

MINUTES

Commission Meeting**October 28, 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)	
William E. Laine, Jr.)	Associate Members
John R. McConaugha)	
Kyle J. Schick)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief Deputy, Fisheries Mgmt.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Lou Atkins	Admin Office Specialist
Michele Guilford	HR Analyst
Erik Barth	Head, MIS Department
Todd Sperling	MIS, Bs. System Specialist, Sr.
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Jim Wesson	Head, Conservation/Replenishment
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Mike Meier	Head, Artificial Reef Program
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Stephanie Iverson	Fisheries Mgmt., Manager
Bethany Eden	Fisheries Mgmt. Specialist
Holly Aber	Fisheries Mgmt. Technician
Lewis Gillingham	Director, SWFT, Fisheries Mgmt.
Warner Rhodes	Deputy Chief, Law Enforcement
Kenny Oliver	Captain, SA Supervisor

Commission Meeting

**15021
October 28, 2008**

Ben Major
Gerald Pitt
Sid Adams

1st Sgt., SA Assist. Supervisor
Marine Police Officer
Marine Police Officer

Bob Grabb
Tony Watkinson
Chip Neikirk
Hank Badger
Ben Stagg
Benjamin McGinnis
Elizabeth Gallup
Justin Worrell
Danny Bacon
Jay Woodward
Bradley Reams
Rob Butler

Chief, Habitat Mgmt. Div.
Deputy Chief, Habitat Mgmt. Div.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Project Compliance Technician
Eng/Survey, Surveyor

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Other present included:

Margaret P. Clarke
Brad Helmandollar
Williams
Millie Williams
Smith
Vanessa Vaudiquili
Jim Wilson
Richard Lee Green
Cory P. Geay
Roland McPherson
Douglas F. Jenkins, Sr.
Jeffrey Dameron
E. Gregg
J. Booker Webb, Jr.
Dennis Clark
Donald Crockett
Bryan Riger
Alfred M. Stall
Elijah T. Firth, III
Billy C. Parks

David M. King
Frank K. Evans

Luther Bristow

George H. Marshall
Robert Synder
Mark Allen
Robert McCharem
Chris Frye
Roger Parks
Spencer Headley
John Crowling
Robert Jensen
Dan Dise
Norman Parks
David Bradshaw
Ernest C. Ashton
Lester Ashton
Meade Amory

John Alvey
Gene Warron

George W. Smith

Richard Green
Christini Cornwall
Chris Newman
Tom McDermott
Ellis W. James
Ken Smith
Chris Moore
Paula Owen
Anthony Battista
Denny Crockett
Scott McDonald
Frank Kearney
George Hall
David Bell
Vincent Riffin

John Bailey
Larry

Anna M.

John Crown
Wayne Parks
David O'Brien
Youssel Khaul
Pete Freeman
Weldon Pruitt
Bob Pride
J. W. Eskridge
Chuck Pruitt
G. P. Stall
Larry Moore
Dean Dise
J. W. Moore
Bill Parks
Floyd Carmine

Commission Meeting

**15022
October 28, 2008**

Billy Belvin	Curtis Elbourn	Roger L. Williams
Percy Blackburn	Carlisle Banniston	Stanley L. O’Bier, Jr.
Phillip Haywood	Billy Pate	Kenneth Green
Gregory S. Martin	Bubbe Crown	John Cowley
Ronald Lee Haywood	Paul David Stark	Bob Hutchinson

and others.

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Commissioner Bowman called the meeting to order at approximately 9:35 a.m. He noted that Associate Member Robins was absent, but there was a quorum present and they could proceed with the meeting.

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At the request of Commissioner Bowman, Associate Member Tankard gave the invocation and Bob Grabb led the pledge of allegiance.

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APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. Bob Grabb, Chief, Habitat Management, explained that Items 2C, Mr. and Mrs. Mitchell R. Bober, #08-1390 and 2F, Pickle Property, LLC, #08-1155 were being pulled. He explained that 2C was under \$50,000.00 in project cost and could be handled administratively and 2F would be rescheduled in order for staff and the applicant to further discuss the royalty fees.

Commissioner Bowman asked for a motion. **Associate Member Holland moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 8-0. 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 September 23, 2008 meeting minutes. Associate Member Fox noted that he had been left off the first page as being in attendance of the last meeting and he did attend the meeting. Commissioner Bowman stated that it had been brought to his attention that he had been indicated as the one to second a motion during the public comment period when pound nets were being discussed and it was actually Associate Member Bowden.

Associate Member Tankard moved to approve the minutes, as amended. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

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

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

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

Commissioner Bowman asked if there were any questions of staff. Associate Member Fox asked about the fee exemption on some of the page two items. Mr. Grabb explained that there was a government exemption established by the State Code and Federal Laws.

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 2B, 2D through 2E, and 2G through 2O. He noted that items 2C and 2F had been pulled from the agenda. Associate Member Holland asked that separate motions be done, since he would be abstaining from voting for item 2M, Baymark Construction Corporation, #08-1605.

Commissioner Bowman asked for a motion for 2A through 2B, 2D through 2E, 2G through 2L, and 2N through 2O.

Associate Member Schick moved to approve these items. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman asked for a motion for item 2M. **Associate Member Tankard moved to approve item 2M. Associate Member Schick seconded the motion. The motion carried, 7-0-1. Associate Member Holland abstained. The Chair voted yes.**

2A. DEPARTMENT OF THE ARMY, #08-1700, requests authorization to stabilize approximately 510 linear feet of Accotink Creek including placing Class II riprap along approximately 460 linear feet of the shoreline, installing bendway weirs and locked limbs/logs extending a maximum of 10 feet channelward, and excavating 50 linear feet of existing riprap material as part of the Accotink Creek stabilization project at Fort Belvoir.

Permit Fee..... \$100.00

2B. BLUEWILDLIFE, LLC, ET AL, #08-1733, requests authorization to restore approximately 5,347 linear feet of Bolling Branch including the installation of J-hooks, cross-vanes, root-wads, and channel relocation at Chattins Run Farm in Loudoun County.

Permit Fee..... \$100.00

2C. MR. AND MRS. MITCHELL R. BOBER, #08-1390, request authorization to construct 450 linear feet of timber replacement bulkhead, with associated knee-brace support piles, which will extend a maximum of one (1) foot channelward of an existing, deteriorated timber bulkhead and mean low water adjacent to their property on Myer Creek at 124 Starview Place in Lancaster County. Recommend a royalty in the amount of \$450.00 for the filling of 450 square feet of State-owned bottom at a rate of \$1.00 per square foot.

Pulled from the agenda, to be handled administratively.

2D. GWYNN'S ISLAND RV RESORT, LLC, #08-1504, requests authorization to construct 335 linear feet of riprap revetment, a 120-foot long by 24-foot wide riprap jetty, a 100-foot long fishing pier, and to dredge 2,000 cubic yards of subaqueous bottom material from a 45-foot wide by 350-foot long channel to provide maximum depths of minus three (-3) feet at mean low water adjacent to their campground facility situated along the Chesapeake Bay at 551 Buckchase Road in Mathews County. Staff recommends inclusion of our standard dredging conditions and the assessment of a royalty of \$235.00 for the encroachment of the pier on 785 square feet of State-owned submerged land at a rate of \$0.30 per square foot and a dredging royalty of \$1,435.00 for the dredging of 2000 cubic yards of State-owned submerged bottom material at a rate of \$0.60 per cubic yard.

Royalty Fees (encroachment 785 sq. ft. @	
\$0.30/sq. ft.....	\$ 235.50
Royalty Fees (dredging 2,000 cu. yds. @	
\$0.60/cu. yd.....	\$1,200.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,535.50

2E. HOLIDAY MARINA, #07-1463, requests authorization to remove two existing piers and install three (3) new 12-foot wide piers with mooring pilings and finger piers to create a total of 44 wet slips and to dredge 11,300 cubic yards of subaqueous material from a 180,600 square foot area to provide maximum depths of minus five (-5) feet at mean low water in conjunction with the redevelopment of their marina situated along Rowes Creek at 3143 Holiday Marina Road in Gloucester County. Staff recommends approval with the inclusion of our standard

dredging conditions and the assessment of a royalty of \$5,085.00 for the dredging of 11,300 cubic yards of State-owned submerged bottom material at a rate of \$0.45 per cubic yard.

Royalty Fees (dredging 11,300 cu. yds. @ \$0.45/cu. yd.).....	\$5,085.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$5,185.00

2F. PICKLE PROPERTY, LLC, #08-1155, requests authorization to dredge on an as-needed basis 84,500 cubic yards of State-owned subaqueous material to create maximum depths of -10 to -17 feet at mean low water; to construct a 13-foot wide by 462-foot long, commercial, floating concrete pier with an 8-foot wide by 50-foot long gangway and ten (10) 9-pile mooring dolphins; to construct a 13-foot wide by 50-foot long floating pier adjacent to an existing travel lift; to install seven (7) new support piles for the existing travel lift; to construct a 60-foot wide by 75-foot long wharf extending approximately 45 feet channel-ward of mean low water; to install approximately fourteen (14) 19-pile and two (2) 9-pile mooring dolphins; and to install approximately 130 linear feet of riprap marsh-toe sill channel-ward of mean low water, adjacent to their South Norfolk Aggregate and Marine Yard situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. Staff recommends the assessment of a royalty in the amount of \$33,300.00 for the new dredging of 74,000 cubic yards of State owned subaqueous bottom at a rate of \$0.45 per cubic yard.

Pulled from the agenda, to be rescheduled.

2G. DEPARTMENT OF THE NAVY, #08-1510, requests authorization to install and backfill approximately 305 linear feet of replacement bulkhead aligned channel-ward of an existing bulkhead's batter piles along Berth 20 and across a previously excavated barge slip adjacent to Berth 21, and to construct an open-pile, concrete wharf with utility trench approximately 17.5 feet channel-ward of the proposed bulkhead along Berth 20 and extending 279 feet southeasterly to a point aligned with and extending 90 feet to the existing wharf along Berth 21 at the Norfolk Naval Shipyard situated along the Southern Branch of the Elizabeth River in the City of Portsmouth.

Permit Fee.....	\$100.00
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2H. CITY OF PORTSMOUTH, #08-1604, requests authorization to install 810 linear feet of replacement bulkhead aligned two feet channel-ward of an existing deteriorated bulkhead between the Harbor Tower and Tidewater Yacht sites off

Crawford Parkway, situated along the Southern Branch of the Elizabeth River in the City of Portsmouth.

Permit Fee..... \$100.00

2I. WESTERN VIRGINIA WATER AUTHORITY, #08-1689, requests authorization to install 297 linear feet each of a 24-inch and 36-inch diameter, concrete encased, sewer line beneath the existing bottom of the Roanoke River along the western side of Wasena Park in the City of Roanoke. The proposed project also includes the demolition and removal of an existing concrete dam, which currently contains a 42-inch diameter sewer line that will be replaced immediately downstream with the proposed sewer lines. Staff recommends inclusion of our standard in-stream permit conditions.

Permit Fee..... \$100.00

2J. NAVAL FACILITIES ENGINEERING COMMAND, #07-2540, requests a modification to a previously authorized project to now install two (2) 42-inch diameter concrete storm-water outfalls extending approximately one-foot through an existing bulkhead, each to be fitted with tide check valves, adjacent to the P-201V Aircraft Maintenance Hangar situated along Willoughby Bay at Naval Station Norfolk in the City of Norfolk. The proposed modification will also include the temporary construction of cofferdams to accommodate the installation the outfall pipes.

Permit Fee..... \$100.00

2K. MARINE CORPS BASE QUANTICO, #06-0753, requests authorization to modify an existing permit by directionally boring and installing new potable water, sanitary, electrical, and communication utility lines a minimum of 10-feet below the existing streambed of Chopawamsic Creek in Stafford County.

Permit Fee..... \$75.00

2L. TOWN OF TANGIER, #08-0125, requests authorization to construct a 415-foot long by 6-foot wide open-pile marginal wharf with associated finger piers, mooring piles, access walkways and marsh toe stone riprap to accommodate 32 boats, adjacent to Town property along Ridge Creek a tributary to North Channel in the Town of Tangier, Accomack County. No dredging is proposed.

Permit Fee..... \$100.00

2M. BAYMARK CONSTRUCTION CORPORATION, #08-1605, requests authorization to dredge by mechanical methods approximately 3,600 cubic yards of State-owned subaqueous bottom material, on an as needed basis to provide an 80-foot wide channel, with maximum depths of minus seven (-7) feet at mean low water. The dredging is to maintain the access channel from Cherrystone Channel (north of Cape Charles Harbor) to the Bay Creek Marina in Kings Creek, Northampton County. All dredged material will be placed in an approved upland disposal site. The dredging will be confined to the period of October 1 through November 30 in order to minimize the adverse effects to any clam and oyster industries that may be present in or near the project area. Staff recommends the assessment of a royalty in the amount of \$90.00 for the new dredging of 200 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard.

Royalty Fees (dredging 200 cu. yds. @\$0.45/cu. yd.....	\$ 90.00
Permit Fee.....	\$100.00
Total Fees.....	\$190.00

2N. REALTY VENTURES GROUP, INC., #08-0453, request authorization construct a 60-foot wide roadway bridge over Swift Creek in conjunction with a proposed residential community development at the applicant's property in Chesterfield County. Recommend our standard in-stream conditions and a royalty of \$7,800.00 for the encroachment over 3,900 square feet of State-owned subaqueous bottomland at a rate of \$2.00 per square foot.

Royalty Fees (encroachment 3,900 sq. ft. @ \$2.00/sq.ft.....	\$7,800.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$7,900.00

2O. WILLIAMS GAS PIPELINE/TRANSCO, #07-1717, requests authorization to construct associated equipment and access crossings of multiple streams and waterbodies, as needed, for the purpose of inspecting, repairing or replacing petroleum pipeline segments in Appomattox, Buckingham, Fluvanna, and Louisa Counties. Staff recommends the inclusion of our standard in-stream construction conditions. In addition, since the James, Hardware, and Rivanna, rivers are designated as potential anadromous fish use areas, staff recommends a time-of-year restriction of March 15 to June 30 be imposed. The Hardware River is also designated a Threatened and Endangered Species river due to the presence of the Federal/State endangered James River spiny mussel. To minimize potential adverse impacts upon this species, staff also recommends that the permittee be required to coordinate any in-stream repairs in this river or its perennial tributaries

with the Department of Game and Inland Fisheries and the U.S. Fish and Wildlife Service. Finally, staff recommends that an additional royalty in the amount of \$3.00 per linear foot be assessed for any in-stream repairs that require the removal and replacement of anomalous line segments.

Permit Fee..... \$100.00
Royalty fees (\$3.00/linear foot) to be collected, if line replacement is required.

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3. CONSENT AGENDA ITEMS. There were no consent items to be heard.

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4. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL. A closed meeting was not held.

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5. CITY OF HAMPTON, #06-1356, requests authorization to modify their previously issued permit to include the installation of two 16-foot by 16-foot open-sided shelters on the Buckroe Beach Fishing Pier situated along the Chesapeake Bay in Hampton. An adjacent property owner and other nearby property owners protested the project.

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

Ms. Gallup explained that the project site was located on the Chesapeake Bay in the Buckroe neighborhood of Hampton at the south end of the public beach just north of a private beach and residential area.

Ms. Gallup said that at the February 26, 2008 meeting, the Commission voted to approve the City of Hampton’s request to construct a 16-foot wide by 709-foot long commercial fishing pier with a 70-foot by 26-foot L-head platform. The original pier was destroyed by Hurricane Isabel in 2003.

Ms. Gallup stated that the City was now requesting to modify their permit to include two 16-foot by 16-foot open-sided shelters. Their application stated that these structures were designed to provide pier patrons some protection from the elements without their having to walk the length of the pier to the snack bar/bait shop facility.

Ms. Gallup said that the application was protested by an adjacent property owner, as well as the Chesapeake Landing Homes Association. The protests focused on the general location of the pier and the proposed shelters. The Association was concerned that the shelters would further impact their view and would give the public a false sense of safety during storms.

Ms. Gallup said that while staff was sensitive to the concerns expressed by the Chesapeake Landing residents, the majority of their concerns appeared to be related to issues which were considered by the Commission at the February 26 meeting. Additionally, staff did not believe that the proposed shelters would result in any additional environmental impacts.

Ms. Gallup stated that as a result, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the modification, as proposed.

Vanessa Valldejuli, Senior Deputy City Attorney was present and her comments are a part of the verbatim record. Ms. Valldejuli explained that they were utilizing space where a closed shelter had existed prior to Hurricane Isabel and leaving it open sided so there would not be an impact on anyone's view. She stated this was being constructed to help those who use the pier and provide them with shelter from the weather. She said the Chesapeake Landing Association's lawsuit had been dismissed by the Court. She said that the case of an encroachment on their riparian area was still in court. She stated that the City Council had amended the ordinance not allowing boats to launch within a certain buffer area at one of their meetings. She had the agenda for that meeting as a handout. She said the Chesapeake Landing Association had started a campaign with the press and the City Council. She provided a copy of a Daily Press Article and read it into the record. She said they were asking that the permit be granted.

Commissioner Bowman asked if anyone in support of the project was present. There were none. He asked if anyone was present in protest that wished to speak.

Tom McDermott, Chesapeake Landing resident, was sworn in and his comments are a part of the verbatim record. Mr. McDermott stated that they were not opposed to the pier. He said that he did not, nor did he know of anyone who started the campaign that was alleged. He said there were two lawsuits and one was dismissed and the other was dismissed because there was a wrong signature. He said the shelter was not water dependent and golf courses even discourage shelters because of the hazard of weather making it dangerous to users and caused a liability issue. He said residents on the north side and south side of the project were opposed as it not necessary that it be there.

Associate Member Fox asked about the issue raised in February about whether the launching of boats was a violation of the Code. Ms. Valldejuli explained that was removed from the agenda and they let the courts decide and the ordinance was changed.

Carl Josephson asked about the riparian lawsuit. Ms. Valldejuli referenced Code Section 30-71. Mr. Josephson stated the permit for the pier was issued and they were here now only for the additional structures as it was too late to contest the pier.

Associate Member Tankard asked if in February they had changed the pier and structure and added a structure. Ms. Valldejuli explained that it was to be an enclosed structure originally to aid fishermen for weather. She stated this was a City operated pier.

Associate Member Schick stated this was not a water dependent structure, but the General Assembly had said these were permissible on some occasions. He stated also he understood the protest, but it was within what was done in the past.

Associate Member Schick moved to accept the staff recommendation and to approve the project. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee..... \$100.00

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- 6. **JAMAICA SHORES ASSOCIATION, #08-0451**, requests authorization to replace an existing 58-foot long by 12-foot wide concrete boat ramp with a 68-foot long by 12-foot wide ramp and to construct a 4-foot wide community use pier extending 108 feet channelward of their property in the Jamaica Shores Subdivision situated along the Rappahannock River in Middlesex County. Adjoining property owners protested the project.

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

Mr. Neikirk explained that the property was situated along the Rappahannock River, in the Jamaica area of Middlesex County. The Jamaica Shores subdivision was an older waterfront development. The boat ramp and pier were located on a 30-foot wide parcel commonly owned by the Jamaica Shores Association and the facilities were designed to be used by the association members.

Mr. Neikirk said that the proposed ramp was intended to replace an existing deteriorated concrete ramp and the proposed 4-foot wide by 108-foot long pier was intended to serve as a tending pier. No slips were associated with the pier.

Mr. Neikirk stated that the project was protested by Mr. John A. Crown and his family. They were the adjoining property owners located on the northwest side of the property. The only letter staff had received from the Crowns was somewhat vague. During the

April 8, 2008, Middlesex Wetland Board hearing on this matter, however, Mr. Crown claimed that his family owned the property where the pier and boat ramp were proposed. The property issue had apparently been litigated and the applicants had presented staff with a Final Consent Order dated April 5, 2006, which declared that the Jamaica Shores Association, Inc. were the fee simple owners of the property.

Mr. Neikirk said that in their April 3, 2008, report, VIMS questioned the increase in width of the ramp from 12 feet to 14 feet that was originally proposed. The width was subsequently reduced to 12 feet by the Middlesex Wetlands Board. VIMS also noted that no major changes in the existing environmental conditions were expected.

Mr. Neikirk said that the Health Department informed staff, in their letter dated August 28, 2008 that the project was in compliance with their "Sanitary Rules for Marinas and Boat Moorings." The Department of Conservation and Recreation said that they did not anticipate that the project would adversely affect any of their programs although their Chesapeake Bay Local Assistance Division noted the applicability of the Chesapeake Bay Act requirements and that they were regulated by the local government. The Department of Environmental Quality had determined that a Water Protection Permit would not be required since the impacts were anticipated to be minimal and temporary. No other state agencies had commented on the project.

Mr. Neikirk explained that the project would not encroach on any public or privately leased oyster planting ground and staff did not believe the project would adversely affect navigation.

Mr. Neikirk said that the boat ramp would replace an existing similar structure and staff did not anticipate any significant adverse impacts associated with the proposed pier. The property issues appeared to have been resolved by the Circuit Court of Middlesex County. Nevertheless, a VMRC permit would not affect the property rights of either the applicant or the Crowns.

Mr. Neikirk stated that, accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the assessment of a royalty in the amount of \$200.00 for the encroachment of the pier on 400 square feet of State-owned submerged land at a rate of \$0.30 per square foot and for the encroachment of the ramp on 160 square feet of State-owned submerged land at \$0.50 per square foot.

Commissioner Bowman asked if the applicant was present and wished to address the Commission.

Frank Adams, applicant and contractor, was sworn in and his comments are a part of the verbatim record. Mr. Adams said that the staff's briefing had covered the matter.

Commissioner Bowman asked if anyone was present in protest and wished to address the Commission.

John Crown, adjoining property owner and protestor, was sworn in and his comments are a part of the verbatim record. Mr. Crown provided slides of the beach area that he said he owned. He said some of his property had already been taken and now they wanted it all. He said there was no room for parking as there was only a 30-foot right of way. He said there was no place for boats to tie up without impacting others, but they were not opposed. He said where they had added the concrete, the area had started to wash away, causing beach erosion. He said the Chesapeake Bay Act was for this purpose. He asked that they deny the permit. He provided two additional photos of the adjacent beach.

Commission Bowman asked about the ownership issue. Mr. Neikirk explained that the property leading to the ramp was in the court ruling.

Associate Member Fox asked if the new ramp was of the same elevation. Mr. Adams explained that the ramp was slightly lower at the end. Associate Member Fox asked if the adjacent area was the same level. Mr. Adams responded, yes.

Commissioner Bowman asked for a motion.

Associate Member Holland moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (encroachment 400 sq. ft. @	
\$0.30/sq. ft.....	\$120.00
Royalty Fees (encroachment 160 sq. ft. @	
\$0.50/sq. ft.....	\$ 80.00
Permit Fee.....	\$100.00
Total Fees.....	\$300.00

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- 7. DOMINION VIRGINIA POWER, #08-1668**, requests authorization to install a total of approximately 76 linear feet of new 230kV transmission line approximately 120 feet above two crossings of Tuscarora Creek between the existing Pleasant View substation, located east of Leesburg off Cochran Mill Road, and a new substation site northwest of Hamilton near the intersection of Berlin Turnpike and Route 7, as part of the Pleasant View-Hamilton Transmission Line project in Loudoun County. The project is protested by the City of Leesburg.

Elizabeth Gallup, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. Ms. Gallup stated that there was no one from the Town present at the meeting.

Ms. Gallup explained the project site was located to the east of the City of Leesburg and involved two separate aerial crossings of Tuscarora Creek. Both aerial crossings were approximately 120 feet above Tuscarora Creek. Crossing #1 was approximately 43 linear feet across the creek and Crossing #2 was approximately 33 linear feet. The new transmission line would be within existing utility and road right-of-way easements. There were existing utility lines adjacent to the proposed Crossing #2.

Ms. Gallup said that the State Corporation Commission issued a Certificate of Public Convenience and Necessity for the transmission line on February 18, 2008 that determined the route of the line. There would not be any new poles installed within Tuscarora Creek.

Ms. Gallup stated that staff received a letter of objection from the Town of Leesburg dated October 6, 2008. The letter stated that the Town was in opposition to the new transmission line and did not support approval of the application.

Ms. Gallup said that the Department of Game and Inland Fisheries did not currently document any listed wildlife resources in the project area and did not anticipate that the project would result in adverse impacts to any listed wildlife under their jurisdiction. The Department of Conservation and Recreation did not have any objections to the project. No other agencies or organizations had commented on the project.

Ms. Gallup said that while staff understood that the City of Leesburg was not in favor of the new transmission line, staff did not believe that the two overhead transmission line crossings would have a negative impact on State-owned submerged lands. Additionally, all other parts of the project outside of the stream crossings were outside of the Commission's jurisdiction.

Ms. Gallup said that as a result, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of two aerial crossings of Tuscarora Creek with the assessment of an appropriate royalty at the rate of \$3.00 per linear foot of crossing.

Commissioner Bowman asked if the applicant's representative was present.

John Brady, representing Dominion Virginia Power, was sworn in and his comments are a part of the verbatim record. Mr. Brady said that they supported the staff recommendation. He said it was the State Corporation Commission that changed the routes causing the visual issues. He said they were working with the Town and groups to minimize impacts.

Commissioner Bowman said the visual impact was not in the two areas, just the existing power line. He stated that he did not understand the protest. Mr. Brady stated that he agreed.

Commissioner Bowman asked for discussion or a motion.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (crossing 76 lin. ft. @ \$3.00/lin. ft.).....	\$228.00
Permit Fee.....	\$100.00
Total Fees.....	\$328.00

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- 8. **MARK ALLEN, #07-1748**, requests authorization to install a mooring buoy at 37° 44'03.9" North Latitude 76° 19' 23.95" West Longitude, approximately 400 feet offshore of the applicant's property situated along Dividing Creek in Northumberland County. The project is protested by an adjacent oyster ground leaseholder.

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

Mr. Madden explained that the project was located along the southern shore of Dividing Creek just upstream of the creeks confluence with the Chesapeake Bay. In 2006 the applicant constructed a 198 foot long (MLW) private, noncommercial, timber pier to moor his 40 foot sailboat that has a 6-foot draft. The buoy had been requested by Mr. Allen because he would like to be able to moor his sailboat at the proposed buoy when the wind conditions become too great to safely moor his boat in the wet slip at his pier.

Mr. Madden explained further that the project was protested by the nearby oyster ground leaseholder, Mr. Luther M. Bristow III. Mr. Bristow believed that the buoy and the piers along the shoreline hindered his ability to dredge his oyster ground. Since staff was aware that Mr. Bristow had worked the lease in the past, staff recommended that Mr. Allen relocate the mooring and its required 100-foot swing radius completely outside any of

of Mr. Bristow's leased areas. Mr. Allen agreed and the mooring was relocated to 37° 44' 03.97" North Latitude 76° 19' 23.95" West Longitude.

Mr. Madden said that on January 28, 2008, Mr. Bristow was informed of the revised location of the mooring. Commission staff received a response from Mr. Bristow indicating that he still objected to the revised location. The protestant suggested that the mooring be repositioned an additional 150 feet farther away from the revised project location.

Mr. Madden stated that Mr. Bristow currently leased a 1.73 acre area of oyster shore (plat file #15752) immediately inshore of the 100 foot swing radius of the mooring, as well as a separate 1.99 acre parcel of oyster shore (plat file #15751) to the west of the smaller lease. The two oyster leases were separated by an area of vacant ground.

Mr. Madden explained that according to Section 28.2-515 of the Code of Virginia, an oyster lease must be a minimum of 3 acres in size in order for an oyster ground leaseholder to get a permit to dredge within that lease. As a result, Mr. Bristow cannot presently dredge either lease. Subsequent to Mr. Allen's request for the permanent mooring, however, Mr. Bristow applied for a deeper water, 5.5 acre parcel, of open ground underneath the proposed buoy. This would effectively connect his two separate parcels into a 9.22 acre parcel.

Mr. Madden stated that no other individuals or State agencies had objected to the proposed mooring.

Mr. Madden said that while staff was sensitive to the issues raised by Mr. Bristow, staff believed that Mr. Bristow could certainly navigate around the buoy and tong on the lease inboard of the mooring. Staff believed that the argument that he was unable to dredge in the area in question was irrelevant since his current leased acreage did not allow him to apply for a dredge permit in the first place. The proposed buoy and 100-foot swing radius did not encroach over any of Mr. Bristow's currently leased grounds.

Mr. Madden stated that accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the VMRC standard conditions for private moorings.

Commissioner Bowman asked if the applicant was present and wished to speak.

Mark Allen, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Allen stated that the buoy was only for temporary use for his sailboat when the winds were high. He said that the boat did not keep the watermen from working the lease as where the anchor was for the buoy was not leased. He stated there was no swing of the boat over the oyster ground.

Commissioner Bowman asked if anyone in protest was present and wished to speak.

Luther Bristow, protestor and leaseholder, was sworn in and his comments are a part of the verbatim record. Mr. Bristow stated the lease had been in his family since 1919. He said after the storm they found oysters on the lease and got a permit to dredge it. He said the pier would encroach on his shore and the buoy on his lease. He said he had applied for other leases, which would be ready soon. He said that this project impacted the environment and the resources.

Commissioner Bowman asked for discussion or a motion.

Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee (riparian mooring)..... \$25.00

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- 9. **RICHARD GREEN, OYSTER PLANTING GROUND APPLICATION, #2008-035:** Applicant is requesting to lease 215.37 acres of oyster planting ground within the James River near the James River Bridge in the City of Newport News. The application is protested by Mr. George Marshall, who also provided a petition with 42 signatures of watermen requesting that the area not be leased and further, that the Commission set the area aside as additional public ground.

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

Mr. Stagg explained that the requested oyster planting ground lease was immediately upstream of the James River Bridge, offshore from Huntington Park, in the City of Newport News. It was within the Thomas Rock Hand Scrape Area of the James River and was open during Commission approved dates to public harvest. The majority of the application included an area that was historically leased by J. H. Miles and Co., Inc. (Plat File 15267, 205.00 acres) and the remainder consisted of previously unleased vacant ground.

Mr. Stagg stated that the application, as surveyed, actually contained 215.37 acres. In accordance with the provisions of § 28.2-613, the Miles lease reverted to the Commonwealth on November 7, 2000, after they failed to provide documentation of significant production of oysters and/or clams, reasonable plantings of oysters, clams or cultch, or significant oyster or clam aquaculture operation during any portion of the ten-year period immediately prior to renewal. Portions of the Miles ground had been leased since 1930 and were extensively worked until the diseases MSX and Dermo adversely affected the area.

Mr. Stagg said that this application was within the same area as a previous application by Mrs. Sharon Carr. That application was the subject of a full Commission hearing in May of 2005. During the public hearing on the Carr application, Mr. Marshall stated that this area should be kept open to the public and that over 1,000 bushels of oysters were caught in this area from December 1, 2004, through March 31, 2005. Staff noted at the time that based on information provided by the VMRC Law Enforcement Division, a harvest

Commission Meeting

estimate of 1,000 bushels of oysters from this area seemed high. Also, a portion of the Carr application (approximately 80 acres) was restricted because of an existing Health Department condemnation and was not open to harvest during that time period. Subsequently, the Commission voted 4-3-1 to deny the application with a proviso that Mrs. Carr could reapply for a “more reasonable” amount of acreage. As of the date of the Green application, no such request was ever submitted by Mrs. Carr. Although, during the May 2005 hearing, Mr. Marshall requested that the Commission set the area aside as public ground, no specific Commission action was taken on his request.

Mr. Stagg explained that on May 5, 2008, Mr. Green applied for the same general area encompassed by the previous Carr application. The application was subjected to the normal VMRC public interest review and the area was surveyed in July of this year. As surveyed, the 215.37 acre area includes 121.43 acres that are open to direct harvest of shellfish and 93.94 acres that are currently restricted for direct harvest, due to the Health Department condemnation. Shellfish can be relayed from this area to unrestricted ground under a VMRC relay permit. The restricted area remains in the same location as when the Carr application was surveyed.

Mr. Stagg said that staff received a protest from Mr. George Marshall on August 18, 2008, along with a petition signed by 41 other citizens requesting that the area be set aside as public ground.

Mr. Stagg stated that Mr. Green provided additional information and a rebuttal to Mr. Marshall’s protest on September 10, 2008. Mr. Green, noted that he had worked on the water for the last 50 years. He also provided a petition signed by 42 citizens in support of his lease application. Mr. Green noted in his letter that the ground had been held as a private lease for well over 50 years and that he had personally worked the ground for the J. H. Miles Company in years past. He further noted that the area was not the best strike area in the James River, but properly seeded oysters would grow to market size before they died from the effects of MSX and Dermo. He stated he planned to plant large seed oysters here and provide work for himself and other commercial watermen and their crews.

Mr. Stagg said that on October 20, 2008, the Replenishment Department staff conducted a survey of the resources in the area of the application. That survey indicated considerable existing shellfish resources along the offshore area of the application area.

Mr. Stagg stated that based on the amount of resource found during the survey of the bottom, staff recommended setting aside from leasing the area channelward of the current Health Department condemnation line, for an indefinite period subject to any future Commission action. Staff further recommended that, if the applicant agreed, the leasing of the area along and inshore of the current condemnation line was appropriate, since this area could not be harvested for direct market, but could be used to grow shellfish for relay to other grounds in open areas and eventual harvest.

Mr. Stagg explained that the Conservation and Replenishment Department had surveyed and found considerable resource on the offshore pier and it gets less as you moved closer to shore.

Commissioner Bowman asked for questions of staff.

Associate Member Tankard asked why staff had recommended making public previously leased oyster ground. Mr. Stagg stated that in Carr's application it took that natural rock which should have been in Baylor Survey. He said that of the 100's of acres of Baylor Survey they had pretty much gotten the natural rocks. He said that from Miles working this ground helped the resources to be here. He said it had been vacant for a number of years and the public had used it since. He said when he spoke to the MPO's he did not think there was much resource there, but the Conservation and Replenishment Department personnel found considerable resource.

Associate Member Fox stated that if it were to be leased by Mr. Green he would actively work it now and in the future, which would be good for the resource and area around it. He said if established as public grounds, no one would replenish and work it, like Mr. Green proposed.

Mr. Stagg responded, yes, as there is not enough replenishment money to do all the acres. He said during the public season it was worked and then would be dormant in the summer. He said Mr. Green plans to put seed, shell, etc.

Commissioner Bowman asked if the applicant wished to speak.

Richard Green, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Green said he had applied for it and would seed and plant it. He said he had worked with Mr. Miles when he held the lease for many years. He said the ground was great and it does get strike. He said if the salinity is high because of no rain the seed will die off. He said he wanted something to work and this had always been private ground actively worked by Miles.

Mr. Green explained that Mr. Carr had tried to apply and did not get it. He said the ground was still open and that is why he applied. He explained that the watermen are an important resource and will be impacted, if he loses it. He said he had worked hard for years but now it was all gone and only a small amount make it to market. He said this would provide work for others also in the summer months. He said this would be good for him, others, and the resource.

Associate Member Tankard asked about his time as a waterman. Mr. Green stated he started out as a young boy culling. He said he worked for the Federal government for 30 years, but otherwise he had worked on the water.

Associate Member Schick asked about the condemned portion. Mr. Green stated that it could be worked in the summer months by relaying and putting them on a clean area. He said the inshore oysters drain well and have fresh water to keep them alive.

Commissioner Bowman asked for protesters who wished to speak.

George H. Marshall, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Marshall stated he had worked for 54 years for Miles, all his life. He said here was natural rocks with plenty of shell on it. He said a person could catch 15 to 18 bushels a day there.

Commissioner Bowman asked for discussion and motion.

Associate Member Tankard moved to approve the lease for the 215.00 acres as applied for. Associate Member Schick seconded the motion.

Associate Member Bowden asked if staff had done the survey. Dr. Wesson said yes, there were sizable marketable oysters there and in the rest of the James River it was low. He said there were more on this area than on the adjacent public grounds. Associate Member Bowden stated that he could not support leasing the whole 215 acres. He said watermen can work here as they are now struggling to keep working. He said he was concerned about the summer harvest and taking this out of public production. Associate Member Fox asked about where the market size oysters were found and if it was a small area. Dr. Wesson explained they found more market size offshore than inshore. He said inshore was sandy bottom and Miles had planted surf clam shells there, but it still struck.

After much discussion about the leasing of the entire area and the fact that watermen have worked this area in the past, Associate Member Schick suggested amending the motion to split the amount 50-50 dividing it with a perpendicular line.

After some more discussion about how it should be divided. Associate Member Holland offered a substitute motion to lease the condemned area and the rest to be split 50-50 with a perpendicular line (up and down). After some more discussion Associate Member Bowden offered an amendment, which would give the watermen the southern half and the applicant the northern half for his use to relay shellfish from the condemned area. Associate Members Holland and Fox both agreed to the amendment. The motion carried, 7-1. Associate Member Tankard voted no. The chair voted yes.

- 10. ENFORCEMENT ACTION:** Commission review of information indicating possible violation of Chapter 12 of Title 28.2 of the Code of Virginia, specifically unauthorized dredging undertaken by Mr. John Alvey at or near his property situated along Neabsco Creek at 16127 Neabsco Road, in Prince William County.

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

Mr. Bacon explained that this matter was continued from the September 23, 2008 Commission meeting in order to allow Habitat Management and Law Enforcement to further verify the times and dates of photographs that were provided to Commission staff showing the dredging operations.

Mr. Bacon said that Mr. Alvey's property, and the site of the alleged dredging violation, was less than a half-mile from the confluence of Neabsco Creek and the Potomac River. While the site was best described as being commercial/industrial in nature, it was located just downriver of several marinas and residential neighborhoods. The property was zoned B1 (business) and had been used as a marina in the past.

Mr. Bacon stated that this was not the first time that Mr. Alvey and the Commission had been involved in a dispute over unpermitted dredging activities. The last time occurred over three years ago. In the spring of 2005, Commission staff became aware of ongoing activities at Mr. Alvey's property that appeared to involve dredging in conjunction with the removal of derelict structures.

Mr. Bacon explained that on April 22, 2005, the Commission sent Mr. Alvey a formal letter directing him to cease all further dredging activities at his property, whether intentional or incidental. At the time, while the Commission elected to withhold further enforcement action, the Commission clearly and unambiguously warned Mr. Alvey that any further dredging in the absence of the required permits would constitute a violation of Chapter 12 of Title 28.2 of the Code of Virginia, and would necessitate VMRC enforcement action.

Mr. Bacon said that on August 21, 2008, staff received an e-mail with photos from the Department of Environmental Quality (DEQ) about dredging activities that were occurring at Mr. Alvey's property at 16127 Neabsco Road along Neabsco Creek in Prince William County. DEQ's contact was precipitated by their receipt of an anonymous complaint with pictures that showed Mr. Alvey dredging at his property.

Mr. Bacon stated that on August 25, 2008, Commission staff contacted Prince William County's Wetlands Board staff and asked if they could conduct a site visit of the property to further investigate the alleged violation, as well as, take pictures to assist VMRC staff in determining the extent of any illegal dredging activity. Upon arrival, the County staff

was told to leave the property by Mr. Alvey. County staff was, however, able to secure photos of the site from an adjacent marina.

Mr. Bacon said that based on the foregoing, Commission staff, in conjunction with a Marine Police Officer, visited the site by boat on August 27, 2008. Random soundings taken in the vicinity of the reported dredging showed several areas where the depth of the water was much deeper than the surrounding area. Mr. Alvey was not on site at the time of this investigation. While on site, staff observed and documented a moderate amount of wet dredged material on shore, as well as on the barge that was apparently used as a platform for the dredging equipment.

Mr. Bacon explained that during the Commission meeting on September 23, 2008, the Commission's counsel, Mr. Carl Josephson, questioned the potential admissibility of the photos that had been provided to DEQ and forwarded to us, along with others staff obtained, since the time, date and photographer could not be verified. In response, our Law Enforcement staff had been able to verify that the photographs were taken on August 15 and 21, 2008, that showed Mr. Alvey engaged in dredging activities. Law Enforcement staff was also informed by the photographer that Mr. Alvey had dredged on other occasions, primarily on weeknights and weekends.

Mr. Bacon said that staff believed that the continued dredging operations that were occurring at Mr. Alvey's property were a clear violation of Chapter 12 of Title 28.2 of the Code of Virginia, and necessitated Marine Resources Commission enforcement action. The Commission had previously warned Mr. Alvey that future incidents would result in enforcement action. Accordingly, in light of the current information, staff had no recourse but to recommend that the Commission find Mr. Alvey in violation of §§28.2-1203 and 28.2-1212 of the Code of Virginia with referral to the Commonwealth's Attorney and Attorney General, respectively, for the appropriate enforcement action, including possible restoration and/or civil penalties.

Commissioner Bowman asked if there were questions of staff. He asked staff if they had investigated the photographs. Mr. Bacon stated that a Marine Police Officer had contacted the photographer and was told what date the photographs were taken.

Commissioner Bowman asked if Mr. Alvey was present and wished to speak.

John Alvey, was sworn in and his comments are a part of the verbatim record. Mr. Alvey explained that there were problems in the creek and the site was a permitted marina. He said there was an influx of silt which made the creek unusable. He said he had contacted the Corps and told them what he was doing. He was told that as long as he was not dredging and just removing trash and debris he could continue. He provided photographs of the barge and debris he was removing. He said the barge was not even powered and he was using an excavator to move it. He said he takes everything up to the upland and lets it dry out so he can get the topsoil. He said the large pieces of trash come from upriver.

Commissioner Bowman asked him if while he was cleaning up the habitat, was the depth increased. Mr. Alvey responded, the Corp said not to dredge. He explained that every five years the Corps dredges the channel and the depths change then.

Mr. Alvey said that his neighbor had a very similar ramp and put a pier and lifts in, but the rain runoff goes over to his property and back into the creek. He stated that there had been dredging by other marina owners. He said the Corps does the major dredging. He said with the number of tires he collects he could go into the tire business. He provided several documents for the record, a letter from the Corps and a clean marina manual.

Commissioner Bowman asked if any permit was ever received. Mr. Alvey said the Corps' permit, but no VMRC permit, but it was a joint application process. Mr. Alvey said he submitted a FOIA request and staff could not find the original permit from the 70's.

Commissioner Bowman asked staff to read the Corps' letter, which Mr. Bacon did. Commissioner Bowman asked if he got the permit from the Corps after the fact to which Mr. Alvey responded no.

Commissioner Bowman asked if there were questions by the Commission.

Associate Member Schick stated that the Corps' letter said to get all local and state permits. He said that if the equipment had to go on state bottom then he needed to get either a no permit necessary letter or a permit.

There was further discussion about the Code and the need to acquire a permit from VMRC when taking or using State-owned bottom. Commissioner Bowman asked for further discussion or a motion.

Associate Member Tankard said it was clear to him but not to Mr. Alvey and he had been warned and notified by letter from VMRC of what to do. He said he moved to accept the staff recommendation and find Mr. Alvey in violation of Sections 28.2-1203 and 28.2-1212 of the Code of Virginia and that the matter be referred to the Attorney General and the Commonwealth's Attorney. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.

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Commissioner Bowman adjourned the meeting for lunch at approximately 11:50 a.m. The meeting was reconvened at approximately 12:46 p.m.

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11. **BOB JENSEN:** Rappahannock Preservation Society's 20/20 Program for Oyster Restoration.

Bob Jensen representing the Rappahannock River Preservation Society gave his presentation and his comments are a part of the verbatim record.

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12. **PUBLIC COMMENTS:**

Marine Debris and Derelict Trap Removal Project: (Approval of procurement methods.)

Mr. Travelstead, Chief Deputy, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. He explained that this was about a proposal for a program to put the watermen to work that have been put out of the crab dredge fishery when it was closed. He said what staff was asking for now was approval of the procurement in accordance with the Code of Virginia, Section 28.2-550, which would allow for notification being sent to all watermen eligible to participate in this program, to determine their interest. Employment would be offered to all interested, eligible watermen and payment would be at a set amount per day worked, as determined by the program guidelines. He said staff wants to be ready to proceed with the programs when the money becomes available.

Associate Member Fox asked if this was for Virginia watermen only. Mr. Travelstead responded, yes, and that Maryland is looking into similar programs for their crabbers.

Commissioner Bowman asked for further questions from the Commission. There were none. He asked for action by the Commission.

Associate Member Holland moved to approve the services for the commercial seafood industry. Associate Member Schick seconded the motion.

Commissioner Bowman stated that he appreciated the staff putting this together and asked if VIMS had been contacted. Mr. Travelstead stated that most of the work would be with VIMS.

The motion carried 8-0. The Chair voted yes.

Ken Smith, Virginia State Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith stated that the Virginia watermen were being treated unfairly. He said when a Virginian got a 255-pot license they were able to work 300 pots and when a Maryland waterman got a 300-pot license they were able to work 900 pots.

Mr. Smith said that Maryland had obtained \$3 million for their watermen to go to work and they were working to pay the money out now.

Mr. Smith spoke of a chronological timeline of what Virginia had done so far.

April 23, 2008 – Virginia Delegation sent a letter to the Governor.

April 27, 2008 – Mr. Fox wrote a letter to the Governor addressing this situation with the watermen.

May 14, 2008 – Delegations of Virginia and Maryland sent a letter to the Secretary of the Department of Commerce requesting a declaration of disaster be made.

May 22, 2008 -- Governor Kaine wrote to the Secretary of the Department of Commerce requesting that a declaration of disaster be made.

Date unknown – Secretary of the Commerce Department declared the situation a disaster.

October 1, 2008 – Oyster season opened and they had been told that there was good catch at the Drumming ground area and the catch is already down. He said it was hard work and by the second week the catch was down and the watermen were catching only 4 to 5 bushels per day.

October 15, 2008 – The Governors of Maryland and Virginia wrote a letter to the Secretary of the Department of Commerce to release the disaster money.

October 23, 2008 – The Virginia delegation asked for help to get the money released.

Mr. Smith stated that this all started back in April and there was still no money available. He said the waterman needed to work and needed money. He requested that the Commission open the crab dredge season until the money was received. He also requested that Mr. Bowden make a motion for emergency action to open all public oyster grounds in Virginia to harvest. He reiterated that the Commission needed to give the watermen some relief.

Commissioner Bowman said that Mr. Smith was a good advocate for the watermen. He stated that there had been more dialogue than he had seen in the last 10 years. He assured Mr. Smith that VMRC was in hourly contact with the Secretary of Natural Resources and the Governor and this was being hashed out on a daily basis, day in and day out. He said they want to get the money released, too. He said the Governor and Secretary had done all they can at this time and they did not want to undo what had been done. He stated that nobody wanted to do these difficult things to the watermen and did not like taking these regulatory actions, but it was necessary. He said it would be easier to just give everybody all they want so they can go away happy, but it was a time to make difficult decisions. He said he felt that the Commission was on the right path to recovery and there were rumors of stricter rules in the future which were not true. He said the Commission was looking to get a sustainable resource for the fishery. He said he knew no one wanted to hear that watermen were losing their homes and it did concern him. He said that he felt their pain and understood what they were going through. He said the current dialogue needed to continue in order to make everything better.

Mr. Smith asked about something he read regarding a "Crab Holiday" in Maryland. He said it seemed that Maryland watermen were being given special privileges.

Commissioner Bowman asked staff to respond. Mr. Travelstead said that he was not aware of it and that staff would look into it. He said that he would contact Tom O'Connell who was his counterpart in Maryland. He said that a request by County Commissioners was made on behalf of Maryland watermen to extend their season for two weeks and the Maryland Department of Natural Resources denied it.

Associate Member Bowden said he agreed that he did not want to see them lose their house and it was different for those who were suffering. He said he had great concern with the dredge survey, as too many crabs had shown up out in the water. He said it was not right to put the watermen out of work. He said right now there was no sponge crab market and the only ones sold were by Maryland watermen. He said they need to be helped now, as they had no money they needed to be put to work. He said that nothing that had been done was justified. He stated that Seaside Eastern Shore was not included in the survey. He said he had compassion because he knew what it was like to be poor. He asked about tapping into the Waterway Improvement Funds.

Commissioner Bowman stated that it had been discussed and he had been given assurance that the disaster money was coming.

Associate Member Bowden stated that next year the number of watermen would be smaller. He said on Tangier it was the worst and all those watermen were in bad shape. He said their economy was impacted because there were no land jobs. He said they needed work for the 5 ½ months during the winter. He said in Maryland the actions taken only affected the core of the industry. He stated the Commission needed to do something. He suggested that the Commission hear from others.

Commissioner Bowman opened the hearing to the public to take comments.

Charles Pruitt of Tangier was present and his comments are a part of the verbatim record. Mr. Pruitt stated that he had removed all pots as he was required, but he was going under because working on the water was his only job. He said that crabs are in abundance and that there was no shortage. He said he caught 69 bushels on Saturday and others had as well. He said he needed an answer to their problem and the Commission only made more laws. He said they cannot abide by them because their family would starve and they just want to work to make money. He said they did not want any handouts. He suggested that a basket limit be put on the catch and let them work. He said when the number of watermen is down the catch will be also. He said he understood what the Commission was trying to do and they too want the crabs to continue to exist. He said the laws that were on the books did not work. He said they needed to listen to the watermen as they know more than the scientist. He said the country is in bad shape. He said they do not want hand outs, they only want to work.

Dennis Crockett, former Mayor of Tangier, was present and his comments are a part of the verbatim record. Mr. Crockett stated that the Church was affected, Tangier Oil Company was affected, and he was affected. He said the watermen were asking for a bushel limit and he agreed. He said he never would have thought to hear this. He said the Marine Police Officers can be present at the landing sites and control the number of crabs. He said you cannot do closure for a week or month it affects all of them, especially to just one group of the industry. He said they were not asking for a handout only asking for work. He asked where the numbers in the survey came from and stated that the numbers were wrong that were given to the Board. He said like Mr. Pruitt said, it was too drastic. He said they see crabs being harvested during the season and wondered what is wrong. He said he knew there was pressure from Richmond, but the Board needed to vote their consciences. He said there was no reason for the amount of hardship and the Commission should put a bushel limit of the crab harvest.

James Eskridge, Mayor of Tangier and waterman, was present and his comments are a part of the verbatim record. Mr. Eskridge asked about how important the survey was to the Commission in making their decision.

Commissioner Bowman explained that they depend on a compilation of all studies by staff and their recommendations. He said the survey was an important part.

Mr. Eskridge said that the VIMS personnel said the numbers were down and it would be a slow season, but there have been crabs caught, mostly peelers. He said something was wrong. He said he had so many crabs he had to use someone else's space to store the crabs. He said the numbers on the graphs say one thing, but out there harvesting something different had occurred. He said there was a need to cut the monies for the number crunchers. He said they had worked with regulations before. He said the Governor had contacted him to do a list and make suggestions, but they were ignored. He said they were willing to work with regulations and not be asked to tie up for 6 months so that they can not work. He said the Commission needed to be reasonable with the regulations. He said he understood the need for regulations, but they needed to work and they can work with regulations, even more, if necessary.

Tammy Pruitt, Onancock crabber, was present and her comments are a part of the verbatim record. Mrs. Pruitt explained that over on Tangier the young people were encouraged to work on the water. She said her husband was going for a job interview and would be asked about his education, but he will have to tell them that he dropped out of school. She said he did this so he could work with his Father. She stated that these were extreme regulations, as they have bills to pay and he needed something to do. She said that the Commission would listen to the scientists who were educated, but they would not listen to the watermen. She said when she used the cull rings, the crabs just crawled right out and they were almost 6 inches. She asked why there was a need for cull rings, as they were so large that they lose the legal size crabs. She said that crab dredging was a way of living and the only one known by these watermen or only one that they have. She

explained that she was a ninth grade teacher and when she asked her students what they will do later, most say they will worry about it later. She said the watermen want to work and the Commission needed to use their common sense and she was asking them to do that. She said they do not want handouts. She said right now she is trying to sell her husband's boat as they could not afford to keep it and she works. She said the VMRC made a mistake when they closed the dredge industry. She said this spring when there is a higher number of crabs, there will be no market.

Dennis Dalheim, Poquoson waterman was present and his comments are a part of the verbatim record. Mr. Dalheim stated that this was an opportunity to do something and the country was now in terrible shape. He suggested that an emergency regulation be established with a 25 bushel limit per day and allow the watermen to continue to work. He said he could not see putting everyone on edge with a lack of information and something needs to be done. He said until the 23rd of March he will suffer and he hoped that VMRC had compassion. He said he did not like to beg as he had worked hard. He said if you give a little you get a little. He asked that the emergency regulation be approved so that he could survive.

Dan Dise, Tangier Watermen's Association was present and his comments are a part of the verbatim record. Mr. Dise said he spoke with staff about the winter dredge survey and they had no idea of the peeler run. He said they are catching 60-70 baskets of peelers because the winds were bringing them in. He said staff had said there would be a decent catch in the fall and until then it would be slow. He said that been contradicted by what they've seen out on the water. He said there have been market problems and now there will be no crab dredging. He said that VMRC was working on HB-2's, which are the pickers, and if there were 50 pickers it would not help the crab house, except for the summertime. He stated that VMRC is creating a bigger problem. He said that he was poor, is poor, and will probably die poor. He said that the blue crab committee had come up with suggestions and they were not even considered. He said it seemed to be all or nothing and the watermen had got the nothing.

Charles Pruitt stated that it looked like the blue crab took precedence over the watermen; the crabs were more important. He said that should never happen.

Associate Member Bowden said that he was put on the Board by Richmond, but God put him on this earth and he was going to do what needed to be done. He said as the watermen have said in the spring crabs will be worthless as they were loaded with them. He said someone had shown him their catch and he knew. He said the ones being affected were the full-time watermen and there was a need to do something and have a back up plan. He said there was more reduction than was originally told because of the cull rings. He said they were told that VIMS would be doing research on the cull rings. He said he believed the watermen because he knew when someone was telling him the truth and when they were not. He said he has been told about the cull rings letting the crabs out and he was told that there was not a need for them on the Eastern Shore, as all

the crabs get out. He said he suggested that the Commission give the watermen the first fifteen days of November with a 40 bushel limit. He said that VMRC had overstepped the boundaries set by the Code.

Associate Member Bowden moved to open the season from November 1 through November 15 by emergency regulation. Associate Member Holland seconded the motion.

Commissioner Bowman stated that he believed that we are at a juncture where if the current plan were not continued there would be a lost opportunity to return the crabs to an historical level. There was much discussion about alternate funding, such as the Waterway Improvement Fund being used until Federal disaster funds come through. Commissioner Bowman explained that to use these \$1.7 million from the Waterway Improvement Funds until the Federal money came through would deplete the funds. Associate Member Fox asked about projects that the watermen could participate in. Commissioner Bowman stated that they could be involved in the waterway cleanup, which required special equipment. He said that staff was working on other alternatives. Mr. Travelstead said that they want to put as many watermen to work that are directly related to the crab fishery. He said that 50 people could go to work now, but there was concern that prior expenditures would not be reimbursed.

Associate Member Fox suggested that the motion be amended to stipulate that when the money comes in, the season would close. Associate Member Bowden and Holland both agreed. The motion failed, tie vote, 4-4. Associate Members Laine, McConaugha, and Tankard all voted no. The Chair voted no.

* * *

Douglas Jenkins, Twin Rivers Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins explained that at the Shellfish Management Advisory Committee meeting he had requested that an 8-bushel limit be put on the Yeocomico-Coan-Rappahannock for the replenishment project and it was not done. He said he was asking again. He said watermen in the area have small boats. He said watermen should be able to work the Baylor grounds and asked that the project be started in November. He said the Potomac River tributaries watermen need to work.

Commissioner Bowman asked Dr. Wesson to comment. James Wesson, Conservation and Replenishment Department Head, explained that they were set up to run the program and he was comfortable with the plan, as they could handle 25 people.

Mr. Jenkins stated that there were a lot more that wanted to sign up but they were, including him, waiting to see if the limit could be changed, as they wanted a better plan so everything would not be caught up in a few days.

Commissioner Bowman explained that he thought Mr. Jenkins made good sense with his request.

Dr. Wesson stated that they have worked with groups with the Replenishment projects all the time and he asked that he be allowed to up the limit if a number of watermen do not show up. He said the Conservation and Replenishment staff was easy to work with.

Associate Member Bowden said he was glad to hear that they were easy to work with and moved to set an 8-bushel limit for the Yeocomico and Coan Rivers and Rappahannock River (Wickes Bar) Replenishment Project. Associate Member Schick seconded the motion. The motion carried, 7-1. Associate Member Fox voted no. The Chair voted yes.

Mr. Jenkins asked about opening sooner, because of the Thanksgiving Holiday; and, Jack Travelstead, Chief Deputy, Fisheries Management, responded that staff would do all they could to back the date up; and the participants would be notified.

* * *

Jack Travelstead, Chief Deputy, Fisheries Management, explained that he had spoken with Tom O'Connell regarding the crab holiday provision. He said Mr. O'Connell said that this had no impact on the female crabs, as the seasons ends October 22nd. He said Mr. O'Connell said that the holiday issue was to work around the holidays and for the watermen to take a Saturday or Sunday off.

* * *

Request for reinstatement of oyster harvest license:

Julian Booker Webb, waterman, was present and his comments are a part of the verbatim record. Mr. Webb said he got a ticket because he was above the line, the line on the chart and the line goes across the river.

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement, gave the presentation. Lt. Col. Rhodes explained that on October 9th Mr. Webb was harvesting in an area that was closed to harvest. He said he was summonsed and his license and oysters were confiscated, in accordance with the penalty required for such violation, established in Regulation 4 VAC 20-720-10. He read the penalty section into the record.

Commissioner Bowman asked how far over the line was Mr. Webb. Mr. Webb stated 75 yards. Lt. Col. Rhodes stated that he was not present.

Commissioner Bowman asked for action by the Board.

Associate Member Bowden moved to reinstate Mr. Webb's license. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Mr. Webb asked if he still needed to go to court? Commissioner Bowman stated yes, but Lt. Col. Rhodes would contact the courts in regards to the action taken today. Mr. Webb asked if he could go back to work now? Commissioner Bowman responded, yes, he could go back to work.

* * *

Scott McDonald, Gill Netter, was present and his comments are a part of the verbatim record. Mr. McDonald explained that at last month's meeting there had been discussion about a request for a moratorium on gill nets. He said he wanted to know about the status of that request.

Commissioner Bowman asked staff to comment. Jack Travelstead, Chief Deputy, Fisheries Management, stated that the issue would be best heard by FMAC first.

Mr. McDonald stated that the Maryland watermen needed to be kept out of Virginia waters.

Associate Member Bowden explained that there was a lot of quota moving out of Virginia. He said the Virginia watermen could not get a striped bass permit in Maryland because they did not have a Maryland address. He said as long as he had been a waterman he could not get one. He said this needed to be looked at and they needed to be treated the same as they treated the Virginia watermen. He said right now there were a number of fish that were under quota.

Mr. Travelstead stated that the Commission needed to give staff some guidance. He said at the present time staff is very busy with other issues. He asked if they wanted limited entry on all gill netting in Virginia.

Associate Member Bowden responded that there was a need to do something. He said that Maryland was not being fair and in Virginia the out of State fees were lower than in Maryland. He said the dealers and the watermen needed to be protected. He said this was not a pressing issue for everyone, but for the watermen it was. He said the Commission needed to move forward on the spiny dogfish, too.

Mr. Travelstead explained that the General Assembly had given the Commission the authority to raise the fees every three years, but it was attached to the Consumer Price Index. Commissioner Bowman stated it could not be an impediment. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, said that was correct, the interstate clause intended the increase to cover the State's administrative and enforcement costs. He said the Commission could charge more for out-of-State. Commissioner Bowman explained further that they could be charged the same as the State they come

from. He said it was supposed to be equal, but not be an impediment. Associate Member Holland asked if we can be charged the same as Maryland. Commissioner Bowman said yes, on the reciprocal license.

Mr. Travelstead suggested a small group be formed to find some solution as to the best method for solving this problem. He said a meeting could be held in November. Commissioner Bowman stated that he would form a group to be made up of the following individuals: Associate Member Bowden, Associate Member Holland, Mr. McDonald, and Mr. Travelstead. He said this group would get together and report back to the Commission.

No further action was taken.

* * * * *

24. FAILURE TO REPORT CASES:

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist provided a hand out for the Board.

Mr. Grist explained that in Section 60 of Regulation 4 VAC 20-610-10 et seq., "Mandatory Harvest Reporting", describes the requirements of mandatory reporting for commercial fisherman (Attachment 1). It is unlawful for any valid Commercial Fisherman Registration Licensee to fail to fully report their harvests and related information, as set forth in this regulation. Subsection 60.D states that registered commercial fishermen shall submit a monthly harvest report to the Commission no later than the 5th day of the following month. Subsection 60.F states that registered commercial fishermen not fishing during a month shall so notify the Commission no later than the 5th of the following month (by postage paid postal card provided by the Commission or by calling the Commission's toll free telephone line).

Mr. Grist said that on June 20, 2008, staff sent notice letters, by certified mail, to 165 individuals that were found to be missing monthly Mandatory Harvest Reports from each of the following years: 2006, 2007 and 2008. Enclosed (Attachment 2) is an example copy of the notice letter, which includes instructions on contacting staff to resolve this matter, as well as notice that if the issue was not resolved by August 8, 2008, then staff would proceed with a formal compliance hearing before the Commission. By August 8, 113 individuals had provided their monthly Mandatory Harvest Reports. However, 52 individuals continued to be out of compliance. Of the 52 individuals, 28 individuals signed for the certified letter notifying them of the delinquency. Twenty-two individuals did not claim their certified letter and one individual's letter was returned as undeliverable (address on file incorrect).

Mr. Grist stated that on September 30, 2008, staff sent notices of hearing, by way of Law Enforcement, to each individual. Enclosed in the packet was an example copy of the summons. Staff originally provided a 45-day period for resolution of this compliance issue, ending August 8, 2008. Staff recommendations, as follows, would allow an additional period to resolve this issue, but with step-wise sanctions if this issue is not resolved. The notice of hearing also notes, to each individual, what the staff recommendation will be and the individual's failure to appear before the Commission may result in the immediate suspension and/or revocation of their license(s), regardless of the staff's recommendation. All individuals will be notified by certified mail of the Commission's final decision.

Mr. Grist said that staff recommended two-year probation for all 52 individuals. During probation, should they incur any violation of Regulation 610, of any other regulation passed by the VMRC, or of any of the laws relating to the Marine Resources of the Commonwealth, they should appear before the Commission and a suspension of their license is recommended. If all missing reports, to date, are not resolved to the satisfaction of staff by February 28, 2009, the individual will be denied their 2009 Commercial Registration License for the entire year. If all missing reports, to date, are not resolved by February 28, 2010, the individual will be denied their 2010 Commercial Registration License for the entire year. If this individual does not appear at the October meeting of the Commission, staff recommends the suspension of all commercial licenses, until his appearance before the Commission.

Mr. Grist stated that the following 18 individuals had agreed to accept the staff recommendation is for probation until such time as their get their records up to date or by February 28, 2009.

Phillip L. Haywood	Gregory A. Stratton	Billy W. Belvin	Vincent Riggan
William J. Parks	Ernest C. Ashton	Joe D. Richmond	Lester L. Ashton
Clarence A. Jewell	Douglas M. Stiles	Gregory S. Martin	Elijah T. Firth
Ricky K. Guthrie	Curtis M. Elbourn	David W. Bell	William T. Manning
Jimmy B. Jones	Paul D. Stark	George C. Hall	

Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Lennie B. Callis

Rufus Ruark said he wished to speak on behalf of Mr. Callis. He explained that he had purchased Mr. Callis' boat and pots and had talked about transferring the license to his son. He said that Mr. Travelstead had told him to hold off. He said Mr. Callis had thought that he was reporting, but he had forgotten to send in the green cards. He said he still wants to transfer it to his son.

Commissioner Bowman asked if the records were up-to-date. Mr. Grist said he still needed to work with staff to clear up his record and that staff still recommended probation until the record was cleared up.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Floyd N. Carmine

Floyd N. Carmine was sworn in.

Mr. Grist explained that Mr. Carmine had agreed to probation.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Alfred M. Stratton

Mr. Grist stated that the reporting was not updated and staff recommended 2-year probation until get the records up-to-date by February 28, 2009, if not, then he will not get his 2009 license. He said Mr. Stratton had received all of the notifications.

Alfred M. Stratton, was sworn in and his comments are a part of the verbatim record. Mr. Stratton explained that he worked with his brother and he keeps the paper work straight.

Commissioner Bowman stated that he and his brother needed to get it straight.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Commissioner Bowman asked how many still present agreed to the staff recommendation. He asked Mr. Grist to repeat the staff recommendation.

Mr. Grist stated that the staff recommended 2-year probation and any other violations of any regulations and laws will cause them to have to appear before the Commission and their licenses to be suspended. If their records are not corrected by February 28, 2009, they will not get a license in 2009 and if their records are not corrected by February 28, 2010, they will get a license in 2010.

The watermen in this group are listed below:

Kenneth L. Green	William T. Manning	John K. Marshall	Frank S. Carpenter
John H. Allen	Andrew T. Parks	Billy N. Pate	

Associate Member Holland move to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Associate Member Fox asked if these individuals would be notified in writing of what actions were taken today in their individual cases. Mr. Grist stated that certified, return receipt letters will be mailed.

Paul H. Somers

Mr. Grist stated that Mr. Somers had received all notifications and reports are done. He said Mr. Somers accepted the staff recommendation.

Paul Somers was sworn in and his comments are a part of the verbatim record. Mr. Somers stated that he was a pound netter and he had no gear overboard at the time. He said it was an oversight on his part not to send in the green cards.

Commissioner Bowman stated that there had been only 1 discretion prior.

Associate Member Bowden moved that the Commission not put any probation on Mr. Somers. Associate Member Fox seconded the motion. The motion carried, 8-0.

Stanley L. O'Bier

Mr. Grist explained that he received all notices and his reports are done.

Standley L. O'Bier, was sworn in and his comments are a part of the verbatim record. He said he never received the certified letter, the summons only. He said that staff had found his 2006-2007 records and he was only behind on his 2008 reports. He said when he went to pick up his striped bass tags, he brought his reports, but had left some information off of them and took them back to correct. He said he forgot to turn them in.

Mr. Grist said that staff still recommends probation as they were not turned in until after the deadline.

Associate Member Schick moved to accept the staff recommendation for 2-year probation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

George B. Crockett

Mr. Grist explained that he did receive all notices, but he was still not up to date.

George B. Crockett, was sworn in and his comments are a part of the verbatim record. Mr. Crockett said he talked to staff and they called his reports up on the computer and

then let him know what they did not find, which was October – November 2007. He said they had left him a message on his phone that it was September 2007. He said he did not receive the certified letter.

Mr. Grist said they had his return receipt signed by him in their records.

Mr. Crockett stated that it was not his signature.

Commissioner Bowman asked how far behind was he and were there any previous occurrences.

Stephanie Iverson, Fisheries Management Manager, stated that he still had October and November 2007 missing.

Mr. Grist stated the staff recommended the 2 year probation and that he get his records up to date by February 2009.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Dennis J. Fatony

Michele Fatony, wife of Dennis Fatony, explained that the staff found the reports today and they did turn them in on time. She said staff told her they were misfiled.

Ms. Iverson explained that they had found that his October reports were mixed in with his July reports.

Mrs. Fatony stated that she mailed in the green cards for herself and him in the same envelope, as she had been instructed to do by staff.

Commissioner Bowman asked if there were any previous problems with reporting. Mr. Grist stated that there were 4, the most recent was resolved in August 2006 and he was on the short summons list.

Mrs. Fatony stated that they had sent in copies and cleared up the problems from before.

Associate Member Schick moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 8-0.

Mrs. Fatony asked why he was being put on probation when the staff messed up.

Ms. Iverson explained that they did find July's in October, but they were still missing the 3 prior months.

Mr. Grist said they received the certified letter and it was then it should have been resolved.

Commissioner Bowman stated that he had a history in 2003, 2005, 2006, and 2008. He said there was some mistake here, which happens. He said he recommended no probation, but they needed to get the reports in on time.

Associate Member Schick moved to accept the recommendation of Commissioner Bowman. Associate Member Bowden seconded the motion. The motion carried, 8-0.

Lois A. Miles

Mr. Grist stated that they did not get the letter, but they did get the summons.

Mr. Miles, son of Lois Miles, stated that he had gotten them straight with staff and they were up to date. He said the only problem was he had not sent the cards for “no activity” into the office.

Mr. Grist stated that this was the first violation and there was no history of summons.

Associate Member Bowden he moved to not put Mrs. Miles on probation. Associate Member Holland seconded the motion. The motion carried, 8-0.

Mitchell G. Kellum

Mr. Grist stated that he received the letter and was up to date as of today.

Mitchell G. Kellum, was present and his comments are a part of the verbatim record. Mr. Kellum explained that someone else handles the reporting and his number was left off the card. He said he crabbed with peeler pots and gill netted with others. He said he did call VMRC and found some confusion when he called. He said he has been a full-time working waterman the entire time and it was not his fault the paperwork was not done.

Mr. Grist stated that there had been some compliances issues in 2004 and 2005. He stated also that the individual is responsible for his own reporting.

Associate Member Holland moved to accept the staff recommendation of probation. Associate Member McConaugha seconded the motion. The motion carried, 8-0.

Roger L. Williams and Elizabeth A. Williams

Mr. Grist said that neither received their letters, but were served their summons. He said there were no previous violations and no tickets and recommend no probation, but recommended they keep the records up to date.

Associate Member Bowden moved to not put on probation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Ronald L. Haywood

Mr. Grist explained that he did not receive the letter and was not up to date for the missing months. Holly Aber, Fisheries Management Technician, stated that he was working with another waterman.

Ronald L. Haywood, was sworn in and his comments are a part of the verbatim record. Mr. Haywood said that it was just since May that it was not reported by the other waterman. He said it was his first year having a license that he got from his father. He said this was his first year buying a gear.

Commissioner Bowman asked if there was not a problem in 2003 as there was no record of it being straighten out.

Mr. Haywood stated that he did not own a boat and worked with someone else.

Commissioner Bowman asked if he understood the importance of turning in the green cards now. Mr. Haywood responded yes.

Associate Member Bowden said that considering it was his first year and he had inherited the problem from 2003, he moved no probation, but suggested he make sure the paperwork gets in. Commissioner Bowman suggested adding to the motion, that if the records are not clear up by February 2009, he will be put on probation. He suggested he get with staff between now and February 2009. Associate Member McConaugh seconded the motion. The motion carried, 8-0.

Mr. Grist stated for the remainder of the list that has not appeared at this hearing, the staff recommended suspension of their license until they appear before the Commission. The following individuals are listed below:

Earl T. Colona	Richard A. Costin	James G. Thomas	James A. Taylor
Robert W. West	James T. Newsome	James C. Baker	James A. Foster
Howard E. Bohannon			

Associate Member Schick moved to accept the staff recommendation for suspension of licenses. Associate Member Holland seconded the motion. The motion carried, 8-0.

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23. REPEAT OFFENDERS

Warner Rhodes, Deputy Chief, Law Enforcement gave the presentation and his comments are a part of the verbatim record.

Joseph Keith Forrest of Gwynn, Virginia

Lt. Col. Rhodes explained that Mr. Forrest had called and requested a continuance.

Associate Member Fox moved to grant the continuance, as requested. Associate Member Holland seconded the motion. The motion carried, 8-0.

Eugene Nettles of Hampton, Virginia

Lt. Col. Rhodes explained that Mr. Nettles had 2 summonses. He said Mr. Nettles was summonsed for commercially taking and possessing for sale unculled male hard crabs and commercial crabbing outside of the regulated time limit. He said Mr. Nettles had gone to court and was found guilty. He said staff recommended 12-month probation, starting April 1, 2009.

Mr. Nettles was sworn in and his comments are a part of the verbatim record. He stated he did not realize the time had been changed.

Associate Member Holland moved to approve the staff recommendation for 12-month probation. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The chair voted yes.

Freddie Kline Pruitt, Jr. of Onancock, Virginia

Lt. Col. Rhodes explained that Mr. Pruitt explained that there had been two summonses since June 1 for obstructed cull rings. He said the last one was in September. He said Mr. Pruitt had gone to court and was found guilty.

Tammy Pruitt, wife, was sworn in and her comments are a part of the verbatim record. Mrs. Pruitt explained that the judge had given him a reduced fine. She explained that he had had engine problems between the tickets. She said he went out to open the cull rings after the first ticket but did not get back to them for about a month because his boat engine was being repaired. She added also that his Mother had been ill during this time.

Commissioner Bowman asked about any earlier violations. Lt. Col. Rhodes stated in September 2007 he was summonsed for unculled crabs.

Mrs. Pruitt explained that at the start not all the cull rings have to be opened. She said they have had \$6,000 in bills for the engine repair and he can only get his boat if he can pay the bill. She said the pots were not obstructed and they tried to correct it.

Associate Member Bowden stated that he knew of Mr. Pruitt and knew about the engine repairs from others. He said he suggested no probation, but emphasized that Mr. Pruitt not return to the Commission for the same problem. He moved to approve that there be no probation. Associate Member Tankard seconded the motion. The motion carried, 8-0. The chair voted yes.

Jackie L. West of Achilles, Virginia

Lt. Col. Rhodes explained that Mr. West had 3 convictions since June 1 -- Set crab pots without cull rings, set crab pots with cull rings obstructed, and fish crab pot before legal time. He recommended that Mr. West license be suspended for 12 months starting April 1, 2009.

Jackie L. West was present and was sworn in.

Commissioner Bowman asked about prior violations. Lt. Col. Rhodes responded, none prior in 12 months.

Associate Member Bowden moved to approve 12-month probation, starting April 1. Associate Member Schick seconded the motion. The motion carried, 8-0.

Richard L. Green

Richard L. Green, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Green stated that he received a summons for uncultured oysters and that he had used the Conservation and Replenishment cull stick issue to him. He stated that it was too short and not calibrated.

Commissioner Bowman stated that if a guide is issued you expect it to be the correct size.

Mr. Green stated that he had already paid the fine by mail.

Lt. Col. Rhodes stated that the cull stick was 2 7/8 to 2 15/16 inch size. He said Mr. Green will still be appearing in Court. He said that a Marine Police Officer will be sent.

Associate Member Schick moved to dismiss the charges. Associate Member Holland seconded the motion. The motion carried, 8-0.

Christopher Newman

Lt. Col. Rhodes explained that Mr. Newman received a summons for hand scraping after hours in the Rappahannock River. He was caught working at 1:50 p.m.

Christopher Newman, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Newman stated that he did not realize the time had change; it was not done intentionally.

Lt. Col. Rhodes stated that he recommended that because he had a clean record, his permit and license should be returned.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Curtis Edwards

Lt. Col. Rhodes explained that he was summonsed for unculled oysters and his court date is November 19.

Curtis Edwards, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Edwards explained that the cull was too short and the undersized oysters would not fit.

Lt. Col. Rhodes stated that there are a lot of oysters under legal size.

Associate Member Schick moved to dismiss the charges. Associate Member Holland seconded the motion. The motion carried, 8-0.

Associate Member Schick asked staff about the cull sticks. Dr. James Wesson, Head, Conservation and Replenishment, explained that the cull sticks were cut by a machine shop and they check them out and they were three inches.

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- 13. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to establish final regulations for the winter 2008 recreational fishery.

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

Mr. O'Reilly explained that the public notice indicated the management options, for the December 2008 fishery. The Commission can 1) maintain the one-fish limit, from

December 10 through December 31, as in 2007; 2) lessen the number of days in December that this fishery is managed by a 1-fish limit; or 3) establish a 2-fish limit, for the entire month of December.

Mr. O'Reilly said that FMAC approved the 2-fish limit with only one abstention

Mr. O'Reilly reviewed the table on public comments that had been received. He said that there had been 22 comments received. He said 3 supported no change for 2008; 18 were in support of a 2-fish limit for the entire month of December; and 3 letters of support from Ad-hoc members for the 2-fish for the month of December.

Mr. O'Reilly explained that the 2008 license sales were down and said that 2007 – 2008 and 2008-2009 boat licenses and single licenses were down quite a bit. He said in June, July, August, and September versus the 12-month period were 12,000 versus 17,000. He said in 2007-2009 there were 29,000 and 10,000 in July, August and September. He said the saltwater licenses were for 12 months; not a calendar license. He explained that in August 2008 there were 6,100 individual licenses and 3,500 boat license compared to August 2009 were it would be 5,700 individual licenses and 2,700 boat licenses.

Mr. O'Reilly stated that in Section 28.2-203 of the Code of Virginia it establishes the aspects to be looked at, which are biological, social, and economic. He stated also that poor recreational quota management impacts the commercial watermen. He said the track record since 1990 for pounds landed. He said in 2003, 2004, and 2006 there were large overages. He said that 6 times the harvest has been over quota and 3 times under. He added that 2007 was under quota. He reviewed various tables, one being a chart for size frequency, which indicated that large fish being caught was still a problem. He also stated that the Saltwater Fishing Tournament, Figure 3, indicated a trend of increasing catches of large striped bass. He added the Maryland juvenile exploitable index was very poor.

Commissioner Bowman asked if there were questions of staff.

Commissioner Bowman asked if there was no correlation between effort and harvest. Mr. O'Reilly stated yes, but it was weak. Commissioner Bowman stated that no people were fishing, there was no abundance of fish and license sales were down. He said had an equation adjustment been considered for decision making for number of fish? Mr. O'Reilly said FMAC was pushing it now because of low harvest and not banking on the bay-wide quota. He said 5 to 10% would not be a big problem. He said the question was who can fish in December, not as much as last year. He said if the availability was there, the Commission could take the risk.

There was discussion by the Board about the financial impact on the tournaments and the fact that the charter boats were having hardships similar to the crab fishery. Mr. O'Reilly said that from what he heard last night the bookings were off and it was important to the

fleet to have 2-fish rather than one. He said staff's information indicates this was a volatile fishery. He stated that the Maryland fleet fishing here was another component.

Commissioner Bowman asked if there would be an overage in 2009. Mr. O'Reilly said that staff wants to wait and work with the Ad-hoc committee and FMAC on next year.

Commissioner Bowman opened the public hearing.

Bob Pride, representing the Virginia Charter Boat Associate, was present and his comments are a part of the verbatim record. He said that half of the members report a 20% to 80% drop in sales. He said for a long time corporate customers made up 80% of the new business. He said there were no calls and he thought they were assuming that the price was up because of the general state of the economy. He said they would like to see 2-fish, as it would be better for getting bookings for charters. He said they felt there was no risk going to 2-fish for 2008.

Commissioner Bowman closed the public hearing.

Commissioner Bowman asked for discussion or a motion on this matter.

Associate Member Schick moved to approve 2-fish limit as he felt a lot less fish will be caught. Associate Member Holland seconded the motion. Associate Member Bowden explained that at the FMAC meeting Mr. Powers and Mr. Pride said the same thing and that was overage cannot be allowed bay-wide. He said the commercial industry going under could not be banked on and he supported the motion, because next year if it comes back he stated that he would be terrible. Associate Member Tankard stated that he liked to be able to catch 2 fish from December 21 through December 31, but there was a need to be conservative and not go over and he agreed with the staff recommendation. Associate Member Laine said that with overage history, he would be scared of the consequences if an overage occurred in 2009. He said he felt it would be better to give up 10 or 11 days and be allowed to have a 1-fish limit for 10 days. **The motion failed on a tie vote, 4-4. The Chair voted yes.**

Associate Member Laine moved for a 1-fish limit for a 10-day period as recommended by staff. Associate Member Tankard seconded the motion. The motion carried, 6-2. Associate Members Holland and Schick voted no. The Chair voted yes.

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- 14. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-910-10 et seq., "Pertaining to Scup" to reduce the Winter II trip limit from 3500 pounds to 2000 pounds.

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

Ms. Nelson explained that the NMFS had announced the unused portion of the Winter I period quota was 96,912 pounds. She said that because the amount transferred is less than 499,999 pounds, the possession limit per trip will remain at 2,000 pounds for the Winter II period.

Ms. Nelson stated that to date there had not been any public comments received.

Ms. Nelson said that staff recommended adopting the draft Regulation 4 VAC 20-910-10, et seq., which adjusted the Winter II possession limit to 2,000 pounds.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed

Commissioner Bowman asked for a motion from the Board.

Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

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- 15. **PUBLIC HEARING:** Final consideration of emergency amendments to Regulation 4VAC20-260-10 et seq., "Pertaining to the Designation of Seed Areas and Clean Cull Areas."

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

Dr. Wesson explained that this emergency regulation simply removed the maximum cull size from areas 4 through 6 in the Lower Rappahannock River. He said those areas had been harvested for many years, and there was almost no large oysters in the area. He stated that the three areas below the bridge would be managed by the 4 ¼ inch maximum cull size limit. He staff expects no public comments on this matter.

Dr. Wesson said that staff recommended making this emergency regulation 4 VAC 20-260-35, et seq., a permanent part of Regulation 4 VAC 20-260-10, et seq., which is in the Commission's packet.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He asked for a motion from the Board.

Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

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16. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-20-10 et seq., "Pertaining to the Licensing of Fixed Fishing Devices"

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

Mr. O'Reilly explained that the Commission advertised to revamp Regulation 4VAC 20-20-10 regarding pound net priority rights. He said that weather events on the Bayside Eastern Shore had prevented the setting of nets and the long time fishermen would lose their license and production would also be lost. He said at FMAC the discussion was about the fact that 11 storms in August 2008 had kept fishermen from setting their nets. He said that staff at the last meeting had suggested that they work with FMAC to find a solution. He said there was three aspects to this issue: 1. Cap # licenses at 161, unless it involved the upriver catfish, 2. Keep the grey trout exemption, can not work and keep grey trout, 3. Interest in the fishery – 10 vacant locations in the last year and none the previous years. He said it was a declining fishery, but it would be a lost opportunity if the Commission forgot to set the license rule.

Mr. O'Reilly stated that FMAC suggested that you have to set and fish 1 out of 3 years.

Mr. O'Reilly said that staff recommended that the current requirement be waived in 2008 and still be allowed to retain priority rights to the location in 2009.

Commissioner Bowman opened the public hearing. There were no public comments and he closed the public hearing. He asked for discussion or a motion from the Board.

Associate Member Schick moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 8-0.

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- 17. PUBLIC HEARING:** Proposed regulation 4VAC20-1170-10 et seq., "Pertaining to Requirements Related to the Purchase of Fish from the Catcher", to require the use of certified scales.

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

Mr. Grist explained that at the September 23, 2008 Commission meeting a public hearing was held for the proposed amendments to Regulation 4VAC 20-620-10, et seq., "Pertaining to Summer Flounder" to establish the commercial harvest seasons, trip limits, and landing periods and to repeal possession limits.

Mr. Grist further explained that it was extremely difficult for Law Enforcement to produce convictions for cases involving vessel overages in the flounder directed fishery, as well as most other fisheries. He said currently the Seafood Buyers are not required to have certified scales for measuring the weights of seafood catches.

Mr. Grist stated that staff sent by fax inquiries to Virginia dealers, asking if their business currently used certified scales. He said staff had received nine responses and eight had indicated they were currently using certified scales. He said that the use of certified scales ensure that the true weight of seafood harvested is reported to the Commission through the Mandatory Harvest Reporting Program. He said by signing the receipt issued, the purchaser verifies that the weight measurement was determined using certified scales in possession of the purchasing company, and was overseen by a representative of the purchaser.

Mr. Grist said that staff recommended adoption of the draft Regulation 4 VAC 20-1170-10, et seq. He said blue copies of the draft regulation have been provided to the board with 2 slight modifications.

After some discussion about reporting between the board and staff, 1st Sergeant Ben Majors was asked to comment.

Officer Majors explained that Law Enforcement was concerned about the use of weight scales because in the wholesale portion of the business it was not required, but it was in the retail. He stated that it was a problem getting convictions for overages on flounder, shark, etc. He said in order to enforce the poundage quota the fish needed to be weighed on certified scales.

Associate Member Bowden asked if these were small overages in the dismissed cases. Officer Majors stated no, that in was in cases of large overages.

Commissioner Bowman opened the public hearing.

Meade Amory, Amory Seafood, was present and his comments are a part of the verbatim record. Mr. Amory explained that they agree with the staff recommendation because they use the certified scales. He said the problem was that they signed these receipts late at night, because early morning personnel were not qualified to be certified. He stated that with scallops, flounders, and dogfish if they are murky, you have to wait a day or two to get a true weight. He said that certified scales with stickers should be enough. Him signing the receipt was a problem.

Commissioner Bowman said that technically you cannot take the scales to court.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, said that the scale number would not account for each and every transaction.

Mr. Amory asked what would happen if there is not a signed receipt. Commissioner Bowman stated that it would be a violation. Mr. Amory said that there was a problem with the weight of poor fish because when it gets sent out to retailers they do not want to pay but according to the weight when they receive it. He stated that one could measure the length of the fish with a tape measure and take the scales to court.

Scott McDonald was present and his comments are a part of the verbatim record. Mr. McDonald explained that fish drain and does not reflect a true accurate weight until they do, which caused him to hesitate to sign a receipt until they do. He said they adjust the weight constantly and how do you know that the scales stay certified.

Commissioner Bowman stated that it was only being certified, not actually accurately weighed. Mr. Amory stated that an accurate weight is needed before the receipt is signed.

Commissioner Bowman explained that the Commission was looking for wins in court and trying to fix the defects, as they were not concerned with weight only, that it is certified.

Mr. McDonald suggested that the officers could carry a weight with them to use to check the scales. Commissioner Bowman explained that it could not be done for safety reasons. Officer Majors explained that it would require a 2,500 pound weight to certify the scales.

Associate Member Schick suggested that a letter be posted at the place of business stating that all fish are weighed on certified scales.

Commissioner Bowman said that they would try it and suggested that the regulation be amended to say that the facility agrees to provide a letter, to be posted and a copy to be provided to the VMRC.

Associate Member Holland moved to approve amending the regulation to have it state that the facility shall agree to provide a letter to be posted by them stating that

all fish were weighed on certified scales, with a copy of this letter to be provided for VMRC. Associate Member Schick seconded the motion. The motion carried, 8-0.

18. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-751-10 et seq., "Pertaining to the Setting and Mesh Size of Gill Nets", to make lawful, the setting of anchored or weighted gill nets within 500 yards of the mean high water mark on the ocean side of Northampton and Accomack Counties.

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

Mr. O'Reilly explained that last month the Commission adopted an emergency regulation to amend the regulation to say that the nets would be tended. He said staff recommended that this be incorporated into the final regulation. He said the amendments were on page two of the draft regulation in the Commission's packets.

Commissioner Bowman asked for questions of staff. There were none. He opened the public hearing. There were no public comments. He closed the public hearing. He asked for a motion from the Board.

Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.

19. BLUE CRAB: Latent Effort Controls; Request for public Hearing.

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

Mr. Travelstead said that the Commission had spent a significant amount of time, over the last 9 months on this issue of latent effort. He said that latent effort is a threat to the crab resource. He said there was between 500 and 600 crab pot licenses and 300 to 400 peeler pot licenses that fall into the latent effort slot. He said that staff had reported to the Commission that there was no funding to start a pot tagging program and this would be a no cost effort to get rid of these latent effort crab licensees. He said staff was requesting that the Commission advertise a proposed regulation to define latent effort and prevent those in this category from getting into the fishery, both crab and peeler potters from 2009 and beyond until such time as the crab resources rebounds to approximately 200 million crabs.

Mr. Travelstead said they had been looking at dozens of definitions during several meetings of CMAC. He said they had looked at recent data and as far back as eight years. He said they have considered setting the minimum catch amount at zero to 25 bushels in a number of years. He said they had thought about using the number of days worked, but decided that could not use that. He said it had been suggested to set the time frame from 2004 to 2007, which is a lengthy period of time allowing for more opportunity to be active. He said that they decided to zero bushels and 2004-2007 to define latent effort and not allow in when the harvest is better. He said they wanted to look out for the full-time crabbers now and in the future as they did not need to have to compete with the no effort individuals. He said there was some concern that some people that meet this definition might need to get back, as they have lost their other jobs.

Mr. Travelstead said that CMAC suggested that the Commission take the number of latent effort licenses and make 5 to 10 percent available to some latent effort on a case by case basis. He said when those ran out there would be no more available. He said that 527 crab pot latent effort licenses control 83,000 pots and 341 peeler pot latent effort licenses control 71,000 pots in 2009. He said these could be placed on a waiting list and when the resource rebounds be reconsidered. He said the number to let in needs to be discussed further and analyzed.

Mr. Travelstead said that the staff recommendation was to take this to public hearing. He said at the CMAC meeting there was not a quorum, but the visitors at the meeting supported it.

Douglas Jenkins was present and his comments are a part of the verbatim record. Mr. Jenkins stated he was concerned that the elderly will be left out that only work a few days a year, those who crab for the holidays or to buy medications.

Associate Member Schick asked if they could be sold or transferred to anybody within the five percent.

Mr. Travelstead responded yes those on the waiting list could buy through a transfer from another active crabber.

Associate Member Schick asked if they get what they had back or what was available. Mr. Travelstead said that would be decided on.

Associate Member Fox asked if on waiting list, if a son could get the license by transfer. Mr. Travelstead stated that that had not been thought of or discussed.

Associate Member Schick asked if any of the latent effort crabbers had fished in 2008. Mr. Travelstead said he did not recall. Rob O'Reilly, Deputy Chief, Fisheries Management, said that they were looking at, as to eligibility, not what's actually fished yet and there was the control date, too.

Mr. Travelstead stated that the December 16, 2007 control date had been enacted by the Commission.

Associate Member Bowden asked about the licensees in Accomack County and Tangier Island. Mr. Travelstead said the information was in the packet, but it had not been looked at. Associate Member Bowden expressed his concern that the Tangier watermen not be locked out.

Commissioner Bowman asked for a motion from the Board.

Associate Member Schick moved to approve the staff's request for a public hearing. Associate Member McConaugha seconded the motion. The motion carried, 8-0.

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20. BLACK SEA BASS: Industry Request for modifications to the limited entry commercial fishery, directed and bycatch fishery quotas; Request for Public Hearing.

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

Ms. Nelson explained that this was a request for a public hearing. She explained that a 45% cut was proposed for 2009. She said this was a limited entry fishery, unlike others.

Ms. Nelson stated that the industry members present at the September meeting suggested to drop the bycatch quota from 40,000 pounds to 10,000 pounds, and to distribute the resulting 30,000 pounds to the active directed fishery permittees based on their ITQ. In addition, after 75% of the bycatch quota had been harvested, those industry members suggested reducing the bycatch trip limit from 200 pounds to 100 pounds and to eliminate the 10% rule.

Ms. Nelson said that staff recommended a November public hearing.

Commissioner Bowman asked for a motion from the Board.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 8-0.

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- 21. SHARKS:** Implementation of new ASMFC Shark Fishery Management Plan; Request for Public Hearing.

Lewis Gillingham, Director, Virginia Salt Water Fishing Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham explained that this was a request for a public hearing. He said the ASMFC Shark Management Board had met last month and determined many states would not be able to comply with the January 2009 compliance deadline originally called for in the amendment. The Board will next meeting in February 2009 and will at that time determine the compliance deadline. Therefore, staff was requesting a public hearing on this matter be scheduled for the Commission's January meeting.

Commissioner Bowman asked for questions of staff.

Commissioner Bowman questioned why Claude Bain had not talked about sharks. Mr. Gillingham stated that Mr. Bain was a member of the ASMFC Shark Advisory Board and had been appointed vice-chair and since his retirement the vice-chair had become chairman of the committee.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried. 8-0.

- 22. FISHING GUIDE LICENSE:** Limited Entry for Virginia's Charter Boat Fishery; Request for Public Hearing.

Jack Travelstead, Chief Deputy, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead said that staff had been working with the Charter Boat Association for many months. He said they had several concerns, 1) lack of access to Maryland fishing grounds, 2) lack of equity and fairness in the current VA-MD license reciprocity agreement, 3) increased fishing pressures on Virginia's fishery resource, particularly striped bass, and 4) the need for improve compliance with the Federal waters closure to striped bass fishing. He in response to these concerns the Commission had established a control date of June 24, 2008 in case limited entry was to be pursued.

Mr. Travelstead explained that any individual can purchase a Virginia Charter boat license and since Virginia's license is reciprocal with the Maryland Charter boat license most of the Maryland boats do not purchase a Virginia license. He said because of this there is no money gain for Virginia.

Mr. Travelstead said that Tom O'Connell of the Maryland DNR estimates that there are 57 Maryland vessels participating in the Ocean striped bass fishery and 50 in other Virginia fisheries in the mid-Bay area.

Mr. Travelstead stated that having a guide license will allow Law Enforcement to address violations and could revoke licenses.

Mr. Travelstead explained that there was an increase in mortality in older striped bass in the Ocean fishery and stocks were still at a safe level, but the number continues to rise.

Mr. Travelstead said that establishing the guide licenses would limit the sales. He said to change the non-resident fee would require action by the General Assembly.

Mr. Travelstead said that the staff with the VCBA have recommended three solutions.

- 1) To establish a guide license, as authorized by Section 28.2-302.8 of the Code.
- 2) Limit access (sale) of the guide license to those individuals meeting certain criteria.
- 3) Raise license fees for non-residents.

Mr. Travelstead said that to limit entry, VCBA proposed to limit sale of the licenses to any individual who:

- 1) Held a Virginia Charter Boat License from January 1, 2008 through June 24, 2008.
- 2) Held a Virginia Charter Boat License in 2006 and 2007, or
- 3) Require documentation that had operated a vessel licensed as a Virginia charter boat from January 1, 2007 though June 24, 2008.

Mr. Travelstead said that the intent was to cap the number of guide licenses at those who are active or recently active in the fishery.

Mr. Travelstead explained that documentation to satisfy the criteria could include insurances certificates, W-2 or 1099 income forms, and logbooks. He said that they further proposed that the license be transferable, but only between residents and between non-residents, thereby maintaining the current distribution of licenses, by residency.

Mr. Travelstead said that the FMAC suggested that the license be purchased annually; agents not be allowed; if the individual drops out, he will maintain eligibility; and, establish a waiting list and make it first come first serve.

Associate Member Schick asked if someone new was preparing to get, but does not meet the criteria. Mr. Travelstead said they would just be out of luck because the control date is June 24, 2008.

Associate Member Schick was concerned about new charter boat operators and that he did not like to shut out Virginia residents; he said should be allowed in for 2008. He suggested that the control date be changed to the hearing date.

Commissioner Bowman stated that it could not be done unless the control date were amended.

Mr. Travelstead said that wording could be added to the notice of public hearing to say consider variations and that would allow more to be added.

Mr. Travelstead stated that staff recommended the advertisement of those proposals of staff, VCBA and FMAC for public hearing.

John Cowly, Rudee Inlet, was present and his comments are a part of the verbatim record. Mr. Cowly said that there were 19 Maryland boats in the striped bass Ocean fishery. He said it would be a problem when older head boat operators retire and a new one could not come in.

Commissioner Bowman stated that they could with documentation. He stated that the Commission was trying to get Virginia boats into Maryland and equal things out. Mr. Cowly asked if they were also trying to eliminate North Carolina. He said that they would like more time to decide on this as head boats provide a lot of revenue for Virginia Beach.

Commissioner Bowman stated it would be continued at the November meeting. He said all that is wanted is for everyone to come to the table and bargain as Virginia wants a reciprocal license. He said North Carolina had been asked and they responded no.

Mr. Cowly said that more than 30 days was needed to get all notified of the meeting.

Commissioner Bowman said that the public hearing in November was needed as this had been worked on for more than a year.

Associate Member Tankard moved to accept the staff recommendation to advertise for a public hearing in November. Associate Member Fox seconded the motion. The motion carried, 8-0.

Mr. Travelstead asked if the additions were to be added. Commissioner Bowman responded yes.

Commission Meeting

**15073
October 28, 2008**

There was no further business and the meeting was adjourned at approximately 5:35 p.m. The next regular meeting will be Tuesday, November 25, 2008.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary