

MINUTES

Commission Meeting

September 27, 2011

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
J. Carter Fox)	
William Laine, Jr.)	
Joseph C. Palmer, Jr.)	
J. Bryan Plumlee)	Associate Members
Richard B. Robins, Jr.)	
Kyle J. Schick)	
Whitt G. Sessoms, III)	
John E. Tankard)	
Jack G. Travelstead	Chief, Fisheries Mgmt.
Paul Kugelmann, Jr.	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Katherine Leonard	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
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Head, Saltwater Tournament
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Biological Sampling Program Mgr.
Alicia Nelson	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Renee Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Randy Widgeon	Area Supervisor, ES
Steven York	Marine Police Officer
Donald Bond	Marine Police Officer

Commission Meeting

Tony Watkinson	Chief, Habitat Mgmt. Div.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Juliette Giordano	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Roger Mann	Robert Orth
--------------	------------	-------------

Others present included:

Matt Braun	David Hinckle	Bobby Jarman	George Burke
Lud Kimbraugh		Bryan Ellis	Kim Lanterman
Myles Pocta	Andy Lacatill	Brock Vergates	Cory Nealon
Chris Moore	Ellis W. James	Scott Harper	James E. Hudgins, Jr.
Ken Smith	Cleve Bryan	Danny Rosito	Kim Huskey
Art Kohn	Ty Farrington	John Forrest	Rob Latour

and others.

* * * * *

Commissioner Bowman called the meeting to order at approximately 9:35 a.m. All Associate Members were present.

* * * * *

At the request of Commissioner Bowman, Associate Member Robin gave the invocation and Tony Watkinson, Chief, Habitat Management, led the pledge of allegiance. Associate Member Robin asked that instead of the prayer that there be a moment of silence in memory of James Kirkley of VIMS who had passed away on September 21, 2011.

* * * * *

APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes from the Board members or staff. Jack Travelstead, Chief, Fisheries Management, asked that Item 11, VIMS' report be moved forward to be heard after the Habitat items, but before lunch. Commissioner Bowman announced that VMRC Counsel had advised him that it would be necessary to have a closed meeting in order for them to discuss two matters. He said that Item 4, the closed meeting would be done after Item 8, Public Comments, but before lunch.

Commissioner Bowman asked for a motion for approval of the amended agenda by the Board.

Associate Member Robins moved to approve the agenda. Associate Member Plumlee seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

MINUTES: Commissioner Bowman requested a motion for approval of the August 23, 2011 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Laine moved to approve the minutes, as distributed. Associate Member Plumlee seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member Tankard abstained, as he was not at the last meeting.

* * * * *

Commissioner Bowman, at this time, swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

* * * * *

2. PERMITS (Projects over \$500,000 with no objections and with staff recommendation for approval).

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

Mr. Watkinson reviewed the information for the record regarding Items 2A through 2C. He said that the staff recommendation was for approval with conditions and royalties.

Commissioner Bowman asked for questions of staff. There were none. He asked for comments pro or con from those of the public in attendance and there were none. He said the matter was before the Commission.

Associate Member Fox moved to approve Items 2A through 2C. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

2A. ELIZABETH RIVER CROSSINGS LLC and HAMPTON ROADS SANITATION DISTRICT, #11-1133, request authorization to install a 42-inch sanitary force main, using the Horizontal Directional Drilling Construction Method, under approximately 2,600 linear feet of State-owned subaqueous land of the Elizabeth River downstream of the Mid-Town Tunnel between the Cities of Portsmouth and Norfolk.

Permit Fee.....	\$25.00
-----------------	---------

2B. DOMINION VIRGINIA POWER, #10-1256, requests authorization to construct an overhead electrical transmission line across Lake Anna in Louisa and Spotsylvania Counties, a temporary bridge across the North Anna River in Caroline and Hanover Counties, and a temporary solid fill causeway with riprap scour protection and timber dolphins into the Mattaponi River in King William County to facilitate the transport of components for the construction and operation of the proposed Unit 3 at their North Anna Power Station in Louisa County. Recommend approval contingent on the SAV restoration plan received April 5, 2011, complete removal of the aforementioned temporary structures upon project completion, and a February 15 to June 30 instream work time-of-year restriction to protect anadromous fish species. Staff also recommends a one-time royalty of \$150.00 for the aerial crossing of the drowned streambed of the North Anna River (50 feet) within Lake Anna at a rate of \$3.00 per linear foot and a combined royalty of \$7,300.00 for the temporary encroachment of the causeway (13,400 square feet at \$5.00 per square foot), bridge (1,650 square feet at \$2.00 per square foot), and dolphins (5 at \$500.00 each) over State-owned submerged land, based on an annual rate of 10% of the one-time charge for the five-year period the temporary structures will be in place.

Royalty Fee (aerial crossing 50 lin. ft. @ \$3.00/lin. ft.).....	\$ 150.00 (one-time fee)
Temporary encroachment Royalty Fee (encroachment 13,400 sq. ft. @ \$5.00/sq. ft.) Royalty Fee (crossing 1,650 sq. ft. @ \$2.00/sq. ft.) Royalty Fee (Dolphins 5 @ \$500.00 each)	\$72,800.00 (rates based on a 10% annual rate times the anticipated 5-year encroachment) \$7,280.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$7,530.00

Commission Meeting

2C. WESTERN REFINING, #11-1227, requests authorization to encase and/or replace numerous pilings, to repair and/or replace numerous fenders, cross-beams and longitudinal braces, and to replace three entire pile bents to facilitate reconstruction of an existing commercial pier in the York River at the Western Refining Yorktown Refinery located at 2201 Goodwin Neck Road in York County.

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

* * * * *

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).

3A. FRANK HUNDLEY and PAT LEWIS, #11-1044, request after-the-fact authorization to retain an uncovered, four-pile boat lift which was constructed without the benefit of a permit at their joint-use pier on Wooldridge Cove adjacent to their properties at 7 Wooldridge Cove and 17 Wooldridge Cove, respectively, in Middlesex County. The applicants and the contractor have each agreed to pay a civil charge in the amount of \$600.00, for a total of \$1,200.00, in lieu of further enforcement action. Staff recommends approval with a triple permit fee totaling \$75.00 and acceptance of the aforementioned civil charges.

Tony Watkinson, Chief, Habitat Management, gave the presentation. Mr. Watkinson reviewed the information regarding the after-the-fact applications.

On July 18, 2011, staff received an application from R & W Marine Construction, agent and contractor for Mr. Hundley, for the installation of an uncovered boat lift at a joint use pier on Woolridge Cove in Middlesex County. The pier was originally authorized under VMRC #94-0217 issued to Fay Smith et al. Ms. Smith was a prior property owner of Mr. Hundley's lot and Mr. Pat Lewis was still the adjoining owner and co-permittee on the original permit. When staff conducted our regular site inspection on August 24, 2011, it was noted that the proposed lift had already been installed at Mr. Hundley's slip along the joint-use pier. Staff contacted Mr. Hundley, and Mr. Richard Callis of R & W Construction to gather information on why the lift was installed before the necessary permit was secured. Mr. Hundley indicated that he purchased the property on November 6, 2010, and while he knew the pier was jointly owned, he was unaware a VMRC permit would be required for the boat lift. Mr. Callis indicated verbally that there was a miscommunication between the person who prepares applications for him, and his construction crew that installed the lift. Apparently, there was some confusion regarding the need for a permit, since a VMRC permit is not typically required for a boat lift at a private use pier. A permit is required in this case since the pier is shared by two property

Commission Meeting

owners. Both Mr. Hundley and Mr. Callis had indicated their willingness to pay a civil charge to remedy the situation.

Staff did not have an issue with the lift itself, and would have authorized the structure at the pier upon completion of the public interest review, provided no opposition was raised. That review is now complete and there has been no opposition to the proposal.

Therefore, staff recommends after-the-fact approval of the lift and acceptance of triple permit fees totaling \$75.00 and a \$600.00 civil charge each from Mr. Hundley and Mr. Callis, in lieu of further enforcement action. Mr. Lewis, co-owner of the pier, appears to have had no involvement in this violation, and he has no objection to the lift. We do not recommend any separate enforcement action for Mr. Lewis.

It was noted that the applicant was not present.

Associate Member Robins moved to approve item 3A. Associate Member Tankard seconded the motion. The motion carried, 9-0.

Civil Charge (\$600.00/each Messrs. Hundley and Callis).....	\$1,200.00
Permit Fee (Triple A-T-F).....	\$ 75.00
Total Fees.....	\$1,275.00

3B. VINCENT RADLEY, #11-0786, requests after-the-fact authorization to retain an 18-foot long by 33-foot wide covered marginal wharf impacting 594 square feet of subaqueous bottom, adjacent to his property at 6476 Fairview Drive situated along the Passapatanzy Creek in King George County. The applicant agrees to pay a civil charge in the amount of \$600.00 in lieu of further enforcement action. Staff recommends approval with a triple permit fee totaling \$75.00 and acceptance of the aforementioned civil charge.

Tony Watkinson, Chief, Habitat Management, gave the presentation. Mr. Watkinson reviewed the information regarding the after-the-fact application.

On August 26, 2010, we received a Joint Permit Application requesting authorization to construct a breakwater system on the applicant’s property situated on the Potomac River. During a site visit, staff noted that there were two piers on the applicant’s property, one on the Potomac River and one on Passapatanzy Creek. During that same visit, staff had a conversation with the agent and requested an after-the-fact application be submitted for review for the marginal wharf and open-sided cover. The requested application was received on June 1, 2011. Staff has completed a full public interest review regarding the covered marginal wharf. No opposition from the public or State agencies was received.

Commission Meeting

A request for a second pier in a protected cove or stream is not uncommon when a property fronts on two water bodies. Staff estimates that approximately one-half of the covered wharf was located over the intertidal zone. Accordingly the covered area encroaches on less than 400 square feet of State-owned submerged land.

As such, given the minor environmental impact and minor degree of non-compliance, and the fact that a smaller marginal wharf had existed when the property was purchased by the applicant and the project is not objected to by adjacent property owners, staff recommends the Commission accept a consent agreement in lieu of any further enforcement action and issue a permit for the covered marginal wharf in consideration of the applicant’s agreement to pay a triple permit fee of \$75.00 and a \$600.00 civil charge.

Commissioner Bowman stated his concern was that some felt it was better to ask for forgiveness and pay a civil charge. He said the way it was going gave him heartburn. Mr. Watkinson stated one option would be to revisit the fees established for civil charges.

Commissioner Bowman asked for a motion.

Associate Member Tankard moved to approve the after-the-fact application for item 3B. Associate Member Laine seconded the motion. The motion carried 9-0.

Civil Charge.....	\$600.00
Permit Fee (Triple A-T-F).....	\$ 75.00
Total Fees.....	\$675.00

* * * * *

- 5. **FISHING BAY YACHT CLUB, #11-0955**, requests authorization to construct a 91-foot long by 6-foot wide T-head pier addition at the end of their existing commercial pier and to add a 1-foot wide catwalk adjacent to an existing boatlift on the pier situated along Fishing Bay in Middlesex County. The project is protested by an adjacent and a nearby property owner.

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

Mr. Woodward explained that the Fishing Bay Yacht Club (FBYC) was a private sailing club located near the north end of Stove Point in Deltaville, with frontage on both Fishing Bay and Jackson Creek. The Fishing Bay shoreline is comprised of both commercial marinas and boat yards along the western shoreline, and residential properties along the eastern shoreline of Stove Point. The club had been in existence for over 50 years and is home to larger cruising yachts, “One Design” and “Optimist” small sailboats, and other

Commission Meeting

smaller vessels which in the past taught sailing to young members. The original clubhouse on Fishing Bay was built in 1950 after the club relocated from Urbanna. It was replaced in 2002. The existing 220-foot long pier on Fishing Bay was constructed sometime before 1962. An 80-foot long T-head of the pier was destroyed by Hurricane Isabel in 2003 and only a portion of it was rebuilt in the aftermath. The current pierhead is essentially an "L-head" extending 24 feet in the northwest direction. In 2004, the FBYC purchased an adjacent parcel on Fishing Bay, allowing for additional expansion of the sailing program. The proposed new T-head measuring 91 feet long will be slightly longer to the east, and at a slightly more channelward angle than the original T-head. The purpose of the new T-head is to provide a safer launching, mooring and retrieval platform for multiple sail boats as they leave and approach the boat ramp located to the east of the pier.

Mr. Woodward stated that the project was being protested by the immediate adjacent property owners, James and Barbara Jacob, and their next door neighbor, Kendall S. Odell. When the application was submitted, the Jacobs jointly owned the property with Mr. Swenson. Mr. Jacob and Mr. Swenson both feel that the project represents a dramatic departure for any structure on Fishing Bay and would be unsightly. They also believed the addition would create safety problems, force all boat traffic from the ramp toward their riparian line, impact an oyster lease, and violated a verbal agreement made with the Club upon purchase of their lot. They stated that a large group of Club members also felt the construction was unwarranted.

Mr. Woodward pointed out that Mr. Odell, who also served on the FBYC Grounds Committee, shared many of the same concerns expressed by Mr. Jacob and Mr. Swenson. In addition, he believed the proposal violated an existing deed restriction and would obstruct access to private property. He also felt the pier addition was inconsistent with neighboring commercial piers, would obstruct ingress and egress to two existing boat ramps, would interfere with commercial watermen, would obstruct anchorage in public waters and lacked adequate launching width. Finally, he stated that the addition lacked the FBYC support.

Mr. Woodward said that during the review of this application, Mr. and Mrs. Jacob purchased the property outright from Mr. Swenson. They had applied for a private, non-commercial, riparian pier which would extend 240 feet channelward of mean low water and also encroached onto the oyster lease in the area between the FBYC pier and Mr. Odell's private pier (VMRC #11-0795). The impacted oyster planting ground lease was a 7.2 acre parcel held by Mrs. Judith Hawksworth (Lease No. 18394, Plat File No. 5112). Mrs. Hawksworth was formally notified of the proposal, and while she initially had some questions of staff, she later indicated that she did not object to the proposal.

Mr. Woodward noted that the Middlesex County Wetlands Board did not require a permit for the project. The U. S. Army Corps of Engineers issued a Regional Permit #19 for the project on August 17, 2011. The Virginia Department of Health, Division of Onsite

Sewerage, Water Services, Environmental Engineering and Marina Programs approved the project. The Department of Environmental Quality indicated that a Virginia Water Protection (VWP) permit would not be required. No other agencies had commented.

Mr. Woodward stated that staff believed that the proposed T-head and catwalk construction would not represent a significant expansion of the pier dimensions that existed prior to Hurricane Isabel. Staff was unaware of any specific conflicts or complaints associated with the previously existing pier. Staff carefully considered concerns regarding safety and navigation; however, staff believed the proposed construction might actually improve safety with little additional impact to navigation in the immediate area. The proposed private pier of Mr. and Mrs. Jacobs would seem to represent more of a navigation concern for Mr. Odell since it was to be located between his existing private pier and the existing FBYC pier.

Mr. Woodward said that in regards to the issues raised about any deed restrictions, it was unclear to staff if the restrictions were associated with the parcel from which the pier extended or the additional parcel acquired by FBYC in 2004. In any event, staff believed that issue was beyond the purview of the Commission and any permit issued by the Commission would have no effect on any existing restrictions associated with the deed.

Mr. Woodward explained that after reviewing the project and history of the site, all comments in the record, and after considering all of the factors in § 28.2-1205 of the Code of Virginia, staff recommended approval of the project, as proposed, with a royalty in the amount of \$871.50 for the encroachment of the new pier structures at a rate of \$1.50 per square foot.

Commissioner Bowman asked if the purchase of other upland property widened the riparian area. Mr. Woodward said he was not sure, but Mr. Odell was concerned with the agreement and what could be done with the new lot. He said there was a deed restriction here. Commissioner Bowman stated that verbal agreements were difficult to work with.

Associate Member Robins asked if the extension further south was pre-Isabelle and what the approximate distance was from the pier and the adjacent property. Mr. Woodward said that the proposed extension was slightly further offshore as shown on the riparian plat. He said visually it was eight or more feet additional distance offshore. Associate Member Robins questioned the catwalk being one-foot wide. Mr. Woodward stated that was not discussed with the applicants or the protestants and staff had no objection to widening the catwalk for safety reasons.

Associate Member Tankard asked if all small boats were being used. Mr. Woodward stated it was small ones on the Fishing Bay side and larger boats on the Jackson Creek side.

Associate Member Schick asked if the tiny pier in front of the pool belonged to the protestant. Mr. Woodward stated it was at Mr. Jacob's lot and that a proposed replacement pier in that location that could be closer to the Yacht Club and it could interfere.

Commissioner Bowman asked for the applicant and if he wished to comment.

Matt Braun, applicant, was sworn in and his comment are a part of the verbatim record. Mr. Braun explained that he had been the Dock's Committee chair since January 2011 and he oversees the dock and makes recommendations for needed changes. He said that the staff had accurately described the project. He said the dock was used for instructing the youth of the community and the regatta was held here and there was a need for more room for navigation when they must deal with the SW winds. He said the club was formed in 1938 and had bought the clubhouse in 1948. He added that 1949 was when the original dock was built. He explained that in 2003 Hurricane Isabelle damaged it and it was built back to the way it is today. He said that now they wanted back the T-head as it originally was.

Associate Member Schick asked if membership of the club was required. Mr. Braun stated yes to be approved by the board.

Commissioner Bowman asked for the slide that showed the new construction and asked why the L-head was so far in one direction and not split. Mr. Braun said that the riparian boundary property line was just five feet off on the west side.

Associate Member Robins asked about the length of the T-head and why the catwalk was only one-foot wide. Mr. Braun explained that originally it was 70 feet and with the regatta there were 14 to 40 boats with eight boats put in the deeper water. He explained that the SW winds trail off and it was easier to access the open water. He stated navigable water was needed.

Commissioner Bowman asked for anyone, pro or con, who wished to comment. There were none. He announced the matter was ready for discussion or action.

Associate Member Schick moved to approve it as submitted with staff recommendation to allow the catwalk to be between one-foot to three-foot wide. Associate Member Robins suggested that the motion be amended to say that a revised drawing showing the change to the size of the catwalk be submitted for staff approval. Associate Member Schick agreed to the amendment. Associate Member Fox seconded the motion. The motion carried, 9-0.

Royalty Fee (encroachment 581 sq. ft. @ \$1.50/sq. ft.).....	\$871.50
Permit Fee.....	\$ 25.00
Total Fees.....	\$896.50

* * * * *

6. **BAY CREEK MARINA & RESORT LLC, #04-2844**, requests relief from their permit SAV mitigation obligations for repeat plantings that resulted from the construction of seven (7) offshore breakwaters and beach nourishment situated along the Chesapeake Bay adjacent to the Marina Village subdivision in the Town of Cape Charles.

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

Mr. Badger explained that at the May 2005 Commission meeting, Bay Creek Marina & Resort was granted authorization to construct seven (7) offshore breakwaters and place associated beach nourishment landward of the breakwaters adjacent to their property situated along the Chesapeake Bay in the Town of Cape Charles.

Mr. Badger said that the Commission imposed two (2) special conditions on the permit specifically related to submerged aquatic vegetation:

- 1) Condition #18 states that any Submerged Aquatic Vegetation (SAV) that is directly impacted by the breakwaters or beach nourishment will be compensated at a 2:1 ratio (area).
- 2) Condition #19 states that an approved SAV Mitigation Plan, dated April 25, 2005, is attached and made a part of this permit. The plan includes monitoring and replanting, as necessary, for a period of 3 years.

Mr. Badger stated that staff received a post-construction SAV report from Bay Environmental, Inc., dated September 12, 2008. In that report, it was noted that the SAV coverage in the impact area had been reduced from 0.75 acres to 0.1948 acres for a resulting net loss of 0.5552 acres. As stated in special condition #18, the compensation ratio for the lost of SAV is 2:1; therefore, 1.1104 acres or 48,369 square feet of SAV was required to be planted.

Mr. Badger said that Bay Creek Marina & Resort contracted with VIMS and Dr. Robert Orth to broadcast eelgrass seeds over 1.1 acres of state owned submerged bottom, north of Sandy Island in Cherrystone Inlet. Dr. Orth seeded the area in the fall of 2009 and reassessed the area in late April 2010. At that time there were approximately 4,760

Commission Meeting

seedlings/plants established, or approximately 2.8% of those seeds broadcast within the plot area. According to Dr. Orth, that rate is within the range VIMS has found in other locations around the bay.

Mr. Badger explained that in the Fall of 2010, Dr. Orth conducted another survey and could not find any plants within the 1.1 acre plot. Dr. Orth stated this was not unexpected given that most of the eelgrass in the bay declined that summer due to the extremely hot summer conditions.

Mr. Badger stated that as a result of this survey, Bay Creek Marina & Resort had requested relief from the SAV mitigation obligations included in their permit. Specifically, they were seeking relief from the requirements for repeat plantings associated with special conditions #18 and #19 referenced above. The permittee believed that they had made a good faith effort to satisfy their permit obligations. To date, they stated that they had spent over \$17,000.00 to satisfy their mitigation obligations.

Mr. Badger said to help understand the decline in SAV in the project area staff evaluated the VIMS interactive SAV maps for the Cape Charles area. In 2004 (before the construction) the general area near the proposed breakwaters had 10% to 40% SAV coverage. In 2009 (after the construction) the area had less than 10% coverage and in 2011 there was no SAV in the impacted area. Other areas in Cherrystone Creek and Cherrystone Inlet showed similar losses. Had Bay Creek Marina & Resort waited until 2011 to construct the breakwaters, there may not have been any direct SAV impact and therefore, no mitigation requirements.

Mr. Badger stated that according to Dr. Orth, there had been a Bay-wide decline in eelgrass since 2010 attributed in part to the extremely hot summer conditions the Bay had experienced and the clarity of Bay waters. Dr. Orth believed that if the permittee was to repeat the planting in the general area or along the bayside of Northampton County the same results might occur. He also stated that the hot summers had warmed up the Seaside Bays, as well, and staff would not recommend the planting or broadcast of seed in these areas at this time.

Mr. Badger explained that in light of Dr. Orth's recommendations and the fact that the permittee had made a good faith effort to satisfy their permit obligations, staff recommended the Commission relieve Bay Creek Marina & Resort, LLC of their SAV mitigation requirements. Staff recommended all other conditions of their permit remain unchanged.

Commissioner Bowman asked for questions.

Associate Member Tankard asked why there was erosion here in this location. Mr. Badger stated that that project site did face the Bay to the northwest and there was a bar offshore, which provides some protection. He said he did not know, as there was erosion

at the Hoffler property in a nearby area where there is also a bar. He said also that the tide was rising all over the Bay.

Associate Member Robins asked if for SAV mitigation in the future were there any different species that could be used that would stand more heat. Dr. Bob Orth, VIMS, said that the eelgrass and widgeon grass are the primary two in the Bay. He said they still did not understand the dynamics for widgeon grass as it comes and goes. They had not used widgeon grass because of this and the eelgrass is a much more robust grass, but more susceptible to the heat issues that have occurred over the last five to ten years.

Associate Member Fox asked if they gave up this 1.1 acre site was there an alternate area where the funds could be put to better use. Dr. Orth stated that the dynamics have changed and they cannot predict where the grasses will reappear. He said the general pattern was that there was a decline in the lower Bay complicated by poor water quality, weather events, and the impact of the heat. He said that this was not true for the upper Bay, so it was not necessarily needed there.

Commissioner Bowman stated where the SAV had been lost the applicant had made a good faith effort.

Associate Member Tankard said that he was familiar with the area and the eelgrass had not been there for decades and it was a waterway issue for water fowl. He said there was a greater dynamic here than originally thought.

Commissioner Bowman asked if the applicant or the representative wished to comment. They responded no. He asked for questions. He announced that the matter was before the Commission.

Associate Member Robins said that with the number of plantings there had been a good faith effort by the permittee and he wondered if a discussion on the benefits of monitoring when the plantings are done would not be appropriate. He said he moved to support the staff recommendations and suggested a need to review if monitoring should be made a permit condition. Dr. Orth said that they had kept a finger on the pulse of every blade of eelgrass in the Bay, but the dynamics of change such as weather and climate puts challenges on the success of the plantings. He said they had worked with VMRC and determined that they should go to Seaside and it had worked, but the grasses did eventually all die.

Associate Member Laine asked if it could have worked in an area such, as Magothy Bay. Dr. Orth said they had worked with Bob Grabb in 2001 and planted grasses, but just last year all the grasses died because of the change in dynamics related to water temperature and turbidity, so Magothy might not have worked.

Commission Meeting

Associate Member Plumlee asked if instead of requiring the plantings in the location of the sites, that regions should be identified where these plantings would not succeed. He suggested that the Commission consider going to an 'in lieu' fee rather than forcing plantings in areas where it was known not to work; and, take a bay-wide approach.

Associate Member Fox asked if he was suggesting that instead of mitigation the applicant pay into a fund to be used for later plantings. Associate Member Plumlee responded yes. Dr. Orth said there was an example of this in the DC area when a bridge crossing was proposed and instead of doing the plantings in that location, the planting was done at the mouth of the Potomac River. He added it did not succeed, but there was a precedent for this method of mitigation.

Commissioner Bowman stated that the Commission staff would need to figure out how to handle the funds. He asked for a second to Associate Member Robins motion to accept the staff recommendations. **Associate Member Tankard seconded the motion. The motion carried, 9-0.**

Relief from further mitigation obligations for the permittee was approved.

* * * * *

7. DISCUSSION: Proposed permit process for applications requesting to remove submerged timber logs from State-owned bottomlands.

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

Mr. Worrell explained that the Habitat Management Division recently received a Joint Permit Application (JPA) requesting authorization to remove submerged timber logs from a non-tidal river in Southampton County. These were logs that were previously cut and prepared for mill-processing; however, they were subsequently lost in waterway transit. Under certain conditions the logs were well preserved, and the old growth timber was highly sought-after for furniture and custom millwork. Given that VMRC had never reviewed or authorized a request for such a removal of logs, and the fact that staff perceive these logs to be a valuable State resource resting on State-owned bottomlands, staff felt it was appropriate to require a Commission permit for their removal and to seek guidance on processing such a request.

Mr. Worrell said staff would like to present for consideration draft criteria for an application review and permit process that could be implemented for this specific request and possibly for similar future requests. This criteria had been created after several discussions and a site meeting with the applicant, and a conversation with the North Carolina Division of Coastal Management, which had a similar log recovery permit

process in place. Regulatory programs and recovery efforts were also in place in several other coastal and Great Lakes states.

Mr. Worrell stated that staff was proposing the following criteria be applied for an application review process and subsequent permit process:

- A complete JPA will be forwarded to sister agencies including, the Department of Game and Inland Fisheries, Department of Historic Resources and the Department of Forestry for review and comments. Any comments or recommendations received from these agencies will be considered for implementation into a Commission permit.
- A public notice in a local newspaper will be required. However, staff is not recommending that our standard adjoining property owner (APO) notification process occur, as there could potentially be numerous owners that would need to be identified and contacted, and there is no expected impact to such owners' upland property or riparian rights.
- A one-year permit will be granted for one particular length of one waterway. The limits of the area will be clearly identified and will include latitude and longitude coordinates.
- The permit will be "non-exclusive," meaning that if other applicants request to recover such log resources in the *same waterway*, an application will be processed and a subsequent permit may be granted.
- The permit will not allow logs to be removed if they are submerged in bottom or bank sediments.
- The permit will specify that logs will only be removed at private boat ramps or access points with upland property owner's written permission.
- The permittee must maintain a record of all logs removed. This record will be forwarded to Commission staff within 15 days of removal and include each log's length, diameter, and approximate monetary value. Photographs of logs will also be required.
- Along with the submittal of a recovery record, the permittee must pay a royalty to the Commission. At this point staff is recommending a rate of \$0.50/linear-foot of log.

Mr. Worrell said that staff felt that this process would provide the foundation for future permitting of such log recovery requests. Staff did acknowledge, however, that this process may need to evolve over time depending on the recovery findings, the nature of future application requests, or comments and recommendations received from other State agencies. Should the Commission concur, staff proposed to immediately implement this application review and permit process for the recent application that was received by VMRC. At the end of the initial one-year permit for log recovery, staff would provide a status briefing to the Commission.

Commissioner Bowman asked for questions.

Commission Meeting

Associate Member Fox said he called around about logging interest and the Commission should decide to permit this request because it was State-owned property and that an assessment was needed for a fair value on the worth. He said for cypress it commanded the most value and pine somewhat less and they were both sold by the 1,000 board foot. Mr. Worrell stated that the applicant previously advised that a broker indicated that he could get approximately \$3-\$4 per board foot.

Associate Member Fox said it depended on the processing used and they used board foot not the linear foot. He added there was a ¼-inch international rule. He said he was concerned that they would not just pull up all the logs, but pick desirable logs only and leave non-desirable ones that would impact navigation. He suggested contacting other agencies. Mr. Worrell said that North Carolina did not assess a royalty only the permit fee. He reiterated that the State was not reimbursed. Associate Member Fox said they probably want the larger trees, not the smaller ones. Mr. Worrell noted the applicant was not present. He added that the applicant was not able to remove the larger trees as it was a homeowner request not an industry request. Associate Member Fox said a royalty percentage was determined by the yield or profit and that would be hard to determine. Mr. Worrell said there would be the record of recovery to be used to determine the royalty.

Commissioner Bowman asked staff if they had contacted the Department of Environmental Quality. Mr. Worrell stated yes and that they had no problem with the project. Commissioner Bowman suggested that the assessment cover the agency's expenses, he suggested \$500. Mr. Worrell reiterated that this was a property owner not a business, and the only permit fees Habitat could charge were \$25.00 and \$100.00.

Associate Member Fox suggested that they would have to trust the applicant to report and to base the royalty on the international scale. Commissioner Bowman suggested that staff speak to someone involved in forestry. Mr. Worrell said there was a Division of Forestry office in Courtland.

Associate Member Robins said this was only a review today and the Commission would look at procedures at the next meeting. Commissioner Bowman responded yes. Mr. Worrell stated this was just a proposal.

Commissioner Bowman said that staff would talk to someone in forestry and come back next month to determine what was fair for the State. He said staff was to tell them what was proposed and to get the per board footage. Associate Member Fox reminded the Commission that it would depend on the type of log, cypress or pine.

Commissioner Bowman stated the matter was before the Commission.

Mr. Worrell said that staff would ask the applicant to be present at the next meeting.

Commission Meeting

Commissioner Bowman asked for a motion to table the matter.

Associate Member Robins moved to table the matter until the October meeting. Associate Member Schick seconded the motion. The motion carried, 9-0.

* * * * *

- 11. **VIRGINIA INSTITUTE OF MARINE SCIENCE:** Presentation of Dr. Bob Orth’s annual review of the status of Submerged Aquatic Vegetation, including VIMS’ request to authorize the renewal of the 727.85 acre set-aside area in South Bay for seagrass restoration that was last established by the Commission at their August 22, 2006, meeting.

Dr. Bob Orth briefed the Commission on the status of underwater grasses in the Chesapeake Bay and seaside lagoons and requested that the Commission renew the area which was previously set-aside in South Bay where seagrass re-plantings have shown some remarkable successes. Written comments regarding the history of the area and recommendations by staff were as follows:

Historically, prior to 1933 the coastal bays of the Eastern Shore supported large amounts of submerged aquatic vegetation (SAV), primarily eelgrass. The SAV was found in Magothy, South, Cobb, Hog Island and Chincoteague bays. The significance of these beds was noted in the populations of wintering waterfowl that fed on the eelgrass and in the bay scallop population, which was harvested commercially. In fact, the Commission set-aside Public Scallops Grounds in these bays in the 1920s. In the early 1930s, the combination of disease and the 1933 hurricane wiped out the entire population of eelgrass in the coastal bays. Bay scallops, which use eelgrass as a settlement substrate, were eliminated and have rarely been seen since.

At the August, 2006, VMRC meeting, the Commission approved a request from VIMS to renew for another five (5) years 361.49 acres in South Bay that was originally set-aside for seagrass restoration by the Commission at their August 28, 2001, meeting. The Commission also approved an additional 366.36 acres of unassigned state bottom adjacent to the above set-aside area for a total of 727.85 acres.

The South Bay set-aside area has developed into one of the largest eelgrass beds in the lower Delmarva Peninsula and is now self sustaining. With this success, VIMS has now embarked on a bay scallop restoration effort. Historically bay scallops were commercially harvested in the early 1900’s but disappeared when eelgrass died out in 1933. For the last three years VIMS has been spawning bay scallops and placing juveniles in bags to protect them from predators in South Bay. There are now a small number of free living bay scallops that VIMS believes were derived from their efforts in South Bay. The continued success of the bay scallop restoration effort is dependent on maintaining the set aside area for future research.

The Commission approved the set-aside area in South Bay for 5 years with the ability to renew for another five (5) years if the restoration efforts continue to prove successful. VIMS had asked for the set-aside area to be extended.

Given the fact that the SAV set-aside area has been successful and is now providing habitat for the bay scallop restoration effort, staff recommended that the area be set-aside for an indefinite period of time instead of on a renewable basis. If in the future the Commission determined a need to review, redefine or eliminate the set-aside area the Commission had that ability to do so on its own or at the request of the public at any time.

Also since Regulation 4 VAC 20-70-120 allows for the taking or catching of hard shell clams by the use of a conventional dredge from unassigned ground on the Seaside of Accomack and Northampton counties between December 1 and April 1, where the water is more than four feet in depth at mean low water, staff recommended that no dredging be allowed in the set-aside area, since a portion of the set-aside area may have water depths greater than four feet at mean low water.

After some questions and discussion, Commissioner Bowman asked for a motion for a continuance of the set aside area in South Bay (727.85 acres).

Associate Member Tankard moved to approve the continuance for setting the area aside (727.85 acres) in South Bay. Associate Member Schick seconded the motion. Associate Member Robins asked if all the staff recommendations and restrictions in Regulation 4VAC20-70-120 were included. Commissioner Bowman responded, yes. The motion carried, 9-0.

* * * * *

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

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

**Chincoteague-Assateague National Park
Blue Crab Fishery**

Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Associate Member Robins moved for the following:

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

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

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

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

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

AYES: Bowman, Fox, Laine, Palmer, Plumlee, Robins, Schick, Sessoms, and Tankard.

NAYS: NONE

ABSENT DURING VOTE: NONE

ABSENT DURING ALL OR PART OF CLOSED MEETING: NONE

Motion carried, 9-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

8. PUBLIC COMMENTS. There were no public comments.

Commission Meeting

The Commission broke for lunch at approximately 12:19 p.m. and reconvened at approximately 1:00 p.m.

* * * * *

9. **PUBLIC HEARING:** Consideration of final blue crab regulations, including closure of the crab dredge fishery for the 2011-2012 season, (4VAC20-1140-20 et seq. “Pertaining to Prohibition of Crab Dredging in Virginia waters). Decision on licensing those individuals on the peeler pot and crab pot waiting list who have been inactive, at least since 2004 (4VAC20-270-10 et seq., “Pertaining to Crabbing”). Re-assignment of latitude-longitude coordinates that apply to Virginia Blue Crab Sanctuaries (4VAC20-752-20 et seq., “Pertaining to Blue Crab Sanctuaries”).

Rob O’Reilly, Deputy Chief, Fisheries Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. O’Reilly noted that comments had been received from The Nature Conservancy, the Chesapeake Bay Foundation, the Northampton Anglers Club and 40 plus others. He explained that he had given a briefing at the July Commission meeting, the August Commission meeting had been interrupted by an earthquake, and now a briefing of that meeting was summarized for this hearing.

Mr. O’Reilly said that at the July meeting staff had discussed the abundance as the number of crabs available prior to the fishery occurring. He said there were two categories of crabs: recruits age 0 and age 1 plus (potential spawners). He said there had been a 30% decline in abundance in 2011 from 2010 and 53% increase in harvest since 2008. He added that after the Commission’s 2008 conservation plan, bay-wide there was 51% increase in harvest, in 2010, over the 2009 harvest. He stated that Virginia’s increase was larger than Maryland’s. He said that the 2011 harvest included recreational which was estimated as 8% of the bay-wide harvest.

Mr. O’Reilly explained that of the conservation measures taken in 2008, the Crab Dredge fishery season closure resulted in 38% of that 34% reduction. The larger cull ring size (2 3/8-inches), increased peeler size. The earlier sanctuary was closure contributed to that plan. He noted that VIMS and ODU scientists said female crabs were staging for spawning in May. He said with the Crab Dredge Fishery, there was the issue of waste, which was one of the reasons for staff to recommend a closure of the dredge season for 2011-2012.

Mr. O’Reilly said that next was the issue of the waiting list. He said there were 320 licensed crab and peeler pot waiting list. He noted that there were 867 on the waiting list, at the beginning because they did not report any catch for the time period 2004 – 2007.

Mr. O'Reilly said that in comparing the spring pot harvest in 2010 versus 2011, there were more harvesters and more quality harvest days in the spring of 2011. He said the spring months were an increase in the harvest; however, there was a need for a reduction bay-wide because abundance declined by 30%.

Mr. O'Reilly said that the Blue Crab Management Advisory Committee (CMAC) they wanted to reinstate 7 from the waiting list, and staff does not recommend them being allowed to reenter the fishery until the harvest reaches the 215 million target of age one plus female crabs, 3 consecutive years.

Commissioner Bowman said that with the number of individuals who ask for exceptions there would be concern for being fair, if it were not based on management decisions, not just CMAC, but from others outside.

Mr. O'Reilly said that with the new stock assessment there were new targets and new thresholds. He said the new target was 215 million age one plus female crabs rather than the 200 million crabs, both male and female.

Concerning the issue of identification of crabs and peeler pots, Mr. O'Reilly said that Maryland had been left out for allowing out of state identification on pots but they had asked to be included last fall. He said it was already allowed for North Carolina and the Potomac River Fisheries Commission. He said that staff was recommending that Maryland be included effective today.

Mr. O'Reilly summarized that staff recommendations that included: the closure of the 2011-2012 crab dredge season, delay of reentry of the individuals on the waiting list, until there was 215 million female crabs that were age one plus for three years; a reassignment the lines to the sanctuary; and allowing the marking of Maryland identification on the crab and peeler pot buoys.

Mr. O'Reilly said that there had been a suggestion to make some tending requirements for pots and some on CMAC did not think it was a problem, but a lot of others did. He stated that some individuals leave their pots once the season is over. He said staff recommended leaving this for future discussions by the CMAC. Commissioner Bowman stated this could be done by consensus of the Commission as no formal action was necessary to send it to the Committee.

Mr. O'Reilly reviewed the draft regulations indicating the proposed changes.

There were no questions.

Commissioner Bowman opened the public hearing.

Commission Meeting

Chris Moore, Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. Mr. Moore congratulated the Commission on its actions taken in 2008 as it did cause an improvement. He noted the stock assessment had provided a new target and threshold to be used for future conservation. He stated they supported a healthier fishery.

Kim Huskey, Virginia Seafood Council, was present and her comments are a part of the verbatim record. Ms. Huskey requested that the Commission consider opening the 2011-2012 Crab Dredge Fishery season. She said this was full-time fishery being made a part-time one. She said this caused a loss of jobs for the industry and opening the fishery would provide economics and jobs for watermen.

Ty Farrington, Virginia Watermen Association was present and his comments are a part of the verbatim record. He provided the Board with a handout. Mr. Farrington said he was a member of the Blue Crab Management Advisory Committee. He said the suggested dredge fishery was December to January, which is not truly a whole season. He said if they were given 27 days for a season it would match the days available for the Ghost Pot project to equal 50 days. He said the Crab Dredge fishery should have been addressed as the first item of the meeting because moving it to the last meant some were tired and ready to go home. He said the watermen need a full winter of work and buyers need a full year. He said there was a political need to create jobs. He stated that staff cannot quantify the waste, because there was no proof. He said the 1988 study was 23 years old and you cannot compare 200 dredgers to the fleet of only 53 now. He said using the latest technology and most efficient equipment means that crabs will be provided for market. He said when other States cannot provide the product the value increases. He said there was waste in other fisheries and the Commission needs to close the peeler pot fishery, which works all the time, 24/7. He said the dredgers work on only a small portion of the Bay. He said there were more animals in the winter and they thrive and are in larger abundance. He said not all female dredge fishery crabs are pregnant as stated by staff. He said staff needed to protect the crabs in fall by setting lines for potters. He said that there was strong support for the dredge fishery, but the Commission was only looking for those against the fishery. He said he had petitions with a 1,000 signatures for opening the crab dredge fishery. He said he did not have all of them with him, but provided a sample. He said he doubted the accuracy of the information on the dredge fishery. He said the 22 days for the Ghost Pot project was not enough and the Commission should reopen the dredge fishery January 1 with a limit of 30 to 36 bushels. He referenced the Code Section 28.2-203 which says to not discriminate among users and that conservation should be done in a way to minimize the burden and hindering business. He asked that this be settled now and made right. He said there was no damage as there was no proof, so let them work.

Ken Smith, Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith said that staff referred to damage, but they need to show proof. He asked how much increase in abundance was the result of the closed crab

dredge fishery. He said Mr. Farrington felt that the winter dredge survey which is conducted is like comparing apples to oranges. He suggested allowing the 14 watermen to reenter the fishery and to not allow agents. He asked how staff came up with the right numbers and something did need to be done. He said Virginia takes the brunt of the regulations and it was not their fault that Virginia had the spawning grounds. He said crabs migrate north and south.

Commissioner Bowman closed the public hearing as there were no further speakers.

Associate Member Palmer stated that in 2008 there was a 200 million crab limit and the new regulations cut the catch by 34% and there was less gear and no crab dredge fishery. He said the sanctuary closed May 1. He said no one at that time was happy, but it was acceptable and in three years there had been sizeable gain in the stocks. He said now it was the ninth inning and the rules had changed because of the new stock assessment method. He said he agreed with Mr. Farrington and Mr. Smith. He said there were lots of crabs out there and those reporting the catch are over reporting. He said for the latent licensees, the Commission has lost credibility as to what it will do. He said he agreed the 14 licenses should be given back as a good faith effort by the Commission. He said the Commission should be doing management by crisis as it was done in 2008. He said the 43 dredgers have lost their infrastructure, which includes picking houses and market. He said the market need a supply of crabs for 12 months or they lose. He stated there's a need to reinstate the crab dredge fishery and also the crab pot fishery.

Commissioner Bowman stated that rules change as did science. He said the Commission did not change and was told to make the best decision with the best available science. He said he understood those that disagree such as those on the waiting list, as well as others. He said they want in with an exception and they want the crab dredge fishery opened. He said the crab dredge fishery works in an area with lots of female crabs, but there was concern with disturbance of the females so that they can't live and provide spawn. He said he doesn't make the motions and votes when there are ties.

Associate Member Robins said that the rules are changing as for every stock there is a typical change every 5 or 6 years which results in different benchmarks. He said there had been talk about optimal yield and with the stronger assessment what is being done is to achieve maximum yield. He said there was always a trade off in order to maintain a sustainable yield, which is based on science. He said the recommendation by CMAC had exceeded the reference point. He said there was need for dialogue for a full-time fishery. He suggested that a panel be put together like Maryland's fishery design team, but to provide for more dialogue with industry. He said in 2008 the Commission did what was needed and the catch population and value is all up. He said should have more discussion for long-term issues. He said a lot needs to be looked at. He stated excessive licenses had been addressed as there was a lot of latency in both full-time and part-time harvesters. He said there was a limit on license transfers per year. He said with agency the license can become active. He said there needed to be a viable, full-time fishery, but there

needed to be more ways to control and more effective management. He said with the 14 licensees it was right to look out for the full-time fisherman, but it was not fair to others and should not allow excess in capacity. He said the staff needs to do an analysis before bringing those back from the waiting list. He said with what he had seen today, he could not see letting them back into the fishery and there was need to offset allowing the crab dredge fishery back. He said the Commission did not discriminate among the users as it was more to do with recreational and commercial. He reiterated that long term discussion was needed and if the crab dredge fishery was allowed then there was a need for other fishery management measures to fit them in.

Associate Member Schick said that in 2008 both Maryland and Virginia established management measures based on the best science that existed then, not as defined today. He said better science results in changed decisions. He said the Commission wants to save the fishery.

Associate Member Plumlee stated he believed that the industry was trying to work with the State. He agreed with Palmer for a compromise and keep the moratorium but bring the 14 licensees back.

Associate Member Laine said that since the crab dredge fishery was closed there have been increases in the stocks and most female crabs are caught by the dredge fishery who need to be able to spawn. He said in the latest report the 200 million crabs set was too liberal. He stated the Code says to use the best science and the latest is the best. He said it was not good for all to open the crab dredge fishery.

Commissioner Bowman asked for action by the Commission. He asked for a motion for the 2011-2012 Crab Dredge Fishery. He read Code Section 28.2-707(D) for the record.

Associate Member Laine moved to keep the Crab Dredge Fishery season closed as staff recommended and the comments supported. Associate Member Palmer seconded the motion. The motion carried, 9-0.

Commissioner Bowman asked for a motion for the delaying of the waiting list reentry.

Associate Member Plumlee move to allow the 14 crabbers identified to reentry the fishery. Associate Member Palmer seconded the motion. He added that there would be no agency and they must be present when using the license. Associate Member Robin stated he could not support the motion as it was not fair and premature to do before discussing it further with the industry. Associate Member Laine stated he agreed with Associate Member Robins that it was premature. Commissioner Bowman stated he could not support the motion because of the legality and fairness. Associate Member Fox stated he could not support and requested that CMAC be asked to look at it again. Associate Member Sessoms stated he supported the motion

as it was a compromise. The motion failed, 3-6. Associate Members Robins, Tankard, Schick, Fox, Laine, and the Chair voted no.

Associate Member Robins moved to accept the staff recommendation and to not allow the 14 watermen to reentry the fishery. Associate Member Tankard seconded the motion. Associate Member Plumlee stated that with the dredgers out, the 14 watermen being allowed back would not impact future decisions. The motion carried, 6-3. Associate Members Plumlee, Palmer, and Sessoms voted no. The Chair voted yes.

Commissioner Bowman asked for approval of the reassignment of the latitudes and longitudes for the sanctuary.

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

Commissioner Bowman asked for a motion to allow for the Maryland ID to be on the crab pots.

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

Associate Member Robins suggested a panel be established and for staff to report back next month. It was the consensus of the Board that this would be done.

Associate Member Plumlee moved to advertise for a public hearing in October to discuss extending the potting season through November 30. Associate Member Palmer seconded the motion. Mr. Travelstead said the science would not be any different next month and there would be same arguments about equivalency. Associate Member Palmer asked about the assessment of the catch. Mr. Travelstead explained the catch was up so far higher this year. Associate Member Robins said the CMAC had discussed it and the flexibility would be there, but early numbers show that the fishery is going over the target. He said the Board could ask for a staff update on the catch information and if necessary at that time take emergency action. Commissioner Bowman asked if the two Board members agreed. Associate Member Palmer responded okay and Associate Member Plumlee said he would withdraw the motion.

* * * * *

- 10. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest” to establish the 2011-2012 public oyster seasons.

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

Dr. Wesson explained that in July at the Commission meeting staff had expressed their concern with the developing interest in taking seed oysters from the James River to plant in Maryland. He said staff would like to start with the 2011-2012 Public Oyster Harvest Season first, followed by the issue of the seed oysters, second.

Dr. Wesson stated that staff had advertised several versions of the season openings—one with most of season openings on October and others with staggered openings. He stated also that staff had advertised to reduce the daily harvest from 10 bushels to eight bushels per licensee because of the anticipated lower standing stock numbers this season.

Dr. Wesson said that the Shellfish Management Advisory Committee (SMAC) had met on August 15 and made two recommendations regarding seasons. He said first, they recommended that the James River hand scrape areas be reevaluated in December, and if catch rates and standing stocks had not decline significantly, that the season be extended another month. He said second, they recommended that the season for Mobjack be moved to the month of March, 2012. He added that staff was recommending that the season in the Great Wicomico River and Blackberry Hangs in the upper Chesapeake Bay be from December 1, 2011 through January 31, 2012 based on a number of comments from watermen in that area.

Dr. Wesson said that SMAC also discussed the catch limit and compromised on a recommendation of keeping the bushel catch per license at 10 bushels, and a maximum of 30 bushels/vessel.

Dr. Wesson said that there was one letter of comment received after the briefings were mailed, which in the Commission notebooks on blue paper.

Commissioner Bowman opened the public hearing.

John Forrest, Gwynn’s Island waterman, was present and his comments are a part of the verbatim record. Mr. Forrest said that he would like to see the Piankatank River opened to hand tong this fall. He said it was presently used as a seed area for the State who moved it to areas in the Rappahannock River. He said there were a good number of larger oysters that could be caught and it was closer to where he lives and he would not have to go elsewhere to work. He said the others were benefiting from the larger oysters that get moved to the other areas.

Dr. Wesson said that Mr. Forrest was correct this was a seed river for the State and these management strategies were working well in the Piankatank River. He stated that staff recommended keeping the area closed to public harvest and keep this as a seed area.

Ken Smith, Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith agreed that there were marketable size oysters in the Piankatank River as other watermen had told him there were oysters that could have been caught in the area. He said he agreed with the request.

Commissioner Bowman said the public hearing was closed. He said the matter was before the Commission.

Associate Member Fox stated that the Piankatank River had not been advertised. Commissioner Bowman said it would have to be an emergency regulation, which the Board does not want to do. Associate Member Fox stated that this was something that the SMAC could address for future seasons.

Commissioner Bowman asked for a motion.

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

Dr. Wesson asked about the bushel limit of 10 bushels per licensee.

Associate Member Fox moved to accept the staff recommendation. Associate Member Robins seconded the motion.

Mr. Smith asked to speak and noted that the staff had also recommended a 30 bushels maximum vessel limit and originally it was 8 bushels per licensee. He suggested the Commission consider a 24 bushel vessel limit and no per licensee limit. Dr. Wesson said staff could suggest that it go back to eight bushels per licensee rather than the 10 bushels per licensee. Mr. Smith stated he would prefer it stay at the 10 bushels per licensee. **The motion carried, 9-0. The Chair voted yes.**

Dr. Wesson said that in Maryland funding has been made available to the various county watermen's associations from the Maryland Department of Natural Resources. He said there were no shells or seed available in Maryland for restoration. He said that there are State loans for the leaseholder that paid for 100% of the restoration, but only require 40% to be paid back. He explained that staff had thought that maybe there should be a season change or a quota. He stated that the Assistant Attorney General said that the Maryland residents could not be prevented from purchasing these seed as the Code of Virginia allowed for the exporting of oysters. He noted that VIMS had always said to not take the James River seed oysters to anywhere where the salinity is higher and Maryland had it on

their books to not allow for disease shellfish to be brought to Maryland for planting. He said that SMAC said that a lot of seed was needed in the fall, so they suggested going to a quota. He said staff suggested that it 10,000 bushels per month, but they wanted it to be a quota of 40,000 bushels for the months of October through December. He said that individuals could come down and buy that amount in one month. He said it was suggested that there be a total of 120,000 bushels of seed oysters for the entire season. He said that staff could come back after stock assessment is complete and discuss changing the amount if it was determined that should be done starting January 1.

Dr. Wesson said that staff had a proposal that would include a Seed Harvest Permit, a call-in requirement and monthly report of the seed harvest in order to keep up with the quota.

Dr. Wesson said staff was still not sure what Maryland would do at this point. He said with the freshet now staff was not sure if they would come here or not.

Commissioner Bowman said they needed to know how many could go to Maryland without hurting the stocks. Dr. Wesson said the stocks are sustainable because the lower James River depends on the upper James River for spawn. He stated that VIMS staff were concerned about the situation. Commissioner Bowman stated he was leery of the risk.

Associate Member Fox said that the SMAC had discussed this matter and considered the 120,000 bushels included planting in the James River and other areas in Virginia, as well as Maryland. He asked VIMS to comment.

Dr. Roger Mann, VIMS, was present and his comments are a part of the verbatim record. Dr. Mann complimented the committee for their meeting both in August and September. He said several problems were answered with one answer. He asked what about Maryland, as it cannot be stopped from seed going to Maryland. He said that one issue was it was not all being reported. He said they asked the Committee how much was needed for the spring? Fall? He said it was a little in the fall and a lot in the spring. He suggested that individuals seed out the members of General Assembly to enact legislative changes. He said he was not opposed to the 40,000 bushels being removed and with the stock assessment they could get an idea of what was actually left.

Commission Bowman said explained that emergency action was needed.

Associate Member Fox moved to accept the staff recommendation to adopt the SMAC recommendation as an emergency regulation. Associate Member Palmer seconded the motion. The motion carried, 8-1. Associate Member Tankard voted no. The Chair voted yes.

Associate Member Plumlee moved to advertise for the public hearing in October. Associate Member Robins seconded the motion. The motion carried, 8-1. Associate Member Tankard voted no. The Chair voted yes.

Dr. Wesson said there was one more item to discuss and that was a request for the hand scrapes to be allowed to leave the dock 1 hour before sunrise, the same as the dredgers in the Pocomoke-Tangier Sounds. He said the regulation allows them to leave now one-half hour prior to sunrise and then they can start harvest at sunrise. He said in Pocomoke-Tangier they were allowed to leave with their dredges one-hour prior to sunrise, but they have to travel from one sound to another and there are no private grounds in the area. He stated that staff and Law Enforcement were both concerned about poaching and that there was private grounds this area. He said that staff did not recommend advertising for a public hearing to consider this request.

Commissioner Bowman stated the matter was before the Commission for action.

Associate Member Fox moved to advertise for a public hearing. Associate Member Plumlee seconded the motion. The motion failed, 2-7. Associate Members Laine, Schick, Palmer, Sessoms, Tankard, Robins, and the Chair voted no.

Dr. Wesson said that staff had offered to request an additional half-hour at the end of the day and they were not interested.

* * * * *

12. REQUEST FOR PUBLIC HEARING: To modify Summer Flounder trip limits and season starting date for the winter 2011 fishery.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. He said more information would be provided next month, but explained for newer Board members some of the background and the reason for this request for public hearing.

Mr. Grist said that during the winter directed fishery season vessels may land up to 10,000 pounds of summer flounder within each 15-day period. The winter directed fishery season begins on the first Monday in March and when combined with all summer flounder by-catch landings since the start of the calendar year, continues until total landings are projected to be 85% of the allocated quota for that season. When the 85% quota trigger is reached, the winter directed fishery ceases and the by-catch only fishery resumes until the start of the fall directed fishery season, currently the last Monday in November.

Mr. Grist stated that during the fall directed fishery season vessels may land up to 7,500 pounds of summer flounder each 12-day period. The fall directed fishery continues until

Commission Meeting

all preceding by-catch landings, directed summer flounder landings, and projected landings from the 300,000 pound tidal waters set-aside are projected to be 85% of the allocated quota for the fall season. When this 85% quota trigger is reached, the fall directed fishery ceases and the by-catch only fishery again will resume.

Mr. Grist said the by-catch fishery for summer flounder caught offshore opens on January 1 each year and remains open, except during the directed fishery time periods or until it is projected that 100% of the annual commercial quota has been harvested and the fishery is closed by VMRC.

Mr. Grist noted that the staff had received an industry request to change the 2011 commercial fall directed fishery for summer flounder caught offshore. They have asked that the fall directed fishery open on the second Monday in November, November 14, with a 10,000 pound vessel limit every 15 days.

Mr. Grist stated that staff recommends advertising for an October public hearing the proposed amendments for the summer flounder fall directed fishery for 2011.

Commissioner Bowman said the matter was before the Commission.

Associate Member Robins moved to accept the staff recommendation to advertise for a public hearing. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

13. REQUEST FOR PUBLIC HEARING: To modify Scup trip limits for the Winter I, 2012 fishery.

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

Ms. Nelson stated that in April staff received a memorandum from the ASMFC announcing an increase in the scup quota for 2011 and implementing several changes, including a 7-day landing period for the Winter I period and an increase to the Virginia Summer period quota from 6,818 pounds to 13,085 pounds.

Ms. Nelson said that due the quota increases and the unused portion of the scup Winter I period, the NMFS announced on August 4 that the 2011 Winter II period, November 1 through December 31, possession limit would be increased from 2,000 pounds to 8,000 pounds. She noted that all States are required to implement the provisions established in the addenda to the Scup Fishery Management Plan.

Commission Meeting

Ms. Nelson explained that staff recommended the advertisement for an October public hearing, to amend Regulation 4VAC 20-910-10, et seq., "Pertaining to Scup," to increase the Winter II trip limit, increase the Summer period quota, and to adjust the Winter I landing period from 14 days to 7 days.

Commissioner Bowman said the matter was before the Commission.

Associate Member Robins moved to accept the staff recommendation to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

14. RECOMMENDATIONS of the Recreational Fishing Advisory Board and Commercial Fishing Advisory Board.

Sonya Davis, Fisheries Management Specialist, Sr., gave the presentation. Ms. Davis reviewed the recommendations of the two Boards and her comments are a part of the verbatim record.

Commissioner Bowman asked if the individuals for Item Q, 2012 CCA Northern VA "Save a Kid, Catch a Fish" were notified of the RFAB's decision to deny their request for funding. Ms. Davis stated that they had been notified, but she had not heard back from them.

Virginia Saltwater Recreational Fishing Development Fund

The Recreational Fishing Advisory Board (RFAB) initiated a single project review cycle in 2009 that involves 4 meetings, from May to September. This change from two review cycles to one review cycle was made because saltwater recreational license sales seemed to be on a downward trend, and there is a current annual obligation of approximately \$1.5 million on the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF) that supports agency functions. Also, the exact cost of the Virginia Fisherman Identification Program (FIP), which began in 2011, is still unknown at this time. The RFAB members and staff determined that there would not be enough funds to support two review cycles.

The estimate of funds available, for projects, as of August 31, 2011, from the VSRFDF, is \$1,731,163.

The RFAB began this review cycle with 17 project proposals. They recommended the funding of four educational events in May, and the Commission approved the expenditure of \$23,094 in June. One project (Item K) was withdrawn by the applicant, with no reason

given. The RFAB is recommending the funding or partial funding of eight of the remaining twelve projects, totaling \$480,908. In addition, staff is requesting \$10,000 be added to cover reimbursement costs for RFAB member travel.

On September 12, 2011, the following eight projects were recommended for approval by the RFAB:

A) 2011 Virginia Marine Sportfish Collection (Year 5). J. Grist, J. Cimino, VMRC. \$11,500. Vote 8-0.

B) Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2012. Jack Travelstead, VMRC. \$321,856. Vote 8-0, to fund \$286,856.

RFAB COMMENT: Provided that the commercial Marine Fishing Improvement Fund furnishes the additional \$35,000.

C) 2012 Children's Fishing Clinic (Year 15). Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. \$6,500. Vote 8-0.

D) 2012 Kiwanis Club Children's Fishing Clinic (Year 11). Wesley Brown, Capital District Kiwanis Club. \$6,500. Vote 8-0.

E) 2012 Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay. M. Fabrizio, T. Tuckey, VIMS. \$46,658. Vote 8-0, to fund \$23,329.

RFAB COMMENT: Provided that the commercial Marine Fishing Improvement Fund furnishes the additional \$23,329.

F) 2012 Virginia Game Fish Tagging (Year 18). S. Musick, VIMS and L. Gillingham, VMRC. \$70,213. Vote 8-0.

L) Bennett's Creek Park Fishing Pier Replacement. Michael Kelly, City of Suffolk. \$75,000. Vote 8-0.

RFAB COMMENT: Provided that the City of Suffolk is able to obtain all necessary permits.

P) 2012 Norfolk Youth Head Boat Fishing Trip. Ned Smith, Norfolk Anglers Club. \$1,010. Vote 8-0.

The following four projects were not recommended for approval by the RFAB:

M) Survey Design for Adult Atlantic Menhaden along the U.S. East Coast. Robert Latour, VIMS. \$55,373. Vote 8-0.

RFAB COMMENT: The reason for the denial was because they felt that sufficient recreational funds, over the years, have been dedicated to the study of menhaden. Also, the RFAB wants to see the results from the VIMS (PI: Dr. Kirkley) socio-economic study on menhaden before considering any additional projects.

N) Examining Stock Composition of Migratory Striped Bass. David Gauthier, ODURF. \$82,351. Vote 8-0.

RFAB COMMENT: The reason for the denial was because they felt that sufficient recreational funds, over the years, have been dedicated to the study of striped bass.

O) Population Dynamics of Overwintering Speckled Trout on the Elizabeth River in Chesapeake Bay. C. Jones, S. Beharry, ODURF. \$64,871. Vote 8-0.

RFAB COMMENT: The reasons for the denial were because they felt that this study was specific for one small area, Virginia Dominion Power may be closing the facility in the next year or so and it may not continue as a "hot ditch" area, and regulation of the species may still continue without the information that would be provided from this study. However, if the facility does not close, the RFAB has invited the investigators to return with another project proposal.

Q) 2012 CCA Northern VA "Save a Kid, Catch a Fish". J. Bello, G. Lenard, Coastal Conservation Association – Northern VA. \$2,700. Vote 8-0.

RFAB COMMENT: The reasons given were because they felt that most of the children were coming from the Washington, DC area and that they were using charter boats from Deal, MD, the nearest port. This program would not benefit a large number of children from Virginia or utilize the Virginia charter and head boat industry. No one was in attendance of the meeting to discuss this program further.

Comment letters, which include the above proposals, are provided.

After much discussion about the importance of the Atlantic Menhaden fishery to the State of Virginia and having available the best data for making decisions for the fishery, staff indicated that there was \$55,373.00 available for a one-shot deal to design a study. Mr. Travelstead said that the ASMFC was making a recommendation for cutting catch as much as 40 plus percent and there was a need for a method to measure the stocks. He said he felt that it was the ones who had their own data that were the ones who 'rule the day'.

Associate Member Fox moved to approve all the recommendations by the RFAB to include Item M, “Survey Design for Adult Atlantic Menhaden along the U. S. East Coast.” Associate Member Plumlee seconded the motion. Associate Member Robins said he appreciated the Recreational Fishery Advisory Board, but this would be an important step forward to understand the menhaden. Associate Member Tankard stated that menhaden was a hot topic—important to Virginia. The motion carried, 9-0. The Chair voted yes.

RFAB Travel Reimbursement Funds.

The reimbursement funds are low. Staff is requesting a \$10,000 increase to cover mileage and meals for the Advisory Board members.

Associate Member Fox moved to approve increase in the RFAB travel reimbursement fund as recommended by staff. Associate Member Plumlee seconded the motion. The motion carried, 9-0. The Chair voted yes.

Commercial Marine Fishing Improvement Fund

Five project proposals have been submitted for funding from the commercial Marine Fishing Improvement Fund (MFIF). The estimate of funds available, as of December 31, 2011, for projects, from the MFIF, is approximately \$123,040. Three projects have been recommended for some funding, totaling \$108,329.

With the small amount of commercial funds available, it was decided that a mail-out would be more cost effective than a full meeting of the Commercial Fishing Advisory Board (CFAB). Each member was provided a copy of the five project proposals and a summary of how the projects, or portions of the projects, may be funded. The CFAB members were asked to provide comments by August 26, 2011, and only one member commented in support of the suggested expenditures. The other seven members did not provide comments for or against any of the suggested expenditures. However, on September 12, 2011, the RFAB did not recommend any portion of funding for Items D and E, and they suggested utilizing more commercial funds to assist with the Wallop-Breaux match (Item C). Staff does not believe that the CFAB members would be opposed to this change suggested by the RFAB.

The following three projects were recommended for approval:

A) Marketing of the Virginia Aquaculture Oyster Industry. Mike Hutt, VMPB. \$50,000. MFIF to provide \$50,000.

B) 2011 Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 11). M. Fabrizio, T. Tuckey, VIMS. \$46,658. MFIF to provide \$23,329. Provided the VSRFDF furnishes the additional \$23,329.

C) Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2012. Jack Travelstead, VMRC. \$321,856. MFIF to provide \$35,000. Provided the VSRFDF furnishes the additional \$286,856.

The following two projects were not recommended for approval:

D) Survey Design for Adult Atlantic Menhaden along the U.S. East Coast. Robert Latour, VIMS. \$55,373. Funds not available.

E) Examining Stock Composition of Migratory Striped Bass. David Gauthier, ODURF. \$82,351. Funds not available.

Associate Member Fox moved to approve the recommendations of the CFAB. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Boat Scarring Project: If the Commission decides to continue the Boat Scarring project and funds the project 50% from VSRFDF and 50% from MFIF.

Ms. Davis provided a handout that explained that the final funding amount for this project as \$22,600.00, to be split between the RFAB and CFAB funds (\$11,300.00 each). She noted this item was only reviewed by the Commission Board for their approval, not by the RFAB and CFAB.

Associate Member Robins moved to approve the funding of this project. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.

At the request of Commissioner Bowman, Ms. Davis explained the two Boards' review process and sources of funding. These responses by staff and questions from the Board are a part of the verbatim record.

* * * * *

At the request of Commissioner Bowman, the Commission unanimously authorized loaning the agency's original signed copy of the Potomac River Fisheries Compact, subject to recall by a future Commission or Commissioner. The Potomac River Fisheries Commission does not have an original, and few exist.

* * * * *

Commission Meeting

**16502
September 27, 2011**

There being no further business, the meeting was adjourned at approximately 3:55 p.m.
The next regular meeting will be held Tuesday, October 25, 2011.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary