

## MINUTES

## Commission Meeting

December 19, 2006

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
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
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst, Sr.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Joe Cimino	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Ron Owens	Fisheries Mgmt. Specialist
Mike Meier	Head, Artificial Reef Program
Richard Lauderman	Chief, Law Enforcement Div.
Warner Rhodes	Deputy Chief, Law Enforcement Div.

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Steve Pope	Law Enforcement, Area Supervisor
Ed Clifton	Law Enforcement, Assist. Area Supervisor
George Verlander	Marine Police Officer
Keith Crandall	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.
Randy Owen	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.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell  
David O'Brien  
Mike Osterling

Other present included:

Lemuel R. Hart	Harry Lee Johnson, Jr.	Jon C. Powers	Todd Burns
Sandy Englise	Randall E. Taylor	Walter Hodges	Scott Hodges
Charles N. Cooper	Vincent Dolan	Brian Chromey	Louise Prusia
Richard Williams	Barbara Kerr	Joe Gibson	Barbara Adcox
Cecil Adcox	Mary Randolph Spencer	Sarah Hurst	Ted Dey
Charles Robison	Chris Clark	William Counselman	Randy Stokes
George Compo	Bob Winsfred	David Greer	Andy Cole
Jane Cole	Tony Germmoth	A. J. Erskine	Claire Hudson
Tommy Leggett	Tara Riley	Mike Peirson	Roger Parks
Russell Gaskins	Shawn Boggess	Ty Farrington	Frances Porter
Susan Gaston	Dr. Cynthia Jones	Curry Robert	Susan Mitchell
Basil Hurst			

and others

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Commissioner Bowman called the meeting to order at approximately 9:38 a.m. All Associate Members were present.

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Wilford Kale, Senior Policy Analyst gave the invocation and Associate Member Robins led the pledge of allegiance to the flag.

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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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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb stated that there was an additional item for the agenda. He said that staff had received a letter from the attorney representing the Scott Family requesting that an item be added for discussion regarding the Burwells Bay Improvement Association project heard at a previous meeting.

**Commissioner Bowman asked for a motion to approve the agenda. Associate Member Robins moved to approve the agenda, as amended. Associate Member Holland seconded the motion. The motion carried, 9-0. 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 November 28, 2006 meeting minutes.

**Associate Member Holland moved to approve the minutes, as circulated. Associate Member Robins seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member McLeskey abstained, as he was absent at the November Commission meeting.**

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Commission Meeting

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

Bob Grabb, Chief, Habitat Management Division, reviewed items 2A through 2D for the Commission. He said that staff was recommending approval of these items. There were no questions of staff.

Commissioner Bowman opened the public hearing and asked if anyone was present pro or con for these items wishing to address the Commission. No comments were received.

**Commissioner Bowman asked for a motion for Page Two Items 2A through 2D. Associate Member Schick moved to approve Items 2A through 2D. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.**

- 2A. **VERIZON, #06-2560**, requests authorization to relocate and install by directional bore and diver handheld jet pump method, 2,400 linear feet of fiber-optic cable up to four (4) feet below the substrate of the Nansemond River, immediately upstream of the Kings Highway Bridge in the City of Suffolk. Recommend imposition of a time-of-year restriction from March 1 through June 15 and a royalty of \$7,200.00 for the encroachment in State-owned bottom at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 2,400 l. ft. @\$3.00/l. ft.).....	\$7,200.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$7,300.00

- 2B. **FLUOR ENTERPRISES, INC., #06-2376**, requests authorization for permanent impacts to 1,866 square feet of Accotink Creek consisting of placement of riprap, a retaining wall, and extension of an existing culvert and temporary impacts to 13,948 square feet of Accotink Creek consisting of construction access as a result of construction of four High Occupancy Toll lanes and related infrastructure along a stretch of the I-495 Beltway in Fairfax County. No royalty was recommended, as this is a VDOT public/private partnership project.

Permit Fee.....	\$100.00
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- 2C. **H & H ENTERPRISES, INC., #06-1910**, requests authorization to dredge 7,500 cubic yards of State-owned subaqueous bottom material from a 376-foot by 220-foot basin to achieve maximum depths of minus eight (-8) feet below mean low water, and to construct a 300-foot long by 20-foot wide industrial pier with an 8-foot by 20-foot L-head and two (2) 40-foot by 5-foot finger piers adjacent to their property situated along the Western Branch of the Elizabeth River in Portsmouth. All dredged materials will be transported to the Craney Island Dredged Material

Management Area. Recommend the requirement for a pre-dredge conference, submission of a post-dredge survey, and a royalty in the amount of \$39,450.00 for the encroachment of the pier over 19,725 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot. Recommend no dredging royalty since the former property owner, Virginia Boat and Yacht, obtained a permit to dredge this same area (#98-0776), paid the royalty, but never performed the dredging.

Royalty Fees (encroachment 19,725 sq. ft. @ \$2.00/sq. ft.).....	\$39,450.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$39,550.00

**2D. CHINCOTEAGUE LANDMARK, L.L.C., #05-2660**, requests authorization to construct and backfill 30 linear feet of new bulkhead; 568 linear feet of replacement bulkhead, aligned a maximum of two (2) feet channelward of a deteriorating bulkhead; dredge 1,786 cubic yards of subaqueous bottom; install one (1) 110-foot by 6-foot pier and fourteen (14) finger piers with mooring pilings creating 26 wet slips along Chincoteague Channel adjacent to the Landmark Crab House Restaurant in the Town of Chincoteague. The proposed project will replace the existing Landmark Crab House Restaurant and the Shucking House Restaurant. The boat slips will be for the exclusive use of the owners or tenants of the 26 condominium units. All dredge material will be transported to an approved upland disposal site. Recommend a royalty of \$803.70 for the dredging of 1,786 cubic yards at a rate of \$0.45 per cubic yard; a royalty of \$1,700.00 for the filling of 570 square feet at a rate of \$3.00 per square foot and a royalty of \$25,470.00 for the encroachment over 16,980 square feet of State-owned subaqueous bottom at a rate of \$1.50 per square foot.

Royalty Fees (dredge 1,786 cu. yds. @\$0.45/cu. yd.).....	\$ 803.70
Royalty Fees (bulkhead 576 sq. ft. @ \$3.00/sq. ft.).....	\$ 1,710.00
Royalty Fees (encroachment 16,980 sq. ft. @ \$1.50/sq. ft.).....	\$25,470.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$27,973.70

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**3. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL. No Closed Meeting was held.**

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4. **BARBARA KERR, ET AL, #05-2542**, requests authorization to retain a 20-foot by 24-foot open-sided boathouse near the channelward end of a 130-foot long private pier adjacent to their property along the Piankatank River in Mathews County. The owners of an adjoining parcel protested the project due to an error by the agent in the joint permit application, as they were not notified during the application review process.

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

Mr. Neikirk explained that Ms. Kerr and Ms. Millican applied for a permit to construct a 130-foot long pier and a 20-foot by 24-foot open-sided boathouse in an application received by VMRC on October 26, 2005. During the review of the application, staff notified the leaseholder of oyster planting ground in the area of the pier and the adjoining property owners, as listed in the application. No responses to the notices were received. After determining that the pier and boathouse would not adversely affect navigation or productive oyster planting ground, staff notified the applicants on December 2, 2005, that staff had determined that the pier and boathouse qualified for the statutory authorization contained in §28.2-1203(A)(5) of the Code of Virginia.

Mr. Neikirk stated that on May 10, 2006, staff received a letter from Mr. and Mrs. Beau Hurst explaining that they were the adjoining neighbors of Ms. Kerr and Ms. Millican and they had never been notified of the pier and boathouse application. In their letter, they claimed that they took possession of their property on July 11, 2005, more than three months prior to the submission of the application. In addition, they stated that they did indeed object to the recently constructed boathouse. Staff contacted Mathews County and they confirmed the Hursts closed on the property on July 12, 2005. Accordingly, they were in fact the adjoining property owners when Ms. Kerr and Ms. Millican filed their application.

Mr. Neikirk said that by letter dated September 13, 2006, staff notified Ms. Kerr and Ms. Millican that due to an error in their application, the accurate adjoining property owners were not notified of their application. Furthermore, since the neighbors objected to the construction of the boathouse, the boathouse did not satisfy the requirements of §28.2-1203(A)(5) of the Code of Virginia and a permit from VMRC was required. Since the boathouse was already constructed, staff informed Ms. Kerr and Ms. Millican that staff would initiate a public interest review to consider after-the-fact approval of the boathouse. Regardless of the fact that the Hursts also objected to the location of the pier, the pier itself, still met the statutory exemption and no further authorization was required for the pier.

Mr. Neikirk further said that the pier and boathouse were located on the Piankatank River, along the west side of Ginny Point in Mathews County. The river is approximately 2,300 feet wide at the project location and the pier extended approximately 130 feet

channelward of mean high water. There was a shallow sandy flat surrounding most of Ginny Point. The pier and boathouse appeared to extend just to the edge of the shallow area.

Mr. Neikirk said that as previously stated, the project was protested by the adjoining property owners, Mr. and Mrs. Hurst. They stated that they were concerned with the placement of the pier so close to their shared property line. They also stated that the pier seemed to be located in one of the more shallow areas along their shoreline. They stated that had they had an opportunity to review the plans prior to the construction that they would have attempted to reach a reasonable compromise with their neighbors. They claim they spoke to Ms. Kerr and Ms. Millican in December, as the pier was being constructed and expressed their concern that they had not been notified. They also stated that the applicants did not indicate that they were planning to construct an open-sided boathouse at the pier. Finally, they noted that the applicants must regularly drive and walk by their house and that they told members of their family that they were aware the house had sold.

Mr. Neikirk explained that in a letter dated June 10, 2006, Ms. Kerr and Ms. Millican stated that they hired an agent, Ms. Betty Pugh, to file the permit application and that she used data made available from Mathews County to identify the names and addresses of their adjoining property owners. They claim they did not know the names of their former neighbors nor did they know Mr. Hurst's name until he introduced himself on November 19, 2005. They claim they discussed the project with Mr. Hurst during their meeting in November 2005. They argue that the pier was positioned and aligned in a manner to reach deep water in the shortest distance and that there was approximately 100 feet between the pier and their shared property line with the Hursts.

Mr. Neikirk noted that the boathouse encroached over oyster planting ground leased by Mr. James Vivian Shipley. He was notified of the project, but did not offer any comments. No state agencies had commented on the proposal and staff did not believe the pier and boathouse adversely affect navigation.

Mr. Neikirk said that the agent, Ms. Pugh told staff she used property data provided to her by the County earlier in 2005. She acknowledged, however, that she did not confirm the information at the courthouse. Staff discussed this matter with Mathews County personnel and although they were able to confirm that the property was transferred on July 12, 2005, they were unable to determine when their public records were updated.

Mr. Neikirk stated that when reviewing after-the-fact requests, staff attempted to evaluate the proposal without regard to the fact that the structure had already been built. In this case, staff must evaluate whether or not staff would have recommended approval of the pier and boathouse in the proposed location if the neighbors had objected to the application when it was originally reviewed. Although the pier and boathouse were positioned more toward the shared property line than the center of the property, it

appeared from the aerial photographs and the navigational charts that the chosen site was closer to deep water. Furthermore, the pier and boathouse were approximately 100 feet from the Hursts' property and it was unlikely that the pier encroached on the Hursts' riparian area.

Mr. Neikirk stated that staff recommended after-the-fact approval of the project with a triple permit fee of \$75.00, as provided by §28.2-1206(D) of the Code of Virginia. Should the Commission determine that a civil charge was also appropriate, staff believed the charge should be based on a minimal environmental impact and a minimal degree of deviation or non-compliance.

Barbara Kerr, applicant, was sworn in and her comments are a part of the verbatim record. Ms. Kerr explained that they had hired an agent to research and file any applications that were necessary. She said they have not tried to circumvent the process. She said the county records were out of date and they did not know the owners on either side. She said she appreciated being allowed this process and she looked forward to resolving this issue.

Commissioner Bowman asked if anyone was present, pro or con?

Basil Hurst, adjoining property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Hurst explained that they had taken possession of the property on July 12, 2005, which was prior to the application submission to VMRC. He said they were not notified as the adjoining property owners. He said he had visited them when he came to the neighborhood after taking residence on November 19, 2005. He said he originally thought they had made application prior to him and his wife buying the house. He said the applicant had indicated that they knew the Stones, the previous owners of his property and had interacted with them, but they never told him about their plans and it was that day that he noticed the ongoing construction. He said his father and mother-in-law could attest to that, if necessary. He said after that he did some research and contacted the VMRC and it was then he found that the application had not been submitted until October 26, 2005. He said if they had been notified as required, then a compromise could have been reached because they did not object to the pier, but only wanted it a little further from their property line.

Commissioner Bowman asked Mr. Hurst how would he have changed it? Ms. Hurst requested to be allowed to speak to this question.

Sarah Hurst, adjoining property owner and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Hurst explained that the structure was more in front of their property and if it could just be moved ten feet it would lessen the impact on their view.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, asked Mr. Hurst if they were full-time residents. Mr. Hurst responded they were not full-time, but they were staying there more now.

Commissioner Bowman stated that he wished the agent was present to explain why the documents were incorrect and no research was done to insure that the information was correct. Mr. Neikirk responded he did not think the agent was present.

Commissioner Bowman stated that he could not see requiring the removal of the boathouse, as the applicants do have a boat, therefore, there is a need for it. Mr. Hurst stated that they were asking for its removal to improve their view, as they did not get their opportunity to comment prior to its construction.

Ms. Kerr stated that they acted in good faith and apologized for the oversight, as it was not intentional. She again thanked the board for the opportunity to address this issue.

**After some discussion, Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion. He further stated that it was unfortunate that the neighbors were not notified and that staff had accessed the situation correctly and the project was reasonably sited. He said that the open-sided boathouse limits the structure’s impact of anyone’s view. The motion carried, 9-0. The Chair voted yes.**

Permit Fee (Triple-ATF authorization).....\$75.00

Commissioner Bowman asked the staff if they could draft a letter to be sent to the agents to help resolve this problem so that it will not continue to occur. Bob Grabb, Chief, Habitat Management, stated that staff recommended that a letter be sent to the County, since they only put this information on a CD at the beginning of the year, requesting that a disclaimer be added to the CD stating that the information is subject to change.

Associate Member Holland suggested that VMRC require the agents in the future sign off for accuracy as of date submitted since they were certified. Mr. Grabb explained that the agents were not required to be licensed or certified, so there would be no leverage that could be used by VMRC to require it. He said in the past when staff had repeated problems with this, staff does not work with the agent, but with the applicant directly.

Associate Member Schick stated that the agent should have been present. Mr. Neikirk explained that he had spoken with her and she did not feel it was necessary, as she thought the attorney would be present.

Commissioner Bowman explained to all parties that the Commission’s decision could be appealed.

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5. **ERNEST ADCOX, #06-1449**, requests authorization to construct a 42-foot by 19-foot private, non-commercial, open-sided boathouse and associated finger piers at an existing pier adjacent to his property along the Poquoson River in York County. An adjacent property owner and a nearby resident protested the project.

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

Ms. West explained that Mr. Adcox's property is situated along the Poquoson River, between the mouth of Patricks Creek and Hodges Cove, in York County. The waterway is over 3,000 feet wide at this location. Mr. Adcox has applied to construct a boathouse with associated finger piers on the east side of the terminus of his existing pier. There was one other boathouse in the immediate vicinity of the Adcox's property. Mr. Adcox planned to shelter his 38-foot powerboat with a 13-foot beam in the boathouse.

Ms. West stated that Ms. Evelyn F. Shepherd, the adjacent property owner to the west, had expressed concerns that the proposed boathouse would obstruct her view. She also believed that the boathouse was unnecessary to protect vessels made of composite materials. In addition, she was concerned that, during a severe storm event or hurricane, the boathouse may be damaged and materials from the roof would cause property damage. Ms. Shepherd's adjacent property owner to the west, Mr. James Bates, also expressed concerns regarding the visual impact from the proposed structure.

Ms. West noted for the Commission that in this case, the boathouse would not have qualified for statutory authorization pursuant to §28.2-1203(A)(5) of the Code of Virginia because it was 798 square feet, and therefore over the 700 square foot limit provided for in the statute.

Ms. West explained that another boathouse was located adjacent to Mr. Adcox's property to the east. An application requesting authorization to construct that boathouse was submitted by a previous property owner and was authorized in 1997 under VMRC #97-0812. The project was not protested at the time. That property owner, Mr. James Elliott, was not protesting this project. The adjacent oyster ground leaseholder was also notified and no response was received.

Ms. West explained further that the subject boathouse appeared to be reasonably sized for the vessel owned by the applicant. The open-sided design should minimize the visual impacts associated with the structure. As such, although the project did not qualify for the authorization contained in §28.2-1203 (A)(5) of the Virginia Code since it was over 700 square feet, staff would have issued a permit for the project as proposed if the adjacent property owner had not protested it. Therefore, after evaluating the merits of the

project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project as proposed.

Ms. West stated that the Shepherds were not going to be present at the meeting as they were out of the country.

Commissioner Bowman asked if the applicant and his representative wished to address the Commission.

Ernest Adcox, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Adcox explained that he needed the boathouse to protect his boat and he was asking for the same thing as his neighbors already had.

Associate Member Fox asked if there would be a boatlift in the boathouse. Mr. Adcox responded, yes.

Commissioner Bowman asked if anyone was present in opposition to the project. There were none.

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

Permit Fee.....\$25.00

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**6. CHARLES N. COOPER, #05-0481**, requests authorization to install four (4) private aids-to-navigation adjacent to his property situated along the Lafayette River in Norfolk. Several residents in the vicinity protested the project.

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

Ms. West explained that Mr. Cooper’s property is situated along the Lafayette River upstream of the Hampton Boulevard Bridge. The waterway is approximately 1,600 feet wide at this location. Mr. Cooper has applied for a permit to install four (4) day markers in order to clearly identify the limits of the auxiliary channel, which provided access from his pier to the main channel in the Lafayette River. According to the application, Mr. Cooper planned to purchase a 34-foot long powerboat with a 14-foot beam and a 3.5-foot draft.

Ms. West stated that six local residents opposed the project. Each letter noted concerns regarding the channel markers posing a safety hazard to water skiing and other recreational activities, a visual nuisance, and setting a bad precedent. Mr. Compo, Mr. Robison and Mr. Counselman further noted that the distance from the main channel through Mr. Cooper's channel to his pier was approximately 295 feet and should be easily navigated without markers. Mr. Traylor, Mr. Smith, Mr. Clark, and Mr. Counselman all noted that the installation of a navigational range marker on the pier would also provide Mr. Cooper with the assistance he desired without the installation of pilings in the river. Mr. Clark also suggested that reflectors on the pier could assist boaters when navigating at night.

Ms. West said that the U.S.C.G. authorized the installation of Mr. Cooper's day markers, also called private aids to navigation, on September 16, 2006.

Ms. West explained that when staff reviewed proposals to encroach over State-owned submerged land, they considered, among other things, the water dependency and the necessity of the proposed structures. The intended goal of this review was to limit the encroachment of structures to the minimum amount necessary to reasonably achieve the intended use. While navigational day markers were certainly water dependent, staff believed that a range marker located on Mr. Cooper's pier should provide the navigational guidance Mr. Cooper desired without resulting in any further encroachment over State-owned submerged lands. A range marker will also avoid conflicts with the other uses of the waterway identified by the numerous protestants.

Ms. West said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended denial of the project, as proposed.

Ms. West stated there was an additional protest letter from William W. Granger, III received today by Jack Travelstead, which she handed out to the Commission. Ms. West read the letter into the record.

Commissioner Bowman asked if the applicant or his representative wished to speak.

Charles Cooper, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Cooper utilized a coast chart via the overhead projector to show the location of the shoal. He said he had a long pier which had been there since 1946 and had been changed over the years. He said the floating dock was 40 feet with a slip for his 36-foot boat. He said he was requesting these markers because of the water depth problem. He said he did not need the markers for navigation, but only to help him maneuver the boat in the turning basin. He said only two houses were affected and that was Robison's and Compo's and they were both opposed to the project. He said that Sarah Greer, the daughter of the late Mrs. Greer was opposed. He said the letter of the late Mrs. Greer did

not want to mess up more and wanted it left as it was now. He said the neighbors around the river were concerned with vessel traffic, large and small, and that there would be no more obstructions. He said he could see a compromise, as the further offshore markers were the ones of most concern by others. He said he absolutely needed #4 and #5 to allow him to get his boat into the area.

Commissioner Bowman said the Commission did not want to set precedence, where others would want the same.

Commissioner Bowman asked if anyone was present in opposition.

Charles Robison, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Robison explained that he had known Mr. Cooper for a long time, as he had been there himself for 30 years. He said Mr. Cooper's pier was 272 feet long, which most piers in the area were 80 feet to 100 feet. He provided pictures. He said he understood the need for it because of the shoal, but his major concern was for safety, as water activities need minimal obstructions. He said 4 or more pilings were not necessary. He provided an additional picture. He said when the pier addition was added he did not object, but the markers with the lights was not necessary and would only be an obstruction. He requested denial of the proposal.

Christopher Clark, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Clark said that he was next door to Mr. Compo. He said he was concerned with safety also and was not opposed to #4, the soft marker, but he felt Mr. Cooper did not need 2 of them.

Ted Dey, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Dey said he lived 3 houses down from Mr. Cooper. He said he has 2 children, 11 years of age and 14 years of age. He explained that they have to go by Mr. Cooper's property in their John Boat to get to the club and so they can stay out of the main channel, where there were larger boats. He said he objected to any markers and he was concerned a precedent would be set for other pier owners. He said a skilled boater should be able to maneuver the boat in the turning basin.

John R. Stokes, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Stokes said that children sail there and additional markers will only be a hazard. He said he did not like opposing Mr. Cooper's project, but he did object to it.

Andrew Cole, protestant, was sworn in and his comments are a part of the verbatim record. Dr. Cole said he has children and as an emergency physician he had seen what could happen to children when they are involved in an accident involving the water and obstructions. He said for an experienced boater there should be more than enough space to maneuver a boat.

William Counselman, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Counselman said that he was an experienced river pilot and Mr. Cooper could come in to his dock by the bow side. He said he was south of Mr. Cooper on the south bank. He said Mr. Cooper had said he does not need the aids, and he can turn off his dock without them and he definitely does not need day markers. He said safety was an issue and they did not need an additional hazard in the river.

George Compo, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Compo said he was opposed to any markers.

Sara Greer, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Greer stated that she appreciated the Commission considering her mother's letter. She said everything had pretty much been said by the others.

David Greer, protestant, was sworn and his comments are a part of the verbatim record. Mr. Greer said he would be moving into the area and he appreciated the Commission's consideration of the hazards of these markers. He said the markers could only cause confusion to others and coming from some directions would not even be seen. He also said this could set a precedent. He thanked the board for their efforts to work out a resolution.

Mr. Cooper in his rebuttal said he disagreed on the comments about the depth being deeper on his side and agreed that the small vessels should stay out of the channel. He utilized a staff slide to show how the winds affected him when he was turning and he said he was afraid of going aground. He said he needed something to assist him. He said the wind cause him to hit the pilings. He said he would be happy to have anything.

Associate Member Tankard said that in accordance with Section 28.2-1205 the Commission must consider the detrimental effects to others, when the project was only benefiting one individual.

**Associate Member Tankard moved to deny the request for permit. Associate Member Robins seconded the motion. Associate Member Fox stated that boaters should be able to control their vessels with an adequate turning basin. He further stated that he supported the staff recommendation and motion. Associate Member Robins stated that he agreed with Associate Member Tankard, as the private benefit was small in comparison to the concerns for public safety. Associate Member Bowden expressed his compliments to all, as they were trying to be good neighbors. He stated that he agreed with the board members in regards to the benefits versus detriments. The motion carried, 9-0. The Chair voted yes.**

No applicable fees -- Permit Denied.

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**SPECIAL PRESENTATION:**

Captain Steve Pope, Law Enforcement Division, Middle Area Supervisor, introduced Mr. Curry Roberts and Ms. Susan Mitchell, representatives for the 2006 State Fair. He said they were here to give the Directors Award to the Commission as this year it had been the best exhibit ever for VMRC. He said this was the result of the efforts of all the divisions of VMRC, Fisheries Management, Habitat Management, Administration and Finance and Law Enforcement.

Commissioner Bowman instructed Captain Pope to accept the award on behalf of all. Mr. Roberts made the presentation and explained about the state fair and indicated the others who had not done as well as VMRC. He presented the agency with a ribbon as well as a Certificate of Appreciation.

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7. **ALBERT WILLIAMS, #05-0753.** Consideration of Mr. Williams' failure to comply with the Commission's June 27, 2006, directive to remove four (4) unauthorized pilings placed within Willoughby Bay in the City of Norfolk.

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

Ms. West explained that Mr. Williams's property is located on Willoughby Spit near the westbound bridge of Interstate 64 in Norfolk. The Commission considered Mr. Williams' request to construct a pier and boathouse during the June 27, 2006 meeting. At that time, the Commission directed Mr. Williams to remove four illegally driven pilings located on the property line extended between himself and Mr. Ted Warren. The pilings were to be removed within 60 days. To date, these pilings have not been removed.

Ms. West stated that Mr. Williams filed a notice of appeal to initiate a Court review of the Commission's June 27, 2006 decision to grant him authorization to construct a pier and boathouse along an alignment different than what he requested in his application. His Notice of Appeal did not specifically mention the removal of the pilings as an element of his appeal. Furthermore, Mr. Williams apparently elected not to pursue his appeal since a Petition for Appeal was never filed with the Court. Although Mr. Williams has recently submitted survey information in an attempt to show that he owns property both landward and channelward of a paper street, Willoughby Bay Avenue, and that he is a riparian property owner, the extent of his riparian area is currently unknown.

Ms. West explained that as installed, the pilings were not a part of any existing pier and would not be considered part of the pier that was previously authorized by the Commission. In addition, their location appears to present a navigation hazard for boats that would use the authorized pier on the neighbor's property, Mr. Ted Warren.

Mr. Warren's pier was approved by the Commission at the same June 27, 2007 hearing where they also authorized Mr. Williams' pier. Both gentlemen were required to place their piers in the middle of their shoreline in order to provide equal access for each property owner.

Ms. West said that since Mr. Williams had failed, thus far, to remove the pilings in contradiction to the Commission's directive, staff recommended that the matter be immediately referred to the Attorney General's Office for initiation of the appropriate enforcement action.

Ms. West explained that Mr. Williams was out of town and his brother was present at the meeting on his behalf.

Commissioner Bowman asked if there had been any contact made on this matter.

Ms. West explained that she had talked with both Mr. Williams and his Attorney, Mr. Eason. She said they have provided evidence of his riparian ownership and were pursuing an apportionment. She said they were waiting for the decision and had asked the staff to reconsider the decision.

Richard Williams, representing his brother, Albert, was sworn in and his comments are a part of the verbatim record. Mr. Williams said that he had been asked to come to the Commission meeting and ask for a continuance. He said they were told that no permit was necessary for mooring piles or a boatlift by VMRC staff.

Commissioner Bowman asked about why Albert Williams was not present. Mr. Williams said his brother had scheduled his cruise a year ago.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, said it was up to the Commission whether they want to entertain the request and the staff's request for enforcement action does need a board decision. He said it was not required that the Commission consider any additional information, unless they want to do so.

Commissioner Bowman stated that he originally thought there were extenuating circumstances involved, but from the comments made, that was not the case.

**Associate Member Schick moved to approve the staff recommendation to move forward and take enforcement action. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

There was some discussion between Mr. Williams and Mr. Josephson. Mr. Josephson stated that Mr. Eason the Attorney for this case should contact him.

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**Item 7A. Burwells Bay Improvement Association:**

Bob Grabb, Chief, Habitat Management, explained the Scott family had been ordered by the Commission’s staff to remove derelict structures within 60 days and that they intended to appeal the Commission’s Order, as they might possibly utilize some of the structures. Mr. John Daniel with Troutman and Sanders, attorney for the Scott Family, in his letter dated December 19<sup>th</sup>, requested a Stay order be issued on the removal order, pending their potential appeal on the subaqueous portion of the project

**Associate Member Robins moved to approve the request for a stay to the enforcement action ordered by the Commission. Associate Member McLeskey seconded the motion. The motion carried, 9-0. The Chair voted yes.**

No applicable fees.

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The Commission broke for lunch at approximately 11:49 a.m. and the meeting was reconvened at approximately 1 p.m. Associate Member Fox had left and did not return for the afternoon session of the meeting.

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**SPECIAL PRESENTATION:**

Jack Travelstead presented Dr. Cynthia Jones with a certificate of service, which he read into the record. He also said when she was appointed by Governor Warner she was the first fisheries scientist to serve on the Commission Board in 130 years. He spoke about her insight into fisheries issues, especially limited entry, which had provided valuable information and assisted the Commission in their decision-making. Dr. Jones spoke about her time on the board and of her appreciation for this recognition. Commissioner Bowman stated that he appreciated her ability to show the best interest of science in layman’s terms and thanked her for her service to the Commonwealth.

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Associate Member Holland was absent during Items 8 and 9.

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8. PUBLIC COMMENTS:

**Requests to extend the public oyster ground harvest season on the Seaside of Eastern Shore and in the Upper Rappahannock River.**

Lemuel Hart, Seaside Eastern Shore Waterman for 22 years, was present and his comments are a part of the verbatim record. Mr. Hart stated that he loved being an oyster harvester and the oysters were back, as this seems to happen in cycles. He said in years past they were given a 6-month harvest season and now it was down to 3 months. He said last year it was 4 months and explained that he just wanted to get that 4<sup>th</sup> month back. He said with all the equipment and permits and/or licenses it cost them a significant amount. He said the cost for an oyster harvester five times more than it cost for other industry watermen. He said the oysters were coming back over there and the Seaside did not need to be managed in the same manner as other areas.

Commissioner Bowman asked Mr. Hart if he had attended the September Commission meeting. Mr. Hart responded no, he was told by staff that first they wanted to see how it worked out and then it could be decided at the December meeting. Commissioner Bowman asked him how was the season so far. Mr. Hart responded that it was going very well and would continue. He said he did not think they were asking for much, just 4 months. He went on to say that not all watermen could afford to go into other fisheries, as it was their livelihood. He said that oyster taxes were being collected better and when the watermen were working everyone benefited.

Commissioner Bowman said the main concern here was if this would deplete the oyster stocks and if they were depleted, it would be detrimental to the watermen. He asked if he was just asking to extend the season, as was done last year. Mr. Hart stated that on the Seaside, management does not help, as the oysters come back naturally, and the more it was worked, the better it gets.

Commissioner Bowman stated that the Commission would continue with the public comments allowing the Board time to consider this request.

Harry Lee Johnson, Jr. a Seaside Eastern Shore Waterman was present and his comments are a part of the verbatim record. Mr. Johnson explained that he was here for the same reason as Mr. Hart. He said they see a big comeback over on Seaside and requested that the Commission consider an extension of the public oyster harvest season for another month.

A. J. Erskine, representing Bevans Oyster Company and Cowart Seafood Corporation was present and his comments are a part of the verbatim record. Mr. Erskine said he wanted to clarify his comments last month in regards to opening the lower Rappahannock River and an additional area in the Potomac Tributaries. He said his comments only

applied to the Potomac Tributaries request, not the Rappahannock River, as they were not necessarily opposed to this. He said Mr. Cowart had informed him that during his time on the Board he supported the area remaining closed, but today if he were still on the board he would have voted to open the Lower Rappahannock River with limits.

Russell Gaskins, representing the Virginia Watermen's Association and the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Gaskins said they were requesting that the public oyster harvest season in the Rappahannock River above the bridge be extended through February 2007. He said the crab season was slow and they needed work.

Commissioner Bowman stated that the Commission would hold off on the previous requests and continue with the Public Comment period and after the Board had finished with other public comment issues and had had time to think about these oyster issues, they would return to them.

**Regulation 4 VAC 20-70-10 Et seq., "Pertaining to the Harvest of Clams", to allow the possession of more than 250 clams by any boat licensed to take blue crabs with a dredge, when that vessel is also licensed to take clams with a dredge.**

Associate Member Bowden explained that a problem had arisen that he had brought up before and thought there was some research being done to correct the regulation that was never changed when the Commission approved amending it. Originally, the Commission had asked Mr. Josephson to research this matter, as the court would side with the watermen when there were two licenses. The Commission had agreed with Mr. Josephson's findings, but nothing was changed. He reminded the Commission that he had again brought it up at the March 2005 Commission meeting, that the regulation did not get changed and the Board again concurred. He said the problem had now come up again, as the season had started, and Law Enforcement was enforcing the regulation, as it was now.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel stated that he remembered agreeing with Mr. Bowden, but not what action was taken.

Jack Travelstead, Chief Deputy Commissioner, explained that staff would have to look at the issue and come back to the Commission. Associate Member Bowden stated that had already been done. Mr. Travelstead said that clam or dredge licensee should be allowed the limit of each species. Associate Member Bowden agreed and said that 250 clams was allowed for personal use, but it says in the regulation that it can not be done at the same time. He said he believed it was done by consensus of the Commission, but the watermen tell him it was approved. Mr. Travelstead explained that the Commission still needed to amend the regulation.

**Associate Member Bowden moved to hold a public hearing with the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 7-0. The Chair voted yes.**

**Requests to extend the public oyster ground harvest season on the Seaside of Eastern Shore and in the Upper Rappahannock River**

Commissioner Bowman brought back the issues of extending harvest seasons for public grounds to the harvest of oysters. He asked Dr. Wesson to comment.

Dr. Wesson said he would feel comfortable with opening the Seaside of Eastern Shore as the spatset was good, there had been more high tides and not a lot of low tides which has resulted in days of work being missed by the watermen. He stated that the resource was not the issue here, but the lack of reporting on Seaside and staff would feel better about it if the data were available.

Dr. Wesson explained that the request for the Rappahannock River was different, as the area had been worked very hard for 3 months and an extension would hurt the oyster rocks and the potential for next year's season. He stated that there had been a decent spatset in this area. He said that staff did not recommend extending the season.

Associate Member Robins asked if it was not detrimental to the Seaside. Dr. Wesson stated that the shellfish were hand caught on the seaside. He also said that the high tides had affected VMRC staff in getting work done just like the watermen.

Commissioner Bowman asked if tides kept the watermen from having all three months to work. Dr. Wesson responded yes.

Associate Member Tankard stated that it would be all right to extend the season, but staff did not know exactly what the harvest was on the Seaside.

Associate Member Bowden explained that there had been a lot of rain in the spring and the oysters had survived. He said he agreed with the tide issue and he felt that they should be given an extension to give them the days that were missed.

**Associate Member Robins moved to approve an extension of the season on the Seaside through January 31<sup>st</sup>. Associate Member Bowden seconded the motion. Mr. Travelstead said that a public hearing would not be necessary and it could be made effective from January 1<sup>st</sup> for 30 days. Associate Member Robins stated he would amend the motion to say through January 30<sup>th</sup>. Associate Member Bowden accepted the amendment. The motion carried, 7-0. The Chair voted yes.**

Commissioner Bowman asked the Commission about the Rappahannock River season request.

Associate Member Schick explained that last month there was no compromise made and he understood the spat set problem, but the watermen needed to work, and the Blue Ribbon Oyster Panel's work would not help with this year.

Associate Member Bowden stated he felt the Commission should have opened up the Lower Rappahannock River, so as to work the oysters below to keep them from becoming snappy or long-billed. He said the Commission should preserve the upper river areas. He said to let them continue to dredge in the upper portion where there was spatset would be a bad idea.

No action was taken on the Upper Rappahannock River extension request.

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**9. PUBLIC HEARING:** Final consideration of emergency amendments to Regulation 4VAC20-490, Pertaining to Sharks, to establish a 4,000-pound trip limit for spiny dogfish.

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

Mr. Travelstead stated that the emergency action approved at last month's meeting needed to be made permanent and the 4,000-pound trip limit be extended through April 30<sup>th</sup> or until the fishery closes. He further stated that the State's season should not last through April 30<sup>th</sup>. He said it was staff recommendation to approve this action.

Mr. Travelstead said an announcement is pending tomorrow that the federal quota was projected as being caught, thereby, closing the Federal waters to further harvest. He said a notice was sent out about the Federal fishery.

After some discussion between staff and the board, Commissioner Bowman opened the public hearing. There were no comments, either pro or con. The public hearing was closed.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried 7-0. The Chair voted yes.**

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Associate Member Holland had returned to the meeting.

\* \* \* \* \*

- 10. PUBLIC HEARING:** Consideration of proposed amendments to Regulations 4VAC20-1090, "Pertaining to Licensing Requirements and License Fees", Regulation 4VAC20-610, "Pertaining to Commercial Fishing and Mandatory Harvest Reporting", and Regulation 4VAC20-200, "Pertaining to the Requirements for Reporting Oyster Transactions and Payment of Taxes", affecting the methods for payment of oyster taxes, reporting of harvests from leased grounds, and establishment of oyster and clam aquaculture licenses.

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

Dr. Wesson explained that in the 2006 General Assembly session, the Commission initiated a change to the Code of Virginia to stop collecting the oyster replenishment and inspection taxes on oysters. Due to the years of declining oyster harvests, the costs to the agency associated with Law Enforcement collecting, and Administration and Finance processing the tax, has surpassed the revenues collected more than two and one-half times. The agency intended that the oyster harvest would be incorporated into the mandatory reporting system with all of the other species harvested.

Dr. Wesson further explained that when the proposed Bill became public, it was found that the industry did not want to remove these taxes. The industry felt that the tax should be kept, and possibly increased, and that the inspection tax should be collected for the Oyster Replenishment Program rather than sent to the State General Funds, as it currently does. The Bill was therefore changed to remove the collection process from the Marine Police Officers and have the tax sent directly to the VMRC office. This bill passed and became law in July 2006, with the three cent per bushel inspection tax redirected for deposit in the Special Public Oyster Rock Replenishment Fund. Regulation 4VAC20-10, Et. Seq., "Pertaining to the Requirements for Payment of Taxes" has been amended to implement this Code change for the collection of oyster taxes.

Dr. Wesson stated that since staff had intended to convert the oyster harvest reporting to the mandatory reporting system, it seemed best to follow through and incorporate oyster harvests in the mandatory reporting system. The mandatory reporting forms have been modified to incorporate oyster harvests from public and private grounds. This will provide a method of auditing the tax collections, and it is hoped that over time, the cost of collecting the oyster taxes becomes too large, and it could be phased out at a later time. Staff would also like to begin tracking clam harvests from private grounds into the mandatory reporting system. Tracking this production would give important data on the existing clam aquaculture industry as well as the developing oyster aquaculture industry. It is extremely important that the value of the shellfish aquaculture industry in Virginia be documented to both show its importance to the economy, as well as give protection to the industry in disputes over other uses of the shoreline. There continues to be more and more cases of conflicts in use between potential development and the seafood industry. In many cases, MRC staff has had a difficult time determining the factors describing the value of the shellfish industry and an accounting of production from private grounds will be very valuable to these evaluations.

Dr. Wesson said that the mandatory reporting program is based on a Commercial Fishermen Registration License in Regulation 4 VAC 20-610-10, and many people who work on private leases or in aquaculture have been exempt from this license, staff recommended creating an Aquaculture License. The aquaculture industry has been very supportive of an aquaculture license. Staff has suggested a \$10.00 fee for both a Clam Aquaculture License and an Oyster Aquaculture License. These licenses could be used as the identifying numbers for the Mandatory reporting forms for those aquaculturists that do not have a Commercial Fisherman Registration License.

Dr. Wesson stated that staff recommended the adoption of these amended regulations. Staff also recommended that these regulatory changes be made effective February 1, 2007.

Commissioner Bowman opened the hearing for public comment.

A. J. Erskine, representing both Bevans Oyster Company and Cowart Seafood Corporation, was present and his comments are a part of the verbatim record. Mr. Erskine stated that they strongly supported the adoption of an aquaculture license, as this would be a good source of information for the Law Enforcement Division as well as Fisheries Management in the Commission's effort to manage the resources.

Mike Pierson, representing Cherrystone AquaFarms, was present and his comments are a part of the verbatim record. Mr. Pierson stated that they supported the aquaculture license and reporting requirements for the industry to be regulated responsibly.

Tommy Leggett, representing himself as a private grower and the Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. Mr. Leggett stated they supported the licensing and reporting requirements, as this would provide data to show the impact of the aquaculture industry.

Commissioner Bowman asked if anyone was present in opposition to these proposed amendments to the regulations. There were none.

**Associate Member Tankard moved to accept the staff recommendations. Associate Member Robins seconded the motion. Associate Member Robins stated that the aquaculture industry had an important role in the overall shellfish industry and this would now be shown. The motion carried, 8-0. The Chair voted yes.**

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11. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-510, "Pertaining to Amberjack and Cobia", to provide for the lawful aquaculture of Cobia.

Jack Travelstead, Chief Deputy Commissioner, gave this presentation and his comments are a part of the verbatim record.

Mr. Travelstead explained that studies by the Virginia Institute of Marine Science (VIMS) and Virginia Tech suggest that cobia may be an ideal species for aquaculture production. In October, Governor Timothy Kaine announced that Virginia Cobia Farms will invest \$30.33 million to develop a new technology and method of farming cobia in Saltville, Virginia. The project will create 60 new jobs.

Mr. Travelstead further explained that Virginia Cobia Farms is a joint venture between MariCal, Inc, an aquatic life science biotechnology company, and Blue Ridge Aquaculture, the largest indoor Tilapia farm in the U.S. A letter from the Hampton facility of Virginia Tech is enclosed, and we will provide you with letters from Virginia Tech (Blacksburg) and Virginia Cobia Farms, describing their anticipated activities, at your meeting.

Mr. Travelstead said that current VMRC regulation on cobia prohibited the possession of any cobia less than 37 inches total length and prohibited the commercial harvest of more than two fish per person. Both of these provisions prevented the aquaculture of cobia, although this was never the intended purpose of the measures. Therefore, it was necessary to exempt aquaculture facilities and their cobia products from the 37-inch minimum size limit. Also, the harvest of broodstock cobia from Virginia waters for aquaculture purposes should be exempted from the two-fish possession limit.

Mr. Travelstead explained that staff was proposing that the Commission establish a cobia Aquaculture Permit that would be issued by the Commissioner to bona fide cobia aquaculture facilities, as well as those universities investigating the aquacultural uses of cobia. The permit, by regulation, would exempt the named facility from the current provisions of Regulation 4 VAC 20-510. The permit may be issued to individual fishermen who might be engaged by the aquaculture interest to harvest cobia that would serve as broodstock. Total broodstock cobia harvest was currently projected to be about 100-200 fish. Hook-and-line was anticipated to be the primary harvest method in order to minimize harming the fish.

Mr. Travelstead stated that to ensure the cultured cobia can be easily discriminated from the wild fish in the market place, staff had proposed a requirement that all cultured cobia be so labeled. This labeling requirement should apply to cobia raised in Virginia, as well as those that might be imported for sale in Virginia.

Mr. Travelstead said that finally, staff was proposing that no cobia from an aquaculture facility be introduced to the natural waters of Virginia, without the permission of the Commissioner. Such a measure was necessary to prevent introduction of diseased cobia and those not of Atlantic coast origin.

Mr. Travelstead said that staff recommended the initiation of the necessary procedures to amend Regulation 4 VAC 20-510, to allow for the aquaculture of cobia in Virginia, by establishing a Cobia Aquaculture permit that exempted the facilities and their fishermen

from established possession limits and minimum size limits and to prohibit the release of cultured cobia into Virginia waters. Staff requested a public hearing be held in January 2007.

**After some discussion, Associate Member Robins moved to approve the staff recommendation and hold a public hearing at the next meeting. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**12. FAILURE TO REPORT HARVEST**, as required by Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Management Specialist, Sr., gave the presentation and her comments are a part of the verbatim record. Ms. Iverson explained that the regulation had been amended to allow for stricter enforcement of compliance in reporting before the watermen were allowed to renew their Commercial Fisherman Identification Card. She explained that this harvest data was very important in the Commission's efforts to manage the various fisheries and to obtain and comply with federal quotas given to the State.

Ms. Iverson stated that staff recommended a two-year probation for each individual. During their probation, should they incur any violation of this or any other regulation passed by the VMRC, or any of the laws relating to the Marine Resources of the Commonwealth, they should appear before the Commission and a suspension of their licenses should be considered. The three individuals had long histories of failing to report harvest, in accordance with Regulation 4 VAC 20-610-10 Et seq. If any of these individuals had not appeared at the December 19, 2006 meeting of the Commission, staff had recommended suspension of all commercial licenses, until their appearance before the Commission. Ms. Iverson noted for the Board that all the individuals were present at the meeting.

Ms. Iverson briefed the Commission on the three individual cases:

Joseph Blanchard #1482

Mr. Blanchard had been consistently out of compliance, since 2001. Over the last three years, Mr. Blanchard had reported sporadically and only when prompted by multiple phone calls by VMRC staff and possible Commission action. Mr. Blanchard had not sent reports into the VMRC office for 2002 or for June through December 2004. When Mr. Blanchard came in to pick up his 2005 card, he was informed that he had not reported for the majority of 2004. Mr. Blanchard stated that he had some reports at home he needed to fill out and would be sending them in immediately. VMRC staff never received these reports, despite multiple follow-up calls. He reported 'Private grounds' for all of 2005,

and staff had documented harvest from Amory Seafood that he sold over 4,000 pounds of finfish, for October 2005.

In addition to Mr. Blanchard's previous failures to report, VMRC had not received his reports for April through October 2006. Mr. Blanchard had been called several times by staff, and he has been sent multiple delinquent letters. Despite these prompts, Mr. Blanchard had not sent any of the requested reports into our office.

Commissioner Bowman called Mr. Joseph Blanchard forward to answer questions and comment on his behalf. Mr. Blanchard was sworn in and his comments are a part of the verbatim record. He stated he could not excuse himself and he had met with staff to bring his records up to date and apologized to them. Mr. Bowman said he not only owed them an apology but other watermen as well, because he was hurting them and himself.

Shawn Boggess #4251

Mr. Boggess had been consistently out of compliance since 1998. Mr. Boggess only responded to repeated phone calls or the possibility of Commission action. Each year, the compliance staff contacted Mr. Boggess to remind him that staff had not received his harvest reports as required. Only after continuous staff prompting, does Mr. Boggess submit delinquent harvest reports. Mr. Boggess' reports were habitually late, and, in some instances, incomplete.

In August 2006, staff contacted Mr. Boggess to inform him that staff had not received any harvest reports for 2006. Mr. Boggess assured staff he would have all missing reports submitted to the VMRC office immediately. In September 2006 reports, for January through April, were received, but his reports for May through July had not been sent. In total, Mr. Boggess had not submitted harvest reports, for May through October 2006. After Mr. Boggess received his letter to appear at this Commission meeting, mailed November 20, 2006, he contacted the office to inform staff that he had mailed all delinquent reports and asked if he still had to appear before the Commission. Staff informed Mr. Boggess that he still had to appear. Staff had not received reports for June, September or October 2006, but he had caught up with these months and he was now up to date.

Commissioner Bowman called Mr. Shawn Boggess forward to answer questions and comment on his behalf. Mr. Boggess was sworn in and his comments are a part of the verbatim record. He explained that he worked with his father and they reported together. He said he had been late, but had now caught up.

Commissioner Bowman explained that the license was a privilege and not a right.

Ty Farrington #1695

Mr. Farrington had been consistently out of compliance since 1999. Every year, Mr. Farrington had to be prompted by staff to submit his harvest reports. In January 2006 Mr. Farrington came into our office to explain why he had been delinquent with his reports for 2005, and, at that time, promised to submit all delinquent reports. Staff had received a few reports for January through May 2005, but he continued to be delinquent with his remaining 2005 harvest reports.

During June 2006 staff contacted Mr. Farrington to inform him that he had not submitted delinquent 2005 harvest reports and that he was also out of compliance for 2006. In July 2006 Mr. Farrington called the office seeking information he could take to court in reference to a summons he received. The conversation prompted Mr. Farrington to send staff a delinquent March 2006 harvest report. He had been delinquent for June through November 2005, April through May 2006, and August through September 2006, but as of this meeting he was current.

Commissioner Bowman called Mr. Farrington forward to answer questions and comment on his behalf. Mr. Farrington was sworn in and his comments are a part of the verbatim record. He stated he had not spoken with anyone before this and that he had come to the office and brought everything due from him up-to-date. He said it was just poor organization on his part and he was now putting his information down daily so he will not have this problem again.

Commissioner Bowman read into the record the Code of Virginia, Section 28.2-232 and stressed to them that one more violation and their license would be revoked for two years.

The board discussed their concerns in regards to habitual bad or non-reporting and the affects of this on important fisheries management decisions and justifying quotas being granted by the Federal government to Virginia for the various fisheries.

Commissioner Bowman stated there would be separate motion made for each individual.

**Joseph Blanchard #1482**

**Associate Member Robins explained that he was glad that the regulation had been made stricter and since the individuals were now caught up in their delinquent reporting, he moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 6-2. Associate Members Tankard and McConaugha both voted no. The Chair voted yes.**

**Shawn Boggess #4251**

Associate Member Robins moved to accept the staff recommendation. Associate Member Holland seconded the motion. Commissioner Bowman explained that there should not be any problems to occur during the probation period. The motion carried, 5-3. Associate Members McConaugha, Schick, and Tankard all voted no. The Chair voted yes.

**Ty Farrington #1695**

Associate Member Robins moved to accept the staff recommendation. Associate Member Holland seconded the motion. Commissioner Bowman stated there were reasons here to give approval since it was the holidays and his records are now up to date, but this must continue to be the case or next time he should expect to lose his license. The motion carried, 6-2. Associate Members McConaugha and Tankard both voted no. The Chair voted yes.

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There was no further business and the meeting was adjourned at approximately 2:05 p.m. The next meeting will be Tuesday, January 23, 2007.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary