

MINUTES

Commission Meeting**February 24, 2009**

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)	Associate Members
William E. Laine)	
John R. McConaugha)	
Richard B. Robins, Jr.)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief Deputy, Fisheries Mgmt.
John M. R. Bull	Director-Public Relations
Katherine Leonard	VMRC Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt., Manager
Lewis Gillingham	Director, SWFT, Fisheries Mgmt.
Mike Johnson	Fisheries Mgmt. Specialist
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Laura Lee	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Gerald Pitt	Marine Police Officer
Brandon Sterling	Marine Police Officer

Commission Meeting

Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
Roger Mann
Jim Reece

Other present included:

Maxie Martin	Robert Ruggiero	Brian Baker	Alicia Farrow
Chander Copelin	Dennie Durette	Tony Roth	Don Allen
I. E. Lawson	Chris Flannagan	Brian Chromey	Chuck Roadley
Randy Rivercomb	Stan Thompson	B. G. Adams	Christie Blevins
Brian Broadentas	Lawrence Carmine	Kin Lanterman	John Bailey
Michael J. Hotchab	Rocky Freeman	Charelene D. Grangrilee	
Mark B.	Mark Shackelford	Ellis W. James	Suzanne Collins
Douglas F. Jenkins, Sr.		Jackie Haman	Frank Kearney
George Trice	Frances W. Porter	William Nelson	Stanley Williams, Jr.
Willie Shiflette, Jr.	Nelson Ortiz	Daryl Culpepper	W. C. Tice
W. E. Bradley	Scott MacDonald	Ken Smith	Joe Palmer
Glenn Salvador	Chris Moore	James R. Smith	Bob Allen
Logan Gregory	Paul Kellam	A. J. Erskine	Kevin Waterfield
David W. Ashburn	David Nobles	John Melvin	Kim Reece
James Moore	Randall Carr	Billy Lee Bonnville	Jeff Hammer
Tommy Mason	Danny Bowden	William Brown, Jr.	Greg Brown
Bob Hutchenson	Randy C.	Tommy Leggett	Roger Parks

and others.

Commissioner Bowman called the meeting to order at approximately 9:39 a.m. He noted that Associate Member Schick was absent and stated that there was a quorum, so the meeting could proceed.

* * * * *

At the request of Commissioner Bowman, Associate Member Fox gave the invocation and Bob Grabb, Chief, Habitat Management led the pledge of allegiance.

* * * * *

MINUTES: Commissioner Bowman asked for a motion for the approval of the December 16, 2008 minutes, if there were no changes or corrections. **Associate Member Robins moved to approve the minutes. Associate Member Holland seconded the motion. The motion carried, 8-0. The chair voted yes.**

Commissioner Bowman asked for a motion for the approval of the January 27, 2009 minutes, if there were no changes or corrections. **Associate Member Fox moved to approve the minutes. Associate Member Tankard seconded the motion. The motion carried, 7-0-1. Associate Member Laine was not present at the January Commission meeting.**

* * * * *

APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. Bob Grabb, Chief, Habitat Management explained that there were a number of Habitat Items that were either being withdrawn or there was a request for a continuance until the March meeting.

- 5. L. Carl Floyd, Et Al, #08-2214 – appeal withdrawal
- 7. Gwynn's Island Condominium Unit Owner's Association, #08-0739 – request to continue until the March Commission meeting.
- 11. Moon of Norfolk Conveyance – request to continue until the March Commission meeting.
- 12. Fort Norfolk LLC Conveyance – request to continue until the March Commission meeting.

Randy Rivercomb was sworn in and his comments are a part of the verbatim record. Mr. Rivercomb requested that Item 6, Riverview Landing LLC, be continued until the March Commission meeting. He said they had just retained John Daniel as their attorney and were not prepared to proceed with the issue at this meeting.

Commissioner Bowman asked staff to comment. Mr. Grabb explained that the Wetlands Appeal was heard in December and because of the lengthy Commission agenda for

Commission Meeting

January, staff did not have a problem with continuing the matter to the February meeting. He explained that at this point, normal Commission policy was to not continue a subaqueous item at the request of the protestants unless the applicant was in agreement. In the absence of that agreement, staff would recommend that the Commission proceed to hear this application.

Chuck Roadley, Williamsburg Environmental Group, representing Waterview Landing, LLC, spoke and requested that the Commission go ahead and hear his client’s application.

Commissioner Bowman asked for comments from the Board.

Associate Member Robins stated that the protestants had just retained counsel and were not prepared to continue with the matter at this hearing. He moved to continue it until the next meeting. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman asked for a motion to adopt or approve the amended agenda. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

* * * * *

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

* * * * *

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

Bob Grabb, Chief, Habitat Management Division, summarized the page two items, 2A through 2G, for the Commission.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He asked for a motion from the Board.

Associate Member Tankard moved to approve items 2A through 2G. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

2A. VIRGINIA ELECTRIC & POWER CO., #08-1862, requests authorization to construct a 110 foot-long, utility crossing of the Slate River to install an 18-inch diameter, steel encased, natural gas pipeline using the directional drill method in conjunction with a 13.6 mile gas pipeline to energize the new Bear Garden Generation Station across the James River from Bremono Bluffs Station in Buckingham County. The generated power will be transmitted along a new 520 foot-long 230kV, single circuit, electrical transmission line using existing utility poles. Staff recommends the assessment of a royalty in the amount of \$330.00 for the pipeline encroachment under Slate River at a rate of \$3.00 per linear foot and \$1,560.00 for the encroachment over 520 linear feet of the James River by the transmission line at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 110 lin. ft. @ \$3.00/lin. ft.....	\$ 330.00
Royalty Fees (encroachment 520 lin. ft. @ \$3.00/lin. ft.....	\$1,560.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,990.00

2B. FLUOR ENTERPRISES, INC., #08-2001, requests authorization to cross Aquia Creek and Chapawamsic Creek in Stafford County, Powells Creek and Neabsco Creek in Prince William County and Pohick Creek in Fairfax County, in association with the I95/395 HOV/BUS/HOT Lanes improvement project.

Permit Fee.....	\$100.00
-----------------	----------

2C. UPPER OCCOQUAN SEWAGE AUTHORITY, #07-1765, requests authorization to modify their previously authorized permit to include impacts to 341 square feet of Cub Run and Flatlick Branch as a result of removal and replacement of fords and construction access as part of the Cub Run Gravity Delivery System upgrade in Fairfax County.

No applicable fees – Permit modification.

2D. CITY OF HAMPTON, #05-1121, requests authorization to reactivate and extend their previously authorized permit to October 31, 2011, to dredge, on an as-needed basis, by either hydraulic or clamshell method, up to 4,000 cubic yards of new material and 10,000 cubic yards of maintenance material, per cycle, to maintain maximum depths of minus nine (-9) feet below mean low water from a 420-foot long channel ranging in width from 70 to 100 feet wide within the Salt Ponds channel in Hampton. All material will be placed above mean low water on the adjacent City of Hampton public beach.

No applicable fees – Permit extension.

Commission Meeting

2E. BUCHANAN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, #08-1848, requests authorization to install a submerged sewer line beneath 5,202 linear feet of Poplar Creek to provide municipal sewer service to area residents and the Southern Gap Industrial Development Area in Buchanan County. Recommend approval with our standard instream permit conditions and adherence to any time-of-year restrictions and/or survey requirements recommended by the Department of Game and Inland Fisheries.

Permit Fee.....	\$100.00
-----------------	----------

2F. PERKINS CREEK ASSOCIATION, LLC #06-2998, requests authorization to maintenance dredge 6,659 cubic yards of subaqueous material to provide maximum depths of minus three and one-half (-3.5) feet at mean low water within Perkins Creek and the entrance channel to Perkins Creek, a tributary of the Rappahannock River in Middlesex County. The sandy portion of the dredged material is proposed to be placed as beach nourishment on 56,695 square feet of subaqueous bottom along the north side of the Lord Mott Canary property that is now owned by the Williamson Family and is located at the end of Lord Mott Road. The balance of the material is proposed to be disposed of on the upland within "Geotube" bags. Staff recommends approval with our standard dredging conditions and a special condition stating that neither the applicant nor the adjacent property owners will acquire any property interest in the submerged land covered by the sandy dredged material. Staff also recommends the assessment of a royalty of \$2834.75 for the encroachment of the sandy dredged material on 56,695 square feet of State-owned submerged land at a rate of \$0.05 per square foot.

Royalty Fees (beach nourishment 56,695 sq. ft. on State-owned, submerged bottom @ \$0.05/sq. ft.....	\$2,834.75
Permit Fee.....	\$ 100.00
Total Fees.....	\$2,934.75

2G. U.S. COAST GUARD, CIVIL ENGINEERING UNIT CLEVELAND, #08-1088, requests authorization to dredge 5,900 cubic yards of State-owned subaqueous material to create and maintain maximum controlling depths of -11 feet at MLW within a small boat basin and minus seven (-7) feet at MLW channelward of an adjacent boat ramp, each with a one-foot over-dredge tolerance, at the USCG Integrated Support Command Portsmouth situated along Craney Island Creek in the City of Portsmouth.

Permit Fee.....	\$100.00
-----------------	----------

* * * * *

Commission Meeting

- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board). There were no consent items.

* * * * *

- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** A closed meeting was not held.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, reported that the City of Virginia Beach stormwater project heard in May of 2008 was heard by the Circuit Court. Judge Tyler was on the bench, ruled in favor of the Commonwealth’s request for a dismissal based on the fact that the 29 property owners had no standing, as they were not aggrieved, and that their primary concerns were highland issues.

* * * * *

- 5. **L. CARL FLOYD, ET AL, #08-2214.** Commission review, on appeal by the applicants, of the January 20, 2009, decision by the City of Virginia Beach Wetlands Board to deny their proposal to install 350 linear feet of composite bulkhead and access stairs on properties in the Sandbridge Beach subdivision situated along the Atlantic Ocean in Virginia Beach.

Appeal – withdrawn.

* * * * *

- 6. **WATERVIEW LANDING, LLC, #08-0534,** requests authorization to construct an 8-foot wide by 210-foot long community pier with a 6-foot wide by 40-foot long pierhead and a 41-foot long canoe and kayak launching platform adjacent to their property situated along Harry George Creek in Middlesex County. The project is protested by several nearby residents.

Continued – to be heard at the March meeting.

* * * * *

- 7. **GWYNN'S ISLAND CONDOMINIUM UNIT OWNER'S ASSOCIATION, #08-0739,** requests authorization to remove an existing portion of their pierhead with seven (7) associated wetslips and to extend the existing pier and mooring poles 70 feet channelward and construct a 97-foot long by 5-foot wide pier-head with pilings and finger piers to create 12 slips for a total of 15 slips at their community pier situated along Milford Haven off Callis Wharf Road in Mathews

County. The project is protested by the leaseholders of two nearby parcels of oyster planting ground.

Continued – to be heard at the March meeting.

* * * * *

- 8. ROBERT RUGGIERO, #08-2149**, requests authorization to install a 160-foot long concrete block bulkhead adjacent to his property along Pocomoke Sound at 8475 Keith's Lane in the Town of Saxis, Accomack County. A Coastal Primary Sand Dune/Beach permit is required.

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

Mr. Badger explained that the applicant's property was located in the Town of Saxis on the Chesapeake Bay side of northern Accomack County along Pocomoke Sound, about 1.75 miles south of the Virginia/Maryland State Line. The shoreline along most of the Town's western boundary had been eroding at a rate of approximately 3.8 feet per year as documented for the period from 1986 to 1998.

Mr. Badger further explained that the property was located along a beach that overlies a relic marsh substrate that was now partially exposed due to beach erosion. There was approximately 900 linear feet of concrete rubble riprap along the shoreline to the southwest that began on the adjacent property. The Corps/Town dredged material disposal site for the Starling Creek Channel was located on the northeast side. The applicant's home and sanitary drainfield was located less than 100 feet from the intertidal beach.

Mr. Badger said that Mr. Ruggiero proposed to install a 160-foot long bulkhead consisting of a series of 6-foot long by 2-foot wide by 2-foot high interlocking blocks with 12-foot returns. The bulkhead would be a total of three (3) blocks high with one of the three blocks buried two feet into the substrate. The applicant also proposed to backfill the area landward of the proposed bulkhead.

Mr. Badger stated that the County of Accomack had not yet adopted the model Coastal Primary Sand Dune and Beach ordinance. As a result, the Commission was responsible for administering the provisions of that ordinance within the locality.

Mr. Badger said that the Virginia Institute of Marine Science (VIMS) indicated that a shoreline protection structure appeared justified in this case, since the reach was experiencing a high rate of erosion and the applicant's home and drainfield were at risk. Bulkheads, however, were not advised for a high-energy environment, such as this. They also acknowledged that there was not enough shoreline length to justify an offshore

breakwater system. Such a structure was previously recommended by VIMS in the Shoreline Management Plan they prepared for the entire Town of Saxis shoreline in 1999. They further stated that if armoring was considered necessary, then a stone revetment was recommended in lieu of a bulkhead and that the structure should be located landward of the beach features, if possible. The marked change in the landform for this alignment included the edge of upland fill about 60 feet channelward from the house at the west end and an upland scarp 75 feet channelward from the house at the east end near the dredge material disposal site. This would allow the existing reed grass and other beach vegetation to grow naturally and should provide additional stabilization.

Mr. Badger noted that no State agency had expressed opposition to the project and no protest had been received.

Mr. Badger explained that a Shoreline Management Plan with Habitat Enhancement for the Town of Saxis was published by VIMS in 1999. The goal of that study was to identify the best course of action to manage shoreline erosion in Saxis and to provide a detailed Shoreline Management Plan which could be presented to potential State and Federal funding agencies. The Plan consisted of a series of headland breakwaters, beach nourishment, and vegetative plantings. It was developed utilizing the historic shoreline, wave climate and storm surge information, as well as a strong consideration for habitat resources. Unfortunately, to date no State or Federal funding had been secured to implement that plan.

Mr. Badger noted that Section 28.2-1401 (B) of the Code of Virginia stated that, "The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features." In addition, as stipulated in § 28.2-1408 of the Code of Virginia (Standards for use of coastal primary sand dunes) and amplified by the Coastal Primary Sand Dunes/Beaches Guidelines, Section IV, no permanent alteration of or construction upon any coastal primary sand dune shall take place which would (i) impair the natural functions of the dune, (ii) physically alter the contour of the dune, or (iii) destroy vegetation growing thereon unless the wetlands board or the Commission, whichever is applicable, determines that there will be no significant adverse ecological impact, or that the granting of a permit is clearly necessary and consistent with the public interest, considering all material factors.

Mr. Badger stated that it was clear that Mr. Ruggiero's property was experiencing a high rate of erosion and that his home and drainfield were at risk. Staff could not, however, support a bulkhead in this high-energy environment. The proposed bulkhead would affect how waves and sand moved along the shoreline and could cause increased erosion on the adjacent properties. Staff could support a properly designed stone revetment that would be located largely landward of the beach features. (A stone revetment would also

have little impact on the Town's Shoreline Management Plan if funding was ever secured.)

Mr. Badger said that after evaluating the merits of the project and in keeping with the Guidelines and §28.2-1401 (B) of the Code, staff recommended the proposed project be denied. Staff could recommend approval of a modified proposal that entailed a properly designed stone revetment located landward of the beach features as recommended by VIMS. Obviously, revised plan view and cross sectional drawings that depicted the revetment located landward of the beach features would be required

Associate Member Robins asked if someone from VIMS could comment on the vertical structure versus a rip rap structure. Lyle Varnell, VIMS representative, explained that eventually the vertical structure would just add to the erosion problem and there was a need to look to the future. He said if the Commission did not accept the staff recommendation then VIMS would recommend putting in rip rap.

Robert Ruggiero, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Ruggiero stated that the house was currently in the exact location and was only rebuilt by the final owner and placed on top of pilings. He said that since 2005 there had been a continued loss of shoreline and there was an urgent need to do something. He said the cost of the blocks was an inexpensive way to go and they were easy to install, but he was not an expert. He stated that he had wanted to keep it natural looking as the adjoining property was not natural. Commissioner Bowman stated that the front area was a dynamic area. Mr. Ruggiero explained that staff wanted to move it back further and maybe it could be some wall and some rip rap, but he had no idea of what the costs would be. He said the erosion of the highland was filling the bay.

Commissioner Bowman stated that he felt this was a dire situation. He asked if there was anyone in opposition who wished to speak. There were none.

Commissioner Bowman asked Mr. Varnell if there was any assistance that could be provided to the applicant. Mr. Varnell stated that VIMS had provided some assistance to Mr. McGaness, but he did not know what it was. He explained that Scott Hardaway had looked at it and there were some alternatives if the breakwater was too expensive. He said that if there were to be a structure with sand fill for beach nourishment, it would have to be maintained.

Commissioner Bowman stated that staff recommended denial, but this was a liability to the Commonwealth and caused significant concerns. He said that VIMS and VMRC staff were correct and only made recommendations to protect the shoreline. He asked for discussion or a motion from the Board.

Associate Member Robins said that protecting the property would not happen overnight, but the type of structure recommended by VIMS and staff would require a realignment.

Commission Meeting

He said no backfill would be needed to recover the beach. He said he would suggest approving the project to install a revetment and require the submission of drawings acceptable to the staff.

Associate Member Fox stated this was a serious problem and if action was taken promptly, it would not require coming back before the Commission.

Associate Member Robins made a motion to approve the project using rip rap revetment along the shoreline and that drawings be submitted for approval of staff. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

No applicable fees.

* * * * *

- 9. **VININGS MARINE GROUP, LLC, #07-1161**, requests authorization to construct a 16-foot wide by 240-foot long, commercial, floating “super yacht” pier, with a 6-foot wide by 50-foot long access ramp/gangway, and utility lines and stations, adjacent to their property situated along Little Creek in the City of Norfolk. The project is protested by several nearby property owners.

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

Mr. McGinnis explained that the subject project was located on an undeveloped site in the City of Norfolk situated along a portion of Little Creek known as Fisherman’s Cove. The site was actually situated on two separate parcels of land. The waterfront parcel was owned by Vinings Marine Group, LLC, while the upland parcel was owned by East Beach, LLC (Marathon Development Group, Inc.), who was acting as the agent on this matter. Vinings Marine Group, LLC also owned the two adjacent marinas that were on either side of the subject property. The site included a man-made slip, which was previously excavated from the upland to accommodate the Sea Belle, an old ferry vessel that was initially brought to the site to serve as a waterfront restaurant. The Sea Belle sat abandoned in this slip for many years and was removed by the applicant in exchange for portions of the upland property owned by the City of Norfolk.

Mr. McGinnis said that the project consisted of the construction of a 16-foot wide by 240-foot long floating pier that would serve as an expansion of Vinings Marine Group’s marina operations and was intended to accommodate transient “super yachts”. The upland property was proposed to be developed with a multi-story Condominium structure with a small section on the first level reserved for support facilities for the proposed super yacht pier. In order to accommodate the upland development, the applicant had received

permits to fill the former man-made slip from the Norfolk Wetlands Board, the Department of Environmental Quality, and the U.S. Army Corps of Engineers.

Mr. McGinnis stated that the project was protested by nine nearby property owners. Their objections ranged from a concern over the overabundance of condominiums in the area, to an increase in traffic and a general concern for the potential impacts to upland wildlife. Of the objections received, only two stated any concern for marine life or habitat, though they seemed to focus more on the impacts related to the filling of the former Sea Belle slip rather than the proposed pier. Three of the nine protests had not stated a reason for their objections to the project. The project's approval by the Norfolk Wetlands Board was appealed to the Commission by 32 Norfolk freeholders last year. That appeal was also based upon wetland impacts resulting from the filling of the slip. The Commission, at their meeting on January 22, 2008, voted unanimously to uphold the Board's decision to approve the project.

Mr. McGinnis said that the Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated December 6, 2007, stated that the proposed pier would result in minimal shading impacts. Their remaining comments were related to the impacts of filling the man-made slip, which fell outside of the Commission's jurisdiction.

Mr. McGinnis also said that the Virginia Department of Health, Marina Program, in a letter dated October 30, 2007, stated that the subject project was in compliance with their Sanitary Regulation for Marinas and Boat Moorings, and had therefore been approved. No other agencies had raised concerns or objections to the project.

Mr. McGinnis said that while staff was sympathetic to the concerns expressed by the protestants, staff did not believe that the proposed pier had any substantial bearing on those concerns. Much of the protestants' concerns appeared to relate to the upland condominium development, which was not the subject of this application. The proposed 240-foot long pier was of similar length to the adjacent piers and should not serve as an impediment to navigation within this portion of Little Creek. In staff's opinion the project appeared to have been properly designed and should compliment the applicant's adjacent marina operations.

Mr. McGinnis stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved, as proposed. Staff recommended the assessment of a royalty in the amount of \$21,192.00 for the bold outline encroachment of the pier and yacht slips over 21,192 square feet of State-owned submerged land at a rate of \$1.00 per square foot. Staff further recommended the inclusion of a permit condition, which prohibited the permanent mooring of any vessels at the pier since the stated purpose was for transient use by super yachts only. Any change in this use would require a new public interest

Commission Meeting

review and Commission authorization, including a reassessment of the recommended royalty assessment.

After some discussion, Commissioner Bowman asked if the applicant or their representative wished to speak.

Brian Baker, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Baker explained that they did not have a proposed time schedule to complete the project and because of the economic downturn they would be working for years to complete the project.

After further discussion, Commissioner Bowman asked for a motion.

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

Royalty Fees (Public Marina Pier 21,192 sq. ft. @\$1.00/sq. ft.....	\$21,192.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$21,292.00

10. VIRGINIA ELECTRIC & POWER COMPANY, #08-1688, requests authorization to replace existing aerial 230kV and 500kV electric transmission lines by installing an aerial double-circuit 500/230kV electric transmission line from Meadow Brook to Loudoun that will cross ten (10) jurisdictional stream segments in Fauquier and Prince William Counties. The project is protested by three adjoining property owners in Prince William County.

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

Mr. Bacon explained that Virginia Electric & Power Company proposed to construct a 22-mile 500/230kV aerial double circuit line entirely within its existing right-of-way and parallel to an existing Morrisville-Loudoun 500kV line. The beginning of the transmission line was in a residential setting while the majority of the transmission line was in rural or agricultural areas. New structures would match the existing 500kV structure locations with the exception of several that would be placed in new locations to avoid stream impacts. The stated purpose of the project was to better serve the growing electrical demand in the region.

Mr. Bacon further explained that the proposed transmission line project would cross a total of 28 different streams. Of the 28 streams, six had drainage areas of five (5) square

miles or greater, the agency threshold for asserting jurisdiction. The jurisdictional streams included Town Run, Cedar Run, Kettle Run, Broad Run, Little Bull Run and Bull Run. There were a total of ten jurisdictional crossings (Town Run and Little Bull Run will be crossed in three different locations).

Mr. Bacon stated that the existing 240-foot right-of-way was currently occupied on its western side by the 500kV line. There was also an 115kV electrical distribution line on the outermost eastern edge of this right-of-way. The new 500/230kV transmission line and towers would be constructed between the two existing transmission and distribution lines. Once the new towers were constructed, and the new and existing lines had been transferred to the new structures, the old towers would be removed. There was also a gas transmission line within the right-of-way. Most of the easement had been previously cleared to accommodate the 500kV, 230kV, 115kV and gas line. Where woody vegetation existed within the right-of-way, additional clearing would be required. As proposed, there would be no vehicle crossings of any streams.

Mr. Bacon said that three individual letters of protest had been received from Mr. Gary Hubbard, Mr. Jay Knox and the Kingsbrooke Home Owners Association (HOA), Inc. Each own property along Kettle Run, Little Bull Run and Broad Run respectively. All of the Protestants were from Prince William County and they were objecting to the project because of property devaluation, visual and health reasons. Two letters of support had been submitted for this project by Mr. Eugene F. Suarez Jr. and John B. Bradshaw, both from Prince William County.

Mr. Bacon noted that the Department of Game and Inland Fisheries (DGIF) had expressed no objection to the project as long as the crossings are accomplished by aerial means and no stream impacts occurred, as proposed. While DCR was concerned about impacts to upland species in the easement, those areas and impacts were outside the Commission's jurisdiction. The Department of Environmental Quality had indicated that they planned to waive the requirement for an individual Virginia Water Protection Permit provided the project qualified for the Corps' Nationwide permit #12 and met all § 401 certification conditions.

Mr. Bacon said that while staff was sympathetic to the landowners whose upland properties might be affected by the project, it appeared that these upland concerns were outside the Commission's jurisdiction. In addition, staff believed those issues had been considered by the State Corporation Commission (SCC) in its decision to approve the Certificate of Public Convenience and Necessity for the Meadow Brook-Loudon Project.

Mr. Bacon stated that since there should be no direct impact to State-owned subaqueous land and after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval with the following conditions:

- 1) Any streambeds or banks impacted by the project shall be restored to pre-existing contours and conditions upon completion of construction.
- 2) The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) and the approved Sediment and Erosion Control Plan for the Meadow Brook-Loudon Project shall be followed throughout construction.
- 3) Any proposed deviation in crossing method or location must be formally authorized by the Commission.

Mr. Bacon added that staff also recommended the assessment of a royalty in the amount of \$3,690.00 for the encroachment over a total of 1,230 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Associate Member Fox stated that the upland issues were not the concern of the Commission, the right-of-way had been approved by the State Corporation Commission, and the only concern was that the old crossing was to be removed and replaced. Mr. Bacon reiterated that there were no impacts to the creek.

Commissioner Bowman asked if a representative of Virginia Electric and Power Company wished to speak to the Board.

John Bailey, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bailey stated that they had been before the Commission with a similar project the previous fall and were requesting that this project be approved.

Associate Member Fox asked if he knew the protestant. Mr. Bailey stated he had seen them. Associate Member Fox asked if they protested at the hearing of the State Corporation Commission. Mr. Bailey stated that they did know about the hearing, but not about the public comment period.

Commissioner Bowman asked for discussion or a motion.

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

Royalty Fees (encroachment 1,230 lin. ft. @ \$3.00/lin. ft.....	\$3,690.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,790.00

* * * * *

Commission Meeting

- 11. **MOON OF NORFOLK CONVEYANCE.** Commission consideration of the appropriate terms, conditions and just compensation for the conveyance of 108,466 square feet (2.49 acres) of previously filled State-owned subaqueous lands in Norfolk as authorized by Chapter 884, Acts of Assembly 2006, as limited by Chapter 879, Acts of Assembly 2007.

Continued – to be heard at the March Commission meeting.

* * * * *

- 12. **FORT NORFOLK LLC CONVEYANCE.** Commission consideration of the appropriate terms, conditions and just compensation for the conveyance of 4,489 square feet (0.103 acres) of previously filled State-owned subaqueous lands in Norfolk as authorized by Chapter 673, Acts of Assembly 2008.

Continued – to be heard at the March Commission meeting.

* * * * *

- 13. **LAWSON PROPERTY CONVEYANCE.** Commission consideration of the appropriate terms, conditions and just compensation for the conveyance of 22,400 square feet (0.51 acres) of previously filled State-owned subaqueous lands in Hampton authorized by Chapter 875, Acts of Assembly 2007.

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

Mr. Grabb explained that during the 2007 legislative session, the General Assembly authorized, and the Governor approved, the conveyance of certain previously filled subaqueous lands along the Hampton River in Hampton, to Iola L. Lawson, her successors and assigns. The Act called for the subject conveyance to be "... upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed ...". The purpose of this hearing was to set and approve the terms, conditions and compensation amounts due for that conveyance.

Mr. Grabb said that in the absence of specific directions from the General Assembly, the Commission in the past had normally recommended approval of these legislative conveyances for a fee tied to the square footage of State-owned public trust land being conveyed. That fee was usually based on the prevailing royalty the Commission was assessing for newly filled land.

Mr. Grabb explained that during the 2007 General Assembly session, however, Governor Kaine recommended, and the legislature approved, specific guidance on how the Commission was to determine the amount of compensation due for the property interest

being conveyed. That formula was given as an amount equivalent to 25% of the assessed value of the parcel, exclusive of any buildings or other improvements. Furthermore, the assessed value was established as the average of the local real estate tax assessments for the most recent 10 years available for the specified parcel. In the event that no such assessments were available, then the assessed value was calculated as the percentage, by square footage or acreage, that the specified parcel represented of the larger parcel for which an assessment was available.

Mr. Grabb said that the Governor and legislature also provided the Commission with the ability to accept something less than 25% when unique circumstances exist. Any such determination to accept something less, however, must be justified in writing.

Mr. Grabb stated that the Commission last used these new procedures when they approved the terms, conditions and compensation that December Partners LLC was assessed for the conveyance of 0.749 acres (32,631 square feet) of previously filled State-owned subaqueous lands in Norfolk. This approval occurred at the December 2007 meeting. Coincidentally, that legislative conveyance was also approved by the 2007 General Assembly (Ch 884 Acts 2007).

Mr. Grabb said that the property described in the Acts of Assembly (Ch 875 Acts 2007) and being conveyed to Iola L. Lawson, her successors and assigned, i.e. the Lawson Property, was apparently filled sometime after November 4, 1970 based on plats recorded in the Hampton City Clerks Office. The apparent upland portion of the property, i.e. Parcel 1, constituted 12,258 square feet (0.28 +/- acres). The filled area being conveyed equaled 22,400 square feet (0.51 +/- acres). In other words, the filled area comprised 64.63% of the entire parcel.

Mr. Grabb explained that according to the information provided, the average of the local real estate tax assessments paid for the entire parcel over the last ten years equals \$316,190.91. Since the filled subaqueous lands constituted 64.63% of the total acreage or square footage, the average assessment attributable to the previously filled land was \$204,354.19. In order to determine the appropriate level of compensation, the 25% formula is applied to this figure.

Mr. Grabb stated that based on the provisions of Section 28.2-1200.1.C of the Code of Virginia, the recommended compensation for the property interest that the Commonwealth was conveying in the 22,400 square feet of previously filled lands equaled \$51,088.55, which was the recommendation of staff.

Mr. Grabb explained their counsel, however, would attempt to set forth what he believed were unique circumstances that either warrant a credit for his clients or would lead the Commission to agree to a compensation rate less than the 25% as set forth in the Code. Based on the information submitted, staff was asking that the Commission approve the subject conveyance for an amount equal to \$12,856.56. The Commission should recall

that the Secretary of Natural Resources, while acknowledging that the decision was ultimately the Commission's, had previously provided the Commission with some thoughts on what he believed might constitute unique circumstances.

Associate Member Robins asked about the status of the Secretary of Natural Resources' letter. Commissioner Bowman asked Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, to comment. Mr. Josephson stated that the Commission did not take action on how this letter was to be used and it was not official guidance. But, it was not precluded from being considered by the Commission.

Associate Member Fox asked if the drawing showed that the land was filled after 1970. Mr. Grabb stated that he was right and the plat, item 6 in the Commission packet, depicted when it was filled and the red mark indicated the mean low water line. Commissioner Bowman asked if dredged materials were used. Mr. Grabb stated he did not have any idea, but the General Assembly had approved it. Associate Member Fox then asked if it was an illegal filling. Mr. Grabb responded no, and it was not relevant to this matter. Mr. Josephson responded that it was immaterial for the 25% rate set by the General Assembly, but it would be material when considering unique circumstances.

After some further discussion, Commissioner Bowman asked if Mr. Cummings, attorney for the Lawsons, wished to address the Commission.

Larry Cummings, attorney for the Lawson family, was present and his comments are a part of the verbatim record. Mr. Cummings provided a handout which was a summary of the data in the documents. He explained that while the mean low water line was depicted in red on the plat that was recorded in the 70's, it was filled prior to that. He stated that Mr. Lawson, Jr. purchased the property in 1965, so the family had owned it since then. He said if the Commission were to decide on strictly staying with the 25% which was \$51,088.55, then they were requesting that consideration be given for the real estate taxes that been paid in the amount of \$38,000.00, leaving a balance of \$12,000.00. He said that in the Secretary's letter it was suggested that the 25% not be reduced any more than half, 12.5%, which would make the amount \$25,544.28.

Associate Member Fox asked about the location of the structures. Mr. Cummings stated that most were on the original land. Associate Member Fox asked if the family owned the property for a long time. Mr. Cummings responded yes. Associate Member Tankard then asked if taxes had been paid on the property since the 60's. Mr. Cummings responded yes. His clients had felt that they owned it until just recently. He said there had been recent research done because of a possible sale and this was all brought to their attention, at that time.

Commissioner Bowman explained that this was not about the filling, but about the state-owned bottom land. He said the City can benefit from the taxes assessed by them. He said the Secretary was prudent to suggest considering no less than half of the 25%. He

said the Commission must consider the public trust and that these monies go to the State, not to VMRC.

Mr. Josephson reminded the Commission of the case before which established a precedence and policy, and there was a need to be consistent or any difference would need to be clearly justified.

Associate Member Fox explained that the General Assembly, in considering their action, had already given a severe discount at 25% and over time the value had increased and this was well below the current value. He said the Lawsons had use of the land for a number of years and never were charged any rent, only property taxes. He said the law gives the applicant significant advantage already and he did not feel that giving more could be justified.

Associate Member Fox then moved to accept the staff recommendation to assess the compensation at \$51,088.55. Associate Member Laine seconded the motion. Associate Member Robins expressed his concern that a policy or precedence was being established. He asked staff what had been considered for the December Conveyance. Mr. Grabb stated that the Commission used the 25% Rule. The motion carried, 8-0.

Royalty Fees (Land Conveyance)	\$51,088.55
--------------------------------	-------------

* * * * *

- 14. S & S MARINE PROPERTY CONVEYANCE.** Commission consideration of the appropriate terms, conditions and just compensation for the conveyance of 12,100 square feet (0.28 acres) of previously filled State-owned subaqueous lands in Hampton as authorized by Chapter 875, Acts of Assembly 2007.

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

Mr. Grabb explained that this was the same type of case as discussed before and Parcel I contained 1200 square feet (0.03 acres +/-) of previously filled land, while a separate parcel, Parcel II, contained 10,900 square feet (0.25 acres +/-). The two described parcels connect with, or adjoin to, the 0.51 acres +/- that the legislature approved for conveyance to Iola L. Lawson. The upland portion of the S&S Marine Supply Property, i.e. Parcel C, constituted 49,424square feet (1.13 acres +/-). The filled area being conveyed totaled 12,100 square feet (0.28 acres +/-). In this instance, the filled area only comprised 19.67% of the entire parcel.

Commission Meeting

Mr. Grabb said that according to the information provided, the average of the local real estate tax assessments paid for the entire parcel over the last ten years equaled \$546,020.00. Since the filled subaqueous lands constituted 19.67% of the total acreage or square footage, the average assessment attributable to the previously filled land in this instance was \$107,402.13. In order to determine the appropriate level of compensation, the Commission must then apply the 25% formula to this figure. Therefore, based on the provisions of Section 28.2-1200.1.C of the Code of Virginia, the recommended compensation for the property interest that the Commonwealth was conveying in the 12,100 square feet of previously filled lands equaled \$26,850.53, which was staff's recommendation.

Mr. Grabb stated that Counsel for S&S Marine Supply Inc., however, would be asking that the Commission approve the conveyance for \$0. This was based largely on his argument that the taxes his clients had paid over the last ten years, attributable solely to the subaqueous lands involved, exceeded that which was calculated using the legislative formula.

Mr. Grabb said that in his letter, dated January 8, 2009, Counsel for S&S Marine Supply Inc also maintained that the property was filled on various occasions beginning as early as the 1930s. The plat referenced in the Acts of Assembly, however, described a mean low water mark as depicted on a plat that was recorded in the Hampton City Clerks Office in November 1970. Therefore, while the filling of Parcel C itself may have begun as early as 1930, the two parcels described in the Acts of Assembly were apparently filled sometime after 1970.

Mr. Grabb explained that finally, Counsel for S&S Marine Supply would attempt to set forth what he believed were unique circumstances that either warranted a credit for his clients or would lead the Commission to agree to a compensation rate less than the 25% set forth in Code. The Commission was reminded that the Secretary of Natural Resources, while acknowledging that the decision was ultimately the Commission's, had previously provided the Board with his thoughts on what he believed might constitute unique circumstances.

Commissioner Bowman asked the attorney for this case to address his comments to the Board.

Larry Cummings, Attorney for S & S Marine, was present and his comments are a part of the verbatim record. Mr. Cummings provided a handout. He stated that this was a similar situation to the Lawson conveyance as it was the same property generally, and he was requesting the same thing that they be given a tax credit. He said he understood that the Commission could convey the property for nothing. But using the Secretary's recommendation that no less than half of the total 25% should be assessed, the compensation amount would be \$13,425.27. He explained that historically this property had been owned since 1977, 31 plus years, and it was referred to on the same plat. He

Commission Meeting

said there was a history of revenue and value of land that was submerged, if not filled. He said they were asking that their request be considered, as it was not filled by them and only purchased in 1977.

Commissioner Bowman asked for questions. There were none.

Associate Member Fox said he felt his previous comments for Item 13 applied in this case as well. He moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (Land Conveyance)	\$26,850.53
--------------------------------	-------------

- 15. **DISCUSSION:** Update of the Commission’s General Permit for Emergency Situations and Water Quality Improvement Projects (4VAC 20-395-10) involving activities in non-tidal waterways and request for public hearing.

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

Mr. Watkinson explained this was a proposal to amend and to adopt the editorial changes to VMRC Regulation 4VAC 20-395-10 involving non-tidal waterways. Staff was requesting authorization to advertise a public hearing in April.

Commissioner Bowman stated this was something that had to be done.

Associate Member Robins moved to advertise for an April public hearing. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman asked staff for fisheries items that could be heard now. Staff suggested that Items 18, 21, 22, and 24 be brought forward on the agenda. Commissioner Bowman asked for a motion to amend the agenda. **Associate Member Holland moved to amend the agenda, as recommended by staff. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.**

- 18. **DISCUSSION:** To establish conformity for various regulatory requirements for the 2009 calendar year.

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

Mr. Travelstead stated that the Commission needed to adopt two emergency regulations. He explained that the 4VAC20-530-10, establishes the American Shad Bycatch Fishery. He said this should have been done at last month's meeting. He said staff recommended the removal of the year 2008 and to replace it with 2009.

Mr. Travelstead stated that the Commission in 4VAC20-270-10 Crab Regulation there was a need to leave the 2008 year out. Commissioner Bowman asked what happen if the date were to fall on a Sunday. Mr. Travelstead stated that it could be taken care of at that time. He said the end of season closure of October 27 was for 2008 only and needed to be removed. He said that after the crab survey was completed an additional change may be needed.

Commissioner Bowman asked for a motion. **Associate Member Robins moved to accept the staff recommendations. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

* * * * *

21. FINAL DECISION ON AMENDMENTS TO REGULATION 4 VAC 20-490-10 ET SEQ., "Pertaining to Sharks", to comply with the Interstate Fishery Management Plan for Atlantic coastal sharks (a public hearing was held in January).

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

Mr. Travelstead stated that a final decision was needed on the shark regulation. He explained that the 'at sea' processing requirements were eliminated by ASMFC in early February. He said there was a need to eliminate the recreational bag limit also.

Mr. Travelstead stated that the Commission needed to amend this regulation to eliminate the two measures pertaining to dogfish.

Associate Member Robins referred to the draft regulation, page 10 of 13, item B, which he felt needed to be clarified. He read the sentence and included his correction, which read, as follows: "...the tail and fins must remain naturally attached to the carcass, except for the dogfish, through landing." Commissioner Bowman stated that that way it can be processed anyway someone wanted. Associate Member Robins moved to approve the proposed regulation, as amended. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

* * * * *

22. **BLACK SEA BASS:** Establish a 12 ½-inch minimum size limit for the Virginia recreational fishery, to comply with ASMFC requirements; Request for a March 2009 public hearing.

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record. Mrs. Nelson explained that this was a request for a public hearing to increase the minimum size limit from 12 inches to 12 ½ inches.

Commissioner Bowman asked for discussion or a motion. **Associate Member Robins moved to advertise for a public hearing. Associate Member Tankard seconded the motion. Associate Member Bowden stated that the ASMFC stock assessment was not well done and a lot of States were leaving theirs at 12 inches. Mr. Travelstead said that when the Federal specifications do come out in June, Virginia would have to adopt the 12 ½ inch, but if they should change it back then staff could come back to make that change. Associate Member Robins explained that at the workshop there were comments that the Black Sea Bass was experiencing overfishing. The motion carried, 8-0. The Chair voted yes.**

* * * * *

24. **DISCUSSION:** Consideration given for the establishment of a one-month season for the harvesting of polluted oysters from Russ' Rock and Little Carters Rock, Rappahannock River; Request for a March 2009 public hearing.

Jack Travelstead, Chief Deputy, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that this was a request from the industry for a small season and because it was a polluted area, to establish a relay season for the sites. He said staff was requesting a public hearing next month.

Commissioner Bowman asked about offloading sites plans? Mr. Travelstead said that would be heard at the public hearing.

Associate Member Fox stated that at the Shellfish Management Advisory Committee meeting they talked about doing this in April since an increase in salinity this summer may result in a mortality of these marketable oysters.

Commission Bowman stated that the logistics of handling the process and the safety of the process needed to be considered as well.

Associate Member Fox moved to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commission broke for lunch at approximately 11:44 a.m. and return at approximately 12:36 p.m.

16. PUBLIC COMMENTS:

Federal Regulations:

Scott McDonald – requested time to discuss clarifying the Federal Regulations for the use of gill nets that were affecting Virginia fishermen.

Commissioner Bowman stated that Mr. Gregory with the Fishery Department of NOAA would be coming later to the hearing and at that time this would be discussed.

17. PUBLIC HEARING: Establishing the 2009 recreational summer flounder management measures (Regulation 4 VAC 20-620-10 et seq.)

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. Mr. O'Reilly provided handouts of additional public comments that had been received since the packet had been mailed.

Mr. O'Reilly explained that this was the tenth year that the Commission was considering the management of annual summer flounder quota by raising the size limits to overcome a shortage. He said that the decision between the options being considered was just one-half inch. He said that two of the options were for 18 ½ inches and one was for 19 inches.

Mr. O'Reilly explained that it was the recommendation of the ASMFC Technical Committee that states take closed days within the 2-month period of the highest landings in 2008. He said for Virginia that would be Wave 3. He said that for Wave 4 or summertime, there was no support for May and June, as most prefer the summer closure because there are other species to catch as well. He stated the ASMFC management board did not accept the technical committee advice on this issue, and VMRC staff would be recommending against Wave 3 for a closed season, as industry was used to summer closed seasons, and Wave 3 showed a slightly lower reduction potential.

Mr. O'Reilly explained that the ASMFC technical and management boards had approved all of Virginia's option.

Mr. O'Reilly explained that in some years Virginia had large overages, such as 2001 and 2006. He said the most pertinent overage was in 2007. He said that the ASMFC had established Virginia's 2009 recreational summer flounder landings target at 345,000 fish, which meant that the 2009 management measures could be liberalized. He explained if the performance factor had to be used that the target would have been reduced to 323,955 fish. He said that the ASMFC had not required the performance factor, stock growth, or any other type of risk-averse measure. He said further that no other state was interested in adding risk-averse measures to keep landings down along the Coast in 2009.

Mr. O'Reilly stated that FMAC voted for Option C based on the state of the economy not the cost of fuel. He said that in the public comments received by staff the votes as far as preference were: Option A was 21; Option B was 14; Option C was 16; and there were 4 no comments. He explained that an alternative suggestion was for an 18-inch size limit and it was communicated to those individuals why this was not being considered. He said the Virginia Anglers Club wanted Option A; the Recreational Fishing Alliance wanted option A; the Chincoteague Charter Boat Association wanted option C; FMAC wanted option C; the Town of Wachapreague wanted option C and the Peninsula Recreational Fishing Association were split between options A and B.

Mr. O'Reilly explained that staff recommended the adoption of the amendments to 4VAC20-620-10, which were 19 inch, 5-fish limit, and a year round season. He referred to the draft copy of the regulation, page 6, Sections 50 and 60 which contained the changes.

Commissioner Bowman opened the public hearing. There was no public comment therefore the public hearing was closed. He asked for questions.

Associate Member Robins cited Virginia's past history and support for conservation equivalency which gives it an effective voice. The State's past performance hits the target and staff continues to keep it on track. Other States have different interests. He said there were 3 options, which will keep harvest below the target and the Commission must consider the risks as each are different. He said FMAC had recommended C, but with a stock increase factor that is above the target when we need to be below the target. He said the economy is presently in a recession. He said there was a need to go with an option that keeps Virginia below the target. The 19-inch option has the least risk.

Associate Member Tankard stated he agreed with Associate Member Robins that Options A and B were better options and that Option C was not the best for long-term management.

Commission Meeting

Associate Member Bowden stated that he attended the FMAC meeting and they recommended Option C. He said that Charter Boat fishery did not want Option B, but that no one in the Charter Boat Fishery came to the meetings. He said he did not support Option C, it had the most risk, and Options A and B with their closed season had an impact. He said the Charter Boat Fishery was year round and not just a summertime fishery.

Commissioner Bowman stated that there was a risk of overage with Option C and the Charter Boat fishery did not want B, so that left Option A.

Associate Member Tankard asked if Law Enforcement could work with the 18 1/2-inch size limit. Commissioner Bowman stated that officers were given discretion for enforcement in all fisheries, as this was a finite number, either one was not an issue.

Associate Member McConaugha stated that some of the industry did not want a closed season. He moved to adopt Option A; 19-inch size limit with no closed season. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

* * * * *

Federal Regulations (cont'd):

Scott McDonald explained they had enforcement questions concerning federal rules on gill nets. The watermen have been given tickets, as they do not know the regulations.

Logan Gregory, representing NMFS, was present and his comments are a part of the verbatim record. Mr. Gregory explained that NMFS sends letters out to permit holders on a regular basis and if there are questions they can call the office or request copies of the regulations.

Jack Travelstead, Chief Deputy, Fisheries Management, explained that all gill netters in the Striped Bass Fishery were previously provided with the regulations for both the State and Federal governments. He said that had not been done this year.

Commissioner Bowman noted that the Commission was required to reduce the use of paper and provide this information by way of the agency's website.

Mr. Travelstead stated that a handout was available with all of the regulations.

Mr. McDonald stated that this information needed to get to the watermen and the MPO's needed to be educated on them. He said his question was if an 8-inch net was not allowed. Mr. Gregory stated that was correct.

Associate Member Bowden stated that there was a question of if the gear was legal at the dock and stored could the regulation still be enforced? He said if the gear was allowed in one area and the fisherman had to travel to another area it should be legal to have it aboard the boat.

After some further clarifying discussion, Associate Member Robins stated that there needed to be an outreach program.

Commissioner Bowman said that this issue had been discussed with NOAA, as the MPO's and watermen were impacted and there were plans for mini seminars and other plans. He said they were doing their best to inform them. Mr. McDonald stated that they want to obey the laws. Mr. Gregory stated that summonses would still be reviewed to determine if an actual violation had occurred.

Commissioner Bowman suggested that a group get together and work on a solution.

Associate Member Bowden stated that a letter should have been sent to NMFS about not including the Federal regulations because of budget mandates and there would not have been this confusion. Mr. Gregory said they did not know about the situation and if they had, this would not have occurred.

Commissioner Bowman introduced Mr. Glenn Salvadore, who was with the National Marine Fisheries Service.

Mr. Salvadore stated that his job description included providing information to the public. He said he also held workshops with members of Law Enforcement from Maine to Florida. He said he did make individual contacts and would hold a workshop if there was enough interest.

Associate Member Bowden introduced Mr. Salvadore to the staff and asked that he get the information to the watermen, so as to reduce confusion in the future.

No further action was taken.

* * * * *

19. PUBLIC HEARING: Adding efficiency to the requirements for cull rings in crab pots (Regulation 4 VAC 20-700-10 et seq.)

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation.

Mr. O'Reilly explained at the meeting last month the Commission had directed staff to advertise this matter for a hearing at the February meeting. He said a copy of the notice was in the Commission's packet.

Mr. O'Reilly said that last year in the middle of the crab season, emergency action was taken requiring that any pot placed, set or fished in Virginia waters, excluding the Seaside area, shall be equipped with two 2 3/8-inch unobstructed cull rings located one each, in the opposite exterior side panels of the upper chamber of the crab pot. He said because this occurred after the start of the 2008 season, previous requirements for at least one unobstructed 2 3/16-inch cull ring and one unobstructed 2 5/16-inch cull ring were to remain in place; in 2008, requiring 4 cull rings per crab pot.

Mr. O'Reilly said that the CMAC suggested that two cull rings at 2 3/8-inch be required rather than 4. He further said that on the Seaside the requirement would be for one unobstructed 2 3/16-inch and one 2 5/16-inch unobstructed cull ring. Mr. O'Reilly also said that fishermen could keep the smaller cull rings in pots, but only the two 2 3/8-inch rings would be required.

Mr. O'Reilly referred the Commission to page 2 of the regulation to see those changes.

Mr. O'Reilly said that staff was recommending the adoption of the amendments to Regulation 4VAC20-700-10, et seq.

Commissioner Bowman opened the public hearing.

Douglas Jenkins, Twin River Watermen's Association was present and his comments are a part of the verbatim record. Mr. Jenkins stated that last year's requirement for the 2 3/8-inch cull rings in the upriver area allowed the legal size crabs to escape. He stated that their catch was cut by 25%. He said that unless it was designated, he hoped the Commission would reconsider the change made last year, now, before the start of the season. He said in the upriver area they caught about 5 to 6 bushels of crabs in comparison to other areas where the catch was 25 bushels. He said he could not get anything done at the Crab Committee meeting and now he was trying to get the Commission to make a change.

Mr. O'Reilly said that there was a need for an improved, more comprehensive study for cull rings, which was not being done at this time. He said the 2 3/8-inch cull ring allowed for the females to escape which would help to meet the 34% catch reduction of females. He said that nothing can be done to address Mr. Jenkins concerns until a geographical study were to be done, and the CMAC had been advised of this need.

Commissioner Bowman asked for discussion or a motion.

Associate Member Robins said that the regulation needed to be cleaned up, as the two smaller cull rings were superfluous and it needed to be done before the season starts. He said the cull rings were important to last year's package, but a broader study was planned. He said he agreed with Mr. Jenkins that staff needed to take a look at it from a geographical aspect.

Associate Member Robins moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. Associate Member Bowden stated he was against the regulations, as they had more than met the target in Virginia for a half year not the whole year. He said there was a savings for male crabs in the upriver areas and that Mr. Jenkins was correct about how it should be divided up and a line should be drawn. He stated he did not support the motion. The motion carried, 7-1. Associate Member Bowden voted no. The Chair voted yes.

* * * * *

20. PUBLIC HEARING: Virginia Seafood Council 2009 study of *Crassostrea ariakensis*

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

Mr. Travelstead provided handouts, which included three letters from The Nature Conservancy, the Chesapeake Bay Foundation, and the U. S. Fish and Wildlife Service.

Mr. Travelstead stated that this was the eighth proposal by the Virginia Seafood Council (VSC) for field trials using the *C. Ariakensis* oyster. He said that the proposal was previous years. He said that 1.1 million animals will be used.

Mr. Travelstead explained that no action was required but to meet the requirement of a public hearing prior to the Commissioner taking action. He explained also that a decision could not be made any sooner than 30 days following the public hearing and no later than 60 days; between March 26 and April 27. He said the Board can discuss the project and offer comments or opinions.

Mr. Travelstead said that on the second page of the TNC letter, they were recommending postponement of a decision by the Commissioner until after the EIS is released. He said since a record decision in the EIS would not be decided until late May to early June, such a postponement would have the effect of cancelling the project.

Mr. Travelstead said that representatives of the VSC were here as well as others, who wished to speak.

Commissioner Bowman asked for the VSC representative to come forward and comment.

Frances Porter, representing the VSC, was present and her comments are a part of the verbatim record. Mrs. Porter stated that this was the 7th proposal and not the 8th. She said that there was a need for a new resource to compliment the native oyster. She said the April 1st decision of the EIS will not be published until June 30th.

Mrs. Porter said that there was a need to get the oysters into the water in June and VSC does need a permit until the EIS is implemented. She stated that Stan Allen had spoken to the General Assembly about the future being aquaculture. She stated also that Mr. Allen supported the introduction. She said that there were some watermen against it and she realizes that they long for the traditional ways to return. She said that waterman can farm successfully as some watermen were growing oysters now and they can speak to that. She said the suggestion that the ariakensis will overwhelm the native oysters was not backed by science. She said that all the spawning that had been checked in recent weeks were found to be native species only. She said that the VSC works to restore the native species. She stated that the Great Wicomico and Lynnhaven Rivers were healthy, but that was not true in the Rappahannock where disease mortality is still present. She said that a complimentary resource was needed and that oyster scientist said that the native will not return to its historical levels. She stated that ariakensis can help to bring oysters back to the Bay. She said they were requesting approval.

Associate Member Fox asked about the written reports indicating that 99% of shucked oysters are non-native and they come from the Gulf was true? Mrs. Porter stated that was accurate from what she had heard. Associate Member Fox asked why the number was low for the Virginia oyster. Mrs. Porter responded that the number needed was not here and the shucking houses needed large quantities of oysters.

A. J. Erskine, President of the VSC, was present and his comments are a part of the verbatim record. Mr. Erskine explained that he had worked with Stan Allen at VIMS on a study done on the non-native oysters. He said the industry was excited and they were still making a large investment in the native oysters. He said the development of a hatchery and aquaculture were complimentary to the native. He said the VSC had acted responsibly in the studies and trials. He said the months of August, September and October were important to the shucking houses in sustaining a level of product to meet the market needs. He said the EIS talks to the risks of reproduction of the ariakensis and the impacts to the native species. He explained that based on the model, it says two things and that was the native oysters will not recover and with 700,000 non-native oysters the model shows that there should be 100,000 reproductive oysters at one site in one year. He said this had not been seen as yet at any one site. He said that small aquaculture operations were anxious to work with the non-native oysters to sell to the shucking houses. He said they strongly supported the project.

Associate Member Fox asked about a news article where Albert Pollard spoke to the PEIS and to reaching the goal with ariakensis in some form.

Mr. Erskine explained that there was 2 to 3 times the meat per bushel for the non-native oyster versus the native oyster. He said they had larger size shells and would shuck out in one year. He said there was a void in the market for shucking size meat and it was important to the economy.

Associate Member Robins asked about how oysters will be taken care of during the trials. Mr. Erskine said that there was an emergency plan to deal with lost oysters and a bond required for each participant to cover recovery costs.

Tommy Leggett, representing CBF, was present and his comments are a part of the verbatim record. Mr. Leggett stated that they had been supportive of the past trials to get information for aquaculture. He said but CBF felt that another project was not appropriate as there was a pending policy decision in June 2009. He said that other agencies do not support the proposal, such as: VIMS, Federal agencies, ASMFC, and Chesapeake Bay Program.

Paula Jasinski, representing NOAA, was present and her comments are a part of the verbatim record. Ms. Jasinski stated that they were opposed to this trial the same as last year. She said an EIS decision is coming out soon and six trials were already done. She said VIMS and U.S. Fish and Wildlife Service were opposed. She said also they were a health risk. She explained that there was a research program on the triploid native showing the same growth rate without the ecological and health risks.

Associate Member McConaugha asked about triploid reproduction. Ms. Jasinski explained they do produce gametes.

Mr. Erskine said in response to Associate Member McConaugha's question that while reproduction in triploids can occur, virtually all of the larvae die.

Doug Jenkins, Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that they wanted to request a permit for other watermen who were interested in participating. He said they needed to know the criteria and how to complete the application.

Commissioner Bowman explained that anyone can apply, but there are steps to go through. It was not limited to the VSC.

Mr. Jenkins said that he was told by Mrs. Porter that you had to be a member of VSC. He said they wanted to apply for the same and had spoke to Mr. Travelstead about it. He said they wanted the same time-frame.

Commissioner Bowman explained that there was a lot involved in making an application, than just applying to put overboard. He suggested that they read the VSC proposal and he could not say that it could be done at the same time. He said a detailed application was needed for the Commission to make a decision.

Tommy Mason, Chincoteague, was present and his comments are a part of the verbatim record. Mr. Mason stated he had been growing oysters for 42 years and had been a part of the ariakensis project for 11 years. He said that by the second summer he usually loses

Commission Meeting

90-95% of his oysters (*C. virginica*) to disease mortality. He said this death rate usually occurred from September to October. He said that MSX and Dermo were like cancer and impacted the viability of the native oyster. He explained that the triploid oysters (*C. virginica*) were being grown in the cages to beat the disease. He said that last year Bloxom lost 99% of his triploid oysters (*C. virginica*). He stated that Mike Costagna in Wachapreague raised hard clams and the hard clam aquaculture industry was the largest in the country. He said Mr. Costagna told him there needed to be another oyster. He said that Tom's Cove Aquafarms had shucked out some *C. ariakensis* oysters and they had gotten 15 gallons from 13 bushels. He said that NOAA had said that the *C. virginica* and *C. ariakensis* were infected with viruses and the *C. virginica* was faster to get rid of it than the *C. ariakensis*. He said he went on the internet to inquire about non-native and found that we are being feed non-native vegetables now. He said that John Hopkins had said that the asian oysters were better filterers and would benefit the Bay. He said that he was a member of the Blue Ribbon Oyster Panel in 2006 and Roger Mann had said that it was common to use multispecies that would meet expectations. He said the *ariakensis* would grow faster, shuck higher, and grow to market size in 6 to 12 months. He added that the shelf-life for the non-native was less than the native. He said that he felt that some agencies did not want to clean up the Bay as there would not be any funding available for their studies.

Danny Bowden, waterman, was present and his comments are a part of the verbatim record. Mr. Bowden stated that he supported the project. He said that some agencies did not support the project because of the threat to their funding. He stated the *C. ariakensis* was a viable product. He said he worked on the water and without a profit how can he continue. He said that there can be money made as has been shown in the 3 years of the project. He said to make a profit they had to get 3 to 5 cents for seed oysters and to sell the market oyster for 20 cents/oyster. He said the industry cannot depend on the native. He said that 16 million people live in the Chesapeake Bay basin. He said he would like to see everyone get involved. He said the *ariakensis* now do taste like the Virginia oyster.

Commissioner Bowman closed the public hearing. He asked for discussion from the Board.

Associate Member Bowden stated that 99% of the oysters processed in Virginia were imports and it would be better for the half shell market if they were shucked here and sold here. He said that one shucking house could shuck what few oysters coming from Virginia waters all by themselves.

* * * * *

23. DISCUSSION: Approval of the 2009 Replenishment Plan and Associated Procurement Methods.

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

Dr. Wesson explained that the usual General Fund budget of \$1.2 million had been cut to less than \$400,000.00, but the lost of general funds have been replaced with some other funds including some small grants. He said that the possible crab disaster funding would be funding a Waterman's Aquaculture Training Project and a Spat on Shell project. He said the plan included the planting of house shells and another year for the cow nose ray project. He said that since he was concerned that with the amount of funds we would not be able to use the available house shells and had approached Maryland fisheries personnel to ask if they could possibly use some of the Virginia house shells because the VMRC had only \$400,000 in general funds. He said also that there would not be money to move any natural seed oysters. He said they would be continuing a small spat on shell project in the Lynnhaven with funds from Virginia Beach. He said for the rest of the plan, he could answer any questions.

Associate Member Fox asked if Maryland intended to do anything with the cow nosed rays. Dr. Wesson responded not now, but that Maryland and Virginia had begun talking about doing something together in the future.

Commissioner Bowman asked if \$0.30 per pound was enough to pay for cow nosed rays. Dr. Wesson explained that we were just paying the \$0.30 per pound. Commissioner Bowman asked if the payment amount discussed last year was determined to be adequate compensation. Dr. Wesson said that all the funds had been spent last year. He said staff needed the procurement methods approved.

Commissioner Bowman asked Jane McCroskey if she agreed with the procurement plan. Mrs. McCroskey stated she felt she needed to clarify one thing that might be confusing on the procurement. The plan states that \$600,000 will be spent from the Waterways Improvement Fund and that monies will also be available possibly from the State of Maryland. The monies from Maryland would not be additional monies added to the program but would reimburse a portion of the expenses from the Waterways Improvement Fund.

Commissioner Bowman asked for action by the Board.

Associate Member Tankard moved to approve the plan and associated procurement methods. Associate Member Holland seconded the motion. The motion carried, 7-0-1. Associate Member Robins was not present. The Chair voted yes.

2009 OYSTER REPLENISHMENT PLAN

FUNDING SOURCES	MATCHING REQUIRED	AMOUNT
Non-federal		
General Funds (GF) State		\$ 383,513
Waterway Improvement Funds		\$ 600,000
The Nature Conservancy (TNC) – Seaside		\$ 60,000
The Nature Conservancy (TNC) (Piankatank)		\$ 52,000
City of Virginia Beach – Lynnhaven River		\$ 100,000
Indirect Cost		55,000
Federal		
NRCS – York River Reef		\$ 111,999
U. S. Navy – Little Creek		\$ 8,000
Potential Additional Funding Sources		
Non-federal		
Maryland Department of Natural Resources		\$ 400,000
Federal		
Crab Disaster Funds \$1,500,000		\$ 980,000

BAY & TRIBUTARIES

Seed Transfer: Natural

There are currently no funds available for moving natural oyster seed. We moved significant amounts of natural oyster seed from the Great Wicomico River in 2007 and 2008, and we are in the process of developing the “Benefit versus Cost” of that activity.

This was a recommendation of the Blue Ribbon Oyster Panel. Results of harvests from the 20007 seed plants are attached in Tables 1 and 2. It appears that cow nosed ray predation is extremely destructive to our natural seed plants.

There was a good natural spatset in a portion of the Great Wicomico River, and in the Upper James River there was the highest spatset that we have ever observed in the VIMS-VMRC oyster surveys. The James River seed is available to private industry if anyone wants to move it, but is very susceptible to disease mortality.

In 2008 and 2009, there were modest spatsets in the Piankatank River (Table 3). Counts are 400-500 oysters per bushel. In 2008, we allowed private industry to take up to 20,000 bushels of seed oysters from the Piankatank River. We would like to offer this program again in 2009.

The seed is harvested by private industry under VMRC supervision and a bushel of shell was replanted on the same oyster beds by the private industry participants in the summer (under VMRC supervision).

Seed Transfer: Spat on shell

Since 2006, we have worked collaboratively with VIMS, NOAA, and the private oyster industry to produce oyster spat on shell. This effort has been a program for oyster replenishment that provides an economic development opportunity for industry, while simultaneously benefiting restoration. This program incorporates the remote setting of eyed larvae of wild, disease resistant, or polyploidy oyster varieties on shell, at industry sites. The spatset on shell has been used for restoration projects, public bed “put and take” fishery, and extensive aquaculture on privately, leased beds. Remote setting at industry sites requires large scale hatchery capabilities to produce millions to billions of eyed larvae. The VMRC programs have been stimulating growth in the private hatchery infrastructure throughout Virginia. Hatchery production in Virginia increased more than three-fold from 2006 to 2007, and doubled again in 2008. We had two Virginia hatcheries produce eyed larvae in 2008, and we anticipate at least four hatcheries producing eyed oyster larvae in 2009. Thirteen remote setting stations are now producing spat on shell in Virginia and we anticipate more growth in 2009.

Hatchery production

In 2007 and 2008 there was NOAA oyster funding to provide infrastructure assistance to expand and improve hatchery oyster production facilities. We do not have this funding in 2009. The Commission will set the price for eyed oyster larvae according to the wild stock or polyploidy used for the various projects. A notice will be advertised among all hatcheries in the Chesapeake Bay region for participants in the project, with a set price of \$200 per million for most Chesapeake Bay and selected stocks of diploid eyed larvae, \$400 per million for eyed larvae from Lynnhaven oysters, and \$250 per million for

Commission Meeting

triploid eyed larvae. The quantities needed for each stock will depend on funding availability, but we anticipate that there will still be more eyed larvae needed in 2009 than there will be hatchery capacity to produce. The State hatchery in Maryland helped provide eyed larvae for our program, that we could not get from the private hatcheries in 2006, 2007, and 2008, and they are available again in 2009 to help with the production. We also expect a significant increase in eyed larvae demand from the remote setting stations for spat on shell production for private oyster grounds, and this was the ultimate goal of the infrastructure assistance in 2007 and 2008, but it could significantly reduce eyed larvae availability for our program in 2009. This shortage in eyed larvae will continue to stimulate hatchery growth and that is good.

The anticipated hatchery eyed larvae needs in 2009 are:

177.8 M	Diploid eyed larvae for public grounds @ \$200/M	\$ 35,560
150 M	Diploid eyed larvae for the Lynnhaven River From Lynnhaven broodstock @ \$400/M	\$ 60,000
	On shell program @ \$250/M	1,200M Triploid eyed larvae for the Crab Disaster spat \$300,000
		Setting stations

Currently there are 11 industry setting station working with our program and at least 2 others that are potentially available. The setting stations containerize the shell, buy the eyed larvae, and produce the spat on shell for deployment in the water. Staff from our program and VIMS have worked with the setting stations over the last 3 years, and have improved their overall success in producing the spat on shell. The set rate and number of spat on shell have improved, and become more consistent over the past 3 years. In 2008, more than 12,000 bushels of spat on shell were produced in our program, with an average set rate of 9.2% and an average of 9.8 spat on each shell produced. In total, almost 78 million spat on shell were deployed in 2008.

For 2008, there will be a number of projects.

Complete a spat on shell project that was started in 2007, and that we have paid the participants for part of the project already. This project will put spat on shell on public grounds. (Table 4)

Lynnhaven River – 2,000 bushels of spat on shell \$40,000

Blue Crab Fishery Resource Disaster Funds

The process to produce oysters on private ground using hatchery produced larvae which is set on shell is now relatively well established in Virginia waters. In three years of conducting projects and tests with the industry, a manual has been developed that can allow a beginner to readily participate in the process. Both crab harvesters and crab processors should be able to transition into this industry if they have access to private oyster leases. There are currently thousands of acres of private grounds in Virginia, which have potential for spat on shell production. Many of these leases are held by crab industry participants and many others could be subleased from current leaseholders that have become inactive. Shells will have to be added to most of these leases, but plots are generally very small for each year's production (usually 1 acre or less). The VMRC Conservation and Replenishment Department will assist the participants in identifying suitable private lease areas for oyster production. A program for this transition would be set up at 3 levels that will depend on the amount of equipment and water access that an interested person might have. **Tier I** participants would be those crab industry participants that need the most equipment, with **Tier III** participants needing the least equipment. The allotments for each participant will be based on 600 bushels per year of oyster production.

Requirements:

Tier I

- Crabber or processor with access to the water for setting up a tank, but with no current equipment.
- Access to a private oyster ground lease.
- Ability to bag, transport, and plant 600 bushels of shell per year in three 200-bushel setting events.

Tier II

- Crabber or processor with no access to the water for a setting tank, but with the ability to rent tank space from another person with a tank.
- Access to a private oyster lease.
- Ability to bag, transport, and plant 600 bushels of shell per year in three 200-bushel setting events.

Tier III

- Crabber or processor with setting tanks.
- Access to private oyster lease.
- Ability to bag, transport, and plant 600 bushels of shells per year in three 200-bushel setting events.

Estimated annual of costs for the project for each participant would be as follows:

Tier I

Tank, pump, air blower	\$ 5,000.00
Shells for ‘spat on shell’ bags, 600 bushels @ \$1.00/bu.	\$ 600.00
Triploid Eyed Oyster Larvae, 42 million @ \$250/M	\$10,500.00
Shells for preparing ground, 1,200 bushels @ \$1.00/bu.	\$ 1,200.00
Total	\$17,300.00

Tier II

Shells for ‘spat on shell’ bags, 600 bu. @ \$1.00/bu.	\$ 600.00
Triploid Eyed Oyster Larvae, 42 million @\$250/M	\$10,500.00
Shells for preparing ground, 1,200 bu. @ \$1.00/bu.	\$ 1,200.00
Rent of tank space, \$300.00/set @ 3 sets @200 bu./set	\$ 900.00
Total	\$13,200.00

Tier III

Shells for ‘spat on shell’ bags, 600 bu. @ \$1.00/bu.	\$ 600.00
Triploid Eyed Oyster Larvae, 42 million @ \$250/M	\$10,500.00
Shells for preparing ground, 1,200 bu. @ \$1.00/bu	\$ 1,200.00
Total	\$12,300.00

If there is more interest in the project than there are funds, participants will be selected by a lottery. We anticipate that most of the participants will be in the Tier II and Tier III levels, since there is currently tank space available in most areas of the Bay.

Income Replacement for each participant.

A conservative estimate of one bushel of market oysters for each for each bushel of spat on shell, based on \$30/bushel for the market oysters would be \$18,000.00 per year. With triploid oysters, the return should be much higher both for the market price of the oysters sold, and for the number of bushels produced for each bushel of ‘spat on shell’.

Based on \$500,000 of crab disaster funds per year, 29 Tier 1, 37 Tier II, or 40 Tier III allotments could be handled this year. The production of ‘spat on shell’ for market oyster production on the private ground could revitalize the oyster industry in Virginia. Currently, the wild production of oysters from the Bay is seasonal, and quantity and quality of the local oysters is unpredictable. Importation of oysters from the Gulf of Mexico is also not dependable and transportation costs lower the margin of probability for the industry. The availability of locally grown, triploid oysters, year round, would add

stability to the Virginia oyster industry in both meat quality and quantity. Additionally, the increased demand for the eyed larvae will lower the risk and spur investment for new private hatcheries to be constructed in Virginia.

Units of 600 bushels per participant was chosen based on the tank capacity and the ability of small processors to handle the shell commodity. It is unlikely that an individual could handle any more than that amount in a single year. ‘Spat on shell’ oysters have been produced on the west coast by watermen for many years, in small backyard operations. After a waterman has gained experience and confidence in the production methods, they could easily expand to two to three times that amount per year.

Total Project Cost \$500,000

Shell Planting:

About 500,000 bushels of shucking house shells are available to plant on the Western Shore. All of these shells are placed on good public oyster bottom. As we conduct the annual fall oyster survey, the amount of shell on each bar is determined. We plant shell on the public bars where the quantity of shell has fallen below a minimum threshold per meter that allows a reasonable opportunity for spatset.

500,000 bushels of house shells within the Bay \$650,000

The Nature Conservancy has secured funding to add fresh shell to Burton Point oyster reef in the Piankatank River. Fresh shell will be used to cover most of that reef with a new veneer of shells. The Chesapeake Bay Foundation will then add “spat on shell” to jumpstart populations on this reef.

35,000 bushels of shell \$ 52,000

We have also received a Natural Resources Conservation Service WHIP grant to build an oyster reef along a shoreline in the vicinity of the Catlett Islands in the York River. The Chesapeake Bay Foundation will then add “spat on shell” to jumpstart this reef.

40,000 bushels of shells \$111,999

The State of Maryland currently has no shell planting program since they have no access to shells. They are interested in purchasing some of our shells if we do not have enough money to complete this year’s program. They would purchase shells from Virginia, based on the price we have paid to stockpile the shells in Reedville, Virginia.

Seaside: Eastern Shore

To date the Nature Conservancy has funds for one restoration project on Seaside, and this project will use the dredged shells that are available. Work will be completed on Cobb Island, VMRC-Nature Conservancy Sanctuaries.

\$60,000

We continue to seek funding for oyster restoration for this area, but opportunities appear limited for this year.

Watermen Aquaculture Training Program:

VMRC has conducted small, oyster aquaculture training projects for 10 watermen per year, each year, since 2006. This program has been very popular. We have submitted a proposal to the Blue Crab Fishery Resource Disaster Plan to train up to 92 crabbers in caged, oyster, aquaculture.

Oyster aquaculture using cages to produce oysters for the 'half shell' market has potential for crab industry participants. Crab fishermen can use the same boats and crab pulling equipment to lift and handle oyster cages. Stocks of native oysters have been selected for faster growth and disease resistance, and these oysters can be grown in cages to market size in less than two years. Cage oyster aquaculture requires only a small amount of 'hands on' instruction, but many watermen have not entered this activity because of the relatively high initial costs, and the delayed time period to grow out oysters to a size that they can receive a return on their investment.

Most of the previously trained participants have continued buying oyster seed and equipment on their own once they have started. The Conservation and Replenishment Department has used other oyster aquaculturists to assist with the training, and now there are many sources of information for new oyster aquaculturists. Each participant must have access to a private oyster lease, but generally this has been no problem. There are currently thousands of acres of private oyster leases in Virginia. Many are held by the crab fishermen themselves (or they can sublease from others that are not using their grounds.) The Conservation and Replenishment Department will assist the participants in finding the growout areas on private ground. All of the cages used in this program are less than 12 inches off the bottom and are therefore exempt from State permits. The Conservation and Replenishment Department will provide 50,000 cultchless, triploid oyster seed and all of the bags and cages needed to grow that quantity of oysters to market size.

Estimated annual costs for each participant:

Oyster growout cages and bags 40 cages (2 feet long, 3 feet wide and 1 foot high) 120 bags	\$41,000
50,000 triploid oyster seed at \$15/thousand	\$ 1,100
Total	\$ 5,200

As many as 92 crab fishermen could be trained this year. If more than 92 crab fishermen are interested, participants would be selected by lottery.

The potential return will vary with the success of the participant, the location, and market conditions. Cultchless oysters are grown for the 'half shell' market, and the value of Chesapeake Bay oysters varies with market demand. Generally at least \$0.20 per oyster is an expected return, which would provide the participant with \$10,000.00 of income. With careful marketing, the grower can significantly improve this return. The more dependable availability of high quality, market oysters from the Chesapeake Bay should increase the value of the local product. More Virginia oysters will help the oyster industry and spur development of new oyster hatchery infrastructure.

Cage Aquaculture Project	\$480,000
--------------------------	-----------

Cow-Nosed Ray Control and Marketing Project:

Cow nosed rays are the most significant impediment to oyster restoration. We have invested in industry assistance to harvest and develop markets for the rays for the past two years. More than 760,000 pounds of rays have been harvested with this assistance since 2007, and marketing success will only be possible if the rays are continuously available. We will advertise again for \$0.30 per pound for all the cow nosed rays which are caught, up to \$120,000. We will again work with the processors.

Cow-nosed Ray Project	\$120,000.00
-----------------------	--------------

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2009 OYSTER REPLENISHMENT PROGRAM:

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the production of eyed larvae and spat on shell, the Commission will set a price per million larvae and the price per bushel of spat on shell. Loading, transporting, and planting costs for spat on shell will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity site. For the purchase of hatchery-spawned, aquaculture-produced, cultchless oysters, the Commission will set the price. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method. For the purchase of the cow nosed rays, the Commission will set the price at \$0.30 per pound.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.50 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$0.625 per bushel of oyster shells at the shucking house. Loading, transporting and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2009 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

For participation in the Blue Crab Fishery Resource Disaster Fund Projects, the Cage Aquaculture Training Program and the "Spat on shell" Training Program, public notices will be posted, and all interested blue crab harvesters and processors may apply. Selection of participants, if more apply than there are funds, will be by lottery. Blue crab industry participants that have not received other Blue Crab Fishery Resources Disaster Funds will be given first priority.

The agency anticipates that all other 2009 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2009 Replenishment Program.

APPROVAL, BY THE COMMISSION, OF THE REPLENISHMENT PROGRAM WILL ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.

* * * * *

25. APPEALS: Individual Appeals of Commission Decisions to Place Certain Crab Pot and Peeler Pot Licenses on a Waiting List, Until the Recovery of the Chesapeake Area Blue Crab Stock

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

Mr. Travelstead explained that Desmond J. Owens had requested a continuance until the March meeting. He added that there were 12 appeals already scheduled for the March meeting.

Mr. Travelstead explained further that this was done in the same way as the last meeting and those with similar circumstances were grouped for approval or conditional approval.

Individuals who appealed for medical reasons and staff had recommended approval:

Billy L. Bonnaville Randall A. Carr John S. Melzer, Jr.
Fielding L. Dickinson, III Sidney H. Simmons John Fannin

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

Billy Bonnaville, was sworn in and his comments are a part of the verbatim record. Mr. Bonnaville explained that his documentation was tied to his wife who died of cancer because he had taken care of her during her illness. Commissioner Bowman stated that he should get the documentation from his wife’s doctor.

Mr. Travelstead explained that the following individual was in the category of incorrectly reported gear. He said that staff was recommending approval.

Larry Hayes

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

Mr. Travelstead explained that there were 16 who admitted to no harvest during 2004 and 2007, and felt that because they pay for their license it means they were entitled to them. He said that 3 were recommended for approval in keeping with the precedence set at last month's meeting.

Lowry K. Hudgins, Sr. George Trice James I. Moore

Associate Member Robins asked if Mr. Hudgins had amended his reporting with his son. Mr. Travelstead stated that it was now on the record. He did have a license, but had reported with another individual.

Associate Member Robins moved to approve the 3, as recommended by staff. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

Mr. Travelstead stated that the Commission needed to decide on the remainder of the 16.

Dean R. Burress Paul H. Kellam Rickey Hall James E. Withrow
Emerson O. Harding David W. Ashburn William F. Nelson Kevin R. Waterfield
Daryl S. Culpepper John A. Masiak, Jr. Charles L. Ashburn Clifton Lee, Jr.

Commissioner Bowman called Paul Kellam.

Paul H. Kellam, III

Mr. Kellam explained that he had had a license since the mid 80's and no catch had been reported for the time period and records before that were for working up the Virginia line, but in the Potomac River. He said there were records back in the 1990's in Virginia. He stated he had followed the law.

Commissioner Bowman asked if he had reported Potomac River catch. Mr. Kellam stated he always complied with the requirements.

Commissioner Bowman asked if all the others were the same. Mr. Travelstead stated not any.

Associate Member Holland stated that they had a Virginia license but did not harvest any crabs. Mr. Kellam stated he had submitted a letter. He said he had a crab business and had served on the Potomac River Fishery Commission, as he had been involved with all for the last 20 years. He said he was involved with establishing his business for the last few years. He stated he loses his license with the criteria established.

Associate Member Robins said there was the difficulty with the resource targeted amount being caught. He said there were a 1,000 plus licensee put on the waiting list. He said they are not eliminated as they can get a license by transfer. He said there are criteria for 3 exemptions, hardship, bad health, and military. He said that he had to be put on the waiting list because of the status of the resource.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins moved to deny the request. Associate Member Laine seconded the motion. Associate Member McConaugha asked about him about the winter dredge survey for Maryland for 3 years. Mr. Kellam stated he was involved in it for 3 years, 2001, 2002, and 2003. The motion carried, 8-0. The Chair voted yes.

Rickey Hall

Mr. Travelstead called Rickey Hall. He was not present

Commissioner Bowman asked for a motion.

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

Dean R. Burress, James E. Withrow, Emerson O. Harding, John A. Masiak, Jr., Charles L. Ashburn, and Clifton Lee, Jr.

It was the consensus of the board to take a motion for all the above individuals since they were not present.

Commissioner Bowman asked for a motion.

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

David W. Ashburn

Commissioner Bowman asked Mr. Ashburn to come forward.

Mr. Travelstead explained that no harvesting activity had been reported, as Doggett Seafood had been destroyed by Hurricane Isabel who was Mr. Ashburn's market. He stated that staff recommended the request be denied.

Mr. Ashburn explained that since his market was destroyed he had taken his peeler pots and went on up the road.

Commissioner Bowman asked for a motion.

Associate Member Fox asked him if he now had a market for his crab catch. Mr. Ashburn responded yes and explained that he had submitted a letter saying he started up a crab business and had it up and running and he had peeler potted last year.

Associate Member Robins stated that they had approved one request because their boat was destroyed, but having no market was not a good reason, since there were other markets around. He said this situation did not fit within the guidelines set forth. He moved to deny, per staff's recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-1. Associate Member Fox voted no. The Chair voted yes.

Emerson Harding

Mr. Travelstead stated that he had missed Emerson Harding when putting the list together earlier for those not present and staff had recommended denial.

Commissioner Bowman asked for a motion.

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

William F. Nelson

Mr. Travelstead called Mr. Nelson to come forward. He explained that there had been no harvest reported by peeler pot.

Mr. Nelson explained that he had worked in other fisheries, but had kept all his licenses. He said at one point he was told that if he did not buy the license the year before, he would lose it in 2001. He said he submitted a letter and his license was returned.

Mr. Nelson explained he works in the scallop fishery for 5 weeks out of the year and 6 weeks oystering. He said he could not keep up with them all, so he had an agent using his card, but that individual had not reported. He said there were 5 or 6 weeks of crabbing and a little bit of gill netting, but without the crab license he could not make it. He said it

would have a financial impact. He said he had made a mistake getting someone else to use his crab license, thinking he was maintaining his license so he would not lose it.

Commissioner Bowman asked him where the agent was. Mr. Nelson explained that he was not here and he explained further that the individual had recently gotten another license after he had messed up his license.

Associate Member McConaugha stated just not peeler potting, but reported crab pot catch and still in that industry. Mr. Nelson confirmed that.

Associate Member Fox stated that it was the cardholder's responsibility that the reporting gets done.

Associate Member Bowden asked if the individual had a license of his own. Mr. Nelson stated he had a hardship card for a short time and was also working with his also, because he had the crab gear licenses. Associate Member Bowden asked if there were any records for the individual. Mr. Travelstead stated that they did not have any records.

Mr. Nelson said he had provided reports that the individual gave him with his letter of appeal, but staff told him they were falsified reports and were never sent in at all. He said he had put his name and card number in the letter he submitted. Associate Member Bowden asked staff to check on this individual to see if he is reporting at all.

Associate Member Robins stated that due to fact that this was a reporting irregularity it could be deferred until next month.

Commissioner Bowman suggested Mr. Nelson bring the individual to the meeting to testify and to tell him that he will be under oath just like in a court. He stated that if he is found to be lying, then he will get the State Police to press charges for perjury.

Kevin B. Waterfield

Mr. Travelstead explained that Mr. Waterfield had in the past crabbed in Virginia and North Carolina, in Virginia's Back Bay area. He said he only crabbed in North Carolina so during the 2004-2007 time period, so he had not reported any harvest in Virginia.

Mr. Waterfield explained he had crabbed for 23 years and reported Virginia harvest up until 2003 and then again in 2008. He stated that the Back Bay was a different area as the crabs come from Albemarle Sound and other areas. He said that he leaves out of a Virginia marina and that there was freshwater in Back Bay so that in 2004 to 2007 he caught his crabs in North Carolina. He said in 2008 Back Bay was looking better. He said he bought 300 pots in September and then he was notified that he would not get his license and would be put on a waiting list.

Commissioner Bowman asked why he needed a Virginia license. Mr. Waterfield stated that in 2008, because of a drought there were grasses in the Bay, so that he could crab there and he reported his harvest.

Associate Member Robins explained that the management unit was the same for Seaside as there was no different management plan, so you are licensed under one plan.

Mr. Travelstead stated that the regulations were for Statewide and no exemptions for Back Bay or any distinction.

Commissioner Bowman asked for a motion.

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

Mr. Travelstead called Daryl Culpepper to come forward.

Daryl S. Culpepper

Mr. Culpepper explained he had his crab pot license, but he also wanted to keep his peeler pot license as he had bought some peeler pots from a Mr. Johnson last August and he did not buy the license because he thought he had one and now he would be stuck with a bunch of peeler pots.

Associate Member Tankard stated that he could purchase a license and get it transferred and he moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

Thomas W. Chandler

Mr. Travelstead explained that Thomas W. Chandler was next and he was an individual whose boat had been destroyed due the Hurricane Isabel. He stated that last month the Commission had set a precedent when they approve a similar request.

Commissioner Bowman asked for a motion.

Associate Member Robins moved to approve the request subject to documentation being received for the loss of the boat. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Mr. Chandler explained that his boat had been destroyed by Hurricane Isabel.

26. REPEAT OFFENDERS:

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement, was sworn in and he gave the presentation. His comments are a part of the verbatim record.

Willie F. Shiflette, Jr.

Lt. Col. Rhodes explained that Mr. Shiflette had been charged with possession of unculled oysters while harvesting in the Rappahannock River. He said that his license and permit had been confiscated until he appeared before the Commission in accordance with Regulation 4VAC20-720-110-B.

Lt. Col. Rhodes further explained that Mr. Shiflette had previously been charged and convicted of a violation involving the possession of dark sponge crabs pursuant to Regulation 4VAC20-370-20, by the Gloucester County Courts.

Lt. Col. Rhodes said that staff was recommending that he receive 12-months probation immediately.

Willie Shiflette, was sworn in and his comments are a part of the verbatim record. Mr. Shiflette stated he was not keeping track.

Commissioner Bowman again explained what the staff recommendation was and explained further that if any violations for harvest or reporting harvesting should occur within that 12-month period, the defendant would be brought back before the Commission to have his license revoked.

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

James R. Smith

Lt. Col. Rhodes stated that Mr. Smith was not present.

Commissioner Bowman asked Lt. Col. Rhodes if the staff recommendation proposed would be for if he was present to the meeting, which staff confirmed. He stated normally what occurs in these situations was that the license would be suspended until the individual appeared before the Board and Lt. Col. Rhodes confirmed that this was staff recommendation.

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

23. **DISCUSSION:** Approval of the 2009 Replenishment Plan and Associated Procurement Methods.

Ken Smith

Mr. Smith requested that a Shellfish Management Advisory Committee (SMAC) meeting be held prior to any shell planting in order to decide where the shells should be placed in order to avoid covering any existing oysters already on the rocks.

Mr. Smith also requested that a Dudley Biddlecomb be appointed to the SMAC. Commissioner Bowman asked him to approach Mr. Biddlecomb and asked if he would like to serve. He suggested Mr. Smith call the committee chairman regarding the meeting.

Associate Member Fox asked staff if the shells were being planted in the best areas. Dr. Wesson explained that staff was trying to keep the shells replenished at a certain level in the various areas of the Bay and the Patent Tong Survey data was used to make this determination.

No further action was taken.

There was no further business and the meeting was adjourned at approximately 3:36 p.m. The next regular meeting will be Tuesday, March 24, 2009.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary