

MINUTES

Commission Meeting

January 27, 2009

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
Kyle J. Schick)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief Deputy, Fisheries Mgmt.
John M. R. Bull	Director-Public Relations
Katherine Leonard	VMRC Recording Secretary
Michele Guilford	Acting Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Jim Wesson	Head, Conservation/Replenishment
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt., Manager
Lewis Gillingham	Director, SWFT, Fisheries Mgmt.
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Kevin Croft	Marine Police Officer
Bill Hawkins	Marine Police Officer
Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.

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Justin Worrell	Environmental Engineer, Sr.
Danny Bacon	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician
Randy Owen	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS): Lyle Varnell

Others present included:

William J. Shift, Jr.	Bob Calves	Charlette Baldwin
Carl Jacksop	Franklin D. Wyker	Barbara R. Wyker
Brian Chromey	Jerry Brown	Ed Starbird
Rich Donoff	J. Rawleigh Simmons	Richard Ayers
Paul Clarke	Dot Field	Dandi Aliff
Kimberly W. Aliff	Margaret B. Ward	John Mullins
Barbara A. Mullins	Ray Watson	Ron Pace
Andy Moser	James Vautrat	Janet Smith
Lewis Filling	Danny Winall	Don Richwine
Anna Dougherty	John Price	David O'Brien
Sarah Cameron	Keith Lockwood	Teri Nadal
Jim Monk	Dee Carter	Chris Riddick
Ingrid Roper	Chris Roger	Robert Montague
Betty Coulson	Garlard Flourney	Dianne Flourney
Doug Riley	Debra Lintz-Riley	Collin Riley
Alejan Gomez	Regina Gomez	Chris Frye
Neville Reynolds	Jim Gunn	Scott Harper
Scott Hardaway	James Firman, Jr.	Ellis W. James
Roger Parks	Frances W. Porter	Gordon C. McPherson
Edward L. Stratton	Tina Taylor	Onnie Lee Smith, Jr.
Alice Firman	Michele McPherson	John Forrest
John Boyle	Regina Boyle	Cynthia Smith
Joe Cardwell	George B. Crockett	Calvin K. Poole
Buddy C.	David Hart	Larry Hart
Robert Tyler, Jr.	B. Tyler	Bill Papa
William S.	Douglas Finney	Herb Thom
Sam S.	Robert B. Tyler, Sr.	Betty Tyler
Glad Tyler	John E. Alexander	Beverly S. Ward
Vernon A. Ward	Lee R. Smith	Ken Smith

and others.

Commissioner Bowman called the meeting to order at approximately 9:30 a.m. He noted that Associate Member Laine was absent and stated that there was a quorum, so the meeting could proceed.

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

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APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. Mr. Grabb explained that the representative for these two items had asked that Item 10, Lawson Property Conveyance and Item 11, S & S Marine Property Conveyance be continued until the February meeting; and, the agent for Item 7, Mr. & Mrs. Ernest S. Harding III, #08-0711 requested that this item be proposed until the February meeting.

Associate Member Robins asked that time be allowed to discuss the advertising of a public hearing for cull rings. Commissioner Bowman announced that it would be Item 21 on the agenda.

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

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MINUTES: Commissioner Bowman asked for a motion for the approval of the November 25, 2009, if there were no changes or corrections. **Associate Member Robins moved to approve the minutes. Associate Member Tankard seconded the motion. The motion carried, 8-0. The chair voted yes.**

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Commissioner Bowman swore in the rest of 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, reviewed the page two items, 2A through 2M, for the Commission. Mr. Watkinson explained that in 2G, Scott

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County Public Service Authority, #08-2168, staff recommended that the Commission approve the installation of the submerged water line by the open-trench method, including the standard in-stream construction conditions, and stipulating that there be a time of year restriction as requested by the Department of Game and Inland Fishery (DGIF). He said in addition and with the applicant’s agreement staff recommended that they conduct any necessary mussel and fish surveys and relocations, as required by DGIF. He said that staff was recommending approval of these items. His comments are a part of the verbatim record.

Commissioner Bowman asked if there were any questions of staff. Associate Member Fox asked if item 2M should have included a requirement for a Marina Management Plan requirement and a stipulation that no occupancy lodging was allowed. Mr. Stag explained that it was not recommended by staff, but could be added if that was the desire of the Commission. Associate Member Fox stated he wanted that added to 2M, Robious Investments, Inc.

Commissioner Bowman opened the public hearing and asked if anyone was present, pro or con to address these items.

Regina Gomez and Alejan Gomez, were both sworn in. Ms. Gomez’s comments are a part of the verbatim record. She stated that they were present in support of Item 2J. She also stated that the protests had been withdrawn on the previous project. She asked why the rate per square foot for this project and a previous project were \$5.00 a square foot versus the \$1.50 per square foot charged for another project on the agenda for filling.

Mr. Watkinson explained that the difference was that the two were industrial projects and the other one was not.

Associate Member Fox made a motion to approve items 2A through 2M. He said to add the conditions discussed for 2M which was to provide a Marina Management Plan and overnight occupancy would be prohibited. Associate Member Holland seconded the motion. The motion carried, 8-0. The chair voted yes.

2A. PRINCE WILLIAM COUNTY SERVICE AUTHORITY, #08-2000, requests authorization to install by the aerial method 80 linear feet of new 24-inch diameter sanitary sewer line. The new sewer line will cross Quantico Creek and run parallel to an existing sewer line. The aerial crossing will be five (5) feet above ordinary high water.

Permit Fee.....	\$100.00
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2B. THE NATURE CONSERVANCY, ET AL, #08-2183, requests authorization to restore approximately 4,400 linear feet of Blacks Run, Seibert Creek and an unnamed tributary to Seibert Creek which will include the installation of rock vanes, cross vanes, j hooks and wood combination structures, excavate approximately 1,200 cubic yards of material from pools, and relocate sections of the stream channel at Purcell Park in Rockingham County.

Permit Fee.....	\$100.00
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2C. QWEST, #08-1926, requests authorization to install 100 linear feet of fiber optic cable by the directional bore method at least 4 feet beneath Beaverdam Run along Loudoun County Parkway between Smith Switch Road and Route 7 in Loudoun County. Staff recommends a royalty in the amount of \$300.00 for the encroachment under 100 linear feet of State owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (100 lin. ft. @ \$3.00/lin. ft.)...	\$300.00
Permit Fee.....	\$100.00
Total Fees.....	\$400.00

2D. FLUOR LANE, LLC, #06-2376, requests authorization to modify their previously issued permit to increase temporary impacts associated with construction access from 13,948 square feet of Accotink Creek to 24,410 square feet for the construction of High Occupancy Toll Lanes and related infrastructure along a stretch of Interstate 495 Beltway in Fairfax County.

No applicable fees – Permit Modification

2E. CITY OF NEWPORT NEWS, #08-1721, requests authorization to maintenance dredge 20,027 cubic yards of State-owned subaqueous bottom material from the James River to achieve a maximum depth of minus seven and one half (-7.5) feet from the entrance channel to Leeward Marina and minus nine and one half (-9.5) feet along the James River at Huntington Park in Newport News. Staff recommends inclusion of our standard dredging conditions.

Permit Fee.....	\$100.00
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2F. TAZEWELL COUNTY BOARD OF SUPERVISORS, #08-1223, requests authorization to relocate 580 linear feet of the Bluestone River, 310 linear feet of an unnamed tributary stream, install three submerged sanitary sewer crossings and construct five culvert crossings and a new ConSpan precast concrete arch bridge to facilitate construction of the Bluestone Regional Business & Technology Center in Tazewell County. Recommend approval with our standard in-stream permit conditions, transfer of State title to the relocated channel, and a permit condition wherein the Permittee agrees to conduct any necessary mussel, fish

and/or crayfish surveys/relocations and adhere to any in-stream work time-of-year restrictions as recommended by the Department of Game and Inland Fisheries.

Permit Fee.....	\$100.00
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2G. SCOTT COUNTY PUBLIC SERVICE AUTHORITY, #08-2168, requests authorization to install a submerged water line, by directional bore method, beneath 220 linear feet of the Clinch River immediately upstream of the U.S. Route 58 Bridge in Scott County.

Permit Fee.....	\$100.00
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2H. DEPARTMENT OF GAME AND INLAND FISHERIES, #08-2223, requests authorization to demolish an existing public boat ramp and tending pier and construct a new 73' long by 16' wide concrete boat ramp, with 116 linear feet of riprap scour protection, and a new 6' wide by 47' long open-pile tending pier with a 6' wide by 30' long L-head at property situated immediately downstream of the Route 3 bridge on Totuskey Creek in Richmond County.

Permit Fee.....	\$100.00
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2I. SIX M, LLC, #07-1590, requests authorization to install and backfill approximately 195 linear feet of steel sheet pile bulkhead aligned a maximum of four feet channelward of mean low water, adjacent to their property situated along an unnamed tributary to the Eastern Branch of the Elizabeth River in the City of Norfolk. Staff recommends the assessment of a royalty in the amount of \$1,190.00 for the backfilled bulkhead's encroachment over 238 square feet of State-owned subaqueous land at a rate of \$5.00 per square foot.

Royalty Fees (industrial filling 238 sq. ft. @ \$5.00/sq.	\$1,190.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,290.00

2J. CARMELO AND NARDE GOMEZ, #08-0716, requests authorization to install 490 linear feet of timber bulkhead aligned a maximum of five feet, but an average of two feet, channelward of an existing deteriorated bulkhead, and to install eight (8) 7-pile mooring dolphins adjacent to the proposed bulkhead, adjacent to their property situated along an unnamed tributary of the Eastern Branch of the Elizabeth River in the City of Norfolk. Staff recommends the assessment of a royalty in the amount of \$5,575.00 for the backfilled bulkhead's encroachment over 1,035 square feet of State-owned subaqueous land at a rate of \$5.00 per

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square foot and for the mooring dolphins' encroachment over 200 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royalty Fees (industrial filling 1,035 sq. ft. @ \$5.00/sq. ft.).....	\$5,175.00
Royalty Fees (mooring dolphins, 200 sq. ft. @ \$2.00/sq ft.....	\$ 400.00
Permit Fee.....	\$ 100.00
Totals Fees.....	\$5,675.00

2K. CHESTERFIELD COUNTY DEPARTMENT OF TRANSPORTATION, #08-2064, requests authorization to construct a vehicular bridge over Swift Creek Reservoir ((Deep Creek) in conjunction with causeway improvements and widening of Woolridge Road in Chesterfield County.

Permit Fee.....	\$ 100.00
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2L. U. S. ARMY CORPS OF ENGINEERS, #03-1365, requests an extension of their existing permit which allows for the placement of up to 3 million cubic yards of dredged material from State-owned subaqueous bottomland within the middle portion of the James River Federal Navigation Project within the James River. The current permit, issued in February of 2004, expires on February 24, 2009. The request is for an additional five years. The Corps has also requested a waiver of a portion of the current time-of-year restriction, from February 15 through March 7, 2009, only, in conjunction with a proposed Atlantic Sturgeon tracking study to be conducted during the same dates.

No applicable fees – Permit Extension

2M. ROBIOUS INVESTMENTS, INC., #08-1614, requests authorization to construct a 30- foot wide concrete slab boat ramp up to 22 feet channelward of ordinary high water; to construct an 8-foot by 60-foot tending pier adjacent to the boat ramp; to construct a 10- foot by 90-foot fixed pier with three (3) 8-foot by 20-foot floating piers, creating up to six (6) wetslips; and to install 90 linear feet of bulkhead up to a maximum of three (3) feet channelward of ordinary high water, all being within the James River in conjunction with a proposed river front park for residents of the Tarrington on the James subdivision in Chesterfield County. Recommend a time-of-year restriction for construction activities from March 15 through June 30 of any year. Recommend a royalty of \$330.00 at a rate of \$0.50 per square foot for the impact to 660 square feet State owned subaqueous bottomlands for the boat ramp, and a royalty of \$4,698.00 at a rate of \$1.50 per square foot for the encroachment over 3,132 square feet of State owned subaqueous bottomland for the tending, fixed, and floating piers and wet slip area, for a total royalty of \$5,028.00.

Royalty Fees (encroachment 660 sq. ft. @ \$0.50/sq. ft.....	\$ 330.00
Royalty Fees (encroachment 3,132 sq. ft. @ \$1.50/sq. ft.....	\$4,698.00
Royalty Fees (filling 270 sq. ft. @ \$1.00/sq. ft.....	\$ 270.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$5,398.00

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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’s Board). There were no consent items.

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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** A closed meeting was not held.

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- 5. **POTOMAC TIMBER INVESTMENTS #227, LLC, #08-1123,** requests authorization to redevelop the Urbanna Yachting Center Marina at their property situated along Urbanna Creek at 15 Watling Street in the Town of Urbanna. The proposed redevelopment includes the demolition of the northern boathouse and the demolition of most of the southern boathouse, as well as most of the existing open pile piers. A total of 139 boat slips are proposed to exist at the marina after completion of the renovations. The project is protested by numerous residents.

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

Mr. Neikirk explained that the Urbanna Yachting Center Marina is located along the west side of Urbanna Creek in the Town of Urbanna. Development along the creek includes a mixture of residential and commercial properties. The waterfront in the Town of Urbanna was primarily commercial and there were marinas on both sides of the Urbanna Yachting Center. The narrow upland parcel only encompasses 1.41 acres but it possessed approximately 870 linear feet of shoreline. The marina currently has 86 slips. In 2006, however, the Commission issued the previous owner of the marina a permit authorizing the redevelopment and expansion of the marina to a total of 102 slips. That permit was transferred to Potomac Timer Investments #227, LLC and it remained valid. The current

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application sought authorization to further expand the facility from 102 to a total of 139 slips.

Mr. Neikirk said that the proposed redevelopment included the demolition of the northern 10-slip boathouse and replacement with eight (8) open slips, the partial demolition of the southern boathouse with only six (6) slips and the existing bathroom facilities proposed to remain enclosed, and the demolition of all but six (6) of the existing slips and replacement with floating piers designed to create 127 new open wet slips. After the proposed renovation there would be a total of 139 slips at the facility, including the six (6) slips proposed to remain within a portion of the southern boathouse. They intended to keep an existing travel-lift and fuel facilities were proposed to be located on one of the new floating piers. The new floating piers were proposed to fan out from the convex shaped property and stay just inside what the applicants had calculated to be 1/3 the distance across the creek. The slips were of varying sizes and some were designed to moor vessels up to 60 feet in length. Two-hundred and sixty-three (263) linear feet of bulkhead were also proposed to be replaced two (2) feet channelward of an existing bulkhead.

Mr. Neikirk stated that in addition to the marina redevelopment, the applicants were seeking authorization from the Town of Urbanna to demolish the existing office and store building and to construct 14 elevated condominium units and a 3,200-square foot bathhouse and manager's office facility. The development of the condominiums was currently in litigation.

Mr. Neikirk said that the project was protested by numerous town and county residents. Staff had received 33 individual letters of objection, as well as a petition signed by 308 individuals claiming to be residents of the Town of Urbanna. Their concerns were primarily related to the size of the proposed expansion and its effect on navigation, boating safety and other uses of the creek. Some expressed environmental concerns associated with the additional boat slips and others expressed aesthetic concerns associated with tearing down the old boathouses. Mr. Jack Dozier, the owner of the adjoining Port Urbanna Yachting Center marina believed that the proposed "F" dock would interfere with access to his marina. Christchurch School expressed a concern that the proposed piers would interfere with their crew team's regular training conducted within Urbanna Creek.

Mr. Neikirk explained that Mr. G. Lewis Filling, Chief Administrative Officer and Zoning Administrator of the Town of Urbanna submitted two letters expressing opposition to the proposal. One of the letters indicated it was written on behalf of the Mayor, Town Council and Citizens of Urbanna. In that letter he noted that the parcel was only about 1.4 acres and currently included two boathouses, a multi-purpose building, and travel lift. He stated that a marina at the proposed size would negatively impact the surrounding neighborhood and add congestion to the street. He noted that parking was limited. He also stated that the piers would impede boat traffic, interfere with access to the adjoining marina and add congestion within the creek in the area of the town. Finally,

he claimed that the Town of Urbanna had concurrent jurisdiction to the center of the creek and they requested that the application be modified to allow for a maximum of 78 slips or denied.

Mr. Neikirk said that staff had also received 49 letters of support for the project. The letters all appeared to be from current slip holders or boaters that had visited the marina. They stated that the deteriorated facilities needed to be improved and they believed the proposed floating piers would be an environmentally sensitive and safer alternative. They stated that the improved and expanded facilities would have a positive economic impact on the town.

Mr. Neikirk stated that in their report, dated September 4, 2008, VIMS noted that various marina activities might impact water quality and marine habitats. They recommended that construction of the replacement bulkhead be as close to the existing bulkhead as possible. They also noted that the upland development associated with the property was still pending and recommended that adequate upland should be available to support the proposed marina without the need to fill wetlands or subaqueous lands. They stated that floating piers were generally acceptable provided the water was deep enough to allow the piers to float at all normal tide levels. The waters of Urbanna Creek are presently condemned for shellfish harvesting and VIMS recommended that measures should be taken to ensure that no further degradation of water quality occurs. They recommended adequate pumpout and restroom facilities be required and that no overnight occupancy of boats be allowed unless authorized by the appropriate agencies. Finally, they recommended that the old piers and structures be properly removed from the water and disposed of in an approved upland location and that a Marina Management Plan be developed, if one did not already exist.

Mr. Neikirk said that the Health Department informed staff that the marina was in compliance with their "Sanitary Regulations for Marinas and Boat Moorings." The Department of Conservation and Recreation 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. The Department of Game and Inland Fisheries noted that the Rappahannock River was an Anadromous Fish Use Area and recommended a time-of-year restriction between February 15 and June 30, as well as conducting in-stream activities during low or no flow conditions. They noted the presence of bald eagles and great blue herons in the project vicinity but they did not anticipate any adverse impacts to those species. No other State agencies had commented on the proposal.

Mr. Neikirk said that the proposed piers would not encroach on any public oyster ground and would only encroach on private oyster planting ground currently leased by the applicant. The applicant currently had an additional oyster planting ground lease application pending before the Commission, also in the vicinity of the marina.

Mr. Neikirk noted that a portion of the proposed project would encroach on 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 it were approved by the Commission. In their approval letter dated November 20, 2008, the Corps noted that the applicant would be responsible for maintaining the federal portion of the turning basin of the Urbanna Creek Project Channel where the project was located. 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 that although the project appeared to conform with many of the items contained within our Marina Siting Criteria and Subaqueous guidelines, the proposed project also presented several conflicts. Possible conflicts with the siting criteria and guidelines included the potential of the expansion to interfere with access to adjacent riparian properties, conflicts with existing uses of the waterway, impeding navigation, and adding to congestion of the waterway. Staff also questioned whether adequate upland existed to support all of the associated marina activities. Although the applicant had provided a site plan which appeared to show an adequate number of parking spaces, it was difficult to conceive of a 1.41 acre parcel as accommodating the proposed condominiums, marina office and bathhouse, marina parking, and any upland boat storage and boat maintenance associated with the travel lift facility.

Mr. Neikirk stated that the applicant had attempted to design the project so that the piers did not extend more than 1/3 the width across the waterway as recommended in the VMRC Subaqueous Guidelines. Nevertheless, staff was concerned that the piers may still adversely impact navigation and existing uses of the waterway. Staff was particularly concerned with the encroachment of the proposed piers on the southern end of the project. The existing marked channel was close to those proposed piers and boats traveling through the channel under the Route 227 Bridge would need to make a sharper turn to avoid the proposed piers. Staff also questioned whether it was reasonable to consider the large cove across from the southern end of the project when calculating the width of the waterway. Staff clearly understands the applicant's desire to renovate the deteriorated facilities at this marina and staff did take this into consideration when they reviewed and approved the renovations and expansions proposed by the previous owner. Staff was concerned, however, that the magnitude of the proposed project may adversely affect navigation and other traditional uses of the adjacent waters. Although the applicant had attempted to confine the proposed expansion to 1/3 the width of the waterway, the configuration of the waterway must be considered since the deepest water and marked navigation channel were located toward the applicant's side of the creek. The marina was

also located along a curve in the creek and the further structures were extended at this curve, the sharper the turn becomes for vessels traveling past the marina.

Mr. Neikirk stated that the Town of Urbanna relied heavily on tourism and boating activities supported by the creek. Although renovation of this marina may improve water access and provide certain economic benefits, it was important that the expansion not adversely affect existing uses of the creek and access to other marinas. These concerns had clearly been expressed by the Town, the public, and the adjoining property owners.

Mr. Neikirk said that accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff was unable to recommend approval of the project, as proposed. Staff could support a revised proposal that incorporated the following design considerations and special conditions:

1. A-Dock may not be extended beyond the existing pier.
2. Elimination of B-Dock.
3. C-Dock may not extend more than 200 feet channelward of A-Dock (112 feet shorter than proposed).
4. D-Dock may not extend more than 184 feet channelward of the bulkhead (40 feet shorter than proposed).
5. E-Dock may not extend more than 170 feet channelward of the bulkhead (approximately 25 feet shorter than proposed and in alignment with currently authorized pier.)
6. F-Dock may not extend more than 193 feet channelward of the bulkhead corner and all but the first four slips on the north side of the pier must be eliminated (approximately 40 feet shorter than proposed and in alignment with the currently authorized pier.)
7. The existing deteriorated bathroom facilities currently located in the existing boathouse shall be eliminated or relocated to the upland.
8. The replacement bulkhead shall extend no more than one (1) foot channelward of the existing deteriorated bulkhead.
9. The applicant shall be required to develop and implement a marina management plan and fuel spill contingency plan deemed acceptable to staff.

Commissioner Bowman asked if the applicant wished to speak.

Ray Watson, co-owner of the Urbanna Yacht Center, was sworn in and his comments are a part of the verbatim record. Mr. Watson explained that the existing permit number 05-1820 was transferred from Mr. Scott. He said that there had not been any objections to the structures. He stated that a permit had been issued across the water for 129 slips and floating docks. He said he had been encouraged by the Town to buy this property and to plan these condos. He said there were 178 parking spaces on the site. He said he purchased this property and made these plans all in good faith. He said it was now in

litigation and he was trying to work with all concerns. He said that at the present time there were no slips large enough to handle transient vessels. He said his being able to accommodate those vessels would be beneficial to both the marina and the town.

Mr. Watson said that Mr. Filling encouraged him to buy this property. He said there was more parking spaces here than at any other location in Urbanna. He said he presently held an oyster ground lease and intended to apply for more. He said he was interested in oysters, was a licensed waterman, and wanted to get involved in aquaculture.

Mr. Watson explained that in 2008 his plan was submitted. He said he met with Mr. Wyker and the Corps and had revised the plan and moved it in 81 feet. He said he had met several times with Corps to work on making it safe. He said he did not need 300 feet for a vessel to turnaround and there was a “no wake” zone. He stated that Urbanna Creek was a transitional waterway. He said if you compared this one to the Rudee Inlet area, this was no problem. He said he just wanted fairness. He said he had made an additional revision by pulling back 9 more feet for a total of 91 feet. He said the Urbanna Citizen Committee was looking at an old plan and concessions had been made and safety considered as there was a “no wake” zone.

Commissioner Bowman asked about staff’s recommended alternative. Mr. Watson said staff wanted a 45 slip reduction when he had approval for 139 slips. In addition, the floating dock would be environmentally friendly.

Andrew Moser, Planner for the Project, was sworn in and his comments are a part of the verbatim record. Mr. Moser showed the changes made on the map because of the concerns expressed by protestants. He said this was 179 feet from the protestor’s pier and the south dock had been pulled back 9 feet. He said it was 173 feet off the green marker. He said the applicant was asking for only 40 feet more.

After a little more discussion, Commissioner Bowman asked for anyone in support of the project that wished to speak.

James Vautrot, supporter of the project, was sworn in and his comments are a part of the verbatim record. Mr. Vautrot said that he was representing 10 plus Urbanna residents who felt that it would not hinder water activity, as these would be responsible boaters. He said the development would be an economic benefit to the town and would improve the aesthetics of the area.

Rory Pace, supporter and resident, was sworn in and his comments are a part of the verbatim record. Mr. Pace provided an Economic Analysis as a handout. He stated that VIMS endorsed the model, because it would mean revenues to other businesses, add to the appearance of the town and help as the marina was being under valued. He said the results showed that there would be an economic impact in that there would be 15 more jobs, \$300,000 labor income, the property was worth \$.5 million and being a valuable

asset provided local revenue. He said the net value could be added to the region's economy. He said this would create a stimulus in a weak economy.

John Price, slip renter at the center, was sworn in and his comments are a part of the verbatim record. Mr. Price stated that he enjoyed using the facilities and would welcome the bigger slips and floating dock.

James Monk, slip renter from Richmond, was sworn in and his comments are a part of the verbatim record. Mr. Monk stated that the marina had not been kept up and it needed the improvements or if needed to be replaced. He said the slips were too narrow for some of the boats, and the 4 to 5 foot variation in the water depth made it hard to tie up a boat. He said the slips were needed to make this a viable project. He said this center was a signature marina in the area, because it was the first one to be seen when crossing the bridge and the slips were reasonably priced and the others in the area were too high.

Commissioner Bowman asked if anyone in opposition wished to speak.

John Mullet, Urbanna marina operator, was sworn in and his comments are a part of the verbatim record. Mr. Mullet stated he was a property rights advocate. He said he was sitting on the fence about this project. He said he was concerned with project on the south and north side. He said on the north there was a boat manufacturer of catamarans that provided employment. He said that there must continue to be ingress and egress for all. He referred to a drawing on the screen. He said he was concerned with the impact on the ingress and egress as it had looked severe, but he had been told that it was not. He said Mr. Watson indicated there was parking up by the house on the hill which could be used. He said that had only happened once during the Oyster Festival. He stated he wanted progress, but consideration must be given to the floating dock and their infringement on the neighbors. He said the County had been cooperative with the applicant at first, but he was only told that they would see, because they were concerned with the survival of the town. He said the applicant had tried to satisfy all parties.

Rollins Ellis, Attorney for the Rappahannock Association and Catmar Cats, was present and his comments are a part of the verbatim record. Mr. Ellis said that the location depicted on the chart of RA and CC, would limit their launching capability.

Buddy Wyker, Urbanna Citizen Committee, was sworn in and his comments are a part of the verbatim record. Mr. Wyker said that he was a protestor and with the revisions the scope and size had grown. He provided some pictures, as a handout. He said the plan would reduce the boating area in the unprotected harbor. He said the Christ Church rowing team would not be able to make the turn unless they slow down. He said the town had not approved the project nor had they permitted the condos yet. He said if the 138 slips were to be approved where were the parking spaces that would be needed. He said this was a full service marina and they hauled boats with their travel lift. He said space in the water was needed for a travel lift. He asked if the condos were built where would the

traffic turn around? He asked where would the condo owners and boat owners park? He provided more pictures. He said he represented a lot of people and they were requesting that the project be denied and requested also that the Commission rescind the permit approved in 2006. He said no one in town had been involved in that approval process.

Commissioner Bowman stated that the Board would consider what was being asked for now, but could not rescind the existing permit.

William Smith, part owner in an area business, was sworn in and his comments are a part of the verbatim record. Mr. Smith said he was not against progress, just worried with construction being done on the waterways. He said that a barge would be restricted in their use and they would have to be lighted to get under the bridge.

Bob Calvin, Urbanna resident, was sworn in and his comments are a part of the verbatim record. Mr. Calvin stated that he had once utilized the marina when he owned a boat. He explained how the Christ Church rowing team worked and said the team would have a tough time turning at the bridge, as it would be a tight turn. He said he requested that the Commission deny the project. He said that there had been another change, but the public had been given no time to review the latest plan.

Lewis Filling, County representative, was sworn in and his comments are a part of the verbatim record. Mr. Filling stated that this project was opposed by the residents and the County. He said it was a small town and currently there were 570 residents. He said the town had been created in 1680 by an Act. He said it was ½ square mile of area and the channel in the creek was the Town's property line. He stated the street access to the marina was a deadend. He explained that the condos still had to be approved by the County. He said the highland area where all this was proposed was 1.42 acres and the zoning ordinance required adequate parking for all developments. He said here at the site would be the slips, the office, boat repair, and the condos, including about 50 employees. He said the number of parking spaces necessary exceed the amount of space available. He said there had not been an application filed with the County by the applicant. He said the parking requirements were for the total development and not just the marina. He said that this proposed use of the property was not consistent with other uses in the area.

Commissioner Bowman stated that the parking was an upland issue not a VMRC issue. Mr. Filling stated that navigation would be impacted as well as recreational and commercial use of the creek.

Robert Montague, Urbanna resident, was sworn in and his comments are a part of the verbatim record. Mr. Montague stated his family had been in the area for four generations. He said the project would impact navigation with their docks. He said the whole project was too much for the site. He said the applicant had overpaid for the property and that was not the fault of the citizens.

Clyde Roper, Urbanna resident, was sworn in and his comments are a part of the verbatim record. Mr. Roper explained that the area of the docks would impact marine biology and natural history of the area. He said the flow of water would be impacted, as it was not a very deep creek. He said also it would impact others' use of the creek. He said the lights would impact the bottom of the creek. He stated that it would impact the bald eagles that come to the area and he had seen six of them in the last two weeks. He said it would be an encroachment on navigation even using the 1/3 calculation.

Don Richwine, Urbanna resident, was sworn in and his comments are a part of the verbatim record. Mr. Richwine stated that a permit for 102 slips had been approved and even that was too much. He said he agreed with the staff recommendation. He stated that water quality would be impacted with the increased number of boats. He said the Board needed to make a good decision.

Commissioner Bowman stated that the applicant could have 5 minutes for his rebuttal.

Mr. Watson said that the concern over parking was not necessary as there were 78 parking spaces and on a really good day there was approximately 10 percent usage. He said he had obtained the town permit, the Middlesex permit and the Corps had said it was a very safe project and that the planning was well done. He said he was asking for consideration of his proposal. He said that the Town of Urbanna was dying; as the average age in the area was over 70. He stated he needed the floating dock and he had made good concessions. He said any docking for 40-foot transients was wiped out by the staff recommendation. He said he had already spent money promoting the business. He said this was a benefit to the Town and the business needed to provide service. He said finally that the property was in disrepair and needed to be repaired or replaced.

Associate Member Schick asked if he was aware that the Corps could ask that slips be eliminated, if people petitioned them to do so. He said the Corps can require the removal at the owner's expense. Mr. Watson stated that Mr. Henderson had explained that to him and the floating docks were needed so they could be moved. Associate Member Schick stated that the actions by VMRC had no bearing on the actions of the Corps.

Associate Member Robins stated that redevelopment did have economic benefits, but it also impacts other reasonable uses as was testified in regards to the Christ Church boating team. He said staff had made good suggestions. He said G dock added encroachment to the basin and there should not be further encroachment. He said the F dock constrained use by the other marina. He said he agreed with staff to prohibit outboard dockage on F. He stated that staff recommended that the dock (D) channelward of existing docks be the same length.

Associate Member Schick stated that in regards to D dock he agreed with Associate Member Robins. He said F dock with 4 slips should be brought back to the permit area. He said that D and E he agreed to extend. He said at C dock the four slips should be

eliminated. He said at B dock the 2 slips should be shortened and reversed so there was no impact on the channel. He said the marina owner knew about the coming of boats that were 45 to 50 foot and they needed to build large enough for them. He said that boats today need dockage and water depth. He said he appreciated the staff recommendation to reduce the scope, but he felt they had gone further than was necessary. He said this was a great place for this development. He suggested that 10 slips be eliminated making it 128 slips.

Associate Member Schick moved to reduce the number of slips to 128, that G dock be made the same as the existing dock and the dock approved and permitted in 2006, and at A dock to reduce the number of slips to 4 slips, C and D docks not to go out any further, and to allow the width necessary for boats 45 to 50 foot long. Associate Member Holland seconded.

Associate Member Fox said he did not agree with dock A as it impacted navigation and the ability for boats to turn around. He said he was opposed to any dock being at that end of the property. He said that Dock B should be the same length as the existing docks, C and D. He said he was opposed to the motion because the project was too large.

Associate Member Robins stated he agreed with Associate Member Fox. He said the number of slips would impact other uses and the length of the dock should be controlled and the allowed number of slips should be kept within the foot print. He said he agreed with staff recommendation because users such as the rowing team needed a wider opening for their use.

Associate Member Robins made an substitute motion to accept the staff recommendation. Associate Member Tankard seconded the motion. Associate Member Schick said that this would put the applicant back to 79 slips and he already had approval for 102 slips. He said the amendment was no more than 1/3 across the creek and there would be no further encroachment. He said that because the applicant was being limited he would not be able to make a living. He said 102 slips were needed at a minimum and there was plenty of water. He said the added structures were needed as there was a need to build for the future. He said there was plenty of room for 200 feet, there was a "no wake" area and beyond the green marker there was deep water for power boats to access. Associate Member Fox stated that they were permitted for 102 slips and the staff recommendation was actually more space than that or what was permitted and he did not have a problem with that addition.

After further discussion, Commissioner Bowman read into the record Section 28.2-1203 which referred to public trust and to the Constitution. He said he believed the staff recommendation did do a lot as it considered all parties. He said when looking at the area he felt concerned with the impact of boating traffic and its impacts on water quality, and that putting more boats in this waterway would not help. He said he would accept the staff recommendation, as a substitute motion.

Commission Meeting

The substitute motion carried, 6-2. Associate Members Holland and Schick both voted no. The chair voted yes.

Permit Fee.....	\$100.00
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6. **GEORGE CLARKE, ET AL, #07-2631**, requests authorization to construct three (3) offshore stone breakwaters with beach nourishment situated along the Chesapeake Bay adjacent to the Sand Hills subdivision in the Savage Neck area of Northampton County. The project is protested by an adjacent property owner.

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

Mr. Badger explained that the proposed project was approximately 1.6 miles south of Smith Beach and 4.8 miles north of the Town of Cape Charles. The small subdivision consisted of 5 lots plus a Common lot along approximately 1,200 linear feet of shoreline. There was severe erosion along the upland and beach interface, with a substantial scarp running along most of the property. The property had large 40-foot high secondary coastal dunes.

Mr. Badger stated that the applicants proposed to install three offshore stone breakwaters (measuring 237 feet, 262 feet and 240 feet respectively and totaling 739 linear feet) and nourish behind the breakwaters with beach quality sand that would impact 59,900 square feet (1.38 acres) of State-owned subaqueous bottom. This would create two pocket beaches landward of the proposed breakwaters. There would be 180-foot gaps between each of the breakwater segments. The proposed breakwaters would be landward of the closest sand bar to allow sand transport to downdrift properties.

Mr. Badger said that the proposed project was adjacent to the Savage Neck Natural Area Preserve, a Commonwealth-owned Natural Area Preserve, managed by the Department of Conservation and Recreation (DCR).

Mr. Badger explained that staff had received three letters of concern from DCR given their role as steward of the Savage Neck Natural Area Preserve. DCR had concerns that the breakwaters would starve the preserve’s beach of sand and cause erosion. Should this occur, the federally threatened Northeastern Beach Tiger Beetle and a rare state plant, the Sea Beach Knotweed’s habitat, would be degraded or lost. They also stated that erosion of the currently stable preserve beach could cause losses to the coastal dune communities.

Mr. Badger said that the Virginia Institute of Marine Science stated that the proposed project was consistent with an integrated approach to shoreline management. In their opinion, however, the impacts associated with the project could be further reduced. They

recommended that the applicant consider reconfiguring the breakwater system so that the adjacent property owner would not be affected by the structures. Although VIMS did not recommend a particular breakwater design, Scott Hardaway had been to the site and made suggestions to the applicants and their agent/contractor (James Gunn). Mr. Gunn and the applicants' consultant, Vanasse Hangen Brustlin, Inc. (VHB) had designed numerous successful large scale breakwater projects in the past.

Mr. Badger stated that the Northampton County Wetlands/Dunes Board approved their portion of the project, as modified at their November 19, 2008 meeting. The applicants removed a proposed stone revetment from the project's plans that would have armored a primary dune. They also proposed the placement of 1,000 cubic yards of beach sand offshore of DCR's property, as a feeder bar, to help insure minimal disruption in the supply of sand to downdrift properties. The applicants had also agreed to the Army Corps of Engineers (ACOE) special conditions, as requested by U.S. Fish and Wildlife Service, for the protection of the northeastern beach tiger beetles in their issued Regional Permit (RP-19). The Virginia Department of Game and Inland Fisheries (DGIF) recommended coordination with U.S. Fish and Wildlife Service regarding the protection of the federally threatened Northeastern Beach Tiger Beetle. No other State agency had expressed opposition to the project.

Mr. Badger said that in response to DCR's concerns, the applicant had agreed to nourish the beach with compatible sandy beach material; to remove plans for the stone revetment along the dune and to add 1,000 cubic yards of sandy material as a feeder beach to minimize the disruption in sand supply to DCR's downdrift property. In addition, the applicant had also agreed to all the ACOE's special conditions for the protection of the northeastern beach tiger beetles contained in their RP-19.

Mr. Badger stated that while staff was sensitive to DCR's concerns it appeared that the project had been designed to minimize the potential for any adverse affect along the adjoining Natural Area Preserve beach while providing protection for the applicants' eroding shoreline. As suggested by our Shoreline Development BMP's, the breakwater project appeared to have been designed to address the specific site conditions such as the wave climate and the material composition, and had been designed with an appropriate spacing and distance offshore. Furthermore, the applicant had developed a plan for site access to avoid impacts to adjoining resources.

Mr. Badger said after evaluating the merits of the entire project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, and given the fact that the applicant had attempted to reduce the impact to the down drift properties by adding a feeder bar and removing the stone revetment, staff recommended approval of the project, as modified, with a one-time royalty assessment in the amount of \$3,625.00 for the beach nourishment fill over 72,500 square feet of State-owned subaqueous land, which included the 12,600 square foot feeder bar, at a rate of \$0.05 per square foot.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked if the VIMS breakwater system had been incorporated into the applicants' plans. Mr. Badger responded yes. Associate Member Fox asked someone from VIMS to comment.

Scott Hardaway, VIMS, was sworn in and his comments are a part of the verbatim record. Associate Member Fox asked about VIMS' suggestion to reduce impacts with the breakwater being reconfigured to lessen the impacts to the adjoining property owner. Mr. Hardaway stated that their accommodations were acceptable.

Associate Member Tankard asked for the large aerial shot and asked if this included the vortex. Mr. Badger responded no. Associate Member Tankard explained this was a high energy area in the watershed and the vortex was north one mile offshore. He said he was worried that over time the breakwater would take away from the DCR property. Mr. Hardaway explained that looking at the 1937 shoreline it would be sitting about 1,000 feet offshore and it would be coming closer and closer to the point and then would fade into the shoreline. He said the shoreline then turns so the orientation changes consequently there are changes in the wave impacts and provide a lot of the material that is along here. He said the banks are made up of sand and serve as a great feeder to the bars. He said the headlands here are different at the DCR property and so it is a different situation.

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

Nelville Reynolds, VHB Environmental Services in Williamsburg, was sworn in and his comments are a part of the verbatim record. Mr. Reynolds stated that the VMRC and VIMS staff had both done a good job. He said they had worked to make this into an acceptable project. He said they worked with the Game and Inland Fisheries because of their concerns with the tiger beetle and their habitat. The applicant had also agreed to do a geomorphic survey of the shoreline without it being made a permit condition. He said all other concessions had been made. He said they had worked with Corps. He said they were requesting approval from the Commission.

Paul Clark, Department of Conservation and Recreation, was sworn in and his comments are a part of the verbatim record. Mr. Clark said that there were concerns by DCR and they recognized the positive steps made by the applicant in response to the DCR concerns. He said that a letter had been submitted stating that DCR was opposed to the project. He said the location of the southern breakwater would cause shoreline erosion at Savage Neck, which was State-owned property. He stated that these lands were protected by the Code of Virginia and their Counsel said that DCR must maintain their opposition. He said this could still impact the beach habitat of the tiger beetle.

Commission Meeting

Associate Member McConaugha stated that the feeder bar caused the flow of plenty of sand so why was DCR still concerned. Mr. Clark stated that this was the largest population of tiger beetles and the eroding of the downdrift area could still occur impacting the preserve. He stated he had made a site visit with others and on an adjacent area downdrift they were still concerned.

Commissioner Bowman asked if there were any rebuttal comments. There were none. He asked for action by the Board.

Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. Commissioner Bowman stated that the Commission did not want to do anything to impact another agency, but because of Mr. Hardway, from VIMS, whose comments had convinced him that he should support the motion. Associate Member Fox said it would benefit the applicant to work with DCR and DGIF to minimize impacts. Associate Member McConaugha stated that they had offered to monitor the shoreline. The motion carried, 8-0. The chair voted yes.

Royalty Fees (filling 72,500 sq. ft. @ \$0.05/sq. ft.....	\$3,625.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,725.00

- 7. **MR. & MRS. ERNEST S. HARDING III, #08-0711**, request authorization to construct a 4-slip community pier at their property situated along Lower Machodoc Creek in Westmoreland County. The project is protested by several adjacent and nearby property owners.

Request by Agent to postpone this matter until the February meeting.

- 8. **DOUGLAS RILEY, ET AL, #08-2032**, requests authorization to riprap their existing shoreline and grade an existing bluff at their properties situated along the York River in York County. Both dunes and beaches and subaqueous permits are required.

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 on the southern shoreline of the York River, approximately 5.6 miles upstream from its confluence with the Chesapeake Bay in

York County. The river at this location was approximately 2 miles wide and had a northeast fetch of approximately 31 miles. The majority of the upstream residential properties had been similarly hardened with riprap. The Colonial National Cemetery and the U. S. Coast Guard's Yorktown Training Center, located immediately downriver, were protected by riprap and/or steel sheetpile bulkheading.

Mr. Owen said that the applicants sought authorization to construct approximately 195 linear feet of Class III and Type I riprap revetment and to grade an existing bluff to protect two residential lots which were currently experiencing moderate to high erosion rates. The Riley's home was located 29 feet from the edge of an existing 40'+ bluff which had slopes that were nearly vertical. The remaining property, owned by the Frank Pearce Trust, was currently a vacant lot. The shoreline was presently lined with some concrete rubble that offered limited shoreline protection.

Mr. Owens stated that the York County Wetlands Board approved their portion of the proposed project that involved tidal wetlands at their December 2008 public hearing.

Mr. Owen said that the project, as proposed, would impact approximately 2,000 square feet of jurisdictional beach. York County had not yet adopted the model Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As such, the Commission was charged with acting as the local dunes and beaches board and authorization was required for this portion of the project pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen explained that the remainder of the project required Commission authorization for encroachment over 360 square feet of State-owned submerged land pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen stated that the Virginia Institute of Marine Science, in their Shoreline Permit Application Report, dated December 9, 2008, advised that the Riley's existing home was at risk if erosion continued. As such, they concluded that the proposed project was justified. No other State agencies had commented on the proposal. The project was not protested to date.

Mr. Owen said the shoreline was currently experiencing moderate to severe erosion rates. Adjacent properties had been similarly hardened and VIMS supported the proposed shoreline treatment given the proximity of the Riley's residence to the existing bluff.

Mr. Owen stated that accordingly, after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as submitted.

Commission Meeting

Commissioner Bowman asked if there were questions for staff. There were none. He asked if the applicant wished to make any comments.

Danny Winall, agent, was sworn in and his comments are a part of the verbatim record. Mr. Winall said he would answer questions.

Commissioner Bowman asked for questions. There were none. He asked if anyone in opposition was present and wished to speak. There were none. He asked for discussion or action by the board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Permit Fee (Subaqueous).....	\$100.00
Permit Fee (Beach and Dune).....	\$ 10.00
Total Fees.....	\$110.00

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- 9. **LUCK STONE, #08-2268**, requests authorization to expand their existing loading dock (South Richmond Facility) situated along the James River in the City of Richmond. Both wetlands and subaqueous permits are required.

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 on the western shoreline of the James River, approximately 2.5 miles downstream of the I-95 crossing of the James River in the City of Richmond. The river at this location was approximately 450 feet wide and was utilized by both recreational boaters and commercial barge traffic. The federal project channel extended upriver an additional 2 miles, terminating at the Richmond Locks.

Mr. Owen said that the applicant was seeking authorization to construct a 1,050 square foot dock addition with conveyor and loading hopper, repair an existing fender and mooring system and install two new H-beam steel dolphins to facilitate expansion of their existing loading dock (South Richmond Facility) situated along the James River in the City of Richmond. The proposed expansion would allow the applicant to load barges with stone (Class III) that was larger than the capacity of the existing hopper. The shoreline is currently hardened with riprap. There are no vegetated wetlands located onsite.

Mr. Owen stated that the pier expansion, as proposed, would be constructed over approximately 320 square feet of existing intertidal riprap revetment (non-vegetated wetlands). The City of Richmond has not yet adopted the model wetlands ordinance. As such, the Commission is charged with acting, as the local Wetlands Board and authorization is required for this portion of the project pursuant to Chapter 13, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen explained that the remainder of the pier expansion and the proposed dolphins require Commission authorization for encroachment over approximately 450 square feet of State-owned submerged land pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen stated that the Virginia Institute of Marine Science, in their Shoreline Permit Application Report dated January 8, 2009, advised that since the shoreline was already hardened, the pier expansion was expected to have limited impacts on aquatic resources. VIMS was recommending a February through June time-of-year instream work restriction to protect anadromous fish. No other State agencies had commented on the proposal. The project was not protested to date.

Mr. Owen said that the project, as proposed, should not negatively impact tidal wetlands or State-owned subaqueous land due to the open-pile design of the pier. The project should not negatively impact navigation in the adjacent federal project channel since the proposed expansion would not exceed the channelward encroachment of the existing loading dock.

Mr. Owen stated that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1302(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as submitted.

Mr. Owen said that in addition, staff recommended a royalty of \$900.00 for the encroachment of the pier and dolphins over 450 square feet of State-owned submerged land at a rate of \$2.00 per square foot.

Commissioner Bowman asked if the work would be started as soon as the permit was complete with no deadline in case it could not get done. Mr. Owen answered that for the pilings there was no time of year restriction, but there was for the dredging.

There were no public comments.

Associate Member Robins moved to accept the staff recommendation with the staff's recommendation for royalties. Associate Member Schick seconded the motion. The motion carried, 8-0. The chair voted yes.

Royalty Fees (encroachment 450 sq. ft. @ \$2.00/sq. ft.)	\$ 900.00
Permit Fee (Wetlands).....	\$ 10.00
Permit Fee (Subaqueous).....	\$ 100.00
Total Fees.....	\$1,010.00

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10. LAWSON PROPERTY CONVEYANCE. Commission consideration of the appropriate terms, conditions and just compensation for the conveyance of 22,400 square feet (0.51 acres) of previously filled State-owned subaqueous lands in Hampton authorized by Chapter 875, Acts of Assembly 2007.

Request by the representative to continue this matter until the February meeting.

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11. S & S MARINE PROPERTY CONVEYANCE. Commission consideration of the appropriate terms, conditions and just compensation for the conveyance of two parcels totaling 12,100 square feet (0.28 acres) of previously filled State-owned subaqueous lands in Hampton as authorized by Chapter 875, Acts of Assembly 2007.

Request by the representative to continue this matter until the February meeting.

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12. PUBLIC COMMENTS:

Frances Porter, Virginia Seafood Council was present and her comments are a part of the verbatim record. Ms. Porter said that they were requesting that a public hearing be held to discuss the continuation of the C. ariakensis project for 2009. She said they were requesting a February 2009 hearing.

Associate Member Robins asked if this was like the past project. Ms. Porter stated yes it was almost identical.

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

James Firman, waterman, was present and his comments are a part of the verbatim record. Mr. Firman said he was requesting the harvest season for the James River Hand Scrape Areas be extended.

Commission Meeting

Commissioner Bowman asked that Dr. Wesson respond. Jim Wesson, Head, Conservation and Replenishment Department, said that the areas had a three month season with very little activity. He said staff did not recommend an extension, as there had been work in other areas and people were working. He stated the per person catch was small, as there was not much there. He explained that there were spat and small size oysters present and to continue would cause damage affecting the oysters for the next year. His comments are a part of the verbatim record.

No action was taken.

Christopher Walker – Failure to Report

Mrs. Christopher Walker, wife, was sworn in and her comments are a part of the verbatim record. Mrs. Walker said they had received a letter that his card would be taken for not reporting. She said they were asking that it be returned.

Commissioner Bowman asked that staff respond. Joe Grist, Head, Plans and Statistics, explained that he had spoke with Mr. Walker about the missed reporting of no activity in early 2007. He said he did not have any previous history of not reporting. He stated that staff was recommending 2-year probation and that all reporting be caught up by February 28. His comments are a part of the verbatim record.

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

Bobby Taylor, Jr., waterman, was present and his comments are a part of the verbatim record. Mr. Taylor expressed his concern that out of state watermen where allowed in Virginia waters to conch pot and Virginia watermen could not do so also. He said there were approximately 45 Maryland boats in Virginia working; 3 in Wachapreague and 6 or 7 in Chincoteague.

Associate Member Robins stated this was a small fishery with a history of 40 boats in the past and 20 boats now. He said right now it was a sustainable fishery, but with a 40 percent increase there was cause for concern, especially when you talking about the Eastern Shore. He said he suggested this be referred to the subcommittee and to have them look at this matter.

Commissioner Bowman asked if referring this to the Finfish Management Advisory Committee would be okay. It was the consensus of the Board that this should be taken to FMAC.

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19. FAILURE TO REPORT COMMERCIAL HARVEST:

Edward L. Stratton

Tina Taylor, daughter, was present and her comments are a part of the verbatim record. Ms. Taylor stated his son did the reporting and the reports were up to date.

Joe Grist, Head, Plans and Department, said this was a case to be heard later and this was different from the crab issue. He deferred to Ms. Iverson.

Stephanie Iverson, Fisheries Management Specialist, Sr., explained that Mr. Stratton had been one of the 165 non-compliance problems with data sent back to be corrected. She said that the staff had explained this to both of them. She said that the staff recommended a two-year probation.

Associate Member Bowden moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 8-0.

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13. DISCUSSION: Setting the 2009 recreational summer flounder fishery measures. Request for a February 2009 public hearing.

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

Mr. O'Reilly explained that the 2009 target (345,000 fish) was not much bigger than it was in 2008 (342,000 fish). He said to maintain this amount you would need no more than a 19-inch size limit with no closed season or 18-1/2 inch with a two-week closed period as suggested by ASMFC or no closed season. He further said that the Ad hoc committee suggested a 17-inch option.

Mr. O'Reilly said that the Ad-hoc Committee chose the options and FMAC improved them by requiring that a factor considering stock expected for 2009 be included. He said all the options maintained the 2008 five-fish limit. He explained that if there was an over harvest, because of no closed season, then next year it would require a larger closed season. He said that 3 States were under their target and a liberalization plan for Virginia was necessary.

Mr. O'Reilly stated that the Technical Committee would be meeting on February 3rd.

Commission Meeting

Mr. O'Reilly said if you use the 2007 data, then an 18-1/2 inch size limit would be necessary and if the 2006 data were to be used then it would need to be a 17 to 18-1/2 inch limit.

Mr. O'Reilly stated that staff recommended a February public hearing and to advertise the five options, A through F. These options are:

- A 19-inch, five fish, no closed period
- B 18-1/2 inch, five fish, 7/21 – 8/3 closed season
- C 18-1/2 inch, five fish, no closed period
- D 18-inch, five fish, 7/21 – 7/28 closed period
- E 17-1/2 inch, five fish, 39-day closed period
- F 17-inch, five fish, 7/18 – 12/31

Commissioner Bowman asked for questions of staff.

Commissioner Bowman asked if the 17-1/2 inch savings was non-existent why should it be advertised. Mr. O'Reilly explained that a poll done for the last two years had shown this was what the public wanted, which was why it was added by the Ad hoc committee. He said he agreed with him about the 17-inch and 18-inch and felt that the 19" and the two 18-1/2-inch should be advertised for public hearing.

After some further discussion, Commissioner Bowman asked for action by Board.

Associate Member Robins moved to advertise options A through C for a February public hearing. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The chair voted yes.

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- 14. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-490-10 et seq., "Pertaining to Sharks," to comply with the Interstate Fishery Management Plan for Atlantic coastal sharks.

Lewis Gillingham, Director, Saltwater Fishing Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham said that the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks, adopted in August 2008, required each state to modify its current shark regulations. Necessary compliance changes to the regulation are numerous and include commercial and recreational size limits, a season closure for both commercial and recreational, plan specific permitted shark gear, definition of a recreation shore angler and vessel angler for the purpose of determining individual possession limits, changes to the list of restricted species of shark, requirement

that all shark be landed with all fins attached, restrictions for smooth dogfish and a provision to close commercial shark fishery in state waters once the federal quota has been projected and announced.

Mr. Gillingham explained that coordination between state and federal regulations is necessary to ensure sustainable populations of coastal sharks. He provided the board with a copy of the draft regulation prepared by staff and reviewed the changes. He said the proposed regulations would result in conservation.

Mr. Gillingham said that ASMFC Shark Management Board would be meeting February 2nd to finalize the compliance date which could be March 1, 2009. He said that staff recommended that the Commission conduct with the public hearing today but defer its final decision until the February meeting. There were two reasons for this request. First, the ASMFC will meet in early February and they may modify the plan. Second, staff is proposing to hold a public hearing for changes to the recreational summer flounder fishery next month. If modifications to the shark and recreational summer flounder fisheries coincide regulations cards would only need to be done once, saving money.

Commissioner Bowman asked for questions of staff.

Associate Member Bowden stated that this is all about large coastal sharks and the fins certainly did not have to be left on dogfish and pelagic sharks. Mr. Gillingham explained that the board met last October and discussed the smooth dogfish. They modified how the technical committee defined status quo. He said they looked at trip limits and that 95% of the trips were a 1,000 pounds or less, which they thought was status quo. He said he was amazed that it was generally felt by the board members that the status quo applied to all commercial restrictions for smooth dogfish, yet according to the ASMFC staff it only applied to the trip limit. However this misunderstanding between the board and ASMFC staff was the reason that he hoped that the Commission would hold off on making a final decision until next month. Associate Member Bowden asked if he was going to get clarification on that because it was a large coastal plan and nothing to do with small and pelagic species. Mr. Gillingham said that there is clarification, but the board might revisit it. Associate Member Bowden asked if the fins must be left on them, even the dogfish. Mr. Gillingham responded yes, according to ASMFC staff.

Commissioner Bowman said he needed to get clarification and to push for it.

Associate Member Robins asked if the board can eliminate the processing at sea for smooth dogfish. Mr. Gillingham said that staff was not sure. Associate Member Robins said that fins and tails identification was not difficult and staff needed to talk with ASMFC. Mr. Gillingham reiterated the understanding by ASMFC staff of "status quo" only applied to the processing for smooth dogfish for the commercial fishery.

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

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to continue the matter until the February meeting. Associate Member Tankard seconded the motion. The motion carried, 8-0. The chair voted yes.

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15. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-270-10 et seq., "Pertaining to Crabbing," to allow the setting of fish pots from March 12-16 in Virginia waters of the Potomac River, upriver of the Route 301 bridge.

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

Mr. O'Reilly explained that this proposal is requested to bring the Potomac River tributaries into conformity with other areas and would exempt crabbers in this area from the prohibition of putting fish pots out prior to the start of the season between March 12 through March 16. He said staff looked at the data for this area and found only a few crabs were landed and also looked at fish potting. He explained that the exempted area was above the Route 301 Bridge, which extended from Newberg, Maryland to Dahlgren, Virginia. He referred to the amendment which was shown on page three in the draft copy of Regulation 4VAC 20-270-10, "Pertaining to Crabbing."

Mr. O'Reilly stated that staff recommended the adoption of the amendment.

Commissioner Bowman asked if there were any questions. There were none. He opened the public hearing. There were no public comments so the public hearing was closed. He then asked for action by the board.

Associate Member Tankard 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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16. PUBLIC HEARING: Proposed Regulation 4VAC20-1190-10 et seq., "Gill Net Control Date," to establish December 31, 2005, as the control date.

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

Mr. Grist explained that industry had requested this action the previous fall. He said that Figure 1 showed the number of licenses during 1994 through 2008 sold to residents and non-residents. He said the number of Maryland non-resident licenses doubled from 2005 to 2008. He stated that the total number of recreational gill net licenses had also increased, but no data was available for non-residents.

Mr. Grist said that during the October 28, 2008 Commission meeting, industry members expressed concern about personal observations of increased gill net activity from non-residents. He said further that industry members discussed the need to prevent excessive harvest of limited resources such as striped bass, spot and Atlantic croaker, as well as prevent additional competition of those dependent on the gill net fishery for their livelihood.

Mr. Grist reviewed a chart showing the collections of licenses fees for gill nets.

Mr. Grist explained that FMAC supported the setting of a control date and that a subgroup of industry members would look at this issue further to work out the details.

Mr. Grist stated that a control date would work the same as it did for the crab fishery and impact decisions for future regulations.

Mr. Grist read Section 20 of the draft regulation 4VAC 20-1190-10, which said:

“The Commission hereby establishes December 31 2005, as the control date for management of all gill net fisheries in Virginia. Participation by any individual in a gill net fishery after the control date will not be considered in the calculation or distribution of gill net rights should any entry limitations be established. Any individual entering the gill net fishery after the control date will have no right to future participation in the gill net fishery should any entry limitations be established.”

Mr. Grist said that staff recommended the adoption of Regulation 4VAC 20-1190-10 et seq., “Pertaining to Gill Net Control Date.”

Commissioner Bowman asked for questions.

Associate Member Schick asked about someone who fished after the control date. Mr. Grist said that those details had to be worked out and it depended on the date selected. He explained that a workgroup could work this out. Associate Member Schick asked why this date was chosen. Mr. Grist stated that it was recommended by the Commission.

Associate Member Bowden stated that since the out of state licenses had increased the date could be moved forward, if necessary. He said it would be harder to go back to an earlier date.

Associate Member Schick stated that he had had questions asked of him from the public and he would hate to see Virginians cut out. Mr. Grist stated that was not the intention. Associate Member Schick said that he had seen the results of the crab control date. Mr. Grist said that FMAC had spoke of this and were asking that a workgroup be formed.

Associate Member Robins explained that the crab control date can be flexible with transfer and exemption mechanisms. He said this can go to FMAC to work on it.

Commissioner Bowman opened the public hearing.

Anthony Smith, waterman, was present and his comments are a part of the verbatim record. Mr. Smith stated he had worked in this industry for 30 years and in the last two years invested in his own equipment. He said he was ready in December to begin on his own and he had invested \$30,000. He said he had worked with others. He asked if he would be able to get his own license.

Mr. Grist stated that no standard limits had been set as yet and this would be worked out with a committee.

There being no other public comments, Commissioner Bowman closed the public hearing. He asked for action by the Board.

Associate Member Bowden moved to approve the December 31, 2005 control date. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The chair voted yes.

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17. REPORT ON CRAB LICENSE FEES:

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. He provided a powerpoint presentation.

Mr. O'Reilly stated that the Commission, at the last meeting, had expressed concern that the crab regulatory changes had impacted the funding of the Virginia Marine Products Board, whose funding comes from the license fees. He said for the last two years there had been a downturn, but this has occurred from FY 1994 and forward because economic times have impacted the funding for both the Marine Products Board and VMRC.

Mr. O'Reilly explained that they had looked at the revenues from all major licenses not just crab license fees from 2004 through 2008. He said that of the license sales, the most comes from crab and foodfish. He said that the decline in crab license revenue from 2007 to 2008 was substantial.

Mr. O'Reilly said the data showed that there would be loss of revenue from crab licenses purchased previously and are now on the waiting lists. He said for the sake of estimating 2009 losses, staff used the 2007 revenue and those losses equal \$15,257 for the Marine Products Board and \$7,000 for VMRC.

Mr. O'Reilly said that the revenue from the sale of crab dredge licenses based on the actions of the Commission in February 2008 was reduced to 53. The projected loss to the Marine Products Board would be \$6,700 and to VMRC would be \$4,370.

Mr. O'Reilly said that, adjusted for inflation, revenues from the 1990's to the present are at a very low level, as compared to especially the 1980's. He stated that 2003 revenue was the lowest since the 1980 – 1993 time period. He said the 2009 annual revenues, adjusted by inflation, should be similar to those in 2007 and 2008.

Mr. O'Reilly explained that in looking at revenue collected for gears used to harvest food fish, gill net license sales dominate sales. He said that recreational gill license sales were now above 900 compared to 2004 when there were only 560.

Mr. O'Reilly stated that hand scrape license sales had increased since the hand scrape areas had been opened a few years back in the James River and in the Potomac tributaries. He said that the establishment of the oyster and clam aquaculture licenses had resulted in an increase in 2007 and 2008. He said that buyer licenses, such as the Seafood Place of Business and the Seafood Boat and Truck licenses had taken a downturn since 2004. He said that as long as there will be the establishment of limited entry and limited access that there will be impacts to the sale of licenses.

Mr. O'Reilly said that the increase in license fees in 2006 had added to the revenue funds for both VMRC and the Marine Products Board. He said the projected lost for 2009 is \$36,717 for the Marine Products Board and \$15,358 for the VMRC.

Mr. O'Reilly said that regulations do impact revenues, but the Commission considered the impacts to the resource.

Commissioner Bowman asked Mr. Cardwell to speak on behalf of the Marine Products Board.

Joe Cardwell, VMPB Marketing Specialist, was present and his comments are a part of the verbatim records. Mr. Cardwell said they had been promoting the State's fisheries to keep the economy growing. He said the upcoming newsletter will have examples of their efforts to accumulate funding. He said Mr. O'Reilly's presentation had given him a better understanding of the Marine Products funding as most of their funding came to them after-the-fact.

Mr. Cardwell said that he sometimes found himself doing more to seek out funding than promoting Virginia's seafood.

Commissioner Bowman asked him about the new license plates. Mr. Cardwell said they were working to get enough interest for their proposed license plates. He said originally it takes 350 signed applications to get this license plate approved and then they must sell a thousand plates to start getting a percentage. Commissioner Bowman asked about the price of the license plate and what part of that would be given to the Marine Products Board. Mr. Cardwell stated the license plate will sell for \$25.00 and the Marine Products Board will get 15 percent. Commissioner Bowman asked what the average budget was for the Marine Products Board. Mr. Cardwell said \$250,000. Commissioner Bowman asked how someone got an application for the new tags. Mr. Cardwell said that on their website you can apply for the license plate or just call their office.

Associate Member Fox asked about their promotional efforts for the cow nosed rays. Mr. Cardwell said that in the last two years he had talked with 39 industries and participated in food shows. He said that they had to educate everyone on the fishery and even with impacts of regulations it would still be a sustainable fishery. He said they were going in a lot of directions, such as development of it as a bait fish, the Koreans using its byproducts and its use as a shark food. He said one form of prepared food was a strip, such as clam strips, which had tremendous potential. He said another direction was to use it as a pet food, but funding limits how many directions can be taken.

Associate Member Bowden said that it looked like it was about \$30,000 loss out of \$200,000 plus. He asked about the funding availability in the CFAB funds. Sonya Davis, Fisheries Management Specialist, Sr., said that Marine Product Board could request separate grants from the Marine Improvement Funds. Associate Member Bowden asked when staff would know how much was in the CFAB budget. Ms. Davis stated that it would be after the commercial registration license sales end, after February. Commissioner Bowman asked about who had the discretion to decide how the funds are used. Ms. Davis stated that it was the Commission's decision.

Associate Member Robins stated that they could request grants for the upcoming season. Ms. Davis responded yes.

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18. INDIVIDUAL APPEALS OF COMMISSION DECISION TO PLACE CERTAIN CRAB POT AND PEELER POT LICENSES ON A WAITING LIST UNTIL RECOVERY OF THE BLUE CRAB POPULATION.

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

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Mr. Travelstead explained that at the present time there were 443 crab pot licensees and 287 peeler pot licensees on the waiting list. He further explained that these licensees can not participate in the crab fishery until the resource recovers to the level established. He said there were 58 appeals received for this month and 10 appeals for next month. He stated that the Commission could vote in mass if they desired. Commissioner Bowman said that it would be okay to approve the appeals in block in accordance with the staff recommendation.

* * *

Mr. Travelstead explained that in the first group were 21 individuals with health issues and documentation to verify this fact and staff wished to give them the benefit of a doubt. He said staff was aware of some and some did not have any medical records and staff was recommending that they be denied. He said if they were denied they could come back with verification documents.

Associate Member Robins stated that for those staff recommended denial the Commission has two options: deny their appeal until they appear before the board or approve them subject to needed verification being submitted. He moved to approve all of those in the first group, as recommended by staff, and those recommended for denial to be approved subject to them providing medical documentation. Associate Member Holland seconded the motion. The motion carried, 7-0-1. The chair voted yes. Associate Member Schick was absent from the room.

Approved:

Golden M. Ferris	James C. Edwards	Orrie L. Smith, Jr.	Clarence Williams
Mark G. Hanks	Dwayne Simmons	Douglas L. Edwards	William Brown, Sr.
Danny Soles	John E. Alexander	Charles F. Harris	Norman D. Conley
Lee R. Smith	James Bowden, Sr.	Jeffery W. Sharpless	Bruce C. Wood

Approved subject to submitting verification of health issues:

William S. Edwards	Gary L. Powell	Richard A. Swain	John P. Boyle, Jr.
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Mr. Travelstead explained that the next group of 19 had not reported the proper gear. He said that they had indicated just "pot" which stands for crab pot and not put ppot which stands for peeler pots. He said a number had written "pot" only and staff found that they had harvested hard crabs and peeler crabs. He said staff felt that some of these individuals should be given the benefit of a doubt and therefore staff had recommended approval.

Associate Member Fox moved to approve the appeals per the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 8-0.

Approved:

Lawrence L. Diggs Mitchell Shores Vernon A. Ward Beverly F. Denston
William W. Bailey David W. Hart Marvin Holloway, Jr. Edward L. Stratton
Arthur W. Somers, Jr. William Bonawell, Sr. Harry M. Healy, Jr. Ronald D. Evans
Joan Gregory William H. Welch Harold E. Wilhelm, Jr. Logan W. White

Mr. Travelstead explained that there were 3 appeals recommended for denial in this group. He stated that Beverly Pruitt had withdrawn his appeal. He said for Messrs. Eskridge and Freeman there was no evidence of harvest by a particular gear and no indication that peeler crabs were harvested. He said staff recommended that they be denied.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Denied:

James W. Eskridge
David S. Freeman

* * *

Mr. Travelstead explained that there were 6 appeals by individuals who had failed to properly report commercial harvest and no evidence to prove any harvesting activity at all occurred. He said that in some cases these individuals had provided receipts from businesses indicating harvest. He said that staff was recommending for the rest that they be denied based on the fact that they failed to report harvest in compliance with the VMRC regulation.

Mr. Travelstead told the Commission that Edgar Harper had passed away. He explained that Mr. Harper's wife had located the reports that had not been turned in so he was not put on the waiting list. He said, if approved, this license can be transferred and staff recommended approval.

Mr. Travelstead explained that Raymond Kellum had worked with VIMS and the Corps of Engineers and removed crabs from the sanctuary in the Great Wicomico. This was done under a scientific permit. He stated that staff recommended approval.

Associate Member Fox moved to approve the two appeals (Kellum and Harper). Associate Member Robins seconded the motion. The motion carried, 8-0.

Mr. Travelstead said that the next four were recommended for denial by staff. Commissioner Bowman asked if staff had heard from them. Mr. Travelstead stated that Steven Bunce and Gregory Parks, Jr. were absent and William D. Hart and Tyler G. Tyler were both present.

Associate Member Fox moved to deny both Mr. Bunce and Mr. Parks their appeals. Associate Member McConaugha seconded the motion. The motion carried, 8-0.

Commissioner Bowman asked Mr. Hart why he had not been reporting. William D. Hart, crabber, was present and his comments are a part of the verbatim record. Mr. Hart explained that he was the father and was here for his son. He said that his son's harvest was reported with his and had reported every year. He said he did report peeler pot harvest, but no crab pot harvest. Commissioner Bowman asked him how long he had the license. Mr. Hart responded 7, 8 or 10 years. Mr. Travelstead stated that there was no record to support what he said. Mr. Hart stated that the report forms have his son's name on them. Mr. Travelstead asked if VMRC had these forms. Mr. Hart said yes, 2004 and 2005. He said the law said if it was not caught to not report. He said this was a part-time job in the winter. He said he would hate to lose his son's license.

Commissioner Bowman asked for action by the Board.

Associate Member Bowden moved to reinstate his license because this was a clerical error. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Betty Tyler, mother of Tyler G. Tyler, was sworn in and her comments are a part of the verbatim record. Ms. Tyler said her son was 13 years old. She said her husband had purchased the license when he bought the boat. She said she had been reported zero until the last two years because her son had only 10 or 15 pots and he caught a few crabs. She said her husband's reports had been done but she did not think it necessary to report such a small amount caught by her son. She said they had the records, they just were not turned in. Commissioner Bowman asked her to show them to staff. Mr. Travelstead stated that approval would be conditioned that the harvest was put on proper forms.

Commissioner Bowman asked for a motion.

Associate Member Bowden moved to reinstate the license and put him on one-year probation as long as records are up to date in 30 days. Commissioner Bowman reiterated that if they are not reported the license would be revoked. Associate Member Robins seconded the motion. The motion carried, 8-0.

Approved:

Raymond K. Kellum
Edgar Harper

William D. Hart
Tyler G. Tyler

Denied:

Stephen Bunce, Jr.
Gregory Parks, Jr.

* * *

Mr. Travelstead explained that the next five had no records of crab harvest and no other records to show any harvest. He stated that staff recommended denial.

Herbert A. Thom, Jr. was sworn in and his comments are a part of the verbatim record. Mr. Thom explained that he had crabbed 2003, 2004, and 2005, but had been derelict in reporting his catch. He said he had sent some reports on the green card for 2 to 3 bushels catch. He said the 5-3/4 to 6 inch were the only ones he retained.

Commissioner Bowman said it would be a problem to honor that reason as everyone else would be trying to apply using the same reason. He said they could not apply the rules unequally. He said this was an effort to control the number in the business so that when the crabs did come back there would not be a gold rush. He said he had admitted to the omission and there was technical evidence and it was not fair to others to treat him differently.

Associate Member Schick asked him if he had any records. Mr. Thom stated that his wife passed away in 2005 and he could not find the records.

Commissioner Bowman said that if he provided receipts or could get copies it might be considered.

Associate Member Robins said that the last case was for a 13 year old and written documentation was provided. He said this was a different case as this was an adult who admitted to not reporting.

Associate Member Robins moved to deny the appeal. Associate Member Tankard seconded the motion. The motion carried, 7-1. Associate Member Schick voted no.

Calvin Poole was sworn in and his comments are a part of the verbatim record. Mr. Poole read his letter submitted to staff and said that he had no harvest to report. He said he had a right to get a license and not work. He said he did have health problems now. He said even if he could keep his license he would not set out pots. He said the State would be losing the revenue from his not buying the license. He said he had not caught a single crab in ten years. He said he was appealing to keep his license.

Commissioner Bowman stated that if the Commission allowed this, it would not be fair to others and this was being done to prevent latent effort.

Associate Member Robins moved to deny the appeal. Associate Member Fox seconded the motion. The motion carried, 8-0.

Associate Member Robins moved to deny the appeals by Bowden, Smith, and Walker as recommended by staff because of the lack of reports. Associate Member Fox seconded the motion. The motion carried, 8-0.

Commissioner Bowman stated that letters would be sent notifying of decision and to advise that decision can be appealed.

Denied:

Calvin K. Poole Donald R. Bowden James R. Smith Herbert A. Thom
Krista L. Walker

* * *

Mr. Travelstead explained that the next individuals requested special consideration because of damages to their boat or home suffered during Hurricane Isabel. Mr. Terry K. Haydon did not submit a letter of appeal and staff suggested deferring a decision but to keep on it file. He said that staff recommended approval for the other individuals.

Commissioner Bowman asked for a motion.

Associate Member Robins moved to approve Messrs. Tynes, Smith, and Wilson. Associate Member Tankard seconded the motion. The motion carried. 8-0.

Approved:

Johnnie Tynes, Jr.
William Smith, Jr.
William Wilson, Sr.

* * *

Mr. Travelstead explained that these three individuals had been cited by the Commission for failure to report and had been put on probation. He said these individuals had since gotten their reports up to date, but not in time to make it into the database and be put on the waiting list. He said staff was recommending approval for Messrs. Ashton, Crockett, and Bell.

Commissioner Bowman asked for a motion.

Associate Member Robins moved to approve as recommended by staff. Associate Member Fox seconded the motion. The motion carried, 8-0.

Approved:

Lester L. Ashton
George B. Crockett
David W. Bell

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20. **RESOLUTION TO GOVERNOR KAINE:** Requesting support in development of amendments to the biennial budget to include sufficient funds for the Agricultural Best Management Practices Cost Share Program.

Associate Member Fox said he did favor the first two paragraphs, but the third paragraph about allocation of resources did not include the skilled, educator, state police, etc. and this was beyond our area of expertise. Commissioner Bowman said that he was informed that the money being there was less trouble.

Ken Smith, President, Virginia Watermen's Association asked to see a copy of the resolution.

Commissioner Bowman read the resolution into the record from the Virginia Marine Resources Commission to the Honorable Tim Kaine, Governor of Virginia:

“The Virginia Marine Resources Commission congratulates you on focusing on 2009 as the Year of the Environment. Water quality is an important part of the Commonwealth's environment. We further appreciate your leadership on including twenty million dollars in the first year of the biennium budget for cost sharing with farmers to install agricultural best management practices. This program is the prime element of the Commonwealth's water quality efforts to reduce nonpoint sources of pollutions from runoff.

The Commission further recognizes that no funds are included in the current budget for the second year of the biennium for he agricultural cost share program. To keep the Virginia farmer's interest and confidence in using best management practices, it is important to maintain and enhance the progress across the Commonwealth in restoring our rivers, streams, and our Chesapeake Bay.

Therefore, be it resolved, that the Virginia Marine Resources Commission requests your support in the development of amendments to the biennium budget to include sufficient funds for the Agricultural Best Management Practices Cost Share Program to maintain and enhance the reduction of nonpoint sources of water pollution for the second year of the biennium. This resolution was adopted by the Virginia Marine Resources Commission at its monthly meeting on January 27, 2009.”

Commissioner Bowman said this was identical to the Department of Conservation and Recreation.

Associate Member Robins said the Resolution spoke to the needs and health of the Bay. He moved to approve the resolution. Associate Member Tankard seconded the motion. The motion carried, 8-0. The chair voted yes.

Mr. Smith stated that the Best Management Practice program is the cheapest money to be spent. He said watermen need redeveloping and need the same program so as to do better and fix the industry.

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21. REQUEST FOR PUBLIC HEARING: Possible Changes To The Cull Ring Requirements In Crab Pots.

Associate Member Robins explained that there was a need to advertise for a public hearing to modify the cull ring requirements of 2-3/8 inch now required in the Bay and tributaries, 4 cull rings total.

Associate Member Fox asked if four rings were required now.

Associate Member Robins yes and at least 2 cull rings at 2-3/8 inch, but the additional were superfluous.

Associate Member Robins moved to advertise for a public hearing. Associate Member Fox seconded motion. The motion carried, 8-0. The chair voted yes.

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REQUESTS FOR LICENSES TO BE REINSTATED: Commercial Waterman with Rappahannock River Oyster Summonses.

Commissioner Bowman asked if the waterman that had been summons in the Rappahannock River were present.

Warner Rhodes, Deputy Chief, Law Enforcement, stated that one of them was present and the others were caught in traffic up by the Norris Bridge opening.

Lt. Col. Rhodes stated that Colton R. Kellum, Jr. was present. He said that staff recommended that his license and permit be returned to him.

Commissioner Bowman asked why they should be returned.

Lt. Col. Rhodes said Mr. Kellum had no previous violations and had not caused any difficulty when he was issued this summons. He said that Mr. Kellum was acting as

agent for Mr. Ellis the commercial licensee and he also wanted to get the license returned. He said Mr. Ellis had no violations on record and was cooperative.

Commissioner Bowman asked for a motion.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. Commissioner Bowman asked if the motion could be amended to include probation. Associate Member Robins agreed with including the one-year probation. The motion carried, 8-0. The chair voted yes.

Commissioner Bowman asked about the others.

Lt. Col. Rhodes said that staff recommended the same, reinstate the license and permit and 12-month probation. He said the summonses were for undersized and unculled oysters.

Associate Member Robins asked staff if all of the watermen had called in. Lt. Col. Rhodes said that not all. He said Messrs. Bonnaville and Walton had called, but Messrs. Smith and Shiftlett had not.

Associate Member Robins moved to reinstate Messrs. Bonnaville and Walton's license and permit and place them on one-year probation. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The chair voted yes.

Associate Member Robins moved to not reinstate the license and permit to Messrs Smith and Shiftlett until they appeared before the Board. Associate Member Tankard seconded the motion. Associate Member Bowden noted that they might not have cell phones. Commissioner Bowman suggested amending the motion to say that if they call in with a legitimate excuse then staff can reinstate the license and permit. Associate Member Robins asked for confirmation that all were coming from north of the bridge, which was confirmed, and amended his motion to say subject to receiving an excuse to document absence, the license and permit would be reinstated and there would be the one-year probation. Associate Member McConaugha seconded the final amended motion. The motion carried, 8-0. The chair voted yes.

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Commission Meeting

**15222
January 27, 2009**

There was no further business and the meeting was adjourned at approximately 4:07 p.m.
The next regular meeting will be Tuesday, February 24, 2009.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary