

MINUTES

Commission Meeting**June 24, 2008**

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
David Grandis	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Sunita Hines	Bs. Applications Specialist
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Keith Nuttall	Marine Police Officer
Ronnie Daniel	Marine Police Officer
Gary Fox	Marine Police Officer
Grady Ellis	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.

Commission Meeting

**14843
June 24, 2008**

Elizabeth Gallup
Randy Owen
Danny Bacon
Bradley Reams

Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Other present included:

Mike Ware	Jim Smith	Terry C. Fuller	Moe Bridgman
Henry Jones	Harry Johnson	Juan S. Crofton	Tracy West
Ellis W. James	Bob Pride	Chris Moore	

and others.

Commissioner Bowman called the meeting to order at approximately 9:34 a.m. and announced that Associate Members Tankard and McLeskey would not be at the meeting. He said that there was a quorum present and the Commission could proceed with the meeting.

At the request of Commissioner Bowman, Associate Member Fox gave the invocation and Associate Member Schick led the pledge of allegiance.

APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. Bob Grabb, Chief, Habitat Management, explained the following changes.

Item 5, Birchwood Motel, Inc., #5-2780, was approved by the Commissioner for a continuance as requested by the applicant's attorney. Commissioner Bowman asked that since this was at the request of the applicant, would there be any problem with an indefinite continuance? David Grandis, Assistant Attorney General, responded no. After some further discussion, the Commission directed staff to get wit Assistant Attorney General Atbiston and Mr. Martingayle, counsel for the applicant, to set a future date for the hearing.

Item 7, Ronald Savage, #05-2456, was pulled from the agenda because the violation had been resolved.

Item 8, Bonnie K. Cross, #08-0105, was pulled from the agenda because the protest had been resolved. This item could then be handled administratively.

Item 10, Baymark Construction Corporation, #08-0519, was pulled because the Health Department had not yet approved the project; therefore, the Commission's decision is normally withheld until after the Health Department approval is received, given Section 28.2-1205.C. of the Code of Virginia.

When Commissioner Bowman asked for any other changes, Associate Member Robins requested that time be allotted for staff to provide a status report on a request made by the Commission to provide information regarding the impact of the 2 3/8-inch cull ring on crab harvest.

Commissioner Bowman asked for a motion. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Holland seconded the motion. The motion carried, 7-0. The Chair voted yes.**

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MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the May 27, 2008 meeting minutes. **Associate Member Fox moved to approve the minutes, as submitted. Associate Member McConaugha seconded the motion. The motion carried, 6-0-1. Associate Member Schick abstained because he was not present at the last meeting. The Chair voted yes.**

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

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

Bob Grabb, Chief, Habitat Management Division, reviewed the ten page two items, 2A through 2J, for the Commission. He said that staff was recommending approval of these items. His comments are a part of the verbatim record.

Commission Meeting

Commissioner Bowman opened the public hearing and asked if anyone was present, pro or con to address these items. There were none, therefore, the public hearing was closed.

Commissioner Bowman asked for a motion for Items 2A through 2J. **Associate Member Schick moved to approve these items, as read. Associate Member Holland seconded the motion. The motion carried, 7-0. The Chair voted yes.**

2A. ERICKSON RETIREMENT COMMUNITIES, #07-0928, requests authorization to modify their previously authorized permit to include additional impacts to 29 linear feet of Beaverdam Run due to installation of riprap adjacent to a bridge pier as part of the Gloucester Parkway extension project in Loudoun County.

No applicable fees – Permit Modification

2B. OLD POINT COMFORT MARINA, #08-0867, requests authorization to install ten 20-foot drive-on floating docks and one drive-on jet-ski dock at Dock A at Fort Monroe situated along Mill Creek in Hampton.

Permit Fee..... \$100.00

2C. FAIRFAX YACHT CLUB, #08-0769, requests authorization to maintenance dredge approximately 4,500 cubic yards of material to maximum depths of minus six (-6) feet below mean low water from the Occoquan River in Fairfax County.

Permit Fee..... \$100.00

2D. TOM LANGLEY, ET AL, #07-0704, requests authorization to modify an existing permit by mechanically dredging an additional 125 cubic yards of State-owned submerged bottom to achieve maximum water depths of minus five (-5) feet mean low water around the private pier serving 1604 Ferebee Drive, situated along Broad Bay in Virginia Beach. Dredged spoils will be offloaded at the existing boat ramp at the end of Alanton Drive and transported to an approved landfill. Recommend an additional royalty of \$56.25 for the dredging of 125 cubic yards of State-owned bottom at \$0.45 per cubic yard.

No applicable fees – Permit Modification

2E. CITY OF NORFOLK, #08-0500, requests authorization to extend existing storm water outfall pipes seaward at 14th and 15th View Streets by approximately 100 and 252 linear feet, respectively, to accommodate previously authorized beach nourishment projects along the Chesapeake Bay in the City of Norfolk.

Permit Fee..... \$100.00

2F. DEPARTMENT OF THE NAVY, #07-2694, requests a modification to their existing permit to now install approximately 4,150 linear feet each of 6-inch diameter sanitary force main and 8-inch diameter water line beneath the bed of the Elizabeth River between the Lambert’s Point Deperming Station and a point along the shoreline in the City of Portsmouth near the intersection of Progress Avenue and Van Buren Street, to replace existing utility lines in conjunction with the previously authorized replacement and modification of the Deperming Station’s facilities.

No applicable fees – Permit Modification

2G. DEPARTMENT OF THE NAVY, #08-0812, requests authorization to replace an outdated passive magnetometer system within Slip A of the Lambert’s Point Deperming Station situated on the Elizabeth River in the Cities of Portsmouth and Norfolk. The proposed project includes the installation of 98 sensor tubes embedded in the riverbed, the replacement of sensors within 106 existing tubes, and the on bottom placement of data transmission cables between the sensors and the station’s pier facilities.

Permit Fee..... \$100.00

2H. VANE MARINE TERMINAL, LLC, #08-0767, requests authorization to replace an existing commercial pier within the same or smaller footprint, to construct a new 10-foot by 60-foot pier deck addition, to repair existing mooring dolphins, and to install three (3) additional mooring dolphins, adjacent to their property situated along Paradise Creek in the City of Portsmouth.

Permit Fee..... \$100.00

2I. U.S. COAST GUARD, #08-0847, requests authorization to replace approximately 65 linear feet of existing steel sheet pile breakwater, rework existing waterfront utilities, and install approximately 16 linear feet of timber pile supported fender panel, adjacent to Bulkheads 1 and 2 at U.S. Coast Guard Integrated Support Command (ISC) Portsmouth, situated along Craney Island Creek in the City of Portsmouth.

Permit Fee..... \$100.00

2J. MATTHEW A. ORSI, ET AL, #08-0806, requests authorization to install 600 linear feet of stone riprap channel-ward of a deteriorating bulkhead and construct a 10-foot long retaining wall along the Chesapeake Bay adjacent to Lots #1, #2 and #3 in the Peaceful Beach Estates Subdivision near the Town of Jamesville in Northampton County.

Permit Fee..... \$100.00

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

TIDES ON THE CHESAPEAKE ASSOCIATION INC., #06-0390, requests authorization to retain a 295 square foot, L-head community pier extension, a timber observation bench, an access platform to the creek, and two mooring piles to create a single transient mooring on an existing 49-foot long, timber community pier adjacent to property situated at the confluence of Rock Hole Creek and the Little Wicomico River in Northumberland County. The pier extension was constructed prior to receipt of a properly executed Commission permit. The permittee has agreed to a \$600.00 civil charge and a pro-rated triple permit fee of \$50.00 in lieu of further enforcement action.

Bob Grabb, Chief, Habitat Management, reviewed this consent item for the Commission and his comments are a part of the verbatim record. He stated that the staff was seeking approval of the terms of the consent agreement which had been negotiated by staff and the parties involved.

Commissioner Bowman asked if there were any questions for staff. There were none. He asked if the applicant was present. The applicant was not present. He asked for action by the Commission.

Associate Member Holland moved to approve the consent item. Associate Member Fox seconded the motion. The motion carried, 7-0. The Chair voted yes.

Permit Fee (pro-rated, triple)..... \$ 50.00
Civil Charge..... \$600.00
Total Fees..... \$650.00

- 4. **CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL. No closed meeting was held.**

5. **BIRCHWOOD MOTEL, INC., #05-2780**, requests authorization to install a 750-foot long six (6) inch diameter sewage discharge pipe under an already permitted 700-foot long by 5-foot wide community pier adjacent to their property along Chincoteague Channel in the Town of Chincoteague, Accomack County. The project is protested by a nearby oyster ground leaseholder and several property owners. The Circuit Court of Accomack County remanded the case back to the Commission for rehearing.

Continuance granted -- date of the re-hearing was subsequently set for the August 26, 2008 Commission meeting.

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6. **JAMES C. SMITH, JR., #03-2500**. Commission consideration of an unauthorized 680 square foot non-commercial open-sided boat house constructed at the end of a private pier at property situated along the Poquoson River in York County. An adjoining property owner protested the project.

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

Mr. Owen explained that the project was located at 101 Oyster Cove Road in the Seaford section of York County. The property is situated along the Poquoson River, approximately 3.5 miles upstream (southwest) of the confluence of the Poquoson River and the Chesapeake Bay. The Poquoson River, at this location, is primarily residential. While numerous open-sided boathouses have been constructed along the River, Mr. Smith's is the only boathouse in the Oyster Cove community.

Mr. Owen stated that in the original application, which was received on December 4, 2003, Mr. Smith sought authorization for a 5-foot wide by 275-foot long private pier with a 42-foot long by 17-foot wide open-sided boathouse. The pier also included a 15-foot by 20-foot L-head, a 5-foot by 15-foot step-down platform and 104 linear feet of 4-foot wide timber catwalk.

Mr. Owen said that in response to requests by staff, revised drawings were received on March 3, 2004, and March 30, 2004. Apparently, these revisions were sought to clarify the pier head dimensions. The last drawing received depicted a 5-foot wide pier with a 12-foot by 20-foot L-head, aligned to the left. No reference was made to the subject boathouse, catwalks or stepdown platform. Since the latest revised drawing failed to depict the boathouse, the staff member handling this project apparently assumed it had been deleted from the proposal.

Mr. Owen stated that based on that drawing, staff sent a letter dated March 31, 2004, which advised Mr. Smith that his pier qualified for the statutory exemption provided in

Code. The letter contained no reference to the boathouse, catwalks or stepdown platform. No other authorization for the boathouse was ever granted by VMRC.

Mr. Owen explained that nearly two years later, while staff happened to be on an adjacent property, staff noted that Mr. Smith had in fact constructed the boathouse without authorization. The L-head and boathouse were also flipped and constructed on the opposing sides. Staff sent letters, dated June 23, 2006, and August 16, 2006, to the applicant noting the violation and requesting the submittal of as-built drawings for review. Further enforcement action was temporarily set aside, however, pending the outcome of separate litigation brought by Mr. Smith's neighbors who were also seeking removal of the subject boathouse as being in violation of the restrictive covenants in the neighborhood.

Mr. Owen explained that the boathouse was protested by the adjoining property owner, Mr. J. Henry Jones, III, and a nearby resident, Ms. Marjorie D. Smith. Both asserted that the boathouse was built in violation of the neighborhood's restrictive covenants, as well as, without the required York County or VMRC permits. Mr. Jones additionally maintained that the structure diminished his and his neighbor's view of the Poquoson River. Insofar as the covenants were concerned, copies of the York County Court's final order on this matter were provided to staff by letter dated December 5, 2007. The Court did not require removal of the boathouse. Also, staff noted for the Commission that the pier and boathouse were also built without a York County building permit. Ultimately, the County chose to issue the permit with a \$100.00 fine assessed by the County. Mr. Smith has never offered an explanation why neither he nor his contractor, Mr. Robert Holloway, failed to initially obtain the County's required permits or authorizations.

Mr. Owen stated that in light of the objection letter which was received on December 20, 2007, from J. Henry Jones, III, an adjacent property owner, the boathouse did not meet the requirements for statutory authorization. Although under 700 square feet, the protest meant it required a permit from the Commission and was considered to have been constructed in violation of §28.2- 1203.A.5 of the Code of Virginia.

Mr. Owen noted that staff did meet with Mr. Smith and his contractor on February 14, 2008, and confirmed that the structures measured as a 5-foot wide by 229-foot long pier with an 18-foot x 20.5-foot L-head, aligned to the right, and 56 linear feet of 4-foot wide timber catwalk and a 635 square foot open-sided boathouse. Both, the dimensions and the orientation of the structure, did not conform to the original project drawings or the revisions that were submitted on March 3, 2004 and March 30, 2004.

Mr. Owen said that to date, Mr. Smith had refused to provide the as-built drawings requested by staff. In a recent letter dated February 26, 2008, staff responded to questions raised by Mr. Smith in a previous letter and provided additional detail on staff's position for this project. Mr. Smith found that staff's response was unsatisfactory. In essence,

Mr. Smith, an attorney by vocation, believed that he had permission to build both the pier and boathouse based on the March 31, 2004 letter sent by VMRC. That NPN letter clearly did not authorize the boathouse and given the subsequent protest by the adjoining property owner, the boathouse did not meet the requirements for exemption under §28.2-1203.A.5.

Mr. Owen stated that were it not for the standing objection from the adjacent property owner, the structure, as constructed, would qualify for the exemption provided for boathouses in the Code. The structure appeared to be constructed within Mr. Smith's riparian area and should not impact navigation. As a result, staff recommended after-the-fact approval of the boathouse; however, staff further recommended that any approval should be contingent on the assessment of an appropriate civil charge for both, the applicant and the contractor. As an attorney and waterfront property owner Mr. Smith should have known about the legal requirements for permits at both the local and State levels. In addition, as a qualified marine contractor that has previously been before the Commission, Mr. Holloway should be well-versed in State and local permit requirements.

Commissioner Bowman asked if the applicant or his representative wished to make comments.

James C. Smith, Jr., the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Smith stated that he appreciated the opportunity to make his remarks in order to resolve some of the record. He said he disputed the fact that his boathouse was said to be unauthorized and in violation. He said that Section 28.2-1203 of the Code, it stated what was allowed without a permit and his project conformed to the size limits, therefore, it did not require a permit. He said he had also met all safety standards. He stated that the only reason he was here was because of the protest and the issue of notification and because of the protest it would have to be issued a permit. He said he filed the JPA and the GP17 with the drawings and information on the adjoining property owners, which are in the VMRC files and which included the boathouse.

Commissioner Bowman said that in the revised drawings, the boathouse was not indicated and the alignment was different from that submitted with the original application. He asked why Mr. Smith did not question what was in the letter, dated March 31, 2004, where it stated what was allowed, which did not include the boathouse. Mr. Smith explained that in the March 2003 application and drawings, it showed the boathouse and that he only deleted the platform that was outside of what was allowed. He said he thought he had cured the problem and would receive his "No Permit Necessary" letter.

Mr. Smith explained that he called his contractor to check on the status and was told that the work could not start until the letter was received from VMRC and the contractor suggested that Mr. Smith call the VMRC office. Mr. Smith stated that when he called he was told by staff that the revised drawing had not been received and was told that the way

it was, it would need to be heard by the Board. He said he was told by staff that they would need the revised drawing showing the platform had been removed. As he did not have a copy of the original drawing submitted, he drew a sketch and sent it in, as requested, showing the platform had been removed. Associate Member Fox stated that the revised drawing did not show the boathouse. Mr. Smith said that the boathouse had never been discussed and he thought he just needed to show the platform removed.

Associate Member Fox asked about the fact that the structure had been changed and the boathouse was built on the left instead of the right side, as proposed. Mr. Smith stated that it was a mirror image and the VMRC under the Code could issue the NPN letter as the platform was removed and the other was only an improvement. Associate Member Fox asked why he did it that way. Mr. Smith said it was done so that it would be further away from the adjoining property owner.

Mr. Smith explained that on a site visit by staff on July 2006 he was told that it met all the requirements except for notification of other property owners and notice in the newspaper. He said that he could not do that as it was VMRC's responsibility. He stated that the notice caused him further problems since the other residents brought a suit against him because they felt he was not allowed this boathouse due to the covenants in the deed. He said when he called in February 2008 he was told by staff that they had to wait until the Court made its decision for the suit. He noted that the Court ruled in his favor and said that the covenants did not control his property.

Commissioner Bowman stated that he felt that was not a fair account of what happened, but that the Commission usually did not make a decision until the court had ruled.

Mr. Smith stated that VMRC must recognize that all of the correspondence was prior to the suit. He stated that both the County and VMRC had given fuel for the fire or in this case the suit. He said he had agreed to the after-the-fact application, but that he objected to this matter being called a violation, even in the notification for this meeting.

Associate Member Schick stated that in the NPN letter in March there was no mention of the boathouse. Mr. Smith stated that he contacted the contractor and he called VMRC and spoke with Ms. West. He said neither staff nor his contractor was here at the meeting now, and the letter he received included the boathouse. He further said that he thought that VMRC considered all the drawings, not just the final ones. He said that all of the requirements had been met by him and it was only a technical violation because of the non-notification. He said he was requesting that no civil penalties be assessed against him or the contractor.

Mike Ware, attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Ware stated he represented Mr. Smith in the suit. He said Mr. Smith was not aware the covenants could encumber the use of his property. He stated that the court did not require removal of the boathouse because the judge ruled that the

covenants did not control his property. He said he had advised Mr. Smith to get with staff in order to clarify how it all got sidetracked and that not all the problems were caused by Mr. Smith.

Associate Member Schick asked if Mr. Ware and the contractor had been in contact, or if he had been asked to attend this meeting. Mr. Ware responded that he had had no contact with him, and Mr. Holloway decided on his own whether to attend or not.

Commissioner Bowman asked Mr. Ware about the March 31st NPN letter. Mr. Ware stated that Mr. Smith, although an attorney, dealt with estate planning and he was like any other individual who received the NPN letter and assumed it included the boathouse.

Associate Member Fox asked if the Commission should consider the covenants. David Grandis, Assistant Attorney General, responded that the covenants were a separate issue. Associate Member Fox asked if they should just ignore it. Mr. Grandis responded yes, he thought so.

Commissioner Bowman asked if there was anyone in opposition present that wished to speak.

Jesse Henry James, adjoining property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. James explained that he was very familiar with the history of this project. He said the boathouse blocked his view of the Chesapeake Bay, though he could still see the Poquoson River. He stated that he thought that the covenants covered this sort of thing. He explained that this was once a close knit neighborhood, but not anymore. He stated that he never received any notification about the project. He said it was only after the hurricane that there were problems with the jointly owned pier, so they dissolved this joint-ownership. He said that Mr. Smith's pier was built in 2005 and the boathouse in 2006, so they were not built at the same time. He said when he had the Wetlands Board bring action against him that he took responsibility for his actions and corrected the situation so that he met all requirements. He said he was asking that Mr. Smith be required to remove the boathouse.

Commissioner Bowman asked if anyone else wished to speak. There was no one. He asked Mr. Smith if he wished to provide rebuttal testimony. He responded, no. He asked for action by the Commission.

Associate Member Robins moved to approve the project, as built, with a civil charge of \$600.00 based on a minor environmental impact and minor non-compliance for both parties, the applicant and the contractor. Associate Member Holland seconded the motion. The motion carried, 7-0.

Applicant:

Commission Meeting

Permit Fee	\$100.00
Civil Charge.....	\$600.00
Total Fees.....	\$700.00

Contractor:

	\$600.00
Civil Charge.....	

7. **RONALD SAVAGE, #05-2456.** Formal restoration hearing concerning the unauthorized construction of two (2) 28-foot by 6-foot unauthorized piers and associated mooring piles adjacent to property at 117 Poplar Lane, situated along the Occoquan River in Prince William County.

Pulled from the agenda, violation resolved.

8. **BONNIE K. CROSS, #08-0105,** requests authorization to construct an 18-foot by 26-foot open-sided boathouse at the channel-ward end of a 100-foot long private, noncommercial, open-pile pier adjacent to her property situated along the York River at 5064 Cross Breeze Lane in Gloucester County. The adjoining property owners protested the project.

Pulled from the agenda, protest resolved.

9. **TERRY FULLER, #07-2001,** requests authorization to install a 14-foot by 13-foot L-shaped floating platform at his existing private, non-commercial pier adjacent to his property situated along Mill Creek in Hampton.

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

Ms. Gallup explained that the proposed project was located at 225 Yukon Street situated along Mill Creek across from Fort Monroe in Hampton. This area was primarily residential.

Ms. Gallup said that the applicant requested authorization to attach a 110-square foot L-shaped floating platform to his existing 129 -foot long by 5-foot wide private pier that currently had a 25-foot by 20-foot T-head platform at its channelward end. Mr. Fuller received authorization in December 2003 to rebuild his pier after Hurricane Isabel

(VMRC #03-7233) and received a permit in 2004 to add a 5-foot by 20-foot addition to the existing 20-foot by 20-foot L-head platform at his pier which increased the size of the platform to 500 square feet (VMRC #03-2546).

Ms. Gallup stated that Mr. Fuller had stated that they needed the additional decking at his pier, to help his young daughters access the jet-ski at low tide. He explained that his pier was very high over the water due to lifting by storms and that his daughters could not get on the jet-ski at low tide. He believed that a floating pier would accommodate this need.

Ms. Gallup noted for the Commission that Mr. Fuller already had 100 square feet more than that allowed by Section 28.2-1203 (A)(5) of the Code of Virginia. The addition of the proposed floating pier would add another 110 square feet to his pier.

Ms. Gallup said that while staff was sympathetic to Mr. Fuller's request, staff did not believe that the additional encroachment over State-owned subaqueous bottom was justified. Mr. Fuller already had more square footage at his pier than was allowed by Code. As a result, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended denial of Mr. Fuller's request, as proposed.

After some clarification questions regarding the structure and tides, Commissioner Bowman asked if the applicant wished to come forward and speak.

Terry Fuller, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Fuller stated that he appreciated the opportunity to address the Commission. He explained that it would be safer for his young daughters to access the jet ski from the floating pier, as well as for everyone else. He said the L-head helped to provide stability because of the changing tides.

Associate Member Schick asked about whether the floating dock was installed. Ms. Gallup explained that the structure was involved in a violation and Mr. Fuller had removed it to resolve the violation. Commissioner Bowman asked if it did help while it was there. Mr. Fuller stated that unfortunately, he did not have the jet ski at that time.

Commissioner Bowman asked if there was anyone present who wished to speak, either pro or con.

Moe Bridgman, adjoining property owner, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Bridgman explained that he was the property owner on the north side and that he and Mr. Fuller had been neighbors for 15 years. He also explained that he was a retired safety professional. He said the structure would make it safer and the rigid platform needed to be split to be stable. He stated he supported the project.

Commission Meeting

Associate Member Schick explained that the Board had heard many such cases as this one and unless it was a water dependent structure, then it was not necessary. He stated that the platform could be reduced in size if Mr. Fuller really wanted the floating dock.

Associate Member Schick moved to accept the staff recommendation and deny the application. Commissioner Bowman asked for a second to this motion three times. There being none, the motion failed for lack of a second.

Associate Member Robins requested clarification of what staff considered in the square footage limitations established by Code. He wanted to know if the T-head was the 100 foot excess noted by staff. Bob Grabb, Chief, Habitat Management, explained that if you cut out the center as part of the pier you ended up with two T-heads and you do count the T-head. Associate Member Robins asked if a five-foot catwalk structure would count in the square footage limitation. Ms. Gallup stated that a straight finger pier would not count.

Commissioner Bowman asked for another motion.

Associate Member Schick stated that he hated to not approve this, but the Board had heard others with similar structures and they were denied.

Commissioner Bowman stated that the cases he thought Mr. Schick referred to were on the channelward-side so they were denied. He said he supported the applicant's request, as Associate Member Robins had made a good point.

Associate Member Holland moved to approve the project, as applied for. Associate Member McConaugha seconded the motion.

Associate Member Robins explained that he could appreciate Associate Member Schick's comments. He said at this location there was a large tidal variation and the structure would provide additional safety. He also said that the dimensions were five feet versus the previously heard projects' where the structures were ten feet and fixed. He said this would look like a catwalk and should not be counted in the square footage limitation.

Commissioner Bowman reiterated that the dimensions of the previously heard proposed structures were larger and it was correct to deny them. He asked the Board to vote for the substitute motion.

The motion carried, 6-1. Associate Member Schick voted no. The Chair voted yes.

Permit Fee..... \$25.00

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- 10. **BAYMARK CONSTRUCTION CORPORATION, #08-0519,** requests authorization to construct two floating piers with T-heads and finger piers for the mooring of 79 boats within the footprint of the existing Bay Creek Marina along Kings Creek in the Town of Cape Charles. The proposed piers and boat slips were previously permitted in 2001; however, they were not completed at that time. The applicant has requested that the Commission set a reduced royalty assessment.

Pulled from the agenda, pending Health Department approval.

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SPECIAL PRESENTATIONS:

Lt. Colonel Warner Rhodes, Deputy Chief, Law Enforcement, made the presentations of service certificates for both officers. He read into the record what was on the certificates. His comments are a part of the verbatim record.

George R. Daniel, Marine Police Officer since May 16, 1978, had retired, as of June 1, 2008.

D. Keith Nuttall, Marine Police Officer since June 15, 1975, was retiring, as of July 1, 2008.

Commissioner Bowman told the officers that he felt that they had both served the Commonwealth well and thanked them for their service with the Marine Resources Commission.

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Commissioner Bowman announced that the meeting would be recessed for lunch at approximately 11:00 a.m. He reconvened the meeting at approximately 12:15 p.m. He stated that Item 11, Public Comments, would be heard last to allow time for individuals to arrive who wished to address the Commission on other issues.

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- 12. **DISCUSSION:** Request from the Virginia Charterboat Association to revamp the licensing requirements and guidelines for recreational fishing in Virginia.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record.

Mr. Grist explained that the Virginia Charter Boat Association (VCBA), by way of the attached letter, has expressed concern for the existing, and growing, licensing inequities that exist between Virginia and Maryland charter boats fishing in Virginia waters. The VCBA correctly noted that Maryland charter vessels have open access to Virginia fishing grounds without purchasing a Virginia fishing license of any kind, as our License Reciprocity Agreement with Maryland specifies that all Maryland recreational fishing licenses are valid in Virginia. In contrast, Maryland requires both a Charter Boat License and a Guide License to participate in its charter fishery and has limited access to its Guide License. This limited access program prevents many Virginia charter vessels from fishing in Maryland waters.

Mr. Grist said that Maryland limited entry to its charter boat fishery, in the early 1990's. At that time, some Virginia vessels were grandfathered in that fishery. Many other Virginia vessels have since been excluded. During the Warner administration, then Secretary of Natural Resources, W. Tayloe Murphy, Jr., was successful in convincing Maryland to reopen their fishery to a limited number of Virginia charter vessels, and about a dozen vessels took advantage of that opportunity.

Mr. Grist stated that most recently, Virginia's winter trophy striped bass fishery has attracted many Maryland charter boat operators who migrate to Virginia after the Maryland striped bass season was closed. These vessels compete for dock space and customers with Virginia charter boats, who otherwise have no similar access to Maryland fishing grounds.

Mr. Grist said the current situation, as he had described, and as expressed by the VCBA, was inequitable. To address this situation, the VCBA requests three actions: 1) repeal of the current License Reciprocity Agreement, 2) imposition of higher license fees for non-residents, and 3) establishment of a limited access program for the Virginia charter boat fishery.

Mr. Grist explained that the VCBA would ultimately prefer a return of open access to Maryland fishing grounds. Given the past history of this issue, it was unlikely that Maryland would reopen its fishery. Nonetheless, Maryland DNR had been apprised, by way of letter from Commissioner Bowman, of the solutions offered by the VCBA. Tom O'Connell, head of the Maryland-DNR had made contact with VMRC and agreed to meet and discuss this matter.

Mr. Grist stated that the solution offered by the VCBA was worthy of consideration, but should be fully vetted through the recreational fishing community. Discussion with FMAC members and representatives of Virginia's numerous recreational fishing clubs and environmental organizations would be in order, as each of the proposed solutions had far extending consequences, for those who did recreationally fish in Virginia.

Mr. Grist said that the current License Reciprocity Agreement provided that all Maryland and Potomac River Fisheries Commission recreational licenses were valid in Virginia. The Commissioner, by law, was authorized to enter into reciprocal agreements; therefore, the existing agreement could be repealed by his action. Imposition of higher license fees for non-residents, on the other hand, would require legislative action.

Mr. Grist explained that the Code authorized the Commission, through the regulatory process, to establish a Guide License and to limit access to that license, just as Maryland had done. Developing such a program would take substantial staff time that might not be immediately available, given the current demands of the blue crab management program.

On a related topic, Mr. Grist stated that the National Marine Fisheries Service had just published the attached proposed rule to establish a National Angler Registry. The purpose of the registry was to improve the quality of catch and effort estimates, for the fishery, by establishing a phone directory, for all recreational fishermen in the U.S. The phone directory would be the sole source for contacting anglers for interviews. To meet the standards outlined in the proposed rule, Virginia would have to redesign its recreational fishing license program, which would, also, require legislative action. Those States that do not license saltwater anglers would have to do so, while Virginia would have to eliminate its blanket licenses for a private boat, a recreational pier and a rental boat as well as the exemption when fishing from private property. Compliance with this proposed rule was not required; however, anglers in those States that choose not to conform to the federal standard would be required to purchase a federal fishing license starting in 2011.

Mr. Grist said that staff recommended these issues be referred to FMAC, for further review and discussion, and that representatives of Virginia's conservation and angling clubs be engaged as well.

Commissioner Bowman said that the Department of Game and Inland Fisheries had an existing system that could accommodate this need and it had worked well at DGIF. Virginia had a system already that was fair. He recommended that this be considered.

Associate Member Schick suggested that the other States be brought into this matter, as he was concerned with the Federal government taking responsibility rather than the States.

Commissioner Bowman stated that in support of the Federal government, they had been mandated to come up with a program to improve recreational data. Currently, he said that some of the recreational data was garbage. He stated he felt it would be better for the State to manage and provide ideas.

Associate Member Robins explained that this was a difficult change. He stated that Virginia did have a boat license because of an exemption, but other States did not have

this exemption. He said in order for the State to comply with the Federal requirements it had to give up some exemptions. He said he had read where comments were still being taken until August 11th and VMRC needed to provide some comments.

Commissioner Bowman stated that the State of Delaware already had a system in place, which could be another way to go.

Associate Member Fox asked if the Virginia Charter Boat Association had met with the Maryland association. Mr. Grist stated that they had met, but help was still needed from the State.

Bob Pride, Virginia Charter Boat Association, was present and his comments are a part of the verbatim record. Mr. Pride stated that he was the person who put these recommendations together. He stated that there was inequity between Maryland and Virginia that needed to be changed. He suggested that like the Crab Fishery, a control date of June 24, 2008 be established by the Commission in order to allow the Commission to put more restrictions on the fishery. He suggested that any changes should not begin in midseason, but to wait until next year, as this will give Virginia something with which to bargain with when they meet with the Maryland officials.

Associate Member Robins moved to advertise for a public hearing at the July meeting to discuss the establishment of a control date of June 24, 2008. Associate Member Fox seconded the motion. The motion carried, 7-0. The Chair voted yes.

No further action was taken.

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13. DISCUSSION: ASMFC requirement to lower Virginia's summer (May 1 – October 31) Scup quota; a request for a public hearing to be held at the July Commission meeting.

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

Ms. Nelson stated that within a recent NMFS and ASMFC closure notice for the summer period, only involving landings by holders of federal moratorium vessel permits, staff discovered a discrepancy between the summer quota listed by ASMFC (2,887 pounds) and that listed in the VMRC Regulation 4 VAC20-910-10 et seq. (7,862 pounds). Staff contacted the ASMFC plan coordinator who indicated a letter had been sent revising the summer quota in February. Staff had no record of receipt of that letter. Staff recommended amending the regulation so as to be in compliance with the Scup Fishery Management Plan.

Ms. Nelson said that staff recommended advertising, for a July public hearing, the amendments to the regulation in order to adjust the summer period catch quota.

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

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Special Request Item: Associate Member Robins earlier asked that the agenda be amended so that the staff could give a report on the status of a study requested by the Commission at a previous meeting on the impact of the 2 3/8-inch cull ring on crab harvest.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record.

Mr. Grist explained that VIMS had two studies ongoing on exclusion devices. Staff had scheduled a meeting with Rom Lipcius (VIMS) to discuss the co-design of a cull ring study for the Chesapeake Bay, to include an area along the bayside of the Eastern Shore. He stated that three (3) or four (4) areas would be selected for the study and it should take about a month to six (6) weeks to complete. VIMS staff would handle a northern and an eastern bay study site, and VMRC staff would handle two southern bay sites.

Commissioner Bowman asked Mr. Varnell from VIMS, if he wished to comment. Lyle Varnell, VIMS, stated that they had this matter covered. His comments are a part of the verbatim record.

Associate Member Robins asked about when the study would be done. Mr. Grist stated that it would be done in the fall.

No action was taken.

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11. PUBLIC COMMENTS:

Ellis W. James

Ellis W. James, a Norfolk Resident and Sierra Club Member, was present and his comments are a part of the verbatim record. Mr. James wanted to advise the Commission on two issues. He said first, that there was a Water Quality Assessment Report which came out June 18, 2008 by John Carlock that the Commission members should review. He stated that there were two items of particular interest. In the report the author had

noted the miles of impaired rivers and how in the Chesapeake Bay there was at least one reason why the Bay was impaired. He said the second item was about primary sand dunes and a Virginia Pilot article which caused him some concern. He said for the City of Norfolk's portion of the Bay, the City needed to take stronger action to protect the sand dunes. He said he just wanted to bring these matters to the attention of the Board.

Commissioner Bowman thanked Mr. Ellis for providing this information to the Board. He explained that in regards to the water quality comments by Mr. James, the Governor's Fellows Program for young people would give them information on the environment that would help them when they become the policy makers in the future. He explained that the Governor was looking for funds for point and non-point source pollution problems. He said also that the University of Virginia currently had a barge out on the Elizabeth River, because it was the most polluted of all the river systems in Virginia, for both students and teachers to visit in order to provide educational information to them. Finally, he said that the Governor had a list of themes from which he selected the 'Environment' to be emphasized for his final year.

Commissioner Bowman asked for anyone else at the meeting who wished to address the Board during this time period. There was no one else to speak.

No action was taken.

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Commissioner Bowman adjourned the meeting for a short recess to allow time for the individual for Item 14, Repeat Offender, to arrive at the appointed time of 1:00 p.m. Staff informed him this time period had been specified in the letter of notification. He reconvened the meeting at 1:00 p.m.

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14. REPEAT OFFENDER: John T. Johnson

Lt. Colonel, Warner Rhodes, Deputy Chief, Law Enforcement, gave the presentation and his comments are a part of the verbatim record. Mr. Rhodes explained that he had not heard anything from Mr. Johnson, and he had just checked his phone messages to ensure that Mr. Johnson had not called him.

Mr. Rhodes said that originally Mr. Johnson was scheduled to appear before the Commission in January 2007 because of his failure to comply with Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting". He said at that time Mr. Johnson failed to appear before the Commission and his commercial license and gear licenses were all suspended until he did come before the Commission. He said Mr. Johnson was again notified to appear before the Board at its

February 2007 meeting, which he did and gave testimony. He explained that at that time staff had testified that Mr. Johnson had been inconsistent in his harvest reporting and he would eventually get the information to staff but only after numerous reminders. At the February meeting, the Commission decided to revoke all of Mr. Johnson's licenses for 90 days followed with probation for a period of 21 months.

Mr. Rhodes explained that in September 2007 while still on probation, Mr. Johnson received two summonses from Officer Croft. He explained that one was for an improperly marked crab/peeler pot float (Section 27.2-712 of the Code) and the second was for unlawfully baited peeler pots with fish (Section 28.2-708 of the Code). He said when Mr. Johnson appeared in the Portsmouth General District Court on October 2, 2007 he was found to be guilty of both charges. He explained that Mr. Johnson appealed that Portsmouth General District Court decision with the Portsmouth Circuit Court and on November 30, 2007 was convicted by the circuit court of the first charge and fined \$250 plus court costs; and, the second charge was Nolle Prosequi.

Mr. Rhodes said that as a result of the appellant court's action, Officer Croft notified Mr. Johnson on June 5, 2008 that he was to appear before the Commission at its meeting on June 24, 2008 for violations of his probation.

Commissioner Bowman asked what staff's recommendation was for this case. Mr. Rhodes stated that staff recommended that all of Mr. Johnson's licenses and gear licenses be suspended until February 28, 2009, which was the remainder of his original probationary period.

Commissioner Bowman asked if Mr. Johnson was present. Mr. Johnson was not present. Mr. Rhodes stated that Plans and Statistics staff had indicated to him that Mr. Johnson was still not reporting his harvest to mandatory reporting system consistently and was delinquent for most of 2008.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins stated that based on Mr. Johnson's history he moved to approve the staff recommendation. He further commented that Mr. Johnson had a long history of not reporting his harvest for the mandatory reporting system and that the new violations had occurred while he was on probation. Associate Member Bowden seconded the motion. He added that he was very concerned that Mr. Johnson did not show up at this hearing so he felt he had to agree with the staff's recommendation. The motion carried, 7-0. The Chair voted yes.

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Commission Meeting

**14863
June 24, 2008**

There was no further business and the meeting was adjourned at approximately 1:06 p.m.
The next meeting will be Tuesday, July 22, 2008.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary