

## MINUTES

**Commission Meeting****May 23, 2006**

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

William A. Pruitt	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
Russell Garrison )	
J. T. Holland )	Associate Members
Cynthia Jones )	
Wayne McLeskey )	
Richard B. Robins, Jr. )	
Carl Josephson	Sr. Assistant Attorney General
Katherine Leonard	Recording Secretary
Wilford Kale	Senior Staff Advisor
Jane McCroskey	Chief, Admin./Finance Div.
Andy McNeil	Programmer Analyst, Sr.
Rob O'Reilly	Deputy Chief, Fisheries Mgmt. Div.
Jim Wesson	Head, Conservation/Replenishment
Eric Robillard	Head, Plans and Statistics
Joe Cimino	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Ellen Cosby	Fisheries Mgmt. Specialist
Joey Thompson	Admin. and Office Specialist
Kelly Lancaster	Fisheries Mgmt. Specialist
Linnette Curtis-King	Admin. and Office Specialist
Carter Shackelford	Fisheries Mgmt. Specialist
Richard Hancock	Fisheries Mgmt. Technician
Claude Bain	Head, Saltwater Fishing Tournament
Warner Rhodes	Acting Deputy Chief, Law Enforcement Div.
Chris Beuchelt	Marine Police Officer
Kevin Croft	Marine Police Officer

**Commission Meeting**

**13763  
May 23, 2006**

Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Sean Briggs	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)  
David O'Brien  
Lyle Varnell

Other present included:

Ed Morris	George M. Powell	Michael P. Sawyer
Audrey T. Sawyer	Carl D. Thomas	David Ramsey
Gail Lamm	Dan Morris	Frank Mills
David A. Jones	Bob Klein	Jenny Heisler
Doug Heisler	Robert Holloway	Anna Dougherty
Chris Flint	Ben Flint	Tom Langley
Jim Salmon	Richard Lutz	Andy Edmunds
Marvin Milton	Rebecca Francese	Wade Thomas
Anthony Collins	Myles Pocta	Katie Madary
Scott Harper	Robert DeFord	Ron Sutton
Steven Bulleigh	Tommy Leggett	Ellis W. James
Jane Whitcomb	Donna Labo	May King
Ernest L. George	Joe Shelton	Hank Norton
Susan Gaston	Kelly Place	

and others

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Commissioner Pruitt called the meeting to order at approximately 9:32 a.m. Associate Member Schick was absent. Associate Member Bowden and Holland arrived late.

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Associate Member Garrison gave the invocation and Mr. Carl Josephson led the pledge of allegiance to the flag.

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

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**APPROVAL OF AGENDA:** Commissioner Pruitt asked if there were any changes to the agenda. He explained that the applicant for Item 6, Harbour View Limited Partnership (00-0476) had requested a 30-day deferral until the June meeting. Bob Grabb, Chief, Habitat Management, explained that the applicant for Item 9, Baymark Construction Corporation (05-2610) had also requested a deferral until the June meeting.

**Associate Member Robins moved to approve the agenda, granting the requests for 30-day hearing deferrals for Items 6 and 9. Associate Member Fox seconded the motion. The motion carried, 5-0.**

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**MINUTES:** Commissioner Pruitt asked for a motion to approve the April 25, 2006 meeting minutes.

Associate Member Fox stated that the Commission decision last month as written for the VMRC webpage for Wards Oyster Company was incorrect and the motion as it is written in the minutes being approved today is correct. Associate Member Robins agreed with Mr. Fox's statement.

**Associate Member Robins moved to approve the minutes as presented. Associate Member Fox seconded the motion. The motion carried, 4-0-1, with Associate Member McLeskey abstaining since he was absent at the last meeting.**

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**Commission Meeting**

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

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

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

**After some discussion, Associate Member Garrison moved to approve Page Two items, A through O, as presented by staff. Associate Member Robins seconded the motion. The motion carried, 5-0.**

- 2A. **WESTFIELDS BUSINESS OWNER’S ASSOCIATION, #06-0331**, requests authorization to impact 19.7 linear feet of Flatlick Branch, a tributary to Cub Run, in Fairfax County as a result of the Stonecroft Boulevard expansion. The bridge over Cub Run will be expanded to 52.5 feet wide. A 10-foot by 14-foot culvert will be placed in Flatlick Branch to direct water under the road while the bridge is expanded and riprap will be utilized to maintain the low-flow channel. Staff recommends a royalty of \$1,034.50 for the encroachment over 1,034.5 square feet of State-owned bottom at a rate of \$1.00 per square foot.

Royalty Fee (encroachment 1,034.50 sq. ft. @	
\$1.00/sq. ft.....	\$1,034.50
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,134.50

- 2B. **DANIEL A. HOFFLER, 06-0578**, requests authorization to temporarily install a 175-foot long by 5-foot wide pier, extending 131 feet channelward of mean low water near the southern end of the sandy spit at “Point Farm” along Cherrystone Creek in Northampton County. The temporary pier will be completely removed by August 31, 2006.

Permit Fee.....	\$ 100.00
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- 2C. **VIRGINIA INSTITUTE OF MARINE SCIENCE, 06-0749**, requests authorization to construct a 1.3 MGD raw water intake consisting of two (2) 8-inch diameter pipes extending approximately 280 feet channelward of mean high water along the existing “Oyster Pier,” two pre-cast concrete caissons under the existing pier to house the intake pumps, and a 13’ 3” by 20’ 3” pump house on the existing pier-head, and to install an 18-inch diameter outfall extending approximately 240 feet channelward of mean high water with a 10-foot long riprap gabion located at the channelward end of the outfall pipe. The outfall pipe will be installed approximately 800 feet downstream of the Oyster Pier. The

intake and outfall structures are designed to provide raw seawater for the seawater research laboratory currently under construction at the Virginia Institute of Marine Science situated along the York River in Gloucester County.

Permit Fee..... \$ 100.00

**2D. TRANSCONTINENTAL GAS PIPE LINE CORPORATION, #06-0254,** requests authorization to conduct routine inspection and maintenance activities including the use of an existing petroleum pipeline at 22 jurisdictional stream crossings along a corridor that extends from the bank of the James River in Fluvanna County to compressor station # 185 in Prince William County. Anomalies detected within any section of the pipeline may require excavation and replacement or in-stream repairs. Depending on the size of the stream and nature of the repair, temporary dams, cofferdams, and flume pipes may be installed to provide dry working conditions. This project was originally permitted under our Virginia General permit (VGP#1) for VDOT activities, and has been taken over by the locality under the Local Partnership Funding Program to expedite construction. Recommend our standard in-stream construction conditions apply, as well as time-of-year restrictions and mussel surveys/relocations if necessary as recommended by DGIF as well as upon the expiration of the public comment period on May 26, 2006.

Permit Fee..... \$ 100.00

**2E. TOWN OF FARMVILLE, #06-0809,** requests authorization to replace and widen the VDOT Route 45 bridge crossing over the Appomattox River requiring the widening of the bridge deck from 44 feet to 59½ feet, the widening of the support piers: the excavation of 30 cubic yards of material below ordinary high water (OHW); placement of 30 cubic yards of permanent fill material below OHW; and the placement of 6,200 cubic yards of fill below OHW for the construction of the temporary construction causeways required to gain access to the bridge piers. Staff recommends our standard instream construction conditions.

Permit Fee..... \$ 100.00

**2F. NORFOLK YACHT AND COUNTRY CLUB, #01-1042,** requests modification of an existing permit, authorizing installation of seven (7) uncovered boat lifts at slip numbers 58, 51, 31, 29, 27, 24, and 22, all on pier A, adjacent to their property situated along the Lafayette River in Norfolk. The project will encroach on 3,780 sq. ft. of state-owned bottom and a royalty will be charged of \$1.50 per square foot for this encroachment. Since it is a permit modification, the permit fee has been paid previously.

Royalty Fee (encroachment 3,780 sq. ft. @\$1.50/sq. ft.)..... \$5,670.00

**2G. MAXUM PROPERTIES, INC. #06-0560**, requests authorization to construct a 6-foot wide by 94-foot long community fishing pier with a 14-foot wide by 24-foot T-head, a 5-foot wide by 115-foot long tending pier with an 8-foot by 64-foot L-head and a 14-foot wide by 115-foot long concrete boat ramp with two (2) 55-foot long vinyl sheetpile jetties to serve residents in the Pebble Beach Estates subdivision situated along the Mattaponi River in King and Queen County. Recommend approval with an instream time of year restriction from March 15 through June 30 to minimize adverse impacts on anadromous fish and a royalty of \$956.00 for the encroachment of the piers over 2,720 square feet of State-owned subaqueous land at a rate of \$0.30 per square foot and the ramp over 280 square feet at a rate of \$0.50 per square foot

Royalty Fee (encroachment 2,720 sq. ft. @ \$0.30/sq. ft.).....	\$ 816.00
Royalty Fee (encroachment 280 sq. ft. @ \$0.90/sq. ft.).....	\$ 140.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,056.00

**2H. VIRGINIA ELECTRIC AND POWER COMPANY, #98-0102**, requests authorization to install a 230kV aerial transmission line across a tributary of the North Landing River and West Neck Creek to facilitate construction of their proposed Landstown to West Landing project in Virginia Beach. Staff recommends a royalty of \$1,416.00 for the encroachment of the line over 472 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

Royalty Fee (encroachment 472 l. ft. @ \$3.00/l. ft.).....	\$1,416.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,516.00

**2I. WILLIAM A. WHITE, #05-1897**, requests authorization to remove an existing wharf and construct a new 8-foot by 68-foot private wharf with an uncovered boat lift and install and backfill approximately 326 linear feet of vinyl bulkhead aligned a maximum of two (2) feet channelward of the existing deteriorating bulkhead adjacent to his property situated along Rainey Gut in the Princess Anne Hills Park subdivision in Virginia Beach. Staff recommends a royalty of \$652.00 for the filling of 652 square feet of State-owned bottom at a rate of \$1.00 per square foot.

Royalty Fee (filling 652 sq. ft. @ \$1.00/sq. ft.).....	\$652.00
Permit Fee.....	\$100.00
Total Fees.....	\$752.00

**Commission Meeting**

**2J. RICHARD A. MAGALIS, #04-0188**, requests authorization to construct a 45-wide bridge over Crooked Run, a non-tidal tributary to the Shenandoah River, near Front Royal in Warren County to provide access into the proposed Blue Ridge Shadows residential development and Blue Ridge Shadows Golf Course. The bridge structure will span approximately 30 feet of State-owned bottom and remain approximately 25 feet above ordinary high water. Staff recommends a royalty of \$2,700.00 for the encroachment over 1,350 square feet of State-owned bottom at a rate \$2.00 per square foot.

Royalty Fee (encoachment 1,350 sq. ft. @	
\$2.00/sq. ft.).....	\$2,700.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$2,800.00

**2K. KEELING COVE, LLC, #05-0534**, requests authorization to dredge approximately 8,980 cubic yards of State-owned submerged bottom to obtain maximum depths of minus four (-4) feet below mean low water to improve navigational access to properties situated along Keeling Cove, a tributary to the Lynnhaven River in Virginia Beach. All dredged materials will be offloaded at a nearby upland site into sealed dump trucks and transported to a landfill in Chesapeake. Staff recommends a royalty of \$4,041.00 for the dredging of 8,980 cubic yards at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 8,980 cu. yd. @	
\$0.45/cu. yd.).....	\$4,041.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$4,141.00

**2L. CITY OF VIRGINIA BEACH, ET AL, #01-0951**, requests authorization to modify and extend an existing permit to allow the 2006 beach nourishment cycle to include approximately 2 million cubic yards of beach quality sand, obtained from a borrow source located outside of Virginia’s Territorial Sea, to be placed on approximately five miles of Sandbridge Beach. The permit will be extended 14 months, expiring on October 1, 2007.

Fees not applicable, Permit Modification and Extension

**2M. BAE SYSTEMS NORFOLK SHIP REPAIR, #06-0772**, requests authorization to install one 27-foot by 29-foot mooring dolphin and expand two existing dolphins to 27.5-feet by 6-feet at Pier 6 adjacent to property situated along the Southern Branch of the Elizabeth River in Norfolk.

Permit Fee.....	\$ 100.00
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**Commission Meeting**

**2N. R. FREDERICK BAENSCH, #06-0084**, requests authorization to construct a 300-foot long commercial pier with an 81-foot long T-head, six (6) finger piers and associated mooring piles, including a 3-pile cluster dolphin, to create a 14-slip commercial marina facility adjacent to their commercial property situated along Antipoison Creek off Windmill Point Road in Lancaster County. Recommend approval with the use of a turbidity curtain during removal of all derelict structures associated with the ruined wharf at the site, and a one-time royalty in the amount of \$12,940.00 for the encroachment over 12,940 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty Fee (encoachment 12,940 sq. ft. @	
\$1.00/sq. ft.).....	\$12,940.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$13,040.00

**2O. BAE SYSTEMS NORFOLK SHIP REPAIR, #06-0791**, requests authorization to install 250 linear feet of riprap revetment in front of an existing sheetpile bulkhead near Pier 6 located adjacent to property situated along the Southern Branch of the Elizabeth River in Norfolk.

Permit Fee.....	\$ 100.00
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**3. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL.** No closed session was held.

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Carl Josephson, Senior Assistant Attorney General and VMRC counsel asked to make some announcements. His comments are a part of the verbatim record.

Mr. Josephson reminded the Commission that Mr. Michael Jewett was present at the last meeting and read a statement to the board. He further explained that the Attorney General had approved enforcement action against the Jewetts and it had already been filed with the court. Also, he circulated a copy of the Circuit Court's decision in the case of Palmer versus VMRC, as the court had upheld the Commission's decision in this case.

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4. **EDWIN A. MORRIS, SR., ET AL, #05-2644**, requests authorization to change the status of a private pier to a joint-use pier and to expand the pier to include a 70-foot by 6-foot extension, a 40-foot by 12-foot decked area and two 24-foot by 14-foot open-sided boathouses adjacent to property situated along the Poquoson River in York County. The adjacent property owner protested the project.

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

Ms. West explained that Mr. Morris and his adjacent property owner, Mr. Powell, had submitted an application to change the status of Mr. Morris' current pier from private to joint-use and to lengthen and expand the pier to include a 40-foot by 12-foot pier head, two boathouses and associated finger piers.

Ms. West further explained that the Morris and Powell properties were located on the Poquoson River, downstream of the Harwood Mill Reservoir dam, in York County. A County drainage easement was located along the shared property line between the Morris and Powell lots, preventing the construction of a shared pier on the property line. With the exception of the proposed finger piers and boathouse on the eastern side of the pier, it appeared that the proposed pier extension, pierhead, and one boathouse would be constructed to the west of the property line extended in front of Mr. Morris' property.

Ms. West noted that Commission staff does not have the authority to determine riparian area. Only a Court of Chancery could determine the riparian areas between coterminous property owners.

Ms. West stated that Mr. Christopher R. Valentine, the adjacent property owner protested the project. His concerns included a reduction of his property value, loss of view, and type of roofing materials to be used, which he believed were not in keeping with the architecture of the neighborhood.

Ms. West said that the Army Corps of Engineers had issued a Regional Permit #17 for the project. No other State agencies had commented on the project.

Ms. West stated that the boathouses appeared reasonable in size, together totaling less than 700 square feet, and the proposed open-sided design should also minimize the visual impacts associated with the structures.

Ms. West said that staff was generally supportive of the construction of shared-use piers since they reduced encroachment over tidal wetlands and State-owned submerged lands. There were special considerations, however, that must be addressed when evaluating joint-use piers. These included the location of the pier in relation to who would be using it; the square footage of the proposed pier; and the relationship of potential future users of the pier should the property change hands.

Accordingly, Ms. West explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the following special conditions -

- The existing T-head portion of the pier shall be removed to a width equal to that of the existing pier.
- The proposed 40-foot by 12-foot pier head (480 sf) shall be reduced to no greater than 400 square feet, as permitted under §28.2-1203 of the Code of Virginia, as amended, beginning July 1, 2006.
- Should Mr. Powell or his successors in title elect to construct a pier within their own riparian area, the boathouse and associated finger piers on the eastern side of the pier, presumably constructed for Mr. Powell's use, must be removed and the pier will revert to the sole use of Mr. Morris or his successors.

Ms. West said that if the approval was conditioned as outlined above, the pier shared by the Morris and Powell families could easily be converted to a private pier, for use by Mr. Morris and his successors, that would be consistent with the provisions set out in §28.2-1203 of the Code of Virginia.

Robert Sidney Holloway, agent and contractor, was sworn in and his comments are a part of the verbatim record. Mr. Holloway explained he would address the staff recommendation. He said that the two parties agreed to have a joint pier, but wished to have it on Mr. Morris's property, as they could not build it on the property line because of a county drainage easement. Mr. Morris' son was severely handicapped. He said the families had enjoyed the pier for 21 years. He said they wanted to enlarge it and get to deeper water. He said when he called and told staff what was being requested, they said it would have to be considered a commercial pier. He said at that point he put in a Joint Permit Application for the joint use pier.

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

Mr. Holloway distributed a copy of Mr. Valentine's letter of protest. He said he felt they were being environmentally responsible in making this a joint pier. He asked that the Commission please consider their special needs.

Associate Member Robins referred to the APO letter and asked about the increased T-head.

Mr. Holloway said this was a joint pier and considered commercial. He said two families and handicapped individuals would be using this pier. He explained that the Code allowed for 250 square feet for one pier. He said the Commission should consider all of this when considering the space needed.

Edwin A. Morris, Sr., applicant, was sworn in and his comments are a part of the verbatim record. Mr. Morris said the additional space requested was to alleviate the congestion on the dock caused by his scooter and his son's wheelchair. He said since his son was a quadriplegic he had a special wheelchair. He said they were asking for favorable consideration of the pier, as requested.

Dan S. Morris, son of the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Morris explained that his was a large family and they contained two handicapped individuals with special needs.

George M. Parris, IV, co-applicant, was sworn in and his comments are a part of the verbatim record. Mr. Parris stated that there should be some solution that can be reached for their special needs.

Christopher R. Valentine, adjacent property owner protesting the project, was sworn in and his comments are a part of the verbatim record. Mr. Valentine explained that he was not opposed to the project and only had two problems with the proposal. He said first of all the shingles were not appropriate as they were galvanized metal which would be unsightly and differ from other roofs in the area. He said second, he felt 44' X 70+' was a big footprint and he did not want to have them get rid of the boathouse, but he did want to see it moved further away from his property about 16' and closer to the Powell's property. Associate Member Fox said the pier was already there and a shift would mean tearing it down and reconstructing it. Mr. Valentine went to the staff slide to demonstrate what he meant in shifting it further from his property.

Mr. Holloway in his rebuttal statements stated that Mr. Valentine planned to put in a pier, which would be longer than Mr. Morris'. He said that across the way, a subdivision was planned. He further said that Mr. Valentine's concerns were not justified.

**After further discussion Associate Member Robins stated that the metal roof was not regulated by the VMRC, as it was an architectural element. He said as to the shape and size of the pier staff recommended that the 12' X 7' T-head be removed which would still leave the existing T-head. He said the 12' X 7' structure was not necessary to the boathouse. He felt this would still serve the needs of the handicapped individuals. He moved to approve the project with staff's conditions, requiring the removal of the 12' X 7' T-head, but allowing the existing T-head to remain. Associate Member Garrison seconded the motion. Mr. Garrison stated that he felt consideration must be given for the needs of a handicapped person and this project would not have an impact on the environment. Associate Member Fox asked if adapting to staff recommendation, to say it must be limited to 400 square feet, and not get involved with the shape of the project, was a possibility. Associate Member Robins said it could be a conditioned approval requiring approval by staff of revised drawings. Associate Member Garrison agreed with the amendment. The motion carried, 7-0.**

Permit Fee..... \$ 100.00

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- 5. **TANNERS LANDING ASSOCIATES, LLC, #05-0480.** Formal Restoration Hearing concerning the unauthorized channel dredging and failure to comply with the special conditions contained within an unexecuted permit for their property situated along the Lafayette River in Norfolk.

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

Ms. West explained that the property was located adjacent to the Granby Street Bridge on the Lafayette River in Norfolk.

Ms. West reminded the Commission that this project was first presented to the Commission with staff's recommendation for approval at the December 20, 2005, meeting. All dredged materials were to be disposed of at the Craney Island Dredge Material Area. In accordance with the revised Rent and Royalty Schedule, which became effective on December 1, 2005, staff recommended that royalties be collected for both the dredging and encroachment portions of the project. Mr. Tom Langley, agent for the applicant, spoke during the Commission's consideration of the Page 2 items and objected to the assessment of a royalty for this project. As a result, the Commission agreed to further consider this project at their January 24, 2006, Commission meeting. At that meeting, the project was again approved with the assessment of an annual royalty for the encroachment of the community pier and a one-time royalty for the proposed dredging. At the February 22, 2006 meeting, the Commission subsequently approved the permittee's request to change the annual royalty for the community pier to a one-time royalty. In other words, this project was considered at three consecutive meetings.

Ms. West said that on April 12, 2006, staff received an inquiry regarding the status of the dredging permit for an adjacent property owner, Mr. Chris McCoy. Mr. Tom Langley, agent to Mr. McCoy stated that dredging at the Tanner's Landing property had begun and he was concerned that his client would miss his opportunity to utilize the services of Salmon's Dredging, Inc. while they were on site. According to correspondence received from Mr. R. Wade Thomas, dredging operations were initiated on April 10, 2006. Upon realizing that a pre-dredge conference, a standard VMRC permit condition, had not yet been held for the Tanner's Landing Associates, LLC project, staff reviewed the file. Staff then found that the permit had not yet been executed, the royalty had not yet been paid, and that there was a complete lack of adherence to almost ALL of the special conditions contained within the draft permit. These conditions included a requirement for a minimum 15 day notification prior to the start of activities, that a VMRC issued permit certification placard (distributed with the final permit) be displayed at the work site, and

that a pre-dredge conference be held within 7 days prior to the commencement of dredging activities.

On April 17, 2006, Ms. West stated that staff telephoned the project agent, again Mr. Tom Langley, to inquire regarding the apparent lack of compliance with the VMRC permit. Mr. Langley stated he was no longer involved with the Tanner's Landing project. Staff then immediately telephoned Mr. Tony Collins, the permittee, to inquire about the initiation of dredging in the absence of the permit and without adherence to the VMRC permit conditions. Staff requested that Mr. Collins cease dredging operations until the situation could be assessed. Mr. Collins declined to do so, stating that the dredging was nearly complete.

Ms. West said that staff conducted an on-site inspection with Audrey Cotnoir of the U.S. Army Corps of Engineers, on April 20, 2006. Barges and excavators were on site but it appeared that the dredging company, Salmon's Dredging, Inc., was demobilizing. The barges, which were moored along the shoreline and within jurisdictional tidal wetlands, appeared to be within an unauthorized channel. Areas of dredge material spillage were clearly visible channelward of mean low water. Staff spoke to the site superintendent, Mr. Fred Lemon, during our inspection. Mr. Lemon had a copy of the ACOE permit and the VIMS report on site.

Ms. West explained that when staff telephoned Mr. Collins on April 17, 2006, he had the unexecuted VMRC permit for this project in his possession. According to his May 8, 2006, letter he was out of the country from March 30<sup>th</sup> until April 10<sup>th</sup>. The construction schedule indicated that dredging was to take place this summer. As a result, Mr. Collins was unaware that his failure to execute his VMRC permit immediately would have any impact on the construction of the facility. Dredging began without his knowledge, at the direction of his contractor, on the day of his return. Mr. Collins states in his letter that both he and the contractor relied on the purported expertise of the dredging subcontractor, Salmon's Dredging, Inc.

Ms. West further explained that in a May 3, 2006, letter, Mr. R. Wade Thomas, Project Manager of Mid Eastern Builders, Inc. (MEB) stated that he had received the VIMS report and the permit from the U.S. Army Corps of Engineers in November 2005. MEB contacted Mr. Chris Flint of Flint Construction Company for a cost proposal for the pier and dredging. Flint Construction Company recommended that MEB contact Salmon's Dredging, Inc. (Salmon's). According to Mr. Thomas' letter, a copy of the Army Corps of Engineer's permit was forwarded to Salmon's by Flint Construction Company in November 2005. In April, Salmon's notified MEB that they could initiate dredging operations immediately. MEB, believing that all permits had been secured, released Salmon's to commence dredging operations. Dredging commenced on April 10, 2006 and dredging was completed by April 20, 2006.

Ms. West said that following a brief presentation on the violation at the April 25, 2006, Commission meeting, Mr. Tom Langley submitted correspondence that stated his services were not retained beyond obtaining permit approvals for the project and that he had no knowledge of the violation. Our permit, however, was forwarded to Tanners Landing Associates in care of Mr. Langley, for execution.

Ms. West stated that in the VMRC April 25, 2006, Notice to Comply, Mr. Collins was directed to provide a post-dredge survey of the entire dredged area, including any illegally dredged areas. The post-dredge survey was received on May 10, 2006. The boat basin previously considered by the Commission had been overdredged over a vast majority of the area by, on average, greater than half of a foot. In some locations, over a foot of additional depth had been dredged. In addition, a 195-foot long by approximately 60-foot wide illegal access channel was dredged from the authorized basin through both subaqueous land and jurisdictional tidal wetlands to the upland. Mr. Robert Kennedy of East Coast Hydrographics estimated the total illegal excavation to total 582 cubic yards.

Ms. West said that according to conversations with both Mr. Collins and Mr. Thomas, the purpose of the illegal channel was to allow barges to offload dredged materials into trucks for material disposal at an upland site in Chesapeake. Permits obtained for this project authorized the disposal of the dredged material at the Craney Island Dredge Material Area, not upland disposal. As a result, the decision by Salmon's Dredging to unilaterally change the disposal plan without authorization resulted in additional unanticipated but unavoidable subaqueous and wetland impacts.

Ms. West said that as of May 15, 2006, staff had had no contact with Salmon's Dredging, Inc. or Flint Construction Company with regards to this violation. Since that time, however, staff had spoken with them.

Ms. West explained that Commission permits were not final until the documents had been signed, notarized and properly executed. This was clearly stated in staff's letter to the applicant. As such, dredging at this site had taken place in the absence of proper authorization from this agency. Further compounding the situation, the applicant's lack of adherence to the proposed permit conditions had directly resulted in unauthorized impacts to both State-owned submerged lands and jurisdictional tidal wetlands.

Ms. West stated that according to the correspondence from Mr. Collins, Mr. Thomas and Mr. Langley, this dredging violation was the result of a series of miscommunications. It was clear to staff that ALL of these unauthorized impacts could have been avoided. All persons that staff had spoken to, and who were directly involved with this violation, had stated they were in possession of a copy of the permit issued by the U.S. Army Corps of Engineers. That permit clearly stated that the ACOE shall be notified prior to the initiation of the permitted activity, that the dredge material must be transported to Craney Island Dredge Material Area and that the permittee must apply for and be granted a permit modification prior to changing any aspects of the permit. In addition, in capital

letters, the Army Corps of Engineer's permit clearly states that "YOU MAY NOT BEGIN WORK UNTIL YOU HAVE OBTAINED A PERMIT FROM THE VIRGINIA MARINE RESOURCES COMMISSION." Staff was unclear how or why the permittee, personnel from an experienced and reputable construction firm, and an "experienced" marine dredging contractor all neglected to notice or heed this explicit language contained within the Army Corps of Engineers permit.

Ms. West explained that staff was particularly concerned with the activities of Salmon's Dredging, Inc. As a marine dredger with years of experience, their apparent complete disregard for the permitting process and the regulatory processes was inexcusable. In addition, staff was currently investigating this same dredger's association with a dredging violation in Virginia Beach.

As such, Ms. West said that staff recommended that triple permit fees of \$300.00 and the assessment of triple royalties in the amount of \$4,321.80 for the unauthorized dredging of 2,401 cubic yards of material at the maximum rate of \$0.60 per cubic yard. Staff also recommended that significant civil charges be considered for the applicant and the contractor, but especially the dredging subcontractor, of up to \$10,000 for each violation in lieu of further enforcement. Clearly, Salmon's Dredging, Inc. was guilty of dredging State-owned bottom without a permit, a violation of §28.2-1203(A) of the Code of Virginia and a Class 1 misdemeanor. They were also subject to the assessment of civil penalties by the appropriate circuit court in amounts not to exceed \$25,000 per day for each violation. Staff considered this violation to have resulted in a significant degree of environmental impact and, as a result, a major degree of deviation and non-compliance.

Ms. West said that staff also recommended that the Commission consider filing a written complaint over the performance of Salmon's Dredging, Inc., with the State Board of Contractors.

Commissioner Pruitt asked if there were questions for staff.

Associate Member Garrison asked if Mr. Collins had returned her call. Ms. West responded that he did call her back, but indicated that since the dredging was near completion they wanted to finish up. Associate Member Garrison asked if the dredge spoil was placed on an approved site. Ms. West responded she hoped it was an approved site.

Associate Member Robins asked if the permit had a stipulation for an over dredging tolerance. Ms. West said there was none, but generally staff allowed for 6 inches of overdredge.

Commissioner Pruitt asked if the applicant or representatives for the applicant wished to address the Commission.

Tony Collins of the Tanner's Owners Association was sworn in and his comments are a part of the verbatim record. Mr. Collins explained that he was on holiday when the violation occurred and Fred Lemons called to inform him of the violations. He said that this was his first experience with a pier and dredging as a developer. He said this was all originally planned for the July and August timeframe. He said the permit was received by his office staff while he was on holiday and retained in order for him to sign upon his return. He said he spoke with Wade Thomas and this was his first dredging experience as well and he did not know the permit was not issued. He said they contacted the staff and told them they wished to be allowed to finish up the little amount of work that remained to be done and get the equipment demobilized and removed as well. He said he felt that they were cooperative and responsive. He said there had been a breakdown in communication and Wade Thomas made a business decision.

Tom Langley, Langley and McDonald Engineering, was sworn in and his comments are a part of the verbatim record. Mr. Langley explained that he was contracted with to secure the permit, not for any further services.

Robert Wade Thomas, Mid Eastern Builders (MEB), was sworn in and his comments are a part of the verbatim record. Mr. Thomas explained that he assumed Salmon's had the necessary permits and agreed to start work, which was error in judgment on his part. He further explained that Mr. Collins notified him when the problem arose and he stopped work when contacted. He said he wished to cooperate to resolve as he tried to do things by the law. He said he dropped the ball and should have read the permit. He said they want to restore everything and they have a meeting scheduled with the City of Norfolk and have also contacted the Army Corps of Engineers (ACOE).

Ben Flint, Flint Contracting, was sworn in and his comments are a part of the verbatim record. Mr. Flint explained that he was only involved with the piers and bulkheads. He only recommended several dredgers at the request of the applicant. He said he provided him with a list.

Jim Salmon, Salmon's Dredging, Inc. Inc., was sworn in and his comments are a part of the verbatim record. Mr. Salmon explained that he had seen the ACOE permit, which required that the dredged spoil be taken to Craney Island. At that time, he informed them that he was not equipped to take the spoil to Craney Island, but was equipped to take the spoil to Higginson-Buchanan. He said they forwarded a contract to him, so he thought it was all right. He said he relied on others and did not look at the permit again. He said he had not intended to violate any laws and this was his first time before the board for such a matter. He said he was willing to do whatever was necessary to resolve it.

Ellis W. James, Norfolk Resident, requested an opportunity to address the Commission on this matter. Commissioner Pruitt explained from what the VMRC Counsel told him that it was necessary for any party wishing to participate in the restoration hearing to have a direct connection.



Associate Member Garrison asked Mr. Salmon how long had he been in the business, if he was familiar with the predredge conference requirement, and was he not aware of the requirement to post a notice of the permit at the project site. Mr. Salmon said he had been in this business for 3 or 4 years and he did know that in most cases a conference was necessary, but as a subcontractor he thought that the general contractor had taken care of all of it. He further stated that he had relied on others to take care of what was necessary.

Associate Member Jones asked why there was no evaluation from VIMS and if those present could comment. Dr. David O'Brien of VIMS was present and responded to Dr. Jones. He explained that he did not do the site visit. The Wetlands Scientist had done this one and was currently on vacation. He stated that the ¼ acre included both wetlands and subaqueous encroachments. He also explained that when they evaluate a project they consider vegetated wetlands and the effects of dredging turbidity as well as the water quality, nearness to channel or mudflats and any disturbance that might occur to near shore habitat. He said they usually suggest a buffer from any dredge the site because of the possibility of secondary impacts to adjacent areas, which could result in shoreline erosion.

Associate Member Fox asked Mr. Salmon if he could not take it to Craney Island, had he informed them. Mr. Salmon stated that he could not do it and he told them that, but they still contracted with him anyway. Associate Member Fox asked if there was a fee for Craney Island. Mr. Salmon responded, yes, but the Higginson-Buchanan site was higher. He said he was not set up to barge, as it cost more money. He said in this situation, there was no financial gain for any of the parties involved. Associate Member Fox asked if Mr. Salmon had told them he would need to dredge the channel. Mr. Salmon responded, no, but assumed that had been changed. He said it was not anyone's intent to do wrong and he wanted to do his part to straighten this all out.

**After some further discussion, Associate Member Garrison moved to charge a triple permit fee of \$300.00; triple royalty for the dredging of \$4,321.80 and assess a civil charge on the owner Mr. Collins for \$10,000.00, as he did not immediately stop the dredging when notified. He further moved to assess a civil charge on Salmon's Dredging, Inc. for \$10,000.00 for the improper disposal; a civil charge on Salmon's Dredging, Inc. for \$10,000.00 for the overdredge of 582 cubic yards or ¼ acre of wetlands and subaqueous bottoms; and to request that Commissioner Pruitt contact the Contractor's Board to report Salmon's Dredging, Inc. Associate Member Robins seconded the motion for discussion. He said he did not agree with second fines. He said what was to be assessed for the applicant was fine. He said he wanted to recommend an amendment for Salmon's Dredging, Inc. fines of \$10,000.00 for improper disposal and \$5,000.00 for the overdredge of the wetlands and subaqueous bottoms.**

Associate Member Jones asked for clarification of the improper disposal. Was Salmon's Dredging, Inc. aware that Craney Island was the site permitted, but instead opted to use

**Commission Meeting**

another site that was correct. Ms. West said that the Higgerson-Buchanan site was an approved disposal site. Associate Member Jones asked why there was concern with the site, if it was approved. Associate Member Robins explained it was a departure from the permit and its requirements when there was no predredge conference and when they did not adhere to the proper disposal site. He said they did not comply with the permit and as it was a big departure from the permit requirements he felt that it was the correct action to take, levying a civil charge against Salmon's Dredging, Inc.

Associate Member Fox asked why no fine was placed on MEB when they told Salmon to go ahead with the alternate disposal site. He said he felt MEB needed to be fined in the matter, as they had some culpability as well.

Commissioner Pruitt allowed Mr. Thomas to respond to Associate Member Fox's question. Mr. Thomas of MEB, stated that no one told him. He explained that it was Salmon's Dredging, Inc. that told him there was a need to move to the Higgerson-Buchanan disposal site, which wasn't true. He said his fault was that he did not review the permit to see that the Craney Island disposal site was required. He said when Mr. Collins called him about the problem, the dredging had already stopped, there was only demobilization left to do. Associate Member Fox asked if he was not aware that Salmon's Dredging, Inc. was not capable of taking the dredged materials to the Craney Island site. Mr. Thomas said he was only told after it all happened.

**Associate Member Garrison asked if the motion still included the Commissioner being asked to report Salmon's Dredging, Inc. to the Contractor's Board. Associate Member Robins responded that it did.**

Commissioner Pruitt told all parties to get with the staff and if they did not agree with the civil charges, then the matter would be taken to the Attorney General for further action.

**The motion carried, 7-0.**

Assessments against the applicant:

Royalty Fees (triple) (Dredging 2,401 cu. yds. @\$0.60/cu. yd.).....	\$ 4,321.80
Permit Fee (triple).....	\$ 300.00
Civil Charge.....	\$10,000.00
Total Fees.....	\$14,621.80

Assessments against the dredging contractor:

Civil Charge for improper disposal of dredged material.....	\$ 10,000.00
Civil Charge for the overdredge.....	\$ 5,000.00

Total Civil Charges..... \$ 15,000.00

\* \* \* \* \*

- 6. **HARBOUR VIEW LIMITED PARTNERSHIP, #00-0476.** Formal Restoration Hearing concerning the construction of a 30.5-foot by 30.5-foot gazebo structure positioned channelward of mean low water adjacent to their riverfront park at the confluence of Knotts Creek and the Nansemond River in the City of Suffolk.

Deferral request approved, to be heard at the next Commission meeting in June.

\* \* \* \* \*

- 7. **ROBERT DeFORD, #05-2355,** requests authorization to construct an 8-foot wide by 325-foot long community pier including a 14-foot wide by 69-foot T-head, a 10-foot by 20-foot floating pier, and 3-foot wide finger piers to provide a maximum number of seven (7) slips with uncovered boat lifts to serve the residents of a new subdivision situated along the Eastern Branch of the Elizabeth River in Virginia Beach. And adjoining property owner protests the project.

Justin Worrell, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Worrell stated that Ms. Fortune, the protestant, was not present at the hearing.

Mr. Worrell explained that the proposed community pier was designed to serve a new five lot residential subdivision located at the end of an extension of Le Cove Drive in Virginia Beach. This property is directly west of the confluence of Kings Creek and the Eastern Branch of the Elizabeth River. The Military Highway (U.S. Highway 13) Bridge is within eyesight to the east. This section of the Elizabeth River, between the Military Highway Bridge and the Broad Creek Bridge (Interstate 264) to the northwest, is primarily a residential area with several private piers along both sides of the river. According to the application drawings, only lot numbers 4 and 5, and the individual community parcel from which the pier would extend, are shown to be actual riparian properties. Lots 1, 2, and 3, were platted as *potential* riparian properties. If the community pier is approved as proposed, the applicant plans to reduce the size of those properties to prevent riparian access and potential impacts to the resource protection area (RPA).

Mr. Worrell further explained that the applicant/developer had offered to sever the riparian rights from the two current, and any future riparian properties, to preclude the construction of individual private piers. The community pier would be the only structure providing water access to property owners within the new subdivision.

Mr. Worrell stated that Mr. and Mrs. Fortune, adjacent property owners to the west of the property, objected to components of the community pier plan. The Fortunes had concerns regarding the size and length of the pier, the number of slips proposed, and the floating dock component. They contend that the pier should provide a maximum of six (6) total boat slips, as the developer originally informed the neighbors. Also, the Fortunes were concerned that the placement of the floating dock on the western side of the pier would lead to future problems with jet ski users navigating too close to their existing pier. Mr. Douglas Heisler, the adjacent property owner on the eastern side of the property, called to voice his support for the proposal.

Mr. Worrell said that in response to questions regarding the length of the pier, staff and the U.S. Army Corps of Engineers (Corps) determined that the total length of the pier, approximately 265 feet channelward of mean low water (MLW), did not exceed more than one-third the width of the Elizabeth River at this point, nor did the pier affect any semblance of a channel. There was no federal navigational channel in this section of the Elizabeth River. As a result, the Corps had issued a Regional Permit 19 for the community pier proposal.

Mr. Worrell stated that the Department of Conservation and Recreation commented that they did not anticipate any adverse impacts resulting from this project. The Virginia Department of Health (VDH) Division of Shellfish Sanitation commented that the project would not increase existing condemned waters, and the Division of Wastewater Engineering approved the project stating that the project was in compliance with their Sanitary Regulations for Marinas and Boat Moorings. The Virginia Institute of Marine Science (VIMS) noted that the design of the pier seemed to create more potential boat slips than there were riparian properties. VIMS recommended that the "number of slips be commensurate with the number of riparian properties and the elimination of the proposed guest slips."

Mr. Worrell said that the City's Chesapeake Bay Board approved the proposal with the stipulation that the lot lines for parcels 1, 2, and 3 be adjusted to preclude riparian rights. The Virginia Beach Planning Commission recommended approval, and City Council granted a conditional use permit for the community pier. On March 21, 2006, the City's Planning Department issued the final approval letter, advising the applicant that the City's Building permit could now be issued.

Mr. Worrell said that the applicant had stated that the proposed property lines for lots 1, 2, and 3 were drawn in a manner to show that each could be considered individual riparian properties. He agreed to the Bay Board's condition that they be redrawn as non-riparian properties, however, in anticipation that the community pier would receive local and State approval. The applicant also contended that he could re-plat the lot lines for parcels 1, 2, and 3 to create larger riparian properties. In that situation, if approved by the City, the new subdivision would include five specific riparian properties.

**Commission Meeting**

Mr. Worrell stated that staff generally supported a community pier approach to provide a central point of water access for communities with riparian property. One community pier was typically recommended over numerous individual private piers given the cumulative environmental and aesthetic impacts involved. In this instance, staff recommended approval of the community pier provided that all five lots in the subdivision were permanently restricted from installing individual private piers, as the applicant had offered. Staff could only support a maximum number of five (5) boat slips, however, not the seven (7) as requested, given that this was a five-lot subdivision. Considering the very limited riparian area for three of those five lots, staff felt that the number of slips should be commensurate with the total number of proposed lots. Furthermore, staff recommended denying the proposed floating pier section and the octagonal platform along the walkway. Both appeared to be unnecessary given the size of the total pier and the minimal number of people potentially authorized to use it.

Mr. Worrell said that should the Commission decide to approve the community pier, staff recommended assessing a royalty based on the total square footage of the bold outline footprint including the pier, slips, and any other approved appurtenances, at a rate of \$1.50 per square foot. If approved, staff also recommended that the applicant be required to create and implement a marina management plan that included education of residents and specific plans to handle waste and contaminant spills.

Commissioner Pruitt asked for the applicant or his representative to address the Commission.

Robert DeFord, applicant, was sworn in and his comments are a part of the verbatim record. Mr. DeFord explained that the lots are not recorded and the City of Virginia Beach had encouraged a community pier versus the individual private piers. He stated that lots 1, 2, and 3 were 20 feet wide and would have riparian rights. He said the Fortunes' 1100-foot pier crosses marsh. He said the lot owners would give up their riparian right and all lots would have access to the community pier. He was requesting 2 slips for lots 4 and 5 and with boatlifts the owners could possibly have 2 boats. He said it would be stipulated that the community pier would be for the homeowners only and the Homeowner's Association would maintain ownership and maintain it. He said the Fortunes would not see the docks. He said the distance from lots 1, 2, and 3 would require the owners to use carts to carry needed items to the pier. He said that there was a potential for 5 families to use the pier. He said the floating pier had been proposed for use with canoes and kayaks and when the tide was low.

Commissioner Pruitt asked if there was anyone in opposition to the project present and wishing to address the Commission.

Peter Nixon, Norfolk resident along the Elizabeth River, was sworn in and his comments are a part of the verbatim record. Mr. Nixon explained that as a waterman he worked 8 months out of the year in this location. He said he was very concerned with the scale and

**Commission Meeting**

with the length of the pier. He said he felt the pier should be reduced in length and made to follow the contour of the land. He said it was not necessary to go out as far as the Fortune's pier did to get to deeper water. He said he approved of the design. He requested a slide to demonstrate the location of another proposed pier.

Commissioner Pruitt asked Mr. DeFord for any rebuttal comments.

Mr. DeFord in his rebuttal comments explained that he was trying to be accommodating as much as he could, but not out as far as the Fortune's pier. He said they were following the contour of the land.

Associate Member Robins asked how he felt about the staff recommendation to deny the floating pier. Mr. DeFord said the floating pier would help to access the pier when the tide was low and a small boat was involved.

Commissioner Pruitt stated if that was all, were the Commission members ready to make a motion.

**Associate Member Robins moved to allow the bumpout but it was not to exceed 12' diameter, eliminate the finger piers, leave the floating dock, limit the slips to 5 in total, and the 5<sup>th</sup> slip to be placed landward of the floating dock. Associate Member Fox seconded. The motion carried, 7-0.**

Permit Fee..... \$100.00  
(Note: Royalty fees to be determined upon receipt of revised drawings.)

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Commissioner Pruitt left the meeting for a while and Associate Member Garrison assumed the chair duties.

- 8. **MICHAEL P. SAWYER, #06-0061**, requests authorization to construct a 14-foot by 40-foot concrete, private, noncommercial boat ramp extending approximately 28 feet channelward of an existing timber bulkhead adjacent to his property situated along Hudgins Creek, a tributary of Stutts Creek in Mathews County. The adjoining property owners protested the project.

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

Mr. Neikirk explained that Mr. Sawyer's property was located at the mouth of Hudgins Creek, a tributary of Stutts Creek in the Moon area of Mathews County. Development along the shoreline is primarily residential and the creek is approximately 100 feet wide at

the project site. The nearest public boat ramp is located on Gwynn's Island which is approximately 3.5 miles away by water and 8.5 miles away by land.

Mr. Neikirk said that Mr. Sawyer proposed to construct a 14-foot by 40-foot, private, concrete boat ramp extending through and approximately 28 feet channelward of his existing bulkhead. The proposed site was adjacent to an existing 38-foot long enclosed boathouse. Mean low water intersects the existing bulkhead, so the project did not involve any tidal wetlands. In a conversation with staff, Mr. Sawyer explained that he planned to pour in place that portion of the ramp located landward of the bulkhead. He planned to form the other portion of the ramp on the upland and deploy it as pre-cast sections.

Mr. Neikirk stated that the adjoining property owners protested the project. Their stated concerns included navigational hazards associated with the use of the ramp near the mouth of the creek, lack of construction details in the application, possible shoaling of the mouth resulting from the construction, additional traffic along a narrow private road, and possible use of the ramp for commercial purposes.

Mr. Neikirk said that the Virginia Institute of Marine Science stated in their report dated April 28, 2006, that the adverse environmental impacts resulting from the project should be minimal. No other state agencies had commented on the project.

Mr. Neikirk stated that the proposed boat ramp would not encroach over any public or privately leased oyster planting ground. Although the proposed boat ramp would be located near the mouth of the creek, it would not extend as far channelward as the existing enclosed boathouse. Accordingly, staff did not believe the structure itself would adversely affect navigation in the creek. The existing boathouse could potentially obstruct the view from a boat being launched on the ramp and conversely it may be difficult for a boat exiting the creek to see a boat on the ramp. As such, staff would be reluctant to recommend approval of this ramp if it were being proposed for commercial purposes. If however, the usage was restricted to private, noncommercial activity, as proposed, and the boaters operated their vessels in accordance with existing laws, staff did not believe the private use of the ramp represented any more of a navigational hazard than the existing boathouse. Additionally, since the proposed boat ramp was to be constructed on grade with the existing substrate and no jetties were proposed alongside the ramp, staff did not believe the boat ramp would cause shoaling.

Accordingly, Mr. Neikirk said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the assessment of a royalty of \$196.00 for the encroachment of the ramp on 392 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Associate Member Garrison asked for questions for staff. There were none.

**Commission Meeting**

Commissioner Pruitt returned to the meeting. He asked for the applicant or a representative to address the Commission.

Michael Paul Sawyer, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Sawyer explained the protestants were not full time residents and were only there for so many days in the year. Commissioner Pruitt asked the applicant if he agreed with the staff recommendation. Mr. Sawyer responded yes. He further explained that the structures would be pre-cast and then floated down the river for installation.

Commissioner Pruitt asked for anyone in opposition present and wishing to address the Commission. There were none. He then asked for a motion.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Garrison seconded the motion. The motion carried, 7-0.**

Royalty Fee (encroachment 392 sq. ft. @	
\$0.50/sq. ft.).....	\$196.00
Permit Fee.....	\$100.00
Total Fees.....	\$296.00

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The Commission broke for lunch at approximately 12:07 p.m. and returned at approximately 12:50 p.m.

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- 9. **BAYMARK CONSTRUCTION CORPORATION, #05-2610**, requests authorization to construct a 1,375-foot long by 10-foot wide open-pile, concrete fishing pier with a 116-foot long by 30-foot wide modified T-head and a 30-foot wide octagonal covered shelter and two (2) floating docks for water taxis and boat rentals at their property situated along the Chesapeake Bay in the Town of Cape Charles. The project is protested by a nearby licensed pound netter and the Arlington Plantation Home Owners Association.

Deferral request approved, to be heard at the next Commission meeting in June.

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- 10. DON WHITCOMB, #05-1409**, requests authorization to construct an 8-foot wide by 30-foot long boat ramp extending approximately 17 feet channelward of mean low water, adjacent to his property situated along Glebe Creek in Westmoreland County. Both adjacent property owners protested the project.

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

Mr. McGinnis explained that the proposed project was located in a primarily residential area along Glebe Creek in Westmoreland County, near the Town of Tidwells. The applicant was seeking authorization to install an 8-foot wide by 30-foot long, timber boat ramp, which would extend 17 feet channelward of mean low water, adjacent to an existing pier on his property. The closest public boat ramp is located on Bonum Creek, an approximate 14-mile drive from Mr. Whitcomb's property. There are also several for-fee boat ramps at area marinas and seafood facilities available for public use, the closest one being approximately seven miles drive away at McGuire's Wharf on Nomini Creek.

Mr. McGinnis stated that in Mr. Whitcomb's original application construction was proposed for a 10-foot wide by 45-foot long boat ramp extending approximately 4 feet channelward of mean low water, along the southern boundary of his property. A plat submitted with the permit application showed that the proposed ramp would have been within a 10-foot wide easement, reserved as a "walkway" to Glebe Creek for the owner(s) of a non-riparian, upland property, identified as Parcel "A."

Mr. McGinnis said that prior to Mr. Whitcomb's proposed project being heard by the Westmoreland County Wetlands Board, staff had received an objection from Mr. John Walsh on July 11, 2005, followed by an objection by Mr. and Mrs. Murdock on July 25, 2005. Mr. Walsh owned the adjacent property to the northeast of the applicant, and Mr. and Mrs. Murdock owned the adjacent property to the south. Collectively, their comments with regard to the proposed boat ramp focused on issues related to the project's impacts to the Resource Protection Area (RPA), tidal wetlands, and the existing access easement.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated August 11, 2005, stated that if the proposed boat ramp were relocated adjacent to the pier, impacts to approximately 200 square feet of vegetated wetlands would be avoided.

Mr. McGinnis said that the Westmoreland County Wetlands Board approved Mr. Whitcomb's proposed boat ramp at their hearing on August 15, 2005, but required the location of the boat ramp be moved from the easement as it was originally proposed, to a spot adjacent to his existing pier, to avoid impacts on vegetated wetlands. The Board's approval also included 90 linear feet of riprap revetment to be installed above mean low

water, outside of the Commission's jurisdiction. Following the decision by the Wetlands Board, revised objections to the proposed project were submitted by both protestants. Mr. Walsh's comments dated September 21, 2005, stated that he believed that the proposed boat ramp would require unnecessary "cuts" in the shoreline, and that Mr. Whitcomb's needs might be better served by using "ramps" attached to his pier, much like other property owners on the creek. Staff was not sure what Mr. Walsh meant by "ramps," but believed he may have meant to say lifts. Mr. and Mrs. Murdock's revised comments dated September 23, 2005, echoed their previous concerns about the ramp's impacts within the RPA.

Mr. McGinnis said that the Department of Game and Inland Fisheries (DGIF), in an e-mail dated December 19, 2005, indicated that they did not anticipate a significant adverse impact upon threatened or endangered wildlife resources under their jurisdiction. The Department of Conservation and Recreation (DCR), in a memorandum dated January 10, 2006, stated that they did not anticipate that the proposed project would result in any adverse impacts upon natural heritage resources, state-listed plants or insects, or State Natural Area Preserves. Their memo went on to state that all proposed land disturbance, clearing, or grading must comply with the Chesapeake Bay Preservation Area Designation and Management Regulations. DCR also stated that the applicant's existing pier already provided a point of access to the water, and recommended utilization of lifts placed on the pier, rather than the construction of the ramp. No other State agencies had raised any concerns or objections to this project.

Mr. McGinnis explained that while staff was sensitive to the concerns of the protestants, it appeared a majority of their concerns related to potential impacts to areas over which the Commission did not have jurisdiction. Staff also acknowledged the comments provided by DCR in regard to the project's compliance with the Chesapeake Bay Act requirements, however, these issues should be addressed under the Chesapeake Bay Act Program administered by the County.

Accordingly, Mr. McGinnis said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since the Wetlands Board approved the application in modified form to reduce impacts to vegetated wetlands, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved, as currently proposed.

Staff further recommended the assessment of a one-time royalty in the amount of \$68.00 for the encroachment over 136 square feet of State-owned subaqueous land at a rate of \$0.50 per square foot.

Commissioner Pruitt asked for the applicant or representative to address the Commission.

**Commission Meeting**

Jane Jacob Whitcomb, applicant, was sworn in and her comments are a part of the verbatim record. Ms. Whitcomb explained that it was just a small boat ramp they wanted on their property, which was 2 ¼ acres. She said the property owners felt the location was not acceptable so she had reduced the length and width of the boat ramp to 8' X 30' and relocated it. She said she would only be using a 14-foot john boat and just having fun at her property.

Commissioner Pruitt asked for anyone in opposition to the project and wishing to address the Commission.

John Alexander Walsh, adjoining property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Walsh stated that his letter of objection was a part of the record. He said originally he understood it to be a proposed jet ski ramp and that was unacceptable to him. He said even though the request was for a boat ramp and not a jet ski ramp, he still was protesting for environmental reasons.

Kenneth H. Murdock, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Murdock explained he was not going to repeat their concerns as they were in item 7-2 of the Commission's record. He said their comments were dealt with by the moving the boat ramp. He said he agreed with the Department of Conservation and Recreation regarding the impacts of the project. He said staff had presented the impacts of the case as concisely as could be done.

Ms. Whitcomb in her rebuttal stated there would be no jet ski as her son was too severely head traumatized to use anything like that. She said she had made the concessions she felt were necessary to resolve the protests and environmental concerns. She said she worked for NOAA and was as concerned as others in regards to conservation. She said she would only be removing some small holly trees.

Commissioner Pruitt asked for a motion.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Garrison seconded the motion. The motion carried, 7-0.**

Royalty Fee (enchantment 136 sq. ft. @	
\$0.50/sq. ft.).....	\$68.00
Permit Fee.....	\$25.00
Total Fees.....	\$93.00

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- 11. FARMINGTON FARMS HOMEOWNERS ASSOCIATION, #05-2964,** requests authorization to construct a 12' wide by 40' long concrete boat ramp and a 6' wide by 40' long open-pile tending pier at property situated along the Pamunkey River in Hanover County. Wetlands and subaqueous permits are required.

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

Mr. Owen explained that the project was located on the Pamunkey River, approximately 3.8 miles downstream of the Route 360 crossing, in Hanover County. The shoreline along this reach of the river is rural in character and is predominantly wooded or agricultural. Boating activity is seasonal and considered to be light to moderate.

Mr. Owen said that the Association's restrictive covenants provide individual lot owners access to the River via easements across the properties of Gary and Jody Chapman and R. E. Watson Associates, Inc. Specifically, the covenants provide for a "river access" which allowed for vehicular (including boat trailer) and pedestrian ingress/egress to the River and a "landing" which included vehicular pull-out and turning areas, a parking area and a boat ramp.

Mr. Owen said that since Hanover County had not yet adopted the model wetlands zoning ordinance contained within the Virginia Wetlands Act, the Commission was charged with acting as the local wetlands board for this project.

Mr. Owen explained that the boat ramp, as proposed, would result in the filling of 252 square feet of non-vegetated wetlands (sand/mud mixed flat community) and 108 square feet of State-owned subaqueous land. As such, Commission authorization was required for this portion of the project pursuant to Chapters 12 & 13, Subtitle III, of Title 28.2 of the Code of Virginia. The proposed tending pier, while specifically exempted by §28.2-1302.3.1 of the Code, required Commission authorization pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code.

Mr. Owen stated that the Virginia Institute of Marine Science, in their Shoreline Report dated May 9, 2006, advised that the direct adverse impact of the project was expected to be minimal. No other State agencies had commented on the project. No protest for this project had been received to date.

Mr. Owen said that the adverse impacts to the marine environment associated with the proposed construction were considered by VIMS and staff to be minimal in nature. Accordingly, in light of this, the riparian access granted by the Association's covenants and easement, and in consideration of all of the factors contained in §28.2-1205(A) of the Virginia Code, staff recommended approval of the project as proposed. This recommendation was also based upon the following additional findings:

- (1) that the anticipated public and private benefits of the proposed activity exceeds its anticipated public and private detriment;
- (2) the proposed development conforms with the standards prescribed in §28.2-1308 of the Virginia Code and the guidelines promulgated by the VMRC pursuant to Virginia Code §28.2-1301; and
- (3) the proposed activity does not violate the purposes and intent of Chapters 12 and 13, Subtitle III, of Title 28.2 of the Virginia Code.

Further, Mr. Owen stated that staff recommended a royalty in the amount of \$81.00 for the encroachment of the pier and ramp over 162 square feet of State-owned subaqueous land at a rate of \$0.50 per square foot.

Commissioner Pruitt asked for the applicant or representative to address the Commission.

Ron Sutton, Farmington Farms Home Owners Association, Building Committee, was sworn in and his comments are a part of the verbatim record. Mr. Sutton said he did not have anything to add to staff's comments.

Commissioner Pruitt asked if anyone in opposition was present wishing to address the Commission. There was no one present in opposition to the project.

**Associate Member Fox moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 7-0.**

Royalty Fee (encroachment 162 sq. ft. @	
\$0.50/sq. ft.).....	\$ 81.00
Permit Fee.....	\$ 25.00
Wetlands Permit Fee.....	\$ 10.00
Total Fees.....	\$116.00

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- 12. ANDREW EDMUNDS, #06-0670**, requests authorization to construct 373 linear feet of riprap revetment adjacent to his property situated along the James River immediately upstream of Osborne Park in Henrico County. A wetlands permit is required.

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

Mr. Owen explained that the project was located on the north side of the James River, approximately ¼ (0.25) mile upstream of the Osborne Park public boat landing in Henrico County. The James River is approximately 750 feet wide at this location and is extensively utilized by recreational and commercial boat traffic including large cargo ships calling on the Port of Richmond.

Mr. Owen further explained that the applicant was seeking authorization to construct 373 linear feet of riprap revetment and a 100-foot long private open-pile pier with a non-commercial, open-sided 450 square foot boathouse. The applicant's home was located approximately 1,650 feet (0.31 miles) landward of the shoreline and at an elevation considerably above floodwaters. An unimproved roadway provided access from the home to the shoreline. The pier and boathouse were statutorily authorized by §28.2-1203.A.5 of the Virginia Code.

Mr. Owen stated that since Henrico County had not yet adopted the model wetlands zoning ordinance contained within the Virginia Wetlands Act, the Commission was charged with acting as the local wetlands board for the proposed riprap.

Mr. Owen said that the riprap, as proposed, would impact approximately 2,238 square feet of non-vegetated wetlands (sand/mud mixed flat community). As such, the Commission authorization was required for this portion of the project pursuant to Chapter 13, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen stated that the Virginia Institute of Marine Science (VIMS), in their Shoreline Report dated May 9, 2006, advised that the applicant's shoreline was experiencing minor undercutting most likely due to barge wakes and occasional high flow events. Since active bank failure was not observed, VIMS suggested that a shoreline protective structure might not be warranted at this site. No other State agencies had commented on the project. No protests were received for this project to date.

Mr. Owen said that in staff's opinion, the majority of the riverbank along the applicant's property was moderately undercut. This was likely due to storm events and wake-induced erosion caused by recreational boat traffic, sand and gravel barge traffic and the larger ships calling on the Port of Richmond.

Mr. Owen explained that staff considered adverse impacts to the marine environment associated with the proposed construction, to be minimal in nature. VIMS questioned, however, the need for the riprap given the absence of bank failure and the distance between the shoreline and the applicant's home. In light of existing shoreline conditions, the location of the unimproved roadway and the continued potential for storm and wake-induced erosion, staff recommended approval of the project as proposed. This recommendation was based upon the following findings:

- (1) that the anticipated public and private benefits of the proposed activity exceeded its anticipated public and private detriment;
- (2) the proposed development conformed with the standards prescribed in §28.2-1308 of the Virginia Code and the guidelines promulgated by the VMRC pursuant to Virginia Code §28.2-1301; and
- (3) the proposed activity did not violate the purposes and intent of Chapter 13, Subtitle III, of Title 28.2 of the Virginia Code.

Commissioner Pruitt asked for the applicant or representative to address the Commission.

Andrew Edmunds, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Edmunds explained that he had owned the property for 12 years. He said about 3 feet of the shoreline on the point had been lost in the past 12 years. He said he just wanted to stop any further erosion at his property, possibly losing the roadway that ran parallel with the shoreline. He said he would appreciate the Commission’s consideration of his request.

Commissioner Pruitt asked for anyone in opposition that was present and wishing to address the Commission. There was no one present in opposition.

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

Wetlands Permit Fee..... \$10.00

\* \* \* \* \*

**13. DISCUSSION:** Commission approval of the mandate assessment conducted pursuant to §§2.2-613 and 15.2-2903(6) of the Code of Virginia and Executive Memorandum 1-98. The two mandates involved are the:

- Wetlands Zoning Ordinance in Tidewater           SNR.MRC001
- Coastal Primary Sand Dune Zoning Ordinance   SNR.MRC002

Bob Grabb, Chief, Habitat Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Grabb explained that Section 15.2-2903(7) of the Code of Virginia directed the Commission on Local Government (CLG) to maintain an updated catalog listing of all State and Federal Mandates imposed on local governments.

**Commission Meeting**

Mr. Grabb further explained that Executive Memorandum 1-98 required executive branch agencies to periodically reassess if the mandates may be altered or eliminated without undue threat to the health, safety or welfare of the citizens of the Commonwealth.

Mr. Grabb said that several years ago, the tidal wetlands zoning ordinance and the coastal primary sand dune/beach ordinance were listed as local mandates in the CLG catalog. Although local adoption and implementation was voluntary, once adopted the locality was required to provide the local board with meeting space and reasonable secretarial, clerical, legal and consulting services.

Mr. Grabb stated that by letter dated April 19, 2000, Commissioner Pruitt had ask the CLG to reevaluate the two listed mandates and assessment schedules in the hope that they would be eliminated from the 2001 catalog. In a letter dated June 5, 2000, CLG turned down our request and ruled that the two zoning ordinances qualified as mandates under the category of a "regulation of optional activity." Our legal counsel and then Secretary of Natural Resources John Paul Woodley, Jr., upheld this ruling and interpretation. The two mandates had appeared in each of the succeeding Catalogs of State and Federal Mandates.

Mr. Grabb said that the 2006 Catalog of State and Federal Mandates on Local Governments called for the Marine Resources Commission to conduct an assessment of our two mandates during the period 3/01/06 – 5/31/06. By letter dated March 8, 2006, staff contacted each of the thirty-six localities that have chosen to adopt and locally administer the tidal wetlands zoning ordinance, as well as the six localities that had adopted and were implementing the coastal primary sand dune and beaches ordinance, requesting their input and any comments they cared to offer regarding these mandates and the costs of implementing them. Staff received five written responses to its query. Those responses were from Accomack County, James City County, Lancaster County and the Cities of Chesapeake and Newport News.

Mr. Grabb said that in keeping with the provisions of Executive Memorandum 1-98, staff recommended that the Commission move to retain the two listed mandates. If approved, that recommendation would then be conveyed to Secretary Bryant for his review, endorsement and submittal to the CLG prior to the assessment deadline of May 31, 2006.

Commissioner Pruitt asked for a motion from the Commission.

**Associate Member Robins moved to accept the staff recommendation to retain the two listed mandates. Associate Member Holland seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*



**14. PUBLIC COMMENTS:**

**Ellis W. James**, Norfolk Resident, was present and his comments are a part of the verbatim record. Mr. James explained that he appreciated the effectiveness of the Commissioner and the other board members in these violation cases. He said the over dredge issue was just such an issue. He stated that developers and property owners were trying to push the envelope and circumvent the laws, which may not be true in some instances. He said in every case they always say there was no intended act on their part to go around the laws. He said he appreciated the earlier discussion when the board dealt vigorously with the issue and in the future there was a need to push hard for accountability. He said the excuses given in such cases were all unacceptable.

No action was taken.

**Frances Chester** was present and his comments are a part of the verbatim record. Mr. Chester explained that he had shepherded, ran a wool mill, and been an attorney for 45 years. He said he had been farming and direct marketing since he was 10 years old. He stated that in January 2005 he put in a permit application for a clear span bridge on his farm over the Jennings Branch in Augusta County. He said at first there was a protest for the poor quality of plan. He was instructed by staff to obtain an Engineering plan, which he did and still nothing happened. Then there was another objection and he was told to get a new engineering plan, which he did. He explained that it took him 17 months to get his permit. He said he could not help that the staff was so long in getting the permit application processed and in the end he received a 17-page permit with a statement that he owed \$1,240.75 of which \$1,140.75 was a royalty fee for encroachment. He said he was not going into the water but each side of the bridge was on the banks as the bridge just went over the water. He said he was questioning the fact that he was being asked to pay fees that were not in effect until December 1, 2005. He said he was told when he first applied in January 2005 that it would cost him a \$50 - \$100 permit fee. He stated that there was a law that prevented the charging of after-the-fact fees. He said where he came from less government was the best government. He said this had been all bureaucratic nonsense. He said he was requesting a decision from the board to let him pay the \$50-\$100 permit fee otherwise he would have to take this matter to court as it was unconstitutional.

Commissioner Pruitt asked if a hearing on this could be done in June or July. Mr. Chester explained that he needed to get the bridge in by July 1, so he would pay the fees, but under protest. Commissioner Pruitt suggested scheduling a meeting in June.

Bob Grabb, Chief, Habitat Management, explained that if he paid the fees today he could leave with his permit and do the work. Mr. Chester agreed to the hearing in June being scheduled.

Commissioner Pruitt asked Mr. Chester to get with staff and he would be put on the June agenda.

No further action was taken.

**Special Presentation for Ellen Cosby** In recognition of 18 ½ years service with the Virginia Marine Resources Commission. Ms. Cosby had accepted a position as Assistant Executive Director at the Potomac River Fisheries Commission. Mr. O'Reilly presented her with the Certificate of Service and read the certificate into the record, as well as making comments on the great job she has done in her time with the Commission.

Commissioner Pruitt congratulated her on her new position with the Potomac River Fisheries Commission. He said he felt "A. C." Carpenter would be very appreciative in her filling an assistant position that he had needed for many years.

Ms. Cosby thanked everyone and stated that she had enjoyed her time with the Commission and would miss everyone she had worked with here over the years.

**Steven Clark**, commercial waterman, was present and his comments are a part of the verbatim record. Mr. Clark explained that he had had to request a duplicate Commercial Fisherman License card in the past and at the present time he needed to get a third duplicate as his was stolen along with his Striped Bass permit.

Kelly Lancaster, Fisheries Management Specialist, was present and her comments are a part of the verbatim record. Ms. Lancaster explained that Mr. Clark had lost his commercial card once in each of the last 3 years and this was his 2nd request for a 2006 duplicate because of being lost, stolen, etc. She said this was becoming a habitual problem and staff was asking the Commission to make the decision of whether to issue a duplicate card again, making it the 3<sup>rd</sup> 2006 card.

Commissioner Pruitt asked how many times it had been stolen. Mr. Clark responded that it had been stolen 2 times this year and this last time the striper permit was with it. He said his crew does not use the striper permit. He said also that other items were stolen, not just the license and permit.

After some discussion, Commissioner Pruitt asked Ms. Lancaster what the staff recommended. She explained that staff did not have a recommendation and were asking the Commission to make that decision; they just wanted him to be able to give his side of the situation and to understand the seriousness of requesting duplicate cards.

Commissioner Pruitt said that based on the testimony, he felt he should be given another card.

Associate Member McLeskey moved to grant him the duplicate license. Associate Member Bowden seconded the motion. The motion carried, 7-0.

Ms. Lancaster asked if this included the Striped Bass Permit, also. Commissioner Pruitt responded, yes.

### **Federal Gill Net Restrictions**

Rob O'Reilly gave a powerpoint presentation and his comments are a part of the verbatim record. Mr. O'Reilly explained that in March and April of 2005 measures were taken by the Commission to protect the Sea Turtle and Bottlenose Dolphin, which were both endangered species. Five emergency regulations, including a regulation to preclude a monkfish fishery; a regulation to establish a prohibition on fishing large mesh (greater or equal to 7 inches stretch measure); gill nets in coastal waters; a regulation to establish a 24-hour tending restriction, for gill nets; a regulation to allow the June coastal blackdrum fishery to be exempt for the federal rule's tending requirements; and a regulation that exempted the coastal striped bass fishery from a nighttime fishing prohibition. He explained that the Chesapeake Bay Bridge Tunnel was established in the Final Rule as the boundary, which was a problem for Virginia's Striped Bass fishery. He said Commission staff was concerned that they were only notified when Lewis Gillingham received an e-mail of the Final Rule, after it was published.

Mr. O'Reilly stated that Commissioner Pruitt on May 18<sup>th</sup> wrote a letter expressing the agency's displeasure in regards to the Final Rule and the surprise on some points even by industry. He said the Striped Bass coast fishery had been changed drastically, resulting in a 70% reduction in catch since 2002, but this was not even considered. He explained that the Final Rule was final as there was to be no further review to be done. He said the letter sent by Commissioner Pruitt was very strong. He added that everyone was perplexed with what had been done.

Associate Member Bowden stated that at the workshop he attended they were told what to do and the Federal representatives said that these actions were taken to protect the industry. He said he was told that Virginia did not have the authority to make such laws and NMFS was working towards zero mortality on dolphins. He said that the Observer information was not used, which had upset them. He stated, basically, the two fisheries were closed. He said that the shark plan passed the same as the Federal plan, which increased the quota, but the industry still could not fish, and on the Eastern Shore everyone was basically out of business. Associate Member Bowden said the Federal representative told them that they had worked with Rob O'Reilly and Lewis Gillingham but Mr. O'Reilly said that he had only talked to this representative once, recently. He said they were also told that the Final Rule is final. He stated he felt that the State needed to take this matter to Court.

**Commission Meeting**

Commissioner Pruitt stated that the matter needed to go beyond the Commission and taken to the Secretary's office as well as Congress.

Associate Member Robins thanked Mr. O'Reilly for the support data and complimented him for the fact that the exemptions sought were so well documented. He said review was warranted, even if Federal representatives said it could not be done. He said he agreed with Commissioner Pruitt's letter.

Associate Member Holland asked if the Final Rule overruled the State regulations. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that a Federal law overrode a State law, when there were inconsistencies.

No further action was taken.

\* \* \* \* \*

- 15. PUBLIC HEARING:** Consideration of Ernest L. George's proposed placement of a pound net in the Rappahannock River. The proposal was protested during the 30-day comment period.

Rob O'Reilly gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly explained that last February, the Commission conducted a review of the licensing and compliance, with special conditions, of Mr. Ernest L. George's pound net at Windmill Point. The Commission should recall that pound net, which was situated immediately in front of the Beach Cove Villas at Windmill Point, had been the subject of considerable debate. The debate ended, however, in February, when Mr. George voluntarily agreed to move his pound net to a new location. His newly proposed location was on the southern shore of the Rappahannock River approximately 1500 feet from shore.

Mr. O'Reilly stated that the placement of a pound net at a new location was subject to the provisions of Regulation 4 VAC 20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review." In accordance with this Regulation, Mr. George had identified and had advertised his new location in the Southside Sentinel. The 30-day public comment period expired on April 29, 2006.

Mr. O'Reilly said that during the comment period, the agency received seven letters and e-mails expressing concern for the placement of the net at its proposed location. One commenter did not object to the new location on the basis that the location was far enough from shore. In general, the commenters opposed the location because they believed it would affect their ability to fish from their property; impact the enjoyment of their property; create an additional navigation hazard already hampered by sand bars, an artificial reef, an existing pound net and crab pots; result in overfishing; was directly in

**Commission Meeting**

front of their property; would limit access to the rock wall (part of the old North End Wharf); result in more debris and dead fish on the shoreline, draw birds, and make it unhealthy for swimming.

Mr. O'Reilly explained that Regulation 25 outlined those factors the Commission should use in reaching a decision to approve or deny Mr. George's request. In addition to the Virginia Constitution and public trust doctrine (as defined by the common law of Virginia adopted pursuant to §1-10), the Commission should consider:

1. Other reasonable and permissible uses of the state waters,
2. Marine and fishery resources of the Commonwealth,
3. Tidal wetlands,
4. Adjacent or nearby properties,
5. Water quality, and
6. Submerged Aquatic Vegetation

Mr. O'Reilly said that the pound net was a legal and historically common method of commercial fishing in Chesapeake Bay and its tributaries. In prior decades, pound nets numbered well over 3000 and today, about 100 nets were set statewide. It was a passive gear, permanently affixed to the bottom and its success was subject to the migration and swimming patterns of fishes. Active gear such as a trawl, move to the fish, while fish must move to a passive gear to be captured. Thus, the ability of a single pound net to affect fishing, in all but the smallest of areas, was limited.

Mr. O'Reilly went on to say that only one other pound net was located on the southern shore of the lower Rappahannock River, and that net was near the submerged breakwater (Old North End Wharf) and was 0.6 miles from the proposed location. The proposed location also was about 1.3 miles upriver from Sturgeon Bar Oyster Reef, and was about 0.75 miles from the marked river channel. The net's shoreward end was in a mean low water depth of about 3.5 feet and was 1500 feet from shore.

Mr. O'Reilly stated that while any pound net presented a barrier to some navigation, the distances noted above, suggest that this pound net would present little hindrance to navigation. Its proposed distance from shore, 1500 feet, would allow for the shoreward passage of small boats, kayaks, and canoes, while the distances to the other noted structures appeared to be satisfactory. There was not likelihood that this area would be overrun with other structures. The net's distance from shore also likely reduced its effect on one's ability to fish from shore. The success of shore based fishermen was more likely affected by the shallow waters and gentle slope of the bottom and their ability to cast to deeper waters.

Mr. O'Reilly explained that there was no evidence that the proposed net would have any impact on water quality or tidal wetlands. And, the Habitat Management Division had confirmed there was no submerged vegetation in the area.

Mr. O'Reilly said that some loss of dead fish was common with any fishing operation. Depending on local currents, these fish might end up on nearby beaches. Here too, however, the distance from shore aided in the dispersal of these fish and decreased their likelihood of ending on the adjacent beach. Some of this type of litter was inevitable.

Mr. O'Reilly said that staff noted one point of confusion on the proposed location of Mr. George's pound net. Specifically the latitude/longitude point of the proposed location was 600 feet from shore, not the 1500 feet as advertised. In staff's conversations with Mr. George, however, confirmed his desire to place the net 1500 feet from shore. Based upon the staff review of the applicable factors, staff recommended approval of the license at the specified location, provided the shoreward end of the net was no closer than 1500 feet to the shoreline.

Sonya Davis, Fisheries Management Specialist, Sr., gave a powerpoint presentation showing the proposed site. Ms. Davis reviewed the various slides of the proposed pound net location.

Ernest George, applicant, was present and his comments were a part of the verbatim record. Mr. George stated it had been hard for him to get a new location for his net.

Commissioner Pruitt asked if anyone was present in opposition. There was no one present.

**Associate Member Garrison apologized for the problems Mr. George had with his other pound net site and told him he should have stuck with that site. He moved to approve the new pound net site. Associate Member Holland seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**16. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-450, "Pertaining to the Taking of Bluefish".

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

Mr. Robillard explained that in 2006, the Council recommended a transfer of the recreational quota to the commercial sector. This was not the maximum transfer possible. The maximum transfer from the recreational portion of the quota would raise the commercial quota to 10.5-million pounds. Because it was projected that the recreational landings might go over their allocation in 2006, NMFS chose to reduce the transfer recommended by the council to the commercial fishery by 1.5-million pounds. ASMFC decided to keep the higher coast-wide quota, so as not to limit individual states that would lose benefits from a coast-wide quota. Therefore, the federal (NMFS) specifications

**Commission Meeting**

differ significantly from those approved by the ASMFC Bluefish Management Board for 2006. The ASMFC approved a commercial quota of 9.5-million pounds and the federal quota is 7.9-million pounds.

Mr. Robillard explained about how the quota was to be divided between the commercial and recreational fisheries.

Bluefish TAL 24,798,836 pounds

Based on 83/17 split:

Commercial TAL (before transfer)	4,215,802 pounds
Recreational TAL (before transfer)	20,583,033 pounds

With recreational transfer made:

Commercial TAL (after transfer)	9,583,000 pounds
Recreational TAL (after transfer)	15,215,836 pounds

Mr. Robillard explained that the ASMFC had established the 2006 Virginia commercial bluefish quota as 1,124,334 pounds. The current VMRC Regulation 4VAC 20-450-10 et seq., Pertaining to the Taking of Bluefish, establishes the commercial quota as 1,235,310 pounds, and staff is requesting that this regulation be amended to establish the 2006 commercial quota of 1,124, 334 pounds.

Mr. Robillard stated that this revised commercial quota had been advertised for a public hearing at today's hearing.

Commissioner Pruitt asked if there were any public comments. There were none.

**Associate Member Robins moved to accept the staff recommendation to amend 4VAC 20-450-10 and change the commercial quota to 1,124,334 pounds. Associate Member Bowden seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

- 17. REQUEST FOR PUBLIC HEARING:** Request for a short-term exemption to the slot limit and season requirements of Regulation 4VAC20-252, "Pertaining to Striped Bass" for recreational fishing tournaments.

Mr. Claude Bain, Head, Virginia Saltwater Fishing Tournament, gave the presentation and his comments are a part of the verbatim record.

Mr. Bain explained that the FLW Outdoors, a national organization that promotes and runs recreational fishing tournaments and outdoor activities, has announced a “striped bass tournament trail” consisting of 7 qualifying tournaments and a national championship for 2006. The qualifying tournaments will be held at various ports along the northeast coast of the United States during the summer and fall, with the national championship scheduled for Virginia Beach in December.

Mr. Bain said that the FLW Outdoors Striped Bass Tournament Trail rules conflict with the Virginia striped bass regulations regarding possession of fish in the prohibited slot. FLW maintains their tournament does not seek to kill any striped bass and will take extraordinary measures to ensure that all striped bass are handled in a manner to ensure a viable release after weighing.

Mr. Bain said the two main issues associated with this request are: 1) possible mortality of striped bass associated with this event and the impact of the proposed activity on Virginia’s efforts to stay within its Chesapeake bay-wide quota; and, 2) the impact in granting a special exemption to a fishery regulation may have on future requests – the “precedent” value of a special exemption.

Mr. Bain said that staff recommended advertisement of proposed amendments to the striped bass regulation to allow the operation of tournaments, including the FLW Outdoors Tournament, that meet certain established criteria. Specifically, a tournament would be exempted from size limitations or season requirements, if it meets the following criteria:

- 1) The tournament operates for a limited duration, with a maximum of 3 days,
- 2) The tournament format provides for the live release of all fish,
- 3) The tournament director submits a written proposal to the Commissioner detailing the measures the tournament will use to ensure the survivability of fish entered in the tournament, to include capture, handling, and storage of fish by tournament entrants on the water during the competition, by tournament officials at the weigh-in, by tournament officials when transporting and returning the fish to the water, and any penalties that will apply to entrants bringing in or weighing dead fish. Such proposal must be submitted no later than 120 days prior to the tournament, and the Commissioner, must determine the proposal adequately addresses potential mortality issues,
- 4) Tournament officials must agree to provide any or all fish entered in the tournament to the Marine Resources Commission, or to any designee of the Marine Resources Commission, upon written request,
- 5) Tournament officials agree to allow Marine Resources Commission staff access to all tournament areas during the event, for the purposes of observation and assessment, upon request, and,



- 6) Its approval does not jeopardize the status of the striped bass stock or prove to be an issue of compliance with the interstate fishery management plan.

Mr. Bain stated that the staff believes the social and economic benefits of recreational fishing tournaments justify consideration of this regulatory amendment, provided adequate mortality safeguards are included and there are no compliance issues for ASMFC. Staff also believes a specific event is not a good precedent, and that the benefits of this regulatory amendment should be available to all tournaments that meet the regulatory criteria.

Mr. Bain said that the staff recommended advertising an amendment, of Regulation 4VAC 20-252-10 et seq., that would incorporate the 6 criteria necessary for any recreational striped bass tournament to obtain an exemption from size and season limitations. Staff was requesting a June public hearing on this issue.

Commissioner Pruitt asked if there were any questions of staff.

Associate Member Robins said was staff seeking ASMFC approval for compliance purposes. Mr. O'Reilly responded no, this is not a compliance concern. He said this is in the Bay area and a part of the Baywide quota. Associate Member Robins asked if staff sees any immediate problems. Mr. O'Reilly responded, no.

**Associate Member Robins moved to advertise for a public hearing to be held at the June meeting. Associate Member Holland seconded the motion. The motion carried 7-0.**

\* \* \* \* \*

- 18. REQUEST FOR PUBLIC HEARING:** To consider amendments to Regulation 4VAC 20-150-10, et seq. and Regulation 4VAC20-900-10, et seq., concerning the harvest of horseshoe crabs by dredge and revisions to harvest and landing provisions for horseshoe crabs, respectively.

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

Mr. O'Reilly asked the Commission that since there were two horseshoe crab issues to be discussed, one being a request for approval of an emergency regulation, with a follow up public hearing to be held in June, and, secondly, a request for a public hearing in June for a different regulation. Commissioner Pruitt suggested that the emergency action be taken first.

Mr. O'Reilly explained that the Commission at its December 2005 meeting adopted amendments to Regulation 4VAC 20-900-10, et. seq., Pertaining to Horseshoe Crab, to establish a crab dredge-specific Horseshoe Crab Gear License for better utilization the 2,000-crab per vessel quota. In this amendment, it removed restrictions associated with using crab dredges for the harvest and possession of horseshoe crabs, May 1 through June 7. Since that time staff realized that 4VAC 20-150-10, et. seq., Pertaining to the Dredging of Conchs was in conflict with the amendments made to Regulation 4VAC 20-900-10 at the December meeting. Regulation 4VAC 20-150-10 makes it unlawful to harvest, take or possess horseshoe crabs from certain areas and during certain periods of times with crab dredges. In order to make the regulations consistent, it would be necessary to amend 4VAC 20-150-10, to allow the harvest of horseshoe crabs by conch harvesters who use crab dredges. He said on page 4 of 5 of the draft emergency regulation showed the requested changes.

Mr. O'Reilly said that staff was recommending that Emergency Regulation 4VAC 20-150-10 be adopted and that a June public hearing be advertised.

Commissioner Pruitt asked if there were any public comments and there were none.

Associate Member Robins announced that he would be abstaining on the horseshoe crab issues because of financial conflicts.

**Associate Member Bowden moved to accept the staff recommendation to amend the conch dredge regulation. Associate Member Holland seconded the motion. The motion carried, 6-0-1. Associate Member Robins abstained.**

Mr. O'Reilly stated that on May 9, 2006 the ASMFC adopted Addendum IV to the Interstate Fishery Management Plan for Horseshoe Crab. This addendum included a multiple-measure management system for Virginia that included:

- a) A prohibition on the landing of horseshoe crabs in Virginia from federal waters (EEZ), from January 1 through June 7, in any year, and
- b) A division of Virginia's quota (152,495 horseshoe crabs) such that not more than 40% may be harvested east of the COLREGS Line, and these landings must be comprised, at a minimum, of a male to female ratio of 2:1 of the 40%.

Mr. O'Reilly said it was necessary to amend 4VAC 20-900-10 in order to be in compliance with Addendum IV adopted by the ASMFC and the changes were shown on page 2 of 5 of the draft regulation. He explained that in paragraph D and E which stipulated a percentage of the quota for the directed fishery and bycatch fishery for horseshoe crabs, was no longer valid because of the adoption of Addendum IV by the ASMFC. He said the Commission needed to rescind paragraphs D and E and to amend the regulation by adding the two items, A and B, which were adopted by the ASMFC in

Addendum IV. He said the staff recommended advertising for public hearing at the June meeting.

Commissioner Pruitt asked for a motion.

**Associate Member Fox moved to approve the request by staff for a June public hearing to amend Regulation 4VAC 20-900-10, et seq. The motion was seconded by Associate Member Holland. The motion carried, 6-0-1. Associate Member Robins abstained.**

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**19. DISCUSSION:** Recommendations of the Recreational Fishing Advisory Board.

Associate Member Jones did not participate in this item and abstained from voting, because of financial conflicts.

Sonya Davis, Fisheries Management Specialist, Sr., gave the presentation and her comments are a part of the verbatim record.

Ms. Davis explained that the Recreational Fishing Advisory Board (RFAB) has completed its review of pending applications and, on May 8, 2006, developed final recommendations for funding. Each of the projects submitted during this review cycle has been subjected to a staff review and an RFAB public hearing. Written public comments had been received and were in the Commission packets. In addition, new projects were subjected to professional peer reviews.

Ms. Davis said that the amounts for funds currently available for new projects was \$389,015.00 and there was a projection of \$2.2 million by the end of September. She said the cycle began with 13 projects, but 2 were withdrawn, Items D & I. She said that of the 11 remaining, 9 projects recommended for funding amounted to \$257,039.00. She said one project was not recommended by RFAB, Item K, Using Virginia Recreational Fishers in a Sea Turtle Tagging Study, as the they did not feel it met the guidelines for a project. She said one was tabled, Item F, as the board wanted to see if other funding sources were available. She noted that \$283,431.00 was currently available from the Commercial Marine Improvement Funds.

Staff concurs with the funding recommendations, as submitted by the RFAB.

The following projects were recommended for approval by the RFAB:

- A. 2006 CCA Tidewater Youth Fishing Day (Year 9). Tom Johnson, CCA Tidewater Chapter. \$6,000. VOTE: Unanimous

**Commission Meeting**

**13805  
May 23, 2006**

B. 2006 Saxis Fishing Pier Youth Fishing Tournament (Year 5). Allen Evans, Eastern Shore of Virginia Angler's Club. \$1,250. VOTE: Unanimous

C. 2006 Morley's Wharf Youth Fishing Tournament (Year 5). Allen Evans, Eastern Shore of Virginia Angler's Club. \$1,250. VOTE: Unanimous

E. Estimating Relative Abundance of Young-of-Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of Chesapeake Bay (Year 6). Marcel Montane, VIMS. \$15,841.50. VOTE: Unanimous

(Originally \$31,683; this project was recommended to be funded half by the Saltwater Recreational Fishing Development Fund and half by the Commercial Marine Improvement Fund. Staff recommends the approval of \$15,841.50 of commercial funding at this time, as has been done in previous years.)

G. Visual Function in Chesapeake Bay Sport and Prey Fishes: Summer Flounder, Bluefish, Cobia, and Atlantic Menhaden. A. Horodysky, R. Brill, R. Latour VIMS. \$44,279. VOTE: 8-1

H. 2006 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Angler's Club. \$6,954. VOTE: 8-1

J. 2006 Early Summer Children's Fishing Program. Charlie Johnson, Northampton County Angler's Club. \$1,100. VOTE: 8-0-1

L. Understanding Localized Movements and Habitat Associations of Summer Flounder in Chesapeake Bay Using Passive Acoustic Arrays. M. Fabrizio, J. Lucy, VIMS. \$149,906. VOTE: 7-2

M. Towards Validation of Juvenile Indices of Abundance for Several Fish Species in Chesapeake Bay. R. Latour, C. Bonzek, M. Fabrizio, VIMS. \$30,458. VOTE: 8-1

(Originally \$60,916; this project was recommended to be funded half by the Saltwater Recreational Fishing Development Fund and half by the Commercial Marine Improvement Fund. Staff recommends this new project be reviewed by the Commercial Fishing Advisory Board.)

The following project was not recommended for approval by the RFAB:

K. Using Virginia's Recreational Fishers in a Sea Turtle Tagging Study. Christina Trapani, Virginia Aquarium Stranding Response Team. \$4,600. VOTE: Unanimous

(THE RFAB does not believe this project meets the guidelines for projects set forth in the Code of Virginia, Section 28.2-302.3.)

The following project was tabled for further review by the RFAB:

F. Impact on Mycobacteriosis on the Striped Bass Recreational Fishery in Chesapeake Bay, Year 2: What is the Fate of Infected Fish? J. Hoenig, W. Vogelbein, D. Gauthier, VIMS. \$88,500. VOTE: 8-1

(The Recreational Fund has been the major contributor for these types of projects for the last few years. The RFAB would like to see other funding sources participate in the funding of this research. Funding requests have been submitted to the National Science Foundation/National Institute of Health and the Commercial Fishing Advisory Board.)

Associate Member Robins wanted to know when the Recreational board would hear the tabled item, Item F. Ms. Davis said it would be discussed at the July meeting.

Commissioner Pruitt asked if there was anyone from the public to address this item. There were no public comments.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 6-0-1. Associate Member Jones abstained.**

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There was no further business, so the meeting was adjourned at approximately 2:45 p.m. The next meeting will be Tuesday, June 27, 2006.

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William A. Pruitt, Commissioner

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Katherine Leonard, Recording Secretary