

MINUTES

Commission Meeting

September 28, 2010

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
William E. Laine, Jr.)	Associate Members
J. Bryan Plumlee)	
Kyle J. Schick)	
John E. Tankard, III)	
David Grandis	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Management
John M. R. Bull	Director-Public Relations
Katherine V. Leonard	Recording Secretary
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Allyson Watts	Fisheries Mgmt. Specialist
Lewis Gillingham	Head, Saltwater Fishing Tournament
Laura M. Lee	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Steve York	Marine Police Officer
Jeff Copperthite	Marine Police Officer

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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Roger Mann
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Others present included:

Buddy Wyker	Jack Dazier	Catherine Kudrick	Heather McDonald
Ned A. Greene	Rick Rice	Karl Mangels	Travis Davidson
Kate Field	Jeremy Pianalato	Jim Stricker	Craig Dozier
T. M. Mize	J. Breeden	J. C. Douglass	Frank Dennis
Andy Lacatell	Henry Green	Robert Breland	Dale Feites
J. C. Martorana	Glenn Wilson	Andy Moser	Ray Watson
Ellis W. James	Hank Bowen	Roger Parks	Douglas F. Jenkins
Wayne France	Ken Smith	Tommy Leggett	Ray McElligott
Ray West	Walter Deal	Bernard West	James M. Deal
Mark A. Cottee	Julie Ray	Roy Insley	Wes Robbins
David West	Timmy Jenkins	Ellen Grimes	Andrew McElligott

and others.

Commissioner Bowman called the meeting to order at approximately 9:41 a.m. Associate Member Robin was absent.

Commissioner Bowman requested a moment of silence, in lieu of a prayer, for Sam Swift a long-time waterman whose life recently was ended suddenly in a fishing accident. Also, at his request Associate Member Schick led the pledge of allegiance.

SPECIAL ANNOUNCEMENT:

Commissioner Bowman announced the appointment to the Board, yesterday, of Bryan Plumlee by Governor McDonnell. He said that Mr. Plumlee was replacing Dr. McConaugha who had admirably served on the Board during his time. He explained that Mr. Plumlee was an attorney with the law firm Huff, Poole & Mahoney who specialized in environmental issues. He had served on the Virginia Beach Wetlands Board, two as chairman. He is a 1991 graduate, magna cum laude, of North Carolina State University. He received his law degree in 1996 from the University of North Carolina at Chapel Hill. He and his wife, Anne, live in Virginia Beach with their two sons. He welcomed Mr. Plumlee to the Board.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes from the Board members or staff. There were none. He asked for action by the Board.

Associate Member Tankard moved to approve the agenda. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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Commissioner Bowman noted for the record that there was a quorum present at the meeting. He said that the documents of qualification for Mr. Plumlee had been received by him and would be made a part of the overall record.

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MINUTES: Commissioner Bowman requested a motion for approval of the August 24, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Laine moved to approve the minutes, as distributed. Associate Member Holland seconded the motion. The motion carried, 6-0-2. The Chair voted yes. Associate Members Fox and Plumlee both abstained from voting, as they were not present at the August Commission meeting.

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

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

Tony Watkinson, Deputy Chief, Habitat Management Division, summarized these items for the Board. He stated that there were ten items (A-K). His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Associate Member Tankard asked a question for Item 2E, which was, did the adjoining property owner realized that the transporting of sand would be significant. Mr. Watkinson stated he had been advised of the project.

Associate Member Fox asked why was the new bulkhead's distance from the old bulkhead different than the usual 2-foot requirement. Mr. Watkinson said it was being placed against the old bulkhead to allow for the proper slope. Associate Member Fox asked if it was because of the water depth. Mr. Watkinson responded yes.

Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed.

Associate Member Plumlee announced that because he was the attorney representing the City of Chesapeake he would be abstaining from participating in the voting for Item 2G, City of Chesapeake Public Works, #10-1258. Commissioner Bowman stated that a separate motion for Item 2G would be necessary.

He stated the matter was before the Commission for action and asked for a motion for all items except for Item 2G.

Associate Member Tankard moved to approve all of the page two items (A – K), except for 2G. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman asked for a motion just for Item 2G.

Associate Member Tankard moved to approve Item 2G. Associate Member Laine seconded the motion. The motion carried, 7-0-1. Associate Member Plumlee abstained.

- 2A. **DEPARTMENT OF THE ARMY, #10-1223**, requests authorization to repair the Poe Road Bridge above Accotink Creek by installing approximately 1,730 square feet of riprap scour protection at the bridge abutments, installing approximately 508 square feet of riprap scour protection in the central bridge pier, installing a 80-foot wide stone weir upstream of the bridge, installing a 75-foot

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wide cross-vane downstream of the bridge, grading approximately 150 linear feet of Accotink Creek, and installing two temporary construction access areas in Accotink Creek at Fort Belvoir in Fairfax County. Staff recommends a time-of-year restriction from February 15 through June 30 to protect anadromous fish resources.

Permit Fee.....	\$100.00
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2B. DEPARTMENT OF THE ARMY, #10-0846, requests authorization to replace the Farrar Road Bridge over Accotink Creek, install 817 square feet of riprap scour protection, and directionally drill 74 linear feet of utility line a minimum of ten feet beneath Accotink Creek at Fort Belvoir in Fairfax County. Staff recommends a time-of-year restriction from February 15 through June 30 to protect anadromous fish resources.

Permit Fee.....	\$100.00
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2C. CITY OF HAMPTON, #10-1172, requests authorization to maintenance dredge, on an as-needed basis, up to 15,000 cubic yards of material from the Salt Ponds Inlet to a maximum depth of minus nine (-9) feet below mean low water in Hampton. Dredged sand will be placed above mean low water on the adjacent beach.

Permit Fee.....	\$100.00
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2D. K-VA-T FOODS, INC., #10-1001, requests authorization to install two triple box culverts within approximately 106 linear feet of Little Creek to provide vehicular access to a proposed Food City at the intersection of Euclid Avenue and Bob Morrison Blvd. in the City of Bristol. Recommend approval contingent on an April 1 through July 31 instream work time-of year restriction to protect the State Endangered Tennessee dace and an encroachment royalty of \$4,452.00 for the placement of the culverts over 1,484 square feet of State-owned subaqueous land at a rate of \$3.00 per square foot.

Royalty Fees (encroachment 1,484 sq. ft. @ \$3.00/sq. ft.).....	\$4,452.00
Permit Fee.....	\$ 100.00
Total fees.....	\$4,552.00

2E. NANCY DRURY, ET AL , #10-1163, requests authorization to install 215 linear feet of stone riprap up to a maximum of eleven (11) feet channelward of a deteriorating bulkhead situated adjacent to their property along the Chesapeake Bay at 4620 Peaceful Shores Drive in the Jamesville area of Northampton County.

Permit Fee.....	\$100.00
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2F. TOWN OF CHINCOTEAGUE, #10-1113, requests authorization to construct a 160-foot long by 8-foot wide fishing and observation pier which includes a 10-foot wide modified T-head along Chincoteague Channel adjacent to Bridge Street in the Town of Chincoteague. The pier will be constructed over and attached to the old VDOT concrete bridge fender.

Permit Fee.....	\$100.00
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2G. CHESAPEAKE PUBLIC WORKS, #10-1258, requests authorization to replace the existing Bells Mill Road Bridge over Bells Mill Creek, in the same location, with associated improvements to the roadway approaches and shoulder widening, north of Cedar Road near the Seabrook Landing subdivision in Chesapeake. Recommend approval with our standard instream construction conditions.

Permit Fee.....	\$100.00
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2H. VULCAN CONSTRUCTION MATERIALS, #10-0755, requests authorization to install either, or a combination of, three (3) steel pipe piles with batter boards or 19-pile mooring dolphins, to support barge operations at their Virginia Shipyard facility situated at the confluence of the Eastern and Southern Branches of the Elizabeth River in the City of Norfolk.

Permit Fee.....	\$100.00
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2I. OLD DOMINION UNIVERSITY, #10-0811, requests authorization to construct an 8-foot wide by approximately 82-foot long, open-pile pier, with a 6-foot wide by 20-foot long gangway leading to a 12-foot wide by 65-foot long floating pier, to support activities of the Old Dominion University Women's Crew Team, at their new facility in Lakewood Park, situated along Wayne Creek in the City of Norfolk. The pier is proposed to include one light pole on each of the floating and fixed pier sections, channelward of mean low water, and will support the permanent mooring of the team's three (3) chase motor boats. ODU has agreed to remove the pier should they cease to use the crew facility.

Permit Fee.....	\$100.00
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2J. AT & T CORPORATION, #10-1189, requests authorization to install, by directional bore method, 330 linear feet of fiber optic cable beneath the submerged bed of Smith Creek (The Hague) in the City of Norfolk. Staff recommends the assessment of a royalty in the amount of \$990.00 for the cable's encroachment beneath 330 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fee (encroachment 330 lin. ft. @ \$3.00/lin. ft.).....	\$ 990.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,090.00

2K. TOWN OF VINTON, #10-1238, requests authorization to replace an existing single barrel, 8-inch diameter, sanitary sewer siphon pipe by installing, by open cut method, new concrete encased, double barrel, 8-inch pipes crossing approximately 20 linear feet under the bed of Glade Creek in the Town of Vinton, Roanoke County.

Permit Fee.....	\$100.00
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3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission). There were none.

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. VMRC Legal Counsel advised the Board that there was no need for a closed meeting.

5. RAPPAHANNOCK ASSOCIATES, LLC, #10-0297, requests authorization to install a 238-foot long floating, concrete pier with nine (9) wetslips at the channelward end of an existing pier, construct 351 linear feet of replacement vinyl bulkhead, replace a 351-foot long timber walkway landward of the bulkhead, and to dredge 370 cubic yards of subaqueous material along the bulkhead to provide maximum depths of minus six (-6) feet at mean low water adjacent to the Port Urbanna Yachting Center located along Urbanna Creek in the Town of Urbanna. The project is protested by the owners of the adjacent marina.

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Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the Port Urbanna Yachting Center was located along the west side of Urbanna Creek in the Town of Urbanna. Development along the creek included a mixture of residential and commercial properties. The shoreline in the immediate vicinity of the project was primarily commercial. The Urbanna Yachting Center Marina was located on the south side of the marina and there was also a commercial pier facility on the north side of the marina property. The marina currently had 44 slips enclosed within existing boathouses and 3 open slips. There was a travel lift, pumpout station, service yard, boat storage areas, and a restaurant located at the property.

Mr. Neikirk explained that the applicant proposed to install a concrete floating pier with nine (9) wet slips extending from the channelward end of an existing boathouse pier, replace a vinyl bulkhead extending two (2) feet channelward of a deteriorated bulkhead with timber walkway replaced landward of the bulkhead, and to dredge approximately 370 cubic yards of subaqueous material channelward of the bulkhead to provide maximum depths of minus six (-6) feet at mean low water. The dredged material was proposed to be dewatered on site and then trucked to an existing upland containment area in Deltaville.

Mr. Neikirk noted that the project was protested by Potomac Timber Investments, LLC, the owner of the adjacent Urbanna Yachting Center marina. They stated they were concerned with the impact of the proposed expansion on navigation by boats accessing their facilities, as well as, the other boathouses, travel lifts, and restaurants northwest of the proposed pier extension. They stated they had questions concerning the impact of the proposed pier extension on their recently approved marina redevelopment and expansion. They also stated they had environmental concerns regarding the impact of the proposed dredging on Urbanna Creek.

Mr. Neikirk said that in their report dated September 15, 2010, VIMS stated that the addition of wet slips and boats were expected to incrementally add to the introduction of pollutants, but noted that the adherence to the marina operational procedures included with the application should lessen those impacts. They stated there would be some shading impacts associated with the pier. They explained that bulkheads were generally not the preferred option for stabilizing shorelines, but that they were a logical choice in areas with restricted navigation. If possible, they recommended replacing the bulkhead in the same footprint. Finally, they stated that dredging could re-suspend fine sediments and impact benthic organisms and the ecological services they provided. Where possible they recommended zonation mooring, a practice of mooring deeper draft vessels in the naturally deeper areas. This practice eliminated the need to dredge the entire facility to a consistent depth.

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Mr. Neikirk stated that by letter dated May 7, 2010, the Health Department informed staff that the marina was in compliance with their "Sanitary Regulations for Marinas and Boat Moorings." The Department of Environmental Quality determined that a Virginia Water Protection permit would not be required because the water quality impacts should be minimal and temporary.

Mr. Neikirk explained that in their memorandum dated May 3, 2010, The Department of Conservation and Recreation stated they did not anticipate that the project would adversely affect any of their programs although their Chesapeake Bay Local Assistance Division noted the applicability of Chesapeake Bay Act requirements that were regulated by the local government. No other State agencies had commented on the proposal.

Mr. Neikirk noted that the project would not encroach on any public or privately leased oyster planting ground.

Mr. Neikirk said that a portion of the proposed pier extension would encroach on the turning basin of the Urbanna Creek Federal Project Channel. The Corps of Engineers, however, had reviewed the project and determined that the project satisfied the conditions for their Regional Permit Number 19 if approved by the Commission. In their approval letter dated April 26, 2010, the Corps noted that the applicant would be responsible for removal of any portion of the pier deemed necessary by the Corps to conduct maintenance dredging. The letter also stated that the applicant would be responsible for removing any of the authorized structures should the Secretary of the Army later determine that they were causing an unreasonable obstruction to navigation. The turning basin of the Urbanna Creek channel had historically been used by commercial vessels primarily accessing the old Southern States grain facility. That facility was closed several years ago and had recently been replaced by a mixed-use commercial waterfront development.

Mr. Neikirk said also that the marina was located within an embayment along the creek and as a result the proposed pier addition extended more than 1/3 the width across the waterway. Nevertheless, given the configuration and width of the waterway, staff did not believe the pier would adversely affect navigation traversing Urbanna Creek. The floating pier addition would result in some reduction in width between the southern end of the proposed pier-head and the yet to be constructed northern piers at the adjacent Urbanna Yachting Center. A fairway of approximately 100 feet would be maintained between the piers, which was approximately the same width between the boathouses immediately west of the proposed pier addition. It appeared to staff that the triangular deck area at the southeast end of the pier could be modified to reduce the constriction without the loss of any proposed slips. Modifying the triangular deck to a simple finger pier would also reduce the temptation to temporarily moor boats along the southern end of the pier. That was an additional concern expressed by the owners of the adjacent marina.

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Mr. Neikirk reiterated that although the proposed pier addition would extend more than 1/3 the width of the waterway, staff did not believe it represented a hazard to navigation, given the configuration of the creek and the existing and pending improvements on the adjoining properties. The elimination of the southern triangular deck area would reduce the constriction between the applicant's pier and the piers to be constructed at the Urbanna Yachting Center, without the elimination of any of the proposed slips.

Mr. Neikirk explained that VIMS recommended replacing the bulkhead in the same footprint as the old timber bulkhead if practical. Staff believed it would be difficult and more costly to completely remove the old bulkhead and replace it in the same footprint, however a vinyl replacement bulkhead can usually be constructed within a foot of an existing wall. Given the location of the travel lift at the head of the canal, staff believed the requested dredging was appropriate.

Mr. Neikirk said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the following special conditions:

1. The triangular shaped deck area at the southern end of the floating pier shall be eliminated and may be replaced with a 4-foot wide finger pier.
2. The vinyl bulkhead shall be replaced within one (1) foot of the existing deteriorated timber bulkhead.

Mr. Neikirk explained that staff also recommended a dredging royalty in the amount of \$166.50 for the dredging of 370 cubic yards of State-owned submerged land at a rate of \$0.45 per cubic yard. In accordance with §28.2-1206(B) of the Virginia Code, it appeared the marina was exempt from the payment of encroachment royalties.

Commissioner Bowman asked staff to explain the Code Section 28.2-1206. Mr. Neikirk explained that some facilities are exempt from payment of certain fees because they perform ship repairs or sell watercraft.

Commissioner Bowman asked if the applicant or a representative wished to comment.

James Breedon, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Breedon stated that this facility had been here for a long time and was previously owned by Mr. Ben Hurley. He explained that 238 feet was the width from one end to the other and it would not go into the channel. He said they accept the staff's conditions. He said the finger pier to be more stable should not be 4 feet wide, but 6 feet wide, since the pier was lengthy. He stated that there was another marina at which they were operated as a 'green' marina and the same would be the case here. He said the dredging was to allow them the use of the travel lift and to remove the siltation. He said the Corps had issued its Regional Permit Number 19 and the applicant had accepted the

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conditions. He utilized the overhead drawing of the project to review and explain the project. He said they were requesting approval of the project with the staff conditions. He said he would answer any questions.

Commissioner Bowman asked for questions. There were none.

Commissioner Bowman asked for comments from anyone else.

Jack Dozier was sworn in and his comments are a part of the verbatim record. Mr. Dozier explained the concerns expressed by the protestor regarding navigation and showed on the slide how the navigation would be impacted. He said the structure blocks it somewhat, but this was never an issue because of the dock being put out further in order for the boats to come into the area. He said the dredging at the bulkhead was needed as it was not as deep as further out and they needed more depth. He added that they needed to clean out the old bulkhead as it was rotten and some of it had collapsed.

Commissioner Bowman asked for questions.

Associate Member Fox asked if the larger boats docked at the pier were a visibility problem. Mr. Dozier stated that there was something already here and with a boat there it would be easier to see around.

Buddy Wyker, supporter for the project, was sworn in and his comments are a part of the verbatim record. Mr. Wyker said he had docked his boat here since 1974 and they had done a good job of maintaining the facility. He said he recommended approval.

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

Captain Andrew Moser, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Moser provided the Commission with a handout and utilized the overhead projector. He said the applicant had made an error on the drawings in regards to the distance and instead of the 145 feet indicated it was actually 110 feet. He noted that there were no finger piers shown on the drawing. He read from the January 2009 Commission minutes where it said that the staff recommendation was modified by Associate Member Robins which required that 'G' dock not be extended further than 'F' dock. He said the same restriction should be required here. He said the applicant did oppose the application for permit #08-1123 of their project and it was modified. He noted that the project encroached on their property.

Commissioner Bowman announced that the matter was ready for discussion or action by the Commission.

Associate Member Schick moved to accept the staff recommendation with conditions requiring the triangular deck at the southern end of the floating pier be eliminated and may be replaced with a 6-foot wide finger pier, the replacement bulkhead must be constructed within one-foot channelward of the deteriorated bulkhead, and a clearance of at least 100 feet must be maintained between the pier addition and the existing and currently permitted structures extending from the adjacent Urbanna Yachting Center Marina. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (dredging 370 cu. yds. @ \$0.45/cu. yd.).....	\$166.50
Permit Fee.....	\$100.00
Total Fees.....	\$266.50

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- 6. **JONATHAN D. MIZE, #10-0059**, requests authorization to construct a 476 square foot open-sided, flat roof boathouse at the end of an existing 240-foot long private pier at property situated along the Rappahannock River in Essex County. The project is protested by the downstream adjacent property owner.

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

Mr. Owen explained that the project was located at 3544 Grandview Drive in the Fairview section of Essex County. The Rappahannock River was approximately 1.8 miles wide at this location. The pier extended into approximately three (3) feet of water at mean low tide. Private non-commercial boathouses were common in this section of Essex County.

Mr. Owen also explained that Mr. Mize submitted his original application on January 14, 2010, requesting authorization to construct a 5-foot wide by 20-foot long extension and an uncovered boatlift adjacent to his existing 240-foot long private pier. By letter dated January 20, 2010, Mr. Mize was advised that this work qualified for the statutory authorization provided to riparian property owners for the construction of private piers pursuant to §28.2-1203(A)(5) of the Virginia Code.

Mr. Owen stated that on June 24, 2010, Mr. Mize provided revised project drawings seeking authorization to construct a 34-foot long by 14-foot wide flat roof boathouse. He was advised by letter dated July 12, 2010, that a permit may be required for this structure. Letters were sent to the adjacent property owners on that same date notifying them of the proposal.

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Mr. Owen noted that in their letters dated January 26, 2010 and July 23, 2010, Mr. and Mrs. Russell Pace, the downstream adjacent property owners, informed staff that they objected to the proposed boathouse and pier extension, as it may interfere with navigation to their pier if it were to also be lengthened on its current alignment. They further suggested that the applicant would likely attempt to use the flat roof as an elevated deck. In a subsequent telephone conversation, Mr. Pace commented on a previous upland dispute regarding Mr. Mize's placement of backyard fill material, which created drainage issues for his property, and the planting of trees that obstructed his upstream view of the River. He was advised that these issues were outside the Commission's jurisdiction.

Mr. Owen also noted that Mr. Blair Nelson, the upstream adjacent property owner, stated in his letter dated July 15, 2010, that he would support the project provided Mr. Mize did not attempt to use the roof as an elevated deck.

Mr. Owen stated that the applicant completed and signed the Regional Permit 17 Certificate of Compliance Form provided in the Joint Permit Application by the U. S. Army Corps of Engineers. Essex County had advised that they would issue their building permit should the Commission approve the project.

Mr. Owen said that the 476 square foot open-sided boathouse would have qualified for the statutory authorization provided in §28.2-1203(A)(5) of the Code of Virginia, had it not been objected to by the adjoining property owner. In this case, staff believed the open-sided design only minimally added to the visual obstruction already presented by the pier and boatlift. Staff believed, however, that the use of the flat roof as a deck would constitute a pier platform and would result in the pier exceeding the statutorily authorized 400 square foot pier platform threshold.

Mr. Owen stated that staff recommended approval of the project as proposed, contingent on a permit condition prohibiting the use of the roof as an elevated deck.

Mr. Owen noted that a letter was received by staff on September 24, 2010 informing them that the protestant could not attend the meeting. He said a copy of the letter was added to the Commission notebooks.

Commissioner Bowman asked for questions of staff. There were none. He asked if the applicant or a representative was present and wished to comment.

Jonathan Mize, applicant, was sworn in and his comments are a part of the verbatim record. Commissioner Bowman asked if he had anything to add to the staff comments. He said no.

Associate Member Schick asked why he chose to use planking for the roof. Mr. Mize said it was a flat roof and the least objectionable profile. He said it was tongue and

groove with 8-inch plank. He said this was used for the bulkhead and was the strongest, requiring no maintenance.

Commission Bowman announced the matter was before the Commission for discussion or action.

Associate Member Tankard moved to approve the project with the condition that use of the roof was prohibited. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee.....	\$25.00
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- 7. **PRINCE WILLIAM COUNTY SERVICE AUTHORITY, #10-0757**, requests authorization to install approximately 165 linear feet of new 16-inch water line a minimum of three (3) feet beneath the channel bottom of Powell's Creek and to install approximately 40 linear feet of riprap revetment for bank stabilization, associated with Lake Montclair Water Main Project in Prince William County. The project is protested by several nearby residents.

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

Mr. Bacon explained that Prince William Service Authority proposed to construct 1,600 linear feet of new 12-inch and 16-inch water line from an existing water main on the northwestern side of Lake Montclair to an existing water main on the northeast side of the lake. The majority of the new water line would be crossing non-tidal wetlands along Powell's Creek. The residential area was highly developed. The proposed new water line would be installed by open trench method utilizing a coffer dam system and turbidity curtains to control the sedimentation at the construction site. Riprap revetments were proposed to be constructed along both shorelines to stabilize the hillside. The stated purpose of the project was to supply the area with a stable source of potable water to serve the growing demand in the region.

Mr. Bacon stated that the proposed water line project would cross Powell's Creek, an unnamed tributary of Powell's Creek, and two sections of Lake Montclair along with the non-tidal wetlands associated with Lake Montclair. Powell's Creek had a drainage area exceeding five (5) square miles which was the agency's jurisdictional threshold.

Mr. Bacon said that two letters of protest had been received regarding this project. In a letter written on behalf of the Montclair Property Owners Association dated

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June 24, 2010, Mr. Raymond Diaz, attorney for the Association explained they were concerned with the degradation of the area and the siltation of Lake Montclair. They specifically mentioned the unrelated widening of Sprigg's Road and the bridge built over Powell's Creek, as two reasons for the silting in of Lake Montclair. The Association was displeased with the County's reaction to their concerns regarding the need for dredging and the degradation of Lake Montclair and the associated wetlands and riparian buffer. Mr. Peter D. Uhrmacher, a nearby resident, was concerned with the potential damage the project would impose on the lake and the associated wetlands.

Mr. Bacon noted that the Prince William Service Authority responded to the protestants' concerns in a letter dated August 16, 2010.

Mr. Bacon also noted that the Army Corps of Engineers had issued a Nationwide Permit 12 (utility lines) and a Nationwide 13 (bank stabilization) and had expressed no objection to the project as long as the crossings are accomplished in accordance with the criteria set forth in the issued permits.

Mr. Bacon said that in their e-mail dated July 12, 2010, The Department of Game and Inland Fisheries stated they had no objection to the project provided the upland erosion and sediment control standards were followed and provided the disturbed areas were restored and re-vegetated after completion of the project.

Mr. Bacon also said that the Department of Conservation and Recreation and The Department of Environmental Quality both indicated they had no objection to this project. No other State agencies had provided comments on the proposed project.

Mr. Bacon stated that while staff was sympathetic to the landowners' concerns, it appeared that the Prince William County Service Authority had addressed the issues of sedimentation of Powell's Creek and Lake Montclair. The Service authority must follow the 1992 Erosion and Sedimentation Manual for duration of the project. The issue of the riparian buffer was an upland issue that was not in the Commission's jurisdiction. Staff believed the costs associated with any future dredging of Lake Montclair deemed necessary, as a result of sedimentation, is an issue between the County and the Association.

Mr. Bacon said it appeared there should only be minimal and temporary impacts to state-owned subaqueous land associated with this project. Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the following conditions:

- 1) Any streambeds or banks impacted by the project shall be restored to pre-existing contours and conditions upon completion of construction.

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- 2) The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) and the approved Sediment and Erosion Control Plan for the project shall be followed throughout construction.
- 3) Any proposed deviation in crossing method or location must be formally authorized by the Commission.
- 4) Construction shall be performed during low-flow conditions to the greatest extent practicable.

Commissioner Bowman asked if the applicant or a representative wished to comment.

Glenn Wilson, from the engineering firm representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Wilson stated that the details were left to the contractor. He said they avoid stream crossing in a major storm event. He said they should be working no more than two weeks in the stream, maybe even less.

Commissioner Bowman asked for questions.

Associate Member Fox asked what occurred in the case of a hurricane. Mr. Wilson explained in the case of a major weather event they pull everything out as soon as possible, so as to not lose anything.

Associate Member Plumlee asked for a description of the purpose of the line.

Charlie Martorana, representing the Prince William County Service Authority, was sworn in and his comments are a part of the verbatim record. Mr. Martorana said that this was to complete the loop of the system around Lake Montclair and reinforce the entire water system in the area. He said this was in the County overall plan, as developed. He said it closed the loop to make it more effective and flexible. Associate Member Plumlee asked if it was a part of the long-term plan and redundant in coverage in cases of emergency. Mr. Martorana responded yes.

Commissioner Bowman asked for anyone in support who wished to comment. There were none. He asked for those in opposition who wished to comment.

Ned Greene, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Greene said that he would like to support the project, but usually the results of these upstream projects cause problems for those downstream and the community gets left holding the bag. He said in a report done in 2008 it said that these projects were protecting the Bay and the communities. He provided a picture and hand out of other projects.

Commissioner Bowman said that he needed to consult with legal counsel to see if this fell within the VMRC jurisdiction. David Grandis, Assistant Attorney General and VMRC

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Counsel, the other project was not under VMRC jurisdiction and it was not being heard at this meeting. Mr. Greene said that this all comes into the lake and the County will take no responsibility. He said they are told the line on the lake is their responsibility.

Commissioner Bowman stated that if this project was an acceptable use of State-owned bottom in the creek conditions could be added during the permitting processing. He said they were considering a decision on only one crossing and what was above was not within the VMRC jurisdiction so by the law the Commission cannot consider it. He reiterated that no upland issues were under the VMRC's jurisdiction pursuant to the Code of Virginia.

Mr. Greene said that he requested the construction be denied.

Commissioner Bowman announced that the matter was before the Commission for discussion or action.

Associate Member Fox asked if the Service Authority could complete the project within a certain number days. Mr. Martorana said that they could not request less than the contractor agreement and the crossing should not take more than two weeks. He said if there was a pending storm then the contractor would get everything out and onto high ground. He said the County Inspectors monitor the construction activity daily. Associate Member Fox asked if the ditch for the pipe was left open for the entire six months. Mr. Martorana stated that it was not left open the entire project period as they cut the pipe, put it in it and backfill as they work.

Associate Member Fox moved to accept the staff recommendation with the addition of a 3-week time period once the crossing is commenced until it is finished. Commissioner Bowman expressed his concern in enforcing the 3-week time period. David Grandis, Assistant Attorney General stated that the applicant had asserted that they would complete this as quickly as possible, which would be in their best interest. He said with the staff recommendation and the applicant's assertion the matter was addressed. Associate Member Fox amended the motion to include a condition that the work would be done during, with low flow conditions, and that speed be applied as is applicable in order to complete the work as soon as possible. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee.....	\$100.00
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- 8. **U. S. FISH AND WILDLIFE SERVICE, #10-1216**, requests authorization to install approximately 504 linear feet of 4-foot wide elevated boardwalk over tidal and non-tidal wetlands; construct a 17-foot octagonal observation deck with a

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6-foot by 4-foot connecting ramp; and construct an 8-foot by 12-foot floating canoe launch platform with a 4-foot by 12-foot connecting ramp to the boardwalk, within and adjacent to an unnamed creek tributary of the James River at the Presquile National Wildlife Refuge in Chesterfield County. A tidal Wetlands permit and Submerged Lands permit are required.

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

Mr. Stagg explained that the proposed project was located in the Presquile National Wildlife Refuge on Presquile Island in Chesterfield County. The island was formed by the old natural channel of the James River and the "cut thru" channel created by the Army Corps of Engineers for large ships that traverse this reach of the James River.

Mr. Stagg stated that the Presquile National Wildlife Refuge (NWR) was one of four refuges that comprise the Eastern Virginia Rivers National Wildlife Refuge Complex. The 1329-acre island refuge was located approximately 20 miles south of Richmond, Virginia and was established to protect habitat for wintering waterfowl and other migratory birds. Presquile was a component in the network of refuges on and around the Chesapeake Bay, the nation's largest estuary. The Refuge was home to nesting and roosting bald eagles and was primarily comprised of hardwood swamp, with a fringe of marsh and 300 acres of upland fields. At least two tidal creeks run through a portion of the island.

Mr. Stagg said that the boardwalk, observation deck, and floating canoe launch were proposed to provide access to visitors participating in approved public use activities within the Refuge, both from the upland and by non-motorized watercraft within one of the island's tidal creeks which was locally referred to as Little Creek.

Mr. Stagg noted that the Chesterfield County had not adopted the Wetlands Ordinance and as a result, the Commission was charged with acting as the local wetlands board pursuant to Chapter 13, Subtitle III, of Title 28.2 of the Code. The canoe launch also required a submerged lands permit from VMRC for the impacts to State-owned subaqueous bottomlands. The applicant proposed to use a galvanized steel frame modular boardwalk system through the non-tidal and tidal marsh area. This type of elevated walkway did not require penetration of the ground soil, was height adjustable, and easily accommodated bends and curves around existing trees thereby minimizing impacts to existing vegetation and the substrate.

Mr. Stagg said that in their Shoreline Permit Report dated September 14, 2010, VIMS stated there would be some shading impacts from the boardwalk structure, however, they also noted that there did not appear to be any alternate location for access to the creek without traversing over both non-tidal and tidal wetlands. They recommended the

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boardwalk be elevated to at least three (3) feet above the substrate minimize shading impacts.

Mr. Stagg stated that the Department of Game and Inland Fisheries, in comments dated August 24, 2010, noted the previous presence of bald eagle nests in the immediate area, but did not anticipate the project would result in adverse impacts to those nests. Additionally, they stated that non-motorized recreation and human entry to the area should be evaluated directly with VDGIF staff and that any instream work be avoided during a time-of-year restriction from February 15- June 30 of any given year to minimize impacts to anadromous fish species.

Mr. Stagg noted that the Department of Historic Resources, in comments dated September 3, 2010, stated that the project would be reviewed pursuant to Section 106 of the National Historic Preservation Act (NHPA) directly with the Fish and Wildlife Service.

Mr. Stagg explained that the refuge was established March 7, 1953, to provide habitat for wintering Canada geese, wood ducks, mallards and other migratory birds and was further charged with providing opportunities for compatible, wildlife-dependent public uses. Staff believed the proposed construction of the boardwalk, observation platform and canoe launch would provide for additional public access to riverine environments and provide both migratory bird education and the opportunity to provide educational information concerning both non-tidal and tidal wetlands habitat and vegetation while minimizing any adverse impacts to those same environments to the greatest extent possible.

Mr. Stagg stated that after evaluating the merits of the project, and after considering all of the factors contained in 28.2-1205 (A) and 28.2-1302 of the Code of Virginia, staff recommended approval with a permit condition that the boardwalk clearance above the substrate be as high as practicable (up to a height of three feet above the substrate) with the system to be used. Since the project provided for public access and was on federally owned lands, no royalty was required.

Commissioner Bowman asked for questions of staff. Associate Member Tankard said that the width and height should correspond to have less impact on light getting through to the bottom. Mr. Stagg said that the applicant wanted to keep the boardwalk to a minimum width and he was not sure they could raise it, but they were willing to do so as much as possible to minimize impact.

Commissioner Bowman asked if a representative for the applicant was present to comment. Mr. Stagg stated that there were notified of the hearing.

Commissioner Bowman asked if anyone in opposition was present and wished to comment.

Ellis W. James was sworn in and his comments are a part of the verbatim record. Mr. James said he was a Sierra Club observer and was concerned with some parts of this projects. He explained that the bald eagle migrate to Virginia from mid- to late November, but with the climate change that was changing. He said the bald eagle activity was intense in December during the mating season. He said most years there are three eggs resulting in survival of the fledglings. He said philosophically he was not opposed. He said close attention needed to be given to the recovery of the bald eagle in the Commonwealth.

Commissioner Bowman referenced and read from the evaluation the Department of Game and Inland Fisheries condition which covered the bald eagle.

Associate Member Laine said that he felt the Fish and Wildlife Services would be concerned with this and would take care of it. He moved to approve the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 8-0.

Permit Fee.....	\$100.00
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- 9. **MR. AND MRS. PETER SWART, #10-1115**, request authorization to install one (1) 87-foot long offshore stone breakwater with beach nourishment and a 105-foot long stone riprap revetment on their property along Chesconessex Creek in the Crystal Beach area of Accomack County. A Coastal Primary Sand Dune and Beaches permit and a Submerged Lands permit are required.

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 site was located in Crystal Beach, a small beachfront community lying one mile northwest of South Chesconessex, near the mouth of Chesconessex Creek. The community was established in the late 1940s or 50s. The Swart’s property is situated along a very narrow, medium to high-energy beach with a 15 mile fetch to the northwest across Pocomoke Sound. The long-term erosion rate at the project site is approximately 1.2 feet per year.

Mr. Badger said that there is a low vegetated dune west of the house that extends onto the adjacent parcel. The adjacent shoreline to the east also had a narrow beach but no primary sand dune feature. The nearshore area was shallow and sandy with extensive submerged aquatic vegetation (SAV) habitat. There were small patches of SAV landward of the proposed breakwater.

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Mr. Badger stated that Mr. and Mrs. Swart proposed to install a 3-foot high, stone riprap revetment along the face of the already impacted (existing rubble material) primary sand dune and in front of their cottage; install an offshore breakwater with a crest elevation of 1-foot above mean high water and place 185 cubic yards of beach quality sand landward of the breakwater as beach nourishment at their property located at 16261 Crystal Beach Road.

Mr. Badger explained that at the June 26, 2001, Commission meeting the Swarts received authorization to elevate their cottage with pilings. The pile-supported cottage was now near mean high water and can not be moved any closer to the road.

Mr. Badger said that The County of Accomack had not yet adopted the model Coastal Primary Sand Dune and Beach ordinance. As a result, the Commission was responsible for administering the provisions of that ordinance within that locality.

Mr. Badger said that the Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers on Thursday, September 9, 2010, to accept public comments on the project. Ms. Ellen Grimes, the applicants' agent, and Mr. Arthur Nielsen, a nearby property owner, were the only ones to attend the hearing.

Mr. Badger stated that Mr. Nielsen expressed concerns with the size of the rock being used for the riprap revetment and the length of the return walls. He also had concerns with the crest height of the breakwater and questioned whether the breakwater would be permanently marked. No other public opposition had been received on the project to date.

Mr. Badger explained that in their report dated August 20, 2010, the Virginia Institute of Marine Science (VIMS) stated that the existing residence was at high risk from erosion, tidal flooding and storms at this location. Flooding was a different problem from erosion and generally cannot be resolved with shoreline stabilization methods. They stated that the two most effective solutions for reducing flooding risk to structures were to move the structure landward or raise the structure above flood levels. In this case, there is no area on the parcel to relocate the structure landward and it has already been elevated. With regard to this specific application, VIMS recommends construction of the nearshore breakwater and encourages adjacent property owners to do the same. VIMS also notes that the combined use of a revetment and breakwater is generally not preferred, but the proposed revetment may be warranted in this case. They recommend removal of the failed bulkhead and rubble before installation of the stone revetment within the same footprint, and an increase in the amount of beach nourishment with burial of the stone revetment under sand to allow dune vegetation to recover over the structure and to reduce the potential for erosion of the adjacent dune.

Mr. Badger said that in their e-mail dated August 25, 2010, the Department of Game and Inland Fisheries (DGIF) documented the existence of the Northeastern beach tiger beetle

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in the vicinity and recommended coordination with the Department of Conservation and Recreation (DCR) and the Virginia Department of Agriculture and Consumer Services (VDACS).

Mr. Badger said that in their written comments dated August 30, 2010, and in an additional e-mail dated September 10, 2010, the Department of Conservation and Recreation stated they did not anticipate any significant adverse impacts upon the Federal and State Threatened Northeastern beach tiger beetle, noting the beetle site was well north of the proposed project.

Mr. Badger noted that neither adjacent property owner had expressed opposition to the project.

Mr. Badger explained that as stated by VIMS, a single nearshore breakwater with a small amount of beach nourishment would not significantly improve the level of protection for the threatened residence. For erosion protection, an offshore breakwater system encompassing several breakwaters across multiple parcels with a wide, stable sand beach was the preferred approach for this shoreline. In this case however, there was an expectation that adjacent property owners were also considering applying to construct offshore breakwater structures in the near future. If properly designed, the additional breakwaters would improve the level of protection for all the parcels.

Mr. Badger said that beach nourishment was only proposed on one side of the breakwater. This was apparently done to avoid direct impacts on a small area of SAV. According to VIMS, allowing the breakwater to accrete sand naturally removed sand from the existing sand supply and might create or worsen erosion on nearby properties. Therefore, increasing the amount and area of beach nourishment was advised to jump start the accretion process and also to cover the proposed revetment with sand. VIMS had stated that the net benefits of this approach outweighed the impact to the small area of SAV (widgeon grass) on the landward side the breakwater.

Mr. Badger stated that staff agreed with Mr. Nielsen that the crest height of the proposed breakwater should be increased. After consultations with Scott Hardaway and Karen Duhring from VIMS, staff believed the crest height should be increased to a minimum of two (2) feet above mean high water. If the height of the breakwaters was increased, staff did not believe additional markers would be necessary since they would be more visible and they were already located close to shore.

Mr. Badger said that Mr. Nielsen also had concerns that the proposed rock size (class II) on the revetment would be too small and that Class III should be used. Staff agreed with Mr. Nielsen that bigger stone was generally better, however, after consulting with Mr. Hardaway, staff believed that if the breakwater was installed with the recommended increased crest elevation and with the proposed Class III stone, that Class II stone would be appropriate for the revetment on the low dune and upland.

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Mr. Badger explained that after evaluating the merits of the project and after considering all of the factors contained in §28.2-1403 and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the following conditions:

1. The breakwater shall have a crest height of two (2) feet above mean high water and shall be armored with Class III stone.
2. The revetment shall be constructed with a minimum of Class II armor stone and with the toe aligned no farther channelward than the failed bulkhead or rubble.
3. The applicant shall remove the failed bulkhead and rubble before installing the stone revetment in the same footprint and shall increase the amount of beach nourishment so that the breakwater is fully connected to the revetment with sand to mean high water and shall bury the stone revetment under clean sand of a grain size similar to that currently existing on the beach.

Mr. Badger said that finally staff recommended a royalty of \$0.05 per square foot for the beach nourishment located channelward of mean low water.

Mr. Badger stated that staff would also encourage the applicant to pursue a joint breakwater system with adjacent property owners in order to provide a more appropriate and effective shoreline protection alternative for the entire shoreline reach.

Mr. Badger noted that revised drawings had been submitted with the changes suggested by VMRC and VIMS.

Commissioner Bowman asked for questions of staff.

Associate Member Plumlee asked if Mr. Neilson was an adjoining property owner. Mr. Badger said no, he was a mile away and a retired engineer.

Commissioner Bowman asked if the applicant or a representative wished to comment.

Ellen Grimes, agent for the applicant, was sworn in and her comments are a part of the verbatim record. Ms. Grimes said the technical information had been explained by the staff. She said in this area there had long been cottages in the area like Silver Beach and now the properties were owned by the next generation and there were three adjoining properties. She said she wanted them to all to do this jointly and had been working with them for a decade. She said one of the adjoining property owners wanted to wait and see because of the expense. She said that for another property further down, the owner had been told by VMRC to move the structure back and that person was unhappy with that and had not done it.

Commissioner Bowman asked for questions of staff and there were none. He asked for anyone in opposition and there were none.

Commissioner Bowman asked for action by the Commission.

Associate Member Holland moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (beach nourishment 2,240 sq. ft. @ \$0.05/sq. ft.).....	\$112.00
Permit Fee.....	\$ 25.00
Total Fees.....	\$137.00

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The Commission meeting was adjourned for lunch at approximately 11:50. The meeting was reconvened at approximately 12:39 p.m.

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10. PUBLIC COMMENTS.

Warm Weather Regulations:

Hank Bowen was present and his comments are a part of the verbatim record. Mr. Bowen expressed his concerns over the penalty in the warm weather regulations that require the shellfish to be destroyed.

Commissioner Bowman asked staff to comment. Dr. Jim Wesson, Head, Conservation and Replenishment, explained that this was obviously about human safety and the Marine Police Officer has the choice of not destroying but rather to put them back overboard. He said from what he had learned this was generally what was done by the officers.

Mr. Bowen comments that the shellfish have been destroyed in the Oyster area. He said for the transplanting of seed clams were exempt from the shading requiring, but under the bulk tag for seed this is not covered. He stated any seed transplanted should be exempt.

Dr. Wesson stated that staff had added the wording about the shading and in general the seed are exempt, but staff will be reopening the matter of this regulation because of further FDA requirements for next summer and a statement of clarification could be added at that time.

No action was taken.

Oyster Buyer Reporting:

Tommy Kellum said that there were oyster buyers that were not reporting their oysters purchased, which is in violation of the Code of Virginia. He suggested that action needed to be taken in this matter and that these buyers should not be allowed to buy oysters during the next year. He said not reporting and paying the taxes takes away from the restoration dollars. He noted that the watermen were penalized, if they did not report.

Commissioner Bowman asked if the Commission should hold a public hearing regarding this matter.

Jack Travelstead, Chief, Fisheries Management, suggested that the buyers not reporting would simply be invited to appear before the Commission and at that point their license could be revoked, as there was procedure to deal with it.

No action was necessary.

Virginia Bushel Tub

G. Wayne France, President, Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. France stated that the Commission needed to discuss the orange basket issue. He said it was not easy to find the required tub anywhere. Commissioner Bowman said that the Code says the orange basket cannot be used.

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement, said that these tubs can be obtained from I. Cooper or Ocean Products.

No action was necessary.

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11. **PUBLIC HEARING:** Consideration of proposed amendments to Regulations 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", 4VAC20-650-10 et seq., "Establishment of Oyster Sanctuary Areas", and 4VAC20-260-10 et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas" to establish the 2010/2011 public oyster season restrictions, including repeal of the 4 ¼ inch maximum cull size for the Rappahannock River, reduction in the size of the Wreck Shoal-James River Sanctuary, and time, gear, and catch limit changes.

Jim Wesson, Head, Conservation and Replenishment, gave this presentation. His comments are a part of the verbatim record. Dr. Wesson provided copies of the petitions received from the watermen and the comments from the Chesapeake Bay Foundation.

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Dr. Wesson explained that this was the same thing we have done every fall. He said for Regulation 4VAC 20-650-10 the Wreck Shoal Sanctuary area has been reduced to a 10th of what it was. He said there had been no comments until the Chesapeake Bay Foundation had submitted their concerns in the large reduction of the Wreck Shoal Sanctuary area. He said both staffs from VMRC and VIMS are comfortable with the change.

Associate Member Fox asked if the area would be marked. Dr. Wesson responded, yes.

Dr. Wesson explained that in Regulation 4VAC 20-260-10 staff was just eliminating the ¼ inch maximum size limit in the Rappahannock River Rotation Areas. He said that there had not been a lot of comments on this change.

Associate Member Fox asked if separate motions were necessary for Regulations 4VAC 20-260-10 and 4VAC 20-650-10.

Commissioner Bowman said the public hearing was opened for Regulation 4VAC 20-650-10.

Ken Smith, Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith said he was pleased with the way the Shellfish Management Advisory Committee members and staff had worked this out so well and they fully agreed with the change in the Wreck Shoal Sanctuary area.

Commissioner Bowman noted that there was one comment received in opposition. He asked for a motion.

Associate Member Fox moved to accept the staff recommendation for Wreck Shoal Sanctuary area. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman opened the public hearing for Regulation 4VAC 20-260-10. There were no public comments. He asked for action by the Commission.

Associate Member Fox moved to accept staff recommendation for the elimination of the maximum cull size. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman asked for staff to present the issue of Regulation 4VAC 20-720-10 for the public oyster harvest seasons.

Dr. Wesson stated that the most comments had been received for this issue. He said that originally the staff had recommended the staggered season which would make it so that the season would cross over a 6-month season. He stated that the SMAC did not like staff

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recommendation and made another recommendation to open all areas October 1, except for the Pocomoke-Tangier Sounds and the Seaside of Eastern Shore. He said that staff did not want to change the season lengths as it seemed to be working to stabilize the harvest. He said the pre-surveys had been done, and in some areas there was for only enough oyster stocks for two months based on the amount of oysters found in those areas.

Commissioner Bowman asked how recent were the surveys? Dr. Wesson stated last week and yesterday.

Dr. Wesson stated that if the seasons do start early, staff would prefer not to have them continue into the New Year. He said that the Rappahannock had the biggest standing stock and now the biggest strike since 2006. He said staff was concerned that if the season goes on any more than that recommended the continued dredging will impact the small spat. He said it was a balancing act and staff would like them to be allowed to work as long as they can, but not until they are just grinding on the oyster rocks.

Dr. Wesson said that there was an Ad hoc committee meeting held because of the interest in the patent tong being allowed in the Rappahannock. He said there was a small group who like to patent tong at Deep Rock, but they do not want it to open October 1, as they have other fisheries to work with. He said the Ad hoc committee wanted patent tonging in the Rappahannock but did not want to work at the same time as the dredgers, but rather to have a season after the dredge season to work in deeper waters.

Dr. Wesson said that SMAC wanted to raise the bushel limit from 8 to 10 bushels per man. He said this would increase the speed of reducing the stocks.

Commissioner Bowman asked if there were questions.

Associate Member Fox said that 50,000 bushels were to be harvested at 10 bushels per day that would mean 5,000 boat days and 300 boats would catch it all in 17 days. Dr. Wesson stated that there was more than one waterman on a boat. Associate Member Fox stated that would shorten time to work and he was concerned because there would be no work for January, but this is what the watermen have asked for. Commissioner Bowman said this was no real issue, but conservation. Dr. Wesson said to start now was an economic-market issue.

Associate Member Schick said he was concerned with self-regulating when there were not enough oysters and afterwards it would be too late. He asked if staff would still be able to monitor. Dr. Wesson said the regular fall survey is done mid-season and they will be checking the sites that have been worked. He said that staff plans to make aerial flights weekly to monitor the activity. He said you just cannot make more oysters.

Commissioner Bowman asked for comments from Dr. Mann of VIMS.

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Roger Mann, representing VIMS, was present and his comments are a part of the verbatim record. Dr. Mann explained that he was at the SMAC meeting and it was a good meeting. He said it was economic concerns for the watermen. He added that VIMS was committed to the survey being done.

Commissioner Bowman opened the public hearing.

Ken Smith, President, Virginia Watermen's Association was present and his comment are a part of the verbatim record. Mr. Smith said he wanted to compliment the SMAC and staff for working together. He stated the issue with the watermen is safety. He said there were incidents last year and the boats needed to be spread out. He said it was a positive for the watermen to re-evaluate the situation and possibly lengthen the seasons. He said if there were a few spat on the shell that have struck, then working them might kill some and you end up rounding the shells resulting in a pretty oyster. He said that he and other watermen want it passed the way it is.

Tommy Kellum, processor, was present and his comments are a part of the verbatim record. Mr. Kellum explained that he had spoken with Dan Dise for the Tangier Watermen's Association and they want December 1 for Pocomoke-Tangier with the 10 bushel limit. He said Mr. Dise said that they did not always agree with staff, but in the case of rotating areas they did agree.

Mr. Kellum said that he favored opening October 1 as the resource was limited from other States as they were opening in November. He said he was concerned with all areas closing at the end of December. He said they get the resources from seven states year round and he was concerned with what the watermen will do when January gets here. He suggested that Area 4 open October and November and again in January or February. He said some areas need to be opened up after the 1st of the year and there was lots of resource in Area 4. He suggested opening Area 4 after December.

Associate Member Fox asked if with the gulf situation the prices were low for October and high for November.

Mr. Kellum said that October is the strongest in the Gulf, but they were negotiating with BP and some felt it was better to get the compensation then to work. He said some of his customers were reluctant to get the gulf oysters. He said he was not as there was a lot of product on the market after October 15. He said that states such as Texas, Mississippi and Alabama open their season October 15. He said the Virginia resource command more dollars. He said he was concerned for the watermen and himself. He said that January to July 4th there was the crab business.

Commissioner Bowman asked if he felt it was better to open in February than in January. Mr. Kellum stated he thought so as there was always market either month sold. Dr. Wesson said that the season needs to close after November, be closed for December and

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come back to re-evaluate. He said it was a risk having a 3-month season and to still want another month.

Mr. Smith said they like it to be all spread out and he appreciated Mr. Kellum's comments. He said in Area 1, Broad Creek when they worked there the oysters were beautiful and rounded. He said he was hoping to go back and he suggested looking into that area. He said it was a strip along the shore with good hard bottom and should be considered for opening later.

Commissioner Bowman asked staff if they wanted to comment more. There were no more staff comments. He explained that the proposal was for the start date of October 1 with a 10-bushel limit and there was no opposition to Mr. Kellum's suggestion for Area 4 to be opened October and November and again in February. He asked for discussion or action by the Commission.

Associate Member Fox moved to accept the staff recommendation with the suggested season change for Area 4 being opened October and November and again in February. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

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12. PUBLIC HEARING: Consideration of proposed amendments to Regulation 4VAC20-1230-10 et seq., "Pertaining to Restrictions on Shellfish" to establish procedures requiring the use of identification tags for shellfish harvest containers.

Jim Wesson, Head, Conservation and Replenishment, gave this presentation. His comments are a part of the verbatim record.

Dr. Wesson explained that all shellfish will have to be tagged after January 1, 2011. He said that staff had worked with industry to have tags provided. He stated that there had not been a lot of comments. He said the certified shippers already have tags they are required to use and the watermen will be able to get their tags from the VMRC agents.

Commissioner Bowman opened the public hearing.

Hank Bowen was present and his comments are a part of the verbatim record. Mr. Bowen said that something needed to be written now saying that no tags were needed for seed. Dr. Wesson said that the seed were exempt because the tags were required for shellfish that were for human consumption and the tags follow them to the point where they were consumed.

Commissioner Bowman asked for action by the Commission.

Associate Member Tankard moved to approve the amendments to the regulation for tagging. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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- 13. PUBLIC HEARING :** Establishment of a Fishermen Identification Program (FIP), which shall be consistent with the National Saltwater Angler Registry Program, and consideration of proposed amendments to Regulation 4VAC20-1090-10- et seq., "Pertaining to Licensing Requirements and License Fees," to raise saltwater recreational license fees to meet the cost of the FIP.

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

Mr. Travelstead explained that there was a lack of good recreational fishermen harvest data. He said now it was collected through a federal survey, but the national Academy of Sciences had said the current survey was a poor method and a new design was coming online soon. The NMFS has implemented a National Angler Registry to create a phone book of angler contact information. States can be exempted from the national program by creating their own registry.

Mr. Travelstead said that this issue was taken to the General Assembly and they directed VMRC to set up a Fisherman Identification Program. He said that buying a fishing license would be one way to register at the state level. This information would be sent to the National Marine Fisheries Service. He said with a blanket license, such as for a private boat, the license holder would not need to register, but the guest aboard the private boat would be required to register. He stated staff wanted to make registration as simple as possible with an online procedure or by telephone.

Mr. Travelstead explained that in the tidal waters to catch a marine species they would be required to register unless a PRFC or Virginia license is purchased. He said the information required is the name, address, phone number, and date of birth.

Commissioner Bowman asked what would be the results of doing nothing. Mr. Travelstead said the fishermen would have to go through the same process and pay a \$15.00 federal fee to register with the NMFS. Commissioner Bowman asked if that was required of everybody. Mr. Travelstead responded yes, no exceptions.

Associate Member Schick asked if a license was still not required for private property. Mr. Travelstead responded yes, and there was still a boat license.

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Commissioner Bowman said that the age for requiring registration was over 16 and 65 and over. Mr. Travelstead stated it was the same as the federal. He said the federal government realizes that most states do not require children to be licensed.

Associate Member Tankard asked how the FIP number would be checked. Mr. Travelstead said that a special sequence of numbers would be used, such that the officers could identify the code number as valid.

Associate Member Plumlee asked if the cost of enforcing this cannot be assigned to those made to register. Mr. Travelstead said no they cannot, but staff would be keeping an eye on the costs of phoning in, so possibly, that option could be eliminated in order to reduce cost. He said that Maryland is considering not allowing the use of the phone for registration.

Associate Member Schick asked if agents would be able to provide this license to get a federal number. Commissioner Bowman stated no, as the agents are not paid very much and there have been frequent complaints that if they have to do more they would drop out.

Mr. Travelstead said that staff had applied to the ASMFC for funding to advertise the new FIP program.

Commissioner Bowman said that since most would not know about the Saltwater Recreational License the first year, it would be a time for the Marine Police to educate the public as we only want the data, not the fines.

Associate Member Fox asked about how the customers for the head boat and charters boats would be handled. Mr. Travelstead said that they would be exempt as this information would be captured from the head and charter boat operators.

Commissioner Bowman opened the public hearing. The public hearing was closed as there were no comments from the public. He asked for action from the Board.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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- 14. PUBLIC HEARING:** Consideration of the recommendations of the Recreational Fishing Advisory Board (RFAB) and the Commercial Fishing Advisory Board (CFAB).

Sonya Davis, Fisheries Management Specialist, Sr., gave the presentation. Her comments are a part of the verbatim record.

Ms. Davis explained the program and said that because of funding there was only a one cycle review. She said the RFAB had recommended seven projects of nine projects for a total cost of \$545,210. She said the information for these projects had been provided in the evaluation and she would answer any questions by the Board about them. She did add that two projects were not recommended and two projects were jointly funded by the Recreational and Commercial funds and American Eel and Wallop Breaux match.

Virginia Saltwater Recreational Fishing Development Fund

The Recreational Fishing Advisory Board (RFAB) initiated a single project review cycle in 2009 that involves 4 meetings, from May to September. This change from two review cycles to one review cycle was made because saltwater recreational license sales seemed to be on a downward trend, and there is a current annual obligation of approximately \$1.5 million on the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF) that supports agency functions. Also, the exact cost of the Virginia Fisherman Identification Program (FIP), to begin in 2011, is unknown at this time. The RFAB members and staff determined that there would not be enough funds to support two review cycles.

The estimate of funds available, for projects, as of August 31, 2010, from the VSRFDF, is \$1,956,906.

The RFAB began this review cycle with 12 project proposals. They recommended the funding of three educational events in July, and the Commission approved the expenditures. The RFAB is recommending the funding of seven of the nine remaining projects, totaling \$545,210.

On September 13, 2010, the following seven projects were recommended for approval by the RFAB:

E) 2010 Virginia Marine Sportfish Collection (Year 4). J. Grist, J. Cimino, VMRC. \$10,000. Vote 8-0.

F) Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2011. Jack Travelstead, VMRC. \$325,468. Vote 8-0, to fund \$312,468.

RFAB COMMENT: Provided that the commercial Marine Fishing Improvement Fund furnishes the additional \$13,000.

G) 2011 Children's Fishing Clinic (Year 14). Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. \$6,500. Vote 8-0.

H) 2011 Kiwanis Club Children's Fishing Clinic (Year 10). Wesley Brown, Capital District Kiwanis Club. \$6,500. Vote 8-0.

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I) 2011 Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay. M. Fabrizio, T. Tuckey, VIMS. \$46,574. Vote 8-0, to fund \$23,287.

RFAB COMMENT: Provided that the commercial Marine Fishing Improvement Fund furnishes the additional \$23,287.

J) 2011 Virginia Game Fish Tagging (Year 17). J. Lucy, VIMS and L. Gillingham, VMRC. \$78,904. Vote 8-0.

K) 2011 Enhancing and Restoration of Submerged Aquatic Vegetation (SAV) Habitat in Chesapeake Bay and the Virginia Coastal Bays (Year 16). Robert Orth, VIMS. \$107,551. Vote 8-0.

The following two projects were not recommended for approval by the RFAB:

D) Sheepshead Diet in Chesapeake Bay between 2006 and 2008, Virginia. H. Liao, C. Jones, ODURF. \$27,724. Vote 8-0.

RFAB CONSENSUS: This project is of limited value to recreational anglers.

L) Messick Point Recreational Fishing Pier, Engineering and Design. Dave Callis, City of Poquoson. \$50,000. Vote 8-0.

RFAB CONSENSUS: This pier location is of limited utility for recreational anglers. Diminishing funding resources were also a consideration to not go forward with this project.

Comment letters, which include the above proposals, are provided by the CCA of Virginia, Mr. Jeffrey Bliemel, and the PSWSFA.

Commissioner Bowman asked for a motion to approve the Recreational funding.

Associate Member Schick moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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Ms. Davis explained that of the Commercial license sales funds most were expended on mandatory reporting. The total cost of the four projects subject to review was \$93,319.00, but only three were being recommended for a total of \$92,187.00. She said that there generally was not a meeting of the CFAB as she usually contacted them all by mail in order to get their comments. She noted that Mr. Crump was the only one to call in support of the recommendations.

Marine Fishing Improvement Fund

Four project proposals have been submitted for funding from the commercial Marine Fishing Improvement Fund (MFIF). The estimate of funds available by December 31, 2010, for projects, from the MFIF, is \$93,319. Three of the four projects have been recommended for funding, totaling \$92,187.

With the small amount of commercial funds available, it was decided that a mail-out would be more cost effective than a full meeting of the Commercial Fishing Advisory Board (CFAB). Each member was provided a copy of the four project proposals and a summary of how the projects, or portions of the projects, may be funded.

The following three projects were recommended for approval:

A) Product Development for Cownose Ray. Mike Hutt, VMPB. \$55,900. MFIF to provide \$55,900.

B) 2011 Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 10). M. Fabrizio, T. Tuckey, VIMS. \$46,574. MFIF to provide \$23,287.

C) Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2011. Jack Travelstead, VMRC. \$325,468. MFIF to provide \$13,000.

The following project was not recommended for approval:

D) Correlation of genetic measures obtained from rack and-bag vs. bottom-cage oyster culture. \$37,076. Funding is not available, if the MFIF funds the other three projects, as listed above. Also, this project duplicates some of the work done by the Commission's Conservation and Replenishment Department.

Commissioner Bowman announced the matter was before the Commission.

Associate Member Fox moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

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There was no further business and the meeting was adjourned at approximately 1:49 p.m. The next regular meeting will be held Tuesday, October 26, 2010.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary