

## MINUTES

**Commission Meeting****February 28, 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. )	
Russell Garrison )	
J. T. Holland )	Associate Members
Cynthia Jones )	
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.
Andy McNeil	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
Marine Police Officer	MPO Bryan Tittermary
Marine Police Officer	MPO David Drummond

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.
Sean Briggs	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

David O'Brien  
Lyle Varnell  
Paula Jasinski  
James Kirkley  
John Olney  
Eugene Bureson  
Ryan Carnegie

Other present included:

Patsy Kerr	Lt. Matt Riethmiller	Mark Hudgins
Mark Hudgins	Michael F. McNeill	Patrick McNeill
William J. Conner	Vern Ball	Judy Gutowski
David Gutowski	Davie Horie	Tom B. Langley
Ben Flint	Jamie Oliver	Rebecca Franeg
Albert Williams	Richard William	Marsh Zellboefer
Susan Craun	Galen Craun	Amy Crum
William Brau	Joe Kouskinski	Ellis W. James
Allison Connolley	Jeff Hunther	Norman Malo
Karen Malo	S. Lake Cowart, Jr.	A. J. Erskine
James Fletcher	Ernest L. George	Douglas F. Jenkins, Sr.
Bonnie-Leigh Jones	Bobby Weagley	John Wyatt
Charles Dryden	Pat Crewe	Bob Jensen
Tommy Leggett	Michael Congrove	Chris Moore
Richard W. Harding, Jr.	Kelly Place	

and others

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Commissioner Pruitt called the meeting to order at approximately 9:40 a.m. Associate Members Fox and McLeskey were both absent. Associate Member Holland arrived at approximately 9:50 a.m. Associate Member Jones arrived at approximately 12:15 p.m.

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Tracy West 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. Colonel Steve Bowman, Deputy Commissioner announced that Dr. Bob Orth would not be present to give his presentation and that item (17) was pulled.

**Associate Member Robins moved to approve the agenda, as amended. Associate Member Garrison seconded the motion. The motion carried, 4-0.**

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**MINUTES:** Commissioner Pruitt asked for a motion to approve the January 24, 2006 meeting minutes.

**Associate Member Robins moved to approve the minutes as presented. Associate Member Garrison seconded the motion. The motion carried, 4-0.**

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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 P. His comments are a part of the verbatim record.

Commissioner Pruitt asked if anyone was present pro or con on these items to address the Commission. No one asked to speak.

**Associate Member Schick moved to approve Page Two items, A through P. Associate Member Garrison seconded the motion. The motion carried, 4-0.**

**2A. TOWN OF BLACKSBURG, #05-1083**, requests authorization to cross Toms Creek in two (2) locations with 12-foot wide, timber, clear span bridges for pedestrian and bicycle use in Heritage Park in Blacksburg. There will be no structures or construction activity within the creek bed. Recommend approval with proper erosion and sediment control measures during construction of the associated upland abutments and wing walls.

Permit Fee.....\$100.00

**2B. TAZEWELL COUNTY PUBLIC SERVICE AUTHORITY, #06-0028**, requests authorization to install two (2) aerial and six (6) submerged sewer line stream crossings of Laurel Fork and its tributaries and construct one (1) 0.5 MGD outfall to facilitate replacement of the Town of Pocahontas' Wastewater Treatment Plant in Tazewell County. Recommend approval with the inclusion of our standard instream permit conditions.

Permit Fee.....\$100.00

**2C. CITY OF BRISTOL, #05-2670**, requests authorization to install 12 linear feet of submerged water line beneath and construct a 65-foot long by 34-foot wide clearspan bridge across Beaver Creek to facilitate vehicular access and private utilities installation to the Sugar Hollow Business Complex in the City of Bristol. Recommend approval with the inclusion of our standard instream permit conditions.

Permit Fee.....\$100.00

**2D. NAVAL FACILITIES ENGINEERING COMMAND, #05-2628**, requests authorization to install a 325-foot by 52-foot T-head at Pier 11 at Norfolk Naval Base situated along the Elizabeth River in Norfolk.

Permit Fee.....\$100.00

**2E. U. S. FISH AND WILDLIFE SERVICE, CHINCOTEAGUE NATIONAL WILDLIFE REFUGE, #05-1130**, requests authorization to construct an 80-foot long by 12-foot wide concrete boat ramp; a 60-foot long by 6-foot wide open-pile pier with a 36-foot long by 6-foot wide floating dock; a 110-foot long breakwater and mechanically dredge an 80-foot by 20-foot area channelward of the proposed

boat ramp to minus four and one half (-4.5) feet at mean low water, adjacent to their property situated along Assateague Channel on Assateague Island in Accomack County.

Permit Fee.....\$100.00

**2F. NORVIEW MARINA, #05-2159**, requests authorization to remove a 20-slip floating pier and to install a new 185-foot long floating pier providing eight (8) larger wetslips adjacent to their marina facility situated along Broad Creek in Middlesex County.

Permit Fee.....\$100.00

**2G. GLOUCESTER COUNTY DEPARTMENT OF UTILITIES, #05-2942**, requests authorization to cross approximately 80 linear feet of Fox Mill Run, adjacent to the Route 17 crossing, with a submerged 16-inch diameter waterline within an existing utility easement in Gloucester County. Recommend approval with our standard in-stream construction conditions.

Permit Fee.....\$100.00

**2H. WILL DRENNAN , ET AL, #04-0321**, requests authorization to dredge, by clamshell method, 4,022 cubic yards of State-owned submerged lands to achieve maximum depths of minus four and a half (-4.5) feet below mean low water to create a 786-foot long by 20-foot wide access channel and seven (7) associated homeowner boat basins adjacent to property situated along Broad Creek in Norfolk. All dredged materials will be transported to and disposed within the Craney Island Dredged Material Management Area. Staff recommends a royalty of \$1,786.05 for the dredging of 3,969 cubic yards of material at \$0.45 per cubic yard.

Royalty Fees (dredging 3,969 cu. yds.  
@ \$0.45/cu. yd.).....\$1,786.05  
Permit Fee.....\$ 100.00  
Total Fees.....\$1,886.05

**2I. LANGLEY AIR FORCE BASE, #05-1935**, requests authorization to install and backfill 1,200 linear feet of bulkhead, construct a 63-foot long by 16-foot wide boat ramp with a 50-foot by 13-foot service pier, a 96-foot long by 12-foot wide temporary emergency access pier for security and rescue activities, and to maintenance dredge, using either clam shell or hydraulic, 25,000 cubic yards of State-owned submerged lands to reach maximum depths of -8 feet below mean low water at their marina facility situated along the Southwest Branch of Back

River in Hampton. Dredged materials will be disposed of at an off-site upland disposal facility. Staff recommends a pre-dredge conference to include inspection of the disposal area, submission of a post-dredge bathymetric survey, that the contractor provide an observer at the dredge material containment area within radio contact with the dredge operator while the dredge is operating to prevent overflow of the containment area and that a minimum of two (2) feet of freeboard be maintained between the height of the dredged material and the top of the containment berm.

Permit Fee.....\$100.00

**2J. LANGLEY AIR FORCE BASE, #05-2839**, requests authorization to install five (5) floating piers ranging in length from 320 feet to 150-feet and all 8-feet wide, and 41 20-foot long by 3-foot wide finger piers to create 75 wet slips replace marina structures destroyed by Hurricane Isabel adjacent to their property situated along the Southwest Branch of Back River in Hampton.

Permit Fee.....\$100.00

**2K. VIRGINIA COMMONWEALTH UNIVERSITY, #04-2266**, requests a permit modification to reduce in size and relocate a previously authorized 12-foot wide by 24-foot long (288 square feet) floating research platform to the downstream side of the VCU Rice Center River Pier Facility situated along the James River in Charles City County. The new platform will measure 10-foot wide by 28-foot long (280 square feet).

Fees not applicable – permit modification

**2L. DEPARTMENT OF THE NAVY, #05-2544**, requests authorization to replace 52 existing sensors, to install 37 new sensors and install associated new and replacement cables across 2,000 linear feet of State-owned submerged lands, using trenching to reach cable depths of minus three (-3) feet below the substrate, and to place 17,000 cubic yards of protective gravel over the sensors and cable trench, between Naval Station Norfolk and the Sewells Point Degaussing Station, located within Hampton Roads Norfolk Harbor in Norfolk.

Permit Fee.....\$100.00

**2M. THOMAS SHUTTLEWORTH, #05-1190**, requests authorization to install 865 linear feet of VDOT Class II, stone riprap, the toe of which may extend a maximum of six (6) feet channelward of an existing concrete apron, for shoreline protection adjacent to his property along Linkhorn Bay in the Linlier subdivision in Virginia Beach.

Permit Fee.....\$100.00

**2N. TANNER'S LANDING ASSOCIATES, LLC, #05-0480,** requests a modification to a Commission-approved project substituting the assessment of an annual royalty for a one-time royalty of in the amount of \$14,577.00 for the encroachment over 9,718 square feet of State-owned submerged lands at a rate of \$1.50 per square foot in association with a project located adjacent to property situated along the Lafayette River in Norfolk.

Royalty Fees (9,718 sq. ft. @ \$1.50/sq. ft.).....\$14,577.00 (one-time royalty payment)  
(Modification to method of payment approved January 24, 2006)

**2O. DEPARTMENT OF THE NAVY, #05-3064,** requests authorization to construct a 30-foot wide by 227-foot long by 9-foot tall (extending five (5) feet vertically above mean low water) stone breakwater, approximately 175 feet channelward of mean low water, to decrease wave energy and provide shoreline protection adjacent to the Normandy Beach training area in the Naval Amphibious Base, Little Creek, situated along the Chesapeake Bay in Virginia Beach.

Permit Fee.....\$100.00

**2P. VIRGINIA JACOBS, #04-2794,** requests authorization to modify her previously issued permit to increase the number of wetslips from 48 to 53 and to install uncovered lifts within all 53 slips at Pelican's Nest Marina which is situated along Little Creek in Norfolk.

Fees not applicable – permit modification

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Associate Member Holland arrived to the meeting at approximately 9:50 a.m.

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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 and the Boone's pier

**The motion was seconded by Associate Member Garrison. The motion carried, 4-0.**

**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 Garrison seconded the motion. Commissioner Pruitt held a Roll Call vote:**

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

**NAYS: None**

**ABSENT DURING VOTE: Fox, Jones, and McLeskey**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: Fox, Jones, and McLeskey**

**The motion carried, 6-0.**

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

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4. **NAVAL MEDICAL CENTER, #05-2225.** Commission review of a decision by the staff of the Portsmouth Wetlands Board to decline to exert jurisdiction over a project to install two marsh sills, grade, backfill and plant to convert a disturbed and filled wetland area into a vegetated wetland area on their property situated along Scotts Creek in Portsmouth.

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

Ms. West explained that the project was located near the helicopter landing area on the property of the Naval Medical Center along Scotts Creek, a tributary to the Elizabeth River, in the City of Portsmouth. The proposed project consisted of the removal of existing construction debris from both wetlands and uplands, excavation of the area, placement of clean sand fill in order to establish an appropriate grade, planting the area with marsh vegetation, and the installation of two rock sills for the protection of the new wetland area.

Ms. West also explained that a locality which had adopted the Model Wetlands Ordinance was required to evaluate any requests for authorization to conduct activities within jurisdictional wetlands in accordance with the provisions set out in §28.2-1302 of the Code of Virginia as well as associated regulations and guidelines. However, staff for the Portsmouth Wetlands Board had declined to subject this project to a public interest review and present this application to the local Board for their consideration. Board staff, Ms. Jamie Oliver, cited an opinion by Attorney General Gerald Baliles, dated September 1, 1982, as the reason for this decision. In her interpretation of this opinion, local wetlands boards did not have the authority to regulate wetlands on Federal property. In conversations between staff and Ms. Oliver, she stated she consulted with the Portsmouth City Attorney's Office, who also read Attorney General Baliles opinion and concurred. Staff had not been provided copies of any written correspondence between Ms. Oliver and the City Attorney's Office on this matter.

Ms. West stated that upon staff's review of Attorney General Baliles September 1, 1982, letter, staff could not support Ms. Oliver's conclusion that local wetlands boards did not have the authority to regulate wetlands on federal property. That opinion concluded with the following statement - "I am, therefore, of the opinion that the Marine Resource Commission and the local wetlands board have no jurisdiction to regulate federal activities on federally owned wetlands.... unless such activities involve the discharge of dredged or fill material in any portion of the navigable waters within Virginia's jurisdiction....." The basis for this conclusion rested on the fact that the Clean Water Act of 1972 subjected all Federal actions that result in filling in navigable water (which included tidal wetlands) to State oversight. This was communicated to the Portsmouth Wetlands Board by letter dated November 7, 2005.

Ms. West said that this project clearly involved the discharge of fill material within jurisdictional wetlands. In fact, the project could not be undertaken in the absence of such discharge. As such, Attorney General Baliles' September 1, 1982, letter supported, rather than limited, the local wetland board's responsibility to protect wetland areas on Federal property.

Ms. West explained that staff could not support the decision by the local staff to exempt the proposed project from the purview of the Portsmouth Wetlands Board. Therefore, staff recommended that the Commission direct the Portsmouth Wetlands Board and their staff to fulfill their obligations as stipulated in the Wetlands Ordinance, §28.2-1302 of the Code of Virginia, and to consider the application at public hearing as soon as possible.

Jamie Oliver, Staff Wetlands Coordinator, was sworn in and her comments are a part of the verbatim record. Ms. Oliver explained there was confusion as the Code does not address the Clean Water Act and the Wetlands Board had not figured out how to apply it in their decision making process.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that under the Clean Water Act Federal immunity was waived in accordance with Section 404 for that portion of the project that involved fill material. He said that the project involved filling in navigable waters and also wetlands. He said the Wetlands Board under state law could issue or consider a permit.

Ms. Oliver stated that they needed further clarification, as it was not clear in the documentation that was provided to them.

Commissioner Pruitt suggested that a motion was needed to remand the matter back to the Wetlands Board. **Associate Member Schick moved to remand it back to the Wetlands Board. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

Fees not applicable- wetlands review

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5. **MARINE HYDRAULICS INCORPORATED, #04-2481,** requests authorization to install a 200-foot long bulkhead up to 15-feet channelward of mean low water, fill approximately 2,185 square feet of State-owned submerged lands, install two (2) 100-foot long by 8-foot wide travel lifts, and to dredge 23,000 cubic yards of State-owned submerged lands to achieve maximum depths of -17 feet below mean low water to create a 285-foot long by 80-foot wide access channel and a 197-foot by 273-foot turning basin adjacent to their property situated along the Eastern Branch of the Elizabeth River in Norfolk. All dredged materials will be transported to and disposed within the Craney Island Dredged Material Management Area.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. Commissioner Pruitt asked if this project was protested, to which Ms. West responded, no.

Ms. West explained that the project site was located to the west of the Campostella Bridge on the southern shoreline of the Eastern Branch of the Elizabeth River in an industrial use area of Norfolk. The applicant proposed to construct a new travel lift facility in order to provide repair services for Navy vessels and barges. In addition, the applicant proposed to construct an on-site wetland area as mitigation for wetland impacts associated with this project and another project at a MHI facility located in Norfolk on the mainstem of the Elizabeth River.

Ms. West stated that the Norfolk Wetlands Board had approved the project as proposed. The Department of Health had stated the project had no impact on VDH programs. The Army Corps of Engineers had not yet acted on the application.

Ms. West said that staff did not typically support requests to create uplands through the bulkheading and filling of State-owned submerged lands. However, due to the nature of the shoreline in this area, staff had been persuaded that the applicant's request consisted of the minimum encroachment necessary to accomplish the desired use of the property. Approximately half of the currently existing peninsula consisted of fill property that was created in the mid-1970's through the deposition of concrete construction debris infilled with soil. As such, it would be difficult to install a steel sheetpile bulkhead through the existing buried concrete on the upland.

Ms. West also said that the applicant had proposed to mitigate for the wetland impacts associated with both this project and additional construction associated with VMRC #04-1984 by constructing a vegetated tidal wetland site on this parcel. The construction of the wetland area did not include any impacts below the mean low water mark. Staff, however, noted that a partially submerged derelict vessel and was immediately adjacent to the mitigation area.

Ms. West stated that staff recommended approval of the project as proposed with the inclusion of the following conditions. 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. In addition, staff recommended that the Commission require the applicant to remove the abandoned derelict vessel that was immediately adjacent to the mitigation area and that the on-site wetlands mitigation area be graded and planted prior to the initiation of any bulkhead backfilling or dredging activities. This sequence of planting and construction was also a requirement contained in both of MHI's local wetland board permits. Lastly, staff recommended the assessment of a royalty in the amount of \$10,350.00 for the dredging of 23,000 cubic yards of material at a rate of \$0.45

per cubic yard. In accordance with §28.2-1206(B)(i) of the Code of Virginia, commercial facilities engaged in the business of ship construction or repair are exempt from the payment of rents and royalties other than for dredging activities.

Commissioner Pruitt asked if the applicant or their representative was present to address the Commission.

Tom Langley with the firm of Langley and McDonald Engineering was sworn in and his comments are a part of the verbatim record. Mr. Langley explained that they were opposed to the recommendation by staff that the applicant be required to remove the derelict vessel. He said that the Wetlands Board had examined this issue also, so the applicant had the vessel surveyed to see what it would cost to have it removed. He explained that this vessel was a part of the prior owner’s filling in the area, and he had put concrete inside of it. He said they were proposing to clean the area around the vessel and that the barge provided some protection to the wetlands being created and protection from erosion.

Ben Flint, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Flint explained that the estimate he had received on the barge removal was \$90,000.00. He said Jesse Simpson was the original owner of the property and only the ripped area was original ground.

Commissioner Pruitt again stated that there was no opposition to the project and asked for a motion.

**Associate Member Garrison moved to approve the project, not require the removal of the barge, but to include all other conditions set forth by the staff. Associate Member Holland seconded the motion.** Associate Member Robins asked VMRC Counsel if the Commission could require removal of the barge. Mr. Josephson stated that was a close call. He said that the Commission could not require Marine Hydraulics, Inc. to remove the barge, but in accordance with 28.2-1205(E) an argument could be made that in order to fill State-owned bottoms in the application for the bulkhead, it would be a reasonable permit condition to require them to remove the barge. Associate Member Garrison explained that the motion to approve was not made because of the cost of removal, but to protect the wetlands vegetation. **The motion carried, 5-0.**

Royalty Fees (dredging 23,000 cu. yds.	
@ \$0.45/cu. yd.).....	\$10,350.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$10,450.00

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6. **MARINE HYDRAULICS INCORPORATED, #04-1984**, requests authorization to install a 1,032-foot long by 33-foot wide trestle to support a mobile crane, three (3) mooring dolphins, dredge 491,000 cubic yards of State-owned submerged lands from a 990-foot by 232-foot wide basin to create depths of -65 feet below mean low water for the installation of a drydock with an associated 250-foot long by 230-foot wide access channel to -40 feet below mean low water to connect with the adjacent Federal Navigation Channel, construct a 193-foot long new bulkhead with 1,202 square feet of associated fill of State-owned submerged lands, and install a 26-foot long by 24-foot wide bridge to access the dry-dock at their property situated along the Elizabeth River in Norfolk. All dredged materials will be transported to and disposed within the Craney Island Dredged Material Management Area. Several residents in the vicinity protested the project.

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

Ms. West explained that the project site was located on the eastern shoreline of the Elizabeth River immediately adjacent to the Lambert's Point Marine Terminal facility. This section of shoreline could best be characterized as industrial. The Midtown Tunnel was located approximately 1,000 feet southeast of the project site. Marine Hydraulics Incorporated, Inc. (MHI) was proposing to expand an existing ship service and repair facility with the addition of a drydock and associated construction including a trestle for a mobile crane, mooring dolphins, and a new bulkhead at the head of an existing ship repair slip. The proposed project also included dredging of the slip to a depth of -65 feet below mean low water. This depth was necessary to accommodate the proposed drydock when it was submerged. In addition, the applicant desired to fill a failed wetland mitigation area behind the bulkhead that was initially constructed to satisfy the Norfolk Wetlands Board requirement for mitigation associated with the impacts attributable to the construction of the original facility. Although the applicant repeatedly attempted to establish an on-site vegetated wetland, the location was exposed to frequent wakes and was routinely denuded of the planted grasses by waterfowl. The applicant now proposed to replace the failed mitigation site on this property by constructing a wetland area on MHI property located on the Eastern Branch of the Elizabeth River.

Ms. West stated that the Norfolk Wetlands Board had approved the bulkheading and backfilling, in conjunction with a relocation of the mitigation site. The Army Corps of Engineers issued an individual permit for the project on June 29, 2005.

Ms. West explained that the W.H. Taylor Elementary School PTA and the West Ghent Civil League had protested the project. These groups were concerned with increased traffic, airborne toxins resulting from the sandblasting and scraping of vessels, and the

impacts that a 24-hour operation would have on the surrounding residential neighborhood.

Ms. West said that while the Virginia Institute of Marine Science's comments focused mainly on the proposed mitigation for the project, they did note that dredging to accommodate the drydock might result in anaerobic conditions within the dredged basin. The VIMS report, however, acknowledged that the proposed impacts appeared to be unavoidable given the nature of the proposed activity.

Ms. West stated that the applicant had proposed to mitigate for wetland impacts associated with both this project, and additional construction associated with VMRC #04-2481, by constructing wetlands on MHI property on the Eastern Branch of the Elizabeth River. The construction of the new wetland area did not include any impacts below the mean low water mark. Staff noted, however, that a submerged derelict vessel had been abandoned immediately adjacent to the mitigation area.

Ms. West said that given the industrial nature of the shoreline and since the objections to the project seemed to be associated with upland issues outside of the jurisdiction of the Commission, staff recommended approval of the project as proposed with the inclusion of the following conditions. 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. In addition, staff recommended that the Commission require the applicant to remove the abandoned derelict vessel that was immediately adjacent to the mitigation area; and, that the on-site wetlands mitigation area be graded and planted prior to the initiation of any bulkhead backfilling or dredging activities are commenced. This sequence of planting and construction was also a requirement contained in both of MHI's local wetland board permits. Lastly, staff recommended the assessment of a royalty in the amount of \$220,950.00 for the dredging of 491,000 cubic yards of bottom material at a rate of \$0.45 per cubic yard. In accordance with §28.2-1206(B)(i) of the Code of Virginia, commercial facilities engaged in the business of ship construction or repair are exempt from the payment of rents and royalties for encroachment, but not for dredging activities.

Associate Member Robins asked for clarification of the recommendation for mitigation in Page 3AE. Ms. West explained that the Wetlands Board had required the grading in accordance with the VIMS recommendation.

Tom Langley with the Langley and McDonald Engineering Firm was sworn and his comments are a part of the verbatim record. Mr. Langley explained that they were amazed at the amount of siltation that came into the area and stated that a storm drain interceptor would be installed to catch the silt.

Associate Member Holland asked Mr. Langley if the applicant was okay with the staff recommendations. Mr. Langley, responded yes.

Commissioner Pruitt asked if anyone was present in opposition. There was no one in opposition present. Commissioner Pruitt noted for the record that two written protests had been received which were a part of the VMRC record.

**Associate Member Robins moved to approve the request without the requirement to remove the derelict vessel. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Royalty Fees (dredging 491,000 cu. yds @ \$0.45/cu. yd.).....	\$220,950.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$221,050.00

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- 7. **MR. & MRS. MILTON CONRAD, #05-2880**, request authorization to install a submersible pump, a 2-inch diameter PVC raw water intake pipeline, and a 4-inch PVC discharge pipeline on an existing private pier, and to change the use of that pier from private to commercial use, in association with a proposed crab shedding facility to be constructed on their property along a cove of Greenvale Creek on Rocky Neck in Lancaster County. Two adjoining property owners protested the project.

Jay Woodward, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Woodward said letters had been received by staff the prior day from other agencies. He said that the Department of Environmental Quality may require a permit and the Health Department said that the project was in compliance with the sanitation requirements. He circulated copies of the correspondence to the board members.

Mr. Woodward explained that the project was located on a small cove, known locally as Spring Cove, off of Greenvale Creek, a tributary to the Rappahannock River, approximately 9 miles upriver of the Rt. 3 Norris Bridge. The subject property was the Conrad's home and it was currently zoned for residential use. At the mouth of the cove was the Greenvale Creek Marina, a portion of which was located within the cove itself. The Conrads recently elected to sell their commercial property which was situated at the mouth of Greenvale Creek. Mr. Conrad had a seafood market and a restaurant at that site. The Conrads plan to build a pile-supported, 60-foot long by 24-foot wide crab shedding building which would include 16 tanks, a walk-in cooler, and office, located adjacent to their shoreline, landward of all tidal wetlands. Intake water would be drawn from the creek via a 1.5 horsepower, 20 gallon per minute (gpm) submersible pump, suspended off

the end of their existing pier. Water would be pumped through a 2-inch diameter PVC water line up to the building where it would flow through the shedding tanks. Another pump would send the effluent water back to the pier through a 4-inch line, which would discharge channelward of mean low water into the creek.

Mr. Woodward said that Mr. Conrad had stated that the facility would operate seasonally; from about April 1<sup>st</sup> until about October 30<sup>th</sup> and that he would not be buying crabs over the dock. He said Mr. Conrad further stated that only one pickup truck per day would transport product from the property, that he would not use any detergents or chemicals, and that any dead crabs and waste would be properly disposed of in the Lancaster County dump in nearby Nuttsville.

Mr. Woodward explained that Mr. and Mrs. Conrad were granted a Special Exception from the Lancaster County Board of Supervisors for a crab shedding facility at their property (Tax Map #19C-1-5) at 1617 Rocky Neck Road on November 28, 2005. That approval was subject to several conditions, including a restriction on other types of seafood processing other than crab shedding, a requirement to obtain all other local and State permits, and compliance with the local Chesapeake Bay Preservation Ordinance.

Mr. Woodward said that the adjoining property owner, Mr. William J. Conner, and Mr. Conner's adjoining property owner, Mr. Michael F. McNeill both protested the project. Among their concerns were the noise, smells, water quality in the cove, runoff, parking at the facility, and the impact on the general public health, safety, morals, and welfare of the surrounding residential properties. They both also raised the issue of illegal filling of the nontidal wetlands at the site. These have since been restored under direction of the county zoning office and the Department of Environmental Quality. Mr. Conner also had concerns about the availability of water in the cove for this operation, and felt that the silty nature of the cove would effect the operation. Mr. McNeill further felt that the residual bacteria and ammonia in the effluent water would cause health problems for the facility.

Mr. Woodward stated that the Virginia Institute of Marine Science originally had concerns when the outfall pipe was proposed for discharge into the tidal wetlands. Mr. Conrad modified the design so that the effluent would discharge directly into the creek itself. Because of this modification in the proposal VIMS had determined that there should not be any impacts to tidal wetlands at the site. However, VIMS was unable to determine the impacts of the pump and outfall pipe on submerged lands, and they questioned the need to place the building in nontidal wetlands adjacent to the shoreline.

Mr. Woodward said that the Department of Environmental Quality had asked for additional information. They also informed staff that DEQ usually conditionally approved projects that received U.S. Army Corps of Engineers Regional Permits 12 and 18, which was the case for this project.

Mr. Woodward explained that the Lancaster County Wetlands Board did not require a permit for this project since the modification eliminated the discharge from the tidal wetlands, and since the pipes that would cross over the tidal wetland area would be supported on the existing open-pile pier.

Mr. Woodward stated that no other agencies had commented on the project to date.

Mr. Woodward explained that the proposed facility was similar in design to many other upland, flow-through crab shedding operations all over Tidewater Virginia. Staff agreed with the protestants that the proposal constituted a commercial activity. Therefore, staff was processing this application as a request to change the use of the existing pier from private to commercial. While the intended use of the property was not within the Commission's purview, the local government had determined that the proposed activity met their definition of "areas of basic seafood processing." Therefore, they found the request to be a permissible activity, with special exception, in the R-1, Residential, General zoning district.

Mr. Woodward stated that the nature of the flow-through operation should not appreciably increase ammonia or bacteria levels in the tanks and the location of the discharge pipe approximately 30 feet away from the intake pipe should not affect the water coming into the tanks from the creek. Staff believed that the applicant had the most to gain by ensuring a clean operation and healthy product, and staff did not generally address specific business designs, unless there was reason to believe there might be anticipated adverse impacts to marine resources in the area. Given past experience with facilities of this nature in the tidal waters of the Commonwealth, staff had no reason to believe there would be any adverse impacts to resources within the Commission's jurisdiction. Any potential water quality impacts would be addressed by DEQ in their review of the application.

Accordingly, Mr. Woodward said that staff recommended approval of proposed intake and outfall pipes, the submersible pump and the change in use of the pier from private to commercial, with a prohibition on other watermen unloading catch or buying product at the pier. In addition, staff recommended a royalty in the amount of \$150.00 for the crossings over 50 linear feet of State-owned subaqueous bottom (40 foot intake line and pump, 10 foot outfall line) at a rate of \$3.00 per linear foot.

S. Lake Cowart, Jr. of Cowart Seafood, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Cowart said that they supported the project. He said Mr. Conrad had been a waterman involved in crabbing for 50 years. He said that Mr. Conrad wanted to continue to shed crabs. He stated that this was a reasonable plan as there were no additional piers and it was an onshore facility. He said water would be pumped from the creek and would not be detrimental to the creek. He said he was requesting that the board approve the staff recommendation.

James Milton Conrad, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Conrad asked that his project be approved in the location requested.

Commissioner Pruitt asked if conditions needed to be set for other vessels that might utilize the facility? Mr. Conrad explained that there would be no other vessels utilizing this facility. He said it was just for him to work there in order to keep a little busy.

David Gutowski, adjoining property owner, was sworn in and his comments in opposition of the project are a part of the verbatim record. Mr. Gutowski said that he was the most affected by this project. He said he was not notified and he felt this project would affect his property values.

Michael F. McNeill, adjoining property owner, was sworn in and his comments in opposition to this project are a part of the verbatim record. Mr. McNeill said the County had not notified him regarding this proposed project. He said that the County had held its public hearing and only one person had attended that lived in the area. He said he could not get any information that he had requested from the County. He said there were a lot of changes at this site. He said he was concerned with the water going back and forth across the pier everyday and all the pollution this would cause. He said that he was also concerned that the number of pests and noise in the area would increase. He said that others lives were being disrupted by just one man.

Patrick McNeill, attorney for William Conner, protestant and adjoining property, was present and his comments are a part of the verbatim record. He stated the staff recommendation prohibited other watermen from using this facility. He said that if there was to be no buying or selling, why was there a need for a commercial facility. He stated that Mr. Conner felt he was being ignored and his only place to make a stand was at VMRC.

Lindsay Tridalpel, Mr. Conrad's father-in-law, was sworn in and his comments in support are a part of the verbatim record. Mr. Tridalpel explained that most of the protests being made were not germane to VMRC authority. He said that the County did send out notification. He further said that because of Mr. McNeill's complaints changes had been made. He stated that the VMRC staff had reviewed all of this and he asked for approval of the staff's recommendation.

Commissioner Pruitt explained that the pier was already in existence. Because it was to be commercial structure, the request was being heard by VMRC.

Mr. McNeill said that Mr. Conner was concerned with the pump. Commissioner Pruitt asked if Mr. Conner had made an appeal of the local decision to the Circuit Court. Mr. McNeill responded, yes. He further explained that in Section 3.4 there was a requirement for a Water Quality Impact Statement and this was not done. He said the County had a

Comprehensive Plan and since the crabbing industry was dying, were looking to find other industries for the area.

Mr. Conrad explained that no chemicals or detergents were necessary if the facility was maintained daily and hosed down. He said that the crabs would be sold whole and loaded and trucked with one vehicle daily.

Associate Member Robins said that he felt sympathetic for the protestants and their concerns. He said on the County level they had addressed these concerns with the conditions recommended by VIMS. He said also that the applicant had been responsive to the protestants' concerns and made changes.

**Associate Member Robins said that since the staff recommendation with conditions was adequate and it was a reasonable use of state-owned bottom, he moved to approve the staff recommendation. Associate Member Bowden seconded the motion.** Commissioner Pruitt asked Patrick McNeill when was the appeal to be heard. Mr. McNeill said he did not know. Commissioner Pruitt asked how this appeal would affect the VMRC permit. Mr. Josephson said that the issues are severable. He further said that the court could overturn the County but would have no effect on the VMRC permit. **The motion carried, 5-0.**

Royalty Fees (encroachment on 50 l. ft. @ \$1.00/l. ft.).....	\$150.00
Permit Fee.....	\$ 25.00
Total Fees.....	\$175.00

\* \* \* \* \*

- 8. **NORMAN MALO, #05-2798**, requests authorization to extend an existing pier 25 feet channelward, reconfigure and enlarge the associated decking to a total of 1932 square feet and to construct a 66-foot by 42-foot open-sided boathouse designed to house two (2) boats and a personal watercraft adjacent to his property situated along the Piankatank River in Gloucester County. An adjoining property owner protested the project.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation with slides. His comments were a part of the verbatim record. Mr. Neikirk indicated that the applicant and protestants were all present.

Mr. Neikirk explained that Mr. and Mrs. Malo's property was situated along the Piankatank River near the mouth of Dancers Creek in Gloucester County. The Piankatank River was approximately 2,000 feet wide at the project site and the stated mean low water depth near the end of the proposed pier extension was minus six (-6) feet. Development along this portion of the shoreline is primarily residential.

Mr. Neikirk further explained that the Malos' existing pier extended approximately 200 feet channelward of mean high water, and excluding the main stem of the pier and 4-foot wide or less finger pier, had 684 square feet of pierhead and associated open-pile and floating deck area. The existing pier was located near the upstream property line shared with Dr. and Mrs. Craun. The Crauns' pier was also located very close to the shared property line. The Malos proposed to extend the pier 25 feet channelward and construct a 66-foot by 42-foot open-sided boathouse near the channelward end of the pier. The boathouse was designed to shelter a 44-foot Hinckley and a 26-foot Regulator, as well as a personal watercraft lift. They also proposed to reconfigure and enlarge the open-pile and floating deck areas. Excluding the main stem of the pier and the two 4-foot wide finger piers, the proposed pier had 1,812 square feet of deck area, and the proposed boathouse roof covered 2,772 square feet. The proposed peak of the roof was approximately 23 feet above the pier deck (26 feet above mean high water).

Mr. Neikirk stated that Dr. and Mrs. Craun, the adjoining property owners on the northwest side of the project protested the project. They believed the project would adversely affect their view and property value. They also argued that the structure would be much larger than others in the vicinity. Since the combined area of the proposed open-pile decking and floating pier far exceeded 250 square feet, the pier did not meet the requirements for the statutory authorization for private piers provided in §28.2-1203(5) of the Code of Virginia. The pier did 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 proposed pier addition would adversely affect navigation.

Mr. Neikirk said that when reviewing proposals to build over State-owned submerged land, staff considered, among other things, the water dependency and the necessity of the proposed structures. The intended goal of this review was to limit the encroachment of structures to the minimum amount necessary to reasonably achieve the intended use. Reducing the size of structures determined to be reasonably necessary also served to minimize the adverse impacts on neighbors and the general public.

Mr. Neikirk stated that in this case, staff believed a 66-foot long boathouse was longer than that necessary to cover the applicants' 44-foot vessel. Staff was of the opinion that a reduction to a 60-foot long boathouse should provide adequate protection for that vessel. The second covered slip area for their 26-foot boat also appeared to be reasonably sized. Given the size and seasonal use associated with personal watercraft (PWC), however, staff did not believe that providing a covered area for PWCs was justified. Staff recommended that the PWCs either be stored on davits or on the adjacent upland property with a tight fitting fabric cover if necessary.

Mr. Neikirk also stated that the deck area also appeared to be larger than that necessary to provide reasonable and safe access to the vessels. Staff believed the square footage of the existing deck, excluding the main stem of the pier and 4-foot wide or less finger piers, should provide adequate decking for the revised facility.

Therefore, Mr. Neikirk said that staff recommended approval of the project with the following conditions:

- The size of the boathouse should be reduced to a maximum width of 42 feet and length of 60 feet and the boathouse should remain open-sided.
- The PWC lift may not be housed within the boathouse, and
- The total square footage of the pier decking, excluding the main stem of the pier and finger piers measuring four (4) feet or less, shall be reduced to a maximum of 684 square feet.

Mr. Neikirk said that a royalty was not recommended because this was a private, noncommercial pier. If approved, however, the permit would be withheld pending receipt of revised drawings reflecting the Commission's approval.

Norman Malo, applicant and property owner, was sworn in and his comments are a part of the verbatim record. Mr. Malo thanked the Commission for the opportunity to address the board. Commissioner Pruitt asked him if he accepted the staff recommendation, to which he responded yes. He said in order to improve the shoreline and control erosion he had put in break points and rock. He said that he had surveyed the area and this was not as large as other piers in the area. He said he was requesting approval of his project.

Karen Malo, applicant and property owner was sworn in and her comments are a part of the verbatim record. Ms. Malo provided a powerpoint presentation showing different views for neighbors piers. She said that the roof would enhance and blend in with the environment. She also said the trees had more impact on the view than the structure they proposed.

Jeff Watkins of Riverworks and agent for the applicant was sworn in and his comments are a part of the verbatim record. Mr. Watkins said he would wait to comment, but could answer any technical questions the board might have.

Susan Craun, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Craun said the project was very large and it was more like a double boathouse. She said the applicant told her husband about wanting a copper roof and they were concerned that their view would be lost. She said this loss of view could even affect their property value or resale value. She said the boathouse impeded their downriver view. She said they were requesting that the Malos move the structure further down along their shoreline. She provided a powerpoint presentation to assist in her presentation.

Mr. Malo said that he respected the Craun's concerns as he came there for the same reasons also. He said he was not trying to harm the area, but to protect his investments. He asked that the Commission favorably consider his request.

Mrs. Malo explained that the copper roof was recommended because it would look more natural and blend with the water once it had oxidized to a patina.

**Associate Member Robins explained that VMRC does consider impacts on protestants when they work with staff. He said the staff’s downsizing of the project and the boathouse being open-sided did help. He moved to approve the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Permit Fee.....\$100.00

\* \* \* \* \*

- 9. **ROBERT A. BADENOCH, #04-1523**, requests after-the-fact authorization to retain a 15-foot long by 18-foot 6-inch wide roof extension, the timber siding used to enclose the boathouse, and a 132 square foot deck addition to a previously permitted boathouse adjacent to his property situated along a cove of Bridgemans Back Creek in Northumberland County.

Jeff Madden, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. In response to Commissioner Pruitt’s question, Mr. Madden stated the project was not protested.

Mr. Madden explained that the applicant’s residence, boathouse, and pier were located on a 0.48-acre parcel along a cove of Bridgemans Back Creek approximately 1½ miles west of Smith Point and two miles north of Reedville. The parcel of land included his home, a garage and an office. The entire cove was residential in nature with numerous piers and boathouses therein.

Mr. Madden further explained that in October 1982, Robert A. Badenoch received Commission authorization to construct a 25-foot long by 4-foot wide, finger pier extension and a 40-foot long by 16-foot wide, open-sided timber boathouse adjacent to an existing 48-foot long pier with a 28-foot long L-head. That permit provided only one access point to the upland and no catwalks or decking around the open-sided boathouse. At present there was a 40-foot long by 18½ -foot wide, close-sided boathouse at the property with a 15-foot long by 18½-foot wide roof extension. There was also a 31-foot long by 3 ½ foot wide, finger pier along the downstream (west) side of the boathouse and a 132-square foot deck inboard of the boathouse. The finger pier and deck extension provided a second access point to the upland. The 55-foot long by 18½ -foot wide close-sided boathouse at the end of the L-configured pier provided protection for Mr. Badenoch’s 46-foot long wooden Tiffany yacht.

Mr. Madden said that on July 28, 2004, Commission staff met with Mr. Nathan Moore, who represented Mr. Badenoch at the time, to conduct a routine site inspection in

response to staff's receipt of a Joint Permit Application requesting authorization to construct and backfill a 104-foot long timber bulkhead, two additional finger pier sections adjacent to his existing boathouse and to install 3 mooring piles. During the site visit, staff advised Mr. Moore that the proposed bulkhead appeared to be aligned landward of mean low water and, therefore, was outside our jurisdiction. Upon later review of our permit files, however, staff determined that the as-built pier, decking and boathouse exceeded that which was authorized in 1982 and reflected in the permit drawings dated August 1982.

Mr. Madden stated that as a result, a Sworn Complaint was filed and a Notice to Comply was issued to Mr. Badenoch on August 27, 2004. The Notice directed the applicant to remove the unauthorized roof extension, the siding from the boathouse and return the piers to the configuration depicted in VMRC permit #82-6054. The demolition and reconfiguration was to be accomplished within 60 days. As an alternative, staff agreed to allow Mr. Badenoch to submit a request for after-the-fact authorization to retain the pier additions and the as-built boathouse. The after-the-fact request was to include scaled drawings, a complete written account of the construction of all structures built in excess of the 1982 permit, and why the illegal construction was conducted in the absence of the required permit.

Mr. Madden said that on September 20, 2004, Mr. Badenoch responded to the Notice to Comply by providing scaled as-built drawings of all structures located channelward of mean low water and an explanation for the construction of the boathouse and decking in excess of the 1982 permit. According to Mr. Badenoch, he constructed the enlarged boathouse, added the siding to the building and built the pier additions himself between 1983 and 1984. Mr. Badenoch wrote that, prior to constructing the boathouse, he had met with Northumberland County representatives and was led to believe that no additional permits were required. No contact or inquiry was apparently made with VMRC.

Mr. Madden said that no private individual or State agency had protested the project.

Mr. Madden explained that although staff was at a loss to explain why Mr. Badenoch failed to contact VMRC prior to initiating his construction and enclosing the boathouse, the close-side boathouse was providing protection for a 46-foot long antique wooden yacht with a 15-foot beam. In addition, the 132 square feet of additional decking, inboard of the boathouse did not appear to be an unreasonable use of State-owned submerged lands. Staff believed the environmental impacts associated with the additional encroachment were minimal, and the degree of noncompliance was moderate. Accordingly, staff recommended approval of the after-the-fact permit with the assessment of a standard triple permit fee and the consideration of an appropriate civil charge.

Robert Badenoch, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Badenoch said that he had not realized that he had done anything wrong. He said it had been 22 years since the project was done. He said when he contacted the

County to ask about the sides of the boathouse and to replace the old piers they told him it was not a problem. He said he did not realize he had to contact the VMRC but he knew the Corps was usually involved. He said he was requesting approval of the structure as they exist.

**Associate Member Robins said that the applicant needed to keep the enclosed boathouse to protect his vessel, especially, an antique boat, as this was a special purpose. He moved to accept the staff recommendation and impose a civil charge of \$1,000.00. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Civil Charge.....	\$1,000.00
Permit Fee (Triple).....	\$ 75.00
Total Fees.....	\$1,075.00

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The Commission broke for lunch at approximately 12:14 p.m. Associate Member Jones arrived at the meeting at approximately 12:15 p.m. The meeting was reconvened at approximately 12:59 p.m. Commissioner Pruitt did not return directly from the lunch break and Associate Member Garrison reconvened the meeting and served as the chairman.

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**10. JOSEPH F. KRUSHINSKI, #05-2707**, requests after-the-fact authorization to retain deck railings and a three-foot wide stairway constructed as part of a flat-roof, open-sided boathouse, adjacent to his property situated along Aquia Creek in Stafford County.

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

Mr. McGinnis explained that this project was located on the southwestern side of Aquia Creek, opposite Widewater Beach, in Stafford County.

Mr. McGinnis stated that the applicant sought after-the-fact authorization to retain the deck railings and a set of three-foot wide steps constructed as part of a flat-roof, open-sided boathouse. The flat-roof of the boathouse served a dual-use as a second story deck platform.

Mr. McGinnis explained that in 1990, Mr. Krushinski submitted an application (VMRC #90-0556) to construct a 4-foot wide by 60-foot long, private, non-commercial pier with a 4-foot wide by 40-foot long T-head platform and two (2) 4-foot wide by approximately

18-foot long finger piers. This application also appeared to have included a 24-foot wide by 24-foot long platform, which straddled the shoreline, landward of the pier. By letter dated April 20, 1990, staff informed the applicant that his proposed pier would not require authorization by the VMRC.

Mr. McGinnis further explained that in 2000, Mr. Krushinski submitted an application (VMRC #00-1562) to construct a 15-foot wide by 36-foot long, flat-roof, open-sided boathouse, adjacent to his existing, private, non-commercial pier. The proposed boathouse was to include three-foot wide catwalks around the outside of the covered slip, as well as a gangway/ramp connecting the boathouse to the adjacent pier. Staff noted that while the dimensions and configuration of the pier in 2000 varied from those applied for in 1990, the applicant's pier still would have qualified for the private pier exemption provided in Section 28.2-1203(A)(5) of the Code of Virginia, at that time. The drawings submitted with this application, however did not indicate that the flat-roof boathouse would also serve as an elevated deck platform. By letter dated September 8, 2000, staff informed the applicant that his proposed boathouse would not require authorization by the VMRC.

Mr. McGinnis said that on July 25, 2005, staff received an application (VMRC #05-1711) from Mr. Krushinski, to extend his pier an additional 38 feet, bringing it to a total length of 207 feet channelward of mean low water, with two (2) additional 3-foot wide by 60-foot long finger piers and a 60,000 pound boat lift, to accommodate his anticipated purchase of a 46-foot Hatteras. During a review of the application, staff noticed that the application drawings, dated received July 25, 2005, noted the presence of an elevated deck, complete with stairway and jacuzzi/hot tub. A search of Commission records, including the above-mentioned applications previously submitted by the applicant, indicated that these additions had not been previously authorized by the VMRC. Staff conducted a site visit on September 29, 2005, and confirmed the existence of the unauthorized second-story deck, which included a set of stairs, deck railings, a hot tub, a propane heating unit, and an assortment of outdoor furniture. Mr. Krushinski was present at that visit. Additionally, staff observed an unauthorized piling structure, identified as a "swing" by Mr. Krushinski, that had been constructed adjacent to the pier.

Mr. McGinnis explained that staff then issued a Sworn Complaint and Notice to Comply on October 13, 2005. The Notice to Comply directed Mr. Krushinski to remove the unauthorized structures and additions or submit an after-the-fact application to retain the structures and additions along with a statement explaining when the work was done, and why it was conducted without the necessary permits or authorization. Mr. Krushinski promptly removed the hot tub and "swing," and submitted an after-the-fact application on November 14, 2005, to retain the remaining unauthorized additions.

Mr. McGinnis said that both sets of adjacent property owners, Mr. and Mrs. Barrie Locke, and Mr. and Mrs. John Joseph O'Neal, signed Adjacent Property Owner's

Acknowledgment Forms on October 31, 2005, indicating that they had no objection to the project as proposed.

Mr. McGinnis stated that the Department of Game and Inland Fisheries, in an e-mail to staff dated January 18, 2006, noted the presence of two bald eagle nests within the vicinity, but stated that they did not anticipate any significant adverse impacts upon critical resources under their jurisdiction. The Department of Conservation and Recreation, in a memorandum dated January 24, 2006, stated that due to the scope of the project, that they did not anticipate that the project would adversely impact natural heritage resources in the project area. No other State agencies had raised any concerns or objections to the project.

Mr. McGinnis said that Aquia Creek had a history of large private piers and boathouses. Most of those piers and boathouses did not require a permit from the VMRC under previous versions of Section 28.2-1203(A)(5) of the Code of Virginia. VMRC had also previously permitted a number of large, multi-slip, and/or enclosed boathouses along the creek. Although unauthorized, the applicant's after-the-fact request did not stand out from many of the other large piers with expansive decking platforms, or the multiple-slip, enclosed boathouses that can be seen on Aquia Creek. Neither adjacent property owner objected to the project, and the nearest pier was approximately 820 feet upstream of Mr. Krushinski's. Although Mr. Krushinski maintained that it was his intention all along to use the flat roof of the boathouse as a deck platform, his previous application drawings failed to reflect this plan or use. His previous application submissions, however, demonstrated that he was aware of the need to obtain VMRC authorization before proceeding with any construction activities over State-owned subaqueous land.

Mr. McGinnis stated that in light of the Commission's previous decision to deny an after-the-fact request to retain a hot tub over State-owned bottom in the Cage (#04-1605) case last year in Portsmouth, staff felt that the major issues with Mr. Krushinski's violations were the non-water dependent use of the hot tub, as well as the non-water dependent "swing." Both of these structures had now been removed and/or relocated upland by the applicant.

Accordingly, Mr. McGinnis said that staff recommended the Commission approve Mr. Krushinski's after-the-fact request. In addition, staff recommended the Commission consider an appropriate civil charge based upon minimal environmental impact and a moderate degree of non-compliance.

Associate Member Robins asked if the largest violation had been removed?

Mr. McGinnis responded that the major objection was the hot tub, and that had been removed. Mr. Robins asked if the upper level railing supports had been figured into the square footage. Mr. McGinnis said that this structure paled in comparison to others in the area. Associate Member Schick said that in other areas the use of upper sections was not approved. Mr. McGinnis said he looked at other structures in the area or at similar structures that were allowed by the Commission. Associate Member Jones asked how would there be a guarantee that it would not revert back to non-water dependent use or that the hot tub would not be returned. Mr. McGinnis said that the Commission would act on any repeat violation.

Joseph Krushinski, property owner and applicant, was sworn in and his comments are a part of the verbatim record. Associate Member Robins asked what was the intended use of the 2<sup>nd</sup> floor deck. Mr. Krushinski responded, storage.

There was no one in opposition present to address the Commission.

**Associate Member Holland moved to approve the request. Associate Member Robins seconded the motion, but asked that a civil charge of \$1,200 be added. Associate Member Holland agreed to the amendment. Associate Member Schick stated that it was not acceptable to do this kind of thing and expect to just come to the Commission and pay a fine. He said this structure did conform with other structures in the area. The motion carried, 5-1. Associate Member Jones voted no.**

Civil Charge.....	\$1,200.00
Permit Fee (Triple).....	\$ 75.00
Total Fees.....	\$1,275.00

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- 11. **TOWN OF CHINCOTEAGUE, ET AL, #05-3032**, requests after the fact authorization to retain and continue to install approximately 20,000 feet of slip-lining inside the existing 16-inch waterline from the mainland to the new waterline west of the Black Narrows Channel. Twenty-six (26) access pits along the existing waterline will be excavated to allow for maintenance and repair access. The project is to repair and maintain the existing waterline to the Town of Chincoteague. A State Wetlands permit is required.

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

Mr. Badger explained that the Town of Chincoteague's water supply came from deep wells on the mainland and was carried through a single, 16-inch iron pipe that runs along the north side of the causeway to the Town of Chincoteague. Last year the Town replaced a 2,650-foot long section of the waterline by directional drilling under Chincoteague

Channel, Marsh Island and Black Narrows to a point west of the Black Narrows Bridge. The Town originally planned to replace the remaining 3.5 miles of deteriorating pipe in phases over the next few years. Last fall, however, a number of breaks in the pipe occurred making the replacement of the entire water line a necessity. The slip-lining pipe would cross 11,725 linear feet of State owned wetlands and the nineteen (19) access pits required to install the lining would temporarily impact 10,566 square feet of State-owned vegetated wetlands. Seven other pits would be located on Town property or Wallops Flight Center (NASA) property and would require a permit from the Accomack County Wetlands Board.

Mr. Badger said that during the construction of the Mosquito Creek, Cockle Creek, Queen Sound and Wire Narrows bridges in the 1990's, new sections of water line were attached under the bridges and these sections would not require replacement at this time.

Mr. Badger stated that the Joint Permit Application (JPA) for this project was received on December 21, 2005. On January 26, 2006, however, staff received a letter from the applicant's agent, Mr. Karl Kratzer, of Whitman, Requardt and Associates, LLP, informing us that to ensure the reliability of the water supply system to meet the higher seasonal demands, repairs would begin on January 30, 2006, so that the work would be completed before the tourist season. Mr. Kratzer also stated that during the tourist season the Town would have only one day of water storage and that the repairs had become urgent based on the failures experienced in the water line last fall.

Mr. Badger said that since a portion of the wetlands involved in the project were State-owned, the Commission, rather than the Accomack County Wetlands Board, must issue a permit for their use pursuant to Section §28.2-1306 of the Code of Virginia. Accomack County Wetlands Board would meet on February 23, 2006 to address their portion of the project, which would include the Wallops Flight Center (NASA) property. The Town also owns a portion of the project area, however, under §28.2-1302-10 of the Code of Virginia, this was exempt from the Wetlands Zoning Ordinance as "Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision".

Mr. Badger said that the Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers on Monday, February 13, 2006, to accept public comments on the project. In attendance was Mr. Jack Bonniwell, Chairman of the Accomack County Wetlands Board. No one from the public attended the hearing.

Mr. Badger stated that the Virginia Institute of Marine Science indicated that the individual and cumulative adverse environmental impacts resulting from this activity would be minimal provided all temporary impact areas were restored to pre-construction conditions. They recommended, however, that all impact areas be graded to pre-existing conditions and that these areas be planted with the appropriate wetland vegetation on 12 to 18 inch centers to aid in the reestablishment of vegetation. VIMS also recommended

appropriate erosion and sedimentation (E&S) controls installed around the impacted areas and that the stockpiling of excavated material in existing wetlands be prohibited.

Mr. Badger said that no protests to the current application had been received and no State agency had expressed opposition to the project.

Mr. Badger said the Town of Chincoteague and their agent were well aware of the need to obtain VMRC permits before conducting work encroaching upon State-owned wetlands and submerged lands. If the Joint Permit Application had been received in a timely manner, however, the applicant would most likely been granted a permit prior to the start of construction.

Mr. Badger stated that in this case staff would most likely have recommended approval of the project. Since the applicant, through their agent, was quick to notify staff of the unauthorized work, and because of the emergency nature of the project, staff recommended after-the-fact approval of the project. Staff further recommended that all temporary impacted areas be graded to pre-existing elevations and conditions, and that the areas be planted with the appropriate wetland species on 12 to 18 inch centers to aid in the reestablishment of vegetation and that appropriate erosion and sedimentation (E&S) controls be installed around the impact areas.

No one was present representing the applicant. Mr. Badger explained that representatives for Chincoteague have failed to be at any hearings regarding this project.

There was no one in opposition was present to address the Commission.

Associate Member Bowden explained that the Town Manager was doing double duty, which was the reason for his absence. He said he suggested that a triple permit fee be assessed against the applicant.

**Associate Member Bowden moved to accept the staff recommendation with a triple permit fee charged. Associate Member Robins seconded the motion. The motion carried, 6-0.**

Wetlands Permit Fee (triple fee).....\$30.00

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- 12. **DELMARVA POWER, #05-2896**, requests authorization to relocate the main (69 KV) overhead transmission line from the north side of the Black Narrows Bridge to the south side of the bridge in the Town of Chincoteague, Accomack County. The installation of three of the six new poles will impact either State-owned wetlands or State-owned subaqueous bottom. Both wetlands and

subaqueous permits will be required. Two Marsh Island residents protested the project.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Badger explained that the permit number was transposed. It should read #05-2896.

Mr. Badger explained that the existing fixed bridge over Black Narrows Channel and the swing-span bridge over Chincoteague Channel were scheduled for replacement on a new alignment beginning at the western side of Black Narrows Channel and terminating at Maddox Boulevard on Chincoteague Island. The proposed construction was scheduled to start in late 2006 or early 2007. The relocation of the existing transmission line would accommodate the construction of the new bridge, which was permitted by the Commission on September 23, 2003.

Mr. Badger also explained that the realigned overhead transmission line would cross 485 linear feet of State-owned wetlands and 1,365 linear feet of State-owned subaqueous bottom. Pole number 143 will impact 20 square feet of non-vegetated State owned wetlands, and poles 144 and 145 will encroach over 982 square feet of subaqueous bottom.

Mr. Badger said that the Virginia Department of Transportation (VDOT) would remove the three existing power poles that are in State waters during the construction of the new bridge. Since a portion of the project involves State-owned wetlands, the Commission, rather than the Accomack County Wetlands Board, must issue a permit for their use pursuant to Section §28.2-1306 of the Code of Virginia.

Mr. Badger stated that the Accomack County Wetlands Board was scheduled to meet on February 23, 2006, to address their portion of the project, which included the Town of Chincoteague's property and property on Marsh Island.

Mr. Badger said that the Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers, on Monday, February 13, 2006, to accept public comments on the project. In attendance were three Delmarva Power representatives and Mr. Jack Bonniwell, Chairman of the Accomack County Wetlands Board. No one from the public attended the hearing. Nearby oyster ground leaseholders were notified of the public hearing in advance.

Mr. Badger stated that two Marsh Island property owners, Frances Dobinski and Thomas Park, had protested the project. Ms. Dobinski had expressed concerns that the magnetic field from the power lines might cause health issues and that her property value might depreciate. Mr. Park was opposed to the new bridge and any other project that may be the result of the bridge replacement.

Mr. Badger said that the Virginia Institute of Marine Science had indicated that the individual and cumulative adverse environmental impacts resulting from this activity should be minimal provided that all wetland areas temporarily impacted by construction were properly restored upon completion of the project. They also recommended that all temporary impacted areas be graded to pre-existing conditions and that these areas be planted with the appropriate wetland plantings to aid in the reestablishment of vegetation. No State agency had expressed any opposition to the project.

Mr. Badger explained that although Ms. Dobinski had health concerns, the location of the proposed power line would be south of the road and would actually be further away from the present homes than the existing power line. Mr. Park had concerns with the proposed bridge, however, the bridge was permitted by the Commission in September 2003.

Mr. Badger said that the applicant's drawings showed the location of power pole #144 in Black Narrows Channel to be within 24 feet of a submerged 16-inch waterline to the Town of Chincoteague. Staff had contacted both the applicant and the Town to address this issue. The Town and the applicant had agreed to work together to ensure the waterline would not be damaged during construction. The Town would mark the waterline location before the applicant started construction.

Mr. Badger said that staff also originally had concerns with the location of power pole #143. The applicant's drawings showed the power pole location to be in the middle of a man-made canal that parallels the causeway. Small boats use this waterway on high tide to traverse between Black Narrows Channel and Queen Sound. Staff requested Delmarva Power stake the location of the power pole. The staked location was not in the middle of the canal as shown on their drawings but was on the north side of the canal. As staked, the power pole should not impede small boat usage of the waterway. The applicant will revise their drawing to show the proper location in relation to the canal.

Mr. Badger stated that based on the above information, staff recommended approval of the project with revised drawings showing the proper location of power pole #143 as staked in the field. Staff further recommended that all temporary impacted areas be graded to pre-existing conditions and that the areas be planted with the appropriate wetland plantings as stated in the applicant's mitigation plan.

Mr. Badger explained that in accordance with the Commission's Rent and Royalty Schedule, staff recommended that a one-time royalty of \$2,003.20 be assessed for the encroachment (open-pile structures) over 1,002 square feet of State-owned non-vegetated wetlands and subaqueous land at a rate of \$2.00 per square foot.

Marsh Zellhoefer, agent for the applicant, was sworn in and her comments are a part of the verbatim record. Associate Member Holland asked Ms. Zellhoefer if the applicant agreed with the staff recommendation. Ms. Zellhoefer responded, yes.

There was no one in opposition present to address the Commission.

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

Royalty Fees (encroachment on 1,002 sq. ft. @ \$2.00/sq. ft.).....	\$1,002.00 (One-time royalty payment)
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,102.00

\* \* \* \* \*

Commissioner Pruitt returned to the meeting and assumed the duties of chairman.

**13. PUBLIC COMMENTS:**

Commissioner Pruitt opened the public comment period.

**Ellis W. James**, Norfolk Resident, was present and his comments are a part of the verbatim record. Mr. James wanted to bring to the Commission his concerns with the climate changes and the resulting rising of the seas. He said the meltdown at the arctic were signals for Virginia that dramatic changes will occur. He stated that some say that this will not happen for some time yet. He said he only hopes that the staffs of both VIMS and VMRC begin to gather information and think ahead and that the Commonwealth will be prepared.

**James Fletcher** - Summer Flounder issue

Mr. Fletcher stated that the summer flounder regulations need to be made more economical for the watermen. He said that North Carolina has made this change resulting in \$2,500 to \$3,500 in fuel cost savings. He said he was requesting that VMRC look at the economics of the summer flounder commercial fishery. He said there is a Model by North Carolina that can be used and he was asking that the staff be instructed to bring a proposal to the Commission for their consideration.

No action was taken.

**Associate Member Garrison**

Associate Member Garrison wanted to bring to the attention of the Commission that North Carolina was considering a license for the saltwater fishery. He said that the Virginia charter boats were being left out.

Jack Travelstead, Chief, Fisheries Management, explained that there was license acceptance between states. He said that Preston Pate in North Carolina was interested in a discussion, but not this year, because of the battle they had had with their General Assembly to get it passed.

Commissioner Pruitt suggested making it a permanent item of FMAC.

**Associate Member Robins**

Associate Member Robins asked about Mr. Fletcher's comments. Mr. Travelstead said there had been a North Carolina proclamation for allowing, in North Carolina, the possession of more than their trip limit, to offload in North Carolina and move on into Virginia. Associate Member Robins suggested that Fisheries staff review this with Law Enforcement and come back at the next meeting. Colonel Bowman suggested that the Commission allow staff 30 days to look at the issue. Mr. Travelstead reminded the Commission that the season starts in October.

Commissioner Pruitt suggested that staff contact the North Carolina counterparts.

No further action was taken.

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**14. ADDITIONAL COMMENTS CONCERNING THE 2006 AMERICAN SHAD BYCATCH FISHERY.**

Jack Travelstead, Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead explained that the last meeting lasted so long that some of the watermen did not get a chance to address this issue before the Commission. He said this item was to allow them to provide their comments.

Mr. Travelstead explained that the staff did not recommend the bycatch area extend to the upper reaches of the rivers, which are the spawning areas. He said that staff had estimated that there would be 20 to 25 permitted fishermen, but have received 55 requests since last month. Not all of the watermen have a history in the fishery. He said that staff is concerned that the fishery will double in size.

John Wyatt, Watermen Association representative, was present and his comments are a part of the verbatim record. Mr. Wyatt stated that there has been good cooperation between watermen and he hopes it does not become a decisive issue. He said the bycatch on spawning reaches was suppressed because of the increased applications. He said 10 fish is not profitable. He said the regulation was amended but not really discussed at a public hearing. He said a 10 fish bycatch would never become a directed fishery. He stated that there was directed fishery at the fall line and there had been no complaints. He

said the upriver watermen had brought this matter before the Commission, and thought when Mr. Travelstead did bring it to the ASMFC they thought they would be included, but it was never discussed or considered. He said it was not fair or equitable with all the regulatory burdens, as there were too many to keep up with. He stated that the shad caught as bycatch would die and throwing them back was a waste. He said they were only asking to be allowed to keep what gets caught in their nets.

John Olney, VIMS, was present and his comments are a part of the verbatim record. Mr. Olney explained that monitoring data downriver and upriver show that the number of hatchery fish upriver was higher. In the 2 or 3 hatchery spawning areas, 8 of every 9 fish are shown as hatchery fish. Commissioner Pruitt asked about the concern with the shad caught at the fall line. Mr. Olney stated that it was not a take fishery and all are thrown back.

Tom Gunner, DGIF, was present and his comments are a part of the verbatim record. Mr. Gunner explained that a great deal of the fish caught were not killed at the fall line, but thrown back to be seen later.

Associate Member Robins asked Mr. Travelstead if staff's concern for allowing the bycatch in the spawning reaches was because of the ASMFC. Mr. Travelstead responded, yes. He said it would be difficult convincing ASMFC for anything next year. He said this time it got through the Management Board without a technical review. He said a technical review since then had brought up some concerns. He said he was not optimistic for next year.

Mr. Travelstead explained that the staff was concerned with allowing the harvest of hatchery produced fish in spawning grounds as the State had spent monies for programs for the shad fishery.

Associate Member Bowden said he agreed with Mr. Wyatt that it was a problem for the upriver fishermen. He said the regulation needed to be amended for upriver fishermen, but with a history of significant amounts caught. Commissioner Pruitt asked, how many people should be allowed? Associate Member Bowden said that staff stated there were 30 plus individuals. Mr. Travelstead asked, was there a need to go back prior to the 1994 moratorium? Associate Member Bowden suggested that the striped bass fishing permits should provide the history records.

Kelly Place, waterman, was present and his comments are a part of the verbatim record. Mr. Place stated that it would be bad to cut out the ones that were asking to be allowed, as fewer fish would be caught than what was sampled by VMRC and VIMS. He suggested allowing the fishermen to sell the bycatch to the monitoring program. He said he agreed with Associate Member Bowden.

Associate Member Robins stated that there was a need to keep the area closed as a significant sanctuary. He said he was sensitive to the upriver watermen, but it needed to be taken back to FMAC for further review and the development of a scientific permit. He moved to keep the area closed and refer the matter back to FMAC. Associate Member Jones seconded the motion. Associate Member Bowden explained that it has been before FMAC for years and been discussed to help the upriver problem. He said Mr. Place had a good idea, if the fishermen take less than 10 fish. He said if it goes back to FMAC the season will be over before the Commission can take action. He said he could not support more study, as 5 or 6 years was long enough. The motion failed, 3-4. Associate Member Jones, Robins, and Garrison all voted yes. Commissioner Pruitt said he was opposed to the motion and voted no, breaking the tie.

Associate Member Bowden moved to give special permits for the upriver fishery, limiting it to ten individuals with a history in the fishery. Associate Member Bowden suggested going back to the striped bass fishery in mandatory reporting to get histories. Mr. Travelstead asked what years should they go back to get this information. Associate Member Bowden suggested 1994 and on. Mr. Travelstead asked about 1994 through 2005. Associate Member Bowden said that 3 years history was used before.

Commissioner Pruitt suggested that the staff be given time to look at the data and come back later in the meeting to finish the discussion and make a decision.

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15. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC 20-252-10, "Pertaining to the Taking of Striped Bass" to establish the 2006 commercial and recreational harvest quotas at 1,554,302 pounds each.

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 to increase the quotas for the 2006 Recreational and Commercial Fisheries. He said the staff was recommending that 1,554,302 pounds for each fishery be approved.

Commissioner Pruitt asked for comments from Law Enforcement and there were no comments. He opened the hearing to the public.

Doug Jenkins, Twin River Watermen Association, was present, and his comments are a part of the verbatim record. Mr. Jenkins said they were concerned with the cutting of the number of tags. He said the commercial quota was being cut because of overages in the recreational fishery baywide, both in Virginia and Maryland. He said the 2004 quota was 1,364,153 and the number of tags was dropping in the bay from 187 to 156. He asked why the Bay was being penalized because of overages caused by others.

Mr. O'Reilly explained that since 1997 the baywide quota had changed, but it had nothing to do with performance of a fishery. He said the model used shows a downturn, and the contributors are the series of year classes, the kill rate of fishing mortality rate, and the catch in numbers of fish. He said nothing done to the commercial fishery was because of the recreational fishery. He said, for the recreational fishery, in 2004 the slot method was introduced, and then in 2005 the modified slot limit, where fish between 28 and 34 could not be kept was implemented to slow down harvest. He said in 2005 there was a decrease from 2.4 million to 1.9 million pounds in the recreational landings. He said from 1997 to 2003 ASMFC froze the quota, and now each year it changes. He explained the harvest control model.

Mr. Jenkins said he did not understand the model, and the figures just did not add up to him. He said it was unfair to the Bay fishermen that the Coastal fishermen remain the same.

Commissioner Pruitt closed the public hearing.

**Associate Member Robins moved to approve the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 6-0.**

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**16. PUBLIC HEARING:** Virginia Seafood Council proposal, "Reexamination of Feasibility Study On One-Year Grow-Out of Triploid *Crassostrea ariakensis*."

Jack Travelstead, Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead said the public hearing was mandated by the Code of Virginia and there was a window of 30 days from this date to no later than 60 days, when the Commissioner must make a decision. The Code of Virginia required that the Commissioner consult with VIMS and their comments were in the hand out he had passed out.

A. J. Erskine, representative for the Virginia Seafood Council, was present and his comments are a part of the verbatim record. Mr. Erskine said that he was speaking for Frances Porter as she was recuperating from knee surgery. He thanked the Commission for giving him the opportunity to speak to them. He explained that the experimental oysters were brought to VIMS in 1996. He stated that in 1998 experimental projects with sterilized *ariakensis* were started. He said VSC took the project subsequently adding more oysters and more participants. He said that 5 new growers would receive 100,000 oysters. He said the current growers wanted to be able to keep a portion of the 2005 oysters. He said the proposed project period will be from June 1, 2005 through to June 1, 2007. He said the project would proceed responsibly while adhering to all requirements. He said this was the third year and eventually they hope to start a put-and-take aquaculture industry. He said the additional industry was not trying to replace the native

oyster industry. He said the past projects had provided economic benefits to the state's economy. He said the ariakensis had proven to be disease tolerant, to grow fast and to provide a good shucking yield. He said the risk model was developed in 2003 to keep any risk of spawning from happening. He said so far there had been good collaborative effort with the federal and state groups.

Associate Member Robins asked Mr. Erskine to explain accumulative risks. Mr. Erskine said accumulative risk was placing the oysters on the same area every year and assuming those oysters would spawn. He said he felt that accumulative risk was not a concern. He said the new growers were screened by VMRC and held to the same provisions as in the past. He explained that emergency plans were determined prior to any weather event happening. He said Jim Wesson helped determine the emergency location for these plans. He said the 2005 oysters would be moved as suggested by the risk model to avoid any risk of spawning occurring.

Commissioner Pruitt opened the hearing to the public.

Michael Congrove, 2006 Project Manager, was present and his comments are a part of the verbatim record. Mr. Congrove explained that the project was being handled with care and participants meet all criteria set by both Federal and State agencies. He said the accumulative risk was to be addressed next week when they met with personnel from federal agencies. He said it was estimated that 4 ½ oysters might be left at any one site. He said if during 2003-2006 only 4 ½ oysters were left, it was not enough to reproduce.

Commissioner Pruitt stated that the Chesapeake Bay Foundation letter was on file regarding this matter.

Commissioner Pruitt closed the public hearing.

Associate Member Garrison stated that the imports were way ahead of the exports and the cownose ray makes it a risk putting out seed oysters. He said there was a need to take a chance with the triploid oyster. He said the processing industry was disappearing.

Mr. Travelstead explained that it was a decision to be made by the Commissioner. Associate Member Garrison offered to make a motion to help him make up his mind.

Associate Member Jones stated that VIMS and CBF agreed it was a sound proposal and followed the National Academies of Science. She said she was concerned with the one year old oysters and that they continue to be monitored. She said the accumulative risks can not be dismissed.

Associate Member Robins said that since the data would be submitted to the EIS project this would be positive input and a benefit of the project. He said this was not a high-risk project but a contained aquaculture project.

Commissioner Pruitt instructed the staff to put all the information together and prepare the document that he could sign after 30 days.

Associate Member Schick said that aquaculture was in the future for the shellfish industry and something to expand baywide. He said it would help the native oyster by promoting a cleaner Bay.

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**17. BOB ORTH, VIMS:** Update of status of Submerged Aquatic Vegetation.

Dr. Orth was unable to be at the meeting and make his presentation therefore the item was pulled and rescheduled for the March meeting.

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**19. 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.

Jack Travelstead, Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead explained that no compromise had been reached between Ms. Jones and Mr. George. He said the net was licensed last year with conditions. He said Mr. George has been in compliance according to the Law Enforcement Division.

Bonnie-Leigh Jones, protestant, was present and her comments are a part of the verbatim record. Ms. Jones explained that Mr. George's pound nets were in front of her property. She said Mr. George has continued to violate the conditions on his 2005 permit and she was requesting the site be denied for 2006. She said she liked to fish recreationally and she always tries to comply with the rules and so should Mr. George. She said when Mr. George asked for monetary assistance from the residents they agreed to do that to help him with the cost of moving to another location.

Ernest L. George, Poundnetter, was present and his comments are a part of the verbatim record. Mr. George explained to the Commission that he had had some problems originally setting the net properly, but it was getting to be too much of a hassle and he asked the Commission for a one-year extension for the priority rights requirement, to find a new location for his pound net, as he would not be able to set it up this year.

Mr. Travelstead explained that there was a request from Mr. George to relocate. This request for a new location would be advertised for 30 days to allow for public comments. He said if Mr. George could not set his nets this year he does not want to lose his priority rights. He said Mr. George was asking for 2 years to set his net.

Mr. Garrison stated that the Commission did not want to set a precedence where pound netters were run off when they were established in the area first.

Dr. Jones said that in accordance with MPO Crandall's report, when asked to comply Mr. George did set the net correctly.

Associate Member Schick asked what was it the Commission had to do. Commissioner Pruitt explained that Mr. George wanted to retain his priority rights. Colonel Bowman said he needed an exemption from the regulatory requirement to set his net during the year to maintain his right to the location the following year.

**Associate Member Holland moved to allow Mr. George the exemption from the priority rights requirement. Associate Member Garrison seconded the motion. The motion carried, 6-0.**

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**20. FISHERIES MANAGEMENT DIVISION:** Request permission to construct two artificial fishing reefs; Poquoson Reef, to be located near the mouth of the Poquoson River and Mobjack Bay Reef, to be located on the western side of the channel in Mobjack Bay.

Jack Travelstead, Chief, Fisheries Management, explained that this was a new process for artificial reefs as it had been removed from the Habitat process. His comments are a part of the verbatim record.

Kelly Place, waterman, was present and his comments are a part of the verbatim record. Mr. Place said it seemed to him that fishing areas were being taken away by piecemeal. He said he did not necessarily oppose the project, but it needed more review before one user group is given exclusive use. He said he was concerned this area would be closed to other user groups. He said that other user groups needed to be notified before any action was taken.

Doug Jenkins, Twin River Watermen Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said he agreed with Mr. Place.

Charles Dryden, Poquoson waterman, was present and his comments are a part of the verbatim record. Mr. Dryden said there was no prior notification and recommended that more information be provided to the public prior to any approval. He said the Poquoson River site was a gill net area in the spring for catching spot and croaker.

Mike Meier, Fisheries Management Specialist, Sr., was present and his comments are a part of the verbatim record. Mr. Meier explained that this was consistent in size of reef

with others and in line with what has been done in the past. He said he tried to select sites that were out of the way and in depths deep enough to put a reef in that location.

Commissioner Pruitt suggested that this be continued for another month to allow more public comments. He also suggested that staff meet with individuals in the areas affected by these projects. Mr. Meier agreed to meet with user groups in the Poquoson River and Mobjack Bay areas to resolve any possible user conflicts.

No action was taken at this time.

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**18. JIM KIRKLEY, VIMS: Presentation of Economic Contributions of Virginia's Commercial Seafood and Recreational Fishing Industries.**

Jim Kirkley, VIMS, was present and his comments are a part of the verbatim record. Mr. Kirkley presented a powerpoint presentation for the Commission.

Kelly Place, waterman, was present and his comments are a part of the verbatim record. Mr. Place said economic impact and economic importance were two different terms. Mr. Kirkley explained that he was addressing theoretical issues.

No action was taken.

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Commissioner Pruitt left the meeting at this point. Associate Member Garrison assumed the duties of chairman.

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**21. APPROVAL OF THE 2006 OYSTER RESTORATION PROGRAM AND PROCUREMENT PROCEDURES.**

Associate Member Garrison expressed his concerns in spending money on moving seed oysters when the cownose rays were such a problem. Mr. Garrison said the \$1.9 million or what is being spent on seed movement could be used to catch the cownose rays. He said something was needed now to solve the cownose ray problem before moving any more seed oysters. Dr. Wesson stated that the cownose ray problem was being worked on from more than one direction.

Dr. James Wesson, Head, Conservation and Replenishment Department, gave the presentation. Dr. Wesson said that there was \$1 million dollars from general funds for the program this year that had not been available for years. He said industry was used to

perform all the projects, except for the James River shell recovery program. He said most of the money was allocated for shellplanting in varying strategies. He explained that there was included this year an aquaculture project for training 10 western shore watermen. He said that there were also two seed programs, the program to move natural seed, which was high risk due to disease, cownose rays, etc. He said staff was recommending 20,000 bushels and the advisory committee wanted to move 30,000 bushels, but the committee generally agreed with the remainder of the program. He reminded the Commission of the second seed project, spat on shell that was approved at last month's meeting and advertised by public notice. He stated that the staff was requesting approval of the 2006 Oyster Replenishment Program and the Procurements Procedures.

Associate Member Robins asked if they approve the 30,000 bushels of seed oysters where would the monies come from for the increase in seed? Dr. Wesson said that monies would have to come from other projects. He said that probably monies from the Great Wicomico River shell recovery project would be used for the seed project. He said the committee had asked that we allow the use of mechanical hand tongs to retrieve the tongs when harvesting the seed oysters, which had been incorporated in the plan.

Associate Member Garrison asked if they do not approve the seed movement could something be done to resolve the predation problems with the cownose rays. Dr. Wesson said that was being worked on and there was more interest now than there ever had been. Associate Member Garrison said that we seem to keep putting off trying to resolve this problem. Dr. Wesson explained that there were some projects that may begin this year.

Jack Travelstead, Chief, Fisheries Management, explained that we need to hear from VIMS and the Virginia Marine Products Board on what was being done by them. He suggested asking them to attend the next meeting and to explain what they are doing for resolving this problem. Associate Member Garrison asked Mr. Travelstead to contact both of them and arrange something for the next meeting.

Associate Member Garrison opened the hearing to the public.

Doug Jenkins, Twin River Watermen Association, was present and his comments are a part of the verbatim record. Mr. Jenkins provided a copy of an article from the Bay Journal, which shows what happens to shell while waiting for a spat set.

Associate Member Garrison said that Mr. Jenkins had provided him with a copy earlier, so he read a quote from the last page of the journal, which said "...if you can't measure whether winning or losing and how we measure the score...no sense playing the game".

Mr. Jenkins stated that in the fall at the Shellfish Advisory Committee when we knew what funding was available it recommended 100,000 bushels of seed oysters be moved from the James River to other areas with comparable salinities. He said that according to

staff's statistics there were approximately 900,000 bushels of seed oysters available in the James. He said it was amazing when there are almost \$2 million available that \$1.5 million was to be spent on shells. He said that only 20,000 bushels of seed oysters were planned for the upper Rappahannock River and the Potomac River tributaries. He said they have been denied seed for years. He said that 450,000 bushels of shells was being planned for shellplanting this year and this would mean putting shells on top of shells already there. He asked why when there were plenty of seed available now for moving to other areas for growout was the State still spending \$1.5 million for shellplanting.

Commissioner Pruitt returned to the meeting at this point and assumed his duties as chairman.

Mr. Jenkins said when he looked up the word "replenishment" in the Webster Dictionary, it said "...to supply fully, fill, build up again, make good, replace..." He said to leave the James River seed oysters and not move them would possibly be losing them to a freshet. He said moving only 10% seed was poor management. He said that he had written letters to the congressional representatives asking them to deny any more funding to VIMS or VMRC if they intend to continue with shellplanting. He said he had scheduled a meeting with the Secretary of Natural Resources to discuss this with him. He said to continue the way it was being done was mismanagement and bad. He said the Commission needed to take advantage of the seed oysters available and move more seed to the Rappahannock and Potomac.

Dr. Eugene Burreson, VIMS, Head of the Oyster Disease Program, was present and his comments are a part of the verbatim record. Dr. Burreson said that the VIMS staff did not recommend moving diseased oysters to high salinity areas. He said that 50 to 70 percent of the oysters are diseased and when salinity was high there was a lot of mortality. He said the James River oysters were susceptible to disease and the Piankatank River seed were a stronger stock. He suggested that the seed be moved to Bowlers in the Rappahannock or the Nomini. He said the presence of disease had increased this year.

**Associate Member Garrison moved to approve the 2006 program with 40,000 bushels of seed for the Bowlers and Nomini areas. Associate Member Schick seconded the motion. Associate Member Robins asked that separate motions be made for the program and the procurement procedures.**

**Associate Member Robins offered a substitute motion to approve the 2006 program with 30,000 bushels of seed oysters. Associate Member Jones seconded the motion. The motion carried, 4-3. Associate Members Bowden, Schick, and Garrison voted no. Commissioner Pruitt voted yes, in order to break the tie vote.**

**Associate Member Schick moved to approve the 2006 procurement procedures. Associate Member Holland seconded the motion. The motion carried, 5-0-1. Associate Member Robins abstained because of financial conflicts.**

Mr. Travelstead reminded the Commission monies would have to be cut from another project and asked the Commission if they want it to come from the Great Wicomico River shell recovery project to cover the additional seed oysters to be moved. Associate Member Schick suggested that if could not get all the 30,000 bushels of seed that the funds go back to the original project.

**2006 OYSTER REPLENISHMENT PROGRAM:**

FUNDING SOURCES	MATCHING REQUIRED	AMOUNT
<b>Non-federal</b>		
General Funds (GF) State		\$1,000,000
Indirect Cost Recovery (ICR)		111,000
The Nature Conservancy (TNC) Mitigation – Seaside		72,000
The Nature Conservancy (TNC)– Seaside	\$52,000	52,000
The Nature Conservancy (TNC)– Bayside	10,347	34,188
Waterway Improvement Fund (WIF)		102,000
Total Non-federal		\$1,371,188
<b>Federal</b>		
NOAA-VIMS		\$ 492,000
CZM – Seaside Heritage Program		50,000
Total Federal		\$ 542,000
Grand Total		\$1,913,188

**BAY & TRIBUTARIES**

**Seed Transfer (Natural):**

There was almost no spatset in the Bay again in 2005. Salinities were low at the beginning of the summer, and then began to rise and return to more normal levels by the end of the summer. Oyster disease levels increased to more normal levels in late summer

(See VIMS Disease Report). The only natural seed oysters that are available are in the upper James River. These seed have significant levels and intensities of oyster disease, which limits the areas that the seed can be transferred. Additionally, cownose rays greatly reduce the likelihood of success in moving seed oysters even in the lower salinity areas. We will move approximately 20,000 bushels of seed to 4 areas.

James River Seed to:

5,000 bushels @ \$6.25/bushel to Bowlers Wharf in the Upper Rappahannock River	\$ 31,250
5,000 bushels @ \$6.25/bushel to Morattico Bar in the Rappahannock River	\$ 31,250
5,000 bushels @ \$6.75/bushel to Nomini River (Nomini Cut and Deans)	\$ 33,750
5,000 bushels @ \$6.75/bushel to Nomini River (Kings Copsica)	\$ 33,750
<b>Total</b>	<b>\$130,000 (GF)</b>

The CRD and VIMS will monitor survival of seed oysters in the Rappahannock River. The salinity range at Morattico Bar is in the extreme danger range. Survival will be compared between the two areas.

**Seed Transfer (Spat on shell):**

We will also begin a new collaborative effort between VMRC-VIMS-NOAA and the private oyster industry to produce oyster spat on shell. This project was described last month. That briefing is included again below:

VIMS, VMRC and private industry are now working together on a new model for oyster replenishment that provides economic development opportunity for industry as well as benefits for restoration. This model incorporates remote setting of eyed larvae of wild, disease resistant, or polyploid oyster varieties on cultch at industry sites. Most of the cultched spat – set on shell – could be used for restoration programs, while some of the product (especially triploids) could be used for extensive aquaculture on private leased beds.

Remote setting at industry sites will require large-scale hatchery capabilities to produce billions of eyed larvae. The hatchery producers in Virginia expressed interest in developing capabilities themselves to meet the demand for eyed larvae. Remote setting will require developing the infrastructure throughout sites in Virginia. Seafood harvesters

and processors have expressed interest in managing the setting and deployment of spat on cultch. The process will require oversight and monitoring. VIMS and VMRC will work cooperatively to provide due diligence and restoration sites for spat-on-cultch. General descriptions of how this plan would operate and how we intend to get started on this project follow.

#### Hatchery production

Over the next few years, hatcheries will be spurred to develop capacity to produce eyed larvae. As part of this development, VMRC will use NOAA funds to purchase eyed larvae from hatcheries – about 270 million in 2006 and 400 million in 2007 – for remote setting trials. Oyster brood stocks will be VIMS disease resistant strains, wild seed or both – whatever is appropriate for the ultimate destination of the spat-on-cultch.

Ultimately, for public-private oyster restoration, industry setting sites will purchase eyed larvae from hatcheries as part of their overall operating costs of producing spat-on-cultch. Ideally then, the hatchery component of public-private oyster restoration in Virginia will be perpetuated by larvae sales themselves, without need for financial assistance.

#### Setting stations

Over the next couple of years, these same NOAA funds will be used to establish 8-9 setting stations located at industry sites throughout Virginia. It is these setting sites that will generate demand for eyed larvae. Through empirical trials led by VIMS and VMRC over the next three years, we will endeavor to optimize the remote setting process at all locations and to transfer this expertise to industry. Ultimately, setting sites will operate by purchasing eyed larvae from hatcheries, set them on cultch prepared on site, and transport the spat on cultch to restoration sites. With increased efficiencies as experience grows, industry may choose to plant “extra” spat on private beds, add value by “nursing” the spat on bottom for some time, or plant public grounds to provide potential benefits to the public fishery.

#### Demand side economics

Federal funds will be needed initially to purchase spat for restoration purposes. The principal Federal investment will be spat-on-cultch for restoration. The model we use will “create demand” for spat-on-cultch (and therefore, also, eyed larvae) by using Federal dollars to purchase seed for restoration. Spat “sales” will become the performance measure for the program. This partnership is trying to make oyster restoration entrepreneurial driven. In this way, we think we can maximize efficiency of the program and provide the best return for the Federal investment. Projected production for the program is 2.5 billion eyed larvae, translating to about 250,000,000 spat on cultch. It will take several years to get to that point.

For 2006, we advertised two notices to determine interest in the project by private industry (Notices attached). We had a great deal of interest in the project concept.

Six spat on shell producers have been chosen and 3 privately owned hatcheries will produce the oyster larvae. NOAA funds will pay for its 6,000 bushels of spat on shell in this program.

6,000 bushels \$148,000 (NOAA)

**Shell Planting:**

About 550,000 bushels of house shells are available to plant on the western shore and 20,000 bushels on the Eastern Shore.

**Reef Sanctuary Areas:**

A small grant from the Nature Conservancy will provide shells to recover one of the reefs in the Piankatank River at Bland Point. About 25,000 bushels of shells will be placed as a new veneer over this reef and then the Chesapeake Bay Foundation will place about 750,000 of their oysters on the reef. These oysters are selectively bred for disease tolerance and we will be attempting to restart seed production in the Piankatank River with this effort.

25,000 bushels \$34,188 (TNC)  
\$10,347 (ICR)

Most of Virginia shucking house shells will be used to maintain good, public oyster bottom that requires the consistent replenishment with shell cultch. Most of the house shells will be planted relatively close to the shucking houses to hold costs as low as possible.

We will continue to maintain production areas in the Rappahannock, Piankatank, and Great Wicomico Rivers. We will also continue to rebuild harvest areas in Tangier (California and Johnsons Rocks) and Pocomoke Sound (Onancock and Public Ground 13 Rocks) where there has been relatively good spatset and survival in recent years.

**Reedville-Zapata Stockpiles to Tangier and Pocomoke Sounds**

300,000 bushels @ 5,000-10,000 bushels/acre  
@ \$1.50/bushel \$450,000 (GF)

Other shucking houses on the Western shore to the Rappahannock and Piankatank Rivers

200,000 bushels @ 1,000 to 5,000 bushels/acre  
@ \$0.95 to \$1.50/bushel \$250,000 (GF)

Shellplanting with dredged shells from the James River – we will be using the NOAA funds and any extra remaining GF to dredge shells and rebuild a test area in Mobjack Bay and additional harvest areas in Tangier and Pocomoke Sounds.

350,000 bushels @\$1.40/bushel @  
10,000 bushels/acre \$500,000  
(\$344,000-NOAA, \$166,000 GF)

**Reclaiming buried dredged shell in the Great Wicomico River:**

In 2004, the Army Corps of Engineers (ACOE) planted more than 1.7 million bushels of dredged shells in the Great Wicomico River. Most of this shellplants were on areas that were mostly mud. We have monitored these sites during the fall survey of 2004 and 2005, and shells on several of the areas have completely disappeared. We would like to use several large dredge boats to try and recover shells from at least one of these areas this spring, before they get too deep in the mud. We will dredge the shells and transport them to other good areas in the Great Wicomico, and wash them overboard to clean them.

100,000 bushels @\$1.00/bushel \$100,000 (ICR)

Shell planting Seaside Eastern Shore

**Three grants are available for the Seaside:**

The Nature Conservancy and VMRC are continuing a grant to simultaneously restore oysters, scallops and SAV in South and Cobb Bays area of Northampton County.

87,000 bushels of shells @ \$1.20/bushel for oyster  
restoration \$52,000 (TNC)  
\$52,000 (WIF)

Other funds for bay scallop and eelgrass restoration \$12,000 (TNC)

Seaside Heritage Program

Oyster restoration on various rocks in Accomack and Northampton Counties

20,000 bushels of conch shells @ \$2.00/bushel  
8,737 bushels of dredged shells \$1.20/bushel \$50,000 (CRM)

The Nature Conservancy mitigation project for Northampton County

60,000 bushels of dredge shells @ \$1.20/bushel \$72,000 (TNC)

**Watermen Aquaculture Training Program for the Bayside:**

From 1997 – 2000, we conducted several aquaculture training programs to introduce interested watermen in how to raise oysters. These programs were very successful, with most of the interest on seaside. Many of the watermen that we trained are still growing oysters today. There was never any significant interest in the training program on the Western shore. We would like to advertise a training program for the western shore to see if there are now watermen interested in a training program. We proposed to advertise for 10 participants to be provided the equipment to grow 500,000 market oysters (50,000 for each participate).

Anticipated costs are as follows:

\$5,000/watermen for seed and materials  
10 watermen @\$5,000 \$50,000 (WIF)

**2006 PROCUREMENT PROCEDURES:**

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the production of eyed larvae and spat on shell, the Commission will set a price per million larvae and the price per bushel of spat on shell. For the turning and cleaning and dredging of public oyster

bottoms, the Commission will set at per hour or per day rate to be paid. For the purchase of hatchery-spawned, aquaculture-produced, broodstock oysters and scallops, the Commission will set the price. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.50 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$0.50 per bushel of oyster shells at the shucking house. Loading, transporting and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2006 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

For participation in the Aquaculture Training Program, public notices will be posted, and all interested watermen may apply. Selection of participants if more than 10 watermen apply, will be by lottery.

The agency anticipates that all other 2006 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2006 Replenishment Program.

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**ITEM 14, AMERICAN SHAD: (Continued)**

Jack Travelstead, Chief, Fisheries Management informed the Commission that the staff had the information discussed and requested earlier in the meeting. Mr. Travelstead explained that the question was whether to allow fishermen in the spawning areas for the shad bycatch fishery. He stated that the fishery had been under a moratorium for ten years trying to restore the shad. He also reminded the Commission that when they approved the King Williams County Reservoir project they had placed pumping restrictions on it to protect the shad.

Associate Member Garrison referred back to the DGIF who actually run the hatcheries who recommend that the Commission leave the regulation as it now stands.

Associate Member Robins stated that fishermen could get a permit, they now just could not work in the spawning areas and the Commission needed to maintain the spawning areas by keeping them closed.

Associate Member Schick stated that 31 people would have the option to work there and allowing them to fish was a positive action, but they would have to have landed 5,000 pounds of striped bass for 3 of the 5 years.

**Associate Member Bowden said that a compromise would be that if fished 5 of the last 10 years the watermen would be allowed 5-fish in the spawning areas per vessel. He moved to allow a limited entry of individuals who had worked 5 years between 1996 and 2005, allowing the harvest of 5-fish, and allowing a maximum of 12 people. Associate Member Garrison seconded the motion. Associate Member Jones stated this was bad idea after hearing what Mr. Travelstead has said about the King William County Reservoir project. She said the Commission allowing the harvesting in the spawning areas was not justified and not well thought through. The motion carried, 4-2. Associate Member Robins and Jones both voted no.**

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There was no further business, so the meeting was adjourned at approximately 5:32 p.m. The next meeting will be Tuesday, March 28, 2006.

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William A. Pruitt, Commissioner

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Katherine Leonard, Recording Secretary