

MINUTES

Commission Meeting

July 22, 2003
Newport News, VA

The July 22, 2003 meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Russell Garrison)	Members of the Commission
J. T. Holland)	
F. Wayne McLeskey)	
K. Wayne Williams)	
Cynthia Jones)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin-Finance Div.
Jack Travelstead	Chief, Fisheries Management
Chad Boyce	Fisheries Management Specialist
Roy Insley	Head-Plans and Statistics Dept.
Van Cox	Fisheries Management Specialist
Colonel Steve Bowman	Chief, Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
Capt. Randy Widgeon	Supervisor, Eastern Shore Area
MPO Keith Nuttall	Marine Police Officer
MPO Thomas Moore	Marine Police Officer
Bob Grabb	Chief, Habitat Management
Tony Watkinson	Deputy Chief, Habitat Management
Chip Neikirk	Environmental Engineer Sr.
Hank Badger	Environmental Engineer Sr.
Kevin Curling	Environmental Engineer Sr.
Mark Eversole	Environmental Engineer Sr.
Jeff Madden	Environmental Engineer Sr.

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Randy Owen	Environmental Engineer Sr.
Jay Woodward	Environmental Engineer Sr.
Benny Stagg	Environmental Engineer Sr.
Tracy West	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
Tom Barnard

Others present included:

Bill Eddins	Alicia LaGalbo	Brian Hostetter
Michael Lafayette	Chris Able	Les Duty
Lawrence E. Luck	Travis Armistead	Craig Palubinski
L. A. Fletcher	Eric Poth	Less Rosenberg
Tommy Pearson	James Brawley	Douglas F. Jenkins, Sr.
Cindy Brigman	Larry Foster	Leo Rogers
Marshall B. Cox, Sr.	Everett Skipper	Susan Gaston
Robert Jensen	Charles Dryden	Lionel Jenkins
Tom Dylan	Frank A. Kearney	W. C. Tice
Jim Hampton	Jesse Dryden	Irv Fenton
Eric Drum	Richard T. Greer	Billy Lett
Raymond Kellum	Bobby Brown	Rodney West
Mark Coffee	james West	Bernard West
Charles West	Tom Powers	Ray McElliott
Mike Shackelford	Bob Allen	Scott Bloxom
Robert Hollowell	Kelly V. Place	James White

and others.

Commissioner Pruitt called the meeting to order at 9:36 a.m. with two of the Associate Members absent. Associate Member Cowart was absent and Associate Member Ballard arrived late to the meeting.

Associate Member Garrison gave the invocation and Associate Member Birkett led the pledge of allegiance to the flag.

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Commissioner Pruitt introduced Mr. J. T. Holland as a newly appointed Associate Member. He explained that Mr. Holland replaced Mrs. Gordy. He stated that Mr. Holland was the 5th recreational fisherman on the board. He further explained Mr. Holland's numerous achievements, affiliations, and positions of authority held by him over the years.

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

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1. APPROVAL OF MINUTES: Associate Member Williams moved to approve the minutes for the June 24, 2003 Commission meeting. Associate Member Jones seconded the motion. The motion carried, 6-0.

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***APPROVAL OF AGENDA: Associate Member Garrison requested some time at the end of the meeting to discuss the issue of gaslines. Associate Member Williams moved to approve the agenda with the change. Associate Member McLeskey seconded the motion. The motion carried, 6-0.**

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2. PERMITS:

Bob Grabb, Chief-Habitat Management, gave the presentation on Page two items A through J and his comments are a part of the verbatim record. Page Two items are projects that cost \$50,000 or more, are unprotested, and have a staff recommendation for approval.

Mr. Grabb explained to Mr. Holland the difference between what is referred to as Page 1 items and Page 2 items and the procedure followed.

There being no questions from the board and no comments from the public, Associate Member Williams moved for approval as presented of items A through J. Associate Member Garrison seconded the motion. The motion carried, 6-0.

2A. NAVY PUBLIC WORKS CENTER, #03-1054, requests authorization to install a mooring buoy at 36° 58' 54" North Latitude, 76° 20' 04" West Longitude for the purpose of training exercises in Hampton Roads Harbor near the Norfolk Harbor Entrance Reach in Norfolk.

Permit fee.....\$100.00

2B. CITY OF NORFOLK, #03-1341, requests authorization to construct three 229-foot long by 35.5-foot wide stone breakwaters and 112,400 cubic yards of beach nourishment adjacent to property situated along the Chesapeake Bay in Norfolk.

Permit fee.....\$100.00

2C. DEPARTMENT OF THE NAVY, #03-0861, requests authorization to nourish approximately 9,280 linear feet of beach at the Dam Neck facility in Virginia Beach by placing approximately 700,000 cubic yards of beach quality sand obtained from a borrow source located outside of Virginia's Territorial Sea.

Permit fee.....\$100.00

2D. JTR, LLC, #02-1227, requests re-issuance of a previously approved permit (#88-0086) for the construction of 477 linear feet of fixed and floating piers and a 5,000 square foot restaurant on pilings adjacent to their property situated along Little Neck Creek in Virginia Beach. Recommend approval with an annual royalty in the amount of \$577.20 for the encroachment of the restaurant and piers over 5,772 square feet of State-owned submerged land at \$0.10 per square foot.

Royalty fee (encroachment on 5,772 sq. ft. @ 0.10/sq. foot).....\$577.20
Permit fee.....\$100.00
Total fees.....\$677.20

2E. KOCH REFINING COMPANY, LP, #98-0830, requests an extension, for a period of five years, of their existing permit which authorizes the maintenance dredging of up to 34,000 cubic yards of State-owned subaqueous material, annually, on an as-needed basis, adjacent to their facility situated along the James River in the City of Newport News. A previous permit condition required the planting of 37,000 market size clams at the Middle Ground Light Broodstock Management Area. Since no dredging has taken place, the planting was never completed. Recommend approval with the condition that no dredging take place until the required clam planting is completed. All dredged material to be placed within the Craney Island disposal site.

Permit fees not applicable.

2F. VIRGINIA DEPARTMENT OF CORRECTIONS, #02-2288, requests authorization to construct a 578-foot, 2 mgd raw water intake structure, which will extend approximately 172 feet beyond the existing stream bank with associated withdrawal pipe, which will require the excavation of 73 cubic yards of State-owned submerged lands adjacent to property situated along the James River in Goochland County. Recommend a construction time-of-year restriction between March 15 through July 31 to protect spawning aquatic resources.

Permit fee.....\$100.00

2G. VIRGINIA INSTITUTE OF MARINE SCIENCE, #03-0843, requests authorization to deploy a variety of submerged data collection instruments within a 300-foot by 480-foot area south of the Institute’s “Ferry Pier” along the York River in Gloucester County. An instrumentation buoy is proposed to be deployed at 37° 14’ 40” North Latitude and 76° 30’ 02” West Longitude and a three-inch cable is proposed to run along approximately 600 feet of submerged bottom to connect all instruments with the Ferry Pier. With the exception of the buoy, the instruments will extend no higher than four (4) feet above the substrate. The three-inch data cable is proposed to cross approximately 100 linear feet of Public Ground Number 27.

Permit fee.....\$100.00

2H. TAZEWELL COUNTY, #03-0957, requests re-issuance of a previously approved permit (VMRC# 99-0694) for the construction of a 68-foot long by 34-foot wide concrete bridge with support pier across the Bluestone River immediately south of the intersection of State Routes 720 and 818 in Tazewell County. Recommend approval with our standard instream permit conditions.

Permit fee.....\$100.00

2I. COLONNA’S SHIPYARD, INC., #98-0550, requests a modification of their permit to allow the maintenance dredging, on an as-needed basis, of up to 20,000 cubic yards of material in Drydock #1, Slip #5 and Marine Railway #4 to varying depths of -11 feet at mean low water to -55 feet at mean low water at their commercial facility on the Eastern Branch of the Elizabeth River in Norfolk. Recommend approval for a five-year (5) period, with all terms and conditions of the original permit to remain in effect.

Permit fees not applicable.

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- 2J. **BOB BRAGG, #99-0374**, requests reactivation and extension of his permit to construct four (4) open-pile community piers with associated finger piers and mooring piles to create 24 wet slips to serve a planned residential development along Pitmans Cove near the Town of Kilmarnock in Lancaster County. Recommend approval with a three-year extension and all terms and conditions of the permit to remain in effect.

Permit fees not applicable.

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EXECUTIVE SESSION:

Associate Member Williams moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose 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:

8. **JAMES CITY SERVICE AUTHORITY, #03-0391**, requests authorization to install, by directional drill method, a 12-inch non-potable water pipeline beneath Powhatan Creek, and a discharge outfall pipe extending up to 243 feet into the James River in conjunction with a proposed James City County Service Authority groundwater treatment facility. An adjoining property owner is protesting the project.
10. **DISCUSSION:** Commission consideration of a definition of water dependent projects.

The motion was seconded by Associate Member Birkett and carried unanimously, 6-0.

Associate Member Williams moved for the following:

CERTIFICATION OF CLOSED MEETING
OF THE VIRGINIA MARINE RESOURCES COMMISSION

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;

Commission Meeting

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 McLeskey seconded the motion. Commissioner Pruitt held a Roll Call vote:

AYES: Birkett, Pruitt, Garrison, Williams, Holland, Jones, and McLeskey.

NAYS: None

ABSENT DURING VOTE: Associate Members Cowart and Ballard

ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Members Cowart and Ballard

The motion carried unanimously, 7-0.

Clerk/Secretary
Virginia Marine Resources Commission

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- 4. **CHRISTOPHER PRIOR, #03-0816.** Commission review on appeal of the May 21, 2003, decision by the Northampton County Wetlands and Dunes Board to deny a permit to construct and backfill 400 linear feet of bulkhead and to construct four 48-foot long groins at his property situated along the Chesapeake Bay in the Church Neck area of Northampton County.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides and his comments are a part of the verbatim record. Mr. Badger explained that he wished to show slides to the board for orientation only that had not been a part of the Wetlands Board record. Commissioner Pruitt asked for a motion as to whether viewing the slides should be permitted. **Associate Member Holland moved to see the orientation slides. Associate Member Birkett seconded the motion. The motion carried, 6-0.**

Mr. Badger explained that Mr. Prior's property was located in a small subdivision south of

Westerhouse Creek on the Chesapeake Bay. The property faces northwest along an area with a mix of sand bars and shallows extending for the first 300 feet offshore. There is sparse submerged aquatic vegetation (SAV) throughout the area.

Mr. Badger explained that the applicant sought authorization to install and backfill 400 linear feet of bulkheading and construct four, 48-foot long, low-profile groins, which would impact approximately 1,072 square feet of dune and beach, and 20 square feet of state-owned subaqueous bottom. Only the dune and beach portion of the project fell within the local board's jurisdiction.

Mr. Badger stated that during their May 21, 2003 public hearing, the Northampton County Wetlands and Dunes Board considered the report provided by the Virginia Institute of Marine Science (VIMS), as well as the testimony provided by the applicant's agent, Mr. Ben Mears.

Mr. Badger said that VIMS stated in their report that the impacts could be reduced through the use of a properly designed and constructed riprap revetment in lieu of the proposed bulkhead. The riprap has greater wave dissipation qualities which will minimize impacts to adjacent unprotected properties. VIMS also suggested that the groins may or may not be effective in trapping sand, but that a low profile design would minimize potential downdrift effects.

Mr. Badger stated that Mr. Mears, provided a brief description of the project in which he stated that there were existing bulkheads to the north, and a bulkhead two lots south of the proposed project. He also stated that Mr. Prior wanted to save his property from further erosion.

Mr. Badger said that the Board discussed the fact that Mr. Prior had an active Wetlands Permit (#02-1373), authorizing him to install 190 linear feet of stone riprap on one of the two lots where he now proposed a bulkhead. That permit was originally issued to James Reynolds and was transferred to the new property owner, Mr. Prior at his request. The expiration date of that permit is October 16, 2003.

Mr. Badger said that the board also discussed the possibility of extending the riprap revetment across the entire project area. Mr. Mears indicated the cost of stone would be more than a bulkhead. He also stated that the applicant would not accept stone riprap and if the application was denied would most likely appeal the Board's decision. Board member Sherman Stairs indicated that property owners need to be aware of the cost of protecting their property, and that doing nothing could have impacts to the tidal waters. Mr. Badger explained that the County staff, the Board, and the agent discussed the applicant's desire to save his beach and why riprap was a better solution than a bulkhead. The Board and staff also discussed their general policy of encouraging riprap wherever practical.

Mr. Badger said that Board member Grant Cooley stated that if the applicant's intent was to save his beach then the riprap option was the better solution. Mr. Cooley then moved that with the currently approved permit still valid, and considering the adverse impacts attributable to bulkheaded shorelines along the Bay, that the permit be denied. The motion was seconded by Board member Bo Lewis. The Board then voted unanimously to deny the application.

Mr. Badger stated that on May 30, 2003, staff received a letter from Mr. Prior in which he noted his appeal of the May 21, 2003, Northampton County Wetlands Board decision. As such, we considered the appeal timely under the provisions of Section 28.2-1411 (B) of the Code of Virginia.

Mr. Badger stated that Mr. Prior contends that the Board did not fully consider the economics, aesthetics, zoning, or community desires in their decision making process. He maintains that stone is not indigenous to the Eastern Shore, and its cost is prohibitive. He also stated that other bulkheads were along this shoreline and they were very discreet in appearance. According to Mr. Prior, breaking up this continuity with riprap would be unacceptable to the local residents. Mr. Prior also maintains that installation of bulkheads has been routinely approved for many years by the Board. Finally, he believes stone riprap is unsightly in a residential community as well as being unsafe for children and pets who would climb on the stone.

Mr. Badger said that based on staff's review of the record and our attendance at the public hearing, we believe the Board's decision to deny the bulkhead and groins was supported by the evidence on the record considered as a whole. The record in this case shows that the Board evaluated the project subject to the standards for use and development of coastal primary sand dunes and beaches, referenced in Section 28.2-1408 of the Code of Virginia. The Board also considered the testimony provided by their staff and the applicant's agent as well as the comments offered by VIMS. The Board also considered their own General Policy Guidelines, dated November 12, 1998, which encourage riprap wherever practical. Accordingly, staff recommended that the Commission uphold the Northampton County Wetlands and Dunes Board's decision to deny the proposal.

Christopher Prior, applicant, was present and his comments are a part of the verbatim record. Mr. Prior explained that he represented both himself and the community residents. He said that Miller Rogerson had applied for stone riprap, which was unsightly. He said that Mr. Rogerson now wanted to install a bulkhead instead. He said he had several letters to present to the board. Commissioner Pruitt asked Mr. Badger if the letters were new evidence to which Mr. Badger responded yes. **Associate member Holland moved to open the record to accept the additional information. Associate Member Garrison seconded the motion. The motion carried, 6-0.**

Mr. Prior also presented additional maps for entry into the record. He explained that other applicants, such as Mr. King, were also applying to put in a bulkhead not stone riprap to close the gap in the shoreline. Associate Member Holland asked if a cost comparison was done? Mr. Prior responded that it was more expensive, but the stones also presented a danger to children at play. He said he wanted the option to build a wooden bulkhead to protect the trees along the shoreline from severe weather events.

Grant Cooley, Wetlands Board Vice-Chairman, was present and his comments are a part of the verbatim record. After being sworn in, Mr. Cooley asked if the Commission had any questions. Associate Member Garrison said that there was an erosion problem and something needed to be put there. Mr. Cooley explained that stone riprap was already permitted and the board did not see the necessity to issue another permit. Associate Member Jones asked if the bulkhead would have been approved if there was not already a permit for the riprap? Mr. Cooley responded that from the information and reports they had a bulkhead was the less desirable way to go. He said that the shore advisory and VIMS study was the reason for their decision. Associate Member Williams asked if the shoreline study recommended stone riprap? Mr. Cooley responded yes, they had considered the VIMS study that sometimes stones should not be put there. After further discussion and questions, Commissioner Pruitt asked for a decision or action.

Associate Member Ballard entered the meeting at 11:10 a.m.

Associate Member Holland moved to remand the matter back to the Wetlands Board to review the new information provided to the Commission. Associate Member Garrison seconded the motion. Associate Member Jones expressed concern that the Wetlands Board policy should be applied uniformly, that there was a need to follow the VIMS guidelines, and that action taken by the Commission should not overrule the Wetlands Board's policy. Commissioner Pruitt stated that he agreed with Associate Member Jones, but the motion by Associate Member Holland was because of the new information and not to overrule the Wetlands Board. **The motion carried, 6-0-1. Because of his late arrival, Associate Member Ballard abstained from voting.**

Permit fees not applicable.

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- 5. PATRICIA JAGGERS, #03-0951,** requests authorization to install 90 linear feet of quarry stone riprap in front of a failing, timber bulkhead at her property on the Rappahannock River in Lancaster County. The project was protested by an adjacent property owner.

Commissioner Pruitt left the meeting at 11:14 a.m.

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Jay Woodward, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Woodward explained that there were no aeriels due to technical problems.

Mr. Woodward explained that the subject property was located approximately 5 miles southwest of Lancaster Courthouse. The shoreline of the applicant's property is currently bulkheaded, as is approximately 1,800 feet of adjacent shoreline on this reach of river. The applicant's structure was failing due to age and the high-energy nature of the area. A quarry stone riprap revetment was proposed to protect the remaining structure. The revetment would consist of a stone wedge on a 2:1 (horizontal: vertical) slope, using Class 1 (50-100 lb/stone) core stone and Class II (150-500 lb/stone) armor material. The stone would be placed on filter cloth and the washed-out yard area behind the bulkhead would be backfilled using clean fill material. This standard design had been used in many areas of Tidewater as an alternative to a replacement bulkhead, due to its longevity and energy-dissipation characteristics.

Mr. Woodward stated that the adjacent, downriver property owner opposed the project on the grounds that riprap had a tendency to shift and sink, that 10 feet was too far to encroach into the river, that riprap prevents access for the owner, and that snakes and rodents would be attracted to the revetment.

Mr. Woodward explained that the Virginia Institute of Marine Science indicated that the proposed solution was the preferred approach for long-term shoreline stabilization in this reach. They also recommended a buried toe or apron to reduce the potential for collapse.

Mr. Woodward said that the Department of Environmental Quality had previously indicated that they did not need to review such riprap proposals since the water quality impacts were minimal. The project did not require a local wetlands permit, as all of the impacts were channelward of mean low water.

Mr. Woodward stated that given the nature of the project and the VIMS comments, staff recommended approval of the project as proposed. Staff did not believe a buried toe or apron was necessary, since the toe of the revetment was already below mean low water. Due to the fact that the size of the armor stone and the base width and slope of the structure already met general design criteria.

Associate Member Birkett asked for questions of staff. There were no questions. He asked if there was anyone present pro or con to the project. No one else was present, pro or con.

Associate Member Garrison moved to accept the project as recommended by the staff and in accordance with the project drawings. Associate Member Williams seconded the motion. The motion carried, 7-0.

Permit fee.....\$25.00

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- 6. **K.E. POTH FAMILY, L.L.C., #03-0128**, requests authorization to construct a concrete community boat ramp and tending pier, for use by the property owners and guests of the Safe Harbor Landing Subdivision, adjacent to community property (lot number 38) along Gardner Creek in Westmoreland County. The project is protested by nearby property owners.

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

Bob Grabb announced to the board that this would be Mark's last meeting as he was leaving the agency to join the Williamsburg Environmental Group. He commended Mark on his excellent work for the Commission.

Mr. Eversole then explained that the project was located approximately seven (7) miles north of the Town of Kinsale, near the Coles Point area of Westmoreland County. Safe Harbor Landing, a newly developed residential subdivision located on a large waterfront farm tract, is typical of the development of land for residential use in the area as the Northern Neck continues to experience rapid growth.

Mr. Eversole stated that in this case, the Poth Family LLC wanted to develop a 38-lot subdivision on approximately 115 acres of waterfront property. 24 of the 38 lots appear to have frontage on Gardner Creek. The subdivision plan includes a community boat ramp and tending pier. The ramp is designed to be 12 feet wide and 80 feet long, and would extend 50 feet channelward of mean low water. A 4-foot wide tending pier is proposed to extend parallel to the ramp.

Mr. Eversole stated that the proposal was approved by the Westmoreland County Wetlands Board at their hearing on March 17, 2003.

Mr. Eversole explained that the application was received on January 24, 2003. Adjacent property owners were notified, as were the three property owners directly across the creek. A public notice was placed in the Westmoreland News, a newspaper having general circulation in the project area. Seventeen letters of protest were received, primarily from owners of property in the Cherry Grove subdivision across the creek from the proposed ramp. Most letters referenced a concern over the increased amount of boat traffic that would be generated by the ramp, and how it would affect access, navigation, and safety on the creek. Other concerns include the environmental effects of new construction on the creek and its habitat, a desire to have the ramp relocated to the other side of the peninsula, the shallow nature of the creek at the proposed location, and a perceived lack of notification of the

proposal.

Mr. Eversole said that the applicant and their agent were forwarded copies of all letters of protest. While VMRC staff requested that the applicant explore the possibility of relocating the ramp to other locations on the peninsula, the applicant chose to pursue a permit for the ramp in the proposed location.

Mr. Eversole stated that the Departments of Environmental Quality, Conservation and Recreation, and Health-Bureau of Wastewater Engineering all found the proposal acceptable. The Bureau of Shellfish Sanitation reported that this activity “should not require a seasonal closure provided use of the facilities was restricted to the property owners and their bonafide guests, and there were no overnight occupancy aboard moored boats as stated in the application”. In addition, the Virginia Institute of Marine Science Shoreline Permit Application Report stated that while the project would impact approximately 600 square feet of subaqueous bottom and 100 square feet of wetlands, there did not appear to be an alternate location that would significantly reduce the proposed adverse effects of the ramp and pier. Finally, the Army Corps of Engineers issued their regional permit for this project on March 17, 2003, based on a their finding that no impacts to navigation attributable to resulting from the construction of the ramp and pier were anticipated.

Mr. Eversole said that when reviewing proposals to build over State-owned submerged lands, the Commission's Subaqueous Guidelines direct staff to consider, among other things, the water dependency and the necessity for the proposed structure. In this case, a community ramp should alleviate the need for individual boatramps by the owners of the 24 waterfront lots.

Mr. Eversole said that as such, staff was recommending approval of the project finding that its public and private benefits outweighed any potential public or private detriments. Staff also recommended that a condition be added to the permit that specified that the use of the facility was restricted to property owners of the Safe Harbor Landing Subdivision and their bonafide guests, and that there be no overnight occupancy aboard boats moored thereto.

Mr. Eversole explained that if approved, a royalty in the amount of \$240.00 was recommended for the construction of 200 square feet of community pier and 600 square feet of concrete boatramp over State-owned subaqueous land, at a rate of \$0.30 per square foot.

Mr. Eversole explained that the applicant and his agent both wished to address the Commission. Associate Member Birkett asked if there were any questions of staff. There were no questions.

Craig Palubinski, agent for the applicant, was present and his comments are a part of the verbatim record. He presented additional slides for the Commission's review and said that

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there was 145 feet between the tending pier and the Cherry Grove Beach boat ramp. He explained that the ramp had been shifted to avoid wetlands impacts. He addressed the protestants' concerns, such as navigation and the added congestion the ramp would cause during the spring and fall.

Associate Member Birkett asked for questions of Mr. Palubinski. Associate Member Garrison asked how much parking was planned for boat trailers. Mr. Palubinski said the boat owners were expected to take their vehicles and trailers back to their residence and no parking area was planned.

Conrad Poth, applicant, was present and his comments are a part of the verbatim record. He said he felt the facts spoke for themselves. He said that lots of thought had been given to navigation, congestion, and location of the ramp. He said that they felt that putting it across from the other ramps and piers would minimize any conflict with other property owners. He said there was a little activity currently in the area.

Associate Member McLeskey asked if they would accept a prohibition for any other ramps in the subdivision. Mr. Poth said that he could accept the restriction as long as it was for ramps and not piers.

Associate Member Birkett asked if the depth of the channel at low tide was 2- 1/2 feet? Mr. Palubinski said it was 1-1/2 feet at low tide. Associate Member Birkett explained that unless only small boats were used here, it would be a muddy mess.

Associate Member Birkett asked if anyone in opposition wanted to speak?

Chris Able, Attorney for the Cherry Grove Beach Club property owners, was present and his comments are a part of the verbatim record. He said that he had a number of exhibits to offer the Commission. He explained that he felt notice to all residents where the area is less than 500 feet wide was required and this was not done. He explained that there were 18 residents objecting to the project. He explained all of the exhibits he was providing for the Commission. He also stated that the pier required high tide to access and it could not be accessible at 1-1/2 feet depth.

Commissioner Pruitt returned to the meeting at 11:56 a.m.

Associate Member Birkett asked for questions of Mr. Able. He asked for comments.

After some questions of Mr. Able, Mike Lafayette, Attorney and resident was sworn in and his comments are a part of the verbatim record. He entered a photo into the record. He explained that he lived adjacent to the proposed dock and he was not notified. He said that as a boat owner with a dock he disagreed with the measurements provided by the agent for the

applicant and agreed with Mr. Able, Attorney for the protestants. He said that the depth was not 2-1/2 feet, but 1-1/2 feet, that usage did occur in the area, there was a safety issue to consider with two boat ramps in shallow water, and this would cause an already muddy mess to worsen, cause more navigation problems, there was no overnight mooring, but there was daytime mooring, the point along there blocks the view making navigation unsafe, because of boat traffic, a location downriver would provide more water depth, and the pier in a new location would be better for navigation. He asked the Commission to deny the project as proposed.

After some questions of Mr. Lafayette and further discussion, Associate Member Birkett asked if there were any others present in opposition to the project.

Douglas Jenkins, Sr., President of the Twin Rivers Watermen Associate and protestant, was present and his comments are a part of the verbatim record. He commended the Commission for its action taken for the Newport News Waterworks project in King William County. He said that he disagreed with the applicant about boat traffic on the creek. He said that a local DGIF agent had said that this was the most abused waterway by both boaters and skiers. He said he was concerned about further destruction of the marsh vegetation and the effect its destruction had on the food chain as its starts here and ends in the Ocean. He said that there was already too much siltation, which was a hindrance for raising oysters. He stated that he had crabbed and fished in this area for more than 50 years. He explained that the entrance to the creek at low tide did not allow for using a boat motor and usually you must pole into the creek. He said that there was a critical need to protect this area. Associate Member Birkett asked for questions of Mr. Jenkins. There were none.

Les Duty, protestant and property owner, was present and his comments are a part of the verbatim record. He summarized his concerns by saying that the pier infringed on his view 100%, the creek cannot support large boats, a 50' pier would not work, he was not notified and only found out about the project by reading the newspaper, and the project was not economical. Associate Member Birkett asked for questions of Mr. Duty. There were none.

No one else was present to speak in opposition to the project.

Conrad Poth, applicant, in his rebuttal comments said that he had considered the other side of the peninsula, but this area made the least impact and less people were affected.

Craig Palubinski, agent for the applicant, in his rebuttal stated that there was 5 feet of water in the main body of the creek.

After further questions and discussion, Associate Member McLeskey asked VMRC counsel if this was considered commercial. Carl Josephson, Assistant Attorney General, said that it was not sole riparian and was considered commercial since it was a community pier.

Associate Member Garrison made the motion to approve the project with staff recommendations. Associate Member McLeskey asked if the motion could be amended to include a restriction for no other boat ramps being allowed. Associate Member Garrison accepted the suggestion. Associate Member Holland seconded the motion. Associate Member Ballard questioned the issue of notices for the meeting. Carl Josephson responded that the concern that there was a need to notify everyone in the cove was covered directly and indirectly by letter or the notification in the newspaper. Associate Member Williams stated that this was a small estuary and he was not happy with 2 ramps because of safety issues, but property owners deserve to have ramps also. He said that he supported the motion, but he shared everyone's concerns. Associate Member Birkett stated he was concerned that the pier did not serve the community because of the shallow water and the muddy mess it would make of the bottom. He said that did not object to the location. He also explained that he could not support the motion because the ramp was worthless and only benefited the developer as a selling point. He said the buyers would not know about the problems until after they had already bought the property. **The motion carried 6-1. Associate Member Birkett voted no.**

Royalty fee (filling 800 sq. ft. @\$0.30/sq. foot).....	\$240.00
Permit fee.....	\$100.00
Total fees.....	\$340.00

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- 7. **THE MT. HOLLY STEAMBOAT INN, #02-0668**, requested after-the-fact authorization for a modification to a previously permitted commercial pier adjacent to their property situated along Nomini Creek in Westmoreland County. The project is protested by nearby property owners.

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

Mr. Eversole explained that the Mount Holly Steamboat Inn was located on Nomini Creek, immediately downstream of the Route 202 Bridge crossing, and approximately (3) three miles east of the Town of Montross. The Inn reportedly dates back to the early 1800's and currently operates as a Bed and Breakfast Inn and restaurant. The owners, in an effort to provide boaters an opportunity to dock, and either dine or lodge at the Inn, applied for a permit to construct a commercial pier for the temporary mooring of up to 11 boats in April, 2002. A public hearing was held on August 27, 2002, at which time the Commission approved the project. That authorization included a commercial pier extending 130 feet channelward of mean high water, with a 30-foot by 10-foot T-head; eight finger piers; and two mooring piles.

Commission Meeting

Mr. Eversole stated that a routine compliance inspection conducted by the Westmoreland County staff shortly after the pier was completed revealed several discrepancies. While the pier was permitted to be 6 feet wide, field measurements documented an 8-foot width. In addition, 12 mooring piles, not included in the permit drawings, paralleled the pier, in place of the two piles permitted at the channelward end. On November 18, 2002, VMRC staff, along with representatives from Westmoreland County, met with the owners of the Inn, to discuss the violation. At that meeting, Ms. Brigman, a co-owner, indicated that she would submit a request to retain the unauthorized portions of the pier. A letter of explanation and as-built drawings were received on February 7, 2003.

Mr. Eversole said that Ms. Brigman had stated in her letter that the changes to the pier were in part, a result of confusion during the original permitting process, and that she was unaware that her agent had changed the design of the pier when submitting revised plans. Ms. Brigman also stated that she felt the additional pilings are crucial to secure boats in the permitted mooring slips.

Mr. Eversole explained that as part of our standard review process, the adjacent property owners were notified and a public notice was placed in the Westmoreland News, a newspaper having general circulation in the project area. One letter of protest was received from Mrs. Lillian Newton, who opposed the after-the-fact authorization. She feels that the pier should be returned to its permitted dimensions.

Mr. Eversole stated that the Virginia Institute of Marine Science did not issue a second report on the revised application, but rather noted that their previous comments still applied. Those comments stated that adverse impacts resulting from this activity should be minimal provided that permanent mooring was not permitted, and that the use of the structure was otherwise properly managed. The Departments of Health, both Wastewater Engineering and Shellfish Sanitation, found the "as-built" project acceptable.

Mr. Eversole said that the revised plans for the original pier application were shown and discussed at two public hearings, one held by the Westmoreland County Wetlands Board and the other hearing was before the Marine Resources Commission. The applicants were present at both hearings and viewed the plans that were presented. The dimensions of the pier were detailed in the narrative section of the permit issued by the Commission in August 2002, and the plans were attached to the permit as is the case with all VMRC permits. Standard wording in the VMRC permit states that "all activities authorized herein shall be accomplished in conformance with the plans and drawings dated April 10 and June 12, 2002, which are attached and made a part of this permit."

Mr. Eversole said that in addition, the permit placard was displayed visibly at the project site, and was still present as of July 7, 2003. This placard also contained the dimensions of the pier as well as the number of mooring piles permitted.

Commission Meeting

Mr. Eversole said that while staff believed that the applicants were certainly at fault for changes made in the pier construction, there seemed to have been some communication problems between the original agent and the applicants. In fact, following the submission of the revised drawings, the owners assumed the role of the agent, and pursued the permit themselves.

Mr. Eversole said that had the original application included drawings of the pier as it exists today, staff would likely have recommended approval of the design. As such, staff recommended that the request to modify the previously issued permit be approved. Nevertheless given the after-the-fact nature of the project and the foregoing discussion, staff recommended the Commission consider a civil charge, in lieu of further enforcement action. Staff suggested that such charge be based on a minimal environmental impact and a major degree of deviation from the approved plans. There were no questions of staff.

Scott Maceda, one of the applicants, was present and his comments are a part of the verbatim record. He said they wanted to apologize for the error in judgment and for taking the Commission's time. He promised to stick to the land and restaurant from now on and leave Virginia waters alone. Associate Member Ballard asked if he agreed with the civil charges proposed. Mr. Maceda said that it was agreeable as long as they can keep everything the way it currently exists.

Commissioner Pruitt said that Mr. France had called regarding the after-the-fact project application and stated he had no objections. Commissioner Pruitt asked if the size of boats using the pier was restricted. Mr. Maceda said that it was restricted to 45 feet or less. Mr. Eversole agreed that VMRC permit authorized the mooring of boats no greater than 45 feet.

No one in opposition was present.

Associate Member Ballard moved to adopt staff recommendation with an \$1,800 civil charge in lieu of further enforcement as agreed to by Mr. Maceda. Associate Member Birkett seconded the motion. The motion carried, 7-0.

Civil Charge.....\$1,800.00

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8. **JAMES CITY SERVICE AUTHORITY, #03-0391**, requested authorization to install, by directional drill method, a 12-inch non-potable water pipeline beneath Powhatan Creek, and a discharge outfall pipe extending up to 243 feet into the James River in conjunction with a proposed James City County Service Authority groundwater treatment facility. The project is protested by an adjoining property owner.

Commission Meeting

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

Mr. Stagg explained that the proposed project involved the construction of a pipeline from the proposed Five Forks groundwater treatment plant to an outfall location within the James River. The pipeline would traverse easements as well as the County and VDOT property. It included a directional drill under Powhatan Creek and the installation of the outfall pipe and outlet valves, by trench method, within the James River itself. The plant, when fully operational, was expected to provide up to 5 million gallons of water a day by the year 2005.

Mr. Stagg said that the Powhatan Creek crossing would be accomplished by horizontal directional drilling with the entry and exit points beyond the limits of wetland areas to the east and west of Powhatan Creek. The pipe would be installed more than 10 feet below the creek bed and wetland areas.

Mr. Stagg explained that a concentrated discharge was planned near the Jamestown-Scotland Wharf Ferry Pier. The discharge water would contain salinity approximately comparable to the James River. Additionally, the water would be aerated before leaving the treatment plant to ensure that it exceeded 4 ppm of dissolved oxygen. The outfall portion of the pipe would be installed by dredge and trench method with the dredge material removed and transported to shore by barge and disposed of in an upland area. The estimated amount of material to be dredged was 185 cubic yards. Additionally, the trench area would be lined with geo-textile fabric and stabilized with VDOT Size 1 Coarse Aggregate stone and Class 1 Rip Rap extending no more than 12-inches above the existing pre-dredge river bottom.

Mr. Stagg said that a portion of the proposed pipeline crossed the property of the Rosa Armistead Estate. Staff received a letter of opposition from Mr. Christopher Hedrick, of Mason, Mason, Walker and Hedrick, on behalf of the estate. The objections raised by Mr. Hedrick, on behalf of his client, included assertion that the Service Authority had no easement nor right to enter upon the Armistead property, their reservations concerning placement of the pipeline under Powhatan Creek to include environmental impacts and threats to wildlife should there be any leak in the future, a belief that other alternatives for installation of the pipeline existed, and their concerns related to why the Armistead estate was not required to sign the application as a property owner.

Mr. Stagg said that he had requested additional information from the applicant and their agent to address these issues. The applicant provided information addressing these issues, a copy of which was forwarded to the Armistead estate's attorney. While it appeared a valid easement did exist to construct the pipeline upon the Armistead estate, it should be noted that the easement was an upland issue that was outside the jurisdiction of VMRC. Additionally, based upon the original application and additional information submitted by the applicant,

staff believed the environmental issues raised by the protestant had been adequately addressed.

Mr. Stagg said that VIMS in their Shoreline Permit Report, recommended that any disturbance along the shoreline of the James River be backfilled with native material and that the conversion of the subaqueous trench from native substrate to rocky substrate would, over time, fill with sediments and the area would re-populate with benthic fauna.

Mr. Stagg said that the project did not require a wetlands permit from James City County, as governmental activities were exempt from the provisions of the Wetlands Zoning Ordinance. The U. S. Army Corps of Engineers had determined that the project qualified for Nationwide Permits 12 and 39. The Department of Environmental Quality had issued a Virginia Pollutant Discharge Elimination System (VPDES) permit for the discharge into the James River, and both the Health Department and the Virginia Department of Transportation indicated the project was acceptable.

Mr. Stagg said that many of the concerns raised by the protestant involved upland issues that were outside the jurisdiction of VMRC. The public and private benefits of this project included a reliable source of water for the citizens of James City County. Additionally, staff did not anticipate that the project, when completed, would interfere with other reasonable uses of state waters or adverse impacts to marine fisheries, tidal wetlands, water quality or submerged aquatic vegetation. Therefore, staff recommended approval of the project with a permit condition that no construction be allowed between March 15 and June 30 (of any year) to lessen any potential impacts to anadromous fish species. There were no questions of staff.

Larry Foster, James City County General Manager, Leo Rogers, Attorney for the County, and Everette Skipper, also a representative of James City County, were present and sworn in. Mr. Foster explained this project was very critical to the fourth fastest growing County in Virginia. Mr. Foster's comments are a part of the verbatim record. There were no questions from the board.

Commissioner Pruitt asked if there were others present to speak to this project.

Lawrence Luck, Attorney and Christopher Hedrick, Co-Attorney for the Armistead estate were present. Mr. Luck said that the staff had made 2 assumptions that were incorrect. They were that there was a valid easement and that the encroachment involved State-owned bottom. He explained that the Armistead Estate felt they owned from mean low water to the center of the Powhatan Creek and this goes back to a King's Grants in 1607. He requested that the matter be tabled until further investigation of the grant could be obtained.

Commissioner Pruitt asked if there was anyone else present in opposition to the project. There were none.

Commission Meeting

Leo Rogers, Deputy Manager for James City County, in rebuttal said that there was a public hearing held and the estate had been notified through their attorney. He said the County was exercising its Eminent Domain power and requested that the board approve the project.

Associate Member Ballard asked if ownership can be established, can the county exercise Eminent Domain and Mr. Rogers responded, yes. Carl Josephson, Assistant Attorney General, explained that it is an upland issue and does not preclude making a decision today. He said that Section 28.2-1200 of the Code says that the state owns the bottomland in the Commonwealth subject to legitimate proof.

Associate Member Ballard moved to accept staff recommendations with the special condition. Associate Member Williams seconded the motion. The motion carried, 7-0.

Permit fee.....\$100.00

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- 9. **RAMONA H. EDDINS, #03-0544**, requested authorization to mechanically dredge accumulated alluvial material, on an as-needed basis, not to exceed 25 cubic yards per cycle from an existing 990 square foot baptismal pool located approximately 1,400 feet downstream of the VDOT Route 230 bridge at her property situated at the boundary of Greene and Madison Counties. The project is protested by an adjacent property owner.

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

Mr. Madden explained that the project was located approximately five miles north of the town of Stanardsville, along the Conway River and east of the Route 230 bridge crossing. The pool, which serves as a full immersion baptismal site as well as a summer swimming hole for the applicant and area residents, was naturally maintained by the current at a depth of between minus two feet (-2) near the shoreline and approximately minus five feet (-5) at its deepest point in the center of the pool.

Mr. Madden said that in December of 2002, the Commission denied authorization to mechanically maintenance dredge the existing baptismal pool to a uniform depth of minus seven feet (-7) below the ordinary high water level. This denial was based in part on the Virginia Department of Game and Inland Fisheries (DGIF) comments and recommendation that the area should not be dredged to depths greater than 5½ feet. In addition, the Commission determined that the proposed advance maintenance dredging failed to address a continued threat to life or property.

Mr. Madden said that subsequent to the December decision, the applicant had attempted to incorporate the DGIF comments into a modified proposal. Ms. Eddins now sought to maintenance dredge the pool to a depth of minus five and one-half feet (-5½) below the ordinary high water level which was closer to the natural contour of the river bottom. While the applicant acknowledged that there was no need to dredge the pool area at this time, she would, however, like to be able to maintain those depths at the site should a storm deposit enough alluvial material to fill the pool.

Mr. Madden said that the project was protested by Ms. Celia Dollarhide, the adjacent property owner on the north bank of the Conway River, directly across from the dredge site. In her letter, dated June 8, 2003, Ms. Dollarhide expressed her opposition to the project asserting that the waterway was deep enough for use as a swimming hole and baptismal pool without any dredging.

Mr. Madden stated that no other agency had expressed opposition to the project.

Mr. Madden said that staff acknowledged that the existing scour pool provided a valued service to area churches. In addition, the environmental impacts associated with the reestablishment of the natural pool depth following a storm event should be minimal provided the material was removed to a suitable upland location. Accordingly, staff recommended approval of the project with the inclusion of the following conditions:

- Maintenance dredging may be conducted through July 22, 2008, on an as-needed basis provided the Permittee notifies the Commission at least 15 days prior to the commencement of each dredging operation.
- The yellow placard accompanying the permit document must be conspicuously displayed at the work site throughout the construction phase of the authorized activity and each time the maintenance dredging is conducted.
- A pre-dredging conference shall be held on site prior to the commencement of each dredging operation. The meeting shall be attended by the Permittee, the dredging contractor and a member of the VMRC staff. The meeting shall be held within seven (7) days prior to the commencement of each dredging operation and shall include an inspection of the dredge material containment area, an inspection of the previously staked dredge area, and a discussion of the terms and conditions of the permit.
- The Permittee shall provide a post-dredging bathymetric survey of the dredged area within 30 days of the completion of the initial and each subsequent dredging. The survey shall be signed and dated as being accurate and true.

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Bill Eddins, son of the applicant, was present and his comments are a part of the verbatim record. He said this was a small project and that contractors were hard to get. He said that tractor rental was \$1,200. He said he was available if any more information was needed or there were any questions.

There was no one present in opposition to the project.

Associate Member Garrison made the motion to approve in accordance with the staff recommendations with an understanding that staff would work with the Eddins when they needed to dredge and the equipment was available. Associate Member Birkett seconded the motion. The motion carried, 6-0-1. Associate Member Jones abstained from voting.

Permit fee.....\$25.00

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10. DISCUSSION: Commission consideration of a definition of water dependent projects.

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

Mr. Watkinson explained that at the request of the full Commission, the Habitat Management Advisory Committee (HMAC) had considered a definition for water dependent projects. The Commission at their meeting on October 22, 2002 had requested that the Committee develop a definition that could be applied when considering the water dependency of proposals for permits involving structural encroachments over State-owned submerged lands.

Mr. Watkinson said that because of weather conditions the day of the HMAC meeting, not all members could attend. The proposed definition was, however, forwarded to each HMAC member for consideration.

Mr. Watkinson explained that the following definition for water dependent projects was recommended by the HMAC members present during their meeting at which this matter was discussed:

Water Dependent means those structures and activities that must be located in, on, over or adjacent to State-owned submerged lands.

Mr. Watkinson explained that as a result of follow up comments from several members, some confusion was noted regarding the use of the term *adjacent* in the definition.

Mr. Watkinson stated that also, as suggested by Committee Chairman Ballard, the Committee agreed the following two questions must be answered yes when applying this definition for a project to be considered water dependent. They are:

1. *Is it necessary that the structure be located over water?* and,
2. *Is it necessary that the activity associated with the structure be over the water?*

Mr. Watkinson explained that since the Commission only permits that portion of any structure that extends over State-owned submerged land, the use of the term *adjacent* would appear to be unnecessary. Removing the term would not change the intent of the definition. As such, Commission staff recommended the adoption of the following definition for water dependent projects:

Water Dependent means those structures and activities that must be located in, on or over State-owned submerged lands.

Mr. Watkinson said that the Commission's Subaqueous Guidelines stated that the water dependency of a project would be considered, but the Guidelines did not contain a definition.

Although, the term may seem self explanatory, the full Commission had recently dealt with a number of structures such as storage sheds, gazebos and enclosed rooms on private piers for which there had been some debate of whether or not the structure needed to be on the pier or could have served its intended purpose on the adjacent or nearby upland. In fact, the Commission had denied several such structures, which were violations. Several of those decisions are currently under appeal in several Circuit Courts. A definition for water dependency should assist the Commission in the review of future permit applications for such structures and help to resolve violations, provide some indication to applicants regarding the potential acceptability of their project, and help support any subsequent court challenge. Also, use of the definition could assist the Commission in determining if a proposed structure is a reasonable use of State-owned bottomlands and if such use is consistent with the public trust doctrine which the Commission must now consider when exercising its authority to grant use of State-owned bottomlands.

Mr. Watkinson explained that it should be noted, however, that use of the definition for water dependent projects would not necessarily preclude issuance of a permit for structures over State-owned submerged lands that are not water dependent.

Mr. Watkinson said that in a case where a project was determined not to be water dependent, the Commission could still find the project to be a reasonable use of State-owned submerged lands, but they would need to provide an explanation for such finding on a case-by-case basis. Such decisions would need to be made by the full Commission. Alternatively, the Commission may wish to consider some minimum size for such structures, such as gazebos

Commission Meeting

and storage facilities on private piers, that would be acceptable and could be administratively approved if unopposed. This could reduce the number of projects that would need to be considered by the full Commission.

Associate Member Birkett suggested that it should say maximum not minimum. Mr. Watkinson agreed that was right.

After some discussion and questions, Associate Member Ballard made a motion to adopt the definition with the questions. Associate Member Williams seconded the motion. The motion carried, 4-2-1. Associate Members Birkett and Garrison voted No. Associate Member McLeskey abstained from voting.

Vote Count:

Ballard Yes	Holland Yes	McLeskey Abstain
Birkett No	Jones Yes	Cowart Absent
Garrison No	Williams yes	

Associate Member Ballard stated that pursuant to staff's recommendation asking the board to establish maximum sizes for non-water dependent structures, that the Commission ask that the Habitat Committee address the matter. Commissioner Pruitt agreed that it be given to the Habitat Committee for consideration. Mr. Watkinson stated that staff asked that a maximum size be established that could be approved by staff and still require a permit and not be exempt.

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11. DISCUSSION: Commission consideration of staff guidelines to be used in evaluating private piers as a result of Ch 973 Acts 2003.

Bob Grabb, Chief-Habitat Management Division, gave a power point presentation with slides. His comments are a part of the verbatim record.

Mr. Grabb explained that during the 2003 session, the General Assembly enacted certain revisions to the exemption provided for private, noncommercial, open-pile piers constructed by riparian property owners. To qualify for the exemption provided in §28.2-1203.A.5 of the Code, the pier must now be six feet or less in width, and any L-head or T-head platforms or protrusions constructed in conjunction with the pier or boathouse may not exceed a total of 250 square feet, and the piers cannot pose or represent a navigational hazard. Piers that exceed these criteria, for whatever reason are not just denied. They now require evaluation and issuance of a permit prior to construction. That includes those piers that are not protested.

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Mr. Grabb said that to prevent having to bring all of these to the Commission at one of the regularly scheduled monthly meetings, staff was proposing adoption of certain guideline criteria that they could use in evaluating and approving structures, at the staff level, that exceed the criteria for outright exemption. This included those with slightly wider piers (> 6' but ≤ 8') and slightly larger L-heads or T-heads (> 250 ft² but ≤ 500 ft²). Staff was also seeking guidance and permission to approve at the staff level, unopposed, open-sided boathouses in the range of 700 square feet to 1500 square feet.

Mr. Grabb stated that a key component of any justification for structures larger than those exempted by the General Assembly would be an evaluation of the water dependency and the necessity for the larger structure.

Mr. Grabb explained that although staff would be empowered to act on permits, which satisfied the criteria set forth in the table provided to the Commission, an applicant would always have the ability to ask for consideration by the full Commission, itself.

Commissioner Pruitt asked Mr. Josephson for his opinion. Carl Josephson, Assistant Attorney General, said it was not a problem and if the Commission does approve this, it will be delegating its authority for approval under these conditions. Commissioner Pruitt stated that it would save the taxpayers time and money and if protested it would have to be brought before the entire Commission.

Associate Member McLeskey asked if this was for private or commercial piers. Mr. Grabb explained that this was for private, non-commercial piers as exempted by the General Assembly.

Associate Member Holland made the motion to approve the proposal. Associate Member Garrison seconded the motion. The motion carried, 7-0.

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Commissioner Pruitt introduced again, for the benefit of the attendees for the Fisheries Management items, Mr. J. T. Holland as a newly appointed Associate Member. He explained that Mr. Holland replaced Mrs. Gordy. He stated that Mr. Holland was the 5th recreational fisherman on the board. He further explained Mr. Hollands numerous achievements, affiliations, and positions of authority held by him over the years.

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12. PUBLIC COMMENTS

Douglas Jenkins, Sr., requested clarification or a change be made in the regulation in regards to possession of male crabs when fishing peeler pots on Sunday.

Mr. Jenkins said that an individual had been charged with a violation for possession of male crabs on Sunday. He said there were two types of pots, the male crabs were used for bait in one of these pots and working peeler pots on Sunday was unlawful. He said he was requesting clarification or a change be made to the regulation.

Colonel Steve Bowman, Chief-Law Enforcement Division, stated that it was a point of law and meeting with Mr. Jenkins would be a waste of time, but a change in the regulation would be necessary as pertains to commercial crabbing on Sunday.

Associate Member Williams stated that this is a problem out in the general public and it needs to be addressed and something done.

Commissioner Pruitt stated that the matter would be turned over to the Crab Committee and asked Jack Travelstead put it on the agenda.

Public Comment Period ended.

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13. Public Hearing: Request to amend Regulation 4VAC 20-752-10 et seq., to replace an inaccurate longitudinal coordinate associated with the Virginia Blue Crab Sanctuary boundary line.

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

Mr. O'Reilly explained that last month the Commission adopted an emergency regulation to make this correction to the Virginia Blue Crab Sanctuary boundary line and directed staff to advertise this emergency amendment for public hearing. He stated that the emergency amendment was necessary to correct a longitudinal coordinate for the portion of the boundary line southeast of Tangier Island. He explained that the line had been changed from 76 degrees to 75 degrees so the line is being pulled back from Maryland and put back down where it belongs in Virginia.

Mr. O'Reilly said that, to date, no public comments had been received. He said that the staff recommended the adoption of the emergency regulation making the change.

Commission Meeting

Tom Powers, a member of CCA, was present and his comments are a part of the verbatim record. He pointed out an error in the Lower Bay Sanctuary and the ones in State Code were exempted for the recreational closure. He explained that when they rewrote the Code they combined the two areas into one area. He said that under Section 30(B) it says its unlawful for any person to conduct commercial or recreational crabbing within the combined area. He suggested it would be appropriate to split those two areas again. He said that this matter could not be taken care of at this hearing, but he did want to bring it to the attention of the Commission.

Associate Member Ballard made the motion to adopt the emergency regulation and make it permanent. Associate Member Birkett seconded the motion. The motion carried, 7-0.

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14. **Final Decision:** Proposed amendment to Regulation 4 VAC 20-1070-10 et seq., to provide management requirements for the haul seine fishery, in response to HB2239 which modified the definition of a haul seine.

Jack Travelstead, Chief-Fisheries Management Division, gave the presentation and his comments are a part of the verbatim record.

Mr. Travelstead explained this agenda item was a carry over from last month because of the incorrect response address in the Public Notice. He said more comments had been received, but not a significant number as last month. He said that a written position from the CCA was received just prior to the meeting today. And also, Mr. Jenkins, representing the Twin River Waterman Association, had given him a letter with comments. He distributed these additional documents to the Commission. He explained that changes had been made to the draft regulation based on comments from last month's meeting. He said the changes in the regulation were not intended to be overburdensome to the haul seiner, but at the same time allow for sufficient controls so that it remains a reasonable fishery. Issues raised at the public hearing and from the written comments received are as follows:

1. In the section for definitions, the long haul seine definition would need to be changed if the length or distance that will be allowed to drag a net through the water is changed. Currently that distance is 0.5 nautical miles and any changes in the regulation elsewhere would also mean changing the definition.
2. The Code limits all haul seines to 1,000 yards, and this provision cannot be changed by the Commission. The proposed change would remove the words possession on board vessel to allow for extra nets to be on board in the event the net is torn.

3. In Section C, staff had recommended 0.5 nautical mile and from public comments it was indicated that it should be 1 nautical mile. There were additional public comments were received that 2 nautical miles should be used. A compromise is in order and between .5 and 2 miles would be 1 nautical mile. Staff does not recommend exceeding 1 nautical mile.
4. In Section D provides that a person cannot use more than one vessel to haul each end of the net.
5. Section E, the issue of when to fish the pocket. New language makes it unlawful to remove fish from the pocket when there is less than 3 feet of water.
6. For the reporting requirement there was an error in the draft regulation that listed the Fisheries Management Division telephone number, this should be the Law Enforcement Operations number that the haul seiners will call, because personnel there are on duty 24 hours per day.

Associate Member Garrison asked that Jack clarify that the haul seiners are not the only fishery to be required to call in. Mr. Travelstead said that there were other groups required to call and report, such as the clam relay fishery and other fisheries with quotas. The haul seiner works at the night time making it necessary for the watermen to call in their fishing location. A call at 3 p.m. will cover the haul seiners for 24 hours and there are instances where the haul seiner can call and change the location. Mr. Travelstead said that the location can be changed as many times as necessary as long as they call the change into Operations.

Associate Member Williams said he did not think it was right to require the call in of the haul seiners and that it was too close a watch and like getting into a man's pocket.

7. The penalty clause in the regulation is not any different from what is in the Code. Commissioner Pruitt asked why we repeat the Code and did not just use the standing policy. Mr. Travelstead explained that it was just an effort to cite the standing policy.

Commissioner Pruitt asked if there was any further discussion by the board as the public had had their opportunity to speak at the public hearing.

Associate Member Ballard referring to paragraph B in the penalty section suggested changing the word "shall" to "may". Associate Member Jones suggested the wording of "may incur".

Associate Member Jones suggested that on page 2 of 4, paragraph C, changing the wording to "for no more than a distance of 1.0 nautical mile", as recommended by staff. Associate Member Ballard said this would also have to be changed in the definition section.

Associate Member Williams stated that in regards to the pocket there could be a problem because of weather. Commissioner Pruitt stated that some discretion can be used by the officer.

Associate Member Ballard expressed concern with listing the toll free number and it changing. Commissioner Pruitt said the number could still be put in the regulation and if it was changed, bring the matter back to the Commission and change it in the regulation.

Mr. Travelstead said that he wanted everyone here at the meeting to understand that nothing being done now affected the SAV and that it was being taken up as a separate issue at a another meeting.

Associate Member Garrison made the motion to approve the proposed regulation, as drafted and amended by the Commission. Associate Member Holland seconded the motion. The motion carried, 7-0.

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15. JOHN VIGLIOTTA: Request to extend clam relay season in the James River.

Roy Insley, Head-Plans and Statistics, gave the presentation and his comments are a part of the verbatim record.

Mr. Insley explained that the previous week John Vigliotta requested that the relay season in the Hampton Roads area be extended. He explained that when he polled the dealers, all 3 wanted the extension. He said that when he polled the clammers that except for one they all wanted the extension. He explained that the CPUE was stable and had improved some over the years. He said that last year in the Hampton Roads area there was a good set indicated and the clam relay season could be extended without harming the stocks for at least a few weeks. He explained that after discussing this information with Roger Mann at VIMS, he had concurred with the extension for a couple of weeks and agreed that it would not be harmful to the resource. He said that staff recommended extending the relay season for two whole weeks, through Friday, August 29th.

Associate Member Williams moved to approve the requested season extension through Friday, August 29th. Associate Member McLesley seconded the motion. Carl Josephson, Assistant Attorney General asked if this would be an Emergency Regulation and Mr. Insley responded, yes. Mr. Josephson also asked if the effective date would be set before the end of the relay season. Mr. Josephson stated that the effective dates would be from August 15 for two weeks. The motion carried, 7-0

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Commission Meeting

**12492
July 22, 2003**

Associate Member Garrison stated that he had received information that the safe directional boring as thought was not working out in the pipeline project. He said that Habitat had also received this information. Jay Woodward stated that he had slides showing what's happening. Commissioner Pruitt said that the Commission cannot hear anything unless Tim Hayes was present.

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Carl Josephson, Assistant Attorney General, explained that there was a modification in the Freedom of Information Act and Conflict of Interest Act. He said an information sheet was being prepared to pass on to Associate Members through the Commissioner.

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Roy Insley introduced Van Cox, who was a new employee hired to work in the compliance area of mandatory reporting.

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There being no further business, the meeting adjourned at 3:52 p.m. The next meeting date is Tuesday, August 26, 2003.

William A. Pruitt, Commissioner

Katherine V. Leonard, Recording Secretary