

## MINUTES

## Commission Meeting

May 22, 2007

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
J. T. Holland )	
John R. McConaugha )	Associate Members
Wayne McLeskey )	
Richard B. Robins, Jr. )	
Kyle J. Schick	
J. Edmund Tankard, III )	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Erik Barth	Head, Management Info System
Todd Sperling	Program Analyst. Sr.
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Erin Bradshaw	Fisheries Mgmt. Specialist
Aaron Coffman	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Jamie Greene	Marine Police Officer
Cecil Whitehurst	Marine Police Officer

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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.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Danny Bacon	Environmental Engineer, Sr.
Rob Butler	Surveyor

Virginia Institute of Marine Science (VIMS)

Lyle Varnell  
David O'Brien  
James Kirkley  
Carl Hershner  
Todd Herbert

Other present included:

Timothy P. Christensen	Karla Havens	Bo Bragg	Jeff Watkins
Raymond Butts	Jon Paulson	Howard R. Blank	Paul Servis
Peter Ginocchio	Karen Lavaes	Karl Mertig	Chip Watkins
Shawn Albin	Molly Rogger	Julie Bradshaw	Keith
Trammel			
Payton Jones, Jr.	Kenneth Robertson	Fran S. Crofton	Ellis W. James
John M. DeMaria	Jerry Parks	Bob Allen	Susan Gaston
Alyse Shorland	C. D. Hancock	Nelson Ortiz	Chris Moore
Tom Raffetto	Frank Kearney	Bill Bradley	Dean Grubbs
Robert Johnson	Michael Healer	Thomas A. Hazelwood	
Frances Porter	Noreen Mansfield		

and others

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Commissioner Bowman called the meeting to order at approximately 9:35 a.m. All members were present.

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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management said that staff was requesting that Item 2E, U. S. Dept. of the Army, 06-0270 be pulled from the agenda, as a protest had just been received the previous day from Mr. Ellis W. James who was concerned with the adverse impacts to the marine mammals in the area. There were no other changes.

**Commissioner Bowman asked for a motion to approve the agenda. Associate Member Tankard moved to approve the agenda, as amended. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the March 12, 2007 Special Commission Meeting minutes. He explained that only five members would be voting on this, because they had attended this special meeting. Those that attended were Associate Members Holland, McConaugha, McLeskey, and Bowden, and Commissioner Bowman.

**Associate Member McLeskey moved to approve the March 12, 2007 minutes, as circulated. Associate Member Holland seconded the motion. The motion carried, 5-0. The Chair voted yes.**

Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the April 24, 2007 Commission meeting minutes. Associate Member Robins stated there was a correction on page 18, Item 8, where it stated the Associate Member Schick had made the motion and seconded the motion also. He stated he was the one who seconded the motion. **Associate Member Holland moved to approve the minutes, as amended. Associate Member Robins seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member McLeskey noted that due to his absence from the April meeting, he would abstain.**

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

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**SPECIAL INTRODUCTIONS:**

Commissioner Bowman announced that Carl Hershner, Director, Center for Coastal Resources Management at the Virginia Institute of Marine Science, had requested that he be allowed some time to introduce the staff at VIMS who support the VMRC scientific advisors. He asked these individuals to stand and Commissioner Bowman asked his to introduce them by name, which he did.

Commissioner Bowman asked if there were any new employees, which could be introduced at this time. He asked for Habitat to start.

Bob Grabb, Chief, Habitat Management introduced Dan Bacon who had been hired to replace Traycie West. He said that Mr. Bacon had retired from the U. S. Navy with 20 years of service and had a MS in Environmental Science, which he had earned at Christopher Newport University.

Commissioner Bowman asked for Fisheries to continue. Joe Grist, Head, Plans and Statistics, introduced two new employees to the Plans and Statistics Department. The first was Erin Bradshaw who came to the Commission with a BS in Environmental Science and was working towards her MS at Christopher Newport University. He then introduced Aaron Coffman who had his BS in Fisheries Science from Virginia Tech. Mr. Grist also introduced Noreen Mansfield, a graduate student from Old Dominion University, who is serving a summer internship with fisheries.

Associate Member Holland stated that he felt that Joe Grist had done an excellent job in providing his assistance to the Black Drum Tournament on the Eastern Shore. He further stated that he had heard all good comments from others. He asked Mr. Grist to comment, which he did and this is all a part of the verbatim record.

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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, reviewed items 2A through 2F for the Commission. He said that staff was recommending approval of these items.

Commissioner Bowman opened the public hearing and asked if anyone was present, pro or con to address these issues. There were none, the public hearing was closed.

**Commission Meeting**

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

**2A. TOWN OF MOUNT JACKSON, #06-2615**, requests authorization to install, adjacent to an existing 12-inch sewer pipe, 60 linear feet of 24-inch sanitary sewer pipe below the North Fork of the Shenandoah River in Shenandoah County. Staff recommends a time-of-year restriction on instream activities from April 15 - June 15 and August 15 -September 30 to protect mussel species.

Permit Fee.....\$100.00

**2B. VULCAN CONSTRUCTION MATERIALS, #07-0539**, requests authorization to install and backfill 340 linear feet of new sheet-pile bulkhead a maximum of two feet seven inches channelward of an existing deteriorating bulkhead adjacent to property situated along the Southern Branch of the Elizabeth River in Norfolk. Staff recommends a royalty of \$1,700.00 for the filling of 850 square feet of State-owned subaqueous bottom at a rate of \$2.00 per square foot.

Royalty Fees (filling 850 sq. ft. @ \$2.00/sq. ft.).....\$1,700.00  
Permit Fee..... \$ 100.00  
Total Fees..... \$1,800.00

**2C. CITY OF HAMPTON, #06-2904**, requests authorization to install a 45-foot long by 5-foot wide open-pile boardwalk with a 20-foot by 15-foot L-head platform and attached 85.5-foot long by 4-foot wide community pier with a 13-foot by 15-foot floating platform, 1,266 square feet of riprap, and fill 345 square feet of subaqueous bottom adjacent to River Street Park situated along the Hampton River in Hampton.

Permit Fee.....\$100.00

**2D. COVE POINT CONDOMINIUMS, #05-2207**, requests authorization to modify an existing permit to include the installation of floating wharf and finger pier sections instead of fixed sections for the private use marina situated along Little Neck Creek in Virginia Beach. Recommend no additional royalties provided that the design changes occur as proposed within the previously configured bold outline.

No applicable fees – Permit Modification

**2E. DEPARTMENT OF THE ARMY, #06-0270**, requests authorization to modify an existing permit to allow the installation of a temporary 3,000-foot long elevated pier in conjunction with joint training exercises to be conducted between July 15

and August 30, 2007, adjacent to the Omaha Beach and Utah Beach Training Areas at Fort Story along the Chesapeake Bay in Virginia Beach.

Pulled from the agenda -- protest received.

(NOTE: Protest resolved – this item was heard after Item 7)

**2F. DOMINION VIRGINIA POWER, #07-1045**, requests authorization to install 396 feet of power cable approximately four feet below Smith Creek underneath the Brambleton Avenue Bridge in Norfolk. Staff recommends a royalty of \$1,188.00 for the encroachment beneath 396 linear feet of State-owned submerged bottom at a rate of \$3.00 per linear foot. Staff’s recommendation for permit approval is conditioned on expiration of the public notice on May 23, 2007 without receipt of project opposition.

Royalty Fees (encroachment 396 l. ft.@ \$3.00/l. ft.).....	\$1,188.00
Permit Fee.....	\$ 100.00
Totals Fees.....	\$1,288.00

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

Commissioner Bowman asked for a motion to convene a closed meeting.

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

Harrison versus VMRC

**The motion was seconded by Associate Member Bowden. The motion carried, 9-0.**

**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;

**Commission Meeting**

**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 Tankard seconded the motion. Commissioner Bowman held a Roll Call vote:**

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

**NAYS: NONE**

**ABSENT DURING VOTE: NONE**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: NONE**

**The motion carried, 9-0.**

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**Katherine Leonard, Recording Secretary**

Commissioner Bowman announced that the Commission had decided to turn the matter of Harrison versus VMRC over to the Attorney General's office to be appealed. He explained that the court was mistaken as to the Virginia Marine Resources Commission's role in this case and the Commission since 1973 had based its decision on an Attorney General's opinion, established that same year, for what impacts the Commission does consider on the nearby residents. He further explained that it was the City's responsibility to consider all highland issues, which they did. He said the actions taken by the Commission were consistent with their past actions and with the advice given by their legal advisors.

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- 4. **HARBOUR ON INDIAN CREEK, LLC, #07-0500**, requests authorization to complete a previously authorized community pier project to include two (2) 100-foot long, 4-slip T-head community piers each with four (4) uncovered boatlifts and two (2) 24-foot finger piers, and complete a third, 12-slip community pier with uncovered boat lifts in each slip, extending a maximum of 50 feet channelward of the face of an existing wharf, all to serve the 24-unit Harbour on

Indian Creek residential development on Pitmans Cove in Lancaster County. Numerous residents along the cove upstream of the property protested the project.

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

Mr. Woodward explained that on February 1, 2000, the Commission approved a request from Mr. Bob Bragg (VMRC #99-0374) for four (4) community piers containing a total of 24 slips to serve a planned 24-unit residential development, with 15 waterfront and 9 off-water units, on the site of a former commercial wood chip loading facility on Pitman's Cove. That permit expired on February 1, 2003. On July 10, 2003, staff received a request from Mr. Bragg to reactivate and extend his permit. On July 22, 2003, the Commission granted his request with a new permit expiration date of February 1, 2006. On October 24, 2006, Mr. Bragg requested a second reactivation and extension of his expired permit. Because over 8 months had passed since the permit had expired, staff requested Mr. Bragg to submit a new Joint Permit Application for review of the uncompleted work associated with the original permit. Only one of the four community piers, and a portion of the wharf pier had been constructed under the original permit. A modification to pier #1 was the subject of last month's Commission hearing.

Mr. Woodward explained also that on March 2, 2007, staff received a new permit application to complete the building of the facility. As currently proposed, the two new community piers will have a 50-foot T-head and two (2) 4-foot by 24-foot finger piers and were to extend a maximum of 90 feet channelward of mean low water. The partially completed, 12-slip pier at the old wharf site would have two (2) 6-foot by 36-foot pier extensions and five (5) 4-foot by 24-foot finger piers, and would extend a maximum of 50 feet channelward from the face of the wharf to the outer-most mooring piles, according to the scaled application drawings. All 20 of the proposed slips would be 40 feet in length and have uncovered boatlifts in them. The location of the piers and total number of slips remained unchanged from the original permit.

Mr. Woodward stated that seven (7) property owners on Pitmans Cove have submitted letters of objection to the proposal. The objections included the following: 1) the piers will extend more than one-third the width of the waterway; 2) the piers will interfere with boats navigating past the facility; 3) the piers will result in additional boat traffic and shoreline erosion in the cove; 4) the piers could be shortened and still provide for adequate water depths; 5) the additional piers and resulting navigational obstruction could reduce nearby property values; and 5) that all of the property owners were not notified when the first application was reviewed in 1999. One of the protestants, Mr. Paul Servis, also provided information relating to the water depths and width of the waterway. In an effort to resolve some of the concerns raised, staff requested the applicant to provide soundings and waterway width measurements, as well as meet with several of the protestants to discuss their concerns.

Mr. Woodard said that the Virginia Institute of Marine Science indicated that there appeared to be sufficient depth for mooring shallow draft vessels without the need for dredging, that the natural shorelines across the narrow creek were subject to boat wake erosion and that boat mooring facilities could introduce pollutants into the waterway. They suggested a community pier management program to address these and other concerns, and recommended that there be no overnight mooring unless approved by the Virginia Department of Health.

Mr. Woodward stated that the Virginia Department of Health granted an exemption to the requirements of the Sanitary Regulations for Marinas and Boat Moorings in 1999 for this facility, with the understanding that boats with installed toilets and either an overboard discharge or sewage holding tanks would not be allowed to use the facility, except in an emergency. The facility currently had a sewage pump-out agreement with Chesapeake Boat Basin on Indian Creek at Kilmarnock Wharf, approximately one mile north of the site.

Mr. Woodard said that the Department of Game and Inland Fisheries did not anticipate a significant adverse impact upon threatened or endangered wildlife resources under their jurisdiction. The Department of Conservation and Recreation documents the presence of natural heritage resources in the project area, specifically the Federal/State threatened northeastern beach tiger beetle, but due to the scope of activity and distance to the resource they did not anticipate any adverse impact.

Mr. Woodward went on to say that the U. S. Army Corps of Engineers found that the proposed work, as outlined to complete the completion of the project, as authorized under original permit #99-0374, satisfied the conditions of Norfolk District's Regional Permit 19. No further authorization was required.

Mr. Woodward explained that the Lancaster County Wetlands Board approved the project at their April 12, 2007 public hearing and no other agencies had commented on the application.

Mr. Woodward noted for the board that there was no opposition raised by the public during the required public interest review. The project was properly advertised in the local paper, both for the subaqueous and wetlands permits, and the adjacent landowners were notified, as well as the owners of the property immediately across the waterway. Staff brought that project to the Commission with a recommendation for a reduction in the number of slips to 12, all to be located at the existing wharf, given the 1,300 feet of water frontage and the fact that local zoning required at least 200 feet of frontage for private, single family waterfront lots. The Commission, however, chose to approve the applicant's request for 24 slips, or one slip for each unit in the subdivision.

Mr. Woodward stated that while the Corps had found that the project satisfied their navigation criteria, staff, believed that in an attempt to address the protestants concerns

piers #3 and #4 could be redesigned to further reduce the amount of channelward encroachment over State-owned subaqueous bottom and still provide adequate water depths for larger vessels at the piers. Staff's own evaluation of water depths suggested that the information provided by the agent was relatively accurate, and that boats could be moored perpendicular to the shoreline rather than parallel behind the proposed T-heads and still have adequate water depths. With the outboard mooring piles located no more than 76 feet channelward of mean low water, and with bow-to mooring, depths in the slips would be similar to the depths for the proposed outboard slips and even greater than those proposed on the inboard side of the piers. Furthermore, this mooring configuration eliminated the ability for side-to mooring on the outboard side of the T-heads at the proposed piers, thus resulting in both a self-regulation of the number of boats capable of mooring at the piers, as well a reduction in the overall encroachment into the waterway.

Accordingly, Mr. Woodward stated that staff recommended modifying piers #3 and #4 as follows: two (2) 4-slip piers, with a 6-foot by 78-foot T-head and three (3) 4-foot by 24-foot finger piers, four (4) boat lifts, and five (5) mooring piles each (extending a maximum of 76 feet channelward of mean low water). This would allow the stern of all vessels at the piers to reach a minimum of three and one-half (3.5) feet at mean low water at pier #3 and four and one-half (4.5) feet at mean low water at pier #4, while reducing the channelward encroachment of both piers by 14 feet. Staff believed pier #2 as proposed was acceptable given the deeper water of the basin adjacent to the existing wharf, as evidenced by the soundings and aerial photographs. After evaluating the merits of the entire project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in Section 28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as modified, with a royalty assessed at a rate of \$1.50 per square foot for the bold outline of all new structures and slips. Staff further recommended that the Clean Marina Boating Tips Handout that was made a part of the original permit, be incorporated into this permit document, for distribution to all users of the community pier facilities at the Harbour on Indian Creek.

After some discussion for clarification, Commissioner Bowman asked for the applicant or their representative to address the Commission.

Robert Bragg, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bragg said he apologized that the permit had been allowed to expire twice. He said the staff had covered what he wished to address.

Associate Member Schick questioned their design as it related to the lifts. Mr. Bragg stated he thought that approval of the lift included the pilings. Associate Member Schick explained that the project drawings needed to show everything, including the pilings. Commissioner Bowman said this was necessary because someone could complain that everything was not approved.

Associate Member Fox asked if the outside pilings could be moved in to 76' offshore and the structures be reduced from 6' X 48' to 6' X 34'. Mr. Bragg stated that it would cause a problem for pier #3 and pier # 4 to be at 80' and less would be even more of a problem. Associate Member Schick explained that moving closer to the shore would be a problem for the boatlifts.

Commissioner Bowman asked if the applicant's agent wanted to comment. There were no comments. He then asked for anyone in opposition who wished to address the Commission.

Peter Ginocchio, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Ginocchio stated that he was not opposed to the docks or number of docks and slips, but he was concerned with the impact on the waterway. He said it was 250' across from #4 pier and 295' across from #3 pier and there was a lot of traffic and anchoring of other boats. He said that everyone else was required to limit the impact of their pier to 25%. He stated that this should be called a joint-use pier not a community pier. He said that there was inaccurate information used for previous permit and the scope of the project should be reduced, as it was 2 times what the Lancaster County allowed.

Paul Servais, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Servais stated that he did not object to piers. He said he was concerned that the community pier would be 1/3 or 1/4 across the waterway. He asked that they be held to ample water at the same time reducing the size of the structure, making it closer to shore. He the staff recommendation was going in the right direction.

Mr. Bragg in his rebuttal said that he assumed the lift would include the needed pilings. He said if the lifts were the problem, then he would cut that out of the proposal right now and the individuals who wanted a lift would have to seek their own approval. He said that 9 residents were waiting to get a slip and some had said they wanted a lift.

Commissioner Bowman stated that all parties were not opposed to the staff recommendation, which authorized the pilings. Bob Grabb, Chief, Habitat Management said yes, the drawings were standard and they would expect revised drawings from the applicant showing everything. He said to add this later was no problem.

Associate Member Schick asked that if the lifts were not installed before the permit expired, then would a new application would be necessary? Mr. Grabb responded yes and it would have to be advertised.

**Associate Member Tankard moved to accept the staff recommendations with the positive acceptance of the lifts and revised drawings received by staff. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Royalty Fees (encroachment 20,552 sq. ft. @ \$1.50/sq. ft.)...	\$30,828.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$30,928.00

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- 5. **CHERYL E. WALKER, #07-0622**, requests authorization to construct a 15-foot by 100-foot riprap breakwater and to place 600 cubic yards of sandy material landward of the breakwater, as beach nourishment, adjacent to her property situated along the Piankatank River at 8639 Freewelcome Lane in Gloucester County. An adjoining property owner protested 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 Ms. Walker’s property was situated along the Piankatank River, downstream of Ferry Creek and Dancers Creek, in the Dutton area of Gloucester County. Development along this portion of the shoreline was primarily residential. There was a bulkhead along a portion of the applicant’s shoreline and there was a mixture of fringe marsh and sand beach along the shoreline, which generally faced north-northeast. The fringe marsh and backshore were experiencing erosion and the sandy beach appeared to have lost at least a foot in elevation. The Piankatank River was approximately 2300 feet wide at the project site.

Mr. Neikirk stated that in addition to the 15-foot by 100-foot breakwater and beach nourishment, Ms. Walker proposed to construct 175 linear feet of riprap revetment and 160 linear feet of riprap marsh toe sill. The revetment and sill were proposed landward of mean low water and therefore did not fall under the jurisdiction of the Marine Resources Commission.

Mr. Neikirk said that Ms. Constance Hicks Holcombe, an adjoining property owner protested the project. She was concerned that the project might cause some silting therefore adversely affecting her property and the nearby wetlands.

Mr. Neikirk stated that in their report dated March 28, 2007, VIMS noted that some minor erosion was occurring along the leading edge of the marsh and that the riparian bank was being undercut. With regard to the breakwater, they state that this option may work in the high-energy setting. No other State agencies commented on the proposal.

Mr. Neikirk said that the Gloucester County Wetlands Board approved those portions of the project involving tidal wetlands during their public hearing held April 11, 2007.

Mr. Neikirk explained that properly designed breakwaters with beach nourishment were generally considered to be a desirable method to address shoreline erosion since the

breakwaters were designed to maintain a sandy intertidal beach and wetland habitat landward of the breakwaters. Staff believed the proposal to install the breakwater with sand nourishment and plant the nourished area landward of the breakwater with appropriate wetland vegetation, should address the applicant’s erosion problem while re-establishing some lost wetland habitat. Provided the material used for the beach nourishment was comprised of at least 90 percent sand, as proposed, staff did not believe that the project should result in any significant siltation.

Accordingly, Mr. Neikirk said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the construction of the breakwater and associated beach nourishment with a condition that the applicant provide a detailed plan and schedule for the planting of the intertidal area created landward of the breakwaters. Additionally, staff recommended the assessment of a royalty in the amount of \$33.75 for the filling due to the beach nourishment of 675 square feet of State-owned submerged land at the rate of \$0.05 per square foot.

After some discussion, Jeff Watkins, with Riverwalk and agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Watkins stated that they accepted the staff recommendation and royalties assessment.

Commissioner Bowman asked if anyone present was in opposition wishing to speak. There were none. He asked for discussion or a motion.

**Associate Member Robins stated that the project was appropriate and the problems had been addressed as shown in the testimony and evidence in the Commission’s packet. He moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Royalty Fees (filling 675 sq. ft. @ )0.05/ sq. ft.).....	\$ 33.75
Permit Fee.....	\$100.00
Total Fees.....	\$133.75

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- 6. **B. KEITH TRAMMELL, #06-2705**, requests authorization to construct a 12-foot by 16-foot open-sided roofed structure over a portion of his existing private, noncommercial pier situated along the Piankatank River at 154 Twiggs Ferry Road in Mathews County. An adjoining property owner protested 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. Trammell's property was situated along the Piankatank River, adjacent to the Route 3 Bridge, in Mathews County. Development along this section of the river was primarily residential. The shoreline faced generally north and the Piankatank River was approximately 1,800 feet wide at the project site. The homes in the immediate vicinity were located near the top of a relatively high bluff overlooking the river. In addition to the proposed 12-foot by 16-foot open-sided roofed structure, Mr. Trammell had also applied to construct three (3) 5-foot by 26-foot finger piers, three (3) uncovered boatlifts, and a 16-foot by 6-foot open-pile addition to his existing 356-foot pier. Since the pier additions and uncovered boatlifts were non-commercial and did not constitute a navigational hazard, staff determined that those aspects of the project met the statutory authorization for private piers contained in §28.2-1203(A)(5) of the Code of Virginia. In fact, if the adjoining property owner were not objecting to the open-sided roofed structure, it too would meet the statutory authorization.

