

MINUTES

Commission Meeting**January 22, 2008**

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. T. Holland)	
John R. McConaugha)	Associate Members
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle J. Schick)	
J. Edmund Tankard, III)	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Sunita Hines	Bs. Applications Specialist
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Laura Lee	Fisheries Mgmt. Specialist
Alicia Middleton	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Bill Hawkins	Marine Police Officer
Kevin Croft	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.

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Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Danny Bacon	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
Todd Herbert

Other present included:

Brennan Raab	John Daniel	Joe Caporalett
Ricky Reynolds	Paul Barsnica	Barbara Barsnica
Paul A. Galloway	David Wieller	Brian Fletcher
Glen Nelson	Pam Mason	Karl Mertig
Rebecca Jones	Adam Melita	James Janata
Kevin DuBois	Butch Palmer	Dan Rosinski
Karen Vimlyd	Tim McCulloch	W. M. Eason
W. Albertolli	W. S. Kerry	James Groff
Lin Hanbury	R. Francese	Chuck Roadley
Harry Johnson	Kenny Hayden	Robert V. Nicholls
Jim Georgo	Doug Davis	Robert Holloway
Ellis W. James	G. G. Crump	John Wyatt
Douglas F. Jenkins	Roger Parks	Ken Smith
Danny Craig	Lukk Wecanbarp	Vernon Haywood
Chris Moore	Dale Taylor	R. Weagley
Patrick Lynch	Tommy Leggett	Kent Carr
Kelly V. Place		

and others

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m. Associate Member Fox was absent and Associate Member Bowden was late in arriving.

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Associate Member Holland gave the invocation and Carl Josephson led the pledge of allegiance.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management, said that staff did have a change to the agenda, which was to delete Item 10. Because the protest had been resolved, the matter could now be handled administratively.

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

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MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the December 18, 2007 meeting minutes. **Associate Member Tankard moved to approve the minutes, as presented. Associate Member McLeskey seconded the motion. The motion carried, 6-0-1. Associate Member Robins abstained as he had left the last meeting early. The Chair voted yes.**

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

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

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

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

Commissioner Bowman asked for a motion for Items 2A and 2I. **Associate Member Schick moved to approve these items. Associate Member McLeskey seconded the motion. The motion carried, 7-0. The Chair voted yes.**

2A. CHESTERFIELD COUNTY UTILITIES, #07-2282, requests authorization to replace an existing 12-inch water line with a new 16-inch ductile iron water line, by open trench method, to include stream bed riprap stabilization within Kingsland Creek in Chesterfield County.

Permit Fee.....\$100.00

2B. LINWOOD HANBURY, ET AL, #07-1546, request authorization to dredge up to 4,066 cubic yards of State-owned subaqueous bottom within an unnamed cove of Bennett Creek, a tributary to the Nansemond River in the City of Suffolk, adjacent to properties within the Bennetts Creek Harbor subdivision along Old Wharf Road. A royalty was recommended of \$1,829.70 at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 3,780 cu. yd. @\$0.45 cu. yd.)...\$1,701.00
Permit Fee..... \$ 100.00
Total Fees..... \$1,801.00

2C. PALMER AND PALMER LLC, #06-1722, requests authorization to install a 75-foot long by 20-foot wide breakwater, a 80-foot long by 20-foot wide breakwater, and place 550 cubic yards of sandy material landward of the breakwaters as beach nourishment adjacent to their property situated along the James River in James City County. Recommend a royalty of \$356.95 for the placement of beach quality sand over 7,139 square feet of State-owned submerged bottom at a rate of \$0.05 per square foot.

Royalty Fee (filling 7,139 sq. ft. \$0.05 sq. ft.).....\$356.95
Permit Fee..... \$100.00
Total Fees..... \$456.95

2D. HAMPTON ROADS TRANSIT, #06-0441, requests authorization to modify their previously authorized permit to include an additional road crossing of Holt Channel resulting in 1,471 square feet of impacts to State-owned submerged land as a result of construction of the Norfolk Light Rail in Norfolk.

Permit Fee.....\$100.00

2E. DAN ROSINSKI, ET AL, #07-0955, requests authorization to mechanically dredge 2,256 cubic yards of State-owned subaqueous bottom to provide maximum depths of minus five (-5) feet below mean low water adjacent to 66, 68, and 70 Chowning Drive in the Colonial Acres Subdivision situated along Long Creek in Hampton. Recommend a royalty of \$902.40 for the new dredging of 2,256 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 2,256 cu. yds @ \$0.45 cu. yd.)...\$ 902.40
Permit Fee..... \$ 100.00
Total Fees..... \$1,902.40

2F. UPPER OCCOQUAN SEWAGE AUTHORITY, #07-1765, requests authorization to replace 260 linear feet of existing gravity sewer requiring multiple crossings of Flatlick Branch and to remove and replace three (3) existing fords resulting in impacts to 242 square feet of Cub Run and Flatlick Branch as part of the Cub Run Gravity Delivery System Upgrade in Fairfax County.

Permit Fee.....\$100.00

2G. ALLEGHANY COUNTY PUBLIC WORKS DEPARTMENT, #07-1752, requests authorization to remove and replace an existing bridge and construct a new 26-foot 4-inch wide by 300-foot long, two lane bridge on Fork Farm Road (Route 727) crossing over 187 linear feet of the Jackson River in the Town of Iron Gate, Botetourt County. In addition, separate temporary detour and work bridges are proposed to be constructed on the upstream side of the project site and will be removed immediately after the bridge replacement project is finished.

Permit Fee.....\$100.00

2H. THREE TUNNELS INVESTMENTS, LLC, #07-2196, requests authorization to construct two (2) 26-foot wide clear span bridges, the first crossing over approximately 55 linear feet of Dunlap Creek and the second crossing over approximately 55 linear feet of Jerry's Run, associated with the Three Tunnels development project in Alleghany County. Recommend the assessment of a royalty in the amount of \$2,860.00 for the bridges' encroachments over 2,860 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty Fee (crossing 2,860 l. ft. @ \$1.00 l. ft.).....\$2,860.00
Permit Fee.....\$ 100.00
Total Fees..... \$2,960.00

- 2I. **BRISTOL VIRGINIA UTILITIES, #08-0007**, requests authorization to remove approximately 3,600 cubic yards of bottom material adjacent to and within their existing raw water intake on the South Holston Lake Reservoir in Washington County to ensure a safe drinking water supply to area residents.

Permit Fee.....\$100.00

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

There were no consent items.

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Commissioner Bowman stated that the Board would proceed with Item 5 before going into closed meeting to allow Associate Member Bowden, who had been delayed in his arrival, time to get to the meeting. He said it was very important to be able to have a unanimous vote for the closed session.

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- 5. **VININGS MARINE GROUP, LLC, #07-1161.** Commission review on appeal by 32 Norfolk freeholders of the December 12, 2007, decision by the Norfolk Wetlands Board to approve a proposal to install 110 linear feet of riprap revetment and 123 linear feet of bulkhead, and to fill tidal wetlands to facilitate a planned upland residential development project situated along Fisherman's Cove (Little Creek) in the City of Norfolk.

Associate Member Bowden arrived to the meeting at approximately 9:42 am.

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

Mr. McGinnis explained that the subject project was located on an undeveloped site in the City of Norfolk situated along a portion of Little Creek known as Fisherman’s Cove. The site was actually situated on two separate parcels of land. The waterfront parcel was owned by Vinings Marine Group, LLC, while the upland parcel was owned by East Beach, LLC (Marathon Development Group, Inc.), who was acting as the agent on this application. Vinings Marine Group, LLC also owned the two adjacent marinas on either side of the subject property. In addition to its undeveloped nature the site also included a man-made slip, which was previously excavated from upland to accommodate the Sea

Belle, an old ferry vessel that was initially brought to the site to serve as a waterfront restaurant. The Sea Belle sat abandoned in this slip for many years and was recently removed by the applicant in exchange for portions of the upland property owned by the City of Norfolk.

Mr. McGinnis stated that the proposal included the filling of the former slip, installation of a riprap revetment channelward of that fill, and the installation of a low-profile bulkhead further channelward to accommodate the creation of tidal wetlands. The project included the construction of a floating pier that would serve as an expansion of Vinings Marine Group's marina operations and was intended to accommodate "super yachts". The upland property, including the filled slip, was proposed to be developed with a six-story condominium structure with a small section on the first level reserved for support facilities for the proposed super yacht pier.

Mr. McGinnis said that the Norfolk Wetlands Board in 2004 had previously authorized the filling of the Sea Belle slip as part of an application (VMRC #03-2301) originally submitted by Little Creek Marina, Inc. (now Vinings Marine Group, LLC) to expand their upland boat dry storage facilities. Obviously that filling and expansion never occurred. The Norfolk Wetlands Board considered the applicant's current proposal at a public hearing on December 12, 2007. The Board heard testimony from the agent and their engineering and environmental consultants, as well as members of the public that spoke against the proposed project. In the end, the Board voted 4-2 to approve the project, as proposed.

Mr. McGinnis said that staff received the letter of appeal and a petition signed by 32 Norfolk freeholders on December 21, 2007. The freeholder's appeal was considered timely under the provisions of Sections 28.2-1311 (B) of the Code of Virginia. The appellants cited the following points in their appeal letter:

1. The application was made to fill in wetlands to create buildable land
2. The planned development is not water dependent
3. The Board appeared to believe it was bound to honor a previous permit; however, that permit was provided for an entirely different project and an entirely different use from the project now proposed and the Board should not have considered it binding
4. The application did not provide any alternative plans for building on the site without filling in the wetlands
5. No plans have been submitted for zoning approvals of the proposed project and getting zoning approval may limit the project and avoid the need to fill any wetlands
6. There is no compensating public good to be realized
7. The action appears to violate the principles of wetland protection

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Mr. McGinnis said that at the December 12, 2007, public hearing, city staff provided the Wetland Board with a presentation on the proposed project, which included slides, a reading of the project's VIMS report, and their own staff assessment. The Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated December 6, 2007, stated that the filling of subtidal and wetland resources for the creation of upland property was undesirable, and that the proposed pier could be accommodated without the permanent loss of wetlands as proposed. VIMS recommended that the project be re-examined with consideration given to alternatives that would avoid the proposed fill. They further stated that they did not recommend the filling of wetland or subtidal habitat to create wetlands for compensation, and questioned the functionality of the proposed "container" wetland in relation to a natural tidal wetland with regards to habitat and water quality maintenance.

Mr. McGinnis stated that although City staff did not provide a specific recommendation to the Board for either approval or denial, they did state in their assessment to the Board that it appeared the application did not meet the standards for permit issuance since a majority of the fill area would support non-water dependent facilities (e.g., parking and condominium housing). City staff also expressed concerns over the replacement of functioning natural wetlands with artificial "perched" wetlands. They expanded upon that concern by stating that the compensatory wetland design would likely lead to problems that would degrade the wetlands' function and value, and that maintenance issues with regard to the proposed bulkhead supporting the compensatory wetlands would likely manifest in the future. City staff were also concerned about the potential implication for future decision-making consistency should the Board accept the proposed mitigation.

Mr. McGinnis further stated that following the staff presentation, Mr. Brennan Raab of East Beach, LLC, along with Don McLennan of Engineering Resources Group, LLC and Doug Davis of Davis Environmental Consultants, provided a brief overview of the proposed project and the existing site conditions, and responded to the comments made by VIMS and City staff. The Board then took testimony from Ms. Terry Bishirjian and Mr. Bill Eason, two nearby residents who spoke on behalf of their communities in general terms against the project, as well as Mr. Ellis James, who urged the Board not to approve the proposed project. Following the closure of public comments, the Board discussed the proposed project and posed several questions to the applicant. Several members of the Board discussed their opposing views on the water dependency of the proposed project. Some of the Board members argued the fact that they had already previously approved the filling of this site, while others argued that the prior authorization was based upon a different set of circumstances with regard to the intended use of the filled area. Several members also pointed out the economic benefit of the project as well as the effort the applicant had already put into removing the Sea Belle and that those points should be considered by the Board. Following the discussion a motion was made to approve the project. That motion was seconded and passed 4-2.

Mr. McGinnis explained that typically, staff does not support the filling of wetlands to accommodate upland development. However, in this case, staff recognized that the former Sea Belle slip was previously excavated from private, upland property and that the applicant wished to return the site to its previous condition now that this man-made slip was no longer required. Staff felt it was necessary to point out that Vinings Marine Group took responsibility for removing the abandoned Sea Belle, something that staff and the City of Norfolk had been unable to accomplish over the years. Although the filling of wetlands to accommodate upland development was not ideal, it appeared the Board appropriately used its discretion in making their decision when considering the unique circumstances surrounding the proposed project. While staff was sympathetic to the concerns of the freeholders, staff was unable to determine that the Board erred in making its decision, given the nature and character of the wetlands around the edge of the slip, and the fact that the compensation would occur over a previously excavated area and not over State-owned submerged land.

Mr. McGinnis stated that in light of the foregoing, staff recommended that the Commission uphold the December 12, 2007, decision of the Norfolk Wetland Board, finding that their decision was made within the discretion granted to the locality by Chapter 13 of Title 28.2 of the Code of Virginia.

Commissioner Bowman asked for a representative of the appellants to address the Commission, if desired.

W. Albertolli of Norfolk, representing the Bay Point Homeowner Association, was sworn in and his comments are a part of the verbatim record. Mr. Toller explained that Bay Point was a subdivision on property adjacent to the marina. He explained further that he had drafted the letter of appeal and submitted it to the Commission. He stated that the City staff and VIMS were opposed to the project and that the City and VMRC were both charged with protecting the wetlands.

Commissioner Bowman asked for the representative for the City of Norfolk to come forward to make comments.

Adam Melita, Assistant City Attorney for Norfolk, was present and his comments are a part of the verbatim record. Mr. Melita explained that there were merits on either side of this issue and this was considered by the Wetlands Board when they approved this project. He stated that the nature and the character of the wetlands to be filled was not of primary ecological significance which was a consequence of a deteriorating bulkhead. He asked the Commission to uphold the Wetlands Board decision.

Commissioner Bowman asked for the applicant or their representative to come forward and address the Board.

John Daniel, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Daniel said that they agreed with the City Attorney and the staff record and asked the Commission to uphold the local Board's approval of the project.

Commissioner Bowman asked for any rebuttal. There was none, therefore, he asked for discussion or a motion from the Board.

Associate Member Robins stated that since these were fringe wetlands, the decision by the Wetlands Board was appropriate with the law and he felt there were no errors of law and the decision was reasonable and consistent. He moved to uphold the Norfolk Wetlands Board decision. Associate Member McLeskey seconded the motion. Associate Member Schick stated that the standards and uses of wetlands did not stop all development and the applicant did propose to replace the wetlands. He stated further that the applicant's plan was adequate. Commissioner Bowman explained that looking at the property the project was never impeded from being completed, as there were no natural wetlands. He said there needed to be a balance between preservation and a good environmental project and the applicant did a good job with the plan. The motion carried, 8-0. The Chair voted yes.

No applicable fees, Wetlands Review

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4. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL.

Associate Member Robins moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:

Shore Land Investments, LLC, Violation #07-25

Associate Member Holland seconded the motion. The motion carried, 8-0.

Associate Member Robins moved for the following:

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member's knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

Associate Member Holland seconded the motion. Commissioner Bowman held a Roll Call vote:

AYES: Bowden, Bowman, Holland, McConaugha, McLeskey, Robins, Schick and Tankard.

NAYS: NONE

ABSENT DURING VOTE: FOX

ABSENT DURING ALL OR PART OF CLOSED MEETING: FOX

Motion carried, 8-0.

Katherine Leonard, Recording Secretary

The Commission went into Closed Meeting to discuss the status of the Shore Land Investments LLC consent agreement that had been extended by the Commission at the December 18, 2007 meeting. Thus far, counsel for the violators had not agreed to the \$100,000 civil charge proffered by the Commission. **Upon returning to open meeting, the Commission unanimously voted (8-0) for a motion made by Associate Member Robins and seconded by Associate Member McLeskey, to refer this matter to the Office of the Attorney General for enforcement and, as requested by Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, for guidance over a range of monetary penalty charges to seek, to include the seeking of civil penalties in an amount ranging from \$350,000 - \$2.1 million.**

- 6. **J.B.H., LLC, #07-1948**, requests authorization to retain a 180-foot long by 5-foot 10-inches wide private, non-commercial pier with a 40-foot by 20-foot covered platform, a 12-foot 10-inches by 3-foot ramp over a 6-foot by 5-foot platform

leading to a 14-foot by 16-foot 8-inches by 14-foot floating platform and a 10-foot by 12-foot floating platform adjacent to property at 475 Wind Mill Point Road situated along the Back River in Hampton.

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

Ms. Gallop explained that this property was located on Back River in the Fox Hill neighborhood of Hampton. This section of the shoreline along the Back River was primarily residential.

Ms. Gallop stated that staff was visiting a nearby property in June 2007 and noticed a pier across Harris Creek that appeared to have a covered area larger than 400 square feet and containing a bar and table. Staff visited the site on August 2, 2007 and measured a 180-foot by approximately 6-foot wide pier with a 20-foot by 40-foot covered platform, a 13-foot by 3-foot ramp over a 6-foot by 5-foot platform leading to a 14-foot by 16-foot floating platform and a 12-foot by 12-foot floating platform. The covered deck contained a dining table, sitting area with sofa, a bar, and a TV.

Ms. Gallop said that staff issued a sworn complaint and notice to comply dated August 6, 2007. The Notice to Comply directed JBH, LLC to remove the covered platform and discontinue all non-water dependent uses within 30 days of their receipt of the Notice. The LLC chose to submit an after-the-fact Joint Permit Application. Staff received an incomplete JPA on August 29, 2007 and received the additional information to complete the JPA on September 20, 2007. Mr. Donald Honeycutt was the agent for the LLC and lived at 475 Wind Mill Point. In his application he indicated that Hurricane Isabel in 2003 destroyed the previously existing pier. He explained that he pulled up the remains of the old pier and replanted marsh grass. He then hired Routon Construction out of Poquoson and paid them \$5,000.00 to construct a new pier and secure all necessary permits. The pilings were delivered and Routon Construction informed him that they had gotten all of the permits. Mr. Honeycutt paid them another \$5,000.00 and never heard from them again.

Ms. Gallop then said Mr. Honeycutt said that he began to build the new pier by himself in January 2004. He put in poles up to the edge of the marsh and hired Tidewater Dockmasters to install the rest of the pilings. In his application, Mr. Honeycutt indicated that after Tidewater Dockmasters installed the pilings he finished the pier by himself by March 2004. He installed the roof over the 40-foot by 20-foot platform in the summer of 2004.

Ms. Gallop explained that a search of VMRC records had failed to reveal any authorization for any previously or currently existing piers at 475 Wind Mill Point Road. According to the City of Hampton, no building permits were ever issued either. Not only does the pier exceed the statutory authorization contained in the Code, but it

accommodated various non-water dependent uses. Mr. Honeycutt, or the LLC, did not apply to rebuild the pre-existing pier after Hurricane Isabel under the Governor's Emergency Authorization. His pier as it exists today is also larger than that usually permitted by the Commission.

Ms. Gallop stated that after considering all of the factors contained in Section 28.2-1205(A) of the Code of Virginia, staff recommended that JBH, LLC be directed to reduce all L- or T-head platforms and appurtenant floating platforms to the 400 square feet contained by Code. This would bring the structure into conformance with the authorization for private piers as set forth in Section 28.2-1203 of the Code of Virginia. Should the Commission choose to allow Mr. Honeycutt to retain a pier larger than that authorized by Code, staff recommended a civil charge in the amount of \$6,000 be considered based on minimal environmental impact and maximum non-compliance in lieu of further enforcement. Staff also recommended that Tidewater Dockmasters, the firm that installed the pilings necessary to support the excessive structure, also be assessed a civil charge in the same amount.

After a few questions of staff for clarification, Commissioner Bowman asked if the applicant or their representative were present.

Donald Honeycutt, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Honeycutt explained that Isabel had destroyed the pier, which was larger than what was there now. Commissioner Bowman asked if the previous pier was larger and permitted. Mr. Honeycutt responded yes it was larger, but he did not know if it was ever permitted. He explained that it was a neighborhood community pier and was inspected by the Health Department. He said he did not feel that he had done anything wrong and what he had constructed was okay. He explained when he had hired the first contractor he thought he would take care of any permits required as he had paid for the contractor to get the permits. He said after the pilings were delivered and he had paid him for the job the contractor never came back, so he lost his money. He said the structure was 300 square feet less than before. He said he did not check behind the first contractor and when he later hired Mr. Johnson, he told Mr. Johnson that he (Mr. Honeycutt) had the permits to do the work.

Harry Johnson, Tidewater Dockmasters, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Johnson explained that this was his second job as a marine contractor and he had just gotten a new barge. He said he did not check on the permits as he was led to believe that everything was in order. He said he was starting to establish himself as a marine contractor and he had not intended to do anything that was illegal. He said he only drove the pilings for the applicant and did not construct the dock.

Mr. Honeycutt explained that he had put his money and faith in another individual. He explained, utilizing a slide, about the removal of the old pier and building of the new one that it was shorter and smaller than the original one. He reiterated again that he did not

feel that he had done anything wrong and he had only been stupid to trust someone else. He also indicated a willingness to convert the covered platform into an open-sided boathouse.

Associate Member Schick suggested that an amended application might be acceptable if Mr. Honeycutt wanted to reduce the size of the structure, convert the platform to an open-sided boathouse and eliminate the additional floating platforms. In light of that, Mr. Grabb suggested that the matter be tabled until next month. Commissioner Bowman stated that a wrong had been committed in accordance with the spirit of the law, but there seemed to be some mitigating circumstances in this case. He said the Commission must be notified of all work that was to occur over or on State-owned bottom. Mr. Honeycutt asked about being "grandfathered". Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that it was just like the zoning law, any replacement would require that the current zoning law be applied and the same applied here.

Commissioner Bowman asked Mr. Honeycutt if he wanted to submit a revised application, as discussed. Mr. Honeycutt said yes, but asked if he could be allowed two months before the hearing on this was held.

Associate Member Robins agreed that a revised application would be accepted and moved to table the matter until the March Commission meeting, as requested by the applicant to afford him an opportunity to submit revised drawings reflecting the conversion of the covered platform to an open-sided boathouse and the elimination of the additional unpermitted floating platforms. Associate Member McLeskey seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman reminded the Board of the need to decide on action for the contractor's involvement in the violation. He said if this had been the contractor's 22nd job there would be no excuse, but being that he was new to the business then he could be excused.

Associate Member McLeskey moved to absolve the contractor from any civil charge for his company's role in driving the pilings for the structure. Associate Member Schick seconded the motion. He went on to say that he had brought this up before that any new contractor should have a process by which they can find out what is required and VMRC should help them. Associate Member Tankard said someone in a professional position should know there are rules to be followed and it made no sense to waive the VMRC rules today. The motion carried, 7-0-1. Associate Member Tankard abstained. The Chair voted yes.

Deferred – until March 2008.

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7. **GREGORY GARRETT, Notice of Violation # 07-24.** Commission consideration of a violation of §28.2-1203 of the Code of Virginia involving the unauthorized dredging of State-owned subaqueous land from an unnamed cove contiguous to The Thorofare at 122 Sandbox Lane in York County. This was continued from the November 27, 2007, meeting.

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

Mr. Owen explained that Mr. Garrett resided at 122 Sandbox Lane in the Dandy section of York County. His property was bounded by the York River to the north, the Thorofare to the east/southeast and an unnamed cove to the west. Mr. Garrett had two piers, one in the unnamed cove and one in the York River. The pier in the cove was considered Mr. Garrett's private non-commercial pier authorized by Section 28.2-1203 (A) (5) of the Code of Virginia. The pier in the York River was permitted as Mr. Garrett's second pier by the Commission on July 26, 2005.

Mr. Owen stated that a videotape, depicting unauthorized dredging activity adjacent to the 'cove pier,' was hand-delivered to staff on September 25, 2007. That video was taken by the adjacent property owner on September 11, 2007, at approximately 2:30 pm. Mr. Garrett admitted on-site that same day, to staff and representatives from York County and the Virginia Institute of Marine Science, that he had recently "manipulated the bottom sediments" adjacent to the pier.

Mr. Owen said that in staff's opinion, the unauthorized dredging activity depicted in the aforementioned video constituted a willful and intentional violation of Chapter 12, Article 2 of the Code of Virginia. Upon review of the video, staff filed a Sworn Complaint (SC #07-24) and issued, via certified mail, a Notice of Violation (NOV #07-24) to Mr. Garrett on September 27, 2007. The Notice directed Mr. Garrett to provide a bathymetric survey of the cove by October 15, 2007, and to submit a complete written account of the circumstances surrounding his illegal dredging activities. Specifically, Mr. Garrett was requested to provide the name(s) of the persons who performed the work, the period of time over which the work was accomplished, under whose authority the work was initiated, and why the work was undertaken in the absence of the required State permit.

Mr. Owen said that while Mr. Garrett had provided a partial survey of the cove, neither the written account required by VMRC's Notice of Violation (NOV) nor the names of the individuals involved had been provided to date. Mr. Garrett informed staff by email, dated October 31, 2007, that the unauthorized activity took place over a 6½-hour time period.

Mr. Owen explained that staff met with Mr. Garrett and his agent on October 9, 2007, to view the video. At that meeting, Mr. Garrett stated that the two men depicted in the video were "yard men" under his employ. He admitted he had directed them to wash

sediments, generated by the pier contractor during piling installation, back into the “piling holes.” The actual pier construction was completed in January 2007. If this was deemed to be a problem, no explanation had been provided by Mr. Garrett as to why he did not contact the pier contractor to request that he remedy the situation.

Mr. Owen stated that the Virginia Institute of Marine Science stated that dredging eliminated existing bottom-dwelling organisms and adversely impacted water quality. Those impacts, VIMS said, can be widespread in both area and time and the timeline for recovery of the benthic community and the ecological services it provided was not well known. Additionally, the overboard movement of the material was likely to have resulted in the burial of other benthic organisms.

Mr. Owen said that in a previous application (VMRC #05-0450) and in sworn testimony before the Commission (July 26, 2005), Mr. Garrett stated that the cove pier was intended to provide for the mooring of larger vessels during severe storm events only. He also stated that he needed the second pier on the York River to moor the larger vessels since dredging in the cove was expensive and would lead to adverse environmental impacts. As such, staff questioned why one or more of the larger vessels now seemed to be routinely moored in the cove.

Mr. Owen stated that Mr. Garrett maintained that his “yard men” were merely completing the construction of the cove pier, although his contractor advised that the pier had been completed nine months prior, and that no dredging activity had occurred on-site. Staff disagreed with that position. The video clearly depicted two men utilizing a suction pump to hydraulically remove and/or wash sediments away from an uncovered boat lift. This was readily evident in the video where it showed one of the workers washing sediments with his back to the pier for 5 minutes and 25 seconds, or approximately 79% of the time that the pump was in operation. The video also showed the men walking into deeper areas behind each lift. Regardless of what their instructions were from Mr. Garrett, it was clear to staff that sediments were removed adjacent to and from under the lifts.

Mr. Owen stated that the adjacent property owner also reported that the “yard men” were seen running with the trash pump and hoses to a storage container 20 minutes +/- prior to staff arriving on-site for a previously scheduled site visit. As noted previously, Mr. Garrett had thus far failed to provide their names and contact information as required by the VMRC Notice of Violation.

Mr. Owen said that at Mr. Garrett’s request, staff revisited the site on December 4, 2007, on a ‘blow-out’ tide. The photographs taken during that site visit depicted bottom conditions eighty-four days after the video was taken. Scour depressions in the vicinity of the boatlifts and the area where the unauthorized dredging activity took place were readily visible. While ‘prop scour’ might account for a portion of the depressions, the linear nature of these areas beneath the lifts could not have been made by a boat propeller.

Mr. Garrett, nevertheless, continued to maintain that no dredging took place and questioned staff's integrity and the Commission's enforcement authority.

Mr. Owen explained that in response to Mr. Garrett's inquiry, staff explained that the use of the trash pump and dredge slurry to hydraulically wash or move sediments constituted an unlawful use of the Commonwealth's subaqueous beds pursuant to §28.2-1203 of the Virginia Code. In an earlier email dated July 27, 2007, staff had warned Mr. Garrett that his illegal placement of eight jet ski mooring buoys in The Thorofare would lead to enforcement action if they were not immediately removed. Mr. Garrett's decision to install them without Commission authorization, after applying for authorization and being advised by letter dated July 13, 2007, that a permit was required, reflected a pattern of intentional disregard of the Commission's authority. This same disregard for the permit process was also evident in years past when the former Environmental Engineer assigned to York County also required Mr. Garrett to remove several unauthorized buoys from the subject waterway. No after-the-fact authorization was sought for the current violation or considered justifiable by staff because there was no way that staff would have recommended approval of this dredging technique and methodology. In addition to dredge deepening of some areas, the activity also resulted in the filling of adjacent areas and the direct burial of benthic organisms. It also created adverse water quality impacts by its nature.

Mr. Owen said that in light of the unauthorized dredging and fill activity that occurred on-site at each of his two boat lifts and the apparent willful disregard of the Commission's permit authority over State-owned submerged land, staff recommended that the Commission assess an appropriate civil charge (\$5,500) based on a moderate degree of environmental impact and a major degree of non-compliance for both the dredge and fill violation.

After some discussion about the video tape and how it was acquired and who had submitted it, Mr. Owen offered the Tiller's letter into the record. The Tillers are adjacent property owners. He said that they requested he read the letter into the record, in which it reported their observations of the violation as it occurred. He read it into the record.

Commissioner Bowman asked Mr. Timothy McCulloch, who provided the video, if he wished to comment.

Timothy McCulloch, adjacent property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. McCulloch explained that he had photographs he wished to provide showing the area prior to the dredging even before he did his permitted dredging. He said the tide was not as extremely low as those shown by the staff.

Associate Member Schick asked from what area were the photos taken? Mr. McCulloch explained they were taken from his pier in John's Hole. He said the dredging violation

action actually had moved mud back into his dredged area. He stated that was what caused his concern, and that was why he had taken the video.

Commissioner Bowman asked if Mr. Garrett or his representative wished to speak.

John Daniel, attorney for Greg Garrett, was present and his comments are a part of the verbatim record. Mr. Daniel said that he objected to the photos not being labeled properly. Commissioner Bowman, after some discussion with Mr. McCulloch, stated that two of the photos were dated and had times, which could be accepted. One was September 11 at 2:30 p.m. showing the two men adjacent to the slip and the second was December 4th in the afternoon at low tide.

Mr. Daniel stated it was interesting how the same occurrences can be interpreted in different ways. He said this was an interesting, complicated case and a case where good fences make good neighbors. He went on to explain some of the permits that Mr. Garrett had obtained, for his first two 2 piers. He said the cove permit did not expire until later in 2008. He said there were a number of others that could address the Commission, such as Mr. Garrett, et als (6 total were sworn in).

Mr. Daniel noted that he was seldom here that he did not agree with the staff, but that the September 11th facts were different from what's here. He also said that staff had at all times been accommodating with them. He said what Mr. Garrett believed he could do was different from staff. He said they did not agree with the reference to the Code Section 28.2-1203 and Mr. Garrett objected to the term dredging as it was not seen in this section. He said his client understood that permits were required and that he did not dispute what was shown in the video, but he did not feel that he was doing anything more than what he had been permitted to do. He said he had been permitted for the second pier and the one in the cove he had declared as his riparian pier, which was exempted by Code from requiring a permit, so a no permit necessary letter was issued, which authorized the activity. He said as a result of the video and a site visit by staff nearby, the Marine Police were asked to investigate. He said the result of the investigation was that nothing was found and only an inquiry was made. He read the report, which said...no activity or evidence of activity reported, nor any witness to question. He said it was not until the video was received by staff that any action was taken, which was to issue a "stop order", which when received Mr. Garrett did stop.

Mr. Daniel said that they had an affidavit signed by the contractor, Mr. Flint of Flint Construction, which he read into the record. He said that Mr. Flint could not return and complete the project because of sickness of both himself and his employee. Mr. Flint had said that what Mr. Garrett was doing was a normal practice of his company. He also had an affidavit signed by Mr. Gordon Birkett, a former member of the VMRC Board, who was an experienced marine contractor as well as an experienced marina operator also supporting the activities done by Mr. Garrett's men. He explained the bathymetric survey that had been done by Don Davis and Associates, was submitted with Mr. Davis'

comments. He read it all into the record, which included comments on depressions around the pole.

Mr. Daniel stated that Mr. Garrett did not agree with staff's comments. Staff had suggested that there had been three previous violations prior to this notice being issued and they were not a part of this notice of violation. He explained that there had been several meetings, three bathymetric surveys done as requested and the names of the people doing the work provided. He said that Mr. Garrett was not being uncooperative with staff. He said it was suggested that the permit expired January 2007 and they did not know where that came from as the permit was good until July 2008.

Associate Member Tankard asked if the issue was that Mr. Garrett was working within the content of his permit. Mr. Daniel responded yes.

Associate Member Robins said there was an argument that this activity was for backfilling the pilings as there were affidavits that the work was within the scope of the no permit necessary. He said that the portion of the activity that was outside of the authorization, the survey showed there was no evidence of impact. He also stated that the work was haphazardly handled.

Mr. Daniel explained that the affidavits were made by experts and the survey provided evidence of the impact. He said the use of inadequate equipment and labor was not evidence of any blatant disregard of the rules by Mr. Garrett for his own personal gain, as there was a history of permits being obtained in the past. He said there was just a misunderstanding of what Mr. Garrett thought he was entitled to do and what the staff thought he was entitled to. He said the additional work was necessary to secure the pilings. He said Mr. Garrett needed to know what he could do and staff needed to provide him with that information.

Commissioner Bowman asked for Mr. Nelson to come forward.

Glen Nelson was sworn in and his comments are a part of the verbatim record. Mr. Nelson explained that the contractor had not been able to get the project completed and Mr. Garrett asked him if he knew how he could get it done. He said the equipment was available and it was soft sediment. He said they did not know how the equipment was going to work and so he told the other individual to face outside to see how it would work. He said they did that for about ten minutes only. Commissioner Bowman asked why they had stopped, but Mr. Nelson responded said they did not stop, but worked for two more hours. He said the video had only shown the start. He said they worked to put the sediment around the dock pilings.

After some questions were asked of Mr. Nelson to clarify some of his statements as to what exactly had been done, Greg Garrett, applicant, was sworn in and his comments are a part of the verbatim record. Commissioner Bowman asked him if he had asked anyone

to increase the depth with a hydraulic pump. Mr. Garrett responded no, just to push sediment back into the holes. He said the contractor told him it needed to be done as gravity alone would not keep them in place, but the friction between the pilings and the sediment was needed to cover the pilings. He said Mr. Nelson checked one of the holes and it was 6 feet deep. Mr. Robins asked about the holes behind the boat lift. Mr. Garrett explained that this happened when he was using the lift for his boat. He said sometimes he would have to gun the engine on the boat in order to get it on the lift and he was sure this was what affected the sediment.

Mr. Daniel in his rebuttal stated that this was an interesting and complicated case, but after hearing the facts he felt the activity was justified and he appreciated the Commission hearing what they had to say.

Associate Member Robins stated that he had made a site visit in January and expected to see evidence of the dredging at a blow out tide. He said what he did see was mud flat with soft bottom and at the boat lifts the furrows could be explained when the boatlift was used for a boat. He said the record showed that it was standard procedure to fill in around the pilings and it would be better for the contractor to do it. He said he did not feel it was a violation, only haphazard work and unfamiliarity with the equipment by those using it. He said the survey showed what was there and there were minimal impacts.

Commissioner Bowman stated that different observations can occur, but the law said that the bottom cannot be impacted without a permit and the applicant thought this was a part of the approval. He said he did not see the activity rising to a violation finding that a plausible explanation for the dredging had been provided that no discernible benefit to the homeowner could be deduced, and that staff had failed to satisfy the burden of proof required to support a finding of violation beyond a reasonable doubt, as a Class 1 misdemeanor. He stated that staff was correct to pursue this and bring this to the Commission and the protestant did what was right for what was seen, but it was not a violation of the law. He asked for a motion.

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

No applicable fees, Violation Dismissed.

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The Commission broke for lunch at approximately 12:35 p.m. and returned at approximately 1:24 p.m.

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8. **REBECCA L. JONES, #07-1591**, requests after-the-fact authorization to retain a 16-foot by 16-foot enclosed pier-house and authorization to construct a 24-foot by 16-foot open-sided boathouse on the channelward side of the pier-house at her private pier situated along Mill Creek in Middlesex County.

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

Mr. Neikirk explained that pursuant to a report from Middlesex County personnel, staff conducted a site visit on May 31, 2007, and confirmed the construction of a partially completed enclosed building on the applicant's private pier located along Mill Creek at 348 The Winding Trail in Middlesex County. A Notice-to-Comply to Ms. Jones was issued on June 20, 2007. That notice directed removal of the unauthorized structure or the submittal of an after-the-fact application to retain the structure by July 31, 2007. The after-the-fact application was received on July 13, 2007 and additional information addressing deficiencies in the application was received on September 26, 2007.

Mr. Neikirk said that Ms. Jones stated that the building was constructed to replace an enclosed boathouse that included an enclosed storage area on the landward end. That structure was destroyed during Tropical Storm Ernesto. While Ms. Jones had provided pictures of the old boathouse, staff had been unable to verify that any permits were ever issued for the original structure. The after-the-fact application sought authorization to retain the enclosed building and authorization for the construction of a 24-foot by 16-foot open-sided boathouse on the channelward side of the building. The stated purpose for the pier-house was for the storage of boating and fishing gear.

Mr. Neikirk stated that in her after-the-fact application, Ms. Jones included copies of some notes she apparently took as she inquired about repairing her shoreline and rebuilding the pier and boathouse after Tropical Storm Ernesto. Her notes indicated that she contacted the Habitat office on October 2, 2006, and staff told her that they "didn't see any problems" and would send her a form to fill out. Staff apparently sent Ms. Jones a "Joint Permit Application for Emergency Authorization to Reconstruct Previously Permitted Structures Destroyed by Tropical Storm Ernesto." There was a handwritten note, presumably by Ms. Jones, on the application form that stated, "Brian Fletcher said on 10-12-06 at 1:48 pm – don't do anything with this as he knew Chip and would handle it." Staff never received an application seeking authorization to replace the structures from either Mr. Fletcher or Ms. Jones until after Ms. Jones had been served with the VMRC Notice to Comply.

Mr. Neikirk said that the special application referenced by Ms. Jones was developed pursuant to Governor Kaine's Executive Order 34 (revised) related to the reconstruction of previously authorized structures that were destroyed during Tropical Storm Ernesto. This Executive Order authorized the reconstruction of previously authorized structures over State-owned submerged lands subject to the following conditions:

1. The pre-existing structure must have been previously authorized and in a serviceable condition prior to the onset of the hurricane. (emphasis added)
2. The replacement structure must be reconstructed in the same location and in identical or smaller dimensions as the previously permitted structure.
3. Reconstruction activities must be initiated prior to December 31, 2006, and completed prior to June 30, 2008.
4. Any property owner(s) seeking to replace a previously permitted structure pursuant to this Executive Order must submit to the Virginia Marine Resources Commission a letter attesting to the foregoing and containing suitable drawings of the proposed replacement structure(s) for comparison purposes. (emphasis added)
5. No person may proceed with replacement of a previously permitted structure under the provisions of this Executive Order without written approval from the Commissioner of the Virginia Marine Resources Commission. (emphasis added)

Mr. Neikirk explained that for Ms. Jones' construction to have qualified under the Executive Order the emergency application would have needed to have been filed by December 31, 2006 and she would have needed to attest that the previous structure had been properly authorized. Staff had checked the records and had not been able to locate any Commission authorization for the original boathouse or an enclosed storage room.

Mr. Neikirk said that the enclosed pier-house and proposed boathouse did not encroach on public or privately leased oyster planting ground and staff did not believe the project would adversely affect navigation. No one had objected to the project in response to the public notice and the adjoining property owners indicated that they did not object to the proposal.

Mr. Neikirk further said that the Department of Conservation and Recreation noted the presence of a bald eagle nest in the project vicinity and recommended the applicant coordinate with the Department of Game and Inland Fisheries to ensure compliance with protected species legislation. No other State agencies had commented on the project.

Mr. Neikirk explained that when reviewing after-the-fact applications, staff considered whether the project would likely have been favorably reviewed had the application been considered prior to construction. Prior to 2006, staff generally recommended against the construction of any open-sided or enclosed roofed structures on piers unless such structures were deemed to be water dependent. In 2006, however, the General Assembly amended §28.2-1203(A)(5) of the Virginia Code, to provide statutory authorization for open-sided shelter roofs or gazebo type structures measuring no more than 400 square feet, provided such structures were allowed under local ordinance; and, provided further that such structures were not objected to by an adjoining property owner. Accordingly, since the neighbors had not objected to the structure, it appeared the pier-house would be statutorily authorized if the sides were removed. Furthermore, the proposed open-sided boathouse appeared to meet the statutory exemption for private, non-commercial, open-sided boathouses measuring 700 square feet or less, as specified in the same code section.

Mr. Neikirk said that although the enclosed boathouse was not protested and the environmental impacts associated with it may be minimal, staff did not believe the structure was water-dependent. The General Assembly had provided statutory authorization for open-sided shelters and staff did not believe the applicant had presented a compelling reason for the pier-house to be enclosed. In addition to minimizing the visual impacts associated with the structure, the elimination of the sides would reduce the potential for the building materials to enter the waterway during storm events or when the structure fell into a state of disrepair. Additionally, even if it could be determined that the previous boathouse had been properly authorized, staff was of the opinion that the mere prior existence of a structure on State-owned submerged land did not guarantee any right for subsequent structures to remain at the site in perpetuity. Staff believed subsequent requests should be evaluated on a case-by-case basis.

Mr. Neikirk said that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended denial of the enclosed pier-house. Should Ms. Jones choose to remove the sides of the pier-house, staff believed the structure would meet the statutory authorization for open-sided shelter roofs or gazebo type structures provided for in §28.2-1203(A)(5) of the Virginia Code. Additionally, staff believed the proposed open-sided boathouse also qualified for the statutory exemption for open-sided boathouses contained in the same code section. Accordingly, staff recommended that Ms. Jones be directed to either remove the entire pier-house or the sides of the pier-house within 30 days. Should the Commission decide to approve any portion of the after-the-fact request staff recommended the Commission impose triple permit fees, as provided for in §28.2-1206(D), and consider appropriate civil charges to accompany the after-the-fact approval, in lieu of any further enforcement, as permitted by Code.

Associate Member Holland asked if any county permit was obtained? Mr. Neikirk answered that staff did not contact the county, so they had no knowledge of any building permit.

Commissioner Bowman asked if the applicant was present?

Rebecca L. Jones, applicant, was sworn in and her comments are a part of the verbatim record. Ms Jones explained that she had acquired the property from her father. She said they had lost the entire pier and boathouse with Hurricane Isabel and the second time with tropical storm Ernesto. She said they contacted VMRC. She said that her father was a licensed waterman who processed soft shell crabs and worked on his crab pots in the boathouse. She said the structure was only 13' by 15' because of finances. She said after the site visit by staff, she filed the after-the-fact application and had intended to put it all back as it was. She said they needed the small enclosure to store the crabbing equipment and she was willing to do what was necessary to come into compliance.

Commissioner Bowman asked Ms. Jones if her father was an active waterman, to which she responded yes. He asked her about the number of tanks. She responded there were 4 double tanks, pumps, and a refrigerator to store the crabs. Commissioner Bowman asked about locating it on the highland. Ms. Jones stated that would put it in her front yard which faced the water. Associate Member Schick asked if it was permitted after Isabel destroyed it and stated that one slide showed it as open-sided. Ms. Jones responded no, there was a permit and it was not open-sided. Commissioner Bowman asked why it needed to be enclosed. Ms. Jones said it was more for convenience and would provide her father with protection while he worked with the doors open.

Associate Member Robins asked about the permit history. Mr. Neikirk explained that it goes back to the early sixties and things have changed a lot since then. Associate Member Robins asked about the pier being used commercially. Mr. Neikirk stated that it would be a commercial pier, if sales occurred at the dock and if other individual's crabs were accepted there also.

Associate Member Tankard asked what if it was approved to be open-sided. Ms. Jones said there were no other issues, as her father was still crabbing and she just kept it for him.

Commissioner Bowman asked if a conditional permit could be issued for the permit while the crab operation was still being used. Bob Grabb, Chief, Habitat responded yes.

Commissioner Bowman asked for a motion.

Associate Member Tankard moved to allow the structure to remain as stipulated. Associate Member Holland seconded the motion. Commissioner Bowman explained to Ms. Jones that Commission approval was conditioned on Ms. Jones' 86-year old father's continued ability to engage in a licensed commercial crab shedding operation. Ms. Jones was further advised by Commission Counsel that the Commission's conditioned approval was not transferable even if the property wer sold. Ms. Jones agreed to immediately remove the sides once her father ceased to shed crabs or surrendered his commercial crabbing license. The motion carried, 8-0. The Chair voted yes.

Permit Fee.....\$25.00

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- 9. **SHERWOOD FOREST SHORES PROPERTY OWNERS ASSOCIATION, #06-1141**, requests authorization to construct a 7-foot long by 21-inch wide, 37 inch high, uncovered fish cleaning station adjacent to the Association's existing community pier situated along the Little Wicomico River in Northumberland County. The project is protested by both adjacent property owners.

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

Mr. Madden explained that the Sherwood Forest Shores was a residential subdivision located approximately 18 miles east of Heathsville, along the Little Wicomico River in Northumberland County. The Property Owners Association maintained a community mooring facility with 34 wetslips a boat ramp and an existing fish cleaning station for property owners in the subdivision.

Mr. Madden said that the Association felt that a second fish cleaning station was necessary to accommodate the members who moored boats on the north pier. The new cleaning station was proposed at the end of that pier.

Mr. Madden stated that the project was protested by Mr. and Mrs. Paul Barsnica, the adjacent property owners on the north side of the community piers. The Barsnica property was immediately adjacent to the proposed cleaning station. Also, the project was protested by Mrs. Dorothy Spindle. The Spindle property was to the south of the community piers.

Mr. Madden said that in her original letter dated February 7, 2007, Mrs. Spindle wrote that the new fish cleaning station would ruin the Barsnica's view. Mrs. Spindle also pointed out that the community already had a permitted fish cleaning station at the end of the south pier near her. Mrs. Spindle believed that the new station was unnecessary.

Mr. Madden noted that in a letter dated August 7, 2007, Mr. and Mrs. Barsnica added their protest to the project, stating that the station would be in a direct line-of-sight from their living room. They also expressed their concern that fish waste would foul their shoreline and become hazardous to bathers who might swim in the river immediately adjacent to their property.

Mr. Madden said that in an attempt to address the aesthetic issues raised by the adjacent property owners, the Association submitted revised drawings on May 22, 2007, which deleted the proposed roof over the cleaning station on the north pier. In spite of this, the project remained protested.

Mr. Madden stated that the Northumberland County Wetlands Board had indicated that the project did not involve wetlands, and therefore, no permit was required.

Mr. Madden also stated that the Department of Environmental Quality had indicated that no permit was required for the construction of the fish cleaning station. No other state agency had commented on the project.

Mr. Madden explained that balancing the needs of a community facility against those of the property owners immediately adjacent to that facility was often problematic. In this

case however, staff recommended a compromise. Staff believed that locating the station at the end of the boatramp on the outboard side of the north pier, immediately inboard of the wetslips, should be a satisfactory location for an uncovered, fish cleaning station. This would place the station away from any swimmers and further away from the viewshed enjoyed by the Barsnica's. Staff also recommended that the Association consider installing signage, alerting fishermen to the proper disposal of fish waste and the placement of additional waste disposal containers during the fishing season.

Mr. Madden said that in consideration of the foregoing and the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended approval of the project in modified form.

Commissioner Bowman asked if the Association representative was present.

Ames Brock, representative for the Association, was sworn in and his comments are a part of the verbatim record. Mr. Brock provided photographs for the Commission. He explained that the boat ramp separated the two piers. He said the Spindle dock was about 60 feet long and the project would not be visible to this property as it was 600 to 700 feet from the Spindle property. He said it was visible to the Barnisca property, but their view was already involved in the structures there already. He stated the Barnisca's had already added a fence to their property. He stated that he was impressed by the professionalism of the VMRC staff. He stated as to the disposal of fish, he believed in stewardship for all of the environment and believed it should be illegal to dispose of the carcasses. He said there was a contract to get rid of them

Commissioner Bowman asked if he agreed with the staff's proposed compromise. He stated that personally he agreed.

Otis Tucker, a board member for the Association, was sworn in and his comments are a part of the verbatim record. Mr. Tucker provided a petition signed by 27 members, e-mails included, stating they wanted the stand at the end of the pier as proposed. He said the relocation of the stand would interfere with boats accessing the boat ramp and boat staging. He said they were attempting to put the stand at a place where it would be farther out into the water so as to not interfere with any other property.

Joe Capalarie, property owner, was sworn in and his comments are a part of the verbatim record. He said he objected to the proposed compromise as it would interfere with boat traffic and be unsafe. He said at the compromise location, activity would be bottlenecked and at the original location it would not.

Paul Barnisca, property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Barnisca said that he would also be speaking for Ms. Spindle as she could not be present because of a hip injury. He said they felt it would hurt their property values, interfere with their views, as this was such a great view that it sold them

on this property, and his living room faces the structure in the proposed site. Commissioner Bowman asked Mr. Barnisca where the structure should be placed. Mr. Barnisca responded in the location recommended by staff, as it would resolve 80% of his problems. He said the original location was only 50' from the riprap and 75' from the beach. He pointed out that the roof structure violated the county's regulations as there was not supposed to be roof structures allowed in the Little Wicomico. He said there were no signs or enforcement for the disposal of the fish waste. He added that an environmental study should be done because of health concerns.

Commissioner Bowman asked for discussion or action.

Associate Member Robins stated that this was such a diminimis structure that the State was not concerned with environmental impacts, and the issue of the fish discards could be addressed with signage. He moved to approve the project without a roof and at the location proposed by the applicant with signs to be placed at both fish cleaning stations on the proper disposal of the discarded fish parts.

Associate Member Tankard in a substitute motion, moved to allow the roof but to have the fish station placed at the location recommended by staff. Commissioner Bowman asked for a second three times, when no second was made to this motion, he announced that the substitute motion had failed.

Commissioner Bowman requested a second for the original motion. Associate Member Holland seconded the motion. The motion carried, 7-1. Associate Member Tankard voted no. The Chair voted yes.

Royalty Fee (encroachment 14 sq. ft. @ \$1.50 sq. ft.)...	\$ 21.00
Permit Fee.....	\$100.00
Total Fees.....	\$121.00

Commissioner Bowman stated that because of a conflict for staff, they were requesting that Item 22, be heard after Item 17. **Associate Member Holland moved to accept the change. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.**

- 10. JOHN MEEKINS AND ERIC WELLER, OYSTER PLANTING GROUND APPLICATION, #07-055.** Application for oyster planting ground within the Lynnhaven River. The application is protested by Mr. Mark Sanford.

Pulled from the Agenda, Protest Resolved

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11. **SHELLFISH GROUND WITHIN BROAD BAY PREVIOUSLY DESIGNATED AS NON-LEASABLE BY THE COMMISSION.** In February of 1984, the Commission designated a 19.08 acre area within Broad Bay, in the City of Virginia Beach, as non-leasable for a term of 5 years with the option that it could be reviewed again at some point in the future. On April 4, 1989, Staff presented the area to the Commission for review. The Commission again set the area aside for another five year term. When that term expired in 1994, it appears the Chief Engineer, by memo, set the area aside for an indeterminate period of time. Request the Commission reaffirm this decision and agree to set-aside the area as public ground indefinitely.

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

Mr. Stagg explained that Broad Bay was a tributary to the Lynnhaven River, being connected by both the natural Long Creek and the man-made Long Creek canal respectively, all being within the City of Virginia Beach.

Mr. Stagg noted for the Commission that all Baylor grounds within the Lynnhaven River system were removed during the 1920's by the General Assembly. He said that in February of 1984, then Associate Commissioner Ivan D. Mapp requested that the Commission set-aside a 19-acre area that he had originally applied for as an oyster lease ground within Broad Bay in the City of Virginia Beach. Mr. Mapp had further suggested that the Commission could review the issue again after five years. At their February 28, 1984, meeting the full Commission voted to set the area aside as public ground, effective March 1, 1984 until March 1, 1989. The surveyed area encompassed 19.08 acres and was the only "public ground" available to the average citizen.

Mr. Stagg stated that on April 4, 1989, the Commission, upon staff recommendation, voted to renew the set-aside area for another five year term.

Mr. Stagg said that in a subsequent memorandum from Mr. S. M. Rogers, Chief Engineer, dated January 12, 1994, Mr. Rogers stated that after review of the Commission meeting minutes from both 1984 and 1989, a decision was made to designate this acreage as a set-a-side ground for public use indefinitely. This action appeared to have been taken without the benefit of a Commission review and action. Based on the actions of the Chief Engineer, the Engineering/Surveying Department had continued to denote this area as Public Ground on VMRC maps since March of 1984.

Mr. Stagg said that because of the recent opening of a large portion of the Lynnhaven River system to the direct harvest of shellfish by the Health Department, however, staff had received several inquiries concerning the leasing in this area, and other requests

concerning the availability of public ground in general within the Lynnhaven River system. He further stated that because of these recent issues and the fact that the original approval clearly indicated that full Commission review was part of the original designation and the subsequent renewal, staff was requesting formal Commission action to clarify the status of this area. Therefore, staff recommended the Commission set the area aside, subject to any future Commission action, but without any defined termination date.

Commissioner Bowman asked for any questions. There were none. He also asked if there were any public comments and there were none. He then asked for a motion.

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

No applicable fees.

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12. PUBLIC COMMENTS:

CRAB POT FISHERY:

Dale Taylor was present and his comments are a part of the verbatim record. Mr. Taylor requested that the staff review and the Commission consider modifying the regulation for recreational crab potting, which now allowed for 5 crab pots with a license fee of \$39.00. He requested that it be increased to 8 crab pots. He also discussed the impact of the crab pots attached to piers for household use and they were numerous on the waters. He stated that these crab pots were impacting the resource more than the commercial industry, because the small crabs were being caught by these individuals, as there were no limits on these crab pots. He said the commercial industry had a minimum size limit and there was no need to place further regulations on the commercial crab industry.

No action was taken by the board.

PEELER TRAP STAND:

Roger Parks, a Lancaster waterman, was present and his comments are a part of the verbatim record. Mr. Parks stated that he had held a peeler trap stand for 42 years and now there was a threat that he could lose it because of a pier that was constructed nearby. He said when he talked with the Marine Police Officer at the field office he was told that he could not renew this location.

Commissioner Bowman asked staff to address this issue.

Randy Owen, Environmental Engineer, Sr., made a presentation with slides. His comments are a part of the verbatim record. Mr. Owen explained that Mr. Parks' crab trap was licensed for Farnham Creek for 2007. That same year Mr. William Walker, III, had a permit for his proposed private pier approved, which he constructed. Mr. Walker then proceeded to remove Mr. Parks' crab trap. He was told by the Marine Police to put it back. In a regulation established by the Commission the trap must yield to the pier. Staff had had questioned whether it could be allowed for 2008. Mr. Travelstead had said it could not stay. Mr. Owen stated that Mr. Parks was licensed for 11 other traps in the Cove. He said that Mr. Parks moved the crab trap in December 2007 and the Marine Police were told not to relicense it within 100 feet of the pier.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel stated that the Code allowed the pier and a regulation allowed the trap. Commissioner Bowman requested a legal review and determination by Mr. Josephson. Mr. Josephson explained that a regulation could not take precedence over the Code.

Mr. Parks stated that he had this location for 42 years. Commissioner Bowman stated that there had not been any prior dispute between the pier owner and Mr. Parks, which Mr. Parks confirmed. Commissioner Bowman further said that the Commission would have to get back with Mr. Parks on this matter. No action was taken.

OCEAN FISHERMEN WITH BAY STRIPED BASS TAGS – VIRGINIA BEACH AREA

Associate Member Robins explained that there was concern among some fishermen with the high cost of fuel and not being allowed to keep Bay Striped Bass tags on board their vessel while working the Virginia Territorial seas for the spiny dogfish. He said this causes them to have to return to shore to get their tags if they were going to work in the Bay catching Striped Bass. He said that there were about 15 fishermen working out of Virginia Beach in the Territorial seas for spiny dogfish who had raised these valid concerns. He asked staff to comment.

Jack Travelstead, Chief Deputy, Fisheries Management, responded and his comments are a part of the verbatim record. Mr. Travelstead explained that the rising cost of fuel was a growing concern, as now the cost was approximately \$4.00 per gallon whether it was diesel or regular gas. He said that staff had requested the opportunity to do a complete review of the weight system that was approved in 2006. He said the staff would present the results of this review at the March Commission meeting. He stated that until this review had been completed, staff was reluctant to recommend any hasty changes to the regulations.

Commissioner Bowman asked if waiting one more month would hurt, as it was important that the Commission conserve these fish in a responsible way. Associate Member

Robins explained that the concern was with the February 1st opening date coming shortly and he felt that it was important for staff to review these concerns.

Associate Member Robins said that these fishermen had raised valid concerns but that staff should do this review as well as take it to the Fisheries Management Advisory Committee (FMAC) for their review.

Associate Member Bowden stated that this was a short-term problem as the quota for spiny dogfish was usually caught up fast. He said that FMAC can look at it to see if there was any way to give some relief for these people, while still keeping the spiny dogfish season opened.

Commissioner Bowman instructed staff to look at this issue. No other action was taken.

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- 13. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-530-10, Et seq., "Pertaining to American Shad," to eliminate the by-catch fishery for American Shad in the spawning areas, to comply with the provisions of the Interstate Fishery Management Plan.

Joe Cimino, Fisheries Management Specialist, Sr., gave the presentation. His comments are a part of the verbatim record. Mr. Cimino explained that the hand out provided by him was the only comments received, which he read into the record following the presentation.

Mr. Cimino stated that in January 2006 the Commission established provisions for a bycatch fishery for shad in portions of the James, York, and Rappahannock Rivers. He reviewed a map which depicted these areas. He went on to state that the Commission decided to set very restrictive criteria by limiting eligibility to participate in the fishery, on the spawning grounds, to fishermen that reported the harvest of striped bass, using anchored or staked gill nets, from the spawning grounds during the months of February and March in at least five years during the 1996 through 2005 period. He said under these criteria, only 11 individuals qualified for a permit to work in the spawning reaches.

Mr. Cimino said that the ASMFC Management Board approved a limited bycatch allowance of American Shad for 2006 and also in 2007. He said they approved it with the following provisions:

- 1) The Virginia bycatch fishery would be limited to areas above the first bridge in the James, York, and Rappahannock rivers to ensure that American Shad harvested as bycatch in other fisheries, such as striped bass and Atlantic Croaker, were principally Virginia riverine stocks.

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- 2) The bycatch fishery would be limited to anchor gill net and staked gill net gears, as these gears are associated with spring harvests of spot, croaker, bluefish, catfish, striped bass, and white perch during spring, and discard mortality rates for American Shad from these gears are nearly 100 percent.
- 3) The bycatch of American Shad would be limited to 10 American Shad per Bessel (5 per vessel on the spawning grounds).
- 4) Samples of the American Shad bycatch would be collected, especially to distinguish hatchery –origin American Shad from wild stocks.
- 5) The bycatch fishery would be approved solely for one year at a time, and any future bycatch fishery proposals would be reviewed by the ASMFC American Shad and River Herring Technical Committee and Management Board.

Mr. Cimino said that in 2007, a peer review panel endorsed a benchmark stock assessment for American Shad. The assessment evaluated the status of 30 different river-specific stocks, from Maine to Florida. The assessment found that overall, coastwide, stocks are at an all time low and do not appear to be recovering. In Virginia, the status of American Shad in the James and York rivers was low relative to historic levels. Recruitment of wild fish to the James River stock was very poor and the stock relied on hatchery stocking to supplement restoration. In the York River, American Shad had demonstrated some evidence of recovery, though catch indexes and recruitment had declined in recent years. American Shad abundance in the Rappahannock River had been very variable but had not experience severe stock decline.

Mr. Cimino explained that staff recommended amending Regulation 4 VAC 20-530-10, Et seq., “Pertaining to American Shad”, to eliminate the bycatch fishery for American Shad in the spawning areas, to comply with the provisions of the Interstate Fishery Management Plan.

Mr. Cimino read the letter of comments referred to earlier, dated January 17, 2008, in which the Chesapeake Bay Foundation expressed their strong support for the amendments to the regulation as recommended by staff as they had originally opposed the opening of this fishery.

Commissioner Bowman opened the public hearing.

John Wyatt, an upriver fisherman, was present and his comments are a part of the verbatim record. Mr. Wyatt provided the Board members copies of his letter to the Commissioner and which he copied the staff on as well. He stated that the Management Plan had worked for striped bass and shad and the bycatch fishery was working. He said the shad were caught in the nets and usually died. He said he felt it did not make sense to throw a dead fish back and it would not impact the fishery, but it would eliminate waste. He said he works gill nets and he caught 13 shad all year, 11 he reported and two he kept for personal use. He said in January using the 5” mesh nets no shad were caught, which proves it works. He said with 6” mesh net, the bycatch was reduced 90 percent. He

stated that with three Permittees in the whole State it would not be harmful and the fish were dead already.

Mr. Wyatt stated that the fishermen were not the problem, but the non-native predator introduced by the Game and Inland Fisheries was a problem. He said also the blue catfish were more harmful as they ate the shad. And he said DGIF had recently released the flathead. He said that the DGIF was getting more authority by going to the upriver areas. He said that reporting needed to be improved as well. He said that he felt if there was a closure, the whole shad fishery, not just the bycatch fishery. Finally, he said that dead fish do not spawn.

Kelly Place, fisherman, was present and his comments are a part of the verbatim record. Mr. Place said that he did not realize that the bycatch fishery was being eliminated. He said he was involved in the study and the bottomline was the data was faulty and needed to be reviewed before any action was taken to close the fishery.

Doug Jenkins, President of the Twin River Watermen’s Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that he had not come to the meeting for this issue, but he felt the Commission continued to push the watermen back all the time and the Commission should know this. He said the Commission was protecting a resource for spawning purposes and keeping it from one fishery to give it to another.

Commissioner Bowman asked for discussion or action by the Commission.

Associate Member Robins moved to accept the staff recommendation. Associate Member Schick seconded the motion. Associate Member Bowden said he felt he was probably the most knowledgeable of the shad as he had caught lots of them. He said the numbers are low and when the fish are dead it should be utilized. He said that fish did not know boundaries and the spiny dogfish were eating the shad. He said he could not support the motion because there was no scientific reason to do so and the numbers were small with no new mortality. Associate Member Holland stated that he agreed with Associate Member Bowden. Associate Member Robins agreed that he agreed there was insignificant mortality, but he could not see justification to be out of compliance.

Roll call vote:

Bowden	No	Fox	Absent	McConaugha	Yes
Robins	Yes	Tankard	No	Holland	No
McLeskey	No	Schick	Yes	Chair	Yes

The motion failed , 4-4, tie vote.

Commissioner Bowman requested another motion.

Associate Member Bowden moved to allow the bycatch fishery to continue in the spawning reaches, but require the fish to be given to VIMS or DGIF to use as samples for their studies.

Commissioner Bowman asked Mr. Travelstead to comment. Mr. Travelstead stated that there was a need to still adopt the proposed amendments to the regulation to not allow the bycatch fishery in the spawning reaches. He said that VIMS was allowed by law to employ watermen and pay them to supply samples for their studies. He said no amendments were necessary to allow VIMS to get the fish for the study. He said that the Board needed to approve the staff recommendation plus encourage watermen to work with VIMS.

Rob O'Reilly, Deputy Chief, Fisheries Management, noted for the Commission that VIMS had already requested permits for fishermen already in the study program. He said these people were already established in the program, whether pound netters or in the bycatch fishery. He said contact should be made with VIMS to let them know that approximately three more fishermen are available to be added to the group.

Associate Member Bowden stated he was withdrawing his motion because the fish were more valuable to VIMS.

Associate Member Schick moved to accept the staff recommendations adding that contact be made with VIMS to have them include these fishermen in their sampling study. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.

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14. **PUBLIC HEARING:** Consideration of an industry proposal to reopen the James River Hand Scrape Area and Thomas Rock Hand Scrape Area for the harvesting of oysters in February and March, 2008, which would require the amending Regulation 4 VAC 20 -720-10, Et seq., "Pertaining to the Oyster Harvest Restrictions".

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

Dr. Wesson explained that at the December Commission meeting there was a request to extend the season for the oyster hand scrape areas in the Lower James River for the months of February and March. It is obvious that the oyster stocks in these areas are quite low. Spatsets were moderate to low, but disease was the dominant mortality factor in these areas, and low standing stocks were normal. The broodstock which supplied the

larvae for repopulating the Lower James was quite healthy and was in the hand tong area, which would not be affected by this extension. Generally the few watermen that work in these areas do not catch their limits. The fleet that was likely to work was quite small, maybe 15 boats and staff was not opposed to extending the season. Some watermen had called and stated that they were opposed to the reopening, as they believed the oysters should be left for next season giving them something to work on. This was a good reason not to extend, but there was concern that the impact of this disease would result in the larger oysters dying, especially if the drought continued and salinities remained high.

Dr. Wesson stated that staff recommended the reopening of the Lower James River Hand Scrape areas for the months of February and March, with all other restrictions remaining the same.

Associate Member Holland left the meeting.

Commissioner Bowman opened the public hearing.

Kent Carr, waterman, was present and his comments are a part of the verbatim record. Mr. Carr reminded the Commission of the letter from Mr. Kellum requesting the public hearing and the reopening of these areas. He read the letter into the record. He also stated that he supported this opening.

As there were no other public comments, the public hearing was closed.

Commissioner Bowman asked for discussion or action by the Commission.

Associate Member McConaugha moved to accept the staff recommendation, since it would not endanger the broodstock. Associate Member Robins seconded the motion. The motion carried, 7-0. Associate Member Holland had not returned to the meeting. The chair voted yes.

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- 15. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-320-10, Et seq., “Pertaining to the Taking of Black Drum”, to allow the use of small mesh gill nets in the Management Area.

Mike Johnson, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record.

Associate Member McConaugha left the meeting.

Mr. Johnson explained that Section 50 of Regulation 4 VAC 20-320-10- et seq., “Pertaining to the Taking of Black Drum” established that it was unlawful for any person

to place, set or fish gill nets or trotlines from 7 a.m. to 8:30 p.m. of each day for the period of May 1 through June 7, dates inclusive, in the southeastern portion of the Chesapeake Bay.

Mr. Johnson explained further that at that June meeting of the FMAC committee there was discussion and some support by the members for allowing harvest within the management area for species such as Atlantic croaker, as long as there could be some maximum gill net mesh size established. No one wanted to renew the late 1980's conflict between recreational and commercial users fishing for black drum.

Mr. Johnson said that at their October meeting, the FMAC committee at an 8-0-3 vote (there were 3 abstentions) endorsed allowing legal gill net mesh size below five inches (5") within the management area from 7 a.m. to 8:30 p.m. of each day for the period of May 1 through June 7.

Mr. Johnson stated that staff did not receive any public comments.

Mr. Johnson said that staff recommended approval of the amendments to Regulation 4 VAC 20-320-10 that would allow the use of small mesh, less than 5 inches, stretched measure, gill nets in the Special Management Area.

Commissioner Bowman opened the public hearing. There being no public comments, the hearing was closed.

He asked for what action by the Commission.

Associate Member Bowden moved to accept the staff recommendation. Associate Member McLeskey seconded the motion. The motion carried, 6-0. Associate Members Holland and McConaugha were both absent from the meeting. The chair voted yes.

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- 16. PUBLIC HEARING:** Consideration of amendments to regulation 4VAC20-1040-10, Et seq., "Pertaining to Crabbing Licenses", to establish a control date of December 17, 2007, to serve as a basis in the development of future crab regulations.

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

Associate Members Holland and McConaugha returned to the meeting. Associate Member Schick left the room.

Mr. Travelstead explained the use of control date was a common practice in fisheries management, particularly when further measures to limit entry into the fishery were anticipated. A control date is simply an end date, beyond which an individual's participation in a particular fishery will not be considered in any calculations or distribution of fishing rights.

Mr. Travelstead said that the particular date, December 17, 2007, was chosen since it was the date the Commission announced its desire to establish further controls on the blue crab fishery. Using any date in the future would allow individuals to increase their participation level, a situation that should be avoided, given the status of the blue crab population.

Mr. Travelstead said that the staff was recommending the adoption of the amendment to Regulation 4 VAC 20-1040-10 et seq., "Pertaining to Crabbing License" and to be made effective February 1, 2008.

Associate Member Bowden said there were a lot of crab dredge permittees and asked if the license requirement would be removed. Mr. Travelstead explained that the control date would be based on the individual's effort. Associate Member Bowden asked if the permittee was not actively using his permit, if he would be able to keep it. Mr. Travelstead stated not necessarily. Associate Member Bowden also asked if a permittee prior to the control date would get left out. Mr. Travelstead stated not necessarily, but there were still details to be worked out.

Associate Member Robins stated that this would allow for information to work with and if active and inactive it was possible to not be included in the future, which was also dependent on what was necessary at that time. He said this would allow the Commission to look back at latent effort and active effort and there would be no assurances for an inactive permittee to be included. He said also that a qualifying period would need to be established in the future.

Commissioner Bowman opened the public hearing.

Vernon Haywood, waterman, was present and his comments are a part of the verbatim record. Mr. Haywood suggested that when using the control and looking back a few years for activity, the Commission needs to consider a 5-year period. He said that watermen need to be versatile in order to keep working.

There being no further public comments, Commissioner Bowman closed the public hearing. He asked for action by the Commission.

Associate Member Robins moved to accept the staff recommendation to establish the control date as December 17, 2007. Associate Member Tankard seconded the

motion. The motion carried, 7-0. Associate Member Schick had not returned at this point in the meeting. The chair voted yes.

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17. DISCUSSION: Presentation of the Report of the Scientific Review of Virginia's Blue Crab Management Plan and regulations.

Mr. Rob O'Reilly, Deputy Chief, Fisheries Management gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly utilized a PowerPoint presentation in his presentation, reviewing numerous graphs and tables.

Mr. O'Reilly explained that the Members of the Blue Crab Regulatory Review Committee consisted of a diverse group of scientists from South Carolina, North Carolina, Virginia, and Maryland, as well as two associate members and the VMRC Deputy Commissioner.

The following individuals were on the committee:

- Dr. Elizabeth Wenner, South Carolina Department of Natural Resources
- Dr. Thomas Wolcott, North Carolina State University
- Mr. Lynn Henry, North Carolina Division of Marine Fisheries
- Dr. John Hoenig, Virginia Institute of Marine Science
- Dr. Romuald Lipcius, Virginia Institute of Marine Science
- Dr. Thomas Miller, Chesapeake Biological Laboratory, University of Maryland
- Ms. Lynn Fegley, Maryland Department of Natural Resources
- Dr. John McConaugha, Old Dominion University and Associate Member of the Virginia Marine Resources Commission Board
- Mr. Rick Robins, Associate Member of the Virginia Marine Resources Commission Board
- Mr. Jack G. Travelstead, Deputy Commissioner, Virginia Marine Resources Commission

Associate Member Schick returned to the meeting.

Mr. O'Reilly explained that the Committee had been formed at the approval of the Commission board. He explained that this Committee had met on three occasions, June, August, and November. He said they were asked to review the regulations that had been established by the Commission since 1994 and determine why there had not been the desired impact of improving the crab stocks or harvest and to make recommendations for any new measures that might improve the resource.

Mr. O'Reilly stated that the problem was that since 1994, the objectives of the regulations for the blue crab resource and its fisheries had been to promote an increase in the number of exploitable crabs and a spawning stock that would sustain a fishery. He said that

despite all the management measures that had been adopted the bay-wide stocks and harvest had not improved.

Mr. O'Reilly explained that the focus of management should be achieving an exploitation fraction that falls consistently between the target and threshold levels. If exploitation were constrained to the certain levels, there would be a greater chance of success as measured by increased crab abundance and an optimized fishery.

Mr. O'Reilly said that during the last 20 years the crab pot (hard pot) fishery had accounted for at least 74% and as much as 87% of the annual harvest in Virginia. The crab pot harvest consisted of hard crabs and some peeler crabs. Except for the winter dredge fishery, the crab pot fishery harvests more of the remainder of hard crabs landed in Virginia.

Mr. O'Reilly stated that the regulation now required two unobstructed cull rings per crab pot, one at least 2 5/16-inch inside diameter and the other at least 2 3/16-inches diameter. The VMRC allows an exemption from the requirement to maintain an unobstructed 2 5/16-inch cull ring in crab pots located in the Bay, the Seaside of Eastern Shore and the Pocomoke-Tangier Sounds. The cull rings promote an increase in the maximum spawning potential since some crabs can escape from the pots.

Mr. O'Reilly explained that there were obvious benefits to a pot marking system as it would provide a baseline of existing effort and the pot limit would be more enforceable management tool.

Mr. O'Reilly said that there had been discussion for season limits. Currently the season extends from March 17 through November 30 and prior to 2007, the fishery opened April 1. The Committee discussed the benefits of reducing the November fishery, even by two weeks to help to reduce the high exploitation rate on female crabs and the low abundance of spawning stocks.

Mr. O'Reilly explained that this was one of the Commission's earliest attempts to limit entry into a fishery through license and participation requirements. The sale of license was suspended until the number was reduced from 385 to 225. For the last few years there had been less than 225. In earlier years the daily harvest limit ranged from 20 to 30 barrels. In 2000, the limit was change to 17 barrels and remains the same today. Over the last decade the crab dredge harvest has decreased to be 9.2% of the total crab harvest of 22.5 million pounds.

Mr. O'Reilly explained that, proportionally, the fraction of females removed by the winter dredge fishery, 2001 to 2006, is similar or greater than in some earlier years. During recent years, the Bay-wide harvest was well below average.

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Mr. O'Reilly stated that there is a 3-inch minimum size limit on the possession of peeler crabs in Virginia. Since the Chesapeake Bay fisheries depend heavily on annual recruitment of blue crabs, and the peeler fishery is the first to encounter crabs from the previous year's spawn, the fishery has trended down in recent years.

Mr. O'Reilly explained that despite several expansions of the sanctuary there was no evidence of any recent increases in spawning stock biomass. Although the sanctuary protects females within its borders, there is movement of some crabs outside the boundaries of the sanctuary, there is no protection of female crabs outside the boundaries of the sanctuary, there is no protection of female crabs migrating from Virginia to Maryland and the Potomac during spring and fall, and overwintering females are exploited by the Virginia dredge fishery.

Mr. O'Reilly said that effort control had been an elusive management objective of Virginia's blue crab management plan. VMRC had used a multi-faceted approach to constrain effort, focusing primarily on pot limits and moratoria on license sales since 1999. Presently, effort controls are difficult to enforce, given the large area, number of fishery participants, the required time that Law Enforcement spends on any one suspected violation, and especially, the current lack of pot-tagging system. The fundamental basis for any effort control strategy is an initial measure of existing effort, in terms of pot-days or number of pots actively fishing for blue crab. The VMRC mandatory reporting system collects information on gear use, but expects these data do not fully account for effort in the fishery since they do not include illegal effort or unreported landings. Effort control was the most looked at and discussed.

Mr. O'Reilly explained that latent effort had the potential to offset or reverse any progress that was made towards the future successful management of blue crabs, since any increase in abundance would be an inducement for inactive harvesters to become active. In addition, the current allowance of agents, whereby, any person is able to fish an inactive harvester's gear, adds to the overcapacity of effort on these fisheries. In order to effectively manage effort, the Commission is encouraged to develop a strategy to address agency agent and transfer. Given the historical concerns of over capacity, it may be helpful to develop a rationalization strategy to further limit the number of participants in the fishery, recognizing that the resource cannot be simultaneously restored to historical levels of abundance while support the current number of participants at their current level of effort. Except for true emergency situations, no agency should be allowed and no individual should be allowed to purchase the right to fish another licensee's pots.

Mr. O'Reilly said that the committee initially discussed the merits of an individual transferable pot system. To facilitate this type of system, Virginia would need to implement a pot-tagging system in order to enforce and monitor effort in the pot fishery. Later, the committee concentrated on an individual transferable effort system. This is similar to the ITP system, but allowable crab potting days or weeks, is the effort control mechanism. A pot tagging system would be paramount in an ITE effort control system,

as it would be an important mechanism by which to monitor and enforce. The Commission would have to develop a plan to address the risk of latent effort by managing inactive and nominally active licenses.

Commissioner Bowman thanked the Committee for a wonderful job. He stated that no action meant neglecting the fishery as measures were needed and that caused watermen some concern. He said with the short-term measures there was hope that this would mean long-term gain, as there was no desire to see the fishery disappear. He asked for questions and there were none.

Jack Travelstead, Deputy Chief, Fisheries Management, stated that management measures since 1994 have not worked. He said the numerous regulations have prevented further decline and it was still 70% down from 1990, but the harvest had been over target for eleven of the seventeen years. He said now the Commission needed to be more aggressive and staff was recommending approval of a public hearing for the discussion of the proposed short-term measures. They were as follows:

- Shorten the fall season by two weeks,
- Require larger cull rings to allow the females to escape,
- To not open the season Mid-March, but April 1st,
- Increase the size limit of peelers to 3 ½",
- Prohibit harvest of white shell crabs,
- Close the sanctuary May 15th,
- Limit use of an agent to emergency only,
- No expansion of the winter dredge fishery, and

Direct the staff to address long-term measures.

Mr. Travelstead explained that the ITE system would limit the effort by an individual fisherman and a crab pot tagging program would eliminate latent effort, inactive licensees or sporadically active licensees.

Mr. Travelstead recommended the advertisement of a public hearing for the short-term measures.

Associate Member Robins thanked the staff for a job well-done as there was a lot of data. He thanked Dr. McConaugha for his part, as well. He stated the blue crab had been an Icon for the State historically and despite the numerous measures already enacted, the species was still in trouble as the target level was consistently over target, as well as the exploitation rate being over for 8 years. He said the management plan was not working.

Associate Member Robins moved to accept the staff recommendation to advertise for a public hearing to consider the proposed short term measures. He further

suggested that the Crab Management Advisory Committee (CMAC) also be allowed to review these proposals. Associate Member Holland seconded the motion.

Associate Member McConaugha stated that the staff and the committee were unanimous in feeling that the fishery was in trouble. He said the crab fishery situation was very similar to the Cod fishery, which did collapse. He stated that the pot tagging system would give the data needed. He said finally that the current measures were not working and the Commission needed to look at these short term measures. **The motion carried, 8-0. The Chair voted yes.**

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22. DISCUSSION: To establish management measures for the 2008 Summer Flounder Recreational Fishery, amending Regulation 4 VAC 20-620-10, Et seq., “Pertaining to Summer Flounder”; request for public hearing.

Jack Travelstead, Chief Deputy, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that this was a request by staff for a public hearing.

Mr. Travelstead said that the 2007 Fishery was managed by an 18-1/2 inch minimum size limit, 5-flounder limit and closed seasons. He said it had been necessary over the years to manage this quota a quite bit, either because of overages or changes in the quota.

He said that staff had met with the Ad hoc committee and they had put together 5 options, which staff recommended advertising for public hearing.

The options are as follows:

- Option 1 – Minimum Size Limit (inches) 18.5; Possession Limit (number of fish) 3; Closure dates 1/1 – 4/15 and 7/21 – 8/15
- Option 2 – Minimum Size Limit 18.5; Possession Limit 3; Closure dates 7/21 – 8/23
- Option 3 – Minimum Size Limit 19.0; Possession Limit 3; Closure dates 1/1 – 3/29
- Option 4 – Minimum Size Limit 19.0; Possession Limit 4; Closure dates 7/21 – 7/28
- Option 5 – Minimum Size Limit 19.0; Possession Limit 5; Closure dates 7/21 – 7/30

Commissioner Bowman asked for action by the Commission.

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

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- 18. DISCUSSION:** Request by the Fishery Management Division and Army Corps of Engineers for approval to set aside from leasing certain areas of the Lynnhaven River for the purpose of native oyster restoration.

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

Mr. Travelstead explained that last June, the Commonwealth of Virginia entered a Project Cooperative Agreement with the Army Corps of Engineers for the restoration of oyster habitat in the Lynnhaven River. There were no public Baylor grounds within the Lynnhaven River system, consequently all public restoration efforts must be done on unassigned public grounds. Fortunately 30 unassigned acres have been identified for 2007 and 60 acres of unassigned public grounds have been found for the 2008 efforts. Staff recommended these areas be permanently set aside, approximately 30 acres for 2007 and approximately 60 acres for 2008 for oyster restoration.

Commissioner Bowman asked if there were any public comments received in opposition. Mr. Travelstead responded no. He explained that 2 areas that had previously been identified for 2008 had been leased or an application for lease had been received and they were allowing those areas to be leased.

Commissioner Bowman asked for a motion.

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

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- 19. DISCUSSION:** Request for Approval of the Procurement Procedures for the 2008 American Shad Restoration Program.

Jack Travelstead, Chief Deputy, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that annually, the Commission must approve the procurement procedures for obtaining the services of watermen to participate in the American Shad Restoration Program. The authority to approve such procurements is found in Section 28.2-550 of the Code of Virginia

Mr. Travelstead stated that the notice that was included in the notebooks, described the program in detail. The rate to be paid to each waterman is \$225.00/day with the maximum amount available for the total program being \$70,000.

Commissioner Bowman asked for a motion.

Associate Member Robins moved to approve the procurement procedures. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

The following will be advertised by Notice:

PROJECT DESCRIPTION: A total of nine individuals will be selected as permitted project participants, and one individual will be selected as project alternate. All scheduling, on a weekly and seasonal basis, will be established by the Virginia Department of Game and Inland Fisheries project coordinator. The need for participation by alternates in the project will be determined by the Virginia Department of Game and Inland Fisheries project coordinator.

For fishing days during the March 8 through mid-May, 2008 period, permitted project participants shall be paid at the rate of \$225.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 Noon and 12:00 midnight.

Listed below are specific evaluation criteria, ranked by order of importance. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more than 10 equally qualified respondents, selection for the project will be made through a lottery system. The lottery will be held on March 3rd at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.

EVALUATION CRITERIA

1. You must have participated in one or more of the 1992 through 2006 American shad restoration projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals who have previously participated in this project more than one year.
2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.
3. You must be available to fish for shad during most of the days between early-March and mid-May.
4. You must have experience in fishing for shad in upriver areas, using drift gill nets.

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- 20. NON-COMPLIANCE HEARINGS:** Cases concerning failure to comply with the provisions of Regulation 4 VAC 20-252-10, Et seq., "Pertaining to Striped Bass".

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist said that during the November 2006 Commission meeting, Regulation 4 VAC 20-252-10 et seq., "Pertaining to Striped Bass", was amended, converting the Individual Transferable Quota (ITQ) program for striped bass from a per fish (tag-based) ITQ program, to a weight-based ITQ program. This change to the striped bass ITQ program eliminated the incentive to pursue large striped bass and allocated the quota, along with percentages originally intended.

Mr. Grist explained that penalties for first offenses, as prescribed in Subsection A, were as follows:

1. Any overage in pounds that ranges from zero to 3%, or less than 200 pounds, whichever is lower, shall result in a warning being issued.
2. Any overage in pounds that ranges from 4% to 10% shall result in a one year deduction of that overage from that individual harvest quota during the following calendar year.
3. Any overage in pounds that ranges from 11% to 20% shall result in a one year deduction of two times that overage from that individual commercial harvest quota during the following calendar year.
4. Any overage in pounds that ranges from 21% to 30% shall result in that overage being permanently deducted from that individual commercial harvest quota and a one year suspension of that individual from the commercial fishery for striped bass.
5. Any overage in pounds that is greater than 30% shall result in the revocation of that individual striped bass permit, and that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

Mr. Grist stated that multiple offenses could accumulate. He said that 81 individuals out of 474 had exceeded their individual quotas for the 2007 commercial season. He said that two individuals exceeded both their bay and ocean quotas.

The following individual had exceeded his individual striped bass quota for the 2007 commercial striped bass season and is subject to Section 155.A.3 (page 15) of Regulation

4 VAC 20-252-10 et seq. Staff recommends a one year deduction, of two times that overage, from the individual commercial harvest quota during the following calendar year (2008).

MRC ID	Permit Area	First Name	Last Name	Overage (Percent)
1135	BAY	JAMES	BROWN	13%

Mr. Grist explained that Mrs. Brown had called to explain that Mr. Brown could not attend due to illness.

Associate Member Schick moved to send a letter to Mr. Brown inviting him to come before the Commission to be heard. Associate Member Holland seconded the motion. The motion carried, 8-0.

The following individuals have exceeded their individual striped bass quota for the 2007 commercial striped bass season and are subject to Section 155.A.2 (page 15) of Regulation 4 VAC 20-252-10 et seq. Staff recommends a one year deduction of the overage from the individual commercial harvest quota during the following calendar year (2008).

MRC ID	Permit Area	First Name	Last Name	Overage (Percent)
0780	BAY	RICKEY	HALL	9%
0526	BAY	MARSHALL	BELANGA	9%
0122	BAY	CHARLES	POWELL	9%
2919	BAY	DONALD	CRAIG	9%
1148	BAY	LUKE	NEGANGARD	8%
2349	BAY	WILLIE	OFFIELD	8%
3485	BAY	ERVIN	SHACKELFORD	8%
0196	BAY	VERNON	HAYWOOD	5%
0658	BAY	DANIEL	MCCULLOCH	5%
0142	BAY	MERVIN	DELANO	5%
3400	BAY	RAYMOND	ELBOURN	5%
4573	BAY	BRIAN	EWELL	5%

Commissioner Bowman asked if the above individuals had been invited to the Commission meeting. Mr. Grist stated they were invited to get in touch with staff.

Mr. Grist explained that Charles Powell had called to say he could not attend due to illness. He further stated that Mr. Vernon Haywood and Mr. Mervin Delano had come to staff and worked with them so that they were okay now.

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Commissioner Bowman asked for action by the Commission.

Associate Member Robins move to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried.

The following individuals had exceeded their individual striped bass quota for the 2007 commercial striped bass season and are subject to Section 155.A.1 (page 15) of Regulation 4 VAC 20-252-10 et seq. Staff recommends the issuance of a warning letter, advising them of their first offense.

MRC ID	Permit Area	First Name	Last Name	Overage (Percent)
1366	BAY	AUBREY	HUDGINS	3%
0575	BAY	MILLARD	BRYANT	3%
0427	BAY	BENJAMIN	LINDSAY	3%
7494	BAY	JOSEPH	CAUSEY	3%
2311	BAY	JOHN	LONGEST	3%
4087	BAY	SCOTT	OWENS	3%
1685	OCEAN	VINCENT	MCKAMEY	2%
1713	BAY	CHASE	MORGAN	2%
3402	BAY	KEVIN	GODSEY	2%
7455	BAY	JOHN	HELM	2%
3351	BAY	MARK	MILES	2%
0719	BAY	WILLIE	SMULLIN	2%
008012	BAY	JOHN	PATRICK	2%
0675	OCEAN	VAUGHN	PRUITT	2%
1323	BAY	RAYMOND	KELLUM	2%
5024	OCEAN	MICHAEL	NEWELL	2%
1006	BAY	JOHN	HORNER	2%
3481	OCEAN	DIRK	SANFORD	2%
2080	BAY	ANTHONY	KELLUM	2%
2431	BAY	KENNETH	BROOKS	2%
4272	BAY	WILLIAM	JENKINS	1%
0464	BAY	THOMAS	STEVENS	1%
1289	BAY	BRYAN	SAUNDERS	1%
2304	BAY	PHILIP	HINSON	1%
2148	BAY	JOHN	MEEKINS	1%
1129	BAY	CLARENCE	WILLIAMS	1%
2535	OCEAN	MICHAEL	BROWN	1%
2448	BAY	WILLIAM	BAILEY	1%
1200	BAY	DONALD	PORTER	1%
0976	BAY	ROBERT	SULLIVAN	1%
2795	OCEAN	DAVID	JOHNSON	1%
2264	BAY	JEFFREY	CARINO	1%
2496	BAY	RAYMOND	DAVIS	1%
0310	BAY	JOHN	HANSON	1%
2286	BAY	WILLIAM	DAIGER	1%
0832	BAY	JOHN	WEST	1%

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0325	BAY	FRED	DIXON	1%
0045	BAY	DON	MILES	1%
0973	BAY	DAVID	HICKS	1%
3496	BAY	TRACEY	SMITH	1%
0526	OCEAN	MARSHALL	BELANGA	1%
1066	BAY	JAMES	WEST	1%
3393	BAY	STEVE	KELLUM	1%
2179	BAY	CHARLES	JOHNSON	1%
4777	BAY	BEVERLY	PRUITT	1%
3008	BAY	JOHN	BOUDIETTE	1%
2267	BAY	CHARLES	DRYDEN	1%
1132	BAY	CURTIS	HEATH	0.5%
3433	BAY	WILLIAM	LETT	0.4%
0939	BAY	KELLY	PLACE	0.4%
3763	BAY	BILLY	WEST	0.4%
0675	BAY	VAUGHN	PRUITT	0.4%
4890	BAY	JUSTIN	WILSON	0.4%
7243	BAY	WILLIAM	KEYS	0.3%
5282	BAY	REXWOOD	COX	0.3%
2418	BAY	CHARLES	GHENT	0.3%
2760	BAY	GEORGE	BOWDEN	0.2%
0062	BAY	JAMES	WEST	0.2%
0474	BAY	JAMES	KEELING	0.2%
1376	OCEAN	CHARLES	BUCHANAN	0.2%
4081	BAY	JAMES	FISHER	0.2%
3038	BAY	STANLEY	OBIER	0.2%
2191	BAY	MARC	BROWN	0.2%
2687	BAY	KEITH	CHATHAM	0.2%
4426	BAY	HARRY	KAMBOUROPOULOS*	0.2%
0840	BAY	JAMES	MOORE	0.1%
0278	BAY	GREGORY	SWIFT	0.1%
1036	BAY	RONALD	WEST	0.04%
7228	BAY	JAMES	NEWTON	0.04%
1028	BAY	JOHN	BALDERSON	0.02%

* Has additional overage amount from a transferee, see next table.

In addition, six individuals have exceeded their temporary individual striped bass quota, transferred to them by individuals with permanent striped bass quota, for the 2007 commercial striped bass season. Pursuant to Subsection E, of Regulation 4 VAC 20-252-160, eleven individuals with permanent striped bass quota, that temporarily transferred striped bass quota to those six individuals who exceeded their temporary individual striped bass quota, are responsible for the overages. When multiple individuals (transferors) transferred quota to the same individual (transferee) with an overage, the overage is equally divided amongst the transferors. In instances where a transferor had enough remaining quota to cover the overage that they were accountable for, staff

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recommended no action. There were two individuals that were able to cover their overage.

The following nine individuals (transferors) have exceeded their individual striped bass quota for the 2007 commercial striped bass season and are subject to Section 155.A.1 (page 15) of Regulation 4 VAC 20-252-10 et seq. Staff recommends a warning letter be issued noting that this constitutes their first offense.

Transferor MRC ID Permit Area	Transferor First Name	Transferor Last Name	Transferee MRC ID	Transferee First Name	Transferee Last Name	Overage (Percent) / Transferors
1429 BAY	CHARLES	HILL	3496	Tracey	Smith	1%
2731 BAY	BERGMAN	SCOTT	3496	Tracey	Smith	1%
1224 BAY	ALLIE	WALTON	3496	Tracey	Smith	1%
3159 BAY	CAROLYN	WALTON	3496	Tracey	Smith	1%
4426 BAY	HARRY	KAMBOUROPOULOS*	7455	John	Helm	2%*
3901 BAY	JAMES	WHARTON	7455	John	Helm	3%
4830 BAY	MARY	LANE	0325	Fred	Dixon	1%
4398 BAY	JOSEPH	STEPHENSON	008012	John	Patrick	2%
2902 BAY	JACK	STALLINGS	7228	James	Newton	0.04%

*Combined overage percentage from a recorded overage for the transferor, and the recorded overage from the transferee.

Mr. Grist stated that the last two groups were recommended for warnings and were not invited to the meeting.

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

Commissioner Bowman stated that letters of warning would be sent out.

Associate Member Bowden stated that it had worked well this year and he did feel that the board should not sanction those with 1 or 2 fish violations. He said there was a need to look at the program, but it had worked better than he had thought it would.

Associate Member Robins asked why the watermen cannot keep up with their quota. Mike Johnson, Fisheries Management Specialist, explained that there were no scales on the vessel so the watermen just tag them and report the overages.

21. DISCUSSION: Request for public hearing on requirements for the Seaside of Eastern Shore to attend nets while fishing or to retrieve nets before returning to the dock.

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

Mr. Grist explained that the Bottlenose Dolphin Take Reduction Plan, 50 CFR Part 229.35(d)(2) provided that from June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gill nets at night, unless such person remains within 0.5 nautical mile of the closest portion of each gill net and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

Mr. Grist said that from the Friday immediately preceding Memorial Day through September 15 of each year, gill net operators along the southern oceanfront boundary of the United States Dam Neck Military Base, south to the North Carolina border, shall set gill nets at a minimum of 400 feet from the mean high-water mark as provided for by the COV Section 28.2-308. It is also noted in COV Section 28.2-309 that the Commission shall have the authority to promulgate regulations governing the setting of any net on the eastern or Oceanside of the Counties of Accomack and Northampton.

Mr. Grist stated that FMAC had approved by a motion of 7-0-1 (4 abstentions), to recommend to the Commission that no unattended gill net be within 500 yards of the shore (high-water-mark), from Smith Point Light north to the Virginia-Maryland border, during the period of June 1, through October 15.

Mr. Grist stated that staff recommended advertising for a February public hearing for proposed amendments to define an unattended net, and attendance and placement requirements for small mesh (less than 5 inches, stretched measure) for an area to include Smith Point Light north to the Virginia-Maryland border, along the seaside of Accomack and Northampton Counties.

Commissioner Bowman asked for a motion.

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

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- 23. DISCUSSION:** Request for public hearing to establish management measures for the 2008 Black Sea Bass commercial fishery.

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

Ms. Middleton explained that Virginia's share of the commercial fishery TAL was 20% or 405,152 pounds. She stated that staff recommended that a February public hearing be advertised to set the 2008 quotas, as well as to consider an adjustment of the minimum transfer provision.

Commission Bowman asked for a motion.

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

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There was no further business and the meeting was adjourned at approximately 5:00 p.m. The next meeting will be Tuesday, February 26, 2008.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary