

MINUTES

September 28, 2004
Newport News, VA

Commission Meeting

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

William A. Pruitt)	Commissioner
Chad Ballard)	
Gordon M. Birkett)	
Ernest N. Bowden, Jr.)	
S. Lake Cowart, Jr.)	Associate Members
Russell Garrison)	
J. T. Holland)	
Cynthia Jones)	
F. Wayne McLeskey)	
Carl Josephson	Assistant Attorney General
Roger L. Chaffe	Senior Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst, Sr.
Jane McCroskey	Chief, Admin./Finance Div.
Jack Travelstead	Chief, Fisheries Management Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Chad Boyce	Fisheries Management Specialist, Sr.
Jim Wesson	Head, Conservation/Replenishment
Mike Meier	Head, Artificial Reef Program
Roy Insley	Head, Plans and Statistics
Lewis Gillingham	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Richard Hancock	Fisheries Management Tech.
Lewis Jones	Deputy Chief, Law Enforcement
MPO Ed Guy	Marine Police Officer
MPO James Todd	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.

Commission Meeting

**12891
September 28, 2004**

Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Rodney Scott	Compliance Program Tech
Paul Rogers	Surveyor, Engineering/Surveying

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

Other present included:

Ronald Matousheu	Chris Frye	Joe Deldonna
Ralph Deal	Jonathan Johnson	Barry W. Miller
Paul Szatkowski	Randy Francis	Stephanie McManns
Patsy Kurr	Carl J. Morgans	Mark Sanford
Rebecca Francose	Keith Lockwood	Sam Daniels
July Swynstun	Virginia B. Oden	Tim McCulloch
Dennis Dectrich	Willis Kirk	Bill Culpepper
Douglas F. Jenkins, Sr.	Harrison Bresee	Jan Marshall
Dan Dise	Russell Crockett	Jim McHugh
Cecil Jones, Jr.	Clarence Reid	Edward H. Bender
Kent Lislo	Susan Gaston	Kelly Place
Russell Gaskins		

And, others

* * * * *

Commissioner Pruitt called the meeting to order at approximately 9:33 a.m. All Associate Members were present.

* * * * *

Associate Member Garrison gave the invocation and Carl Josephson, Assistant Attorney General, led the pledge of allegiance to the flag.

* * * * *

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

* * * * *

Approval of Agenda: Commissioner Pruitt asked if there were any changes to the agenda. There were no changes. **Associate Member Ballard moved to approve the agenda. Associate Member Birkett seconded the motion. The motion carried, 8 - 0.**

* * * * *

1. **MINUTES:** Commissioner Pruitt asked for a motion regarding the minutes. **Associate Member Garrison moved to approve the minutes for the July 27, 2004 Commission meeting, as circulated. Associate Member Holland seconded the motion. The motion carried, 8 - 0.**

* * * * *

2. **PERMITS:** Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items, A through O, and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unprotected, and staff is recommending approval.

Commissioner Pruitt asked if there was anyone to address the Commission on any of these projects, either pro or con. There was no one present to comment.

Associate Member McLeskey moved to approve Page Two items, A through O, as presented by staff. Associate Member Ballard seconded the motion. The motion carried, 8 - 0.

2A. **KINGSMILL RESORT, #04-1519,** requests authorization to reconstruct and reconfigure their storm damaged marina facility located on the James River in James City County to include replacement of a 110-foot section of fixed dock that will connect a new floating dock system with the upland. The floating dock system will consist of a 13-foot wide by 66-foot long landing float; a 10-foot wide by 270-foot long central dock with a 13-foot wide by 132-foot T-head. The central dock will also have sixteen (16) 4-foot wide by 20-foot long finger piers. A proposed downstream floating dock will be 10-foot wide by 224-foot long with a 13-foot wide by 66-foot long L-head and have five (5) 4-foot wide by 25-foot long finger piers. The applicant also proposed to retrofit an existing upstream floating dock with three (3) 4-foot wide by 20-foot long finger piers. The number of slips will remain unchanged at 91.

Permit Fee.....\$100.00

- 2B. RICHMOND METROPOLITAN AUTHORITY, #02-1025,** requests authorization to modify their previously issued permit to extend a 4-cell highway crossing culvert an additional three feet on the downstream end, within Powwhite Creek, a tributary to the James River within the City of Richmond.

Fees not applicable permit modification.

- 2C. U. S. ARMY CORPS OF ENGINEERS, #03-1365,** requests a one-time modification to their previously issued permit to allow for the overboard disposal of dredged material during the current time-of-year restriction between February 15 and June 30, adjacent to the James River Federal Navigation Project between Milepost 69 and Milepost 27 (Goose Hill Channel) within the James River. This modification, in 2005, is part of a proposed fish study with the Virginia Institute of Marine Science.

Fees not applicable permit modification.

- 2D. MARINE RESOURCES COMMISSION, #04-1407.** The Fisheries Management Division requests authorization to construct a 200-foot long by 30-foot wide intertidal oyster reef sanctuary composed of approximately 2,000 cubic yards of clam and oyster shell. The reef will be centered at 38° 02' 26'' North Latitude and 76° 31' 49'' West Longitude within Public Ground #2, approximately 1,500 feet southwest of Lynch Point, in the Yeocomico River in Westmoreland County.

Fees not applicable, Government exemption.

- 2E. MARINE RESOURCES COMMISSION, #04-1331.** The Fisheries Management Division requests re-authorization to continue construction of the Gwynn's Island artificial fishing reef centered at 37 28' 51'' North Latitude and 76 14' 19'' West Longitude, near Milford Haven Spit, through the deployment of a variety of engineered materials and acceptable demolition materials while maintaining a minimum clearance of 14 feet at mean low water.

Fees not applicable, Government exemption.

Commission Meeting

2F. FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, #02-2187, requests authorization to modify a permit issued on June 24, 2003, that authorized the installation of a sanitary sewer trunk line beneath four sections of Pohick Creek. Recent erosion has changed the previously measured streambed elevations, resulting in a much shallower proposed installation of the sanitary sewer line. The modification would allow the installation of pre-cast concrete caps to be placed over the existing sewer trunk line and concrete encasements to be installed around the proposed sanitary sewer trunk line at two of the crossings. In addition, six-inch thick gabion mattresses will be installed along the streambed to cover the trunk lines instead of riprap as originally permitted. To prevent any adverse impacts to anadromous fish due to sedimentation, a time-of-year restriction of February 15 – June 30 will be required. All other conditions of the original permit apply.

No fees applicable permit modification.

2G. U.S. MARINE CORPS, #02-2196, requests authorization to dredge 340 cubic yards of State-owned submerged land and construct a 67-foot long by 32-foot wide concrete boat ramp, two (2) 40-foot long by 32-foot wide gabion basket ramp support structures and a 108-foot long by 8-foot wide tending pier adjacent to their property situated along Quantico Creek in Prince William County. Staff recommends a time-of-year restriction from February 15 through June 30 to protect spawning of anadromous fishes.

No applicable fees, Government exemption.

2H. WATERMEN'S MUSEUM, #02-0503, requests a modification to their previously authorized project to add a 132-foot long by 14-foot wide floating pier and associated access ramp adjacent to property situated along the York River in York County.

Permit Fee.....\$100.00

2I. U.S. COAST GUARD, #04-0736, requests authorization to install a 108-foot long by 32-foot wide floating pier for the storage of vessels adjacent to their property situated along Wormley Creek in York County.

No fees applicable, Government exemption.

2J. EARL INDUSTRIES, LLC, #04-1721, requests authorization to install 12 10-foot by 20-foot fenders adjacent to a commercial pier at their facility situated along the Elizabeth River in Portsmouth.

Permit Fee.....\$100.00

Commission Meeting

2K. DEPARTMENT OF THE NAVY, #04-1983, requests authorization to mechanically dredge up to 78,000 cubic yards of subaqueous material, on an as-needed basis, to provide maximum depths up to minus -24 feet at mean low water at Piers C, D, and E at the Southgate Annex adjacent to their property situated along the Southern Branch of the Elizabeth River in Portsmouth. Staff recommends the submittal of a post-dredge bathymetric survey be required.

No fees applicable, Government exemption.

2L. ANN PEARSON, #03-2394, requests authorization to install 1,338 linear feet of bulkhead, aligned a maximum of two (2) feet in front of the existing deteriorated bulkhead adjacent to Willoughby Bay Marina property situated along Hampton Roads in Norfolk.

Permit Fee.....\$100.00

2M. BAYMARK CONSTRUCTION CORPORATION, #03-1185, requests authorization to modify their existing permit by installing one additional 200-foot long offshore stone breakwater north of the five (5) previously permitted breakwaters adjacent to their property along the Chesapeake Bay, north of Allegood Pond in the Town of Cape Charles.

No fees applicable permit modification.

2N. COLONIAL PIPELINE COMPANY, #04-1899, requests authorization to conduct routine inspection and maintenance activities of existing petroleum pipelines at 48 jurisdictional stream crossings along a corridor that extends from Danville to the Potomac River in Fairfax County. Problems detected within any section of the pipeline may require excavation and replacement or in-stream repairs. Depending on the size of the stream and nature of the repair, temporary dams, cofferdams, and flume pipes may be installed to provide dry working conditions. Recommend our standard in-stream construction conditions apply, as well as time-of-year restrictions and mussel surveys/relocations as recommended by DGIF. Approval will also be contingent on the expiration of the public comment period on September 30, 2004.

Permit Fee.....\$100.00

2O. CSX TRANSPORTATION, #03-1647, has requested a modification to their previously issued permit to permit installation of a 200-foot and a 100-foot temporary non-erodible stone causeway on geotextile fabric with a sheetpile terminus for up to two years in order to reduce the amount of dredging necessary for construction access during bridge construction over Quantico Creek in Prince William County. All causeway material, and any resulting mudwaves, will be

removed and the area will be completely restored to pre-existing conditions upon completion of the project. The current time-of-year restriction of March 15 through June 30 remains in effect and the previously approved mitigation plan for SAV impacts remains unaltered.

No fees applicable permit modification.

* * * * *

3. CLOSED SESSION:

Associate Member Ballard 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:

Item 6. BAY MARINE, #01-1302. Restoration hearing to consider the unauthorized construction of a 280-foot by 5-foot commercial pier and the installation of a sewage discharge pipe and diffuser extending approximately 260 feet channelward of mean low water adjacent to their marina situated along Broad Creek in Middlesex County, and, NMFS regulations that pertain to the protection of the sea turtles and the status of the litigation.

The motion was seconded by Associate Member Birkett. The motion carried, 8 - 0.

Associate Member Ballard 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;

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

AYES: Ballard, Birkett, Bowden, Cowart, Garrison, Holland, Jones, McLeskey, and Pruitt

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried, 9 - 0.

**Recording Secretary
Virginia Marine Resources Commission**

4. Request by the U.S. Army Corps of Engineers for the establishment of a regulation pertaining to security zones around bridges and tunnels in the Commonwealth.

Lewis Jones, Deputy Chief, Law Enforcement Division, gave the presentation. He explained that his was a request by the Law Enforcement Division and not by the Corps of Engineers. He said he wanted the record to show a requested correction on page two in Subsection F, line 3 and to substitute the word by with or. He explained that he did not want to make it seem that the Governor had to also approve such action as well as the Commissioner or State Coordinator of Emergency Management. He further explained that this regulation was only a mirror of the Corps of Engineer restricted zones around certain structures. This regulation would allow VMRC to assist when necessary in homeland security. Also, if information came from federal level that certain targeted areas are at threat level the regulation would enable VMRC to react quickly in providing assistance. He said that Rick Henderson from the Corps was present to answer any question. His comments are a part of the verbatim record.

Associate Member Garrison asked if there was enough manpower to provide this assistance. Lt. Col. Jones responded, yes. He said that VMRC would be assisting others that would be present as well as VMRC manpower from other areas would be

concentrated in the targeted area. Associate Member McLeskey said that he was also concerned with VMRC having adequate manpower and maybe it would be necessary to request more personnel. Lt. Col. Jones responded that VMRC would only be assisting and others would in charge of the enforcement effort.

In response to Associate Member Jones questions regarding enhancement of search and seizure as pertains to the recreational fishermen, Carl Josephson, Assistant Attorney General responded that this would not change the procedure for search and seizure and that it would be the same as it is now. Associate Member Jones explained that she did not want some unsuspecting recreational fisherman who may not have heard the radio announcement to be stopped and have his boat confiscated causing much confusion.

After much discussion, **Associate Member Ballard moved to adopt the regulation with the word change in Subsection F as requested by staff.** At the request of Commissioner Pruitt, Lt. Col. Jones read this subsection into the record. He read as follows, "Restricted areas under this regulation may be activated by the State Coordinator of Emergency Management, Virginia Department of Emergency Management, or his designee, the Commissioner of the Virginia Marine Resources Commission, or his designee, and/or, the Governor of the Commonwealth of Virginia, when specific information indicating that the bridge and tunnel complexes within the Commonwealth of Virginia have been threatened/targeted or condition of heightened security of the port exists." **Carl Josephson, Assistant Attorney General suggested that the Commission also delete the word and in the subsection. Commissioner Pruitt announced that Associate Member Ballard wanted Mr. Josephson's change to be included in his motion. Associate Member McLeskey seconded the motion. The motion carried, 8 – 0.**

* * * * *

5. **SAM DANIELS, #04-1514.** Commission review on the appeal by Mr. Daniels of the July 19, 2004, decision by the Isle of Wight County Wetlands Board to deny an application to install up to 170 linear feet of riprap revetment landward of mean low water at his property situated along Brewers Creek, a tributary to Chuckatuck Creek in Isle of Wight County.

Ben Stagg, Environmental Engineer, Sr., gave the presentation. His comments are a part of the verbatim record. Mr. Stagg explained that Mr. Daniels was requesting a continuance so that he could retain legal counsel.

Mr. Sam Daniels, appellant, was present. Mr. Daniels affirmed that he was requesting a continuance. His comments are a part of the verbatim record.

Associate Member Ballard moved to approve the continuance request until the October meeting. Associate Member Cowart seconded the motion. The motion carried, 8-0.

- 6. **BAY MARINE, #01-1302.** Restoration hearing to consider the unauthorized construction of a 280-foot by 5-foot commercial pier and the installation of a sewage discharge pipe and diffuser extending approximately 260 feet channelward of mean low water adjacent to their marina situated along Broad Creek in Middlesex County.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation. Mr. Neikirk explained that Mr. Miller was requesting a continuance. He further explained that Mr. Miller's attorney, Mr. James Breeden, had written that he would not be able to attend the meeting. His comments are a part of the verbatim record.

Mr. Barry Miller was present and sworn in. Mr. Miller confirmed that he was requesting a continuance until the October meeting. His comments are a part of the verbatim record.

Associate Member Ballard moved to grant the continuance. He explained that he wanted the motion to include that because this was an ongoing violation the continuance was only extended until the October meeting. Associate Member Holland seconded the motion. Associate Member Garrison asked Mr. Miller if he thought he could correct the violation by the October meeting. Mr. Miller responded, yes, he was moving forward to have this done. **The motion carried, 8 – 0.**

- 7. **CONLEY PROPERTIES, LLC, #04-0732,** requests authorization to construct a 10-slip community pier, which will extend 66 feet into Carpenters Cove of Mulberry Creek and include a 157-foot long T-head, four (4) finger piers, two (2) uncovered boatlifts and ten (10) associated mooring piles in the Town of Morattico, Lancaster County. Adjacent property owners protested the project.

Jay Woodward, Environmental Engineer, Sr. gave the presentation. His comments are a part of the verbatim record. Mr. Woodward explained that he was continuing the trend of the previous items in that Mr. Conley had also requested a continuance. He also explained that he had called the protestants, Mr. Parks and his son, to inform them that this case would probably not be heard at today's meeting. He stated that Mr. Conley was not present either.

Associate Member Cowart explained that he would be abstaining today and at any further hearings on this matter because of personal business interests. Commissioner Pruitt instructed him to get with Mr. Josephson to complete the necessary declaration form.

Associate Member Ballard moved to approve the continuance request until the October meeting. Associate Member Jones seconded the motion. The motion carried, 7-0-1. Associate Member Cowart abstained.

* * * * *

8. **RAPPAHANNOCK SHORES ASSOCIATION, #03-7221**, requests authorization to reconstruct two open-pile timber community piers damaged by Hurricane Isabel, measuring 150-feet and 180-feet in length and designated as piers #2 and #3, lengthen pier #2 an additional 118 feet, reconstruct two 8.5-foot wide by 21-foot long T-head platforms and replace/set the associated mooring piles at piers #1 - #3 to accommodate 27 wet slips previously authorized by VMRC Permit #97-0232 at their property situated along the Rappahannock River in Essex County.

Commissioner Pruitt was absent during this item and Associate Member Birkett chaired the meeting in his absence.

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

Mr. Owen explained that the Rappahannock Shores subdivision is located between Wares Wharf and Bowlers Wharf along the southwest bank of the Rappahannock River, approximately nine miles downstream of the Route 360 bridge in Tappahannock in Essex County.

Mr. Owen also said that this project had an extensive history with the Commission. According to area residents, the three original piers were built sometime around 1958. On November 21, 1998, the Commission granted the Association authorization (VMRC Permit #97-0232) to reconstruct piers #1 and #3 that had been damaged by Hurricane Fran in 1996. The Commission also required pier #2 to be reconfigured so as to remove a more recently constructed illegal 90-foot long L-head. Additionally, the permit directed the removal of several unauthorized mooring piles scattered along the shoreline and four illegal non-riparian private piers (piers #4 thru #7) that had been built by individual Association members.

Mr. Owen stated that this decision resulted in litigation by the owners of the private piers (Searls v. VMRC). That case was later dismissed in the Circuit Court of Essex County on July 16, 2002 and remanded to the Commission. The dismissal largely followed the submittal of four quitclaim deeds, executed on July 12, 1999, that were brought forward

by the property owners responsible for the construction of piers #4 thru #7. In light of the quitclaim deeds, their counsel, Mr. Alexander Dillard, eventually agreed with Commission counsel to dismiss the case and seek an agency rehearing. The deeds purportedly conveyed all of the beach area in front of the non-riparian lots to the low water mark for the aforementioned properties.

Mr. Owen further explained that the deeds conveyed the balance of the beach to the Association since the fee simple title to the beach, which all parties thought had been held in common, had remained unknowingly with the estate of the developer. The Association was apparently unaware that they did not hold title to the beach common area when they first appeared before the Commission in 1998. The Commission had not reconsidered the matter since the dismissal of the litigation in 2002.

On December 8, 2003, staff received a new application from the Association (VMRC #03-7221) requesting authorization to reconstruct piers #2 and #3 that were heavily damaged or removed by Hurricane Isabel. Pier #1 survived the storm with only minor damage.

Mr. Owen explained that Hurricane Isabel had destroyed the four illegally constructed private piers (#4 thru #7). The Association had since removed the remaining unauthorized mooring piles per staff's direction at an August 20, 2004 on-site meeting. Lastly, two of the four riparian lot owners (Paul R. and Myrna D. Strickland and G. Leonard Smith, Jr.) had now rebuilt piers #4 and #5.

Mr. Owen explained that the Association was now seeking Commission authorization for the repairs and improvements necessary to accommodate 27 of the 30 wet slips previously authorized by VMRC Permit #97-0232. They had voluntarily deleted three slips on pier #3 to satisfy the downstream adjacent property owner, Mr. Dave Tribble. In support of their request, the Association had also prepared a draft riparian agreement between the Association and the four "new" riparian property owners who were involved in the litigation and quitclaim deed process.

Mr. Owen stated that the project does not encroach over any public or privately leased oyster ground. In addition, the Virginia Department of Health has stated that the project complies with their Sanitary Regulations for Marinas and Boat Moorings. He explained that the Virginia Institute of Marine Science had revised their comments and said that it had no objection to the project provided no additional community piers were constructed on-site in the future. Also, VIMS recommended that the Association adopt the necessary covenants to preclude individual Association members from the overnight occupancy of moored vessels, onsite refueling, boat repair and/or sewage offloading. No other State agencies have objected to the project.

Mr. Owen stated that based on staff's review of the quitclaim deeds and draft riparian agreement, and advice from Commission counsel, staff believed that the private piers

recently constructed by Messer's Strickland and Smith (#4 and #5) were statutorily authorized by Section 28.2-1203.A.5 of the Virginia Code. Messers Morrow and Searls, who previously shared pier #7, could also apply for individual private piers since they participated in the quitclaim deed process. The statutory exemption would not apply to Mr. and Mrs. Crawford (pier #6), however, because they did not pursue the conveyance of the beach area in front of their lots via a quitclaim deed.

Mr. Owen went on to state that since two boats could easily moor at each private pier, eight total could now potentially moor at the four new riparian lots. Staff would recommend that these slips be subtracted from the Association's previously authorized 30 wet slips.

Accordingly, in light of the minimal environmental impacts anticipated with this project, Mr. Owen said that staff recommended approval of the Association's request to repair piers #2 and #3, the 118-foot extension to pier #2, the two 8.5-foot wide by 21-foot long T-head platforms and installation of the mooring piles necessary to accommodate a maximum of 22 wet slips at piers #1 thru #3. Additionally, staff recommended that the permit be conditioned on our receipt of the executed riparian agreement and the preclusion of the overnight occupancy of vessels moored at the community piers.

Mr. Owen explained that should additional conveyances and the resulting private piers be constructed, staff would recommend that the number of Association permitted slips be reduced by two (2) with each succeeding pier. The Association says it presently has no plans to convey any other riparians.

Commissioner Pruitt had returned to the meeting and resumed the chair responsibilities

Commissioner Pruitt asked if anyone was present representing the Association. Mr. James Daniel Edmunds, representative for Rappahannock Shores Association, was present and sworn in. Mr. Edmunds explained some of the history with the Commission and the current status of the residents. He explained that Mr. Strickland's pier was not long enough to tie up to, but apparently just what Mr. Strickland wanted. He asked that they be allowed to maintain the 30 wetslips and requested permission for them to extend pier 2 the difference of the existing piers that were previously permitted but not constructed the entire permitted length. He explained the depth of water at pier 2 was the best for mooring boats. In response to Mr. Birkett's question, he said he had been a resident since 1995 and each resident had been deeded access to the water, but not to have somewhere to tie a boat up. He also explained that he was under the impression that the Association owned the entire beachfront until it came out to be untrue in 1998. His comments are a part of the verbatim record.

Bob Grabb, Chief, Habitat Management, said the Commission on the original applications for permits made the decision to reduce the number of wetslips requested from 48 to 30.

The staff arrived at the number 22 when considering the remaining water view lots and the 4 riparian piers resulting from the quickdeed claims made.

Mr. Horton Dean Parsons, Jr., Association member and resident, was present and sworn in. In response to Mr. Birkett's questions he said that he had been an actual property owner since 1990 and his parents since 1968. In their deed there is included the right to access the water and the original developer had planned that all property owners would have access; and he thought the Association owned the entire beachfront, until it was found not true because the developer had not followed through to make the transfer. He explained that in order to resolve the problem and keep peace in the community, they had negotiated with the 4 property owners that the Association would take possession of the entire beachfront except for the area where the 4 piers had been constructed. His comments are a part of the verbatim record.

Mr. David Wayne May, Association Member and resident, was present and sworn in. In response to Mr. Birkett's questions he said he has been a lifelong resident when his parents owned the property and now he was the property owner. He said that he too thought the Association owned the beach before it was discovered to be untrue. He explained that in his deed he was given the right to access water. His comments are a part of the verbatim record.

After further questions and discussion, Associate Member Birkett explained that he felt that cutting back the number of slips from 30, because there were 4 riparians already established, penalized the Association and he moved to support staff recommendations with the exception of approving 30 slips not the 22 as staff had recommended. Associate Member Holland seconded the motion. Associate Member Ballard said that he supported the motion even though he doesn't agree entirely with Mr. Birkett but for a different motive. Associate Member Cowart stated that he did support the motion and it needs to be noted that this project does not impact a shellfish growing area and was a large enough area to support this project. He also said that the Commission in the future would need to consider these issues when making a decision of this nature. The motion carried, 8 – 0.

Permit Fee.....\$100.00

- 9. **GEORGE HARRISON, #04-1410**, requests authorization to place up to 1,403 linear feet of riprap revetment at and landward of mean high water, at the applicant's property situated along the James River in Prince George County. Commission Wetlands Permit required.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Stagg stated that this involved a wetland permit, not a subaqueous permit.

Mr. Stagg explained that the proposed project is located adjacent to the Three-mile Reach portion of the James River, south of Windmill Point at the Flowerdew Hundred Farm, in Prince George County. The Benjamin Harrison Bridge is approximately 7.5 miles upstream of the property.

Mr. Stagg explained that Prince George County had not yet adopted the Model Wetlands Zoning Ordinance. Therefore, the Commission was charged with reviewing the wetlands impacts associated with this project. Commission staff held a public hearing at the Prince George County Human Resources Building on September 16, 2004. No one attended that hearing.

Mr. Stagg said that the shoreline along this reach had experienced considerable erosion in recent years resulting in the exposure of tires that had been placed along the shoreline many years ago. The contractor proposed to remove all of the tires before the riprap was installed. Two other areas of the farm property shoreline had been previously protected in a similar manner. Additionally, the area immediately downstream of this proposal was recently stabilized under VMRC permit #02-1378). This project would be a continuation of that project along the upstream portion of shoreline.

Mr. Stagg stated that VIMS, in their Shoreline Permit Situation Report, stated that the proposal would, from a marine environmental viewpoint, result in minimal individual and cumulative impacts. No other agencies had commented on the project.

Mr. Stagg explained that staff recommended approval of the project based on the project's conformance with the standards prescribed in §28.2-1308, the guidelines promulgated pursuant to §28.2-1301 and a finding that the proposal did not violate the purposes and intent of the wetlands zoning ordinance and that the anticipated public and private benefits of the proposal outweighed the anticipated detriments. If approved, however, staff would further recommend that the revetment include the incorporation of filter cloth and a buried toe at an elevation below mean low water.

Commissioner Pruitt was absent during this time. Associate Member Birkett chaired the meeting.

Associate Member Garrison suggested that the applicant consider Class 1 rip rap, which was better quality.

The applicant was not present and no one in opposition was present.

Associate Member Garrison moved to approve the project, but recommended that the applicant consider using a Class 1 riprap. Associate Member Cowart seconded the motion. The motion carried, 7-0. Commissioner Pruitt was still absent and Associate Member Birkett continued to chair the meeting.

Wetlands Permit Fee.....\$10.00

10. MARK SANFORD, #03-048S, requests authorization to lease 5.28 acres of Oyster Planting Ground in Mill Creek, a tributary of Cherrystone Creek in Northampton County. The project is protested by nearby property owners.

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

Commissioner Pruitt returned to the meeting at this time.

Associate Member Ballard stated that he would be abstaining from this matter due to business interests. Commissioner Pruitt instructed him to get with counsel and complete the necessary declaration form.

Mr. Badger explained that the proposed lease was located adjacent to, and southeast of the mouth of Mill Creek, about two (2) miles north of the Town of Cape Charles. The water depths vary from minus one tenth (-0.1) of a foot (mlw) near the shoreline to minus three (-3) feet (mlw) in the small channel that leads from Cherrystone Creek into Mill Creek. The bottom was a mix of sand and mud near the shoreline and mostly mud in the middle of Mill Creek. Cherrystone Creek has a large amount of clam aquaculture activity that borders the proposed lease.

Mr. Badger explained that Mr. Sanford applied for the oyster planting ground lease in August 2003. That the application was for ten (10) acres and included most of the area channelward of mean low water in Mill Creek. A survey was made in March 2004, encompassing 5.28 acres.

Mr. Badger said that the survey was bounded on the north and east by mean low water (Dr. Leonard Oden's property), on the south by mean low water, and on the west by mean low water (Reed farm) and Ballard Fish & Oyster Company's oyster ground lease (Plat file #16733). Mr. Oden's pier was not included in the proposed lease.

Mr. Badger said that staff had received letters of protest from Dr. Oden and his daughter Judith Swystun, (property owners on the northeast side of Mill Creek). They were concerned that the proposed lease would adversely impact the shallow channel leading into Mill Creek. The channel was approximately fifty feet (50') wide and was almost non-

existent as it crossed the sand bar into Cherrystone Creek. They also indicated that clamming activity on this lease would further limit use of their waterfront property and the public's right to fish in Mill Creek.

Mr. Badger explained that Mrs. Swystun had told them that she thought that Commission staff had denied an application by Marshall Cox for the same area six years earlier. Staff had researched its records but could find no application from Mr. Cox for a lease in this area. While Mr. Cox had apparently discussed with staff the possibility of leasing an area in Mill Creek, no application had ever been submitted.

Mr. Badger said that there was no submerged aquatic vegetation (SAV) present at the mouth of Mill Creek or in the Creek itself, although SAV was present in other parts of Cherrystone Creek.

Mr. Badger stated that the area around Mill Creek was currently undeveloped. There was however, the potential for development and increased boat traffic given its proximity to the Town of Cape Charles. At present, it was difficult for small boats to enter Mill Creek at low water. The channel averaged fifty feet (50') wide and the creek itself was only seventy feet to eighty feet (70' to 80') wide between the low water marks. With the addition of an oyster ground lease at the mouth, navigating the restricted channel would become even more of a challenge.

Based on the above, Mr. Badger said that staff recommended the Oyster Ground Application be approved with the original survey being reduced from 5.28 acres to 3.78 acres as decided on the oyster ground map. Furthermore, he said that staff would recommend that the mouth of Mill Creek, from Ballard Fish & Oyster Company (P.F. #16733) southeast to the above-modified application (approximately seven hundred (700) feet), be left vacant to eliminate any adverse impacts to the shallow channel leading into Mill Creek.

Mark Sanford, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Sanford said that he had not been able to resolve the protestant's concerns and would accept the reduced acreage as recommended by staff. He explained that it was very hard to find good areas to lease and he would accept whatever he could get.

Ms. Judith Swynstun, protestant and adjoining property owner, was sworn in and her comments are a part of the verbatim record. She explained that she was concerned with the increasing congestion in this small area and wanted to reserve her right to pier if and when she chose to do so. She stated she agreed with the staff's recommendations.

Associate Member Holland moved to approve the application for lease at the reduced acreage as recommended by staff. Associate Member Cowart seconded the motion. The motion carried, 7-0-1. Associate Member Ballard abstained because of business interests.

* * * * *

11. **DANDY DEVELOPMENT COMPANY, L.L.C., #97-0013**, requests authorization to dredge a 1,575-foot long by 35-foot wide access channel and a 400-foot long by 200-foot wide basin, and to construct a 172-foot long by 8-foot wide marginal wharf with 5-finger piers and associated mooring piles adjacent to their property situated along The Thorofare in York County.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. Ms. West explained that staff was recommending approval with two minor conditions and she would be giving a condensed version of her presentation in order to expedite the hearing.

Commissioner Pruitt asked if there was anyone in opposition present. Ms. West stated no.

Ms. West explained that the project was located within a cove off The Thorofare, a tributary to the York River, west of the Goodwin Islands in York County. The site had served as a boat repair facility for many years under the name of Goodwin Island Marine. The new owner, Mr. Tim McCullough, would like to expand the business to provide services to larger vessels. Currently, the shallow nature of the cove (from 1 to 3 feet at MLW) prevented larger vessels with deeper drafts from accessing the facility.

Ms. West further explained that the project consisted of a channel and basin for access and construction of a freestanding open-pile marginal wharf, which will provide 10 additional slips. The facility, as proposed, will have a total of 24 slips.

Ms. West also explained that Mr. McCullough and his agent, Dennis Dietrich, have modified the project several times over the past year in order to address concerns raised by staff, the Department of Health, the Virginia Institute of Marine Science, and an adjacent property owner.

Ms. West said that staff noted that the facility did not meet all of the desirable criteria established under the Commission's Marina Siting Criteria Regulation 4 VAC 20-360-10. The waterway to be dredged was currently less than 3 feet in depth, there were two private oyster leases in the vicinity of the project, and the access channel would far exceed the 50-foot benchmark indicated in the siting criteria.

Ms. West stated that Mr. Russell no longer resided at the address on file with the agency. He had previously lived in a home on the property adjacent to the leases. When Mr. Russell applied for his leases in July 1999, he indicated that he planned to cultivate shellfish using on-bottom trays. Staff has not observed any trays on the leases during any

of several site visits over the past year. Further, the Engineering Department indicated that rent on these leases had not yet been paid for this year.

Ms. West said that the VDH Bureau of Shellfish Sanitation stated that, should the project be approved, a seasonal closure from April through October would be established in the area. One of Mr. Russell’s leases and part of another would be within the seasonal closure area. The VDH Bureau of Wastewater Engineering (BWE), and the applicant had worked over the past year to bring the facility into compliance with the VDH regulations. As a result, BWE no longer had any objections to the proposal.

Ms. West explained that this was an established and currently operational, albeit somewhat constrained, boat repair facility. Although the project did not meet all the desirable aspects of the Commission’s marina siting criteria, it did meet many of the desirable aspects contained in those criteria.

While the expansion would result in a seasonal closure, Ms. West said that such closure would not preclude cultivation of shellfish in the area. Furthermore, it appeared that Mr. Russell’s leases were not currently active and had not been active, at a minimum, over the past year. Staff was not aware of any other shellfish harvesting activity in the vicinity of the project.

Given the history of the facility and the efforts by the applicant to minimize the impacts of the project wherever possible, Ms. West said that staff recommended approval of the project as proposed, with the requirement for submission of a post-dredge bathymetric survey and the assessment of a dredging royalty assessed in the amount of \$0.45 per cubic yard.

The applicant, Tim McCullough, was present but stated he did not have any comments to make and there were no questions from the Commission.

Associate Member Holland moved to approve the project as presented. Associate Member Garrison seconded the motion. The motion carried, 8-0.

Royalty Fees (dredging approx. 18,000 cu. yds. @ \$0.45/cu. yd.).....	\$8,100.00
Permit Fee.....	\$100.00
Total Fees.....	\$8,200.00

* * * * *

The Commissioner announced a 45-minute lunch break at approximately 12:20 p.m.

The meeting was reconvened at approximately 1:05 p.m.

* * * * *

12. PUBLIC COMMENTS:

John Willis Kirk/William Thomas Culpepper – reinstatement of his Summer Flounder Endorsement License.

William Culpepper was present and his comments are a part of the verbatim record. He explained that they had been back before the Commission a number of times regarding this matter and wanted to know where the situation stands.

Tom Powers was present and his comments are a part of the verbatim record. He explained that the Finfish Management Advisory Commission (FMAC) was supposed to have set up a subcommittee to discuss and prepare proposals for handling hardship exceptions.

Rob O'Reilly, Deputy Chief, Fisheries Management Division, was present and his comments are a part of the verbatim record. Mr. O'Reilly explained that the only exception established was for medical and no further action had been taken by the FMAC on this matter. He said that more input was needed from FMAC to work this out. He further explained that this was a broad issue and there were quite a few limited entry fisheries.

Willis Kirk was present and his comments are a part of the verbatim record. He stated that each year the quota goes up. Mr. O'Reilly stated that it had gone up slightly over the last few years and that the Black Sea Bass fishery was a similar situation.

Mr. Culpepper said that Mr. Kirk was being eliminated because he was six days late bringing his catch into shore. Commissioner Pruitt said that he thought the Committee was looking at this. Mr. Kirk explained that he had 11 years of history before and 1 year after. Commissioner Pruitt said it appears the matter was going in circles and it was the same today as six months ago.

Jack Travelstead, Chief, Fisheries Management, was present and his comments are a part of the verbatim record. He stated that the matter was deferred to FMAC by the Commission and when FMAC recommendations were brought back no action was taken. He said that nothing else had happened and it was assumed the issue was dead, except for the medical exemption. He further explained FMAC struggled with this matter. He said that criteria cannot be set up for every special case and a committee was needed to look at the requests on a case-by-case basis. He said that FMAC was concerned that there would be a flood of requests, mostly frivolous. He said it would take amending regulations, which required public hearing procedures be followed.

Associate Member Ballard said that staff needed to look at how many regulations would need to be amended to allow for exceptions. He said that the Committee needed some guidelines. He explained that they needed broad statements like Habitat to define hardships. He said he felt that a lot of groundwork was still needed.

After further discussion between staff and the associate members, it was decided that the FMAC should continue its review and for staff to bring back a proposal for discussion in November and hold a public hearing in December. Associate Member Garrison explained that it would be cutting it short and FMAC would have only 3 weeks to react. Commissioner Pruitt said it might not get done for 2005.

Mr. Culpepper asked when they should come back and Mr. Travelstead said they should come back for the public hearing. Associate Members Ballard and Holland both suggested that Mr. Culpepper and Mr. Kirk should attend the committee meeting.

The matter was deferred to FMAC, no further action was taken.

Jeff Gordon – update on the Virginia Beach shoreline stabilization project and concerns of residents. Mr. Gordon said he was here last time in July. He said the work was not going as promised by the City. He said they had indicated they could work both sides at the same time, but they are daily working on the northside, not the southside. He said he was requesting the Commission to write to the Mayor to encourage that they start on that side as well. Carl Josephson, Assistant Attorney General stated that they were not required legally to do this, and the Commission could only encourage them.

Associate Member Garrison moved to ask the Commissioner to notify the City of Virginia Beach that the Commission was not happy with the progress on the project. Associate Member Holland seconded the motion. The motion carried, 7-0-1. Associate Member McLeskey stated that as a resident of the area, he would not vote on the motion.

Cecil Jones, Jr. – requested a Commercial Black Drum Permit. His comments are a part of the verbatim record. Mr. Jones said that his only source of livelihood was fishing for black drum.

Commissioner Pruitt asked Mr. Jones if he had his commercial license. Mr. Jones responded, yes.

Jack Travelstead, Chief, Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead explained the regulation did allow for granting exceptions. He further explained that the Commission had only granted 1 in 1 out exceptions prior to March. He explained that Mr. Jones needed to submit his request in January to be considered before the March 1 deadline.

Commissioner Pruitt instructed Mr. Jones to get with Mr. Travelstead and Mr. O'Reilly. He further stated it was tough to get into these fisheries.

No further action was taken.

Edward Bender, Pound Net Fisherman – Status of litigation regarding the NMFS regulations pertaining to the protection of sea turtles. Mr. Bender explained that the court case was back to square one. He said that experiments by the federal government failed and they did not include anyone from Virginia. He said that Jack Musick from Virginia, the leading expert on sea turtles was not included. He said that since the court case was back to the beginning, it was time for the Attorney General's office to become involved in the case.

* * * * *

13. Striped Bass: Review of the Individual Transferable Quota program.

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

Mr. Travelstead said that a public hearing was held a year ago to shift the ITQ Program from tags to a weight quota. He explained the present tag system. He said the tag system encourages fishermen to pursue larger fish since they are paid by weight. He said that the fishermen upriver do not have access to the larger fish and they are given less tags each year. He explained that FMAC decided to consider changing the system from tags to weight so that they would have unlimited tags and could fish as long as they did not exceed the weight limit. He said it was important to manage the quota properly and it could not be done without the following measures being adopted.

1. Check-in Stations: All permitted striped bass buyers qualify. Self-marketers (harvesters and buyers) must report to a different buyer. All harvesters must take catch to one of these buyers but are not required to sell to them.
2. Buyer should record: weight of catch, number of fish, numbers of tags used, name of fisherman and CFRL#; buyer's permit number and date of weigh in of striped bass.
3. Buyers report information daily to VMRC by electronic format directly to VMRC database. (Another option: hire additional staff for data entry and auditing of reports).
4. Fisherman maintains information listed in 1), above, on log sheet, with verification by check-in station. Running total of pounds harvested and tags used maintained on log sheet at all times.

5. Current monthly mandatory harvest reporting continues but is supplemented by log sheet.
6. Fishery closes in July (approximately two weeks) for auditing purposes.
7. Tagging of fish still required; additional tags not issued until audit verifies use of first allotment of tags. Tags not used at end of year must be returned before following year's tags are issued.
8. Once used, labels must be cut from tags.
9. Transfer of tags will not occur on a daily basis. Up to two weeks will be needed for audits, and the transferor must contact VMRC by telephone to initiate transfer process. Minimum pounds that can be transferred = 200 pounds.
10. Implementation of this program will require: 1) development of reporting software, 2) automation of buyers or hiring of additional staff, 3) programming of VMRC data bases, 4) purchase of additional tags, 5) development and printing of new reporting forms.

Mr. Travelstead said the committee was made aware that there was cost to changing the system. He said that some fishermen want this change, but some do not because of the cost, which would result in their fees going up. He said there needed to be a clear indication that this is what the industry wants. He said if they do want this change, a subcommittee needed to be appointed. He said that staff questioned whether this was a universal desire to change from tags to weight and did not want to go into setting up committees to study fees and such, just to have it fail to be adopted. He said an informational public hearing was needed to determine what is actually wanted by them.

Associate Member Bowden said that this issue had been going on for 3 or 4 years. He said he agreed with Jack on getting more information from the fishermen, but one thing needed to be added and that was whether they wanted electronic filing.

Associate Member Garrison said consideration should be given to all because some cannot fish the larger fish. He explained that upriver fishermen could not work in the bay and ocean because of the size of their boat. He said this needed to be considered when deciding on a system.

Associate Member Ballard stated that the \$100,000 cost would not be raised by only increasing the Striped Bass fee. Mr. Travelstead said it might be possible when you consider raising fees on all the applicable gear types.

Associate Member Jones said she agreed with holding an informational hearing and with Mr. Bowden about the need to discuss electronic filing. It would allow the Commission

to keep better track of the fishery and could save the Commission a great deal of money in the future.

Commissioner Pruitt allowed some public input by the following individuals.

Tom Powers stated that there was no limit on permit fee cost for striped bass to support this change in systems. His comments are a part of the verbatim record.

Douglas Jenkins, Twin Rivers Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that the river fishermen were more affected as compared to the ocean fishermen. He said that when setting the fishing license fees, the facts that the majority of the fishermen are in the upper rivers as well as the Bay and they get 1/3 or less income from the fishery should be considered

Kelly Place, representing CVWA, was present and his comments are a part of the verbatim record. Mr. Place stated that continued failure to go to poundage, have caused the fishermen to adapt to the current management rules and more efficient ways to get the most poundage. He said that he had some ideas that he wanted to be considered.

Associate Member Birkett moved to approve a public hearing being held to obtain information on this issue. In answer to Associate Member Holland's question as to when the public hearing would be held, Mr. Travelstead responded October. Associate Member Birkett agreed with the hearing being held in October and he explained that when this issue started last year, staff had been given a year to solve the problem and time was running out. Mr. Travelstead explained that last December when weight versus tags was discussed, staff had developed the 9 measures that they thought were needed. He further explained that the General Assembly in 2004 approved giving the Commission the authority to raise the license fees. **Associate Member Holland seconded the motion.** Associate Member Bowden said that the board realized this could not be implemented in 2005, but in 2006. He said the Commissioners expected to have to hear a lot of public comment. He requested that the information to be provided by staff be provided to the members prior to the Thursday before the Commission hearing as he needed to talk with others. He said that in response to Doug Jenkins' comments, the cost to the fisherman should be based on per tag value. Commissioner Pruitt said the hearing should be informational and just that. Associate Member Garrison said that if the 500 fishermen want this weight system, then they should have to pay the entire cost. **The motion carried 8-0.**

Roy Insley, Head-Plan and Statistics, asked if all 500 watermen were to be notified. Commissioner Pruitt responded, yes and said the hearing was open to all the public not just the 500.

14. Pound net siting, public interest review: Recommendations of the Finfish Management Advisory Committee.

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

Mr. Travelstead explained that Commissioner Pruitt had suggested FMAC develop criteria for a public review of pound net sitings as a result of an earlier hearing where a pound net was to be located in front of a condominium. He also explained that the Commissioner wanted FMAC to come up with ways to avoid these types of conflicts. He said that the subcommittee set up by FMAC met in Tappahannock. He said it was thought that if the Commission did not take some sort of action, then the General Assembly would be asked to take action by its constituents that could adversely affect pound net fisherman in others areas. He explained that FMAC endorsed the recommendations of the subcommittee, which are as follows:

1. Establishment of a public review process for pound nets with new locations; all pound nets in their current location would be exempt (Grandfathered) from the review process for a period yet to be determined.
2. Pound net fishermen desiring to relocate their net shall, before a license for the proposed location is issued, advertise the location in a local newspaper and inform all property owners within 500 feet of the proposed location. The proposed location shall also be noted on the Commission's internet website.
3. Receipt of negative comment during the notice period would initiate a public hearing before the Commission at the next available meeting. In evaluating the application for the new location, the Commission should consider those same factors outlined in Section 28.2-1205 of the Code of Virginia concerning permits for the use of state-owned bottomlands.
4. Following the public hearing, the Commission could license the net at the proposed location, deny the license, or modify the location in the interest of reducing conflicts.

Mr. Travelstead said this was what had been accomplished so far. He wanted to know if the Commission thought they were on track. He said they were requesting the board's approval and whether they wanted to hear more in October and hold a public hearing in November.

Associate Member Garrison asked how long was it to be grandfathered as things will change and there could be problems down the road because of these changes. Associate Member Jones said she had the same concerns about the grandfather clause. Mr. Travelstead said the committee had discussed this as well. He said that some thought

they should be grandfathered forever and some for 5 to 10 years. He said that was an unresolved issue with FMAC.

Commissioner Pruitt stated that the Commission wanted staff to bring back a draft proposal in October for their review so that a public hearing could be held in November.

No further action was taken.

* * * * *

15. Black Sea Bass: Report of September 23rd industry meeting; review of regulation.

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

Mr. Travelstead said the annual meeting with the Black Sea Bass industry was held late last week after the evaluation was prepared and he had additional information for the members. He said three issues were discussed. He said notices were sent to individuals in the fishery and only 13 people showed. He said there was good discussion and almost unanimous agreement with such a small group.

The sea bass quota increased 50,000 pounds in Virginia for the bycatch fishery and direct fishery was up 35,000 pounds. He said there was no objection to increasing the quota. He said the committee wanted all suggestions to be taken to public hearing. He said that it was suggested splitting the increased quota equally among all vessels. He said there were a number of vessels in the fishery not making use of the quota.

He explained that there was a lot of discussion on the bycatch quota. He said that this year the bycatch quota was underutilized. He explained that the industry contributed this to trip limits being too low. He said they discussed making it 10 percent of the total vessel catch for other species and also suggested that the 2004 bycatch trip limit be increased so the maximum was changed from 500 pounds to 1,000 pounds. He said that ASMFC was talking of changing the quota and if Virginia does not utilize its entire current quota limit they will most likely redistribute it to other states.

He said that on quota transfers all industry members supported an allowance for the transfer of direct fishery quota, either permanently or for one year.

He said that additional correspondence had been received since the industry meeting and was included in their handouts.

He said that staff requested that the entire matter be advertised for public hearing and that the Commission adopt the emergency regulation and consider at the public hearing making it permanent for the remainder of the year.

No public comments were made.

Associate Member Ballard moved to adopt the emergency regulation and take to public hearing that and other matters discussed. Associate Member Holland seconded the motion. The motion carried, 8-0.

* * * * *

16. Public Hearing: Consideration of proposed amendments to Regulation 4VAC20-720, "Pertaining to Restrictions on Oyster Harvest" for the 2004/2005 public ground oyster harvest season.

Dr. James Wesson, Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record. He explained that the Commission needed to establish the seasons for 2004/2005 fishery. He stated that staff recommended the same as last year with two exceptions. He said that staff suggested closing the Deep Rock Dredge Area and the Pocomoke Sound Hand Scrape Area.

The hearing was opened to the public at this point in the meeting.

Russell Gaskins, president of the Northern Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Gaskins requested the Commission consider opening the Blackberry Hangs area in the upper Bay and the area below the Rt. 3 Bridge in the Rappahannock River that had not been opened in years. He said there were oysters to be caught in the lower area. Dr. Wesson said that staff would survey the Blackberry Hangs area.

Jan Marshall, president of the Tangier Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Marshall said that he had one suggestion for a change in the Tangier-Pocomoke Sound area. He explained that the catch limit needed to be changed to 8 bushels per man per day with a vessel limit of 16 bushels.

The public hearing was closed.

Associate Member Cowart explained that the lower Rappahannock River was closed so as to be an area for study. He said it was the only area actually set aside for this purpose. He further explained that there were a lot of federal monies invested in this area and he could not support opening this area. He said this area could tell us whether the native oyster will come back. He also said that he agreed with Jan Marshall's suggestion to change the catch limit in the Pocomoke-Tangier dredge area.

Associate Member Cowart moved to accept staff recommendations as well as Mr. Marshall's suggested change in catch limit for Pocomoke-Tangier dredge area. Associate Member Birkett seconded the motion. The motion carried, 8-0.

Commissioner Pruitt said that the staff would look at the Blackberry Hangs area and come back next month. Associate Member Cowart said it should be opened even if there are only a small amount of oysters.

* * * * *

Commissioner Pruitt explained that based on the discussion in the closed session to work on the turtle issue and in conversations individually, he felt that everyone agreed that there was a need to have a Congressional Liaison Committee to meet with congressmen and also with the State Liaison Office. He announced that Associate Member Birkett would chair this committee and that Associate Members Jones and Bowden would both be members of the committee. His comments are a part of the verbatim record.

* * * * *

Commissioner Pruitt, Jane McCroskey, Chief, Administration and Finance Division, and Wilford Kale, Senior Staff Advisor and Legislation Liaison, gave a financial presentation on the License fees increase approved by the 2004 General Assembly. Their comments are a part of the verbatim record.

Associate Member Birkett chaired the meeting during this presentation.

Commissioner Pruitt explained that the General Assembly had approved enabling legislation authorizing VMRC to raise license fees. He explained that Mr. Kale had presented this in the past. He explained that there was a committee meeting today with General Assembly members, Rules Committee, Senate Finance Committee, and et als. He explained that staff from the Senate Finance Committee had called and said that Senator Chichester wanted to know the status to date. At the Commissioner's request, Carl Josephson said that Section 28.2-201(4) of the Code of Virginia was the appropriate statute pertaining to VMRC's authority to increase fees. Commissioner Pruitt said it was his understanding from the debates that the legislators were expecting a lot more out of this enabling legislation.

Jane McCroskey explained that if the public review process was started today it was assumed that starting January 1, 2006 fees could be raised. She said commercial fees would be collected at the start of calendar year 2006. She explained that recreational fees, which are collected by agents of the Department of Game and Inland Fisheries, would be collected in 2006, but revenues would not be seen for 6 to 9 months because of the collection and handling process for getting the funds to VMRC. She said these funds would probably show up as revenue in the 3rd quarter of calendar year 2006.

Commissioner Pruitt further explained that when the House did some rewording they restricted recreational funds from being used for commercial purposes. He also said that Senator Chichester's legislation asked for 10 positions with funding but because the

legislation was amended by the house no funding was provided to pay for them. He said that it was hoped that Senator Chichester would go back this next year for the funding.

Wilford Kale explained that some legislators expressed much concern over the changes made by the conferees for which they blamed VMRC. He said Commissioner Pruitt had to explain that the agency supported the administration's proposal and the changes made by the conferees were what others wanted changed.

Commissioner Pruitt asked the Commission what they wanted staff to do in this matter.

Associate Member Garrison asked with state funds frozen and no raises, how could the current staff be given raises without having more money. Commissioner Pruitt explained that the across the board raises came from the Governor's budget proposal which was then approved by the General Assembly. He said that some pay changes could be made in-house, if funds are available, when Human Resources personnel audit a position and find the position underpaid. He said that this had been done over the years, but not in many instances. Associate Member Garrison stated that this needed to be pursued.

Associate Member Ballard asked if legislation limits encompass both licenses and permits? Mr. Kale responded that this encompasses both existing and future licenses. Associate Member Ballard asked how does the Commission implement the process? Commissioner Pruitt suggested that staff should bring back a list of existing fees and proposals to the Commission based on the legislation and then have a public hearing. Mr. Kale said the Roundtable Committee came up with suggested increases for every existing fee and Jack might want to include that also. Associate Member Ballard clarified that the information would be provided by staff in October so that it could be advertised for public hearing in November. Associate Member Holland suggested that they provide a fee history and Associate Member Garrison suggested that they provide the top dollar that can be gotten from this fee increase. Associate Member Cowart asked if these increased fees would go into the General Fund. Mrs. McCroskey explained that they would not go into the General Fund. She said the commercial fees will go into the Marine Fishing Improvement Fund and the recreational fees would go into the Virginia Saltwater Recreational Fishing Development Fund. She also stated that they would not go to the Marine Products Board. Associate Member Cowart asked if this involved environmental permit fees. Bob Grabb explained that permit fees were not involved in this process.

Associate Member Jones expressed her concern that the public will perceive that funds are being used to support staff and raises and they need to know how these funds will be used. Wilford Kale explained that cost of living raises do come from the commercial fee funds and are spent up quickly for the mandatory reporting personnel. He further explained that the recreational funds come back to the Commission and the Recreational Fishing Fund Advisory Board to administer expenditures. He said as an example they have been used to support Law Enforcement with capital for purchases, but not to fund

Commission Meeting

**12919
September 28, 2004**

personnel. Associate Member Jones stated that the Recreational and Commercial fishermen needed to know that this is a state assisted agency not a state funded agency.

No further action was taken.

* * * * *

Roy Insley, Head-Plans and Statistics, introduced a new employee in his department, Richard Hancock who came from VDOT and had experience in fisheries.

Commissioner Pruitt announced there would be two new Marine Police Officers next month.

* * * * *

The next meeting is October 26, 2004.

* * * * *

There was no further business, the meeting adjourned at approximately 3:15 p.m.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary