

MINUTES

Commission Meeting

February 22, 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
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
William Laine, Jr.)	
J. Bryan Plumlee)	Associate Members
Kyle J. Schick)	
Richard B. Robins, Jr.)	
John E. Tankard, III)	
Jack G. Travelstead	Chief, Fisheries Mgmt.
David Grandis	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Louise Atkins	Admin and Office Specialist
Linda Hancock	Human Resources Manager
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Allison Watts	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Head, Saltwater Tournament
Alicia Nelson	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Gerald Pitt	Marine Police Officer
Jennifer Baylis	Marine Police Officer

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Tony Watkinson
Chip Neikirk
Ben Stagg
Jeff Madden
Justin Worrell
Dan Bacon
Hank Badger
Jay Woodward
Ben McGinnis
Mike Johnson
Bradley Reams

Chief, Habitat Mgmt. Div.
Deputy Chief, Habitat Mgmt.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Project Compliance Tech.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell Susanna Musick

Others present included:

Brian Fletcher	Tammy Halstead	Leonard Holmes	David Ancarrow
Karen Duhring	Shawn Whealton	Josh Butler	Paul Bull
George Mears	Mark Hudgins	W. L. Baker	Marina Phillips
David O'Brien	Ellis W. James	Amy Cuono	Chris Cuono
Randy Birch	Jeff Deem	Bob Allen	Frances Porter
Tony A. Horton, Jr.			

and others.

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m. He noted that Associate Member Holland was absent.

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At the request of Commissioner Bowman, Associate Member Robins gave the invocation and Associate Member Schick 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.

Tony Watkinson, Chief Habitat Management said that Item 8, Tiger Enterprises, Inc., #10-1928, was requested to be pulled from the agenda.

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Commissioner Bowman asked for action by the Board.

Associate Member Laine moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

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MINUTES: Commissioner Bowman requested a motion for approval of the January 25, 2011 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Schick moved to approve the minutes, as distributed. Associate Member Tankard seconded the motion. The motion carried, 6-0-2. The Chair voted yes. Associate Members Laine and Robins abstained as they were absent for the January Commission meeting.

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

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2. PERMITS (Projects over \$50,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management Division, summarized these items for the Board. He stated that there were seven items (A-G). His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Commissioner Bowman opened the public hearing.

Leonard Holmes, property owner, was sworn in and his comments are a part of the verbatim record. Mr. Holmes said he was in favor of the Laurel Lake Waterfront HOA project, as proposed. He noted that the last time they raised the level of the dock it flooded his property. He said he was concerned that once the contractor is hired the dam would be constructed higher than what is being requested.

Commissioner Bowman asked if wording would need to be added to the permit to assure that this does not happen. Mr. Watkinson said that the drawing which established the elevation would be a part of the permit and any changes would be a violation which

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would have to be investigated for possible enforcement action. He said that a condition could be added to the permit. Commissioner Bowman asked who controls the spillway.

Mr. Holmes said that this is controlled by the dam and a pipe and the dam was currently broken. Commissioner Bowman said that there was no value to control the spillway.

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

Associate Member Tankard asked if there would be a need to make sure this did not happen. Mr. Watkinson said the drawings would be attached to the permit and they were required to comply with the permit drawings.

Commissioner Bowman said the matter was ready for action.

Associate Member Tankard moved to approve the page two items (A through G). Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

2A. LAUREL LAKE WATERFRONT HOA, #10-1899, requests authorization to repair an existing earthen impoundment and construct a new riprap spillway & sill within Skimino Creek to facilitate repairs to Barlows Pond in James City & York County. Recommend approval with an encroachment royalty of \$175.00 for the encroachment of the dam and spillway over 175 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty Fees (encroach 175 sq. ft. @ \$1.00/sq. ft.).....	\$175.00
Permit Fee.....	\$100.00
Total Fees.....	\$275.00

2B. TOWN OF WYTHEVILLE, #10-1997, requests authorization to install an 8-inch HDPE sewer line, ductile iron casing pipe, and concrete encasement beneath the streambed of 40 linear feet of Reed Creek, upstream of Atkins Mill Rd in Wythe County. The sewer line and encasement will be installed utilizing either the open trench and cofferdam method or be directionally drilled. Recommend inclusion of standard in-stream permit conditions.

Permit Fee.....	\$100.00
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2C. OCEAN LAND TRUST, LTD, #10-1570, requests authorization to change the use of their existing 512-foot long by 5-foot wide private pier to a community pier for the lot owners in the "Ocean View" subdivision and install a 225-foot long by 5-foot wide L-head to the existing pier, which includes a 25-foot long by 5-foot

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wide floating platform section for kayak access along Crippen Creek in Accomack County. The L-head will accommodate the mooring of up to ten (10) boats for lot owners. The applicant has agreed to forever prohibit the construction of private piers on all 15 riparian lots (Lots 11-16, 26-28, 39-44) in the subdivision. Staff recommends the assessment of a royalty in the amount of \$3,235.50 for the pier and mooring area encroachment over 2,157 square feet of State-owned submerged land at a rate of \$1.50 per square foot.

Royalty Fees (encroach 2,157 sq. ft. @ \$1.50/sq. ft.).....	\$3,235.50
Permit Fee.....	\$ 100.00
Total Fees.....	\$,3335.50

2D. CITY OF NORFOLK, #09-0710, requests authorization to install approximately 100 linear feet of replacement bulkhead with concrete cap encroaching approximately 1.5 feet channelward of mean low water, with riprap aprons on either end and a concrete stairway for access to the Lafayette River, at the southern terminus of Ashland Circle in the City of Norfolk.

Permit Fee.....	\$100.00
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2E. DEPARTMENT OF THE NAVY, #09-1153, requests a modification to a previously authorized permit to now install an approximately 3,000-foot long, conduit duct bank system to accommodate instrument cables between an existing underwater electro-magnetic measurement range located within the Eastern Reach Channel of the Norfolk Harbor Channel and an existing data concentrator shed, to be installed within a dredged trench to be backfilled with approximately 7,000 cubic yards of non-magnetic gravel within the channel and 8-foot wide articulated concrete matting along the remainder of the duct bank's path within Hampton Roads.

No applicable fees – Permit Modification

2F. HAMPTON UNIVERSITY, #10-1595, requests authorization to install additional riprap along portions of existing revetments totaling 1,700 linear feet in length and to reconstruct, on existing pilings, an 8-foot wide by 62-foot long open-pile pier with an 8-foot by 20-foot L-head platform, at their Strawberry Banks property situated along Hampton Roads and Jones Creek in the City of Hampton.

Permit Fee.....	\$100.00
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2G. DEPARTMENT OF THE NAVY, #11-0039, requests authorization to demolish and upgrade portions of Pier 1 at Naval Station Norfolk to include the

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replacement/addition of 70 concrete support piles; the replacement of portions of the pier's existing concrete deck, fender system, and affected utilities; and the installation of 20 new bollards situated along Hampton Roads in the City of Norfolk.

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). No consent items.

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

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- 5. **DAVID ANCARROW, #10-1245.** Commission review of the York County Wetland Board's January 13, 2011, decision to approve the installation of approximately 175 linear feet of riprap marsh toe sill with backfill and the jurisdictional determination that would allow the additional filling of approximately 6,000 square feet of vegetated tidal wetlands as identified by the Virginia Institute of Marine Science (VIMS) at Mr. David Ancarrow's property on Cabin Creek

Tony Watkinson, Chief, Habitat Management explained that staff was aware of the applicant's request made through Ms. Marina Phillips, their attorney, for the Wetlands Board to revisit the jurisdictional issue and he stated that it was staff's recommendation to remand this matter back to the Wetlands Board, as requested by the applicant. He noted that the Commission could come back and review this issue at a later date, if necessary.

Commissioner Bowman asked Ms. Phillips if staff had explained their request to her satisfaction. Ms. Marina Phillips, attorney representing the applicants, stated that staff had adequately explained it, and their request of the Wetlands Board to reconsider their decision was to be heard at the Wetlands Board meeting in March.

Associate Member Schick moved to remand the matter back to the Wetlands Board for their further review. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

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Commissioner Bowman noted that he was in possession of the letter of request submitted to the Wetlands Board, as of that morning.

No applicable fees – Remanded to Wetlands Board

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Commissioner Bowman left the meeting at this point. Associate Member Bowden took over as chair in the Commissioner’s absence.

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- 6. **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, #10-2003**, requests authorization to extend the existing Wallops Island rock seawall 4,600 feet to the south and place approximately 3,199,000 cubic yards of sand along 19,400 linear feet of their shoreline, extending the beach east a maximum of 240 feet beyond the seawall with a total impact to both the existing beach and submerged land of 550 feet beyond the seawall. The sand for the project will be dredged from deposits in the Atlantic Ocean beyond Virginia's three-mile territorial limit and will be pumped to the beach from a near shore anchored pump-out station located approximately between the 28-foot and 32-foot contours east of Wallops Island in the Atlantic Ocean. The project is protested and both Coastal Primary Sand Dunes and Beaches and Submerged Lands permits are required.

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

Mr. Badger explained that the Wallops Flight Facility (WFF) is located in the northeastern portion of Accomack County and is comprised of the Main Base on the mainland, and Wallops Island. The Island was bounded by Chincoteague Inlet to the north, Assawoman Inlet to the south (which has filled in), and the Atlantic Ocean to the east. The shoreline was protected by a combination of a stone riprap revetment in the middle section of the island’s oceanfront and geo-textile tubes on the southern end of the island.

Mr. Badger said that the long-term erosion rate along Wallops Island and Assawoman Island was approximately 14 to 17 feet per year. The ocean had encroached substantially toward the launch pads, infrastructure, and the test and training facilities belonging to the National Aeronautics and Space Administration (NASA), the U.S. Navy, and Mid-Atlantic Regional Spaceport (MARS). At the present time the southern launch pad was within approximately 200 feet of mean high water and the drone runway is also at risk.

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Mr. Badger stated that NASA and MARS were currently constructing new facilities on Wallops Island to support launching of orbital rockets that would carry payloads to the International Space Station beginning later this year.

Mr. Badger said that NASA had completed the Final Programmatic Environmental Impact Statement (PEIS) for the proposed Shoreline Restoration and Infrastructure Protection Program (SRIPP). Alternative One, which was the preferred alternative, involved a seawall extension and full beach fill. It was chosen over two other alternatives (Alternative Two-Seawall extension, beach fill and a large jetty on the southern end, and Alternative Three-Seawall extension, beach fill and a breakwater on the southern end). Alternative One was found to have less environmental impacts to adjacent property and submerged lands.

Mr. Badger noted that the County of Accomack had not yet adopted the model Coastal Primary Sand Dune and Beach ordinance. As a result, the Commission was responsible for administering the provisions of the ordinance within that locality.

Mr. Badger noted that the project was protested by Mr. Paul Rochmis. Mr. Rochmis owned a home on Gargathy Creek and had concerns that the proposed project would impact (close) Gargathy Inlet and the wetlands it served. He believed that the Commission should hold NASA responsible if Gargathy Inlet became restricted.

Mr. Badger said that the two adjacent islands (Assawoman and Assateague) were owned by U.S. Fish and Wildlife Service (USFW). Louis Hinds, Refuge Manager, stated that they did not object to the project, as proposed. Their approval was predicated upon the completion of the initial 1,430-foot long portion of the seawall and the beach fill starting 1,500 feet north of the Wallops Island/Assawoman Island property line and extending north for 3.7 miles. Mr. Hinds stated that the beach fill in combination with the extension of the seawall was critical to the integrity of the USFW property. He also had no objection to the incremental seawall extension to the maximum length of 4,600 feet provided the beach profile was maintained in accordance with the project design. Additionally, he stated that it was imperative that monitoring, as described on pages 372-378 of the final PEIS, be undertaken.

Mr. Badger stated that in the VIMS report, dated February 14, 2011, they stated that in addition to the proposed beach fill and seawall extension, there would be temporary impacts that would occur from 2 Scotts buoy anchors located approximately 1 mile offshore. The temporary impacts to subaqueous land would also occur from the pipelines between the buoys and beach placement areas. They also stated that the remaining geotubes that had deflated or failed should be removed or replaced to avoid dispersal of waste geo-textile material beyond project boundaries into adjacent natural areas.

Mr. Badger explained that VIMS agreed with NASA's proposal to coordinate with USFW and VDGIF to develop a plan of action to address nest sites found within or

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adjacent to the construction area prior to conducting work on the Wallops Island beach during shorebird or sea turtle nesting season. They also recommended that VMRC be informed of such plans and that the monitoring should be performed as described on page 372-378 in final PEIS, with copies of reports sent to VMRC. Finally, they recommended that VMRC should be notified of the commencement and conclusion of each phase of project activity.

Mr. Badger said that staff had not received direct comments from the Department of Game and Inland Fisheries (DGIF). In a letter sent to NASA, dated May 7, 2009, however DGIF stated they did not fully support any of the alternatives since they believed the project would likely result in the adverse impacts to wildlife or the resources on which they depend. DGIF, however agreed with the selection of Alternative One as the Preferred Alternative since the installation of a permeable jetty has been removed. The jetty would have reduced the southerly transport of sand, thereby adversely affecting the islands to the south.

Mr. Badger stated that the Department of Conservation and Recreation (DCR) documented the existence of Piping Plovers and Wilson Plovers and recommended coordination with the DGIF and USFWS. Alternative One (Preferred Alternative) was DCR's preferred alternative, but they recommend the proposed seawall extension be limited to the minimum length necessary to protect the facility. They also continued to recommend exploring the feasibility of inland relocation of the existing facilities.

Mr. Badger explained that the sand for the project would be dredged from two Unnamed Shoal deposits (A & B) approximately seven miles and 11 miles east of Assateague Island in the Atlantic Ocean and beyond Virginia's three-mile territorial limit; therefore, no authorization was required from the Marine Resources Commission for this portion of the project.

Mr. Badger said staff had discussed Mr. Rochmis's concerns with NASA. They stated that because of the continuing growth of Fishing Point on Assateague Island along with the southwestward migration of the offshore shoals, that there was less sand transport to the south along Wallops Island and in most years the net sediment transport was to the north. They also stated that their modeling indicated the impact from the nourishment would be mostly contained to the area within 2 miles of the project (Gargathy Inlet is more than 3.6 miles south of the southern end of the proposed project). Staff, therefore, did not believe the project would impact the inlet anymore than what was already being impacted by natural processes (erosion and accretion) near the inlet.

Mr. Badger stated that NASA had completed the Final PEIS for the proposed SRIPP and the Environmental Impact Statement evaluated the potential environmental impacts from the proposed NASA, Wallops Flight Facility, SRIPP. The SRIPP encompassed a 50-year planning horizon and was intended to reduce damage to Federal and State infrastructure on Wallops Island caused by the combination of sea-level rise and coastal storms.

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Mr. Badger said that after numerous meetings with State and Federal agencies and multiple public hearings on alternatives to protect the infrastructure on Wallops Island, with the least amount of environmental impact, Alternative One (the Preferred Alternative) was submitted.

Mr. Badger said that since both VIMS and USWFS had concerns that the beach fill in combination with the extension of the seawall was critical to the integrity of USFW property, staff discussed the matter with the applicant. The applicant stated that they had funding starting in May to install the first 1,430 linear feet of seawall which would protect the southern launch pad, with a completion date in November 2011. They also stated the funding was in place to install the entire 19,400 linear feet of beach fill (starting in November or December 2011). The beach fill would take approximately six to nine months. Therefore, staff believed the timetable proposed by NASA met the requirements requested by VIMS and USWFS.

Mr. Badger said that the applicant had agreed to the monitoring as stated in the Final Programmatic Environmental Impact Statement, Charter 5, "Mitigation and Monitoring" pages 372 through 378, as requested by USFW, DCR, DGIF and VIMS. This included the monitoring of Threatened and Endangered Species (Piping plovers and sea turtles) and conducting post-construction beach profile monitoring surveys.

Mr. Badger stated that after evaluating the merits of the project and after considering all of the factors contained in §28.2-1403 and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as submitted, conditioned on the removal of the remaining geo-tubes that have deflated or failed, notification of the commencement and conclusion of each phase of project activity and submittal of all post-construction beach profile monitoring surveys. Staff also recommended that Charter 5 of the final PEIS "Mitigation and Monitoring" pages 372 to 378 be made a part of the permit.

Mr. Badger noted that NASA representatives were present at the meeting.

Associate Member Bowden asked if there were questions for staff.

Associate Member Schick said the grade of the beach would be monitored, but what if the erosion is faster than expected was there a backup plan in this event. Mr. Badger stated that this was an ongoing project and there was a plan to replenish the sand every five years.

Associate Member Plumlee asked if it was Alternative one included the rock jetty that was removed which was recommended by staff. Mr. Badger said that that was actually in Alternative two.

Associate Member Tankard said in the modeling there was a two mile area for erosion or accretion to occur. He said here there were two dynamics, the rock breakwater and the

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sand, and together would they have a greater impact than if it was one or the other. Mr. Badger said the effect was more with any type of revetment the erosion would be moved quicker to the side. The nourishment would also stop some of that. He said this came from the modeling which was done by the Corps of Engineers and there was also an independent study done.

Associate Member Bowden asked if the applicant's representative were present.

Paul Bull, Project Management for NASA, was sworn in and his comments are a part of the verbatim record. Mr. Bull explained that they had brought a presentation for the computer, but it was not working and they could answer any questions.

Associate Member Robins asked about the monitoring of the migrating sand. Mr. Bull explained that they would do a pre-project monitoring and they had the contractor that would do it so they could see what was happening now and then again in the spring and fall. He said they had plans to put sand back every 3 to 7 years, they were stipulating 5, but it would depend on the severity of the impacts caused by the weather.

Associate Member Tankard asked if they could explain the modeling that was done.

Mr. Bull explained that the modeling was done through the Corps of Engineers, by the Vicksburg Environmental group. He said the modeling basically predicts how the weather will impact the shoreline. He said the further away from the project you are there was less impact. He suggested Mr. Hudgins explain the modeling more for the Commission.

Mark Hudgins, U. S. Army Corps of Engineers, Norfolk, was sworn in and his comments are a part of the verbatim record. Mr. Hudgins explained the modeling that was done.

Mr. Bull stated that the modeling was certainly worthwhile. He provided a slide, dated November 2010, of the Wallops Island area showing all the NASA assets, such as the MARS Facility which was worth \$1.1 billion, with funding of \$100 million for all programs. He said there was \$50 to \$80 million in liquid fueling. He said for the State it was worth \$26 million, for the federal government it was \$51 million, and there was \$23 million in private funding as well as a \$2 billion program for eight missions to supply the space station.

Associate Member Plumlee said that he did not see that there was any staging that would have an impact on the area as it was all offshore. He stated the staging did not use the wetlands. Mr. Bull said that they had a rock resource on the island that was on highland and not on wetlands. He noted that there was very little staging on the shore.

Associate Member Schick said that Mr. Bull had indicated that the funding was in place and asked if he actually had it in hand. Mr. Bull said that there was three years of fiscal

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funding for this project as it was considered the number one project for the NASA facility. He said the FY10 funds were already at the Corps of Engineers, FY11 they did not have but it was coming when Congress finally approves the budget proposal, and FY12 was to come, also. He reiterated that the financing was secured as this was considered the number one project.

Associate Member Schick noted that this was the only way for the United States to get to the space station, so it was a high priority. Mr. Bull confirmed that statement.

Associate Member Bowden asked if there was anyone present who wished to speak in favor or in opposition to the project. There were none. He said the matter was before the Commission for action.

Associate Member Schick moved to approve the staff recommendation. Associate Member Fox seconded the motion. Associate Member Robins asked if the motion included the conditions that were a part of the staff recommendation. Associate Member Schick responded yes. The motion carried, 7-0. Commissioner Bowman was absent from the hearing.

Permit Fee.....	\$100.00
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- 7. **LLOYD TAYLOR, ET AL, #10-1798**, requests authorization to construct a replacement timber bulkhead aligned a maximum of two (2) feet channelward of an existing deteriorated timber bulkhead and to install a total of 225 linear feet of riprap revetment the toe of which will be aligned at mean low water adjacent to his property located at 2614 Glendas Way situated along the Rappahannock River in Spotsylvania County. A Wetlands Permit is required.

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

Mr. Bacon explained that the project is located on the Rappahannock River, approximately 1/2 mile downstream of the Route 1 Bridge over the Rappahannock River. The area is residential in nature, and the Rappahannock River is approximately 260-foot wide at this location and is extensively utilized by recreational boat traffic.

Mr. Bacon said that the applicant was seeking to construct 100 linear feet of replacement timber bulkhead, 225 linear feet of riprap revetment and a 50-foot long private, open-piled pier with two (2) additional mooring dolphins and an uncovered boatlift. The applicant's home was located approximately 150 feet landward of the river and at an

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elevation considerably above floodwaters. An unimproved road provided access from the home to the shoreline.

Mr. Bacon noted that the applicant's shoreline had a riprap revetment and an old timber bulkhead. The riprap revetment and bulkhead were not constructed using the best management practices and the area did have moderate erosion issues.

Mr. Bacon said that the pier and mooring piles were statutorily authorized by §28.2-1203 (A)(5) of the Code of Virginia.

Mr. Bacon explained that since Spotsylvania County had not yet adopted the model Wetlands Ordinance, the Commission was charged with acting as the local Wetlands Board for the proposed timber bulkhead and riprap revetment pursuant to Chapter 13, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Bacon stated that the riprap revetment, as proposed, would impact approximately 930 square feet of non-vegetated wetlands (mud flat/rubble community) and the timber bulkhead would impact approximately 370 square feet of non-vegetated wetlands (mud flat/rubble community).

Mr. Bacon said that the Virginia Institute of Marine Science (VIMS), in their Shoreline Report dated February 2, 2011, advised that the applicant's riverine shoreline was experiencing undercutting at the site. VIMS suggested that the riprap revetment should be placed along the whole length of the project eliminating the need for the timber bulkhead. VIMS stated that riprap revetments dissipate wave energy better than bulkheads.

Mr. Bacon noted that the Department of Environmental Quality in an e-mail dated January 19, 2011, stated that the project was acceptable. No other State agencies had commented on the project and no comments had been received in response to VMRC's public notice and notification of adjoining property owners.

Mr. Bacon stated that in staff's opinion, the majority of the riverbank along the applicant's property was moderately undercut. This was likely due to storm events and wake-induced erosion caused by recreational boat traffic. Past cutting of the Resource Protection Area, also, had most likely contributed to the erosion issues at the applicant's property.

Mr. Bacon said staff believed the adverse impacts to the marine environment associated with the proposed construction were minimal. Although VIMS questioned the need for the timber bulkhead, staff did not believe the replacement of the existing bulkhead was an unreasonable request.

Mr. Bacon stated that in light of the existing shoreline conditions and the continued potential for storm and wake-induced erosion, staff recommended approval of the project,

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as proposed. This recommendation was based upon the following findings: (1) that the anticipated public and private benefits of the proposed activity exceeds its anticipated public and private detriment; (2) the proposed development conforms with the standards prescribed in §28.2-1308 of the Code of Virginia and the guidelines promulgated by the VMRC pursuant to Virginia Code §28.2-1301; and (3) the proposed activity does not violate the purposes and intent of Chapter 13, Subtitle III, of Title 28.2 of the Code of Virginia.

Associate Member Bowden asked for questions of staff. There were none. He asked if the applicant or a representative were present.

Brian Fletcher, agent for the applicant, was sworn in and his comments are a part of the verbatim record.

Associate Member Schick asked why the applicant did not want to use the rip rap along the entire shoreline. Mr. Fletcher explained that was because there was already an existing bulkhead and the elevation was higher in the location of the bulkhead which would require more excavation to smooth the area out.

Associate Member Bowden asked if anyone in support or opposition for the project wished to comment. There were none. He announced that the matter was before the Commission.

Associate Member Schick moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 7-0. Commissioner Bowman was absent from the hearing.

Wetlands Permit Fee.....	\$10.00
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- 8. **TIGER ENTERPRISES, INC. #10-1928**, requests authorization to remove an existing boathouse and to construct a new 18-foot by 34-foot open-sided boathouse with two (2) 4-foot wide finger piers adjacent their existing private, noncommercial, open-pile pier situated along the North River at 8718 Elmington Lane in Gloucester County. The project is protested by an adjoining property owner.

Item pulled from the agenda - protests had been resolved, to be handled administratively.

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9. **GUILFORD HEIGHTS ASSOCIATION, #10-0816.** Request by Bill Baker, agent for the project, for reconsideration of a previously assessed, accepted and paid civil charge of \$1,800.00 in lieu of the need for further enforcement action, related to after-the-fact approval of a tiered concrete block structure placed on a jurisdictional beach area adjacent to the James River on property owned by the Guilford Heights Association in Surry County.

Tony Watkinson, Chief, Habitat Management, explained that this was a unique request for a situation where the applicant has asked that the civil charged that was assessed be reconsidered when it has already been paid.

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

Mr. Stagg explained that the Guilford Heights project was considered by the Commission during the August 24, 2010, meeting and involved the consideration of an after-the-fact request to retain a previously unauthorized 186 linear foot concrete block retaining wall at their property along the James River in Surry County. It was determined that the unauthorized structure was jurisdictional under the Coastal Primary Sand Dunes and Beaches law and a full public interest review was conducted for the request prior to the hearing at the August 24, 2010, meeting.

Mr. Stagg said that while staff had some concerns about the use of this type of material as a bulkhead, the structure did appear to be functioning at this current location. After evaluating the merits of the project, testimony of Mr. Baker, and staff's comments, and after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia, the Commission voted to approve the project with special conditions. The Commission approval to grant after-the-fact authorization of the project was also predicated on the Association's and contractor's agreement to each pay a civil charge of \$1,800.00 in lieu of the need for further enforcement action. The Association and Mr. Baker, as the Association's designated agent were advised of the Commission's action in a follow-up letter of notification. In that letter Mr. Baker was informed that should the Association not agree to the civil charge that the matter would need to be reconsidered by the Commission for direction concerning the need for further legal action. In response to the letter of notification, a check in the amount of \$1,800.00 was submitted by Mr. Baker on September 7, 2010. This was considered to be the Association's agreement to pay the civil charge and to avoid the need for any further legal action in this matter. As such, the after-the-fact permit was issued on September 28, 2010.

Mr. Stagg stated that the contractor, Mr. Mike Reeson, who was not present at the August 24, 2010, hearing, subsequently contacted VMRC and indicated he did not agree to pay the civil charge. His involvement in the matter was considered by the Commission at their October 26, 2010 meeting. After considering the testimony of Mr. Reeson and the arguments presented by his attorney related to their understanding that the Association

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was to obtain the necessary permits for the project, the Commission voted to reduce the civil charge for the contractor (Mr. Reeson) to \$600.00. Mr. Reeson agreed to the reduced amount and submitted his payment on November 8, 2010.

Mr. Stagg noted that copies of the August 24, 2010, and October 26, 2010, staff evaluations concerning these hearings are attached for reference.

Mr. Stagg said that staff believed both the applicant and the contractor were provided ample opportunity to address all relevant issues related to this project during the August and October 2010, hearings. While staff acknowledged at both hearings that there was some initial confusion about permit requirements, Mr. Baker was clearly informed by VMRC staff in December 2009, that the project appeared to need additional state authorization and the project was subsequently completed without that authorization. Additionally, after a full hearing before the Commission, the Association, through Mr. Baker, paid the entire \$1,800.00 soon after the meeting. The contractor, also after a full hearing before the Commission, agreed to a reduced civil charge of \$600.00 and has paid that agreed upon charge. Following payment of the agreed upon civil charges, the Commission fulfilled its portion of the agreement by issuing the after-the-fact permit in lieu of further enforcement action.

Mr. Stagg said that in accordance with §28.2-1420 of the Code of Virginia, civil charges were recommended, assessed, agreed upon, and paid in lieu of any further enforcement action for violations associated with the Coastal Primary Sand Dunes and Beaches law. Staff did not believe the Code of Virginia provided for the appeal of an agreed upon civil charge. Since the contractor was not present at the initial hearing and did not agree with the initial civil charge amount, staff believed it was appropriate to allow him an opportunity to appear before the Commission concerning those charges. Mr. Baker was afforded ample opportunity to address the issues related to the Association's violation and after-the-fact permit request. Accordingly, staff maintained that no adjustment to the assessed and paid civil charge was appropriate. Additionally, staff believed entertaining such an action would break the civil charge agreement and be equivalent to the appeal of a civil charge which did not appear to be provided for under the Code of Virginia. Therefore, staff recommended that the civil charge agreed upon by Mr. Baker at the August 24, 2010, hearing and subsequently paid not be altered.

Associate Member Bowden asked VMRC Counsel if the Commission had any authority to take any further action to give the individual any relief since the permit had already been issued and in lieu of any further enforcement action he had agreed to it. David Grandis said that he thought it was within the Commission's discretion. He said here it was a peculiar situation where the civil charge had been paid and now the applicant had changed his mind. He said it was at the discretion of the Commission if they should decide to refund the money if it were not paid with consent or to reconsider and not change. He said the civil charge was in lieu of further enforcement action where a penalty would be assessed by the Circuit Court.

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Associate Member Plumlee said essentially this was an agreement and the Commission could agree to modify what was to be paid. He said this is not an appeal, just a request. Mr. Grandis stated that was right.

Associate Member Schick said that there had been additional conditions put in place and he asked if these had been done. Mr. Stagg stated he understood that they had been done but that he had not made any site visit to confirm it and Mr. Baker could comment on whether it was completed.

Associate Member Tankard asked why he thought he was due a refund, because the letter did not explain.

Bill Baker, applicant representative was sworn in and his comments are a part of the verbatim record. Mr. Baker stated he did not think it was justified to start with, but he was concerned with getting into further enforcement action. He said he and the contractor were assessed a civil charge of \$1,800, but the contractor's was reduced to \$600.00. He said he was concerned with why theirs must be the \$1,800.00. He said he called the DCR Chief Deputy who came to the site and said the project did not do any harm to the James River, but actually helped it. He said after that staff called him to come to the hearing.

Associate Member Schick said that initially when this was talked about there was some question as to the contractor's part in this and also he was not present. He said the DCR letter was sent to Mr. Baker, not the contractor. He said the activity was not destructive but it was the fact that the letter was ignored when it said that he needed other state permits, which was a major infraction of authority. He stated the Commission needed to stand by what was decided and there was no evidence provided to justify a change in the decision.

Mr. Baker said that Surry County told him he did not have to file a JPA and then he received a letter from VMRC staff and he met with staff who told him that no JPA had been submitted. He said at that time he gave staff the JPA. He said it needed modifying, but staff said they would take care of that.

Associate Member Schick asked him who told him he did not need to submit the JPA. Mr. Baker said Surry County. Associate Member Schick asked him if he had anything in writing to which Mr. Baker responded no.

Associate Member Robins asked staff if there was any interagency communication. Mr. Watkinson said nothing other than what is in the record which was a part of the background information. He said he received a request from Mr. Bowman that the request from Mr. Baker was to be placed on the agenda. He said he asked Mr. Baker to put his request in writing and the matter was put on the agenda.

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Associate Member Robins said that looking at the history the decision to charge the \$1,800.00 was related simply to the matrix for assessing civil charges and it was decided that the degree of non-compliance was major and the environmental impact was minimal. He said the contractor was heard and his was lowered to \$600.00 because the Commission had agreed to assign a different level of responsibility for the contractor's part. He said the values assessed were for the level of responsibility by each party.

Associate Member Schick stated that he agreed that it was assigning a different level of responsibility. He said now this was a simple fact of daddy saying no and deciding to go to mommy. He said the County does not speak for the State. He said the contractor did not have the letter and the difference was appropriate. **He said he would like to make a motion that the Commission not renegotiate.**

Associate Member Plumlee said that he would like to add that the Commission had heard from the contractor along with his attorney who provided a vigorous argument which the Commission accepted. He said it was accepted that to some extent there was some responsibility and these assessments were minimal by the matrix. He said it would be bad practice to have someone keep coming back to see if a change would be done and this was something the Commission should not do.

Associate Member Fox asked if they needed to make a motion or could the Commission just not take any action. David Grandis, Assistant Attorney General and VMRC Counsel explained that they could make a motion to take no action, just to get it on the record. **Associate Member Fox seconded the motion. The motion carried, 7-0. Commissioner Bowman was absent from the hearing.**

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- 15. REQUEST FOR A MARCH PUBLIC HEARING:** Angling Club-proposed modifications to possession and size limit for speckled trout from December 1 through March 31, as described in "Pertaining to Speckled Trout and Red Drum," Regulation 4 VAC 20-280-10 et seq.

Lewis Gillingham, Head, Saltwater Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham said the Commission received an initial request in a letter from the Tidewater Angling Club (TAC) in September 2009. The TAC was looking for some additional protection of trophy speckled trout during the winter period in the Elizabeth River. The proposal has been heard by the FMAC now three times and has evolved from the original request. Although the FMAC did not totally agree with the proposal, it did agree to go forward with a public hearing. Staff was requesting advertisement of a reduction of the rod and reel and hook and line possession limit from 10 speckled trout to 5 speckled trout, with only one speckled trout of 24 inches or greater allowed from

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December 1, through March 31. For the remainder of the year the possession limit would remain 10 speckled trout.

Mr. Gillingham said the TAC had solicited support from other angling clubs and had received six letters supporting this position from other fishing clubs and one letter of non-support from a fishing club. The agency had also received several e-mails supporting the TAC proposal. All are attached following this evaluation in your information packet.

Mr. Gillingham said that if the advertisement of a public hearing were approved this month, it would allow the FMAC to review and make final comments on this issue before the March public hearing.

Associate Member Robins had reviewed the letters from other angling clubs and asked if we knew how much gill netting was occurring in the Elizabeth River's hot ditch area. Mr. Gillingham indicated that staff had reviewed the commercial landings of speckled trout for the Elizabeth Rive and the landings were from 3 people or fewer and could not be revealed due to confidentiality. Staff had received complaints about gill netting in this area, but it is uncertain on the level of activity and whether it was commercial, recreational, or an illegal net. There is some commercial gill netting in the area, but it is primarily for bait for catching other species of fish, primarily blue catfish during this time. The original TAC proposal only addressed the concern of an increase in gillnetting, but this proposal is limited to rod and reel and hook and line caught speckled trout.

Associate Member Plumlee asked if there had been any studies done as to what the modification would do or anything along those lines. Mr. Gillingham said the recreational survey that estimates such catch is not conducted during January or February. However, there is information from the Virginia Saltwater Fishing Tournament that he might be able to provide some insight. In the last five or six years the lion's share of trophy fish that are 24 inches or greater or have weighed five pounds or more have been caught in the Elizabeth River compared to the rest of the State the rest of the year. It has become quite a fishery and well known destination point to fish.

Associate Member Robins said if that is true, then it would prudent to go forward and hear it at a public hearing.

Associate Member Tankard asked what attracted the fish to the area, was it the warm water temperatures. Mr. Gillingham said the area does provide a safe haven to them with the deep water and the warm water temperatures, as Dominion Power discharges worm water that has been used to cool their machinery into a man made canal known as the "Hot Ditch," which then flows into the Elizabeth River. There are a couple of other areas where the water is warmed by a discharge, such as the Surry Power Plant (James River) and the Refinery on the York River where you can find speckled trout in the winter time. Associate Member Tankard asked if this proposal was for state-wide. Mr. Gillingham

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stated yes it was the intent of the club for this to be state-wide and from December 1 through March 31.

Associate Member Bowden said when FMAC reviewed the initial request there was a big crowd because there was talk of impacting other gear types as well as gill netting. In response to Mr. Plumlee’s question, there was no way to do a study as the recreational catch numbers are not easy to get as the commercial ones. He said when FMAC heard it the last time those in opposition were not present, because it was thought that they were not aware of the meeting. It was decided at FMAC by the members that there was enough to move forward with it now and to advertise and hold a public hearing that would allow others to hear about it and get a chance to comment.

Associate Member Bowden said the matter was before the Commission.

Associate Member Tankard moved to approve the advertisement for a public hearing to consider the possession limit and size limit for speckled trout. Associate Member Laine seconded the motion. The motion carried, 7-0. Commissioner Bowman was absent from the hearing.

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The Commission broke for lunch at approximately 11:25 a. m. and reconvened at approximately 12:15 p.m. Commissioner Bowman returned to the meeting following the lunch break.

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10. PUBLIC COMMENTS:

Ellis W. James, Norfolk resident, spoke on potential impacts to Lynnhaven Inlet oyster beds from any bilge discharges from coal freighters in the Lower Chesapeake Bay.

Ballast Water Discharge Reporting

Tony Watkinson, Chief, Habitat Management, was asked by Commissioner Bowman to make a few comments about the efforts in regards to the Ballast Water Discharge Reporting. Mr. Watkinson explained that there was a regulation established a few years ago for this purpose. He said these reports are mainly required for those overseas vessels utilizing Virginia ports. He said the Commission only received the reports and the just forwards them to the Federal Ballast Water Reporting office in Maryland. He added that there were some federal management changes being made for more effective management of ballast water to possibly include the treatment of the water. His comments are a part of the verbatim record.

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Randy Birch and Chris Cuono, Chincoteague watermen, requested that the Commission consider separate gear quotas for horseshoe crab harvesting.

Mr. Robins explained that these watermen had come to the meeting because originally there was an item for the horseshoe crab on this month's agenda. He said this was for requesting a public hearing to modify the possession limit. He said there was concern with the fact that there was one quota for all the horseshoe crab fisheries, which is usually caught up by the dredge fishery in a short period of time resulting in the closure of the other fisheries.

Mr. Birch said there were some fisheries that do not work as fast or catch as much, such as those who harvest by hand. He explained that they have to work with the tides and might catch 500 crabs per day and the dredge fishery catches maybe 5,000 crabs per day. He noted that the dredgers do have some crabs that are thrown back which usually just die. He stated that they did not want to take away from anyone, but to be given a fair share of the quota.

Mr. Cuono stated he felt there should be separate quotas and noted that the Virginia quota was only 152,000 horseshoe crabs.

Commissioner Bowman said he felt the request was reasonable and asked staff to comment.

Jack Travelstead, Chief, Fisheries Management explained that once staff heard of this concern through the grapevine, they pulled the item from the February agenda, so they could take care of all the issues together at one time. He said that staff was scheduling a meeting with the industry in March to get all of their input before bringing this matter to the Commission in March to request a public hearing in April. He stated it might even require a second meeting with industry. He suggested that the watermen look for a letter of notification. He noted that the quota this year could be lower because of past overages.

Associate Member Tankard said it was mentioned by the watermen that there were discards and mortality and he asked if this would be included in the discussion. Commissioner Bowman stated it would be looked at for the overall fisheries.

Associate Member Robins stated that the dredge fishery was an important part of the horseshoe crab industry and should be included in the industry meeting.

No action was taken.

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- 11. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-530, "Pertaining to American Shad", to provide for a limited by-catch fishery in 2011.

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

Mr. O'Reilly said that this was the sixth year that the ASMFC had allowed for the bycatch fishery for shad. He noted that this would be a change in the year to 2011 in the regulation.

Mr. O'Reilly explained that Mr. Grandis had a slight problem with some of the wording which was on page three of the regulation where it said 'or any recreational gear' and staff made that change. He added this was prohibited.

Mr. O'Reilly said that a number of watermen had signed up originally but in the last two years there had only been seven participants. He said that the harvest limit was 1,000 pounds or 300 American Shad.

Mr. O'Reilly explained that the future of the six year bycatch allowance was uncertain at this time as the ASMFC had adopted Amendment three in its interstate fishery management plan at its February 2010 meeting and this amendment closed state waters by January 1, 2013, unless sustainability can be shown.

Mr. O'Reilly said that staff was recommending the adoption of the amendments that would authorize a 2011 limited allowance of American Shad, as by-catch.

Commissioner Bowman asked for questions.

Associate Member Fox asked if the bycatch is stopped would it mean other fisheries would have to be stopped as well because any shad that was caught would have to be discarded and they would most likely be dead. Mr. O'Reilly said it might affect other fisheries, like the striped bass, etc.

Associate Member Robins asked if the ASMFC was looking at other issues, such as setting a target for mortality reduction. Mr. O'Reilly said he had asked about that just last week and it was not certain as there was confusion about other fisheries and the bycatch to be allowed. He stated it was just not clear cut.

Commissioner Bowman opened the public hearing. There were no public comments so the public hearing was closed. He said the matter was before the Commission for action.

Associate Member Fox moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

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12. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-620, "Pertaining to Summer Flounder", to establish the 2011 recreational fishery management measures.

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

Mr. O'Reilly explained that additional comments had been received from the Charter Boat Association in which they gave their preference for Option B; 17 ½ inches, 4-fish possession limit, and no closed season.

Mr. O'Reilly stated that last month staff presented information, relative to the difference between the 2010 landings (273,110 fish) and 2011 quota (target) of 570,000 summer flounder, in terms of five options that could potentially achieve that target, as shown below:

- A) 18 inches minimum size limit, 4 fish, no closed season
- B) 17 ½ inches minimum size limit, 4 fish, no closed season
- C) 17 ½ inches minimum size limit, 3 fish, no closed season
- D) 17 inches minimum size limit, 4 fish, no closed season
- E) 17 inches minimum size limit, 3 fish, no closed season

Mr. O'Reilly noted that all options were approved by the ASMFC technical committee. However, the ASMFC technical committee did indicate that the most risk was associated with Option D and Option E carried the second-most risk.

Mr. O'Reilly said that also last month, staff informed the Commission of the limited analytical tools available to project 2011 landings. All projections were based on a proportional increase method. Whether fishery-independent data (such as the VIMS ChesMMAAP survey) or fishery-dependent data (such as the Virginia Volunteer Angler Survey) were used, staff calculated a percentage increase in the number of lengths that were greater than 17 inches, 17 ½ inches or 18 inches, in comparison to the number of lengths of summer flounder that were 18 ½ inches or greater (the 2010 minimum size limit). For example, 61 summer flounder lengths $\geq 18 \frac{1}{2}$ inches were recorded by the Virginia Volunteer Angler Survey (VAS) in 2010, and 94 recorded lengths were $\geq 17 \frac{1}{2}$ inches. Proportionally, there were 1.541 times as many lengths $\geq 17 \frac{1}{2}$ inches than for lengths $\geq 18 \frac{1}{2}$ inches ($94/61 = 1.541$ or 54.1% more). The 2010 landings were 273,110 fish, and 1.541 (rounded) $\times 273,100$ fish = a projected 2011 landings of 420,858 fish.

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Mr. O'Reilly said that staff had explained to the Commission that the methods such as these, used to project landings increases, were less representative of the fishery than methods that were used to reduce a future year's landings. The data sets used to project 2011 landings contain lengths collected a few times a year (fishery-independent data) or lengths that do not adequately represent a balanced sample from diverse geographic areas (volunteer-type data) or are reported with measurement bias from the fishermen (volunteer data). However, other states face similar or worse data deficiencies, and these data are the best available because the NMFS intercept collections consists of very few summer flounder less than the annual legal size limit (18 ½ inches in 2010).

Mr. O'Reilly explained that at the January meeting, staff had explained that the Maryland VAS projected an overage for the 17-inch options and the Virginia VAS projected nearly a doubling of the 2010 landings, in 2011, for Option D. Staff briefed the Commission on the early January Ad Hoc meeting and follow-up e-mail correspondence and reported that this committee generally favored the 17 ½-inch options, with a couple of members preferring Option A. Although the committee did not endorse a 17-inch minimum size limit, a minority of members (N=10) stated that the 17-inch options should be reviewed by the ASMFC technical committee, and staff indicated that matched the decision of the Deputy Commissioner and Commissioner.

Mr. O'Reilly said that the Commission had voted to exclude Options D and E from further consideration, following the staff briefing and several questions from the Commission.

Mr. O'Reilly explained that Table 1 provided management measures, landings and targets (quotas) that have been adopted by the Commission, since 1999. The base year is 1998, and that year's landings were used to determine states' allocated targets from the coast-wide recreational harvest limit (in pounds), which is 40% of the total allowable coast-wide (commercial and recreational) landings in any year. Virginia has the third highest percentage of the coast-wide recreational harvest limit, at 16.7% of the total, based on 1998 landings, and the table below shows that Virginia has the third lowest allowable increase in landings, in 2011, among the nine states that are in the management unit.

Summer Flounder projected landings estimates (number of fish) by state in 2010
(*based on waves 1-5 data source:
<http://www.st.nmfs.noaa.gov/st1/recreational/index.html>).
The percent alteration relative to the 2010 projected landings estimates necessary to
achieve the 2011 recreational harvest limit.

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State	2010 Target	2010 Harvest (wave 1-5)	2010 Projected Harvest	2011 Target	2011 Liberalization
MA	140,000	45,505	45,505	187,000	310.9%
RI	144,000	86,652	86,652	193,000	122.7%
CT	95,000	40,117	40,117	128,000	219.1%
NY	449,000	251,356	251,356	602,000	139.5%
NJ	997,000	593,677	593,677	1,335,000	124.9%
DE	80,000	71,600	71,600	107,000	49.4%
MD	75,000	38,221	38,221	101,000	164.3%
VA	426,000	273,110	273,110	570,000	108.7%
NC	143,000	86,235	94,570	191,000	102.0%
Coast	2,549,000	1,486,473	1,494,808	3,414,000	128.4%

Mr. O'Reilly said that Table 1 shows that, in 2010, the Virginia recreational summer flounder fishery was managed by an 18 ½-inch minimum size limit and 4-fish possession limit, on a statewide basis, with no closed season. Table 1 also shows that there have been four overages of annual quotas in the past 12 fishing seasons. The 2010 unadjusted target for Virginia landings of summer flounder was 426,000 fish, and Virginia's estimated 2010 landings were below the target by 35.9% (Table 1). Virginia total landings, from 1999 through 2010, were 5.4% less than the allocated total quota for those same years.

Mr. O'Reilly reviewed Table 2 which summarizes the important fishing months, in terms of landings. Waves 3 and 4 (May-June and July-August) usually represent the majority of the landings. In past years, when the minimum size limit was 15 ½ inches or 16 ½ inches (2002 and 2005-06 respectively), the seaside fishery has contributed a major portion of the May-June landings. Occasionally fall landings from the Chesapeake Area have been above average, as in 2002 and 2004. On one occasion high landings occurred in April (of Wave 2 in 2006), as the Virginia minimum size limit was much lower than the one in Delaware or Maryland, and there was an extensive participation, at that time, by out-of-state boats.

Mr. O'Reilly said that in the 2011 target landings of 570,000 summer flounder, Virginia can implement a plan for 2011 that would potentially allow for a 108.7% increase from 2010 landings (see Table 1). The ASMFC management board has approved the three remaining options, shown below:

- A) 18 inches minimum size limit, 4-fish, no closed season
- B) 17 ½ inches minimum size limit, 4-fish, no closed season
- C) 17 ½ inches minimum size limit, 3-fish, no closed season

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Mr. O'Reilly stated that the VMRC projected 2011 landings on the basis of four different data sources (Virginia VAS, ChesMMAP, NEAMAP and the MD VAS), as shown in Table 3. An additional eight treatments of the ChesMMAP and NEAMAP data sources, where treatments included multi-year length data from one of these surveys or a combination of these survey data, were also included. In all there are 12 projections, and all projections for an 18-inch minimum size limit fall short of the 2011 target by at least 30%. The Virginia VAS has also been used in previous years to project landings. It would be preferable to have a larger sample size, but for the 18-inch projected landings increase, this data source projects landings of 322,359 fish in 2011, which is the third highest projection from all data sources.

Mr. O'Reilly reiterated that this evaluation suggests the unsuitability of the MD VAS data for projecting 2011 Virginia landings, and that data source consistently projects the highest Virginia landings at any minimum size limit proposed for 2011. This data set consisted mostly of coastal bay lengths in 2010, and that length distribution may not adequately characterize the length distribution of the Virginia fishery, which consists of a strong Chesapeake Bay component (usually in Wave 4 and part of Wave 3), as well as a seaside or coastal bays component (primarily Wave 3 and a small portion of Wave 2). It appears from past use of the MD VAS data that realized landings have been less than a-priori projected landings.

Mr. O'Reilly said that projected landings for a 17 ½-inch size limit (and 4 fish) fall below the 2011 Virginia target. Except for the MD VAS estimate of 544,854 fish, the other 11 data sources or treatments project landings that range from 338,136 fish to 436,976 fish, and this higher estimate is 23% lower than the 2011 target. Implementation of a 3-fish limit lowers these projected landings by nearly 4%, based on angler fishing success data, for private boat only, provided by the National Marine Fisheries Service (Table 5).

Mr. O'Reilly explained that VMRC has never managed this fishery by an 18-inch minimum size limit, and that is the reason staff reviewed NMFS-collected data from the 2006 fishery, as that was the last time the minimum size limit was lower than 18 ½ inches. The VMRC has never lowered the minimum size limit by more than ½ inch, but the allowable increase in landings has never been as high as it is in 2011 (a 108.7% increase in landings is the ceiling).

Mr. O'Reilly stated that there has been an expectation by all states based on recent assessment results that a very large pulse of 2-year olds (2009 year class) and a much larger than average abundance of 3-year old summer flounder will be available for harvest by the recreational fisheries. The recent stock assessment results (Terceiro 2010) indicate that recruitment was exceptional in 2009 on a coast-wide basis. Previously, the 2009 assessment (Terceiro 2009) of stock data through 2008 indicated that recruitment in 2008 was at a very high abundance level, but the 2010 assessment showed that the 2008 year class was not as abundant by 2009, as shown by the ASPIC model. However, the coast-wide model does indicate this year class in 2009 was larger than all other age-1

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groupings of flounder, except for the 2004 year class (as age 1 in 2005), and the VIMS Trawl Survey data show the 2008 year class as the largest, since 1994 (Table 7).

Mr. O'Reilly said that it seems the VIMS Trawl Survey (young-of-year data) and the ChesMMAP index of relative abundance, for several year classes, (Table 8) may be showing a different outlook on the strength of the 2009 year class, while those surveys support the presence of a large group of 3-year old fish available for the 2011 fisheries. The mean length-at-age data from Virginia ChesMMAP trawl surveys performed over the past eight years, shown in Table 9, indicate that we can expect summer flounder between the ages of two and four to compromise a large proportion of the 2011 recreational harvest, with an average spring size of 17 ½ inches and an average fall size of 18 inches. This means there should be a good availability of keeper-size summer flounder, in 2011, regardless of whether Option A, B or C is adopted by the Commission.

Mr. O'Reilly explained that Table 10 provides information on effort and landings in the Virginia recreational summer flounder fishery since 2001. The year 2001 was used as starting point because that was the first year Virginia used state-specific management measures, rather than coast-wide measures, as in 1999 and 2000. The effort data include directed summer flounder trips (harvesters declared this as a targeted species or harvested this species) and generalized trips (all species harvested during trips). Table 10 shows a large decline in directed trips in 2010 (through Wave 5, but zeros have been recorded by NMFS for Wave 6, in 2 of the past 3 years). The VMRC summer flounder advisory committee and the industry, at large, verify this downturn in effort that was mostly driven by economic factors. The table also shows generalized trips have declined by about 1 million trips, from 2007 to 2010. Table 10 A indicates a highly significant relationship between directed summer flounder trips and landings on an annual basis ($R^2 = 0.83$; $p \ll 0.01$). In comparison, there is a weaker, but significant relationship between generalized trips and summer flounder landings ($R^2 = 0.54$; $p < 0.05$). As with summer flounder directed trips, there has been a recent downturn in generalized trips, but it started in 2008.

Mr. O'Reilly said that the recent (2010) lower catch (harvest and released alive summer flounder) estimates suggest that lower effort (trips by private boats) is responsible, rather than availability, as shown below:

Year	Number of directed summer flounder trips	Number of general (all species) trips	Summer flounder total catch
2001	1,320,884	4,128,242	5,352,554
2002	991,670	3,253,846	3,438,507
2003	728,418	3,113,184	3,036,650
2004	938,032	3,594,308	4,122,535
2005	843,612	3,841,219	2,924,224
2006	1,036,977	3,899,642	3,136,066
2007	918,543	3,723,442	3,866,803

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2008	777,274	3,425,308	2,986,870
2009	856,074	2,984,056	3,431,113
2010	633,739	2,609,804	2,709,482

Mr. O'Reilly explained these effort declines may be mostly associated with the economic downturn. In 2011 expectations are that fuel prices will be high and that will affect effort, as well as the continued recession. Consideration should be given to effort trends, if possible, when reviewing any proposal, especially when liberalization options are based on minimum size limits or closed seasons similar to or identical to past years, when effort was not subject to economic constraints similar to recent years.

Mr. O'Reilly said that staff has received less public comment, to date, than in other years, and that is surprising, since this is the first time in several years that regulations can be liberalized to a large extent. As reported last month, the standing Ad Hoc Committee members expressed individual preferences for each of the three options, but the majority favored option B. The FMAC voted unanimous support for Option B. About 55% of individual preferences were for Option B, with 32% in favor of Option A. Of the 4 fishing clubs that sent a preferred option, two clubs prefer Option A and two clubs prefer Option B.

Option	Minimum size limit and possession limit	Individual preferences (David Agee's survey and emails received by staff)	Recreational fishing clubs supporting option
A	18", 4 fish	30	<ul style="list-style-type: none"> • Eastern Shore of Virginia Angler's Club • Bull Island Angler's Club
B	17.5", 4 fish	52	<ul style="list-style-type: none"> • Peninsula Saltwater Sport Fishing Association • Portsmouth Angler's Club
C	17.5", 3 fish	12	-

Mr. O'Reilly stated that in consideration of the data sets, effort trends and the extent of liberalization allowed by the ASMFC, staff supports Option B. That option would manage the 2011 recreational summer flounder fishery by a 17 ½-inch minimum size limit, a 4-summer flounder possession limit and no closed season. Projected landings for a 17 ½-inch size limit (and 4 fish) fall below the 2011 Virginia target. Except for the MD VAS estimate of 544,854 fish (still below the quota of 570,000 fish), the other 11 data

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sources or treatments project landings that range from 338,136 fish to 436,976 fish, and this higher estimate is 23% lower than the 2011 target. Staff is wary of lowering the possession limit, as there is no recent data at a 17 ½-inch minimum size limit to suggest what conservation value this offers. Although it would be beneficial to have data that were more representative of the three waves of the fishery and the various fishing areas, the data sets that were used indicate that a 17 ½-inch minimum size limit, 4-fish possession limit and no closed season will not exceed the 2011 quota (target).

Mr. O'Reilly said that staff recommends adoption of the amendments to draft 4VAC20-620-10 et seq., "Pertaining to Summer Flounder", that establish the 2011 recreational summer flounder management measures, as a 17 ½-inch minimum size limit, with a 4-fish possession limit and no closed season.

Commissioner Bowman asked for questions of staff.

Associate Member Plumlee inquired about there being no data for the 3-fish allowance previously as there had never been a 3-fish allowance. Mr. O'Reilly confirmed that there had never been a 3-fish allowance. He said in 2010 there was an 18 ½-inch size limit and 4 fish limit, which did not help with what was before the Commission today.

Associate Member Tankard had a question about latent effort and if there was a gauge for what latent effort could be this year. Mr. O'Reilly said latent effort is there, but the extent of it will be determined by the combination of high fuel prices, the expected larger pulse of fish and the high strength of word of mouth in this fishery. The table showed a 200,000 drop in trips in one year and if one-half of that is brought back that will be a fair expectation. He said we can expect that because of the lower size limit, and the fact that economics kept some from fishing last year.

Associate Member Laine asked about the relative lengths of 2008 and 2009 recruits. Mr. O'Reilly explained in 2009, the average length was 15 inches in the spring and 16.3 inches in the fall. With the 17 ½ inch size limit there will be some of that year class available in the fall. He said in the 2008 year class, which will now be age three (from the ChesMMA Virginia data), showed 17 ½ inches average length in the spring and 18 inches in the fall.

Commissioner Bowman said that there was a lot of talk last year about being conservative and complaints were made. He said it was a good recommendation by staff because if wave 3 is big it would take over the target. He said you can not ignore there being a 108% liberalization allowance.

Associate Member Tankard asked why the Eastern Shore anglers want an 18-inch size limit. Mr. O'Reilly said the on the Eastern Shore they tend to be more conservative and they remember the 2006 overage. He said there are a couple of committee members from

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the Eastern Shore that have been there for five or six years and they feel you need to look at the long-term and consider an 18 inch limit.

Commissioner Bowman opened the public hearing.

Jeff Deem, Eastern Shore, was present and his comments are a part of the verbatim record. Mr. Deem explained that he had served on the both the FMAC and the Ad Hoc Committee. He said those on the Eastern Shore had previously wanted the 17 ½-inch size limit and it was their preference now. He said the fishery needed the break because of the underage last year. He said that he felt the 17-inch size limit could be justified, but the 17 ½-inch with 4 fish was playing it safe and conservative. He said as to the latent effort mentioned, he did not feel that would be a problem for this year because of the lag in the word getting around to others, but felt it would be a problem for the next year.

After some further discussion, Commissioner Bowman asked for a motion.

Associate Member Laine said that he commended the staff and Mr. Deem and moved to accept the staff recommendation and adopt proposal B. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

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- 13. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-950, "Pertaining to Black Sea Bass", to set the 2011 directed commercial fishery quota at 302,216 pounds and to limit black sea bass by-catch landings per trip and repeal the transfer of by-catch quota to the directed fishery.

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record. Ms. Nelson explained that this had been advertised for a public hearing for today.

Ms. Nelson said that the commercial black sea bass fishery in Virginia is a limited entry fishery. The directed fishery received a majority of the quota and is managed by the ITQ system. It was noted that the bycatch fishery was usually given a 40,000 pound limit each year, which will be 11.7% of the 2011 quota. The permittees are allowed to land 200 pounds per day or more than 200 pounds per day if it is not more than 10% by weight of the combined Atlantic mackerel, squid, scup, and flounder on board the vessel. Beginning in 2009, the landings are reviewed on May 1 of each year, and the bycatch quota would become the lesser of 10,000 pounds or the remaining amount of the original quota. In 2010, the bycatch fishery exceeded the 40,000-pound quota for the first time since the fishery was created in 2004 and was closed on March 28, 2010.

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Ms. Nelson stated that the staff met with the black sea bass industry members on January 11, 2011 to discuss allocation options in response to the bycatch fishery overage in 2010. The industry members were also concerned that any bycatch landings over 1,000 pounds were likely the result of vessels targeting black sea bass, then catch enough scup and flounder to comply with the 10% bycatch rule. The industry members in attendance agreed that the May 1 transfer of remaining bycatch quota, over 10,000 pounds to the directed fishery should be eliminated. Most felt that while the bycatch fishery would likely reach the quota again in spring 2011, any remaining quota should be kept with the bycatch fishery for the remainder of the year. There were two changes suggested:

- 1) Limit bycatch landings to 1,000 pounds, even if it is less than 10% of the other species on board (Atlantic mackerel, scup, squid, or flounder). If the aforementioned other species are not on board, then the bycatch limit would remain at 200 pounds.
- 2) Repeal language that allows transfer of any remaining bycatch quota over 10,000 pounds to the directed fishery after May 1.

Ms. Nelson explained that on January 26, 2011, the Commission adopted an emergency regulation to set the 2011 quotas for the black sea bass fishery. This will become a permanent part of the regulation adopted today.

Ms. Nelson said one public comment was received from Mr. Bill Lipcsey who was against allowing any extra bycatch of black sea bass.

Ms. Nelson stated that staff recommendation was to adopt the draft regulation 4VAC 20-950-10, et seq. to set the 2011 black sea bass fishery quota, cape black sea bass bycatch landings at 1,000 pounds per trip, and to repeal language that allows transfer of any remaining bycatch quota over 10,000 pounds to the directed fishery.

Commissioner Bowman opened the public hearing. There were no public comments so the public hearing was closed. He said the matter was before the Commission for action.

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

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- 14. APPROVAL:** of the 2011 Oyster Replenishment Plan and associated procurement procedures.

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

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Dr. Wesson explained that the Commission needed to approve the 2011 Oyster Replenishment Program and the associated procurement procedures.

Commissioner Bowman asked if two motions were needed. Dr. Wesson stated yes.

Dr. Wesson reviewed the funding and restoration plans for the Commission, which is described below:

Associate Member Fox moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained from voting because of conflict of interest. The Chair voted yes.

Associate Member Fox moved to approve the procurement plan. Associate Member Tankard seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained from voting. The Chair voted yes.

* * *

2011 Oyster Replenishment Program with associated procurement procedures included at the end.

<u>Funding Sources</u>	<u>Amount</u>
<u>Non-Federal</u>	
General Funds (GF) State	\$495,000
<u>Federal</u>	
NOAA – Piankatank	\$610,720
NOAA – Rappahannock	\$ 66,000
Federal ARRA Stimulus – Seaside Eastern Shore	\$ 65,000
NOAA – Blue Crab Disaster Oyster Aquaculture - Spat on Shell	\$500,000

Commission Meeting**February 22, 2011****Bay and Tributaries:****Seed Transfer:**

Wild seed is available in the James and the Piankatank Rivers. We had excellent spatsets in both of these rivers in 2010, but almost no spatset in the Great Wicomico River. The 'Benefit versus Cost' ratio for seed oyster planting for public grounds in our tests in 2008 and 2009 were very low (Table 1). The Blue Ribbon Oyster Panel recommended that seed planting return at least \$1.00 for each \$1.00 expended. The only areas that had a relatively good benefit versus cost were in Nomini Creek. Staff recommends moving 10,000 bushels of James River seed to the Nomini. Watermen will be hired to harvest the seed and the seed will be transferred by truck and replanted in the Nomini. Seed counts in the James are very high (>1,500 oysters/bushel, Dredge Survey, Table 2) and salinity in the fall was 12 ppt in the Nomini, which will limit any risk of loss due to disease. Cow nosed rays still present the major source of risk for these seed.

10,000 bushels of seed in the James River to be moved to Nomini Creek @\$8.00/bushel	\$80,000 GF
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Piankatank River

In the Piankatank River, we have a very successful program to allow private industry a modest harvest of seed oysters each year (Figures 1 & 2). In this program, private leaseholders sign up for the amount of seed that they would like to harvest from the public seed grounds, and they must replace a bushel of shells for each bushel of seed taken. Counts per bushel have been relatively low, 400 – 500 oysters/bushel for the past several years, but this year the counts are much higher at 1,000 – 1,200 oysters/bushel and staff recommends that the participants replace each bushel of seed with two bushels of shell. Staff further recommends that 20,000 bushels of seed oysters be offered to the private industry in 2011. All of this activity occurs under the VMRC supervision.

Shellplanting:**Great Wicomico and Rappahannock Rivers and Tangier and Pocomoke Sounds**

General funds will be used to add shells to harvest bars where the VIMS-VMRC oyster stock assessment has shown less than 5 liters of shell cultch per meter. More acres of harvest bars fall into this category of needing shells than there are General Funds, but as many acres as possible will receive 1,000 bushels of shells per acre.

173 acres of harvest bars @ \$2.00/bushel of shell	\$346,000 (GF)
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Commission Meeting**February 22, 2011**NOAA Chesapeake Bay Office – Oyster Restoration:Piankatank River

NOAA Chesapeake Bay Oyster Restoration funds can only be expended on certain tasks. Funding exists for rebuilding 23 acres of sanctuary in the Piankatank River (Figure 3). Watermen will be hired to clean the live oysters off of these sites prior to reshellings with 10,000 bushels of shells per acre.

23 acres @ 10,000 bu. shell/acre @ \$1.60/bu.
\$368,000/NOAA)

23 acres @\$500/acre for watermen to clean \$11,500 (NOAA)

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

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

There are not enough house shells this year to complete these projects, and this project can be extended to 2012. We will need to expend the General Funds first. We will then buy the shells that remain for this project. It is likely that we will only have these NOAA funds for 2012 if we do not get more General Funds, so these funds will be very important in 2012.

Rappahannock River

NOAA Funds can also be used to add shell to the sanctuary sites in the Rappahannock River. Again it is likely, that we will save these funds for 2012.

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

Seaside Eastern Shore:

The Marine Resources Commission, the Nature Conservancy and the Virginia Institute of Marine Science received an American Recovery and Reinvestment Act (Stimulus Project) Award in 2009 to do oyster, eelgrass, and bay scallop restoration on the Seaside of the Eastern Shore. More than 20 acres of oyster sanctuary reefs were constructed mostly with dredged fossil shells from the James River. A small amount of additional funds were given to VMRC for 2011. Approximately two acres of sanctuary reef will be constructed with locally, dredged shells in the Boxtree area.

Two acres @ 20,000 bu. of shells/acre @ \$1.75/bu. \$70,000 (NOAA)

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A small amount of shucked conch shells are available on Seaside. These shells will be used to rebuild about two acres of harvest area.

20,000 bu. @ 10,000 bu. of shells/acre @\$2.00/bu. \$40,000 (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 the rays by the watermen. MRC funds will again be used to purchase 200,000 pounds of cow nosed rays @\$0.15/pound.

200,000 pounds of cow nosed rays @\$0.15/pound \$30,000 (GF)

NOAA Blue Crab Disaster Oyster Aquaculture Training Projects:

This project to train crab industry participants in either spat on shell or cage oyster aquaculture was approved in 2009. More than 90 crab industry participants signed up for the spat on shell project and 150 for the cage oyster aquaculture project. Two years of training have been completed for the cage aquaculture project, and 131 participants have received seed and equipment to grow 50,000 oysters. Some oysters are beginning to attain market size and be sold, and staff has continued to work with these individuals. The spat on shell project has lagged behind the cage aquaculture project by one year, mainly because of how late the funding arrived to VMRC in 2009. Thirty-five individuals were given contracts for the spat on shell program in 2009. Approximately 30 of these participants either completed or have almost completed their projects in 2010. The project resulted in more than 24,000 bushels of spat on shell being produced, 1.1 billion eyed larvae produced by the hatcheries, and a much higher setting rate for the larvae than we had seen in previous years. We have prepared contracts for an additional 30 participants for 2011. To finish the first group from 2009, and the 2011 participants, our hatcheries will have to produce about 1.8 billion eyed larvae just for VMRC this year. This is a very ambitious order for the hatcheries, therefore, our program will just concentrate on the spat on shell for 2011. Some funds will still be available in 2012 for this program, but we will not advertise for more participation, until we know how much we complete in 2011.

Spat on Shell
30-36 participants \$500,000 (NOAA)

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APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2011 OYSTER REPLENISHMENT PROGRAM:

General:

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

This section of the Code states that:

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

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

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.50 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$0.75 per bushel of oyster shells at the shucking house. Loading, transporting and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2011 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.

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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 2011 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2011 Replenishment Program.

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

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There was no further business and the meeting was adjourned at approximately 1:40 p. m. The next meeting will be held Tuesday, March 29, 2011. (Note that this date was changed because of the ASMFC meetings being held the week of the 4th Tuesday, which is the normal time frame for the meeting.)

Steven G. Bowman, Commissioner

Meeting Recorded by:

Louise Atkins, Admin and Office Specialist

Linda Hancock, Human Resources Manager

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Minutes Prepared by:

Katherine Leonard, Recording Secretary