

MINUTES

Commission Meeting

August 24, 2010

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. T. Holland)	
William E. Laine, Jr.)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
David Grandis	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Management
John M. R. Bull	Director-Public Relations
Katherine V. Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance Div.
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Allyson Watts	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
James Vanlandingham	Marine Police Officer
Russell Phillips	Marine Police Officer
Matthew J. Broderick	Marine Police Officer
Ronald D. Cagle	Marine Police Officer
Matthew D. Dize	Marine Police Officer
Mark T. Hill	Marine Police Officer
Stephen A. Holliday	Marine Police Officer
Benjamin E. Major IV	Marine Police Officer
Steven J. York	Marine Police Officer

Commission Meeting

**16017
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Tony Watkinson	Chief, Habitat Mgmt. Div.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Ben Stagg	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Bob Orth	Roger Mann
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Others present included:

Jim Cahoon	Rebecca Francese	Tracy West	Jay Foster
J. Poulson	Tom Jenkins	Bill Baker	Margaret Young
Mark Douglas	Robert Janeski	Mark Hudgins	R. P. Ayres
Frank Thurn	Mark Hiltke	Bob Simon	Matt Nash
Peter Zohasky	Hank Bowen	Douglas F. Jenkins	Lindsey Carner
Kevin Howell	David O'Brien	Ty Farrington	Roy Insley
Glenn W. France			

and others.

Commissioner Bowman called the meeting to order at approximately 9:30 a.m. Associate Members Fox and McConaugha were absent.

Commissioner Bowman requested a moment of silence, in lieu of a prayer, for a retired, long-time employee who had recently passed away, Captain Charles Jones. . He said that Captain Jones had been with the Commission for 28 years, as part of the Law Enforcement Division. Also, at his request Associate Member Tankard led the pledge of allegiance

APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda.

Tony Watkinson, Chief, Habitat Management, explained that Item 5, APPALACHIAN POWER COMPANY, #10-0658 was being pulled off the agenda by staff because the protest had been resolved.

Commissioner Bowman asked if there were any further changes from the Board members or staff. There were none. He asked for action by the Board.

Associate Member Holland moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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MINUTES: Commissioner Bowman requested a motion for approval of the July 27, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Robins moved to approve the minutes, as distributed. Associate Member Laine seconded the motion. The motion carried, 6-0-1. The Chair voted yes. Associate Member Schick abstained from voting, as he was absent from the July Commission meeting.

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Commissioner Bowman noted for the record that there was a quorum present for this hearing.

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

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SPECIAL INTRODUCTIONS

Col. Rick Lauderman, Chief, Law Enforcement, introduced seven of the ten new Marine Police Officers hired recently to work in the Law Enforcement Division. He explained there various backgrounds in other enforcement positions.

- Matthew J. Broderick
- Ronald D. Cagle
- Matthew D. Dize
- Mark T. Hill
- Stephen A. Holliday
- Benjamin E. Major IV
- Steven J. York

Commissioner Bowman congratulated them for their achievement in securing these positions. He said there were various tests and a background check which they must pass to be hired for this type of position with the Commission. He further explained that these positions were not filled until now because of the budget constraints.

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

Tony Watkinson, Deputy Chief, Habitat Management Division, summarized these items for the Board. He stated that there were ten items (A-J). His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked about the item 2J and if the timing for the demolition that was set by the U. S. Coast Guard is the basis for the setting of the deadline. Mr. Watkinson said the U. S. Coast Guard permit was issued late and the October 11, 2011 was being done for both the U. S. Coast Guard and VMRC. Associate Member Robins asked if this was the staff recommendation. Mr. Watkinson responded yes.

Commissioner Bowman asked if the turbidity curtains permit condition was still required. Mr. Watkinson responded yes.

Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed. He stated the matter was before the Commission for action.

Associate Member Holland moved to approve the page two items (A – J). Associate Member Schick seconded the motion. The motion carried, 7-0. The Chair voted yes.

- 2A. **THE GREEN ASSOCIATION, #10-1199**, requests authorization to install 1,688 linear feet of quarry stone riprap revetment extending a maximum of ten (10) feet channelward of an existing, deteriorated timber bulkhead at several locations at their residential shoreline on Dead and Bones Cove of Carter Creek in Lancaster County.

Permit Fee.....	\$100.00
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- 2B. **NORTHROP GRUMMAN SHIPBUILDING INC, #10-0518**, requests authorization to mechanically maintenance dredge, on an as-needed basis, up to 300,000 cubic yards of State-owned bottom material from the James River to

maintain depths of minus fifty (-50) feet below mean low water adjacent to Pier 3, minus thirty-seven (-37) feet below mean low water adjacent to Pier 6, minus seventy-two (-72) feet below mean low water at the Floating Dry Dock basin, and minus forty-nine (-49) below mean low water adjacent to Dry Dock 11. All dredged material will be disposed of at Craney Island or an approved upland disposal location.

Permit Fee.....	\$100.00
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2C. NORTHROP GRUMMAN NEWPORT NEWS, #05-1746, requests authorization to modify their existing permit to retain the 12,750 square foot platform associated with the previous steam generation facility at Pier 3 situated along the James River in Newport News. The platform will be used for waterfront security.

No applicable fees – Permit Modification

2D. DEPARTMENT OF THE NAVY, #10-0516, requests authorization to construct a 42-foot wide by 392-foot long armor stone breakwater with a maximum height of 7 feet above mean low water in the Chesapeake Bay between the Officers Beach and the Enlisted Beach directly adjacent to Joint Expeditionary Base Little Creek Fort Story - West in Virginia Beach. A maximum of 3,000 cubic yards of sandy beach material will be placed on the beach and channelward of mean low water to create a temporary construction access.

Permit Fee.....	\$100.00
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2E. GRAVEYARD COVE DREDGE, LLC, #09-1320, requests authorization to install a total of 213 linear feet of inlet jetties consisting of composite bulkhead and marsh toe revetments, and maintenance dredge by mechanical method, approximately 738 cubic yards of State-owned submerged bottom to achieve maximum depths of -3.0 feet at mean low water adjacent to properties in the Kline Farm subdivision, situated along Graveyard Cove and the Eastern Branch of the Lynnhaven River in Virginia Beach. Dredged spoils will be barged and offloaded at commercial marine property in Portsmouth. Staff recommends a royalty of \$153.00 for the 153 square feet of fill associated with the bulkhead portions of the jetties at \$1.00 per square foot.

Royalty Fees (filling 153 sq. ft. @ \$1.00/sq. ft.).....	\$153.00
Permit Fee.....	\$100.00
Total Fees.....	\$253.00

2F. DEPARTMENT OF THE NAVY, #09-1712, requests authorization to construct a 23-foot wide by 137-foot long, open-pile, concrete boat ramp; construct a 15-foot wide by 146-foot long floating tending pier/wave attenuator with a 5.3-foot wide by 35-foot long gangway; construct a 14-foot wide by 152-foot long floating pier along an existing bulkhead, with a 4-foot by 8-foot, open-pile platform and a 5.3-foot wide by 35-foot long gangway for access to the pier; and install six (6) ladders and 24 concrete fender piles on the existing bulkhead along Ranger Avenue, to support operations at the V47 Combat Craft Facility situated along Willoughby Bay at Naval Station Norfolk in the City of Norfolk. The proposed project also calls for the construction of portions of the boat ramp within a temporary 34-foot by 100-foot sheet-pile cofferdam, and the temporary excavation and replacement of approximately 50 cubic yards of sandy bottom material to allow for the installation of the lowest pile caps of the ramp within the proposed cofferdam.

Permit Fee.....	\$100.00
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2G. U.S. COAST GUARD, #10-0552, requests authorization to replace a previously existing floating pier with a new 6-foot wide by 76-foot long floating pier, and to install a new approximately 91-foot long floating tending pier with widths ranging between 6 and 9.5 feet along side an existing boat ramp, adjacent to the small boat piers situated along Craney Island Creek at U.S. Coast Guard Base Support Unit Portsmouth in the City of Portsmouth.

Permit Fee.....	\$100.00
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2H. TOWN OF GLEN LYN, #10-0761, requests authorization to install a 6-inch diameter water line attached to the existing Route 649 bridge, crossing over 112 linear feet of the East River in Giles County.

Permit Fee.....	\$100.00
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2I. U.S. ARMY CORPS OF ENGINEERS, #10-0905, requests authorization to install a 20-foot wide riprap toe protection structure extending 13 feet into the Little Calfpasture River, immediately downstream of the Goshen Dam and Lake Merriweather in Rockbridge County.

Permit Fee.....	\$100.00
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2J. FIGG BRIDGE DEVELOPERS, LLC, #09-0797, requests authorization to modify their existing permit for the Jordan Bridge replacement project to extend the time period for removal of the existing Jordan Bridge such that “complete removal of the existing Jordan Bridge structure from State-owned subaqueous bottom shall occur within the timeframe required by the United States Coast

Guard (USCG) permit number 1-09-5 and subsequent approvals.” The demolition activities authorized by the USCG are to be completed by October 11, 2011. The VMRC permit required complete removal of the existing bridge structure one (1) year from the permit issuance date of August 25, 2010.

No applicable fees – Permit Modification

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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).

- 3A. **STEPHEN HOCK, #10-0522,** requests after-the-fact authorization to retain a 134-foot replacement bulkhead adjacent to his property at 2205 River Drive situated along the Potomac River in King George County. The applicant has agreed to pay a \$600.00 civil penalty and a triple permit fee of \$75.00 in lieu of any further enforcement action.

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

Mr. Watkinson reviewed information included in the staff evaluation that explained that in February of 2010, staff received an anonymous message stating that Mr. Brad Martin was replacing a bulkhead at Mr. Hock’s property without proper approval from the Commission. After researching the project and completing an on-site inspection, it was determined that the original bulkhead and fill was permitted under VMRC #89-1008. That permit authorized a bulkhead, fill, jetty and a pier; however, the replacement of the structures in November of 2009 had not received the proper authorization from the Commission, which should have included the submittal of an abbreviated application required by the Governor’s Executive Order number 106(2009) and Commission approval prior to commencing any work.

Mr. Hock purchased the property in October of 1998 and stated in a letter to the Commission dated April 13, 2010, that the bulkhead was in place when he purchased the home. Staff aerial photos from 2002 confirm his statement. According to Mr. Hock, the remnants of Tropical Storm Ida severely damaged the bulkhead and pier in November 2009. Mr. Hock stated that he contacted several contractors and Mr. Martin of Martin Marine provided him with a cost estimate to replace the bulkhead and pier in the exact location of the damaged bulkhead and pier. According to Mr. Hock, Mr. Martin told him that he believed the Governor’s Executive Order authorized him to rebuild the structure without permission from the Commission. Mr. Martin reportedly began work on November 20, 2009, and completed the job on December 10, 2009.

After a phone conversation with VMRC staff, Mr. Hock submitted an after-the-fact Joint permit application on April 5, 2010. In that application, Mr. Hock’s agent, Mr. Craig Palubinski of Bayshore Design, prepared an overlay of the current aerial views with older aerial views to show that the bulkhead was in approximately the same alignment or very close to the previous bulkhead. Staff agreed with Mr. Palubinski’s findings, however, it was not clear exactly how much of the bulkhead was destroyed by the storm. Since it had been Commission policy to require permits for replacement of lost structures, a permit was needed for this work which appeared to have been more than just repair of an existing structure.

Mr. Watkinson noted that in this case the applicant had assumed responsibility for the activities and had agreed to pay a \$600.00 dollar civil penalty and a triple permit fee of \$75.00 in lieu of further enforcement action. Staff recommended that the Commission approve the after-the-fact replacement and accept the \$600.00 civil charge and triple permit fees in-lieu of the need for further enforcement action.

Commissioner Bowman asked for questions of staff. Commissioner Bowman asked if this increased the footprint. Mr. Watkinson said they had proof that showed that it did not.

Commissioner Bowman asked for anyone present pro or con who wished to comment. There were none. He said the matter was before the Commission for action.

Associate Member Robins moved to approve item 3A. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

Permit Fee (triple).....	\$ 75.00
Civil Charge.....	\$600.00
Total Fees.....	\$675.00

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3B. FRANK B. NELMS, JR., #09-0909, requests after-the-fact authorization to retain a previously constructed and unauthorized private-use pier, being 4.5-feet wide by 60-feet long, to include an 8-foot by 8-foot L-head, and one associated mooring dolphin, at the applicant’s property situated along the Nansemond River at 2075 Wilroy Road in the City of Suffolk. The pier represents a second riparian pier at the same property and is adjacent to an existing boat ramp. The applicant has agreed to payment of triple permit fees of \$75.00 and a civil charge of \$1,800.00 in lieu of any further enforcement action.

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

Mr. Watkinson reviewed information included in the staff evaluation for this item that explained the project was located along the Nansemond River along Wilroy Road in the City of Suffolk. The property had a mixed-use of both residential and commercial. A private pier was previously authorized in 2000 directly behind the existing private residence at the property. A boat ramp was also authorized in 2000 slightly downstream of the residence location. The second riparian pier that is the subject of this after-the-fact application was apparently constructed as a tending pier for the boat ramp.

Staff received an anonymous complaint in April 2009 related to construction activities at this location. The complaint included the construction and apparent commercial use of a second pier at the property, as well as complaints about upland disturbance related to possible violations of the Chesapeake Bay Act requirements.

Staff arranged a site visit with the property owner to investigate any activity that may have impacted State-owned subaqueous bottomlands and/or tidal wetlands. A staff member from the City of Suffolk Wetlands Board was also in attendance. At that on-site meeting, it was noted that no application had been submitted related to the pier adjacent to the existing boat ramp, and since this, at a minimum, would constitute a second riparian pier at the same property, a permit was required. Additionally, there was some discussion concerning the use of the pier related to the commercial business that also operated from the same location. During the meeting, Mr. Nelms requested that he be allowed to submit an after-the-fact application seeking authorization to retain the pier, as constructed. A Joint Permit Application was received on July 6, 2009.

The submission of the application prompted review by the Army Corps of Engineers, and subsequent action related to both this application and the previously constructed private pier behind the residential home on the property. In fact, the applicant removed three of the four mooring dolphins adjacent to the pier, as required by the Army Corps of Engineers. This action, along with ongoing City of Suffolk actions related to the existing upland uses of the property regarding zoning delayed VMRC action on the after-the-fact approval request. However, since these issues appeared to have been resolved, final action by VMRC was now warranted for the second riparian pier at this location.

The applicant had indicated that tidal flow along this reach of the river can be quite rapid and to safely stage boats at the pier when launching and retrieving boats at the ramp placement of the watercraft parallel to the L-head of the existing pier was required. Also, the applicant had indicated that the pier would be for private non-commercial use only.

Staff had not received any objections to the pier, as constructed, during the public interest review, and no agencies had commented on the proposal.

In this case, staff believed the construction of a tending pier adjacent to an existing boat ramp was reasonable at this location and concurred that a small L-head may lend itself to a safer environment when staging boats for retrieval and after launch at the existing boat

ramp. However, since the applicant had previously applied for other structures and shoreline work at this property it appeared he was fully aware of the permitting process. Additionally, a portion of the property was used for commercial construction offices and equipment storage, to include a marine construction company. This fact reinforced that the applicant should be well aware of the permit process required for encroachment over State-owned subaqueous bottomlands. As such, after evaluating 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 based on Mr. Nelms agreement to pay a Civil Charge of \$1,800.00 based upon a minimal degree of environmental impact, but a major degree of non-compliance in-lieu of the need for further enforcement action. Since the pier was proposed only for private non-commercial use staff recommended no royalty fees to be assessed.

Commissioner Bowman asked if the applicant or a representative was present as well as if anyone was present pro or con who wished to speak. There were none. He said the matter was before the Commission for action.

Associate Member Tankard moved to approve item 3B with a triple permit fee and civil charge assessment of \$1,800.00. Associate Member Holland seconded the motion. The motion carried, 7-0. The Chair voted yes.

Permit Fee (triple).....	\$ 75.00
Civil Charge.....	\$1,800.00
Total Fees.....	\$1,875.00

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4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.

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

Al and Lois Beddison versus VMRC

Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

Associate Member Robins moved for the following:

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

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

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

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

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

AYES: Bowden, Bowman, Holland, Laine, Robins, Schick, and Tankard.

NAYS: NONE.

ABSENT DURING VOTE: Fox and McConaugha.

ABSENT DURING ALL OR PART OF CLOSED MEETING: Fox and McConaugha.

Motion carried, 7-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

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5. **APPALACHIAN POWER COMPANY, #10-0658**, requests permission to cross approximately 513 linear feet of State-owned submerged land with a new 12 kV aerial distribution line, the new distribution line will cross the New River at SR 94 Bridge (new) in Grayson County. The project is protested by an adjacent property owner.

Pulled from the agenda – Protest Resolved.

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6. **MARK DOUGLAS, #10-0921**, requests authorization to construct two (2) low-profile timber groins extending 48 feet channelward of mean high water adjacent to his property situated along the York River at 1626 Jenkins Neck Road in Gloucester County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along the York River in the Jenkins Neck area of Gloucester County. The shoreline consisted of a sandy beach with a wide shallow sandy subtidal flat with some submerged aquatic vegetation channelward of the beach. The adjacent upland was low in elevation and a new house had recently been constructed on pilings. Mr. Douglas' lot was approximately 240 feet wide along the shoreline.

Mr. Neikirk stated that Mr. Douglas sought authorization to construct two (2) low-profile timber groins extending 48 feet channelward of mean high water. One groin was proposed near his downstream property line and the other proposed groin was positioned approximately 60 feet upstream.

Mr. Neikirk noted that the proposed groins would impact approximately 100 square feet of jurisdictional beach and approximately 20 square feet of State-owned submerged land. Gloucester County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that were effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Neikirk said that in their report dated June 30, 2010, VIMS stated that an offshore rock sill or breakwater system combined with beach nourishment was the preferred alternative for shoreline stabilization, however since there was SAV located channelward of the shoreline, they stated any breakwater or sill should be sited so as to avoid SAV impacts.

Mr. Neikirk explained that staff met with Mr. Douglas and his contractor, Mr. Charles Duke on site last month to discuss the project and possible alternatives. Mr. Douglas said he had considered a breakwater system but felt that it would be cost prohibitive. He was primarily concerned with addressing erosion he had noted on the east side of his property. There was discussion about alternative spacing for the groins and the inclusion of beach nourishment to minimize impacts on sand transport and he was amenable to those modifications.

Mr. Neikirk noted that no comments were received in response to the public notice and neither adjoining property owner had indicated that they objected to the project.

Mr. Neikirk said that staff agreed that the construction of an offshore breakwater would be preferable along this shoreline but staff also understood Mr. Douglas' concern over the additional costs associated with a properly designed riprap breakwater. Additionally, breakwaters were typically more effective when they were used to treat an entire reach of shoreline and the adjoining owners were not currently proposing any shoreline protection work.

Mr. Neikirk said that according to staff aerial photographs, much of this beach appeared to have been relatively stable since 2002. As noted by Mr. Douglas, however, there had been some erosion near the eastern end of his property. Although groins interrupted sediment transport by design, that impact could be reduced through the use of a low-profile design and the placement of beach nourishment within the created groin cell.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project conditioned upon the groins being constructed with a low profile design and with a condition that a minimum of 40 cubic yards of sand be placed within the created groin cell within 14 days of the completion of the groins. Staff also recommended a royalty in the amount of \$10.00 for the encroachment of the groins on 20 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Commissioner Bowman asked for questions from the Board for staff.

Associate Member Tankard said the beach looked stable and asked why was this structure needed and what direction was the sand movement. Mr. Neikirk explained that the eastern end of the property had receded and the applicant was trying to protect it. He said he was not sure of the drift of sand, but it appeared that it moved both ways, causing the sand to move back and forth.

Commissioner Bowman asked if the applicant or the representative was present and wished to comment.

Mark Douglas, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Douglas said that the staff slide showed the area in 2009 and he had a photograph a week ago Friday at mean high water, which showed the shoreline. He said he had lost 78 feet of beach on the left side of his property. He said there was a lot of beach erosion and that he had lost some of his trees in the past. He said he had a house and a septic tank he felt he needed to protect.

Associate Member Holland asked if he agreed with the staff recommendation. Mr. Douglas responded, yes.

Commissioner Bowman asked if there was anyone present, pro or con, who wished to comment. There were none.

Commissioner Bowman asked for comments from VIMS. Lyle Varnell, representative for VIMS, said they had done research on the vulnerability of the beach and dune. He said the groins would maintain some elevation on the beach, but when the shoal is gone the area is volatile and the beach is never stable as it was always in motion. He said using the groin approach was reasonable at this point.

Associate Member Tankard stated he was concerned for the adjoining property owner that it would take their sand and as a result cause financial impact. Mr. Varnell said there was a lot of sand movement and offshore does mitigate some impacts. He said this small erosion did need some attention. He added the breakwater would have an affect on the downstream properties which was of minimal concern now.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Holland moved to accept staff recommendation. Associate Member Robins seconded the motion. Commissioner Bowman said his concerns hinged on VIMS' interim approach which meant there would need to be something else done later. The motion carried, 7-0. The Chair voted yes.

Royalty Fees (encroachment 20 sq. ft. @ \$0.50/sq. ft.....	\$ 10.00
Permit Fee.....	\$ 25.00
Total Fees.....	\$ 35.00

- 7. **ROBERT WINFREE, #10-1025**, requests authorization to reconstruct and reinforce an existing concrete block retaining wall/bulkhead structure and to install a 30-foot long concrete block groin structure extending up to 20 feet channelward of mean low water at his property situated along the James River at 112 Eagle Bluff Drive in the Town of Claremont in Surry County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

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

Mr. Stagg explained that the project was located along the James River at the southern limits of the Town of Claremont. Surry County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes that were effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Stagg said that the site was characterized as a sand beach and there was a sloped graded area landward of the bulkhead. In 2004, Mr. Winfree applied for permission to install a riprap structure along the eroding bluff at this location. That proposal was landward of mean high water and therefore did not require a VMRC or Wetlands Board permit at the time. The riprap was apparently never installed and the site continued to be the subject of additional erosion in the ensuing years. The bulkhead/retaining wall was constructed of 2-foot by 2-foot by 6-foot concrete blocks that are stacked and interlock with a groove system.

Mr. Stagg stated that staff received a phone complaint from a nearby property owner in early October, 2009, concerning construction activity and structures that had been placed both along the shoreline and upon State-owned subaqueous bottomlands at this location. During a site visit with Mr. Winfree, staff informed him that a considerable portion of the existing work required authorization from VMRC, possibly the U. S. Army Corps of Engineers, and the Surry County Wetlands Board. Staff explained that in order to be considered in compliance, all the structures could be removed and the area restored to its former contours. As an alternative Mr. Winfree was informed of the option of submitting an after-the-fact application to retain the structures, as installed. Mr. Winfree submitted a Joint Permit Application on October 22, 2009.

Mr. Stagg said that the after-the-fact request was heard at the March 23, 2010, Commission meeting. The Commission directed Mr. Winfree to remove the groin and breakwater structures within 90 days. Additionally, the Commission directed Mr. Winfree to submit a new application with a revised and properly engineered design to address the failing bulkhead/retaining wall structure. Mr. Winfree removed the portions of the project as directed by the Commission in a timely manner.

Mr. Stagg went on to say that a new Joint Permit Application was received from Mr. Winfree on June 25, 2010. Staff requested additional information concerning the design on July 6, 2010, and Mr. Winfree responded in a letter dated July 12, 2010, with additional information. Staff conducted a site visit with Mr. Winfree, on July 13, 2010. During the site visit Mr. Winfree indicated a desire to also place one groin structure along the shoreline. Staff received a revised drawing with a slight modification to the bulkhead wall and the addition of the groin feature on July 14, 2010.

Mr. Stagg said that a public interest review was conducted for the project and staff had not received any objections.

Mr. Stagg explained that in their original Shoreline Advisory Report on the after-the-fact application, VIMS noted that the type of material used for all three structures was not normally recommended. Additionally, they stated that the bulkhead had already lost considerable material on the landward side of the wall. They also observed some shoreline erosion along the channelward side of the bulkhead possibly from wave action and from flow associated with a drainage pipe that extended through the bulkhead. VIMS stated that if they had been consulted in advance, they would have recommended a properly designed stone breakwater system with beach nourishment and appropriate plantings, and a properly sloped upland bank with heavy woody vegetation. They stated further that while a stone breakwater structure would be preferred, if a shoreline structure was considered necessary they recommended a stone rip rap revetment with a properly sloped upland bank. As a less preferred alternative, and to allow for the use of the existing concrete block structures, they indicated the blocks could be used in conjunction with a tiered bank system with appropriate vegetation. Finally, they noted that any of the above recommendations should include the proper installation and use of filter cloth in conjunction with all structures. In a revised Shoreline Permit Application Report, dated August 19, 2010, the above noted comments were repeated. Additionally, VIMS noted that a single groin on the beach was not expected to provide significant erosion protection benefits. They further noted that the groin structure, as proposed, may be flanked at the landward end because it would not tie into an upland bank. Finally, VIMS stated that if the concrete wall and groin were permitted, additional verification was needed that the structures were properly engineered for the expected wave height and existing upland drainage outfalls and that the groin should be nourished with clean beach sand and be a low-profile design.

Mr. Stagg said that staff continued to have considerable concerns with the type of material used and the design of the bulkhead. The concrete blocks, while quite heavy, were not the type of material normally used for groins or bulkheads. There did not appear to be any mechanism to tie the structures together, making them susceptible to settling, movement during extreme storm events, and hydrostatic pressure during large rain events. The applicant had submitted a revised plan to incorporate up to three perpendicular, tiered tie-back block additions, in what appeared to be a response to both the Commission direction to provide for a properly engineered structure and to address staff's concerns raised during the July site visit concerning the lack of tie-backs. Staff expressed concern that the number of tiered "tie-back" blocks did not appear to be sufficient to achieve the proper stabilization and reinforcement that may be necessary to maintain structural integrity over time. While the applicant indicated that the perpendicular additions would be tied into the wall with groove interlocks, staff believed this type of reinforcement may be better suited on the channelward side of the existing structure in light of the potential forces being exerted from the landward side of the structure from the fill material and any hydrostatic pressure.

Mr. Stagg said also that the bulkhead had partially failed, as both a functioning retaining wall for the upland graded material and as a shoreline erosion defense structure along the

beach. While staff acknowledged the applicant's proposal to attempt to reinforce the existing structure, the current plan did not appear adequate to address the potential structural failure of the bulkhead. Additionally, while the current plans included a drawing from an engineering firm, they were not listed as agent or contractor for the project, and their drawing stated that additional anchors and/or tie backs may be needed at the direction of the contractor/engineer. Therefore, it did not appear that the current plan fully addressed the Commission's directive to submit a properly engineered design for the existing structure and staff was reluctant to recommend approval without some type of certification by an engineer that the current proposal was adequate. As such, staff recommended the applicant be directed to provide an engineering analysis confirming the current plan was adequate and structurally sound. The proposed groin would be placed in a similar location as one of the groin structures that were ordered removed. As noted previously in our review of the earlier after-the-fact application, staff did not typically recommend these types of structures for groins, as they do not appear to be properly tied together, and they did not conform to the recommended low-profile groin design.

Mr. Stagg stated that should the Commission decide to approve of the project without additional engineering certification, after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia, staff would recommend a condition that the upstream portion of the wall be realigned and angled landward and incorporated with a return wall. Such a return wall should preferably be constructed with appropriately sized stone rip rap to better address the flanking of the structure. Staff also would recommend a condition requiring removal of the structure, within 90-days, should it fail in the future. Finally, staff recommended that the proposed groin structure be deleted and the applicant considered the installation of a rock breakwater/sill channelward of the existing cypress trees.

Associate Member Robins asked if the staff recommendation for additional engineering input requirement would all time for the applicant to get back and make this amendment to the proposal and not require a new application. Mr. Stagg responded that yes it could be submitted as a modified engineering drawing.

Associate Member Tankard said from the picture of the wall the erosion could be seen behind the wall and upland. Mr. Stagg stated he did not know what it looked like prior to the construction. Associate Member Tankard asked if the blocks added to the erosion problem. Mr. Stagg said the structures did reflect the waves and was not properly engineered. He said there was no return wall and the water breached over the top.

Commissioner Bowman asked if a discharge permit was required. Mr. Stagg stated the County reviewed the project.

Associate Member Schick asked if the staff was recommending that the tier not be higher than one block. Mr. Stagg said staff recommended stepping the bank up. Associate

Member Schick asked if staff also was recommending proper engineering. Mr. Stagg responded yes.

Commissioner Bowman asked if the applicant or anyone pro or con were present to comment. The applicant was not present nor was there anyone else wishing to comment.

Commissioner Bowman stated that someone should not mess with Mother Nature when they did not know what they were doing and they needed to relay on engineering. He said now someone had gone ahead and done it and it was a mess as it had all gone wrong. He said they put a higher wall, but it still failed. He said it was disturbing, but the best was needed to make a bad situation right.

Mr. Stagg said a rip-rap revetment application was made before the Beach Dune Ordinance, but it was never installed. He said if he had done that, he would not be here before the Commission now.

Associate Member Schick stated it was not done the right way and needed to be redone. He stated the applicant was absent and he needed to return with engineer drawings.

Associate Member Holland said he moved for the staff recommendation to get an engineer to design the project and to work with staff to come back to the Commission.

Associate Member Tankard said he agreed with Mr. Holland but more was needed in the motion.

Associate Holland stated it was bad now and could not stay as it was. He said the Commission needed to get engineer drawings and if the applicant did not provide them then further action would be taken.

Associate Member Schick said to give him 30 or 60 days and if not done as requested, then require its removal and restoration.

Commissioner Bowman stated that someone needed to correct or restore the area.

Mr. Stagg suggested hearing it again in 60 days, requiring revised drawings to be submitted in 45 days to allow staff time to review and approve; and, if after the 60 days no revised drawings were received by staff then a restoration hearing would be held.

Associate Member Holland made an amended motion to hold another hearing in 60 days and to require the revised engineering drawings to be submitted in 45 days to staff for their review and approval. Associate Member Robin seconded the motion. He asked that the motion include that if the applicant does not submit revised drawings within the time required then a restoration hearing would be held.

Associate Member Holland agreed to the amendment. The motion carried, 7-0. The Chair voted yes.

Deferred for 60 days – Submission of revised engineer plans in 45 days for staff review.

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- 8. GUILFORD HEIGHTS ASSOCIATION, #10-0816**, requests after-the-fact authorization to retain a previously installed and unauthorized 186 linear foot concrete block retaining wall/bulkhead structure at their property situated along the James River in Surry County. The project requires a Coastal Primary Sand Dunes and Beaches permit.

Commissioner Bowman recused himself from this hearing and left the meeting. Associate Member Holland acted as the Chairman.

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

Mr. Stagg explained that the project was located along the James River in Surry County, south of the Sunken Meadows area. Surry County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code. The site was characterized as a sand beach up to the existing block bulkhead and a stone gabion basket bulkhead that was installed along a portion of the shoreline prior to Surry County being included under the Coastal Primary Sand Dunes and Beaches ordinance. Accordingly, the gabion structure did not require a permit when it was constructed above the high water line.

Mr. Stagg said that Mr. Baker was the owner of lot 20 and was serving as the permitting agent for this project. Staff received a written request from Mr. Baker on December 15, 2009, requesting verification of jurisdictional determination for proposed shoreline work that was being considered by the County pursuant to their local ordinances, including the Chesapeake Bay Preservation Act. Specifically, Mr. Baker noted a letter from Surry County requiring, among other things, that he provide written verification from VMRC regarding a jurisdictional determination for the project prior to the commencement of any construction activity. Staff responded to Mr. Baker on December 17, 2009 and informed him that based upon the information provided to VMRC staff could not ascertain with certainty whether the project would fall under VMRC jurisdiction. The letter noted however, that it appeared from the drawings that some or the entire project would likely be within VMRC jurisdiction, as the site appeared to be a beach. Staff also suggested that the site be staked in the field so that a site visit could be arranged to determine jurisdictional areas.

Mr. Stagg stated that in April of 2010, Surry County staff requested a joint site visit at Guilford Heights and they informed us that construction of a shoreline erosion structure had taken place at the site without final approvals from the County. Staff conducted a site visit on April 26, 2010. During the visit staff observed that a concrete block bulkhead/retaining wall structure had been installed along the shoreline, channelward of two upland parcels within the subdivision (Lots 20 and 21). VMRC staff determined that the shoreline along this reach was indeed a beach.

Mr. Stagg explained that at a meeting held at the Surry County Governmental Center on May 20, 2010, there was discussion about the unauthorized structures. The meeting was attended by Surry County Planning and Zoning staff, Mr. Baker, and Ms. Sandra Jennings, the owner of lot 21. VMRC staff noted that the structure, as currently installed required a Dunes and Beaches permit from VMRC. A Joint Permit Application was submitted at the meeting by Mr. Baker.

Mr. Stagg said that after review of the submitted Joint Permit Application, staff informed Mr. Baker, the Guilford Heights Association and the contractor, Mr. Michael Reeson of Driftwood Corporation that the application information did not appear to reflect the actual structure already installed at the site. However, Mr. Baker had previously submitted the entire packet of information he submitted to the County that did contain drawings reflective of the installed structures and staff noted they would be incorporated into the Joint Permit Application request for after-the-fact approval. In correspondence to both Mr. Baker and Mr. Reeson, staff requested information on why the project was completed without the submission of an application. Staff met with the contractor, Mr. Reeson, on July 13, 2010, at which time he indicated he installed the structures because he believed if he didn't do the work the applicant would find another contractor who would and he would lose the job and that he was trying to keep his crews employed during tough economic times.

Mr. Stagg noted that a public interest review has been conducted for the project and staff had not received any objections.

Mr. Stagg said that in their Shoreline Permit Application Report, dated August 19, 2010, VIMS noted that had they reviewed the proposal before it was installed they would have advised that this was not a proven method for tidal shorelines and it was not the preferred type of structure. They stated further that the preferred method for toe stabilization at this location was an offshore breakwater structure with beach nourishment across multiple parcels along the same beach. If a well designed offshore structure was not feasible they recommended a sloped revetment on individual parcels that would allow for wave run-up and would better dissipate waves rather than reflect their energy.

Mr. Stagg said that staff had concerns with the type of material used and the design of the bulkhead. The concrete blocks, while quite heavy, was not the type of material normally used for bulkheads. There did not appear to be any mechanism to tie the structures

together, making them susceptible to settling, movement during extreme storm events, and hydrostatic pressure during large rain events. The structures did, however, incorporate four sets of perpendicular tiered blocks on the channelward side of the structure that appeared to have been installed to reinforce the structure from the landward sloughing bank material and hydrostatic pressure.

Mr. Stagg explained that the portion of the block wall structure installed landward of the older gabion baskets was not jurisdictional since the upper limit of the beach ends at any existing man-made structure. The remaining portion of the structures, while located on the beach, appeared to have been placed as far landward as possible and the environmental impact appeared minimal.

Mr. Stagg stated that while staff had some concerns about the use of this type of material as a bulkhead, as currently installed, the structure appeared to be functioning at this current location. It did appear that the downstream return wall could have some adverse impacts to the already eroding shoreline during storm events as wave action would run along the return wall and directly into the bank.

Mr. Stagg said that after evaluating the merits of the project, and after considering all of the factors contained in 28.2-1403(10)(B) of the Code of Virginia, staff recommended approval of the project with the condition that the downstream portion of the wall at the intersection with the existing bank be protected with appropriate sized rip rap to address adverse wave action and potential flanking of the structure. While there appeared to be some confusion on whether the structure required a permit from VMRC, the applicant was clearly in the process of obtaining authorization from the county, who had specifically requested that the applicant contact VMRC to determine what if any authorization might be necessary from this agency. Additionally, staff believed the contractor was fully aware of the necessity to obtain permits from VMRC for shoreline work and apparently installed the structure in spite of this knowledge. Therefore, since the structure was installed without prior approval, staff recommended appropriate civil charges to both the applicant and the contractor based upon minimal environmental impact and major non-compliance. If approved, staff also recommended a permit condition requiring removal of the structure, within 90-days, should it fail in the future.

Associate Member Holland asked for questions of staff.

Associate Member Schick asked if the contractor knew not to do this without a permit. Mr. Stagg explained that he told him he understood his economic concerns, but that he could not put the structure in without a permit. He said this was an easy project as they had the equipment and the site was accessible by the beach. He said he told him not to do the work without a permit.

Associate Member Schick said that in the front of the wall that rock material was needed as a toe. Mr. Stagg said they did look at that and discussed with VIMS at the site visit.

He said it could be made a condition of the permit. He said there had been a number of storms since the first of the year in Surry. He said the area was stable as there was no scouring. He said there tends to be erosion after the storms, but it was able to restore itself.

Associate Member Holland asked if the applicant or his representative was present to comment.

Bill Baker, the applicant was sworn in and his comments are a part of the verbatim record. Mr. Baker provided handouts of photographs showing the site right after Tropical Storm Ernesto. He said that Mr. Mike Vanlandingham from the Department of Conservation and Recreation had looked at it and all engineers said the worst thing to do was to do nothing and he decided that something needed to be done. He noted on the pictures the homes along the site and expressed his concern that they would eventually go into the water. He said they met with the neighborhood to discuss doing the whole beach. He said the general consensus was to not do anything. He explained Ms. Young and he were interested and did shop around for a contractor, but more thought it was too small of a job and one did suggest a more expensive method. He said they were not financially able to do more than the rip rap.

Mr. Baker said that they used a double wall around the gabion and it was put into the ground. He said the 4,000 pound concrete block would not go further into the water and could be retrieved and reused. He said the bank was sloped better and there had not been any erosion since it was put there. He added that the prior gabion was not good enough and water and breached it. He said when there had been two northeasters there had been extreme high tide which took all the dirt along the entire bank and washed out everybody up and down the beach. He said they had to do something that was economically feasible for them and it was better to do something than not do anything.

Mr. Baker said that he felt he had shown a proper attempt to do it right. He said he approach FEMA and did not get any help and if it got done it was better for the bay. He said he had filled out the Joint Permit Application and a notice was in the newspaper. He said after it was submitted the changes occurred. He said at another agency meeting he was told he did not have to submit it to VMRC and he was told they sent it. He said then he got the notices of violation from VMRC and he called staff met with them and he felt he had not done anything wrong. He said staff told him about the Code and about the Beaches and Dunes ordinance, but there is no dune here. He said he was told that he had not submitted the JPA so he gave it to VMRC staff right then.

Mr. Baker said he thought this was resolved. He said he got an emergency permit from the County in June, 2009. He further said he contacted Department of Conservation and Recreation, the structure was working, affordable and to protect his property which he thought was the end of the story.

Associate Member Holland asked for questions from the Board.

Associate Member Tankard asked if Mr. Reeson stated that the project could be done with a permit or without it. Mr. Baker said he thought it was a part of the project.

Associate Member Schick asked if the contractor knew about VMRC, but did not tell them. Mr. Baker explained that they had to do something as the hurricane season was coming. He said he had obtained approval from the Homeowners Association and signed a contract with Mr. Reeson to act as an agent.

Associate Member Schick asked if in December 2009 he knew about the VMRC permit. Mr. Baker responded yes.

Associate Member Robins asked what was the construction date. Mr. Baker said December 2009.

Associate Member Holland asked for comments pro or con from anyone present. There were none. He said the matter was before the Commission.

Associate Member Schick asked when did staff first tell Mr. Baker that a permit was required. Mr. Stagg explained that a letter was received by staff from the County on December 8, 2009 requesting that he provide a written response from VMRC. He said staff, not knowing it was already constructed, sent a letter on December 17 which said a portion of the project required a permit. Associate Member Schick asked if the construction was ongoing. Mr. Stagg stated the County called with concerns for the construction. He said an application was submitted on May 20, 2010, but the date on the application was for June or July 2009. He said he was not able to confirm whether Mr. Baker was told it was not needed

Associate Member Holland stated the matter was before the Commission.

Associate Member Robins said it was unfortunate that the contractor did what he did as there was a conscious decision made to do this action and avoid the permit process and the Commission should consider an appropriate civil charge.

Associate Member Robins moved to accept staff recommendation with the condition that the downstream portion of the wall at the intersection with the existing bank be protected with appropriate sized rip rap to address adverse wave action and potential flanking of the structure and with a civil charge to be assessed for the applicant and contractor for \$1,800.00 each based upon a minimal environmental impact and a major non-compliance with a triple permit fee. The motion carried, 6-0. Commissioner Bowman had recused himself because of a connection to this case which he was concerned might give an impression of impropriety. He was not present during this hearing.

Civil Charge (applicant).....	\$1,800.00
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Civil Charge (contractor).....	\$1,800.00
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Commissioner Bowman returned to the hearing.

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- 9. **SARAH CARNEAL, #10-0686**, requests authorization to construct a 12-ft wide by 85-foot long riprap breakwater with 156 cubic yards of sand placed landward of the breakwater as beach nourishment and to construct a 50-foot long vinyl groin adjacent to her property situated along the Piankatank River at 975 Wilton Creek Road in Middlesex County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along the Piankatank River on the east of Glebe Neck in Middlesex County. The shoreline consisted of a sandy beach and a sandy sub-tidal substrate. A steep, vegetated 30 to 40 foot high bank was located landward of the beach. Interestingly, the residence was located at the base of the bank, along the beach. Other shoreline protection structures along the east side of Glebe Neck include revetments, bulkheads, a few breakwaters and a single groin.

Mr. Neikirk said that Ms. Carneal sought authorization to construct an 85-foot long riprap breakwater with 156 cubic yards of sand placed landward of the breakwater, as beach nourishment. She also sought authorization to construct a 50-foot long vinyl groin south of the breakwater.

Mr. Neikirk stated that the proposed groin would impact approximately 10 square feet of jurisdictional beach and approximately 40 square feet of State-owned submerged land. The breakwater was located entirely on State-owned submerged land. Middlesex County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code. Only the groin portion of this permit required a Coastal Primary Sand Dunes and Beaches permit since the breakwater was channelward of mean low water and the beach nourishment was allowed without a permit under the dunes and beaches law.

Mr. Neikirk explained that in their report dated August 14, 2010, VIMS stated that the sill/breakwater was the preferred shoreline stabilization method at this site. They questioned the need for the proposed groin and stated that it might interrupt the limited sediment transport along the shoreline. They recommended the construction of a sill/breakwater in lieu of the groin if additional protection was necessary.

Mr. Neikirk said that in their report dated July 30, 2010, the Department of Conservation and Recreation stated that they did not anticipate that the project would adversely affect any of their programs but they noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government. They also noted that the project must comply with the Virginia Erosion and Sediment Control Handbook and Virginia Stormwater Management Regulations.

Mr. Neikirk noted that the proposed project did not encroach on any public or privately leased oyster planting ground. No comments were received in response to the public notice and neither adjoining property owner had indicated they had any objection to the project.

Mr. Neikirk explained that the proposed breakwater was the preferred shoreline stabilization structure along this shoreline and similar breakwaters were successfully maintaining a wide beach within a ¼ mile of the project site.

Mr. Neikirk said that VIMS questioned the potential effectiveness of the proposed groin and stated it could adversely impact down-drift properties. A single groin located less than ½ mile south of the site appeared to have adversely affected sediment transport and might be exacerbating erosion on down-drift properties. Based upon this, staff was reluctant to recommend approval of the groin at this location. As an alternative, staff would certainly be willing to entertain a new permit or a permit modification for a second breakwater or sill at the site of the proposed groin.

Mr. Neikirk explained after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the breakwater and beach nourishment but staff was compelled to recommend denial of the proposed groin. Staff, also, recommended a royalty of \$100.00 for the encroachment of the beach nourishment sand on 2,000 square feet of State-owned submerged land at a rate of \$0.05 per square foot. Should the Commission determine the groin was acceptable, staff recommended a royalty for \$0.50 per square foot for the encroachment of the structure onto State-owned submerged land.

Associate Member Schick asked why staff did not recommend the groin, but did recommend the backfill. Mr. Neikirk explained that only 40-50 cubic yards of sand were needed as there was not a lot of sand movement.

Commission Meeting

**16041
August 24, 2010**

Associate Member Tankard asked about a picture of the existing groin. Mr. Neikirk said that yes he did have a picture and he had not measured the groin, but would estimate it to be 100 feet.

Associate Member Tankard asked about where it adversely impacted this area. Mr. Neikirk stated it would widen the beach at another property.

Commissioner Bowman asked if the applicant or a representative was present to comment.

Michele Meredith, agent for the applicant, was sworn in and her comments are a part of the verbatim record. Ms. Meredith said she had a picture of the groin and provided photographs. Se stated that her husband was the contractor as the applicant had come to them 6 months prior with a project that if used would work with the fetch in the area. She explained that their design would provide the most protection for the cost and protect the house and property on the other side. She said they had suggested the small groin after looking at the other properties structures in the area. She said that at two other properties where rip rap was used it had not had much affect and a lot of vegetation had been lost. She stated the breakwater was costly and they did not agree with two breakwaters. She said that six inches of sand had been lost beneath the pier and they would be putting concrete under the steps to maintain them.

Commissioner Bowman asked if anyone was present, pro or con, who wished to comment. There were none. He said the matter was before the Commission.

Associate Member Schick asked for a staff slide of the next door neighbor. Mr. Niekirk discussed the slide and pointed out the revetment and groin.

Commissioner Bowman said the matter was before the Commission.

Associate Member Schick moved to approve the project including the groin and staff recommendation for the placement of sand behind it; with appropriate royalties to be assessed. Associate Member Laine seconded the motion. The motion carried, 7-0.

Royalty Fees (encroachment 2,000 sq. ft. @ \$0.05/sq. ft.....	\$100.00
Permit Fee.....	\$100.00
Total Fees.....	\$200.00

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- 10. JAMES COVINGTON, #10-0898**, requests authorization to remove three (3) deteriorated timber groins and to construct three (3) new vinyl groins extending 42 feet channelward of mean high water adjacent to his property situated along Fishing Bay at 443 Stove Point Road in Middlesex County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along Fishing Bay on the west side of Stove Point near Deltaville in Middlesex County. The shoreline consisted of a sandy beach with a wide shallow sandy sub-tidal flat channelward of the beach. The adjacent upland slopes gradually upward toward the residence. A timber bulkhead was located at the upper portion of the beach. There were numerous groins on nearby lots along this shoreline.

Mr. Neikirk said that Mr. Covington sought authorization to remove three deteriorated timber groins and construct three replacement vinyl groins extending 42 feet channelward of the existing bulkhead. One groin was located near the southern property line and the next two groins were spaced approximately 40 feet apart.

Mr. Neikirk also said that the proposed groins would impact approximately 96 square feet of jurisdictional beach and approximately 30 square feet of State-owned submerged land. Middlesex County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk noted that in their report dated August 14, 2010, VIMS stated that groins were generally not the preferred approach to shoreline stabilization due to their interruption of sediment transport. In this case, however, since there was an established groin field and the shoreline was already hardened, VIMS stated the replacement of the groins was reasonable. They noted that a breakwater system would be a preferred approach but that it would require the participation of other property owners. Finally, they suggested artificially nourishing the groin cell to minimize the impact on down-drift properties.

Mr. Neikirk said that the Department of Game and Inland Fisheries noted that Kemp's Ridley and Loggerhead sea turtles were known to exist in the project area but that they did not anticipate any adverse impacts on those species due to the scope of the project. They also noted the presence of a Bald Eagle nest in the project vicinity, however, they stated they did not anticipate the proposed project would adversely impact eagles provided there were no new nests within a ¼ mile of the project site. Finally, they stated the Northeastern Beach Tiger Beetle was known to occur in the vicinity. To minimize

impacts on anadromous species, they recommended erosion and sediment controls and a time-of-year restriction from February 15 through June 15 of any year.

Mr. Neikirk explained that the U. S. Army Corps of Engineers checked the Fish and Wildlife database and concluded that there were no documented adult Northeaster beach tiger beetles at the project site.

Mr. Neikirk said that the Department of Environmental Quality determined that a Virginia Water Protection Permit would not be required. No other agency comments were received.

Mr. Neikirk stated that the replacement groins would encroach upon Additional Public Ground set aside by the General Assembly in §28.2-646 of the Virginia Code. This designation prohibited the assignment of private ground but did not prohibit the Commission from issuing a permit to encroach on the ground.

Mr. Neikirk noted that no comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the project.

Mr. Neikirk stated that staff agreed that the construction of an offshore breakwater would be preferable along this shoreline but staff also understood it was impractical, unless other property owners participate. Breakwaters were typically more effective when they were used to treat an entire reach of shoreline.

Mr. Neikirk said that VIMS had advised that the placement of beach nourishment in the groin cells would reduce impacts on down drift property owners and staff typically recommended beach nourishment where practical. In this case, however the down-drift property owner had a long privately dredged channel that required regular maintenance dredging. Staff was concerned that the placement of additional sand along the shoreline could possibly adversely impact the channel.

Mr. Neikirk said that given the project location, and considering the width of the Piankatank River at the site, as well as the nature of the project staff did not feel the time-of-year restriction recommended by the Department of Game and Inland Fisheries was necessary.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a royalty in the amount of \$15.00 for the encroachment of the groins on 30 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Commissioner Bowman asked for questions of staff. There were none.

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

Jay Foster with R & W Marine contractor and representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Foster said that concurred with the staff recommendation and he would answer any questions.

Commissioner Bowman asked if anyone in opposition was present and wished to comment. There were none.

Commissioner Bowman said the matter was before the Board for action.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Royalty Fees (encroachment 30 sq. ft. @ \$0.50/sq. ft.).....	\$15.00
Permit Fee.....	\$25.00
Total Fees.....	\$40.00

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- 11. **STEVE JOHNSON, #10-0937**, requests authorization to remove a deteriorated groin and to construct a new vinyl groin extending 50 feet channelward of a deteriorated bulkhead and to construct 50 linear feet of replacement vinyl bulkhead aligned a maximum of two feet channelward of the old bulkhead adjacent to his property situated along the Rappahannock River at 752 Felton Road in Middlesex County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along the Rappahannock River near Deltaville in Middlesex County. The shoreline consisted of a sandy beach with a wide shallow sandy sub-tidal flat channelward of the beach. There was a high steep bluff protected by a deteriorated timber bulkhead near the base of the bank. Numerous groins and hardened shorelines were located both upstream and downstream of Mr. Johnson's property.

Mr. Neikirk explained also that Mr. Johnson sought authorization to replace a deteriorated timber groin with a new vinyl groin extending 50 feet channelward of a deteriorated timber bulkhead and to construct 50 linear feet of replacement vinyl bulkhead aligned 2 feet channelward of the deteriorated bulkhead. The new groin and replacement bulkhead would impact approximately 140 square feet of jurisdictional beach and approximately 10

square feet of State-owned submerged land. Middlesex County had not yet adopted the Coastal Primary Sand Dunes and Beaches ordinance which was made available to them by virtue of recent Code changes effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk said that Mr. Richard Callis was the contractor and the permitting agent. In response to an inquiry from staff concerning whether a riprap revetment had been considered, Mr. Callis explained the high bank limited access and a revetment would have to be constructed by barge and would be cost prohibitive. He also noted that there were bulkheads on the adjoining lots and he believed the corrugated vinyl bulkhead material dissipates wave energy better than a typical timber sheet pile bulkhead. Finally, he explained the high bank prohibited grading, so the revetment would have to be constructed channelward of the bulkhead and impact additional beach.

Mr. Neikirk said that in their comments dated August 14, 2010, VIMS stated the preferred alternative for this site would be the removal of the improperly constructed bulkhead and the construction of a riprap revetment. They added that the replacement of the groin within the established groin field was acceptable. To minimize impacts the interruption of sand transport to down-drift properties, VIMS recommended beach nourishment accompany the groin replacement.

Mr. Neikirk noted that the Department of Environmental Quality stated that a water protection permit would not be required since the anticipated impacts would be minimal and temporary. The Department of Game and Inland Fisheries noted the presence of a Bald Eagle nest in the project vicinity; however, they stated they did not anticipate the proposed project would adversely impact eagles provided there were no new nests within a ¼ mile of the project site. They also stated the northeastern beach tiger beetle was known to occur in the vicinity. Finally, they recommended erosion and sediment controls and a time-of-year restriction from February 15 through June 15 of any year to minimize adverse impacts on anadromous species.

Mr. Neikirk said that the U. S. Army Corps of Engineers checked the Fish and Wildlife database and concluded that there were no documented adult Northeaster beach tiger beetles at the project site.

Mr. Neikirk noted that no comments had been received in response to the public notice and neither adjoining property owner had indicated that they had any objection to the project.

Mr. Neikirk explained that staff believed the construction of a low-profile timber groin within an established groin field was a reasonable approach to help maintain a sandy beach and to stabilize the shoreline. Staff agreed that a revetment would be a preferable to the proposed replacement bulkhead, but staff acknowledged that the high bluff limited

access to the shoreline and there were bulkheads on both adjacent properties. Finally, the addition of sand as beach nourishment within the created groin cell would provide additional shoreline protection while minimizing the interruption of sand transport to down-drift properties. Getting the sand to the site would be difficult. The existing groin cell currently contained a significant amount of sand.

Mr. Neikirk said that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed. Staff also recommended a royalty in the amount of \$5.00 for the encroachment of the groin on 10 square feet of State-owned submerged land at a rate of \$0.50 per square foot. Given the project location and considering the width of the Rappahannock River at the site, as well as the nature of the project, staff did not feel a time-of-year restriction was necessary.

Commissioner Bowman asked for questions of staff and there were none.

Commissioner Bowman asked if the applicant or a representative was present and wished comment.

Jay Foster, R & W Marine Contractor represented the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Foster stated that they concurred with the staff recommendation and he would answer any questions.

Commissioner Bowman asked for any other comments, pro or con, in this matter. He asked for an action by the Board.

Associate Member Holland moved to accept the staff recommendation. Association Member Laine seconded the motion. The motion carried, 7-0.

Royalty Fees (encroachment 10 sq. ft. @ \$0.50/sq. ft.).....	\$ 5.00
Permit Fee.....	\$25.00
Total Fees.....	\$30.00

12. CHINCOTEAGUE INN, RAYMOND BRITTON, MANAGER, Violation #10-09. Consideration of the failure to comply with a Commission notice to remove from State-owed submerged lands, the western 54-foot by 13.6-foot section of a floating platform installed as a restaurant sitting/dining area along Chincoteague Channel in the Town of Chincoteague.

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

Mr. Badger explained that on June 8, 2010, staff was notified by another restaurant owner that the Chincoteague Inn had added a large floating platform with seating adjacent to their restaurant along Chincoteague Channel. Staff inspected the site on June 11, 2010, and observed an unauthorized 71.5-foot long by 13.6-foot wide floating platform/pier and a 30-foot by 33.5-foot floating platform with a 22-foot by 12-foot roof structure that was open on three sides. The western 54-foot by 13.6-foot portion of the platform/pier fell within VMRC jurisdiction. The remainder of the structure was located within a manmade area.

Mr. Badger said that on June 15, 2010, staff prepared a Sworn Complaint and issued a Notice to Comply for the unauthorized portion of the platform/pier that fell within VMRC jurisdiction. The notice directed Mr. Britton, manager of the Chincoteague Inn, to immediately remove the western 54-foot by 13.6-foot portion of the floating platform/pier that fell within VMRC jurisdiction within 10 days of receipt of this letter. The notice stated further that failure to comply within the time frame specified would result in this matter being placed before the full Marine Resources Commission as an enforcement action. Mr. Britton received the Notice to Comply by Certified Mail on June 16, 2010.

Mr. Badger stated that Mr. Britton submitted a Joint Permit Application (JPA) on June 18, 2010, requesting an after-the-fact permit for the entire floating platform. Staff did not believe it was appropriate to take action on Mr. Britton's after-the-fact application until the violation had been resolved. A letter was sent to Mr. Britton on June 22, 2010, again stating that failure to remove the platform within the specified time frame would result in this matter being placed before the full Marine Resources Commission as an enforcement action.

Mr. Badger noted that on June 28, 2010, staff again inspected the site and determined the platform had not been removed. Staff noted, however, that the platform had been secured to the adjacent pier with mooring lines instead of the previously utilized U-bolts and rollers, and that the platform had received a Certificate of Documentation issued to BIC, Inc. (Mr. Britton's construction company) by the United States Coast Guard on June 24, 2010. The Coast Guard made an on site inspection of the structure on July 1, 2010, and found that the platform could be documented as a vessel only if Mr. Britton could comply with all the safety requirements contained in the USCG Marine Safety Manual, Vol. II, Section B, Chapter 4-I, "Vessels in Immobile Status." The Coast Guard also stated that the floating platform would be closed until all the required information was submitted and approved. Mr. Britton surrendered the Certificate of Documentation by letter to the United States Coast Guard on July 2, 2010.

Mr. Badger said that Mr. Britton had stated that from the time of the initial investigation by VMRC he believed the floating platform was classified as a barge and therefore, VMRC did not have jurisdiction over the vessel. Staff believed the structure was a floating platform that was used as part of the restaurant's sitting and dining area. Staff also believed the commercial use alone (as a restaurant expansion) would require

authorization from VMRC even if the platform was classified a vessel/barge. It should also be noted that Mr. Britton and the Chincoteague Inn constructed a similar structure in the same location last year on pilings without authorization (Violation #09-09) from either VMRC or the U. S. Army Corp of Engineers (ACE). As required by VMRC, Mr. Britton removed the structure from State waters in late September 2009 and he applied to retain the portion of the wharf that fell inside the manmade boat basin, however, the ACE required the entire structure be removed. Although the first open-pile structure was eventually removed, Mr. Britton was able to use the sitting and dining area the entire summer before removing the structure in the fall without any penalty.

Mr. Badger said that the Accomack County Wetlands Board was advised of the violation. They did not, however, take jurisdiction, since the platform was channelward of mean low water and therefore outside of their jurisdiction.

Mr. Badger explained that the Department of Environmental Quality sent a letter to Mr. Britton stating their belief that the structure was in reality a floating dock and represented an expansion to the restaurant.

Mr. Badger noted that the Corps of Engineers stated the current configuration of the structure was that of a commercial floating dock, not a construction barge and that it required an Army Corps of Engineers permit.

Mr. Badger explained that in the Code Section 28.2-1203. "Unlawful use of subaqueous beds; penalty," it stated it shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission.

Mr. Badger also explained that Mr. Britton was a long-time marine contractor and agent, who had applied for and received permits from VMRC for over 20 years. Therefore, staff did not believe that he could reasonably assume a floating platform or barge used as a restaurant's sitting/dining area would not require additional authorizations from the same agencies that had required him to remove a similar pier structure in the same location last summer.

Mr. Badger explained that the USCG Marine Safety Manual, Vol. II: Section B: Chapter 4: I, "Vessels in Immobile Status" states that a barge/vessel could receive a Certificate of Documentation as a Permanently Moored Vessel (PMV) provided the vessel could meet all the appropriate safety standards, local oversights and a site permit from the ACE. If Mr. Britton could meet all the above the Coast Guard requirements, the C.G. would give the structure a Certificate of Documentation as a Permanently Moored Vessel. They would then turn over the responsibility for regulating the safety requirements on that vessel to a local entity. Staff does not believe the Town, County or State would accept the responsibility or possible liability.

Mr. Badger said that if the Commission was to permit the floating platform, staff believed the same standards set by the Coast Guard for safety of Permanently Moored Vessels would be appropriate, since the floating platform was homemade and had not been certified for its total capacity.

Mr. Badger stated that projects completed without a permit or constructed in a manner other than that authorized by a VMRC permit are illegal and may be subject to prosecution, both criminally (§28.2-1203) and civilly (§28.2-1212 and §28.2-1213). In lieu of civil penalties, the Commission may also consider civil charges in amounts not to exceed \$10,000.00 for each violation. In the event that the Commission and the applicant cannot agree to a resolution of the violation, the case can be forwarded to the State Attorney General's Office to seek a Civil Penalty. Maximum penalties may reach \$25,000 for each day of violation upon such finding by the appropriate Circuit Court.

Mr. Badger said that based on all of the above, staff recommended the Commission find the floating structure to be a unlawful use of State-owned submerged lands pursuant to § 28.2-1203 of the Code of Virginia and direct immediate removal of that portion of the illegal structure that falls within its jurisdiction (the western 54-foot by 13.6-foot section of a floating platform). Staff believes this structure could be removed within just a few days and does not believe an additional removal period should exceed more than 10 days as originally provided.

If Mr. Britton does not remove that portion of the floating platform within the time frame established by the Commission, staff recommends this matter be referred to the Office of the Attorney General to seek removal of the structure through the circuit court and to seek civil penalties of up to \$25,000.00 per day for the violation.

Commissioner Bowman asked for questions of staff.

Commissioner Bowman asked for comments by the applicant or a representative.

Jon C. Poulson, attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Poulson said that this was not an open-pile structure and the barge extended to the end of Chincoteague Inn. He said the area was made a man-made basin decades ago and only 54 feet of the barge is in an area under VMRC jurisdiction.

Mr. Poulson explained that Mr. Britton in 2009 removed 3 1/2 –foot wide structure with the existing adjoining pier. He said he reconstructed it to 11 ½ feet by 50 feet and went over into State bottom. He stated that no survey had been done and the majority of the area was in the man-made basin. He said Mr. Britton did suffer some cost when he paid \$25,000 to build and then to remove the structure. He said this time the inquiry was made after a complaint was made by a competitor. He said Mr. Britton felt that he could put the barge in this location for the same purpose for about 4 months after which it would return to being a construction barge.

Mr. Poulson said that staff wanted to say this was similar to the structure in 2009 and that a permit was necessary. He said the picture displayed showed this was not true. He said previously the structure was fixed to the bottom with pilings and did not float and was a pier. He said in the two notices sent staff, at first said it was a floating platform and then said it was now a floating platform/pier. He said that staff's position was that it was a similar structure, therefore, it needed a permit and he stated it was not similar. He stated that staff said that even if it was a vessel it still needed permit because it was being used in conjunction with Chincoteague Inn. He stated that if VMRC was trying to control barges then they were on one slippery slope to say the least. He said they reference the Code Section 1203 where it said...over State waters...which he said meant one constructs a structure over state-owned bottom.

Mr. Poulson said that in the staff evaluation it asserted that Mr. Britton knew that he needed a permit and that they took strong issue with this assertion as Mr. Britton felt he did not need a permit for a barge and as his attorney he concurred. He said he wanted to point out that they were not being indifferent to VMRC's authority by not removing the structure only that they did not feel that it was a decision to be made by staff, but to be made by the Board or the appropriate court.

Raymond Britton, applicant, was sworn in and his comments are a part of the verbatim record. He was asked a number of questions by his attorney to which he responded. Mr. Britton stated that he had owned barges for 25 years under the company name BIC. He had a number of types which included 2 steel, 2 wooden, an old monitor and 3 small floating platforms. He said he had constructed 6 pontoons boats from December 2009 into 2010. He said they were used under the bridge for construction. He said the shape of the barge was for marine construction and from December to April, it was the same as it was now. He said what is on it at that time was moved when it was not in use by the Chincoteague Inn. He said for a barge state registration or U. S. Coast Guard was not required as there was no power. He said in 2009 there was 3 ½ foot walkway at the bulkhead and was all constructed in a man-made basin. He said the Chincoteague Inn had bulkheading all around it. He said when the staff visited he was told that he needed a permit so he took it down. He added it cost him \$25,000 to remove it. He said the decking and railing had been added to the barge and it had been used for 4 months. He said in June 2010 staff received the complaints and he was told he needed the permit. He said he submitted the application for what was under VMRC jurisdiction and then he received a letter that he had to move it as no hearing would be held. He said he had documented the barge with the U. S. Coast Guard, but later surrendered the certification. He said they said that it was permanently anchored and stationary and a permit was necessary for any passengers. He said the County did not have any concerns, nor the Wetlands Board and the Health Department had given permission for the additional seating. They provided slides which were reviewed and discussed.

Commissioner Bowman asked if the ramps were attached to the barge or removable. Mr. Britton said to the restaurant. He continued to review the slides saying they he had disconnected the barge in 32 minutes from the pier.

Commissioner Bowman asked for questions.

Associate Member Tankard asked if he was contesting that the platform was on the State-owned bottom? Associate Member Tankard asked if they agreed that it was State-owned bottom Mr. Poulson stated that they did not agree, but no one knows. He said staff had determined that 54 feet further was State-owned bottom.

David Grandis, Assistant Attorney General, said that staff cannot determine property rights.

Commissioner Bowman stated he could not say there was no jurisdiction.

Associate Member Holland asked that with the barge being moored or tied up was it more stringent with people on it. Mr. Britton stated that being moored was different.

Associate Member Schick asked if withdrawing the certification was to be able to allow people on it. Mr. Britton said he did it to be able to use it. Associate Member Schick stated he wanted to make money versus providing safety. Mr. Poulson stated there was no requirement to have it with it being used for people. Associate Member Schick asked who had clear title if it was filled over State-owned bottom. Mr. Britten said that deed existed and a survey, too, by the new owners.

Commissioner Bowman asked what was the stated purpose of the barge when he applied to the U. S. Coast Guard in June 2010. Mr. Britton said he indicated it was a construction barge and he had no idea he needed anything else.

Commissioner Bowman read from the Code Section 28.2-1203: "It shall be unlawful for any person to build....trespass or encroach upon or over...which are the property of the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission..."

Commissioner Bowman said that honesty is best policy and the structure is over State-owned bottom in his opinion, but steps had been taken to circumvent the law and the Law of Virginia needed to be complied with. He said the vessel was still over State-owned bottom and being used as a part of the business as a part of the restaurant proper.

Mr. Poulson said that if it was legal he had a right to so without being regulated by agencies. He said it was legal as it had not been constructed over State-owned bottom.

Commissioner Bowman asked if the type of use did not affect what is required. Mr. Poulson stated no, because the barge floated over the bottom and jurisdiction was over permanent structures. He reiterated that this was transit or temporary.

Commissioner Bowman said they had to consider the public trust and the public could not use the area.

Associate Member Schick said that it was trespassing over State-owned bottom and the use of it determined the water dependency which was used to determine the need for a permit. He said it did not matter whether it was temporary or permanent its use was not water dependent.

Mr. Poulson stated that the use of the barge was not the issue.

Commissioner Bowman asked for anyone present, pro or con, who wished to comment. There were none. He stated the matter was before the Commission.

Associate Member Bowden said that he agreed this was a barge as the U. S. Coast Guard would document it, and a car in a garage does not make it an appliance. He said it was not considered construction on State-owned bottom, as this was a gray area. He said this was a man-made area and no one knew how much was natural, but staff arbitrarily put a line there. He said that VMRC does not determine boundaries and staff has determined that the applicant must prove ownership. He said they would never permit a floating platform for that use, but this here was a barge and where does the VMRC have the authority to regulate a barge. He stated that there were too many gray areas, as there was no dock and pontoons were put on it for construction, which is an appropriate use.

David Grandis said that the Commission was not regulating a barge or determining what it is or how it was constructed was not being considered, but how it was being used.

Associate Member Schick said that really it was a barge and use determines what it was, dock or barge. He said he agreed this is a gray area.

Associate Member Bowden stated that VMRC had no legal authority as it was a barge and the U. S. Coast Guard said it was a barge and he could not support staff. He said a marina had exclusive use of the bottom and any mooring means exclusive use, but we cannot exert our authority over the U. S. Coast Guard.

Associate Member Robins said under the Public Trust, the Commission can exert its authority for use of State-owned waterways. He said a barge was built on pontoons and should be seen as a traditional floating dock. He said it was just a technical distinction. He said the fact that it can be moved in 32 minutes was not pertinent and whether it was lined or bolted was not significant to authority over State-owned bottom. He said use

must be considered, it was in the record. He said this was being used to augment seating for the restaurant and it was appropriate for the VMRC to consider its use.

Associate Member Tankard stated that he agreed with Mr. Robins in general. He said it was over the State-owned bottom and used for the restaurant. He said if it were to be allowed it would set a precedent for other using the same reasoning. He stated he could not see permitting this use and it said in Code Section 28.2-1203 that a permit must be given to allow use over State-owned bottom.

Associate Member Holland said it was a gray area as it was a documented barge and VMRC did not have jurisdiction over a barge. He said it had been proven that it could be moved quickly. He stated that the staff did a great job, but he could not agree that it was a part of the restaurant.

Associate Member Laine stated it was a simple end run around the law and if it was water dependent then it should be approved but then the door is opened to who knows what. He moved to accept the staff recommendation for the structure to be removed.

Commissioner Bowman asked for advice from Counsel about civil charges. Mr. Grandis said that in Code Section 28.2-1205 that civil charges could be applied in lieu of further Law Enforcement action. He said if Mr. Britton did not agree to the penalty then it would be referred to the Attorney General's office and enforced by the Court.

Mr. Poulson said it was not appropriate to apply a civil charge. He said it was a gray issue. He stated that if the Commission ordered the removal, they would comply or appeal it. He said that they would not ignore the law if ordered to remove it.

Commissioner Bowman said to clarify staff's recommendation that the Commission find that the floating platform structure be an unlawful use of State-owned submerged lands pursuant to Section 28.2-1203 of the Code of Virginia and direct removal of that portion of the illegal structure that falls within its jurisdiction (the western 54-foot by 13.6-foot section of the floating platform) within 10 days. Mr. Laine agreed with this clarification.

Associate Member Schick said that if it were there as a barge then it could remain there instead of it being removed. He said if the use were to be changed then it could remain with an escalator, but if not then a cease and desist order would need to be issued and all equipment would have to be removed that was associated with this use.

Commissioner Bowman asked for a second to the motion. Associate Member Robin seconded the motion. He added that with the issue of a civil charge, if the applicant were to be allowed to retain the structure, then the Commission could pursue a civil charge, but in this case the applicant is being directed to remove it making no civil

charge to be in order. He said the staff recommendation and the motion was for removal.

After some further discussion, the motion carried, 4-3. The Chair voted yes. Associate Members Holland, Bowden, and Schick all voted no.

No applicable fees – Ordered to remove the structure.

* * * * *

13. BAYLOR GROUND ADJUSTMENT, NOMINI BAY, WESTMORELAND COUNTY. Staff request for Commission approval of adjustment of Baylor Ground, originally created by Acts of the Assembly, Chapter 632, approved April 2, 1902. Adjustment to correct encroachment upon upland land parcels. Request is pursuant to Section 5, 28.2-553 (Reestablishment of lines of Baylor survey; procedure; evidence of reestablished lines) of the Code of Virginia.

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

Mr. Stagg explained that this public ground was located within Nomini Bay, to the west of the eastern shoreline within Westmoreland County, and extended out to the Virginia/Maryland state boundary. The ground was initially established by the General Assembly pursuant to Acts of the Assembly, Chapter 632 and approved on April 2, 1902. The enabling legislation stated the following: “Whereas, through neglect of duty, mistake, or inadvertence no survey whatever was made of the natural oysters rocks, beds, or shoals in Nomini and Currioman bays within the limits of the county of Westmoreland, as directed and provided by act aforesaid: (being the legislation that created the original Baylor Survey), and, Whereas, the said natural oyster rocks, beds, and shoals have, ever since the passage of said act and from the time immemorial, been used and enjoyed by the citizens of the State as a common for the taking and catching of oysters without interference or dispute until application was recently made to have said natural oyster rocks, beds, and shoals assigned to them; and, Be it enacted by the general assembly of Virginia, That the county court of Westmoreland county shall forthwith appoint three commissioners, who shall be persons engaged in the oyster industry, whose duty it shall be to go out upon the waters of the Nomini and Currioman bays, in the county of Westmoreland, and take with them a competent county surveyor and the oyster inspector of said county, and then proceed to lay off and designate, by metes and bounds, all of the natural oyster rocks, beds, and shoals, within said waters of the Nomini and Currioman bays, in the said county of Westmoreland, and cause the said surveyor to make a true and accurate survey and plat of the same...”

Mr. Stagg said that this survey and plat were to be recorded within the clerk’s office of Westmoreland County upon completion. While staff had been unable to locate any such

document at the county clerk's office, staff understood many records were lost earlier during a fire last century. However, staff had located a boundary survey and map as apparently performed by Mr. Fred E. Ruediger sometime prior to 1932. As noted within the Code of Virginia, Chapter 5, Article 4, §28.2-553, The Commission may re-establish, relocate, and remark all lines of the Baylor survey which cannot otherwise be relocated because of the loss or destruction of previous marks. In re-establishing any such lines, the line surveyed by Fred E. Ruediger shall be followed where such line exists or was surveyed. Additionally, under Chapter 5, Article 4, §28.2-551, the Code also noted that "The surveys of the public oyster beds, rocks, and shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of such body of water, notwithstanding any surveys, plats, markers or lines to the contrary."

Mr. Stagg stated that staff had discovered and verified in the field that a portion of the above referenced public ground, as surveyed and mapped, extended landward of mean-low water along the eastern shoreline of Nomini Bay. Staff did not believe the area along this shoreline had any significant oyster resources, nor did the public work this area due to shallow depth and pier and groin structures protruding from the shoreline.

Mr. Stagg explained further that §28.2-556 "Erosion control devices within the Baylor survey," stipulated the following: The public oyster beds, rocks, and shoals shall not include any area needed for an erosion control structure if the Commission, after considering the comments of the Virginia Institute of Marine Science and the Department of Conservation and Recreation, and any other relevant evidence, finds that: (i) shoreline erosion has occurred at the site and is expected to continue; (ii) such erosion is increasing the sediment load to public waters, causing degradation of water quality; (iii) the proposed project is a technically and environmentally acceptable way to control erosion at the site unless such Baylor ground is productive under §28.2-630 of the Code of Virginia in which case the environmentally preferable erosion control shall be utilized; and (iv) the Commonwealth's interest in protecting water quality by controlling erosion at the site outweighs the value of the portion of the natural oyster beds, rocks, and shoals affected by the erosion control structure. Whenever the area of the natural oyster beds, rocks, and shoals is so changed, the Commission shall make the changes on its Baylor survey charts.

Mr. Stagg said that, as noted and required by the Code Sections that were referenced above, staff was recommending a realignment of the public ground boundary to rectify this upland encroachment and to accommodate the already existing shoreline erosion structures along this reach of shoreline. The ground as currently mapped contains 195.69 acres. Staff recommended eliminating one existing corner (#75) creating a new boundary (from corner 74 to 76) that would remove the upland encroachment and shoreline structures and result in a revised acreage of 187.95 acres and if approved VMRC's oyster lease maps would be revised to reflect the change.

Commissioner Bowman asked for anyone present who wished to comment, pro or con. There were none. He asked for discussion or action by the Board.

Associate Member Holland asked if this would remove eight acres from the Baylor Grounds. Mr. Stagg stated it would be less than eight acres.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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SPECIAL ANNOUNCEMENT

Commissioner Bowman announced that Douglas Jenkins had decided not to seek re-election as President of the Twin River Watermen's Association and that Wayne France had been elected as the new President of the Association. He also introduced Mr. France's son.

14. PUBLIC COMMENTS

SPINY DOGFISH PERMIT REINSTATEMENT REQUEST

J. C. West a waterman from the Gloucester area requested that his permit be reinstated. He said it was an error in his reporting and that he had indicated just "dogfish" and not "spiny dogfish", in his catch reports. He provided records to staff as a hand-out and requested the return of his permit.

Commissioner Bowman stated that an evaluation and comments from staff were needed for this matter. Joe Grist, Head of Plans and Statistics explained that staff had evaluated this matter and issues like this had come up three times this year. He said there was a request in October 2009 to limit entry into this fishery and in November 2009 there were issues with reporting requiring action by the Commission. He said the committee had discussed whether to remove or add individuals and they felt it would go against the intent of limiting entry, but it was a decision for the Board.

Commissioner Bowman asked Mr. Travelstead for comments. Jack Travelstead, Chief, Fisheries Management explained there were a number of people in this same situation who just put "dogfish" on their reports and not "spiny dogfish". He said when staff looked at the data the dogfish were caught at the right time of year for spiny dogfish, Mr. West had provided documentation, and technically this did meet the requirements.

Commissioner Bowman said he would like to say yes because of it being an honest mistake, but that would be detrimental to the quota and to others. Mr. Travelstead explained that it was a small quota, but should go up in the future significantly over the next two years. He said the ASMFC wanted to divide the poundage among the states, but in the past the catch had been 3 million which was spread over 100's of permittees.

Associate Member Robins said that the staff had raised the issue of others in the same situation and that they could also document it. He said the committee recommendation was based on 100 qualified individuals and a larger pool would be more than historically allowed. He said there was only 60 million pounds for the Coast and it was improving. He suggested that the Committee revisit this issue so that it can be determined how to manage the fishery and change the criteria.

Associate Member Bowden stated that there were 30 participants that some questioned why they had a permit and with 1.6 million pounds and 30 participants it would equal a 15-day season at this time.

Commissioner Bowman suggested that the Commission look at this issue, but wait until things change to take any action.

No action was taken.

* * * * *

15. PUBLIC HEARING: Consideration of amendment to Regulation 4 VAC 20-270-20 et seq. "Pertaining to Crabbing" to continue the 5 a.m. to 1 p.m. daily time limit for crab pots and peeler pots through September in 2010.

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

Mr. O'Reilly explained that this was being heard due to a request by Ty Farrington, a member of the Crab Management Advisory Committee, at last month's meeting. He explained that Mr. Farrington had asked the Commission to consider shifting the start time from 6 a.m. to 5 a.m. for crab potting and peeler potting during the month of September.

Mr. O'Reilly said that in 2001 the Commission had considered bi-State measures in order to reduce the annual crab harvest by 15%. He said that the Commission approved a CMAC endorsed Wednesday closure, but the industry did not like the closure and in 2002 the Commission adopted a daily time limit that had been one of the proposed measures in 2001.

Mr. O'Reilly explained that Mr. Farrington was concerned with working with the crabs in the heat of the day. He said the current start time limit is within about ½ hour of first light and that was what the Committee wanted in 2001.

Mr. O'Reilly said that staff polled the committee twice. With 12 responses 7 were in favor of the change and 5 were not. He said that Mr. Jenkins had commented that light

was needed to work the peeler pots to sort the crabs. Mr. Wiggly of FMAC was opposed because he indicated, older watermen, like it to be daylight when they work.

Mr. O'Reilly stated that staff recommended no change as this had become traditional for the past eight years and there had not been any complaints. He said that on September 30th, the last day of the month, it would mean the longest length of time occurring before first light (1 hr. 35 min.) for the entire crabbing season, if the start-up of the daily time limit was changed to 5 a.m.

Associate Member Robins suggested that this be discussed with the Committee for the following year.

Commissioner Bowman opened the public hearing and asked for any public comments.

Ty Farrington, commercial crabber, was present and his comments are a part of the verbatim record. Mr. Farrington stated that he had brought this up last month. He provided the Commission with a petition with 100 signatures. He said he spoke with Dan Dise on Tangier and he was told by him that they did want the change. He said with the global warming it had been a hot summer and the fall was expected to be hot also. He said he had always wondered why the change had been made in the past. He said daylight brings the heat and he cannot sell dead crabs. He said there was public support and industry support for this request.

Commissioner Bowman asked if anyone else wished to comment.

G. Wayne France, Twin River Watermen's Association President, was present and his comments are a part of the verbatim record. Mr. France suggested changing it to from 5 a.m. to 2 p.m. in September, it would add about 26 extra hours to the season and would take care of both problems.

Being there were no more public comments, Commissioner Bowman closed the public hearing. He said the matter was before the Commission for discussion or action.

Associate Member Robins said that Ty had made some significant comments and shown that there was more interest than shown by staff's survey. He moved to refer the matter to the Committee and consider it for next year after a complete review was made. Associate Member Holland seconded the motion. Commissioner Bowman said they would like to accommodate all, but it would be better to make a change after the season ended. The motion carried, 7-0. The Chair voted yes.

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Commission Meeting

16. **VIRGINIA INSTITUTE OF MARINE SCIENCE**, Presentation of Dr. Bob Orth's annual review of the status of Submerged Aquatic Vegetation including the VIMS request to authorize the renewal of the 507.90 acre set-aside area in Hog Island Bay, for seagrass restoration that was last established by the Commission at their August 23, 2005, meeting.

Bob Orth, VIMS, was present and his PowerPoint presentation is a part of the verbatim record. Dr. Orth reviewed his presentation and said that they were well below the 2010 SAV goal with less than 5,000 acres. He said regulating the various gears over the years had minimized the scars. His comments are a part of the verbatim record.

Commissioner Bowman stated that most did want to be a part of the solution and not a part of the problem. He said he was happy with cooperative efforts made with industry.

Dr. Orth explained that in the area set aside at Hog Island, the eel grass was coming back and there had been some natural recovery. He said they were requesting an extension for this area to be set aside. He said with the scallop restoration efforts the stocks were coming from North Carolina, but being held in quarantine to make sure they bring no harm to Virginia's Chesapeake Bay. He said they were re-establishing a fishery that was lost many decades ago.

Associate Member Tankard moved to approve the request to continue to set aside the Hog Island area. Associate Member Schick seconded the motion. The motion carried, 7-0. The Chair voted yes.

Commissioner Bowman said this motion was for the procurement and funding. He asked staff if they had any comments. Jane McCroskey, Chief, Administration and Finance, said she did not have any comments.

Commissioner Bowman inquired about funding for this project. Mr. Travelstead explained that VIMS was proposing a total cost of \$23,959.00, planning to supply services totaling \$21,000.00 and match in the amount of \$2,959.00.

Staff requested approval of \$ 21,000.00 in funding for this project to be split equally between the Marine Fishing Improvement Fund and the Recreational Saltwater License Fund.

Associate Member Robins moved to approve the funding. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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Associate Members Bowden and Holland left early during this presentation at approximately 3:45 p.m. for the rest of the meeting.

17. **REQUEST FOR PUBLIC HEARING:** for the 2010-2011 public oyster season requiring amendments to Regulations 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", 4VAC20-650-10 et seq., "Establishment of Oyster Sanctuary Areas", and 4VAC20-260-10 et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas".

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

Dr. Wesson explained that this was the normal yearly process for setting up the public oyster harvest seasons and other associated limits. He said that Texas, Mississippi and Louisiana would be opening their seasons in November. He said the harvest was being boosted to increase public harvest. He said there had been complaints of overcrowding on the oyster rocks, but the management measures had helped. He said the standing stock has been historically low, but now it was higher than in the past because of better management and there was need to continue this management for the future.

Dr. Wesson stated that the Shellfish Management Advisory Committee had been more active this summer. He went on to explain that the Wreck Shoal Sanctuary was the oldest sanctuary established after the first Blue Ribbon Oyster Panel. He said at that time there was hardly any standing stocks so it was not controversial. He stated that in late 2004 there was a good spat set because of the 2003-2004 rainy season. The lower James River was opened and some of the sanctuary area was removed at that time to allow dredging in the James River. He said that VIMS-VMRC monitored the areas and there was an increase in oysters, but it was still not a healthy stock. He said there had been other problems over the Wreck Shoal Sanctuary area because of an error in the description of the area and the Lat-Longs were wrong for the buoy indicated. He said VMRC and VIMS met with the SMAC and developed a smaller sanctuary to protect the heart of the Wreck Shoals area (700 acres). This new area was accepted by the subcommittee. He said SMAC accepted the proposal on August 23, 2010. He said the rest of the area could be opened to hand tong. He said staff was recommending the advertisement of this change.

Dr. Wesson said that staff was recommending similar measures for the public oyster ground harvest season as it has been for the last several years. He said the seasons were proposed this way because of the standing stocks. He said this proposal was this way in order to keep a supply of oysters for all year.

Dr. Wesson said that the Milford Haven seed plant areas were proposed for opening for harvest with hand tongs. He said Areas 7 and 8 was proposed for opening to hand scrape as well as the Rappahannock Rotation areas. He said, in Tangier, staff proposed to open another rotational area and the Tangier watermen were satisfied with that method of opening a different rotational area each year. The two areas to be opened in the Rappahannock are usually 1 above the bride and 1 below. He said in Rotational Areas 1

and 6 staff had collected bloodstock for the hatchery and kept them closely checked. He said in the Broad Creek and Drumming Ground area in 2006 there was the highest spat set that had been seen for a while with the best being in Drumming Ground where large oysters had been seen. He said VIMS and staff recommend that Rotational Area 4 and 6 be opened.

Dr. Wesson said that there had been a lot of discussion by the Committee and approval for opening the entire State on October 1st through March 31st. He said if this was done, it should not include Tangier and Seaside and to come back in December to discuss extending it. He said this way some areas would be opened 3 months versus the 2 months as recommended by staff. He said if opened later than October, the watermen would continue crabbing, but if not they would start oystering.

Commissioner Bowman asked if staff was sure this was an accurate representation of what was happening out there. Dr. Wesson said that staff would keep in contact with the buyers and surveys would be completed by the end of November at the 3rd or 4th week. He said it is a risk.

Dr. Wesson said there were other recommendations to increase the 8 bushel limit to 10 per man. He said when doing the dual patent tong and hand scrape survey, when staff does the survey with the patent tong it takes more grabs to get the limit.

Dr. Wesson said that staff was still not getting the reporting from all the buyers and harvesters.

Dr. Wesson said that staff recommending same options as has been done for the last several years for Regulation 4VAC 20-720-10, et seq.

Dr. Wesson said that staff recommended the maximum cull size limit for the rotational areas in the Rappahannock be discontinued.

Commissioner Bowman stated he was please with all the discussion that was done to come up with a workable plan for a trigger point as it was still not as it should be but it was looking up.

Associate Member Tankard said it gave him pause with Maryland increasing there sanctuary areas and we were reducing Wreck Shoal from 2,200 acres to just 700 acres. Dr. Wesson said that staff and VIMS were still protecting the heart of Wreck Shoal and Maryland he felt was going overboard.

Commissioner Bowman stated it was Maryland's right to do it. Dr. Wesson said they were working with same partners as Virginia.

Associate Member Robins asked if the special reference points within specific areas better define removal. Dr. Wesson said staff was working on it with Dr. Mann to answer that question.

Commissioner Bowman said the matter is before the Commission for action.

Associate Member Tankard moved to accept the staff recommendation to advertise for a public hearing in September. Associate Member Laine seconded the motion. The motion carried, 5-0. The Chair voted yes. Associate Members Bowden and Holland left early.

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18. REQUEST FOR PUBLIC HEARING: for amendments to Regulation 4VAC20-1230-10 et seq. "Pertaining to Restrictions on Shellfish" regarding the use of identification tags for shellfish harvest containers.

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

Dr. Wesson noted that a letter from the FDA indicated that Virginia could be out of compliance with the ordinance for shellfish safety, which required a tag at the harvest area on the boat. He said other states, such as Mississippi and Louisiana, started putting tags on every bushel bag. He said in Virginia they had been using the MRC 53 tax ticket in lieu of a tag and now the tag requirement would to be even stricter. He said staff had worked with the VDH-DSS and industry to allow tagging in a way that would have minimal impact on the industry. He said the clam industry would also be required to use this tag. He said there would be an allowance for a bulk tag in certain circumstances.

Dr. Wesson said staff had not received very many comments. He said VMRC would provide the tags, a generic tag, to be sold at cost. He said they could be sold by the agency's license sales agents.

Dr. Wesson said the staff recommended advertising for a public hearing.

Commissioner Bowman asked for a motion by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 5-0. The Chair voted yes.

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- 19. DISCUSSION:** concerning a Conservation and Replenishment Program project to allow the harvest of seed oysters by private planters from areas permitted for shell dredging in the upper James River between September 13 and September 24, 2010.

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

Dr. Wesson explained that the staff has a project to dredge and plant fossil shells in the York River and on Seaside, Eastern Shore. He said the area that had been dredged in past years was the Groves Wharf area near Kingsmill. He said the area had been checked and the shell deposit was 40 feet deep. He said in the spring when they were checking the area they found a spat set in the area so there were seed on the sites. He said a weather event would kill it all and staff felt that the public should be allowed to go up there to harvest some of this seed. He said he would not recommend taking the seed oysters to the higher salinity areas. He said there were no shucking houses on the James River and there was a short supply of shell. He said it would take 3 years for these seed to grow out. He said staff was recommending a special season in September requiring the issuance of a Bulk Seed Permit to work after the curfew established by the warm weather regulations. He said some of these areas are in polluted areas with a small quantity of market size. He said they recommended opening these areas for two weeks requiring that the harvesters sign up to get a Bulk Seed Permit. He said it would be an honor system. He said there would be a charge of \$1.00 per bushel to be paid to the State and put into the Special Fund. He suggested that if they are taken to the Potomac River tributaries that they be planted way up the river.

Commissioner Bowman asked who would do the sealing of the trucks. Dr. Wesson said they would only be required to get a Bulk Seed permit.

Commissioner Bowman asked for public comments.

Roy Insley was present and his comments are a part of the verbatim record. Mr. Insley stated that he agreed with the proposal, but he was concerned that the James River had not received any shells or seed for a long time. He said it was a good time to have a pilot program to hire someone to move the seed to public rocks in the James River. He said it was a public resource and private industry needed to be promoted. He said the James River watermen needed help, too.

Dr. Wesson said that it was not as much as funding as there was concern with moving it to saltier areas that were a higher risk. He said there was not enough manpower for such a project as the shell project was taking the time of all field personnel. He said if there was money later, then seed could be moved in the spring into the lower James River. He said in the Piankatank River there was seed that could be moved as there had been a good

set last spring. He said in the James River the count was more than 1,000-count and it was the best seen so he would hate to lose that for the industry.

Mr. Insley again reiterated that there was a need for something on the public rocks in the James River and there had been no shells planted for years. He said if the seed were available it was not fair to the James River watermen to let it go everywhere else but ignore the James River public rocks.

Commissioner Bowman said he felt that was a good point. Dr. Wesson stated that if the private people needed the seed they could afford to move it. He said this was a bonus to find this resource above the seed area.

Associate Member Tankard said that if this effort was done by private planters and the oysters did grow out, as expected, he would agree with the private leaseholders getting them.

Association Robins suggested exploring the other seed projects in the spring.

Commissioner Bowman asked for a motion by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 5-0. The Chair voted yes.

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20. REQUEST FOR PUBLIC HEARING: to consider the establishment of a Fishermen Identification Program as authorized by Section 28.2-302.1:1 of the Code of Virginia and to amend Regulation 4VAC20-1090-10 et seq. to raise saltwater recreational fishing license fees.

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

Mr. Travelstead said that the National Angler Registry Program began January 1, 2010. He added the National Marine Fisheries Services (NMFS) will begin charging anglers to register under the national program. He said the fee is expected to be in the range of \$15 to \$25. He explained that States can avoid this fee for their anglers by gaining an exempted-State status, which can be done by the State setting up their own program and providing NMFS with the names and addresses of all anglers.

Mr. Travelstead said that Virginia had too many blanket licenses and exemptions from the license requirements to provide such a complete list. He said the General Assembly had directed the agency to establish a Fisherman Identification Program.

Mr. Travelstead said that the Maryland Department of Natural Resources had offered to build an internet-based system that would not only accommodate their anglers, but include anglers for the Potomac River Fisheries Commission and the Virginia Marine Resources Commission. He said this offer was at no cost and Virginia had accepted the offer. He added the system would be online by January 1, 2011.

Mr. Travelstead said to meet the cost of implementing a State-level angler registry program an increase in saltwater recreational fishing license fees would be necessary. He said the General Assembly recognizing this, authorized a one-time fee increase of no more than \$10 to purchase a private recreational boat license.

Mr. Travelstead explained that staff recommended the advertising for a public hearing in September.

Commissioner Bowman asked for questions.

Associate Member Robins asked how staff would handle the lifetime licenses with the registry. Are they registered by the State for the remainder of their life? Mr. Travelstead said that staff would do a survey to update their information periodically.

Associate Member Tankard asked if there was still a boat license. Mr. Travelstead said there was no change in the licensing.

Mr. Travelstead said staff wanted to make it as easy as possible to register at the State level at no cost.

Commissioner Bowman asked for a motion.

Associate Member Schick moved to accept the staff recommendation to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 5-0. The Chair voted yes.

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There was no further business and the meeting was adjourned at approximately 4:15 p. m. The next regular meeting will be held Tuesday, September 28, 2010.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary