

MINUTES

Commission Meeting

January 22, 2013

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:

Jack G. Travelstead	Commissioner
Robert G. Beck	
S. Lynn Haynie	
Joseph C. Palmer, Jr.	
J. Bryan Plumlee	Associate Members
Richard B. Robins, Jr.	
J. Edward Tankard, III	
Whitt G. Sessoms, III	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Linda Hancock	Director, Human Resources
Louise Atkins	Acting Recording Secretary
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Senior Mgr.
Stephanie Iverson	Fisheries Mgmt. Mgr.
Renee Hoover	Biological Collection Program, Supervisor
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham	Game Fish Coordinator
Samantha Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Bob Park	Sr. Marine Police Officer
Kevin Croft	Sr. Marine Police Officer

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**16873
January 22, 2013**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Bradley Reams	Program Support Technician Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present:

George Bott	Anker Madser	John Henley
Donald Delano	Nancy Ball	Michael Francisco
Bryan Ellis	John Forrest	Rick Bartlett
Jay Foster	Myles Pocta	Richard Langhorne
Dave Bugg	Hank Jones	Andy Lacatell
Meade Amory		

and others.

Commissioner Travelstead called the meeting to order at approximately 9:30 a.m. Associate Member Fox was absent.

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

APPROVAL OF AGENDA: Commissioner Travelstead asked if there were any changes from the Board members or staff. Mr. Watkinson indicated that at the request of the applicant, Item 6, Doug Campbell, 11-1159 was being pulled from the agenda. Mr. O'Reilly stated that there were no changes to the Fishery items.

Commissioner Travelstead stated the agenda was approved, as amended, by the Board.

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

MINUTES: Commissioner Travelstead asked for a motion for approval of the December 10, 2012 Commission meeting minutes, if there were no corrections or changes.

Associate Member Plumlee moved to approve the minutes. Associate Member Sessoms seconded the motion. The motion carried, 5-0-2. Both Associate Members Robins and Palmer abstained as they were absent from the meeting.

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

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were three page two items to be heard. He reviewed these items for the Board. His comments are a part of the verbatim record.

There were no questions or public comments. Commissioner Travelstead stated the matter was before the Commission.

Associate Member Robins moved to approve items 2A through 2C. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

2A. MICHAEL J. BOGESE, JR., #11-1574, requests authorization to stabilize approximately 5300 linear feet of shoreline by installing twelve (12) Class II armor stone breakwaters of varying lengths from 70 feet to 100 feet and installing twenty (20) Class II armor stone sill structures of varying length from 40 to 250 feet extending a maximum of 60 feet channelward of mean low water and encroaching 16,723 square feet over State-owned bottom; conduct beach nourishment with 8,468 cubic yards of clean sand material on 55,755 square feet of State-owned bottom; install a 5-foot by 16-foot pedestrian footbridge crossing 9 feet of State-owned bottom and install a 12-foot by 38-foot concrete boat ramp encroaching a maximum of ten (10) feet channelward of mean low water adjacent to his property situated along the James River at 16901 Sandy Point Road in

Charles City County. Staff recommends approval with a royalty in the amount of \$120.00 for the encroachment of the concrete boat ramp over 240 square feet of State-owned bottom at a rate of \$0.50 per square foot and a royalty in the amount of \$1,442.05 for the beach nourishment material filling 28,841 square feet of State-owned bottom at a rate of \$0.05 per square foot for a total royalty amount of \$1,562.05. A royalty was paid for the additional beach nourishment impacts under permit #09-0228.

Royalty Fees (encroachment 240 sq. ft. @ \$0.50/sq. ft.).....	\$ 120.00
Royalty Fees (filling 28,841 sq. ft. @ \$0.05/sq. ft.).....	\$ 1,442.50
Permit Fee.....	\$ 100.00
Total Fees.....	\$ 1,662.50

2B. ELIZABETH RIVER CROSSINGS OPCO LLC, #11-1116, requests authorization to modify an existing permit, to include relocating proposed temporary marshalling piers and to increase the footprint of the Norfolk pier to 11,600 square feet, to install six (6) additional 36-inch pilings as mooring dolphins and a temporary crane ramp that will extend approximately 35 linear feet channelward of mean low water along the Portsmouth shoreline, and to extend the South Portsmouth dredge support of excavation wall an additional 108 linear feet resulting in additional encroachment over State-owned submerged land to facilitate the construction of an additional tunnel for the Mid-town crossing as part of the U.S. Route 58 Downtown Tunnel/Mid-town Tunnel/Martin Luther King Freeway Expansion Project across the Elizabeth River between the cities of Norfolk and Portsmouth.

No applicable fees – Permit Modification

2C. LOUDOUN COUNTY SANITATION AUTHORITY, #10-2020, requests authorization to install a water intake structure and associated piping encroaching upon 15,200 square feet of subaqueous bottom, the mechanical excavation of 4,500 cubic yards of subaqueous bottom, and the placement of a temporary coffer dam encompassing 66,200 square feet of subaqueous bottom in the Potomac River and to install a 48-inch raw water line under 29 linear feet of Tuscarora Creek, install a 48-inch raw water line under 40 linear feet of Sycolin Creek, install two (2) 48-inch raw water lines under 149 linear feet of Goose Creek, a 48-inch finished water line under 253 linear feet of Goose creek, and install a 17-foot wide open span bridge crossing over 34 linear feet of Sycolin Creek for the Potomac River Water Supply Project in Loudoun County.

Permit Fee.....	\$100.00
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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).
- 3A. **LYNNHAVEN RIVER INVESTMENTS LLC, #12-0375,** requests a permit modification to retain the open-pile wharf decking and accompanying handrail, constructed in the permitted footprint but 1.5 feet higher in elevation, to be used as additional restaurant floor space for the commercial establishment known as The Marlin Club, located at 2149 Vista Circle, situated along Long Creek in Virginia Beach. The applicants have agreed to a \$1,000.00 civil charge in lieu of further enforcement action.

Tony Watkinson, Chief, Habitat Management, gave the briefing on the information in the staff's evaluation. His comments are a part of the verbatim record.

Associate Member Palmer moved to approve the request, but to waive the assessment for a civil charge. Associate Member Sessoms seconded the motion. The motion carried, 7-0.

No applicable fees – Permit Modification
(Civil charge waived by the Commission.)

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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

Associate Member Tankard seconded the motion. The motion carried, 7-0.

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 Plumlee seconded the motion. Commissioner Travelstead held a Roll Call vote:

AYES: Beck, Haynie, Palmer, Plumlee, Robins, Sessoms, Tankard, and Travelstead.

NAYS: NONE

ABSENT DURING VOTE: Fox

ABSENT DURING ALL OR PART OF CLOSED MEETING: Fox

Motion carried, 8-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

5. **YANKEE POINT RACING AND CRUISING CLUB, #12-0018**, requests Commission reconsideration of their September 25, 2012, decision to approve a pier extending no longer than 50 feet from mean low water with a 50-foot L-head for transient use by club members with a maximum of nine (9) vessels rafted on the outboard side of the pier

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adjacent to the club’s leased property on Meyer Creek at 734 Oak Hill Road in Lancaster County.

Jay Woodward, Environmental Engineer, Sr., gave the briefing on the information in the staff’s evaluation. His comments are a part of the verbatim record.

George Bott, agent for the applicant, was sworn in. Mr. Bott stated that they appreciated the Commission reconsideration of this matter and that they agreed with the staff recommendations. His comments are a part of the verbatim record.

No one else was present to comment, pro or con. Commissioner Travelstead asked for comments or action by the Board.

Associate Member Plumlee moved to approve the request to extend the pier to a total length of 62 feet channelward of the mean low water with conditions stipulating that no more than nine vessels can be moored at the pier, no outboard pilings were allowed and no more than two vessels can be moored abreast of each other. A royalty was assessed at the rate of \$1.50 per square foot for the area occupied by the pier and a total of nine vessels. The motion was seconded by Associate Member Robins. The motion carried, 7-0.

Royalties Fees (encroachment @ \$1.50/sq. ft.)	(Note: square footage to be established)
Permit Fee.....	\$ 25.00

- 6. **DOUG CAMPBELL, #11-1159**, requests authorization to install a six-foot wide, private, open pile pier extending 145 feet channelward of mean low water with a 14-foot by 16-foot deck, a 16-foot by 30-foot open-sided boathouse, a 2,500 pound boat lift, and a jet ski lift along Lyons Creek at his property identified as 156 Pasture Road in the City of Poquoson. The project is protested by an adjacent property owner and an oyster lease holder.

Pulled from Agenda – at the request of the applicant

- 7. **NANCY D. BALL, #12-0749**, requests authorization to construct a single 27-foot long, continuous height, timber jetty, adjacent to a man-made mooring basin situated along Nomini Creek in Westmoreland County. The project is protested by an adjacent property owner.

Jeff Madden, Environmental Engineer, Sr., gave the briefing on the information in the staff's evaluation. His comments are a part of the verbatim record.

Dave Bugg, Attorney representing the applicant and her agent, was sworn in and his comments are a part of the verbatim record. Mr. Bugg stated that his clients are hoping that with the groin in place that the filling in of the area would stop over time and they were asking for approval of the staff recommendation.

Commissioner Travelstead asked for other comments and there were none, pro or con. He noted that a letter of comment had been received and given to the board from Ms. Simpson. He stated the matter was before the Commission.

Associate Member Sessoms stated he agreed with staff and moved to approve the project as recommended by staff, with a royalty assessment of \$0.50 per square foot for the encroachment of the jetty on State-owned bottom. Associate Member Palmer seconded the motion. The motion carried, 7-0.

Royalty Fees (encroachment 27 sq. ft. @ \$0.50/sq. ft.).....	\$ 13.50
Permit Fee.....	\$ 25.00
Total Fees.....	\$ 38.50

- 8. **MICHAEL FRANCISCO, #12-1374**, requests authorization to replace an existing private pier with a 5-foot wide open pile private pier within a right of way easement extending 44 feet channelward of mean low water, install four mooring piles, and to mechanically dredge 24.5 cubic yards of State-owned subaqueous bottom from a 380 square foot area near the end of the proposed pier to lower the depths to minus three (-3) feet at mean low water along an unnamed cove on Milford Haven at 239 Old Ferry Road in Mathews County. The project is protested by the property owner, through which the applicant has the aforementioned right-of-way easement.

Mike Johnson, Environmental Engineer, Sr. gave the briefing on the information in the staff's evaluation. His comments are a part of the verbatim record.

Richard Langhorn, attorney for the applicant was present and his comments are a part of the verbatim record. He stated that the applicant is asking to be allowed to dredge in order to bring his boat further inshore and away from the channel.

John R. Forrest, V, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Forrest said he objected to the dredging because the applicant had purchased a larger boat and now he wanted to be able to accommodate that larger boat.

Associate Member Palmer moved to approve the project with special conditions stipulating that only the southern side of the pier may be dredged, the new 5-foot wide pier must be centered along the centerline of the existing pier, and no outboard mooring piling shall be installed. A standard dredging royalty of \$0.45 per cubic yard was to be assessed for the dredging of State-owned bottom. Commissioner Travelstead noted that there would be no dredging allowed on the northern side of the pier. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

Royalty Fees (dredging 23 cu. yds. @ \$0.45/cu. yd.).....	\$ 5.85
Permit Fee.....	\$ 25.00
Total Fees.....	\$ 30.85

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9. **ROBERT G. SMITH, #12-1301**, requests authorization to construct a 72-foot long by 10-foot wide timber commercial pier with four (4) associated piles adjacent to his property situated along Cockrell Creek in Northumberland County. The project is protested by a nearby property owner.

Jeff Madden, Environmental Engineer, Sr., gave the briefing on the information in the staff's evaluation. His comments are a part of the verbatim record.

Robert G. Smith was present, when asked said he did not have any comments, but indicated he would answer questions. There were no questions.

Commissioner Travelstead asked if the protestant was present and they were not present. He stated the matter was before the Commission.

Associate Member Palmer moved to approve the project in accordance with the staff recommendation with a standard royalty assessed at \$2.00 per square foot for the encroachment of the commercial pier over State-owned bottom. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

Royalty Fees (encroachment 1,832 sq. ft. @ \$2.00/sq. ft.).....	\$ 3,664.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$ 3,764.00

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Associate Member Beck left the meeting for the rest of the day.

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10. PUBLIC COMMENT.

Commissioner Travelstead in a special presentation expressed his appreciation for Mr. Kyle Schick’s eight years of distinguished service on the Commission and presented him with a plaque.

Summer Flounder

Meade Amory, Amory Seafood, was present and his comments are a part of the verbatim record. Mr. Amory requested that the Commission consider increasing the daily commercial flounder trip limit from 10,000 to 12, 500 pounds when the season starts on March 4th. As there were no objections from the members of the Board, it was agreed to advertise for public hearing at the February Commission meeting.

Sites for offloading commercial catch

John Forrest, commercial waterman, was present and his comments are a part of the verbatim record. Mr. Forrest expressed his concern that watermen would be banned by the City of Virginia Beach from using the Owl Creek public boat ramp for offloading their catch. Commissioner Travelstead instructed the VMRC staff to look into this matter.

VIMS shellfish disease test fees

Hank Jones, clam aquaculturist, was present and his comments are a part of the verbatim record. Mr. Jones expressed his concern for the increased fees established by VIMS to perform disease tests on their clam broodstock. Lyle Varnell, VIMS, stated that the increase in these fees were the result of the State’s budget cuts and noted that VIMS did not make any profits from performing these tests.

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11. FAILURE TO REPORT: Cases involving failure to report commercial harvests, in accordance with Chapter 4VAC20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting.”

Stephanie Iverson, Fisheries Management Manager, gave the presentation on the two cases of failure to report. Her comments are a part of the verbatim record. She noted that Mr. Guthrie had called to say he had the flu and could not attend. She provided a handout of additional correspondence for the case for Ricky K. Guthrie. She noted also that Mr. Walker had assumed he did not have to be present.

Ricky K. Guthrie:

Associate Member Palmer moved to suspend Mr. Guthrie’s license until he comes to the next Commission meeting. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

Wade D. Walker:

Associate Member Palmer moved to suspend Mr. Walker’s license until he comes to the next Commission meeting. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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- 12. **Richard Bradford:** Appeal of decision to deny his exception to the two year waiting period for a Commercial Fisherman Registration License.

Joe Grist, Deputy Chief, Fisheries Management gave the briefing on the information in the staff’s evaluation. His comments are a part of the verbatim record. He stated the staff recommendation was to deny the request and uphold the Commissioner’s decision. He provided a handout of the December Commission meeting staff evaluation.

Richard Bradford, appellant, was sworn in and his comments are a part of the verbatim record. Mr. Bradford explained that he desired to get into the commercial fisheries of harvesting clams and oysters. That because of his age it was difficult to obtain a job and he needed to supplement his retirement income. He added he had some leased ground on which he and a partner had put clam seed and he was hoping to supplement his income.

Commissioner Travelstead asked what the pleasure of the Commission for this matter.

Associate Member Tankard said he had heard what was said at the previous hearing and he still had not heard anything to make him change his mind. He moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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- 13. **PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-260-10 et seq., “Pertaining to Designation of Seed Areas and Clean Cull Areas”, to revise oyster culling and inspection procedures for Seaside of the Eastern Shore.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing of the information in the staff evaluation. His comments are a part of the verbatim record.

Commissioner Travelstead opened the public hearing, but there was no one present to comment; therefore, he closed the public hearing.

Associate Member Palmer moved to approve the amendments to the regulation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

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14. REQUEST FOR APPROVAL: Of the 2013 Oyster Replenishment Plan.

Jim Wesson, Department Head, Conservation and Replenishment presented the proposed 2013 Oyster Replenishment plan, as described in the staff’s written evaluation. His comments are a part of the verbatim record.

Associate Member Tankard moved for the approval of both the proposed 2013 Oyster Replenishment Program, as well as the associated procurement procedures outlined in staff’s written evaluation. The motion was seconded by Associate Member Plumlee and carried, 5-0-1. Due to a business conflict, Associate Member Robins abstained from the vote for the approval of the 2013 Oyster Replenishment Plan.

FUNDING SOURCES: AMOUNT:

Non Federal

General Fund (GF) State FY 2013	\$ 500,000
New General Funds of \$2,000,000 per year, beginning July 1, 2013, is proposed in the Governor’s Budget presented to the General Assembly session	\$ 2,000,000
Non-General Funds (NGF) Various Sources	\$ 200,000

Federal

NOAA – Blue Crab Disaster Oyster Aquaculture and Spat on Shell	\$ 300,000
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Bay and Tributaries:

Seed Transfer:

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A good natural spat set occurred in the James, Great Wicomico, and Piankatank Rivers in the summer of 2012. The Benefits (\$) to Cost (\$) ratio for moving seed oysters with MRC funds for growout on public grounds is generally less than one. Only in the Nomini Creek have we been able to regularly stay above break even. Staff believes that seed movement in the Nomini is cost effective, but reporting of harvest in that area is very bad. Staff is recommending moving 10,000 bushels of James River seed oysters to the Nomini River this spring and is making an effort to improve the rate of mandatory reporting for this area. Natural spat set never occurs in this area, so the only way any harvest can be maintained there is by moving seed. The cost for each bushel of seed to be planted in this area will be \$8.50 and staff intends to move:

10,000 bushels of seed oysters @ \$8.50/bu.

\$85,000 (NGF)

Piankatank River

In the Piankatank River, we have a very successful program to allow private industry a modest harvest of seed oysters each year (Figure 2). In this program, private leaseholders sign up for the amount of seed that they would like to harvest from the public seed grounds, and they must replace two bushels of shell for each bushel of seed taken. Counts per bushel are relatively high (600-1,000 oysters/bushel). Staff further recommends that 20,000 bushels of seed oysters be offered to the private industry in 2013. They can either pay for VMRC to cover the shell replacement, or they can plant the shells themselves. All of this activity occurs under the VMRC supervision. The cost per bushel will be higher in 2013 because of an increase in costs per bushel for shell (\$1.30 versus \$2.05) that VMRC will have to pay for shell.

Great Wicomico River

Private industry was allowed to harvest a small amount of seed oysters in the Great Wicomico in 2012 in a similar program to the Piankatank River. All of the VMRC shell beds were reshelled in 2012, and everywhere received a very good spatset (Figures 3 & 4). Certain rocks in this area will again be opened for private individuals to harvest seed oysters, and participants will replace the seed harvested at a rate of two bushels of shell for each bushel of seed harvested. Staff is recommending up to 20,000 bushels of seed harvest for the area in 2013. Shell costs are higher for the Great Wicomico River than for the Piankatank River, so the seed will cost more. The cost per bushel (\$5.50/bu.) for high-quality seed oysters in this program is still a very good deal for local harvesters and leaseholders. Replacing old shell with new shell appears to more than compensate for the modest loss of seed oysters from the system.

Corrotoman River

One small bar called Middle Ground in the Corrotoman River has historically had higher spat sets than most areas on the Rappahannock River. Currently, it is included in

Rotation Area 4 in the Rappahannock River, but there are rarely any market oysters in our annual stock assessment from this area. Low oxygen events tend to occur with enough regularity that market oysters never accumulate. Staff is recommending a new management strategy for this area. If shells are maintained and in good condition, and a program is started to allow the spat set to be harvested each year by private industry similar to the Piankatank and Great Wicomico Rivers, that this area will be more productive for seed harvest. This year staff will advertise to allow 4,000 bushels of oysters and shell removed by private industry and replaced with one bushel of new shell. VMRC will then add additional new shell. If industry is not interested in harvesting from this area (because the count of live oysters is only 200 oysters per bushel) then VMRC will reshell the area and see if there is any interest in 2014.

Shellplanting:**Bay and Tributaries:**

Shells that are deployed on public beds degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most areas, the half life of shells appears to be 3 to 4 years. Shells must be replaced regularly and Conservation and Replenishment staff determines the areas that are in need of shell-planting with the annual patent tong survey. The new General Fund appropriation will allow VMRC to add new shells to many acres. Funds for oyster restoration will never be enough to maintain oyster beds at maximum productivity, but if the mean value for cultch does not fall below 5 liters per meter, reasonable productivity can be maintained. The level of funding for oyster replenishment has been relatively low for a number of years, and there are many more acres of oyster beds that need new shells than there is funding (Table 1). Shell costs have increased significantly (2 to 3 times greater than 2010 prices), so the cost-per-acre to plant will be higher and less acres of restoration will be able to be completed. VMRC will increase the price per bushel paid for house shells from \$0.75 per bushel to \$1.50 per bushel on the pile. Private individuals, the State of Maryland, and other oyster restoration partners in Virginia are offering to buy shells at values higher than this, so it is unclear how many house shells will be available. We will purchase as many house shells as we can, and whatever remains of the appropriated General Funds will be used to dredge fossil shells for the shell-planting. VMRC intends to advertise with an Invitation for Bid package for shell dredging and planting to begin on July 1, 2013.

160-800 acres of oyster restoration @ 1,000 bushels/acre @ \$3.00/bu. =
\$500,000 - \$2,500,000 (GF)

Seaside of Eastern Shore:

Approximately 4 acres of harvest areas will be planted with shells harvested from local shell deposits.

4 acres @ 10,000 bu. of shells/acre @ \$2.50/bu.

\$100,000 GF

Cow Nosed Rays:

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

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

\$20,000

NOAA Blue Crab Disaster Oyster Aquaculture Training Projects:

This project to train crab industry participants in either spat-on-shell or cage oyster aquaculture was approved in 2009. Thus far VMRC has given equipment to 132 crabbers for a small cage aquaculture operation and have provided training for them. VMRC has also assisted 91 crabbers in spat-on-shell aquaculture. The spat-on-shell program was very successful in 2012. In total, 1.1 billion oyster eyed larvae were set on almost 26,000 bushels of shells for 2012. Virginia hatcheries were very productive in 2012. NOAA has extended this project through 2013 and there are enough funds to add about 19 more harvesters in the spat-on-shell program. To complete the project in 2013 about 1.8 billion oyster eyed larvae and 36,000 bushels of shell will be needed. Shells have definitely become a limiting factor for the growth of aquaculture in the future.

Spat on shell training

\$300,000 (NOAA)

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2013 OYSTER REPLENISHMENT PROGRAM:

General:

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

This section of the Code states that:

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

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

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.75 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$1.50 per bushel of oyster shells at the shucking house. Loading, transporting, and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2013 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

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

The agency anticipates that all other 2013 oyster replenishment activities will be completed using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2013 Replenishment Program.

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

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James River and Thomas Rock Hand Scrape Areas:

A request by the oyster industry to extend the harvest season for the James River and Thomas Rock hand scrape areas was discussed, but no action was taken by the Board. A copy of the e-mail correspondence regarding this request was provided by staff as a handout.

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- 15. REQUEST FOR EMERGENCY REGULATION:** To lower the recreational black sea bass fishery possession limit of 25 fish to 15 fish, through the end of February 2013, to comply with interstate fishery management plan requirements.

Rob O'Reilly, Chief, Fisheries Management gave the briefing on the information in the staff's evaluation. His comments are a part of the verbatim records. He noted the staff recommendation was in the evaluation which recommended the approval of the emergency regulation and the advertisement of a February public hearing.

Commissioner Travelstead asked for a motion.

Associate Member Robins moved to approve the staff recommendations. Associate Member Tankard seconded the motion. The motion carried, 6-0.

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- 16. REQUEST FOR FEBRUARY PUBLIC HEARING:** To establish management measures for the 2013 recreational summer flounder fishery.

Lewis Gillingham, Game Fish Coordinator, gave the briefing on the information in the staff's evaluation. His comments are a part of the verbatim record. He noted that staff was recommending the advertisement of a public hearing in February.

As there were no objections from the members of the Board, it was agreed to advertise for public hearing at the February Commission meeting.

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- 17. REQUEST FOR FEBRUARY PUBLIC HEARING:** To establish a limited entry system for the American shad by-catch allowance fishery that has been capped at 30 permits by the ASMFC.

Joe Cimino, Fisheries Management Senior Manager, gave the briefing on the background information provided in the staff’s evaluation. He noted that staff recommended the advertisement of a February public hearing.

As there were no objections from the members of the Board, it was agreed to advertise for public hearing at the February Commission meeting.

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18. LEGISLATION AND PENDING FISHERIES ISSUES.

Commissioner Travelstead updated the Commission on bills being heard by the Virginia General Assembly. He explained that two similar bills which were introduced this session would give the Commission limited authority to regulate the menhaden fishery for the first time in the agency’s history. He stated that when the Governor signs these bills they would be effective prior to July 1, 2013. He added that staff could be bringing something to the Commission in March or April. His comments are a part of the verbatim record.

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Rob O’Reilly, Chief Fisheries, briefed the Commission on the cow nose ray tagging and marketing projects; regulatory changes that will be necessary to commercial blue crab bushel limit; and changes to the regulations regarding agents for the 2013 crab harvest season, which need to be heard at the next meeting.

As there were no objections from the members of the Board, it was agreed to advertise for public hearings on these matters to be held at the February meeting.

Mr. O’Reilly gave a briefing on the status of the crab dredge study currently being conducted by VIMS.

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Commission Meeting

**16890
January 22, 2013**

There being no further business, the meeting was adjourned at approximately 2:50 p.m.
The next regular meeting will be held Tuesday, February 26, 2013.

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Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary