

## MINUTES

**Commission Meeting****September 25, 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 )	
Wayne McLeskey )	Associate Members
Richard B. Robins, Jr. )	
Kyle J. Schick )	
J. Edward Tankard, III )	
Carl Josephson	Sr. Assistant Attorney General
David C. Grandis	Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Sunita Hines	Bus. Applications Specialist
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Director - SWFT
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Alicia Middleton	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Jamie Green	Marine Police Officer
Javier Arce	Marine Police Officer

Bob Grabb  
Tony Watkinson  
Chip Neikirk  
Jeff Madden  
Randy Owen  
Hank Badger  
Ben Stagg  
Jay Woodward  
Benjamin McGinnis  
Elizabeth Gallup  
Danny Bacon

Chief, Habitat Management Div.  
Deputy Chief, Habitat Mgt. Div.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell  
David O'Brien

Other present included:

Matt Abell	Bob Pride	Lenny Leta	Jim Jenrette
Stewart Wright	Cynthia Jones	Stacy Beharry	Renee Reilly
Joseph Ballengo	John W. Ridley	Dan Dise	Denny Crockett
Tommy Leggett	Russell Garrison	Frank Kearney	Ron Staph
Chris Moore	Tom Powers	A. J. Erskine	L. Leroy Turner III
M. Quade	Douglas F. Jenkins	Roger Parks	Russell Gaskins
Lionel Jenkins	C. L. Treakle	Mike Croxton	Rob Savage
Harry Lee Johnson, Jr.	Liz Harper	Page Dyres	Rich Kutchen
Jeff Watkins	Christen Nye	Norman Carley	Marilyn Carley
Giacomo Riccarell	Craig Palubinski	Michale Hurst	Ellis W. James
Russell Burke	W. DuPaul	Carolyn Walton	Allie Walton
Dean Close	Paige W. Hogge	Laura McKay	Patrick Lynch
Robert Jensen			

and others

\*\*\*\*\*

Commissioner Bowman called the meeting to order at approximately 9:39 a.m. All Associate Members were present.

\*\*\*\*\*

Associate Member Robins gave the invocation and Bob Grabb, Chief, Habitat Management, led the pledge of allegiance.

\*\*\*\*\*

**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management said that Item 2B Courtland Farms – Loudoun, LLC, #06-2468 was pulled because of unresolved protests and Item 5, William P. Bryant, III, #02-2392, was pulled because the project was not properly advertised.

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

\*\*\*\*\*

**MINUTES:** Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the August 28, 2007 minutes. **Associate Member Holland moved to approve the minutes, as circulated. Associate Member Tankard seconded the motion. The motion carried, 8-0-1. Associate Member Fox abstained because he was absent at the last month’s meeting.**

\*\*\*\*\*

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

\*\*\*\*\*

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

Bob Grabb, Chief, Habitat Management Division, reviewed items 2A, 2C through 2G for the Commission. He noted that item 2B Courtland Farms – Loudoun, LLC, #06-2468 was pulled from the agenda because of unresolved protests. He said staff was recommending approval of the Page Two Items, 2A, and 2C through 2G.

**Commission Meeting**

Commissioner Bowman opened the public hearing and asked if any persons attending the meeting wished to address any of these issues, either pro or con. There were none. He announced the public hearing was closed.

Commissioner Bowman asked for any discussion or a motion for Page Two Items 2A, 2C through 2G.

**Associate Member Schick moved to approve these items, as presented by staff. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**2A. CAMP PEARY, #07-1667**, requests authorization to construct two floating docks, each measuring 10’ wide by 15’ long, with hinged access ramps in Skimino and Queens Creek to provide safe boating access for Camp Peary personnel.

Permit Fee.....\$100.00

**2B. COURTLAND FARMS LOUDOUN LLC, #06-2468**, requests authorization to install, by the directional drill method, 119 linear feet of 6-inch HDPE pipe encased in an 8-inch HDPE sleeve at least 10 feet beneath Little River as part of the Courtland Farms force main project in Loudoun County. Staff recommends a royalty of \$357.00 for the encroachment under 119 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Pulled from the agenda, pending notification by applicant of protest resolution.

**2C. TOWN OF STRASBURG, #07-1168**, requests authorization to install a water intake structure temporarily impacting 3,070 square feet and permanently impacting 690 square feet of the North Fork of the Shenandoah River in Shenandoah County. Staff recommends a time of year restriction of April 15-June 15 and August 15-September 30 to avoid the mussel spawning season.

Permit Fee.....\$100.00

**2D. FAIRFAX COUNTY PARK AUTHORITY, #07-1548**, requests authorization to install three trail crossings above Accotink Creek measuring 10-feet by 69-feet, 10-feet by 99-feet, and 12-feet by 90-feet as part of the Accotink Stream Valley Trail in Fairfax County. Staff recommends a time of year restriction from February 15-June 30 to minimize potential impacts to anadromous fish.

Permit Fee.....\$100.00

**2E. ROUTE 28 CORRIDOR IMPROVEMENTS LLC, #07-1576**, requests authorization to install 20 linear feet of fiber optic line and gas line a minimum of 5 feet beneath Horsepen Run and 20 linear feet of overhead power and telephone lines above Horsepen Run near the intersection of Frying Pan Road and Route 28 in Fairfax County. Staff recommends a royalty of \$240.00 for the encroachment under and over 80 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 80 l. ft. @ \$3.00/l. ft.) \$240.00  
 Permit Fee.....\$100.00  
 Total Fees.....\$340.00

**2F. TOWN OF MOUNT JACKSON, #06-2616**, requests authorization to replace 300 linear feet of an existing overhead sewer line including all existing concrete piers in the North Fork of the Shenandoah River in Shenandoah County.

Permit Fee.....\$100.00

**2G. EQUITY HOMES, L.L.C., #07-0825**, requests authorization to replace portions of an existing 34-slip marina located within the natural limits of Branson Cove, with a 25-slip community pier facility extending approximately 90 feet channelward of mean low water. The proposed project will also include the installation of 118 linear feet of replacement timber bulkhead and the construction of a 6-foot wide community fishing pier extending 116 feet channelward of mean low water with a 16-foot by 24-foot L-head platform, all of which is proposed adjacent to their property situated along Branson Cove and Lower Machodoc Creek in Westmoreland County. Recommend a royalty in the amount of \$14,568.00 for the bold outline encroachment of the community pier over 9,246 square feet of State-owned subaqueous bottom at a rate of \$1.50 per square foot, the encroachment of the community fishing pier over 1,050 square feet of State-owned bottom at a rate of \$0.30 per square foot, and the bulkhead's encroachment over 128 square feet of State-owned bottom at a rate of \$3.00 per square foot.

Royalty Fees (encroachment 9,246 sq. ft. @\$1.50/sq. ft.)...\$13,869.00  
 Royalty Fees (encroachment 1,050 sq. ft. @ \$0.30/sq. ft.)...\$ 315.00  
 Royalty Fees (encroachment 128 sq. ft. @ \$3.00/sq. ft.).....\$ 384.00  
 Permit Fee.....\$ 100.00  
 Totals Fees.....\$14,718.00

\*\*\*\*\*

**3. CONSENT AGENDA ITEMS.**

**3A. NEWPORT NEWS SHIPBUILDING, #03-0913,** requests after-the-fact authorization to reactivate, extend, and modify their existing previously authorized permit to retain a 14-foot wide by 704-foot long 5-inch long electrical trench attached to the mechanical trench and one 44-foot wide by 336-foot long concrete pile standoff located on the side of Pier 3 adjacent to property situated along the James River in Newport News. The applicant has agreed to a civil charge in the amount of \$1,200.

Bob Grabb, Chief, Habitat Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Grabb explained that staff had completed a full public interest review regarding the change, including contacting both adjoining property owners and running another newspaper advertisement. Neither adjoining property owner voiced an objection to the as-built project. The applicant explained that the change was meant to prevent an aircraft carrier berthed at the pier from coming in contact with the pier and damaging or destroying electrical, mechanical and hydraulic pipelines, equipment, and the pier itself. The design was changed from the original plan as a result of 3-D wind and weather modeling that indicated a carrier could list toward the pier. Other than the addition of the electrical trench and the concrete pile standoff, Pier 3 is in compliance with the permit issued by the Commission.

Mr. Grabb said that had Newport News Shipbuilding applied for a modification in advance of construction it was likely that staff would have recommended approval. As a result, staff was recommending approval with triple permit fees (\$300.00) and a civil charge of \$1,200.00 based on minimal environmental impact and a moderate degree of non-compliance. The applicant had agreed to the triple permit fee and civil charge.

Commissioner Bowman asked if anyone, pro or con, was present to address this matter. There were none.

**Associate Member Fox moved to approve item 3A. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Civil Charge.....	\$1,200.00
Permit Fee (ATF – triple fees).....	\$ 300.00
Total Fees.....	\$1,500.00

\* \* \* \* \*

**4. 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: VMRC versus Jewett**

**Associate Member Tankard seconded the motion. 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;

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

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

**Associate Member Holland seconded the motion. 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**

Motion carried, 9-0.

---

**Katherine Leonard, Recording Secretary**

\* \* \* \* \*

- 5. **WILLIAM P. BRYANT III, # 02-2393**, requests authorization to construct a 4-foot by 200-foot open-pile private pier extension with a 3-foot wide catwalk to create one wetslip and to construct a 15-foot by 25-foot open-sided covered boathouse over the wetslip at the applicant’s property situated along the Warwick River in the City of Newport News. The application is protested by an adjacent property owner.

Pulled from the agenda, Project was not property advertised.

- 6. **NORMAN CARLEY, #07-1354**, requests authorization to remove an existing pierhead and extend a 6-foot wide pier 46 feet channelward to a total length of 280 feet channelward of mean low water with four (4) cluster pile dolphins located 25 feet channelward of the pier, construct 1,061 square feet of open-pile pierhead decking, and to construct a 44-foot by 72-foot open-sided boathouse adjacent to his property situated along the Piankatank River at 1330 Ebenezer Church Road in Mathews County.

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

Mr. Neikirk explained that the Carley’s property was situated along the southern shoreline of the Piankatank River, downstream of the Route 3 Bridge and Cobbs Creek, in Mathews County. The Piankatank River is approximately 4,000 feet wide at the project site. There is a wide shallow area in front of the property which drops off rapidly near the end of the proposed pier extension. The stated mean low water depth at the landward side of the proposed boathouse was minus five (-5) feet and it was minus eight (-8) feet near the channelward end of the boathouse. Development along this portion of the shoreline was primarily residential.

Mr. Neikirk said that the Carley’s existing pier extended approximately 225 feet channelward of mean high water with a small pierhead and an uncovered boatlift. They proposed to remove the existing pierhead and extend a 6-foot wide pier 46 feet channelward to a total length of 280 feet channelward of mean high water with four (4) cluster pile dolphins located 25 feet channelward of the pier. A 44-foot by 72-foot open-sided boathouse and 1,061 square feet of open-pile pierhead decking was proposed at the channelward end of the pier.

Mr. Neikirk stated that the boathouse was designed to shelter a 48-foot San Juan motor yacht with an overall length of 52 feet and a beam of 15 ½ feet, as well as, a 26-foot power boat with a 9-foot beam. Approximately 720 square feet of the deck area was covered and proposed to be used for storage of personal watercraft and boating related items. A hip style roof was proposed over the two slips and deck area.

Mr. Neikirk said that since the deck area associated with the pier exceeded 400 square feet, and since the open-sided boathouse was designed for multiple boats and far exceeded 700 square feet, the pier and boathouse did not qualify for the statutory authorization for private piers and open sided boathouses provided in §28.2-1203(5) of the Code of Virginia.

Mr. Neikirk noted for the Commission that the structure did not encroach over any public or privately leased oyster planting ground. No other State agencies had commented on the proposal and staff did not believe the proposed pier addition would adversely affect navigation. No one objected to the project in response to the public notice and the adjoining property owners had indicated they had no objection to the proposal.

Mr. Neikirk said that there were other large boathouses in the general vicinity. In recent years the Commission had approved an after-the-fact request for a 1,326 square foot open-sided boathouse directly across the River at Horse Point in Middlesex County, and a 2,520 square foot open-sided boathouse approximately four miles upstream in Gloucester County. The 2,520 square foot boathouse was designed for a 44-foot boat and a 26-foot boat and was approved last year over the objection of the adjoining property owner.

Mr. Neikirk explained that when staff reviewed these proposals to build over State-owned submerged land, they considered, among other things, the water dependency and the necessity of the proposed structure. The intended goal of this review was to limit the encroachment of structures to the minimum amount necessary to reasonably achieve the intended use. Reducing the size of structures to the minimum necessary served to reduce potential adverse impacts on neighbors and the general public, as well as, the potential for building materials to enter the waterway during storm events or when the structures fell into a state of disrepair.

Mr. Neikirk said that in 1998, the General Assembly amended §28.2-1203(A) (5) of the Virginia Code to provide statutory authorization for the construction of open-sided boathouses measuring 700 square feet or less and designed to cover a single boat at a private, noncommercial pier, provided the boathouse was not objected to by the adjoining property owners and was allowed by local ordinances. Staff carefully evaluated boathouses that exceeded the threshold for the statutory exemption. Staff had, however, authorized and recommended Commission approval of larger structures when a documented need existed and when the anticipated adverse impacts were minimal.

Mr. Neikirk noted that in this case, staff believed the boathouse was larger than necessary to cover the applicant's two boats. Given the size and seasonal use associated with personal watercraft (PWC), staff also did not believe providing a covered area for PWCs was justified. Even if the structure were reduced in size, however, this proposal begged the question: "What is the maximum size boathouse the Commission is willing to approve for a private property owner?" A 100-foot long boathouse might be reasonably sized for a 90-foot boat, but was it appropriate to approve such a large encroachment over State-owned submerged land for an individual riparian property owner? If an applicant had six large boats, would it be reasonable to approve a request to cover all of them, or would it be more appropriate for the boats to be accommodated in a marina?

Mr. Neikirk said that while staff strived to review each project on its own merits, staff also must consider recent Commission actions on similar projects in the vicinity. Last year the Commission approved, in modified form, a boathouse application approximately four miles upstream of this location. That permit authorized the construction of a 2,520 square foot open-sided boathouse and was designed to cover two similar sized boats. The boathouse proposed in this application measure 3,168 square feet, approximately 650 square feet larger than the boathouse approved last year. The Carley proposal also included 1,061 square feet of open-pile deck area, not including the long finger piers. Seven-hundred and twenty (720) square feet of that deck area was to be covered by the proposed roof. As a result, staff was of the opinion that the size of the boathouse and deck area could be and should be reduced.

Mr. Neikirk stated that staff believed that the boathouse could be redesigned to still accommodate both of the applicant's boats through the elimination of most of the covered deck area. Alternatively, the applicant might want to construct the cover over just the larger boat.

Accordingly, Mr. Neikirk said that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff felt compelled to recommend denial of the application, as proposed. Staff could support and recommend approval of a modified structure with the following conditions:

- The size of the open-sided boathouse shall be reduced to a maximum size of 2500 square feet.
- The total square footage of the pier decking, excluding the main stem of the pier and finger piers measuring five (5) feet or less, shall be reduced to a maximum of 400 square feet and shall remain uncovered.

Mr. Neikirk noted for the Commission that Mr. Carley had sent in information correcting the dimensions for the smaller boat, making it 31.5 feet long with a 10-foot beam.

Norm Carley, co-applicant, was sworn in and his comments are a part of the verbatim

record. Mr. Carley explained that he had retired from the Navy after many years of service. He said he and his family wanted to stay on the water. He said when he retired he established a business and was lucky to have sold it. He said they were requesting a dock extension for their large boats in order to protect them. He said they were requesting a 44' X 72' boathouse. He said his agent admitted that he was over zealous in the original proposal and they were willing to modify it. He said they had 450' of waterfront. He said there would be no obstruction of Mr. Meeks view on the east side, who had indicated he supported the proposal and on the west Mr. Wortham could not see it for the trees. He said they were just requesting the same consideration as their neighbor.

Marilyn Carley, co-applicant, was sworn in and her comments are a part of the verbatim record. Mrs. Carley explained that they had looked at other areas, but this area met all their needs. She said this was an open area and they could extend the deck without encroaching on their neighbors.

Commissioner Bowman reminded them that the Commission was charged with considering all the citizens of Virginia, not just those in the immediate area.

Jeff Watkins with Riverworks, the contractor and agent for the applicants, was sworn in and his comments are a part of the verbatim record. Mr. Watkins said this proposal was good as it did not have any protestants. He said the area shoreline had a high elevation which meant there was no obstruction for others. He utilized slides he had brought for his presentation. He said the applicants were keeping the 52' boat and it needed excessive length at least 66 to 68' long and 2 feet wider for the installation of the boatlift. He said he was proposing a roof with a step to cover both the smaller and large boats with a 5' to 12' pitch. He said he preferred to have approval of the 2,900-square footage.

Associate Member Schick said the Commission had heard cases with multiple boats before, but not all of them have wanted to cover all the boat slips. He said there was a case with 3 boats and it was downsized to 2 boats, because of the fact the one boat which was fiberglass. He said there was a need to look at this issue. He said the Commission traditionally had approved 2 boat covered slips for larger boats.

Commissioner Bowman said that the distance between the properties in this case was good, but VMRC must look out for the rights of all the citizens, not just the applicants and the adjoining property owners. He stated he was concerned that the Commission was looking at moving targets and the staff brought to the Commission what was being asked for, but there needed to be a better procedure.

Associate Member Schick explained that he agreed that there was a need for the leeway when a boatlift was being installed, both in the front and the back.

Associate Member Fox asked if this was the largest structure being considered for

approval. Mr. Neikirk responded it was the largest in his area.

Commissioner Bowman instructed staff to meet with the Habitat Management Advisory Committee (HMAC), chaired by Associate Member Schick. This would establish parameters or guidelines for the approval of structures such as this, to insure consistency by the Commission, in its decisions in order to be fair to future applicants and their contractors when making decisions on their projects.

**After some discussion about what possible modifications could be made, Associate Member Holland moved to approve a 2,900 square feet structure, as requested by the applicant. Associate Member McLeskey seconded the motion. During the discussion of the motion, Associate Member Fox suggested that a motion was also needed to approve the 400 sq. ft., uncovered decking and the 6-foot finger pier in the center of the opened-sided boat house. Associate Member Holland, who made the original motion, agreed to include this as an amendment. After further discussion, Commissioner Bowman said the amended motion made by Associate Member Holland, and seconded by Association Member McLeskey, was the motion being considered. In an effort to clarify the motion, he explained that it included the approval of the 2,900 sq. ft. of opened-sided boathouse, the 6-foot finger pier in the center of the boathouse, and 400 sq. ft. of uncovered decking. The motion carried, 9-0. Chair voted yes.**

Permit Fee.....\$100.00

\* \* \* \* \*

- 7. **VIRGINIA ELECTRIC & POWER COMPANY, #07-1458**, requests authorization to install an aerial 230 kV electrical transmission line from Bristers to Gainsville across six jurisdictional crossings in Fauquier and Prince William Counties. The project is protested by two adjoining property owners in Fauquier County.

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

Mr. Bacon explained that the Virginia Electric & Power Company proposed to construct a 15.9-mile 230kV line entirely within its existing right-of-way and parallel to an existing Morrisville-Loudoun 500kV line. The beginning of the transmission line was in a residential setting while the majority of the transmission line was in rural or agricultural areas. The new structures would match the 500kV structure locations with the exception of several that would be placed in new locations to avoid stream impacts. The stated purpose of the Virginia Electric & Power Company Bristers-Gainsville overhead 230kV line project was to serve the growing electrical demand in the region.

Mr. Bacon stated that the proposed transmission line project would cross a total of seven different streams. Of the seven, four of those streams had drainage areas of five (5) square miles or greater, the agency threshold for jurisdiction. The jurisdictional streams included Town Run, Cedar Run, Kettle Run, and Broad Run. There were a total of six jurisdictional crossings (Town Run would be crossed in three different locations).

Mr. Bacon said the existing 240-foot right-of-way was currently occupied on its western side by the 500kV line. There was also an 115kV electrical distribution line on the outer most eastern edge of this right-of-way. The new 230kV transmission line would be constructed between the two existing transmission and distribution lines. There was also a gas transmission line within the right-of-way. Most of the easement had been previously cleared to accommodate the 500kV, 115kV and gas line. Where woody vegetation existed within the right-of-way, additional clearing would be required. As proposed, there would be no vehicle crossings of any streams.

Mr. Bacon stated that two individual letters of protest had been received. The protestants, Mr. and Mrs. Longerbeam and Mr. Raymond Miller, all owned property along Town Run. All the protestants were from Fauquier County. The Longerbeams objected to the transmission line because they believed there would be impacts to the waterways and the adjacent upland properties along the proposed route. Mr. Miller stated that he just wanted Virginia Electric & Power to “Keep Out” of his property.

Mr. Bacon explained that while staff was sympathetic to the landowners whose upland properties might be affected by the project, it appeared those upland concerns were outside the Commission’s jurisdiction. In addition, staff believed those issues were considered by the State Corporation Commission (SCC) in its decision to approve the Certificate of Public Convenience and Necessity for the Bristol-Gainseville Project.

Accordingly, Mr. Bacon said that since there would be no direct impact to State-owned subaqueous land and after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and further considering all the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the application for a permit to install the aerial lines over State-owned subaqueous land, with the following conditions:

- 1) Any streambeds or banks impacted by the project shall be restored to pre-existing contours and conditions upon completion of construction;
- 2) The Virginia Erosion and Sediment Control Hand Book (3rd Ed., 1992) and the approved Sediment and Erosion Control Plan for the Bristol-Gainesville project will be followed throughout construction;
- 3) Any proposed deviation in crossing method or location must be formally authorized by the Commission.

Mr. Bacon stated that if the Commission approved the project, staff would recommend the assessment of a royalty in the amount of \$447.00 for the encroachment over 149 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Commissioner Bowman asked if VEPCO had a representative present at the hearing.

Ms. Liz Harper, representing the applicant, was present, but indicated to the Commission that she did not have any comments to add to what staff had presented, but offered to answer any questions the Commission might have. There were no questions. (Ms. Harper spoke from the back of the room so her statements were not audible on the recording.)

Commissioner Bowman asked if there was anyone else present at the hearing wishing to address this matter, pro or con. There were none.

**Following some discussion, Associate Member Robins moved to accept the staff recommendations. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Royalty Fees (encroachment 149 l. ft. @ \$3.00/l. ft.)....	\$447.00
Permit Fee.....	\$100.00
Total Fees.....	\$547.00

\*\*\*\*\*

Associate Member Holland asked for time to discuss the Nassawaddox dredge project from last month's meeting.

Commissioner Bowman asked for a motion to amend the agenda to discuss the matter as requested and to add that to the agenda as Item 7A.

**Associate Member Robins moved to add this to the agenda. Associate Member McLeskey seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**7A. NASSAWADDOX DREDGING PROJECT:**

Associate Member Holland explained that he had understood the H. Spencer Murray project was to be a DEMO project, with all the groups involved in order for the creek to be made navigable, and the Commission approved it. He said now that the Northampton County, Board of Supervisors had voted to return some of the monies collected, by taxing the residents. He said that the Commission based its approval of the disposal of the spoil overboard on this being an interim solution to a navigational problem. He stated that he felt it was setting a precedent, which was not his intention. He said he was requesting this matter be put back on next month's agenda and to have the applicants, the County

representative and the Corps representative give the Commission an update on the status of the project.

Commissioner Bowman asked that staff comment on this matter. Bob Grabb, Chief, Habitat Management, asked, if this was a request for an update on the 2005 Federal Channel Project or the H. Spencer Murray's project? Associate Member Holland responded that it was the Murray's project.

Mr. Grabb explained that it had been approved, but he was not sure if the permit had actually been issued. He explained that the Commission motion was made to approve it as proposed. As drafted, however, the permit contained some standard conditions and some that were not standard. He said this was not what the applicant applied for and when the permit was sent to him for his signature, he questioned the conditions. He said staff questioned whether the motion for approval included those conditions. Commissioner Bowman stated that it could be put on the agenda for clarification.

Mr. Grabb stated that he understood what Mr. Holland wanted to discuss, was what the approval entailed. The Murray application was a proposal seeking an interim solution to a long-term problem.

Carl Josephson, Senior Assistant Attorney and VMRC Counsel stated that what was approved included the staff conditions. Mr. Josephson said he saw the project as being done by an individual and wondered why the Commission should be concerned with it being approved. Associate Member Holland stated that he had thought it was an application supported by all parties, as a stopgap measure, and he felt that now there was a need to look at this as an individual dredge project.

Associate Member McLeskey said that the Corps called him to say there were no funds and they supported the project. He said the Corps expressed concern for the limited access for watermen. He said he felt this was an emergency measure and the conditions not being presented at the time it was heard, represented a grey area. He asked if the Commission could waive these conditions.

Associate Member Tankard said that because the Corps had no funds now for the project he had considered it an individual's application.

Mr. Grabb explained that Mr. Murray was surprised when he got the permit document to see these standard conditions included in it; and he questioned them. He also said the County decided to give back the monies collected for the Federal match money. He explained that as a result of this action by the County, there was concern that the Federal project would not be done.

Associate Member Schick stated there was an impressive group involved in the project and allowing the sidestepping of the spoil was not often granted and not usually to an

individual. He said he had thought it was okay since the government was involved in the project.

Mr. Grabb explained that this was supposed to be a stopgap, interim project, until the Federal project could be funded. He said also that the disposal of the spoil overboard was a short term solution to get over the hump, and lack of Federal monies. He said there was concern that this was not a Federal project, but an individual project. He explained that what was being asked was whether or not VMRC wanted to allow the sidecasting of the spoil, and if the matter should be added to next month's agenda for reconsideration.

**Associate Member Holland moved to reconsider the matter at next month's meeting. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman stated that there was an apparent need to hear the whole story and to discuss these conditions. He directed staff to notify all the parties involved.

\* \* \* \* \*

The Commission meeting was recessed for lunch at approximately 11:07 a.m. The Commission meeting was reconvened at approximately 12:15 p.m.

\* \* \* \* \*

**8. PUBLIC COMMENTS:** There were no public comments.

\* \* \* \* \*

**9. PUBLIC HEARING:** Proposed amendments to Regulations 4VAC20-252, "Pertaining to the Taking of Striped Bass", to establish management measures for the 2007 Fall Recreational Fishery.

Rob O'Reilly, Deputy Chief, Fisheries Management gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly utilized a PowerPoint presentation. He stated that an active effort had been made since 2003 to keep the recreational fishery harvest close to the quota. He said the recreational fishery had exceeded its quota each year, since 2001. He explained that an Ad Hoc Panel was formed in 2003, and with the Fisheries Management Advisory Committee, they recommended the fishery be managed in the fall of 2004 by a modified slot limit, where the fisherman is limited to fish from 18 inches to 28 inches with all fish allowed to be 28 inches or more. He said changes had been made in the years following to compensate for the overages. He said any attempt to manage the recreational fishery was difficult. He said data is collected by the National Marine Fisheries Service (NMFS), using the fishermen intercept interviews. These take place at various established locations or in interviews where

fishermen are contacted by telephone, in order to estimate harvests of striped bass and other species. He explained that this means the adjustment of recreational harvest cannot be done at the fisherman level, as it can in the case of the commercial ITQ system. He also said that the only way the recreational fishery can be managed is by season, possession limit, size limit or a combination of the measures.

Mr. O'Reilly explained that since the 2006 harvest exceeded the quota by 871,245 pounds, staff had the Ad Hoc committee meet to develop further measures to make sure the 2007 overage was not as large. He said that the first meeting was held on July 12 with industry representatives from diverse geographical area representatives, and different user groups to discuss and select options. He explained that at the second meeting on August 13<sup>th</sup> they produced 5 options for reducing the 2007 harvest: (Only B, C, and E were advertised as options 1, 2, and 3.)

Option	Description	Potential Savings
A	A no-take slot limit, between 28 and 34 inches, total length, and a 1-fish limit from December 18 through 31	618,354
B	A no-take slot limit, between 28 and 34 inches, total length, and a closure from December 25 through 31	672,084
C	A no-take slot limit, between 28 and 34 inches, total length, and a 1-fish limit, from December 1 through 31	849,378
D	A no-take slot limit, between 26 and 37 inches, total length	615,683
E	A no-take slot limit, between 28 and 34 inches, total length, and a 1-fish limit, from December 10 – 31.	727,071

Mr. O'Reilly explained that there are usually a lot of e-mails received by staff and the results of these e-mails were that 11 were for option 1, 10 were for option 2, and 28 were for option 3. He said that also a poll had been devised through the agency website for the first time and the results were 159 for option 1, 74 for option 2, and 298 for option 3

Mr. O'Reilly further explained that the committee did not look at reducing the entire 2006 overage amount, since the data collected by NMFS could include some illegal size fish and some that were actually caught in the ocean.

Mr. O'Reilly stated that FMAC met on August 21<sup>st</sup>, they thoroughly discussed options 1-5. They voted to recommend to the Commission Options B, C, and E for discussion at the September public hearing.

Mr. O'Reilly explained that there continues to be concerns about the methods used by NMFS to collect the data and the accuracy of the data. He stated that staff had spoken with NMFS about their data collection methods, but NMFS said it was not designed or intended for quota management. He said since 2001 the data had shown that the number of larger fish had increased and the Atlantic States Fisheries Management Commission is aware of the increase in larger fish.

Mr. O'Reilly said that the Ad Hoc committee had asked that the Commission consider of the five options, with option E, first and option 2, second. He said the entire group was very candid in their comments, and a few members expressed concern with the increase in the larger fish caught, and other issues. He said for this reason, as well as others, it was felt the Ad Hoc committee should be continued.

Mr. O'Reilly stated that in the regulation, under Section 90 and 100, the amendment is shown there for a no-take slot and a season time period of October 4 through December 30. He further stated that staff was recommending option 1.

Listed below are the options being considered by the Commission:

Option	Description
1	A no-take slot limit, between 28 and 34 inches T. L., and a 1-fish limit, from December 10 through December 31
2	A no-take slot limit, between 28 and 34 inches T. L., and a 1-fish limit, from December 1 through December 31
3	A no-take slot limit, between 28 and 34 inches T. L., and a 1-fish limit, from December 25 through December 31

Commissioner Bowman said he thought the poll was not the staff's idea. Mr. O'Reilly explained that a industry representative had suggested it.

After some further discussion for clarifying the information that was presented, Commissioner Bowman opened the hearing for public comments.

Tom Powers, a member of both committees, was present and his comments are a part of the verbatim record. Mr. Powers explained that the Ad Hoc committee did not want any closure. He said that not closing it the last week puts more pressure on the larger fish. He said some will put a 24-inch in the cooler and keep it until a larger fish comes along. He said when they dispose of the smaller fish it was usually dead. He said he supported the closure for the last week as that the fishermen would not be catching the larger fish.

Ron Staples, representing "Stripers Forever", was present and his comments are a part of the verbatim record. Mr. Staples said recreational fishermen are always getting cut, but not the commercial. He stated that net fishermen threw back more dead fish. He said it

should be that the striped bass are a sport fish and commercial harvest should not be allowed.

Russell Garrison was present and his comments are a part of the verbatim record. Mr. Garrison explained that he agreed that the data collection was flawed and needed to be changed. He said the FMAC recommendation surprised him, which included the closure from December 10 – 31. He said in the Horn Point area there had been only 1 violation. He said as to the closure including December 25th, that it was a good family time and helped the economy.

Bob Pride, representative for the Virginia Charter Boat Association, was present and his comments are a part of the verbatim record. Mr. Pride stated that his group supported option 3 as it would have the least impact on business.

Jim Jenrette, Eastern Shore Charter Boat Captain, was present and his comments are a part of the verbatim record. Mr. Jenrette said he supported option 1 because a closure would affect his business and they target only larger fish.

Matt Able of Accomack was present and his comments are a part of the verbatim record. Mr. Able stated that he supported option 1 as it had the least impact on businesses and was the best one for the resource.

Rob Savage, Eastern Shore Fishing Guide, was present and his comments are a part of the verbatim record. Mr. Savage said he agreed with Mr. Jenrette. He said also that he was concerned with the use of the internet to do a poll as there was no public notice and there were still a number of people who do not use that technology. He said he disagreed with some of Mr. Powers' comments about the smaller fish. He said that the December 21st – 31st closure would affect the Eastern Shore tourism and other related business.

Stuart Wright of Charlottesville was present and his comments are a part of the verbatim record. Mr. Wright stated that he had been fishing on the Eastern Shore for the last fifteen years. He said he agreed with VMRC's concerns about how the data was collected and did not support the method used. He said that options 1 and 2 did not protect the larger fish; option 3 will not reduce the poundage. He stated he could not support any of the options. He said that he could support a maximum size limit, a size limit on the ocean, and the ending of commercial harvest of menhaden in the Bay.

Lenny Leta, was present and his comments are a part of the verbatim record. Mr. Leta said he did not support options 1 and 2 because he did not believe in a closed season. He said he agreed with others with regards to the data problems.

Commissioner Bowman closed the public hearing.

Mr. O'Reilly gave the board some additional comments received as a handout. He said there were several for option 1 and one for option 3.

Commissioner Bowman asked if there was any discussion.

Associate Member Bowden stated that you should be careful when you asked for a minimum size as it affects the quota. He said the commercial fishery had to payback for overages and it was 15% or less that the commercial fishery caught and released. He said in the recreational fishery there was more.

Associate Member Robins explained that based on the comments from the poll there is support for a closure. He said after hearing comments at the hearing and from staff on how the MRFSS data is collected, and the quality, it was critical to take some action. He said some did support a closed time and the staff's recommendation of approving Option 1 was a reasonable compromise.

Associate Member Tankard stated that he supported Option 1 as it would allow more time for enjoyment of the fishery and provide some conservation.

Associate Member McConaugha stated he supported Option 1 and was concerned with the quality of the data, but there would be consequences if the Commission did nothing.

Associate Member Fox stated that Option 3 would hurt the least as there was more harvest in October and November in areas near him. He said that at the end of the year the fish will have migrated. He said he encouraged staff to consider a maximum size. He said he did understand the arguments for Options 1 and 2, but that he supported Option 3.

Commissioner Bowman asked for a motion.

**Associate Member Holland moved to accept option 1. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\*\*\*\*\*

The Commission meeting was adjourned for a 7-minute break

\*\*\*\*\*

Commissioner Bowman stated that Robert W. Jensen representing the Rappahannock River Preservation Society had requested time to address the Commission.

Commissioner Bowman asked Mr. Jensen what was it he wanted to discuss with the Commission at this hearing.

Mr. Jensen explained that it was related to the U. S. Navy Facility in Hampton Roads.

Commissioner Bowman asked if this was the case that was in litigation. Mr. Jensen responded, yes.

Commissioner Bowman asked the VMRC Counsel to respond. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that since the matter was presently in litigation, Mr. Jensen would have to address any issues related to the case with the Circuit Court Judge.

No action was taken.

\* \* \* \* \*

**10. PUBLIC HEARING:** Proposed amendments to Regulations 4VAC20-260-10, Et seq., 4VAC20-650-10, Et seq., and 4VAC20-720-10, Et seq., to establish management measures for the 2007 - 2008 Public Oyster Harvest Season.

Dr. Jim Wesson, Department Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record. Dr. Wesson gave the Commission a handout, which was a letter from the Chesapeake Bay Foundation.

Dr. Wesson stated that there had been some good discussion at last month's meeting. He explained that the lower Rappahannock River had been divided into six, approximately equal areas. The plan called for the rotation of these six areas, with two areas open this year, two different areas the second year and then the 3<sup>rd</sup> year two more. He explained that area 7 above the bridge would remain closed because of recent replenishment activities and Areas 8 and 9 will be opened. He said in the lower Rappahannock River area a permit will be required to work in those two areas. He stated that a laminated map will be provided to all watermen who get this permit to work there. He explained that area 1 was the area most were interested in as it had not been worked for many years. He said that in other areas such as the Potomac River tributaries, Nomini is proposed to be opened the first year and the Coan and Yeocomico are to be closed, as there had been seed oysters planted in those two areas. He said it was proposed for this same type of management strategy for Pocomoke-Tangier Sounds and staff had divided the area into three parts. He said watermen preferred two areas which should not limit their harvesting so much. He said they also wanted the season to start December 1<sup>st</sup>, as in the past so they could continue with crab harvesting.

Dr. Wesson stated that all areas would have the same bushel limit of 8 bushels per commercial registered fisherman licensee, except the James River hand tong area and the Seaside of Eastern Shore. He explained that the scientists felt it was important to keep the larger oysters in the lower Rappahannock River, since they seemed to have survived

and possibly become disease tolerant. He said they felt that with a 4.25 inches maximum cull size that it would protect 30% of these oysters.

Dr. Wesson said that at the Shellfish Management Advisory Committee, there was much discussion about gear type to be allowed in the lower Rappahannock River. He said the patent tongers had felt left out as for years because only hand scrapes were allowed. He said the deep waters should be kept for patent tongers and this was the basic consensus at that meeting. He said there were little hills and mud areas which are better for patent tonging not dredging. He said the patent tongs put back oysters as they are less efficient, slower and easier to keep track. He said that the small hand scrapes were better for the upriver area.

Dr. Wesson explained that the staff proposed to have a Buyback Program of the larger oysters that are greater than 4.25 inches. He explained further that watermen could participate in this project and sell three bushels of these oysters to be replanted for the State. He said these oysters would be put back on a sanctuary area. He said that the watermen would be provided a cull stick and map for the areas. He stated that the State would buy them back for \$25.00 per bushel so as not to compete with the open market. He said the watermen were to keep these oysters separate from the rest to be planted and they would be issued a MRC 53 ticket as a receipt to submit to the Main Office for payment.

Dr. Wesson stated that Law Enforcement had a problem with putting these oysters in containers and preferred they be loose on the bottom like the rest. He said staff had suggested that orange baskets be used to avoid a violation.

Dr. Wesson said that Regulation 260 was being changed to establish the cull sizes and Regulation 650 was being changed to clarify sanctuary, with a word change.

Dr. Wesson stated that all these regulations reflected stiffer penalties, as suggested by the Blue Ribbon Oyster Panel. He said in the Lower Rappahannock River a waterman could lose his permit immediately.

Dr. Wesson said that at a meeting with Law Enforcement they had suggested a special time limit of 7 a.m. to 1 p.m. and a two-month season of October to November for the Lower Rappahannock River rotation areas.

After some discussion for clarification, the public hearing was opened.

Lemuel Hart, Seaside of Eastern Shore waterman, was present and his comments are a part of the verbatim record. Mr. Hart said he had a petition signed by watermen for a 6-month season on the Seaside, but they were willing to negotiate. He said back in the early 90's there were oyster issues and at that time the Seaside was lumped into the same restrictions. He said the area is different from other areas in how the oysters are grown

and how they are harvested. He said further that there are other factors that control the harvest, which was the tides, no harvest on Saturdays or Sundays was allowed, and the weather. He explained that there are only 3 or 4 days to a work week there. He said the crab potters get 9 months and the oyster harvester get only 3 months. He said they want a fair shake as November to January are the worst months of the year and market demands require the importation of oysters from the Gulf States. He said the Commission cannot do a blanket regulation. He said they were asking for 4 months, October through January, like last year.

Roger Parks, representing the Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Parks stated that it was not fair taking away the hour and the month of December as they cannot work and pay their bills. He said this needed to be looked at more as it cannot continue the way it has.

Dan Dise, representing the Tangier Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Dise said they were in favor of some rotation, but not in the way it was proposed. He said they wanted it done in moderation. He said if it is done in thirds, it would be too restrictive. He said they needed an area to move to if nothing was found on the first rock. He asked about the three bushels and whether it needed to be a full bushel.

Dr. Wesson explained that the oysters could not be held overnight on the vessel and the least to be bought will be ½ bushel, otherwise put the oysters back overboard onto the rock.

Leroy Turner, waterman from Gwynn's Island, was present and his comments are a part of the verbatim record. Mr. Turner asked about the three bushels and if the spat had to be cleaned off and put back and about who would replant. He also asked about the time restriction of 7 a.m. to 1 p.m. and whether the boat could leave the dock before that time. Dr. Wesson explained that they did want the spat killed, so it did not need to be cleaned and the waterman would replant the oysters. He said they could leave before, but cannot start harvesting until 7 a.m.

Mike Croxton, waterman, was present and his comments are a part of the verbatim record. Mr. Croxton stated that they cannot make a living with just a two-month season and need a longer season.

Commissioner Bowman explained the Commission was doing the best it could, as the area was being checked out, since the area had not been worked for so long.

Russell Gaskins, Virginia Working Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Gaskins explained that he had been a patent tonger his whole life and there had always been areas opened below the bridge for

patent tonging. He said he would like to see the Lower Rappahannock stay a patent tong area.

Douglas F Jenkins, president of the Twin River Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins explained that he had worked with the Oyster Heritage Program and Blue Ribbon Oyster Panel and they had discussed patent tonging one time and decided that it should be done at Deep Rock. He said it was advertised for Areas 1 – 6 to be for hand scraping. He said he had a petition with 120 signatures stating that the areas be for hand scraping, the same as the other areas upriver for the last 5 years. He said that they were told by staff that Drumming ground had a number of small oysters. He said a small dredge would not damage the rocks as the 100-pound patent tong would. He stated the lower area needed cleaning with a small dredge to loosen the fouling and allow the water flow to clean it up and the scientists will get the larger oysters for the sanctuaries. He said it was a plus, plus, plus for everyone. He was the smaller boats had been used upriver and could handle a patent tong. He said at the Shellfish Management Advisory Committee there was only a small group of dredgers in attendance.

Lionel Jenkins, waterman, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that he questioned the size of oysters in the river and was concerned that a majority of the oysters were over 4.25 inches and up. He said they might have to throw 40 to 50% back overboard. He said that would mean only 25% were left for them to harvest. He said also that he believed it was logical to work with the hand scrape, like in the other areas, as the patent tongs leave holes.

Paige Hogge, resident on the Rappahannock River, was present and her comments are a part of the verbatim record. Ms. Hogge said that all areas should be opened from October to January so that the harvest effort would be spread out. She said requiring the use of the orange baskets versus the tub was setting a new precedent. She said the Commission should allow the patent tongers to work there as there was a need to help this group.

Tommy Leggett, Chesapeake Bay Foundation, was present and his comments are a part of the verbatim. Mr. Leggett said that they support the staff's recommendations. He said there should be no favor for one gear or the other shown, as this would be a time to make a comparison. He said this was a good compromise when oysters were at a historic low.

Leroy Turner said if the Commission was stricter on taking the licenses, it would be thrown out of court.

Commissioner Bowman stated that the court doesn't revoke the license, the Commission does that. He asked staff to clarify, if it was staff's recommendation to allow the patent tong in this area.

Dr. Wesson responded yes, that was included in Rotation Area 1.

Jack Travelstead, Chief Deputy Commissioner, stated that the SMAC meeting was after the advertisement was done and it was discussed at that meeting for the use of patent tonging, so it was not advertised. He said he suggested that an emergency regulation could be approved with a public hearing held in October.

Commissioner Bowman asked if this fits the criteria in the Code of an Emergency Regulation. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel responded that was determined by the Commission. He read the applicable portion of the Code. He said it was a factual determination, which most of the time was deferred to the Court by entities.

Associate Member Robins asked if the patent tongers are allowed in the area what's the expected harvest.

Dr. Wesson explained that staff estimated about 3,000 bushels and there would be approximately 20-25 patent tongers versus 60-80 hand scrapers, like the James River.

Associate Member Robins asked if the staff was concerned if the patent tong was adopted there would be habitat damage, but that something could be learned from it. Dr. Wesson said it did lend weight to see the difference in gear types. He said that both can cause damage to the oyster rocks, but in different ways.

Associate Member Robins asked about the October to November season for the Lower Rappahannock River area. Dr. Wesson stated that this was suggested by Law Enforcement personnel. Associate Member Robins asked about how long staff felt the season would last. Dr. Wesson said that if the dredgers are allowed in the area, maybe 2 weeks and if the patent tongers are allowed, maybe two months.

Associate Member Robins asked about Seaside. Dr. Wesson explained that the area is depressed just like the other areas and he could see a 4-month season, but not a 6-month season. He said that reporting in that area is bad so it is hard to see what is really there.

Associate Member Schick said that this had been discussed for a year and this was the first time patent tonging had been discussed. He said there was only one group's consensus. Dr. Wesson explained that the BROP had not discussed gear types and he had encouraged all parties to attend the SMAC and a number of patent tongers showed up this time. He said a permit was required no matter what gear was allowed, which can be obtained from the field offices.

Commissioner Bowman explained that Law Enforcement has other fisheries to monitor at the same time and there were a mandated number of inspections required. He said also there was a cap on the number of hours before overtime must be paid. He said this was the reason for the time frame.

Associate Member Fox stated he missed the BROP report last month and we cannot expect a great harvest. He said the report does not give a lot of hope. He said positive things were discussed, but 3 were not discussed at all: 1. Aquaculture, 2. Triploids, and 3. Ariakensis. He said it would be discouraging to the watermen, if there were not many oysters.

Associate Member Bowden said it was not right to change to patent tonging if it was not advertised.

Associate Member Robins said he appreciated staff's efforts for the Lower Rappahannock and the Pocomoke-Tangier areas, but the Lower Rappahannock had new area whereas the Pocomoke-Tangier did not have new area. He said staff's recommendation was what had been agreed to when working with watermen. He said he supported the October and November season for the lower Rappahannock. He stated the harvest will be completed in 2 to 4 weeks and the study on the two gear's impact would be a good investment. He said he agreed with Associate Member Bowden that because it was not advertised for patent tonging the Commission could not justify allowing it.

**Associate Member Robins made a motion to approve the staff's recommendation including the 7 a.m. to 1 p.m. workday requested by Law Enforcement, the season recommended by staff and the four months on the Seaside Eastern Shore by adding October. Associate Member Bowden seconded the motion. Associate Member Schick asked about the limited entry suggestion, which was not discussed. Associate Member Robins said, as the season was opening next week there was no time to established limited entry and the amount of harvest estimated was 3,000 bushels in this area. He stated he wanted to add to the motion that the Lower Rappahannock River would be harvested by hand scrapes. Associate Member Tankard for discussion read Section 28.2-210, for discussion only, relating to emergency regulations. Mr. Josephson explained again that this was a factual determination by the Commission that it meets the requirements for an emergency regulation. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

Dr. Wesson reminded the Commission that he needed a motion to approve the procurement methods for the Buyback Program.

The following are the procurement methods to be utilized for the program

“Staff is, therefore, recommending a “buyback” program to recover some of these large oysters and relocate them to adjacent sanctuary areas. The Marine Police will be assisting with the program in the river. Harvesters may collect up to three bushels of oysters greater than 4 ¼ inches each day. After harvest is completed and on their way to port, these oysters shall be taken to a designated sanctuary area and spread on the bottom. The

Marine Police will monitor this activity, and give receipts for the bushels of oysters deployed on the sanctuary area. The harvester will then send his receipts (MRC 53 tickets) to the MRC main office. Harvesters will be paid \$25.00 per bushel, with a daily allowance of three bushels of large oysters (>4 ¼ inches) per permittee. Staff has monitored this area for years, and the three bushels per permittee per day is derived from the percentage of oysters in this area that are within the size class greater than 4 ¼ inches. Approximately 31% of the market oysters in the lower Rappahannock River are greater than 4 ¼ inches. With a commercial harvest limit of 8 bushels per permittee per day, 3 bushels of large oysters will be approximately 30%. This limit will reduce the likelihood that a harvester would stay and continue to harvest just to catch large oysters once he had finished the 8 bushel commercial limit.”

“Staff recommends setting the price per bushel at \$25. This price will be a little less than the anticipated market price, so that it will not interfere with normal market price variations. The sanctuary sites will be close to the harvest areas so there will be no added expense for the deployment process, and the harvester will be allowed to hold the 3 bushels of large oysters (>4 ¼ inches) in orange, plastic, bushel baskets. When in baskets, the large oysters will not get mixed with the commercial catch, and they will be ready for deployment at the sanctuary sites. Staff estimates that up to 1,000 bushels of these large oysters (>4 ¼ inches) could be harvested during the season and intends to use the Waterway Improvement Fund as the source for expenditures. All of the permitted harvesters in the Rappahannock River area that complete a standard Federal “W-9” Tax form will be allowed to participate in the program.”

**Associate Member Robins moved to approve the procurement methods. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

Associate Member Bowden left for the day at approximately 3:39 p.m.

\* \* \* \* \*

**11. REQUEST FOR PUBLIC HEARING:** General Permit for Temporary Protective Enclosures for Shellfish, Proposed Regulation 4VAC20-1130, including a Report of the Ad Hoc Panel meetings.

Jack Travelstead, Chief Deputy Commissioner, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that the development of the General Permit was mandated by the General Assembly (Senate Bill 1333) and established as Sections 28.2-603.1 and 603.2 of the Code. He said Section 28.2-601.3 of the Code establishes the General Permit requirement and the provisions to be included.

Mr. Travelstead said that an Ad Hoc Committee was appointed by the Commissioner who met on this matter and was very helpful in drafting the document. He said the first issue was how specific the permit. Should it, for example, list minimum distances to piers, marinas, and channels and exact size of the enclosure? He said the current draft allows the Commissioner to approve or alter a proposal because of impacts to navigation. He said the vertical clearance over the structure was also a major issue with the Panel. Two members suggested a 3-foot clearance over the cages. He said the rest of the committee did not specify any clearance, but left it up to the Commissioner. He said another member of the committee suggested that "Guidelines" be developed, which would be brought to the Commission for their consideration at a later time.

Commissioner Bowman opened the public hearing.

Bill DuPaul was present and his comments are a part of the verbatim record. Mr. DuPaul said he was concerned that the General Permit will allow 3-dimensional aquaculture, which was not contemplated in the original legislation. He said this would impact boating safety, though in some places this would not be a concern. He said the Commission should present options at a public hearing so everyone would know and have confidence in the agency. He said other agencies, such as DEQ, needed to review this also.

A. J Erskine, representing Bevans Oyster Co. and Cowart Seafood Corporation, was present and his comments are a part of the verbatim record. Mr. Erskine explained that requiring a 3-foot vertical clearance would limit the available area for aquaculture too severely. He said this matter should be decided upon on a case-by-case basis.

Commissioner Bowman closed the public hearing.

Associate Member Fox asked if structures were larger than 12 inches would require approval. Mr. Travelstead explained that less than 12 inches with no buoys would be okay, but if more than 12 inches, would need to go through the process to be approved.

Associate Member Fox asked if multiple buoys were allowed. Mr. Travelstead stated that the permit allows one buoy per structure, with the leased ground marked with stakes and signs.

Associate Member McLeskey inquired about spacing of the structures? Mr. Travelstead stated the structures would be limited to 250 per acre, on average over the permit area, but there was no requirement for how close one cage could be to another.

**Associate Member Tankard moved to approve the request to advertise for a public hearing. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.**

\*\*\*\*\*

- 12. **REGULATION 4VAC20-20**, "Pertaining to the Licensing of Fixed Fishing Devices". Industry requests suspension of the requirement to set and fish a net to maintain priority right to the location the following year.

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

Mr. O'Reilly said this was a request for a public hearing to consider the industry's request for a suspension for 2007 of the requirement to set and fish a net in order to maintain priority rights the following year to the currently, permitted location of the device.

**Associate Member Robins moved to approve the request to advertise for a public hearing. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.**

\*\*\*\*\*

- 13. **REQUEST FOR PUBLIC HEARING:** Proposed amendment to Regulation 4VAC20-910, "Pertaining to Scup", to adjust the commercial fishery possession limit for Scup for the Winter II period (November-December).

Alicia Middleton, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record.

Ms. Middleton explained that this was a request for public hearing to consider the establishment of the possession limit for Scup for the Winter II period. She said that in 2006, it was increased from 3,000 pounds to 6,500 pounds and in 2007 this would be an increase from 3,000 pounds to 3,500 pounds.

**Associate Member Fox moved to approve the request to advertise for public hearing. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.**

\*\*\*\*\*

Associate Member Fox asked about the December holiday's coming up and the need to change the date of the meeting, which was on the 25<sup>th</sup>, Christmas day.

Commissioner Bowman stated that for the Thanksgiving holiday, he felt that the date of the meeting was okay. It was the general consensus that the date did not need to be changed. He stated that he recommended the December meeting date be changed to Tuesday, December 18, 2007.

**Associate Member Fox moved to change the Commission meeting date to December 18, 2007. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

\* \* \* \* \*

There was no further business and the meeting was adjourned at approximately 4:05 p.m. The next Commission meeting will be October 23, 2007.

---

Steven G. Bowman, Commissioner

---

Katherine Leonard, Recording Secretary