Mr. Neikirk stated that Mr. William P. Sadler, Jr., on behalf of the Spring Hill Baptist Church Parsonage protested the project. The protestants were concerned that the pier additions would lead to the pier becoming a commercial facility. They also stated that the Chesapeake Bay Act did not permit the construction of buildings on piers and stated further that if that was not the case, they still objected to the covered metal roof building.

Mr. Neikirk said that the proposed roof would not encroach on any public or private, leased oyster planting ground. No other State agencies had commented on the proposal.

Mr. Neikirk said that prior to 2006, staff generally recommended against the construction of roofed structures on piers unless such structures were deemed to be water dependent. In 2006, however, the General Assembly amended §28.2-1203(A)(5), to provide statutory authorization for open-sided shelter roofs or gazebo type structures measuring no more than 400 square feet, provided such structures were allowed under local ordinance and provided further that such structures were not objected to by an adjoining property owner. In cases where an adjoining property owner objected to such a roofed structure then a VMRC permit would be required.

Mr. Neikirk said that staff was of the opinion that given the height of the shoreline, the presence of trees obstructing the view of the pier from the adjoining property, and the proximity of the proposed structure to the Route 3 bridge, that the proposed structure should not significantly impact Spring Hill Baptist Church Parsonage's property.

Accordingly, Mr. Neikirk explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

As there were no questions of staff, Commissioner Bowman asked if the applicant or his representative was present.

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Keith Trammell, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Trammell stated that he did not have anything to add to staff comments and would be happy to answer questions.

Associate Member Schick asked if local authorization was obtained. Mr. Neikirk stated that none were required. Associate Member Fox asked about the metal roof. Mr. Trammell explained that metal was better, as shingles would not stay in place. Associate Member Schick asked about whether there would be any commercial use. Mr. Trammell stated that he would only store equipment there.

Commissioner Bowman asked if anyone present in opposition wished to speak to the Commission. As there were none, Commissioner Bowman asked for discussion or a motion.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Permit Fee.....\$25.00

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- 7. **FRANCIS K. GATES, III, #06-2895**, requests authorization to construct a 41-foot by 20-foot open-sided boathouse adjacent to his property situated along Hampton Roads in Hampton. An adjoining property owner protested the project.

Elizabeth Gallup, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. Ms. Gallup stated that the contractor was not present and his letter was provided, as a handout.

Ms. Gallup explained that the proposed project was located on Hampton Roads, in the City of Hampton, northeast of the boundary with the City of Newport News. Development along this section of the shoreline was residential. The applicant was seeking authorization to construct a 41-foot long by 20-foot wide open-sided boathouse to cover a single lift, and, to construct a 6-foot wide by 142-foot long private, non-commercial pier with a 16-foot by 18-foot L-head platform and a 59-foot long by 5-foot wide finger pier. With the exception of the boathouse structure, all other portions of the applicant's pier request did not require authorization from the Marine Resources Commission, since the proposed pier qualified for the statutory authorization, provided in Section 28.2-1203 (A)(5) of the Code of Virginia.

Ms. Gallup stated that staff received a letter of protest from Mr. Gates' neighbors, Mr. Max and Mrs. Regina Buzard, on December 27, 2006. The Buzards were opposed to Mr. Gates' project because they believed that the design was not structurally sound. They

requested that the contractor amend his application to include more specific building specifications. The protest letter was forwarded to the applicant and the agent for comment or response.

Ms. Gallup said that it should be noted that even without the Buzards' objections, Mr. Gates' proposed boathouse would not have qualified for the statutory authorization provided in Section 28.2-1203 of the Code of Virginia because the proposed boathouse roof was greater than 700 square feet, which was the threshold allowed for private, non-commercial boathouses.

Ms. Gallup stated that the applicant stated in a letter dated January 11, 2007 that he planned to purchase a boat in the 32-foot range and that his contractor had advised him that this size boat would require a 20,000 lb boat-lift, which would in turn required a boathouse span of 16-feet with 2-feet of additional clearance on each side.

Ms. Gallup explained that while staff was sensitive to the concerns of the protestant, the Commission did not typically regulate the engineering design of piers and boathouses. In this case, a marine contractor had designed the proposed boathouse structure, but staff was concerned about the size of the boathouse. The applicant stated in his application that he did not currently own a boat and gave no indication of his plans to purchase one. Without a documented boat ownership, there existed no clear necessity for a boathouse larger than the 700 square foot deemed appropriate by the General Assembly and embodied in code. In addition, staff questioned why a boathouse, measuring roughly 20 feet by 35 feet, was not adequate to house a potential 32-foot boat. As a result, staff recommended denial of the request, as applied for and approval of a boathouse no larger than 700 square feet in size.

Commissioner Bowman asked if anyone in opposition was present to address the Commission on this matter. There were none.

Commissioner Bowman said he had a problem with going ahead on a matter when no was present. He asked for any discussion.

**Associate Member Fox stated that staff had done a thorough job and the larger boathouse was not justified. He moved to accept the staff recommendation.** Associate Member McLeskey asked how staff felt about the boathouse. Ms. Gallup stated that more evidence was necessary to justify the need for a larger structure. Bob Grabb, Chief, Habitat Management, stated that if it was not approved but denied by the Commission and they waited a year to reapply, the protest would still be there. **The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

- 2E. DEPARTMENT OF THE ARMY, #06-0270**, requests authorization to modify an existing permit to allow the installation of a temporary 3,000-foot long elevated pier in conjunction with joint training exercises to be conducted between July 15 and August 30, 2007, adjacent to the Omaha Beach and Utah Beach Training Areas at Fort Story along the Chesapeake Bay in Virginia Beach.

Bob Grabb, Chief, Habitat Management announced that pursuant to efforts by all parties the protest had been resolved on this item. His comments are a part of the verbatim record.

Commissioner Bowman asked for a motion to hear this matter. **Associate Member Schick moved to hear Item 2E. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Mr. Grabb read the description of the project into the record at the request of the Commissioner. He explained that there had been a change in the time of year for the joint training exercises and staff recommended approval.

**Commissioner Bowman asked for a motion. Associate Member Robins moved to approve item 2E. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.**

No applicable fees – Permit Modification

\* \* \* \* \*

- 8. SUNSET BAY, LLC, #07-0228**, requests authorization to create 11 new boat slips and reconfigure 13 permitted boat slips with finger piers and mooring piles; install a 44-foot long by 5-foot wide open-pile pier and retain a 40-foot by 8-foot T-head and mooring piles along Chincoteague Channel adjacent to Sunset Bay Town Homes in the Town of Chincoteague, Accomack County. The total number of slips along Chincoteague Channel will increase from the previously permitted 16 to a total of 24. (The total wet-slips at the marina/town homes will increase from 63 to 72.). An adjoining property owner protested the project.

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

Mr. Badger explained that Mr. Donald Britton received a permit (#03-1873) from the Commission to construct a replacement bulkhead and seven (7) finger piers with mooring piles, thereby creating 16 wetslips along Chincoteague Channel adjacent to his property on South Main Street, north of the Coast Guard Station at the February 22, 2005, meeting. The VMRC permit covered only a portion of the proposed 63-wetslip-marina; the majority of which was located in an adjacent man-made basin. That approval was

contingent on a special condition which provided that, “should there be a change in upland use (e.g. marina to condominiums, dockominiums, townhomes, etc.), a new permit application and public review for the use of the existing moorings involving State-owned submerged lands would need to be submitted for Commission review and approval.” The property had since been sold to Sunset Bay, LLC. The applicant had also acquired the adjacent properties along Chincoteague Channel to the north and south, and was in the process of building 65 condominiums on the parcels. Other interior parcels had also been acquired to satisfy the Town’s parking space requirements.

Mr. Badger also explained that in addition, the applicant had applied to the Town for authorization to construct an additional six (6) units. The Town had not yet issued a permit for the additional units and was awaiting approval by VMRC on the number of additional boat slips (if any) to make sure the applicant had adequate parking for the additional units and boat slips.

Mr. Badger stated that Sunset Bay had submitted a parking plan to the Town. The Town’s zoning, required 3 parking spaces for each 2-bedroom unit, 4 parking spaces for each 3-bedroom unit and one space for every boat slip. The applicant therefore, needed 195 parking spaces for the 65 condominium units under construction, plus 24 spaces for the 6 condominium units being proposed and 72 spaces for the 72 proposed boat slips for a total of 291 parking spaces. The applicant’s parking/site plan showed 290 parking spaces, one short of the current required number of spaces. There appeared however, to be room for two or three more parking spaces and the applicant had acquired an additional interior parcel to satisfy the Town’s parking space requirements.

Mr. Badger said that Ms. Danuta Brzezinska, an adjacent property owner, had protested the project. Ms. Brzezinska had concerns that the boat slips would encroach on her property and her riparian rights. She also stated that the boatslips would impact wetland and subaqueous bottom habitat in the area and that the bulkhead on the northeast side of the applicant’s property, along with the raised elevation on their property, would cause run-off to onto her property.

Mr. Badger stated that the applicant was also requesting after-the-fact authorization to retain a 40-foot by 8-foot T-head that was constructed at the channelward end of the man-made boat basin pier within VMRC jurisdiction. The contractor had stated that he did not realize the T-head lay outside the man-made basin.

Mr. Badger said that the Virginia Health Department (VHD) advised that the applicant had submitted an approved plan for sanitary facilities. The VHD-Division of Shellfish Sanitation informed us that while the project would affect condemned shellfish growing areas, it would not cause an increase in the size of the closure. No other State agencies had raised objections to the project.

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Mr. Badger explained that although, Accomack County Wetlands Board approved the original permit, they did not require a permit for this proposal since the current proposed piers and mooring piles were channelward of mean low water and were not within their jurisdiction.

Mr. Badger said that the U.S. Army Corps of Engineers had indicated that the project qualified for their Nationwide Permit Number 19.

Mr. Badger noted that the Virginia Institute of Marine Science (VIMS) did not anticipate any significant adverse environmental impacts from the additional shading of the state-owned subaqueous bottom.

Mr. Badger pointed out that as staff indicated in 2005, this facility appeared to meet most of the requirements of the Commission's Criteria for the Siting of Marinas or Community Facilities for Boat Mooring. Item number 7 of the Specific Siting Guidelines recommended site specific stormwater management, i.e. Best Management Practices (BMPs), be required (such as buffer strips, grassed swales, wet detention ponds and permeable parking surfaces).

Mr. Badger explained that in this case, since there would be no boat hauling and boat maintenance at the site, staff believed the rainwater run-off from the proposed parking area, was an upland issue that should be addressed by the applicant's Erosion and Sediment (E&S) Control Plan, which was required by both Accomack County and the Town of Chincoteague.

Mr. Badger also explained that the applicant had stated that the proposed pier and 2 slips on the north side of their property, as shown on their application drawings, would be a minimum of five feet off the property line and should not encroach upon the property rights, including riparian rights of Ms. Brzezinska.

Mr. Badger said that the Town in their 2005 letter of support cited a shortage of existing marina facilities and available docking for visitors to Chincoteague, as the basis for their support. At the time, Associate Member Bowden also reiterated that the prior facility had always been commercial and agreed that there was a need for more slips in the Chincoteague area.

Mr. Badger said that staff, as well as the Commission, at the time had concerns that the property would not be used, or remain a public marina, as was indicated. Therefore, as a condition of the permit, the Commission imposed a special condition in the original permit which stated, that should there be a change in the upland use a new permit application for use of the existing moorings involving State-owned submerged lands would need to be submitted for review and approval. The intent of that condition was to preserve general public access to the slips being constructed along Chincoteague Channel within the Commission's jurisdiction. Sunset Bay had indicated that they had 48 boat

**Commission Meeting**

slips for sale or rent to condominium owners within the man-made boat basin, and that they did not expect that all condominium owners would require or desire a slip.

Mr. Badger explained that the original application was for a marina, not condominiums or townhomes, and the Commission approved 16 slips within VMRC's jurisdiction. The intent was to preserve the right of the public to utilize these slips built over public bottom. Unfortunately, staff could not recommend or support their conversion to private slips for condominium owners, nor could staff support the requested expansion from 16 to 24 slips without further clear justification of their dedication for and benefit to the general public at large.

Mr. Badger stated that staff recommended an after-the-fact authorization to retain the 40-foot by 8-foot T-head with triple fees and a civil charge based on minimal environmental impact and a moderate degree of deviation. Had the applicant originally applied for the T-head, staff would most likely have recommended approval. Should the Commission elect to approve this request, however, staff would recommend that a royalty be assessed at the rate of \$1.50 per square foot for any encroachment based on the bold outline footprint. Finally, staff recommended that the permit not be issued until the applicant had obtained a permit, as required, from the Town of Chincoteague pertaining to the number of parking spaces required for the additional boat slips and condominium units.

After extensive discussion for clarification, Commissioner Bowman asked if the applicant was present.

John Paulson, Attorney for the applicant, was present and his comments are a part of the verbatim record.

Commissioner Bowman asked for anyone present in opposition to address the Commission. There were none.

Continued discussion by board.

**Associate Member Robins moved to approve the existing slips and the expansion with the condition in the permit that they be opened to the public; and, to allow the increase to 24 slips and retention of the T-head. He said a civil charge of \$1,200 is to be assessed with triple permit fees and a royalty of \$1.50/sq. ft. for the bold outline of the encroachment. Associate Member Tankard seconded the motion. The motion carried, 8-0-1. Associate Member Bowden voted no.**

Royalty Fees (encroachment 15,840 sq. ft. @ \$1.50/sq. ft.).....	\$23,760.00
Permit Fee (Triple – ATF).....	\$ 300.00
Total Fees.....	\$24,060.00
Civil Charge.....	\$ 1,200.00

\* \* \* \* \*

9. **VA TIMBERLINE, LLC**, Notice of Violation # 06-17, hearing concerning violation of the Code of Virginia 28.2-1203, more specifically, the disturbance and alteration to subaqueous lands of the Commonwealth of Virginia within several tidal tributaries of Lawnes Creek in Isle of Wight County without prior authorization.

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

Mr. Stagg explained that on June 22, 2006, Habitat staff was notified that a large excavator type piece of equipment was operating in the marsh bordering Lawnes Creek. Habitat staff flew over the project on July 12, 2006, and observed and photographed a large area of marsh and tidal stream tributaries of Lawnes Creek that had been traversed and where extensive mowing of the tidal marsh had occurred. A subsequent ground site visit was conducted with representatives from VA Timberline, LLC, Isle of Wight County, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, and the Department of Environmental Quality. Considerable alteration to both the marsh areas and subtidal bottomlands were observed. These were apparently created by the large "marsh buggy" equipment that was used to mow large portions of the tidal marsh, which consisted of common reed, saltmarsh cordgrass, saltmeadow hay, and big cordgrass. The tidal tributaries of Lawnes Creek were traversed in dozens of locations, which resulted in the displacement of the non-vegetated bottomlands. Numerous small, elevated mud-waves were created by the weight of the equipment.

Mr. Stagg stated that in their defense, representatives of VA Timberline, LLC apparently contacted the Army Corps of Engineers in June 2006 and inquired whether a permit would be required to mow the marsh in this location. While that initial contact was by phone, staff had obtained e-mail correspondence dated June 19, 2006, in which the Corps stated, "We do not regulate the cutting of vegetation above the soil surface in a wetland area. They further stated that "If you were instead bulldozing or excavating, that would be considered an excavation and/or fill activity and require a permit." Unfortunately, the Corps did not mention that the proposed activity might also require additional authorization from other agencies including the Isle of Wight County Wetlands Board, the Department of Environmental Quality and/or VMRC. Representatives from VA Timberline, LLC have stated that they attempted to contact VMRC, but received no response. Staff did receive a phone call from VA Timberline, LLC, and returned the call twice but apparently no one was in the office. The initial call from VA Timberline, LLC, did not specify the nature of the call, so staff assumed it was related to two other applications within the development at the time (i.e. a wastewater outfall pipe and a community pier).

**Commission Meeting**

Mr. Stagg said that staff again visited the site, by boat, on July 27, 2006, and documented numerous stream crossings by the “marsh buggy” equipment. On August 11, 2006, staff submitted a Sworn Complaint and a Notice of Violation was issued noting the “disturbances, which included depressions and mud waves of the tidal marsh and subaqueous lands along dozens of traverse lines made by the mowing equipment”. It was further noted that there was not a VMRC or wetlands permit issued for this activity. In light of the fact that this type of activity would not likely be approved by VMRC, staff did not afford VA Timberline, LLC the opportunity to submit an after-the-fact authorization request. Staff, again visited the site by boat on May 17, 2007, at the approximate time of low water, to observe and document the current conditions of the disturbances.

Mr. Stagg also said that the adverse impacts to both the marsh and the subtidal stream tributaries of Lawnes Creek caused by the equipment used during the mowing of the marsh were considerable. Many acres of marsh substrate were disturbed and dozens of traverse lines cross the subtidal streams that wind through this marsh area. While the applicant apparently did make some advance attempt to seek permit guidance, staff believed VA Timberline, LLC, did not fully investigate all necessary avenues to ascertain if additional approvals were required. While VMRC did not believe mowing of the marsh itself requires a permit from either the Wetlands Board or VMRC, the Department of Environmental Quality had indicated they would likely have required some additional authorization no matter what the method involved. Additionally, had VA Timberline, LLC, clearly disclosed the type of equipment and the magnitude of the area involved, it was highly likely, that the activity would not have been authorized by any of the regulatory agencies.

Mr. Stagg explained that the Isle of Wight County Wetlands Board directed the Zoning Administrator to impose the maximum penalty allowed by law in the General District Court. They further noted that in lieu of court action they would accept an agreement to perform appropriate remediation and the payment of a civil charge of \$10,000. The County did file criminal actions (two Class One misdemeanors) on December 13, 2006. On March 19, 2007, the Wetlands Board reached an out of court settlement with VA Timberline, LLC in lieu of proceeding further with the criminal charges. The agreement included:

The payment of a civil charge of \$10,000.00 and agreement to restore, at its cost, the area along Lawnes Creek where the violation occurred in accordance with any and all directives, requirements or orders imposed as final upon VA Timberline, LLC, by the Virginia Department of Environmental Quality (DEQ), as DEQ was still in negotiations with VA Timberline, LLC, on a final action plan related to violations within their jurisdiction.

Mr. Stagg said that the Virginia Institute of Marine Science indicated that the impacts to the subaqueous lands involved should recover slowly over time.

**Commission Meeting**

Mr. Stagg stated that while VA Timberline, LLC, had made some attempt to seek permit guidance related to the activity of marsh mowing, staff did not believe that they could reasonably have assumed that the amount of disturbance in these environmentally sensitive areas would not require additional authorizations from the same agencies with which they were already working with related to numerous other activities at the site. Unfortunately, staff believed that any attempt to restore the non-vegetated subaqueous lands and associated mudflats to their original contours and conditions would result in even more disturbance. Over time the areas were expected to slowly recover and return to near pre-disturbance elevations, therefore, staff recommended the Commission consider an appropriate civil charge, based upon a significant environmental impact and major degree of non-compliance, in lieu of any further enforcement action.

Commissioner Bowman asked for any questions or discussion from the board.

Commissioner Bowman asked if there were representatives for the applicant present that wished to address the Commission.

Chip Watkins, representing VA Timberline, LLC, was sworn in and his comments are a part of the verbatim record. He said he had just taken over for the Virginia portion of the Company and he was originally with VA Timberline in North Carolina. He said that all those individuals with the Virginia branch of the company had been fired. He said they did not have any rationale to offer and the Company had not intended to do what had been done.

Commissioner Bowman stated that it was intolerable what was done for commercial purposes just to sell lots.

The Commission discussed their concerns regarding the large amount of impact on both the wetlands and subaqueous areas and how this could be handled as far as a civil charge assessment or requiring mitigation. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, stated that in accordance with the Code of Virginia, Section 28.2-1213 (C) the Commission could collect as much as \$10,000 for each violation, as each time that there is a trespass over the subaqueous bottom it could be considered a violation. Associate Member Robins asked about mitigation on the watershed. Mr. Stagg said that was for DEQ to decide and there was no on-site mitigation for the subaqueous portion of the violation, as it would only cause more damage. Associate Member McConaugha asked about an off-site mitigation for the subaqueous portion. Mr. Josephson stated that had never been considered for state-owned bottom.

Mr. Grabb said that there had been mitigation in the form of an oyster reef being funded. He said there was not a bank or anything like wetlands. Associate Member McConaugha asked about requiring wetlands mitigation. Mr. Grabb stated that the Commission could, but the Wetlands Board had already made their determination. He said the Wetlands Board process had been reviewed by the VMRC staff and no Commission action was required.

**Commission Meeting**

Associate Member Robins stated that in the County's letter, item 3-8 of the Commission packet, the company admitted that the equipment was on site for approximately 37 days. Mr. Stagg pointed out for the board that the equipment had not been operational for that entire time and it was more like 8 to 12 days.

Commissioner Bowman asked about the actual subcontractor who did the work. Mr. Stagg stated that the name of the company was Marsh Buggies, Inc., which was a Louisiana Company. Commissioner Bowman stated that he felt the Commission should contact the State Contractor's Association to have the company banned from ever working again in the State of Virginia.

Commissioner Bowman stated that the number of days would be easier than cuts, as there was a need to balance the punishment to fit the crime, as this was an adverse impact to a pristine area.

Associate Member Fox said that if 37 days was the only number for determining the **violation, times \$10,000 it would work out to be \$370,000, and he was disappointed that it was not more. He moved to accept the staff recommendation, and assess a civil charge of \$370,000.00.** Mr. Stagg stated that they had not anticipated such an assessment, as staff was just treating it as a regular violation. Mr. Grabb explained that VA Timberline would have to agree to this amount. He stated that he had talked to Virginia Phillips, attorney for VA Timberline, via telephone and she asked if the assessment would be based on the matrix table and said that if it were to be more than \$10,000 they wanted a deferral for 30 days so that they could argue the monetary issue before the Commission board.

Mr. Watkins explained that if it were to be more than what they had thought it might be, which was \$10,000.00 then they could not agree to anything more without having their attorney present to argue their case.

**Associate Member Schick seconded the motion. He also said that the Commission should address this issue with someone that can discuss this matter.** Commissioner Bowman explained that the matter was on the record and the attorneys would have access to the recording to listen.

At the end of the discussion no vote was taken on the motion made by Associate Member Fox. Commissioner Bowman announced that the case would be deferred for 30 days and brought back to the June Commission meeting, as requested.

Deferred by the Commission until the June meeting.

\* \* \* \* \*

**Commission Meeting**

- 10. DESMOND OWENS, #06-093**, requests to lease up to 190 acres of oyster planting ground within the North River between Silver Creek and Ware Neck Point in Gloucester County. The lease application is protested by a number of residents in the area.

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

Mr. Stagg explained that Mr. Owens applied for up to 190 acres of oyster planting ground within the North River, near Ware Neck Point in Gloucester County on May 5, 2006. The application was advertised and posted, as required by the Code of Virginia. Mr. Owens was asked to complete our standard Oyster Lease Use Plan Questionnaire on June 6, 2006. The form was returned on June 16, 2006. Mr. Owens indicated that the proposed uses of the lease include traditional shelling, planting of spat and /or seed oysters, clam cultivation and his intention to place either shell or structures on-bottom, not to exceed 12-inches above the substrate.

Mr. Stagg stated that beginning in early June 2006, staff began to receive numerous letters of protest. Staff received four letters of objection related to Mr. Owens current upland business site and the potential for increased activity at this location. Mr. Owens upland processing site was not located at the location of the oyster ground application. Staff believed these concerns fall outside the jurisdiction of VMRC and were a local matter.

Mr. Stagg explained that Mr. Andrew Mauck submitted a letter of objection indicating he also represented other property owners near the area covered in the application. His objections suggested that the proposed lease area was too large and that any area that might be used for 3-dimensional aquaculture should be more clearly defined. Of particular concern was that portion of the application within an un-named cove of North River. The protestants were concerned about the potential impact on navigation, the potential for visual and noise issues related to potential aquaculture cage placement, and marking and cleaning issues. They contended that although aquaculture was good for cleaning the waters of the Chesapeake Bay, continual disturbance of the bottom related to structure maintenance would offset any beneficial filtering effect of additional oysters, and potential SAV damage could result in adverse impacts to fishing in the area. Subsequent dialogue between the applicant, Mr. Mauck, and staff addressed some of the issues expressed by the protestants. Mr. Owens agreed to abandon the offshore portion of his application along the northern and southern portion of Public Ground Number 7. The applicant and Mr. Mauck had met at another time and were able to reach an agreement concerning the future placement of any structures within the cove. Mr. Owens agreed to limit those structures and pledged to work with the surrounding residents to assure continued navigational access within the cove.

**Commission Meeting**

Mr. Stagg stated that under current law and regulation, Mr. Owens would not be allowed to place any type of structures (higher than 12 inches) and/or floats upon any portion of the lease without seeking additional and separate authorization through the Habitat Management Division. Recent changes to the Code of Virginia that took effect after July 1, 2006, however, would mean that any future aquaculture structures would likely fall under a regulatory framework that was to be developed by the Fisheries Management Division.

Mr. Stagg said that staff had received fifteen letters in support of Mr. Owens' lease application.

Mr. Stagg explained that staff believed the objections related to Mr. Owens upland processing site were outside the jurisdiction of VMRC. It also appeared that Mr. Owens had attempted to address the direct concerns of the residents within the cove where a portion of his application was located. Additionally, Mr. Owens had agreed to abandon the two deeper offshore portions of his original request. It was the policy of the Engineering/Surveying Department to avoid leasing any areas that contain submerged aquatic vegetation (SAV) and as a result those areas were excluded from the proposed lease. If the Commission chose to grant the lease, under current procedures, Mr. Owens would need to seek additional approvals to place structures higher than 12-inches above the substrate or to mark any structures, no matter the height, with buoys. It was currently unclear what those procedures or requirements might be under any future regulation. Given that uncertainty, however, staff would recommend that the cove not be leased at the present time. Once Fisheries had developed the new regulation, the property owners along the cove would be better able to determine what impact, if any, the potential 3-dimensional use and deployment of aquaculture structures there might be on navigation or the use of the cove itself.

**Associate Member Robins moved to approve as applied for, as all concerns had been addressed and the use of aquaculture structures would require a permit. Associate Member McLeskey seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

Associate Member McLeskey left the meeting at approximately 3:15 p.m.

19. **DISCUSSION:** Recommendations by the Recreational Fishing Advisory Board (RFAB) and the Commercial Fishing Advisory Board (CFAB) for the funding fisheries projects.

Commissioner Bowman announced that there had been a request for this item to be moved forward and asked for a motion. **Associate Member Robins moved to amend**

**the agenda. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman announced that the Commission would hear the Menhaden proposal first and the remainder of the proposals would be taken next.

Sonya Davis, Fisheries Management Sr., gave the presentation and her comments are a part of the verbatim record. Ms. Davis provided the Commission with a handout of one additional comment letter. She said that the estimated funds available for the projects for the Commercial Marine Improvement Fund is \$286,705 and from the Virginia Saltwater Recreational Fishing Development Fund is \$2,950,289. She further explained that at the Commercial Board meeting there had been one (1) member in attendance. She said that staff conducted a survey of the members regarding this project. She said that 2 were in favor of partial funding, 3 no funding, and 2 had abstained. She stated that the Recreational Board had approved 7-2 for funding in the amount of \$313,403 if the Commercial Board provided funding of the project in the amount of \$50,000. She said there was an updated budget and a representative from VIMS was present and could explain it.

Jack Travelstead, Deputy Commissioner and Chief of Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead said in response to the Boards comments that the budget was too expensive and could it not be lowered, the budget was lowered. He said that originally it was \$1.1 million for the 3-year study. He said that efforts by the staff had reduced it to \$788,000. He said he then contacted Lyle Varnell to see if further cuts could be made and the results were that a reduction in the indirect cost rate was agreed upon. He said this is a yearly request and the remaining years would have to be approved year to year and the first year's total proposal funding is \$334,331. He stated that staff recommended a split between the boards of \$50,000 (CFAB) and \$284,331 (RFAB). Associate Member McConaugha asked about the total amounts of funding for the 2<sup>nd</sup> and 3<sup>rd</sup> year. Mr. Travelstead said the year 2 was \$236,439 and year 3 was \$154,452. Associate Member Fox asked about conditioning the funding on the report being submitted on time. He suggested holding \$25,000 of the funding depending on timely reporting and if the report was received on time a bonus of \$25,000 being adding, making the total amount \$50,000. Commissioner Bowman asked VMRC counsel for advice. Carl Josephson responded that was totally left the Commission's discretion. Mr. Travelstead stated that the contract could be written with this added to the reporting requirements.

Commissioner Bowman asked Dr. Kirkley to address the Commission. He said that anyone in opposition could address the Commission after this presentation.

Dr. James Kirkley, representing VIMS, was present and his comments are a part of the verbatim record. Dr. Kirkley explained that this species was important to the economy and the employment of minorities, as well as its contribution to the ecology and other

species. He said in the past this would have been a compact study, but today it was more complex. He said there was interest in the social impacts. He said the cost of hiring an anthropologist was very high and internationally the direction being taken is for ecosystem management. He said they must study all the bits and pieces. He said that the value of this species to the Commonwealth was various. He said that the Secretary of Natural Resources was asking such questions as, "what was the real value of the species and what relationship does this species have to water quality issues?" He said as a result of the many impact concerns, the study had grown.

After a question and answer period between the board and Dr. Kirkley, those wishing to speak were allowed time at this point

Susan Gaston, representative for Omega Protein was present and her comments are a part of the verbatim record. Ms. Gaston explained that they had worked with scientists for a long time in all studies relating to this matter and they do support sound science. She said they were not in opposition to the study. She said Dr. Kirkley was well respected and well known. She said this was a cooperative study as there was a Memorandum of Understanding (MOU), which included Omega, but no agenda was discussed and they were never asked to participate. She said that they did want to cooperate. She said they want to go back to the original proposal and they appreciated the cost cuts, but there was not a cooperative agenda before VMRC. She said they were concerned with the users not being included, the assumptions made in his proposal, and with the other studies, which had been included. She said Omega did not support the current proposal.

Commissioner Bowman read the Secretary of Natural Resources letter of support for the proposal and Dr. Kirkley into the record and it is a part of the verbatim record.

Associate Member Fox said that a positive vote could be done with a directive to work with Omega and see if modifications were needed.

Associate Member McConaugha stated that the proposal was very vague in his opinion and he agreed with the suggestion to have Dr. Kirkley work more with the others to nail down a work plan. He said the proposal was more in flux and from the comments made, it was premature to accept this proposal.

Associate Member Robins said there have been comments today that there was an interest in this by the board and for an update to be provided several months down the road. He said this should not prohibit action being taken today.

Commissioner Bowman suggested that a report in 60 to 90 days could be required.

Associate Member Robins stated that the research proposal was consistent with the MOU, but he was concerned that the stakeholders were not involved.

**Associate Member Robins moved to accept the staff recommendation for items H (CFAB - \$50,000) and R (RFAB - \$284,331) for the menhaden study by Dr. James Kirkley and to require a report on the updated research and the stakeholders' involvement in 90 days. Associate Member Holland seconded the motion. Associate Member McConaugha asked if the funding depended on the report. Associate Member Fox responded no. The motion carried, 7-0-1. The Chair voted yes. Associate Member McConaugha voted no. Associate Member McLeskey left the meeting during the presentation.**

\* \* \* \* \*

Commissioner Bowman called for a 5-minute break before continuing with this item.

\* \* \* \* \*

Sonya Davis, Fisheries Management, Sr., continued at this point with the remainder of the Recreational Board recommendations and her comments are a part of the verbatim record. Ms. Davis stated that the board had reviewed and recommended 12 of the 18 proposals. She said that staff was recommending 13 items, as the shark study was important to the management of Virginia's shark and ray fisheries.

Commissioner Bowman asked if funds were available to fund the shark study (N). Ms. Davis stated there were funds available. Commissioner Bowman asked for comments to justify the funding of this project.

Dr. Dean Grubbs, representing the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. Dr. Grubbs explained that this survey has been continuous since 1973. Virginia needs to continue to closely monitor because the Chesapeake Bay is very important for many large coastal shark species. He said the only funds requested were to supplement 30% reduction of federal funds for the cost of vessel usage and equipment, as well as field supplies.

Associate Member Conaugha stated that it was a good study and he supported it.

**Commissioner Bowman asked if this was a motion. Associate Member McConaugha responded yes and moved to approve the Recreational Fishing Advisory Board recommendations, and Item N, which was recommended by staff. Associate Member Fox seconded the motion. The motion carried, 8-0.**

Ms. Davis continued with the Commercial Marine Improvement Funds expenditure recommendations. She stated that the recommendations of the Commercial Fishing Advisory Board were in the evaluation as well as the staff's recommendations. She requested that the staff recommendations be approved.

Commissioner Bowman asked for a motion.

**Associate Member Fox moved to approve staff recommendations of Items A through E for funding projects from the Commercial Marine Improvement Fund. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

The recommendations reviewed by the Recreational and Commercial boards as well as the Commission were as follows:

- 1) **The Commercial Fishing Advisory Board (CFAB) had completed its review of pending applications.** There are eight (8) Board members and only one member attended the May 1, 2007 meeting. Six (6) members were contacted by staff either in person or by telephone, providing these recommendations for the following proposals.
  - A) Product Development for Cownose Ray. Shirley Estes, VMPB. \$75,624. -- 7 supported full or partial funding.
  - B) Project Manager for the Re-examination of Feasibility Study on One-year Grow-out of Triploid *Crassostrea ariakensis*. Frances Porter, VSC. \$26,318. -- 6 supported full funding, and 1 abstained.
  - C) Hampton Roads Clam Project. H. Kator, K. Reece, B. Croonenberghs, R. Wittman -- VIMS/VDH. \$25,002. -- 6 supported full funding, and 1 abstained.
  - D) Federal Assistance Match (Wallop-Breaux) Funds FY 2008. Jack Travelstead -- VMRC. \$179,256. -- 6 supported full or partial funding, and 1 abstained.
  - E) Estimating Relative Abundance of Young-of-Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of Chesapeake Bay (Year 7). Marcel Montane -- VIMS. \$36,325. -- 6 supported a 50% split of funding with the recreational fund (\$18,162.50), and 1 abstained.
  - F) Estimating Relative Abundance of Blue Crabs in the Virginia Portion of Chesapeake Bay. M. Fabrizio, M. Montane -- VIMS. \$50,000. -- 4 supported full or partial funding, 2 did not support funding, and 1 abstained.
  - G) Abundance, Distribution and Biology of Sharks and Rays in Chesapeake Bay and Virginia's Coastal Lagoons: Continuation of a Long-term Monitoring and Research Program. D. Grubbs, J. Musick -- VIMS.

\$89,073. – 1 supported partial funding, 5 did not support funding, and 1 abstained.

- H) Estimate and Assess Social and Economic Importance and Value of Menhaden to Chesapeake Bay Stakeholders and Region (3 Year Study = \$788,284). James Kirkley -- VIMS. (Year 1 request = \$363,403). – 2 supported partial funding with the recreational funds, 3 did not support funding, and 2 abstained.
  - I) Updated Assessment of the Economic Importance of Virginia's Commercial Fishing Industry. James Kirkley -- VIMS. \$42,294. – 6 supported full or partial funding, and 1 abstained.
  - J) Development of a Replacement for the Horseshoe Crab Bait Currently Used in the Commercial Whelk Pot Fishery (2-Year Study). R. Brill, R. Fisher, D. Cristo --, VIMS. \$95,061. – 0 supported funding, 5 did not support funding, and 2 abstained.
  - K) Seasonal Distribution Patterns of Veined Rapa Whelks with Respect to Shellfish Resources in the Lower Chesapeake Bay. Juliana Harding -- VIMS. \$41,726. – 4 supported full or partial funding, 2 did not support funding, and 1 abstained.
  - L) Continue Evaluating Behavioral Responses of Cownose Rays to Electrosensory Repellents and to Conduct Shellfish Prey-Size Selectivity Trials. Robert Fisher - VIMS. \$16,832. – 5 supported full or partial funding, 1 did not support funding, and 1 abstained.
  - M) Collection of Biological Samples to Supplement Current Cownose Ray Biological Assessment Efforts. Robert Fisher -- VIMS. \$24,699. – 2 supported full or partial funding, 4 did not support funding, and 1 abstained.
- 2) **The Recreational Fishing Advisory Board (RFAB) has completed its review of pending applications.** They met on May 14, 2007 and developed final recommendations for funding for the following projects:

**The following projects were recommended for approval by the RFAB:**

- A) 2007 Sunshine Children's Fishing Program. Denny Dobbins -- Portsmouth Anglers Club. \$7,194. **VOTE: 9-0**

- B) 2007 Saxis & Morley's Wharf Fishing Pier Youth Fishing Tournaments (Year 6). Allen Evans -- Eastern Shore of Virginia Anglers Club. \$2,500. **VOTE: 9-0**
- C) 2007 Early Summer Children's Fishing Program. Melvin Dudley -- Northampton County Anglers Club. \$1,100. **VOTE: 9-0**
- D) Artificial Reef, Funding for Deployment of Structure 2006-2007. Mike Meier -- VMRC. \$150,000. **VOTE: 9-0**
- E) Visual Function in Chesapeake Bay Sport and Prey Fishes: Summer Flounder, Bluefish, Cobia, and Atlantic Menhaden (Year 2). A. Horodysky, R. Brill, R. Latour -- VIMS. \$50,289. **VOTE: 8-1**
- F) Estimating Relative Abundance of Young-of-Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of Chesapeake Bay (Year 7). Marcel Montane -- VIMS. \$36,325. **VOTE: 9-0 for the amount of \$18,162.50**  
COMMENT: Provided that the Commercial Marine Improvement Fund provides a match of \$18,162.50.
- G) Enhancing Submerged Aquatic Vegetation (SAV) Habitat: Research and Education for Restoration (Year 13). Robert Orth -- VIMS. \$95,689. **VOTE: 9-0**
- I) Virginia Marine Sportfish Collection (Year 1). Joe Grist -- VMRC. \$12,000. **VOTE: 9-0**
- J) SAS Licensing and Training for VMRC Technical Staff. Joe Grist -- VMRC. \$38,500. **VOTE: 9-0**
- K) Quinby Harbor Enhancements. David Fluhart -- Quinby Harbor Committee, Accomack County. \$294,375. **VOTE: 9-0**
- M) 2007 Hope House Fishing Excursion and Clinic. D. Hurst, C. Macin -- Great Bridge Fisherman's Association. \$2,500. **VOTE: 9-0**
- R) Estimate and Assess Social and Economic Importance and Value of Menhaden to Chesapeake Bay Stakeholders and Region (3 Year Study = \$788,284). James Kirkley -- VIMS, (Year 1 request = \$363,403). **VOTE: 7-2 for the amount of \$313,403.** COMMENT: Provided that the Commercial Marine Improvement Fund provides \$50,000.
- S) Budget Amendments for a Previously Contracted Access Project: Conversion of a Protective Wave Screen into a Saltwater Fishing Pier.

Michael Nealer -- City of Newport News. The original 2004 request was for \$170,250. The 2007 request is for an additional \$270,583 to include lighting, for a total of \$440,833. **VOTE: 9-0**

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

- H) Estimating Relative Juvenile Abundance of Recreationally Important Finfish and Crustaceans in the Virginia Portion of Chesapeake Bay. M. Fabrizio, M. Montane -- VIMS. \$469,568. **VOTE: 9-0** COMMENT: The RFAB was informed that this project was approved for federal aid (Wallop-Breaux) and recreational funds were not needed at this time.
- L) Saxis Fishing Pier Expansion. Charles Tull, Mayor -- Town of Saxis. \$132,107. **VOTE: 9-0.** COMMENT: The RFAB requested that an engineering firm review the budget and resubmit during the next project review cycle. They also did not believe the pier would be utilized enough to justify the expense. Mr. Tull informed the RFAB that the engineering firm of George, Miles and Buhr provided the budget. The firm confirmed this statement with an E-mail received 5/15/07 (public comment # 11).
- N) Abundance, Distribution and Biology of Sharks and Rays in Chesapeake Bay and Virginia's Coastal Lagoons: Continuation of a Long-term Monitoring and Research Program. D. Grubbs, J. Musick -- VIMS. \$89,073. **VOTE: 9-0.** COMMENT: The RFAB did not believe this project would benefit the recreational fishing community.
- O) Response of Summer Flounder to Hypoxia in Chesapeake Bay: Physiological Tolerances and Shifts in Habitat Use. M. Fabrizio, R. Brill - - VIMS. \$99,721. **VOTE: 9-0** COMMENT: The RFAB did not believe this project would benefit the recreational fishing community.
- P) Effects of Piscivorous Fishes on Local Juvenile Game Fish Populations. P. McGrath, J. Musick -- VIMS. \$45,530. **VOTE: 9-0.** COMMENT: The RFAB did not believe this project would benefit the recreational fishing community.
- Q) Laboratory Investigations of the Ability of Striped Bass to Function under Low Ambient Oxygen Conditions. R. Brill, D. Gauthier -- VIMS. \$81,468. **VOTE: 9-0.** COMMENT: The RFAB did not believe this project would benefit the recreational fishing community.

**The following are the funding recommendations provided by staff.**

1) **The Commercial Marine Improvement Fund.**

- A) Product Development for Cownose Ray. Shirley Estes – Virginia Marine Products Board (VMPB). \$75,624.
- B) Project Manager for the Re-examination of Feasibility Study on One-year Grow-out of Triploid *Crassostrea ariakensis*. Frances Porter -- VSC. \$26,318.
- C) Hampton Roads Clam Project. H. Kator, K. Reece, B. Croonenberghs, R. Wittman -- VIMS/VDH. \$25,002.
- D) Federal Assistance Match (Wallop-Breaux) Funds FY 2008. Jack Travelstead -- VMRC. \$75,000
- E) Estimating Relative Abundance of Young-of-Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of Chesapeake Bay (Year 7). Marcel Montane -- VIMS. \$18,162.50.
- H) Estimate and Assess Social and Economic Importance and Value of Menhaden to Chesapeake Bay Stakeholders and Region (3 Year Study \$788,284). James Kirkley -- VIMS. \$50,000 (1<sup>st</sup> year).

2) **The Saltwater Recreational Fishing Development Fund.**

Staff concurs with the funding recommendations, as submitted by the RFAB, with the following additional project.

- N) Abundance, Distribution and Biology of Sharks and Rays in Chesapeake Bay and Virginia's Coastal Lagoons: Continuation of a Long-term Monitoring and Research Program. D. Grubbs, J. Musick -- VIMS. \$89,073. COMMENT: Staff thinks the continuation of this survey is important for the management of the shark and ray populations in Virginia.

Item#	Project	Submitted	Staff	CFAB
A	Product Development Cownose Ray	\$75,624	\$75,624	\$48,500
B	Project Mgr. <i>C. ariakensis</i>	\$26,318	\$26,318	\$26,318
C	Clam Project	\$25,002	\$25,002	\$25,002
D	*Federal Assistance Match*	179,256	\$75,000	\$15,262
E	Y-O-Y American Eel	\$18,163	\$18,163	\$18,163
F	Blue Crabs	\$50,000		\$50,000
G	*Sharks and Rays*	\$44,537		
H	*Social/Economic Menhaden*	\$181,701	\$50,000	
I	Econ. Commercial Fishing	\$42,294		\$34,334
J	Horseshoe Crab Bait	\$95,061		
K	Veined Rapa Whelks	\$41,726		\$41,726
L	Cownose Ray Electrosensory	\$16,832		\$16,832
M	Cownose Ray Biological Assess.	\$24,699		
	Sum	\$821,213	\$270,107	\$276,137
	Projected 2007 Budget	286705	\$286,705	\$286,705
	Remaining for boat scarring and/or buffer	-\$534,508	\$16,599	\$10,568

Split funding with RAFB\*

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Item#	Project	Submitted	Staff	RFAB
A	Sunshine CFP	\$7,194	\$7,194	\$7,194
B	Saxis and Morley's KFT	\$2,500	\$2,500	\$2,500
C	Early Summer CFP	\$1,100	\$1,100	\$1,100
D	Artificial Reef	\$150,000	\$150,000	\$150,000
E	Visual Function	\$50,289	\$50,289	\$50,289
F	*Y-O-Y American Eel*	\$18,163	\$18,163	\$18,163
G	SAV	\$95,689	\$95,689	\$95,689
<b>H **</b>	<b>Rec. Important Finfish</b>	<b>\$469,568</b>		
I	VA Marine Sportfish Collection	\$12,000	\$12,000	\$12,000
J	SAS Licensing and Training	\$38,500	\$38,500	\$38,500
K	Quinby Harbor	\$294,375	\$294,375	\$294,375
L	Saxis Fishing Pier	\$132,107		
M	Hope House	\$2,500	\$2,500	\$2,500
N	*Sharks and Rays*	\$89,073	\$89,073	
O	Summer Flounder Low Oxygen	\$99,721		
P	Local Juvenile Game Fish Populations	\$45,530		
Q	Striped Bass Low Oxygen	\$81,468		
R	*Social/Economic Menhaden*	\$181,701	\$313,403	\$313,403
S	Newport News Wavescreen/Fishing Pier	\$270,583	\$270,583	\$270,583
	Sum	\$2,042,061	\$1,345,369	\$1,256,296
	Projected 2007 Budget	\$2,950,289	\$2,950,289	\$2,950,289
	Remaining for boat scarring and/or buffer	\$908,228	\$1,604,920	\$1,693,993

\*Split funding with CFAB\*

\*\*Item H approved for federal aid funding.

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11. **PAYTON JONES, JR., #06-029; ROY LEE ROBERTSON, SR., AND KENNETH ROBERTSON, #06-144; CHARLES M. CLAGGETT JR., MARSHALL CLAGGETT, AND LARRY A. CLAGGETT, SR., #06-200,** request to lease oyster planting ground within Burwells Bay near Tylers Beach in the James River in Isle of Wight County. A portion of the Jones application is protested by the Claggetts. All of the Robertsons' application is protested by the Claggetts. The Claggett application overlaps a portion of the Jones application and all of the Robertson application.

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

Mr. Payton Jones, Jr. submitted an oyster planting ground application on February 9, 2006 seeking to lease up to 150 acres of ground adjacent to the Tylers Beach channel within the Burwells Bay area of the James River in Isle of Wight County. His application wrapped around an existing lease in the name of Claggett. Staff determined the leasing of the small, narrow area around the Claggett lease to Mr. Jones was not warranted, due to its small size and so informed Mr. Jones of this fact. Mr. Jones application was then surveyed, excluding the portion that wrapped around the Claggett lease. He was present at the time the ground was staked in the field.

Subsequently, on August 30, 2006, Mr. Roy Lee Robertson, Sr. and Kenneth Robertson applied for a three-acre area inshore of the Claggett lease. That application prompted a protest by Mr. Payton Jones, since he had also applied for some of this same area, in a letter received on October 26, 2006. The Robertson application also prompted a protest by Mr. Charles M. Claggett. In a letter dated November 22, 2006, he noted his objection to any lease inshore was of his current lease. Staff interpreted this letter to also be a defacto protest of the Jones application since his original application extended inshore of the Claggett lease. Mr. Roy Lee Robertson, Sr., was now deceased and staff was continuing to process the original application solely in the name of Kenneth Robertson.

Mr. Jones objected to the leasing of the area inshore of the Claggett lease to either Mr. Robertson or Mr. Claggett contending that he applied for that area first. However, our map of the area indicates that the Jones application did not extend all the way inshore of the Claggett lease and therefore staff deemed the area to be too small to attach to the larger portion of the lease offshore. The Robertson application encompassed the entire area inshore of the Claggett lease and constituted a legitimate lease area containing approximately 3 acres. Mr. Claggett objected to the two applications that extended inshore of his existing lease, noting a continuing problem of others oystering on his lease, to include the moving and/or removal of his lease corner markers. He further noted that

he believed the area should be leased to him. Staff had recently had to restake the Claggett lease, confirming that the stakes were not located in the correct location.

Staff recommended the assignment of an area, as surveyed, to Mr. Jones that terminated at the offshore corners of the existing Claggett lease. Since the area between the Claggett lease and the channel and rock jetty were extremely narrow, this effectively severed the triangular portion inshore of Claggett. While staff was aware of ongoing issues related to movement and removal of stakes in this area, the area inshore of the Claggett lease did constitute a valid size parcel for assignment. Therefore, staff recommended the assignment of a rectangular parcel immediately inshore of the Claggett lease to Mr. Robertson. Should Mr. Claggett wish to continue with his application, staff recommended allowing the assignment of the narrow area between the channel and Mr. Claggett's existing lease to be assigned to Mr. Claggett, but only if combined with his existing lease to create one contiguous parcel. Should Mr. Claggett not wish to pursue this small area due to the cost of surveying and assignment fees, staff recommended that this area not be leased.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 9-0.**

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**12. DISCUSSION:** Presentation on mean low water determination (how it is calculated and surveyed). Commissioner Bowman deferred this item to another meeting.

No action was taken.

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**13. PUBLIC COMMENTS:**

**REGULATION 4 VAC 20-470-10, et seq., Pertaining to the use of Gill Nets in the Hampton Roads Management Area**

**Gerald Parks, a Commercial Waterman** - was present and requested emergency action be taken by the Commission to amend Regulation 4 VAC 20-470-10 to allow him to continue to work his gill net in the Hampton Roads Management Area during the summer months. Mr. Parks explained that he wanted to work in a small area where at one time it was allowed. He described the area as follows: From the mouth of Hampton Creek to the stone pole of the Interstate 64 Bridge Tunnel in front of the Veteran's Administration Hospital. His comments are a part of the verbatim record.

Jack Travelstead, Chief Deputy Commissioner, stated that there was not enough time to get any public comment and it was a high users conflict area. He said that FMAC had proposed this restriction because of some problems. His comments are a part of the verbatim record.

Commissioner Bowman stated that he did not feel that emergency action was necessary and asked the staff to review the matter.

Mr. Parks stated that this was a low traffic area and he needed emergency action to be taken so that he could continue working or he would have to go do crab potting. He stated this would put more pressure on the crab fishery and allowing him to continue with gill netting would relieve any added pressure.

Commissioner Bowman stated that the Commission could consider health reasons and fishery economic reasons, but this was not an emergency. He said this issue needed to be studied and a public hearing held.

Associate Member Bowden said that there was another gear conflict in the Eastern Shore area within the Black Drum Area where watermen catch croaker. He suggested these be submitted to the Finfish Management Advisory Committee for their review.

Commissioner Bowman announced that these matters would be turned over to the Finfish Management Advisory Committee for their review.

No further action was taken on these matters.

**Bob Allen** – Recreational Fisherman in the Buckroe area of Hampton, was present and his comments are a part of the verbatim record. Mr. Allen expressed his concern on seeing menhaden boats in the area of the proposed artificial fishing reef, as these were spawning grounds for the cobia and the area should be protected for this reason from this activity occurring.

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**14. PUBLIC HEARING:** Request to establish an artificial fishing reef at Bluefish Rock.

Mike Meier, Head, Artificial Reef Program, gave a powerpoint presentation. His comments are a part of the verbatim record. Mr. Meier provided the board with handouts of additional public comments. He explained that the recreational fishermen support the reef as proposed and the Army Corps of Engineers has issued a permit for the reef at the original site.

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Mr. Meier explained that two hearings had been held with both recreational and commercial fishermen on March 14<sup>th</sup> and May 3<sup>rd</sup>. At the first meeting the staff was told that the original site selected would impact other fisheries and they were asked to do a sonar scan of other possible sites. There were 3 alternate sites suggested by members of this group. Two alternate sites suggested were immediately east and southeast of the original site proposed; and, the third was suggested by C. D. Hancock, as a compromise. At the May 3<sup>rd</sup> meeting a report by staff was made of the side scan results. The side scan showed that from the construction standpoint the original, the eastern, and southeastern sites appeared to be acceptable, and the C. D. Hancock was also acceptable; however, it was 1 ¼ miles further out from the original site. The recreational fishermen strongly support the original site and the commercial fishermen want the reef reduced in size and put in any other area, but the original.

Commissioner Bowman stated that it would not be good to put in a reef in the tugboat traffic area and if relocated outside the tugboat traffic area, that staff must do the request for proposal at the same time they seek to amend the Corps' permit. Mr. Meier stated that staff would go to the Corps first. He said that the staff recommended the compromise site made by C. D. Hancock.

Associate Member Robins asked if there were additional user conflicts? Mr. Meier responded that the Hancock site would be less of a conflict.

Commissioner Bowman opened the public hearing.

C. D. Hancock, Coastal Virginia Watermen Association, was present and his comments are a part of the verbatim record. Mr. Hancock said they were not opposed to the reef, but just wanted more involvement in the process so that conflict could be averted. He said the questions being asked were discussed at the meetings. He said that tugboats were seen to use the original proposed site. He said they just wanted it moved from working areas.

Bob Allen, Recreational Fisherman in Hampton, was present and his comments are a part of the verbatim record. Mr. Allen said that he ties up his boat in the Salt Ponds and that he was only representing himself. He said he had made contact with number of businesses and they were in favor of the reef being placed in the original and larger site proposed by staff. He said all of these Hampton businesses would benefit from this reef.

Kelly Place, Vice President of the Independent Watermen Association, was present and his comments are a part of the verbatim record. Mr. Place stated that he had never opposed the reef program, but he was concerned about the location and size of the proposed reef. He said this was historical fishing ground and the compromise by C. D. Hancock was less detrimental, but he still was concerned with the size. He said it was improper to limit an area to one user group with no economical returns. He stated it was almost a square mile that would be restricted. He said this reef would change the bottom

structure and the ecosystem and an EIS should be done. He said that the Commission should require an EIS to be done and to reduce the size to 1/4. He said he was also concerned with the materials as they area coated with toxins.

Commissioner Bowman asked if an analysis had been done. Mr. Place stated that the donor had given the VMRC staff wrong information. He said that gears are not fished all year and licenses can be revoked, but he reef would be there forever.

Susan Gaston, representing Omega Protein, was present and her comments are a part of the verbatim record. Ms. Gaston stated that Omega Protein has been involved. She said that additional fishing grounds would be taken.

Bill Bradley, Newport News recreational fisherman, was present and his comments are a part of the verbatim record. Mr. Bradley explained that they rely on the reefs and appreciate the closeness of the proposed reef for them to access it.

Nelson Ortiz, representing the Peninsula Saltwater Fishing Association and a recreational fisherman, was present and his comments are a part of the verbatim record. Mr. Ortiz explained that new fishermen to the area want to have access to a reef using a small boat. He said they support he original site for that reason.

Mr. Meier, in his follow up comments, explained what was done on the side scan and pointed out the various locations on the map. He said the size of agency reefs varies from 40.5 acres to 444 acres, averaging 297 acres. He explained that there was a small percentage of toxins on the bridge at West Point and would not be used. He said lab work was done and EPA did the evaluation. He said that the decking and girder were going to be placed on the Mobjack Bay reef. He said over the years various substrate materials have been used from bales of tires at first and then they were modified with concrete and finally changed to all concrete. He said when they use some boats they were cleaned and inspected and staff had worked with the EPA. He said now they were following the dictates of a study done by a contractor some years ago and they tried to contact the watermen without success. He said there had been opportunities for watermen to address their concerns. He said the Poquoson Reef was moved north and cut in half because of the watermen's concerns.

Associate Member Fox asked if the C. D. Hancock site was a navigation issue for small boats. Mr. Meier explained that this would depend on the weather, as the Hancock site was a long distance for a small boat to travel.

Mr. Meier explained that staff tried to make the reefs as accessible as possible and still find suitable bottom and water depth close to the access points.

**Associate Member Robins moved to approve the original site proposed by staff. Associate Member Fox seconded the motion.** Associate Member Bowden stated that

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everyone could go where they want to go and he had fished small boats a lot. He said that tugboats do use the original site and that can be a hazard to small boats. He said he could not support the motion. Associate Member Schick said that the original site would impact productive fishing in the area and the tugboat traffic in this area. He said it needed to be in a non-productive area and the C. D. Hancock site was the least productive. **Associate Member Schick stated he could not support the motion and offered a substitute motion and moved to approve the C. D. Hancock site. Associate Member Holland seconded the motion. The substitute motion carried, 6-2. Commissioner Bowman and Associate Member Robins both voted no.**

Roll Call Vote:

McConaugha	Aye	Tankard	Aye
Fox	Aye	Holland	Aye
Schick	Aye	Bowden	Aye
Robins	No	Chair	No

\* \* \* \* \*

- 15. PUBLIC HEARING:** ASMFC- required amendments to Regulation 4 VAC 20-380-10 et seq., "Pertaining to Grey Trout (Weakfish)", to establish a 6-fish recreational possession limit and 150-pound commercial by-catch possession limit.

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

Mr. Cimino said there were two (2) amendments that needed to be in place by October 1, 2007, to be in compliance with the ASMFC Management Plan Addendum. He said there was concern for the standing stock because of the low harvest occurring in both recreational and commercial fisheries. He further said that the addendum also required that the bycatch limit be reduced from 300 pounds to 150 pound per trip. He said the ASMFC had addressed a cap of 80%, for the fishery, but this was only to serve as a trigger for any further management measures, that might be seen as necessary. He said that this was not addressed in the amended regulation. He stated the amended regulation would not need to go into effect until October 1, 2007, to be in compliance with the ASMFC requirements.

Commissioner Bowman opened the public hearing.

Mr. Cimino noted, for the Commission, that one hook-and-line fisherman had submitted comments expressing his concern about the limits. He said once the fishery had been rebuilt, it would be reevaluated on the Federal level and could be reevaluated by the State at that time, as well.

There were no public comments. The public hearing was closed.

**Associate Member Tankard moved to accept the staff recommendation to amend Regulation 4 VAC 20-380-10. Associate Member Bowden seconded the motion. The motion carried, 7-0. Associate Member Schick was absent from the meeting during the item. The Chair voted yes.**

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**16. PUBLIC HEARING:** Request to incorporate April emergency amendments that establish warm water shellfish harvest restrictions, to promote public health, as permanent parts of Regulation 4 VAC 20-720-10 et seq.

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

Dr. Wesson explained that there had been a few refinements made to the emergency regulation in Section 105, but most had been discussed at the previous meeting.

After some discussion, Commissioner Bowman opened the public hearing.

Robert Johnson, Suffolk resident, was present and his comments are a part of the verbatim record. Mr. Johnson explained that he had been a waterman for 30 years and leased approximately 2,500 acres of oyster ground. He said that if refrigeration was required by 10 a.m., they could only work until 8:30 a.m. He stated that Section 28.2-530 of the Code needed to be enforced.

Dr. Wesson explained that this was all put into place in the fall for the Health Department, with the intention of coming back to this matter in May.

Mr. Johnson stated that he would like to see the science that determines the 2-hour limit. Dr. Wesson explained that the actual data did exist. He said the 1<sup>st</sup> year was to start working on what restrictions work, and Virginia Tech was studying it to see if it could be changed. He further said that it was critical to do this by the 2008 deadline, because there was a 60% national reduction requirement in the number of incidences, that must be met. He explained that even stricter rules could be imposed if there were to be a second incident in Virginia.

John DeMaria, owner and operator of DeMaria Seafood, was present and his comments are a part of the verbatim record. Mr. DeMaria said that culling takes time, and since the 15<sup>th</sup> of May, no watermen would work for him.

Commissioner Bowman explained that it was for health reasons that the Commission was forced to establish the regulations, and staff was trying to do its best. He said staff had worked with the Health Department as well.

Mr. DeMaria stated that if the emergency regulation could be delayed 15 days, then it was not a dire situation. He said his family had worked the waters since the Civil War. He said that not all issues were addressed in the regulation. He said that covering was a good practice, and the ice helped also. He said in the shallow areas big boat could not work and small boats did not have room for people on boat to harvest and cull, as it was too small. He said to restrict their time to 8:30 a.m. and have the oysters refrigerated by 10 a.m. impacted their income. He said he had made a large investment on his oyster leases.

Dr. Wesson said that in the Gulf states there was more harvest, but for shucking purposes only, and they required the refrigeration, as well as having made an investment in post harvest treatment system. He said that someone needed to address this with Congress to raise the bar.

Thomas Hazelwood was present and his comments are a part of the verbatim record. He said that Section 28.2-530 of the Code of Virginia was not being upheld. He said that if the regulation does not supersede the Code, then the Code should be enforced.

Dr. Wesson explained that Section 28.2-507 gave the Commission the authority to close areas and manage the harvesting of oysters.

Jack Travelstead, Chief Deputy Commissioner, explained that in the Code, Section 507 provided a broad, general authority to amend the Code.

A discussion ensued concerning the harvesting time limit and the time of departure from the dock. Assistant Attorney General Josephson pointed out there was no conflict between the proposed regulation and Code.

Commissioner Bowman closed the public hearing.

**Associate Member Robins moved to approve amended Regulation 4 VAC 20-720-10. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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17. **PUBLIC HEARING:** Fisheries Management Division-Conservation and Replenishment Department - Planned deployment of 150 hollow, 1-foot tall and 1.5-foot diameter, concrete "oyster reef balls" on the windward side of a one-acre inter-tidal oyster reef(s) to act as erosion protection. Each "oyster reef ball" covers a 7.065 square foot area for a total impact of 1,060 square feet. The

location of the deployment will be in Public Ground No. 19 in Magothy Bay, at 37°09'11" and 75°55'34", in Northampton County.

Dr. James Wesson, Head-Conservation and Replenishment, gave the presentation and his comments are a part of the verbatim record. Dr. Wesson explained that this project had been approved with the program. He said that the reef balls were to be donated by a concrete company and a group of school volunteers in Charlottesville, Virginia. He said these reef balls would be used in a Smith Island area of Northampton County to alter the sand movement on the oyster reefs. He said these structures would not impact navigation.

**Associate Member Robins moved to approve the project. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**18. DISCUSSION:** Request for emergency amendments to Chapter 4VAC 20-1120-10, et seq., "Pertaining to Tilefish and Groupers" to correct nomenclature.

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

Mr. Grist stated that staff recommended adoption of the emergency amendments to Chapter 4 VAC 20-1120-10, Et. seq. to correct the nomenclature on three species of fish, and they were requesting advertisement for a June public hearing.

**Associate Member McConaugha moved to approve the emergency amended regulation. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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(Item 19 was moved forward on the agenda and heard before Item 10.)

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**20. REPORT:** Results of the Hard Clam Aquaculture Task Force meeting on Aquaculture license issues.

Jack Travelstead, Chief-Fisheries Management, gave the presentation, and his comments are a part of the verbatim record. Mr. Travelstead explained that at the April meeting Hank Jones raised his concerns with the new aquaculture licenses and the reporting requirements. He explained further that, as a result of the discussion of this matter, the Commission decided that a meeting with industry was needed. He said they met and 4

people attended. He said 3 were concerned with whether what was done was correct and one, Mr. Jones, wanted some changes made for improving the process.

Mr. Travelstead stated that the reason for these actions was to collect additional information on the aquaculture industry and the harvest from private oyster ground leases in order to provide data for proof of use. He said second, it was to generate monies for the Virginia Marine Products Board so they could help the aquaculture industry.

Mr. Travelstead explained that the changes suggested were to make one all purpose license, allow one license for the owner of the lease and one for the vessel and the owner of the product to make the reports. He said the owner knows all about the process. He stated the form used is the same used for all fisheries. He said Mr. Jones was concerned with the added expense incurred. He said staff was working to have a regulation with more specific information about what to report.

Mr. Travelstead said that there were a few problems to work out and the licenses were already bought for this year, so that if there was a change, it should be made effective January 1.

Associate Member Tankard asked if a motion was needed for a public hearing. Mr. Travelstead responded no.

No action was taken.

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There was no further business and the meeting was adjourned at approximately 5:29 p.m. The next meeting will be Tuesday, June 26, 2007.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary