

MINUTES

Commission Meeting

February 28, 2012

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.	
J. Bryan Plumlee	
Joseph C. Palmer, Jr.	Associate Members
Richard B. Robins	
Kyle J. Schick	
Whitt G. Sessoms, III	
Jack G. Travelstead	Chief, Fisheries Management
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Director, Public Relations
Jane McCroskey	Chief, Admin-Finance
Erik Barth	Head, MIS
Todd Sperling	Bs. Systems Specialist, MIS
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation-Replenishment
Joe Grist	Head, Plans and Statistics
Joe Cimino	Biological Sampling Program Mgr.
Stephanie Iverson	Fisheries Mgmt. Manager
Allison Watts	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Renee Hoover	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
James Rose	Area Supervisor, NA
Grady Ellis	Marine Police Officer
Thomas Fitchett	Marine Police Officer

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Tony Watkinson	Chief, Habitat Mgmt.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Julliette Giordano	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Tech
Rob Butler	Surveyor

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Susanna Musick
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Others present:

James K. Tucker	Jason Ericson	Karla Haven	Jim Taylor
George Bott	Richard Callis	Sam Thrift	Mike Pocks
Lynn Martin	Tony Martin	Jane Haddon	Thomas Nelson
Rhonda Buchanin	Bob Buchanin	Tim McCulloch	John W. Evans, III
Greg Garrett	Mary Leedom	Chuck McGee	Robert Deramo
Charles Wimbrow	Randy Birch	Kim Huskey	Harold H. Barton
Jeff Horton	Jeff Deem	Chris Cuono	Amy Cuono
Michael H. Gibson	John C. Ludford	Andy Lacatell	Frank Kearney
W. C. Tice	Danny Bowden	Ernest Bowden	Newman Memita
Timmy H.	Fella Daniels	K. Heath	A. J. Erskine
Keith Like	L. W. Nixon		

Commissioner Bowman called the meeting to order at approximately 9:35 a.m. Associate Member Tankard was absent.

At the request of Commissioner Bowman, Associate Member Schick gave the invocation and Tony Watkinson, Chief, Habitat Management led the pledge of allegiance.

APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes from the Board members or staff.

As there were no changes, Commissioner Bowman asked for a motion for approval of the agenda by the Board.

Associate Member Robins moved to approve the agenda, as presented. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman noted for the record that there was a quorum present and the meeting could proceed.

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MINUTES: Commissioner Bowman requested a motion for approval of the January 24, 2012 Commission meeting minutes, if there were no corrections or changes.

As there were no changes, Commissioner Bowman asked for a motion to approve the minutes.

Associate Member Laine moved to approve the minutes, as presented. Associate Member Fox seconded the motion. The motion carried, 6-0-2. The Chair voted yes. Associate Member Plumlee abstained as he was absent from last month's meeting and Associate Member Robins abstained as he was not present for the entire previous meeting.

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

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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 read into the record the descriptions of the three page two items A, B, and C.

Commissioner Bowman asked for questions.

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Associate Member Fox asked if the State Historical Landmarks Commission had signed off on Item 2A. Mr. Watkinson stated that staff did asked them sometimes to do a review and staff had not heard of any issues.

Commissioner Bowman opened the public hearing and asked for comments from attendees either pro or con. There were none. He stated the matter was ready for action.

Associate Member Schick moved to approve the page two Items A, B, and C. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

2A. MANASSAS REGIONAL AIRPORT, #09-1612, requests authorization to expand two existing bridges over Broad Run, associated with the expansion of Runway 16L/34R, resulting in approximately 7,740 square feet of encroachment for a 144 linear foot extension on the east side of the bridge and a 104 linear foot extension on the west side of the bridge and for Taxiway B, resulting in approximately 1,140 square feet of encroachment, for a 21 linear foot extension on the east side of the bridge and a 17 linear foot extension on the west side of the bridge, to repair and replace existing Class II and Class III riprap as needed along approximately 1,300 linear feet of stream channel, to construct temporary cofferdams for working in the dry, and to install a temporary 80 linear foot by 15 linear foot clear span bridge in Prince William County.

Permit Fee.....	\$100.00
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2B. MEADWESTVACO VIRGINIA CORPORATION, #11-1750, requests authorization to construct a single span bridge measuring approximately 180-feet long by 34-feet wide crossing 108 linear feet of the Jackson River in the City of Covington as part of a proposed biomass-fueled power generation facility. The proposed two-lane bridge will include a pedestrian walkway to one side, and above which, a two-level utility bridge will be constructed. No instream work is required for the bridge installation. Staff recommends approval with a royalty of \$7,344.00 for the encroachment over 3,672 square feet of State-owned submerged land at a rate of \$2.00 per square foot.

Royalty Fees (encroachment 3,672 sq. ft. @ \$2.00/sq. ft.).....	\$7,344.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$7,444.00

2C. **VIRGINIA ELECTRIC & POWER COMPANY, #12-0092**, requests authorization to make repairs and replace approximately 95 linear feet of 24-inch pipeline along the existing Plains Marketing L. P. Yorktown Pier to refurbish and return to service Dominion Electric Power’s Pipeline 150 at their Yorktown Oil Terminal along the York River in York County. Recommend approval with an encroachment royalty of \$285.00 for the encroachment of the new pipeline over 95 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 95 lin. ft. @ \$3.00/lin. ft.).....	\$285.00
Permit Fee.....	\$100.00
Total Fees.....	\$385.00

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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). There were no consent items.

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4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** VMRC Counsel indicated that a closed meeting was not necessary.

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5. **LAWRENCE GREY, #11-1518**, requests authorization to construct a 285 linear foot riprap revetment channelward of an eroding bluff extending ten (10) feet over jurisdictional beach, adjacent to his property situated along the James River at 13901 Weyanoke Road in Charles City County. A Coastal Primary Sand Dunes and Beaches permit is required.

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

Ms Giordano explained that the location of the project site is the Upper Weyanoke Plantation in Charles City County situated along the James River about 8 miles downriver from the Benjamin Harrison Bridge. This property has approximately 1,900 feet of shoreline along the James River. A narrow, sandy beach approximately 20 feet wide and a broad, flat intertidal area characterizes the shoreline of the project site. Aside from a few Bald Cypress trees along the shoreline, no additional vegetation is present. Steep, eroding bluffs approximately 20 feet in height sit immediately adjacent to the shoreline

with a grassy, vegetated upland. A well that services the property, its pump house, and several trees sit just a few feet from the top of the eroding bluff face.

Ms. Giordano said that the Riverfront property in Charles City County generally exists in large tracts of land on plantations in a rural setting. The shoreline along the Upper Weyanoke property, upriver from the proposed project site, has approximately 750 linear feet of riprap revetment. Properties upriver from the Upper Weyanoke Plantation have natural shorelines with little to no hardening. Approximately 1,200 feet downriver of the Upper Weyanoke property is approximately 700 feet of bulkhead; downriver of this bulkhead is natural, unhardened shoreline.

Ms. Giordano stated that Mr. Grey seeks authorization to stabilize an eroding bluff along the downriver section of his property in order to protect several upland features including a well, its pump house, and numerous trees situated perilously close to the eroding bank. The proposed project includes construction of a 285-foot riprap revetment with a 10-foot base at the toe of the eroding bluff; no grading of the bank is proposed.

Ms. Giordano noted that the proposed revetment will impact approximately 2,850 square feet of jurisdictional beach. Charles City County has not yet adopted the beaches and dunes ordinance which was made available to them by virtue of Code changes that became effective on July 1, 2008. As a result, the Commission is charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Ms. Giordano stated that in their report dated April 8, 2011, VIMS classified the upriver portion of this property as non-vegetated wetlands. At the request of Mr. John Bragg of Charles City County, staff visited the site on October 4, 2011, to assess the applicability of our general permit for emergency bank stabilization on a non-vegetated wetlands (VGP#4). The existence of a narrow beach landward of mean high water required clarification from VIMS regarding the shoreline classification of this section of property.

Ms. Giordano said that in their comments dated October 14, 2011, VIMS states that the sandy area landward of mean high water qualifies as a beach. The report confirms that, though small, this area of sand meets the Code definition of a jurisdictional beach on the date of the site visit. VIMS also notes that the jurisdictional beach extends from mean low water to the slumping of the upland bluff. The upriver shoreline along the property is classified as non-vegetated wetlands because mean high water reaches the base of the upland bank.

Ms. Giordano stated that the applicant originally applied for a 160-foot revetment with the toe aligned 30 feet channelward of the eroding bluff with backfill at 2:1 slope impacting a total of 4,280 square feet of jurisdictional beach. Staff felt the original project proposed excessive encroachment on the jurisdictional beach and recommended the applicant's agent modify the project to reduce channelward encroachment to a

maximum of 10 feet. At the December 6, 2011, Commission hearing the applicant's agent requested that the Commission defer their decision on the Grey's proposed project to install 160 linear feet of riprap revetment and to backfill approximately 2,680 square feet of jurisdictional beach until the January 24, 2012, meeting in order to consider stabilization alternatives. The applicant has since revised the project per staff's recommendation to encroach no greater than 10 feet channelward of the eroding bluff. On January 5, 2012, the applicant's agent submitted revised drawings proposing construction of a longer 285-foot riprap revetment extending 10 feet channelward of the base of the eroding bluff. While the revised project reduces the channelward encroachment over the jurisdictional beach, the new proposal includes an additional length of 125 feet, exceeding the originally proposed 160-foot length. Staff felt that the extra 125 feet of revetment required new advertisement and notification given the scope of changes.

Ms. Giordano explained that staff did not receive revised project plans until January 5, 2012, which did not allow the revised project to be heard at the January 24, 2012 Commission meeting since § 28.2-1403(C)(6) of the Virginia Code requires a minimum 20-day notification period. Staff proposed two options to the applicant's agent concerning the continuation of the Commission hearing. Staff suggested the Commission could make a decision on the 160-foot revetment proposal at the January 2012, meeting and hear the additional 125 feet of revetment at the February 28, 2012, hearing. As an alternative, staff stated the applicant could defer consideration on all aspects of the project until the February 28, 2012, hearing. On January 17, 2012, the applicant submitted written confirmation requesting the Commission defer a decision on the entire project until the February 28, 2012, hearing. At the January 24, 2012, meeting the Commission unanimously agreed to table a decision on the project until the February 28, 2012, hearing.

Ms. Giordano noted that staff had not received any comments in response to the second public notice and neither adjoining property owner indicated they had any objection to the revised project.

Ms. Giordano said that the Department of Conservation and Recreation identifies the area as a Resource Protection Area as defined in the Chesapeake Bay Preservation Act and recommends implementation of erosion and sediment control and stormwater management measures. No other comments were received.

Ms. Giordano explained that staff believes the revised project reduces the originally proposed impacts on the jurisdictional beach while offering the applicant bank stabilization to protect his upland structures. While staff prefers to see the bluff graded to a more stable slope, this would require relocation or in-place stabilization of upland structures, thus adding to the cost of the project. In addition, staff maintains that construction of an offshore breakwater with beach nourishment is preferable along this

shoreline; however, the proposed revetment is consistent with existing shoreline stabilization structures along the applicant's property and is the less expensive alternative.

Ms. Giordano said that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia, staff recommends approval of the project, as proposed.

Commissioner Bowman asked for questions.

Commissioner Bowman asked if the damage occurred over a period of time.

Ms. Giordano responded yes, she believed so, but that 12 feet had been lost from Hurricane Irene.

Associate Member Laine asked if it continued to erode between the gap. Ms. Giordano answered that some vegetation there might help, but that they had decided not to continue.

Commissioner Bowman asked if the applicant wished to comment.

Joseph Foulis, agent for the applicant was sworn in and his comments are a part of the verbatim record. Mr. Foulis said the reason they did not connect the structures is because of the root system at that elevation and the sand was holding there. He said in a few areas there was no erosion. He said if the vegetation was destroyed then they hoped it holds on its own.

Commissioner Bowman asked for questions.

Associate Member Schick asked if they were doing any grading there. Mr. Foulis said they want to see if Mother Nature takes care of it. Associate Member Schick asked if there was any runoff to impact around the wellhouse. Mr. Foulis said they were saving money by not putting in the fill to allow the movement of the well only if necessary.

Commissioner Bowman said that Mother Nature had taken care of the bottom, but it looked like before too long it would impact the wellhouse. Mr. Foulis said the applicant did not want to do it.

Commissioner Bowman stated the matter was ready for action.

Associate Member Robins said that according to the staff presentation there is active erosion which made this a valid project and he moved to accept the staff recommendation. Associate Member Schick stated that the project here was not a cure all for the existing erosion problem and he suggested that the rest should be

addressed before too long. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

No applicable fees.

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6. **SHOANSY PRESERVATION SOCIETY, #11-1146**, requests after-the-fact authorization to retain 162 linear feet of open-pile pier, two (2) uncovered boatlifts, and additional authorization to construct a 30-foot long by 20-foot wide (600 square feet) open-sided boathouse over one of the lifts at an existing community pier on Stampers Bay of the Piankatank River at the end of Shoansy Lane in Middlesex County.

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

Mr. Woodward explained that the project site is located on the northern shoreline of Stampers Bay at the end of Shoansy Lane in the Hartfield section of Middlesex County. The shoreline to the west is sparsely developed with a few piers, while the shoreline to the east is more heavily developed with a large number of residential parcels and private piers. There is an island located approximately one-third of a mile out into Stampers Bay which is owned by Camp Piankatank, a summer camp and conference center, which also owns a 90 acre parcel to the west of the site.

Mr. Woodward said that on August 4, 2011, staff received an application in the name of Jane Haddon, in care of Tony and Lynn Martin, requesting authorization to construct a 600 square foot covered, open-sided boatlift slip and 100 linear feet of access piers at an existing pier at their property on Stampers Bay. The application was submitted by their agent, Richard E. Callis, President, R & W Marine Construction, Inc. The application indicated that the covered lift and additional pier sections would be for a single user, but the initial desk-top review of the application seemed to indicate that the pier may be for multiple users, given the size, configuration, and location relative to the upland parcels. Accordingly, staff sent a letter to the applicant, via their agent, on August 15, 2011, requesting additional information to clarify the use of the pier. On August 24, 2011, staff received a response, indicating that the pier is owned jointly by two family members, Mrs. Haddon and her brother Mr. Morrell. The letter also stated that the pier is located adjacent to their properties and that there are two vessels moored at the pier, one owned by the Martins and Mrs. Haddon, the other is owned by the Morrells.

Mr. Woodward stated that staff conducted a site inspection on August 24, 2011, and discovered that the proposed 100 linear feet of pier additions and the boatlift had already been built. The roof over the lift had not yet been constructed. Following the site inspection staff sent a letter to the applicants and the contractor, dated August 31, 2011,

indicating that pier did not appear to qualify as a statutorily authorized private, noncommercial, riparian pier, but rather it appeared to be a joint-use pier that would require VMRC authorization and that the new construction represented an unauthorized modification to the pier. The letter encouraged the applicants not to proceed with the remaining roof portion of the application and requested a meeting with them and their contractor to discuss the situation. A meeting was held on site on September 6, 2011, at the home of Mrs. Jane Haddon. In addition to staff and Mrs. Haddon, Mr. and Mrs. Martin and Mr. Callis attended the meeting. The history of the property and the associated pier and prior boathouses were discussed. Mr. Callis stated that he acted as agent and contractor in 2002 for a Joint Permit Application in the name of Mr. Mark Morrell (VMRC #02-2182). That applicant proposed the demolition of an existing pier and boathouse at the site, and construction of a new, 110-foot long private pier with a 20-foot by 10-foot pier-head and covered deck. Based upon the information provided in the application, VMRC staff determined that the pier met the statutory exemption for private, noncommercial, riparian piers. Accordingly, a letter was issued to Mr. Morrell indicating that a permit from VMRC would not be required. Unfortunately, that application did not indicate the pier was for community use, nor did it depict the existing upland property lines, nor indicate that the pier originated from a common area. This information likely would have raised concerns by staff that the proposal was not for a private, riparian pier, but rather a joint-use or community pier which would have required formal authorization. Additionally, that application did not include an additional boat lift and finger piers, totaling approximately 60 additional feet, that were built sometime between 2002 and the current application.

Mr. Woodward noted that Mr. Martin sent a letter, dated September 9, 2011, which recapped the discussion and included additional clarifying information on the use of the pier. He also provided a property plat of the subdivision. Another meeting was held with the applicants at the VMRC main office on October 13, 2011. Staff described the additional information that would be needed to complete the review of the application. At that meeting, the applicants agreed to change the name of the application from Jane Haddon to the "Shoansy Preservations Society", in care of Jane Haddon as the property owner of the common area, since it was agreed that the pier was indeed for community use. Mr. Martin followed up that meeting with an email, dated October 14, 2011, providing the additional information requested.

Mr. Woodward said that in reviewing the property plat provided by Mr. Martin, staff noted that it depicted seven lots along the water and a common "Rec. Area" extending toward the water, from which the pier extends. It also appeared to depict a strip of land lying between the seven lots and the water. The Middlesex County tax map also appears to depict a strip of land between the seven lots and the water. This brought into question whether the entire subdivision was indeed "waterfront" with the inherent riparian right to wharf out for access. However, additional information gathered, including the deed description of the original 16.67 acre parcel from which the subdivision was created, appears to indicate that the seven lots and common area in question do in fact extend to

the mean low water line of Stampers Bay. Additionally, staff contacted the downstream property owner, Mr. Gerald L. Ballantyne, Jr., whom staff thought might have some ownership interest in the strip of land and he stated that he does not believe he has any claim to property between the subdivision and the mean low water mark. Accordingly, although the Marine Resources Commission does not have the authority to determine or apportion riparian rights, in the absence of any further information to the contrary staff believe the seven lots do qualify as “waterfront property” with associated riparian rights. If a dispute does arise in the future, it may be necessary for the appropriate circuit court to resolve the matter.

Mr. Woodward informed the Commission that the project is unopposed by the adjacent property owners and VMRC’s public interest review has not raised any concerns or comments. There are no leased oyster grounds affected by the current pier structure. The Middlesex County Wetlands Board determined that the existing pier and proposed covered slip do not conflict with their ordinance and they did not require a permit for the proposal.

Mr. Woodward stated that the Virginia Department of Health has determined that provided the pier is for family use only, it does not conflict with their programs. The Virginia Department of Conservation and Recreation documents the presence of natural heritage resources in the area, but due to the scope of activity and the distance to the resources, they do not anticipate any adverse impacts.

Mr. Woodward said that since a pier for use by the Haddon family has existed in this location for many years without any complaints or concerns being raised to VMRC, staff believes the current request to cover one of the existing slips, as well as to retain the previously unauthorized additions to the pier, is reasonable. Staff generally supports a single, community pier with multiple slips in lieu of multiple private piers because the impacts to State bottom are localized, and in many cases the square footage of structure over State bottom is reduced. The applicant has contacted all of the other waterfront parcel owners in the subdivision and has an agreement from five of the seven lot owners indicating that they agree not to construct their own private pier and instead will use the community pier for access. That agreement has not been formally recorded as a covenant or deed restriction. One parcel, lot 7, already has a private, riparian pier associated with it. The configuration of the existing pier serves to restrict the ability of the Martins to construct an additional private pier regardless of any agreement. Although staff understand the other waterfront lot owners may wish to construct additional slips on the pier for their use and it might eventually be reasonable to allow such construction, staff would be hesitant to recommend approval of any future expansion at the community pier without the owners of those waterfront lots recording formal deed restrictions that would prohibit individual riparian pier construction by owners of the lots that use the community pier.

Mr. Woodward said that given the nature of the subdivision, and the history of the prior pier and boathouses which served the families within the subdivision, staff can understand the confusion on the part of the applicants regarding the “private” versus “community” use of the pier. The applicants relied on a professional marine contractor for advice and guidance in the permit application process. Staff is confident that the applicants now understand that the pier is a community use structure and that any future proposed modifications to the pier will need to be brought forward, by the newly formed “Shoansy Preservation Society” for review by VMRC before any construction can occur. However, staff believes that Mr. Callis, an experienced professional marine contractor, should have understood the difference between private, single family use and community use when representing this application and the prior application submitted under the name of Mark Morrell. When staff first visited the site for this application, it was very clear that the pier originated from a common area, not a private, residential lot.

Mr. Woodward stated that in addition, staff is very concerned that Mr. Callis elected to begin construction of the recent pier modifications prior to receiving any form of authorization from VMRC, as well as constructing additional expansion over what was applied for under the earlier Morrell application. Mr. Callis has submitted a letter assuming responsibility for the unauthorized work at the pier.

Mr. Woodward said that after reviewing the project and history of the site, all comments in the official record, and considering all of the factors in § 28.2-1205 of the Code of Virginia, staff recommends approval of the proposed 600 square foot, open-sided boathouse, as well as after-the-fact approval of the additional 162 linear feet of pier and two boat lifts. Staff further recommends triple permit fees of \$300 and a royalty in the amount of \$5,379.00 for the bold-outline encroachment of the community-use pier over 3,586 square feet of state-owned subaqueous bottom at the recommended rate of \$1.50 per square foot for private use marinas, in accordance with the Rent and Royalty Schedule adopted by the Commission in 2005. Staff has discussed the recommended royalty with Mr. Martin and he expressed that he didn’t think the royalty was appropriate since the pier is being constructed in lieu of other private piers for which there would not be a royalty. Staff understands Mr. Martin’s concern but in this case staff still believes the royalty is appropriate because the pier may be used by the entire subdivision, which includes non-waterfront inland lots, and there are no recorded instruments preventing the waterfront owners from constructing private riparian piers. Staff also recommends a civil charge be assessed to the applicants in the amount of \$600.00 given the minimal amount of environmental impact and minimal degree of deviation and noncompliance. The applicants have been very cooperative and forthcoming in our efforts to bring this matter to resolution. However, staff remains very concerned that the agent/contractor representing this project should have known the difference between a private use and a community pier. As both the agent preparing the application and the contractor doing the actual work and with his admission that he was responsible, staff feels the degree of noncompliance on his part is major considering both the current unauthorized construction at the pier and past unauthorized modifications associated with the Morrell

application in 2002. Therefore, staff would recommend a civil charge in the amount of \$1,800.00 for the agent/contractor in this matter.

Commissioner Bowman asked for questions.

Associate Member Plumlee said the fact that the issue over a name was interesting and that Jane Haddon was not before the Commission. Mr. Woodward said that on the item 2-2 the application was in the name of Jane Haddon property and there was also common ground. He said the community pier question was raised by staff as it was not just Haddon, but also Morrell and Martin. Associate Member Plumlee said it was time to hear from Jane Haddon since she owns it, not an entity. He said if it was authorized this way, then she could be held accountable. Mr. Woodward said he did not know, but when he met with them they said it was known as a society. Associate Member Plumlee stated it was an individual not an entity. Mr. Woodward stated that staff could go back to using Jane Haddon, as the applicant.

Associate Member Robins asked for clarification of where the recommendation stands with a severance for anymore piers in the future and the need to establish an entity. Mr. Woodward said the recommendation was to authorize what is there now and any additional request for extensions should require a severance.

Associate Member Robins asked if they are represented by the contractor and if the violations by the contractor were limited to this site. Mr. Woodward said that contractors in general represent other property owners and that causes staff concern. In this case there two violations that the contractor is responsible for.

Associate Member Fox asked if the whole property was waterfront. Mr. Woodward responded yes. Associate Member Fox stated that not all lots are waterfront on the plat and there was a common area along the beach and the individual lot owners cannot wharf out. Mr. Woodward said lot 4 could have but did not and he felt comfortable that these lots are deeded to the MLW.

Associate Member Sessoms stated the community pier would be for all 21 lots and there needs to be a legal document submitted to the agency establishing an homeowners association.

Associate Member Plumlee asked how the application was advertised and Mr. Woodward stated it was advertised in the name of Jane Haddon.

Commissioner Bowman asked for a representative to comment.

Tony Martin, representing the family, was sworn in and his comments are a part of the verbatim record. Mr. Martin described the ownership and family interest in the Haddon property for the lots. He noted there was the common area with access to water. He

explained that Jane Haddon did pay the taxes but it was owned by all of the family and only the family had access to the beach. He provided pictures and explained that the pier and boathouse were originally there. Mr. Martin said the boat house roof was completed in 1959 and the rest of the pier was completed that same year. He stated that in 2002 they decided to do something with the pier and Mr. Callis the contractor submitted a request for a permit and they were issued a no permit necessary letter, dated December 18, 2002. He said the application drawing was left out and they rebuilt the bulkhead and pier, but not the slips or boathouses.

Commissioner Bowman asked if because of the letter it was assumed it was to be rebuilt, as it was in 1959. Mr. Martin responded yes. He described the previous construction and current construction. He said an e-mail, dated June 22 told the family the status and they felt that continuing was legal. He stated the contractor said they could build it according to the 2002 permit. He stated that the communications have been going back and forth as they have tried to be open and responsive to resolve whether it is private pier versus a community pier.

Commissioner Bowman said that if it is not private then it would be community. Mr. Martin stated it was not commercial as they did not charge since it was for the family only. He said it was private as all family members would use it. He said the Code was different for a community pier versus private pier. He said staff suggested one pier with slips. He added that five family member would not use their riparian rights to build their own pier. He said to pay the \$5,000.00 royalty was hard to stomach. He said they were requesting approval of the after-the-fact and the addition including the roof. He said they also had requested that the royalties and civil charge be waived, as the family believed they were working under an existing permit.

Commissioner Bowman asked about the total project cost. Mr. Martin stated all the new construction including the boat lift was \$16,485.00. Commissioner Bowman asked if the contractor told them that without the permit they could be required to remove all of the structures in violation. Mr. Martin stated no. Commissioner Bowman noted that if structures were put on state-owned bottom then they were under the VMRC's jurisdiction. Mr. Martin said they were told they could complete it by VMRC staff. Commissioner Bowman noted that was only because of safety concerns.

Associate Member Schick asked if Chris Morrell in 2002 was allowed by permit to build the seven slips. Mr. Martin responded yes. Associate Member Schick asked why were they here now. Mr. Martin said they got quotes from contractors in 2002 and Mr. Callis built the original pier which was very good and the price was competitive. Associate Member Schick asked about the permit. Mr. Martin said that Mr. Callis was told by his staff that they were permitted and when VMRC came for a site visit it came to light that it was unauthorized construction and the contractor submitted an after-the-fact application.

Associate Member Palmer asked if the seven family members have shares for the pier. Mr. Martin stated, not legally, it was just a subdivision of land. Associate Member Palmer said that he was asking if everybody has access to the lifts or was it restricted to the use of one person. Mr. Martin responded yes. Associate Member Palmer asked did they get the Health Department approval. Mr. Martin responded yes. Associate Member Palmer asked if it was classed a marina or other because of it being a community pier and that all parties contributed to the maintenance. Mr. Martin responded yes. Associate Member Palmer asked if bathrooms were accessible elsewhere. Mr. Martin stated that the Health Department issued them a waiver and read a document explaining their exemption.

Commissioner Bowman noted that not just one property owner uses the pier so that makes it a community pier. Mr. Martin stated it was for private use. Paul Kugelman, Assistant Attorney General and VMRC Counsel, stated that more than one person uses it.

Associate Member Laine asked if they can sell the individual lots. Mr. Martin responded yes. He added there was a verbal family agreement that they must sell only to a family member, before someone else.

Commissioner Bowman asked for others to speak in support.

Lynn Martin, daughter of Jane Haddon, was sworn in and her comments are a part of the verbatim record. She said her grandparents bought it for their future generations to use and access the water. She said she was worried for the future generations after her and she had come here ever since she was born. She said they needed to get it all straight now for her family.

Richard Callis, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Callis said his staff handled it, but had not followed through and he accepted what he was told by them. He said then he found out the pier was not permitted. He said he applied for it as a private pier.

Commissioner Bowman asked if he accepted the civil charge. Mr. Callis responded yes.

Associate Member Schick said to clarify that in 2002 Mr. Morrell got a no permit necessary letter and the additional construction was in a different name. He asked, why was it not questioned, when there was a different name. Mr. Callis said he thought they were all approved by the permit no matter what name it was under.

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

Associate Member Schick asked how staff found out about the violation. Mr. Woodward said it was when the application was received August 4 and he went on a site visit on

August 24. Associate Member Schick said someone knew it was needed. Mr. Woodward stated that when he looked at it he saw that additional information would be needed as it did not look like a private pier and staff was expecting to see what was on the application. He said in 2002 they applied to demolish and rebuild. Associate Member Schick asked who signed the application that was received in 2007. Mr. Woodward said it Tony Martin and Lynn Martin.

Associate Member Robins said he could understand why they were upset as they felt they were not in the wrong and this was a prominent site for the family. He stated the permit problem was that more was built then allowed and the application misrepresented what was to be built. He added that any change in the drawing should have been addressed as the construction departed from the permit. He noted that the contractor was responsible for what was applied for and permitted. He said it was a problem to issue a permit to a society that was not legal and a permit to one or all seven would be better.

Associate Member Schick said that they should have gone through the proper permitting procedures as this was a good project, but this was not the whole story. He said the staff recommends that there be royalties because it would be a community pier and less impact on state-own bottom. He said the royalties were charged the same as if it were a marina, even though it was a community pier. He added that \$5,000.00 was cheaper than individual piers.

Commissioner Bowman stated that the structure takes away from others having use of the area and the royalties reserved the use of the area for the permittee. He noted that the royalty was for the bold footprint.

Associate Member Plumlee said he agreed with all that was said. He said the family was proceeding appropriately and the contractor was trying to clear up the matter. He stated that fees could not be waived for a community pier. He added they needed to follow the rules and find a proper way to issue the permit.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, said he was concerned with putting the permit in an unincorporated group when a legal entity was needed to be able to hold them accountable. He said he recommended a permit be issued to an individual to be responsible for any compliance. Associate Member Plumlee said that the permit can be conveyed, when they established an entity. Mr. Kugleman said it would require providing documentation for legal entity.

Commissioner Bowman said an individual can accept the responsibility now and later they can convey the permit to the entity when it becomes legal. He said if the was issued to an entity now then it was not legal.

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Associate Member Plumlee suggested that the permit be under the name of Jane Haddon. Associate Member Fox said he agreed with Mr. Plumlee as the county record said who owns and pays taxes. Mr. Martin stated she was the administrator.

Mr. Martin stated the earlier permit was issued to Mr. Morrell and was not correct in 2002. Associate Member Plumlee said a no permit necessary letter was only issued. Mr. Kugelman said he agreed with Associate Member Plumlee because in Chapter 12, Section 28.2 of the Code says that for a private pier a permit was not necessary and staff believed this was the situation. He said it was here for an after-the-fact permit. Mr. Martin said it would be retroactive to collect the rent and royalties for the entire structure. He added that in 2003 the Commission did not collect rent and royalty and he did not see collecting it now.

Commissioner Bowman said this was a new permit application. After some further discussion, he stated that the permit can be issued to the one here. He said the matter was before the Commission.

Associate Member Robins moved to approve the after-the-fact permit in the name of Jane Haddon to include the staff recommendation for the royalties and permit fee and also to assess a civil charge against the contractor in the amount in the amount of \$1,800.00 Associate Member Plumlee suggested adding that a transfer be allowed once there is a property entity name established with proper documentation. Paul Kugelman, Assistant Attorney General and VMRC Counsel stated yes, with the permittee’s approval and the legal entity approved by the Commonwealth. Associate Member Schick seconded the motion. Associate Member Schick asked if it included all of the staff recommendations. Associate Member Robins stated it was only the contractor who would be assessed for a civil charge as he was at fault in giving bad advice. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (encroachment 3,586 sq. ft. @ \$1.50/sq. ft.).....	\$5,379.00
Permit Fee (Triple).....	\$ 300.00
Total Fees.....	\$5,679.00

Civil Charge (Contractor).....	\$1,800.00
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- TUCKER’S BOAT RENTAL & STORAGE, LLC, #12-0021**, requests authorization to construct a replacement concrete boat ramp, two (2) timber jetties, a new downriver tending pier and three (3) low-profile timber groins at their existing boat rental facility situated along the York River in King & Queen County. Both Coastal Primary Dune and Beaches and Subaqueous Lands Permits are required.

Commissioner Bowman left the meeting and Associate Member Robins continued as acting chairman.

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

Mr. Owen explained that the project site is located along the York River at the end of Boat Ramp Road approximately 5 miles downstream from the Town of West Point in King & Queen County. The shoreline consists of a sandy beach with a wide shallow sandy subtidal flat channelward of the beach. The York River is approximately 1.75 miles wide at this location.

Mr. Owen said that several groins exist along the shoreline, both upstream (0.2 mile) and downstream (0.5 mile) of the applicant's property. Numerous private oyster ground leases exist along this stretch of the York on both sides of the River, with the closest lease situated approximately 550 feet offshore. Public oyster ground is situated approximately 0.42 miles offshore of the subject property.

Mr. Owen noted that Mr. James Kelly Tucker, third generation proprietor of Tucker's Boat Rental and Storage, LLC, seeks authorization to construct a 91-foot long by 21-foot wide replacement concrete boat ramp, two (2) 91-foot long timber jetties, each with 10-foot long spurs, a new 5-foot wide by 99-foot long downriver tending pier and three (3) 48-foot long, low-profile timber groins with 16-foot long spurs at his existing facility in King & Queen County. The property begins at the end of Boat Ramp Road and extends downriver approximately 1,335 linear feet (0.26 miles). The proposed structures will impact approximately 655 square feet of jurisdictional beach and approximately 1,198 square feet of State-owned submerged land. King & Queen County has not yet adopted the beaches and dunes ordinance which was made available to them by virtue of Code changes that became effective on July 1, 2008. As a result, the Commission is charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen added that no comments were received in response to the public notice. Both adjoining property owners provided signed releases indicating their support of the project. King & Queen County advised that the project, as proposed, will not impact tidal wetlands. The Department of Environmental Quality, in their January 10, 2012, letter advised that a Virginia Water Protection Permit will not be required because the anticipated water quality impacts are expected to be minimal. No other State agencies commented on the application.

Mr. Owen explained that the applicant's existing boat ramp terminates at or near mean low water and its design does not provide an adequate slope nor does it reach the depths necessary to launch boats at or near most low tides. The proposed dual-lane ramp, jetties

and additional tending pier should accommodate launches at all tide stages and provide for simultaneous launching and/or retrieval.

Mr. Owen stated that staff believes that the construction of low-profile timber groins along this reach of the York River is a reasonable approach to help maintain a sandy beach and to stabilize the shoreline. The addition of sand as beach nourishment within the created groin cells would provide additional shoreline protection, while minimizing the interruption of sand transport to downdrift properties. The applicant wishes to take a wait-and-see approach on the proposed groins, to minimize project costs associated with the purchase of beach quality sand. The addition of beach quality sand as beach nourishment on the beach area is statutorily authorized. Given the distance to the next adjoining property owner, staff does not expect adverse downdrift impacts to adjacent properties.

Mr. Owen said that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommends approval of the project as proposed. Staff also recommend the assessment of a royalty in the amount of \$726.50 for the encroachment of the groins, jetties and ramp on 943 square feet of State-owned submerged land at a rate of \$0.50 per square foot and for the encroachment of the new tending pier over 255 square feet of State-owned submerged land at a rate of \$1.00 per square foot.

Associate Member Robins asked for questions. There were none. He asked if the applicant or the representative wished to comment.

James Tucker, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Tucker explained that his family had owned this property for many years, back to his grandfather and they were trying to improve the ramp as it was not adequate.

Associate Member Robins asked Mr. Tucker if he accepted the staff recommendations. Mr. Tucker responded, yes.

Associate Member Robins asked if anyone, pro or con, was present and wanted to comment. There were none.

Associate Member Robins stated that matter was ready for discussion or action.

Associate Member Schick moved to approve it, as presented. Associate Member Fox seconded the motion. The motion carried, 7-0. Commissioner Bowman had not returned to the meeting.

Royalty Fees (encroachment 943 sq. ft. @ \$0.50/sq. ft.).....	\$471.50
Royalty Fees (encroachment	

255 sq. ft. @ \$1.00/sq. ft.).....	\$255.00
Permit Fee.....	\$100.00
Total Fees.....	\$826.50

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- 8. **ARCHIE AND SHEILA BATCHELOR, #11-1757**, request authorization to construct 206 linear feet of timber bulkhead, up to two (2) feet channelward of an existing, failing bulkhead, landward of mean low water, along their shorefront beach property situated adjacent to the James River at 810 Jordan Point Road in Prince George County. The project requires a Coastal Primary Sand Dunes and Beaches permit.

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

Mr. Stagg explained that the project is located along the James River upstream of the Benjamin Harrison Bridge in Prince George County. Prince George County has not yet adopted the Wetlands Zoning Ordinance or the Coastal Primary Sand Dunes and Beaches Ordinance which was made available to them by Code changes that became effective on July 1, 2008. As a result, the Commission is charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Stagg stated that the site is characterized as a sand beach with a partially failed wooden bulkhead structure and some concrete rip rap along portions of the shoreline where the bulkhead has apparently failed, and along the area upstream section of the proposed new bulkhead.

Mr. Stagg noted that the proposed bulkhead is aligned landward of mean low water, with portions of the structure also proposed landward of mean high water.

Mr. Stagg also noted that a public interest review was conducted for the project and staff has received no objections.

Mr. Stagg stated that the Army Corps of Engineers has approved the proposed bulkhead alignment. No other agencies have commented on the project.

Mr. Stagg explained that while staff considered requiring the new bulkhead to be constructed in the same alignment as the existing deteriorated bulkhead, since considerable portions are still intact, placement of a new structure no more than two feet channelward of the existing structure appears appropriate considering the amount of upland material directly behind the existing wall that will be at risk during construction if the existing bulkhead is required to be removed to facilitate construction of the replacement bulkhead in the same footprint.

Mr. Stagg said that since removal of the currently stable section of the existing bulkhead could result in loss of the upland material and after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia, staff recommends approval of the bulkhead as requested with a special permit condition requiring the alignment of the new bulkhead be as close to the existing alignment as possible in areas where the existing bulkhead has completely failed. In no case shall the bulkhead alignment exceed two (2) feet channelward of the existing bulkhead alignment.

Associate Member Robins asked for questions.

Associate Member Fox ask if they would be required to remove the concrete rubble. Mr. Stagg said it will be broken in pieces and used when needed and there would be backfill.

Associate Member Plumlee asked if filter cloth would be used. Mr. Stagg stated that could be considered.

Associate Member Robins asked if the applicant or a representative was present who wished to comment.

Karla Haven, agent for the applicant, was sworn in and her comments are a part of the verbatim record. Ms. Haven stated she would answer any questions.

Associate Member Plumlee asked if a debris filter cloth would be used. Ms. Haven responded yes, it would be and also clean backfill material with the old timbers to be removed and taken away.

Associate Member Robins asked if anyone was present, pro or con, who wished to comment. There were none.

Associate Member Robins stated the matter was before the Commission for discussion or action.

Associate Member Laine moved to approve the staff recommendations. Associate Member Plumlee seconded the motion. The motion carried, 7-0. Commissioner Bowman had not returned to the meeting.

No applicable fees.

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The Commission broke for lunch at approximately noon and returned at approximately 12:45 p.m.

Commissioner Bowman returned to the meeting and continued as chairman.

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9. **TIM McCULLOCH, #2011-088**, requests authorization to lease up to 27 acres of oyster planting ground within The Thorofare, in York County. The application is protested by an adjacent oyster ground leaseholder, who has also applied for a portion of the same area (Gregory and Elizabeth Garrett, #2011-117).

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

Mr. Stagg explained that the requested oyster planting ground lease submitted by Mr. Tim McCulloch on August 8, 2011, is located within the Thorofare, a tidal connection between the York River and Back Creek, in York County. Mr. McCulloch lives adjacent to a portion of the application area and owns another land parcel adjacent to the application area that is zoned commercial.

Mr. Stagg said that Mr. McCulloch had indicated on the required Oyster Lease Use Plan Questionnaire that he intends to use the proposed lease for on-bottom cage aquaculture (cages no greater than 12-inches off bottom).

Mr. Stagg further said that Mr. McCulloch concurrently submitted a second application for a riparian oyster ground lease adjacent to his residential property along the York River. That 0.50 acre lease has been surveyed and assigned.

Mr. Stagg stated that the regular lease application request has been subjected to our normal public interest review that includes advertisement once a week, for four weeks, in a local newspaper (Daily Press) and posting at prominent locations in the area of the application.

Mr. Stagg explained that staff had received a phone call from Mr. Gregg Garrett in which he indicated that he had concerns with Mr. McCulloch's application and staff subsequently met with Mr. Garrett on October 19, 2011, to discuss his concerns. During the meeting, Mr. Garrett verbally noted his concerns that the proposed McCulloch lease would surround his existing lease and, if approved, block his ability to expand his ongoing aquaculture operations should he wish to lease additional ground adjacent to his existing lease. He further stated concerns about leasing portions of the "cove" area which borders both his and Mr. McCulloch's property. Mr. Garrett also expressed concerns that a previously dredged channel extending from the cove and the commercial property owned by Mr. McCulloch should not be included in any lease to avoid potential future conflicts should dredging be required in the future. Mr. Garrett requested and was provided maps showing other nearby areas of vacant subaqueous bottomlands that could be applied for to be leased.

Mr. Stagg said that Mr. Garrett had indicated he would be submitting an application for approximately 10-11 acres of the same area already applied for by Mr. McCulloch and that he intended to officially object to that same area of the McCulloch application (as well as portions of the cove area and the channel area already noted above). On November 3, 2011, we received an application from Mr. Garrett requesting to lease up to 10.5 acres of ground to match the areas noted above. Staff also received an email of protest to the McCulloch application, from Mr. Garrett on November 7, 2011.

Mr. Stagg said that Mr. McCulloch's application was surveyed on December 20, 2011 and the plat approved by the Chief Engineer on January 4, 2012. No other protests to the McCulloch application have been received.

Mr. Stagg noted that Mr. Garrett's objections to the McCulloch lease include his questioning the validity of leasing any of the "cove" area due to Health Department restrictions on harvest in this area, the potential to restrict Mr. Garrett's ability to lease additional ground immediately adjacent to his existing leases, and concerns about leasing the "channel" that leads from the shared "cove" area out to the Thorofare. Mr. Garrett has requested to meet with Mr. McCulloch concerning this matter, but it is staff's understanding that no such meeting has occurred.

Mr. Stagg explained that since Mr. McCulloch clearly applied in accordance with the requirements of §28.2-605 of the Code of Virginia, which states in part, "...Applications shall be considered in the same order in which they are received, ..." staff believes it appropriate for the Commission to act upon the McCulloch application while considering the objections of Mr. Garrett, before staff proceeds with any further action (including any field surveying) on the Garrett application.

Mr. Stagg said that staff noted that while the "cove" area may be restricted for direct harvest and/or consumption of shellfish at times, such shellfish can be relayed to open areas for future harvest. The remaining area requested by Mr. McCulloch is currently open to the direct harvest of shellfish. Mr. Garrett already leases approximately half of the "cove" area and since both he and Mr. McCulloch share riparian property within the cove, the request to lease the remaining area to Mr. McCulloch seems appropriate. As for the area of the "cove" entrance and the channel area extending out to the Thorofare, this private channel was previously dredged by Mr. McCulloch and staff believes the conditions of our on-bottom regulation will restrict the placement of cages in the channel should the lease be granted. Regulation 4 VAC 20-335-10 ET SEQ states that: "No structures may cause more than a minimal adverse effect on navigation." Additionally, since Mr. McCulloch is proposing to use the commercial property immediately adjacent to the proposed lease area and the existing channel, it would appear in his interest to maintain this area for ingress and egress to both the commercial property and his own boathouse within the "cove." While the McCulloch application does border the existing Garrett lease, it also borders and is very near Mr. McCulloch's residence and his commercial property, which he proposes to use to support the aquaculture activities on

the requested lease area. Mr. Garrett has had the opportunity to apply for this same area for many years but has not done so. While there are other nearby areas that are also vacant, Mr. McCulloch, for the obvious reasons noted above, submitted an application for the area nearest to his property.

Mr. Stagg said that Mr. McCulloch clearly submitted his application well in advance of the competing application of Mr. Garrett. Mr. Garrett already has two existing leases with considerable area to expand his ongoing aquaculture operation. Additionally, since Mr. Garrett already has a lease that encompasses approximately half of the “cove” and he shares riparian lands on the cove with Mr. McCulloch, it seems appropriate that Mr. McCulloch be allowed to lease the remaining half of the “cove.” The channel area at the mouth of the cove and the previously dredged channel extending to the Thorofare have been previously maintained by Mr. McCulloch and the placement of cages in this area would be precluded by VMRC current regulations.

Mr. Stagg stated that staff did not believe the concerns raised by Mr. Garrett warranted any alteration to the area applied for by Mr. McCulloch and thereby recommended approval of the lease request as submitted and surveyed. Should the Commission concur with staff’s recommendation, there would be no area remaining to be leased in the Garrett application and his application will be considered void. Should the Commission alter the McCulloch application in such a manner that there is area available within the concurrent area of the Garrett application, staff will proceed with surveying such area to allow for the continuation of the public interest review process as required by the §28.2-607 of the Code of Virginia.

Commissioner Bowman asked for questions for staff.

Associate Member Robins asked if the sandbox would impact the egress. Mr. Stagg stated that there is a jetty there. He explained that the sand migrates around the point and there is a jetty installed. He further explained that Mr. McCulloch did previously dredge the area to remove the sand.

Associate Member Robins asked if the triangular area impacted the egress. Mr. Stagg said Mr. Garrett is concerned that the channel is not leased and keeping it open for his access.

Associate Member Palmer asked when Mr. Garrett leased his oyster ground. Mr. Stagg explained that he obtained it from the previous owner when he bought the highland property. He said it was maybe ten years.

Commissioner Bowman asked if the applicant or a representative was present who wished to comment.

Tim McCulloch, applicant, was sworn in and his comment are a part of the verbatim record. Mr. McCulloch provided a packet of photographs for the Commission. He said the name of his company was Goodwin Island Oysters. He noted that the survey was done off the channel and that the markers installed by the Coast Guard were no longer there. He stated he had done a lot of improvements to the shoreline, since he acquired the property. He reviewed his pictures of his residence and commercial property. He explained that when he asked Mr. Garrett about the dredging of the channel, Mr. Garrett was not interested. He said three residents share the channel and the others did participate. He said he was not against aquaculture but was against breaking the rules. He said that residential and commercial rules were different and he would operate on the commercial property only. He stated there was only one protest and there was talk by others.

Commissioner Bowman asked for questions.

Associate Member Palmer asked if he had dredged up to his property. Mr. McCulloch explained he dredged up to his pier and then to the marsh toe. Associate Member Palmer asked how Mr. Garrett accessed his property. Mr. McCulloch stated only at high tide.

Associate Member Robins asked about his plans for aquaculture operation. Mr. McCulloch stated he planned to raise millions of oysters and have 1,000's of cages. He said he was branding the product and would build his own cages. He would utilize an air compressor and use different types of cages, in other words a full blown commercial operation.

Danielle McCulloch, applicant's daughter, was sworn in and her comments are a part of the verbatim record. Ms. McCulloch explained that she worked at VIMS, but was here on a personal basis. She said she supported the project and she had seen what was done. She said her father obeyed all rules and was environmentally responsible. She indicated the oyster grounds were essential to his plans and this was the appropriate size and location. She reiterated that he was not against aquaculture, but he believed all laws and regulations were for all to follow. She said she hoped to see it approved.

Commissioner Bowman asked if anyone else was present in support who wished to comment. There were none. He asked if anyone present was in opposition who wished comment.

Greg Garrett, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Garrett said he did not like protesting this lease as he had had an active operation for the last three years. He said he also started raising clams this past summer. He said his grounds would be hemmed in by this lease and by the Yorktown Oil Refinery, which he did try to acquire a portion of that lease. He stated he cannot expand on the north side and this application would wrap his entire lease, which he questioned staff, asking why. He said he and Mr. McCulloch had both been on a committee and

Mr. McCulloch had been put on the committee because he was opposed to aquaculture. He added that there was a Ms. Bennett who was opposed to the Chesapeake Bay Oyster Company aquaculture operation and now she had applied for oyster grounds to do the same. He read from e-mails and articles in the paper that quote Mr. McCulloch as being opposed to aquaculture and it was all within the last year. He again addressed the fact that the oyster ground lease would be wrapping around his lease, when there was other area available. He stated why not avoid conflict and support his entry into the oyster business. He explained that he had scheduled meeting with staff and Mr. McCulloch, which had been cancelled and not rescheduled. He requested that the approval for the lease not include the 10 acres around his lease so that he could get to it.

Commissioner Bowman asked for questions.

Associate Member Palmer asked him when he obtained the leases. Mr. Garrett said it was 3, 4 or 5 years ago. Associate Palmer asked him why he had not applied for more area. Mr. Garrett stated that all of the applications would have been protested by Mr. McCulloch. Associate Member Palmer asked him when he contacted Yorktown Refinery. Mr. Garrett responded two years ago. Associate Member Palmer said these were all on the other side. Mr. Garrett said it was easier on the other side as they could be transferred.

Associate Member Plumlee asked if he was harvesting in the cove. Mr. Garrett said no, just growing the oysters. Associate Member Plumlee asked how active were his oyster grounds? Mr. Garrett said he taken some from the north side and on the east side he was trying to grow clams with cages as the sand moves around in the Sandbox and he was trying to improve it and then move to the west and south side.

Associate Member Schick asked how many he had marketed. Mr. Garrett said he was growing 300-400,000 and had ordered more. Associate Member Schick said he understood that his application would be convenient and avoid conflict, but what other advantages would there be. Mr. Garrett stated that they would be in sight of his property in order for him to protect them from theft and at times of storm. He added it was just practical.

Commissioner Bowman asked if there was anyone present in opposition who wished to comment.

Thomas Nelson, Jr., protestant, was sworn in and his comments are a part of the verbatim record. Mr. Nelson stated he had been on the same committee and he knows of Mr. McCulloch feelings against Mr. Garrett's aquaculture operation. He said Mr. McCulloch had commercial property, but he objected to Mr. Garrett. He said the Board of Supervisor seemed to agree with Mr. McCulloch, as two of the members were actually angered.

Commissioner Bowman reminded him to keep his comments pertaining to the oyster ground lease application.

Mr. Nelson said the wrapping of the lease, seems to make this a Hatfield and McCoy situation because it seemed to be intentional by obtaining this lease to prevent Mr. Garrett from expanding.

Associate Member Fox asked if he was in the oyster business. Mr. Nelson said he only ate the oysters. Associate Member Fox asked if he lived in the project area. Mr. Nelson stated no.

Associate Member Schick asked if Mr. McCulloch was against aquaculture in a residential/commercial area. Mr. Nelson stated Mr. McCulloch was against it in a residential area related to vehicle transport or noise.

Robert Deramo, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Deramo said that aquaculture was good, but this was not a lease, but a spite easement. He said they need to work together, need arbitration and need to table the matter.

Associate Member Schick asked if he had heard Mr. McCulloch say he did not want aquaculture. Mr. Deramo responded yes.

Bob Buchanin, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Buchanin explained that the channel was not straight as depicted and navigation would be impacted. He said he used that route with his boat and the boundary should be moved to the west side. He noted the boundaries of this lease would stop any expansion by Mr. Garrett, when there is other area available.

Mary Leedom, protestant, was sworn in and her comments are a part of the verbatim record. She said that Mr. McCulloch worked to stop oyster farming in York County and caused disquiet in the neighborhood. She noted that he supported zoning ordinances proposed by the Board of Supervisors and she questioned his motives and commitment. She stated she felt VMRC should provide area for oyster farming.

Associate Member Schick asked if she heard or read about it. Ms. Leedom said yes she heard it in the planning meeting and at the hearings twice.

Charles McGee, protestant, was sworn in and his comments are a part of the verbatim record. Mr. McGee said he was involved in the Chamber of Commerce Institute project by students regarding aquaculture and the federal government's mandate to clean the bay was to be paid for by the local government. He stated that the oysters would help. He said that Mr. McCulloch was against aquaculture and had no interest prior to all this. He

said this would just tie up usable grounds. He read from a November 8, 2012 letter by Mr. McCulloch regarding his concerns about aquaculture.

Commissioner Bowman asked him why he was opposed. Mr. McGee said the grounds would not be used as applied for. He said documents show Mr. McCulloch's disdain for aquaculture.

Commissioner Bowman referenced and ready Code Section 28.2-613 which requires significant effort, so there was a remedy for this as he must show results.

Mr. McGee said there were articles in January 2011 in the James River Journal, Daily Press, etc. where Mr. McCulloch said he was against aquaculture, which he read into the record. He also referenced other articles.

Associate Member Schick asked if he actually heard Mr. McCulloch. He said he heard him, when he testified in April 2011 at the board meetings.

Commissioner Bowman asked if anyone else was present in opposition. There being none, he allowed Mr. McCulloch time for rebuttal comments.

Mr. McCulloch stated that all of his objections had been based on the laws. He said until April 2011, there were permanent condemnations and some were seasonal and they were lifted. He said if the area should return to a condemned status then he could still relay the shellfish. He said he did want to make money and this was a commercial property, which was a perfect site. He said he would not be stopping Mr. Garrett and he had only objected before as it related to zoning.

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

Associate Member Robins stated there would be no cages in the channel. Mr. Stagg said that staff had stayed off the channel further than what had been shown on the slide. He added that in April 2005 Mr. Garrett had obtained the two leases in his name.

Associate Member Robins stated the Commission cannot resolve personal issues. He explained that in the Code it was set up so that the first application would be considered and the applicant's sworn testimony was of his intent. He said the Commonwealth had a remedy in the Code for renewal and if it were not used that the Commission would not renew the lease.

Associate Member Plumlee stated that Mr. Garrett has had the opportunity to expand his oyster grounds and that the Commission has the power to control a lease due to non-use and that this can be looked at when the lease is to be renewed.

Associate Member Schick said the Commission did not approve leasing grounds in order to control others and the intent has to be to grow oysters, which is shown in the testimony here. He said the application meets all criteria and the Code says the first applicant is considered and not other applications. He added that there was other area available to lease.

Commissioner Bowman stated the matter was ready for action.

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

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10. PUBLIC COMMENTS:

SUMMER FLOUNDER

Fella Daniels, waterman, was present and his comments are a part of the verbatim record. Mr. Daniels explained that North Carolina had raised their trip possession limit to 17,500 pounds and Virginia's limit is no more than twice 10,000 pounds landing limit. He stated Virginia's landings needed to account for North Carolina's possession limit.

Commissioner Bowman asked for questions. There were none. He asked staff to comment.

Joe Grist, Head, Plans and Statistics was present and his comments are a part of the verbatim record. Mr. Grist stated that staff supported the request as North Carolina had decided late today that for the month of March the trip limit would be 17,500 pounds and if fishermen wish to land in Virginia first then an emergency regulation was necessary.

Associate Member Robins asked about how the regulation would read regarding the poundage. Mr. Grist explained that the current total possession limit was 20,000 pounds with 10,000 pounds landed in Virginia and 10,000 pounds landed in North Carolina. He reiterated they normally would land in Virginia first, then in North Carolina. He added that the North Carolina staff said there would be a 17,500 pound limit in North Carolina, the increased was justified.

Rob O'Reilly, Deputy Chief, Fisheries Management, was present and his comments are a part of the verbatim record. Mr. O'Reilly explained that previously the Virginia landing limit was to allow North Carolina's limit on board and now, with the modification, the 20,000 pounds was not doubling the Virginia limit. He noted the language on page two of the draft regulation was changed.

Commissioner Bowman asked if this would change the intent of the regulation. Mr. O'Reilly responded no. Commissioner Bowman stated this needed to be done not to circumvent the intent of the regulation but to not be detrimental to the watermen.

Commissioner Bowman stated that VMRC Counsel advised that the need for an emergency regulation did meet the criteria.

Associate Member Robins moved to approve the emergency regulation and to advertise for a public hearing in March. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

TILEFISH

Chris Ludford, waterman, was present and his comments are a part of the verbatim record.

Mr. Ludford explained that he had missed last month's meeting and he was sorry that he had missed it. He said that 500 pounds of the golden tilefish was caught in the Northern States and off Virginia, a change from 300 to 200 pounds of tilefish was not correct. He noted that it was the northern states that work on this species and it was a bycatch fishery for Virginia watermen. He said this bycatch species help them to meet their expenses and all species are tied together. He said that there was a need to bring a proposal back in 60 to 90 days to the Commission. He said there were ten fishermen in Virginia which were impacted. He explained that last year there were 7 Maryland boats catching tilefish off Virginia waters.

Associate Member Robins stated that the State of Maryland had taken steps with their regulations to make them mirror Virginia's.

Joe Grist, Head, Plans and Statistics, was present and his comments are a part of the verbatim record. Mr. Grist explained that they did look at them, but they did not finalize them to match with Virginia.

Associate Member Robins said this put an impact on Virginia's fishery and we need to get with Maryland. He noted that North Carolina was doing something experimental and going into their landings. He reiterated that staff needed to follow up.

Mr. Grist said this regulation can be addressed so that it be brought back to Fisheries Management Advisory Committee.

Mr. Ludford stated that in Virginia Beach two boats would get 1,000 pounds per trip and sell to a buyer, but they took a big hit going to 200 per trip. He suggested going back to 300 per trip and it would not make it a directed fishery. He said he applauded North Carolina for their effort and expressed a need for Virginia to do the same.

No action was taken.

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- 11. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-620-10 et seq., "Pertaining to Summer Flounder," to establish the 2012 recreational fishery management measures.

Allison Watts, Fisheries Management Specialist, gave the presentation with slides. Her comments are a part of the verbatim record. She provided additional public comments as a handout.

She stated that Virginia's target quota for 2012 has been established as 465,661 fish. This meant that 2012 landings can be as much as 73% higher than 2011 landings.

Ms. Watts explained that the Ad hoc committee had chosen four options (below) but unanimously supported Option D. FMAC had chosen Option D as their first choice with Option B as a second choice. Ms. Watts noted that Chincoteague Island Charterboat Association had called in today saying they preferred Option B.

These are the four options:

- A) 17 ½ inches minimum size limit, 5 fish, no closed season
- B) 17 inches minimum size limit, 5 fish, no closed season
- C) 17 inches minimum size limit, 4 fish, no closed season
- D) 16 ½ inches minimum size limit, 4 fish, no closed season

Ms. Watts said that staff recommended adoption of the amendments to draft 4VAC20-620-10 et seq., "Pertaining to Summer Flounder", that establish the 2012 recreational summer flounder management measures as 16.5" minimum size, four fish possession limit, and no closed season (Option D), which were on page 6 of the draft amended regulation.

Commissioner Bowman opened the public hearing:

William C. Tice, fisherman, was present and his comments are a part of the verbatim record. Mr. Tice said that the staff recommendation was for Option D. He said that with the 16 ½ size limit or 17 inch size limit the fishery would probably go over the quota which would be taken from the following year's quota. He recommended going with the 17 inch size limit and not be concerned with an overage. He stated that rules can be changed, but why change and always asked what size. He said there should be one size limit, 17" and 5-fish or Option B.

Jeff Deem, recreational fisherman, was present and his comments are a part of the verbatim record. Mr. Deem stated he recommended 16 ½ inch size limit with 4- fish. He said the new survey program shows that the MRFSS had overestimated. He said it was safe to go with this as it would be better for the stock as it would take pressure off the larger stock.

Commissioner Bowman asked about the percentage of release mortality. Mr. O'Reilly stated it was 10%.

Commissioner Bowman closed the public hearing. He stated the matter was ready for discussion or action.

Associate Member Laine stated that Virginia's been under their quota for 7 out of 10 years and the regulations were more restrictive than necessary. He noted that the ASMFC had accepted all four of the options and he felt the Commission should go with the majority of fisherman and accept Option B, 17 inch size limit with 5-fish allowance. He reiterated that most fishermen wanted to liberalize the bag limit and length. He said that staff recommendation for Option D was more liberal and Option B was less liberal and would reduce effort and available fish. He said he spoke with members of various clubs and they wanted Option B.

Associate Member Palmer said you could flounder fish forever and the average fisherman would not catch a big fish and the small ones are thrown back dead. He said he wanted to see some fish caught with what it cost to go out fishing. He said he agreed with Option D, 16 ½ inch size limit and a 4-fish allowance.

Associate Member Robins explained that the stocks have just been rebuilt and along the coast there were complaints of a lack of access and the discard was 93% last year. He said it would provide a quality experience for recreational fishermen if there was better access to the resource in some areas. He said the data treatments all prove to be bias for Option D, 16 ½ inch size with a 4-fish allowance.

Associate Member Schick said that this year they would be caught before they stop growing and it was mainstay species for the Bay and especially for the tributaries. He added that in order to bring home more fish by any angler, Options B or D would be good. He stated the preferred option was Option D.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Laine moved to adopt Option B. There was no second to the motion, therefore, the motion failed.

Associate Member Robins moved to adopt Option D. Associate Member Palmer seconded the motion. The motion carried, 7-1. Associate Member Laine voted no. The Chair voted yes.

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18. REQUEST FOR PUBLIC HEARING: Amendments to Regulation 4VAC20-1260-10 et seq., “Pertaining to River Herring” to exempt the possession of river herring on freshwater impoundments from the moratorium.

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

Mr. Travelstead explained that last year the Commission adopted a moratorium on the harvest and possession of river herring in Virginia, which was to become effective January 1, 2012.

Mr. Travelstead stated that it was not clear in the language of one sentence that was a problem, which where it said you shall not possess any river herring in Virginia. He said that river herring were imported from Canada by some buyers in Virginia and this does not impact the Virginia stocks, but it does impact the retailers and buyers. He said there was letter from Tommy Kellum and Mr. Erskine and Mr. Nixon where present at the hearing to comment. He said the bigger issue was the freshwater river herring that was regulated by the Game and Inland Fisheries Commission and the regulation is to protect the Virginia herring that are in the tidal waters.

Mr. Travelstead said also there needed to be language that the river herring cannot be landed in Virginia from Federal waters. He stated this would be easier for enforcement.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, asked about subsection C where it said a bill of sale was needed. Mr. Travelstead said that would be for river herring coming from another State or from outside the country.

Associate Member Robins said if it were coming from Canada there would be a bill of lading or invoice and from another State there would be a bill of lading. He suggested adding bill of lading or a commercial invoice.

Commissioner Bowman allowed those present to comment to come forward.

A. J. Erskine on behalf of Cowart Seafood was present and his comments are a part of the verbatim record. Mr. Erskine said they support the emergency regulation as Cowart Seafood imported from Canada approximately 1,500 cases of herring roe and salted fish.

Commission Meeting

L. W. Nixon was present and his comments are a part of the verbatim record. Mr. Nixon said he supported the emergency regulation. He said he sold wild product of Canada. He noted that in North Carolina they had a moratorium and from South Carolina you can get fresh, but there was a limit which hurt.

Being there were no others to comment, Commissioner Bowman stated the matter was before the Commission.

Associate Member Robins moved to approve the emergency regulation and suggested amending subsection C to say they shall have an invoice or a bill of lading. He added that it should be advertised for a public hearing. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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12. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-900 et seq., “Pertaining to Horseshoe Crabs” to establish the 2012 commercial quota and allocations to each gear type.

Joe Grist, Head, Plans and Statistics, gave the presentation with slides. His comments are a part of the verbatim record.

Associate Member Robins recused himself from participating in this item because of his involvement in the fishery.

Mr. Grist explained that the 2012 commercial quota had been established by the ASMFC as 152,495 horseshoe crabs, and this was Virginia’s original allocation. There were no overages of quota in 2011, so no deduction of the 2012 quota was required.

The table below shows the allocation of commercial quota by gear types for a year with no reduction in quota, as in 2012.

Current Gear Type and Allocation Amount	Full Quota Year
Dredge Gear (42%)	64,048
Trawl Gear (13%)	19,824
Hand Harvest (23%)	35,074
Pound net/Other Gear (22%)	33,549
Sum	152,495

Mr. Grist said that when the above allocation of landings by gear was implemented by the Commission it was the intent of allowing all gears an equitable portion of the fishery. In 2011, the gill net and other gear fishery landed 43% of the pound net/other gear allocation, versus 57% by pound net for the 22% allocation landed by pound nets alone. The gill net and other gear category had been considered a bycatch fishery when combined with the pound net for the 2011 allocation, but instead they became a directed fishery for horseshoe crabs in 2011.

Mr. Grist said that the Horseshoe Crab industry meeting was held on February 13, 2012 with 21 horseshoe crab harvesters in attendance out of the 82 invited. The group was able to reach a consensus on an option that provided the pound net fishery a separate quota from the other gear category. See the table below:

Proposed Gear Type and Allocation Amount for 2012	Full Quota Year
Dredge Gear (40.348%)	61,528
Trawl Gear (12.488%)	19,044
Hand Harvest (22.095%)	33,694
Pound net (18.142%)	27,665
Other Gear (6.927%)	10,564
Sum	152,495

Mr. Grist explained that at this meeting the participants also recommended additional regulatory provisions to address concerns about the gill net harvests in 2011. The industry members mentioned that some harvesters may have taken advantage of the pound net and other gear category by directing on horseshoe crabs with gill nets. The consensus of the groups was to restrict the horseshoe crab harvest by gill net to the daylight hours only with a daily landing cap of 250 horseshoe crabs. These recommendations had not been advertised in the original public notice and it would require emergency action by the Commission.

Mr. Grist stated that staff recommended adoption of draft Chapter 4 VAC 20-900-10 et seq., that establishes the 2012 commercial quota as 152,495 horseshoe crabs and sub-allocates the annual quota by gear types, as follows:

- a. 40.348% of annual quota for dredge gears,
- b. 12.488% of annual quota for trawl gears,
- c. 22.095% of annual quota for hand harvester licensees,
- d. 18.142% of annual quota for pound nets,
- e. 6.927% of annual quota for other gears.

Mr. Grist stated also that staff recommended adoption of draft emergency Chapter 4 VAC 20-900-25, to restrict the harvest of horseshoe crabs by gill net to daylight hours (sunrise to sunset) and provides a daily landing limit of 250 horseshoe crabs when harvested by gill nets; and, advertising for a March 2012 public hearing, the emergency amendments to Chapter 4 VAC 20-900-25, as previously described.

Commissioner Bowman opened the public hearing.

Charles Wimbrow, hand harvester, was present and his comments are a part of the verbatim record. Mr. Wimbrow said that he had suggested that it be divided among the group and the slide on the change was at the last minute. He suggested that the gill nets be put in the cove to catch the horseshoe crabs before they release their eggs. He also suggested that in May there not be any harvest allowed, if that was done.

Mike Gibson, waterman, was present and his comments are a part of the verbatim record. Mr. Gibson said he agreed and with the gray areas there were loopholes. He stated that the gill nets catch more horseshoe crabs than anyone else. He said that the fishery should be closed in May as the 250 and nighttime would not work.

Associate Member Palmer asked if the catch peaked in April. Mr. Gibson responded no, that it peaked in May.

Danny Bowden, commercial fisherman, was present and his comments are a part of the verbatim record. Mr. Bowden stated the horseshoe fishery was small and contentious. He said the hand harvesting was a recent fishery and was ruled by greed and jealousy. He said this was done by three individuals and the new option was the consensus of all who attended the meeting. He said there were law enforcement issues because some were going out as gill netters but were actually catching the horseshoe crabs by hand. He said when they were asked about it by Law Enforcement they claimed they caught them with the nets. He said that Law Enforcement had suggested that the Committee asked for the gill netters not being allowed to work at night. He said the value of the bycatch fishery has gone up and suggested allowing a 250 horseshoe crab limit but that they not be allowed to have any on board the boat at night.

Kenny Heath, pound netter, was present and his comments are a part of the verbatim record. Mr. Heath said he was at the meeting and they left it with everyone agreeing. He said he disagrees with the moratorium as his son had not been allowed in the fishery.

Chris Cuono, Chincoteague, was present and his comments are a part of the verbatim record. Mr. Cuono explained that at the meeting all had agreed and it was at the last minute to suggest the 250 limit and no night time harvest. He said the season should be ended in May (May 1 through June 7) to eliminate the temptation.

Associate Member Plumlee asked if he was talking a complete closure in May. Mr. Cuono said there was a problem even with the pound netters as the horseshoe crabs have been caught too close to the shore so it should be closed.

Vernon Merritt, Chincoteague Fisherman, was present and his comments are a part of the verbatim record. Mr. Merritt said that all he wanted was a bycatch and by June 7 the season was over. He said fishermen are allowed to fish within 1,000 feet of the shore for spiny dogfish and rockfish. He stated that there was a conflict between the gill netters and hand harvesters, but most hand harvesters were part-time and were done by June 7.

Ernest Bowden was present and his comments are a part of the verbatim record. Mr. Bowden said that with a bycatch fishery you need the daylight provision. He said it would be easier for Law Enforcement.

Commissioner Bowman closed the public hearing. He said the matter was ready for discussion.

Associate Member Palmer said there was an agreement and he moved to accept the staff recommendation, the emergency regulation and that a public hearing be advertised. Associate Member Plumlee seconded the motion. The motion carried 7-0. The Chair voted yes. Associate Member Robins had recused himself from this item.

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16. DISCUSSION: Approval of the 2012 Oyster Restoration Program and its procurement procedures.

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

Dr. Wesson stated the plan for this year's program was in the evaluation and staff was requesting approval of the procurement methods. He said there was a small amount of general funds available in the current fiscal year and some additional general funds of approximately \$500,000 were available to VMRC in the next or 2013 fiscal year.

Dr. Wesson said that the state was getting a return on its investment of \$1.00 for every \$1.00 spent for a bushel of seed oysters and for \$1.00 spent on a bushel of shell the return was \$7.00 from the harvest areas. He said no movement of seed was proposed because there was not enough money.

Dr. Wesson explained that a seed program in the Piankatank River was proposed since the standing stocks were increasing with the additional of fresh shells and it was a successful program.

Dr. Wesson said that in the Great Wicomico River the standing stock was almost back to what it was in 2006. He said it was proposed that the public beds be opened for industry harvest of seed oysters, which would mean shells being added to the beds to see if the stocks increase. He said the added funds the agency receives will be used for shells to put in the harvest areas.

Dr. Wesson explained that with the NOAA funds shells will be added to new areas, completing what was started last year with federal funds.

Dr. Wesson stated that with the use of federal monies from the Crab Disaster Grant funding was available for 130 plus aquaculture trainees. He further stated that grant funds for the Spat on Shell (SOS) program were there for another year.

Dr. Wesson said there was a need to keep shells on the public beds for the harvesters. The Secretary of Natural Resources had provided funding to monitor water quality issues that has been affecting the spat on shell program.

Dr. Wesson said the Commission would be approving procurement methods.

Commissioner Bowman asked for questions.

Associate Member Fox asked if there would be shells planted in Tangier Sound. Dr. Wesson explained that if they can get some more funds from the General Assembly. He said staff uses the stock assessment so that as many areas as possible can receive oyster replenishment efforts.

Commissioner Bowman opened the hearing to the public for comments. There were none. He stated that the matter was before the Commission.

Associate Member Robins announced that he would be abstaining because he participated in the program.

Associate Member Fox moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 7-0-1. The Chair voted yes. Associate Member Robins abstained.

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The approval by the Commission included the approval of the procurement efforts described below.

2012 Oyster Replenishment Plan

Funding Sources **Amount**

Non-Federal

General Funds (GF) State -- FY 2012	\$ 97,000
FY 2013 (July 1, 2012)	\$500,000

Federal

NOAA – Piankatank	\$589,085
NOAA – Rappahannock – Sanctuary areas	\$ 66,000

NOAA – Blue Crab Disaster Oyster Aquaculture Spat on Shell	\$600,000
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The Nature Conservancy – NOAA	\$ 63,000
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Bay and Tributaries:

Seed Transfer:

Wild seed is available in the James, Great Wicomico, and the Piankatank Rivers. Spatsets were generally very good in 2010, and moderate to light in 2011. The Benefit vs Cost ratio for seed oyster planting for public grounds in our tests in 2008 and 2009 were very low. The Blue Ribbon Panel recommended that seed planting return at least \$1.00 for each \$1.00 expended, and it is rare for any of our public seed transfer efforts to obtain that return. Therefore, with only limited general funds, we will not transfer any seed oysters to public grounds.

Piankatank River

In the Piankatank River, we have a very successful program to allow private industry a modest harvest of seed oysters each year (Figures 1 & 2). In this program, private leaseholders sign up for the amount of seed that they would like to harvest from the public seed grounds, and they must replace two bushels of shells for each bushel of seed taken. Counts per bushel are relatively high, 600 – 1,000 oysters/bushel, and staff recommends that the participants replace each bushel of seed with two bushels of shell. Staff further recommends that 20,000 bushels of seed oysters be offered to the private

industry in 2012. They can either pay for VMRC to do the replacement, or they can plant the shells themselves. All of this activity occurs under the VMRC supervision.

Great Wicomico River

Allowing a small percentage of the standing stock of seed oysters in the Piankatank to be used by private industry has worked so well that staff would like to extend this program into the Great Wicomico. In 2005, we committed to the Army Corp of Engineers partners to leave the oysters in the Great Wicomico unharvested and see what would happen over time. In Figure 3, there is a graph of the Great Wicomico standing stocks since 2004. There was a large increase in standing stocks following a 2006 spatset, but standing stocks have declined dramatically since that time. There has been no harvest or shellplanting during this time period. In contrast, approximately 20,000 bushels of seed oysters have been removed each year in the Piankatank, following the same large 2006 spatset, and shells have replaced the oysters removed. Standing stocks have continued to increase using this more active management strategy. Staff proposes to allow harvest from three bars in the Great Wicomico by private industry, with the same replacement cost of two bushels of shell for a bushel of seed. All of this activity will occur under VMRC supervision. Staff intends to run both the Great Wicomico and Piankatank seed programs simultaneously and require that individuals that wish to participate choose which river that they want to get the seed and only allow an individual to work in a single river system. That way the seed can be made available to more watermen and leaseholders.

Shellplanting:

Great Wicomico and Rappahannock Rivers, and Tangier and Pocomoke Sounds

General funds will be used to add shells to harvest bars where the VIMS-VMRC oyster stock assessment has shown less than 5 liters of shell cultch per meter. More acres of harvest bars fall into this category of needing shells than there are General Funds, but as many acres as possible will receive 1,000 bushels of shells per acre. Our benefit to cost return is very high for shellplanting (Table 1), so with limited funds we will reshell as many acres we can afford. If the Oyster Replenishment Program receives \$500,000 in FY 2013, we will have to use dredged fossil shells for this shellplanting. We intend to advertise an Invitation to Bid Package for shell dredging in July 2012. If we do not get the funds, then we can just not award the contract.

173 acres of harvest bars @ \$2.00/bushel of shell \$597,000 (GF)

Commission MeetingNOAA Chesapeake Bay Office – Oyster Restoration:Piankatank River

NOAA Chesapeake Bay Oyster Restoration funds can only be expended on certain tasks. Funding exists for rebuilding 23 acres of sanctuary in the Piankatank River (Figure 4).

22 acres @ 10,000 bu. shell/acre @ \$1.60/bu. \$358,000(NOAA)

NOAA Chesapeake Bay Oyster Restoration funds can also be used to add shells to the 144 acres of existing oyster bars in the Piankatank River.

144 acres @ 1,000 bu./acre @\$1.60/bu. \$230,720 (NOAA)

House shells will be used to complete these projects.

Rappahannock River

NOAA Funds can also be used to add shell to the sanctuary sites in the Rappahannock River.

60 acres of sanctuary @ 1,000 bu./acre @ \$1.10/bu. \$66,000 (NOAA)

Seaside Eastern Shore:

We will work with the Nature Conservancy (TNC) again on oyster restoration on TNC sanctuary areas. Some conch shells are available, and the rest of the shells will be harvested locally.

Two acres @ 16,000 bu. of shells/acre @ \$2.00/bu. \$63,000 (TNCC-NOAA)

Cow Nosed Rays:

Cow nosed ray predation continues to be the single largest impediment to success with both public and private seed planting. A tremendous amount of progress has been made to find uses for the ray meat, to develop processing methods, and to advertise the product. Funds must be combined from a number of sources to keep this project moving forward. In the past, these MRC funds have been used to help subsidize the harvest of the rays by the watermen. MRC funds will again be used to purchase 133,000 pounds of cow nosed rays @\$0.15/pound.

133,000 pounds of cow nosed rays @\$0.15/pound \$20,000 (GF)

NOAA Blue Crab Disaster Oyster Aquaculture Training Projects:

This project to train crab industry participants in either spat on shell or cage oyster aquaculture was approved in 2009. More than 90 crab industry participants signed up for the spat on shell project and 150 for the cage oyster aquaculture project. Two years of training have been completed for the cage aquaculture project, and 131 participants have received seed and equipment to grow 50,000 oysters. Oysters have reached market size and are being sold, and staff has continued to work with these individuals. The spat on shell project lagged behind the cage aquaculture project by one year, mainly because of how late the funding arrived to VMRC in 2009. Thirty-five individuals were given contracts for the spat on shell program in 2009. Approximately 30 of these participants completed their projects in 2010. The project resulted in more than 24,000 bushels of spat on shell being produced, 1.1 billion eyed larvae produced by the hatcheries, and a much higher setting rate for the larvae than we had seen in previous years. We gave contracts for an additional 30 spat on shell participants for 2011. Virginia oyster hatcheries performed poorly in 2011. Our projects needed 1.8 billion eyed larvae, and only 600 million were produced. The hatcheries are beginning a new water quality testing program under a grant from our Secretary of Natural Resources. Dr. Dave Kuhn from Virginia Tech will be working with VMRC and the Virginia oyster hatcheries to try and identify the issue responsible for larval failure, and to find a solution to work around the problem. Our NOAA Blue Crab Disaster grant will be extended through 2013 so we can complete the projects. We intend to advertise for up to 30 more spat on shell participants for 2012 in case we solve the problem quickly, but all of the 2011 participants will have their projects completed first. More than two billion eyed larvae will be needed to complete the project in 2012. We intend to concentrate on the spat on shell program and solving the hatchery problems in 2012. Some funds will be available in 2013 for this program and additional participants can again be added at that time.

Spat on Shell Training

\$600,000 (NOAA)

STAFF

RECOMMENDATION: Staff recommends approval of the 2012 Oyster Replenishment Plan as well as the associated Procurement Procedures.

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2012 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, shell bed cleaning, 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 per thousand. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

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 \$0.75 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 2012 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 2012 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 2012 Replenishment Program.

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- 17. **REQUEST FOR PUBLIC HEARING:** Amendments to Regulation 4VAC20-1250-10 et seq., "Pertaining to the Tagging of Shellfish," to clarify and improve enforcement of the tagging requirements.

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

Commissioner Bowman left the meeting and Associate Member Robins will act as the chairman.

Dr. Wesson explained that last winter the Commission approved some tagging requirements to satisfy the requirements by the Federal Food and Drug Administration (FDA) and it worked fairly well, but there was some confusion over the use of tagging. He said changes have been made to clarify the requirements. He said this was a request for a public hearing.

Associate Member Robins asked for questions. There were none. He stated the matter was ready for a motion.

Associate Member Schick moved to advertise for a public hearing. Associate Member Fox seconded the motion. The motion carried, 6-0. Commissioner Bowman had left the meeting for the day.

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- 13. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-910-10 et seq., "Pertaining to Scup (Porgy)," to establish a 50,000 pound trip limit for the commercial winter fishery.

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

Mr. O'Reilly explained that this was being heard to make the emergency amendments adopted last month a permanent part of the regulation. He said this would increase the Winter I period from 30,000 to 50,000 pounds. He referred to page two of the draft regulation in Section 45 where the changes had been made.

Mr. O'Reilly stated that staff recommended approval of the adoption of these amendments.

Associate Member Robins asked for questions. There were none. He asked what was the pleasure of the Commission.

Associate Member Plumlee moved to accept the staff recommendations. Associate Member Schick seconded the motion. The motion carried, 6-0.

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14. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2012 commercial directed and by-catch quotas.

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

Mr. O'Reilly explained that the Commission was briefed on this last month to establish the 2012 quotas. He said this was done each year, and this year the directed quota is set at 302,000 pounds and the by-catch quota was set at 40,000 pounds. He said in the draft regulation on pages on pages 3 and 4 are where the changes have been made. He stated that the directed fishery quota was suppose to be 302,000 pounds and noted that staff would correct the draft regulation.

Mr. O'Reilly stated that staff recommended the adoption of both the directed and bycatch fisheries quotas.

Associate Member Robins opened the public hearing. There were no public comments. He asked for action by the board.

Associate Member Schick moved to approve the amendments, as read. Associate member Fox seconded the motion. The motion carried, 6-0.

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15. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-1240-10 et seq., "Fisherman Identification Program," to clarify conditions for which a registration in the program is necessary.

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

Mr. Travelstead explained that last month staff had talked about making some changes to clarify that all must be registered who attempt to take or catch fish, because several enforcement cases were dismissed because the officer had failed to witness the individuals attempting to fish. He said this would make it easier for Law Enforcement.

Mr. Travelstead said that language had been added to the draft regulation to indicate that any person attempting to take or catch fish should be registered in the Fisherman Identification Program.

Mr. Travelstead noted that no written comments had been received.

Associate Member Robins asked for questions. There were none. He asked what was the pleasure of the Commission.

Associate Member Fox moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 6-0.

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19. REQUEST FOR PUBLIC HEARING: Amendments to regulation 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2012 recreational fishing season.

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

Mr. O'Reilly explained that this was a public hearing to establish the 2012 recreational fishing season. He said the change involved 6 additional days more than was allowed in 2011. He said the season would gain 3 days in May and 3days in October. The seasons for 2012 would be from May 19 through October 14 and November 1 through December 31.

Mr. O'Reilly said that staff was requesting the advertising for a public hearing for next month.

Associate Member Robins said he remembers at the Council meeting there was discussion on the winter fisheries for January and February, Wave I, to allow more fishing effort but not to impact the fishery. He added this would affect 2013.

Jack Travelstead, Chief, Fisheries Management stated that it was discussed by ASMFC, but did not remember anything being done to finalize it.

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Associate Member Robins said since there were no further questions or public comments, what was the pleasure of the Commission.

Associate member Schick moved to advertise for a public hearing. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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There being no further business, the meeting was adjourned at approximately 4:20 p.m. The next regular meeting will be held Tuesday, March 27, 2012.

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Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary