

MINUTES

Commission Meeting

July 26, 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
William Laine, Jr.)	
Joseph C. Palmer, Jr.)	
J. Bryan Plumlee)	
Richard B. Robins, Jr.)	Associate Members
Kyle J. Schick)	
Whitt G. Sessoms, III)	
John E. Tankard, III)	
Jack G. Travelstead	Chief, Fisheries Mgmt.
Paul Kugelman, Jr.	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Terri Short	Bs. Manager Sr.
Sharon Wilson	Grants Administrator
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Head, Saltwater Tournament
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Renee Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Mathew Broderick	Marine Police Officer
William Hall	Marine Police Officer

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Tony Watkinson
Chip Neikirk
Jeff Madden
Ben Stagg
Randy Owen
Dan Bacon
Jay Woodward
Juliette Giordano
Mike Johnson
Rob Butler

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.
Surveyor

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present included:

Del. Gordon Helsel, Jr.	Joanne Nellos	Tolar Nolley
W. H. Meyers	Barclay Sheperd	Glenn Sheperd
Karen Holloway	Sarah Cornelius	Steve Cornelius
Cory Nealon	Ellis W. James	Chris Moore
Kim Huskey	Andy Lacatell	B. Cox
Julian F. Cox	Roxanne Huckstep	Patricia Kirby
Roger McKinley	Roger McKinley, Jr.	Brian Lockwood
Bobby McCauley	Virginia McCauley	Jizel Palmer
K. Queen	Cory Grifford	Jeff Humphries
Al Blanchard		

and others.

Commissioner Bowman called the meeting to order at approximately 9:39 a.m. Associate Member Fox was absent.

At the request of Commissioner Bowman, Associate Member Robin gave the invocation and Jack Travelstead, Chief, Fisheries Management, led the pledge of allegiance.

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ANNOUNCEMENT:

Commissioner Bowman took the opportunity to welcome the two new Associate Members to the Board. He introduced new Associate Members Whitt G. Sessoms, III and Joseph C. Palmer, Jr. to the Commission. He gave a brief statement of information on each of them.

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Tony Watkinson, Chief, Habitat Management, introduced a new employee in the Habitat Management Division. Mr. Watkinson said Juliette Giordano had joined VMRC with a Bachelor degree from Virginia Tech and a Master degree from VIMS to become the latest addition to the Division in the position of Environmental Engineer, Sr.

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Joe Grist, Head, Plans and Statistics introduced a new employee in the Plans and Statistical Department of the Fisheries Management Division. Mr. Grist said that Renee Hoover was a new Planner in the department who came with her Bachelor degree in Environmental Science from Pennsylvania State University and her Master degree from Old Dominion University. He added she was currently working on her thesis for a Ph.D., which she should complete by next year.

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Jane McCroskey, Chief, Administration and Finance, introduced a new employee in the Accounting Department. She said Sharon Wilson had taken the position of Business Manager. She explained that Ms. Wilson was a native of Newport News with a Business degree from Hampton University. She noted that Ms. Wilson had worked with the Newport News school system for the past 30 years. She said in her position with the City she had performed the same type of work, as she will be performing here at VMRC.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes from the Board members or staff. There was one change by staff.

Lt. Col. Warner Rhodes, Chief, Law Enforcement, requested an item be added to the agenda for some administrative housekeeping changes to a security area regulation. Commissioner Bowman stated this would be added at the end of the agenda, as Item 13.

Commissioner Bowman asked for a motion by the Board.

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Associate Member Robins 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 June 28, 2011 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Laine 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 Sessoms and Palmer both abstained, because as newly appointed Board members, they were not at the last 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 \$500,000 with no objections and with staff recommendation for approval).

Commissioner Bowman asked if there were any Page two items to be heard, as a result of the Code Section change increasing the cost requirement for a hearing by the Board. Mr. Watkinson stated there were none.

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3. CONSENT ITEMS:

- 3A. **CITY OF PORTSMOUTH, #09-1746**, requests after-the-fact authorization for approximately 140 linear feet of sheet pile bulkhead and three concrete wharf girders, installed under emergency repair conditions due to a seawall failure beneath the existing marginal wharf, along the waterfront of the Southern Branch of the Elizabeth River adjacent to the Admiral’s Landing Condominiums in the City of Portsmouth.

Tony Watkinson, Chief, Fisheries Management, gave the presentation. Mr. Watkinson review information for the after-the-application by the City of Portsmouth and his comments are a part of the verbatim records.

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On December 11, 2009, staff received a Joint Permit Application (JPA #11-1746) from the City of Portsmouth requesting authorization to undertake emergency repairs for a failed section of seawall at the Admiral's Landing Condominiums. The City stated that due to recent storm events the afore-mentioned section of seawall had begun to move channelward damaging multiple wharf girders. In addition, this section of seawall was in danger of completely failing and was currently being supported by a single mooring dolphin channelward of the seawall.

On December 14, 2009, staff met on-site with the City's Senior Civil Engineer, Mr. Youssef Khalil, and a contracted structural engineer, Mr. Roland McPherson, to discuss the seawall failure and the City's need for immediate emergency repair work. During that meeting, staff agreed with the City that it was necessary to conduct emergency repairs to the seawall and wharf, as soon as possible to prevent further failure and damage to the remaining structures.

The repairs were to be accomplished in accordance with drawings provided to VMRC by the applicant dated December 15, 2009. While it was agreed upon that the emergency repairs were essential, the City of Portsmouth was informed that they would be required to obtain all necessary after-the-fact permits including a VMRC Subaqueous Permit. The City was also told that they would need to revise the previously submitted JPA for VMRC to begin the public interest review for an after-the-fact subaqueous permit.

On April 26, 2011, VMRC received a revised JPA application for the completed repair work. Staff had conducted the public review process and had not received any comments regarding the project. Staff had also inspected the work site and found the work had been completed in a satisfactory manner. Due to the emergency nature of the application, staff did not recommend a civil charge and any further enforcement action be undertaken; and that the after-the-fact permit be approved to authorize the encroachment over State-owned submerged lands.

Commissioner Bowman asked for questions of staff and there were none. He opened the public hearing. He asked if there were any representatives from the City and there was no one. He asked for those present who wished to comment pro or con and there was no one.

Commissioner Bowman closed the public hearing and asked for action by the Commission.

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

No applicable fees – Emergency Maintenance

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4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** On advice of VMRC's Counsel, it was not necessary to have a closed meeting.

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5. **JAMES GOLDING, #11-0516,** requests authorization to construct an open-sided 792 square foot boathouse at the end of a proposed 200-foot long private open-pile pier in lieu of a previously permitted 1,232 square foot enclosed boathouse at property situated along the James River in Charles City County. The project is protested by several property owners.

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

Mr. Owens explained that Mr. Golding's property, a vacant lot, is located on Harrison Point Drive along the James River approximately 500 feet downstream of the Benjamin Harrison Bridge (SR 106). This section of the James, situated in western reach of Charles City County, had numerous waterfront homes. Piers and boathouses were common to the area.

Mr. Owens stated that Mr. Golding originally applied for and received a permit for an enclosed 1,232 square foot enclosed boathouse on May 28, 2002 (VMRC Permit #02-0693). His concurrent request for a 150-foot long private, open-pile pier qualified for the statutory authorization provided for in Code Section 28.2-1203(A)(5). Since the applicant did not currently own a vessel, staff felt reluctant to approve his request to extend the expiration date of his previous permit to 2012. Accordingly, the permit expired in May 2011.

Mr. Owens said that at the staff's suggestion, Mr. Golding agreed to submit a new application, requesting an open-sided design and smaller boathouse in lieu of the larger enclosed structure originally permitted. He currently held a contract to purchase a 42-foot long vessel. As such, he had requested to lengthen the proposed pier an additional 50 feet to reach greater depths. The pier was now proposed to extend 200 feet channelward of mean high water. Although longer, the pier would still qualify for the afore-mentioned authorization. The U. S. Army Corps of Engineers had advised that the current proposal would qualify for a Regional Permit #17.

Mr. Owens noted that the project was protested by the adjacent property owners and two additional neighbors. They believed that the pier and boathouse should not be extended beyond the established pier-head line, objected to any proposal for an enclosed structure,

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and believed that the proposed roof height was excessive and exceeded that of the existing boathouses in the area.

Mr. Owens said that on May 6, 2011, Staff met with both of the adjacent property owners and one of the two remaining protestants. The fourth neighbor was not able to attend although attempts were made to include him. Mr. Bill Meyers, the downstream property owner, stated that the neighborhood opposition would likely be withdrawn if the structure was proposed in line with the area's existing piers and if the roof height was reduced.

Mr. Owens stated that in response to the concerns raised by the protestants, staff requested depth soundings from the applicant. Upon review, it appeared that the additional 50 feet of pier length would provide 10 to 12 additional inches in depth and would reach the approximate -2.5-foot MLW contour. Mr. Meyers challenged the validity of the soundings. Staff conducted additional soundings and found that the additional pier length would gain approximately 6-inches in depth. Staff had also determined that the proposed boathouse would be situated in approximately the same depth as Mr. Meyers' boathouse. Staff additionally sounded the two upstream protestants' piers and found that they reached approximately one-foot less of water depth than that of Mr. Meyers and the proposed boathouse.

Mr. Owens said that staff additionally questioned Mr. Golding's contractor on the minimum roof height necessary to accommodate the contract vessel. The contractor, Roger McKinley Jr., agreed to reduce the height an additional three feet. He maintained that the current design provided the minimum height necessary to protect the vessel and the lift pursuant to the manufacturer's recommendations.

Mr. Owens noted that although the total square footage of the proposed open-sided boathouse exceeded the 700 square-foot threshold provided for in Code Section 28.2-1203(A)(5), the structure appeared to be reasonable sized for the vessel the applicant intended to purchase. In staff's opinion, the project should not impede navigation along this section of the James River. Had the boathouse proposal not been protested by the neighboring property owners, staff would have administratively authorized the project.

Mr. Owens explained that while staff was sensitive to the concerns raised by the protestants, staff noted that private piers and open-sided boathouses were very common along the subject waterway. Accordingly, after consideration of the factors contained in Code Section 28.2-1205 (A)(5), and in light of Mr. Golding's agreement to reduce the boathouse dimensions and remove the sides, staff recommended approval of the project, as currently proposed, contingent on the receipt of the bill of sale for the contract vessel prior to the issuance of permit.

Commissioner Bowman asked for questions of staff. Associate Member Robins asked if the height that was reduced three feet by the contractor was shown in the drawing. He

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said it was now to be 18 feet above mean high water. Mr. Owens stated the drawing had been amended.

Associate Member Sessoms asked if the pierhead was past the line established by Code. Mr. Owens responded no, but staff had done a sounding 50 feet past the existing pier. He stated that there was no established pierhead line.

Commissioner Bowman asked if the Corps had done a review. Mr. Owens stated that it had not been necessary, but the Corps was asked and staff was told that it met the requirements for a Regional Permit 17.

Mr. Owens said that staff sounded the area of the proposal offshore the old gut and at 1,000 to 2,000 feet the water depth was five feet, even to the channel.

Associate Member Tankard asked if the increased length would impede navigation. Mr. Owens responded no.

Commissioner Bowman asked if the applicant or a representative wished to come forward and make comments.

Roger McKinley, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. McKinley stated that staff had touched on most of the issues. He said they did have an enclosed and larger boathouse and they had revised it to be open-sided, adjusted the length, but did need to reach adequate depth, and the height of the boathouse was reduced from 21 feet to 18 feet from MHW in order to be able to raise the boat out of the water and to protect the boat. He noted the warranty required the boat be raised out of the water.

Commissioner Bowman asked if this was the minimum clearance of water at MHW by the boat. Mr. McKinley responded, yes.

Commissioner Bowman asked for questions.

Associate Member Robins asked about the boat type and the draft and pier length requirements. Mr. McKinley said the contract said it would draw 3 ½ feet to 4 feet of water, the length of the boat was 42 feet and the boathouse length was 44 feet, so there was a 2-foot clearance. He said with the draft of the boat it can only be accessed on high tide. He said that was why they proposed to extend the 50 feet.

Commissioner Bowman asked if anyone in support was present and wished to comment. There was no one.

Commissioner Bowman asked if anyone in opposition was present and wished to comment.

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William Meyers, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Meyers said he had some photographs of the project in 2007. He said was not aware of the existing boathouse and the applicant was an irresponsible property owner.

Commissioner Bowman said the Commission hearing was to decide if this was an acceptable use of State-owned bottom only.

Mr. Meyers asked that their rights be considered as this would obstruct their view and he said he had checked that there was no record of a boat sale. Commissioner Bowman stated that there was a permit condition recommended for a bill of sale to be provided to VMRC prior to the issuance of the permit.

Mr. Meyers stated that the Commission should not give him the permit if there was no boat.

Commissioner Bowman asked for anyone else in opposition and as there were no more, he stated the matter was before the Commission.

Associate Member Robins explained that he appreciated the concerns of the protestants for the original proposal, but he noted that it had been amended to be less impacting. He said the additional length of the pier was necessary for the draft of the boat and it was not too large. He moved to approve the staff recommendation with the condition that the applicant would be required to provide to VMRC, prior to the issuance of the permit, a bill of sale for the boat. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee.....	\$100.00
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- 6. **HAYDEN GORDON, #11-0120**, requests authorization to install 85 linear feet of riprap revetment channelward of a failing concrete bulkhead, replace a 32 linear foot groin with a 40 linear foot low-profile groin, and replace framing and decking on an existing previously permitted private pier situated at his property along Hampton Roads in the City of Hampton. Both Coastal Primary Dune and Beaches and Subaqueous Lands Permits are required.

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

Mr. Johnson explained that the proposed project site was located along Hampton Roads near the mouth of the James River, between the Hampton Roads Bridge Tunnel and Fort Monroe in the City of Hampton. An existing concrete bulkhead ran along parallel to the

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length of the property with the intertidal beach along the western part of the shoreline and a sand beach immediately around an existing private pier and groin on the eastern part the shoreline. Currently, the concrete bulkhead was failing on the western part of the shoreline resulting in large sinkholes immediately landward of the structure.

Mr. Johnson also explained that Mr. Gordon was seeking authorization to place 85 linear feet of riprap revetment immediately channelward of the eastern section of the existing concrete bulkhead that was failing. The wooden structure channelward of the failing concrete bulkhead was proposed to be removed. Additionally, the applicant requested authorization to replace an existing 32 foot groin with a 40-foot low-profile groin that would extend to approximately mean low water and to replace the framing and decking on an existing permitted private pier.

Mr. Johnson stated that the City of Hampton had not adopted the Coastal Primary Sand Dunes and Beaches Ordinance and as a result, the Commission was charged with acting as the Local Dunes and Beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code for those portions of projects involving the jurisdictional beach area.

Mr. Johnson said that the riprap revetment would impact approximately 850 square feet of jurisdictional beach and the low profile groin would impact approximately 80 square feet of jurisdictional beach. The riprap revetment was designed to stop the current undermining of the concrete bulkhead. The replacement of the 32-foot groin with a 40-foot groin was designed in order to maintain the present beach around the bulkhead and pier on the eastern part of the property.

Mr. Johnson noted that the existing pier was replaced in 2003 after Hurricane Isabel by emergency permit #03-7475. The existing pier did not meet the size restrictions to qualify for the statutory exemption for private piers defined by Code Section 28.2-1203(A)(5). Accordingly, the replacement of the framing required a Subaqueous Permit from VMRC.

Mr. Johnson added that no comments were received in response to the public notice and neither adjoining property owner indicated that they objected to the modification.

Mr. Johnson explained that the Virginia Institute of Marine Science Permit Application Report noted that due to the close proximity of the upland improvements the proposed revetment was the least adverse alternative for protecting the uplands from further erosion. They also questioned the need for the replacement groin for erosion control due to the presence of the bulkhead and proposed revetment. No other agency comments were received.

Mr. Johnson said that staff believed the installation of a riprap revetment channelward of the existing bulkhead, where it was currently failing, was a reasonable approach to stop the undermining process currently occurring on the eastern side of the property. Staff

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also believed the removal of the old groin and its replacement by a low-profile groin would be preferable to allowing the old continuous height groin to remain and the groin should help to maintain the current beach.

Mr. Johnson stated that staff understood the need to conduct maintenance and repairs on the existing pier. Although the dimensions of the pier did not allow it to qualify under the current statutory exemption, staff believed it was reasonable to allow it to remain in its current configuration. Accordingly, after evaluating the merits of the project, and after considering all of the factors contained in Code Section 28.2-1403(10)(B) and Code Section 28.2-1205(A)(5), staff recommended approval of the project.

Commissioner Bowman asked for questions of staff and there were none. He asked if the applicant or a representative was present. Mr. Johnson said that they were not present. Commissioner Bowman asked for anyone in opposition who wished to comment. There was no one.

Commissioner Bowman stated the matter was ready for discussion or action.

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

Permit Fee.....	\$25.00
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- 7. **HERBERT KIRKLAND, #11-0675**, requests authorization to construct 100 linear feet of replacement bulkhead aligned 18 inches channelward of a deteriorated bulkhead, with two (2) 50-foot long return walls and riprap along a drainage outlet on the east side of the property, and to remove two deteriorated groins and construct two (2) new timber groins extending 65 feet channelward of the proposed bulkhead adjacent to his property situated along the York River at 1601 Browns Lane in Gloucester County. Both Coastal Primary Sand Dunes and Beaches and Subaqueous Lands permits are required.

Chip Neikirk, Deputy Chief, Habitat Management gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the proposed project site was located along the York River at the end of Brown's Lane in the Bena area of Gloucester County. The shoreline consisted of a sandy beach with a wide shallow sandy sub-tidal flat channelward of the beach. There was submerged aquatic vegetation extending well channelward of the beach. A deteriorated timber bulkhead separated the beach from the lawn and there were two deteriorated timber groins, one located near each property line. The property was

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approximately 100 feet wide at the shoreline. There were numerous groins along the shoreline both upstream and downstream of Mr. Kirkland's property.

Mr. Neikirk said that Mr. Kirkland was seeking authorization to construct a replacement bulkhead aligned 18 inches channelward of the deteriorated bulkhead. Two 50-foot long return walls were proposed at the ends of the bulkhead and riprap was proposed along a drainage outfall. Finally, two (2) low-profile timber groins extending 65 feet channelward of the bulkhead were proposed to replace the deteriorated groins.

Mr. Neikirk stated that the proposed bulkhead would impact approximately 75 square feet of jurisdictional beach and the groins would impact approximately 24 square feet of jurisdictional beach and 106 square feet of State-owned submerged land. Gloucester County had not yet adopted the beaches and dunes ordinance, which was made available to them by virtue of Code changes that became effective on July 1, 2008. As a result, the Commission was charged with acting as the local Dunes and Beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Neikirk said that staff had not received any comments in response to the public notice and neither adjoining private property owner indicated that they objected to the project. No State agencies had commented on the application.

Mr. Neikirk said that although bulkheads were not typically the preferred method to address shoreline erosion, staff believed the replacement of the deteriorated bulkhead along the upper portion of the beach was acceptable in this instance. Staff also believed the replacement of the existing groins with low-profile timber groins within an established groin field was a reasonable approach to help maintain a sandy beach and to stabilize the shoreline channelward of the bulkhead. The addition of sand as beach nourishment within the created groin cell would provide additional shoreline protection while minimizing the interruption of sand transport to down-drift properties.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in Code Section 28.2-1403(10)(B) and Code Section 28.2-1205(A)(5), staff recommended approval of the project with a condition that a minimum of 40 cubic yards of sand must be placed within the created groin cell within 14 days of the completion of the new groin. Staff also recommended the assessment of a royalty in the amount of \$53.00 for the encroachment of the groins on 106 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Commissioner Bowman asked for questions of staff.

Associate Member Plumlee asked if the debris of from the old structure would be removed. Mr. Neikirk stated that they had not specified removal, but it would be removed or buried. Associate Member Plumlee asked if there would be filter cloth used. Mr. Neikirk responded, yes.

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

Jeff Watkins, agent, was sworn in and his comments are a part of the verbatim record. Mr. Watkins stated he could answer Associate Member Plumlee’s question. He stated they would remove as much of the debris from the old bulkheads and groins as possible. He added that they agreed with staff recommendation to add sand in the created groin cell.

Commissioner Bowman asked for anyone opposed to the project to comment. There was no one. He asked for action by the Commission.

Associate Member Laine moved to approve the staff recommendation with the 40 cubic yards of sand for filling the groin cell and the royalty fees. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (encroachment 106 sq. ft. @ \$0.50/sq. ft.).....	\$53.00
Permit Fee.....	\$25.00
Totals Fees.....	\$78.00

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- 8. **BOBBY McCAULEY, #11-0731**, requests authorization to construct two (2) timber and vinyl groins extending 60 feet channelward of mean high water adjacent to his property situated along the York River at 1497 Fleming Road in Gloucester County. Both Coastal Primary Sand Dunes and Beaches and Subaqueous Lands permits are required.

Chip Neikirk, Deputy Chief, Habitat Management gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the proposed project site was located along the York River at the end of Fleming Road in the Bena area of Gloucester County. The shoreline consisted of an eroding sandy beach with a wide shallow sandy sub-tidal flat channelward of the beach. There was submerged aquatic vegetation extending well channelward of the beach. There were numerous groins along the shoreline both upstream and downstream of Mr. McCauley’s property. The upstream adjoining property owner was Gloucester County. At an upstream property beyond the county’s parcel, a groin repair project had recently been completed.

Mr. Neikirk said that Mr. McCauley was seeking authorization to construct two (2) low-profile timber and vinyl groins extending 60 feet channelward of mean high water. The

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property was approximately 90 feet wide along the shoreline and the groins were proposed to be located five feet from each property line.

Mr. Neikirk stated that the proposed groins would impact approximately 90 square feet of jurisdictional beach and approximately 50 square feet of State-owned submerged land. Gloucester County had not yet adopted the beaches and dunes ordinance when Code changes were made that became effective on July 1, 2008. As a result, the Commission was charged with acting as the local Dunes and Beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Neikirk stated that staff had not received any comments in response to the public notice and neither adjoining private property owner indicated they objected to the project. Additionally, staff had not received any comments from Gloucester County and no State agencies had commented on the application.

Mr. Neikirk said that staff believed the construction of low-profile timber groins within an established groin field was a reasonable approach that would help to maintain a sandy beach and to stabilize the shoreline. The addition of sand, as beach nourishment, within the created groin cell would provide additional shoreline protection, while minimizing the interruption of sand transport to down-drift properties.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in Code Section 28.2-1403(10)(B) and Code Section 28.2-1205(A)(5), staff recommended approval of the project with a condition that a minimum of 40 cubic yards of sand must be placed within the created groin cell within 14 days of the completion of the new groin. Also, staff recommended an assessment of a royalty in the amount of \$25.00 for the encroachment of the groins on 50 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked if the use of groins rather than the rip rap was because of the cost. Mr. Neikirk said it probably was as this was an older development and this was done in the past and continued by the property owners.

Commissioner Bowman asked if the applicant or a representative was present. There was no one. It was noted that Mr. Watkins was not Mr. McCauley's agent.

Commissioner Bowman asked if anyone was opposed to the project. There was no one. He said the matter was before the Commission.

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

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Royalty Fees (encroachment 50 sq. ft. @ \$0.50/sq. ft.).....	\$25.00
Permit Fee.....	\$25.00
Total Fees.....	\$50.00

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- 9. **OYSTER COMPANY OF VIRGINIA, LLC, 2011-005**, request for oyster planting ground in Lloyds (Floyds) Bay in the City of Poquoson, and **2011-007**, request for oyster planting ground in the Poquoson River near the mouth of Bennetts Creek in the City of Poquoson. Both applications are protested by numerous parties.

Ben Stagg, Environmental Engineer, Sr., Habitat Management, gave the presentation with slides. Mr. Stagg stated he would brief the Commission on both so there will be only one public hearing to allow public comments. He said these were different issues and the staff recommendations were different. He noted the applicant’s representative was present. His comments are a part of the verbatim record.

Mr. Stagg explained that both applications were for leases located within the City of Poquoson. Application #2011-005 was located within Lloyds Bay (this bay is also known locally as Floyd’s Bay), and the initial application requested up to 50 acres. The second application, #2011-007, was located directly offshore of Beach Road at the mouth of Bennetts Creek and its confluence with the Poquoson River. This initial application requested up to 80 acres.

Mr. Stagg said that staff had conducted VMRC’s normal public interest review for both applications, which included the standard public notice in a newspaper of general circulation in the area, once a week for four weeks, and posting of the application at other locations within the area. The applicant indicated on VMRC’s standard Oyster Lease Use Plan Questionnaire used to include traditional shelling, planting of spat and/or seed oysters and the placement of aquaculture cages up to 12-inches above the substrate.

Mr. Stagg explained that staff had received approximately 65 letters and/or emails in opposition to the 2011-007 application, many of which also noted either direct opposition to the 2011-005 application or merely listed them both at the beginning of their correspondence. A few of the 65 letters and/or emails were multiple correspondences from the same person. Staff received one letter of support for the application.

Mr. Stagg stated that to fully address both applications, some additional information concerning the applicant should be noted. According to information obtained from the applicant’s web site, Oyster Company of Virginia LLC’s mission statement was: *“Promoting the sustainable return of our native ‘Virginia Oyster’ (“Crassostrea*

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virginica") as the basis for the health of the Chesapeake Bay and its ecosystem by accelerating programs and projects with proven results and enlisting our Virginia Watermen as an important part of the solution." The site further explained the business model of this entity, as: "The Oyster Company of Virginia, LLC has developed the Oyster Cage Co-op Program to provide a "bridge" for Watermen to become successful aqua farmers. OCVA has developed commercial and "non commercial" value added propositions with the native Virginia oyster as part of the OCVA business matrix: Sale of 'Virginia Oysters' and Nutrient Reduction Programs (NRP) for the health of our Chesapeake Bay."

Mr. Stagg said that the company proposed a modified co-op business model based on individuals, businesses, and/or other entities purchasing oyster aquaculture cages (@\$175.00 per cage), again, as indicated on the company website: *"Each supporter is assigned to one of OCVA's Watermen who is supplied with the materials to build cages and the seed oysters to grow to mature oysters. The waterman will deploy the cages, rotate and work the cages and then harvest the oysters. Starting with the first harvest in 2012, each OCVA supporter will receive two dozen freshly packed oysters shipped anywhere in the US once a year, every year for the rest of their life."* Finally, the company website noted a dividend component to the business model stating: *"Individuals, corporations, civic groups and organizations that purchase 10 or more OCVA Cages can receive a dividend. The purchase of these cages will help to underwrite the OCVA Waterman build and deploy specially designed 'off bottom' oyster cages. The OCVA Waterman will manage and 'grow out' the oyster seeds for commercial sale through The Oyster Company of Virginia."*

Mr. Stagg stated that staff was unaware of any further details related to the dividend program or the business model relationship between the company and the individual watermen who participate. Private oyster ground leases, historically, were sometimes subleased by the lessee to others and VMRC was not involved in those agreements. While this proposal was not exactly the same as a sublease arrangement, should either application or portion thereof currently pending, be leased by the Commission, the applicant (Oyster Company of Virginia, LLC) would be the responsible party for payment of all fees, rents and compliance with the Code of Virginia statutes and applicable VMRC regulations.

Mr. Stagg informed the Commission that Oyster Company of Virginia LLC currently had one lease in Milford Haven, in Mathews County (assigned on April 24, 2011) and two leases in the name of W. Tolar Nolley/Larry Ewan in the Northwest Branch, Severn River (assigned April 27, 2011). Mr. Nolley was the founder of Oyster Company of Virginia, LLC. The applicant also had leased an offloading facility within the City of Poquoson and had made considerable repairs to that existing structure. This facility was located at the terminus of Forrest Drive along Bennetts Creek.

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Mr. Stagg stated that staff had received numerous letters, e-mails and phone calls in opposition to both applications. Staff responded to each communication in an attempt to address outstanding questions raised by the protestants. Objections to the leases included the existence of submerged aquatic vegetation (SAV) within the footprint of both applications, recreational use of the area by residents in the area (to include skiing, boating, fishing, clamming, swimming, tubing, jet-ski use and other uses), navigation concerns related to cage aquaculture structures, disturbance of the nearby (at the 2011-007 application site) quiet nature of the adjacent residential area, potential adverse water quality impacts associated with possible power-washing and cleaning of cages onsite and the perception that this could be a large scale industrial operation.

Mr. Stagg explained that Representatives of the City of Poquoson City Council contacted staff in late March or early April regarding the numerous calls City Council members were receiving concerning both applications. At the City of Poquoson Mayor's request staff sent a representative to their April 25, 2011, Council meeting to provide them with information related to VMRC policies concerning the leasing of oyster ground and pertinent agency regulations related to aquaculture. Additionally, staff also met separately, later that evening, with a group of citizens to discuss the two Oyster Company of Virginia, LLC applications. Representatives of Oyster Company of Virginia, LLC were present at this meeting. While some issues related to the applications were clarified, there was no consensus or agreement reached between the applicant and most of the citizens in attendance.

Mr. Stagg noted that during staff's evaluation of the project, it was determined that submerged aquatic vegetation (SAV) had been present in recent years in areas of both applications. Additionally, larger areas of the application along Beach Road contained areas that were within the Chesapeake Bay Program 2010 restoration goal and where SAV had previously existed and where it was targeted to be restored. Staff went out and did field surveys of the areas within the footprint of both applications, excluding areas that had contained SAV in recent years. For the application for lease near Beach Road, some of the area surveyed was within the 2010 restoration goal area and that area did not appear to have supported any growth of SAV in the last 10-20 years. Staff believed that virtually all the area contained within the field survey might now have water depths too deep to support such growth.

Mr. Stagg stated that staff had requested that VIMS submit comments that were related to the SAV issue. VIMS' comments that were received June 22, 2011 confirmed the presence of SAV on portions of the lease and that portions of the lease were areas included in the 2010 restoration target boundaries. Specifically, VIMS recommended restricting any lease to areas outside both the current SAV and restoration goal areas. As an alternative, they recommended issuance of a short term lease within some of the area as surveyed that could be renewed or modified after that shorter term based on the presence of any SAV or a lease that would be shortened or modified if SAV recovered within portions of the lease. Unfortunately, staff did not believe that either of the

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alternative lease options would be feasible under the Code of Virginia's laws related to leasing of oyster planting ground. For this type of approach, however, the applicant could seek a subaqueous permit through the Joint Permit Application process.

Mr. Stagg explained that in addition to the concerns associated with SAV, staff also had considerable concerns with the fetch exposure at the site near Beach Road. The area had an unobstructed northeast fetch to New Point Comfort of approximately 8 miles and an unobstructed fetch towards the Eastern Shore of 28 miles. Staff anticipated that major storm events could cause widespread displacement of cage aquaculture structures located anywhere within the proposed lease area. Staff had discussed with the applicant, staff concerns related to leasing any of the area in application 2011-007 (near Beach Road). In light of the considerable amount of objections and staff's concerns the applicant had indicated he might be willing to withdraw this application. However, as a condition of his withdrawal, Mr. Nolley had requested that the Commission either set this area aside as not to be leased, or that his company had the first right of refusal should the Commission contemplate leasing the area in the future.

Mr. Stagg said that both applications, as originally received, contained areas of currently existing SAV and it had been the policy of the Engineering/Surveying Department not to lease areas with existing SAV since 2006. Both application areas were carefully reviewed to determine the recent presence of SAV and those areas were excluded from both of the application survey areas. However, some portion of the surveyed area for the application near Beach Road (2011-007) was within the Chesapeake Bay Program's 2010 SAV restoration goal area. Given the current depth at the site, staff questioned whether SAV would repopulate much of the area targeted for restoration. The area surveyed within Lloyds Bay did appear to be an appropriate area to cultivate shellfish, using both traditional and cage aquaculture methods. While this application did receive a number of protests, many of the issues raised apply more to the application near Beach Road. There were no residential properties near the proposed Lloyds Bay lease and the area was surrounded by marsh and other leases within Lloyds Bay. Therefore, staff recommended approval of the Lloyds Bay area, as surveyed.

Mr. Stagg stated on the other hand, the area near Beach Road presented numerous issues of concern. Numerous objections had been raised concerning other public uses of this area by nearby property owners and others, including recreational boating, fishing, crabbing, clamming, sailing, and swimming. Other concerns include potential adverse water quality impacts that may be associated with cage aquaculture power washing, the potential large scale operation in close proximity to a residential area, the potential displacement of on-bottom cages, the noise pollution, view-shed degradation, navigation concerns, and other quality of life impacts. Staff recognized all these had some merit and warranted due consideration. Additionally, staff had considerable concern with the fetch associated with the Beach Road location and its impact on the aquaculture structures that may be installed if the area was leased. VIMS had also expressed a concern associated with the leasing of any area within the 2010 SAV restoration goal area. They suggested

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an alternative to allow for the leasing of a small “test” area with considerable conditions attached. Staff did not believe the alternative lease arrangement was possible under the statutory leasing requirements. Therefore, staff could not support leasing any ground within the requested 2010-007 application, as submitted.

Mr. Stagg said that while the applicant had proffered a willingness to withdraw the Beach Road application, the withdrawal was predicated on his request that the Commission either delineate this area as not to be leased in the future and/or allow his company the first right to the area should staff receive any future application from another entity. Since the Code Section 28.2-605, stated that applications shall be considered in the order they were received, staff could not support the request to provide the applicant with the first right to the area for any future applications.

Mr. Stagg explained that in light of the large number of concerns by local residents, the use of this area for a variety of uses, and the considerable fetch exposure of the area, staff believed this area was not compatible with traditional and/or cage aquaculture shellfish activities. Staff, therefore, recommended the Commission consider designating an appropriate area in this location not to be leased.

Commissioner Bowman said he had concerns with the encroachment of the SAV on Seaside Eastern Shore’s aquaculture as the SAV pushes this activity off of productive grounds. He stated this was being studied.

Mr. Stagg said that staff did not take an application for a lease on SAV since this was the policy followed since 2006. He reiterated that they do not lease areas with SAV.

Commissioner Bowman asked for questions of staff.

Associate Member Palmer asked if the area for 2011-05 was previously leased. Mr. Stagg responded yes. Associate Member Plumlee asked how long ago was the oyster ground leased. Mr. Stagg responded he did not know and he showed the areas leased for the last ten years. Associate Member Palmer asked if the adjoining lease were activity worked. Mr. Stagg said he did not know and that it was traditionally use, but the area had been impacted by disease. Associate Member Palmer asked if it was used with cages or traditionally. Mr. Stagg stated that there were no cages. Associate Member Palmer asked if for the application 11-07 the immediately adjoining lease had been used. Mr. Stagg stated that the protestant has and had done aquaculture. Associate Member Palmer asked if there had been success with the aquaculture. Mr. Stagg said that it had not been too successful, but Mr. Cox would better able to answer that question.

Associate Member Robins asked if there was depth for the current uses and navigating in Lloyds Bay. Mr. Stagg stated that staff had not checked it, but he thought it would be hard to get in and out at low tide. He said the protestants were concerned that the cages would block any access. He said that cages up to 12 inches should not be an impact. Rob Butler, VMRC Surveyor, said that there was 5-foot depths. Associate Member

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Robins said there was potential hazard to navigation and transit. Mr. Stagg stated that the Commission cannot put conditions on leases and with oyster ground leases the corners are to be marked and the stakes cannot be any closer than 150 feet. He said any additional staking would require a marking plan be approved by the Chief Engineer, which would be done on a case-by-case basis. He said staff had not approved some plans because they were a hazard to navigation or cut into the main channel. He said the lease only the area south of the line would eliminate the problem. He said they could plant shells but it would still cause some problem.

Associate Member Robins asked if the area was used for crab pots or for recreational use. He also asked if 11-007 was more active or if in the area of 11-005 there was more recreational activity and fishing. Mr. Stagg responded that they could kayak, boat skiing or crab pot.

Associate Member Tankard said the protestants had concerns with the water quality being impacting by the maintenance of the cages. Mr. Stagg said that was controversial but that the washing of cages would have minimal impact. He said staff suggested cutting the Lloyds Bay lease size in half. He noted that Lloyds Bay flushes well. Associate Member Tankard asked if VIMS felt that the maintenance of the cages would impact the SAV. Mr. Stagg said Dr. Orth of VIMS could answer that question, but he felt it was not as much as cages would the water quality. Associate Member Tankard asked if the turbidity impacted the SAV. Lyle Varnell, VIMS, said that was a complex question, but primarily it depended on the scale of the facility and how it was done. He said there was good flushing in here. He said there had been talk for 6 or 7 seven years and they had not found an area in Virginia where it was significantly impacted and it was seasonal.

Associate Member Plumlee asked about the lease in Milford Haven that the Oyster Company of Virginia already had. Mr. Stagg noted that they had only been assigned this ground in April 2011. Associate Member Plumlee asked about the upland repairs that had been made by the applicant. Mr. Stagg stated that was in Poquoson. Associate Member Plumlee asked if it was an offloading facility. Mr. Stagg said that Mr. Tolley had a upland project at the Severn River lease area. Associate Member Plumlee asked about the residency issue. Mr. Stagg explained that a Corporation had to be 60% owned by a Virginia resident or be chartered for growing and propagating shellfish and staff gets an affidavit signed, if not chartered. Associate Plumlee asked if there was any harvesting done by the Company. Mr. Stagg said it was a new company and concept and there were other areas applied for to lease which was approved.

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

Tolar Nolley, representing Oyster Company of Virginia was sworn in and his comments are a part of the verbatim record. Mr. Nolley explained that this had been a year-long effort which involves private individuals in the oyster industry. He said they were doing this for all the right reasons. He said he wanted to thank the staff (Ben, Royce, and Rob).

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He said this was a model to give watermen jobs. He said the proponents had valid concerns regarding the Beach Road lease. He said they had listened and were trying to work with everyone. He said right now the government monies are tight and it was a private initiative to make the public part of the solution. He said they were trying to be conservative and well thought out. He said he invited everyone to come and look at it all. He said for the 11-007 application his company did not want to get into an adversarial relationship with the public or VMRC. He stated the Oyster Company of Virginia was helping the watermen to learn a new technology and it would keep the money in the Commonwealth as well as help the health of the Bay.

Mr. Nolley explained that this would protect the oysters from predators by keeping them in cages and off the bottom and also help clean the waterway. He said they were engaging the public with their presentation called, "Oysters for Life". He said the watermen are provided with a cage package. He said the Virginia Marine Products Board and the Virginia hatcheries are helping, which in the end provides more product. He said they would be utilized an existing seafood wharf in the area, which would be cleaned up. He reiterated that this was not an industrial complex. He said they had listened to the mixed concerns expressed for 11-007 by the protestants and had agreed to the staff recommendation to not lease or to limit the area for a test. He Lloyds Bay was a part of the history of Poquoson. He said they would maintain good records so that all could see that they were not here for the short term, but for the long haul.

Associate Member Plumlee asked about the issue of the power washing of the cages and impacting the water quality. Mr. Nolley stated he would defer to VMRC and VIMS. He said the methodology was modeled after the VMRC project.

Associate Member Plumlee asked about the 5-foot water depth. Mr. Nolley said they were going to mark with pole the lease and they would submit a marking plan utilizing GPS coordinates. He said it would be rows with one buoy for each row. He said the use of technology would help VMRC and the Marine Police Officers.

Associate Member Palmer asked what type of oysters would be used. Mr. Nolley stated that they would be disease resistant, diploid oysters, which had an advantage over using triploid.

Associate Member Tankard asked if he had experience with the oyster model. Mr. Nolley explained that he had listened to others in the field, such as the watermen and Watermen's Association. He said they had looked at the resources here and had developed a strong business model and marketing model.

Mr. Stagg explained with the laws and regulations there would need to be another permit for the buoys and if the cages were more than 12 inches high. He stated a long-line staking plan was needed here in this area.

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Commissioner Bowman asked for anyone in support or opposition. There was no one else in support.

Del. Gordon Helsel, Jr., General Assembly representation for Poquoson and resident, was sworn in and his comments are a part of the verbatim record. Del. Helsel stated that 2011-005 and 2011-007 were protested because they would adversely affect the enjoyment of the area, the cages would cause a hazard and he was asking that both applications be denied.

Associate Member Robins asked how 2011-005 was incompatible for the area. Del. Helsel said there was both commercial and recreational use in the areas and they can be traversed. He reiterated there was a lot of activity. He said he last was in Lloyd's Bay 5 or 6 years ago and he spent a lot of time.

Julian F. Cox, resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Cox explained he had been a resident in the area for 42 years as he came here when he was a kid. He noted he was speaking for his wife also. He said he favored the triploid because it grew fast and he supported cage aquaculture. He provided a power point presentation. He said he was concerned with the large scale industrial operation as it was not appropriate for the area. He said the current use serves the people in the area. He added he had a shallow inshore nursery and he agreed with the staff recommendation for the 425 acres being designated not to be leased. He said a lot of the concerns related to the Beach Road application. He added that he was concerned for safe recreational use, the large number of structures, the large number of buoys, an area primarily used recreationally for diving, swimming, jet skiing, etc. in the area, and overall safety. He said that metal pipes were not allowed by VMRC. He said he had a 20 to 23-foot boat at his dock and it would deprive him of his access to the Bay. He stated the structures would cause shoaling and impact the SAV.

Mr. Cox stated that the power washing and increased activity would have an impact and not just a little. He was concerned about the turbidity as it could harm the native oyster population. He said he received a grant from VMRC in 2000 to put in his restoration project and it works as he does see larger oysters, but there was still a lot of mortality. He suggested other areas more suitable for this size of activity. He said he was in agreement with the VIMS letter regarding these applications (11-005 and 11-007).

Brian Lockwood, Poquoson Resident and Protestant, was sworn in and his comments are a part of the verbatim record. Mr. Lockwood said he was protesting both application for similar reasons as presented by Mr. Cox and staff. He said there was potential for a lot of cages as there was no limit in the number of cages by VMRC. He said it was excessive for a commercial operation. He said they were using the diploid and not the triploid oysters and most use the sterile oysters to allow for faster growth. He said he was not concerned that they would be putting watermen to work but they could get their own lease and would not need the company. He said he had a neighbor in Lyon's Creek using

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his lease for aquaculture and doing well. He said the company was more than just the structures and putting the watermen to work. He was concerned because of the recreational use and Lloyd's Bay was to for traversing by boat to other areas. He said it was not used for the watermen, as there were duck blinds and fishing in the area. He said if were to be approved, exclude the channel. He said the impacts on SAV should be considered.

Associate Member Robins asked if there was recreational activity in Lloyd's Bay. Mr. Lockwood said there kayaking and fishing, plus visitors come to the area to see the beauty and wildlife. Associate Member Robins asked if 11-007 was more recreationally active. Mr. Lockwood said 11-005 was utilized and traversed. Associate Member Plumlee said the pursuant to the Code the Commissioner could have any hazardous structures removed. Mr. Lockwood stated it was not a channel as would be usual, but an area traversed for recreational activity in the area of the proposed lease.

Associate Member Sessoms said that on the slide there were a lot of leases in the Bay so why did they object to the 20 acres over the others. Mr. Lockwood stated it was the size and location. He said there was a lease in front of his property with 20 or 30 cages but this was bigger. He stated he did not oppose aquaculture, but he did not want the ability to traverse the area prohibited. He said there should be a more appropriate area for this activity. He said the marking and cages prohibit use by others. Associate Member Sessoms said that the channel goes through other lease also. Mr. Lockwood said that you did not see aquaculture activity back there. He said not all leases were used as it did not cost much to keep it. He said he thought that maybe 90% was used.

Commissioner Bowman said that they must show some activity or it reverts back to the State and there maybe some excluded because of disease, but they must do something and not allow it to lie fallow.

Kate Queen, Beach Road Resident and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Queen stated that she was in favor of the development of aquaculture in Virginia, supported the science, and supported the watermen. She said this could be a potential economic development for the area, but this was not the right location. She staff had given good reasons and hers were the same. She said the fetch at the 11-007 was a concern because when there are storms if the cages are not secure they could wash up on the highland. She said this was significant for the waterfront properties as she feels they should be good stewards and clean up afterwards. She asked who would be liable for when the cages are not secured and get washed up and if the Oyster Company of Virginia was responsible. She said at a meeting someone told her that the homeowners insurance of the watermen's insurance as their insurance did not cover debris from a storm. She said she agreed with staff recommendation and these locations are wrong for the activity proposed.

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Roxanne Huckstep, resident for 25 years and homeowner for 18 years and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Huckstep said the oyster ground here would be an impact as there was a large fetch and there have been a number of storms that have impacted the area. She said they had attended a VIMS meeting to discuss how to protect the shoreline and were told to pray as the big fetch was at the end of the funnel of the Chesapeake Bay. She asked who would secure the structures and who would be responsible. She explained that Lloyds Bay was used as an entry to the Plumtree National Wildlife Refuge. She said marine life utilize the refuge. She added that there were other non-residential and non-recreational areas to be used.

Robert Cox, Poquoson River resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Cox said that he agreed with the others. He said this was a residential area here and the proposal was industrial. He said this did not fit in with the upland planning zones and should not be permitted close to a residential area. He said this set a precedent.

Steve Cornelius, Beach Road resident and protestant, was sworn in and his comments are part of the verbatim record. Mr. Cox's pictures had shown the recreational use in the commons that were used by others. He said VMRC staff had worked well with the public and he appreciated how they spoke with the public.

Barkley Sheppard, Beach Road resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Sheppard stated he appreciated the Commission's time and the staff's time. He said he agreed with the staff recommendation. He said he was concerned about safety, having access, being able to navigate and to continue with recreational fishing. He stated the structures would limit others' use by limiting these to one citizen. He said he was not as concerned about Lloyds Bay (he requested a staff slide). He said there was regular and heavy use of the channel as this was a thoroughfare for Bennetts Creek.

Glen Sheppard, Beach Road resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Sheppard said he was a long time resident. He said he could see all the recreational use and there would be a safety issue with the structures. He said it would impact the channel, access would change, and there would be more impact because of storms. He said for aquaculture this was the wrong place and there were other areas to be used for it. He said this was a popular area.

Al Clayburn, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Clayburn stated he had used the area for 70 years and the navigation would be impacted. Associate Member Tankard asked if was for both areas. Mr. Clayburn stated the Beach Road application.

Sara Cornelius, Beach Road resident and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Cornelius stated this would impact the value of the area

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and the peace and quiet as well as the wildlife. She said she was a teacher and the students value the area. She said there was recreational activity and safety would be impacted. She said the crab pots flatten if you fell on them, but the cages did not and injuries would result. She said others outside of the area come here also. She said in Lloyds Bay there was kayaking and the area was beautiful and pristine making it a treasure. She asked that it be preserved for all.

Commissioner Bowman asked for rebuttal comments from Mr. Nolley. There were none.

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

Associate Member Robins asked if the application for lease 11-005 excluded the SAV and the channel, what would be left to lease? Mr. Stagg stated very little as there was slough or deep area. He noted that the other leaseholders in the area could decide to use cages. Associate Member Robins asked about the lease marking plan and if it interferes with navigation it had to be removed. Mr. Stagg responded yes and explained that the leaseholder could use cages 12 inches in height or less. Associate Member Robins asked if most existed prior to the cage aquaculture. Mr. Stagg stated that they held the leases a very long time as it had been historically leased since the 1930's.

Associate Member Schick asked about a survey being done to determine that it plus or minus five feet in depth. Mr. Stagg stated that there was no sounding done, but the area would be about 4 to 7 feet water depth. Associate Member Schick asked how the cages would be. Mr. Stagg responded no more than 12 inches height. Associate Member Schick stated that would leave 3 to 6 feet of water over the cages.

Associate Member Tankard asked about other leases and if want to use cages higher than 12 inches. Mr. Stagg stated that up to 12 inches no marking was necessary, but if a complaint were to be received it would be addressed at that time. He added they can submit a marking plan with a drawing for staff to evaluate and determine if it was appropriate. He said this area could be traversed with a kayak even with cages. He noted this would be different with a motor vessel.

Commissioner Bowman said the matter was before the Commission.

Associate Member Palmer explained that he had listened to the comments about the 12 inch height cages and a standard crab pot can be 20 to 24 inches a greater hazard and there was no law to prevent them from being used in the area. He said the pressure washing concerns for causing turbidity was not as bad as the jet skis who are out operating from 6 a.m. until 10 p.m. and the watermen are usually out only in the morning and once they are done with pressure washing they are done. He said with other leases there was a potential for cages and Mr. Lockwood told the Commission about one in front

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of him that had 30 or 40 cages. He said this would be just like Mr. Nolley, only it was someone else.

Associate Member Robins said there was significant merit to the innovative business model which involved public investment. He said the business model did support aquaculture which was consistent with the Commission's action in the past. He said the role of the Commission was to make sure these cages were appropriately sited and there was a need for public input. He said the area in 11-007 was relatively shallow and there was lots of recreational activity, which was a cause for concern for safety hazards. He said the area had a long fetch area there which meant storm events could cause the cages to move. He said this lease he felt was a case of detriments outweighed the benefits. He said Lloyds Bay was a more complex area used by the community used extensively for recreational but as an area of transit. He said there was crab activity in the area which was not compatible with a large scale aquaculture activity. He said as far as cage aquaculture both areas were challenged. He said he hoped that the channels could be excluded to minimize interaction. He said to exclude both channels would not leave enough area for a lease. He stated he agreed with the staff recommendation.

Associate Member Schick noted that the 2011-007 application presents numerous conflicts. He said, however, Lloyds Bay is an area that is leasable but still presents management issues. He further stated that leasing the area within Lloyds Bay seems appropriate for cage aquaculture.

Associate Member Plumlee said he agreed with his colleagues and the residents had done an elegant job presenting their concerns. He said 11-007 he could not support and he did support 11-005 with the reduction in area to approximately 20 acres. He said he agreed with the staff recommendation and the opponents did want to seed these types of operations but it was a case of not in my backyard.

Associate Member Tankard stated the Commission needed to support aquaculture and the issue was the long term conflict and a problem with the safety issue. He said the impact of aquaculture on the Beach Road lease did not make it viable. He said in Lloyds Bay it was the channel which was problematic and it were to be excluded then there would not be much area left for a lease. He said the Commission wanted to see aquaculture survive.

Commissioner Bowman said this was a tough situation and he agreed with all as the residents want to keep the status quo and the Commission's job was to minimize the conflicts but help those who work the waterways. He said he agreed with the staff recommendation for Lloyds Bay to resurvey it. He noted that if conflicts were to arise which were tangible and problematic they could be handled by Code.

Associate Member Robins said it would be an alternative to set aside the northern side of the channel so the public could transit Lloyds Bay. Mr. Stagg stated it was up to the Commission and made two suggestions for areas to lease within Lloyds Bay.

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Associate Member Robins stated that he moved to deny the application for lease # 2011-007. Associate Member Tankard seconded the motion. The motion carried, 7-1. Associate Member Palmer voted no. The Chair voted yes.

Associate Member Robins moved that the application for lease # 2011-005 was appropriate and that the approval exclude the channel for navigation purposes. Associate Member Plumlee seconded the motion. The motion carried, 7-1. Associate Member Schick voted no. The Chair voted yes.

Associate Member Robins asked about the area recommended to be set aside. Mr. Stagg explained that the staff recommended that the clamming ground be the north boundary and to stay offshore to not interfere with the riparian areas. He added the area would not be staked, but only mapped. He also added it would not be exempt from a Joint Permit Application only to being leased for shellfish. He stated the Commission had done this before.

Associate Member Plumlee asked if a notice prior to taking action to close the area to leasing was necessary. Commissioner Bowman stated it should be advertised for a public hearing.

Associate Member Robins moved to advertise for a public hearing for the August meeting to discuss the setting aside of the 425 acres and not allow the leasing of the area, as recommended by staff. Associate Member Plumlee seconded the motion. The motion carried, 8-0. The Chair voted yes.

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10. PUBLIC COMMENTS:

Ellis W. James, Norfolk resident and Sierra Club Member, spoke regarding the news article about the contamination that washed up on the shore in Virginia Beach the past weekend and praised the VMRC Marine Police Officers for their prompt response and assistance in helping to mobilize the appropriate City and State agencies.

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The Commission broke for lunch at approximately 12:44 p.m. and reconvened at approximately 1:32 p.m.

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Associate Member Robins reconvened the meeting for the presentation of the Certificates of Appreciation for the retiring Board members.

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Commissioner Bowman presented both Associate Members Holland and Bowden with their certificates, which he read into the record about their eight years of dedicated service to the Commission Board. Both Associate Members Holland and Bowden expressed their appreciation for the other Board members, as well as, the VMRC staff.

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- 11. REQUEST FOR PUBLIC HEARING:** Consideration of final blue crab regulations, including closure of the crab dredge fishery for the 2011-2012 season, (4VAC20-1140-20 et seq. “Pertaining to Prohibition of Crab Dredging in Virginia waters). Decision on licensing those individuals on the peeler pot and crab pot waiting list who have been inactive, at least since 2004 (4VAC20-270-10 et seq., “Pertaining to Crabbing”). Re-assignment of latitude-longitude coordinates that apply to Virginia Blue Crab Sanctuaries (4VAC20-752-20 et seq., “Pertaining to Blue Crab Sanctuaries”).

Rob O’Reilly, Deputy Chief, Fisheries Management gave the presentation with slides.

Mr. O’Reilly gave a hand out to the Commission submitted by Mr. Ty Farrington who is a member of the Blue Crab Management Advisory Committee.

Mr. O’Reilly provided the six items to be discussed as:

- 1) Proposed closure of the Winter Dredge Fishery;
- 2) Disposition of the waiting list and to still reduce harvest by 34%. He said those on the waiting list had not reported any harvest at all during the years 2004 – 2007. He said originally it was planned that if there was a three year level of harvest of 200 million pounds of crabs then more would be eligible for a crabbing license based on the Commission’s plan for reentry for those individuals. He said with the new stock assessment the result would be more conservation management measures to be adopted. Since 2008 and the 34% reduction in harvest of female crabs the Commission has held a steady course, with a few give-and-takes and adjustments, but the Commission has tried to maintain a conservational neutral plan since 2008;
- 3) Reinstatement of the sanctuary coordinates. A year ago, it was discovered some of the latitude and longitude coordinates were incorrect and have since been resurveyed. Amending the regulation with the coordinates added back;
- 4) Maryland ID numbers being allowed on crab and peeler pots. Already in place for North Carolina joint harvesters;
- 5) Revised requirements for crab culling;
- 6) Proposed new requirements for attending peeler pots and crab pots.

Mr. O’Reilly said that there was now a Regulatory Review Committee that the last two items were offshoots from. The Regulatory Review Committee was formed with a

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representative from the Habitat, Fisheries, and Law Enforcement Divisions in order to make the intent of the regulation very clear. He added that John Bull was the coordinator for the Committee, which so far had had only two sessions.

Mr. O'Reilly reviewed a chart that showed the harvest trends for the 2008 management measures to lower the female harvest by 34% with a 35% increase in the value of the crabs per pound. He noted in 2010 there was a 14% increase.

Mr. O'Reilly explained that the Winter Dredge Fishery is a 100 year old fishery dating back to the 1900's or earlier. It is only in recent years that a lot of the information about that fishery has come to the Commission's and staff attention. There is an overwintering stock in the lower bay, most of those female crabs have not spawned yet. The winter dredge fishery harvest consists of 95% of the female crabs. Van Engel from VIMS studies in the 1960's indicated this, and more recent studies by VMRC. In the early 1990's there were as many as 300 vessels, but more recently with 70 or fewer vessels, the depletion of the spawning stock did occur. In crab dredge is very efficient in CPUE because it goes back and forth over the same area, but the problem is there is a quite a bit of waste in the fishery. Twenty years ago staff determined the number of damaged crabs on board was 24% but that is just what was onboard. He said what was said in comments by watermen that of a day's catch only about 1/3 were marketable. He said the management plan in 2008 was for a winter dredge fishery closure and it resulted in a 13% reduction in harvest. He said the Blue Crab Management Advisory Committee earlier this year had called for the Winter Crab Dredge Fishery to be reopened and suggested other measures for other gears was necessary to balance the harvest to allow the dredge fishery to open.

Mr. O'Reilly said when the Commission, along with the Maryland Department of Natural Resources, received National Marine Fisheries Service Disaster Relief Funding of \$15 million there were several projects provided for the eligible licensed crabbers, such as the Ghost Pot Retrieval of discarded pots using side-scan sonar, the License Buy-Back program and the oyster aquaculture projects. He said there will be funding for a short 4th year Ghost Pot program in mid-December with 22 days. He said this will employ the Crab Dredge Fishermen and provide habitat improvement. He said with the limited entry there were 53 crab dredge fishermen who qualified with 13 who were originally on the waiting list. He added that the crab dredge fishermen could just utilize their crab/peeler pot licenses.

Mr. O'Reilly presented density data from the Baywide Winter Dredge Survey, indicating differences in winter crab abundance in the lower bay over time, during years when the winter dredge fishery was in operations at the same time as the survey, and when the winter dredge fishery was closed. Mr. O'Reilly presented abundance and harvest data for blue crabs for the past 22 years and noted how the abundance seeds both the harvest and next spawning stock. For 2011, there was winter kill of blue crabs, especially in Maryland, and a falling off of young crabs, so there is the expectation of less crabs for harvest for the fall of 2011. You do not want a situation where there available crab stock

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is being overfished, or over 53%, and in many previous years that occurred. Current management plans prefer a harvest no greater than 46% of the available stock.

The stock assessment will be published August 9, 2011, and uses analytical and modeling approaches to determine biological reference points for management. It will provide information on the preferred rate of fishing to prevent overfishing. The new stock assessment will propose that the overfishing is not 53% of all crabs but 34% of all female crabs of all sizes. The new proposed control rule will include an overfished definition which will be 70 million age-1 females. Opposed to looking at 200 million age-1+ crabs of all crabs it will be 215 million age-1+ females. With a female only target, it was almost achieved in 2010, but has not happened yet, and conservation will need to be more rigorous.

Mr. O'Reilly noted the waiting list. It started out with 867 individuals that did not harvest any crabs from 2004 through 2007. It was endorsed by staff, the advisory committee, and the Commission. The Commission spent from January 2009 until July of the same year hearing appeals to allow exceptions to the waiting list due to such reasons as medical hardship. After the appeals, and the crab license buyback program, there are 326 individuals left on the waiting list today.

Mr. O'Reilly discussed Dr. Jim Kirkley's work from VIMS on the blue crab fishery, noted as a world renowned economist. Dr. Kirkley's analysis indicated that there were few instances where there was not excess capacity, meaning there was too much capacity in the blue crab fishery in numerous years. Mr. O'Reilly discussed the concern about latent licenses and compounding effort.

Mr. O'Reilly presented examples of trade-offs involving crab-pot seasons and the sanctuary to allow for other effort and still remain conservation neutral. Mr. O'Reilly then reiterated the six items that were up for discussion for a public hearing in August.

Commissioner Bowman asked for questions of staff.

Associate Member Plumlee asked if there was a reason to hear it at the same time as it was tied together or could it be addressed separately. Mr. O'Reilly explained that it was usually heard in April but because of the new stock assessment being delayed this was delayed until August. He said the dredge fishery needed to be heard and the sanctuary issue ends September 15th could be delayed. He said this was a cutting issue and with the public notification it could be made effective January 1, 2012.

Commissioner Bowman said the Commission was criticized that with the rules being changed it was problematic for watermen to keep up with them if everything was done constantly. He said with one species all the crabbers could be heard at one time. He said staff could show the interrelationship.

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Associate Member Plumlee said from the Board's perspective it was hard to digest all the information and hear from the stakeholders. He said the six issues were complex and he felt the Commission wanted to do a good job. He stated that this was the first time for him and he wanted to be able to understand all of the data. He reiterated that it was a lot of issues to hear at the same time.

Associate Member Robins said that Dr. Kirkley's slide showed the capacity for handling the number of licensees versus the abundance of crabs. He said the waiting list was established in 2008 and the motion included that an analysis be done so as not to impact the fishery by re-entry of the individuals on the waiting list. It seems that adding back 193 licenses from the crab wait list, representing increased effort, would require a conservation equivalent measure to compensate for the increased effort. Mr. O'Reilly said that would need to be done and could be based on 2010 average performance.

Associate Member Robins said the problems were not all apparent as the pool of active licenses was not fully utilized. He said approximately 200 were active and the rest were all part-time. He said there was no management tool to manage the activity of the gear. He said the Blue Crab Management Advisory Committee had dialogued on the right number of licenses. He said this had been reviewed for 3 to 5 years and there was a need for long time dialogue on transfers. He said BCMAC was looking for a long-term solution.

Commissioner Bowman said it had taken a while to get here and caution should be taken as regards the public trust as the numbers were close to tipping the scale the wrong way.

Associate Member Tankard asked if the BCMAC supported the measures to be heard at Public Hearing and if they voted to add back the dredge fishery. Mr. O'Reilly stated that at the BCMAC meeting they will have the chance to review and vote on the measures and they have already endorsed the winter dredge fishery for December 1 through January 15. He said it was during this time that most of the crabs were caught. He said that from staff perspective that this was the 4th season closure being proposed and staff would look at opening management measures if it was decided that it should reopen.

Associate Member Tankard said that given the impact of the crab dredge fishery should it even be advertised. Commissioner Bowman stated as a result of the Court Order the Commission must consider it every year.

Associate Member Plumlee asked if there was a time deadline for considering the crab dredge fishery season. Commissioner Bowman said the season for the crab dredge fishery was December to March and the watermen needed time to gear up.

Associate Member Robins said that the BCMAC's input to the Commission had helped before and individuals had spoken to the crab dredge fishery. He added that other modifications were necessary.

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Commissioner Bowman asked for action by the Commission.

Associate Member Tankard moved to advertise for the public hearing in August. Associate Member Laine seconded the motion. The motion carried, 7-0-1. Associate Member Plumlee voted no.

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12. REQUEST FOR PUBLIC HEARING: For the 2011-2012 public oyster season requiring amendments to Regulation 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest". An August 23, 2011 public hearing is requested.

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

Dr. Wesson said this was usually heard at the September Commission meeting, but watermen wanted it to be heard earlier. He said that staff was asking for a public hearing in August. He said hearing it earlier meant there was less information available for spat set as it shows up and can only be seen in September. He noted that there was no disease information at this time to show its impact.

Dr. Wesson stated that there had been two years that had very good harvest and he felt that this was a result of the Commission's management decision. He said harvest had increased to a consistent level of harvest last year and this level of harvest had not been seen since 1988. He said the harvest last year may be more than 200,000 bushels. He said there had been a good spat set in 2005 and 2006, but not in 2008 and 2009. He said there was a good spat set in 2010 and the disease mortality was down. He said it was too early to judge, but harvest will likely be less this year than the last 2 or 3 years.

Dr. Wesson stated that the bushel limit had been raised in 2010 to 10 bushels per commercial card licensee and staff recommended going back to 8 for the 2011-2012 public oyster harvest season. He said every year was different and last year the BP oil spill put more harvest pressure on Virginia. He said now the Mississippi River flooding was killing oysters in the Gulf. Mississippi will not have a season and it was unknown what will come from Louisiana and Texas. He said the rainfall that impacted the Mississippi went as far as North as Pennsylvania and New York and freshwater from the Bay had lowered the Baywide salinity. He said the lower salinity here will reduce the spat set as well as lower the disease mortality. He noted in 2010 there were not as many boxes and no spatset.

Dr. Wesson said that staff is again recommending a staggered season. He said that the Shellfish Management Advisory Committee (SMAC) may want it to all start on October 1 and go out at the same time. He said that resulted in the season ending early in a lot of areas on the Bay. He added that some watermen did not know that it had been shorten in

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2010 and requested extensions. He said staff had three season versions to talk about and a number of watermen had indicated to him that they wanted the staggered season.

Dr. Wesson provided a chart showing the gear versus harvest. He said staff recommended limiting the number of participants, but SMAC did not want to do it. He provided a chart that the Commission could look at the abundance of spat, small, and market before, during and after the season. He said that illegal harvest caused the spat, small, and market numbers to drop and the continued dredging may have damaged the oysters. When the season is extended they work the area longer, which causes the watermen to keep undersized oysters and the dredge causes damage, too. He said a two-month harvest season minimize the damage from the gear. He said staff was recommending that Rotation Areas 1 and 2 in the Rappahannock River, which were in the lower area be opened for the 2011-2012 season. He said staff had surveyed these areas and determined that there was a quantity of oysters available for harvest.

Dr. Wesson said that this year Maryland was not doing any shell dredging for the replenishment of their oyster grounds. He said they had money available and instead of having a state program, they were giving the Counties the money to do their own replenishment. He said most of the Counties wanted to come to Virginia and buy James River seed oysters. He said this started last season, which had concerned staff and the Commission had allowed the James River Hand Tong Season to close April 30th. He said the Counties in Maryland want to obtain approximately 100,000 bushels of seed oysters. The highest standing stocks in the James River are in the seed area which provides spawn for the lower James River. He said that the laws in Maryland say that no seed can be brought in with disease and they need to enforce that law or something will have to be done, such as closing the season for seed oyster harvest until the spring or possibly set a quota.

Dr. Wesson said that staff recommended advertising for a public hearing in August to consider the seasons, times, and lowering the limits.

Associate Member Tankard said that from the James River standing stock is where Maryland would get the seed oysters. Commissioner Bowman asked if the Commission could just wait and see. Dr. Wesson said there was time to figure out what to do and staff could come in August and request a public hearing for September.

Associate Member Tankard stated this was something new for staff. Dr. Wesson stated that the Virginia industry agrees that the seed should be protected as they saw how the problems in the Gulf had impacted the supply of market oysters. He said that there was a need to move the seed instate. He said the old code said no seed sent out of state and Maryland watermen cannot come to Virginia and harvest the seed oysters only individuals can come to Virginia and obtain a license to buy them.

Commissioner Bowman asked for action by the Commission.

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Associate Member Tankard moved to advertise for the public hearing. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

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13. DISCUSSION: To amend Regulation 4VAC 20-1050-10, Pertaining to Establishment of Restricted Area – Northrop Grumman/Newport News Shipbuilding Company”

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement, gave the presentation.

Lt. Col. Rhodes explained that there was a name change that needed to be made for this regulation. He stated that the name of the shipyard previously known as Northrop Grumman had been changed to Huntington Ingalls Industries.

Commissioner Bowman explained that the General Assembly allowed for the adoption of this regulation by the Marine Police for establishing restricted areas. He stated that no public hearing was required because it was a matter of national security.

Associate Member Robins moved to approve the amendments to Regulation 4VAC 20-1050-10. Associate Member Laine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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There was no further business and the meeting was adjourned at approximately 3:07 p. m. The next meeting will be held Tuesday, August 23, 2011.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary