

MINUTES

Commission Meeting

October 25, 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)
Richard B. Robins, Jr.)
Kyle J. Schick)
Whitt G. Sessoms, III)
John E. Tankard)
Jack G. Travelstead	Chief, Fisheries Mgmt.
Paul Kugelman, Jr.	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Head, Saltwater Tournament
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Biological Sampling Program Mgr.
Alicia Nelson	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Renee Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Randy Widgeon	Area Supervisor, ES
David Drummond	Marine Police Officer
Gerald Pitt	Marine Police Officer

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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present included:

Josee Hionis	Dimitri Hionis	Conway Sheild	Steve Wann
Bill Kirby	Hoyt Duff, II	F. C. Dugan	Andy Lacatell
Ellis W. James	John McConaugha	Scott Stiles	Kim Huskey
Steve Ellis			

and others.

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

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

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

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

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

MINUTES: Commissioner Bowman requested a motion for approval of the September 27, 2011 Commission meeting minutes, if there were no corrections or changes.

Associate Member Tankard noted that a motion needed to be corrected as it indicated he was the maker of the motion and also the one to second it. He said he was the one to make the motion and he did not know who had seconded it. The item was 3B, Vincent Radley, #11-0786.

Commissioner Bowman asked that staff check the records. After checking the records, staff said that the minutes should have indicated that Associate Member Tankard made the motion and Associate Member Laine was the one to second the motion.

Commissioner Bowman asked for a motion to approve the amended minutes.

Associate Member Robins moved to approve the minutes, as amended. Associate Member Tankard 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.

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

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

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

2A. KEY CONSTRUCTION COMPANY, INC, #11-1073, requests authorization to replace the existing Route 61 Bridge in the Town of Narrows by constructing an approximately 1,142-foot long by approximately 50-foot wide, two-lane bridge with sidewalks, crossing 480 linear feet of the of the New River in Giles County. All work will be accomplished utilizing coffer dams and temporary causeways. Permittee shall execute a transfer of this permit to VDOT upon VDOT'S acceptance of the structures authorized herein.

Permit Fee.....	\$100.00
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2B. CITY OF WAYNESBORO, #11-1230, requests authorization to replace the existing Route 250/Broad Street Bridge deck in the City of Waynesboro. The new bridge deck will be approximately 285-feet long and approximately 64-feet wide, crossing 110 linear feet of the South River in Augusta County. There will be no in-stream work during demolition or construction of the new bridge deck.

Permit Fee.....	\$100.00
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2C. U. S. ARMY CORPS OF ENGINEERS, #04-1327, requests a modification to their existing permit to place hydraulically dredged material from the two (2) Federal Project Channels at Tangier, along the western shore of the island, south of the existing seawall. The modification will increase the cubic yards, per dredge cycle from 65,000 to 100,000 cubic yards of dredged material within the already permitted disposal site. The permit modification is contingent on the expiration of the public interest review period, provided there are no objections to the project. All other permit conditions would remain unchanged.

No applicable fees – Permit Modification

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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.

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

Chincoteague Inn versus VMRC

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

Associate Member Robins moved for the following:

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

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

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

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

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

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

NAYS: NONE

ABSENT DURING VOTE: NONE

ABSENT DURING ALL OR PART OF CLOSED MEETING: NONE

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Katherine Leonard, Recording Secretary

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- 5. DISCUSSION:** Proposed permit process for applications requesting authorization to remove submerged timber logs from State-owned bottomlands. This matter was tabled at the September 27th Commission hearing.

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

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

Mr. Worrell said that staff would like to present for consideration draft criteria for an application review and permit process that could be implemented for this specific request and possibly for similar future requests. This criteria had been created after several discussions and a site meeting with the applicant, and conversations with the North Carolina Division of Coastal Management (they have a similar log recovery permit process in place) and the Virginia Department of Forestry. Regulatory programs and recovery efforts were also in place in several other coastal and Great Lakes states.

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

- A complete JPA will be forwarded to sister agencies including the Department of Game and Inland Fisheries, Department of Historic Resources, and the Department of Forestry for review and comments. Any comments or recommendations received from these agencies will be considered for implementation into a Commission permit.

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- A public notice in a local newspaper will be required. However, staff is not recommending that our standard adjoining property owner (APO) notification process occur, as there could potentially be numerous owners that would need to be identified and contacted, and there is no expected impact to such owners' upland property or riparian rights.
- A one-year permit will be granted for one particular length of one waterway. The limits of the area will be clearly identified and will include latitude and longitude coordinates.
- The permit will be "non-exclusive," meaning that if other applicants request to recover such log resources in the *same waterway*, an application will be processed and a subsequent permit may be granted.
- The Commission permit fee will be \$100.00.
- The permit will not allow logs to be removed if they are submerged in bottom or bank sediments.
- The permit will specify that all salvaged logs will be immediately removed at private boat ramps or access points with upland property owner's written permission. No storing, or moving logs around in the waterway will be allowed. In addition, logs cannot be raised and then released back to the bottom.
- The permittee must maintain a date record of all logs removed. This record will be forwarded to Commission staff within 15 days of removal. Photographs of salvaged logs will also be required.
- The permittee must provide a mill volume ticket (essentially a receipt) to the Commission for each log removed and sold. This ticket must detail the log species and the number of board feet contained in the log. The number of board feet must be calculated using the International 1/4-Inch Log Rule.
- The permittee must pay a royalty to the Commission for each log removed. This amount is to be calculated based upon the actual number of board feet per log removed, and the current upland "stumpage" value of that log as set by the publication *Timber Mart South*. The "stumpage value" is essentially the value of the standing timber "on the stump," or what a landowner could expect to receive for that particular timber log. The mill volume ticket, including a calculation of the specific stumpage value, and the actual royalty payment are to be forwarded to the Commission within 15 days of the log's sale. Once received, staff will coordinate with the Virginia Department of Forestry to confirm that the log value was calculated correctly. Staff acknowledges that the value of such submerged logs may be much greater than current upland timber, however those values are difficult to predict, and the actual recovery of submerged logs is also a specialized and costly process. The publication *Timber Mart South* is used by the Virginia Department of Forestry to help calculate estimated stumpage values within State forestlands as part of their timber harvesting bid process.

Mr. Worrell stated that staff felt that this process would provide the foundation for future permitting of such log recovery requests. Staff did acknowledge, however, that this

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process might need to evolve over time depending on the recovery findings, the nature of future application requests, or comments and recommendations received from other State agencies. Should the Commission concur, staff proposed to immediately implement this application review and permit process for the recent application submitted. At the end of the initial one-year permit for log recovery, staff would provide a status briefing to the Commission.

Commissioner Bowman asked for questions.

Associate Member Tankard asked what staff meant by submerged? Mr. Worrell said it meant not seen, partially submerged. He said the applicant was not capable of removing submerged logs. He said the logs were basically sitting on the bottom.

Associate Member Laine asked what happened to the logs with no value. He added does the applicant have to remove it. Mr. Worrell stated that they would need to go to an upland disposal site. Associate Member Fox said it would not be acceptable to put them back overboard as it would impact navigation. He said an orderly procedure would be consistent with upland disposal.

Associate Member Robins asked if the royalty assessment was the mill ticket figured with the stump value. Mr. Worrell responded yes. The stump value would be calculated with the board fee and the profit would exceed the stumpage value. Associate Member Robins said this was a reasonable pilot program to be evaluated after one year to determine the success. Commissioner Bowman stated that after the mill ticket was turned in the Commission would be able to see the true value. Mr. Worrell stated that staff could go out with them the first time.

Commissioner Bowman asked if a regulation would be necessary? Tony Watkinson, Chief, Habitat Management, stated that it would not be necessary just the recommended permit procedure to establish the permit process and value calculation would be needed.

Associate Member Robins said as this was a value issue, he suggested that an annual report be required to document the value. He moved to approve the permit with the annual report requirement. Associate Member Fox seconded the motion. The motion carried, 9-0.

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6. **FERDINAND C. DUGAN III, #11-0878**, requests authorization to install an approximately 158 linear foot riprap revetment against a failing bulkhead, and retain a 45-foot long, riprap, marsh toe sill adjacent to property situated along the Potomac River in Westmoreland County. The project is protested by an adjacent property owner.

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Jeff Madden, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Madden said Mr. Webb called this morning and said he would not be attending the meeting.

Mr. Madden explained that the Dugan residence was located in the Coles Neck section of Westmoreland County, approximately six miles north of the village of Kinsale. The property was located along the west shore of the Potomac River, immediately downstream from its confluence with Gardner Creek. The shoreline was exposed to a northeast fetch of approximately five miles. The shoreline immediately north of Mr. Dugan's property is currently undeveloped and the property adjoining the Dugan parcel to the south is owned by Mr. Webb, the protestant.

Mr. Madden said that Mr. Dugan was requesting after-the-fact authorization to retain a 45-foot long riprap sill with a 22-foot base width and additional authorization to install a 158-foot long, toe-scour riprap revetment with an eight-foot base along an existing timber bulkhead.

Mr. Madden stated that in June of this year, Mr. Dugan submitted an application seeking authorization to install a 45-foot long riprap, marsh toe sill with a 22-foot base width, aligned 18 feet channelward of mean low water. In addition, Mr. Dugan requested authorization to install a 65-foot long revetment and to backfill the sill with 35 cubic yards of beach quality sand, both the revetment and the beach nourishment were aligned landward of mean low water. In a letter dated July 20, 2011, staff informed Mr. Dugan that the marsh toe sill would require a VMRC permit.

Mr. Madden explained that the intertidal portions of the project, the 65-foot rip-rap on the north end of the property, and the beach nourishment, were approved by the Westmoreland County Wetlands Board at their July 18, 2011, public hearing. Subsequent to the July 18th hearing, and before a VMRC permit was issued for the rip-rap sill, Mr. Dugan elected to modify his application to include the installation of 158 feet of riprap toe-scour revetment with an eight-foot base width along the channelward side of an existing bulkhead. By letter dated September 7, 2011, staff acknowledged receipt of the revised drawings and informed Mr. Dugan that the revision would require a VMRC permit.

Mr. Madden said that the Westmoreland County Wetlands Board elected to assert jurisdiction over the proposed modifications and heard the matter of the 158-foot toe-scour revetment at their September 19, 2011, public hearing. It was at this hearing that County staff entered into the record of the hearing an e-mail from the downriver property owners, Mr. and Mrs. Mark Webb. They were concerned the placement of the Class II and Class III riprap along the bulkhead would not remain in place unless they built groins to lock the stone in position. They maintained that rock installed along the bulkhead without the benefit of the groins would potentially damage their bulkhead and adjacent

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property in the event that the revetment fails. The Webbs did not attend the September 19th hearing.

Mr. Madden stated that immediately after the September 19th Wetland Board hearing, Commission staff drove to the site to photograph the project. At that time, staff observed that the 45-foot riprap sill had already been installed. The 65-foot intertidal revetment was also constructed, but that structure was landward of the Commission's jurisdiction. When questioned about why he authorized a contractor to install the sill prior to obtaining VMRC authorization, Mr. Dugan explained that he hired Richard Rose and Sons to install the sill and intertidal revetment in the belief that he had all of the permits he required.

Mr. Madden said that while staff acknowledged there was a potential for some movement of rip-rap placed against a bulkhead in a dynamic environment, the structure was designed to incorporate Class II and Class III stone. Class II stone weighed between 150 and 500 pounds with approximately 50 % weighing more than 300 lbs. Class III typically weighed between 500 and 1,500 pounds with approximately 50% of the stone weighing 900 pounds. In addition, the toe of the structure would be buried a foot below the mean low water elevation with a 2:1 slope. The size of the stone appeared appropriate, however the design of the project could be further enhanced if the toe of the structure were placed a minimum of 3-foot below the mean low water elevation.

Mr. Madden said that the alteration of any natural shoreline poses some risk of failure, however, the placement of Class II and Class III riprap against an existing bulkhead had been a successful, well-documented, erosion control strategy, along waterfronts throughout Tidewater Virginia.

Mr. Madden stated that with respect to the after-the-fact aspect of the project, the construction of a riprap sill with a planted and nourished beach component, was currently viewed as a preferred method to control erosion along a shoreline. Staff was concerned that portions of this project were begun before the completion of the permit review process and the execution of a permit. However, upon notification from VMRC that that he had violated the Code of Virginia, Mr. Dugan acknowledged full responsibility for the error and cooperated fully with the follow-up investigation.

Mr. Madden explained that after considering all of the factors in § 28.2-1205 of the Code of Virginia, staff recommended approval of the project. Since the environmental impacts associated with the after-the-fact sill were minimal and the degree of the non-compliance was minimal staff recommended the assessment of a minimal civil charge of \$600.00 and triple permit fees.

Commissioner Bowman asked for questions.

Associate Member Palmer asked if the contractor was aware of the permit process. Mr. Madden responded yes.

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Commissioner Bowman asked if the applicant or his representative was present.

Ferdinand C. Dugan, applicant was sworn in and his comments are a part of the verbatim record. Mr. Dugan said once he had obtained the Wetlands Permit they told him he could proceed with the project, so he thought he had all the permits required. He stated he told the contractor he had all of the permits required. He stated also that he took full responsibility for the project being completed without all the permits.

Associate Member Robins asked the applicant if he agreed to the \$600.00 civil charge and triple permit fees, as recommended by staff. Mr. Dugan responded, yes.

Commissioner Bowman asked for a motion.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 9-0.

Associate Member Schick asked if the Commission should now address the issue of the contractor and whether he was responsible for advising the applicant of the permits that he needed. He asked if the Commission should hear from the contractor and require him to come before the Board.

Commissioner Bowman explained that he understood from what the applicant said that he told the contractor that he had all of the permits required. Associate Member Schick asked if the contractor had asked to see the permits. Mr. Dugan stated he just told the contractor. Associate Member Schick stated that the contractor should have known and made sure that they had all the permits. He stated also that the contractor should have been at the meeting today.

Commissioner Bowman said that the staff could be asked to write a letter to the contractor to ask for these details and then the Commission could decided after that how to proceed. Mr. Watkinson said staff could do that. Commissioner Bowman said a note could be added at the bottom of the letter that said that in the future he should make sure that all the permits have been acquired so that this does not happen again.

Associated Member Fox asked if there was a yellow sticker provided with the permit that was supposed to be posted at the project site. Mr. Watkinson responded yes, when a permit is issued one is provided.

Civil Charge.....	\$600.00
Permit Fee (ATF-triple).....	\$300.00
Total Fees.....	\$900.00

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7. **BUBBA'S MARINA, #01-1979/ #11-0583.** Dimitrios and Josee Hionis request after-the-fact authorization to retain the glass door enclosures installed around the channelward portion of their commercial wharf facility known as Bubba's Shellfish Market at 3323 Shore Drive situated along the Lynnhaven Inlet in Virginia Beach; and to allow the placement of tables and chairs, including a bar/counter, and on-premises consumption of food, beer, wine and mixed beverages on the previously authorized deck for seafood unloading constructed over State-owned submerged land.

Associate Members Palmer and Plumlee both recused themselves from the hearing and left the room. Both indicated business conflicts. Commissioner Bowman noted that five Associate Members had been present at the previous meeting.

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

Mr. Worrell explained that Bubba's Shellfish Company, a boat ramp, and Bubba's Restaurant are all located at 3323 Shore Drive, a commercial property generally identified as *Bubba's Marina*, situated along the Lynnhaven Inlet in Virginia Beach. VMRC permit #01-1979, authorized by the full Commission on February 24, 2004, and eventually permitted on December 17, 2004, detailed specific encroachment activities that would occur as a result of the construction of the Shellfish Company. The portion of the proposed facility channelward of the existing bulkhead (about one-half of the entire facility) included an open-pile structure and commercial wharf permitted specifically for a wholesale/retail fish market, and a commercial seafood offloading dock. The applicant and agent even proffered to restrict the use of the portion of the facility over State-owned submerged land to only seafood offloading, seafood processing, and a wholesale seafood market. The Commission approved the request with such a restriction, and a Declaration of Restrictive Covenant was then prepared by the applicant's attorney, signed by the applicant, and recorded with the Circuit Court of Virginia Beach.

Mr. Worrell noted that in January of 2011, staff visited Bubba's Restaurant in response to a bulkhead application submitted by Mr. and Mrs. Hionis. During that visit staff noticed the recently installed glass enclosures along the channelward perimeter of the adjacent Shellfish Company. Upon further inquiries, staff discovered that the enclosed portion of the Shellfish Company was also operating as a bar and restaurant. A sworn complaint and a notice to comply were subsequently issued, and the matter was presented before the Commission on March 29, 2011, to determine if the facility's existence and current use complied with VMRC #01-1979 permit.

Mr. Worrell said that after hearing staff's presentation, and testimony from Mr. Hionis, as well as arguments by his attorney, Mr. Paul Schmidt, the Commission determined that the use of the portions of the facility extending over State-owned submerged bottomlands as a restaurant was not consistent with the previous Commission permit. However, the Commission granted a six-month stay as an alternative to immediate permit compliance,

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provided the Hionises submitted an after-the-fact application within 30 days requesting authorization to retain the glass door enclosures and to use the facility as a restaurant. The Commission also ordered the Hionises to immediately seek all necessary local approvals and to provide copies of such approvals to Commission staff. Finally, the Commission declared that if all necessary local approvals had not been granted within six months, the use of the facility as a restaurant shall cease, and all restaurant-associated materials on the wharf decking shall be removed.

Mr. Worrell stated that in April of this year, Mr. and Mrs. Hionis submitted an after-the-fact application, as instructed by the Commission, to retain the glass door enclosures and include a restaurant, as an additional use of the Shellfish Market facility. Per the request, staff conducted a public interest review including adjoining property owner (APO) notices and a newspaper advertisement. No protests were received in response to those notices.

Mr. Worrell explained that staff also requested that several regulatory agencies review the request. The following agencies approved the proposal: the Virginia Department of Health – Division of Shellfish Sanitation, Virginia Department on Health – Wastewater Engineering, and the local Virginia Beach Department of Public Health.

Mr. Worrell explained that if the Commission felt comfortable that the City had ultimately approved the ongoing restaurant use of the facility, then staff would recommend after-the-fact approval of the glass door enclosures and the additional use of the facility, as a restaurant. Staff also recommended that such after-the-fact approval include a triple permit fee of \$300.00, an appropriate civil charge based on minor environmental impact and major permit deviation, and a royalty payment of \$5,654.00 for the facility's encroachment over 2,827 square feet of State-owned submerged bottomland at a rate of \$2.00 per square-foot. In accordance with §28.2-1206(D) of the Code of Virginia, the Commission may also want to consider tripling the royalty amount given the after-the-fact nature of the request and the non-compliance with the original permit conditions.

Mr. Worrell stated as an alternative, if the Commission felt that the City of Virginia Beach had not granted final approval for the Shellfish Market to operate as a restaurant, then staff recommended that all restaurant activities immediately cease, and all associated materials such as the bar, tables, and chairs, be removed. This decision would be consistent with the Commission's order from the March hearing that all non-conforming activities cease at the end of the six-month stay period in the absence of all local approvals. If this option was chosen, the Commission would still need to decide if the glass door enclosures could remain, and if triple permit fees and civil charges should be required.

Mr. Worrell provided a copy of the update from the City of Virginia Beach dated October 21, 2011 as a hand-out. He said that the letter provided the local approval process status

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and that the City endorsed the use now. He read from the City's letter and stated that staff had concerns as regards the city approval and conditions. He said staff needed the Commission guidance on whether to continue the stay or issue an order to cease and if ordered to cease then the glass doors and fees need to be approved.

Associate Member Robins stated that the original order was to get into compliance and get the city's permits. Mr. Worrell said that was explained in the letter of finding, item 2-2, in paragraphs 2 and 3. He read into the record a portion of the letter. He said staff was now here requesting a decision by the Commission. Associate Member Robins said the October 21, 2011 letter from the City was supporting the concept, the functioning and current operation. He said it also explained that they may take an estimated 120 days to make a decision of whether to approve it. He asked if staff had information indicating that it would take any longer. Mr. Worrell stated he was uncomfortable guessing what the City would do and did not feel comfortable saying it would be a shorter time.

Associate Member Schick asked if the restaurant was functioning to which Mr. Worrell responded yes. Associate Member Schick asked if it was functioning during the winter. Mr. Worrell responded again yes. Associate Member Schick said the City had not issued a cease order.

Associate Member Sessoms said from the October 21 letter it was clear that the City endorses the use and was working with the applicant to obtain the necessary approvals. He said he spoke with Mr. Hansen by phone to confirm what was being done. He said he did not believe that 120 days was enough to develop a business.

Associate Member Fox stated he agreed with Mr. Sessoms in general. He said he was concerned with the actions of the applicant who did this all in advance of getting the permits. He said he was not pleased and that needed to be addressed.

Associate Member Robins said that there had been an extensive hearing last time and the Commission had allowed the applicant to take care of upland concerns. He said in the letter from the City they supported this project and continued to support it through the City process. He stated he felt that more time was needed and suggested giving them a reasonable amount of time. He said he would consider six months to meet the permit requirements and then bring it back to the Commission.

Commissioner Bowman confirmed with VMRC Counsel that this was not a public hearing, but just a review today. Paul Kugelman, Assistant Attorney General and VMRC Counsel responded yes.

Associate Member Schick said he was concerned that it continued to be unauthorized and unpermitted use of State-owned bottom. He added the Commission needed to approve it and everything else needed to be done to allow to build and change the use. He said it

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needed to come back to the Commission not just for the one issue, but for the non-water dependent uses.

Associate Member Laine said he was concerned that this was being use as a restaurant and not a seafood business, which is water dependent. He said even though the City, endorses it, it is still a matter of encroaching over State-owned bottom. He said others case such as this had been denied by the Commission. He said he felt very troubled with setting a precedent for others to do the same. He said it was taking State-owned bottom for inappropriate use.

Commissioner Bowman said when the use changed it was unauthorized and non-compliant. He said when staff was doing another inspection, they found this violation. He said the Hionis' had done all possible per the Commission directions. He said the matter needed to be continued per Mr. Hansen's letter. He said from the City's report and staff's report it was all moving in the appropriate direction with no impediments. He reiterated that all things were going in the right direction and there did not need to be any impediments put in to impact the process and he Commission must work with the local government. He stated a continuation was in order to accomplish all. He said Mr. Hansen thinks it all can be done in 120 days and a six month continuation can be done. But he said the fees and royalties should not be overlooked in order to assure that the applicant does not get off when they did not follow procedures.

Associate Member Robins said it was premature to issue the permit with the need for City approval. He added the royalties and fees were tied to the final permit. He suggested continuing it for six months in order to get in compliance. He said the Commission would hear it at the end of six months and then determine the fees and royalties.

Mr. Kugelman said he was concerned that there was no permit to use the restaurant over State-owned bottom. He said he recommended that the Commission approve an interim permit to continue to operate the restaurant and to revisit at end of period of time. He said the Commission concern with the fees and royalties can be dealt with now or later.

Associate Member Robins moved to approve an interim permit for a period of six months and at that time the Commission would hear the matter again to decide if this should be made a permanent permit. Associate Member Sessoms seconded the motion.

Tony Watkinson, Chief, Habitat Management stated that staff was concerned that a public hearing was necessary if the Commission had decided on a permit route. Commissioner Bowman opened the public hearing.

Dimitri Hionis, applicant was sworn in and his comments are a part of the verbatim record. Mr. Hionis stated that he did not understand what was being decided by the Commission.

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Commissioner Bowman asked Paul Kugelman, Assistant Attorney General and VMRC’s Counsel to explain the motion. Mr. Kugelman explained the motion in order to clarify it for Mr. Hionis.

Mr. Hionis said that there was not a restaurant, but a waiting area for Bubba’s Marina. He stated this was a seafood market and they had added what they had in order to make it more profitable. Commissioner Bowman stated that the Commission was trying to accomplish the Joint Permit Application process. Mr. Hionis stated that in 120 days Mr. Hanson said the bridge would be build. Commissioner Bowman stated that was not a Commission issue today and asked if he would be satisfied with the decision for him to get all the City required approval and then the Commission would take action. He said the matter was ready for action.

The motion carried, 6-0-1. The Chair voted yes. Both Associate Members Plumlee and Palmer recused themselves from participating in the hearing and voting. Associate Member Laine voted no.

Permit Fee (Interim).....	\$100.00
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(Note items 8 and 9 were heard simultaneously.)

8. WILLIAM H. KIRBY, #2000-051. Request for oyster planting ground in the Northwest Branch of the Severn River in Gloucester County. The application is protested by an adjoining property owner, Mr. Steven C. Wann, who also has a pending application for a portion of the same area (#2000-87).

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9. STEVEN C. WANN, #2000-087. Request for oyster planting ground in the Northwest Branch of the Severn River in Gloucester County. The application is protested by an adjoining property owner, Mr. William H. Kirby, who also has a pending application covering the same area (#2000-51).

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

Commissioner Bowman asked if the neighbors were friends and if they had tried to work it out. Mr. Stagg said he was not sure they were friends, but he would explain with his presentation.

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Mr. Stagg explained that the requested oyster planting ground lease by Mr. William H. Kirby is located within the Northwest Branch, Severn River in Gloucester County. Mr. Kirby lives adjacent to a portion of the application area.

Mr. Stagg stated that Mr. Kirby submitted an application on August 8, 2000, requesting to lease approximately seven acres of oyster planting ground. He indicated a desire to use the lease for commercial oyster and clam aquaculture involving the use of floats and cages. He further indicated his desire to help with bay preservation and to get others involved in the aquaculture operation.

Mr. Stagg said that on November 13, 2000, staff received a letter of protest from Mr. Steven C. Wann, an adjacent property owner. In a subsequent letter dated November 27, 2000, Mr. Wann explained his objections to the application, stating his intention to construct a residence and private pier on the adjacent upland parcel and his desire to also grow oysters adjacent to his property. He indicated he would be also like to lease grounds in front of his property and he submitted an application on this same date requesting to lease up to 3 acres of ground.

Mr. Stagg explained that staff met with Mr. Kirby and Mr. Wann on October 11, 2002, and confirmed that a riparian apportionment was being conducted in relation to a dispute concerning a private pier proposed by Mr. Wann. Staff explained that no surveying of the pending oyster ground leases would occur until such time as the apportionment was completed and suggested that the dividing line established by the riparian apportionment could be used in future survey work related to the pending applications.

Mr. Stagg said staff received a copy of the court order and associated riparian apportionment on January 29, 2008. The apportionment affected three properties including those owned by; Mr. Kirby, Mr. Wann and a parcel owned by Jacques van Montfrans and Elizabeth W. Wilkins. We subsequently received an application for a riparian oyster ground lease from Mr. van Montfrans and Ms. Wilkins that included a portion of the area being requested by Mr. Kirby in his original lease application. Since riparian oyster ground applications take precedence over regular applications, the riparian application was processed, surveyed and assigned on March 11, 2009.

Mr. Stagg said that staff met with Mr. Kirby and Mr. Wann on several occasions and conflicts arose regarding two attempts to schedule the matter for public hearing in 2008. On December 16, 2008, the Commission approved Mr. Wann's request to construct a pier adjacent to his property and that pier has since been constructed.

Mr. Stagg said in January 2011, staff contacted both parties and explained that large portions of both applications contained large beds of submerged aquatic vegetation (SAV) and that it was VMRC's policy not to lease regular oyster ground in areas of existing SAV. Staff further noted that no such restriction applies to riparian oyster ground leases, pursuant to the Code of Virginia, and therefore staff could support

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converting both pending applications to riparian lease requests. Additionally, since the court had established the riparian boundaries of both properties, any riparian lease would adhere to those side boundaries. Staff then exchanged a number of letters related to this matter with both applicants (and Mr. Wann's legal counsel) and held in person meetings with both parties in an attempt to resolve the matter. During these discussions

Mr. Kirby submitted a separate application seeking to obtain a riparian lease adjacent to his property, but also keeping his pending application for a regular lease intact. Mr. Wann indicated that he has a sailboat that requires room to maneuver when docking at the pier and the leasing and potential placement of cages in this area would interfere with such navigation. The entire remaining leaseable area offshore of the SAV area includes approximately 0.40 of an acre immediately offshore of Mr. Wann's pier, a rectangular area of approximately 0.50 of an acre to the west of Mr. Wann's pier, and an area to the east of Mr. Wann's pier contains an approximate area of 0.10 acre (total leaseable area of 1.00 acre). Mr. Wann further indicated that if only the area west of his pier was leased to Mr. Kirby, he would drop his pending regular lease application entirely. However, Mr. Wann also indicated that should Mr. Kirby seek to lease any area offshore of or to the east his pier, then his objection to the Kirby application remains valid and his own lease application will also remain valid.

Mr. Stagg said that while staff believed this would be agreeable to Mr. Kirby based on a previous discussion with him, in a letter from him dated April 11, 2011, he stated that he still sought to lease as much of his original application as possible. Staff made considerable effort to resolve the issues involved with these applications. However, Mr. Kirby continued to request leasing an area that staff cannot support in light the continuing concerns of Mr. Wann related to safe navigation at and near his private pier. Excluding this area seemed warranted and staff believes the remaining area to the east of the pier is too small to constitute a viable lease area. Staff therefore, recommended leasing of the area offshore of Mr. Kirby's property channelward of existing SAV beds which contained approximately 0.50 of an acre. Staff recommended against leasing any area around, offshore of and to the east of Mr. Wann's private pier. Staff further noted that should the Commission lease the recommended area to Mr. Kirby that the placement of cages within this area would still be subject to Regulation 4 VAC 20-335-10 et seq., which includes the following conditions: No structures may cause more than a minimal adverse effect on navigation. The Commission may direct removal of any structures which fail to meet the requirements and conditions of this regulation.

Mr. Stagg said if the Commission adopted staff's recommendation regarding the Kirby application, Mr. Wann had agreed to withdraw his pending application. If the entire area channelward of existing SAV beds was granted to Mr. Kirby as he currently requests, no area would remain for Mr. Wann's application and it would therefore be voided.

Commissioner Bowman asked if the applicant wished to comment.

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William H. Kirby, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Kirby said the Commission did not rent ground in the SAV, but there is SAV in other areas. He said here is what is known as lettuce, not eelgrass. He said if he can get what is shown, then he will not use the cages. He said the pier was past the four foot line and the boat had a 24 inch draft, so the cages actually would not interfere. He said he did not have plans to use the cages and he had accumulated a shell pile for planting for the base for growing oysters.

Commissioner Bowman asked for questions.

Associate Member Palmer asked if there were other leases in the cove. Mr. Kirby said that there were no leases and staff said that is a man-made cove. He said that there were floats for personal use, not commercial.

Commissioner Bowman asked if the area was clean water. Mr. Kirby said it was clean. He added that Mr. Wann did not want to grow oysters.

Ray Shields, attorney for Mr. Wann, was present and his comments are a part of the verbatim record. Mr. Shields explained that the staff had tried to get parties to agree and agreed with the one-half acre west of the pier, but not in the SAV. He stated Mr. Wann did not want cages staked there as it would impact navigation. He noted that staff did a great job.

Steven C. Wann, applicant, was sworn in, and his comment area a part of the verbatim record. Mr. Wann stated he had asked Mr. Kirby to not take any action that would impact him and he agreed to not do anything. He added it was a gentleman's agreement. He said he offered Mr. Kirby access to land which he did not have. He said he did not know what was applied for until the surveyors came out to survey the ground.

Commissioner Bowman asked for those in opposition to speak. Mr. Kirby was allowed to provide rebuttal testimony. Mr. Kirby said in a conversation on July 21, they only talked about the pier and there was no agreement not to act. He said they agreed to restore the bulkhead, but he did not ask to go into business. He reiterated he never asked anyone.

Commissioner Bowman asked for questions.

Associate Member Schick asked if the objection was to the shell with cages in the area. Mr. Shields said they agreed with the blue area and they understood it could go up to 12 inches without approval.

Associate Member Plumlee asked if they accepted the one-half acre for Mr. Kirby and Mr. Wann would withdraw his application. He asked what stops someone else from applying for the same area. Mr. Shield stated they would object. Mr. Stagg explained that the area was too small to lease and staff recommended it not be leased. He further

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explained that if an application were received then the Commission would have to consider it.

Associate Member Schick asked about the pier. Mr. Stagg stated it required a permit.

Commissioner Bowman said the staff recommendation was a good idea for here and they tried to make all parties happy.

Mr. Stagg stated that the other leases that were in the SAV predate the Commission's policy. Mr. Stagg said the recent lease was not SAV and when there's a pier staff did not lease under it to anyone other than the riparian owner.

Associate Member Fox asked about the duck blind and whether it was inshore of the pier. Mr. Stagg responded yes.

Commissioner Bowman said the matter was before the Commission.

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

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10. PUBLIC COMMENTS:**Lynnhaven Fishing Pier:**

Hoyt T. Duff, II, pier owner, was present and his comments are a part of the verbatim record. Mr. Duff explained that he was providing a service with his pier to individuals who cannot own a boat as they are mostly lower income. He stated he was having a problem with the nets that commercial fishermen place around the pier to catch fish. He said his pier was built in accordance with the City Ordinance and that it cannot interfere with commercial harvest according to State Law. He said he cannot move the pier, but the fishermen can move their nets. He suggested the Commission consider a 2,000 yards buffer around the pier where commercial fishermen cannot put their nets.

Commissioner Bowman stated that he had received this day a very good letter written by Ms. Duff putting forth their problem. He said he had already asked staff to look into the matter. He asked staff to comment.

Jack Travelstead, Chief, Fisheries Management referenced Code Section 28.2-302. He explained that this section prohibited commercial nets within 300 yards of a public fishing pier. He said the Commission is authorized by this Code to decrease this distance, but was not authorized to increase the buffer area.

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Mr. Duff said he had spoken with the Marine Police Officer and the GPS located the nets at 300 yards. Mr. Travelstead stated that it would take an Act of the General Assembly to make this change and suggested that Mr. Duff address this issue with his Senate and/or House representative(s).

After some further discussion, Commissioner Bowman said that the Commission could not help to address this with the elected officials, but the Commission could provide information to the Ad hoc work group. He stated that the Commission understood both sides of this issue, the pier owner's and the commercial watermen's. He again reiterated that Ms. Duff's letter expressed the issue well.

No action was taken.

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The Commission broke for lunch at approximately 11:50 a.m. and reconvened at approximately 12:40 p.m.

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Special Presentation:

Commissioner Bowman presented Dr. John McConaugha with a service certification for his four years of service on the Board for the Marine Resources Commission. He said his valued advice, experience, and help provided a balance in the discussion and decisions, especially, for those made on the blue crab issues.

Dr. McConaugha expressed his appreciation for the time he had been on the Board and thanked the Commission for their expression of appreciation.

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- 11. **PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-620-10 et seq., "Pertaining to Summer Flounder", to modify the fall commercial directed offshore management measures.

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

Mr. Grist explained that this had been discussed at last month's meeting and a public hearing had been advertised for this month. Mr. Grist provided one handout, which was a public comment.

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Mr. Grist stated that the offshore directed commercial fishery for summer flounder is currently opened for two seasons each year, a winter directed fishery seasons when vessels may land up to 10,000 pounds for commercial purposes during each 15-day period. He said this year the season ran from March 7 through May 15, which involved numerous 15-day periods. The second directed fishery season was in the fall when vessels could land up to 7,500 pounds of summer flounder for commercial purposes during each 12-day period. He said there was also a bycatch only fishery, which was followed by the winter directed fishery which began on the first Monday in March and when combined with all the summer flounder bycatch landings since the start of the calendar year, continues until the total landings are projected to be 85% of the allocated quota for the winter directed fishery. He said when the 85% quota trigger is reached, the winter directed fishery is ceased and the bycatch fishery resumes until the start of the fall directed fishery season.

Mr. Grist explained that the bycatch fishery for flounder caught offshore opens on January 1st and remains open, except during the directed fishery seasons. He explained that during the bycatch season is was unlawful for any person harvesting flounder outside of Virginia's waters to do any of the following.

1. possess aboard any vessel in Virginia water any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel; or,
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker; or,
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

Mr. Grist said that staff had received a request from L. D. Amory, Chincoteague Fisheries, and Old Point Packing to change the 2011 commercial fall directed fishery for summer flounder caught offshore. He said they suggested that the fall directed fishery open on the second Monday, November 14, 2011 with an increase from 7,500 pounds vessel landing limit to 10,000 pounds vessel landing limit and an increase from every 12 days to every 15 days.

Mr. Grist said the recommended amendments to 4VAC 20-620-10, et seq. required many sub-sections to be changed, which are listed below:

1. Opening the fall directed fishery the second Monday in November:
 - Sub-section 30(C), page two.
 - Sub-section 30(D), page two.
 - Sub-section 30(E), page two
 - Sub-section 40(B), page three.
 - Sub-section 40(C), page four.
 - Sub-division 40(C) (2), page four.
 - Sub-division 40(C) (3), page five.

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2. Increasing the vessel landing limit to 10,000 pounds:
 - Sub-division 40(C) (3), page five.
3. Increasing the vessel possession limit to 20,000 pounds
 - Sub-division 40(C) (1), page four.
4. Increasing the time period for vessel landings to 15 days.
 - Sub-division 40(C) (2), page four.
 - Sub-division 40(C) (3), page five.

Mr. Grist explained that number three was not advertised, but was less restrictive. He explained that this allowed the North Carolina quota to be on board while offloading Virginia quota and was not a request by industry.

Mr. Grist said that staff recommended the adoption of the amendments to Regulation 4VAC 20-620-10, et seq., "Pertaining to Summer Flounder".

Commissioner Bowman stated that Counsel questioned the item staff said was not advertised. Mr. Grist said that it was item 3, which increased the vessel possession limit to 20,000 pounds, which was less restrictive. Paul Kugelman, Assistant Attorney General and VMRC Counsel, said a flag went up when staff said it was not advertised, but being that it was less restrictive was fine.

Commissioner Bowman opened the public hearing. There were no public comments. He closed the public hearing. He stated the matter was ready for action.

Associate Member Fox moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 9-0.

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- 12. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-910-10 et seq., "Pertaining to Scup (Porgy)" to adjust commercial fishery management measures.

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

Ms. Nelson explained that this was a public hearing pertaining to Scup. She said that in April staff received a memorandum from the ASMFC announcing an increase in the scup quota for 2011 and implementing several changes. She said this included a 7-day landing period for the Winter I period and an increase in the Virginia Summer period quota from 6,861 pounds to 13,085 pounds.

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

Ms. Nelson said that staff recommended the adoption of the amendments to Regulation 4VAC 20-910-10m, et seq., "Pertaining to Scup".

Commissioner Bowman asked for questions and there were none. He opened the public hearing and there were no public comments. The public hearing was closed. He stated the matter was before the Commission.

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

Associate Member Robins explained that quotas were set by the ASMFC and MAMFC based on the bio-mass projections. He noted the flounder stocks were rebuilt, but not the bio-mass. He said that there was a joint meeting of the two Commissions to revisit this issue in December and there could be a change.

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14. BLUE CRAB UPDATE: Review of 2011 harvest and discussion of long term management process.

Rob O'Reilly, Deputy Chief, Fisheries Management was prepared to give the presentation with slides. Associate Member Palmer stated he had requested that this update on the status of the harvest be provided to see if it was feasible to extend the crab pot harvest of female crabs through November 30. He asked staff if the number supported the extension. Mr. O'Reilly responded no. Associate Member Palmer said he withdrew his request and further update was not necessary.

Jack Travelstead, Chief, Fisheries Management, said that staff wanted direction from the Commission in order to formulate a visioning process to determine what the blue crab fishery should look like in the future. He said that staff proposes that an advisory committee be set up for the long term review. He added that the Blue Crab Management Advisory Committee was for the short-term and not the appropriate group. He said there needed to be broad membership by geography with more representation of the gear holders, processors, packing houses, and to include environmental groups.

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Mr. Travelstead said that the Commissioner could establish the group and staff would develop the terms of reference as to what is precisely to be looked at and to be done before they meet. He said that staff proposed also, a broad industry survey, which staff had conducted in the past. He added this way they would hear from the masses.

Commissioner Bowman asked how staff would gauge what the other stakeholders felt, as it relates to the Public Trust. Mr. Travelstead stated that there would be a public comment period.

Associate Member Schick asked if the questionnaire would be more directed, not just open comments, and one for the public as well as one for the industry.

Mr. Travelstead stated that Associate Member suggestions would be accepted.

Associate Member Robins asked if once the terms of reference and panel were developed would the panel continue to be engaged. Mr. Travelstead responded, yes. He added this would not take away from the Blue Crab Management Advisory Committee.

Commissioner Bowman asked for questions.

Mr. Travelstead asked if staff could assume the Commission supported this action. Commissioner Bowman responded yes.

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13. FAILURE TO REPORT COMMERCIAL HARVEST CASES.

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

Mr. Grist explained that the Commission staff implemented a new notification system to inform harvesters that they were missing harvest reports. He said the system included a 1st and 2nd notice of missing reports by postcard, 3rd notice with deadline by letter and the 4th notification by certified mail with a deadline. He said the final notice by letter was delivered personally by a Marine Police Officer and the letter instructed the harvester to appear before the Commission.

Mr. Grist said the final number of harvesters still not in compliance was three. He said these harvesters had other infractions than just the one month, which needed to be resolved.

Commissioner Bowman asked about the cost of bringing these individuals before the Commission. Mr. Grist stated that initially the cost for the first post card postage was approximately \$200.00.

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Mr. Grist said that Mr. Shackelford had brought in the information today, but staff needed to review it.

Mr. Grist stated the staff recommendation was for suspension with 12 months probation.

James F. Shackelford

2011	February – June	Failure to report	Not Resolved
2010	January – December	Failure to report	Not Resolved
2009	February – December	Failure to report	Not Resolved
2008	January – December	Failure to report	Not Resolved
2006	June – December	Failure to report	Resolved

James F. Shackelford was sworn in and his comments are a part of the verbatim record. Mr. Shackelford said he had no excuse, he knew he just needed to take care of reporting better. Commissioner Bowman asked him why it took the Marine Police Officer's notification to get him to show up? Mr. Shackelford stated he did not see the mail at his house. Commissioner Bowman said that the Commission should keep track of the cost and charge each individual for reimbursement. He said it cost too much. He asked staff for their recommendation.

Mr. Grist said the staff recommendation was for suspension until all requested missing reports were provided and verified by staff, to be followed by a 12 months probation period.

Commissioner Bowman asked for discussion or action.

Associate Member Robins asked if he did any fishing in 2010? Mr. Shackelford stated he had done some.

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

Mr. Grist explained that Mr. Winder had brought in his information just a few days prior. He said the staff recommendation was for 12 months probation.

Mark T. Winder

2011	March – June	Failure to Report	Not Resolved
2010	January – November	Failure to Report	Resolved
2010	March	PRO with Mandatory Report	Not Resolved
2009	January, March	Failure to Report	Resolved
2009	February, March, June	Failure to Report, audit showed harvest	Resolved

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2007	May – August	Failure to Report	Not Resolved
2006	June – October	Failure to Report	Resolved
2005	February	Unreported catch	Resolved
2005	June	Unreported catch	Resolved
2003	May	Unreported catch	Resolved
2003	May, June	Failure to Report	Resolved
2003	March – June, September	Failure to Report	Resolved

Mark T. Winder was sworn in and his comments are a part of the verbatim record. Mr. Winder said he was sorry, but he came last week to report, just not on time.

Associate Member Palmer explained that he was a waterman and he had not missed a month at all, as he wrote down daily his catch and at the end of month tallied it to report. He said that there was no excuse for not reporting. Mr. Winder stated that it was hard job and he had to leave at 2 a.m. to start work.

Mr. Grist said the staff recommendation was for a 12 months probation period.

Commissioner Bowman asked for action by the Board.

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

Mr. Grist said that Mr. Stiles just brought in his paperwork for staff to review.

Scott L. Stiles, Sr.

2011	March – June	Failure to Report	Not Resolved
2010	March	Failure to Report	Not Resolved
2010	May – December	Failure to Report	Not Resolved
2009	July	Failure to Report	Not Resolved
2008	August – December	Failure to Report	Not Resolved
2006	April – June	Failure to Report	Not Resolved
2006	August – December	Failure to Report	Not Resolved
2003	March – June	Failure to Report	Resolved
2003	March – December	Failure to Report	Resolved

Scott L. Stiles, Sr. was sworn in and his comments are a part of the verbatim record. Mr. Stiles explained that in May 2010 he moved in with his family, but now he was renting to own. He said the post office did not get all of his mail and the Marine Police showed up last week.

Commissioner Bowman asked for questions.

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Associate Member Robins said that there were gaps in his reporting between 2003 and 2011, but not entire years, sometimes as much as nine months. Mr. Stiles said he grew clams up until two years ago as aquaculture. He said he crab potted in 2007, but not 2003 to 2004 or 2008 to 2009.

Mr. Grist said staff recommendation, since he was working with staff to clear up the last two years, was for suspension until all requested reports were provided to staff and then the 12 months probation would start when the suspension was lifted.

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

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- 15. PUBLIC HEARING:** Proposal to adopt emergency amendments that established the 2011/12 James River Seed Quota and monitoring requirements, as final amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest".

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

Mr. Travelstead explained that this was a public hearing to make permanent emergency actions taken by the Commission at the September meeting to establish the seed quota for the James River at 120,000 bushels total with the fall quota set at 40,000 bushels.

Mr. Travelstead said that no Maryland buyers had come down to buy any seed oysters. He said to date only about 2,000 bushels of seed oysters had been caught so far by instate planters.

Mr. Travelstead said that staff recommended these amendments to the regulation be made permanent.

Associate Member Plumlee questioned the necessity for the 40,000 bushel quota. Mr. Travelstead said the quota was appropriate since it prevented the Maryland buyers from taking an excessive share prior to the Virginia harvest in the spring. He said the stock assessment would help determine whether the overall quota of 120,000 bushels should be reduced prior to the spring harvest.

Commissioner Bowman asked for questions. Associate Member Laine asked about the 120,000 bushel quota for the James River. Mr. Travelstead stated it was the only area where there was commercial seed harvest.

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Commissioner Bowman opened the public hearing. There were no public comments. He closed the public hearing. He stated the matter was before the Commission.

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

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- 16. REQUEST FOR DECEMBER PUBLIC HEARING:** to revise commercial and recreational fisheries' management measures, (Chapter 4VAC20-960-10 et seq., "Pertaining to Tautog") in accordance with the Interstate Fishery Management Plan for Tautog.

Joe Cimino, Biological Sampling Program Manager, gave the presentation. His comments are a part of the verbatim record.

Mr. Cimino explained he was the ASMFC Tautog Technical Committee representative. He said that earlier this year, an update to the coast-wide stock assessment for tautog was run. He said that the update suggested the stock was overfished and overfishing is occurring coast-wide. He explained that Addendum VI required the states to make appropriate restrictions in order to reduce the tautog fishery exploitation rate, by 53% from the average landings level of 2008 and 2009. He stated that staff had developed several options, with the aid of the ad-hoc committees that were approved by the ASMFC Tautog Management Board to reduce recreational and commercial fisheries annual landings.

Mr. Cimino said that staff recommended advertising for a December public hearing.

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

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

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- 17. REQUEST FOR DECEMBER PUBLIC HEARING:** to establish 2012 commercial and recreational striped bass quotas (4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass").

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

Ms. Watts explained that the 2011 Bay-wide quota was 8,825,508 pounds. She added that Virginia's quota is divided evenly between the recreational and commercial fisheries and each of the fisheries' quotas will be 1,538,022 pounds. She stated that the 2012 Bay-wide quota would remain at status quo. She noted that the quotas had remained static from 1997 through 2003.

Ms. Watts explained that the 2011 Virginia JAI was the highest in the history of the survey, and that the 2011 Maryland JAI results indicated their index was the 4th highest in history of the survey.

Ms. Watts said that earlier in the year, the ASMFC initiated the development of Addendum III to Amendment 6 of the Interstate Fishery Management Plan for Striped Bass, in order to reduce striped bass fishing mortality up to 40% and protect the spawning stock when it is most vulnerable. She said at its early November management board meeting, the ASMFC will make a final decision on the disposition of the addendum. She said the Chesapeake Bay could be affected by the revisions. She stated this information would be explained at the December Commission meeting.

Ms. Watts said that pending the decision of the ASMFC, staff recommended advertising for a December 2011 public hearing to establish the 2012 Virginia recreational and commercial striped bass quotas, as 1,538,022 pounds each.

Commissioner Bowman asked about the year- end index numbers and when these fish would be available. Ms. Watts stated that the 2011 numbers were preliminary and that most of these juveniles would not be available to the Chesapeake Bay until at least 2015.

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

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

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There being no further business, the meeting was adjourned at approximately 1:24 p.m. Commissioner Bowman noted that the next meeting would be held Tuesday, December 6, 2011.

(NOTE: It was decided at the May 24, 2011 Commission meeting that the November and December 2011 meetings would be combined.)

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Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary