

## MINUTES

**Commission Meeting****March 28, 2006**

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

William A. Pruitt )	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
Russell Garrison )	
J. T. Holland )	Associate Members
Wayne McLeskey )	
Cynthia Jones )	
Richard B. Robins, Jr. )	
Kyle J. Schick )	
Carl Josephson	Sr. Assistant Attorney General
Steven Bowman	Deputy Commissioner
Katherine Leonard	Recording Secretary
Wilford Kale	Senior Staff Advisor
Jane McCroskey	Chief, Admin./Finance Div.
Andy McNeil	Programmer Analyst, Sr.
Jack Travelstead	Chief, Fisheries Mgt. Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Jim Wesson	Head, Conservation/Replenishment
Lewis Gillingham	Fisheries Management Specialist
Joe Cimino	Fisheries Management Specialist
Sonya Davis	Fisheries Management Specialist, Sr.
Eric Robillard	Head, Plans and Statistics
Ellen Cosby	Fisheries Management Specialist
Mike Meier	Head, Artificial Reef Program
Warner Rhodes	Acting Deputy Chief, Law Enforcement Div.
Marine Police Officer	MPO Michael Dobson
Marine Police Officer	MPO Jaime Green

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Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Sean Briggs	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

David O'Brien

Lyle Varnell

Bob Fisher

Other present included:

James Miller	Alfred B. Albiston	John Brooks
Juan Crofton	S. E. Veazey	Fred Jones
Rebecca Francese	Wayne Rodehorst	Michael Ewing
Keith Lockwood	Joe Krushinski	Chris Flint
Perry Roberts	Vince Behm	Ellis W. James
James Hutt, Jr.	Rick Loy	Warren Veazey
Shirley A. Estes	Tommy Leggett	Chris Moore
Douglas F. Jenkins, Sr.		Susan Gaston
John Ripley	Bryan Hubbard	John Glenn, Jr.
Charles Dryden	Frank Kearney	E. T. Firth, Jr.
E. T. Firth, Sr.	Robert Allen	Bob Jensen
Tom Powers	Kelly Place	Bill Ragsdale

and others

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Associate Member Garrison, Acting Chairman, called the meeting to order at approximately 9:37 a.m. Commissioner Pruitt and Associate Member Jones were both late arriving.

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Associate Member Garrison gave the invocation and Carl Josephson led the pledge of allegiance to the flag.

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Associate Member Garrison swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

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**APPROVAL OF AGENDA:** Associate Member Garrison asked if there were any changes to the agenda. There were no changes to the agenda.

**Associate Member Robins moved to approve the agenda. Associate Member Holland seconded the motion. The motion carried, 7-0.**

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**MINUTES:** Associate Member Garrison asked for a motion to approve the February 28, 2006 meeting minutes.

**Associate Member Robins moved to approve the minutes as presented. Associate Member Holland seconded the motion. The motion carried, 5-0-2. Associate Members Fox and McLeskey both abstained, as they were not at the February meeting.**

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

Bob Grabb, Chief, Habitat Management Division, gave the presentation for the page two items, A through J. His comments are a part of the verbatim record.

Associate Member Garrison asked if anyone was present pro or con on these items to address the Commission. No one asked to speak.

Associate Member Schick moved to approve Page Two items, A through J. Associate Member Robins seconded the motion. The motion carried, 7-0.

**2A. IMTT CHESAPEAKE, #06-0025**, requests authorization to maintenance dredge 13,000 cubic yards of subaqueous bottom material and dredge 7,100 cubic yards of new, material to achieve maximum depths of -38 feet at their commercial loading facility on the Southern Branch of the Elizabeth River in Chesapeake. The dredged material will be transported to and disposed within the Craney Island Dredged Material Management Area. Recommend approval with the requirement for a pre-dredge conference and post-dredge bathymetric survey. Further recommend a royalty in the amount of \$3,195.00 for the new dredging of 7,100 cubic yards of material at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 7,000 cu. yds. @ \$0.45/cu. yd.).....	\$3,195.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,295.00

**2B. WILLIAM TINDER, #05-2406**, requests authorization to construct and backfill 509 linear feet of timber bulkhead aligned a maximum of two (2) feet channelward of mean low water and the existing bulkhead at his property situated along the Lynnhaven River in the Great Neck Point subdivision in Virginia Beach. Recommend a royalty of \$1,018.00 for the filling of 1,018 square feet of State-owned submerged bottom at a rate of \$1.00 per square foot.

Royalty Fee (filling 1,018 sq. ft. @ \$1.00/sq. ft.).....	\$1,018.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,018.00

**2C. DOMINION VIRGINIA POWER, #06-0144**, requests authorization to install 2,090 linear feet of submerged electrical transmission line beneath the Chickahominy River immediately downstream of the existing Route 5 Bridge in James City and Charles City County. Recommend approval with the assessment of a \$6,270.00 royalty for the encroachment beneath 2,090 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot and an instream time-of-year work restriction of February 15 through June 15 to protect anadromous fish species.

Royalty Fee (crossing 2,090 l. ft. @ \$3.00/l. ft.).....	\$6,270.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$6,370.00

**2D. OLD POINT COMFORT, LLC, #05-0590**, requests authorization to modify a previously Commission-approved community pier facility to increase the number of slips from 30 to 35 and decrease the size of an L-head to 51-foot by 20-foot adjacent to property situated along the Hampton River in Hampton.

No applicable fees – permit modification.

**2E. CORNELIUS G. ABEN, JR., ET AL, #05-2980**, requests authorization to install 400 linear feet of stone riprap, the toe of which may extend a maximum of ten (10) feet channelward of a deteriorating bulkhead at his property situated along the Chesapeake Bay in the Peaceful Beach Estates subdivision of Northampton County.

Permit Fee.....\$ 100.00

**2F. VIRGINIA ELECTRIC AND POWER, #05-2995**, requests authorization to dredge up to 2,824 cubic yards of State-owned subaqueous bottomland as part of Consent Order with the Department of Environmental Quality, related to a coal ash discharge remediation plan, within Farrar Gut of the James River in Chesterfield County.

Permit Fee.....\$ 100.00

**2G. MID-ATLANTIC BROADBAND, ET AL, #05-1060**, requests authorization to modify a previously issued permit to add an additional crossing of a fiber optic line across the Staunton River, by bridge attachment method, along Route 360, in Halifax and Charlotte Counties. Recommend a royalty in the amount of \$780.00 for the encroachment under 260 feet of State-owned bottom at a rate of \$3.00 per linear foot.

Royalty Fee (encroachment on 260 lin. ft. @\$3.00/lin. ft.)..\$ 780.00  
(Permit Modification -- permit fee previously paid)

**2H. ARMY CORPS OF ENGINEERS, #05-0338**, requests a modification to the current February 15 through September 30 time-of-year restriction for their permit which authorizes the overboard placement of dredged material at Tribell Shoal in the James River. Due to a lack of shellfish resources in the project area, staff recommends approval of a new February 15 through June 15 time-of-year restriction which will protect anadromous fish species.

No applicable fees – permit modification.

**2I. BAE SYSTEMS NORFOLK SHIP REPAIR, #06-0313**, requests authorization to maintenance dredge on an as needed basis up to a maximum of 150,000 cubic yards of material and conduct 33,000 cubic yards of new dredging from a 3,600-foot by 800-foot area to maintain maximum permitted depths ranging from -64 feet to - 25 feet below mean low water adjacent to their property situated along the Southern Branch of the Elizabeth River in Norfolk. All dredged material will be transported to and disposed at the Craney Island Dredged Material Management Area. Staff recommends a pre-dredge conference and the required submittal of a post-dredge bathymetric survey for compliance monitoring. Staff recommends a royalty in the amount of \$14,850.00 for the dredging of 33,000 cubic yards at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 3,300 cu. yds. @ \$0.45/cu. yd.)...\$14,850.00  
Permit Fee.....\$ 100.00  
Total Fees.....\$14,950.00

**2J. BAE SYSTEMS NORFOLK SHIP REPAIR, #06-0344**, requests authorization to repair and expand Pier 3 and associated fender systems resulting in new total dimensions of 705 feet long on the north side and 506 feet long on the south side by 58.5 feet wide, impacting an additional 5,300 square feet of State-owned submerged lands, adjacent to their property situated along the Southern Branch of the Elizabeth River in Norfolk.

Permit Fee.....\$ 100.00

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

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

Williamson versus VMRC

**The motion was seconded by Associate Member Schick. The motion carried, 7-0.**

**Associate Member Robins moved for the following:**

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

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

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

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

**Associate Member Holland seconded the motion. Associate Member Garrison held a Roll Call vote:**

**AYES: Bowden, Fox, Garrison, Holland, McLeskey, Robins, and Schick.**

**NAYS: None**

**ABSENT DURING VOTE: Commissioner Pruitt and Associate Member Jones**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: Commissioner Pruitt and Associate Member Jones.**

**The motion carried, 7-0.**

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**Katherine Leonard, Recording Secretary  
Virginia Marine Resources Commission**

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Associate Member Garrison continued as acting chairman in Commissioner Pruitt's absence.

4. **CARL JOHNSON, #05-2704**, requests authorization to construct a 13-foot by 34-foot open-sided boathouse adjacent to an existing private pier at his property situated along Kenny Creek in Mathews County. An adjoining property owner, as well as other property owners in the vicinity, protest the project.

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

Mr. Neikirk explained that Mr. Johnson's property was located along the eastern shoreline of Kenny Creek, a tributary of Queens Creek in Mathews County. Development along the shoreline was primarily residential and the creek was approximately 140 feet wide at the project site.

Mr. Neikirk said that Mr. Johnson proposed to construct a 14-foot by 34-foot, open-sided boathouse adjacent to his existing private pier. The boathouse was designed to cover the applicant's 32-foot boat. As proposed, the boathouse extended 34 feet channelward of mean low water. There are no other similar boathouses in the immediate vicinity of Mr. Johnson's property.

Mr. Neikirk stated that Mr. Donald Esterling the adjoining property owner, protested the project, as well as other residents along the creek and in the small subdivision. Mr. Esterling was the owner of the adjoining lot that was to have been deeded to the subdivision as a common area. Those objecting to the project were concerned with the adverse impact of the project on their views and property values. The boathouse did not encroach over any public or privately leased oyster planting ground, and no other state agencies had commented on the project.

Mr. Neikirk said that the proposed boathouse was located in the same location where the boat was currently moored. Accordingly, staff did not believe the structure would adversely affect navigation. The boathouse appeared to be reasonably sized to provide protective mooring of Mr. Johnson's boat. In fact, had the adjacent property owner not objected to the project, it would have qualified for the exemption contained in §28.2-1203 (A)(5) of the Code. The proposed open-sided design should also minimize the visual impacts associated with the structure, and the navigational and environmental impacts should not exceed those associated with the boat currently moored at the existing pier. Accordingly staff recommended approval of the project as proposed.

Carl Johnson, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Johnson stated that the staff provided a good summary presentation. He explained that the reason he wanted the boathouse was that he possessed an antique "Deadrise", which he needed to protect and was advised by others that he needed to cover it. He said he had a powerpoint presentation, but it basically was the same as the staff's. He said that while there were no other boathouses presently on this creek, outside the creek there were lots of them.

Associate Member Garrison asked for anyone in opposition to address the Commission.

Fred Jones, adjacent property owner, was sworn in and his comments are a part of the verbatim record. Mr. Jones explained that he was an adjoining property owner. He said that the creek was very narrow. He said he was originally told this would be an uncovered boathouse and today most boathouses have curtains for providing protection. He said the Commission would set a precedent if they approved this one. He further said that others would come and make the same request. He said that you would not be able to turn the boat around. He said that Mr. Esterling, another adjoining property owner, also objected to the proposed project as it would affect the esthetic view from his property.

Mr. Johnson in his rebuttal explained that Mr. Jones was not an adjoining property owner and only owned vacant property, as there was no house on it. He said he thought his request was reasonable and he would agree to any type of roof the Commission required.

**Associate Member Schick, after considering all the information and comments made at the hearing, moved that permit request #05-2704 be approved. Associate Member Holland seconded the motion. Associate Member Robins explained that the upland dispute was outside the jurisdiction of VMRC and as to the access concerns, there was no additional impact as it was a small boathouse. The motion carried, 6-1. Associate Member Bowden voted no.**

Permit Fee.....\$ 25.00

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Associate Member Garrison expressed his personal concern regarding the number of after-the-fact applications that come before the Commission. He said the board was tired of it and it was uncalled for, as information was provided by the localities about the need for a VMRC permit. He said that eventually this could become totally unacceptable and would be stopped.

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- 5. **LEE DEARMOND, #05-2356**, requests after-the-fact authorization to retain 102 linear feet of vinyl sheet bulkhead installed and backfilled a maximum of two (2) feet channelward of a failing bulkhead at his property situated along Long Creek in the Cape Henry Shores subdivision in Virginia Beach.

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

Mr. Worrell explained that in October of 2005 staff received an application from Flint Construction Company to replace a failing bulkhead and the existing piers at 2120 East

Admiral Drive in the Cape Henry Shores subdivision in Virginia Beach. Flint Construction served as both the agent and contractor for the applicant.

Mr. Worrell said that during the initial site visit, staff and VIMS proposed revising the proposal to limit the encroachment of both the piers and the replacement bulkhead. Both the applicant and Chris Flint, of Flint Construction Company, agreed to make the necessary plan revisions.

Mr. Worrell said that upon receipt of the final, correct revisions, staff informed Mr. Flint that the application was deemed complete and the public interest review portion of the permit process would begin. During that conversation, however, Mr. Flint admitted that the new bulkhead installation had actually occurred during the last week of January of 2006. Although the bulkhead installation occurred without a permit, it appeared to have been constructed within the parameters that staff had suggested. The back of the vinyl sheet bulkhead had been installed within approximately one foot of the existing timber sheet bulkhead, thus reducing the original backfill encroachment by approximately fifty percent. The front of the vinyl bulkhead, as measured in place, now extended a maximum of one and one-half feet beyond the deteriorated wall. Including the channelward whalers and support piles, staff estimated the entire encroachment to be two feet along the entire length of the bulkhead. In addition to the bulkhead installation, the previously existing piers were removed entirely. Mr. Flint and Mr. DeArmond were working on a replacement pier proposal that would comply with the exemption criteria listed in §28.2-1203.A.5 of the Code of Virginia.

Mr. Worrell stated that Mr. Flint explained that after having received U.S. Army Corps of Engineers' and City of Virginia Beach's approval, he incorrectly assumed that Commission approval had been granted as well. Staff reminded him that although the Corps' and City's approvals do not depend on the issuance of a Commission permit, their permits specifically reference the potential requirement for a Commission permit prior to commencing any work. Furthermore, staff had discussed this proposal with Mr. Flint on several occasions regarding the details of the revisions and had advised him that once the revisions accurately reflected our earlier recommendations, staff would initiate the public interest review.

Mr. Worrell explained that Mr. Flint immediately accepted responsibility for the error, and stated that Mr. DeArmond had no knowledge of any wrongdoing. Mr. Flint then submitted additional information, including, as-built measurements for the new bulkhead, and requested after-the-fact approval on Mr. DeArmond's behalf. He reiterated that it was not their intention to mislead the Commission in any way, and also pointed out the fact that he had willingly informed staff of the installation without any concern that it was actually a violation.

Mr. Worrell said that following the on site meeting with Mr. DeArmond and discussing the violation, staff did not feel that he knowingly requested initiation of construction

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without Commission authorization, nor was he aware that Flint Construction was working without a Commission permit, therefore, the staff did not feel it was necessary to consider a civil charge from Mr. DeArmond.

Mr. Worrell went on to say that Flint Construction, however, should have known better. They had previously served, and continued to act as the agent and contractor for numerous wetlands and subaqueous projects in the Hampton Roads area. Although it appeared that Flint Construction might have unintentionally proceeded without the required Commission permit, the unauthorized bulkhead was a violation according to §28.2-1203 of the Code. According to VMRC records, Flint Construction Company had never appeared before the Commission in the past for any violation.

Mr. Worrell said that ultimately, staff would have administratively issued the permit for the replacement bulkhead had the public interest and agency review been completed before the actual installation began. Therefore, staff recommended that the Commission approve the after-the-fact bulkhead with triple permit fees and royalties as provided by Code. Furthermore, staff recommended that the Commission consider an appropriate civil charge for Flint Construction, given the after-the-fact nature of the request based on minimal environmental impacts and a moderate degree of non-compliance.

Chris Flint, Flint Construction and contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Flint said that he was not aware that a VMRC permit had not been issued. He said he had submitted the drawings and thought he had taken care of it. He said he agreed he was at fault. He said he did build the structure where VIMS had recommended. He said he would agree to pay all civil charges, even those charges that are imposed on the applicant. He stated he had never been before the Commission for a violation and promised that he would never do this again.

Associate Member Schick asked if he realized that there was a requirement to display the permit. Mr. Flint said that he thought he had given it to the applicant and he was confused by the VMRC letter and the City's permit.

Associate Member Garrison asked if there was anyone present in opposition. Mr. Worrell responded, no.

**Associate Member Schick stated that he felt the staff recommendation was appropriate in this instance. Therefore he moved to approve #05-2356 with a civil charge of \$1,200 imposed on the contractor and triple fees and royalties to be assessed for the applicant. Associate Member Fox seconded the motion. The motion carried, 7-0.**

Royalty Fee (filling 204 sq. ft. @ \$3.00/sq. ft.) (Triple)...	\$ 661.00
Permit Fee (triple fee).....	\$ 300.00

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Total fees.....\$ 961.00  
Civil Charge assessment for the Contractor.....\$1,200.00  
Total Fees.....\$2,161.00

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6. **SARAH A. MOORE, #05-2284**, requests after-the-fact authorization to retain 87 linear feet of vinyl replacement bulkhead constructed approximately one (1) foot channelward of a deteriorated timber bulkhead adjacent to her property situated along Kibble Creek in Mathews County.

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

Mr. Neikirk explained that Ms. Moore’s property was situated along Kibble Creek, a small tidal tributary of the Chesapeake Bay, located near the northern tip of Gwynns Island in Mathews County. The creek was very shallow and only about 80 feet wide at the project site. Development along the creek was primarily residential.

Mr. Neikirk stated that Ms. Moore was seeking after-the-fact authorization to retain 87 linear feet of vinyl replacement bulkhead that was constructed approximately one (1) foot channelward of a deteriorated timber bulkhead without prior authorization from the Marine Resources Commission.

Mr. Neikirk said that an application to install the bulkhead was received by our offices on September 27, 2005. Staff conducted a site visit on October 17 and confirmed that the bulkhead would be located channelward of mean low water and that a permit would be required from VMRC. At that time the construction of the bulkhead had not commenced. The Mathews County Wetlands Board determined that the project as proposed, was channelward of their jurisdiction, therefore, a Wetlands Permit was not required.

Mr. Neikirk stated that the VMRC public interest review consisted of placing a public notice in the local newspaper and notifying the adjoining property owners. No objections had been received.

Mr. Neikirk said that on November 28, 2005, staff received a call from Ms. Julie Bradshaw, a wetlands scientist with the Virginia Institute of Marine Science. She informed staff that while she was conducting the site inspection for her “Shoreline Permit Application Report” for this project, she discovered that construction of the bulkhead had commenced. Staff conducted a site visit the following day and discovered that, with the exception of being backfilled, the bulkhead had been completed. The contractor,

Mr. Keith Trammel, was on site. He was informed that the project was not authorized and that staff was considering the work to be a violation. During the meeting Mr. Trammel apologized for starting the work prior to receiving the VMRC permit and said he accepted full responsibility for the violation.

Mr. Neikirk stated that a Notice to Comply was sent to Ms. Moore on January 30, 2006. The notice directed either removal of the bulkhead or submittal of a written request to have the pending application considered as an after-the-fact application. The notice also specified that any request for after-the-fact consideration of the work must be accompanied with a written statement explaining why the work was initiated prior to receiving the necessary authorization.

Mr. Neikirk said that staff received a letter from Mr. Trammel on February 22, 2006, requesting that VMRC consider the pending application as an after-the-fact request to retain the recently constructed bulkhead. In his letter Mr. Trammel apologized and again admitted full responsibility for the violation. He explained that he began construction assuming that a permit would be issued in the very near future. He said the weather had limited his ability to work for about a month and that the project site offered a protected environment in which to work.

Mr. Neikirk also said that Ms. Moore submitted a letter as well, dated March 6, 2006, requesting after-the-fact authorization for the project. She said she thought she had the necessary authorization and noted that she was on a fixed income and had limited funds available for payment of any additional expenses associated with the project.

Mr. Neikirk said that the Virginia Institute of Marine Science stated that the impacts resulting from the activity were unavoidable and minimal. No other state agencies had commented on the project.

Mr. Neikirk said that staff had determined that the environmental impacts associated with this project were minimal and were prepared to recommend administrative approval of the application prior to being advised that construction had already begun. Although staff understood the contractor's desire to keep his employees working during a period of adverse weather conditions, staff was concerned with his deliberate decision to proceed with construction of the bulkhead prior to receiving VMRC authorization. In this case the contractor has accepted full responsibility for the violation. Accordingly, staff recommended approval of the after-the-fact request with the assessment of triple permit fees and royalties as provided for in §28.2-1206(D) of the Virginia Code. Furthermore, staff recommended the Commission consider conditioning that approval on the agent's agreement to pay a civil charge in lieu of further enforcement action. Staff believed the amount of the civil charge should be determined based on a minimal environmental impact and the moderate degree of deviation or non-compliance.

Keith Trammel, contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Trammel acknowledged that he started knowing he did not have the permit, but thought it was nearly approved. He said he had been a contractor for 25 years and had never done this before.

**Associate Member Fox explained that this case was consistent with the last item and the staff recommendation; therefore, he moved to approve the request with a civil charge of \$1,200.00 for the contractor only. Associate Member Robins seconded the motion. The motion carried, 7-0.**

Royalty Fee (filling 87 sq. ft. @\$3.00/sq. ft.) (triple)....	\$ 261.00
Permit Fee (triple fees).....	\$ 75.00
Total Fees.....	\$ 336.00
Civil Charge assessment for the Contractor.....	\$1,200.00
Total Fees.....	\$1,536.00

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- 7. **RICK LOY, Notice to Comply #05-15.** Formal Restoration Hearing concerning the unauthorized placement of concrete blocks and the installation of a metal slide over State-owned submerged bottom, as well as the unauthorized expansion of an existing private, non-commercial pier at his property situated along Aquia Creek in Stafford County.

Ben McGinnis, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. McGinnis reminded the Commission that this was a restoration hearing, not an after-the-fact application.

Mr. McGinnis explained that this project was located on the southwestern side of Aquia Creek, immediately upstream of Thorny Point, in Stafford County.

Mr. McGinnis stated that in July of 2005, Mr. Loy began construction of a concrete block retaining wall/bulkhead above mean low water, adjacent to his property along Aquia Creek. Following a site visit in July of 2005, the Stafford County Wetlands Board staff determined that Mr. Loy’s project had not been authorized by the Board and was in violation of the Wetlands Zoning Ordinance, Section 28.2-1302 of the Code of Virginia. The Wetlands Board staff directed Mr. Loy to stop work and submit an after-the-fact application to retain those portions of the wall/bulkhead, which had been completed, as well as a request to install the wall/bulkhead along the remaining portion of his shoreline.

Mr. McGinnis said that VMRC had received Mr. Loy's application (#05-1395) requesting after-the-fact approval on June 14, 2005. During a preliminary review by staff, it appeared that Mr. Loy's project was positioned entirely above mean low water, and would not require after-the-fact authorization from the VMRC. Although this appeared to be the case, staff sent Mr. Loy a letter on July 29, 2005, requesting additional information to clarify a lack of detail in the original submission. Prior to being sent notification of this restoration hearing, Mr. Loy had not responded to staff's request. He did, however, submit some additional information directly to the Stafford County Wetlands Board before their October 17, 2005, public hearing on his application. During their hearing, the Board decided that they did not have enough information on the viability of this type of shoreline structure, and set Mr. Loy's case aside until he could provide further information in regards to the engineering and previous uses of such structures.

Mr. McGinnis explained that notification by the Stafford County Wetland Board of their hearing on Mr. Loy's application prompted a routine site visit by staff on October 5, 2005. During this visit, staff observed a large quantity of concrete blocks stacked channelward of mean low water, as well as an apparent addition onto his existing pier, including new decking platforms, catwalks, boat lift, and metal slide. A search of Commission records confirmed that Mr. Loy had not previously applied for, nor been authorized by the VMRC for the placement of the blocks or the pier expansion/additions.

Mr. McGinnis said that staff on October 17, 2005 issued a Sworn Complaint and Notice to Comply. The Notice to Comply directed Mr. Loy to completely remove all of the unauthorized structures, within 30 days, or to submit an after-the-fact request to retain the pier expansion and slide as constructed. The alternative to apply after-the-fact to retain the stacked concrete blocks was not given to Mr. Loy, since it appeared unlikely that the Commission would have approved their placement in such a haphazard manner.

Mr. McGinnis said that by January of 2006, staff had not yet heard from Mr. Loy concerning the status of his unauthorized structures. On February 7, 2006, staff conducted an aerial inspection of the site and confirmed that all of the unauthorized structures remained in place. On that same day, a site inspection by the Stafford County Wetlands Board staff further confirmed and documented the presence of the unauthorized structures. Staff was unsuccessful in its attempts to reach Mr. Loy by telephone to discuss the status of his violations. Although staff left messages, they were not returned.

Mr. McGinnis said that on February 24, 2006, staff sent, by certified mail, a letter to Mr. Loy, directing him to appear before the Commission at its March 28, 2006, meeting for a formal restoration hearing on his unauthorized structures. The U.S. Postal Service (USPS) attempted to deliver this letter to Mr. Loy on February 25, 2006, but had to leave a notice since they could not obtain a signature. On March 1, 2006, and again on March 6, 2006, staff checked the status of the letter with the USPS and observed that the letter had still not been signed for. Consequently, on March 6, 2006, staff requested assistance from the VMRC's Law Enforcement Division in physically serving the letter on Mr. Loy.

Staff received notice from Capt. Ray Jewell, that a Marine Police Officer had served the letter on Mr. Loy on March 9, 2006.

Mr. McGinnis stated that on March 22, 2006, staff received a letter from Mr. Loy, dated March 20, 2006, along with an attempted submission of an after-the-fact application to retain his recent pier expansion. Since his after-the-fact application was submitted to our office only after he had received notification of this restoration hearing, staff had not assigned a VMRC processing number to the application and was currently treating his submission as additional information to this hearing. Mr. Loy stated in his letter that the metal slide and approximately one-fifth of the concrete blocks had been removed from the water. He claimed that the weather and cold-water temperatures had prevented him from removing the remaining blocks, and that he would remove the remaining blocks as soon as the temperatures rose to a tolerable level. Although outside the Commission's jurisdiction, he also stated that he planned to install a riprap revetment above mean high water rather than continue with the concrete block wall/bulkhead. Mr. Loy's letter, however, did not provide any further insight as to why the work was done without VMRC authorization, or address the delay in his response to the directives in our October 17, 2005, Notice to Comply.

Mr. McGinnis said that the staff had given Mr. Loy, ample time and opportunity to comply with the directives in our October 17, 2005, Notice to Comply. Prior to notifying Mr. Loy of this restoration hearing, staff had no record that Mr. Loy even attempted to contact the VMRC office to discuss his violations or request additional time in which to come into compliance. In the opinion of staff, Mr. Loy, through his lack of action, had chosen to disregard the directives in the Notice to Comply. Furthermore, the Stafford County Wetlands Board staff informed Commission staff that Mr. Loy was in the development business. As such, he was well aware of the need to obtain permits before beginning any type of construction activity.

Mr. McGinnis said, accordingly, that staff was recommending that the Commission order Mr. Loy to completely remove, within 30 days, all unauthorized structures detailed in the October 17, 2005, Notice to Comply. If the Commission felt inclined to allow Mr. Loy to keep all, or portions of his recent pier expansion, staff would recommend the Commission direct staff to accept Mr. Loy's March 22, 2006, after-the-fact request to retain the pier expansion. Following a public interest review, this matter would be brought back before the Commission for consideration. Unless all violations were completely removed, staff recommended the Commission also consider an appropriate civil charge for Mr. Loy, based upon minimal environmental impact but a major degree of non-compliance.

John Hutt, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Hutt explained that the pier was a community pier not a private pier, and they did not know who had built it. He said in 2005, it was Mr. Loy's mistake. He said the shoreline protection material had been there for 25 or 30 years and was done in a haphazard way. He said Mr. Loy felt there needed to be repairs made to avoid further

erosion. He said Mr. Loy's objective was to install a seawall. He said if Mr. Loy constructed a block wall it would not require a permit as it was above the mean high water mark and the blocks that were in the water were only there temporarily for construction purposes. He said all work was stopped when Mr. Loy was asked to do so. He said the material would have all been removed in the 30 days but the work went into the winter period so that Mr. Loy could not comply.

Rick Loy, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Loy explained that the wall blocks were not intended to be in the water or on wetlands. He said he spoke with Stafford County personnel and was told that no permit would be necessary, so he proceeded with the work. Mr. Loy did admit that he did build the boatlift without a permit. Associate Member Schick asked why he did not respond to the notification from the VMRC staff? Mr. Loy explained that he started to comply but the winter weather caused him to stop. He said he did not think to write back as the structures were not intended to be permanent. Associate Member Schick asked if he had received any calls from VMRC staff? Mr. Loy explained he could only be contacted by cell phone, not at his home phone. Associate Member Fox again asked if he had received any letters? Mr. Loy responded only one in October or November and he was on vacation for two weeks at the end of February.

Associate Member Garrison asked if there were any protests? Mr. McGinnis responded, yes.

Associate Member Schick asked if the pier was in Mr. Loy's name? Mr. McGinnis said that staff was not aware it was a community pier until Mr. Hutt mentioned it. He stated that there was nothing in the VMRC records for a community pier at that location either. He said someone had mentioned that there was an easement there for a boat ramp for the community's use, which Mr. Loy had removed and backfilled.

Associate Member Fox asked if there was not a record of a community pier. Mr. McGinnis responded that the previous owner had applied for riprap and a pier.

Mr. Hutt entered into the record a plat of the easement. Mr. Loy explained that in the deed there was an easement for residents to have access.

Bob Grabb, Chief, Habitat Management, explained that Mr. McGinnis considered it a private pier, if it was a community pier then a public notice must be advertised, as it did not qualify for an exemption and did require a permit in its entirety.

Mr. Hutt explained that Mr. Loy wanted to replace the seawall as it was not the best structure for solving the erosion problem there and he wanted to apply to VMRC and the County to install a riprap revetment.

**After much discussion, Associate Member Robins moved to order the removal of the concrete blocks in 30 days per the VMRC October 17<sup>th</sup> letter and require an after-the-fact application for the community pier. Associate Member Schick seconded the motion. The motion carried, 7-0.**

No applicable fees – restoration hearing.

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Commissioner Pruitt arrived at the meeting and assumed his duties as chairman at approximately 11:23 a.m.

\* \* \* \* \*

- 8. **PERRY ROBERTS, #05-2053**, requests after-the-fact authorization to retain a 6-foot by 60-foot private, non-commercial pier, 1,116.5 square feet of decking platforms and finger piers, two (2) boat slips, and two (2) jet-ski slips with lifts, adjacent to his property situated along Aquia Creek in Stafford County.

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

Mr. McGinnis explained that this project was also located on Aquia Creek, in the Widewater Beach area of Stafford County. The applicant sought after-the-fact authorization to retain a private, non-commercial pier, which extended approximately 100 feet channelward of mean low water, adjacent to his property situated along Aquia Creek in Stafford County. The unauthorized construction of his pier included 1,116.6 square feet of decking platforms and finger piers, two (2) boat slips, and two (2) jet-ski slips with lifts.

Mr. McGinnis said that in October of 2004, Mr. Roberts, through his agent, Mr. William ‘Pete’ Sullivan, submitted an application (VMRC #04-2372) to repair his private pier and boathouse. In that application, they stated that the purpose of the project was to repair and reconstruct portions of the pier and boathouse, which were damaged from past and recent storms. They further stated that the original footprint and elevation of the structures would remain the same. Although large, staff did not question the dimensions of the pier and boathouse, since many similarly sized structures had been previously constructed along Aquia Creek.

Mr. McGinnis said that staff discussed the project with Mr. Sullivan by telephone on October 29, 2005. During that conversation, Mr. Sullivan explained that the project was repair and not replacement of an existing structure. Staff informed Mr. Sullivan that the proposed 16-foot by 16-foot platform would require a permit, and that because of the size

of the existing pier, would not likely garner staff recommendation for approval. Mr. Sullivan spoke with Mr. Roberts, and they agreed to delete that portion of the project. Based on our conversations, and by letter dated January 10, 2005, staff informed the applicant that his proposed project, excluding the 16-foot by 16-foot platform, was being considered maintenance and repair and would not require authorization by the VMRC. This letter was careful to point out that the repair of the pier and boathouse was to be done in the original location and not to exceed the original footprint or elevation.

Mr. McGinnis explained that in July of 2005, Ms. Elizabeth Blackwell, staff to the Stafford County Wetlands Board, contacted Commission staff to inform us that she had received a complaint that Mr. Roberts' pier and boathouse were being constructed larger than his previous pier and boathouse. Staff conducted a site visit on July 18, 2005 and confirmed that the previous pier had been removed in its entirety and that a new pier had been constructed. Staff also noted during this site visit that the pier configuration had changed from that shown in Mr. Robert's 2004 application. Based upon the pilings that had already been installed, the pier was also to include an approximate 36-foot wide by 37.5-foot long (1,350 square foot), open-sided boathouse, though the roof portion of the boathouse had not been completed as of the day of staff's site visit. As constructed, Mr. Roberts' new pier reflected a complete replacement of the pre-existing structure, and not the repair work stated in his 2004 application, as such, it would have required authorization from the VMRC.

Mr. McGinnis said that a search of Commission records had not revealed any previous applications or authorizations for a pier and/or boathouse by Mr. Roberts or the previous owner of the adjacent upland property. However, 2002 Virginia Base Mapping Program aerial photographs show that Mr. Roberts' previous pier and boathouse extended approximately 130 feet channelward of mean low water, with an approximate 25-foot wide by 40-foot long (1,000 square foot) boathouse. Aside from any decking or catwalks which may have been under the cover of the boathouse's roof, no additional finger piers, catwalks, or decking platforms could be seen. This photograph had clearly shown that the new pier constructed by Mr. Roberts not only differed from the previously existing structure, but further that the pier repair work was not done in the original footprint, as stated in his 2004 application.

Mr. McGinnis said that staff issued a Sworn Complaint and Notice to Comply on July 29, 2005. The Notice to Comply directed Mr. Roberts to remove the unauthorized pier or submit an after-the-fact application to retain the pier within 30 days, along with a statement explaining when the work was done, and why it was undertaken without the necessary permits or authorization. Mr. Roberts, through his agent, Mr. Sullivan, submitted the current after-the-fact application on August 29, 2005, seeking to retain the unauthorized pier as constructed. His after-the-fact application did not include a request to construct a boathouse roof, as he had previously planned to do.

**Commission Meeting**

Mr. McGinnis explained that Mr. Dale Rogers, an adjacent property owner, in his letter dated October 9, 2005 stated his objection to Mr. Roberts after-the-fact project. Mr. Rogers' letter stated that while he had previously signed an Adjacent Property Owners acknowledgment form indicating that he did not object to the repair work Mr. Roberts proposed in his 2004 application, he did object to the complete replacement and expansion of Mr. Roberts' pier. In particular, Mr. Rogers felt that the unauthorized pier expansion now encroached into his riparian area. He wanted the pier to be reduced back to its original dimensions.

Mr. McGinnis said that the adjacent property owner on the opposite side of Mr. Roberts' property, Mr. Bob Spencer had previously signed an Adjacent Property Owner's acknowledgment form indicating that he had no objection to Mr. Roberts proposed repair work in 2004. Mr. Spencer was also notified by letter, dated November 22, 2005, of the current after-the-fact request, and was given an opportunity to comment. To date, staff had not received any comments from Mr. Spencer.

Mr. McGinnis said that the Department of Game and Inland Fisheries (DGIF), in an e-mail to staff dated December 9, 2005, recommended coordination with the U.S. Fish and Wildlife Service regarding potential impacts that may have occurred, and may continue to occur to bald eagles in the area. They also recommend a February 15 – June 30 time-of-year restriction for any additional in-stream construction.

Mr. McGinnis further said that the Department of Conservation and Recreation (DCR), in a memorandum dated December 29, 2005, stated that due to the scope of the project, that they did not anticipate that the project would adversely impact natural heritage resources in the project area. No other State agencies had raised concerns or objections to the project.

Mr. McGinnis said that significant discrepancies existed between the pier and boathouse structure that had previously existed and was shown in the 2002 aerial photograph, the structure Mr. Roberts claimed existed in the 2004 application, and the pier as constructed in 2005. If Mr. Roberts and his agent, Mr. Sullivan, had applied to replace the pier and boathouse, as it previously existed, staff likely would not have had to bring this case before the Commission. By signing the 2004 application, Mr. Roberts, through his agent Mr. Sullivan, certified that the information submitted was true and accurate, though this did not appear to have been the case. Whether done intentionally or not, staff believed that it was clearly misleading.

Mr. McGinnis said that Mr. Roberts' previous application submittal (VMRC# 01-0648) for a private pier on a separate property, as well as Mr. Sullivan's position as an agent/contractor, demonstrated their awareness of the need to obtain proper VMRC authorization before proceeding with any construction activities over State-owned subaqueous land. In this case, the previously existing pier was misrepresented in the 2004 application, and then re-built to dimensions that varied significantly from those in

that application. In addition, their 2004 application claimed that the pier was being repaired and that portions of decking were being replaced. In the opinion of staff, this differed markedly from the complete replacement and expansion of the pier that took place.

Mr. McGinnis said that although Aquia Creek had a history of large private piers and boathouses, most of those piers and boathouses did not require a permit from the VMRC under previous versions of Section 28.2-1203(A)(5) of the Code of Virginia. Under the current law, staff did not feel that it could support this project as proposed.

Accordingly, Mr. McGinnis stated that staff recommended the Commission approve Mr. Roberts' after-the-fact request with the following modifications. Staff recommended that the 4-foot wide by 12-foot long and the 3-foot wide by 40-foot long catwalks be removed from the western portion of the pier, along with a 18-foot by 22-foot section from the decking platform on the northwest side of the pier, and that Mr. Roberts be required to submit revised drawings which reflect these modifications and that illustrate the exact location of the pier's main stem. In addition, staff recommends the Commission consider an appropriate civil charge based upon minimal environmental impact and a major degree of non-compliance for both Mr. Roberts and his agent/contractor, Mr. Sullivan.

Perry Douglas Roberts, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Roberts explained that removal in accordance with the staff recommendation would shrink what already existed and the L-structure was the only additional portion. He said he had permission from the County. He explained that the walkway was the same as always, just new decking and poles had been added. He said there were still some old pilings under the dock.

Associate Member Fox asked Mr. Roberts to show him where the original structures were located on the staff slide, which Mr. Roberts did. Mr. Roberts explained that both adjoining property owners had structures further out. Associate Member Holland asked if the reversed L was the only structure on the outside of the original footprint. Mr. Roberts responded that it was added to provide mooring for guests.

Commissioner Pruitt asked if there was anyone to speak, pro or con. Mr. McGinnis explained that the contractor, Mr. Sullivan was not present but his written statement was in the Commission packet.

Associate Member Schick asked if staff agreed that the boathouse covered the original dock and only the L structure was added. Mr. McGinnis explained that some of the measurements by the applicant differ markedly from staff's measurements. He said staff still questioned the dimensions as they used a 2002 photo to check out what had previously existed.

Commissioner Pruitt said that people rely on their agents to take care of everything. Mr. Roberts explained that his agent had gone out of business and he was trying to get some of the monies he had paid returned for the incomplete work.

Associate Member Garrison suggested that the matter be deferred until next month, when the contractor can come before the Commission. Commissioner Pruitt suggested that the cases could be handled separately.

**Associate Member Schick moved to accept the staff recommendation for #05-2053 including the removal of the L structure with associated pilings and the deck area, with a civil charge of \$1,800.00 assessed for minimal impact and major degree of non-compliance, as well as, triple fees. Associate Member Robins seconded the motion for discussion purposes. Associate Member Holland suggested that the deck be allowed to stay so as not to make it less than what was already at the site. Associate Member Robins and Schick agreed to the amendment. Commissioner Pruitt stated he did not agree with fining the applicant. Associate Member Garrison said that he did not support the motion as he felt the contractor was totally at fault. Commissioner Pruitt explained that the motion did not include the contractor. The motion carried, 6-1. Associate Member Garrison voted, no.**

Associate Member Fox asked what was to be done with the contractor? Bob Grabb explained that the Commissioner was authorized to send a letter requiring the contractor to appear before the Commission at its April meeting.

Permit fee (triple fees).....	\$ 300.00
Civil Charge.....	\$1,800.00
Total Fees.....	\$2,100.00

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The Commission broke for lunch at approximately 11:53 a.m. and returned at approximately 12:40 p.m. Associate Member Jones arrived during the lunch break, approximately 12:15 p.m.

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- 9. KENNETH MORRIS, #05-1089, requests authorization to install two (2) 27-foot by 5-foot pre-cast concrete breakwaters located approximately 60 feet channelward of mean high water and to place 120 cubic yards of sand, as beach nourishment, landward of the breakwaters adjacent to his property situated along the North River near Ware Point in Gloucester County.**

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

Mr. Neikirk explained that Mr. Morris' property was located along Ware Neck Point on the North River in Gloucester County. Development along the shoreline was primarily residential and agricultural. The intertidal and subtidal substrate was generally sandy and there were extensive beds of submerged aquatic vegetation (SAV) located offshore of the property.

Mr. Neikirk said that Mr. Morris proposed to install two (2) 27-foot by 5-foot pre-cast concrete breakwaters located approximately 60 feet channelward of mean high water and to place 120 cubic yards of sand, as beach nourishment, landward of the breakwaters. Each proposed breakwater consisted of three 5-foot by 9-foot hollow concrete boxes that will be floated into position and joined together. One hundred and four (104) feet of concrete bulkhead was also proposed but that was landward of mean high water, above both VMRC and the Gloucester County Wetlands Board's jurisdiction. The breakwaters were sited in water that was approximately one foot deep at mean low water and located relatively close to shore to minimize encroachment on SAV. There are no other breakwaters in the immediate vicinity.

Mr. Neikirk stated that VIMS in their report dated September 7, 2005, stated that the application was unclear and questioned whether the structure was properly designed and whether it would provide the desired protection, especially since there was no beach nourishment proposed in the original proposal. On October 6, 2005, staff received revised drawings that added 120 cubic yards of sandy fill to be placed landward of the breakwaters as beach nourishment. VIMS provided revised comments on November 2, 2005. In their revised comments VIMS stated that the addition of beach nourishment lessened their concerns regarding the adverse impacts on adjoining properties, but they remained concerned with the breakwater construction. They also noted that typical breakwaters were constructed with stone or other materials with sloped sides and interstitial spaces that dissipate wave energy. As a result, they expressed a concern that the vertical sides on the proposed structures would reflect, rather than dissipate, wave energy resulting in possible erosion channelward of the structures.

Mr. Neikirk said that whereas the original proposal was not within the jurisdiction of the Gloucester County Wetlands Board, the revision to add beach nourishment required Wetlands Board authorization. The Board held a public hearing and approved the beach nourishment portion of the project on December 14, 2005.

Mr. Neikirk stated that the Department of Game and Inland Fisheries stated that they did not believe the project would result in a significant impact on threatened or endangered wildlife resources. No other state agencies had commented on the project.

Mr. Neikirk said that the proposed breakwaters and beach nourishment would not encroach over any public or privately leased oyster planting ground. No comments were received from the adjoining property owners or in response to the VMRC public notice.

Mr. Neikirk explained that the Morris property was exposed to a long easterly fetch and that there was evidence of erosion on the property. Accordingly, some type of erosion protection was probably justified to protect the property and improvements. The proposal included the construction of a concrete bulkhead landward of mean high water. If properly designed and constructed, the bulkhead should provide some protection to structures built on the property. The breakwaters and beach nourishment were apparently designed to provide additional protection and to build and maintain a beach channelward of the bulkhead.

Mr. Neikirk said that staff believed a properly designed breakwater system with beach nourishment might be an appropriate option for shoreline protection for this property. Staff was concerned, however, with the materials proposed to create this breakwater system. As noted by VIMS, a more typical riprap breakwater usually had side slopes and angular surfaces that served to dissipate, rather than reflect, wave energy. Additionally, the interstitial spaces within a riprap breakwater provide some habitat, which helped to offset some of the subtidal habitat lost due to the encroachment of the structure.

Mr. Neikirk stated that staff acknowledged that the proposed breakwater design possessed some cost advantages and might even be able to be deployed in some areas that may be less accessible to the type of equipment needed to construct a large riprap breakwater. Access to this particular site, however, was not so limited.

Accordingly, Mr. Neikirk said that staff recommended denial of the project as proposed. Staff could, however, support the construction of a properly designed and more traditional riprap breakwater structure with nourishment.

Sidney Edwin Veazey, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Ed Veazey provided a powerpoint presentation to assist in his presentation. He explained they were proposing the use of a new inventive system. He said the L walls were 8,000 pounds and the T walls were groins in the shape of an upside down T. He said the boxes withstood ice and storm damage and the materials used were environmentally friendly. He showed many examples of the new structures. He explained further that the boxes came in various sizes, like "Lincoln Logs" which could be assembled however desired. He stated it was cost effective as well. He said the name for the box was "sea box".

Warren T. Veazey, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Warren Veazey explained that staff had asked that the proposal be moved out to increase the size of the beach. He also provided a powerpoint presentation. He said there was no scour in front of their breakwaters and he had

examples to show this. He said they would not cause any erosion as they were segmented to reduce wave action. He said on the inside of the boxes SAV could grow because the structure allowed sunlight to penetrate. He said the boxes cover 1/3 of what rock does that was usually used in breakwaters. He said his structures were less expensive as well as being more effective.

Associate Member Fox asked about the cost of the product in place. Warren Veazey explained that it was much cheaper, as he could install 90' of the structure with 3 guys in just a day. He said the riprap would take longer and be more permanent. He further explained that the boxes could be readjusted if necessary.

There was no one else present to speak, either pro or con.

Commissioner Pruitt asked for comments from the VIMS staff.

David O'Brien, representative for VIMS, was present and his comments are a part of the verbatim record. Mr. O'Brien stated that a vertical structure diverts and reflects the wave energy. He said the L wall has a splash wall added which provided very little habitat benefit. He said that what was shown by Mr. Veazey was not SAV but algae. He said they were concerned about toe scour with the vertical face. He said the structure above the mean low water took most of the severe wave action. He said the vertical structure was not advisable and they were more comfortable with a revetment using class 3 or 4 stones. Associate Member Schick stated that it did not look like the Potomac structures showed scouring. Mr. O'Brien stated that in their evaluations, they used their experience and they had no experience with these sites.

Mr. Veazey in his rebuttal said that the bulkhead and the breakwater were different. He said the breakwater was segmented to set a pattern of reflection. He explained that winds build waves but do not cause scour, but scouring was not a problem if the structure was facing the wind.

Associate Member Robins asked if VMRC had previously approved any of these structures. Mr. Grabb responded, no, that the structures in the Potomac were approved by Maryland.

**Associate Member Garrison explained that breakwaters had been proven to work as he had seen by those that were utilized in Williamsburg and he moved to accept the staff recommendation and deny the project as proposed. Associate Member Robins seconded the motion for discussion.** Associate Member Robins agreed with the motion and said the Commission relies on VIMS' advisors as their experts. He said he agreed with the VIMS recommendation that a riprap breakwater was a better solution. Associate Member Fox suggested that the problem might be solved if riprap was placed in front of the breakwater. David O'Brien, VIMS, stated that they do not recommend multiple structures for erosion control and the solution to minimize the impact with riprap of stone

by itself would be adequate. Commissioner Pruitt asked if VIMS had any further study plans? Lyle Varnell, VIMS, said that they had studied breakwaters and there had not been any requests for them to study alternative structures. He said their studies showed that the breakwater dissipates wave action and the value of it was the beach, which improved behind the breakwater. He said for 60 years VIMS had been the shoreline advisor and their review of a project had always been done on a case-by-case basis because of the uniqueness of each area. He said they were not adverse to new technology or more economical methods.

Ed Veazey suggested that they be allowed to install the proposed structures, but in front of one their structures install the riprap. He said then VIMS could evaluate it and if they were not satisfied it could simply be removed. He said he suggested 2 or 3 years to see how it operated. He said they could be removed if necessary.

**After much discussion, Commissioner Pruitt asked if the Commission wanted to take any action on this matter. Associate Member Holland made a substitute motion to accept the proposal offered by the applicant for a 3-year study. Associate Member Fox seconded the motion. Associate Member Jones stated that staff had determined that this was not a good location. She said that the test suggested by Mr. Veazey should be done in a location that VIMS considered more appropriate. Associate Member McLeskey said this was a good opportunity for the state to study this at no cost. He said if it did not work then it could be removed. Associate Member Robins said even though he had seconded the first motion, he agreed with the substitute motion as there was knowledge to be gained, with the applicant covering the cost, and it was an opportunity to evaluate this new technology. He further said that VIMS could develop protocols for evaluation and submit the findings to the Habitat Management Advisory Committee. Commissioner Pruitt said he felt the board should take this opportunity to look at a new technology. The motion carried, 6-2. Associate Members Garrison and Jones both voted, no. Associate Member Fox asked who would do the study? Commissioner Pruitt stated that it would be the applicant under the supervision of VMRC and VIMS staffs. He instructed staff to put this study into an appropriate format.**

Mr. Neikirk asked if staff should bring this matter back in three years? Associate Member Fox responded, yes, but they wanted progress reports along the way too. Commissioner Pruitt reiterated that VIMS needed to be involved.

Royalty Fee (beach nourishment 540 sq. ft. \$0.05/sq. ft.)..\$	27.00
Permit Fee.....\$	25.00
Total Fees.....\$	52.00

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- 10. COLUMBIA GAS OF VIRGINIA #06-0045**, requests after-the-fact authorization for the installation, by directional drill method, of a 4-inch natural gas line under Kingsland Creek, a tributary to the James River in Chesterfield County. The line replaces a previously exposed gas line in the same location.

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

Mr. Stagg explained that the project was located on Kingsland Creek, just east of I-95 and approximately 100 feet upstream of a railroad bridge crossing of the creek in Chesterfield County.

Mr. Stagg said that on January 9, 2006, the applicant submitted a Joint Permit Application seeking authorization for the emergency replacement of an exposed 4-inch gas pipeline under Kingsland Creek. The agent for the applicant, Townes Site Engineering, indicated in their cover letter that due to the precarious condition of the existing pipeline, and the possible negative effect of interrupted gas service or leaking natural gas, the line would be replaced during the week of January 16, 2006. They noted that this action would necessitate after-the-fact approval by VMRC.

Mr. Stagg stated that Kingsland Creek was a non-tidal waterway and approximately 20 feet wide at this location. The applicant completed the work by directional drill method. Since the new pipeline was approximately 5 feet below the streambed, there were no direct impacts to the stream. Staff visited the site on February 8, 2006, and confirmed that the work had been completed and that the old exposed pipeline had been removed.

Mr. Stagg said that staff had not received any objections related to this proposal from other agencies or the public-at-large.

Mr. Stagg explained that replacement of utilities over, under, or through State-owned subaqueous lands required a permit from VMRC. The applicant was aware of this requirement, since they contacted staff before proceeding with any work. Due to the emergency nature of the work, and with staff's knowledge, however, they proceeded with the work while submitting the application for authorization. Had the applicant had the opportunity to submit an application for a new pipeline at this location, it was likely they would have been granted administrative authorization for the work without the need for full Commission consideration. Based on the emergency nature of the request to replace an exposed gas pipeline, and the fact that the line was directionally drilled, staff recommended after-the-fact approval of the proposal be granted with triple permit fees and royalties but without any civil charge consideration.

Associate Member Fox asked when did this emergency occur? Mr. Stagg responded that he was not sure, but the application was submitted as soon as the problem was found.

Commissioner Pruitt asked if anyone was present to comment, either pro or con. No one was present.

**Associate Member Garrison stated that these situations do happen and he moved to accept the staff recommendation with triple fees. He also added that a letter be sent to the County telling them not to do this again. Associate Member Holland seconded the motion. The motion carried, 8-0.**

Royalty Fee (encroachment 20 l. ft. @\$3.00/l. ft.) (triple).	\$ 180.00
Permit Fee (triple fees).....	\$ 300.00
Total Fees.....	\$ 480.00

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**11. COWNOSE RAY ISSUES AND UPDATES:** Marine Products Board and Virginia Institute of Marine Science.

Jack Travelstead, Chief, Fisheries Management was present and his comments are a part of the verbatim record. Mr. Travelstead explained that the board had expressed an interest in the problem with the cownose ray and asked that staff contact the Virginia Institute of Marine Science (VIMS) and the Virginia Marine Products Board (VMPB) to ask them to make presentations on the status of what they were doing for the cownose ray problem. He said that Bob Fisher from VIMS and Shirley Estes from VMPB were both present to provide this information for the Commission.

Bob Fisher, representative from VIMS, was present and his comments are a part of the verbatim record. Mr. Fisher explained that he was with the Sea Grant Program at VIMS and he provided a powerpoint presentation. He gave a brief overview of the work done in regards to the cownose ray in the past, which had begun in the early 1990's. He said that the species migrates from the South American waters to the bay in early May and they migrate in large schools.

Mr. Fisher explained that there is a big difference in the skate and the ray and the skate had a market unlike the ray. He said in early October they migrate out to the Eastern Shore and eat shellfish and worms. He said there were even reports that they had fed on the fish caught in nets. He said the ray feeds by mining to unearth shellfish and worms and can be very damaging to the SAV if it should be in the way of the food source. He said this problem with the ray occurs every 3 to 4 years and there had been committees to discuss this between 1995 and 2005.

Mr. Fisher said that in 1991 a study was developed to find a market for the rays and watermen in Gloucester harvested the rays for this purpose. He said the ray was a member of the shark species and therefore have a lot of blood. It's flesh had a beef like

texture. He said at that time it was taken to Hampton Bay Days under the name Chesapeake Ray and 71% of the individuals who tried a sample of the ray, liked it. He said they were able to prove it was a valid resource for human consumption. He said in 1991 it was not economically feasible for watermen to harvest the rays.

Mr. Fisher said that from 1991 until now there was one other grant and that was for the exploration into total use of the ray. He said that 29%-39% of the ray can be used for human consumption, but 70 plus percent was just waste. He said this study was developed in order to see if the ray had value as a bait for catching other species. He said because it was such a bloody mess they had to cut it up and put it in different bait forms. He said it proved not to be economically feasible to harvest and strip to the user level.

Mr. Fisher explained that current research was looking at the diet of the ray to obtain biological information as well as marketing methods.

Associate Member Garrison asked about the possibility of establishing legislation for offering a bounty and just taking the rays and hauling them off.

Mr. Fisher explained that there was a need to utilize any resource, not just to get rid of it but to be responsible and treat them as a resource.

Associate Member Robins said that Mr. Fisher should be commended for his efforts in trying to create a solution.

Associate Member Jones said this species fits into the ecosystem and just destroying them was a lack of good stewardship.

Mr. Fisher stated that taking away this species would affect the ecosystem and that was why it needed to be managed properly. He said that 6 or 7 million rays could be managed.

Associate Member Schick stated that this was a multi-species management issue not just a single issue and could have positive impacts as well as negative impacts.

Mr. Fisher said that it would be more appropriate to expand this market instead of trying to penetrate the skate market. He said, as suggested in the past, there was a need to educate people on the ray and establish a new market.

Shirley Estes, Executive Director of the Virginia Marine Products Board was present and her comments are a part of the verbatim record. Ms. Estes provided a powerpoint presentation, titled, "Ray of Hope".

Ms. Estes explained that there was an international market as South Korea imported 18,000,000 frozen skates annually. She said the suppliers were Argentina, Brazil and the

USA (Washington, Oregon and Alaska). She said a product must be priced competitively and currently South Korea had a 20-cent duty on rays and 30-cent duty on skates for importing them. She said because the ray duty was cheaper, it was thought that a good portion of the product exported was actually skate. She said that the price delivered to South Korea for this product was \$1.00 per pound and more than 95% goes to the restaurant industry. She said that the restaurants prepare the ray in a noodle dish and these establishments were comparable to the McDonald's in the United States.

Commissioner Pruitt left the meeting at this point. Associate Member Garrison assumed the duties of chairman.

Ms. Estes said that all they had done to date had been federally funded. She said that they had visited the Korean festival and provided them with samples of the ray, which were prepared by their chef. She said that there was a domestic market—food service. She said to date they have had all positive feedback.

Ms. Estes explained that possible markets were to send the wings to Korea and the loin to the domestic food service market. She said that Chefs would use this product as they normally do any meat.

Ms. Estes said that this summer when the rays begin to arrive in the Bay they would like to test another market and that would be leather. She said they have a tanner right now working to develop this product for that market. She circulated her purse among the board members to show them an example of utilizing the skin of the ray for leather. She said this year they want to test the market for how to price this product.

No action was taken.

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**12. PUBLIC COMMENTS:**

Associate Member Garrison asked for any public comments to be heard during the public comment period.

Doug Jenkins, President of the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said he was requesting permission to go and sample the seed oysters transplanted in the Nomini River for the 2006 Oyster Replenishment Program.

Mr. Travelstead explained that a collection permit could be issued for this purpose and Mr. Jenkins would need to contact the Fisheries Management Division Office to request a permit.

Associate Member Schick offered to go out with Mr. Jenkins when he does this sampling.

No further action was taken.

Commissioner Pruitt returned at this point.

**Tom Powers**, was present, and his comments are a part of the verbatim record. Mr. Powers said that when a “restricted area” was established at Plum Tree, it was suggested that there be a sunset clause which was approved but not included in the final regulation. He further said that restriction changes had been made by the Corps, and the Commission needed to make the state regulation compatible with the federal regulation.

**Eric Weller**, was present, and his comments are a part of the verbatim record. Mr. Weller said that he was requesting a new offloading site for polluted shellfish at the Virginia Beach Municipal Marina, as the offloading of these shellfish there was better for them at this location.

Commissioner Pruitt explained that staff would have to handle the request.

**Tim Daniels**, was present, and his comments are a part of the verbatim record. Mr. Daniels explained that because of his vessel being out of service for repairs he had missed the window to get a Sea Bass bycatch permit. He said he had not been able to catch black sea bass for a long time in Virginia; he had in every other state, but not in his home state.

Joe Cimino, Fisheries Management Specialist, was present and his comments are a part of the verbatim record. Mr. Cimino explained that, in the current regulation, a hardship exemption had been added to the regulation, and in 2005, there were a few cases approved. He said that on page 4 of the regulation at the bottom of the page in Subsection E, 17,000 pounds were being held in reserve for this purpose. He explained that there was no stipulation in the regulation that a bycatch fisherman could not utilize the reserved poundage.

Commissioner Pruitt asked if staff recommended approval of this request. Mr. Cimino responded, yes.

After some discussion, Mr. Travelstead stated that there was no hardship exemption for the bycatch fishery and Mr. Daniels could give up the directed fishery pounds once he was approved for an exemption.

**Associate Member Robins moved to approve the request for a hardship exemption. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

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Commissioner Pruitt called for a 5-minute break, in order to sample the cownose ray that had been prepared by the Virginia Marine Product Board's chef.

Associate Member Robins left for the remainder of the day.

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**13. PUBLIC HEARING:** Proposal to construct an artificial fishing reef in the Poquoson River and Mobjack Bay.

Mike Meier, Head, Artificial Reef Program, gave a powerpoint presentation. Mr. Meier provided the board with a handout of additional comments that had been received. He said with the comments already in the Commission's packets and what had been received since, these totaled 170, and were mostly from recreational fishermen.

Mr. Meier explained that the proposed acreages for the Poquoson River Reef would be 331 and the Mobjack Bay Reef would be off the channel on 258 acres. He explained that these sites were part of an indexing done by Dewitt Myatt of potential sites for reefs in the area and were not set in concrete. He said they proposed to deploy designed modules, which would provide food as well as shelter for various species of fish.

Commissioner Pruitt opened the public hearing.

Robert Allen, Buckroe resident, was present and his comments were a part of the verbatim record. Mr. Allen said that he was representing 300,000 recreational fishermen who put into the state's economy approximately \$1 billion annually and provided 9,000 jobs and the industry continues to grow. He said that there was a need for areas where small boats could fish. He asked the Commission to approve these reefs.

David Nobles was present and his comments are a part of the verbatim record. Mr. Nobles said that he supported the proposals. He said the recreational anglers overwhelmingly support more reefs. He said these recreational programs were supported by both State and recreational funds. He said that he hoped the Commission would give their approval.

Jim Hayden, said that in Virginia there was the best fishing on the east coast, year round. He said that he had been involved with the reef program for the last 5-6 years and he hoped that more boats would be put on the ocean sites. He said he supported the proposal.

C. D. Hancock, Coastal Watermen Association, was present and his comments are a part of the verbatim record. Mr. Hancock explained that this proposal for a reef in Poquoson River had just been brought to his attention when Mr. Meier contacted him in March. He

said they did not object to the proposed reef, only to its location. He said the location needed to be changed as other user groups utilize these areas. He suggested, utilizing the slide showing the potential sites, that the site be changed to another area adjacent and where the bottom was dead.

Kelly Place, Coastal Watermen Association, was present and his comments are a part of the verbatim record. Mr. Place explained that he was speaking for this association as well as four others. He said they were not opposed to the Poquoson reef and wanted to cooperate. He said they just wanted it in a different site. He said that he had just found out about the proposal at the last Commission meeting. He said that there were five areas of concern. The first being ecological, as this was a living bottom for recreational and commercial fisheries. He said that it was not right to say this was for small vessels as there were winds in this area that would be too dangerous for smaller vessels. He said when the Monitor-Merrimac Tunnel was put in the Hampton Roads clam area it caused a reduction in productivity, which would happen at the proposed Poquoson site. He said second, there was a legal issue because this project would limit the use of the site to one user group. He said, third, he was concerned that this area would be lost to the commercial industry. He said also that the small boat rationale was not a good reason. He said last, no notice was given and if this was in the works for the past 10 years, why was the commercial sector just notified now. He stated that they supported the reef program but asked for another month to identify a different site.

Susan Gaston, representing Omega Protein, was present and her comments are a part of the verbatim record. Ms. Gaston said they were opposed to the sitings for the reefs, as they would reduce the fishing grounds. She said that they only found out about this proposal now. She said they agreed with Mr. Place and asked for another 30 to 60 days, since it had already been 10 years, to look at this matter more.

E. T. Firth, Jr., commercial waterman in Poquoson, was present and his comments are a part of the verbatim record. Mr. Firth said he reported his clam catch in this area in 1993 as he had worked there 95% of the time. He said the Commission must consider the heritage of a viable resource already there. He said this bottom was productive and he was opposed to a reef being located at the proposed site in the Poquoson River.

Doug Jenkins, President for the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that the others who usually come with him were not able to attend. He said they disapproved of the material being proposed for these reefs as there were better materials that would not interfere with commercial harvest. He said the way it was proposed the commercial industry could not use it at all. He said that one group should not dominate exclusive use of the fishing grounds. He said the Watermen Association's numbers were larger than the number of comments received. He said that the recreational fishery was growing because fewer harvest restrictions were placed on them. He said that they suggested smaller materials be used for the proposed reef.

Tom Powers, Poquoson resident, was present and his comments are a part of the verbatim record. Mr. Powers said that he had not seen any gillnetters or clambers in this location. He said you could find gillnetters southwest of the proposed reef site. He said he supported the proposed reefs. He stated that the Commission sets aside areas all the time for the clam aquaculture and fixed fishing devices. He that 5 to 10 percent of the bottom would be covered in small piles, adding to the live bottom. He said that a lot of recreational fishermen would use this reef. He asked the Commission to not defer the issue again, but to approve the reefs in their current proposed locations.

Bryan Hubbard, Poquoson waterman, was present and his comments are a part of the verbatim record. Mr. Hubbard stated that there was a shell reef at that site and they were productive. He said he believed more recreational fishermen would agree to another site that would not impact the commercial fishery.

Charles Dryden, Poquoson waterman, was present and his comments are a part of the verbatim record. Mr. Dryden said that he agreed with Mr. Hubbard. He said the reef should be placed to utilize dead bottom and where it was proposed would cover up live bottom and kill what was there.

E. T. Firth, Sr., Poquoson resident, was present and his comments are a part of the verbatim record. Mr. Firth said that he had worked this area where the reef was proposed to be located. He said he was only opposed to the location of the proposed reef. He said 3 small boats work in this area. He said that you need good bottom for shellfish and not much bottom was good. He said the James River had been destroyed by progress. He further said that crabbers use this area and soon the gillnetters would be there working. He said at least 4 or 5 different user groups work there. He said he was not opposed to a reef, just not in that location.

Bill Ragsdale, Williamsburg resident, was present and his comments are a part of the verbatim record. Mr. Ragsdale said that he had just heard about the proposed reef the past week. He said not everyone read the public notices so there must be a better way to put everyone on notice. He said he was informed by the CCA. He said he was all for the reef until he heard the previous testimony. He said he had fished in the Poquoson and the watermen were right, the clambers do work on that side of the channel and he had seen gillnetters near the proposed site of the reef. He said the Commission needed an advisory group, as this was important work.

Mr. Meier explained that the commercial people were trying to work with the staff. He said they suggested a south side site but it did not have enough water depth as the Corps required 12 feet of clearance above the reef and on the north side was on a lease. He said he could ask the Coast Guard about a location nearer the channel, but he felt they might feel it was too close. He said Tom Powers was right that patch reefs were built so as to spread the effort. He said interspersed bottom works better for attracting fish. He said

the site was set up in a grid pattern on 200-foot centers so that where good material already existed, a grid could easily be excluded from material placement.

Commissioner Pruitt asked who was the leaseholder? Mr. Meier responded that it was a Ballard lease. Commissioner Pruitt said that staff could possibly approach them and work something out.

Commissioner Pruitt asked if there were any problems with the Mobjack Bay site. Mr. Meier responded all comments received for that reef were from the recreational sector. Commissioner Pruitt stated that the only concerns expressed were from Omega Protein because of the menhaden fishery.

Susan Gaston with Omega Protein stated that boats do work in Mobjack Bay, as these were good fishing grounds for Omega Protein.

**After further discussion, Associate Member Fox moved to accept the Mobjack Bay reef proposal and to deal separately with the proposed Poquoson River reef. Associate Member Jones seconded the motion for discussion purposes.**

Associate Member Bowden stated that from comments heard, there was a need for a little education. He said no, you do not fish near a reef. He said the commercial fishery is not involved and there were no areas set aside for commercial use only. He stated that reefs were favorable but in appropriate places. He said he could not support approval of the reefs but could support a one-month deferral on making a decision. He said the Commission should wait for the Coast Guard comments and that the suggestion for an advisory group was a good one. He said the commercial people deserved more time because they were only objecting to the location.

**The motion carried, 5-1-1. Associate Member Bowden voted no and Associate Member Garrison abstained.**

**Associate Member Fox moved to table the issue of the Poquoson River reef site, until the next meeting. Associate Member Garrison seconded the motion. The motion carried, 7-0.**

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Commissioner Pruitt requested that this item be heard at this point in the meeting.

**17. REQUEST TO EXTEND CLAM SEASON IN THE JAMES RIVER.**

Jack Travelstead, Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead provided the Commission with a handout of the draft emergency regulation.

Mr. Travelstead said this matter comes up every year and the season was set up to end March 31<sup>st</sup> in the Newport News Management Area. Mr. Travelstead had a powerpoint presentation to assist with his presentation. He explained that the data shows that the number of harvesters was down but the catch was remaining the same. He said the resource population on the bottom was stable. He explained that the proposal was to permanently extend the season through April 30 unless at the end of the year the calculated CPUE drops below 174 then it would return to March 31<sup>st</sup>.

Associate Members Holland, Jones, and McLeskey left the meeting at this point.

Commissioner Pruitt asked for any public comments. One unidentified gentlemen stated that he was a clam harvester and he supported the change.

**Associate Member Bowden moved to accept the staff's recommendation. Associate Member Garrison seconded the motion. The motion carried, 4-0.**

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Associate Members Holland and Jones returned to the meeting. Associate Member McLeskey had left the meeting for the remainder of the day.

**14. PUBLIC HEARING:** Consideration of extending emergency regulation 4VAC20-530-10, "Pertaining to American Shad" to establish a limited bycatch fishery on the spawning grounds of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

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

Mr. Travelstead explained that this was a public hearing to make permanent an emergency action taken at last month's meeting. He said that out of eleven openings only three came forward to participate. He stated that no fish were reported and that there could still be catch in the lower river. He said taking any action at this hearing would be a moot point because of changes in the method of harvesting striped bass. He explained that if it were adopted today, it would not be effective April 1<sup>st</sup>. He explained that the only location left was in the upper James, and they were using large mesh gill nets and not catching any shad. He said staff agreed with the continuation of the regulation as there would be no significant impact.

Commissioner Pruitt asked for any comments from the public. There were none. He stated that the Chesapeake Bay Foundation letter was on record with VMRC.

Associate Member Garrison asked about efforts by VMRC and the Game Commission to stop the gill nets on the upper James River from using the small fish as bait. Mr. Travelstead explained that the Department of Game and Inland Fisheries had adopted a new regulation on the maximum size limit for catfish in order to reserve them for the trophy fishery, but he did not know of anything else.

**Associate Member Garrison moved to approve the regulation. Associate Member Bowden seconded the motion. The motion carried, 4-2. Associate Members Fox and Jones both voted, no.**

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Commissioner Pruitt read a statement from Governor Timothy M. Kaine regarding the passing of Delegate Harry Parrish.

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**15. REQUEST FOR PUBLIC HEARING:** Establish an NSSP requirement for human waste receptacles for shellfish harvesting vessels.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead said this was a request for a public hearing.

Associate Member Bowden asked if this was to be required on small boats. Mr. Travelstead responded, yes, and that in talking with Dr. Croonenbergh with the Division of Shellfish Sanitation he was told that a 5-gallon bucket with a lid would meet the regulatory requirement.

**Associate Member Schick moved to approve the request for a public hearing. Associate Member Garrison seconded the motion. The motion carried, 6-0.**

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**16. RECOMMENDATIONS** of the Recreational Fishing Advisory Board (RFAB).

Sonya Davis, Fisheries Management Specialist, Sr., gave the presentation and her comments are a part of the verbatim record. In her presentation she reviewed the two recommendations of the RFAB, which were as follows:

- 1) **York County, Smith Landing Waterfront Improvement Project (Contract RF 04-16).** The original 2004-approved budget for this project was \$701,000. At the November 22, 2005 Commission meeting, York County requested 7 additional expenditures not in the original budget proposal. Even with the additional 7 expenditures, the total project cost was reduced to **\$619,108**. Since November, some boating anglers using the facility have requested two more improvements to the boat ramp areas. One request was to shorten the pilings running parallel to the metal ramp walkways to avoid rope entanglement. The second request was to add bumper boards to the pilings, so boats would not drift between and bump against the pilings. Other expenditures requested by York County are for preparation work for and staining of vehicular guardrails and for plants around the site. The new estimated total project cost is **\$630,948** (split 75% Recreational Fund (VSRFDF) and 25% County). This is an increase of \$11,840 from the November budget but a decrease of \$70,052 from the original budget. The new budget is attached. **VOTE: Unanimous to approve the increase.**
  
- 2) **Saltwater Recreational Staff Budget.** This is a request for a \$10,000 increase of the VMRC saltwater recreational staff annual operational budget. The budget has remained the same for the last 5 years. The budget increase is necessary to cover the rising cost of travel, salary, fringe benefits, postage, rent, office supplies and equipment. Any unused funds will be returned to the Recreational Fund (VSRFDF). **VOTE: Unanimous to approve the increase.**

Commissioner Pruitt asked for any public comments and there were none.

Associate Member Fox asked what the budget amount had been for the staff. Ms. Davis explained that it was currently \$53,240, which would be an increase to \$63,240; and, that like any other project any unused funds would be returned.

Commissioner Pruitt explained that this was the first request for an increase for the staff's annual operating budget in five years.

**Associate Member Garrison moved to approve the recommendations of the RFAB. Associate Member Holland seconded the motion. The motion carried, 5-0-1. Associate Member Jones abstained because of financial conflicts.**

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There was no further business, so the meeting was adjourned at approximately 4:25 p.m. The next meeting will be Tuesday, April 25, 2006.

**Commission Meeting**

**13714  
March 28, 2006**

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William A. Pruitt, Commissioner

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Katherine Leonard, Recording Secretary