

## MINUTES

## Commission Meeting

September 26, 2006

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
J. T. Holland )	
John R. McConaugha )	Associate Members
F. Wayne McLeskey )	
Richard B. Robins, Jr. )	
Kyle J. Schick )	
J. Edmund Tankard, III )	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin./Finance Div.
Andy McNeil	Programmer Analyst, Sr.
Rob O'Reilly	Deputy Chief, Fisheries Mgmt. Div.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Richard Lauderman	Chief, Law Enforcement Div.
Warner Rhodes	Deputy Chief, Law Enforcement Div.
Robert Park	Marine Police Officer

**Commission Meeting**

**13919  
September 26, 2006**

Steven Bennis

Marine Police Officer

Bob Grabb

Chief, Habitat Management Div.

Tony Watkinson

Deputy Chief, Habitat Mgt. Div.

Chip Neikirk

Environmental Engineer, Sr.

Jeff Madden

Environmental Engineer, Sr.

Traycie West

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.

Elizabeth Gallup

Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Todd Herbert

Other present included:

Don Caskie

Dean Parker

Tom Smith

Carl Hensley

Rick Allen

Michael Newhouse

Angela Hensley-Lay

Richard Calvert

Brad Heconanhour

Richard Biemiller

Bob Williams

Cheryl Walker

Bill Walker

Jim Scott

Myles Pocta

Kenneth H. Murdock

Elizabeth A. Murdock

John Maganus

Danielle Hengren

Warren Veazey

Jason Halbert

Tim SanJule

Ellis W. James

Tina Tanerna

Douglas F. Jenkins, Sr.

Robert Park

John M. DeMaria, Jr.

Alan Weaver

Sammie Coates

Chris Moore

Kelly Place

Frances Porter

Dana Dise

Jack Dise

Mike Brien

William Parks

Susan Gaston

Ken Smith

Del. Rob Wittman

David Epperley

and others

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m. Associate Members Bowden, Holland, and Tankard all arrived after 10:00 a.m. to the meeting.

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Tracy West, Environmental Engineer, Sr., gave the invocation and Carl Josephson, Senior Assistant Attorney General and VMRC Counsel led the pledge of allegiance to the flag.

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Associate Member Fox announced that it was Associate Member Robins 40<sup>th</sup> Birthday.

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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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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management, explained that for Item 11, Cowles Spencer, #06-0098, the applicant was requesting a deferral to allow them time to try and resolve the protest and for Item 13, Oyster Ground Applications in the name of Sharon Carr; William Kenton Carr; Sharon Carr and Kent Carr; and Kent Carr Seafood Company, #2006-062, 2006-063, 2006-064, and 2006-065, the applicants were also requesting a deferral because of illness. Mr. Grabb recommended that these two deferrals be granted indefinitely so that they could be handled administratively.

**Commissioner Bowman asked for a motion to approve the agenda, as amended. Associate Member Robins moved to approve the agenda, as amended. Associate Member McLeskey seconded the motion. The motion carried, 6-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman asked for a motion to approve the August 29, 2006 meeting minutes.

**Associate Member Robins moved to approve the minutes, as presented. Associate Member McLeskey seconded the motion. The motion carried, 5-0-1. Associate**

**Member Fox abstained, as he was absent at the August 29, 2006 meeting. The Chair voted yes.**

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

Bob Grabb, Chief, Habitat Management Division, gave the presentation for the page two items, A through K. Mr. Grabb reviewed all the items for the board. He made corrections to the dimensions in Item 2A. Loudoun Valley Associates, LP, #06-1578. His comments are a part of the verbatim record.

There were no questions of staff. Commissioner Bowman asked if anyone was present pro or con on these items to address the Commission. There were none.

**Associate Member Schick moved to approve Page Two items, A through H, as presented by staff. Associate Member Robins seconded the motion. The motion carried, 6-0. The Chair voted yes.**

- 2A. **LOUDOUN VALLEY ASSOCIATES, L. P., #06-1578**, requests authorization to construct one (1) 50-foot by 32.19-foot conspan bridge over Broad Run and install, by the dry-ditch method, 15 linear feet of sewer pipe under Broad Run in Loudoun Valley Estates II in Loudoun County. Staff recommends a royalty of \$2,459.25 for the bridge encroachment of 1,609.5 square feet over State-owned submerged land at a rate of \$1.50 per square foot and the sewer line crossing under 15 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 1,609.5 sq. ft. @\$2.50/sq. ft.).....	\$2,414.25
Royalty Fees (crossing 15 linear ft. @ \$3.00/l. ft.).....	\$ 45.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$2,559.25

- 2B. **URBANNA YACHTING CENTER, #05-1820**, requests authorization to remove a portion of a marginal wharf and an existing T-shaped pier containing fueling facilities and 20 boatslips and to install three (3) floating piers with 43 wetslips, relocate fueling facilities and construct a dinghy dock adjacent to their existing facility situated along Urbanna Creek in the Town of Urbanna.

Permit Fee.....	\$100.00
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**2C. WINDMILL REDEVELOPMENT ASSOCIATES, LLC, #06-1380,** requests authorization to mechanically maintenance dredge 3,200 cubic yards of subaqueous material from the existing 100-foot wide entrance channel to restore depths of minus seven (-7) feet at mean low water, and install two (2) 100-foot long by 24-foot wide (base width) quarry stone spurs at the end of the existing jetties at their commercial marina off the Rappahannock River at the end of State Route 695 in Lancaster County. The sandy dredged material will be used for beach nourishment, above mean low water, on the adjacent beach area to the west of the channel, as has been done during previously authorized dredging cycles.

Permit Fee.....\$100.00

**2D. VIRGINIA ELECTRIC & POWER COMPANY, #06-0180,** requests authorization to modify an existing permit for a coal vessel unloading pier on the Southern Branch of the Elizabeth River in Chesapeake to include the mooring of two (2) 120-foot long barges (a crane barge and a conveyor barge) and the installation of four (4) temporary cluster-pile dolphins to facilitate large coal barge unloading while the previously authorized unloading pier facility is being constructed. The barges and dolphins will be removed upon completion of the coal pier, scheduled for July 1, 2007. Recommend approval with a royalty in the amount of \$2,000.00 for the commercial dolphins at \$500 each.

Royalty Fees (4 temporary commercial moorings @ \$500.00 each).....\$2,000.00  
Permit Fee.....\$ 100.00  
Total Fees.....\$2,100.00

**2E. WESTERN VIRGINIA WATER AUTHORITY, #06-1759,** requests authorization to replace an existing 30-inch sewer line with a new 36-inch sewer line by trenching to include seven (7) crossings of Mud Lick Creek totally 188 linear feet of stream crossing in the City of Roanoke and Roanoke County. Staff recommends standard instream construction conditions and a time-of-year restriction from March 15 through June 30 to avoid impacts during spawning season.

Permit Fee.....\$100.00

**2F. TAZEWELL COUNTY PUBLIC SERVICE AUTHORITY, #04-2798,** requests a modification to their previously issued permit to install a submerged sewer line beneath approximately 70 linear feet of the Bluestone River at three additional locations, adjacent to U.S. Route 19/460, to provide sewer service to area residents in Tazewell County. Recommend approval with our standard instream permit conditions and an instream work time-of-year restriction of April

15 - June 15 and August 15 - September 30 to minimize impacts upon Tennessee heelsplitters. Additionally, an updated mussel survey and relocation is required at crossing #3 no more than 30 days prior to construction.

No applicable fees-permit modification.

**2G. WASHINGTON COUNTY SERVICE AUTHORITY, 06-1077**, requests authorization to install a submerged water line beneath approximately 55 linear feet of Logan Creek and Stonemill Creek to provide potable water to area residents in the Blackwell Chapel area of Washington County. Recommend approval with our standard instream permit conditions and an instream work time-of-year restriction of February 15 – July 31 and August 15 – September 30 at Crossing #2 to protect spawning mussel and fish species. Additionally, permittee agrees to conduct any necessary mussel and fish surveys at Crossing #2 as recommended by the Department of Game and Inland Fisheries.

Permit Fee.....\$100.00

**2H. COLUMBIA GAS TRANSMISSION CORP., #06-1418**, requests authorization to install, by the dry-ditch or dam and pump method, a total of 461 linear feet of 24-inch looping pipeline a minimum of three feet beneath Stony Creek, Mill Creek, Holman’s Creek, and the North Fork of the Shenandoah River in Shenandoah County; Smith Creek in Rockingham County; Naked Creek in Page County; Swift Run in Greene County; and the South Anna River and Rock Creek in Louisa County as part of the Hardy Transmission Project. Staff also recommends time of year restrictions from March 15 – May 31 and August 15 – October 15 in the South Anna River in Louisa County, from April 15 – June 15 and August 15 – September 30 in the North Fork of the Shenandoah River and Smith Creek in Shenandoah County, and from May 15 – July 31 in Swift Run in Greene County as recommended by the Department of Game and Inland Fisheries based on initial mussel surveys conducted for this project. In addition, staff recommends a royalty of \$1,383.00 for the encroachment under 461 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (crossing 461 linear feet @ \$3.00/l. ft.).....\$1,383.00  
Permit Fee.....\$ 100.00  
Total Fees.....\$1,483.00

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

Commissioner Bowman asked VMRC Counsel if there was a need to hold a closed meeting. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel responded, no. There was no closed session held.

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**4. BURWELLS BAY IMPROVEMENT ASSOCIATION, #06-1231.**

Commission review, on appeal by the applicant, of the August 21, 2006, decision by the Isle of Wight County Wetlands Board to deny the applicants request to construct a 5-foot by 300-foot open-pile pier to include a 10-foot by 75-foot L-head; a parallel 5-foot by 50-foot "dock landing" section near an existing boat ramp; and three (3) 2-foot by 12-foot finger piers along the L-head to create 6 slips, with lifts, for use by members of the association at their property situated along the James River (Burwells Bay) at 14477 Burwells Bay Road in Isle of Wight County.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. Mr. Stagg requested that the record be opened so that staff could present information that would give the Commission a better orientation of the project and a rationale for the Wetlands Board's decision. His comments are a part of the verbatim record.

Associate Member Robins asked staff if this would be germane to showing the jurisdiction of the Wetlands Board. Mr. Stagg responded that it would show the rationale for the Wetlands Board's decision. **Associate Member Robins moved to open the record as requested by staff. Associate Member Fox seconded the motion. The motion carried, 6-0.**

Mr. Stagg explained that the site of this application was adjacent to a parcel of upland property owned by the Burwells Bay Improvement Association at the end of Burwells Bay Road in the northern end of Isle of Wight County along Burwells Bay (James River). The parcel of land was commonly referred to locally as the "Public Acre," "County Acre" or just the "Acre."

Mr. Stagg said that the Association submitted a Joint Permit Application on May 25, 2006, requesting authorization to construct a 5-foot by 300-foot open-pile, community use pier with a 10-foot by 75-foot L-head; a parallel 5-foot by 50-foot "dock landing" section near an existing boat ramp, and three (3) 2-foot by 12-foot finger piers along the L-head to create 6 slips with lifts.

Mr. Stagg stated that to properly understand the issues involved with this application a short history of the previous ownership, activities and structures at this location was

necessary. The portion of land now owned by the Burwells Bay Improvement Association was previously owned by the county and was considered a public landing area. The Association obtained ownership of the property from the County in 1959. There did not appear to be any transfer of ownership of any of the offshore structures included with this transaction. Going back even further, however, on July 6, 1925, Mr. Edwin T. Poole received from the Circuit Court “the right and privilege of erecting a wharf at the County landing at Burwells Bay on the condition, however, that the public shall have the right to use said wharf by the payment of the following charges: to wit, for packages, ten cents for each hundred pounds, or fractional part thereof, freight in ton lots at a rate of one dollar for each ton, for excursions of passenger boats at the rate of ten cents for each passenger or guest landed.....” The wharf that was authorized to begin 30 feet south of the northern property line and extend channelward 400 feet (more or less) with a 40-foot by 40-foot L-head, based upon the drawing submitted to the Court. It was unclear if this was what was actually constructed originally, but according to the history of the structures at this location provided by the Scott family (current owners of the structure remnants), everything that existed at the site was destroyed by the hurricane of 1933.

Mr. Stagg explained that a new building was constructed at this location, in 1934, again by Mr. Poole, using some of the original pilings. Mr. Poole added an additional walkway channelward of the building and “bath houses” for both men and women. The structure built in 1934 apparently had dimensions of approximately 64 feet by 64 feet and was approximately 125 feet channelward of mean low water. That new building was well in excess of anything the Court authorized. Mr. Poole continued to conduct business there until his death in 1945. After his death, the structure was apparently rented for two years and then sold to Tommy Sadler. It was resold to Aston Young and then to a Mary Wells. Dr. Darden then purchased the structures in the 1960’s and rented it to Nelson Moody. By this time the bathhouses were gone and most of the offshore pier was gone.

Mr. Stagg said that in the early 1980’s, Mr. Darden sold the structures to Mr. John Read, who placed the ownership into the name of Le Bay Inc. It was then used as a storage space for his construction business. The Bracey and Scott families obtained ownership in 1989 and they subsequently renovated the building for use as a family retreat. Throughout these transfers, it appeared that only the structures themselves were conveyed. It did not appear that any riparian rights were acquired when the Scott and Bracey families purchased the structures.

Mr. Stagg further said that in 1995, VMRC received an application from the Scott and Bracey families requesting authorization to construct a 110-foot long by 7-foot wide non-riparian pier with a 40-foot by 30-foot T-head platform that would extend channelward of the existing structures. Staff recommended denial of the additional structures, as requested, due to their size and a lack of water dependency. The Commission, however, approved that application.

Mr. Stagg stated that during Hurricane Isabel the entire structure was destroyed leaving only remnants of the pilings. The Scott family applied to rebuild the structure citing Governor Warner Executive Orders #'s 58 and 66. Staff wrote Mr. Scott in August of 2004, indicating that VMRC did not believe the structures met the requirements of the Executive Orders. Mr. Scott was sent an additional letter on December 3, 2004, informing him that if he wished to pursue reconstruction of any structures at this location the submission of a regular Joint Permit Application would be required. To date, no application had been submitted.

Mr. Stagg said that the Burwells Bay Improvement Association applied to the Commission to repair/replace their existing damaged boat ramp in 1996. A permit was issued for this work on June 27, 1996.

Mr. Stagg explained that the current application seeking authorization to construct the pier and lifts described above was received on May 25, 2006. The Isle of Wight County Wetlands Board held a public hearing on the application on August 21, 2006. Mr. David Epperley, representing the Association, explained the request to the Board. There was some discussion concerning the existing pilings at the site and if they would present a problem for boaters if the pier were constructed, as requested by the Association. Mr. Epperley indicated he did not believe they would cause any problems. Some discussion followed about why the pier could not be located along the southern end of the "Acre" where there were less remnant pilings. Mr. Epperley said the Association discussed this alternative, but they believed the pier would be more useful situated alongside the existing boat ramp. In addition, members of the Association use the other area for swimming.

Mr. Stagg stated that Mr. Forrest Scott spoke in opposition to the application at the hearing. He stated that construction of the pier would interfere with their intent to rebuild the previously existing structures. Mr. Scott was asked if they had access through the "Acre" to the water. He indicated they did not. They only had an easement for the prior septic system that was installed on the Association property. VMRC staff was then questioned about the status of the destroyed structures. The board was informed of the applications received from the Scott family after Hurricane Isabel, as noted above.

Mr. Stagg explained that County staff recommended denial of the project based mainly on the potential danger to boating related to the remnant pilings of the old pier and building. VMRC staff reminded the board that navigation issues related to this application and the remnant pilings would be addressed by the Commission before any permit was issued and that the primary focus of the Wetlands Board should be on any wetland impacts associated with the proposal. The public hearing was closed and a motion and second were made to deny the project, but no reason for the motion was given. There was no additional discussion, and the board voted 3-0 to deny the application with one abstention.

Mr. Stagg said that the Virginia Institute of Marine Science Shoreline Permit Application Report indicated the proposal would have minimal individual and cumulative adverse impacts. The shoreline along this reach was primarily a non-vegetated sand beach. The Virginia Department of Health, Office of Environmental Health, had both indicated that the project was acceptable. No other agencies had commented on the proposal.

Mr. Stagg went on to explain that while the Isle of Wight County Wetlands Board clearly had some concerns about safety related to the proposed location of the pier, the applicant seemed to address this issue with the board. Additionally, the protestants, while having some potential ownership and legal liability for the remnant pilings at this location, had not been granted any authorization to reconstruct those structures. In addition, they did not appear to have any riparian rights along this shoreline so any reconstruction would seem to clearly infringe on the riparian property rights of the Association. The Wetlands Board did not give any rationale for their decision to deny this project. As a result, staff recommended that the Commission remand this matter back to the Wetlands Board for their reconsideration, with the direction that they fully consider the wetland impacts and that any future decision on the proposal be accompanied by a concise rationale for their decision.

Commissioner Bowman asked if the applicant was present?

David Epperley with Burwells Bay Improvement Association was sworn in, but did not comment.

Commissioner Bowman asked if a representative from the Wetlands Board was present? No one was present.

Commissioner Bowman asked if the Commission had any questions for Mr. Epperley. There were none.

Associate Member Robins stated that staff had it right. It can be seen in the Wetlands Board record that they looked at issues that were not under their jurisdiction, and did not give a justification for their decision. **He moved to remand the matter back to the Wetlands Board and asked for a justification for their decision. Associate Member Schick seconded the motion. Commissioner Bowman stated that he was in agreement with Associate Member Robins after reading the record. He explained that there was no evidence to consider as to whether the Wetlands Board was correct or not. The motion carried, 6-0. The Chair voted yes.**

Wetlands Appeal-Remanded back to the Wetlands Board.

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5. **MR & MRS. JOHN MAGANAS, #06-1663**, request authorization to install a 179-foot long stone riprap revetment situated adjacent to their property along Chesconessex Creek in Accomack County. A Coastal Primary Sand Dune/Beach permit is required.

Heard later so that Associate Members representing the Eastern Shore would be able to participate in the hearing. Traffic problems on the CB Bay Bridge Tunnel had caused their delay.

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6. **RICHARD BIEMILLER, #06-0529**, requests authorization to construct a 288-foot long by 5-foot wide open-pile community pier with a 16-foot by 4-foot finger pier and a 12-foot by 4.5-foot aluminum ramp for access to a 22-foot by 6-foot wide floating dock section and a 90-foot by 6-foot floating T-head with four (4) 24-foot by 4-foot wide finger piers and 14 mooring piles to accommodate a total of 11 slips adjacent to his property situated along the Eastern Branch of the Elizabeth River in Norfolk. An adjacent property owner protested the project.

Traycie West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that the property was located on the Eastern Branch of the Elizabeth River, immediately downstream of the Military Highway (U.S. Rt. 13) Bridge, and across from the mouth of Kings Creek in Norfolk. The proposed community pier was designed to serve a new nine lot residential subdivision. This section of the Elizabeth River was primarily a residential area with numerous private piers along both sides of the river. The river was over 700 feet wide at this location.

Ms. West further explained that according to the application drawings, only four (4) lots and the small individual community parcel from which the community pier would originate were riparian properties. The applicant had severed the riparian rights of all four (4) riparian properties through deed restrictions to preclude the construction of individual private piers. The community pier would be the only structure providing water access to property owners within the new subdivision.

Ms. West stated that an adjacent property owner, Mr. Richard Wilson objected to the community pier. His concerns focused on the encroachment of the pier into the waterway and the number of slips proposed. He was also concerned that the approval of this facility would lead to other property owners requesting piers of similar dimensions.

Ms. West said that there was no federal navigation channel in this section of the Elizabeth River. The Army Corps of Engineers had not yet completed their assessment of the wetland impacts associated with the residential development portion of the application.

Therefore, they had not yet issued permits for the pier portion of the project either. ACOE staff had indicated through email, however, that they had no issues with the pier proposal.

Ms. West stated that the Department of Health had stated that the facility was in compliance with their "Sanitary Regulations for Marinas and Other Places Where Boats are Moored." The Virginia Institute of Marine Science (VIMS) noted that the design of the pier seemed to create more boat slips than there were riparian properties. Although VIMS was in support of the utilization of a community facility over multiple individual private piers, they did note in their report that the number of slips should not be predicated on the total number of units on a property. The Norfolk Wetlands Board had previously considered the wetland impacts associated with the upland development and had approved the project with compensatory mitigation. There are no oyster ground leases in the vicinity.

Ms. West said that staff generally supported a community pier approach to provide a central point of water access for communities with riparian property. One community pier was typically recommended over numerous individual private piers given the cumulative environmental and aesthetic impacts involved. However, in considering the number of waterfront lots (four) and the total number of lots within the subdivision (nine), staff could not support a request for 11 slips. As a result, staff recommended denial of the project, as proposed. However, 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 could recommend approval of the community pier provided the applicant would agree to eliminate at least two (2) slips. Given that there were four riparian lots within the subdivision, and for the purposes of evaluating the proposal, had each riparian property owner constructed their own private non-commercial pier and moored two vessels at each, eight slips plus one guest slip, for a total of nine (9) slips, appeared justified. Such a reduction in slips could be easily accomplished through the removal of the small finger pier, which had been proposed for placement along the spine of the main pier.

Ms. West said that should the Commission elect to approve the community pier, staff recommended a royalty based on the total square footage of the bold outline footprint including the pier, slips, and any other approved appurtenances, at a rate of \$1.50 per square foot. If approved, staff also recommended that the applicant be required to create and implement a marina management plan that included education of residents and specific plans to handle waste and any contaminant spills.

Richard Calvert, agent and contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Calvert said they agreed with the staff recommendation to revise and eliminate 2 slips, and would educate the homeowners on wetlands and the marina use. He said depth soundings were taken in an effort to determine the best location for the construction. He said the homeowners had agreed not

to seek piers of their own. He said the bridge influenced how the area was navigated. He said the lighting at night would be low voltage. He stated that the staff had been a great help and had done a great job.

After some discussion, Commissioner Bowman asked if anyone was present pro or con to address the Commission on this matter. There was no one.

**Associate Member Fox moved to accept the staff recommendation for approval with the deletions of the finger pier as well as the two boat slips. Associate Member Robins seconded the motion. The motion carried 6-0-1. Associate Member Tankard abstained, as he had arrived after the presentation and during the motion vote. The Chair voted yes.**

Royalty Fee (encroachment 5,641 sq. ft. @ \$1.50 sq. ft.).....	\$8,461.50
Permit Fee.....	\$ 100.00
Total Fees.....	\$8,561.50

Associate Member Tankard arrived at approximately 10:12 a.m.

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Commissioner Bowman explained that they would continue with Item 7 and go back to Item 5 when Associate Members Bowden and Holland arrived.

- 7. **RICHARD G. PULLEN, #06-0626**, requests authorization to install 170 linear feet of concrete bulkhead; to install three (3) 50-foot long by 2.5 foot wide concrete, groins; and to replace a dilapidated concrete boat ramp with a 12-foot wide by 25-foot long concrete, community boat ramp, adjacent to his property situated along the Rappahannock River in Caroline County. Both Wetlands and Subaqueous permits are required. The project is protested by adjacent and nearby property owners.

Associate Member Holland arrived at approximately 10:17 a.m. and Associate Member Bowden arrived at approximately 10:20 a.m.

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

Mr. McGinnis explained that the project was located along the Rappahannock River, near Portobago Bay in Caroline County. The property on which the project was currently proposed included a deeded right of access to the river and “boat landing” for the use of other property owners in the community. Existing structures along the shoreline were limited to the remnant pilings of a former pier and a dilapidated boat ramp composed of broken concrete.

Mr. McGinnis further explained that the applicant was proposing to install 170 linear feet of pre-cast concrete bulkhead; three (3) pre-cast, concrete groins, and to replace an existing boat ramp with a 12-foot wide by 25-foot long community boat ramp constructed of pre-cast, modular concrete "Sea-Logs." In addition to the proposed subaqueous impacts, the proposed bulkhead, groins, and boat ramp would impact both vegetated and non-vegetated tidal wetlands under the Commission's jurisdiction. At this time, the applicant had not submitted a proposal for compensation or mitigation of the tidal wetland impacts attributable to the proposed project.

Mr. McGinnis said that since Caroline County had not yet adopted the model Wetlands Zoning Ordinance, the Marine Resources Commission was responsible for administering the provisions of Chapter 13 (Wetlands) of Title 28.2 of the Code of Virginia in that locality. As a result, the Commission would be acting as the Wetlands Board for those portions of the project involving tidal wetlands, as well as the encroachments over State-owned submerged land.

Mr. McGinnis explained that Mr. James Carr, an adjacent property owner, in his March 20, 2006 letter stated that he objected to the proposed project. It appeared that Mr. Carr was concerned about the potential impact of the groins to his downstream property, the proposed grading of the bank adjacent to his property for access to the proposed boat ramp, and the loss of his deeded right of access in its current location. Mr. Carr's letter of protest was followed by a second one, dated September 10, 2006, in which he reiterated his objection to the proposed project, including the three proposed groins. In addition to the objections of Mr. Carr, staff had spoken by telephone with Ms. Angela Hensley-Lay representing her father, Mr. Carl Hensley, a nearby property owner with rights to deeded access across the applicant's property along with the use of the boat ramp. Ms. Hensley-Lay had expressed their objection to Mr. Pullen's proposed project, and was concerned over the potential loss of their current access to the river and boat ramp.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) in their Shoreline Permit Application Report, dated September 13, 2006, stated that the shoreline appeared to be relatively stable and did not show much damage from recent Tropical Storm Ernesto. In VIMS's opinion, if an erosion control structure was considered justified, the use of riprap was the preferred alternative to dissipate wave energy and lessen the potential for scour of existing wetlands by reflected wave energy. They also recommended relocating and minimizing the width of the proposed boat ramp to lessen the adverse impacts to vegetated and non-vegetated wetlands. VIMS did not recommend the installation of groins since they would directly impact vegetated wetlands. There did not appear to be adequate sand in the system to justify the use of groins, and because their design was not low profile, they would be expected to exacerbate downdrift impacts. Their report went on to state that compensation should be considered for all unavoidable impacts to tidal wetlands. No other agencies had raised concerns or objections to the project.

Mr. McGinnis explained that while staff was sensitive to the concerns of the protestants, staff believed that the issues concerning the deeded access easement and the proposed grading of the bank were upland issues outside of the Commission's jurisdiction. However, in light of the comments and recommendations provided by VIMS and the objections of the protestants, and in consideration of the requirements of §28.2-1302 (9), as well as our Wetlands Guidelines and Wetlands Mitigation-Compensation Policy, staff could not support approval of the proposed groins since there appeared to be little need or justification for their use. The resulting impacts to downstream property owners might be significant. Staff preferred to see the use of riprap rather than a vertical bulkhead. After considering the minor impact of the bulkhead, which was aligned at the uppermost limit of tidal wetlands, staff was not inclined to recommend denial of that portion of the proposed project. Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of tidal wetlands and State-owned submerged land could be avoided or should be minimal, and after considering all of the factors contained in Sections 28.2-1205 (A) and 28.2-1302 of the Code of Virginia, staff recommended that the bulkhead and community boat ramp be approved as proposed. Staff also recommended that the three proposed groins be denied.

Mr. McGinnis stated that staff recommended a royalty in the amount of \$90.00 be assessed for the encroachment of the community boat ramp over 180 square feet of State-owned subaqueous land at a rate of \$0.50 per square foot. If the Commission chose to approve the proposed groins, staff recommended the assessment of a royalty for the resulting encroachment at the same rate. Should the Commission choose to approve the project, as proposed, staff would recommend that the permit not be issued until an acceptable compensation plan, consistent with our Wetlands Mitigation-Compensation Policy, and designed to offset the anticipated wetland loss, had been provided to and approved by staff.

Richard Pullen, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Pullen explained that he was trying to make the boat ramp more accessible by improving access for all concerned. He said there were no complaints with the project and they just wanted the road to be built when other work gets done. He said he was working to make all parties happy. He said he preferred a seawall over rip rap as he would be able to build back and save his walnut tree. He stated he was trying not to lose any more trees by doing the bulkhead instead of the rip rap

Warren Veazey, applicant's contactor, was sworn in and his comments are a part of the verbatim record. Mr. Veazey explained that by putting in a bulkhead, vertical height of the shoreline was gained. He further explained that groins in front of a bulkhead would avoid the scouring of the bulkhead. He said the groins were proposed to maintain the beach. He said with the groins shortened they would not trap sand, as they would be designed to only keep the existing sand in place.

**Commission Meeting**

Angela Hensley-Lay, property owner, representing her father, the adjoining property owner, was sworn in and her comments are a part of the verbatim record. Ms. Hensley-Lay stated that they were not opposed to the project and that their only concern was keeping their deeded right of access to the road. She said she felt that the prior approval of the road was needed to insure that they still had access and everything else to be approved after that was done.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, explained that this was not within the VMRC’s jurisdiction.

Mr. Pullen said that he was going to Caroline County after the hearing to pick up the final survey for the road and the building permit at the same time.

In his rebuttal, Mr. Pullen stated that he was doing all that he could to get all approvals. He said he was trying to be a good neighbor.

Associate Member Schick asked for comments from the VIMS representative. Todd Herbert, VIMS, stated that they preferred a revetment, as scouring in front of the bulkhead could have an impact on the wetlands. He said that groins were not necessary, and that low-level structures were better.

Associate Member Robins stated that he felt that what was proposed, i.e., harding of the shoreline, was for a high-energy area, which was not the case in this location. He said both VIMS and VMRC staff were right when they said a groin field was not justified nor was a bulkhead because of the potential scouring. He said he agreed that a rip rap revetment was the best method to use here to stabilize the shoreline.

**Associate Member Fox moved to accept the staff recommendation to delete the groins, add rip rap revetment as a substitute for the bulkhead and approve the community pier. Associate Member Robins seconded the motion. The motion carried, 7-2. Associate Members McLeskey and Schick both voted no. The Chair voted yes.**

Royalty Fees (encroachment 180 sq. ft. @ \$0.50/sq. ft.)....	\$ 90.00
Permit Fee (Subaqueous).....	\$ 25.00
Permit Fee (Wetlands).....	\$ 10.00
Total Fees.....	\$125.00

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5. **MR & MRS. JOHN MAGANAS, #06-1663**, request authorization to install a 179-foot long stone riprap revetment situated adjacent to their property along Chesconessex Creek in Accomack County. A Coastal Primary Sand Dune/Beach permit is required.

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

Mr. Badger explained that the project was located in Crystal Beach, a small beachfront community lying one mile northwest of South Chesconessex near the mouth of Chesconessex Creek. The community was established in the late forties or fifties.

Mr. and Mrs. Maganas proposed to install a 2-foot high, stone riprap revetment along the face of the existing primary sand dune on their property at 16293 Crystal Beach Road. The revetment would then be covered with beach quality sand and sprigged with American beach grass. The new channelward relocation of the dune would place the toe within three feet of mean high water.

Mr. Badger said that the applicant had stated that over time, erosion was causing a shoreline recession along this reach of shoreline. The Maganas's cottage was setback from mean high water approximately 77 linear feet.

Mr. Badger stated that the County of Accomack had not yet adopted the model Coastal Primary Sand Dune and Beach ordinance. As a result, the Commission was responsible for administering the provisions of that ordinance within the locality. Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers on Thursday, September 7, 2006, to accept public comments on the project. Ms. Ellen Grimes, the applicant's agent, was the only one to attend the hearing, and no public opposition had been received on the project to date.

Mr. Badger explained that the Virginia Institute of Marine Science (VIMS) had reviewed the project and stated that from a marine environmental perspective, the placement of rock or any armoring of structures on coastal primary sand dunes was undesirable. They further stated that the proposed approach would not be particularly effective in protecting the applicant's property and might actually accelerate the erosion by disrupting the natural deposition of materials within the dune system. They encouraged the applicant to pursue a joint breakwater system with adjacent property owners in order to provide a more appropriate and effective shoreline protection alternative for the entire shoreline reach. In an effort to determine the long-term erosion rate at the project site, staff contacted Scott Hardaway from VIMS. Mr. Hardaway evaluated the specific shoreline location and concluded that the erosion rate was approximately 1.2 feet per year. This information was based on the years from 1938 to 2002.

Mr. Badger stated that the Department of Conservation and Recreation had documented the existence of the Northeastern beach tiger beetle in the vicinity and recommended

coordination with the United States Fish and Wildlife Service (USFWS) and the Virginia Department of Agriculture and Consumer Services (VDACS). The Department of Game and Inland Fisheries (DGIF) anticipated no significant adverse impacts upon threatened and endangered wildlife resources, even though their records do show the Federal and State Threatened Northeastern beach tiger beetle less than two miles from the project. They also recommended coordination with the United States Fish and Wildlife Service (USFWS) and the Virginia Department of Agriculture and Consumer Services (VDACS).

Mr. Badger said that since the project was landward of mean high water and not on vegetated wetlands, the U.S. Army Corps of Engineers (USACE) had stated that neither a Section 10 nor Section 404 permit was required.

Mr. Badger stated that Mr. and Mrs. Maganas' plan would physically alter the existing costal primary sand dune. The relocation of the dune by artificial means to a more seaward location was likely to result in a loss of the sand stored in the dune and possibly the dune itself. This would reduce the integrity of the dune line and compromise the ability of the dune to protect structures from storm flooding and erosion. §28.2-1401 (B) of the Code of Virginia, "Powers and duties of the Commission" states, "The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features."

Mr. Badger further stated that the Coastal Primary Sand Dunes/Beaches Guidelines, Section IV, states, "No permanent alteration or construction upon any coastal primary sand dune shall take place which would, impair the natural functions of the dune, physically alter the contour of the dune or destroy vegetation growing on the dune. Activities contrary to these standards will be permitted only if the Commission finds that there will be no significant adverse ecological impact from the proposal, or that granting a permit for the proposal was clearly necessary and consistent with the public interest." Given that the applicants' cottage is setback from the water 77 feet and that the property had a long-term erosion rate of only 1.2 feet a year, the revetment seemed unnecessary. Accordingly, after evaluating the merits of the project against the concerns expressed by VIMS, and in keeping with the Coastal Primary Sand Dunes/Beaches Guidelines and §28.2-1401 (B) of the Code, and after considering all of the factors contained in §28.2-1403(10) of the Code of Virginia, staff recommended that the proposed stone riprap revetment be denied.

**Associate Member Holland stated that he felt this was a good solution and moved to approve the applicant's request. Associate Member McLeskey seconded the motion.**

Associate Member Fox stated he felt that if the Commission did not let him do something, it would mean the dune would be lost. He said doing nothing would be wrong.

Associate Member Schick stated he felt to do this would not solve the problem, only increase the neighbors' problems. He said no one else had any interest in doing an offshore breakwater, but what was proposed would not help and not doing anything would not help either.

Associate Member Robins stated that he sympathized with the applicant. He acknowledged that what seems to be a small loss was significant to the owner. He said that VIMS concerns with what was proposed would not be a long-term solution and might accelerate the problem. He said they recommended that a breakwater system would be best and encouraged going in that direction. **He offered a substitute motion to deny the project, as proposed.**

Associate Member Tankard explained that the Code said that the Commission's responsibility was to preserve and protect the sand dunes. He said that living on the bayside of Eastern Shore this was the way the dunes look and when living along the waterfront shoreline was lost. He stated that the proposed project would destroy the neighbors' properties. He said given what the Code said, he agreed with Mr. Robins. **He seconded the substitute motion.**

Associate Member Fox asked if an offshore breakwater would help. Lyle Varnell, VIMS, explained that the effectiveness of a breakwater would depend on the shoreline size. He said this was a very low area so erosion was occurring at a modest rate of 1.2 feet per year. He said the structure landward of the dune had maintained the dune and beach and an offshore breakwater would help to preserve the sand, but he was not sure how much as the wind and waves were a factor. He further said that the dune feeds the beach, which prevents erosion. He said rip rap would divert the sand, losing the sand that would go from the dune to the beach.

Associate Member Schick stated that he felt that VIMS and the applicant needed to talk as this proposal was not a short- or long-term solution. He said the occurrence of storms do a lot of erosion. He stated that he supported the substitute motion.

Commissioner Bowman said that he agreed with Associate Member Tankard in regards to his comments about the Code. He said as VIMS had pointed out they do not assist the applicant unless they are asked to by the applicant. He said before the Commission does anything it should have all information possible. He asked for a vote on the substitute motion.

**The motion carried, 8-1. Associate Member Holland voted no. The Chair voted yes.**

No applicable fees-Permit Denied.

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8. **KEN MURDOCK, #05-1559**, requests authorization to construct four (4) 6-foot wide by 50-foot long stone and/or gabion basket breakwaters, artificially nourished with approximately 444 cubic yards of sand of appropriate grain size and composition, adjacent to his property situated along Glebe Creek in Westmoreland County. An adjacent property owner protested the project.

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

Mr. McGinnis explained that the proposed project was located in a residential area along Glebe Creek in Westmoreland County, near the Town of Tidwells. The applicant was seeking authorization to install four (4) 6-foot wide by 50-foot long breakwaters, which would extend approximately 30 feet channelward of mean low water. The breakwaters were proposed to be constructed of gabion baskets and/or riprap, and would be artificially nourished two years after the breakwaters were installed, if needed, with up to 444 cubic yards of clean sand. The applicant's property included banks ranging from approximately three to four feet in height, with some undercutting. The current proposal also included 50 linear feet of riprap revetment installed landward of mean low water and adjacent to an existing private pier. The Westmoreland County Wetlands Board had approved that riprap on September 19, 2005.

Mr. McGinnis stated that by letter dated June 13, 2006, Mrs. Jane D. Whitcomb, an adjacent property owner, stated her objection to Mr. Murdock's proposed project. In particular, Mrs. Whitcomb felt that the proposed breakwaters would result in shoaling off of her property, would impede access to her pier and boat lift, and would deprive down-drift properties of sand and increase erosion rates. Mrs. Whitcomb suggested the creation of a vegetated intertidal zone or marsh grass fringe, in conjunction with riprap to solve Mr. Murdock's erosion problems and protect his shoreline.

Mr. McGinnis said that the Virginia Institute of Marine Science (VIMS) in its Shoreline Permit Application Report, dated September 14, 2005, stated that the low sills (breakwaters) should help dissipate wave energy and protect Mr. Murdock's shoreline. VIMS did not, however, recommend the use of gabion baskets in marine environments. Instead, they recommended the use of a more traditional riprap construction.

Mr. McGinnis said that the Department of Game and Inland Fisheries (DGIF), in an e-mail dated February 15, 2006, indicated that they did not anticipate a significant adverse impact upon threatened or endangered wildlife resources under their jurisdiction. They further recommended incorporating wetland, mudflat, and/or vegetated dune features into the design, and that strict erosion and sediment control measures be employed.

Mr. McGinnis stated that the Department of Conservation and Recreation (DCR), in a memorandum dated March 6, 2006, stated that they did not anticipate that the proposed project would result in any adverse impacts upon natural heritage resources, state-listed

plants or insects, or State Natural Area Preserves. Their memo went on to state that all proposed land disturbance, clearing, or grading must comply with the Chesapeake Bay Preservation Area Designation and Management Regulations.

Mr. McGinnis said that the Shoreline Erosion Advisory Service (SEAS) of DCR, in a letter to Mr. Murdock dated July 31, 2006, recommended the installation of a riprap breakwater, nourished with good-quality sand and planted with wetland vegetation to address the erosion issues in an attempt to establish a fringe marsh along Mr. Murdock's property.

Mr. McGinnis stated that no other State agencies had raised any concerns or objections to this project.

Mr. McGinnis said that while staff was sensitive to the concerns of the protestant, the project design called for the breakwaters to be installed inboard of the protestant's pier and boatlift, and at a distance that any shoaling should be limited to the area immediately adjacent to the shoreline next to the nearest breakwater. The breakwaters might actually benefit the protestant's shoreline, which abuts the applicant's property, by providing an additional buffer from erosion. However, staff could not support the placement of nourishment behind the proposed breakwaters since construction access was proposed by barge and because the nourishment could disrupt natural sediment transport along the shoreline in this low-energy environment. Additionally, staff could not support the use of wire gabion baskets for the construction of the proposed breakwaters, and would instead prefer the Commission require the use of riprap construction for each breakwater.

Mr. McGinnis stated that accordingly after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the breakwaters be approved as proposed. Staff further recommended that the proposed breakwaters be constructed of riprap only and that the proposed nourishment of the groins be denied.

Mr. McGinnis said that if the Commission were to approve the placement of nourishment material behind the proposed breakwaters, staff recommended the assessment of a one-time royalty in the amount of \$300.00 for the encroachment of any nourishment over 6,000 square feet of State-owned subaqueous land at a rate of \$0.05 per square foot.

As Commissioner Bowman was not present, Associate Member Holland assumed the duties of chair. Associate Member Holland asked if the applicant was present and wished to address the Commission.

Kenneth H. Murdock, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Murdock stated that he wanted to reserve the right to use either

gabions or stone as he was trying to preserve his shoreline. He said the State encouraged offshore breakwaters as the best solution. He said he had owned the property for 4 years and the increased traffic on the water was eroding the marshland and the gabion option on that side was the cheapest and most effective. He said a gabion had a life of 25 years, which he felt was a long time. He explained that crabbers and people with jet skis use this area. He said that the chairman of the Wetlands Board used gabion baskets and nourishment on his shoreline. He said he wanted to wait two years to see what nature would do, but all of the agencies were telling him to nourish now. He said he still wanted to put in gabions and/or stone and would accept the staff recommendation of no beach nourishment. He said he preferred his original proposal and asked for a waiver of the fees.

Associate Member Holland asked if anyone was present pro or con in this matter. There were none.

Associate Member Fox stated that in the VIMS' report they recommended rip rap not gabions. Todd Herbert, VIMS, responded that baskets deteriorate, thus causing a secondary impact and if not stacked properly it all could collapse.

Associate Member Tankard asked about the use of galvanized steel wire. Mr. McGinnis responded that over time or in a storm, the rocks would rub off the PVC and the baskets then deteriorate.

Associate Member Schick asked if this was considered to be a high-energy area. Mr. McGinnis responded that the Glebe was a pretty sheltered, fairly quiet area most of the time.

Associate Member McConaugha asked why staff objected to the nourishment. Mr. McGinnis responded that the nourishment was not necessary, as this was a low energy area. He said there was a spit there and not much was moving into the creek as it trapped the sand that was moving and starved the rest of the creek. He said a new application for the nourishment could be submitted for staff's re-review and determination of appropriate amounts to be used.

Associate Member Tankard asked if the erosion was less than 1 foot per year. Mr. McGinnis responded he thought that number came from a publication by VIMS.

**Associate Member Fox moved to accept the staff recommendations to approve the breakwater as proposed, rip rap only, no nourishment and no fees. He said another application would be accepted at a later date for the nourishment with the VMRC staff and VIMS' approval. Associate Member Robins seconded the motion. The motion carried, 8-0-1. Commissioner Bowman abstained, as he was not present during the earlier presentation.**

Permit Fee.....\$100.00

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- 9. **JOSEPH SULLIVAN, 06-0359**, requests authorization to construct a 1,224 dual-slip open-sided boathouse at his property situated along the James River in Charles City County. An adjoining property owner protested the project.

Bob Grabb, Chief, Habitat Management, announced that the protest for this project had been resolved and the request could be handled administratively.

Protest Resolved-This matter can be handled administratively.

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Commissioner Bowman adjourned for lunch at approximately Noon. The Commission reconvened at approximately 12:45 p.m.

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- 10. **MICHAEL E. NEWHOUSE, #06-1422**, requests authorization to construct a 30-foot by 15-foot open-sided boathouse near the channelward end of his private, noncommercial open-pile pier situated along the Piankatank River in Gloucester County. An adjacent property owner protested the project.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation and his comments are a part of the verbatim record.

Mr. Neikirk explained that the property was situated along the Piankatank River in Gloucester County, approximately 1.5 miles upstream of the Route 3 bridge crossing. The river is approximately 1/2 mile wide at the project site. According to the application, the mean low water depth at the channelward end of the existing pier was approximately minus five (-5) feet. Development along the shoreline in the vicinity of the project is primarily residential. Mr. Newhouse proposed to construct a 30-foot by 15-foot open-sided boathouse to cover a boatlift at the channelward end of a 350-foot long private pier. The boathouse was designed to cover a 20-foot boat.

Mr. Neikirk stated that an adjoining property owner, Ms. Cheryl Walker protested the project. She believed the existing pier and boatlift were already close to her extended property line and that the proposed boathouse would adversely affect the aesthetics and value of her property. She suggested relocating the boatlift and proposed open-sided boathouse to the other side of the pier. The proposed boathouse would not encroach over any public or privately leased oyster planting ground, and no State agencies had commented on the project.

Mr. Neikirk said that the existing pier and boatlift were applied for in 2002, and staff determined at that time that they met the exemption for private piers contained in §28.2-1203(A)(5) of the Virginia Code. During the review of the application in 2002, the alignment of the pier was revised and the pier did not angle as dramatically toward the Walker property as depicted in the current application. Nevertheless, although the pier originates approximately 100 feet from the shared property line with Ms. Walker, the pier does angle toward the imaginary extension of their shared property line and the existing boatlift and proposed boathouse were located along the upriver side of the pier closest to the Walker property. The existing boatlift was low profile and the pilings were too short to be utilized to support the proposed boathouse. Accordingly, since new pilings would need to be driven for the boathouse, staff did not believe it was unreasonable to require that the boathouse be repositioned on the downriver side of the pier to minimize encroachment and impacts on the adjoining property owner. Therefore, staff recommended approval of the open-sided boathouse conditioned on it being located on the downriver (southeast) side of the existing pier.

Michael Newhouse, applicant, was sworn and his comments are a part of the verbatim record. Mr. Newhouse explained that he had had a new survey done of his property and the pier was 67 feet from the Walker property. He was told that if the lift were left in, then the work could be done in 6 months.

Associate Member Fox asked if the lift was left, then new pilings would be installed for the boathouse. Mr. Newhouse said that if he had to relocate some of the structures as requested by Ms. Walker, the contractor he would use said it would cost twice as much and take much longer than 6 months.

Commissioner Bowman asked for anyone pro or con who wished to address the Commission in this matter.

Cheryl Walker, adjoining property owner and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Walker asked if the photo with the trees could be put back up on the screen to assist her. She said there was a beautiful view and only residential and farm land. She said she was sorry she did not say something when the pier was being applied for in 2002. She said she did not realize what effect there would be with a 350-foot pier and at the end a boatlift with a large light for night water traffic. She said the way it was set and with the added boathouse the aesthetics as well as her property value would be affected. She said she hoped the Commission would consider them and her investment when making their decision.

Associate Member Schick asked when her covered boathouse was constructed. Ms. Walker stated it was already there when she bought the property. He asked her if she had ever considered removing the cover on the boathouse. She responded no, because it would be helpful if she ever sold the property.

Associate Member Bowman asked her if she were to sell her other property would she require something in the agreement to exclude anyone from putting in a pier and boathouse. Ms. Walker said she was not sure what the future held for her so it would not be wise to do that. She said she planned to stay there the rest of her life.

Mr. Newhouse in his rebuttal stated that the length of the pier was to where the river curved and it was 3 feet to 4 feet deep at low tide. He explained that he was the biggest developer in the area and development on his property had helped the neighbors.

**Associate Member Schick moved to approve the project as applied for by the applicant. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Permit Fee.....\$25.00

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- 11. COWLES SPENCER, #06-0098**, requests authorization to construct a 40-foot by 32-foot open-sided, dual-slip boathouse at a previously authorized pier adjacent to property situated along the Poquoson River in York County. An adjacent property owner protested the project.

Deferral granted, no further action taken.

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- 12. COLETT THACH, ET AL., #06-0881**, requests authorization to install a 310-foot long by 42.5-foot wide stone causeway across the Rivanna River to facility the removal of the Wollen Mill Dam in Albemarle County. Several residents in the vicinity protested the project.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that Wollen Mill Dam was a privately owned, stone block and timber crib dam spanning 270 linear feet across the Rivanna River in Albemarle County near the City of Charlottesville. It was constructed in 1830 and was in use until 1920. The associated mill closed in 1964. The Rivanna Conservation Society (RCS), in conjunction with the owners, had submitted a Joint Permit Application requesting authorization to partially breach the dam in order to allow passage for anadromous fish and increase public safety. This dam was the first impediment to fish migration on the Rivanna River. The RCS anticipates the project will enhance the overall health of the waterway.

Ms. West further explained that authorization from this agency was not required for removal of structures located on State-owned submerged lands. Therefore, no permit was necessary for the removal of the dam. However, in order for equipment to access the structure, the applicant requested authorization to install a temporary stone fill causeway within the Rivanna River. That portion of the project did require Commission authorization.

Ms. West said that it was anticipated that the causeway would most likely be in place for no more than a few weeks, but at the maximum, up to six months. The applicants had stated that the causeway would be completely removed at the completion of the project and that the area would be restored to preexisting conditions and contours.

Ms. West stated that several residents in the vicinity protested the project. The protest letters initially focused on opposition to the removal of the dam. Staff notified each protestant that only the construction of the rock causeway was within the jurisdiction of the agency. Only one protestant, Mr. Roger Voisinet, renewed his opposition by stating he was also opposed to the construction of the causeway. His concerns included that breaching the dam, and the resulting reduction in water depths above the dam, would allow people from the public park to cross the river and trespass on his property and the property of his neighbors. Mr. Voisinet had experienced problems with theft of small recreational vessels from his yard and anticipated this problem would occur again. In addition, he doubted that shad would utilize the waterway upstream of the dam and he believed the removal itself would cause damage to the waterway.

Ms. West said that the Department of Game and Inland Fisheries had reviewed the project and recommended that the project be undertaken during low flow conditions (July through December), that strict erosion and sediment control techniques be employed, that coordination with the Department be utilized to minimize potential impacts to freshwater mussels, and that a time-of-year restriction from April 1 through June 30 should be applied to avoid potential adverse impacts on anadromous fish.

Ms. West also said that the Virginia Department of Historic Resources had coordinated closely with the applicant and the U.S. Army Corps of Engineers through the requirements of Section 106 of the Historic Preservation Act to ensure proper preservation of this historic resource. The Army Corps of Engineers issued Nationwide permits #27 and #33 for the project and the Department of Environmental Quality issued a "no permit necessary" letter in June 2006.

Ms. West explained that the scope of the Commission's jurisdiction consisted solely with the construction and removal of the causeway. After evaluating the merits of the portion of the project that lies within the jurisdiction of this agency against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project as proposed with the inclusion of the recommendations made by the Department

of Game and Inland Fisheries, our standard instream construction conditions, and with the stipulation that the stone causeway be removed in its entirety and the stream bed be restored to its pre-construction conditions following the completion of the project.

Jason Halbert, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Halbert provided the Commission with a power point presentation, which he reviewed for them. He said it had taken 3 years working towards this project of removing the dam. He said the reason for breaching this dam was for safety reasons and the goals were to restore habitat. He said that most of the Community supported the project and they had advertised this project a lot. He said the representative from the Department of Game and Inland Fisheries was present to address the restoration of the shad to the Rivanna River.

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

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

Permit Fee.....\$100.00

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**13. OYSTER GROUND APPLICATIONS IN THE NAME OF SHARON CARR; WILLIAM KENTON CARR; SHARON CARR AND KENT CARR; AND KENT CARR SEAFOOD COMPANY, #, 2006-062, 2006-063, 2006-064, 2006-065.** This was a hearing concerning the leasing of four protested applications within Mobjack Bay in Mathews County. The Commission has also received a petition requesting that the same area be set-aside as public clamming ground pursuant to the §28.2-632 of the Code of Virginia.

Deferral granted, no further was action taken.

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**14. PURSUANT TO THE PROVISIONS OF THE CODE OF VIRGINIA, §28.2-553,** request for Commission approval of establishment of the boundaries of additional Baylor Ground in Isle of Wight County based on §28.2-649 (Chapter 294 of the Acts of Assembly of 1901-1902) and that previously leased oyster grounds lying within this area be terminated in keeping with the Constitution of Virginia (Article XI, § 3).

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

Mr. Stagg explained that the site of this additional public ground was inshore and to the east of existing Public Ground Number 1, Isle of Wight County, near Days Point at the mouth of the Pagan River and within the James River.

Mr. Stagg further explained that the Engineering/Surveying Department recently discovered information indicating that additional public ground, pursuant to the Code of Virginia, Chapter 12, Section 28.2-649 (established by the General Assembly in Chapter 294 of the Acts of Assembly of 1901-1902), was not shown on the VMRC oyster lease maps. This Act declared certain grounds within the James River, in the County of Isle of Wight, known as Day's Point Long Rock, to be a natural oyster bed, rock or shoal. The result of this legislation was the inclusion of an area immediately adjacent to Public Ground No. 1 of Isle of Wight County as part of that Public Ground.

Mr. Stagg said that unfortunately, this area had not been properly mapped or shown on our oyster lease maps for the past thirty-five years or longer. Due to comments from working watermen that this area was traditionally worked during the public season, staff researched and discovered the Code section noted above and had now mapped the area described in Chapter 294 of the Acts of Assembly of 1901-1902.

Mr. Stagg explained that leasing of this area was a moot point for many years, even without the area being properly mapped, since the Code of Virginia prohibited new leases within the James River above the James River Bridge until July 1, 1993. Since 1993, there had been very few applications for new leases within the James River, due to the lack of measurable quantities of market size oysters surviving in this area. Within the last three years, however, oysters have been surviving to market size throughout much of this area of the James River. As a result the Engineering/Surveying Department had received a considerable number of applications for new leases within the James River and its tributaries. Applications were made for leases near Day's Point and were processed and assigned between September, 2005 and March, 2006 that lie within the area designated in the Act.

Mr. Stagg said that the language of the Act that delineated the additional ground was based partially on a map made by Mr. P. C. Warwick that depicted oyster leases and Public Ground Number 1 in Isle of Wight County, and partially on bearings and distances of unknown origin. Unlike most of the original Baylor Survey, this area was not surveyed from known existing survey markers along the shoreline. The Engineering/Surveying staff used this information to map the area and place this area on our current maps. Unfortunately, without survey stations as a basis for the location, only a "best fit" solution was available. Based on this information, the Engineering/Surveying Department had recreated the boundaries of this additional public ground. Since this area was not properly depicted on our maps for many years, shoreline erosion projects had

been approved along this reach of shoreline to include quite a few breakwater structures. The current Code of Virginia, §28.2-556, states, “the public oyster beds, rocks and shoals shall not include any area needed for an erosion control that was approved by the Commission, after meeting certain criteria contained within this Code section. The Commission had permitted all of the breakwater structures along this reach of shoreline. Therefore, while the Act indicated the additional public area would extend inshore to the mean low water mark, the area proposed by the Engineering/Surveying Department excluded the areas encompassed by the existing breakwaters, but followed the existing low water line as required by the Act where no such structures currently existed.

Mr. Stagg continued to say that it was unclear why this additional public ground was not mapped properly during the standardization of our leasing maps during the 1970’s. However, based on information obtained by staff, the Act was clearly still in effect, and a diligent effort was made to map the area as described in the original Act. The Acts of Assembly of 1901-1902 clearly indicated that this ground should be treated the same as the original Baylor Survey and §28.2-553 of the Code of Virginia authorized the Commission to “re-establish, relocate, and remark the lines of the Baylor survey, which cannot otherwise be relocated because of the loss or destruction of previous marks.” Therefore staff recommended the Commission approve the boundaries for this additional public ground as shown by the map provided with this presentation. Furthermore, since the Constitution of Virginia prohibited the leasing of the natural oyster beds, rocks and shoals, staff recommended that all areas currently under lease that fall entirely within the additional public ground be terminated, effective immediately. Two current leases, lease numbers 17408 and 17477, fall partially within the public area and partially outside of the public area. Staff recommended that the remaining portions of leases numbered 17408 and 17477 that were outside the Public Ground be resurveyed and platted and reassigned at no additional cost to the lessees, should they wish to retain those areas. Additionally, staff recommended that the areas where there were existing breakwaters be excluded from the additional public ground and mapped accordingly as shown in the map provided with this presentation.

Mr. Stagg explained that Mr. Burton was requesting compensation for the seed oysters he had planted onto the lease he had assigned to him within the public grounds. Associate Member Robins asked VMRC Counsel if Mr. Burton would have to make a Tort Claim. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel stated that he would have to take the matter to Risk Management, as the Commission could not authorize reimbursement request. Mr. Stagg stated that Mr. Burton had indicated to staff that he had made a great deal of money from the oysters taken from this ground during the time it was assigned to him.

No one was present to address this issue.

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

No applicable fees.

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**15. PUBLIC COMMENTS**

Commissioner Bowman called for anyone with public comments to come forward at this time. There were no public comments.

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**16. PUBLIC HEARING:** Request for amendments to Regulation 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees."

Jack Travelstead, Chief Deputy Commissioner, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead explained that this was an administrative change and not to be considered as changing any of the new fees established in 2005. The changes in the regulation only establish that the 2006 fees go beyond to other years until such time as the Commission decides to make changes in the fees.

Commissioner Bowman opened the hearing to the public for comments. There were none. The public hearing was closed

**Associate Member Robins moved to approve the amended regulation 4VAC 20-1090-10, et seq., "Pertaining to Licensing Requirements and License Fees". Associate Member Bowden seconded the motion. The motion carried, 7-0. The chair voted yes. Two Associate Members were not present during this presentation.**

\* \* \* \* \*

**15. PUBLIC COMMENTS**

Commissioner Bowman again opened the public comment period at the request of Mr. Doug Jenkins, who was not present when public comments, were requested earlier.

**Douglas F. Jenkins, Sr.**, was speaking for the Virginia Watermen's Association on behalf of Russell Gaskins who could not be present at the Commission meeting. His comments are a part of the verbatim record. Mr. Jenkins expressed the concerns of the watermen that the public hearing on the 2006-2007 Public Oyster Harvest Season was

being held so close to the opening date. He explained that the watermen needed more time to get geared up and 6 days was not enough time. He requested that in the future the public hearing be held so that they would have 2 to 3 weeks notice.

No action was taken.

Kelly Place, Waterman, addressed the Commission regarding the status of the King William Reservoir project extension request for the Dept. of Environmental Quality (DEQ) permit. He stated that the permit extension request had been denied by DEQ by a vote of 6-1. He said that the City of Newport News would have to re-apply and go through another review process.

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**17. PUBLIC HEARING:** Request for amendments to Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Management Specialist, Sr., gave the presentation. Her comments are a part of the verbatim record. Ms. Iverson explained that the proposed changes to the regulation were being made in an effort to tighten up on compliance requirements. She said this would mean that the watermen would have to be timely and up-to-date in order to renew their license. She said that requiring a "911" address was critical to all that the staff does, and accuracy and timeliness were important.

Commissioner Bowman opened the hearing for public comments on this matter. There were none. The public hearing was closed.

Associate Member Robins stated that he agreed with the staff that accuracy and timeliness of data was important and it not being that way had caused problems in the past. He said this would put more "teeth" into the correcting the situation. **He moved to accept the staff recommendations. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**18. PUBLIC HEARING:** Request to exempt licensed pound net fishermen, located in the National Marine Fisheries Service Modified Pound Net Leader Area, from requirements to fish their pound nets or establish a complete system of nets and poles, in order to renew their licenses or maintain their priority rights to such locations in 2007.

Jack Travelstead, Chief Deputy Commissioner, gave this presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that the new Federal Rule satisfied the needs of the watermen, but came too late in the year.

He said being it was late, it put economic impacts on these watermen. He said that staff recommended approval of the amended regulation.

Mr. Travelstead explained that Hurricane Ernesto had affected the Northern Neck watermen and this could mean more of these same requests next year.

Commissioner Bowman explained the Governor had established an Executive Order because of the impacts of Hurricane Isabel, and this year Hurricane Ernesto had affected more areas than Isabel. He said it was necessary to take the same action for Fisheries as is done for the Habitat. He opened the hearing to public comments. There were no public comments. The public hearing was closed.

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

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Commissioner Bowman announced a 7-minute break a little before 2 p.m. and asked that everyone return at approximately 2:05 p.m. He stated that the Commission would continue with Item 19, the oyster issue, when the Commission returned.

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**19. PUBLIC HEARING:** To amend Regulation 4 VAC 20-720-10, et. seq., to establish specifications for the 2006-2007 Oyster Harvest Season.

Jim Wesson, Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record. Mr. Wesson explained that in 2002-2002 there had been a drought followed by excessive rain in 2003-2004. He said the harvest in 2004-2005 was 80,000 bushels and he expected the 2005-2006 would be approximately 100,000 bushels. He said that staff was still working to get that data into the database. He stated that Hurricane Katrina had damaged the oyster industry in the Gulf, and that the availability of local oysters, had helped Virginia's oyster industry last season. In 2005 there had been normal salinity, but in 2006 we were again in a drought. He said there had been more mortality because of the mild winter and higher salinity in 2006. He said usually in the years where there was low salinity there was no spat set and that there had not been a significant spatset since 2002 in the Bay.

Dr. Wesson stated that where the stocks were low, staff was recommending that some of the Potomac Tributaries, Piankatank River, Great Wicomico, Little Wicomico, and the Deep Rock Dredge Area in the Lower Chesapeake Bay be closed. He said that in the areas proposed to be open, staff proposed a 3-month season and staff was working with the industry for the opening date.

Dr. Wesson explained that in the Gulf area, changes had been made and the oyster season was being closed for the month of October. This was the most important market time for oysters. He said that since there would be no oysters coming from the South during this closed time, the Advisory Committee wanted to open October 1<sup>st</sup> as there would be a good market and a good per bushel price. He said the watermen in the Pocomoke-Tangier Sound area wanted to stay at December 1<sup>st</sup>, while the Advisory Committee wanted everywhere to open October 1<sup>st</sup>. He also said that staff had proposed an 8-bushel limit, changing it from 12 bushels as it was last year in most of the areas. He said the Advisory Committee agreed to a 10-bushel limit. He said this would stretch the catch a little longer through the season.

Dr. Wesson said that staff was requesting that the areas that had been closed for some time be left closed. He said the Blue Ribbon Oyster Panel (BROP) was holding ongoing meetings and still had several months to go. He said staff wanted to wait until they BROP had completed their study and had a recommendation to offer the Commission.

Delegate Rob Wittman, representing the Virginia Department of Health-Division of Shellfish Sanitation VHD-DSS, was present and his comments are a part of the verbatim record. Mr. Wittman said that there was potential need for further harvest controls during the summer for public health purposes in an effort to meet requirements in regards to a bacteria named *Vibrio*. He said that the disease was dangerous to those with underlying health problems. He said that there had been cases in the past in which Virginia might have been involved, so there was a need to adopt measures to control harvest. He said that the State of California had already issued an advisory closing oyster harvest during the months of May through October for oysters from the Gulf of Mexico. He explained that the Food and Drug Administration (FDA) had developed a disease model to determine how many incidents to expect. He said the VDH-DSS wanted Virginia to be proactive, as it was not a question of if, but when, it will happen.

Commissioner Bowman explained that the spinach incident was a similar case and there was a need to do all that was possible to prevent this from happening in Virginia.

Dr. Wesson explained that it was proposed to put a 10 a.m. cut off time for dredging on private oyster grounds during the months of May through September; require the shellfish be offloaded and refrigerated the same day and require shading to cover the shellfish while on board the vessel. Commissioner Bowman asked if the FDA agree that these actions were adequate. Dr. Wesson stated that next spring we would have to deal with this again.

Dr. Wesson explained that there was a proposed amendment to the private grounds seed transplanting section of the regulation. He said that at one time there was a problem with circumventing the cull size requirement by harvesting 2 ½ inch or smaller oysters on the public grounds as seed oysters, transporting these oysters to nearby private grounds, and then reharvesting them immediately as market oysters from private grounds. He

explained that in the regulation now, it was required that all seed transplanted from public grounds remain on the lease until the end of the public oyster harvest season. He explained also that in the regulation there was a section that allowed the Commissioner to extend the season through June 30<sup>th</sup> in the James River Seed Area where hand tonging was allowed. He said this past season the public harvest season was extended and circumstances showed that planters needed to reharvest these oysters sooner. He said in the Advisory Committee meeting this was discussed and it was agreed that reharvest of these transplanted oysters would be allowed after March 31<sup>st</sup>, which meant they can be reharvested April 1 and this was proposed by staff in the regulation.

Associate Member Schick asked if the State seed transplanting program could be started earlier, as the amount scheduled to be moved for last year did not get completed.

Dr. Wesson responded that staff could bring the program proposal to the Commission for approval in January and not February as done in the past.

Commissioner Bowman opened the public hearing.

John DeMaria, waterman and seafood processor was present and his comments are a part of the verbatim record. Mr. DeMaria stated that taking these actions because of the disease would be a severe blow to him and the industry. He said he mostly sells private catch in the summer and he usually works on his private leases in the afternoon. He suggested that they be allowed to keep the oysters in bags, which can be put back overboard while harvesting. He said in some areas, because the water depth was shallow, he can only access it at high tide and he would only be able to work these areas 1 day out of 6. He said the proposal of a time limit of 10 a.m. was too strict.

Commissioner Bowman said these actions were based on temperatures and if we wait and do not anything, then we will not have a need to worry at all.

Mr. DeMaria asked, if there were one more case, would this affect the industry forever. Mr. Wittman responded yes, forever in the case of *Vibrio*.

Doug Jenkins, President of the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins explained that they suggested that in the Potomac Tributaries the Commission should open all public grounds for a limited time and once they reach the point where they need replenishing, then close them. He said the watermen in his area had to travel to the James and Rappahannock Rivers last year and the fuel cost were so high. He stated it is a 180-mile round trip to go the James River and back home. He said in the discussion at the Advisory Committee meeting the concern of leaseholders with ground near the public grounds was that watermen would encroach on their leases. He said he was representing the watermen and most of them would not to do this, but some might. He said in 1894 the Baylor grounds were established for the general public's use and should be utilized by the general public, even those who wish to take a bushel for personal use during the season. He stated also that

the notifications usually used numbers to describe the areas open and closed and there are some watermen who do not know the areas by numbers. He said the Commission needed to give watermen somewhere to work in their area so they do not have to travel elsewhere. He said it was suggested by the Advisory Committee to open the Potomac Tributaries, as they were a part of Virginia.

Mr. Jenkins said that the Commission was continually planting shells and they needed to do more seed transplanting and they needed to set a more appropriate time frame to do it.

Associate Member Robins stated that staff said there were no oyster stocks in the Potomac Tributaries that it had proposed to keep closed. Mr. Jenkins explained he disagreed with the staff's method of monitoring, as it was not accurate. He said you could not tell what was there until you go work it. He said some of the areas have been closed 15-18 years and if the oysters were not there now, they never would be. He also said that no more shells were needed.

Associate Member Bowden asked if rotating the areas would be acceptable. Mr. Jenkins responded yes, but the area needed seeding, as well.

Dana Dise, Tangier Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Dise asked staff if the same limit of 8 bushels would be applied to the Pocomoke-Tangier Sound area as last year. Dr. Wesson responded yes. Mr. Dise said that they agreed with this, as that would stretch the catch for the season. He said they did want the season to start on December 1<sup>st</sup>. He said they had a couple of new requests to add. He said Onancock Rock had been closed for some time and they wanted to know if that could be opened for the same reason as Mr. Jenkins, giving the watermen a place in their area to work. He said they would also agree to this being on a trial basis. He said finally, that years ago they were allowed to keep 2 bushels of blue crabs as a bycatch allowance and they wanted to request that be allowed again, which would also help offset the higher costs of operating their vessels.

No one else had any comments they wished to make in regards to this matter. The public hearing was closed.

Associate Member Robins stated that as much as they would like to open more areas as discussed, they had the Public Trust Doctrine to consider and the fact that the resource was doing poorly by historical standards; therefore, he felt it was not wise to open the Potomac Tributaries.

Commissioner Bowman explained that the BROP was analyzing all that was working and all that was not and the panel needed time to finish their work. He said they need to listen to the Panel before next year's decision was made.

Associate Member Fox explained that he would like to open all areas as well, but felt it would be irresponsible to do so. He said if it was at the level of harvest back in the 1980's, it might be done, but this was a time of crisis. He said the harvest numbers reflect this and so do the stock numbers. He said he supported the staff recommendations.

Associate Member Bowden stated that he also did not agree with the sample methods. He said he felt the rotation method would work as he agreed with Doug Jenkins. He said no one here now would be around when the oysters come back. He said he agreed that the James River Seed Area should not be opened to dredging. He said he agreed with Doug Jenkins about keeping the areas closed and the areas need to be opened so that they could be productive.

Associate Member Fox asked about sampling the Potomac tributaries. Dr. Wesson explained that they had checked this year and there was a small spatset this fall. He suggested that this year seed be moved to the Yeocomico and Coan Rivers and to allow watermen to work now where seed oysters were transplanted to in 2006. He said that the hand scrape was a very efficient gear and harvest moves faster and in these areas a lot of money had been put there by Westmoreland County with grant money. He said Nomini seed were mostly gone because of the cownosed ray.

Commissioner Bowman stated that Commissioner Pruitt had always said that the oyster season hearings were the hardest, as you could not always do what was wanted.

Mr. Jenkins stated he could not understand only opening King Copsico and nowhere else. He said they were getting less than they got last year and that was a pill that was hard to swallow. He said he was going to write a letter to the Governor and maybe then he could get some results.

**Associate Member Robins moved to accept the staff recommendations. Associate Member Schick asked that the motion be amended to leave open all those areas that were opened last year and give the waterman areas to work in their locality. Associate Member Robins said he would not accept the amendment. Associate Member Tankard seconded the motion. The motion carried, 5-4. Associate Members Bowden, Holland, McLeskey, and Schick all voted no. The Chair voted yes.**

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Commissioner Bowman explained that it was necessary to change the October meeting date as the Atlantic States Marine Fisheries Commission (ASMFC) was the same week; and, because a number of the staff would be attending the ASMFC meeting, it would be easier if the regular meeting date was changed from Tuesday, October 24, 2006 to Tuesday, October 31, 2006.

**Associate Member Holland moved to change the next meeting date to October 31<sup>st</sup>. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**20. REQUEST FOR OCTOBER PUBLIC HEARING:** To Incorporate ASMFC requirements (revised Winter II commercial possession limits), for scup (porgy).

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist explained that staff was requesting approval to advertise for a public hearing at the next meeting to consider amending the Winter II commercial possession limits for scup (porgy) to bring the state into alignment with federal laws.

Mr. Grist explained that on July 26, 2006 the National Marine Fisheries Service (NMFS) announced a change in the possession limits for the scup Winter II commercial. The possession needs to be adjusted from 3,000 pounds per trip to 6,500 pounds per trip.

Mr. Grist said that staff recommended advertising for an October public hearing the amendments to Regulation 4VAC 20-910-10 et. seq. to increase the Winter II period possession limit.

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

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There was no further business and the meeting was adjourned at approximately 3:10 p.m. The next meeting will be Tuesday, October 31, 2006.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary