

## MINUTES

**Commission Meeting****April 28, 2009**

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 )	
John R. McConaugha )	Associate Members
Richard B. Robins, Jr. )	
J. Kyle Schick )	
John E. Tankard, III )	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	VMRC Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt., Manager, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Laura Lee	Fisheries Mgmt. Specialist
Chris Williams	Fisheries Mgmt. Technician
Warner Rhodes	Deputy Chief, Law Enforcement
James Vanlandingham	Marine Police Officer
William Franklin	Marine Police Officer

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Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Others present included:

Teri Nadal	Kristin Mazur	Wade Self	Frank Wiley
Rebecca Francese	Lee Walton	Mark Essert	Robert Beaman
Clay Lewis	Charlie Wrightson	Shamor Davis	David S. Bailey
Joe Harriss	Janet Smith	Barbara R. Wyker	Buddy Wyker
Lewis Filling	Glenn Bunch	Chuck Liasiak	James Brawley
Chris Williams	David O'Brien	Kirk Havens	Ray Watson
Sarah Messer Smith	Jack Dozier	Victor Lamm Derr	Scott Harper
Ellis W. James	Howard Bohannon	Robert Jensen	Roger Belvin
Jonathan Holloway	Chris Moore	William S. Reynolds	John Vigliotta
Vuong Nguyen	Charles Waddell	Wayne France	Susan Gaston
Nathan Hill	Danny Bowden	Stanley William, Jr.	Tay Twiford
Allen Daniel	Frank Booth	Joe Rستهih	Chuck Churn
Scott West	Ernest West		

and others.

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Commissioner Bowman called the meeting to order at approximately 9:45 a.m. Associate Member Bowden and Holland arrived at the meeting late, approximately 9:50 a.m.

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At the request of Commissioner Bowman, Associate Member Schick gave the invocation and Bob Grabb, Chief, Habitat Management 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, stated that Ms. Mary Hill had asked staff to request a continuance for her application for an oyster ground lease until the May 26, 2009 Commission meeting.

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

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**MINUTES:** Commissioner Bowman asked for a motion for the approval of the March 24, 2009, if there were no changes or corrections. **Associate Member Robins moved to approve the minutes, as presented. Associate Member McConaugha seconded the motion. The motion carried, 6-0-1. The Chair voted yes. Associate Member Fox abstained, as he was absent at the last meeting.**

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

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

Bob Grabb, Chief, Habitat Management Division, summarized the eight page two items, 2A through 2H for the Commission.

Associate Members Bowden and Holland both arrived at the meeting at approximately 10:50 a.m.

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 approve items 2A through 2H. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**2A. TOWN OF CAPE CHARLES, #08-0338**, requests authorization to install four (4) 400-foot long offshore breakwaters and one 430 long offshore breakwater situated along the Chesapeake Bay, approximately 2,000 feet west of Cape Charles Harbor in the Town of Cape Charles, Northampton County, marked and lighted in accordance with Coast Guard regulations. The proposed breakwaters are to protect vessels inside Cape Charles Harbor from wave damage.

Permit Fee.....	\$100.00
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**2B. ARMY CORPS OF ENGINEERS, #09-0148**, requests authorization to hydraulically place approximately 20,000 cubic yards of dredged material, per dredge cycle from the maintenance of the Chincoteague Inner Channel (a section of the Chincoteague Inlet, Federal Navigation Project), on a previously used 103 acre overboard site situated northwest of Lewis Creek in Chincoteague Bay in the Town of Chincoteague, Accomack County. In keeping with the existing permit recommend that the following special conditions apply: 1) Applicant agrees to submit post-dredging bathymetric and cross-sectional surveys; 2) Applicant agrees that the elevation of the dredge material will not exceed two-foot above mean low water; 3) Applicant agrees to submit a submerged aquatic vegetation (SAV) survey before future use of the placement site, to confirm that there is a large enough area remaining, that is free of SAV.

Permit Fee.....	\$100.00
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**2C. ARMY CORPS OF ENGINEERS, #09-0142**, requests authorization to hydraulically place approximately 160,000 cubic yards of dredged material, per dredge cycle from the maintenance of the Metompkin Bay Channel, which is a portion of the Coast of Virginia Federal Navigation Project (WCV) in a previously used overboard placement site situated in the surf zone off Metompkin Island in the Atlantic Ocean, Accomack County. Applicant agrees that no dredged material will be placed in the surf zone between April 1 and September 15 to avoid impacts to sensitive bird species in the area during this period. Applicant also agrees that any overboard disposal subsequent to the proposed expiration date of April 30, 2012, will require a re-evaluation of the Corps' dredge material handling plan and the need for a Federal Channel in the area.

Permit Fee.....	\$100.00
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**2D. EASTERN SHORE BROADBAND AUTHORITY, #09-0142**, requests authorization to install 3,478 linear feet of fiber optic cables across Mosquito Creek, Cockle Creek, Queens Sound, Wire Narrows, Black Narrows and Chincoteague Channel. The fiber optic cables will be placed within the existing Bridges' cable trays and within Verizon's permitted conduit under Chincoteague Channel. Staff recommends the assessment of a royalty in the amount of

\$10,434.00 for the encroachment over and under 3,478 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per square foot.

Permit Fee.....	\$100.00
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**2E. COLONNA’S SHIPYARD, #09-0073**, requests authorization to install and backfill 550 linear feet of steel sheet-pile bulkhead aligned a maximum of two (2) feet channelward of an existing deteriorated bulkhead and across the face of an existing deteriorated boat ramp, to dredge 69,450 cubic yards of State-owned subaqueous material to create and maintain maximum controlling depths of -22 feet at mean low water within an approximately 380-foot wide by 460-foot long basin, and to construct two (2) commercial piers, the first 41-foot wide by 257 foot long and the second 45-foot wide by 433-foot long, to support crane and travel lift operations at their West Yard facility situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. The proposed project also includes up to 20,000 cubic yards per cycle of future dredging on an as-needed basis to maintain the proposed depths. Staff recommends the inclusion of the standard dredging conditions and the assessment of a royalty in the amount of \$31,252.50 for the dredging of 69,450 cubic yards of State-owned subaqueous material at a rate of \$0.45 a cubic yard.

Royalty Fees (69,450 cu. yds. @ \$0.45/cu. yd.).....	\$31,252.50
Permit Fee.....	\$ 100.00
	\$31,352.50

**2F. CITY OF LYNCHBURG, #08-2207**, requests authorization to replace the existing Florida Avenue bridge crossing over 19 linear feet of Fishing Creek in the City of Lynchburg. The proposed project will shift the bridge abutments and stream channel approximately 10 feet to the south due to the proximity of an existing railroad trestle on the north side of the bridge.

Permit Fee.....	\$100.00
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**2G. TOWN OF BIG STONE GAP, #09-0331**, requests authorization to remove the existing center pier and bridge decking of the Proctor Street Bridge and install a new clearspan bridge and a temporary clearspan crossing of the South Fork Powell River in the Town of Big Stone Gap. Recommend approval with our standard instream permit conditions.

Permit Fee.....	\$100.00
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**2H. BARBARA CREECH, #08-1644**, requests authorization to install and backfill 432 linear feet of vinyl bulkhead a maximum of 2 feet channelward of mean low water and the existing bulkhead adjacent to her property in the Bay Colony subdivision situated along Little Neck Creek in Virginia Beach. Staff recommends a royalty in the amount of \$864.00 for the filling of 864 square feet of State-owned bottom at a rate of \$1.00 per square foot.

Royalty Fees (864 sq. ft. @ \$1.00/sq. ft.)...	\$864.00
Permit Fee.....	\$100.00
Total Fees.....	\$964.00

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

Bob Grabb, Chief, Habitat Management reviewed 3A through 3C consent items for the Commission.

Commissioner Bowman asked for questions of staff. He asked if there had been any complaints with the change of use for Item 3B. Mr. Grabb responded no.

Commissioner Bowman asked if anyone was present, pro or con, for these items who wished to speak. There were none. He asked for an action from the Board.

**Associate Member Robins moved to approve the items as presented. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**3A. BAYSHORE, LLC, #09-0091**, requests after-the-fact authorization to retain approximately 424 linear feet of riprap installed over the top of the existing revetment, the toe of which now extends approximately 12 feet channelward of the existing bulkhead, for shoreline protection of property in the Bay Colony subdivision, situated along Linkhorn Bay in Virginia Beach. Both the property owner and the contractor have agreed to \$600.00 civil charges based on minimal environmental impact and minor deviation. The owner has also agreed to a triple permit fee.

Applicant:

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

Contractor:

Civil Charge.....	\$600.00
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**3B. JTR, LLC, #02-1227**, requests an after-the-fact permit modification to allow the commercial facility known as "Lighthouse on the Cove," located at 800 Laskin Road and situated along Little Neck Creek in Virginia Beach, to operate as an event pavilion. The facility was originally permitted as a restaurant; however, it now operates as an event pavilion open to the public for special events such as weddings, receptions, meetings, and boat shows. The modification request also seeks after-the-fact approval for the facility's existing pier alignment which differs slightly from the original permit drawings. Recommend one civil charge of \$600.00 for the pier footprint change and a second civil charge of \$600.00 for the facility's change of use accommodation based on a minimal environmental impact and moderate deviation.

Civil Charge.....	\$1,200.00
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**3C. ANDREW LYNN, #09-0291**, requests after-the-fact authorization to retain eight (8) fender piles installed channelward of an authorized steel bulkhead adjacent to his property at 311 and 313 Mill Street, situated along the Occoquan River in Prince William County. The applicant has agreed to the payment of a triple permit fee of \$75.00 in lieu of further enforcement action.

Permit Fee (Triple).....	\$75.00
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**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** There was no closed meeting held.

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**5. COUNTY OF WESTMORELAND, #09-0118**, requests authorization to construct a 5-foot wide open-pile community tending pier extending 25feet channelward of mean low water. The pier will be within the Court ordered apportionment dated October 4, 2002, and adjacent to the County landing situated along the West Yeocomico River in Westmoreland County. The project is protested by one of the adjacent property owners.

Dan Bacon, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. He provided the Board with a handout from the Virginia Department of Transportation.

Mr. Bacon explained that the project site was situated along the West Yeocomico River, in the Town of Kinsale in Westmoreland County at the end of State Route 1005 and had been maintained as a public landing since the early 1930's. The Purdue grain elevator/loading site and Kinsale Harbor Marina were upriver of the site, but the surrounding lots were residential. A County maintained tending pier previously existed at the landing along with an oyster shell and gravel boat ramp. The boat ramp and pier were located within the 30-foot wide parcel that was maintained by the county.

Mr. Bacon said that the original tending pier was 70-feet long while the proposed pier would be extended 25 feet channelward of mean low water. The reduced pier length would keep the pier within the Court ordered apportionment that was completed in October of 2002. The purpose of the pier is to provide for the safe loading and offloading of boats. Given the size of the roadway and nature of the ramp, staff expects only small boats to use the facility, as well as the local volunteer fire department.

Mr. Bacon stated that the project was protested by Mr. and Mrs. Joseph C. Harris the adjoining downriver property owners. They were concerned with the potential adverse environmental and safety issues as well as upland impacts that the proposed pier might cause. In fact, the Harris' private pier extends to the designated riparian line between the landing property and theirs.

Mr. Bacon said that several letters of support had been received, as well as a petition with 166 signatures.

Mr. Bacon stated that Westmoreland County Wetlands Board did not evaluate the project since governmental projects were exempt from the Wetlands Zoning Ordinance.

Mr. Bacon explained that the Virginia Institute of Marine Science, in their Shoreline Situation Report, dated April 10, 2009, expressed no opposition to the community tending pier as long as the pier was built to follow the guidelines for shading. The Health Department indicated that the project was in compliance with their Sanitary Rules for Marinas and Boat Moorings. By letter dated March 6, 2009, the Department of Conservation and Recreation had indicated 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. Mr. Robert Pickett, Fredericksburg District Environmental Manager of the Virginia Department of Transportation, informed staff that the County had a vested interest in the usage of the road and a tending pier at the end of Route 1005. He also stated that there was a tending pier at the site previously and that it was used by the local government as well as the citizens of the county for public access.



He indicated that VDOT was in full support of a tending pier at this site. By e-mail dated March 13, 2009, the Virginia Department of Game and Inland Fisheries stated they had no objection to the proposed tending pier. No other State agencies have commented on the project.

Mr. Bacon stated that the Army Corp of Engineers issued an RP-19 for the community pier.

Mr. Bacon noted that the project did encroach on an oyster lease but was not objected to by the leaseholder.

Mr. Bacon explained that the tending pier would replace a pier that had existed at the site since the 1930's but would be reduced in length by 45 feet to keep the pier in the court apportioned riparian area for the landing. As such, there was no encroachment into any adjacent riparian areas. Although the neighbor's pier extended to the shared riparian line, there appeared to be adequate space for access to the landing. Staff did not anticipate any significant adverse safety or environmental impacts associated with the proposed tending pier. Staff believed the proposed pier would provide a valuable water access amenity to the people of Kinsale and Westmoreland County. Accordingly, after evaluating the merits of the project against the concerns of the protestant, and after considering all the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project.

Bob Grabb, Chief, Habitat Management explained that he wanted to make a correction. He said it was not in 2002, but in May 2003 that Judge Spruill issued the Court order establishing the apportionment.

Charles Wrightson, County Representative, was sworn in and his comments are a part of the verbatim record. Mr. Wrightson said that in accordance with the Planning Commission ordinance they were to provide access for the public as it was more difficult for the general public to access and enjoy the water without having to pay money. He said the pier had been neglected by the County and this was being rectified.

Commissioner Bowman asked for questions of Mr. Wrightson.

Associate Member Schick asked about the next closest public access. Mr. Wrightson stated about 10 miles at Bottom Creek. Associate Member Schick asked if there were any more. Mr. Wrightson responded at Brancome Cole.

Clay Lewis, resident of Kinsale and representative for the community and the fire department, was sworn in and his comments are a part of the verbatim record. Mr. Lewis said they were requesting that the project be approved as it had been in use for one hundred years. He said the fire department maintains a boat that covers Virginia from Colonial Beach to Smith Point. He said that there were about a half dozen marinas that

would benefit in the case of emergencies. He said they provide medical help by trained personnel. He said the fire department needed it as well as the community to provide them with access to the water.

Commissioner Bowman asked for anyone in opposition that wished to speak.

Joe Harriss, adjoining property owner, was sworn in and his comments are a part of the verbatim record. Mr. Harriss also was represented by Mr. David Baily who was an attorney with an environmental group in Richmond. He provided some photographs as handouts. He said that there was an alternative for the fire department as he had spoken with a marina owner in the area who had agreed to remove the honor box to give them freer access. He said at the proposed location there was no parking or turnaround for the public ramp. He said access to it was difficult.

Commissioner Bowman reminded him that VMRC was only concerned with the subaqueous bottom impacts, all else was not under their jurisdiction.

Mr. Harriss explained that he did not design his pier as it was done by the Corps and it was built that way. He said he did not apply for the hook. He said he wanted to split the water equally and it could be done. He said the pier as proposed would cause congestion as it would be 20 feet from his pier and it was not necessary as there was an alternative. He said nowhere in the Yeocomico was there another set of piers just 25 feet apart. He said this pier was busy which was not shown in the staff's slide and he did not want to deny anyone access to the water. He said it was not governed or maintained and was a nuisance to him and other waterfront residents.

Commissioner Bowman asked for questions.

Associate Member Tankard asked how long it had been in disrepair. Mr. Harriss stated that it had been since 2001 that the County had done anything to it. He said he had done some research and the pier had been there for 35 years and in the 1930's there was no pier there. He stated the boat ramp had not been touched in 8 years.

Commissioner Bowman asked him if he had considered this possibility when he purchased the property. Mr. Harriss said he knew about the State road and the access there and about the pier, but it could not be reconstructed as it was before.

Associate Member Tankard said he was concerned about safety and asked where Mr. Harriss docked his boat. Mr. Harriss said he had a 4'9" draft sailboat and his only access was on the ramp side.

After much discussion about water depth and access space, David Bailey, attorney for Mr. Harriss, was present and his comments are a part of the verbatim record. Mr. Bailey stated he had mailed a package by Federal Express. Bob Grabb, Chief, Habitat

Management stated it had not been received. After further checking it was determined that it had been received the previous afternoon. These packages were handed out to the members. Mr. Bailey explained that there was a letter explaining the legal issues, photographs, maps, and other attachments. He said there were two legal issues. He said the first was ownership and the legal owner was not the applicant. He said there was no deed or plat, and only VDOT owned the road since 1932. He said there was no map before 1932. He said that staff had shown only the earlier one, not the later one. He stated there was no evidence of ownership. He said that VMRC did not have the authority to hear this application as the County was not the property owner.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel responded by saying that VMRC was not deciding the ownership which VDOT was allowing, so it was a private matter. He said VMRC was not prohibited from considering the application.

Mr. Bailey referenced a decision by the Supreme Court that it could only be the owner and Section 62.1-3 of the Code of Virginia established that VMRC consider for the property owner not the non-property owner. Mr. Bailey said there was an effect on the adjoining property and he objected to Mr. Harriss being cut off too soon in his comments. He said he wanted this in the record.

Mr. Josephson stated it was not specifically the effect on the property owners, but on the property. He said in a past Attorney General opinion it was established that it must have a direct physical impact on the adjoining properties not the owners.

Mr. Bailey referenced photos G & H in his packet to demonstrate the difficulty of lifting a trailer and turning it around versus backing up the road. He said even though the public had used it historically there was no room and no parking. As for the fire department, how do they get in? He said it ends up that the adjoining property was used for parking. He said there was not enough room and it was a nuisance. He stated it constituted a public nuisance which was contrary to the Public Trust due to its impact on the adjoining property. He said there might be some uses here, but 30 feet was not enough land and they were not concerned with other ramps, this was just not the proper place.

Commissioner Bowman asked for questions. There were none.

Commissioner Bowman asked for any others in opposition who wished to speak. There were none. He asked for rebuttal by the County representative. There was none. He asked for discussion or action.

Mr. Josephson explained the Public Trust Doctrine applies here and is in 1-200 of the Code in the section where common law as it existed, the Public Trust would apply. He said also that in a Supreme Court Decision, it established that it would be protecting navigation, commerce and fisheries in the water over the submerged land. He explained that in respect to the land ownership issue, the real owner of the land could object to the

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construction of the pier from this land, but there was no objection or no other party claiming ownership of the land. He said by way of their e-mail, VDOT had deferred to the County as to where the end of the State maintenance area or upland of the pier.

Associate Member Schick stated that he was a Westmoreland County resident and familiar with the area. He said as far as the fire department using the other facility's ramp, it could cause difficulties for the customers of the marina. He said he appreciated the local marina saying that they could use the ramp, but the ramp was used a lot by others. He said it might work if 2 slips were donated to the fire department, not the ramp. He said at the project location the County might need to post signs to say 'no turn around' and 'back in only' to protect the adjoining property. He said he supported the pier.

**Associate Member Schick moved to approve the application as he felt that it was good stewardship to make the changes.** Associate Member Robins referenced Section 28.2-1205 of the Code which says the Commission must consider the public and private benefits and the impacts on other users of the water. He said in the Code it does not say no impacts as this was only a balancing of uses. He said they had heard the private detriments, but the public benefit was the Fire Department would have access to the water for emergencies and he felt that the benefits to the public outweighed the detriments. He said also that it was within their riparian area and not an unreasonable use. Associate Member Tankard said he had some concern for the safety of the public and the potential congestion and the decreased size was not an issue. He stated that he supported the County. Associate Member Fox stated that the County needed to police the area and he supported the County. Commissioner Bowman said that what was there in the earlier days, the road, ramp and pier needed to be considered. He said the design of the Harris pier was required by the Corps of Engineers as for the configuration. He said that they had considered all that was there and any future uses. He explained that he felt the Fire Department using this as a launching location did relate to Public Trust. He asked for a second to the motion. **Associate Member Robins seconded the motion. The motion carried, 9-0.**

Permit Fee.....	\$25.00
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- 6. **VICTOR LAVIMODIERE, #09-0223**, requests after-the-fact authorization to retain a previously installed vinyl sheet bulkhead, 116 linear feet long, immediately channelward of an old wooden bulkhead along a beach area of shoreline adjacent to the applicant's restaurant facility and associated parking lot situated at 700 Jordan Point Road along the James River in Prince George County. The project requires a beaches and dunes permit.

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

Mr. Stagg explained that the project was located along the James near the Benjamin Harrison Bridge in Prince George County. The property was the site of a restaurant owned by the applicant. An old deteriorated wooden bulkhead existed along a portion of the property. VMRC staff was initially notified by Prince George County staff of a vinyl bulkhead installation in progress at the site in late January, 2009. The county staff advised the contractor, Jeff Pittock of Trident Marine to stop work on the project pending resolution of whether additional permits were required.

Mr. Stagg said that VMRC staff visited the site shortly thereafter and informed Mr. Pittock that the installation of a bulkhead at this site, while landward of mean high water did require a permit from VMRC under the Beaches and Dunes Ordinance. Staff further concluded that due to the considerable upland disturbance at the site, along with the current state of the failing wooden bulkhead, that completion of the installation was probably warranted to prevent any further water quality degradation. Mr. Pittock was, however, further informed that the submission of a Joint Permit Application seeking after-the-fact authorization was required and that any final authorization to retain the bulkhead would be determined by the full Commission at a future hearing.

Mr. Stagg stated that a Joint Permit Application was received on February 24, 2009, requesting after-the-fact approval for the bulkhead installation which was then subjected to a public interest review.

Mr. Stagg noted that Prince George County had not yet adopted the beaches and dunes ordinance which was made available to them by virtue of recent Code changes, which were effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, of Title 28.2 of the Code. Prior to the Code change jurisdiction along this section of shoreline would have extended only to the mean high water line given the non-vegetated wetlands that existed in accordance with the Wetlands Zoning Ordinance in Chapter 13 of Title 28.2 of the Code.

Mr. Stagg said that the Virginia Institute of Marine Science (VIMS), in their Shoreline Permit Application Report dated April 20, 2009, indicated that the preferred erosion control structure would be a rip rap revetment, however since the bulkhead was already installed it should afford adequate protection for the upland property owner. No other agencies had commented on the proposal.

Mr. Stagg stated that Prince George County issued a building permit for the bulkhead on February 18, 2009 and a mitigation plan related to the Chesapeake Bay Preservation Act was approved on April 8, 2009.

Mr. Stagg stated that no protests had been received for the project.

Mr. Stagg explained that the applicant had apparently depended on his contractor to obtain the necessary permits for this project. While the contractor should have been

aware of the necessity to obtain permits from both the County and VMRC, he was apparently unaware of the recent Code changes related to the Beaches and Dunes Ordinance. Although no permit would have been required under the prior Wetland Zoning Ordinance, and he appeared to have been working under that assumption, he never contacted either the County or VMRC to inquire regarding the limits of jurisdiction and possible permit requirements and made no inquiry regarding the need for any other local building permits or required approval under the Chesapeake Bay Preservation Act.

Mr. Stagg said that in this case, however, the new bulkhead was installed to replace a deteriorated structure and it was installed with only minimal (174 sq. ft.) additional encroachment on the beach in front of the old structure. Accordingly, after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia, staff recommended after-the-fact approval of the project as constructed. Staff recommended, however, that an appropriate civil charge be assessed to the contractor based upon a minimal environmental impact and a moderate degree of non-compliance in-lieu of the need for any further enforcement action by the Commission.

Commissioner Bowman asked about the conversation with the contractor in regards to the need or not need of a permit. Mr. Stagg stated that he was very cooperative and he had worked with him in the past when there was no permit necessary. He said he did not argue and he explained about how beach encroachment was different from a wetlands encroachment.

Associate Member Schick asked if the county had issued a building permit. Mr. Stagg said he felt he knew one was needed and if he had obtained one the County would have told him.

Victor Lavimodiere, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Lavimodiere explained that he and the contractor had been friends for 15 years and this was the case of a friend doing a friend a favor. He said the bulkhead did need to be repaired and Mr. Pittock did it for him, but he took full responsibility for what happened.

Commissioner Bowman asked for discussion.

Associate Member Schick stated he appreciated the applicant wanting to take the responsibility for what had happened. He said he felt that having the product and time available did not mean that they could proceed with the project. He said there was no excuse for not obtaining the building permit.

**Associate Member Schick moved to accept the staff recommendation and stated he agreed with a minimum environmental impact and moderate degree of non-compliance. He said the applicant should be assessed a civil charge of \$1,200.00.**

Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Civil Charge on the applicant.....	\$1,200.00
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7. **TRICOUNTY FARMS, #08-2273**, requests authorization to remove an existing timber jetty and breakwater and to construct a 100-foot long timber jetty, a 290-foot long open-pile pier with an attached wave baffle, 50 linear feet of timber bulkhead and a 10-foot wide by 32-foot long floating pier. In addition, they seek authorization to initially dredge and excavate a total of 416 cubic yards of sandy subaqueous and beach material from a 50-foot by 75-foot area adjacent to the proposed bulkhead to provide maximum depths of minus three (-3) feet at mean low water and to maintenance dredge the area on an as-needed basis for a five-year period with the sandy dredged material proposed to be placed along the intertidal beach immediately down drift (southeast) of the boat launch area adjacent to the B.E.S.T. boatyard facility situated along the Rappahannock River off State Route 639 in Middlesex County. The project requires a Coastal Primary Sand Dune/Beach permit and a subaqueous permit.

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

Mr. Neikirk explained that the project site was located along the Rappahannock River, approximately 1.5 miles downstream from the Town of Urbanna on what was locally referred to as the "Duck Farm". The Rappahannock River was approximately 2.5 miles wide at the project site with long northwest and northeast fetches.

Mr. Neikirk further explained that this facility currently included a long L-shaped pier with 10 wetslips and an attached wave baffle, a concrete boat ramp, three (3) jetties, a travel lift area, and a forklift boat launch area. The upland improvements included a large boat storage building. This project was designed to allow for the expansion of the forklift boat launch area to improve the capacity for the boat launch and retrieval activities associated with the boat storage operation.

Mr. Neikirk said that the owner of the facility, Mr. Glen Bunch, stated in a letter accompanying his application that the current launch area became very congested when three or four boats arrived at the same time. He believed the expansion would allow them to handle four or more boats at the same time. He explained that the proposed jetty and wave baffle were needed to provide some protection from the waves generated by northerly winds. He added that a dangerous situation often developed when numerous people were returning to the facility after the winds picked up.

Mr. Neikirk stated that the excavation, pier, jetty, and bulkhead portions of the project would impact approximately 3,000 square feet of jurisdictional beach. Middlesex County had not adopted the beaches and dunes ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk noted that the remainder of the project, including the dredging and subaqueous portions of the jetty, floating pier and the open-pile pier with the attached wave baffle required Commission authorization for their encroachment over State-owned subaqueous land pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk said that a large percentage of the bottom material proposed to be removed to enlarge the basin would actually be sandy material excavated from the beach and intertidal area. Only 41 cubic yards of the proposed 417 cubic yards to be dredged were channelward of mean low water. To mitigate for the impact to the beach area, Mr. Bunch proposed to place the sandy dredged material on the downstream side of his facility. Since it was anticipated that regular maintenance dredging of this area would be required, placing the sandy dredged material on the downstream side of the piers and jetties should serve to bypass the facility and allow sand to continue to move down the shoreline.

Mr. Neikirk stated that no comments were received in response to the public notice and notification of the adjoining property owners.

Mr. Neikirk explained that in their report dated April 18, 2009, the Virginia Institute of Marine Science (VIMS) reiterated that the site was not well suited for marina operations. They stated that the proposed dredging and structures should be deemed necessary for safe navigation and marina operations with no other less impacting alternatives feasible. They stated that the beach disposal of the dredged material was appropriate if the material was coarse grained sand and free of contaminants. They noted that the Chesapeake Bay Preservation Act required all activities that were not water-dependent to be located outside the 100-foot wide buffer adjacent to wetland and beach areas. They stated that all fuel facilities should incorporate automatic shutoff valves and have spill contingency plans. Finally, they stated that there should be methods to insure against the discharge of toxic pollutants including the efficient collection of materials associated with boat maintenance operations.

Mr. Neikirk said that the Health Department stated that the project was in compliance with their Sanitary Regulations for Marinas and Boat Moorings. The Department of Conservation and Recreation did not anticipate that the project would adversely affect any of their programs although their Division of Chesapeake Bay Local Assistance noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government.



Mr. Neikirk explained that the structures would not encroach on any public or privately leased shellfish planting ground. Public Ground Number 1 was located approximately 1500 feet offshore.

Mr. Neikirk stated that previously, on the application for the existing pier and attached wave baffle, the Commission approved the project with several conditions including a stipulation that the wave baffle maintain a clearance of at least 2 feet between the substrate and the bottom of the structure to minimize adverse impacts on fish passage and sediment transport, as well as a condition directing the Permittee to immediately remove any structures damaged due to storm winds or waves.

Mr. Neikirk said that staff still maintained reservations concerning the location of a boating facility in such an exposed area, however, an upland boat storage operation with associated launch and retrieval operations was more appropriate than the in water storage of boats that had originally been contemplated. Staff also believed the proposed expansion of the boat launch area was necessary to safely launch and retrieve multiple boats. Staff did encourage the applicant to continue working with Virginia's Clean Marina Program to incorporate all appropriate best management practices and strive for "Clean Marina" designation.

Mr. Neikirk said that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the inclusion of the following special conditions:

- The wave baffle attached to the pier shall maintain a clearance of at least two (2) feet between the bottom of the boards and the substrate.
- The Permittee agrees to immediately remove any damaged structures.
- Permittee agrees to properly dispose of any dredged or excavated material that is not clean coarse sand on his upland property in a manner that would prevent its re-entry into state waters.
- Permittee agrees to notify staff at least 2 weeks prior to any required maintenance dredging.

Mr. Neikirk further said that staff recommended a royalty of \$18.45 for the dredging of 41 cubic yards of subaqueous material at a rate of \$0.45 per cubic yard. A royalty for the encroachment of the facilities over State-owned submerged land was not recommended since commercial facilities engaged in the business of selling or servicing watercraft were exempted from encroachment royalties under §28.2-1206 (B)(iii) of the Code of Virginia.

Associate Member Robins asked if the permit condition for spoil disposal included VIMS' recommendation. Mr. Neikirk responded yes.

**Commission Meeting**

Commissioner Bowman asked if the applicant wished to speak.

Glenn Bunch, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bunch stated it was a good use for the small boat retrieval site as the winds are mostly from the NW and it needed protection to make it a safer basin.

Commissioner Bowman asked Mr. Bunch if he agreed with the permit conditions. Mr. Bunch responded yes.

Commissioner Bowman asked for anyone in opposition present who wished to speak. There were none. He asked for discussion or action by the Board.

**Associate Member Holland moved to accept the staff recommendation. Association Member Schick seconded the motion. The motion carried, 9-0.**

Royalty Fees (41 cu. yds. @ \$0.45/cu. yd.)	\$ 18.45
Permit Fee.....	\$100.00
Total Fees.....	\$118.45

\* \* \* \* \*

- 8. **MARY HILL AND MARIE HILL, OYSTER PLANTING GROUND APPLICATION, # 2006-176,** Applicants are requesting to lease approximately 160 acres of oyster planting ground within Chuckatuck Creek on both sides of the Chuckatuck Creek, Route 17, bridge in the City of Suffolk and Isle of Wight County. The application is protested by Robert Johnson, a nearby oyster ground leaseholder.

Continued until the May 26, 2009 Commission meeting.

\* \* \* \* \*

- 9. **RAY WATSON, OYSTER PLANTING GROUND APPLICATION #2008-049,** Applicant is requesting to lease up to 6 acres of oyster planting ground within Urbanna Creek, in the Town of Urbanna, in Middlesex County. The project is protested by numerous town residents.

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

Mr. Stagg stated that staff had received an oyster planting ground application from Mr. Ray Watson on July 17, 2008 for approximately 6 acres within Urbanna Creek, at his existing marina facility. He reminded the Commission that Mr. Watson's request to expand his marina facilities was considered and approved at the January 27, 2009

meeting. With his lease application Mr. Watson also provided information that he intended to use the lease for both traditional shelling and cage aquaculture. Given the current condemnation he would need to relay any shellfish grown at this location to other ground he leased in non-condemned waters prior to sale or consumption. The requested planting ground surrounded an existing lease held by Mr. Watson (Plat File #9559), containing 1.24 acres. That ground was transferred to Mr. Watson from James C. Myers on August 8, 2008. The annual rental for this lease is \$3.00.

Mr. Stagg explained that public notices regarding the planting ground application were sent out on July 25, 2008.

Mr. Stagg said that beginning August 12, 2008, staff began to receive protest letters related to the Watson application. They came from town residents, both adjoining marina operators, a group known as the Urbanna Citizens Committee and the Town of Urbanna. Staff responded to each protest letter and provided additional information about the leasing process, since many of the protestants had expressed concerns that were related to the leasing process, in addition to objecting to Mr. Watson's actual application.

Mr. Stagg stated that the Engineering/Surveying staff surveyed the ground on February 13, 2009, based upon the configuration Mr. Watson requested. After review by the Chief Engineer, it was determined that the area within the Federal Turning Basin in Urbanna Creek would not be included in the survey. Additionally, staff received a drawing from Mr. Franklin D. (Buddy) Wyker, President of the Urbanna Citizens Committee that supposedly depicted an area which would be acceptable to the Committee, both adjoining marinas and the Town, all of whom had previously objected to the application. Using this as a guide, staff met with Mr. Watson at which time a modified version of the area was agreed upon by Mr. Watson. Staff then conducted a meeting with Mr. Wyker, Mr. Filling (of the Town of Urbanna), Mr. Dozier (adjacent marina owner) and Mr. and Mrs. Mullins (adjacent marina owners) at which time a final configuration was agreed upon by all parties as a compromise. Engineering/Surveying staff then mapped this area and a copy was sent to Mr. Watson. As mapped the area contains 2.91 acres (a portion of which includes Mr. Watson's existing 1.24 acre lease). The annual rental for this lease would be \$4.50.

Mr. Stagg stated that Mr. Watson had acknowledged receipt of the drawing but indicated he would still likely request to lease the area within the turning basin that included the area over which he received previous Commission approval to construct additional marina piers. This would not conflict with the agreement of the parties listed above.

Mr. Stagg said that staff contacted the Virginia Department of Health concerning any potential health risk that might be associated with the proposed leasing and/or aquaculture within a marina footprint. Staff was informed, that while the waters were currently classified as prohibited for the direct marketing of shellfish, oyster or clams could be relayed from the area to clean waters under the normal Health Department protocol in

conjunction with a permit from VMRC Law Enforcement. Staff also requested additional comments from the Health Department about any concerns they might have regarding the public health related to non-pathogenic substances (such as heavy metals, petroleum products, etc.) that could be present due to the marina and boats expected to be moored over the proposed lease site. Staff was informed that the Health Department had done some studies of this issue and those studies indicated no known issues from their perspective.

Mr. Stagg explained that while staff did work to reach a compromise with the parties listed above, the project was still considered protested since staff also received individual letters from other town residents for which it could not be ascertained if the compromise configuration adequately addressed their concerns. They had all been notified, however, of the public hearing on the application.

Mr. Stagg stated that staff believed a good faith effort to resolve the issues raised by many of the protestants had resulted in a configuration that would allow the applicant to pursue his aquaculture goals while limiting any adverse impacts to the adjoining property owners and others. Furthermore, based on the comments from the Health Department it did not appear that the propagation of shellfish in close proximity to an active marina would represent a public health threat, provided, all shellfish were properly relayed prior to sale and/or consumption.

Mr. Stagg said that since the Engineering/Surveying Department had previously issued shellfish leases within marina footprints, the Department believed it was appropriate to lease the identified compromise area, excluding any of the turning basin. This was in recognition of the applicant's assertion that the marina area had adequate depths to accommodate both cage aquaculture and marina boating traffic.

Mr. Stagg said that it should be noted, however, that leasing the area under a marina may create potential user conflicts and possible future property issues if the marina were to be sold and the lease was maintained by a different owner. In some cases, when leases had been acquired in the past by marina owners, it had been to protect or preserve a property interest. Staff did not believe this was necessarily justified today given the requirement that leases must be used for shellfish production in order for the lease to be renewed. Although, Mr. Watson had submitted a prospective plan for how he intended to use the lease staff could not predict, nor could VMRC control how the lease might be used in the future. Staff also had no mechanism to rescind or nullify the lease. As long as Mr. Watson paid the \$4.50 rent each year, and made some use of the ground for shellfish propagation, the lease would continue indefinitely. In the event the upland was sold to another developer and/or the marina was operated by a new owner, there was no defined connection to the lease itself. In true capitalistic fashion, the leaseholder would be free to negotiate a separate agreement with the new upland landowner to permit an ongoing encroachment on "his" lease. The State would not benefit from such arrangement at all.

Mr. Stagg stated that if the Commission believed that Mr. Watson was primarily trying to acquire a greater property interest or right in the subaqueous lands over which his proposed marina would encroach, staff believed a more appropriate instrument would be an easement issued pursuant to the provisions of §28.2-1208. Such an easement would be for a period not to exceed five years and would specify the terms and rent the Commission deemed expedient and proper. A lease issued pursuant to §28-2.1208 would not, however, allow Mr. Watson to qualify for the use of the Commission's regulation for on-bottom aquaculture or the general permit for temporary enclosure. This activity could be authorized by permit.

Bob Grabb, Chief, Habitat Management, explained that there had been real concern in the past with leases being obtained for other uses, like real estate. He stated if there is minimal use of a lease it cannot be taken back, if what was agreed to was not done. He said that a lease can be sold with or without the upland property. He said Mr. Watson's original lease would allow him a place to do caged aquaculture. He said the Code Section 28.2-1208 it establishes that a lease is renewable, but was it necessary for aquaculture. He said historically leases were for the protection of the marina, but not negotiable in the future. He said staff was asking for guidance.

Associate Member Schick asked if a lease can be conditioned on the sale of the property. Mr. Grabb stated that VMRC cannot qualify a lease. Its duration was for ten years.

Mr. Stagg stated that the Code said if it was used for propagation, then it could be renewed. Associate Member Schick asked if a marina owner paid royalties to use the State-owned bottom, could someone else can request a lease. Mr. Grabb said yes in theory, but he would doubt the Commission would ever approve it. Commissioner Bowman said the marina pays royalties for the bold outline. Mr. Grabb stated that as the owner of the marina

Mr. Watson could do it with a Habitat permit. Mr. Stagg stated that historically per the Code there were no conditions to lease. Commissioner Bowman stated the Code said how it can be used.

Commissioner Bowman asked the applicant to come forward.

Associate Member Fox asked about what the blue on the photo meant. Mr. Stagg stated that was the approximation of the staff recommendation. He added that in the King letter they still agreed with the change or amendment.

Ray Watson, marina owner and operator, was sworn in and his comments are a part of the verbatim record. Mr. Watson stated that he had applied for 6 acres and had discussed with staff their concerns and the concerns of others. He said they were concerned with the enclosure impeding navigation and with the caged aquaculture being done in the area of the marina. He said that he can relay the shellfish for depuration with VMRC approval. He said he had spoken with the neighbors and adjoining marina owners. He said at the January 2009 meeting he had been approved for the removal of the piers for

floating docks to try to avoid having to come to a hearing at VMRC. He said there was a question of his intent and he planned to do oyster aquaculture. He said he was not applying for, nor did he want a water column lease. He said he had leases in other areas as well. He said he already had over a hundred cages built and had ordered additional wiring. He said he wanted to be in commercial aquaculture. He was a licensed waterman, had an oyster aquaculture product owner license, and crab licenses. He said he was requesting approval of 4.46 acres of oyster ground. He said that Dr. Wesson had given him a grant for aquaculture.

Associate Member Robins asked if he had cages on his other leases. Mr. Watson responded that he did on both. He said he had a crane in his boat to put the cages overboard, and a second crane and a 90-foot barge.

Associate Member Schick asked about the water depth. Mr. Watson responded that it was 7 to 10 feet and the cages were 12 inches off the bottom. Associate Member Schick asked if that would mean 9 feet water above the cages. Mr. Watson said with the oysters the cages would be weighted down. Associate Member Schick asked if he would put up markings. Mr. Watson stated he would use a longline, as he had no need for floats.

Commissioner Bowman asked for those present in opposition who wished to speak.

Buddy Wyker, representing the Citizens Committee, was sworn in and his comments are a part of the verbatim record. Mr. Wyker stated that the neighbors were not all present. He read into the record a letter from adjoining marina owner, Mr. and Mrs. Mullins. He provided a list of the Urbanna Citizens Association membership. He said that the waters are now polluted and oysters can grow in the polluted waters and act as filters to clean the waters. He said they requested approval, but to limit it to growing oysters in the footprint, as presented by staff.

Janet Smith, representing the Town Council, was sworn in and her comments are a part of the verbatim record. Ms. Smith said they were in favor of oysters being in Urbanna Creek, but that Mr. Watson be limited to the staff recommendation because of the other uses in the area.

Associate Member Robins asked if for caged aquaculture he needed the appropriate permit. Mr. Grabb explained as long as they were no more than 12 inches, the leaseholder could get a permit for 12-inches or above.

Associate Member Fox asked about if there were no lease. Mr. Grabb stated they would need a permit but it can be done without a lease.

Associate Member McConaugha stated that a permit would be limited to a certain time. Mr. Grabb stated that staff needed the permit to have control. He said with a permit removal can be required and you cannot do this with a lease.

Associate Member Schick asked if the lease request could be denied and a permit approved today. Mr. Grabb stated that it would have to be advertised. Associate Member Schick asked if he could go ahead with the existing lease. Mr. Grabb responded yes and to get a permit for the rest of the area.

Commissioner Bowman asked for discussion or action.

**Associate Member Fox said if approved there was no consideration of a third party and that it made no sense to lease to Mr. Watson when he could do what he wants with a Habitat permit, therefore, he moved to deny the application for an oyster ground lease. Associate Member Robins seconded. He said that from a procedural standpoint there was no need to lease the bottom when it could be done with a permit and the State would have more control.**

Associate Member Schick stated that there was a need for more regulations to restrict leasing ground under a marina and there was an avenue for a permit. Commissioner Bowman asked if the applicant can make an appeal. Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel, stated that he could appeal, if it was denied. He further stated that the Office of the Attorney General would need to look at whether a regulation could be adopted. Mr. Stagg stated that staff could still accept applications for lease or offer a permit as another option. Commissioner Bowman asked counsel for advice. Mr. Josephson stated that if there were to be a change in the policy it should be well articulated and followed in the future. He said the basis for the policy would need to be adhered to in the future.

**The motion carried 9-0.**

Commissioner Bowman stated that the reason for the concern was that to grant the application for lease would cloud the title of the upland property. He stated also that the Commonwealth was not involved in the dispersal of real property and the Commission could control the lease. Mr. Grabb stated that staff could not deny the application for a lease and it had to come before the Board.

Application was denied.

\* \* \* \* \*

**10. PUBLIC HEARING:** Consideration of changes to the Commission's General Permit for Emergency Situations and Water Quality Improvement Projects (4VAC 20-395-10) involving activities in non-tidal waterways.

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

**Commission Meeting**

Mr. Watkinson explained that the existing General Permit for Emergency Situations and Water Quality Improvement Projects was originally adopted by the Commission at its May 26, 1998, meeting and became effective July 1, 1998.

Mr. Watkinson said that the General Permit was initially developed in response to Chapter 845 Acts of Assembly 1997 that directed the Commission to develop an expedited process for the issuance of general permits for projects involving State-owned submerged lands. The General Permit addresses requirements stipulated by changes to §28.2-1207 of the Code of Virginia as a result of the legislation. The General Permit covers projects designed to improve water quality such as bioengineered streambank projects and livestock crossings, and addresses activities required during emergencies in which a determination has been made that there is a threat to public or private property, or to public health and safety. The emergency projects authorized by the existing General Permit are those considered to be exigencies under the Natural Resources Conservation Service (NRCS, formally the Soil Conservation Service) Emergency Watershed Protection (EWP) program.

Mr. Watkinson said that staff had meet with several agencies (NRCS, US Fish and Wildlife, Corps of Engineers, Game Commission, DEQ, DCR, and Stream Alliance) involved with emergency and stream restoration activities to discuss this matter. The update of the General Permit was also the subject of discussion at a Stream Alliance meeting in Charlottesville in 2008. The proposed draft changes in the General Permit were proposed as an outgrowth of these meetings and discussion with the various agencies. In addition, comments were sought from the Virginia Association of Municipal Wastewater Agencies (VAMWA), specific to provisions regarding repairs of public utility infrastructures, and CBF.

Mr. Watkinson stated that staff recommended the Commission adopt the proposed revisions to the Commission’s General Permit for Emergency Situations and Water Quality Improvement Projects (4VAC 20-395-10) involving activities in non-tidal waterways and that the Commission make these changes effective June 30, 2009.

Commissioner Bowman said that he could recall a number of projects by municipalities concerning after-the-fact emergency repairs that have come before the Board. He asked for discussion or action by the Board.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 9-0.**

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The Commission broke for lunch at approximately 12:35 p.m. and returned at approximately 1:15 p.m.

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Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel explained that for Item 11 and Item 12 the Commission would need to approve the terms and conditions with compensation and he suggested that the Commission adopt the resolutions so that the Commissioner was authorized to sign them.

11. **IOLA L. LAWSON.** Commission adoption of Resolution and approval of the Deed conveying 22,400 square feet (0.51 acres +/-) of previously filled state-owned subaqueous lands in the City of Hampton to Iola L. Lawson and her successors and assigns, in accordance with Chapter 875 Acts of Assembly 2007.

**Associate Member Holland moved to accept the recommendation. Associate Member Tankard seconded the motion. The motion carried 9-0.**

Note: Fees included and approved February 24, 2009. The Resolution is as follows:

**RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION  
PERTAINING TO THE SALE AND CONVEYANCE  
OF CERTAIN SUBAQUEOUS LAND IN THE CITY OF HAMPTON, VIRGINIA  
AS AUTHORIZED BY § 3 OF THE 2007 ACTS OF ASSEMBLY, CHAPTER 875**

WHEREAS, by Chapter 875 of the Acts of Assembly of 2007, the Virginia Marine Resources Commission is authorized to sell and convey on behalf of the Commonwealth to Iola L. Lawson and her successors and assigns, upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5 of said Chapter, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, as more particularly described below; and

WHEREAS, the Virginia Marine Resources Commission, on the 24<sup>th</sup> day of February, 2009, considered the amount of the payment commensurate with the property interest being conveyed as provided in Chapter 875 of the Acts of Assembly of 2007, and determined the payment amount to be Fifty One Thousand Eighty Eight Dollars and Fifty Five Cents (\$51,088.55); and

WHEREAS, the subaqueous land authorized to be conveyed is more particularly described as follows:

Beginning at the southwest corner of Parcel A-1, said parcel being as particularly designated as "Parcel A-1", on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Ivy Home Company", which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970 and revised October 13, 1971, and recorded in Deed Book 468, page 357 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; thence, along the

westerly boundary of said Parcel A-1, N 09°53'02" W, 130.48' to a point; thence, N 35°06'58"E, 35.36' to a point; thence N 09°53'01" W, 9', more or less, to the existing approximate mean low water line; thence along the mean low water line in an easterly direction, 169', more or less, to a point; thence, S 60°51'00" E, 14', more or less to a point; thence, N 82°09'47" E, 6.12' to a point; thence S 07°54'07" E, 163.54' to a point; thence S 33°18'44" E, 2.09' to a point also being located N 80°26'24" E, 189.72' from the point of beginning; thence S 80°26'24" W, 7', more or less, to the approximate mean low water line as shown on said Plat; thence, along said mean low water line, 326', more or less to a point on the southerly line of aforesaid Parcel A-1; thence, S 80°26'24" W, 19', more or less to the point of beginning; containing 22,400 square feet (0.51 acres), more or less; and

WHEREAS, the attached Deed has been prepared to convey to Iola L. Lawson, and her successors and assigns, such rights, title and interest as the Commonwealth may have in the foregoing described subaqueous land; and

WHEREAS, the Virginia Marine Resources Commission deems the terms and conditions therein set forth to be proper;

\* \* \* \* \*

NOW, THEREFORE, BE IT RESOLVED: That the Virginia Marine Resources Commission hereby authorizes its Chairman, the Commissioner of the Virginia Marine Resources Commission, to execute the attached Deed, following and subject to the approval of the form of the Deed by the Attorney General and the approval of the Deed by the Governor.

**THIS IS NOT PART OF THE DEED, ITSELF.**

[Draft Certification. To be executed, on VMRC letterhead following Commission action on the resolution, in 2 originals. One original will accompany the package through the Attorney General/Governor review/action process. The other will be available for attachment to the Deed in connection with final execution and delivery of the Deed if desired by the Grantee.]

**CERTIFICATION**

This is to certify that the enclosed documents, consisting of a 2 page resolution with a 2 page draft Deed (which would grant certain subaqueous land to Iola L. Lawson and her successors and assigns pursuant to § 3 of the 2007 Acts of Assembly, Chapter 875, are true copies of the resolution adopted by the Virginia Marine Resources

Commission on \_\_\_\_\_, 2009, and the Deed reviewed by and referred to in said resolution.

\* \* \* \* \*

**12. S & S MARINE SUPPLY.** Commission adoption of Resolution and approval the of Deed conveying 12,100 square feet (0.28 acres +/-) of previously filled state-owned subaqueous lands in the City of Hampton to S&S Marine Supply and its successors and assigns, in accordance with Chapter 875 Acts of Assembly 2007.

**Associate Member Holland moved to accept the recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

Note: Fees included and approved February 24, 2009. The Resolution is as follows:

**RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION  
PERTAINING TO THE SALE AND CONVEYANCE  
OF CERTAIN SUBAQUEOUS LAND IN THE CITY OF HAMPTON, VIRGINIA  
AS AUTHORIZED BY §§1 and 2 OF THE 2007 ACTS OF ASSEMBLY,  
CHAPTER 875**

WHEREAS, by Chapter 875 of the Acts of Assembly of 2007, the Virginia Marine Resources Commission is authorized to sell and convey on behalf of the Commonwealth to S&S Marine Supply and its successors and assigns, upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5 of said Chapter, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in certain pieces or parcels of subaqueous land in the City of Hampton, Virginia, as particularly described below as PARCEL I and PARCEL II; and

WHEREAS, the Virginia Marine Resources Commission, on the 24<sup>th</sup> day of February, 2009, considered the amount of the payment commensurate with the property interest being conveyed as provided in Chapter 875 of the Acts of Assembly of 2007, and determined the payment amount to be Twenty Six Thousand Eight Hundred Fifty Dollars and Fifty Three Cents (\$26,850.53); and

WHEREAS, the subaqueous land authorized to be conveyed is more particularly described as follows:

**PARCEL I**

Beginning at the northwest corner of Parcel C, said parcel being as particularly designated as "Parcel C", on a certain plat entitled, "Plat

**Commission Meeting**

Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Marine International Corporation Of Virginia", which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970 and revised August 30, 1972, and recorded in Deed Book 470, page 706 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; said point of beginning being on the approximate mean low water line as shown on said plat; thence, N 08°37'08" W, 19', more or less, to a point being N 08°37'08" W, 75.98' from the centerline of the 30' right-of-way (ingress / egress easement) as shown in D.B. 470, PG. 706; thence, N 80°26'24"E, 86', more or less, to the approximate mean low water line as shown on said plat; thence along the mean low water line in an westerly direction, 90', more or less, to the point of beginning; containing 1,200 square feet (0.03 acres), more or less; and

**PARCEL II**

Beginning at the northeast corner of Parcel C, said parcel being as particularly designated as "Parcel C", on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Marine International Corporation Of Virginia", which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970 and revised August 30, 1972, and recorded in Deed Book 470, page 706 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; thence, N 80°26'24" E, 7', more or less, to a point N 80°26'24" E, 256.29' from the northwest corner of Parcel I, here before described; thence, S 33°18'44"E, 10.74' to a point; thence S 08°13'08" E, 245.01' to a point; thence S 87°25'44" W, 129', more or less, to the existing approximate mean low water line; thence along the mean low water line in a westerly direction 84', more or less, to a point; thence N 30°52'27" W, 58', more or less, to a point, that point also being the southwest corner of said parcel C and the approximate mean low water line as shown on said plat; thence along the mean low water line in an easterly and northerly direction, 399', more or less, to the point of beginning; containing 10,900 square feet (0.25 acres), more or less; and

WHEREAS, the attached Deed has been prepared to convey to S&S Marine Supply, and its successors and assigns, such rights, title and interest as the Commonwealth may have in the foregoing described subaqueous land; and

WHEREAS, the Virginia Marine Resources Commission deems the terms and conditions therein set forth to be proper;

\* \* \* \* \*

NOW, THEREFORE, BE IT RESOLVED: That the Virginia Marine Resources Commission hereby authorizes its Chairman, the Commissioner of the Virginia Marine Resources Commission, to execute the attached Deed, following and subject to the approval of the form of the Deed by the Attorney General and the approval of the Deed by the Governor.

**THIS IS NOT PART OF THE DEED, ITSELF.**

[Draft Certification. To be executed, on VMRC letterhead following Commission action on the resolution, in 2 originals. One original will accompany the package through the Attorney General/Governor review/action process. The other will be available for attachment to the Deed in connection with final execution and delivery of the Deed if desired by the Grantee.]

**CERTIFICATION**

This is to certify that the enclosed documents, consisting of a 2 page resolution with a 2 page draft Deed (which would grant certain subaqueous land to S&S Marine Supply and its successors and assigns pursuant to §§ 1 and 2 of the 2007 Acts of Assembly, Chapter 875, are true copies of the resolution adopted by the Virginia Marine Resources Commission on \_\_\_\_\_, 2009, and the Deed reviewed by and referred to in said resolution.

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**13. PUBLIC COMMENTS:**

**Howard and Beverly Bohannon** – requesting that they be taken off suspension.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. He said that these two individuals were part of the 52 that were heard for non-reporting last fall. He said they had not reported for the 2006, 2007 and part of 2008 season. He said at that time they were notified by the North Carolina authorities to attend that meeting, but were unable to be here. He said the decision made was that those who did not attend would be on suspension until they did appear before the Commission. He said they were at this hearing to request being taken off suspension and they have accepted probation. Commissioner Bowman asked about their reporting and Mr. Grist stated that they were now up-to-date.

Howard (father) and Beverly Bohannon (daughter) were both present and sworn in. Commissioner Bowman asked if they understood the staff's recommendation. (Their response was positive but was not audible.) He explained that if they did not turn in their reports they would be back before the Board.

He asked for action by the Board.

**Associate Member Holland moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.**

John Vigliotta – requesting an extension to the Newport News Clam Management Area clamming season. He said historically there was relaying from the Hampton Roads area, but that had not been done last year by him, nor did he have plans for the near future. He said that watermen were working in other areas, but the catch had not been good. He said he was requesting that the season be extended for one or two months, as the watermen have no where else to go.

Joe Cimino, Fisheries Management Specialist, Sr., gave the presentation and his comments are a part of the verbatim record. Mr. Cimino provided the Commission with a copy of Mr. Vigliotta's request and staff had drafted an emergency regulation which he also provided copies. He said that staff recommended approval of an extension for the Management Area for 30 days during the month of May. He stated that staff would not be coming back next month to make this permanent.

Commissioner Bowman asked if this would degrade the standing stocks. Mr. Cimino explained that there had been an April extension since 2006. He said that the catch had been stable since the area was established. He added that historically there had been 200 boats, but now it was 20 or more.

Commissioner Bowman asked for staff recommendation. Mr. Cimino stated "to extend the season through May".

Commissioner Bowman referred to the Code Section 28.2-210 where it explained when emergency action was necessary to help the health of the industry. He also noted that the catch per unit effort (CPUE) was acceptable. He asked for a motion from the Board.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 9-0. Commissioner Bowman stated that no public hearing would be advertised. The Chair voted yes.**

Mr. Vigliotta stated that he would be making requests in a more timely manner in the future. He said the patent tongers needed compassion as the numbers were down and there were about 20 patent tongers. He stated that there was a need to find places for them to work in order to maintain a work force for the industry.

\* \* \* \* \*

Robert Jensen stated that despite what the newspaper article had said there was hope for the Chesapeake Bay, and especially for the oysters. He said he was headed down to

North Carolina to work with them in their oyster restoration efforts. He reminded the Commission of his project known as “Steamers Rock”.

\* \* \* \* \*

**14. DISCUSSION:** Results of the Maryland-Virginia Winter Dredge Survey for the blue crab and an update on status of the stock; request for a public hearing.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead stated that staff was requesting a public hearing in May.

Mr. Travelstead stated that there had been an increase in the age 1+ crab population. He said for the first time in 16 years the abundance of the age 1+ was above 200 million. He explained that for the last 15 or more years, there were 20 regulations established and there had not been much success. He said the current regulations had doubled the number of female crabs and the male crabs were up approximately 50%. He said this was what the regulations were meant to do. He stated that the exploitation rate was down below the threshold, but as far as the 46% there was a need to do more work. He stated that for 7 of the last 10 years crabs had been overharvested.

Mr. Travelstead said that the market was not quite there and the remaining concern with the population was that there was not an increase in recruits. He said that there should be an improvement seen with the number of females and the level could go up substantially.

Mr. Travelstead explained that there would be meetings with CMAC and modifications made to the regulations. He said information would be used from the survey of industry and the buyers. He said the principle regulation objective would be the fall potting season closure.

Mr. Travelstead said the result of the lawsuit and Judge Dole’s decision was that the Commission could only close the winter dredge season one season at a time. He stated that delaying the hearing until May means that all regulation changes could be set at the same time.

Mr. Travelstead stated that the effectiveness will be seen this year because it will start at the beginning of the season. He said other measures to be considered would be:

Cull rings size, closure of crab sanctuary, except the original sanctuary, increase peeler size limits, a closure of the fall potting season and the winter dredge season, reduction of the number of pots allowed by 15% for hard crab pots and 30% for peeler pots, and the restoring of the five-pot recreational license.

**Commission Meeting**

Mr. Travelstead said that staff felt that it would be a risk to not have a closure in the fall because you cannot make up for the losses later. He said the industry was opposed to the closure and felt that a bushel limit could be used to prevent excessive harvest.

Mr. Travelstead explained staff recommended advertising for public hearing the following proposed measures.

Season Closures

Bushel limits

Combine both closures and bushel limits

Modification of crab pot limits to 15 to 20%

Stricter measures for agents

Closure of winter dredge season for 2009-2010

Continue no sale of the five-pot recreational license or season closures

Bycatch reduction devices for recreational crabpots.

Mr. Travelstead stated that staff would have the VIMS' report for next month's public hearing. He said it was a risk to remove any of the current restrictions, but the math says there could be a lessening of restrictions.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to adopt the staff recommendations with the addition of a fall season closure of the crab sanctuary and a seasonal closure for the use of the five-pot recreational license. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**15. PUBLIC HEARING:** Proposed Regulation 4VAC20-1210, "Pertaining to a Blue Crab Sanctuary". The regulation specifies open and closed seasons for the harvest of crabs from an area near the mouth of the Chesapeake Bay.

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

Mr. O'Reilly explained that this was an unusual event, as he had only one slide to show. He said it was a slide of the original crab sanctuary (in green) established in 1942. He said there was continued discussion of in 1943 of the same problems that existed in the 1930's and 1940's, as there is today.

Mr. O'Reilly stated that last year the Commission advertised a closure for May 1 through September 15, but the Code overruled it, and when it was changed by a Senate Bill (SB1111) and signed by Governor Kaine, it was left to the Commission to set the dates.



Mr. O'Reilly explained that the sanctuary was very important to the management plan. He said that CMAC, at its last meeting had some members favoring May 15, for a start of the closure and it was made a motion. He said that a substitute motion was made for a May 1 closure and won by a 5 to 4 vote. He said one member had said that the May 15 start of the closure of the historical sanctuary dredge season would put more money in the pockets of watermen and make up for last year's closure. He said not everyone on the committee was present.

Mr. O'Reilly said that there was a lot of harvest in the original sanctuary area last year and this year. He said with the language of the Code, the Commission could not close the season last year but could this year.

Mr. O'Reilly explained that Mr. Sanford had requested that, if the original sanctuary were to be closed May 1 could the watermen be allowed to go in that area and remove their pots on May 1, to avoid losing another harvest day. He said staff had briefed Law Enforcement on the request and told the Commission that other regulations indicated that commercial crabbing included removing pots.

Mr. O'Reilly stated that the catch in the original sanctuary had been good, and, until recently, the price had been good.

Mr. O'Reilly said the staff recommendation was for a May 1 through September 15 season closure.

Commissioner Bowman opened the hearing for public comments. There were none so the public hearing was closed. He asked for discussion or action by the Board.

Associate Member Bowden said there was a problem with May 1, as it was a Friday.

Jack Travelstead, Chief, Fisheries Management, explained that it was already in the Emergency Regulation and at this hearing it was to make it permanent.

Associate Member Robins said that when CMAC discussed the May 15 closure, some indicated that would be going backwards and nothing would be recouped, for spawning purposes, from the fall closure. He said in a survey of buyers the regulation caused the most problems for business. He said the May 1 closure was an important step in keeping the crab mortality to the target.

Associate Member McConaugha stated that he supported the May 1 closure and he was looking forward to the data that showed the densities of crabs in this sanctuary area and other areas. He said it was for a biological reason that it was closed in the spring.

Commissioner Bowman asked for action by the Commission.

**Associate Member Robins moved to accept the staff recommendation for a closed season of May 1 through September 15. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**16. APPEALS:** Consideration of Individual Appeals for Crab Licenses on the Waiting List.

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

Mr. Travelstead explained that there were 32 appeals.

Mr. Travelstead explained that in the first category there were 6 appeals because of health conditions. He said that one was recommended for denial and two for conditional approval because they lacked backup documentation.

<u>Louis T. Whittaker, Jr.</u>	<u>approve</u>
<u>James A. Jernigan</u>	<u>approve</u>
<u>Beauregard Turner, III</u>	<u>deny</u>
<u>James E. Firman, Sr.</u>	<u>conditional approval</u>
<u>Johnnie A. Booker</u>	<u>conditional approval</u>
<u>Gladys M. Chatham</u>	<u>approve</u>

Mr. Travelstead explained further that Mr. Turner had provided evidence of a doctor's statement, which said he was ill in 2008 and that was outside the time period 2004-2007. He said that staff needed documentation for 2004-2007.

Commissioner Bowman asked if staff had communicated with Mr. Turner. Mr. Travelstead stated that they will.

Associate Member McConaugha asked what documentation for Mr. Whittaker was provided. Mr. Travelstead indicated he was personally aware of Mr. Whittaker's health conditions.

Commissioner Bowman asked about the staff's recommendation. Associate Member Holland asked if Mr. Turner turned in the documentation would he be approved. Mr. Travelstead responded yes, but staff did not have it now.

**Associate Member Holland moved to accept the staff recommendations. Associate Member Bowden seconded the motion. Associate Member Schick asked if Mr. Turner would have time to respond with information. Mr. Travelstead explained that when he was notified of the meeting results and he gets back to staff with the**

**documentation Mr. Turner would be approved. The motion carried, 9-0. The Chair voted yes.**

**William R. Davenport, Jr. Williams R. Davenport, III William S. Reynolds**

Mr. Travelstead explained that the next group was for harvest not being reported. He explained that Messrs. William R. Davenport, Jr. and III, and William S. Reynolds were the same issues as had been approved by the Commission previously. He said they had harvested jimmies for their peeler pots so no catch was sold, so it was not reported. He stated that a precedent of similar approvals had been set by the Commission.

Commissioner Bowman stated that it must be allowed, if it was done before.

**Associate Member Holland moved to approve the three requests by Mr. William R. Davenport, Jr., Mr. William R. Davenport, III and Mr. William S. Reynolds. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Ray Twiford**

Mr. Travelstead explained that the crab pots were worked so staff recommended approval, but peeler pots were not worked so staff recommended it be denied.

Mr. Twiford said that the pots were purchased from his father after he passed away for his son to use. He said that he did use them 3 or 4 times in 2006 and they want both licenses. He said the crab pots were used.

Associate Member Bowden asked which were approved. Mr. Travelstead explained that the license is not lost permanently as once the crabs have recovered, the license would be returned to him.

**Associate Member Robins said that the catch data was looked at and there was a need to have the waiting list. He moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**James E. Withrow**

Mr. Travelstead explained that the evaluation was in error and staff is recommending denial. He said that while Mr. Withrow had his own records, no record of harvest was on the VMRC forms.

Associate Member Schick asked if an appellant could submit his own notes or receipts from retailers for approval. Mr. Travelstead responded that only VMRC forms would be considered for approval.

Associate Member Robins explained that the intent of the appeal was to rectify reporting problems, not to reinstate a license and if the person completely failed to report in the 4 year window. That is not a basis for appeal.

Associate Member Bowden suggested receipts could be acceptable as proof of use of the license, but the appellant could be placed on probation for failure to report harvest. Mr. Travelstead stated that this would violate the precedent previously set by the Commission.

Commissioner Bowman asked for a motion.

**Associate Member Tankard moved to deny. Associate Member Laine seconded the motion. The motion carried, 8-1. Associate Member Bowden voted no. The Chair voted yes.**

**Glenn S. West**

Mr. Travelstead explained that Mr. West claimed he harvested and sold peeler crab, but his Mother fills out his forms and did not include them.

Commissioner Bowman said that Mr. West was a high school graduate 1983 and was a responsible adult.

Glenn S. West was sworn in and his comments are a part of the verbatim record. Mr. West explained that he worked with his father and his mother did his reporting for him. He said his mother's health had been bad last year and she did not report the peelers because she thought she did not have to. He said it was an honest mistake, they had tried to keep up and the only job he had ever had was that of a waterman.

Commissioner Bowman asked if he was missing reports for 2006. Mr. Travelstead stated that he had never reported peeler crabs. Mr. West stated that he did not think he had to report peeler crabs.

Commissioner Bowman asked for discussion or action by the Board.

**Associate Member McConaugha moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Emmett E. Sanford**

Commissioner Bowman called for Mr. Sanford, but he was not present. He asked for action by the Board.

**Associate Member Schick moved to deny. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Phillip L. Evans**

Mr. Travelstead stated said the next individual would be Phillip L. Evans and that in this case there were reports for 2006 that seemed to be legitimate.

Commissioner Bowman asked for the staff's recommendation. Mr. Travelstead stated it was for approval.

Commissioner Bowman asked for a motion.

**Associate Member Schick moved to approve. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Nathan Hill, Jr.**

Mr. Travelstead explained that Mr. Hill showed reporting but not for peeler crabs only hard crabs.

Nathan Hill, Jr. was called forward and was sworn in. He apparently corrected staff's comments (all his comments were inaudible).

Mr. Travelstead stated that Mr. Hill was right and that staff recommended approval.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Ricky W. Owens**

Mr. Travelstead explained that the next individual was Ricky W. Owens and that staff was recommending approval.

Commissioner Bowman asked for a motion.

**Associate Member Schick moved to approve. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman called for Louis Whittaker III.

Mr. Travelstead explained that the following individuals were ones who did not use their license and admitted that they had not used them.

**Louis T. Whittaker, III**

Mr. Travelstead stated that Mr. Whittaker had not used his license because he was at college attending Virginia Tech.

Commissioner Bowman asked for staff's recommendation. Mr. Travelstead said to deny.

Commissioner Bowman asked for a motion.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Andrew R. Parks, Sr.**

Commissioner Bowman called for Mr. Andrew R. Parks, Sr. to come forward and he was not present.

Mr. Travelstead explained that Mr. Parks had been crabbing with his son and it had not been reported. Commissioner Bowman asked about staff recommendation. Mr. Travelstead said that staff was recommending it be denied.

Associate Member Bowden explained that he had actually seen Mr. Parks working with his son hundreds of times. Commissioner Bowman stated that he would be getting a letter and he could appeal the decision.

Commissioner Bowman asked for action by the Commission.

**Associate Member Laine moved to deny. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Lester L. Tyler**

Commissioner Bowman called for Lester L. Tyler to come forward and he was not present.

Mr. Travelstead explained that the staff was recommending denial as there had not been any reporting of crab harvest.

He asked for action by the Commission.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

**Dwayne A. Daniels**

Commissioner Bowman called for Dwayne A. Daniels to come forward.

Mr. Travelstead explained that staff was recommending denial.

Commissioner Bowman read from the evaluation that said that he had quit fishing in order to help the crab population rebuild.

Dwayne A. Daniels was sworn in and his comments are a part of the verbatim record. Mr. Daniels said that he had quit in order to help the crab population rebuilt. He said the previous year he had put some pots out and found that the crabs were back. He said he had built his boat and his crab pots and had plans to start. He said he should have been notified last year when he purchased his license last year that he would not be able to now. He said he had been working with William and Mary in their research by building them tanks and had plans to do this with VIMS also. He said with the economy the way it was, he now needed to get his license to fall back on.

Commissioner Bowman stated that staff recommended denial.

Associate Member Robins asked staff about other cases where the individual was involved in research projects. Mr. Travelstead said there had been two other individuals involved in research projects. He said in both cases those had been approved.

Associate Member Robins suggested that this be continued until the next month when evidence of this could be provided.

Commissioner Bowman said that a letter from VIMS explaining his time involved, the scope of what he was doing, and the results of the project.

Mr. Daniels said he was building experimental tanks now, but now he needs his crab license the most.

No further action was taken.

**Paul K. Seitz**

Commissioner Bowman called for Paul K. Seitz.

Mr. Travelstead explained that Mr. Seitz was the first appeal based on military duty. He said he had been stationed overseas and was on his fourth tour.

Commissioner Bowman asked for a motion to approve.

**Associate Member Fox moved to approve. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Hope C. Evans**

Commissioner Bowman called for Hope C. Evans.

Mr. Travelstead explained that this was one of the cases in which the individual was impacted by Hurricane Isabel. He said in this case it was not just the gear, but the boat and the shedding house were destroyed.

Commissioner Bowman asked for a motion.

**Associate Member Fox moved to approve. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman said for the next groups were all being recommended for approval and he read off the names of one through seven and asked for a motion:

<b><u>Frank A. Booth</u></b>	<b><u>Ronald D. Owens</u></b>	<b><u>Keith D. Chatham</u></b>
<b><u>Mark Miles</u></b>	<b><u>Stanley Williams, Jr.</u></b>	<b><u>James N. Insley</u></b>
<b><u>Glen W. France</u></b>		

**Associate Member Holland moved to accept staff recommendation for all seven. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted no.**

**Mark Neil**

Mr. Travelstead explained that Mr. Neil did not use his vessel as it was broke down, but staff needed documentation to verify the cost.

Commissioner Bowman Commissioner Bowman stated that staff recommended conditional approval. He asked for a motion by the Board.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman stated the next group harvested crabs with someone else.

Mr. Travelstead explained these two were cases of a father and a son working together.



Thomas L. Walton, Jr. and Jonathan W. Holloway were present and sworn in.

Mr. Travelstead stated they were not included as a helper on the reports.

Mr. Holloway explained that he had a 1099 from his father showing he worked and the harvest was reported only under his father's number.

Mr. Walton explained that after the hurricane he had combined his efforts with his father and his father did not report a number for him. He said his father had sent in a letter that stated that he had worked with him. He said the reports could be amended and he was willing to work with staff. He said there was no accurate way to do it. Commissioner Bowman suggested that the catch could be split. Mr. Walton explained that he had had a license for 31 years.

Mr. Holloway explained that the catch was reported, but he did not have any tickets.

**Associate Member Tankard moved to approve conditioned on the records being corrected and a letter from father saying that they worked together. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

Associate Member Robins explained that the appeals process had been heard for a number of months and that had been enough time to correct what needed to be corrected, as initially no deadline had been set. He said there was a need for a deadline for considering these appeals, because it could go on and still be hearing appeals next year. **He moved to advertise for a June 2009 deadline and a public hearing be held at the May meeting.** Mr. Travelstead stated that there would need to be a 2-week deadline set for prior to the meeting to request an appeal. **Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**17. DISCUSSION:** Consideration of regulatory measures for the grouper/tilefish; request for public hearing.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. He provided a letter, dated April 27, 2009 from the Mid-Atlantic Fisheries Management Council and stated that these species were controlled by the MAFMC.

Mr. Grist explained that this fishery had produced 22 International Game Fish Association all-tackle world records in the last four years. He said at its annual meeting in October 2006, the Virginia Saltwater Tournament Committee had added the blueline

tilefish to its list of species eligible for citation recognition. He said that there were 164 blueline tilefish citations registered in 2007, 137 in 2008, and as of April 2009 there were 244.

Mr. Grist stated that the Commission approved Regulation 4VAC 20-1120-10 et seq., "Pertaining to Tilefish and Grouper" on April 24, 2007, which provided for a recreational daily possession limit of 7 tilefish per person, and one grouper per person, and a commercial daily possession limit of 300 pounds of tilefish per vessel, and 175 pounds of grouper per vessel.

Mr. Grist said that staff recommended advertising for a May public hearing the following measures. He said staff was recommended proactive measures.

For the recreational fishery: 1 grouper per vessel per day, 3 tilefish per person per day not to exceed 18 tilefish per vessel per day, creation of a landing permit for grouper and tilefish and requiring mandatory catch reporting for grouper and tilefish.

For the commercial fishery: 150 pounds of blueline tilefish per vessel per day, 150 pounds of grouper per vessel per day, with the exception that only 1 snowy grouper per vessel per day, and 1 warsaw grouper per vessel per day, would be permitted.

Associate Member Robins stated that regarding the reporting requirements the special license needed to be added. Mr. Grist explained that when there is a gear license mandatory reporting is required. Associate Member Robins asked if for the amendment number one effective November 1, 2009 for golden fish the 8 per person per trip was the incidental poundage limit included in the regulation. Mr. Grist said he was not aware of only one as there was no IFQ system. He said he was aware of MAFMC Tilefish Amendment One and suggested waiting for the amendment to become official before amending VMRC regulations.

Associate Member Robins stated that staff had done a good job for this small fishery. He said there were 22 world records in the last few years. He said if the State did not take action, then it would go under the Federal Act. He said it had been precautionary action in 2007 by VMRC. He explained that the National standard management handles these species as a unit. He said there should be a separate management unit from Virginia to the North and if this was done Virginia could gain strength. He said the Federal rules would eliminate the entire fishery.

Commissioner Bowman asked for action by the Board.

**Associate Member Tankard moved to accept the staff recommendation and advertise for a May public hearing. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**18. PUBLIC HEARING:** Andrew Self, proposal to place two pound nets in the Chesapeake Bay near Taylors Beach.

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

Mr. Travelstead explained that there was concern that the pound nets would hinder navigation for small boats along the shore. He said the nets were not marked and were not in the channel. He said the general public feels they should be able to go anywhere. He explained that staff is only concerned in the cases of nets being in the channel or at the mouth of the river or creek.

Mr. Travelstead said that staff had no concerns for limiting the uses by others and encroachment on wetlands or SAV. He said the pound nets do not cause any environmental issues.

Mr. Travelstead stated that staff recommended approval of the two nets requested.

Commissioner Bowman asked Mr. Self to come forward if he wished to speak.

Andrew Self, pound net fisherman, was sworn in and his comments are a part of the verbatim record. Mr. Self stated he just wanted to make a living and he had set nets in the same location before.

Commissioner Bowman asked if anyone was present in opposition who wished to speak. There were none. He asked for action by the Board.

**Associate Member Schick moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**19. DISCUSSION:** Consideration for establishing the 2009 harvest quota Bluefish; request for public hearing.

Joe Grist, Head, Plans and Statistics explained that the 2009 Bluefish quota needed to be updated and staff was requesting a public hearing in May.

Commissioner Bowman asked for action by the Board.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**20. DISCUSSION:** Request for Adoption of a Memorandum of Understanding (MOU) between the Commonwealth of Virginia, Marine Resources Commission and The Nature Conservancy Regarding the Restoration, Management, and Protection of Oyster Reef Sanctuaries adjacent to or on riparian lands of the Nature Conservancy on the Seaside of the Eastern Shore; and, to incorporate these sanctuaries into the VMRC Regulation 4VAC 20-650-10 et seq., "Establishment of Oyster Sanctuary Areas"; a request for a public hearing

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

Dr. Wesson explained that this was a request to adopt the MOU between the Marine Resources Commission and The Nature Conservancy and a request for public hearing to incorporate these sanctuaries into the VMRC regulation.

Dr. Wesson said that over the last 15 years, funding for oyster restoration had been significant, from many different sources, and requirements for matching funds had limited the amount of State general funds that were available for Seaside. There were no significant oyster shucking houses on the Seaside and a lack of shells further limited the options available to the agency for oyster restoration. The grant projects with TNC had maintained enough funding each year to keep the few oyster restoration contractors that were available on the Seaside with some work each year. In working with TNC, more than \$1.1 million in oyster restoration funding had been secured since 2002. Funds were used to build oysters reefs on TNC riparian lands and on public oyster beds. Private, public and TNC areas were intermixed.

Dr. Wesson stated that the funding agencies had required that these funds only be used for oyster reef sanctuaries where shellfish harvest was not allowed. A copy of the letter from NOAA confirming this was give to the Board.

Dr. Wesson explained that as the oyster reefs have become more populated with oysters and the oysters grow to market size, trespassing and theft from the reefs had become a problem.

Dr. Wesson said that after discussions with TNC and MRC, advice was sought from Senior Assistant Attorney General, Carl Josephson regarding the protection of these

restoration sites on TNC property. The solution appears to include the incorporation of these restoration sites within mapped polygons which would be included in the MRC Regulation 4VAC 20-650-10, et seq., "Establishment of Oyster Sanctuary Areas." Secondly, a Memorandum of Understanding between MRC and TNC had been developed that relates to the restoration, management, and protection of oyster reef sanctuaries adjacent to or upon riparian lands of the Nature Conservancy.

Dr. Wesson stated that staff recommended the adoption of the Memorandum of Understanding with the Nature Conservancy relating to the restoration, management, and protection of oyster reef sanctuaries adjacent to or upon riparian lands of the Nature Conservancy on the Seaside of Accomack and Northampton Counties on the Eastern Shore of Virginia.

Dr. Wesson stated also that staff recommended the advertising of the proposed amendment to Regulation 4VAC 20-650-10, et seq. to include the five oyster sanctuaries on and adjacent to the Nature Conservancy riparian property in Northampton and Accomack Counties for a public hearing at the May meeting.

After some discussion for clarification, Commissioner Bowman asked for action on the MOU by the Board.

**Associate Member Fox moved to accept the staff recommendation to adopt the MOU with TNC as this was a reasonable attempt at oyster restoration. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

Commissioner Bowman asked for a motion for the request for a public hearing to set aside the sanctuary areas.

**Associate Member Fox moved to advertise for a public hearing next month to set aside the areas no larger than shown at this hearing. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**MEMORANDUM OF UNDERSTANDING**

between

**THE COMMONWEALTH OF VIRGINIA  
VIRGINIA MARINE RESOURCES COMMISSION**

and

**THE NATURE CONSERVANCY**

**RELATING TO THE RESTORATION, MANAGEMENT  
AND PROTECTION OF OYSTER REEF SANCTUARIES  
ADJACENT TO OR UPON RIPARIAN LANDS OF THE  
NATURE CONSERVANCY ON THE SEASIDE OF  
ACCOMACK AND NORTHAMPTON COUNTIES ON THE  
EASTERN SHORE OF VIRGINIA**

**I. Purpose**

The purpose of this memorandum of understanding (MOU) is to facilitate cooperation between the Commonwealth of Virginia, Marine Resources Commission (VMRC) and The Nature Conservancy (TNC) in the restoration, management, and protection of oyster reef sanctuaries adjacent to or upon riparian lands of TNC on the seaside of Accomack and Northampton counties on the Eastern Shore of Virginia. Collectively VMRC and TNC are referred to herein as Parties. The Parties have a common interest in the restoration, management, and protection of oyster reef sanctuaries created under partnership efforts of the Parties and in the protection of public and private investments in these reefs which direct the Parties to maintain them as oyster reef sanctuaries.

- The Marine Resources Commission serves as stewards of Virginia's marine and aquatic resources, and protectors of its tidal waters and homelands, for present and future generations.

- The mission of The Nature Conservancy, a 501(c)(3) international conservation organization, is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive.

The restoration, management, and protection of oyster reef sanctuaries are consistent with the program objectives of both Parties. (The objective of this cooperative effort is to ensure that the Parties cooperate in the restoration, management, and protection of oyster reef sanctuaries created under partnership efforts of the Parties and in the protection of public and private investments in these reefs which direct the Parties to maintain them as oyster reef sanctuaries.)

## **II. Background**

Since 2002 the Parties have mutually cooperated in seeking public and private funds for the creation of oyster reef sanctuaries adjacent to or upon riparian lands of TNC on the seaside of Accomack and Northampton counties. Collectively the Parties have raised more than one million dollars of public and private funding for the creation and construction of oyster reefs that are to be maintained as “no harvest”, oyster reef sanctuaries.

Trespass and theft (larceny) are significant threats to the maintenance of oyster reef sanctuaries and the overall success of collaborative oyster reef restoration efforts. This problem is exacerbated through public misconception surrounding TNC and the Commonwealth of Virginia’s title to certain areas adjacent to or upon the riparian lands of TNC.

Oyster reef sanctuaries are defined as areas where shellfish (clams and oysters) harvest and leasing are prohibited whether the land is public or private.

Code § 28.2-101 provides that VMRC possesses police power jurisdiction for fishery purposes in tidal waters and that jurisdiction extends to all marine shellfish in such areas.

Code § 28.2-507 authorizes VMRC, in order to protect or promote the growth of oysters, to close any area of the public rocks, grounds, or shoals and to take any other restorative measures. Any portion within the oyster reef sanctuaries that is within the public rocks, grounds, or shoals may be closed for sanctuary purposes. Unassigned grounds need not be assigned if in the judgment of the Commissioner, the assignment is not in the public interest (*See* Code § 28.2-607, proviso number 1). Accordingly, any portion within the oyster reef sanctuaries that are unassigned grounds may be closed consistent with VMRC’s general fishery police power jurisdiction and authority to promulgate

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regulations necessary to conserve and promote the marine resources of the Commonwealth under Code § 28.2-201(1).

To the extent that the reefs are constructed on fee simple riparian property of TNC, as the “owner” TNC may also take action to prohibit trespassing for the purpose of “fishing” on its property by posting it as provided by Code §§ 18.2-134 and 18.2-134.1. Marine Police Officers, being among “all other law-enforcement officers,” can enforce such trespass violations as provided by Code § 18.2-136.1.

**III. Statement of Mutual Agreement**

The Parties agree that oyster reef restoration, management, and protection are important and by working together towards a common goal the Parties can achieve more than by working independently. The Parties also agree that designating certain areas as oyster reef sanctuaries is a critical element of an overall oyster reef restoration strategy for the seaside of Accomack and Northampton counties.

To the extent that any of the property and oyster reefs within the oyster reef sanctuaries may be owned by TNC, TNC specifically requests and consents to any regulation promulgated by VMRC to protect the oyster reef sanctuaries and waives any right that it may have to compensation arising out of any harvest prohibition imposed as a result of any such regulation.

**IV. Scope of Mutual Work**Oyster Reef Sanctuary Designations

The Parties shall from time to time mutually identify new oyster reef sanctuary areas for protection, management, and restoration adjacent to or upon riparian lands of TNC on the seaside of Accomack and Northampton counties which will be subject to official approval by the Virginia Marine Resources Commission. These oyster reef sanctuary areas will be jointly identified and mapped for inclusion in any such regulation promulgated by VMRC that is necessary to protect the oyster reef sanctuaries. The official approval will come through the appropriate process for such designations as determined by VMRC. TNC agrees to prohibit the leasing of any portions of the designated oyster reef sanctuaries located upon their riparian lands and also to prohibit shellfish harvesting upon these riparian lands.

Management of Oyster Reef Sanctuaries

The Parties will cooperate to manage and protect the oyster reef sanctuaries adjacent to or upon riparian lands of TNC on the seaside of Accomack and Northampton counties, regardless of whether the sanctuaries are totally located on property owned solely by TNC or the Commonwealth of Virginia or whether the sanctuaries are located partly on



property owned by TNC and partly on property owned by the Commonwealth of Virginia.

The Parties agree to work together to create and maintain common signage of oyster reef sanctuaries.

The Parties agree to work together to continue to secure public and private funding for the construction and restoration of new oyster reef sanctuaries.

All data pertaining to the location and construction of new oyster reefs within the designated oyster reef sanctuaries and any data generated through the monitoring of oyster reefs within the designated oyster reef sanctuaries will be shared by the Parties.

Protection (Law Enforcement) of Oyster Reef Sanctuaries

The Parties agree to notify each other of questionable activities encountered or observed on the oyster reef sanctuaries.

VMRC agrees to enforce violations of applicable laws that apply to the protection of the regulated oyster reef sanctuary areas subject to this MOU. Depending on the situation, applicable laws that apply to the protection of regulated oyster reef sanctuaries may possibly include, without limitation, Code §§ 18.2-134, 18.2-135, and 28.2-903.

TNC agrees to assist VMRC in their efforts to enforce violations of the oyster reef sanctuaries and also to pursue prosecution as allowed by Code § 18.2-134 and 18.2-134.1 as the fee simple owner of the riparian lands.

**V. Period of Performance and Termination**

This agreement (MOU) can be terminated by either Party upon 30 days written notice to the other Party.

This agreement may be modified or amended at any time upon written agreement of the Parties,

**VI. Signatories**

VMRC: Steven G. Bowman, Commissioner, Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, Virginia 23607.

TNC: Michael L. Lipford, Virginia Director, The Nature Conservancy in Virginia, 490 Westfield Road, Charlottesville, Virginia 22901.

**VII. Project Officers**

Project officers, for the purpose of administrating this MOU, including receiving and reviewing reports, project proposals, and the handling of termination notices are:

VMRC: James A. Wesson, Department Head, Conservation and Replenishment, Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, Virginia 23607.

TNC: Barry R. Truitt, Chief Conservation Scientist, The Nature Conservancy , Virginia Coast Reserve, 11332 Brownsville Road, P.O. Box 153, Nassawadox, Virginia 23413.

**VIII: Approvals**

Virginia Marine Resources Commission:      The Nature Conservancy:

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- 21.    **DISCUSSION:** Request for the Transfer of a Commercial Black Drum Harvest Permit from William Thomas to George Bowden.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist explained that all exception requests must be received by the Commission prior to March 1 of the year for which the permit is requested.

Mr. Grist stated that the Commission established the eligibility requirements for the black drum fishery in 1994 in order to prevent overcapitalization and improve economic benefits to full-time participants in the fishery.

Commissioner Bowden asked for action by the Board.

**Associate Member Bowden moved to approve the requested transfer. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Associate Member Fox asked why this needed to be done. Commissioner Bowman stated it was required by regulation.

**Associate Member Fox moved to advertise for a public hearing in May to amend the regulation. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**22. REPEAT OFFENDERS:**

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement gave the presentation. His comments are a part of the verbatim record.

**Vuong Thanh Nguyen**

Lt. Col. Rhodes explained that Mr. Nguyen had two crab violations and that staff was recommending probation.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman explained that any violations during the 12-month period would result in license suspension.

**Charles L. Waddell**

Lt. Col. Rhodes explained that there had been two violations for crabs since the regulation went into effect on June 1, 2008.

Charles Waddell said that he worked in the Pagan River and he had had problems with his crabs getting stolen and the pots being thrown into the channel.

Commissioner Bowman asked him about the cull ring violation. Mr. Waddell explained that his pots were in Jones Creek and that he had had boat problems and could not go out. He said in the meantime the laws had been changed. He stated that the crab pots were in bad shape and there were no cull rings in them. He said the Court had found him guilty.

Commissioner Bowman stated that the staff recommendation was for 12 months probation.

Associate Member Robins stated that these two violations involved the channel and CMAC intent was the violations would be for conservation measures to be heard by the Commission. He stated that the second was a technical one, not a conservation one. He referred to Regulation 270 where it said two crab related fishery violations.

Commissioner Bowman stated that he understood what Associate Member Robins was saying, but there were always a lot of complaints involving the channel, but the point was well made.

**Associate Member Robins moved for dismissal and if there is another conservation violation, then it would come to the Commission to be heard. Associate Member Tankard seconded the motion. Associate Member Schick stated that if in the channel only get a slap on the hand. He said Mr. Waddell should not have plead guilty in court, as other fishermen moved the pots. The motion carried, 9-0.**

Commissioner Bowman reminded him that there was still one violation that counts and warned him not to come back with another.

**Roger L. Belvin**

Lt. Col. Rhodes explained that there were two oyster violations.

Roger L. Belvin stated that he should have watched what the crew was doing. He said he went on his own with an inexperienced crew. He stated that he was spot checked by Law Enforcement and he was guilty.

Lt. Col. Rhodes stated that he had no previous record. He said that staff recommended 12 months probation.

Commissioner Bowman asked for action by the Board.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Robins seconded. The motion carried, 9-0. The Chair voted yes.**

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There was no further business and the meeting was adjourned at approximately 3:30 p.m. The next regular meeting will be Tuesday, May 26, 2009.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary