

MINUTES

Commission Meeting

December 6, 2011

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

Steven G. Bowman	Commissioner
J. Carter Fox	
William Laine, Jr.	
Joseph C. Palmer, Jr.	
J. Bryan Plumlee	Associate Members
Richard B. Robins	
Kyle J. Schick	
Whitt G. Sessoms, III	
J. Edward Tankard	
Jack G. Travelstead	Chief, Fisheries Management
Paul Kugelmann, Jr.	Assistant Attorney General
John Bull	Director, Public Relations
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation-Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Tournament
Joe Cimino	Biological Sampling Program Mgr.
Stephanie Iverson	Fisheries Mgmt. Manager
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Allison Watts	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Renee Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Victoria Rabenstein	Marine Police Officer
Trevor Johnson	Marine Police Officer

Commission Meeting

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.
Dan Bacon	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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present:

Richard Green	Brian Chremey	Paul Peterson
Bill Mawyer	Ed Overmann	Sicyan Townsend
Shannon Cuyrell	Michael S. Hennady	Joseph Foulis
Ellis W. James	Rich Pochalski	Mark Noel
Andy Lacatell	Todd Sturgis	Andrew Sturgis
John C. Ludford	Keith Skiles	Robert Croonenburghs
Edwin J. O'Malley, Jr.		

* * * * *

Commissioner Bowman called the meeting to order at approximately 9:32 a.m. All Associate Members were present.

* * * * *

At the request of Commissioner Bowman, Associate Member Schick gave the invocation and Associate Member Plumlee led the pledge of allegiance.

* * * * *

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

Jack Travelstead, Chief, Fisheries Management, said staff needed to add another Fisheries item for the potential approval of the oyster measure that the General Assembly in the 2011 General Assembly Session, gave the Commission authorization to approve an alternate model of container for oyster measure; pursuant to the Code Section 28.2-526.

Commissioner Bowman stated that this additional item would be number 13.

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

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

MINUTES: Commissioner Bowman requested a motion for approval of the October 25, 2011 Commission meeting minutes, if there were no corrections or changes.

There were no changes.

Commissioner Bowman asked for a motion to approve the October 25, 2011 minutes.

Associate Member Laine moved to approve the minutes, as presented. Associate Member Plumlee seconded the motion. The motion carried, 9-0. The Chair voted yes.

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

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

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

Associate Member Plumlee said he recused himself for Item 2B, Fluor Enterprises, Inc., #08-2001, because of a business conflict.

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

Commission Meeting

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

Commissioner Bowman asked for a motion for Item 2A:

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

Commissioner Bowman asked for a motion for Item 2B:

Associate Member Schick moved to approve Item 2B. Associate Member Fox seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member Plumlee abstained.

2A. CITY OF ROANOKE, #11-0852, requests authorization to replace the existing Old Mountain Road Bridge in the City of Roanoke, the new bridge will be downstream of the existing bridge and will be a two (2) span bridge measuring approximately 131-feet long by 56-feet wide with one pier installed in the streambed of Tinker Creek. All stream work will be accomplished in coffer dams and the old bridge will be demolished after completion of new bridge.

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

2B. FLUOR ENTERPRISES, INC., #08-2001, requests authorization to modify an existing permit to allow the installation of 120 linear feet of riprap revetment extending a maximum of five-feet (5) channelward of ordinary high water along Aquia Creek, and to modify the size of the previously authorized bridges to a 160-foot long by approximately 52-foot wide clear span bridge along Aquia Creek and a 180 foot long by 52-foot wide clear span bridge along Chopawamsic Creek in Prince William and Stafford Counties.

No applicable fees – Permit Modification

* * * * *

3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).

3A. SEYED FALSAFI, #11-0909, requests authorization to retain a 260 linear foot riprap revetment extending a maximum of 6-foot channelward of mean low water impacting 932 square feet of subaqueous bottom, adjacent to his property at 835 Herbert Springs Road, situated along the Potomac River in Fairfax County. The

applicant agrees to pay a civil charge in the amount of \$1,800.00 in lieu of further enforcement action. Staff recommends approval with a triple permit fee totaling \$300.00 and acceptance of the aforementioned civil charge.

Tony Watkinson, Chief, Habitat Management, gave the presentation by reviewing the information provided in the evaluation. His comments are a part of the verbatim record.

In September of 2007, Mr. Falsafi applied for a permit to construct a riprap revetment extending ten (10) feet channelward of the existing concrete bulkhead. The County had several issues with the project and asked the applicant to modify the request for the revetment. The County and applicant could not come up with a compromise, so the applicant withdrew the request for the revetment. Both Fairfax County and VMRC inactivated the file.

In the fall of 2010, the Fairfax County Department of Public Works and Environmental Services staff investigated a land disturbance activity at the property. Following that site inspection, staff was informed of a possible subaqueous violation at the site. MRC staff, along with Fairfax County Wetlands Board staff, conducted a joint site visit on January 19, 2011, where it was determined that a riprap revetment had been constructed without authorization. On February 3, 2011, the property owner, Seyed Medhi Falsafi, met with Fairfax County and MRC staff to discuss the possible violations at his property. A Notice to Comply was issued to Mr. Falsafi on March 22, 2011. He was advised he could remove the revetment from State-owned submerged lands or submit an after-the-fact application for review. A Joint Permit Application requesting authorization to retain the revetment was received on June 22, 2011.

The application was considered by the Fairfax Wetlands Board on October, 6, 2011, and the after-the-fact request was approved. The board assessed an in-lieu fee of \$33,852.00 as compensation for the impacts to 1,209 square feet of intertidal wetlands.

Staff has completed a full public interest review regarding the subaqueous portion of the project. No opposition from the public or State agencies was received. In this case, Mr. Falsafi has taken full responsibility for the construction of the revetment.

Had the applicant applied for a riprap revetment to be placed in front of a failing concrete bulkhead prior to construction, staff would have likely recommended approval for the project. As such, given the minor environmental impact but the major degree of non-compliance, staff recommended the Commission accept a consent agreement in lieu of any further enforcement action and issue a permit for the 260 linear foot riprap revetment in consideration of the applicant's agreement to pay a triple permit fee of \$300.00 and a \$1,800.00 civil charge.

Associate Member Palmer asked if the contractor knew about the need to obtain a permit. Mr. Watkinson stated he did not know as Mr. Falsafi claimed full responsibility.

Dan Bacon, Environmental Engineer, Sr., explained that the first contractor had gone out of business and the second contractor was only to build the pier. He further explained that Mr. Falsafi had said that the first contractor did all the work.

Commissioner Bowman noted that Mr. Bacon had taken a job with the North Carolina, Corps of Engineers and thanks him for a job well done.

Associate Member Plumlee asked him if the fee recommended was in line with how these fees are paid. Mr. Bacon responded yes.

Commissioner Bowman stated the \$1,800.00 was in accordance with the matrix and asked staff to explain. Mr. Watkinson stated this was recommended because it was a minimum impact and maximum deviation.

Commissioner Bowman asked for comments from the applicant or the representative.

Michael Hennady, representative for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Hennady said that the area impacted was 156 sq. feet and it was revegetated. He said he was the contractor for the pier construction. He said that all fees had been paid to Fairfax County.

Commissioner Bowman asked Mr. Hennady if he understood the permit process for VMRC. Mr. Hennady responded yes, he did.

Commissioner Bowman asked for questions and there were none. He stated the matter was before the Commission.

Associate Member Palmer stated that the \$1,800 was too small of an amount and that \$15-20,000 would be more appropriate. Mr. Watkinson explained that the Commission had previously set the base fees as authorized.

Associate Member Robins asked how long the fee matrix had been in effect. Associate Member Fox noted it was May 25, 1999. Associate Member Robins said he was comfortable with the staff recommendation because of the existing standards/matrix. He suggested that they did need to be reviewed and brought back to the Commission to be updated. Mr. Watkinson said they were updated in May 1999.

Associate Member Schick asked for clarification as to whether this was for Wetlands or the Potomac River. Mr. Watkinson said VMRC's jurisdiction started at the low water and the Wetlands Board's jurisdiction extended from the low water line inland and through the intertidal area. Associate Member Schick asked if the area restored was not VMRC's jurisdiction. Mr. Watkinson responded yes.

Commission Meeting

Associate Member Plumlee asked if the \$33,000 assessment was in lieu of fees. Mr. Watkinson stated that this was the assessment adopted by Fairfax County. Mr. Bacon explained that the \$33,000 would have been paid with the permit application.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, stated that if there was to be a deviation from the matrix then the application need to be heard from and a public notice of deviation prior to such action or it could be challenged in the Court. He said there was a constitutional restraint. He said the fee matrix could be reviewed by staff and then updated.

Commissioner Bowman stated that the applicant was aware of all this as it had been discussed with him and he had agreed to the civil charge and fees, if not, this would have been a page one item instead of a page three item.

Commissioner Bowman asked for a motion.

Associate Member Schick moved to approve item 3A. He added the Wetlands Board had the right to assess the civil charges and how VMRC charged was what was usually done. He said he did not like to see people get off for a violation and suggest that the Commission go along with what it was now. Associate Member Robins seconded the motion. He stated that he would appreciate the staff’s review of the matrix guidelines and that this was a page 3 item because the applicant had agreed. He said that he supported going forward, but agreed that there was a need to review the current matrix. Associate Member Plumlee said he agreed that there was a need to move forward. He said the Wetlands Board asked for a modification which was not done. He stated with the current matrix the Commission’s hands were tied and there was a need to modify the matrix if the Commission can do so. He noted it was an egregious act by the applicant and there was a need to do more than \$1,800. The motion carried, 8-1. Associate Member Palmer voted no. The Chair voted yes.

Civil Charge	\$1,800.00
Permit Fee (Triple).....	\$ 300.00
Total Fees.....	\$2,100.00

Commissioner Bowman directed staff to hold a Habitat Management Committee meeting to review and make suggested changes to the matrix. He said he asked that Associate Member Plumlee be added to this Committee.

Mr. Watkinson stated that it had been two years since the last committee meeting and staff would need to contact all the members to see if they wished to continue as a member. Commissioner Bowman suggested that this be done within 60 days.

* * *

3B. SHIELDS PROPERTIES, LLC, #10-1116, requests an after-the-fact permit modification to their 45-foot long by 10-foot wide L-head pier that was constructed 3.9 feet further channelward than authorized by their permit, adjacent to their property along Assateague Channel near the mouth of Sheepshead Creek at 7536 East Side Road in the Town of Chincoteague. The applicant and contractor have both agreed to pay a civil charge in the amount of \$600.00 each in lieu of further enforcement action. Staff recommends approval and acceptance of the aforementioned civil charge

Tony Watkinson, Chief, Habitat Management, gave the presentation by reviewing the information provided in the evaluation. His comments are a part of the verbatim record.

Mr. Shields received a permit from the Commission in January of this year to widen his existing 40-foot long pier to six (6) feet and to install a 45-foot long by 10-foot wide L-head. Since the pier's L-head would be near the channel leading into Sheepshead Creek, the permit specifically required that the L-head not extend more than 30 feet channelward of the existing bulkhead.

Following receipt of compliance comments from the Army Corps of Engineers, staff conducted its own compliance inspection with Mr. Shields on April 28, 2011. During that inspection, staff found that the pier's L-head extended 33.9 feet channelward of the original bulkhead (3.9 feet further channelward than was permitted). A Notice to Comply was issued to Mr. Shields, on May 13, 2011.

On May 18, 2011, staff received an after-the fact modification letter from his agent, Ms. Ellen Grimes requesting that the permit be modified to include the L-head as constructed. Ms. Grimes also noted that the Army Corps of Engineers had stated in a letter to Mr. Shields, dated May 11, 2011, that the constructed pier would not impact navigation. Staff received the as-built drawings on June 8, 2011. This modification was then subjected to VMRC's standard public interest review.

Staff received a protest from adjacent property owners, Mr. and Mrs. Mark Coulbourne. They believed that a portion of Mr. Shield's pier was within their riparian area. The Coulbourne's commissioned a riparian apportionment and according to Mr. Coulbourne the survey showed the pier to be within Mr. Shields's riparian area by two inches. Mr. and Mrs. Coulbourne have since withdrawn their protest.

Based on staff's evaluation of the pier location and that of the Army Corps of Engineers, staff does not believe the pier is a navigational hazard as constructed. Staff also believes the contractor should be held accountable, since he did not construct the pier as authorized.

Staff, therefore, recommends approval of the after-the-fact modification as constructed, with a civil charge based on minimal environmental impact and a minimal degree of

Commission Meeting

deviation. The applicant and contractor have both agreed to pay a civil charge in the amount of \$600.00 each in lieu of further enforcement action. Staff recommends approval and acceptance of the aforementioned civil charge.

Commissioner Bowman asked for questions.

Associate Member Tankard asked who the contractor was and if there was history for doing this type of work. Mr. Watkinson explained that the current Mr. Britton was the grandson of another Mr. Britton. Associate Member Tankard asked if the contractor was aware of the permit requirements or was this just a mistake. Mr. Watkinson stated that Mr. Badger be asked about the specifics. He said there were specific dimensions in the permit and it was important. He stated that staff hoped the contractor realize this and build the structure as required. Commissioner Bowman asked how much tolerance was given for an overage. Mr. Watkinson explained that historically it was determined no more than 10% of what was authorized. Commissioner Bowman asked how close was this one. Mr. Watkinson stated it was close. Commissioner Bowman asked if the channel could still be navigated. Mr. Watkinson responded yes.

Associate Member Tankard said he understood that this was a real tight channel. Mr. Watkinson said it was not a wide channel and there was traffic in the channel.

Commissioner Bowman stated the matter was before the Commission.

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

Civil Charge (Applicant).....	\$600.00
Civil Charge (Contractor).....	\$600.00

- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** No closed meeting was necessary.

- 5. **HENRICO COUNTY, #05-0852,** requests authorization to modify an existing permit to construct two (2) instream raw water intake structures with debris deflector, transmission lines and back flush lines, which will extend approximately 80 feet channelward of ordinary high water in the James River in Cumberland County. The project is protested by an adjacent property owner.

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

Commission Meeting

Mr. Madden explained that the proposed project was located within the James River in Cumberland County, approximately nine miles downstream of the Bremo Bluffs power plant and three miles upstream of the Route 690 crossing of the James River. It was approximately 2,000 feet downstream of the mouth of Cobbs Creek. The proposed intake structure was a component of the Cobbs Creek Reservoir project which was a pump storage facility designed to provide 14.8 billion gallons of raw water storage within a 1,107 acre normal pool area. With this system, raw water would be diverted from the James into the reservoir when flow was adequate for storage. Controlled releases from the reservoir during low flow periods would enable downstream partners to maintain their respective intake flow rates during droughts. The reservoir project was a regional partnership effort between Cumberland, Henrico, Powhatan and Goochland Counties. While the reservoir itself was authorized by statute and did not require a permit from the Commission, the intake structure and associated excavation required approval from VMRC.

Mr. Madden said that in 2006, the Commission authorized the construction of an 890-foot long by 75-foot wide raw water intake structure consisting of six (6) 75-foot wide by 133-foot long filter packs, with horizontal well screens, having 1-mm slots widths. The filter packs were to be countersunk seven feet below the level of the river bottom and connected to intake pipes and back-flush lines. The intakes were to be located 100 feet channelward of ordinary high water. The intake was permitted to withdraw a maximum of 150 million gallons per day (mgd) at a maximum permitted velocity of 0.25 feet per second (fps). The authorized infiltration gallery encroached over 65,000 square feet of river bottom and required the dredging of 15,000 cubic yards of submerged lands.

Mr. Madden stated that subsequent to the authorization in 2006, it was determined that the infiltration gallery withdrawal structure would not operate, as designed. As an alternative, the Permittee was requesting that the permit be modified to allow the use of a more traditional riverbed sluicing channel design with cylindrical wedge screen intakes. The two intake structures were to be composed of 20 "Tee screen" cylindrical assemblies each 48-inches in diameter and approximately 16 feet long. These screens would utilize 1-mm slot openings. The array of 20 Tee screens would be arranged within a concrete sluicing channel which would direct water flow over the screens. Damage to the intakes would be reduced by the construction of a concrete debris deflector at the upstream end of each of the two intake structures. The intakes would require at least eight feet of water around them to operate properly. This would require the excavation of 8,000 cubic yards of streambed. The top of the intakes, debris deflectors and sides of the sluicing channels would be at the 180-foot elevation, which was the minimum depth for pumping. The ordinary high water elevation was at approximately the 195-foot elevation and the low water elevation at which pumping would cease was at the 182-foot elevation.

Mr. Madden said that in order to de-water the construction site, a cofferdam would be constructed which, depending on the flow of the James River at the time of construction, may be as tall as 15 feet above the stream bed with a maximum 75-foot base width.

Installation and later removal of the cofferdam was expected to take from four to six weeks. The cofferdams were proposed to be removed upon completion of the construction. The overall square footage of the two intakes was to be 25,000 square feet, a reduction of 40,000 feet over the original infiltration bed design.

Mr. Madden explained that since no work ever commenced and the project design had changed, Henrico County was also requesting the issuance of the modified permit with a new expiration date extending the period for construction through at least December 31, 2017.

Mr. Madden said the project was protested by Mr. Lynn Townsend, the property owner on the Fluvanna side of the James River, directly across the river from the intake structure. Mr. Townsend also claimed part ownership of Cobb Island, a mid-stream island in the James River, downstream of the intakes.

Mr. Madden stated that Mr. Townsend believed the debris deflector would divert logs and all other floating debris to both sides of the island. According to the agent, in normal flow the extent of the impact to flow patterns in the James River had already been modeled and shown to not extend across the river. During high flows, the impact would be even less, as the deflector size would stay constant while the river flow cross-section increased, leading to a proportionally smaller impact to river flows. Also, the diverter would project above the natural river bottom by only two feet, which was similar to many natural rock formations in this section of the river. During high flows, the debris deflector would be so far below the river surface as to have little impact on river floating debris. It was intended to keep bed load material (rocks, cobbles, pebbles) from making their way into the sluicing channel during high flow (high energy) periods.

Mr. Madden said the protestant believed there was a potential for accelerated erosion of Cobb Island, as a result of the intake construction. According to the agent, construction of the intake would result in a net increase in channel volume of approximately 18,000 cubic feet. On a percentage basis, this would represent a 2.3% increase in total channel volume along the length of the intake, when the James River was flowing at a mean winter time flow rate of 8,500 CFS. Mr. Townsend maintained that the cofferdam would direct turbulent flow against his property and that it might worsen during flash flood events. In response, the temporary cofferdam would narrow a portion of the main channel adjacent to the island. The proposed work period for construction, use and removal of the cofferdam was based on the historical pattern of seasonal river flows. Work in the river during the highest flow winter and early spring months was not anticipated. Instead, placement of the cofferdam was proposed for average to low flow months.

Mr. Madden explained that Mr. Townsend was also concerned about the impact the back flushing might have on the adjacent area. According to the agent, the screens would be cleaned on an intermittent basis, using an air burst backwash system that would release compressed air within the cylindrical screen. This air would rush upward through the

water column, carrying the debris that collects on the screen up away from the screen and putting it back into the water column. The air created turbulence in the water over the screen, that in a river environment would then move downstream with the river current, but only to the extent that it took the air to reach the water surface. This turbulence would generally be confined within the footprint of the concrete sluicing channel and was not expected to cause any erosion of the natural river bank or river bed.

Mr. Madden said that Mr. Townsend had also expressed some concerns over the sediment erosion and containment during the construction process. According to the agent, once the cofferdam was constructed, all work would occur within the cofferdam and the main sediment release concern would be from the discharge of the dewatering system, which would be routed through a sediment capture device in accordance with an approved erosion and sediment control plan for the project. The cofferdam would be constructed of non-erodible materials that should not be a source of significant sediment to the river. During construction of the cofferdam, the placement of these materials into the flowing river would have the potential to temporarily result in an increase in turbidity immediately downstream of the work area, as the natural sediments overlaying the rock on the river bottom were disturbed and as dust and fine material was washed off of the bulk cofferdam construction materials.

Mr. Madden said that finally, Mr. Townsend was concerned that the river augmentation strategy employed by the applicant might adversely alter the river flow and impact fish life cycles. In response, the agent noted that the Cobbs Creek Reservoir Project was a river flow augmentation project that was being designed to improve flow conditions in the river, especially under low-flow conditions, to support a variety of beneficial uses including fisheries. The schedule for when and in what quantity reservoir releases would be made to the river was being developed in conjunction with thorough State and Federal agency oversight.

Mr. Madden said that the Department of Environmental Quality had stated that their existing permit would be modified administratively. The Department of Game and Inland Fisheries (DGIF) had indicated the listed mussels known from this segment of the James River include State-endangered brook floaters, State-threatened Atlantic pigtoes, and State-threatened green floaters (along with historic records of federal endangered James spiny mussel). DGIF was agreeable to adherence only to the long-term broader time-of-year restrictions for the protection of green floaters and brook floaters prohibiting instream work from April 15 through June 15 and from August 15 through September 30 of any year. DGIF also recommended a mussel survey and/ relocation be performed by a qualified, permitted surveyor from 5 meters upstream through 20 meters downstream and 5 meters channelward of the intake construction site footprint. No other State agencies had commented on the project

Mr. Madden stated that staff was sensitive to the impacts a project of this scale might have on adjacent property owners. However, staff believed that the present modification

incorporated a proven intake design capable of withdrawing 150 MGD at a rate of .25 FPS which would provide augmented flow to downstream partners during critical low flow periods for withdrawal and the augmented flow would have a beneficial impact on aquatic and finfish species that might be stressed during a low-flow event.

Mr. Madden said that, accordingly, after evaluating all of the factors in §28.2-1205 of the Code of Virginia staff believed that the benefits of the project outweighed any potential detriments and staff, therefore, recommended approval of the project with the following special conditions:

The Permittee shall conduct a mussel survey and relocation prior to cofferdam construction by a qualified, permitted surveyor. The survey and relocation shall include the footprint of the project and shall include an area 5 meters upstream, 20 meters downstream and 5 meters channelward of the project footprint;

The Permittee shall adhere to a time of year restriction prohibiting instream construction activity from April 15 through June 16 and from August 15 through September 30 to protect finfish and other aquatic species. Staff acknowledges that work within the constructed cofferdam would not be constrained by the time of year restriction;

Permittee agrees that should there be any unforeseen circumstances beyond their control that interrupts or otherwise postpones construction of the cofferdam, the Permittee will coordinate with this agency prior to construction activities that would encroach into the time of year restriction;

Permittee agrees to erect proper durable signage, warning others of the presence of the intake structures.

Mr. Madden explained that due to the fact that the work authorized by the original permit never commenced and the design had now been changed, staff believed it reasonable for the Commission to consider revising the permit expiration date. Given the size and complexity of the project, staff believed an expiration date of December 6, 2016 (five years), was appropriate. Should the project not be completed in that time period, an extension could be requested and administratively approved provided the request was made prior to the permit expiration.

Commissioner Bowman asked if there was anyone present in opposition. One individual raised his hand.

Commissioner Bowman asked for questions.

Associate Member Fox asked if markers were to be placed where the white dots were on the map. Mr. Madden explained that the white dots were at the foot of the cofferdam and

the applicant had decided there would be appropriate signage decided upon, but they did not describe any particular signage.

Commissioner Bowman asked if there was any monitoring to see if the turbulence would cause erosion. Mr. Madden said it was not perceived as an issue, but it could be made a permit condition.

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

John Daniel, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Daniel said that he represented all the Counties and the agent was present. He explained that this was not a new project and some of the Associate Members were familiar with it since some of the project was authorized in 2006. He stated this was the first regional supply project and the first for the State plan. He said that the Corps of Engineers, Department of Environmental Quality, and other major permit were all in order. He said that there was a Memorandum of Understanding between local government and others. He said that Henrico County had taken over the project and was paying all the cost. He said they were requesting two intake systems be approved. He said that the reason for the change was that at the time it was approved, the intake proposed was the latest technology and now that there was more experience and the intake did not perform as originally thought as the sediment and cleaning was cost prohibitive. He said in the packets there was included an analysis of the old intake and new intake proposed. He said that they had hired Greg Garmon from VCU and his report is in the packet. He stated that the applicant agreed with the conditions and were willing to work with both Mr. Watkinson and Mr. Madden. He noted they had worked with the Department of Game and Inland Fishers and the concerns for the time of year restrictions. He said that no other State agencies had commented and raised concerns. He said that the one protestant was concerned with negative impact to Cobb Island and claimed ownership, but without evidence of ownership. He noted that Mr. Townsend had sent several letters and the applicant was asked to respond to them. He stated that Henrico County officials had talked with the protestant. He reiterated that the applicant agreed with the specifications in the permit conditions, the project met the requirements of Code Section 28.2-1205, and they asked for approval of the modifications and staff recommendations.

Commissioner Bowman asked for questions.

Commissioner Bowman said that under Code Section 28.2-1205 it must benefit the citizens and asked if Mr. Daniel knew the number of citizens. Mr. Daniel stated he did not have that number, but DEQ required an analysis of the needs for such projects and with the population growth they must meet these needs.

Commissioner Bowman asked for others who wished to comment.

Bill Mawyer, representing Henrico County, was sworn in and his comments are a part of the verbatim record. Mr. Mawyer stated it would benefit 300,000 citizens to be connected to a 50-year water supply. He said for Henrico County this would mean 500-600,000 gallons and plus the other counties would mean five million gallons.

Associate Member Fox asked where the point of return for the water was located. Mr. Daniel noted that it was Cobbs Creek.

Associate Member Fox asked if these were the same pipes. Mr. Mawyer responded it was not the same pipes.

Associate Member Tankard asked how the backflush worked. Paul Peterson, Engineer-Project Manager, was sworn in and his comments are a part of the verbatim record. Mr. Peterson said they utilized jet nozzles, the base of a sidewall and the inlet channel to send the water back.

Associate Member Fox stated that the water was put back. Mr. Peterson responded in agreement. Associate Member Fox asked if the Commission was acting on the whole thing or was some being withdrawn. Commissioner Bowman explained that the Commission was acting on the part that was beyond the low water mark and there were no upland issues. Associate Member Fox stated that it was not just the intake but the exit as well. Commissioner Bowman responded yes. Associate Member Fox asked if putting back the water was the cause for the erosion concerns. Mr. Peterson said the channel was rocky as the bed did not have a lot of fine material and there was no impact from backwash. He said the plan was to keep the material from flushing.

After some further discussion, Commissioner Bowman asked if anyone wished to comment in opposition to the project.

Lynn Townsend, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Townsend stated they were concerned with what would happen to the island. He added he and his wife had deeded 614 acres. He felt it would accelerate the erosion of the island. He noted that it was a good project and was needed. He said he was concerned that he would need to add rip rap because of the erosion. He was asked about ownership. He stated he did own it and he had left a message and asked if staff needed the deed, but there was not response by staff.

Commissioner Bowman asked for questions.

Associate Member Tankard asked him if there was any current erosion. Mr. Townsend responded yes, which he had written about in his first letter, dated October 28 (he read from the letter).

Associate Member Sessoms asked what part of the project impacted the island.

Mr. Townsend stated the disturbance of the water he thought caused some problem, but he was no expert or engineer. Associate Member Schick asked if he consulted with an engineer and Mr. Townsend responded no, he just used common sense and he had been there for eleven years.

As there were no other protestants present, Mr. Daniel was given an opportunity to make rebuttal comments. Mr. Daniel stated he was not an engineer and there were project engineers that had looked at the project and not seen a problem. He said they used the best science and the private and public benefits criteria were met in accordance with Code Section 28.2-1205.

Commissioner Bowman asked for questions.

Associate Member Fox asked if the Townsends primary concern was the cofferdam. Mr. Peterson said it would be constructed in four to six weeks and the project would be accomplished in one construction season. He said that September until November was the time to work, which are low water flow months. He said they would get it done as soon as possible.

Associate Member Laine stated that August and September was the hurricane season. Mr. Peterson stated that was a risk for all contractors.

Associate Member Tankard asked if they understood the concerns of the Townsends about erosion to their project. Mr. Peterson said they were trying to reduce the impacts during the construction of the cofferdam and minimize the risks, but there are some.

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

After some further discussion on the protestants concerns regarding erosion to the island caused by the project, Mr. Watkinson agreed with Associate Member Robins that it would be difficult to determine whether erosion was caused by the project or by storms.

Associate Member Plumlee noted he would be abstaining because of business conflicts. Commissioner Bowman stated his abstinence was so noted.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins stated he was sensitive to the concerns of the protestants regarding the potential impact for erosion, but it would only be temporary. He stated it was mitigated by the time of year restriction when the area was at a lower water level. He said in the staff recommendation it noted the design of the debris deflector, which would have little impact on the river, as well as noting the benefits. He said it would be difficult to monitor the impacts of the project. He moved to

Commission Meeting

approve the permit with the conditions. Associate Member Schick seconded the motion. Associate Member Tankard stated he concurred with Associate Member Robins that there may be erosion, but steps had been made to mitigate these impacts by the project and it should be approved. Commissioner Bowman explained that this concurred with Code Section 28.2-1205 that the Commission shall look at the best science to make a decision and that record was complete for this project. He said he understood the concerns of the protestors and he supported the motion. The motion carried, 8-0-1. Associate Member Plumlee abstained.

No applicable fees – Permit Modification

* * * * *

- 6. AMHERST COUNTY SERVICE AUTHORITY, #08-0619, requests authorization to install a raw water intake structure with debris deflector, 24-inch transmission lines and back wash lines extending approximately 630 feet channelward of ordinary high water within the James River in Amherst County. The project is protested by adjacent property owners.

Tony Watkinson, Chief, Habitat Management explained that the protest had been withdrawn and staff recommended approval with staff’s recommendations and the applicant had requested a five year permit with an option to extend it if necessary. His comments are a part of the verbatim record.

Commissioner Bowman asked if the individuals protesting were present. There were none. He added that staff saying there were no protests would have satisfied the requirements for being a page two item.

Commissioner Bowman asked for questions. There were none.

Associate Member Robins moved to approve the staff recommendations and conditions with the granting of a five year permit. The motion carried, 9-0.

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

* * * * *

- 7. LAWRENCE GREY, #11-1518, requests authorization to install a 160 linear foot riprap revetment a maximum of three (3) feet channelward of mean high water, and to backfill approximately 2,680 square feet of jurisdictional beach landward of the revetment for bank stabilization adjacent to his property situated along the James River, located at 13901 Weyanoke Road in Charles City County.

Tony Watkinson, Chief, Habitat Management, explained that the applicant's agent had asked that this item be deferred. He said that they agreed with the request, but added that staff's presentation should be provided as there was concern with the project, as proposed. He added that public comment needed to be allowed since this had been advertised as a public hearing.

Juliette 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 was the Upper Weyanoke Plantation in Charles City County situated along the James River about 8 miles downriver from the Benjamin Harrison Bridge. The property had 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 was present. Steep, eroding bluffs approximately 19-20 feet in height sit immediately adjacent to the shoreline with a grassy, vegetated upland. A well that services the property, its pump house, and a tree sit just a few feet from the eroding bluff face.

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

Ms. Giordano stated that Mr. Grey was seeking authorization to stabilize an eroding bluff along the downriver section of his property in order to protect a well, its pump house, and a Sassafras tree located perilously close to the eroding bank. The proposed project included installation of a 160 linear foot rip-rap revetment with approximately 2,680 square feet of backfill at a 2:1 slope.

Ms. Giordano said that the proposed revetment and backfill would impact an approximate total of 4,280 square feet of jurisdictional beach. Charles City County had not yet adopted the beaches and dunes ordinance which was made available to them by virtue of Code changes that were effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Ms. Giordano explained that a VIMS report dated April 8, 2011, 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 VMRC's 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 stated that in VIMS' comments dated October 14, 2011, they stated that the sandy area landward of mean high water qualified as a beach. The report confirmed that, though small, this area of sand met the Code definition of a jurisdictional beach on the date of the site visit. VIMS also noted that the jurisdictional beach extended from mean low water to the slumping of the upland bluff. The upriver shoreline along the property was classified as non-vegetated wetlands because mean high water reaches the base of the upland bank.

Ms. Giordano said that staff believed the proposed bank stabilization using a riprap revetment with the toe aligned up to 30 feet channelward of the base of the bluff and with backfill at a 2:1 slope represented excessive encroachment on the jurisdictional beach. The applicant was aware of staff's concerns regarding the degree of encroachment over jurisdictional beach in the current proposal. As such, the applicant had requested that his case be deferred until January to allow time to consider alternatives to the proposed project. Given that staff advertised the current project's beach and dune public hearing for December 6, 2011, staff felt that the project needed to be presented at the December meeting to give citizens an opportunity to voice any concerns and to make public the potential continuation of the hearing to the January 24, 2012 meeting.

Ms. Giordano stated that no comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the project.

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

Ms. Giordano stated that staff understood the property owner's concern for protecting his upland structures, but believed there were alternatives to the current proposal that would minimize impacts to the jurisdictional beach. Grading back the bluff, installing a properly designed revetment at the base, and relocating or stabilizing in place the upland structures would reduce adverse impacts to the jurisdictional beach. Staff also believed that the broad, flat intertidal zone and the moderate fetch of this property make it an ideal location to construct an offshore breakwater with beach nourishment for shoreline stabilization.

Ms. Giordano said that, accordingly, 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 recommended that the Commission grant the applicant's request to defer action on the currently proposed project until January to allow him an opportunity to consider alternative stabilization methods.

Ms. Giordano explained that in the event that the applicant decided to proceed with an offshore breakwater with beach nourishment, it might eliminate the need for a beach and dune public hearing and permit. An offshore breakwater would require only a subaqueous permit for the footprint of the breakwater. The associated beach nourishment would be exempt under Section 3, Item 5 of the model Coastal Primary Sand Dune Ordinance. Such a project could be handled administratively if the total project cost falls below the \$500,000.00 cost threshold for a subaqueous permit as specified under §28.2-1207(A)(1) of the Code of Virginia. A beach and dune hearing and permit may be necessary, however, if the applicant decided to add fill at the base of the bluff in combination with the beach nourishment.

Ms. Giordano said that should the applicant decide to proceed with a revetment, staff recommended denial of the project, as currently proposed, after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia. Staff would, however, recommend approval of a modified proposal to construct a properly designed riprap revetment with the toe of the structure extending a maximum of ten (10) feet beyond the base of the bluff with bank grading. Ten feet of encroachment strikes a compromise that minimizes impacts to jurisdictional beach while allowing the applicant to stabilize the bluff and protect their upland property.

Commissioner Bowman asked if the applicant or a representative were present.

Applicant's representative (inaudible) was sworn in and his comments are a part of the verbatim record. He stated that they would like to table this until the next meeting to allow them to review the cost of pulling the rip-rap back.

There was no one in opposition present at the hearing.

Commissioner Bowman stated that the matter was at the pleasure of the Board.

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

Tabled until the next regular Commission meeting.

* * * * *

8. PUBLIC COMMENTS:

REQUEST TO MOVE THE JAMES RIVER/THOMAS ROCK HAND SCRAPE LINE UPRIVER.

Richard Green, James River Waterman:

Mr. Green stated he represented himself and others. He provided a hand out of a letter and petition. He said he could have had more signatures, but the meeting was held earlier than usual. He suggested that the members read the letter.

Mr. Green said that the line as they understood it to be, had been moved back to Blunt Point and Rainbow Farm Point and they had had a good harvest in the area for the past four and five years and it would be a considerable loss. He said when there are smaller areas it was worked up fast. He said they could work here for three or four months. He said he understood leaving it to grow, but actually it died in two or three years time from disease. He said this would be good for the watermen and the Commonwealth and they need the area to keep them in the business in order to support their families.

Commissioner Bowman asked staff to make comments on the problems last year and how it had been marked.

Jim Wesson, Head, Conservation and Replenishment, said that basically the dredge line was marked the same as it has been since 2004 as it was written. He said the confusion started two years ago when the sanctuary was made smaller. He said now the watermen could work in the area that was a part of the sanctuary.

Commissioner Bowman said he agreed with the industry and staff.

Mr. Wesson stated it was never changed and the SMAC said it needed to be marked better. He said that the Marine Police had allowed this, but it was not in the regulation. He said this was a hand tong area.

Commissioner Bowman said this part of the river was 4 ½ miles wide and makes it difficult to mark. He added nothing had changed.

Mr. Wesson stated it was only the sanctuary.

Associate Member Schick asked if it would be detrimental to change. Commissioner Bowman stated that there was significant response to the marking.

Mr. Wesson stated that staff had marked both areas.

After some further discussion, no action was taken.

The Commission meeting broke for lunch at approximately 11:42 a.m. and returned at approximately 12:33 p.m.

8. PUBLIC COMMENTS: (cont'd.)

John Forrest, Waterman from Gwynns Island

Mr. Forrest stated he had five items to discuss with the Commission.

1) Dogfish Permit – request change regulation to base the total catch (10,000 pounds) on a 12-month period instead of the 12-month calendar. He said he could qualify to remain in the fishery if this change was made.

2) Milford Haven – he explained that the 12 boats working in the Milford Haven would be running out of oysters to catch in a week's time. He was requesting that the Piankatank River be open to harvest east of Iron Point. He suggested a limit of five bushels/boat/day. He said these would be market oysters not seed. He said one area called Three Branches had silted over because of there being no work there. He said that staff had said there would be shellplanting there this year.

3) Rockfish – he explained he had leased his tags, so he had no control over the quota if it was over. He said he can get someone else's quota, but need to have access to data to see if over, so he does not lose his tags.

Commissioner Bowman asked if he could ask the person who is using his tags. Mr. Forrest stated that he lies. Commissioner Bowman said there was a risk in leasing the tags and owner needs to know the person.

4) Hook n line license – he explained that he cannot qualify for this and he wanted to catch oyster toads by scuba diving.

Commissioner Bowman asked staff if he was prohibited from catching them. Jack Travelstead, Chief, Fisheries Management, said that there was no hand license for it. He said he could request an experimental gear. Commissioner Bowman suggested Mr. Forrest send in a letter of request to him.

5) Milford Haven – he explained that the watermen were concerned with the requirement to keep the oysters loose in the boat rather than in the bushel basket and tag the basket. He said this was not an issue for him, but it was to the other watermen working in that area.

Commissioner Bowman explained that it was required by law and it allowed for a fair inspection of the catch so the Marine Police can do their inspection as required. He said they must take the bushel from the whole catch and make a full bushel so they can check for small oysters. He said if they were already culled and put into containers then it would be checked by the basket and it would not represent what was in the whole catch.

Mr. Forrest stated he thought he had only nine bushels and it turned out he had 10 bushels.

* * *

Commissioner Bowman said the Commission needed to get comments from staff, there needed to be more study on these issues, and not make a decision, but refer them to FMAC.

Rob O'Reilly, Deputy Chief, Fisheries Management, explained that the dogfish issue had been worked on by the Committee and another meeting was to be held on it. He said for rockfish the Committee wanted to define it and the Commissioner had given good advice. He noted that for the Piankatank River Mr. Forrest had already mentioned that staff did not support it.

* * * * *

Commissioner Bowman said that Item 9 for Tautog would be heard after Item 12, since staff and some of the stakeholders present wanted to work with staff to resolve a few issues prior to this hearing.

* * * * *

10. PUBLIC HEARING: Andrew Sturgis requests approval to license and locate four pound nets along the Eastern Shore.

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

Mr. Travelstead explained that Mr. Andrew J. Sturgis of Belle Haven had applied for permission to license and to locate four pound nets in the Chesapeake Bay along the Bayside of the Eastern Shore. The precise locations of the nets, as determined by surveys conducted by Habitat Management Division, are described in the notice. Charts depicting the locations of the nets relative to the shoreline and other features has been provided.

Mr. Travelstead stated that during the public comment period, six letters and one petition containing 111 signatures expressing opposition to the nets were received. These letters and the petition were included in the books.

Mr. Travelstead said that based upon the public comments received, opposition to the four pound net applications was based on the following:

- 1) the nets will adversely affect recreational fishing from Occohannock Creek to Nandua Creek,
- 2) the pound nets will be a navigational hazard for boaters, particularly in low light conditions,
- 3) pound nets detract from the beauty of the shoreline,
- 4) the area near the mouth of Craddock Creek is one of the few speckled trout fishing areas on the Eastern Shore and a pound net would be destructive of the many fingerling trout in the area,
- 5) proposed net #1 will enclose an area bordered by a sand bar and may entrap dolphins or turtles. Boat traffic will be cut off for all but a few hours per day at high tide,
- 6) proposed net #4 will hamper access to the Turner family's cabin by boat. The net is a navigational hazard.

Mr. Travelstead explained that prior to the adoption of Regulation 25, "Pertaining to Pound Net Siting Public Interest Review", any fisherman could put a pound net at any location provided it met the minimum separation distances with adjacent nets, was not placed on oyster planting ground, or in a marked navigation channel. In other words, State law provided little guidance or prohibition in locating these nets and in the 1950's and 60's there were over 1,000 pound nets in Virginia. Today, there were less than 200. Given this lack of guidance in State code, staff believed that pound nets could be sited at most locations, in general, unless there was substantial evidence of significant impacts to those items listed in Paragraph C of Regulation 25.

Mr. Travelstead said that many of the comments mentioned previously were general in nature and not substantiated by evidence. For example, staff did not believe the placement of these four nets would adversely impact recreational fishing along the Eastern Shore as these nets were not new additions to the current number of nets in Chesapeake Bay as the total number of nets in the Bay was capped by regulation.

Mr. Travelstead noted also, how a pound net affected, or did not affect, the beauty of the shoreline, was in the eye of the beholder. Not all view these nets as objectionable, particularly, if the nets were kept in working order.

Mr. Travelstead stated that with respect to the comment that the pound nets would affect speckled trout fishing near Craddock Creek, staff noted that the 2-inch minimum mesh size required of pound nets provided for the escapement of fingerling-sized fish. Staff also noted that in 1995 the Commission established four Eastern Shore Bayside

Management Areas for the purpose of enhancing recreational speckled trout fishing. Gill nets and pound nets were prohibited within these areas from June 1 to October 31. Sturgis's proposed pound net #4 was south of the Occohannock Creek Management Area and pound net #1 was about ½ mile north of the Occohannock Creek Management Area. Incidentally, 2011 appeared to have been an excellent year for speckled trout, based upon VIMS tagging program data.

Mr. Travelstead said that staff always considered the impacts of the pound nets on the SAV beds and of those factors listed in Regulation 25, potential impacts to Submerged Aquatic Vegetation (SAV) by the proposed Sturgis nets, did, in the opinion of staff, rise to the level of significant. A review of VIMS' 2011 SAV database revealed that proposed nets #1 and #4 would be located within existing SAV beds. Given the potential impacts to these beds, staff believed pound nets should not be approved in these locations. As an alternative, these two nets could be moved further offshore to avoid damage to the SAV. Staff noted that the further offshore movement of net #1 would mitigate the complaint that this net would prevent boat traffic moving within the immediate area, shoreward of the sand bar. Likewise, relocating pound net #4 further offshore and away from the SAV bed might also mitigate the concern of the Turner family that noted the net in its proposed language affected access to their family cabin.

Mr. Travelstead explained that staff recommended approval of nets #2 and #3, as proposed, and denial of nets #1 and #4, as proposed. As an alternative, the Commission should consider moving nets #1 and #4 further offshore, away from the SAV beds.

Commissioner Bowman asked for questions.

Associate Member Robins asked if #1 and #4 were to be moved further offshore the sand bar would they interact with the recreational boat traffic. Mr. Travelstead responded yes, they sure would.

Commissioner Bowman asked about the distance between #2 and #3. Mr. Travelstead stated he did not know, but it was substantial.

Associate Member Fox asked the pound net nearest to the Turner Cabin. Mr. Travelstead responded it was near #4.

Commissioner Bowman asked if the applicant or a representative was present?

Andrew Sturgis, applicant, was present and his comments are a part of the verbatim record. Mr. Sturgis said he did not feel that there was a hazard considering the miles of Bay to circumvent interfering with fishing. He noted that at the CBBT there were a number of pound nets and fishing was not affected.

Commission Meeting

Commissioner Bowman asked about the distance between #2 and #3. Mr. Sturgis responded ¼- mile.

Associate Member Schick what would it mean to move #1 and #4 out beyond the SAV. Mr. Sturgis said he did not know how it impact #4, but it would put #1 on the sand bar. Associate Member Schick asked if was placed beyond the sand bar. Mr. Sturgis said he had not looked at the site.

Associate Member Palmer asked about the depth of water beyond the sand bar. Mr. Sturgis stated it was shallow. Associate member Palmer asked if #4 would impact boat traffic. Mr. Sturgis said he had hardly seen any and to get to the cabin you did not pass the net.

Hank Badger, Chief Engineer, said the cabin was on the bay front and the observation cabin was at the point.

Mr. Sturgis said there were only poles at the head of the trap (#4) and anyone could lift their motor and drift through. He added that there were no poles, but at the very end.

Associate Member Palmer inquired about the water depth at #4. Mr. Sturgis said it 7 feet to 11 feet. Associate Member Palmer asked if he could leave room at the end. Mr. Sturgis responded yes.

Associate Member Tankard asked if the sand bar was a short cut. Mr. Sturgis explained that it had filled in but you could still traverse it at high tide.

Commissioner Bowman asked if anyone in support or in opposition wished to comment.

Edwin J. O'Malley, Jr., resident on the Occohannock Creek, was present and his comments are a part of the verbatim record. Mr. O'Malley explained he had been in this area for 30 years. He stated that nets #1 and #2 interfered coast-wide travel for small craft and for fishing. He said he personally used this area and had seen the net. He said he did not agree with #2 also, for the same reason. He noted that staff had covered a number of his concerns. He said Mr. Sturgis did not own the net so it should not be approved and if he owned it there would be no problem. He said staff had not mentioned the Public Trust Doctrine.

Commissioner Bowman explained that the intent of Code Section 28.2-1205 was to consider all sides concerned. Mr. O'Malley said that there should be more involvement as relates to the public trust. He stated that this was a non-selective device which catches everything, even though this device is allowed by law. Mr. Sturgis has 4 applications here and a 5th pending, which was 22 acres being utilized. He said the water mass was impacted and one person was being granted a net for catching the resource. He said the Commission needed to balance the use of the resources fairly. He said the Commission

should deny #1 and to either cut #2 in half or move it further offshore. He said that commercial fishing is valuable to the economy, but there is also recreational fishing there and it will increase. He said he did not know about the Craddock Creek area. He provided a handout of an aerial map.

Commissioner Bowman asked for questions.

Associate Member Tankard asked about the small boat traffic as Mr. Sturgis said there was not any. Mr. O'Malley stated he did see boat traffic because it was a natural channel.

After some further discussion about some changes to the net locations, Mr. Sturgis indicated that he was asking for new nets. Mr. Travelstead asked if he had put in for the lottery. Mr. Sturgis responded no. Mr. Travelstead stated it did not make sense to proceed if these were for new nets. He explained that when others did not use the net locations then they became available and if a number apply for them, then a lottery is held in anticipation of getting nets.

Commissioner Bowman stated it appeared the agency did not check to see if the applicant was eligible and he apologized for taking the Commission's time. He instructed staff to explain all this to Mr. Sturgis and Mr. O'Malley.

Associate Member Tankard asked about Mr. Sturgis initial inquiry. Mr. Sturgis explained his father, Todd Sturgis, called Mr. Barth about the procedure and what was available. Mr. Barth had indicated that the site would need to be approved and then he could apply.

Commissioner Bowman stated staff needed to look into this issue.

No further action was taken.

* * * * *

11. REQUEST FOR PUBLIC HEARING: American Shad: Continuing the by-catch fishery in 2012.

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 the 7th year that a bycatch fishery has been approved by the ASMFC. He noted that the bycatch has been on average 288 fish to 130 fish since 2006. He stated that this year might well be the last year shad bycatch was allowed by the ASMFC. He said to qualify for the bycatch you must provide evidence of sustainability and that was difficult. He said in the Bay there had been a moratorium since 1994.

Mr. O'Reilly said that staff was requesting a public hearing for the 2010 bycatch fishery.

Commissioner Bowman asked for questions. Associate Member Fox asked about the Native American involvement in the fishery. Mr. O'Reilly stated that what they do catch was for consumption not for resale.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Fox moved to approve a public hearing. Associate Member Tankard seconded the motion. The motion carried, 9-0.

* * * * *

12. REQUEST FOR PUBLIC HEARING: Golden Tilefish: Increasing the commercial trip limit to conform to the federal rule.

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

Mr. Grist said that the proposed changes to be made to the regulation were to make Virginia's regulation a mirror that of the Federal Regulation.

Mr. Grist explained that staff recommended advertising for a January 2012 public hearing to amend Chapter 4VAC 20-1120-10, et seq., to provide a commercial golden tilefish possession limit of 500 pounds, and a range of possession limit options, from 100 to 300 pounds, for the commercial possession of blueline tilefish and sand tilefish.

Commissioner Bowman asked for a motion.

Associate Member Plumlee moved to advertise for the public hearing. Associate Member Robins seconded the motion. The motion carried, 9-0.

* * * * *

9. PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-960, "Pertaining to Tautog," to achieve a 50.5 percent reduction in commercial and recreational harvests and to comply with the provisions of the Interstate Fishery Management Plan.

Joe Cimino, Biological Sampling Program Manager, gave the presentation with slides. His comments are a part of the verbatim record. He provided three handouts. He said staff suggested hearing the recreational options first.

Commission Meeting

December 6, 2011

Commissioner Bowman left the room and Associate Member Robins assumed the position of Chair.

Mr. Cimino explained that in April 2011 the Atlantic States Marine Fisheries Commission (ASMFC) had passed Addendum VI to the Tautog Fisheries Management Plan to establish a lower mortality target of 0.15. He said this was done by them in order to allow the spawning stocks to recover. He stated that the assessment showed that the spawning stock biomass for the coast is estimated to be below the target set in Addendum IV. He noted that on November 8, 2011 the Tautog Management Board accepted a catch-curve analysis that showed fishing mortality in Virginia to be slightly lower than the Coast-wide average and a lesser reduction of 50.5% was required.

Virginia recreational landings reduction options to achieve the proposed 50.5% reduction in annual landings by the recreational tautog fishery. Current regulations: 14-inch minimum size limit, 4 fish possession (bag) limit and closed season May 1- June 24 (55 days).

Options	Min Size	Bag	Closed Season	Closed Days
1	17	4	March 1- March 18; May 16- June 30	64
2	17	4	March 1- 15; May 7- June 30	70
3	16	4	March 1- April 3; May 16- June 30	80
4	16	4	April 1- June 29	90
5	16	4	March 1- March 31; May 29- June 30; Dec 1-Dec 31	95
6	16	3	April 16- September 23	161
7	16	3	March 1- March 28; May 7- June 30	83
8	16	3	March 1- March 31; May 16- June 30	77
9	15	3	March 1- April 3; May 7- June 30; Dec 1- Dec 31	147

Mr. Cimino explained that the FMAC met and there was a thorough discussion on both the recreational and commercial options, and there were several public comments from the audience. He said Dr. Ken Neill stated that the Peninsula Saltwater Sport Fishermen's Association members preferred option 4, the general sentiment among association members is that a continuous closed season is simple to abide by. He added that Dr. Neill's personal preference was for option 6 because by mid-April there were other species to fish for. Mr. Cimino said Mr. Tom Powers said he supported options 3 and 8. He said Mr. Powers had explained that the frustration of a season being split was minor when compared to having an option where he can get out and fish. He noted Associate Member Palmer supported option 6, because of the continuous closed season is easier to abide by and it would be easier for the Marine Police officers to enforce. He said Mr. Craig Paige spoke from the audience in support of options 3 and 8 and he added he preferred the month of April to be open to fishing as it was important to protect the fish when spawning, but that mostly occurred after the middle of May. He added that Mr. David Agee spoke from the audience in support of options 3 and 4 because he felt it

Commission Meeting

protected the fish when they spawn. He said Dr. Bob Allen spoke from the audience in support of options 4 and 6 because they had a closed season.

Mr. Cimino said that the FMAC made a motion to recommend the recreational fishery option 6 (9 in favor and 1 abstention). He added that staff recommended option 6.

Associate Member Robins asked for questions.

Associate Member Laine asked if the impact on the fishery for the different options was all the same. Mr. Cimino responded yes.

Associate Member Robins opened the public hearing. There were no public comments. The public hearing was closed. He stated the matter was ready for action.

Associate Member Laine said that he attended the FMAC meeting and there was a lack of consensus for option 6 by the recreational fishermen and there were not two members with a preference for the Commercial fishery. He noted that none of the options would impact the fishery more than the others.

Associate Member Palmer said he had brought up option 6 because it was very simple to either close or open the season and April was an important time for tautog fishing.

Associate Member Robins asked what was the pleasure of the Commission.

Associate Member Palmer moved to adopt option 6 for the recreational fishery. Associate Member Schick seconded the motion. The motion carried, 8-0. Commissioner Bowman had left the hearing.

Virginia commercial landings reduction options to achieve the proposed 53% reduction in annual landings by the commercial tautog fishery. Current regulations: 14-inch minimum size limit, closed season from May 1- November 12 (196 closed days).

- "N" in the quota field means no quota is considered.
- "Y" represents a quota of 6,939 pounds, based on a 50.5% reduction in average 2008 and 2009 landings.

Options	Min Size	Quota	Closed Season	Closed Days
1	17	N	May 1- November 5	189
2	16	N	January 1- 19; May 1- November 30	233
3	16	Y	May 1- November 12	196
4	15	N	January 1- 15; May 1- December 31	260
5	15	Y	May 1- November 12	196
6	14	N	February 16- December 31	320
7	14	Y	May 1- November 12	196
8	15	N	January 25- March 31; May 1- November 21	271

Mr. Cimino said that there was no new slide for the new option to be presented and no outside public comment. He stated that there were two FMAC members present who could comment and no active tautog fishermen. He said that Rich Puchalski and Jim Dawson both hook and line tautog fishermen stated that they preferred option 8 for the commercial fishery. He said that Mr. Puchalski had stated that this option, which had been drafted at his request was not a part of the options presented to FMAC, would allow them to fish the most important times of the year when there is very high dollar value for the fish. He said that Associate Member Palmer had spoken with fishermen and they preferred option #2. He said that option 8 was approved by FMAC with a vote of 7-1-2 (2 abstentions). He went on to explain that option 9 modifies the option; specifically the closed season to extend it in January for 6 to 7 days, two weeks in March and a few days in November. He added that staff recommended the adoption of option 9.

Associate Member Robins asked for questions. He opened the public hearing.

Chris Ludford, hook and line fisherman, was present and his comments are a part of the verbatim record. He stated he had attended the FMAC meetings and there had been three on the Tautog. He said the fishery is suffering and it was a valuable fishery. He noted that there were a lot of watermen in the fishery. He said that the ASMFC was putting a hardship on the fishermen. He said the consensus was for option 9 as there was a good, but slight compromise for Seaside Eastern Shore and the lower bay as it would give them days to help them. He had others in the audience to stand that he was speaking for.

Associate Member Robins asked for questions.

Associate Member Robins said the request was for option 8 with the changes giving them extra days. He said this was significant benefit for the lower bay. Mr. Ludford responded yes. Associate Member Robins asked if this was a functional option for staff. Mr. Cimino responded yes.

Associate Member Palmer asked if this was a functional option for staff. Mr. Cimino responded yes.

Associate Member Palmer asked Mr. Ludford if he was speaking for all when he said they were happy with the consensus. Mr. Ludford responded yes and he added that they had given up days in March.

Associate Member Robins asked for any other comments.

Mr. Cimino added that in the written comments Jim Dawson supported option 8 and had not seen the modification of the days.

Associate Member Robins asked Counsel if this could be considered today, as this not more restrictive. After some discussion, Paul Kugelman, Assistant Attorney General and

VMRC Counsel, said after reading Code Section 28.2212 that it was allowed as option 9 met the requirements. Mr. Kugelman asked staff if this was advertised. Mr. Cimino said yes, as it was advertised that they could make other amendments to achieve the 53% target.

Associate Member Robins stated the matter was before the Commission.

Associate Member Palmer moved to accept option #9. Associate Member Tankard seconded the motion. The motion carried, 8-0. Commissioner Bowman was absent from this hearing.

Mr. Cimino said that staff was requesting the advertisement of a public hearing in January 2012 to establish a control date of December 6, 2011 for moving towards a limited entry commercial fishery.

Associate Member Robins asked if this had been discussed by FMAC and Mr. Cimino responded yes.

Associate Member Robins stated the matter was before the Commission.

Associate Member Palmer moved to advertised for a February public hearing. Associate Member Plumlee seconded the motion. The motion carried, 8-0. Commissioner Bowman was absent from the hearing.

* * * * *

13. DISCUSSION: Consideration for approval of an alternate container for measuring a Virginia bushel pursuant to Code Section 28.2-526., "Oyster Measure, Standards, Penalty."

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

Dr. Wesson explained that there had been a new Code change giving the option of changing the Virginia oyster measure. He stated that lots of other States have different measures, but in Virginia all must be in the Virginia bushel at landing. He said in the Code the container must be 18 ½ inches across the top, 17 inches diagonally from the inside chine to the top. He noted that the old container was expensive to make and the limits not allow for the use of the orange baskets.

Dr. Wesson stated that was other alternatives. He said there was now available one that was 18 ½ inches diagonally by 11 inches in height for 2,957 cubic inches. He said the old tube is 3,004 cubic inches and it was hard to find someone to make the tubs. He explained he had gotten one made and the watermen do want them.

Commission Meeting

Commissioner Bowman asked if this required an Emergency Regulation and Public Hearing. Paul Kugelman, Assistant Attorney General and VMRC Counsel stated that could possibly be one and asked if this was necessary for the preservation of the seafood industry. He asked what was the emergency?

Dr. Wesson stated that the industry would not collapse and it could be used along with the old tub, but a good part of the industry was not using the tub. Mr. Kugelman stated that it was not necessary for an emergency regulation.

Jack Travelstead, Chief, Fisheries Management said with the meeting being earlier, it could not be done within 30 days.

Commissioner Bowman said that the Commission wanted to be helpful, but other emergency regulations have caused problems. Dr. Wesson said that staff wanted this adopted so that the industry would be able to start using it.

Commissioner Bowman stated that the Commission will support it and at the present can use it. He stated the matter was ready for action.

Associate Member Fox noted that this was an addition to the Virginia tub, not a replacement. Dr. Wesson responded yes. Associate Member Fox stated that it was \$200 in cost versus \$800 in cost. Dr. Wesson, yes, if they are allowed, they can be made.

Paul Kugelman said that as this was additional and not more restrictive the Commission can approve it.

Associate Member Fox moved to accept the container in addition to the Virginia tub. Associate Member Schick seconded. Associate Member Robins asked if a public hearing would be held. Commissioner Bowman responded yes, in case there were concerns by others to allow them to be heard. Associate Member Fox added that the regulation would be amended in January and Associate Member Schick agreed. The motion carried, 9-0.

There being no further business, the meeting was adjourned at approximately 2:08 p.m. The next regular meeting will be held Tuesday, January 24, 2012.

Steven G. Bowman, Commissioner

Commission Meeting

**16567
December 6, 2011**

Katherine Leonard, Recording Secretary