#### **MINUTES**

## **Commission Meeting**

August 28, 2012

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

Jack G. Travelstead Commissioner

J. Carter Fox

William E. Laine, Jr. J. Bryan Plumlee

Richard B. Robins, Jr. Associate Member

Kyle J. Schick

J. Edward Tankard, III Whitt G. Sessoms, III

Paul Kugelman, Jr. Assistant Attorney General

John Bull Director, Public Relations

Linda Farris Bs. Systems Specialist, MIS

Katherine V. Leonard Recording Secretary

Rob O'Reilly Chief, Fisheries Mgmt.

Joe GristDeputy Chief, Fisheries Mgmt.Jim WessonHead, Conservation-ReplenishmentJoe CiminoSupervisor, Biological Sampling ProgramStephanie IversonSupervisor, Mandatory Harvest Reporting

Program

Renee Hoover Fisheries Mgmt. Specialist
Alicia Nelson Fisheries Mgmt. Specialist
Allison Watts Fisheries Mgmt. Specialist
Adam Kenyon Fisheries Mgmt. Specialist

Lewis Gillingham Dir., Saltwater Fishing Tournament

Rick Lauderman Chief, Law Enforcement
Jeff Vanlandingham Marine Police Officer
Brad Ramsey Marine Police Officer

## **Commission Meeting**

Tony Watkinson Chief, Habitat Mgmt.

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

Allen Hogge Surveyor Rob Butler Surveyor

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

### Others present:

John Daniel	Roger G. Hopper	John Paul Woodley, Jr.
Robert Crockett	Chuck Joyner	Wayne Mayton
Barbara Kauneckas	Carl Gruel	Connie Felvey
Peter Kauneckas	Kareem Stanley	Dwight Dixon
Sharon Sharp	Tom Dingledine	Chuck Roadley
James Breedon	Harold Burnley	Ida Hall
Lloyd Rigg	Peggy Sanner	Scott Harper
Stacy Porter	R. C. Irby	Mike Hutt
M. Carter	John Hendi	Kim Huskey
C. Moore	Andy Lacatel	Alex Wazlek
Mark Labocette	Colston Newton	Susan Birch

and others.

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Commissioner Travelstead called the meeting to order at approximately 9:40 a.m. Associate Member Palmer was absent.

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

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**APPROVAL OF AGENDA**: Commissioner Travelstead asked if there were any changes from the Board members or staff. Mr. Watkinson noted that one of the page two items on the meeting agenda, 2B. Columbia Gas of Virginia, #12-0606, had been pulled because of the receipt of a protest.

Commissioner Travelstead asked for a motion for approval of the agenda, as amended.

Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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**MINUTES:** Commissioner Travelstead asked for a motion for approval of the July 24, 2012 Commission meeting minutes, if there were no corrections or changes.

Associate Member Fox noted that Associate Member Robins was not on the first page as being present at the meeting.

Associate Member Tankard moved to approve the minutes, as amended. Associate Member Plumlee seconded the motion. The motion carried, 6-0-1. Associate Member Laine abstained because he was absent at the last meeting.

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

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

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

There were no public comments. Commissioner Travelstead asked for a motion.

Associate Member Schick moved to approve the three page-two items, as read and discussed. Associate Member Robins seconded the motion. The motion carried, 7-0.

2A. CITY OF NORFOLK, #12-0281, requests authorization to dredge approximately 19,700 cubic yards of State-owned subaqueous material to achieve maximum navigable depths of minus five (-5) feet mean low water, and to maintenance dredge approximately 10,000 cubic yards on an as-needed basis, and to install either fixed or floating buoy channel markers within Edgewater Haven in the City of Norfolk. Dredged material will be barged to the Craney Island Dredged Material Management Area (CIDMMA) for disposal.

Permit Fee	\$100.00
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2B. COLUMBIA GAS OF VIRGINIA, #12-0606, requests authorization to dredge 23,573 cubic yards of State-owned submerged land during a one-time dredging event and to restore the site to its pre-dredge bathymetry with certified clean sand to complete the environmental remediation of the former manufactured gas plant (MGP) site adjacent t the Swimming Point neighborhood situated on the Elizabeth River in Portsmouth. Dredged material will be barged to Port Weanack at Shirley Plantation, offloaded onto trucks, and transferred to the Charles City landfill for disposal. Staff recommends approval with a one-time royalty payment of \$10,607.85 for the dredging of 23,573 cubic yards of material at a rate of \$0.45 per cubic yard.

Pulled from the agency -- protest received

**2C. AT&T CORP.,** #12-0991, requests authorization to directional drill under the Potomac River at a minimum depth of 50 feet below the stream bottom to install a utility conduit which will surface a minimum 100 feet landward of the shore of The Potomac River within the Dahlgren Wayside Park in King George County.

Permit Fee	\$100.00
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**2D. AT&T CORP.**, #12-0390, requests authorization to replace an existing fiber optic communication cable within existing conduit along a 60 mile route which will pass through various counties and cross under Upper Machodoc Creek and its tributaries, the Rappahannock River, Goldenvale Creek, Mill Creek, Marascosic Creek, the Mattaponi River, Polecat Creek, Reedy Creek, Mechumps Creek, Stoney Run, the Chickahominy River and Upham Brook. Due to the condition of the conduit in the Pamunkey River, a new approximately 710-foot conduit will be

directionally bored under the river which will connect with the remainder of the existing conduit along the route. Staff recommends approval with standard E & S control measures and a royalty of \$19,656.00 for the encroachment over 6,552 linear feet of State-owned submerged lands at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 6,552 lin.	
ft. @ \$3.00/lin. ft	\$19,656.00
Permit Fee	\$ 100.00
Total Fees	\$19,756.00

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- **3. CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).
- **3A. DOUGLAS CLARK,** #12-0801, requests after-the-fact authorization to retain a previously installed 194 linear foot rip rap revetment along Brewers Creek, a tributary to Chuckatuck Creek at his property located at 21311 Brewers Farm Lane, Carrollton, in Isle of Wight County. The applicant has agreed to a triple permit fee of \$75.00 and a civil charge of \$1,000.00.

Tony Watkinson, Chief, Habitat Management reviewed the evaluation information for the Board for this item. His comments are a part of the verbatim record.

After some discussion, Commissioner Travelstead asked for a motion.

Associate Member Plumlee moved to approve the one consent item. Associate Member Robins seconded the motion. The motion carried, 7-0.

Permit Fee (ATF triple)	\$ 75.00
Civil Charge	\$1,000.00
Total Fees	\$1,075.00

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4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.

Associate Member Robins moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by

Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:

**Chincoteague Inn Appeal** 

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

**Associate Member Robins moved for the following:** 

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

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

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

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

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

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

**NAYS: NONE** 

**ABSENT DURING VOTE: Palmer** 

ABSENT DURING ALL OR PART OF CLOSED MEETING: Palmer

Motion carried, 8-0.

Katherine Leonard, Recording Secretary

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5. WAYNE and CONNIE MAYTON, #12-0612, request authorization to install a 12-foot by 80-foot concrete boat ramp extending up to 20 feet channelward of mean low water and impacting approximately 480 square feet of jurisdictional beach at their property situated along the James River, at 399 Villa Road within the Town of Claremont in Surry County. This project requires a subaqueous permit and a Coastal Primary Sand Dune and Beaches permit.

Ben Stagg, Environmental Engineer, Sr., reviewed the evaluation information for the board and presented slides. His comments are a part of the verbatim record.

After some discussion, Commissioner Travelstead asked if the applicant were present and wished to comment. The applicant indicated he would answer any questions. There were none.

Commissioner Travelstead asked for any public comments. There were none. He stated the matter was before the Commission.

Associate Member Robins moved to accept the staff recommendation to approve the project. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

Permit Fee	\$25.00
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6. PER PROPERTIES, #12-0592, requests authorization to install a bulkhead, mooring dolphins and pilings, and to mechanically dredge 118,039 cubic yards of State-owned submerged land during the initial cycle, and to maintenance dredge approximately 15,900 cubic yards during subsequent cycles on an as-needed basis, for the construction of a grain terminal at 3991 Elm Avenue situated on the Southern Branch of the Elizabeth River in the City of Portsmouth. The project requires a subaqueous permit and a Coastal Primary Sand Dune and Beaches permit. The project is protested by an adjacent property owner.

Justine Woodward, Environmental Engineer, Sr., briefed the Commission on this matter with slides. Her comments are a part of the verbatim record. She provided a handout of the list of Department of Environmental Quality's conditions.

After some discussion, Commissioner Travelstead asked if the applicant's representative was present and wished to comment.

John Paul Woodley and Robert Crockett were both sworn in and their comments are a part of the verbatim record. Mr. Crockett said that this property was used historically for commercial and industrial purposes and has been unused for a generation. He said that

they agree with all but one of the recommendations made by staff and the first three DEQ recommendations were acceptable. He said they wanted as few contingencies as possible.

Commissioner Travelstead asked if there was anyone else present in support of the project. There were none. He asked if anyone was present in opposition and wished to comment.

Dwight Dixon, was sworn in and his comments are a part of the verbatim record. Mr. Dixon said that he had a land grant dated 1711 for the area and expressed his concerns that the project would encroach onto his property and would impact his current business activities and future business ventures. He stated that he would continue to pursue approval of his land grant through the courts.

Roger Hopper, Attorney for Mr. Dixon provided comments and they are a part of the verbatim record.

Commissioner Travelstead asked for other comments in opposition. There were none. He asked for any rebuttal comments by the applicant or representative. There were no rebuttal comments. He stated the matter was before the Commission.

After considerable discussion, Associate Member Robins moved to approve the project as requested with all eleven conditions by staff and the Department of Environmental Quality. He agreed that the motion included them keeping the 70-foot section of the bulkhead and the recommended royalties. Associate Member Schick seconded the motion. The motion carried, 7-0.

Royalty Fees (dredge 118,039 cu.	
yds. @ \$0.45/cu. yd	\$53,117.55
Permit Fee	\$ 100.00
Total Fees	\$53,217.55

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7. ROBERT 'TRAY' IRBY, Notice to Comply #12-01. Commission review of violations of Chapter 12 and Chapter 13 of Title 28.2 of the Code of Virginia, specifically the unauthorized installation of concrete riprap material on State-owned submerged bottom and non-vegetated tidal wetlands at property situated along the James River at 1519 Rustling Cedar Lane in Henrico County.

Juliette Giordano, Environmental Engineer, Sr., gave the briefing of the evaluation with slides. Her comments are a part of the verbatim record.

Commissioner Travelstead asked the applicant if he wished to comment.

Robert Irby, applicant, was sworn in and his comments are a part of the verbatim record. He said he was told by the County that no permit was necessary if he stayed within 2,500 square feet and he did not realize that there was a VMRC permit required. He said he had remedied his erosion problem with the concrete that he had gotten for free. He stated he had done the placement of the concrete himself. He added that he had a family member with critical medical problems and that they could not afford to remove the concrete.

After some further discussion, Commissioner Travelstead stated the matter was before the Commission.

Associate Member Robins moved to allow Mr. Irby 60 days to prepare, with whatever assistance was available to him, and submit a Joint Permit Application; and, if not, to bring this matter back to the Commission to consider requiring the removal of the concrete. Associate Member Schick seconded the motion. The motion carried, 7-0.

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**8. MARC E. BROWN, 2012-011**, requests authorization to lease up to 18 acres of oyster planting grounds at the confluence of the Pagan River and James River adjacent to the Pagan River channel in Isle of Wight County. The project is protested by an adjacent leaseholder. This matter is continued from the June 26, 2012, Commission meeting.

Ben Stagg, Environmental Engineer, Sr., reviewed the information relating to this matter for the Commission with slides. His comments are a part of the verbatim record.

Commissioner Travelstead asked if the applicant wished to comment.

Marc Brown, applicant, was sworn in and his comments are a part of the verbatim record. He said he wanted this piece of oyster ground so the lease would be continuous and he would be allowed to dredge on both ends. He said the ACOE allowed for him to be 85 feet from the toe, which would give him 11 feet.

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

Commissioner Travelstead asked how long had this policy existed about not staking in the channel. Mr. Stagg stated that it has been the policy since he came to work for the agency in 1983.

Associate Member Robins said that staff had concerns with marking within the channel and recommended approval of the two pieces of oyster ground, which consisted of 1.54 acres and 7.67 acres. He said that if this strip area were allowed, it

would make it hard for law enforcement. He moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 7-0.

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9. BLUFF POINT HOLDINGS, LLC, 2011-067, requests authorization to lease up to 250 acres of oyster planting grounds within Barnes Creek in Northumberland County. The application is protested by numerous residents, other leaseholders, and the Chesapeake Bay Foundation.

Ben Stagg, Environmental Engineer, Sr., gave the briefing with slides. His comments are a part of the verbatim record. He provided handouts of additional public comments received since the briefings were mailed out to the members.

James Breedon, attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Breedon said there will not just be aquacultural methods of growing oysters, but also traditional ones, such as shell planting and seeding. He added the applicant will do what was said in the affidavit and requested adoption of the staff recommendation.

Thomas A. Dingledine, applicant, was sworn in and his comments are a part of the verbatim record. He stated that nothing had been done with the existing leases and he was seeking further leases which he will study to determine how it will be used.

Commissioner Travelstead asked if anyone wished to comment in support of the application.

John Hendrickson was sworn in and his comments of support are a part of the verbatim record.

Commissioner Travelstead asked if anyone wished to comment in opposition to the application. Seven individuals were sworn in and their comments are a part of the verbatim record. Most of the individuals spoke of their concerns with the impact to the recreational use as well as safety. Some said the lease was too large, took up all of Barnes Creek and out into the Bay; adding that the bottom was not suitable for growing oysters. Some expressed concerns that this area would be dredged to open the channel and that there was a fetch eastward for 20 miles and southeast for 40 miles and north to Baltimore.

Mr. Dingledine said he wanted to work with the others and staff to decide on a compromise. Commissioner Travelstead recessed this hearing so staff and the applicant with his attorney could discuss a resolution for the concerns of the protestants and return to the hearing.

Upon their return to the Commission meeting, staff explained that the applicant had agreed to a reduction of the application area by 100 acres, consisting of two separate areas of 25 and 75 acres respectively and leaving a proposed area of 150 acres.

Associate Member Schick moved to approve the amended area, deleting the 25 acre and 75 acre areas and leaving an area of 150 acres to be leased. Associate Member Robins asked would there be a prohibition on the use of cages in the mouth of the creek. Associate Member Schick proposed a condition that no on bottom structures (cages) be allowed within a 50-foot wide area north of a line between proposed lease corners 15533 and 15532. Staff suggested that since Bluff Point Holdings LLC already had an existing lease along a portion of this proposed alignment that revised 50-foot area could be to the north of a line from lease corners 8483 to 15532. The motion was amended to restrict on-bottom structures within this revised 50-foot area. Associate Member Tankard stated this still did not alleviate the concerns expressed by the public and he was concerned with leasing this much area to an individual without any experience. He added there were true safety concerns here. The amended motion carried, 6-1. Associate Member Tankard voted no.

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#### 10. PUBLIC COMMENTS.

#### LLOYD C. RIGGS, JR., Notice to Comply #12-03

John Daniel, Attorney for the Riggs Family, asked the Commission how much more time the agency would need to review his client's claim that a king's grant from 1693 conveyed private ownership of .268 acres of Ram Island in Back Bay. This case was heard at the May 2012 Commission meeting and they did their own title search as agreed to by the Commission at that time. He said now they were told that the matter was being reviewed by an outside land title expert and might be placed on the agenda for Commission consideration in September.

# STATUS REPORT OF THE RED DRUM STOCK

Associate Member Tankard asked for a status report of the Red Drum stock, and he asked when it might be possible to adjust the size and possession limit to benefit recreational anglers. Joe Grist, Deputy Chief, Fisheries Management, responded that the stocks were doing well, and there was talk at the Atlantic States Marine Fisheries Commission to possibly allow coastal states to consider enacting a trophy fishery for this species.

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11. OYSTER FISHERY PUBLIC HEARINGS: (1) Proposed amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2012-2013 harvest seasons; (2) Proposed amendment to Chapter 4VAC20-260-10 et seq., "Pertaining to Designation of Seed and Clean Cull Areas," to modify oyster culling procedures; and (3) Proposed amendment of Chapter 4VAC20-560-10 et seq., "Pertaining to Shellfish Management Areas," to close the York River Shellfish Management Area.

James Wesson, Head, Conservation and Replenishment, stated this was a public hearing on three regulations to establish the public oyster harvest restrictions for 2012-2013. He said these could be done separately, which was agreed to by the Board.

Dr. Wesson said the first one was for proposed amendments to Regulation 4VAC 20-720-10, et seq., "Pertaining to Oyster Harvest Restrictions." He noted that 4VAC 20-720-10, et seq. included changes in the definitions in order to clarify them and other housekeeping amendments, which made the draft regulation rather lengthy. His comments are a part of the verbatim record.

Associate Member Fox stated that the Shellfish Management Advisory Committee had unanimously agreed to the amendments.

There were no public comments. Commissioner Travelstead asked for a motion.

Associate Member Fox moved to approve the staff recommendations. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Dr. Wesson said this was a public hearing for adoption of amendments to Regulation 4VAC 20-560-10, et seq. in order to eliminate the York River Shellfish Management Area. He explained that this area had been established as a clam management area at a time when the oyster resource was very low in the area and now that the abundance of oysters allowed for the harvesting of them, this area should be closed to clamming.

There were no public comments. Commissioner Travelstead asked for a motion.

Associate Member Fox moved to approve the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 7-0.

Dr. Wesson said this was a public hearing to consider the adoption of amendments to Regulation 4VAC 20-260-10, et seq. He explained that SMAC had agreed to allow the use of the orange basket on the vessel.

Rob O'Reilly, Chief, Fisheries Management, said that Fisheries staff had met with Law Enforcement management staff and they indicated that the entire force was opposed to

this proposed change as the use of the entire pile had worked because the violation would stand up in court.

There were no public comments. Commissioner Travelstead asked for a motion.

Associate Member Tankard moved to approve the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

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Commissioner Travelstead explained that there was a need to look at the revocation policy. He said usually three violations would result in 12 months probation and the individual could just return to the fishery to do the same thing again. He stated that some violations should be taken to another level and asked the staff to speak with all committees on this issue and report back at the first of the year. His comments are a part of the verbatim record.

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**12. PUBLIC HEARING LOBSTER:** Proposal to establish regulations for American lobsters landed in Virginia, in accordance with requirements of the Atlantic States Marine Fisheries Commission to achieve a 10% reduction in lobster landings from the southern New England lobster stock.

Joe Cimino, Supervisor, Biological Sampling Program gave the briefing of the evaluation and his comments are a part of the verbatim record. He provided the board with a handout of a copy of a letter of opposition received by staff since information was mailed to the Board.

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

Associate Member Schick moved to approve the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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**13. PUBLIC HEARING STRIPED BASS:** Proposed amendments to Chapter 4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to allow the recreational harvest of striped bass by spear fishing.

Lewis Gillingham, Director, Saltwater Fishing Tournament, gave the briefing and his comments are a part of the verbatim record. Mr. Gillingham stated this was a public hearing to consider allowing striped bass to be taken recreationally by spear fishing. He

noted that three written comments had been received and were included in the Commission's mailout. Two of the comments supported the proposed amendment but the third addressed an unadvertised striped bass issue.

Mr. Gillingham said that staff initially received this request from Alex Wazlak, President of the Mid-Atlantic Free Diving Club on January 26, 2012. He said staff reviewed the request and suggested Mr. Wazlak solicit various fishing clubs and organizations for support. Following Mr. Wazlak's contact with the fishing organizations the item was placed on the Fisheries Management Advisory Committee's (FMAC) agenda as a discussion item. The Committee raised six concerns. These concerns were addressed by staff and members of the dive club at the following Committee meeting at which time the FMAC recommended the Commission advertise this amendment for public hearing.

Mr. Gillingham reviewed the six concerns raised by FMAC and reviewed other state's regulations concerning recreational spear fishing of striped bass. Of the six concerns, user/gear conflict between the angling public and sports divers during the fall striped bass season at the Chesapeake Bay Bridge-Tunnel (CBBT) was considered the most significant. Staff recommendation was adoption of the proposed amendments to allow the taking of striped bass by recreational spear fishermen. After some discussion, Alex Wazlak and Mark Labocette, a recreational equipment supplier, were both given the opportunity to provide comments in support and is part of the verbatim record. No other public comments were received. The Commission further discussed the potential issue of gear conflict between recreational anglers and sport divers at the CBBT. If the proposed amendments are adopted the Commission requested staff provide an update on this issue next year.

Associate Member Schick moved to approve the staff recommendation. Associate Member Laine seconded the motion. Associate Member Schick added that the motion would include a one-year review period. The motion carried, 7-0.

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There being no further business, the meeting was adjourned at approximately 5:54 p.m. The next regular meeting will be held Tuesday, September 25, 2012.

Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary