

## MINUTES

**Commission Meeting****January 24, 2006**

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

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

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

Virginia Institute of Marine Science (VIMS)

David O'Brien  
Lyle Varnell  
Roger Mann  
John Olney  
Paul Jasinski

Other present included:

Dick Collins	Amanda Wrotan	Willie Shiflette
A. Shiflette	Hugh Riley	S. Niblo
Joe Illes	Kevin DuBois	Roby Hackney
Tom Langley	John R. Hanson, Jr.	John R. Hanson, Jr.
W. H. Weston, Jr.	Tony Difilipipo	Cliff Bocchiaio
John R. Bland, Jr.	Judy Boone	Ronnie Boone, Sr.
James Bearce	Edward Alleyne	Bill Judy
Danisk Gauber	Ronald Boone, Jr.	Lorraine Holly
Nancy A. LaCross	Jerry Ramsey	Richard Torlone, II
Jeffrey Prier	William L. Regule	Edna Knight Roberts
Don Tharpe	Louis Sleeper	Sarah Harrison
Martin A. Thomas	Peter Decker	Tony DeFilippo
Benny leBar	Dean Westman	A. Putscher
Lee Kosanberg	Robert Hines	Jeff Watkins
Bob Livengood	Mayor Paul Frame	George Banes
Anne Smith	Dennis Clark	Ellis W. James
Richard Green	Dr. Paul L. Evans, Jr.	Andrew G. Bury, Jr.
Chuck Frederickson	Tony Tharpe	G. Crump
R. Weagley	John Wyatt	Roy Insley
Russell Gaskins	Dale Taylor	Roger Parks
James Edwards	Jody Kress	Anita Kress
Frank Kearney	J. F. Cox	B. M. Lockwood

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Robert Jensen	Gladstone L. Chandler	Tommy Leggett
Mark Bryer	John Partin	Jackin Partin
Walter Priest	Joe Shelton	Chris Mooks
Jenny Davis	Danny Rogers	Amanda Hill
Timothy S. Guph	Lionel Jenkins	Oliver Lawson
Orville H. King, III	Mike Insley, Jr.	O. H. King, Sr.
Mike Insley, Sr.	Pat Crewe	Frances Porter
John Ridley	Kelly Place	Douglas F. Jenkins, Sr.

and others

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Commissioner Pruitt called the meeting to order at approximately 9:38 a.m. All Associate Members were present.

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Associate Member Garrison gave the invocation and Commissioner Pruitt led the pledge of allegiance to the flag.

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

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**APPROVAL OF AGENDA:** Commissioner Pruitt asked for any changes to the agenda. Associate Member Garrison requested that Item 16 be heard at 1:00 p.m. Jack Travelstead, Chief, Fisheries Management, explained that Bonnie-Leigh Jones and Ernest Jones asked that Item 18 be deferred until the February 2006 meeting. Bob Grabb explained that the applicant for Waters Edge, Item 8, asked to be heard earlier than scheduled as their attorney had an appointment.

**Associate Member Robins moved to approve the agenda, as requested by the staff, but to deny the request for Waters Edge to be heard earlier. Associate Member Garrison seconded the motion. The motion carried, 8-0.**

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**MINUTES:** Commissioner Pruitt asked for a motion to approve the December 20, 2005 meeting minutes. Associate Member Robins asked that a correction be made to the item on Horseshoe crabs and to change the 5,000 pounds in the motion to 5,000 horseshoe crabs. **Associate Member Robins moved to approve the minutes as corrected. Associate Member Schick seconded the motion. The motion carried, 8-0.**

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

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

After some discussion for clarification as regards to fees for Items D and G, Commissioner Pruitt asked if anyone was present pro or con on these items to address the Commission. No one asked to speak.

**Associate Member Robins requested that separate motions be made for Items A – H and Item I. Associate Member Holland moved to approve as recommended by staff items A-H. Associate Member Robins seconded the motion. The motion carried, 8-0.**

**Associate Member Schick moved to approve Item I as recommended by staff. Associate Member Holland seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained.**

**2A. EAST TENNESSE NATURAL GAS LLC, #05-2367**, requests authorization to install 30.48 miles of submerged and/or buried 20-inch diameter natural gas pipeline beneath 48 streams, 10 of which are jurisdictional, to facilitate construction of the Jewell Ridge Lateral Project in Tazewell and Smyth Counties. Recommend approval contingent on our standard instream permit conditions and the following special permit conditions: (1) the Indian Creek crossing shall be completed utilizing the jack and bore crossing method; (2) all remaining stream crossings shall be completed in the dry utilizing the dam and pump or dry flumed crossing method (3) the Clinch River equipment bridge shall be removed upon completion of the stream crossing, all remaining temporary work bridges shall be removed from the waterway as soon as practical upon completion of construction; and (4) updated mussel surveys and instream construction time-of-year restrictions, as outlined by the Department of Game and Inland Fisheries in their January 10, 2006 letter to DEQ, shall be followed. Additionally, recommend approval of an encroachment royalty of \$1,296.00 for the encroachment of the line beneath 432 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

Royalty fee (Encroachment on 432 l. ft. @\$3.00/ l. ft.).....	\$1,296.00
Permit fee.....	100.00
Total fees.....	\$1,296.00

**2B. GLEBE HILL ASSOCIATES, INC., #04-2063**, requests a permit modification to construct a 100-foot long by 30-foot wide clearspan bridge, in lieu of the previously permitted 90’ by 28’ structure, across Crump Creek to facilitate vehicular access to a proposed residential subdivision in Hanover County. Recommend an encroachment royalty of \$100.00 for the additional encroachment over 50 square feet of State-owned submerged land at a rate of \$2.00 per square foot.

Royalty fee (Encroachment on 50 sq. ft. @ \$2.00/sq. ft.).....	\$100.00
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**2C. RICHMOND DEPARTMENT OF PUBLIC UTILITIES, #02-1288**, requests a three year extension of, and a modification to, their existing permit to install a 36-inch water transmission main beneath 857 linear feet of the James River in the City of Richmond. The modification requests authorization to perform maintenance, as necessary, on the line. Recommend approval contingent on a February through June time-of-year instream work restriction to protect anadromous fish species.

No applicable fees, permit modification and extension

**2D. COVE POINT CONDOMINIUMS, #05-2207**, requests authorization to remove existing tending piers and boat lifts and install approximately 1,669 linear feet of fiberglass bulkhead, varying from two feet to six feet channelward of mean low water and the failing bulkhead, situated along Little Neck Creek in Virginia Beach. The bulkhead will be backfilled with concrete to provide additional structural support and prevent further loss of fill material from under Cove Point Condominiums. Upon completion of the bulkhead, new 4-foot wide by 32-foot long tending piers will be constructed and pre-existing boat lifts will be installed in their original slips. Recommend an annual royalty in the amount of \$4,025.55 for the filling of 7,300 square feet of State-owned submerged bottom at the rate of \$3.00 per square foot (\$21,900.00), and the additional encroachment over 12,237 square feet of State-owned submerged bottom at the rate of \$1.50 per square foot (\$18,355.50).

Royalty fees:

(Filling 7,300 sq. ft. @\$3.00/sq. ft. and encroachment on	
12,237 sq. ft. @ \$1.50/sq.ft.).....	\$4,025.55 annually
Permit fee.....	100.00
Total fees.....	\$4,125.55

**2E. HENRY COUNTY PUBLIC SERVICE AUTHORITY, #03-2332**, requests to revise an existing permit to allow the construction of two (2) aerial, steel encased, PVC sewer lines above Blackberry Creek as part of the Northwest Henry County Sewer Improvement Project. The two crossings, specified as numbers 12 and 13, will span a total of approximately 110 linear feet of State-owned subaqueous bottom and vary in height from 24 inches to 36 inches above ordinary high water. No instream work will be necessary for the construction of the aerial crossings.

No applicable fees, permit modification

**2G. THURSTON PROPERTIES, LLC, #05-2563**, requests authorization to remove the landward 172 feet of existing pier and slips and to construct a new replacement pier with the same number of slips and in the same location adjacent to the permittees' marina facility situated along Urbanna Creek at the end of

Watling Street in the Town of Urbanna. Staff recommends approval with the assessment of a one-time royalty of \$11,524.00 for the encroachment of the pier and slips on 11,524 square feet of State-owned submerged land at a rate of \$1.00 per square foot. Should the Commission elect to approve the conversion of this public marina into a private dockominium at a future date, the royalty would have to be recalculated.

Permit fee.....\$100.00

**2H. GILES COUNTY, #05-2859**, requests authorization to replace the existing single-lane metal truss bridge carrying Route 724 over Wolf Creek near the Town of Narrows with a 25-foot wide, two-lane structure with one in-stream pier. This project was originally permitted under our Virginia General Permit (VGP#1) for VDOT activities, and has been taken over under VDOT's Local Partnership Funding Program to expedite construction. Recommend approval with our standard in-stream construction conditions.

Permit fee.....\$100.00

**2I. HARBOUR VIEW L.P., #05-2394**, requests authorization to construct an 8-foot by 340-foot open-pile community use pier, with railings, to include an 10-foot by 48-foot T-head and a 12-foot by 16-foot floating pier with gangway ramp at their property at the intersection of River Park Drive and North James Road, said pier to extend up to 230 feet channelward of mean low water into the Nansemond River in the City of Suffolk. Recommend a permit condition that the applicant post a sign at the shore end of the pier stating: The intended use of the pier is for temporary mooring only; no overnight mooring of vessels will be permitted. Recommend a royalty of \$3,768.00 for the encroachment over 2,512 square feet of State-owned subaqueous bottomland at a rate of \$1.50 per square foot.

Royalty fee(Encroachment on 2,572 sq. ft. @\$1.50/sq. ft.)...\$3,768.00  
Permit fee.....\$ 100.00  
Total fees.....\$3,868.00

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(Item 3, Closed Session was held after on Item 5)

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**Commission Meeting**

4. **BOY SCOUTS OF AMERICA, COLONIAL VIRGINIA COUNCIL, #05-2049**, requests authorization to construct a 6-foot by 930-foot floating pier addition with six (6) wetslips to replace and extend an existing open-pile pier to a total length of 1,133 feet channelward of mean high water adjacent to their facility situated along McKans Bay on the Rappahannock River in Middlesex County. Continued from December meeting.

Associate Member Garrison explained that there would be no review of the old information and slides.

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

Mr. Neikirk explained that the Commission at its December 20, 2005, hearing, continued this matter until the January hearing to provide the applicant and staff further opportunity to explore alternative designs and/or locations to address staff's concerns and still possibly accommodate the applicant's program.

Mr. Neikirk said that staff met with Mr. Dick Collins, Scout Executive and Mr. Hugh Riley, Treasurer of the Scout's Board of Directors, on January 11, 2005. During the meeting the applicants stated that they had re-evaluated the length of the proposed pier extension and determined that the pier could be reduced to a total length of 1,034 feet and still accommodate their intended use. They also stated that they would be willing to incorporate any reasonable recommended design changes to improve the structural integrity of the pier, but added that the pier needed to be located at the proposed site to accomplish their goals.

Mr. Neikirk further said that during the meeting, staff explained that there were no particular design change(s) that would alleviate all of their concerns with the project and that they remained of the opinion that the exposed location on the Rappahannock River was not appropriate for the construction of such a long pier designed for the in-water mooring of boats. To minimize the potential for the pier to break loose during a storm and damage other structures along the shoreline, they discussed the possibility of adding additional pilings on each floating pier section. The applicants had agreed to install an additional piling on each of the 40-foot pier sections. The original proposal called for the installation of a minimum of two pilings per section. The revised proposal would require a minimum of three pilings per section. The pilings would be 10 to 12-inch diameter concrete filled PVC pipes and would extend to a height of 12 feet above mean high water. It was hoped that even if the sections were to break apart during a storm, that the pile guides and pilings would keep the sections from floating away and possibly damaging other structures along the river.

Mr. Neikirk stated that since the December 20, 2005 staff evaluation, they had received a letter from the Health Department stating that the project was in compliance with their

“Sanitary Regulations for Marinas and Boat Moorings.” Staff had also recently received comments from the U.S. Coast Guard stating that they would require that the end of the pier be lighted for navigational safety reasons.

Mr. Neikirk said that although the applicant had been very willing to work with staff in an attempt to address their concerns, staff remained of the opinion that the proposed site was just not appropriate for the construction of such a long pier to accommodate deep draft sailboats. Although a long pier at this location would not interfere with traffic navigating up and down the Rappahannock River, it would interfere with small boats and associated nearshore activities, forcing those activities farther offshore in the vicinity of the pier. The site was also very exposed, with a 3.5-mile northeast fetch. Although the applicant had reduced the length of the proposed pier to a total length of 1,034 feet and had added additional pilings in the pier design, staff remained concerned with the ability of the long pier and the moored vessels to withstand the waves they would be exposed to during storm events. Accordingly, staff was unable to recommend approval of the project as proposed.

Mr. Neikirk said that should the Commission decide to approve all or some portion of the project, however, staff would recommend the assessment of a royalty in the amount of \$1.00 per square foot for any additional encroachment over State-owned submerged land.

Associate Member Garrison asked for any questions of staff by the Commission. He asked how many water miles was the project above the Norris Bridge. Mr. Neikirk explained that it was at the Middlesex and Essex boundary line about 8 miles above Urbanna.

Associate Member Robins asked if the shortened pier and additional pilings that were added addressed staff's concerns. Mr. Neikirk said the main concern remained the location of the pier.

After some further discussion, Associate Member Garrison asked if the applicant's representative wished to address the Commission. He further asked that since the proposal had been heard previously that the presentations be brief.

Dick Collins, Executive Director for the Boy Scouts, was sworn in and his comments are a part of the verbatim record. Mr. Collins provided a powerpoint presentation. He said that this was a project, which would provide activities on the waterways for children and would give them their “sea legs”. He said that there had not been any concerns expressed by the neighbors. He said they had figured the exact length of the pier necessary for their proposed purpose and this location was a great area for teaching canoeing and kayaking. He said it was 1.3 miles from the channel. He said the Health Department had given their approval and they had reduced the pier and increased the number of pilings to 3 per section to make the proposed structure sturdier to withstand the area wave action. He said these activities they proposed would not interfere with other shoreline activity.

After some further discussion, Mr. Collins provided a hand out of maps. He said that there was already a 500-foot pier in the area and people were used to dealing with it. He went on to say that the first section of the pier was solid with a concrete ramp and small ramp and he could not see how it could be raised for the passage of small boats. He said it would require a new design and additional cost. He said that there was not enough traffic to cause this to be an issue.

Commissioner Pruitt asked if anyone was present in opposition to the proposal. No one was present in opposition.

**Associate Member Schick moved to grant the project with the conditions discussed, i.e., shortening, the additional pilings and lighting. Associate Member Holland seconded the motion. Associate Member Garrison explained that since the proposal was 18 miles from the mouth of the river and weather conditions could get rather rough, he suggested that the motion be amended to require 30 days for clean up if necessary to address damage that occurs and that any exposed pilings be lighted. Associate Members Schick and Holland both agreed to the amendment. The motion carried, 8-0.** Associate Member Robins said that the applicant had made a good effort in addressing the staff's concerns and had still been able to keep the project intact for its stated purpose. He said if you look at the Code and private benefits, there are extraordinary benefits, especially to the children who would never get this type of exposure to the waterways otherwise.

Royalty fee (Encroachment on 13,740 sq. ft. @ \$1.00/sq. ft.).....	\$13,740.00
Permit fee.....	\$ 100.00
Total fees.....	\$13,840.00

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- 5. **M. SCOTT NIBLO, #05-2305.** Commission review of the Norfolk Wetland Board's December 14, 2005, decision to approve a permit to install a riprap revetment within jurisdictional wetlands on his property situated along the Lafayette River in Norfolk.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Ms. West explained that the slides were a part of the Wetlands Board record.

Ms. West explained that the Norfolk Wetlands Board considered this application at their hearing on December 14, 2005. Their staff person, Mr. Kevin DuBois, provided an extensive overview of the project including historic information regarding a previous denial of an application by the Board for a similar project on this same parcel in 2001. Mr. DuBois noted during his presentation that the VIMS report stated that there was no evidence of active detrimental erosion at the site. VIMS estimated the total wetlands impacts to be 1,311 square feet. Mr. DuBois noted during his presentation that the stated

purpose of the project was to create a physical barrier to keep the Niblo children out of the marsh. He concluded his presentation with a recommendation that the application be denied because of a lack of erosion at the property and that there was sufficient upland available to relocate the riprap structure landward of tidal wetlands.

Ms. West stated that during the hearing, the Board thoroughly considered the testimony of the applicant, his agent and VMRC staff. The applicant's agent, Mr. George Bangs, noted in his testimony that the applicant had worked with the Board's staff and modified their original proposal. In Mr. Bangs' opinion, the structure was moved to a location above the mean high water mark wherever possible. He estimated that the structure would impact only 100 square feet of tidal wetlands. He also explained that the applicant was willing to compensate for those impacts by removing a boat ramp and planting that area with marsh vegetation.

Ms. West said that Dr. Niblo explained to the Wetlands Board that the purpose of the project was both for the safety of his children and as a form of land management to keep the wetlands from further encroaching onto his property.

Ms. West explained Mr. Jeffrey Madden of VMRC Staff, noted in a statement he made to the Board that they appeared to be uncertain of the upper limits of their jurisdiction and that they might wish to table the matter and require an official delineation of this important jurisdictional benchmark.

Ms. West said that the Board, in their discussions, noted that additional on-site mitigation above and beyond the planting of the boat ramp area would be required. The applicant agreed to additional mitigation on-site "near the holly trees". The Board ultimately voted, 7 – 1, to approve the application with the following special conditions:

- The structure must be moved landward 1.5 feet to reduce the impact to wetlands.
- The applicant must submit a mitigation plan for the creation of 400 square feet of vegetated wetlands
- The mitigation plan must be reviewed by Board staff for plant selection and elevations.
- The applicant must submit an erosion control plan.

Ms. West said that since there appeared to be no evidence of active detrimental erosion at the property, and since there appeared to be sufficient upland area on the property to allow the installation of a structure to provide protection for the Niblo children without impacting jurisdictional wetlands, there did not appear to be a demonstrated need to place the structure within a jurisdictional wetlands area.

Ms. West further said that in reviewing the “Excerpt of Proceedings” City staff provided with the record, staff noted that there was no discussion on the record by the Board of any further need to avoid impacts to tidal wetlands. Rather, the Board began its discussions with a consideration of the need for mitigation of those impacts. As such, it appeared the Board did not follow the criteria set out in Regulation 4 VAC 20-390-10 et seq. Wetland Mitigation and Compensation Policy and Supplemental Guidelines, which states, in part, that in order for a proposal that impacts wetlands to be approved, three specific criteria must be met. The specific criteria required that all reasonable mitigation actions, including alternate siting, which would eliminate or minimize wetlands loss or disturbance, must be undertaken; and, that a proposal must clearly be water-dependent in nature and demonstrate a clear need to be in the wetlands while providing overwhelming public and private benefits. When a proposal cannot meet one or more of these criteria, the permit should be denied or the activity must occur in areas apart from the wetlands. The regulation further states that a proposed activity should stand on its own merits in the permit approval process and that compensation should not be used to justify permit issuance.

In addition, Ms. West said it appeared based on the testimony by VMRC staff during the hearing and given the large discrepancy between the estimated impacts by the applicant’s agent and VIMS, that the true impacts associated with the proposed project were unclear to the Board. As such, it would have been very difficult for the Board to quantify how much wetlands were being avoided or would still be impacted by relocating the structure 1.5 feet landward of the proposed location. Given that the placement of the structure within tidal wetlands appeared unjustified, and that it appeared the Board did not appropriately apply the guidelines contained within Regulation 4 VAC 20-390-10 et seq., staff recommended that the application be remanded to the Norfolk Wetlands Board for reconsideration with the following specific directives:

- The Board should require that the upper limits of their jurisdiction be determined and clearly marked by staff from the Virginia Institute of Marine Science.
- To the maximum extent practicable, any riprap or other structures should be installed landward of the upper limits of the wetlands board jurisdiction, thereby eliminating most, if not all, of the impacts to jurisdictional wetlands.
- The Board should reconsider the application only if, after the structure has been relocated, unavoidable wetland impacts remain a part of the project proposal.
- In accordance with the recently adopted mitigation policy, Regulation 4 VAC 20-390-10 et seq., mitigation should be required for all unavoidable impacts to jurisdictional wetlands.

Roby Hackney, City of Norfolk Attorney, was present and his comments are a part of the verbatim record. Mr. Hackney explained that the Commission could only modify, reverse

or remand the matter if the Wetlands Board failed in its responsibilities. He said they were asking the Commission to uphold the board's decision as it was appropriate because in the Wetlands Board staff's judgment there was minor impact on the wetlands. He said the Commission should not substitute their judgment for the Wetlands Board's.

Commissioner Pruitt asked if there was any opposition? There was none.

**Associate Member McLeskey said he felt the Wetlands Board had acted appropriately in its authority and he moved to support the Wetlands Board in their decision. Associate Member Garrison seconded the motion.** Associate Member Schick asked why rip rap had been used and why was there encroachment onto wetlands at all. He explained that the rip rap would not protect the children better than the wetlands. He said it was better to use bulkheading and stay out of the wetlands. He said that without knowing how much wetlands will be impacted the amount of mitigation could not be appropriately determined. He further said he could not support the motion.

Commissioner Pruitt asked Mr. DuBois to respond to Mr. Schick's comments. Kevin DuBois, Environmental Engineer for the Wetlands Board, was sworn in and his comments are a part of the verbatim record. Mr. DuBois explained that no official delineation was made. The Wetlands Board staff recommended that the applicant do it, which they did not do. He said the applicant agreed to accept the Wetlands Board staff's observations. He said the comments by VIMS on the amount of erosion was accepted by the board.

Commissioner Pruitt asked for VIMS personnel to comment. Dr. David O'Brien, representing VIMS, stated that he had actually visited the site a number of years ago and the conditions today were very similar to then and that their comments were valid. He said an erosion control structure was not warranted.

Associate Member Fox asked if that meant VIMS did not feel there was any justification for the destruction of any wetlands. Dr. O'Brien responded that was correct.

Lyle Varnell, representing VIMS, said this was an estimate made by VIMS. He explained that they used the saltbush line to make their upland delineation. He said the estimated amount of impacted wetlands was in their report. Dr. O'Brien said there were 1,221 square feet of vegetated wetlands and 90 square feet of non-vegetated wetlands that would be impacted.

Commissioner Pruitt explained that the Wetlands Board must consider the VIMS report, but nothing said they had to comply with it. He said the board had to make a judgment call and the Commission only reviewed the record of the Wetlands Board hearing to decide whether there was any procedural error.

Associate Member Schick stated that because of the discrepancy in the amount of wetlands impacted the amount of mitigation could not be determined. He said that the “no net loss” policy and the mitigation guidelines need to be considered in this matter. Commissioner Pruitt stated that because the mitigation guidelines were new, the Commission had a responsibility to educate the localities about these policies and guidelines. The motioned failed, 3-4-1. Associate Members Jones, Schick, Fox, and Bowden voted no. Associate Member Robins abstained.

Associate Member Fox moved to accept the staff recommendation and remand the matter back to the Wetlands Board with the four (4) conditions. Associate Member Bowden seconded the motion. The motion carried, 4-3-1. Associate Members Garrison, Holland, and McLeskey voted no. Associate Member Robins abstained.

No applicable fees, wetlands review.

(Note: Item 5 was reopened immediately following the closed meeting.)

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

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

Palmer versus VMRC; Mitchell versus VMRC; and legal issues regarding Chapter 12 decisions.

The motion was seconded by Associate Member Holland. The motion carried, 8-0.

Associate Member Robins moved for the following:

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

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

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

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

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

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

**NAYS: None**

**ABSENT DURING VOTE: None**

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

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

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

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**Associate Members Holland and Jones had not returned to the meeting.**

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**5. M. SCOTT NIBLO, #05-2305 (continued at the request of the applicant):**

Scott Niblo, applicant, was present and his comments are a part of the verbatim record. Dr. Niblo requested an opportunity to address the board as he did not get the opportunity earlier. Commissioner Pruitt apologized for the oversight in not giving Dr. Niblo, the applicant, his opportunity to address the Commission.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, explained that the Commissioners could entertain a motion to reopen the case and allow Dr. Niblo to address the Commission if made by someone on the prevailing side.

**Commissioner Pruitt asked for a motion to reopen the case. Associate Member Fox moved to reopen the case. Associate Member Schick seconded the motion. The motion carried, 6-0. Associate Members Holland and Jones were not present.**

Dr. Niblo was sworn in and his comments are a part of the verbatim record. Dr. Niblo explained that the Wetlands Board staff told him they could do a sight review of jurisdiction by walking the property. He said he was going on what the Wetlands Board staff had told him. He said he was losing property with the progression of the saltbush landward and he wanted to control it and provide a safe environment for his children.

George Banks, representative for the applicant, was present and his comments are a part of the verbatim record. Mr. Banks said that the wetlands board did in fact discharge its responsibility by asking that the revetment be moved further up the slope. He said the board made a good and correct decision.

Associate Member Jones returned at this point.

**After further discussion, Associate Member Garrison moved to uphold the decision of the Wetlands Board. Associate Member McLeskey seconded the motion. The motion failed, 2-4-1. Associate Members Bowden, Fox, Jones, and Schick, voted no. Associate Member Robins abstained.**

**Associate Member Schick then moved to remand the matter back to the Wetlands Board as recommended by staff. Associate Member Bowden seconded the motion. The motion carried, 4-2-1. Associate Members Garrison and McLeskey voted no. Associate Member Robins abstained.**

**Associate Member Holland was absent for both votes.**

No applicable fees, wetlands review

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6. **RONALD W. BOONE, #04-2187**, requests after-the-fact authorization to retain a second story 20-foot by 30-foot office, and authorization to increase the size of the previously authorized gazebo to 15-foot by 15-foot and the two (2) previously authorized shelters to 30-foot by 15-foot, all on the Ocean View Fishing Pier adjacent to property situated along the Chesapeake Bay in Norfolk.

Tracy West, Environmental Engineer, Sr., explained that the protestant, Sarah Davis Harrison was requesting that the case be deferred until the next meeting so that she could obtain legal counsel. She further explained that the VMRC staff and the applicant were ready to proceed with the hearing.

Martin Thomas, attorney for the Boones explained that the protestant continued to be a “thorn” in the side of the applicant and was an attorney herself. He said they asked that the matter not be deferred.

Associate Member Holland returned to the meeting at this point.

Sarah Davis Harrison, protestant, explained that she wanted the same opportunity granted to her as was granted to the applicants at the last hearing. She said that the proponents present to speak in support of the project had arrived in numbers and she did not feel prepared to deal with it without legal representation.

Commissioner Pruitt asked her if she was present at the last meeting to which she responded yes. He stated that she had had sufficient time to obtain legal counsel.

**Associate Member Robins moved to hear the case at this meeting and not grant the request of the protestant as she had sufficient time to get an attorney. Associate Member McLeskey seconded the motion. The motion carried, 8-0.**

Ms. West gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that this item was placed before the Commission at the December 20, 2005, meeting. During that meeting, however, the applicant, Mr. Ronnie Boone, requested that the Commission defer consideration of his after-the-fact request so he could retain legal counsel. Since that time, staff had not had any further discussions with Mr. Boone nor been advised that he had obtained counsel.

Ms. West said that the Ocean View Fishing Pier, located at the site of the former Harrison’s Fishing Pier, was located along the Chesapeake Bay in the Ocean View section of Norfolk. Harrison’s Fishing Pier was destroyed by Hurricane Isabel in September 2003.

Ms. West stated that various construction activities associated with the reconstruction of the Ocean View Fishing Pier facility had been previously considered and authorized by the Commission on three different occasions. This represented the fourth time the Commission had considered a request for this project. It was the first after-the-fact request.

Ms. West said that on May 4, 2004, Mr. Boone received authorization under Executive Orders Number 58 and 66 to replace the destroyed fishing pier with a 1,490 foot long by 16-foot wide commercial fishing pier, including a 116-foot by 42-foot T-section and two (2) 16-foot by 6-foot boat launch floating docks. That authorization was granted to Sarah Constant Shores, LLC, under VMRC #04-0894. The Executive Orders authorized the replacement of pre-existing structures provided they were previously authorized and in a

serviceable condition prior to the hurricane. Mr. Boone was able to provide documentation that several permits had been issued over the years by various regulatory agencies authorizing the construction and expansion of the facility. He was unable to provide documentation, however, that the various buildings and shelters located on the former fishing pier were ever authorized by any of the regulatory agencies. In light of this, staff determined that we could not authorize the replacement of any of the previously existing roofed structures under the Governor's Executive Orders. Mr. Boone was further advised to submit a Joint Permit Application for any construction above and beyond what could be authorized under the Executive Orders.

Ms. West explained in following staff's advice, Mr. Boone submitted an application requesting authorization for two (2) 40-foot long breakwaters, a 40-foot by 18-foot T-head, a 116-foot by 42-foot building to house a bait shop, rest rooms, a snack bar, recreational game room, a 12-foot by 12-foot gazebo structure on the roof of the large building, and two 24-foot by 16-foot roofed shelters. The Commission considered this request in two parts. The two (2) 40-foot long breakwaters and a 40-foot by 18-foot T-head were authorized as "Page 2" consent agenda items at the December 21, 2004 meeting. The remaining items, the 116-foot by 42-foot building, the 12-foot by 12-foot gazebo structure, and two (2) 24-foot by 16-foot roofed shelters, were considered as a Page 1 item at the January 25, 2005 Commission meeting. At that time, staff noted that although these items did not meet the Commission's water dependent criteria, they appeared to be consistent with the Commission's public trust responsibilities since the facility offered a variety of public benefits through public access to the Chesapeake Bay. The Commission unanimously authorized the construction of these additional parts of the facility.

Ms. West stated that in staff's January 27, 2005, letter of finding, they requested that Mr. Boone submit a side view drawing of the proposed shelters for inclusion in his permit document. Mr. Boone finally submitted additional drawings on July 18, 2005. These included the drawing requested in our January letter as well as drawings of an enlarged gazebo structure and an office structure, both located on top of the main building. Upon review of these drawings, staff noted that the dimensions indicated on the side view drawing of the shelter were not consistent with the dimensions authorized by the Commission in January 2005. In response to Mr. Boone's submittal, staff began processing his request to modify the previously issued permit for the enlarged gazebo and a second story office facility. Mr. Boone was informed that the drawings he had submitted for the shelters were inconsistent with what had been authorized by the Commission.

Ms. West said that Mr. Boone subsequently submitted another side view drawing, this time with dimensions consistent with those approved by the Commission in January 2005. Mr. Boone was advised verbally that the office and other items would be brought to the Commission for consideration at a later time. Following that, staff notified Mr. Boone, by a letter dated September 23, 2005, that since we had received the side view

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drawing of the shelters, the processing of the project modifications considered by the Commission at the January meeting was now complete. Staff further noted in our September 23, 2005, letter that the letter was not authorization for the office or for a change in dimensions for either the shelters or the gazebo that he had requested in July 2005. Following our September 23, 2005, letter, staff, in October, requested additional information from Mr. Boone regarding the nature of the office structure. Mr. Boone stated that he never received that letter.

Ms. West explained that while conducting routine application site inspections in Norfolk on October 28, 2005, and in response to a telephone call received from Mr. Boone requesting that staff conduct a compliance inspection, staff observed that the second story office had been constructed. A Sworn Complaint and Notice to Comply were issued on November 7, 2005. The Notice to Comply directed Mr. Boone to either remove the office or submit a written account of the circumstances surrounding the construction of the office without proper authorization from this agency. Mr. Boone chose the latter option.

Ms. West said that since the violation had been observed from another property, staff conducted an on-site inspection of the office, gazebo, and shelters on December 7, 2005. Since the pier remained under construction, staff could not conduct a complete compliance inspection. The shelters were determined to be in compliance with the dimensions authorized by the Commission on January 25, 2005. However, the following discrepancies were noted –

- The gazebo, which was authorized to be 12-foot by 12-foot (144 sf) had been constructed at 16.5-foot by 11-foot (181.5 sf).
- The office, which had not been authorized by the Commission, was not an office at all. Rather, it was a bar/food service area with dimensions of 27-feet 8-inches by 10-feet.
- A temporary construction trestle had been installed on site.
- A fish cleaning station, which was not on the original plans, had been installed on the pier.

Ms. West further said it appeared that Mr. Boone, in acting as his own agent for this large commercial project, failed to take note of the January 20, 2005, cover letter to his initially issued permit which reminded applicants that any deviation from the permit or attached drawings required prior authorization from the Marine Resources Commission.

Further, Ms. West explained it appeared that the reminder in our September 23, 2005, letter to Mr. Boone, which clarified what authorizations were contained in the letter, was not noted. Mr. Boone was reminded in that letter that the office and other items would be considered at a future Commission meeting.

Ms. West stated that although the construction trestle would, most likely, have been considered a necessary part of the project and received a recommendation of approval by

staff, the applicant did not request authorization for the installation of the trestle prior to its installation.

Ms. West said that when evaluating the water dependency of a project, staff utilized the criteria that was developed by the Habitat Management Advisory Committee and approved by the Commission at its July 2003 Commission meeting. Those criteria required staff to consider the definition of water dependency approved by the Commission, as well as two specific questions regarding the project being considered. The approved definition states “Water dependent means those structures and activities that must be located in, on or over State-owned submerged lands”. In addition, to be water-dependent, both of the following questions must be answered in the affirmative - 1) Is it necessary that the structure be located over water? and 2) Is it necessary that the activity associated with the structure be over the water?

In conclusion, Ms. West explained that staff recommended after-the-fact approval of the trestle. In addition, the existing gazebo, although larger than authorized, should be allowed to remain in place in its current configuration with the consideration of an appropriate civil charge.

Ms. West stated that staff believed that the proposed second story bar area was not water dependent in nature. In addition, staff had not been persuaded that this particular amenity could be considered to be consistent with conveniences typically offered at a community fishing pier facility. Further, unlike the previous authorizations granted by the Commission for the shelters, the second story bar area was not an amenity similar to that previously offered at the former Harrison’s Fishing Pier and was not in keeping with this agency’s public trust responsibilities. Staff recommended that the Commission direct that this structure be removed in its entirety within 60 days.

Lastly, Ms. West said that staff recommended that the Commission require Mr. Boone to submit scaled engineering grade drawings of the “as-built” pier once it was completed. This would assist staff when assessing permit compliance of the total project upon its completion.

Associate Member Robins asked if there were any historical photographs available for them to review. Ms. West said she did not have any, queued up, but there were probably some that could be found.

Mr. Thomas explained that this was the Boone’s first project and they did not have knowledge of the proper process. He explained that the Boones assume that because the trestle was necessary to the construction and did not require a permit. He said that they had always wanted an office/catering facility and had indicated in documents submitted to VMRC. He said that this was a part of the City improvements and was important to the City.

Mr. Thomas explained Mayor Fraim had to leave the meeting because of a prior commitment and if the Commission would allow, he would make some comments on his behalf. Commissioner Pruitt agreed. Mr. Thomas said Mayor Fraim had indicated that extensive public hearings were held prior to the City's approval being given. This project was important to the revitalization of the Willoughby area, always considered an entertainment facility, and the city council had approved the ordinance unanimously.

Mr. Thomas said that they believed the structure was water dependent. He stated that it enhanced tourism and provided enjoyment and use of the Bay. He further said that it was open to the public and it did not interfere with the use of the Bay. He said that there were no downsides to this project for the public or the Commonwealth.

Anthony J. Defilippo, representing the City of Norfolk was sworn in and his comments are a part of the verbatim record. Mr. Defilippo stated the Boone's project was considered good for the City's plans to attract tourists, especially the upper level for the catering service. He said this project would cause more people to come to Norfolk, stay there and spend money. He said this project had a strong connection to the bay, which is important to the City's attraction to visitors and to their marketing efforts.

Peter Decker was sworn in and his comments are a part of the verbatim record. Mr. Decker explained that the Catering/Bar/Office were needed on the deck for the social events that were to be held there. He said to require its removal would be detrimental. He said they were needed for the enjoyment of the citizens. He said he agreed that a civil charge should be assessed, but that they should be allowed to keep the structures as it is.

Jerry Ramsey, resident on the Piankatank and an employee of Mr. Boone at the pier, was sworn in and his comments are a part of the verbatim record. Mr. Ramsey explained that he grew up in the Oceanview area and his mother was a lifetime resident in the area as well as his siblings. He said his family was requesting that the Commission approve the project as it was an asset to the community. He said his employer was hardworking and was good to all his employees. He said the structure was outstanding in design and construction as well as in harmony with nature. He said that visitors have told him personally how much they like it. He said it was an attraction for the City of Norfolk.

Ronald Boone, Jr., builder and president for the Oceanview Pier, was sworn in and his comments are a part of the verbatim record. Mr. Boone said that everything he had done was not done with the intent of not getting the necessary permits. He said it was the longest pier in North America. He said that he had been contacted to construct the Buckroe pier the same as he had done at Oceanview. He said that he had never faltered from the original plan for the upper deck. He explained that the Health Department had required the cover for the catering area. He apologized for not getting the final authority but he had felt that what was being brought to the Commission would be approved. He said that staff's pictures only show the bar, not the tables and booths for sitting and they were providing a full menu. He said the fishing pier was great, but the restaurant and catering

service were necessary to offset its cost. He said he did not do anything out of meanness or malice. He provided pictures for the board's review.

Commissioner Pruitt asked if anyone in opposition wanted to address the Commission.

Sarah Davis Harrison, protestant and property owner was sworn in and her comments are a part of the verbatim record. Ms. Davis explained that she was a property owner in the area and also represented some of her neighbors. She said she supported the staff recommendation for a complete investigation. She said the project differed from what was authorized and the deck, bar, and pier were greatly enlarged from what was proposed.

Benny LaBon, protestant and Oceanview property owner, was sworn in and his comments are a part of the verbatim record. Mr. LaBon explained that there was a restaurant there, but not out over the water but at the beginning on land. He said they just sold snacks and drinks. He said that he did not remember the location of the restrooms. He said that the building was higher than it was before the hurricane.

Ms. Harrison further explained that there originally was a snack bar on the land, but not a restaurant on the pier. She again said that what was constructed differed from what had been approved. She said the plans were different, depending upon which agency was being applied to for approval. She said notification was not done properly as the Boones were the adjoining properties owners. She said they were also concerned with the increased noise. She said that staff was mistaken that the property was owned by Ronald Boone, Jr., as the actual owners were Sarah Constant Shores, LLC and owned by Mr. and Mrs. Boone, Sr. She said that erosion impacts resulting from the project need to be reviewed. She further explained that there was a lot of political backing for this project. She said she was requesting that the VMRC staff investigate this matter and find out the truth.

Mr. Boone explained that the only difference was in an effort to avoid sun glare, the bar had been moved inward. He said that Sarah Constant Shores were the owners. He said that no false information had been given at any time.

Mr. Thomas explained that they accept the staff recommendation and ask to be permitted to use the facility as an office/catering service. He said they apologized for not getting the proper permit and agreed to the penalty recommended.

Mr. LaBon asked to speak again on his behalf. Mr. LaBon said he agreed there was a problem with the sunlight and the building did block the sunlight from his view. He further said that on all the piers that he had seen, he had never seen a restaurant 400 feet out over the water. He said he felt a precedent for others to come and ask for the same thing would be set.

Commissioner Pruitt asked for other comments but there were none. He asked for a motion.

**Associate Member Garrison moved that the project be authorized and approved as applied for in its entirety with a fine for non-compliance at \$5,000.00. Associate Member McLeskey seconded the motion. Associate Member Bowden said he had some problems with the upstairs and that the bar was okay as an amenity. He said he asked that the motion be amended to restrict the upstairs from being used as a catering service. Associate Member Garrison said he could not accept this amendment. He said the service enhanced the value of the business, as this was a large investment. Associate Member Robins explained that a lot of the concerns expressed were not within the jurisdiction of the Commission. He said the City had considered the project and restricted replacement of the existing building. He further said that he supported the motion. Associate Member Schick stated that he felt some items had obviously been left out of the original proposal and requested that the fine be raised to the maximum, \$10,000. He said that there were 600 plus marinas out of business as a result of Hurricane Isabel and he commended the Boones, but hoped they would work more closely with VMRC in the future. Associate Members Garrison and McLeskey both agreed to the amendment. Associate Member Fox said that this pier increased the public's access to the Bay especially for those individuals who otherwise would not have access. He said he also supported the motion. Associate Member McLeskey asked that the motion include the staff's recommendation to require engineering grade, scaled drawings. Associate Member Garrison agreed to the amendment. The motion carried, 8-0.**

Commissioner Pruitt then asked Mr. Thomas, if his client accepted the civil charge of \$10,000? Mr. Thomas responded yes.

Civil Charge.....\$10,000.00

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The Commission broke for lunch at approximately 12:40 and returned at approximately 1:19 p.m. Associate Member McLeskey left the meeting at the lunch break for the rest of the day. Associate Member Garrison suggested that the public hearing for item 16 be held after the lunch break.

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**16. PUBLIC HEARING:** Consideration of proposals to open areas to oyster harvest in the James River Seed Area and in the lower Rappahannock River.

Jack Travelstead, Chief, Fisheries Management, introduced the issues and his comments are a part of the verbatim record. Mr. Travelstead said that a detailed presentation was

made at the last meeting. He said they would not be going through that briefing again, only a summary. He said this was an important issue and there appeared to be conflict in the objectives, 1) maintaining a resource and 2) maintaining an industry infrastructure. He said what the Commission was now considering to benefit the industry would be undoing what had been done for restoration. He said staff was opposed to opening the areas and suggest helping the industry in other ways. He said, first, by utilizing all house shells for restoration purposes. He said that second, the staff proposed that something be done to extend the current season in the James River an additional 30 days for the areas currently opened to harvest by hand scrape. He said third, that since much of what staff had done for the last 15 years was the result of the Blue Ribbon Oyster Panel (BROP) in early the 1990's, staff now was suggesting that the Commission convene a workshop to reevaluate the BROP recommendations. He said there was a need to look at the two objectives and develop programs for both. He said there was a need to inform the public what the objectives we were seeking to obtain. The following are the recommendations of staff:

- 1) keeping closed the upper James River seed area to harvesting with hand scrapes and the lower Rappahannock River to harvest,
- 2) extend the lower James River Hand Scrape Areas harvest season for 30 days, and
- 3) establish a workshop to re-evaluate current activities.

Dr. James Wesson, Head, Conservation and Replenishment Department, made the presentation and his comments are a part of the verbatim record. Dr. Wesson gave a powerpoint presentation and reviewed the slides from last month. He said the staff had put together a table showing all seed transplanting done by the Commission since 1993. He went on to say that the two areas were very different and they cannot be looked at the same way. He said in the Rappahannock River, eastward of the bridge had stayed closed and there were 300 acres restored upriver of the bridge. He explained that right now in the Rappahannock River there was twice as much area opened as closed. He said the Oyster Heritage Program partnership was still together and wanted to keep up the progress. He said in the James River there were hundreds of oysters per meter and in the Rappahannock River there were 10 oysters per square meter. He said the spatsets were different. He said where the James River had a dependable spatset, the Rappahannock did not have good, dependable spatset. He explained that you should not harvest areas in the Rappahannock River without recruitment. He said that because of the good recruitment in the James River the harvest season where it was already opened to hand scrape could be extended for another month. He said in the upper James River, the Commission was being asked by the watermen to open the lion's share of the seed area to hand scraping. He said in the upper James River there were natural three-dimensional reefs that rebuild themselves. He said he did the reef dive survey in the Bay and he had visually seen the bottom. He showed a slide of the Seaside Eastern Shore oyster beds to enable the board to visualize the James River bottom. He said allowing the hand scrape in the seed areas would change the integrity of the bottom.

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Associate Member Robins asked Dr. Wesson to explain the partnership. Dr. Wesson said the partnership was formed between the Federal, State, and local governments and private organizations, such as the Chesapeake Bay Foundation, The Oyster Heritage Foundation, and the Norfolk Rotary Club and industry. He stated that the Department of Environmental Quality was a more visible agency and more able to put the partnership together. He said the collaboration resulted in funding of \$1.5 million per year for several years and now maintained several \$100 thousand dollars of funding. He said the habitat restoration had begun because the amount of funding had to limited work to only the smaller estuaries, but the partnership decided to start this effort in the Rappahannock River, which was a larger body of water. He said it was decided that 150 acres would be restored on both sides of the bridge for comparison and monitoring. He said the Rappahannock River was made the focus for this study.

Dr. Roger Mann, representative for VIMS, was present and his comments are a part of the verbatim record. Dr. Mann explained that the upper James River area was stable but fragile and he agreed with staff that it was a national treasure. He said these rocks are susceptible to damage. He said he had about ten years of data on the James River, as much had been done in that area by VIMS and VMRC. He said a shell base was important and the reefs had a shell veneer in the James and there are no shells further down into the layers. He stated that if the hand scrape is allowed then these thin layers would be broken. He said he is very familiar with dredges as he himself had used all kinds in his work. He said he did not object to allowing the use of hand tongs.

Associate Member Garrison opened the public hearing.

William Frank Nelson, Rappahannock River waterman and representative for the Watermen's Association was present and his comments are a part of the verbatim record. Mr. Nelson explained that he had been a waterman for 25 years and he had experience with dredges.

Associate Member Garrison asked how much the hand scrape weighed. Mr. Nelson responded 50 pounds without additional attachments.

Mr. Nelson said that once the shells are removed from the top then you can find oysters and spat. He said last year 25 boats worked the Rappahannock and now there were less. He stated that the gear used by the state for sampling was not adequate and that they should use the same gear as the watermen. He said they do not work the 3-D reefs as they are important to the reproduction. He said he went out with Mr. Jensen and saw the sponges that are competitive with oysters for a food source. He said that larger oysters die in 2 to 4 years and if that is the case then open the areas for 2 to 4 years and help the economy and allow the watermen to harvest the oysters before they do die. He stated that the grant money should have been spent to move seed. He said the reefs are protected and he saw 700-800 oysters per square meter on Jensen's reef. He stated that it was disease and freshwater and not the watermen who were affecting the oysters. He said the

oystermen are in decline and they were just trying to sustain their work ethic. He made two suggestions:

1. Close the area in the Rappahannock River that is open now and open the lower Rappahannock below the bridge and put a 15-bushel/boat limit on the harvest.
2. Extend the James River season and move seed.

Lionel Jenkins, representative for the Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins explained that staff said the dredges were damaging to the oyster rocks, but the private leaseholders use dredges and none of them say the dredges do damage to their bottom. He said he had been working the James River for the last 2 years and oysters were starting to get scarce. He said if the Commission would open other areas then the watermen could work in their own area. He said the advisory committee had recommended opening the Rappahannock-James-Pocomoke and Tangier at the same time, but it was not done that way and the Pocomoke and Tangier Sounds opened later.

Julian Cox, resident of Poquoson and an oyster gardener, was present and his comments are a part of the verbatim record. Mr. Cox explained that he had learned that you plant shells to get oysters and you plant oysters you get shells. He said he supported the VMRC staff recommendation.

Paula Jasinski, representing NOAA, was present and her comments are a part of the verbatim record. Ms. Jasinski said that NOAA had put more funding in oyster restoration. She said \$5 million has been invested in Virginia's oyster restoration when the state was cutting back funding. She said the recovery of the oyster resource will not happen in a few years, maybe not even in 10 years, but the continuation of the partnership between the federal government and state will help. She said NOAA encourages the closing of the upper James River seed area to hand scraping. She said they support the staff's recommendation.

Bryan Lockwood, resident of Poquoson, was present and his comments are a part of the verbatim record. Mr. Lockwood said that he is not a waterman, but a citizen. He said he recommended that the Commission not allow the harvesting of oysters by the hand scrape.

Roy Insley, Consultant and Representative for the Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Insley said that he agreed with 90% of what Roger Mann said and a lot of what Jim Wesson has said. He explained that the average age of the watermen is 53 years old. He said they could not work hand tongs any longer and we need to harvest oysters with a more mechanized gear. He said his family has a history on the water as working watermen. He said in the James River you can allow scraping on the north side of the James River in the areas, up to

Swash and up further to Mulberry Point you can work the areas with the scrape and not harm those oyster rocks on the north side of the river. He said this area is being silted over and using this on the flat areas will pull these shells to the top and cleanse them for the spawning season. He said on the areas such as Point of Shoals, those smaller areas might be pulled down. He said the dredge is circled in a small area and worked on the top of these rocks and would not pull these rocks down. He said he felt this gear would help the north side of the James River.

Mr. Insley said that keeping the lower Rappahannock River closed is going against the constitution as these areas were supposed to be open for the public's benefit. He said this area does not contribute spawn to the upper portion of the River. He suggested that the sanctuary be designated to go up the middle of the river and benefit from the water flow patterns. He said that the data does not support keeping this area in the Lower Rappahannock closed. He said in the lower Rappahannock River there were flat rocks which would not be destroyed by harvesting with dredges. He said, as Mr. Lionel Jenkins said, the private planters use dredges on their private bottom. He said dredging can be done and the oyster rocks would replenish themselves. He said they were asking for a change in management of the resource to allow the waterman to make a living. He said the Commission needed to be concerned about the waterman and their families. He suggested taking 2 or 3 months to allow harvest in a portion of this area. He said the watermen were for conservation and for sanctuaries. He said that they agreed with Jack's suggestion for the study.

Jody Kress, waterman, was present and his comments are a part of the verbatim record. He said on the bottom the dredge only weighs 8 pounds. He said broodstock is not the problem, but disease is the problem. He said these oysters are going to die from disease if they are not allowed to harvest them. He said the watermen are a part of the resource and do not want to wipe out all the oysters as everyone thinks. He said the Commission is taking away from the watermen.

Doug Jenkins, President, Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that the advisory committee had suggested moving seed oysters, which was not brought up at the last Commission meeting. He said that there did not need to be a notice circulated, but they needed to start gearing up to do this project. He explained that heavy densities of oyster were not good and healthy oysters spawn better. He said the more oysters there were, the more competition there was for food. He said in a Maryland report it says if 5% of the oyster resource is left on the bottom it can be enough to replenish itself. He said working and dredging the bottom cleans the rocks. He provided a graph, which he said showed the Rappahannock River was improving. He said that staff's data showed that the areas being worked were producing more oysters than the areas not being worked. He said the reefs being in shallow water were working like groins and causing the surrounding Baylor grounds to silt over. He said the construction of reefs was a waste of money and needed to be stopped. He said the watermen's patience was running out. He said that they were

asking for 50% of the Lower Rappahannock River to be opened and that a small area in the James River be opened to hand scraping. He asked Mr. Pruitt that now that he had a new advisory committee, was the Commission going to listen to them or continue as it has been with a dictatorship. Commissioner Pruitt said that in the past the attendance to these meetings had been very low, making it not effective and if the members of the committee attended the meetings it would work.

Dale Taylor, President of the Working Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Taylor said it was the diseases killing the oysters, not the gears. He said if the grounds were not worked the disease would get stronger. He said there was no way for anyone to predict how much or when oysters will come back. He said the private growers will reap from the oysters, not the watermen and the watermen have not killed the oysters, it was disease. He said they were asking that the lower Rappahannock be opened for 4 weeks and it would help the Commission as well as the watermen. He said the watermen need and want to work and if they were allowed to work for the 4 weeks, a solution might be found.

Tommy Leggett, representative for the Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. He said the foundation supported the staff to keep the areas closed for a sustained harvest.

Commissioner Pruitt closed the public hearing.

**Associate Member Garrison stated that he was not opposed to opening a portion of the lower Rappahannock and asked for a slide to assist in setting the limits. He moved to open the lower Rappahannock River from Mosquito Point to Mill Creek for 28 days and to allow harvesting with dredges 50 pounds or less.** Associate Member Fox asked if it was the left side of the line to which Associate Member Garrison responded, yes. **Associate Member Bowden seconded the motion for discussion purposes.**

Associate Member Robins said there was a need to reevaluate how we manage this resource because this affects more than Virginia and the Partnership. He said this Commission must manage the central component of the management strategy. He said if there are only 5 oysters per meter then he could not support opening the area.

Associate Member Bowden explained that he felt like he was in the hot seat, trading today for all tomorrows. He said there was no compromise for the James River and the upper James area was unique from the lower portion. He said there was a need to move the James River seed to the Potomac area as it was a good location for grow out. He said he could see opening a small area on a trial basis in the Rappahannock, but the motion was for over half the area. He said he could sympathize with a smaller area.

Associate Member Jones stated that she agreed with Associate Members Bowden and Robins. She said she was concerned by the statement made that the Commission was taking away from the watermen. She said that the Commission was not taking away from the watermen, it was the results of not taking care of the bay.

**Associate Member Robins asked if he could make a substitute motion. He moved to extend the oyster harvest season in the lower James River through February 28, 2006 and in 90 days for the Commission to convene a workshop. Associate Member Jones seconded the motion.** She said the Commission needed to assist the watermen in approaching the legislature in order for them to get help in the short term. **The motion carried, 6-1. Associate Member Garrison voted no.**

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7. **TANNER'S LANDING ASSOCIATES, LLC, #05-0480**, requests authorization to install a 363-foot long by 8-foot wide open-pile community pier with 10 slips, six (6) with uncovered lifts, and associated finger piers, and to dredge, using mechanical dredging, 825 cubic yards of State-owned submerged lands to achieve maximum depths of minus five (-5) feet below mean low water within a 130-foot by 210-foot basin, to serve a 27-unit condominium complex located adjacent to the Granby Street Bridge situated along the Lafayette River in Norfolk. The agent is objecting to the assessment of a royalty.

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

Commissioner Pruitt left for the rest of the day. Associate Member Garrison chaired the remainder of the meeting. Associate Member Robins also left the meeting for the rest of the day.

Ms. West explained that this project was presented to the Commission with staff's recommendation for approval at the December 20, 2005, meeting. In accordance with the revised Rent and Royalty Schedule, which became effective on December 1, 2005, staff recommended that royalties be collected for both the dredging and encroachment portions of the project.

Ms. West stated that Mr. Tom Langley, agent for the applicant, spoke during the Commission's consideration of the Page 2 items and objected to the assessment of a royalty for this project. As a result, the Commission tabled further consideration for this project until the January 24, 2006, Commission meeting.

Ms. West said that the Joint Permit Application for this project was received on March 8, 2005. However, in accordance with §28.2-1205(C) of the Code of Virginia and Commission policy, staff does not normally bring an application to the Commission for

consideration until the Virginia Department of Health has notified staff that the proposed facility is in compliance with the appropriate Department of Health regulations. The Department of Health, in a letter dated received December 2, 2005, advised staff that the project was in compliance with the Sanitary Regulations for Marinas and Boat Moorings.

Ms. West explained that there were no outstanding issues with the project as proposed. Staff received comments from the Virginia Institute of Marine Science that outlined potential impacts, which were typically associated with these types of facilities, but raised no issues that would cause alarm or concern regarding the overall project impacts. No other protest letters were received. The Department of Environmental Quality stated that a Virginia Water Protection Permit would not be required due to the minimal and temporary impacts expected from the project. The Army Corps of Engineers had also issued their Section 10 permit for this project.

Ms. West said that staff again recommended approval of the project as proposed with several routine conditions as follows. Staff recommended that a pre-dredging conference be required and that the applicant be required to submit a post-dredging bathymetric survey of the dredged area within 30 days of the completion of the dredging so staff could assess permit compliance.

Ms. West stated that in accordance with the Commission's Rent and Royalty Schedule, staff recommended that an annual royalty in the amount of \$1,776.45 be assessed for the encroachment over 11,843 square feet of State-owned submerged lands at a rate of \$1.50 per square foot, and that a one-time royalty of \$371.25, at a rate of \$0.45 per cubic yard, be assessed for the dredging of 825 cubic yards of State-owned submerged lands.

Tom Langley, of Langley and McDonald, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Langley said they were concerned with the royalties calculated and asked that the applicant's project assessment be reconsidered as the application was submitted prior to the effective date of December 1, 2005 for the increased rents and royalties schedule. He said that the Engineering Community was not notified of the proposal to increase the rents and royalties and a public notice was only advertised in a Saturday issue of the Virginian Pilot. He said as a result only one public comment was received. He explained that it was quite a significant increase when you consider the space between an encroachment as the calculation goes from 6 to 19%. He said marinas increased to 29%. He stated that the applicant was asking to be "grandfathered" and assessed at the old rates and that the project be approved by the Commission.

Bob Grabb, Chief, Habitat Management, stated that the regulation was lawfully adopted and that they had followed all proper procedures.

Associate Member Garrison asked if anyone was present in opposition to the project. No one was present.

**Associate Member Fox moved to accept the staff recommendation and authorize the permit with the rent and royalties. Associate Member Schick seconded the motion. The motion carried, 6-0.**

Royalty fees (dredging 825 cu. yds. @ \$0.45/cu. yd.).....	\$ 371.25
(encroachment on 9,718 sq. ft. @ \$1.50/ sq.ft.).....	\$1,494.83 annually
Permit fee.....	\$ 100.00
Total fees.....	\$1,966.08

\* \* \* \* \*

- 8. **WATERS EDGE HOMES ASSOCIATION, #04-0854**, requests authorization to construct a 200-foot long by 6-foot wide open-pile community pier adjacent to property situated along the Southwest Branch of Back River in Hampton. Two nearby oyster ground leaseholders protested the project.

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

Ms. West explained that the property was located adjacent to the King Street Bridge entrance to Langley Air Force Base in Hampton. A community pier, which was constructed atop pilings remaining from an abandoned railroad crossing, previously existed at the condominium complex. According to conversations with Association representatives, it appears the pier was constructed sometime in the 1980's. The community pier structure was destroyed during Hurricane Isabel. Neither staff nor the Association have been able to find any evidence that any of the local, state, or Federal regulatory authorities properly authorized the community pier. Since Executive Order 58 specified that only previously authorized structures destroyed by Hurricane Isabel could be replaced, staff was unable to conclude that reconstruction of the pier could proceed under the Executive Order.

Ms. West said that a Joint Permit Application for this project was received on April 12, 2004. The proposed replacement pier has been modified several times during the processing of the application, with final designs submitted in October 2005.

Ms. West stated that there were three oyster ground leaseholders in the vicinity of the project that were notified of the proposed pier. Two of those oyster ground leaseholders in the vicinity of the project had objected to the proposal. Mr. Weston was concerned that he would be prevented from planting shell and harvesting from that shell near the pier once the pier was replaced. He also would like the Association to leave the derelict pilings in place since they host an oyster population. Mr. Hanson had stated that he believed the area would again be productive for oysters.

Ms. West explained that in evaluating the concerns of the leaseholders, staff requested that they provide documentation regarding harvest activities that have taken place on the lease over the last three years. Mr. Hanson stated that, over the last three years, he had planted shells, pulled his dredge with no bag to turn the shells, and used hand tongs to clean the shell piles. Mr. Weston stated that he had scraped his bottom to turn the shells. He acknowledged though that there had been no oyster production.

Ms. West stated that the Department of Health, in a letter dated May 19, 2004, initially recommended that the application be denied because the Department had not received an application for sewage facilities nor had the applicant been granted a variance. This letter further suggested that the proper regulatory authorities had never properly authorized the pier. Had it been properly authorized, a variance would have been on file with VDH. Initially the agent for the project, Mr. Steve Fisher, and after Mr. Fisher's separation from the project, Association representative Paul Oxley, worked with VDH to secure compliance with their Sanitary Regulations for Marinas and Boat Moorings. Staff finally received a letter dated August 5, 2005, from VDH stating that the project was in compliance with the Sanitary Regulations for Marinas and Boat Moorings.

Ms. West said that since it appeared that the structure was never authorized prior to its illegal construction in the 1980's, it was never subjected to a public interest review. As such, staff was concerned that the Association might not have any legal rights to the old railroad trestle. Association representative Nancy LaCrosse consulted with their attorney, Mr. J. Robert Harris, III. He concluded that the Association does own the trestle, although he did not indicate the total linear footage of the trestle that fell under the ownership of the applicant in his December 8, 2005 letter. Ms. LaCrosse stated in a telephone conversation with staff that 340 linear feet of the trestle fell under the ownership of the Association.

Ms. West stated that VIMS' original comments from May 2004, which discussed proposed wet slips were no longer applicable since those slips were no longer proposed. VIMS' revised comments, dated October 2005, stated that the project was acceptable.

Ms. West explained that by the admission of the leaseholders, the leased grounds adjacent to the applicant's property were not commercially productive. However, the leaseholders had actively maintained the leases in an attempt to make productive use of the area should conditions improve. VMRC permits clearly state that the permit is subject to any lease of oyster planting ground in effect and that nothing in the permit can be construed as allowing the Permittee to encroach on any lease without the consent of the leaseholder.

Ms. West said that as such, staff recommended that the Commission approve the construction of a community pier at this location with the stipulation that the pier design be modified and shortened so that it did not encroach onto the leased grounds of either Mr. Weston or Mr. Hanson.

Ms. West said that staff further recommended that, in accordance with §28.2-1209 of the Code of Virginia, the Commission require the Association to remove all of the remaining abandoned pilings from within the footprint of the old railroad trestle that were under their admitted ownership.

Nancy LaCross, resident and secretary for the Homeowners Association, was sworn in and her comments are a part of the verbatim record. Ms. LaCross explained that this was a small community of about 30 homeowners. She said their request was a result of damage caused by Hurricane Isabel and originally they had requested a 300-foot pier, but reduced it to 200 feet. She explained that VMRC requiring removal of the pilings was an added expense. She said they had acquired a SBA loan and FEMA money that amounted to \$123,000. She provided a picture of the structure prior to the hurricane. She said that they did not know the leases were even in that area. She said they would encroach only on Hanson's lease not the other ones. She said they were requesting a permit for the proposed 200' pier.

Associate Member Garrison asked if anyone was present in opposition.

John Hanson, leaseholder, was sworn in and his comments are a part of the verbatim record. Mr. Hanson said that the pier would encroach on his lease and this was ground that for generations his family had harvested. He said that until the 1980's there had been oyster strike on the lease, but since that time there had not been any strike. He said this was the best ground in the Back River area and he had held onto it because he hoped the oysters would return. He said the only thing that had ever been there was the trestle, not a pier. He said he was requesting that the Commission not allow this pier to be constructed.

W. H. Weston, Jr., leaseholder, was sworn in and his comments are a part of the verbatim record. Mr. Weston explained that his oyster ground had been in his family for more than 60 years. He said he realized that the oyster situation was bad but he was hoping the oysters would come back. He said his lease would be adjacent to the pier and he was concerned with possible siltation resulting from the pilings of the pier.

Associate Member Garrison asked if a pier could be placed over a lease. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, explained that if it was a riparian it could be allowed, but since it is a community pier, he said that according to Section 28.2-1205 of the Code the leaseholdings require that the Commission review this request.

Bob Grabb, Chief, Habitat Management, explained that in Section 28.2-630 for a private pier the leaseholder must be given a year's notice. He went on to explain that if it was a community pier and the Commission should approve it, then it became a civil matter. He suggested that the Commission stipulate that the pier be for recreational purposes only and limit its length up to the lease line.

Associate Member Fox moved to approve a permit to allow the structure to be located up to the lease line, leaving the pilings as requested by the leaseholder, and the royalties to be assessed by staff. Associate Member Jones seconded the motion. Associate Member Schick suggested that the motion be amended to allow the pier to be at least a minimum of 50 feet if the distance to the lease was less than 50 feet. Associate Members Fox and Jones agreed to the amendment. The motion carried, 6-0.

Royalty fee (to be determined)  
Permit fee.....\$100.00

\* \* \* \* \*

- 9. DR. PAUL EVANS, JR., #05-1411, requests authorization to construct a 37-foot long by 17-foot wide private, non-commercial, open-sided boathouse with associated 4-foot wide finger piers at a previously authorized private pier adjacent to property situated along the Western Branch of Wormley Creek in York County. An adjacent property owner protested the project.

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

Ms. West explained that Dr. Evans' property was situated along the Western Branch of Wormley Creek near its confluence with the main branch of Wormley Creek in York County. The waterway is approximately 70 feet wide at this location. The U.S. Coast Guard Training Center is located upstream and across the waterway from the Evans property. A Federally maintained navigation channel within the Western Branch of Wormley Creek is heavily used by U.S. Coast Guard boats transiting to and from the Training Center and the York River.

Ms. West stated that in 2002, Dr. Evans submitted an application requesting authorization to dredge and construct a pier at his property. Staff had concerns then regarding the placement of the pier and the alignment of the dredge cut in relation to the Federal channel. In addition, the project was protested by the adjacent property owner, Mr. J. Roderick Bland. The processing of that application was suspended in October 2002 when Dr. Evans' contractor relocated.

Ms. West said that Dr. Evans submitted a new revised application in 2005 requesting authorization for a pier and boathouse. He had not renewed his request to dredge at this location.

Ms. West said that upon a determination by the U.S. Coast Guard that the pier would not impede navigation within the Federal channel, staff concluded that the pier appeared to be authorized by statute pursuant to §28.2-1203(A)(5) of the Code of Virginia. As such, a

“no permit necessary” letter was issued for the construction of the pier on October 13, 2005.

Ms. West explained that this project was again protested by Mr. J. Roderick Bland, the adjacent property owner, however, the boathouse was not statutorily authorized under the provisions of §28.2-1203(A)(5) of the Code of Virginia. Mr. Bland had expressed concerns regarding the proposed boathouse and pier. He was concerned that the structure was set too close to his property line extended, that the boathouse would obstruct his view, and that, should Dr. Evans’ moor his 57-foot vessel at the pier, navigation of the waterway would be severely impeded.

Ms. West stated that in order to evaluate Mr. Bland’s concerns, staff inquired regarding Dr. Evans intent to moor his 57-foot sport fishing vessel at his pier. Dr. Evans stated that he currently moors his 57-foot vessel at a family member’s property nearby and that he had no intention of mooring this large vessel at his property. Although he does not currently own a smaller boat, he intended to purchase a smaller vessel to moor at the proposed pier and boathouse.

Ms. West said that the subject boathouse would have qualified for the authorization contained in §28.2-1203 (A)(5) of the Virginia Code had it not been protested by the adjacent property owner. In addition, the open-sided design should minimize the visual impacts associated with the structure. Also, given staff’s extensive coordination with the USCG regarding whether the structure would impede navigation of the Federal project channel, and their determination that the project does not appear to represent a navigational hindrance, staff recommended approval of the boathouse as proposed.

Dr. Paul Evans, Jr., applicant, was sworn in and his comments are a part of the verbatim record. Dr. Evans stated that the staff did an excellent job explaining the project. He said that he did not plan to keep a larger vessel at the proposed pier as it would not fit in the boathouse and to tie up at the pier would make the vessel too close to the channel. He said he had tried to speak with Mr. Bland but he would not discuss the matter with him.

Bob Livengood, contractor for applicant, was sworn in and his comments are a part of the verbatim record. Mr. Livengood explained that there would be two mooring pilings to tie up the boat. He said the shoal to the left of the pier did not allow it to be set back in the water so it made the pier close to the property line.

Roderick Bland, protestant and adjoining property owner, was sworn in and his comments are a part of the verbatim record. Mr. Bland stated that if the applicant would move the pier 5 feet there would be no problem. He said the way it was proposed now would be crowding him.

Dr. Evans explained Mr. Bland’s pier was on the east side and the channel would be on the west side and moving it would put him in shallower water.

**Associate Member Schick moved to approve the request with staff recommendations. Associate Member Holland seconded the motion. The motion carried, 6-0.**

Permit fee.....\$25.00

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**10. RON HALL, #05-2244**, requests authorization to install two (2) offshore breakwaters, 75 feet and 55 feet in length, spaced 55 feet apart, and extending an average of 60 feet channelward of mean low water, and place approximately 1,800 cubic yards of beach-quality nourishment behind the structures at his property situated along his shoreline on the Rappahannock River near Mosquito Point in Lancaster County. An adjacent property owner protested the project.

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

Mr. Woodward explained that the project was located just upriver of Mosquito Point off Rt. 700 (Mosquito Beach Lane), approximately 2.5 miles southeast of the Town of Whitestone. The property had approximately 200 feet of shoreline with a sand and clay bank approximately 35 feet high. There was also an iron-ore outcrop on the upriver, western property line. The applicant had razed the existing home and planned to build a new home on the site.

Mr. Woodward stated that the application plans called for extensive bank grading, the installation of two offshore breakwaters with beach nourishment using suitable bank material, a 225-foot riprap revetment and a 200-foot long private pier with an uncovered boatlift. The breakwaters and beach nourishment channelward of mean low water were the only portions of the project requiring a VMRC permit. The revetment and nourishment were approved by the Lancaster County Wetlands Board at their December 8, 2005 meeting, and the pier and boatlift were authorized by statute. The project was initially heard by the Board on November 10, 2005. It was tabled for additional information, which led to a revision, that reduced the length of the breakwaters and moved them ten feet off of the extended property lines, in an effort to resolve concerns raised by the adjoining property owners. The bank grading requires a land disturbance permit from the County.

Mr. Woodward explained that the project was similar in design to a project for Mr. Thomas Teal (VMRC# 02-2329) that was issued on September 30, 2003. The same agent and contractor, Riverworks, Inc., accomplished that project which is approximately 500 feet upriver. Mr. Teal sent in a letter of support for the Hall project on November 7, 2005.

Mr. Woodward stated that staff had received letters of protest from both adjoining property owners, Ms. Cheryl Hoovler (upriver) and Mr. and Mrs. Donald Tharpe (downriver), as well as a letter from Mr. and Mrs. Charlie Hall, which was submitted by the Tharpes. The Halls live immediately downriver of the Tharpes. After an on-site meeting with the agent and wetland board representatives, and receiving revised drawings, Ms. Hoovler withdrew her protest.

Mr. Woodward said that Mr. Tharpe had submitted numerous letters expressing concerns that the bank grading would disturb what he believed to be an archeological site on the property. He had submitted numerous photographs that showed fossil oyster and scallop shell imprints on the outcrop. He had since contacted the Virginia Department of Historic Resources and had sought "consulting party status" with the U. S. Army Corps of Engineers under Section 106 of the National Historic Preservation Act to further identify and evaluate this feature. Mrs. Tharpe indicated that the project would negatively impact their view of the river. The Tharpes do not object to the revetment. They graded their bank and installed a similar revetment a few years ago (VMRC#04-0292).

Mr. Woodward stated that Mr. and Mrs. Charlie Hall were opposed to the breakwaters, bank grading and beach nourishment, believing that the project would starve their downriver property of sand. They do not oppose the revetment. They too graded their shoreline and installed a riprap revetment and a stone groin years ago (VMRC#85-0277).

Mr. Woodward explained that the Virginia Institute of Marine Science indicated that the environmental impacts could be reduced if either just the breakwaters and nourishment or the revetment were constructed, but not both. Given the presence of clay in the bank, VIMS recommended a soil analysis, which had since been done, and showed a high percentage of coarse sand in the bank sample. VIMS recommended a monitoring and maintenance plan for the proposed beach plantings, erosion and sediment controls during grading, revegetation of the graded slope and advised against the use of construction debris in the breakwaters and revetment. The agent agreed to all of these recommendations at the second wetland board hearing, but had yet to submit a planting plan.

Mr. Woodward said that the Virginia Department of Conservation and Recreation documents the presence of the federally threatened Northeastern beach tiger beetle in the project vicinity and recommended coordination with the United States Fish and Wildlife Service and the Virginia Department of Agriculture and Consumer Services regarding potential impacts to this insect species. The application had been forwarded to VDACS. The Department of Game and Inland Fisheries indicated multiple occurrences of this species less than 2 miles from the project site and also recommended federal coordination. They also recommended the use of turbidity curtains during construction to minimize impacts to anadromous fish species in the area.

Mr. Woodward stated that the U.S. Army Corps of Engineers issued a Regional Permit, for this project, and had also agreed to list Mr. Tharpe as a consulting party regarding Section 106 matters relevant to their permit.

Mr. Woodward said that the project was designed similarly to another breakwater project just upriver that appeared to be working very well. From numerous site inspections, staff concurred that the shoreline at the Teal property was now stable and there did not appear to be any adverse impacts to adjoining or nearby properties. Both of the remaining protestants had graded and armored their shorelines, similar to the applicant's proposal, but chose not to incur the added expense of offshore breakwaters and associated beach nourishment. By nourishing the breakwaters with suitable bank material, staff believed that the structures should not result in significant "starvation" of downdrift properties as a result of the breakwaters themselves. It was staff's opinion that the grading and armoring of most of the properties in this reach of shoreline had cut off much of the sand supply from the eroding bluffs.

Mr. Woodward explained that while DCR and DGIF indicated the presence of tiger beetles in the area, the site itself currently had no sandy beach habitat at high tide. However, the creation of a higher, wider beach area behind the breakwaters through nourishment could result in tiger beetles moving into the area.

Mr. Woodward said with regards to the potential for the property to involve a prehistoric, archeological site, staff would leave this determination to DHR, working in conjunction with the Corps of Engineers under Section 106 of the National Historic Preservation Act. It was unclear, however, if the recorded site referred to in correspondence from DHR to the Corps was in fact the subject property. In any event, staff believed that the project as designed should actually protect the outcrop feature. The applicant does not intend to disturb this feature and would protect it with the offshore breakwaters and also cover it with beach-quality sand and stabilize the area with appropriate wetland vegetation.

Accordingly, Mr. Woodward stated that staff recommended approval of the breakwaters and nourishment, using only suitable, coarse sandy material from the bank. Staff also recommended the use of a turbidity curtain during bank grading and breakwater construction, and the submittal of a detailed planting schedule and monitoring plan for the proposed beach vegetation.

Associate Member Schick noted that there were no engineering drawings. Mr. Woodward explained that it had not been required in the past and the County had not required them either.

Jeff Watkins, of Riverworks, representative for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Watkins said that they agreed with all the requirements and royalty assessments.

Edna Roberts, property owner in the area, was sworn in and her comments are a part of the verbatim record. Ms. Roberts said she loved the unblemished area and if a jetty were to be put in, the waterflow would be slowed and sand would accumulate. She said she was concerned that erosion would occur at other properties along the river as a result of this jetty. She said the location where there are artifacts would be covered. She requested that the Commission leave Mother Nature alone and deny the project.

Don Tharpe, protestant and adjoining property owner, was sworn in and his comments are a part of the verbatim record. Mr. Tharpe said that there were no scaled drawings and he had requested a copy of the scaled drawings. He said he spent \$94,000 to plan his riprap. He said he just wants to insure that his investment will not be affected. He said he was an amateur archeologist and he had contacted the Jamestown-Yorktown Foundation regarding artifacts in this location. He said he had contacted all the agencies and was ignored. He said at the Wetlands Board meeting he had asked for scaled drawings. He said that a revetment would be okay because it could be linked with his revetment. He said at the Lancaster County level it had been agreed to tie it all together in order to protect the property. He said this location was the only historical resource of Lancaster County and the only Indian site. He requested that the Commission deny or table the application pending the completion of the Corps historical resource research.

Mr. Watkins responded that the permits had not been set aside but an evaluation was being done. He said the County and Corps permits had both been approved.

**Associate Member Schick moved to approve the project. Associate Member Holland seconded the motion. The motion carried, 6-0.**

Royalty fee (5,500 sq. ft. of nourishment @ \$0.05/sq. ft.).....	\$275.00
Permit fee.....	\$100.00
Total fees.....	\$375.00

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- 11. FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS & ENVIRONMENTAL SERVICES, #02-2187,** requests after-the-fact authorization to modify a previously issued permit, to retain approximately 50 linear feet of riprap stream bank stabilization along Pohick Creek, associated with the Pohick Trunk Sewerline Improvements project in Fairfax County.

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

Mr. McGinnis explained that the project was located on the eastern side of Pohick Creek, approximately 700 feet south of the Interstate 95 overpass in Fairfax County. The applicant sought after-the-fact modification of a previously authorized project to retain

50 linear feet of riprap stream bank stabilization that extended approximately one-foot channelward of ordinary high water.

Mr. McGinnis stated that the original permit was approved by the Commission on May 27, 2003, as a Page 2 agenda item, and authorized the installation of a 60-inch diameter sanitary sewer trunk line. The new line was installed parallel to an existing sewer trunk line, by the open-cut method at four (4) separate crossings of Pohick Creek, a minimum of two and a half feet (2.5 ft) below the creek bottom. The County was authorized to stabilize the adjacent streambeds and banks with riprap. Their permit was subsequently modified by the Commission as a Page 2 agenda item on September 28, 2004. That modification authorized the installation of pre-cast concrete caps over the existing sanitary sewer trunk line, and concrete encasements to be installed around the proposed sanitary sewer trunk line at two of the four crossings. In addition this modification authorized the installation of 6-inch thick gabion mattresses on the streambed over the sewer lines, in place of the previously authorized riprap and a time-of-year restriction of February 15 – June 30 to protect anadromous fish. The applicant later requested a modification to their permit to remove the time-of-year restriction so that the installation of the sewer trunk line could be completed at the last of the four crossings. The Commission, once again, authorized a second modification to the permit on January 25, 2005, as a Page 2 agenda item. This last modification changed the time-of-year restriction to March 1 – June 30 to allow the applicant an additional two weeks to complete the project.

Mr. McGinnis said that on June 6, 2005, staff received a telephone call from the applicant's agent, Mr. Dean C. Westman, of Whitman, Requardt, and Associates, LLP. Mr. Westman informed staff that due to a recent rain event and the proximity of an excavation near the bank of Pohick Creek, that they felt it necessary to install riprap stream bank stabilization to avoid further bank erosion and to prevent the excavation site from collapse. The excavation site near the stream bank was part of the sewer trunk line project, and was denoted in the permit drawings as Structure 5. Mr. Westman's call to staff was received on the same day the installation of the riprap along the stream banks was performed. Staff informed Mr. Westman that they would need to submit an after-the-fact request to modify their permit, yet again. This request was received by staff on June 14, 2005.

Mr. McGinnis stated that the Department of Game and Inland Fisheries, in an e-mail to staff dated August 26, 2005, recommended that the applicant investigate opportunities to restore Pohick Creek to a more stable condition using natural stream channel design principles, which would further protect the sewer trunk lines adjacent to the creek. The Department of Conservation and Recreation, in a memo to staff dated August 29, 2005, stated that due to the scope of the project and its distance from natural heritage resources, that they did not anticipate any adverse impacts, and that the project was acceptable as proposed. The Department of Environmental Quality, on an agency evaluation form

dated August 17, 2005, stated that the proposed project was acceptable. No other State agencies had raised concerns or objections to the project.

Mr. McGinnis explained that clearly the county and their agent were well aware of the need to obtain VMRC permits before conducting work, which would encroach upon State-owned submerged lands. The potential for streambank erosion and collapse of the excavation site not only threatened the project, but also posed a safety hazard to construction crews operating within the excavation. In this case, it appeared that the applicant acted quickly to protect the stream bank to prevent a more serious problem and was not in a position to wait for Commission authorization before beginning the work. Therefore, because the applicant's agent was quick to notify VMRC of the unauthorized work, the emergency nature of the project, and the fact that it would have been recommended for approval if a request had it been submitted prior to the work being done, staff recommended the Commission approve the after-the-fact modification to the existing permit.

Dean Westman, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Westman asked that the Commission grant the County's request for approval.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 6-0.**

No applicable fees, permit modification

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- 12. ANDREW G. BURY, #01-2196**, requests authorization to modify an existing permit to allow the construction of a 24-foot by 40-foot enclosed boathouse at the channelward end of a 128-foot private pier in lieu of at the channelward end of a 95-foot pier adjacent to his property situated along Urbanna Creek near Oakes Landing in Middlesex County.

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

Mr. Neikirk explained that Mr. Bury's property is situated along the southern shoreline of Urbanna Creek adjacent to the Oakes Public Landing near Saluda in Middlesex County. On July 17, 2002, a VMRC permit was issued to the previous property owner, Mr. Dale Foley, for the construction of a 24-foot by 40-foot enclosed boathouse adjacent to a 95-foot long private pier. That permit was subsequently transferred to Mr. Bury on April 9, 2003. On May 24, 2005, the Commission considered a request by Mr. Bury to allow the construction of a 48-foot by 24-foot enclosed boathouse at the channelward end of a 128-foot pier. The Commission approved that request in a modified form by allowing the

construction of the larger boathouse provided it was constructed with an open-sided design. Rather than accept the larger open-sided boathouse, Mr. Bury decided to construct the smaller, currently authorized 24-foot by 40-foot enclosed boathouse.

Mr. Neikirk further explained that staff previously determined that an open-pile pier extending 128 feet channelward of mean high water met the statutory authorization for private piers contained in §28.2-1203(A)(5) of the Virginia Code. Mr. Bury's smaller boathouse, however, was currently authorized to extend no further than 95 feet channelward of mean high water. Mr. Bury now desired to construct the 24-foot by 40-foot boathouse at the channelward end of the 128-foot pier (33 feet further channelward than that currently authorized).

Mr. Neikirk said that Urbanna Creek is approximately 500 feet wide at the project site. With the exception of the public landing, development along this portion of the creek was primarily residential. There were other enclosed boathouses in the vicinity of this project.

Mr. Neikirk stated that Mr. Bury had stated that the channelward relocation of the proposed boathouse was needed to access adequate water depth. He said that at the currently authorized location the mean low water depths range from just over one (1) foot to approximately three (3) feet at the channelward end. He said the 33 additional feet would provide a mean low water depth of approximately three (3) feet throughout the boathouse.

Mr. Neikirk said that previously Ms. Vera England, a county resident, had protested the project. She does not object to the current proposal provided the boathouse is built no larger than currently authorized. No objections were received from the adjoining property owners or the general public concerning the current proposal.

Mr. Neikirk stated that the Middlesex County's Comprehensive Plan states that "boathouses or similar structures should not be permitted to disrupt the scene or interfere with neighboring viewsheds," however, staff had not received any comments from Middlesex County specific to this proposal.

Mr. Neikirk explained that Mr. Bury does not currently own a boat, but had indicated it was his intent to purchase a boat after the boathouse had been constructed.

Mr. Neikirk stated that the proposed boathouse would not encroach over any public or privately leased oyster planting ground. No state agencies had commented on the proposal and staff did not believe the structures would adversely affect navigation.

Mr. Neikirk said that although Mr. Bury was currently authorized to construct a 24-foot by 40-foot enclosed boathouse, the proposed revised location of the boathouse would disrupt the view from the public landing more than the currently authorized location. In recent years staff had generally been reluctant to recommend approval for enclosed

boathouses, since an open-sided boathouse provided similar protection while minimizing the aesthetic impacts. Additionally, an open-sided design eliminated the need for interior walkways and often allowed the structure to be built within a smaller footprint. Staff acknowledged that an enclosed boathouse might provide additional beneficial protection for antique or other wooden vessels, but the applicant did not own such a boat.

Accordingly, Mr. Neikirk said that since Mr. Bury had not presented a compelling need for an enclosed boathouse, staff recommended denial of the proposed permit modification.

Andrew G. Bury, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bury said that he had done soundings and the water was 1-foot at MLW and he was requesting permission to move the boathouse further out. He said he wanted to be able to utilize the boathouse to protect his boat.

No one else requested to speak on this item.

**Associate Member Holland moved to approve the request. Associate Member Schick seconded the motion. The motion carried, 6-0.**

No applicable fee, permit modification.

\* \* \* \* \*

**13. PUBLIC COMMENTS:**

Associate Member Garrison opened the hearing to public comments.

**Douglas Jenkins**, President of the Twin River Watermen's Association, was present and his comments are a part of the verbatim. Mr. Jenkins explained that the tongers in the James River were requesting that they be allowed to keep seed oysters as well as market size oysters on board the vessel at the same time, not just one or the other. His comments are a part of the verbatim record.

Associate Member Garrison requested that the staff investigate this request.

Associate Member Bowden suggested that emergency action be taken by the Commission to approve Mr. Jenkins request.

Dr. James Wesson, Head, Conservation and Replenishment Department, was present and his comments are a part of the verbatim record. Dr. Wesson said that allowing all sizes on board the vessel at the same time makes it a problem for Law Enforcement to enforce the cull law. He said that the seed transplanting program was a part of the whole Oyster Replenishment Program and would be discussed at next month's meeting.

Colonel Steve Bowman, Deputy Commissioner and Chief, Law Enforcement Division, was present and his comments are a part of the verbatim record. Colonel Bowman explained that allowing this request would make it more difficult to accurately cull the oysters. He said that he needed to address this with Jack Travelstead and Jim Wesson and then come back to the Commission.

Jack Travelstead, Chief, Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead explained this seed transplanting was a part of the Oyster Replenishment Program.

No action was taken.

No one else asked to address the Commission so the public comment period was closed.

Associate Member Jones left for the day.

\* \* \* \* \*

- 14. PUBLIC HEARING:** Request to make emergency provisions for 2006 commercial black sea bass harvest quotas permanent parts of Regulation 4 VAC 20-950-10 et seq. The proposed 2006 quota for Virginia’s directed fishery was 631,380 pounds and for the by-catch fishery 118,082 pounds.

Joe Cimino, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. Mr. Cimino said that staff was asking the Commission to make permanent the emergency action taken by the Commission at last month’s meeting for the 2006 commercial black sea bass harvest quotas.

Associate Member Garrison opened the hearing for public comments, but there were none. The public hearing was closed.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 5-0.**

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- 15. PUBLIC HEARING:** Request to make an emergency provision of Regulation 4VAC 20-20-100 et seq. that exempts pound net fishermen from the priority rights requirements necessary for license renewal in 2006.

Rob O’Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. O’Reilly explained that staff was asking the Commission to make permanent the emergency action approved at last month’s meeting to exempt pound net fishermen from the priority rights requirements necessary

for license renewal in 2006. The amendment to this regulation was on page 4 of the draft Regulation, paragraph D.

Associate Member Garrison asked if there were any public comments. There were none. The public hearing was closed.

**Associate Member Fox moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 5-0.**

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**17. PUBLIC HEARING:** Consideration of a proposal to establish a limited by-catch of American shad for the 2006 season.

Jack Travelstead, Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He said there was a letter from the Task Force and a draft regulation in the packets. He said ASMFC has approved for the state a by-catch fishery and it will be reviewed at the end of this year by the Technical Committee. He said some of the public who supported this amendment had left the meeting.

Mr. Travelstead explained that the ASMFC had only approved this request for 2006 with the following conditions:

- 1) 2006 only,
- 2) 10 fish per vessel,
- 3) By-catch allowed only in James, York, and Rappahannock Rivers, above the first bridges.
- 4) By-catch allowed for commercial anchored gill nets and staked gill nets only. No by-catch allowed for pound nets, fyke nets, haul seines, commercial hook-and-line, or any recreational gear.
- 5) Appropriate data collection to determine levels of bycatch, effort, and effects on restoration program

Mr. Travelstead stated that the shad fishery in Virginia for the Bay and its tributaries had been closed since 1994 and in the coastal area since 2005. The objective of the by-catch fishery is to convert dead, discarded fish to a useable and marketable product. The serious concern arises when in an effort to make use of discarded fish, a directed fishery arises, creating additional mortality on the population. Like the earlier case with oysters, this is a challenge for the Law Enforcement officer to enforce it. The ASMFC in all likelihood will not approve this beyond 2006, unless the impacts can be shown to be

minimal. An extensive monitoring program is required to create the supporting evidence staff believes is necessary to convince the ASMFC to extend this beyond 2006. Staff recommends the following additional restrictions for the 2006 fishery.

- 1) Require a free permit of any registered commercial fisherman participating in the by-catch fishery.
- 2) Require the fisherman to complete a survey describing his fishing practices, prior to receiving the permit.
- 3) Limit the by-catch areas to those portions of the James, York and Rappahannock Rivers below their respective shad spawning areas.
- 4) Require, once weekly, calls to the VMRC voice activated recording system to report effort and harvests.

Mr. Travelstead said that staff recommended approval with the above conditions. He said that Dr. John Olney from VIMS, who had participated on the Task Force, was present at the hearing.

Associate Member Garrison opened the public hearing.

Douglas Jenkins, President of the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that they were agreeable with the 10-fish bycatch limit.

Since no one else asked to speak, the public hearing was closed.

Associate Member Fox asked why was the limit set at 10. Mr. Travelstead explained that all the bycatch would most likely be females and there was a tendency to keep the females for the roe. He said there was nothing magic about the number, but they had offered 20 per person to ASMFC and they had agreed to 10 per vessel. Associate Member Fox asked how long this would be allowed. Mr. Travelstead responded one year.

**Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 5-0.**

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- 18. BONNIE-LEIGH JONES:** Request Commission review of the licensing and compliance with special conditions of Mr. Ernest L. George's pound net at Windmill Point.

Deferred until the February 28, 2006 Commission meeting.

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**19. VIRGINIA SEAFOOD COUNCIL:** Request for Public Hearing and Review of Their Proposal to Continue Aquaculture Experiments with the Non-native Oyster, Crassostrea ariakensis.

Frances Porter, representing the Virginia Seafood Council, was present and her comments are a part of the verbatim record. Ms. Porter said that they were requesting a public hearing be held at the February meeting to consider a proposal by VSC for another ariakensis project for 2006.

**Associate Member Schick moved to approve the advertisement of a public hearing to be held at the February 28<sup>th</sup> meeting. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Carl Josephson left the meeting for the rest of the day.

\* \* \* \* \*

**20. UPDATE:** On Status of the 2005 Flounder Fishery and Proposed Regulations for the 2006 Recreational Flounder Fishery.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. O'Reilly explained that this was an update only. He said this is the first year that it is not necessary to make any changes to the regulations. He further explained that when the ad hoc committee met, there was very poor attendance because of weather. He said two members attended and five called in. He said those individuals indicated they want to keep status quo to the 2005 measures and that no action by the Commission was needed.

No action was taken.

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**21. REPORT:** On Status of the Federal Waters (EEZ, 3-200 Mile Ocean Waters) Closure for Striped Bass Harvest.

Associate Member Garrison had requested that the staff provide information regarding this issue. He said because this area was closed and difficult for Law Enforcement to catch the violators, and it was also unfair to the local charter boats. He said that, if the Commission so desired, the staff could be given direction on how they want to proceed with this issue. He said Jack Travelstead with some direction from the Commission, as

the state's representative would be able to address this issue with the ASMFC. He asked, did the Commission want to make a motion?

Rob O'Reilly, Deputy Chief, Fisheries Management, explained that he had some information, which he could provide to the Commission. He said in 1989, federally controlled waters (beyond 3 miles from the shore to 200 miles offshore, known as the Exclusive Economic Zone (EEZ)) were closed to fishing or possession of striped bass. He said that since 1995 when the ASMFC had declared the striped bass restored there had been several requests to open part or all of the EEZ to striped bass harvest. He explained that Massachusetts had requested authority to manage the striped bass from 3 to 12 miles. He said that in 2003 the ASMFC had recommended to the NMFS to reopen the EEZ to striped bass harvest. He said after that the NMFS began work on an Environmental Impact Statement (EIS) which is similar to what is being done for oysters. Mr. O'Reilly stated that the EIS is near completion, and once that is done it will be up to Dr. Hogarth to direct his staff to proceed.

Mr. O'Reilly explained that there have been a lot of comments made to this issue and it is split down the middle, as to who does and does not support this reopening. He said it is a controversial issue, and it may be some time before it is resolved.

Associate Member Bowden explained that this action to open this area would cause an increase in mortality, and it might result in the need to limit the season in the Bay and all you would be doing is robbing Peter to pay Paul.

Kelly Place, waterman, was present and his comments are a part of the verbatim record. Mr. Place said he agreed with Mr. Bowden about the robbing Peter to pay Paul. He said he was suggesting that before making a resolution on this matter, the Commission might want to wait until all the facts are available and hold a public hearing before any decision is made.

Associate Member Garrison asked staff how long before the information would be available. Jack Travelstead, Chief, Fisheries Management said that the information will be available this year, and the best document would be the EIS.

Associate Member Bowden stated that if the ocean is opened up it might be necessary to close the bay fishery some months of the year and this could possibly be the most productive months. He said that Massachusetts wants it open, but they want to be able to control their waters.

After a little more discussion, Associate member Garrison asked Mr. Travelstead to come back with this item when more information is available.

No action was taken.

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**22. AMERICAN SHAD RESTORATION:** Approval of Procurement Procedures and Public Notice for the 2006 Program.

Jack Travelstead, Chief, Fisheries Management Division, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead explained that this was an annual project, and staff was requesting approval of a public notice to advertise the procurement process and the price to be paid, which was increased from \$200.00 per day to \$225.00 per day.

**Associate Member Schick moved to approve the request for the advertisement of the public notice and the procurement procedure. Associate Member Fox seconded the motion. The motion carried, 5-0.**

NOTICE OF REQUEST FOR PUBLIC PARTICIPATION IN THE 2005 SHAD RESTORATION PROJECT

The Marine Resources Commission invites WRITTEN RESPONSE as to the availability of as many as 10 individuals for capturing American shad (shad) from the Pamunkey River (unless otherwise directed by the Virginia Department of Game and Inland Fisheries, VDGIF) for the 2006 shad restoration project. Project dates will be approximately March 8 through mid-May, 2006.

The procurement of services for the 2006 American Shad Restoration Project has been approved by the Commission, using its authority under Section 28.2-550 of the Code of Virginia.

**PROJECT DESCRIPTION:** A total of nine individuals will be selected as permitted project participants, and one individual will be selected as project alternate. All scheduling, on a weekly and seasonal basis, will be established by the Virginia Department of Game and Inland Fisheries project coordinator. The need for participation by alternates in the project will be determined by the Virginia Department of Game and Inland Fisheries project coordinator.

For fishing days during the March 8 through mid-May, 2006 period, permitted project participants shall be paid at the rate of \$225.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 Noon and 12:00 midnight.

Listed below are specific evaluation criteria, ranked by order of importance. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more

than 10 equally qualified respondents, selection for the project will be made through a lottery system. The lottery will be held on March 1st at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.

EVALUATION CRITERIA

1. You must have participated in one or more of the 1992 through 2005 American shad restoration projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals who have previously participated in this project more than one year.
2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.
3. You must be available to fish for shad during most of the days between mid-March and mid-May.
4. You must have experience in fishing for shad in upriver areas, using drift gill nets.

\* \* \* \* \*

**23. REQUEST FOR PUBLIC HEARING:** To incorporate the 2006 Chesapeake Area striped bass harvest quotas into Regulation 4 VAC 20-252-10 et seq.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. O'Reilly explained that this was a request for a public hearing next month to establish commercial and recreational quotas for the striped bass fishery. He said a lot of measures were passed last November and now the quotas need to be established.

**Associate Member Fox moved to approve the request for a public hearing. Associate Member Holland seconded the motion. The motion carried, 5-0.**

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Associate Member Bowden explained that an approved amendment to a regulation allowing for the possession of a crab dredge permit and clam dredge permit at the same time was inadvertently never changed. He explained further that just recently some problems had arisen on the Eastern Shore. He said that since counsel was not present and a legal opinion was needed, he requested that this matter be deferred until the February 28, 2006 Commission meeting.

**Commission Meeting**

**13625  
January 24, 2006**

No action was taken.

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There was no further business, the meeting adjourned at approximately 6:30 p.m. The next meeting will be Tuesday, February 28, 2006.

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William A. Pruitt, Commissioner

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Katherine Leonard, Recording Secretary