

MINUTES

Commission Meeting

February 23, 2010

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
William E. Laine, Jr.)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
David Grandis	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation-Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Fishing Tournament
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Jamie Green	Assist. Area Supervisor, MA
David Drummond	Marine Police Officer
Brandon Sterling	Marine Police Officer

Commission Meeting

**15776
February 23, 2010**

Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Ben McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Other present included:

Karla Havens	Douglas Respass	Fred Whittey	Teri Nadal
Richard Wilson	Jim Gunn	Rebecca Francese	Tara Fisher
Brad Brown	Gary Hobson	David O'Brien	Thomas Delbridge
Z. R. Lewis	Randy Lewis	Thomas Moore	A. B. Crowther, III
Com Nealon	Keith Like	Jeff Deem	Bryan White
Kevin Clark	Allen Roberts	Jerry W. Rhea, Jr.	Randall Carr
Ellis W. James	Roger Parks	Douglas F. Jenkins, Sr.	

and others.

* * * * *

Commissioner Bowman called the meeting to order at approximately 9:41 a.m. All Associate Members were present. Commissioner Bowman announced that there was a quorum present, so the meeting could proceed.

* * * * *

At the request of Commissioner Bowman, Associate Member Holland gave the invocation and John Bull, Director of Public Relations led the pledge of allegiance.

* * * * *

APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda.

Tony Watkinson, Deputy Chief, Habitat Management explained that the applicant for Item 7, Marshall Seafood, #2009-025, had requested that the hearing on his application for oyster planting ground be rescheduled for a later date. Commissioner Bowman asked if other staff or any of the Board Members had any changes. There were no other changes.

Commissioner Bowman asked for a motion to approve the agenda, as amended. **Associate Member Fox moved to accept the modified agenda. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

* * * * *

MINUTES: Commissioner Bowman requested a motion for approval of the January 26, 2010 Commission meeting minutes, if there were no corrections or changes.

Associate Member Robins moved to approve the minutes, as circulated. Associate Member Tankard seconded the motion. The motion carried, 7-0-2. The Chair voted yes. Associate Members Holland and Laine abstained from voting, as they were both absent for the January meeting.

* * * * *

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

* * * * *

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

Tony Watkinson, Deputy Chief, Habitat Management Division, summarized the 12 items for the Board. His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked if anything was in the evaluation for Item 2L. Metro Machine Corporation, # 09-1403 from VIMS regarding a time-of-year restriction.

Mr. Watkinson stated he was not aware of any and that Mr. McGinnis could better answer that question. Ben McGinnis, Environmental Engineer, Sr. stated that no comments had been received regarding a time-of-year restriction. His comments are a part of the verbatim record.

As there were no other comments or questions, Commissioner Bowman opened the public hearing. There were no public comments and the public hearing was closed. He asked for action by the Commission.

Associate Member Holland moved to approve all of the projects, 2A through 2L. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

2A. WISE COUNTY BOARD OF SUPERVISORS, #09-1726, requests authorization to install a submerged sewer line beneath 382 linear feet of the Guest River and/or its tributaries to facilitate construction of the Stephens Guest River Interceptor Sewer Project in Wise County. Recommend approval with our standard instream permit conditions.

Permit Fee.....	\$100.00
-----------------	----------

2B. MICHAEL BOGESE, JR., #09-0228, requests authorization to construct a 5-foot wide by 16-foot long open pile pedestrian footbridge and to stabilize approximately 1,000 linear feet of eroding shoreline through the installation of six breakwaters and the placement of 5,800 cubic yards of beach nourishment material at his property situated along the James River in Charles City County. Recommend approval with a royalty of \$1,345.70 for beach nourishment material over 26,914 square feet of State owned subaqueous lands at a rate of \$0.05 per square foot.

Royalty Fees (beach nourishment 26,914 sq. ft. @\$0.05/sq. ft.).....	\$1,345.70
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,445.70

2C. CITY OF HAMPTON, #09-1673, requests authorization to install two (2) 295-foot long stone breakwaters and nourish with approximately 2,700 cubic yards of beach quality sand adjacent to Buckroe Beach situated along the Chesapeake Bay in Hampton.

Permit Fee.....	\$100.00
-----------------	----------

2D. U. S. ARMY CORPS OF ENGINEERS, #09-1815, requests authorization to place approximately 110,000 cubic yards of sandy dredged material per dredge cycle, from the maintenance dredging of the Chincoteague Inlet Federal Navigation Channel, along approximately 4,400 feet of shoreline east of the stone riprap on Wallops Island or within the previously used overboard site located southwest of Chincoteague Inlet in Accomack County.

Permit Fee.....	\$100.00
-----------------	----------

2E. MR. AND MRS. JOHN SHEPPARD, ET AL, #09-1763, request authorization to install two 170 foot long nearshore stone breakwaters adjacent to their property along the Chesapeake Bay in the Butlers Bluff subdivision at 3274, 3284 and 3294 Butlers Bluff Drive in Northampton County.

Permit Fee.....	\$100.00
-----------------	----------

2F. CHESAPEAKE PUBLIC WORKS, #09-1799, requests authorization to excavate 262 cubic yards of State owned subaqueous material to re grade 350 linear feet of an unnamed tidal tributary to St. Julian Creek, immediately west of Deep Creek Boulevard in the Camelot Lakes section of Chesapeake. The project is designed to improve drainage and alleviate flooding in the area and will include the creation of 1,040 square feet of vegetated tidal wetlands from adjacent uplands in the form of a floodplain bench. Recommend approval with our standard in stream work conditions.

Permit Fee.....	\$100.00
-----------------	----------

2G. CITY OF VIRGINIA BEACH, #09-1000, requests authorization to widen the Princess Anne Road bridge crossing over a tributary to the Eastern Branch of the Elizabeth River in the Kempsville area of Virginia Beach. The existing 8-foot by 10-foot road culverts will be extended horizontally a maximum of 15 feet on the north side, and a maximum of 20 feet on the south side of the roadway. Approximately 127 cubic yards of State-owned submerged bottom will be dredged to facilitate the culvert installations and connections, and cofferdams will be installed to allow in-stream construction in the dry.

Permit Fee.....	\$100.00
-----------------	----------

2H. VIRGINIA ELECTRIC AND POWER COMPANY, #09-1062, requests permission to install an aerial 230 kV transmission line from the Ladysmith CT Switching Substation to the Fredericksburg Four Rivers 230 kV line, the transmission line will cross the Matta River in three separate locations for a total of 373 linear feet. Staff recommends a royalty of \$2238.00 be assessed for the encroachment over 746 (two lines) linear feet of State owned subaqueous bottom at a rate of \$3.00 linear foot.

Permit Fee.....	\$100.00
-----------------	----------

Commission Meeting

2I. POQUOSON MARINA ASSOCIATES, LLC, #07-1569, requests a modification to a previously authorized marina re-development project to now install and backfill approximately 194-linear feet of bulkhead to replace an existing, deteriorated bulkhead in the vicinity of Docks C and D; to replace and rearrange Docks B and C within the same approximate footprint; and to repair/replace Docks D, F, G, and H within their existing footprints, adjacent to their facility situated along the natural portions of White House Cove at the terminus of Rens Road in the City of Poquoson. Dredging is no longer requested as part of the proposed modification. Staff recommends a revised and reduced royalty assessment in the amount of \$86,548.00 for the backfilled bulkhead's encroachment over 651 square feet of State-owned submerged land at a rate of \$3.00 per square foot, and for the marina's previously un-assessed, bold outline encroachment over 84,595 square feet of State-owned submerged land at a rate of \$1.00 per square foot. This assessment takes into account a royalty previously paid (VMRC #83-0134) for the encroachment of a pier over 200 square feet of State-owned submerged land.

Royalty Fees (backfill 651 sq. ft. @ \$3.00/sq. foot).....	\$ 1,953.00
Royalty Fees (encroachment 84,595 sq. ft. @ \$1.00/sq. ft.).....	\$84,595.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$86,648.00

2J. TOWN OF CLIFTON FORGE, #09-0733, requests authorization to repair the existing abutments of the Nettleton Avenue Bridge by installing concrete sub-footings extending approximately two feet channelward of each abutment, adjacent to Nettleton Avenue's crossing over Smith Creek in the Town of Clifton Forge. The proposed project will also include the temporary installation of cofferdams in order to conduct the necessary abutment repairs within the dry. Staff recommends inclusion of the standard in-stream conditions and a time-of-year restriction, which would preclude in-stream construction activities between October 1st and March 31st to avoid potential impacts within this DGIF designated wild trout water.

Permit Fee.....	\$100.00
-----------------	----------

2K. CITY OF NORFOLK AND OLD DOMINION UNIVERSITY, #09-1797, requests authorization to construct 467 linear feet of stone breakwater/sill and approximately 80 linear feet of low-profile riprap sill/guide-wall, backfilled with sand for the creation of approximately 0.69 acres of tidal wetlands at the mouth of an existing drainage canal separating the ODU campus from the City of Norfolk's Lambert's Point Golf Course, and to construct a 10-foot wide by 360-foot long open-pile pier with a 10-foot by 23-foot open-pile observation platform, boat lift,

and a 5-foot wide by 60-foot long gangway/ramp leading to a 10-foot wide by 80-foot long floating platform for use by the ODU Sailing Club, adjacent to their properties situated along the Elizabeth River in the City of Norfolk.

Permit Fee.....	\$100.00
-----------------	----------

2L. METRO MACHINE CORPORATION, #09-1403, requests authorization to dredge 53,300 cubic yards of State-owned subaqueous material to create a maximum controlling depth of -27 feet at mean low water, within an approximately 158-foot by 572-foot by 284-foot by 718-foot basin located on the east side of Pier 2 at their facility situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. The proposed project also includes the removal of approximately 650 feet of abandoned 24-inch diameter HRSD sewer line, with the remaining ends capped and sealed. Staff recommends inclusion of the standard dredging conditions and the assessment of a royalty in the amount of \$23,985.00 for the dredging of 53,300 cubic yards of State-owned subaqueous material at a rate of \$0.45 a cubic yard.

Royalty Fees (dredging 53,300 cu.yds. @ \$0.45/cu. yd.).....	\$23,985.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$24,085.00

* * * * *

3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).

There were no consent items to be heard.

* * * * *

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

Commissioner Bowman announced that Counsel had advised him that a closed meeting was not necessary.

* * * * *

5. NORVIEW MARINA, #09-1444, requests authorization to dredge 270 cubic yards of subaqueous material from a 6800 square foot area adjacent to an existing boat-slip, boat ramp, and travel lift area to provide maximum depths of minus six

and one-half (-6.5) feet at mean low water adjacent to the Norview Marina situated along Broad Creek at 18691 General Puller Highway in Middlesex County. The project is protested by a nearby property owner.

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

Mr. Neikirk explained that Norview Marina was located along Broad Creek in the Deltaville area of Middlesex County. Norview Marina was a full service marina with 99 open and covered wet-slips and an upland boatel for dry storage. They proposed to dredge an area adjacent to their two travel lift slips, boat ramp, and an existing slip adjacent to the travel lift to provide maximum mean low water depths of minus six and one-half (-6.5) feet. Approximately 280 cubic yards of subaqueous material were proposed to be removed by clamshell method. The dredged material was proposed to be placed within an existing earthen berm containment area on their property.

Mr. Neikirk said that this area was previously dredged to a depth of minus five (-5) feet in the mid-1980s. Accordingly, only that portion of the material being dredged deeper than minus five (-5) feet was being considered new dredging. The balance of the material was considered to be maintenance dredging. The increased depth would allow for the hauling and repair of larger vessels. The travel lift and adjacent slip area were leased to Zimmerman Marine, Inc.; an established company that builds and services large vessels.

Mr. Neikirk stated that the project was protested by Mr. James M. Mackey III, the owner of property located across the creek from the project site. In his letter dated, November 16, 2009, Mr. Mackey questioned the need for the dredging and whether it would lead to additional boat traffic. He was also concerned with the potential environmental impacts and increased noise generated by the use of the facilities.

Mr. Neikirk explained that VIMS in their report dated February 12, 2010, stated that there would be temporary increases in turbidity during the dredging, but that only localized impacts on water quality were expected due to the location and size of the dredging area. They recommended the dredging be limited to that which was necessary and that the earthen berm around the disposal area should be adequate to prevent the re-entry of the dredged material into the adjacent wetland or waterway. They also noted that the marina was designated a Virginia Clean Marina and they recommended that best management practices be continued to limit the introduction of pollution into the waterway.

Mr. Neikirk said that the Department of Conservation and Recreation did not anticipate that the project would adversely affect any of their programs although their Chesapeake Bay Local Assistance Division noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government. No other State agencies had commented on the proposal.

Mr. Neikirk noted that the project would only encroach on oyster planting ground leased by the marina.

Mr. Neikirk said the proposed dredging was designed to restore and improve navigational access to existing marina facilities. Provided the dredge cut connected to at least the existing minus six (-6.0) foot contour, as proposed, and provided further that appropriate best management practices were employed during the dredging and de-watering of the dredged material, the environmental impacts associated with this relatively small dredging project should be minimal. The location and small size of the dredge area should allow for the easy deployment of a sediment curtain that would serve to further minimize siltation into adjacent waters.

Mr. Neikirk explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project conditioned upon the inclusion of VMRC's standard dredging conditions and the deployment of a sediment curtain around the perimeter of the dredge area while the area was actively being dredged. Staff also recommended the assessment of a dredging royalty of \$83.25 for the new dredging of approximately 185 cubic yards of State-owned bottom material at a rate of \$0.45 per cubic yard.

Commissioner Bowman called for the applicant to come forward if he wished to comment.

Karla Havens, representing the applicant, was sworn in and her comments are a part of the verbatim record. Ms. Havens thanked the staff for a very thorough presentation. She stated that the only reason they were here before the Commission was because of a protest. She said she had tried to contact the protestant and was finally able to get with him to discuss his concerns. She said that the noise issues and increased noise from the additional use of the pier would be enforced by the County ordinance. She explained that Mr. Mackey had moved into the area in 1997, which was after the marina was established and he was fully aware of its existence. She said any historical questions in regards to the marina could be answered by the applicant. She then added that the area had filled in over the years, making it difficult for the larger boats to get in.

Commissioner Bowman asked for questions of Ms. Havens.

Associate Member Robins asked if this was just restoring the ability to use the travel lift and there was no change in its use. Ms. Havens explained that she was not aware of any changes only that it was going back to the prior use before it had filled in.

Commissioner Bowman asked if anyone present was opposed to the project. There was no one present.

Commissioner Bowman stated that there was concern by the protestant that there would be increased boat traffic. He stated that he felt that the area was maximized already and could not see how there would be increased boat traffic.

Commissioner Bowman asked for discussion or action by the Commission.

Associate Member Robins stated that after listening to the staff recommendations and the comments made by the applicant, he moved to approve the project in accordance with the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

Royalty Fees (dredging 185 cu. yd. @\$0.45 cy. yd.).....	\$ 83.25
Permit Fee.....	\$100.00
Total Fees.....	\$183.25

* * * * *

6. DEPARTMENT OF GAME AND INLAND FISHERIES, ET AL, #08-0856. VDGIF, in cooperation with Mary Washington University, requests authorization to install a floating dock system for their crew team which includes a floating platform, an attached chase boat dock, a ramp hinged to an upland cement pad, and to install approximately 12 linear feet of riprap revetment extending a maximum of five feet channelward of mean high water, adjacent to DGIF property at the city dock off of Sophia Street along the Rappahannock River in the City of Fredericksburg. The project is protested by the National Park Service and the George Washington Foundation.

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

Mr. Bacon explained that the proposed crew team floating dock system is located off of Sophia Street in the City of Fredericksburg. The property had been temporarily transferred for 10 years from the Virginia Department of Game and Inland Fisheries to Mary Washington University.

Mr. Bacon said that the floating dock system would include a 60-foot long by 7.5-foot wide floating dock, a 10-foot long by 45-inch wide attached platform, a 10-foot wide by 3.75-foot wide attached chase boat dock, and an 8-foot wide floating ramp hinged to an upland cement pad. Twelve linear feet of riprap was also proposed for shoreline stabilization.

Mr. Bacon stated that the Rappahannock River is approximately 300 feet wide at this location. The shoreline on the opposite side of the river at this location was known as Ferry Farm, the boyhood home of George Washington, which the Federal Park Service had an easement over. Along this section of shoreline, which was across from the Ferry Farm property, there was a tour boat that was moored at the city dock during the summer. The waterway was used by fishing boats and jet skiers, as well as, other recreational boaters. Less than 200-feet downstream of the proposed dock was a personal dock. There were also two concrete boat ramps directly across from the Ferry Farm property, as well as, a bulkhead structure.

Mr. Bacon said that a Joint Permit Application was originally submitted on May 5, 2008. Gary Hobson, from Mary Washington University, however, asked staff to set the project aside while he tried to resolve the concerns and objections of the National Park Service and the George Washington Foundation. In January of 2010, Mr. Hobson asked staff to put the project on an agenda since he was not able to resolve all of the issues raised by the National Park Service or the George Washington Foundation.

Mr. Bacon explained that staff had received a letter of protest from Mr. Russell P. Smith of the National Park Service, indicating their objection to the project, based on a concern that the floating dock system would be incompatible with the historical surrounding area when viewed from Ferry Farm. He also, noted that the floating dock system would be near the terminus of the "Middle Pontoon Crossing" used by Abraham Lincoln in May of 1862 and the Union army during the Battle of Fredericksburg.

Mr. Bacon said that the George Washington Foundation protest was lodged during a phone conversation with staff in response to the VMRC adjacent property owner notification letter. The George Washington Foundation stated that they had issues with the project, but nothing specific was brought up in their letter or conversation with staff.

Mr. Bacon stated that originally, the Army Corp of Engineers, on August 19, 2008, issued an RP-19 for the construction of the pier. They subsequently suspended the permit on October 28, 2008, based on the concerns expressed by the Park Service over potential adverse effects to the Ferry Farm National Historic Landmark (NHL).

Mr. Bacon said that in response, the University staff went back to the National Park Service and the George Washington Foundation in an attempt to resolve their concerns. At the same time the Corps coordinated a review of the project with the Virginia Department of Historic Resources (VDHR). As a result of the VDHR review, six permit conditions were proposed, which were agreed upon by the University of Mary Washington and which were subsequently included in the Army Corp of Engineers final permit for the project. Those conditions are as follows:

1. The Permittee shall not construct any boat storage facilities or other associated improvements in view from the NHL property or near the location of the dock.

2. The Permittee shall discontinue usage of the dock from November 1st through March 1st, when foliage would be minimal. In addition, the Permittee shall remove and store away from view of the NHL property the dock from November 1st through March 1st.
3. The Permittee shall fund the design, fabrication, and installation of interpretive signage describing the historic significance of the site. The Permittee shall submit to the Corps and the Department of Historic Resources the draft text and design of the interpretive signage for review and approval, and the National Park Service and the George Washington Foundation for review and comment. The Permittee shall install the interpretive signage within twelve (12) months of the text and design being approved by the Corps and the Department of Historical Resources.
4. The Permittee shall design the dock, ramp, and railing in a manner that limits, to the extent possible, the visibility of the facilities from NHL property. The design shall pay particular attention to color, materials, and profile. The Permittee shall submit the design of the dock, ramp and railing to the Corps and the Department of Historic Resources for review and approval and the NPS and George Washington Foundation for review and comment.
5. The Permittee shall remove the dock appurtenant structures from the site no later than eight (8) years from the date of the Corps' permit; an exception was made for the riprap along the shore that was proposed for shoreline stabilization. The Permittee shall return the site to its pre-construction appearance and to pre-construction conditions, upon the removal of the dock and the appurtenant structures.
6. The Permittee shall submit an annual report to the Corps, the Department of Historic Resources, NPS, and the George Washington Foundation for review and comment detailing the status of the conditions of the afore-mentioned permit conditions and the compliance of the Permittee. A review of these reports and the compliance of the Permittee would determine if any amendments were needed.

Mr. Bacon explained that although the University of Mary Washington had agreed to the permit conditions and they had been included in the Corps' authorization for the project, the National Park Service had not rescinded their objection to the proposed floating dock systems to be used by the University of Mary Washington crew team, but the George Washington Foundation had rescinded their protests the day before this hearing.

Mr. Bacon said that when staff reviewed proposals to build over State-owned submerged lands, they considered, among other things, the water dependency and necessity of the proposed structures, the surrounding area and the usage of the surrounding area. The floating dock system that the University agreed to was not on Park Service Property, but was in view of Ferry Farm. Since the Rappahannock River in this area represented a multi-use area, staff believed that the University had addressed all of the issues that were brought to them, and went beyond what most applicants would have done in an attempt

to alleviate the protestant's concerns. Furthermore, staff believed the conditions recommended by VDHR and included in the Corps permit served to adequately address the historic resource concerns, related to this project.

Mr. Bacon stated that after evaluating the merits of the project against the concerns expressed by the National Park Service and the George Washington Foundation, and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked about ownership of property across from the project. Mr. Bacon stated that the Foundation owned it and the Park Service leased it.

Commissioner Bowman asked for the applicant’s representative to come forward if they wished to comment.

Gary Dobson, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Dobson explained that the transfer was only temporary and the agreement would expire July 1, 2018. He said what was being done now was a quick fix. He said they had starting looking for a location for over two years. He said they had consulted with the Corps and the Virginia Department of Historic Resources. He said they also contacted the two protestants George Washington Foundation and the Park Service. He said they had received the Corps’ permit and the Corps had relied on the Virginia Department of Historic Resources to adjudicate, including the time-of-year restriction in regards to the fall foliage and agreed to the eight-year temporary agreement.

Associate Member Fox asked if they would be moving after the eight years. Mr. Dobson responded yes. Associate Member Fox asked if the time-of-year restriction posed a problem. Mr. Dobson said they had agreed as the floating dock only has 3 pilings and allows them to remove it when rowing season is over. Associate Member Fox asked if he did have the Corps’ permit. Mr. Dobson stated that that was correct and there were six conditions.

Commissioner Bowman asked if there was anyone in opposition present who wished to comment. There were none. He said the matter was before the Commission.

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

Permit Fee.....	\$100.00
-----------------	----------

* * * * *

- 7. **MARSHALL SEAFOOD, #2009 025**, requests authorization to lease approximately 70 acres of oyster planting ground within Timberneck Creek in Gloucester County. The application is protested by a nearby property owner and leaseholder, and by Timberneck, LLC, also a property owner along the creek.

Pulled from the agenda – to be rescheduled for a later date.

* * * * *

Since the Habitat Management Items had been completed early and the Fisheries Items had been advertised for after 12:00 noon, Commissioner Bowman announced the meeting would adjourn for lunch at approximately 10:18 a.m. and be reconvened promptly at 12:00 p.m. The meeting was reconvened at approximately 12:04 p.m.

* * * * *

8. PUBLIC COMMENTS:

Ellis W. James of Norfolk spoke against offshore drilling and any potential environmental damage it could cause to fisheries or the commercial fishing industry. Mr. James also expressed his concerns about the Surry Coal Plant and a February 17th Daily Press article which pointed out the toxic threats from this plant, which would impact the water quality, the fisheries, and the watermen.

Douglas F. Jenkins, Sr., Twin River Watermen’s Association was present and his comments are a part of the verbatim record.

Mr. Jenkins expressed his concerns that the Potomac River tributaries were not receiving any seed oysters as these were areas did not have any natural strike, but were very good for grow out of seed that were transplanted to these rocks. He said even without the General Funds there should be funds to be found for performing this activity and suggested that the money to be used for shells, which are not needed, be used for this seed transplanting activity. He suggested that Great Wicomico River seed from the public oyster grounds be transferred to public grounds in these areas (Nomini, Coan, and Yeocomico). He stated that this would benefit the industry in these areas and accomplish what the Governor is trying to do to create jobs by putting some local watermen to work.

(Note: These comments apply to Item 19, which is the item pertaining to the 2010 Oyster Replenishment Program Plan.)

* * * * *

- 9. THOMAS MOORE:** Review of request to license and locate a pound net in Chesapeake Bay, 3,200 yards north of Dividing Creek.

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

Mr. Travelstead explained that Mr. Thomas Moore of Heathsville in the Northern Neck area had applied for a license and location for a pound net in the Chesapeake Bay off of Northern Neck and north of Dividing Creek.

Mr. Travelstead further explained that during the required 30-day public comment period, which ended on February 13, 2010, the agency received a single letter of protest from Mr. Dan Davidson of White Stone causing this public hearing to be necessary. He said Mr. Davidson's issues with this request were that this was a pristine area and that the nets were destroying the spawning grounds for the fish that come to the area.

Mr. Travelstead explained that staff did not agree and was not aware of any spawning grounds in the area. He said there are no SAV's in the area and there was no impact to navigation. He stated that the staff was recommending approval of Mr. Moore's application.

Commissioner Bowman asked for anyone present for the public hearing. There were none. He stated that the matter was before the Commission.

Thomas Moore, applicant, was present, but did not make any comments.

Associate Member Fox noted that the plat showed another net approved for Mr. Haynie. Mr. Travelstead responded yes, Mr. Haynie's was approved last fall and there were two more applications pending the public comment deadline. Associate Member Fox also noted that it seemed to him that the location of the net owned by Mr. Haynie and approved by VMRC would be more of a problem than the one being requested by Mr. Moore.

Commissioner Bowman asked for a motion.

Associate Member Tankard moved to approve this application. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

- 10. PUBLIC HEARING:** Consideration of amendments to regulation 4VAC20-530-10 et seq., to establish a commercial American shad bycatch fishery for 2010.

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

Mr. O'Reilly explained that this was simply a carryover from the last month's meeting when a lot of technical information had been provided by staff. He explained that this had been the 5th year that a limited bycatch was established. He said the regulation was only being amended by changing the date from 2009 to 2010.

Mr. O'Reilly explained that staff was recommending adoption of the amended regulation.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked was staff concerned with the anchored or staked gill nets, because of the unavoidable bycatch. Mr. O'Reilly stated yes, that there was a high release mortality of 100 percent and in 2005 the ASMFC had based their decision on this issue. He said the drift nets provided better release with less mortality.

Associate Member Fox stated that the only way to stop this bycatch would be to take the nets out of the water. Mr. O'Reilly responded yes, that the ASMFC met on February 3 and adopted Amendment 3 and that staff must now decide how this monitoring requirement would impact the staff.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He announced the matter was before the Commission for discussion or action.

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

* * * * *

- 11. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-620-10 et seq., to establish summer flounder recreational fishery measures for 2010.

Rob O'Reilly, Deputy Chief, Fisheries Management gave this presentation. His comments are a part of the verbatim record. Mr. O'Reilly stated that there was one hand-out not in the Commission's packet.

Mr. O'Reilly stated that like the last item, a lot of background and preferences by groups information had been presented at last month's meeting. He said that a notice had been advertised for Options A, B, and C to be heard at this public hearing.

Options advertised for public hearing are as follows:

Option	Min. Size Limit	Bag Limit	Closed Season
A	18 ½-inch fish	5-fish	None
B	18 ½-inch fish	4-fish	None
C	18-inch fish	5-fish	June 7 through July 11

Mr. O'Reilly said that for 2010 the total allowable landings (TAL) were 22.13 million pounds and this was 20 percent greater than the TAL for 2009. He said the Virginia landings can increase by 77 percent to achieve the 426,000 fish target.

Mr. O'Reilly said that the Ad hoc committee was evenly split, as 5 members preferred Option A and 5 members preferred Option B. He said the Peninsula Saltwater Sport Fishermen's Association endorses Option A, and the Northampton County Anglers Club supports Option B. He said that only a few individuals had provided public comment to date and three supported Option B and the others did not provide a preference.

Mr. O'Reilly said that staff supported Option B. He explained that the reason for the staff recommendation was that 2007 data were used as no 2009 data after August were available, so 2009 data are preliminary. He said the 2007 regulation was the same with a small season which resulted in the landings being higher than the target.

Mr. O'Reilly explained that generally it was thought that the charter industry supported the highest possession limit possible, to attract more customers, but the Virginia Charter Boat Association and Chincoteague Charter Boat Association both prefer Option B.

Mr. O'Reilly noted that the proposed amendments that would establish the provisions of Option B could be found on pages 7 through 9 in the draft regulation.

Commissioner Bowman asked for questions of staff.

Associate Member Tankard asked why was Option B preferred by the Charter Boat Associations. Mr. O'Reilly said he felt they thought that with the smaller bag or possession limits it would result in smaller size limits. He said more thought that a limit of five would be a problem for conservation reasons.

Commissioner Bowman stated that if we're careful this year, it would help next year. He opened the public hearing.

Randy Lewis stated that they favored the 18 ½ inch with 5-fish. He said the 19-inch would hurt business on the Eastern Shore and they were glad it was a ½-inch less. He said they just hoped the throwbacks survived last year. He reiterated that the database information was bad.

Commissioner Bowman announced that a new system was started on January 1st. Mr. Lewis stated that there was a need for better data collection.

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

Associate Member Robins stated that staff had a good point. He said in 2007 the harvest was in excess of the target. He said two percent were between 4 and 5 fish. He said it was appropriate to set the limits at 18 ½-inch with 4-fish. He explained that this was a period of increasing accountability and this will keep Virginia within the target amount, as generally, Virginia did a good job of staying near the target.

Associate Member Robins moved to accept the staff recommendation and adopt Option B.

Associate Member Tankard said he supported Option B as he had fished in Wachapreague and it was good to keep a couple of fish. He said he was concerned with the number of throwbacks' survival considering all that have been thrown back.

Associate Member Laine explained that he felt that staff was being overly cautious to consider being 1/3 under quota when the target was greater. He stated he preferred Option A.

Associate Member Tankard seconded the motion.

Associate Member McConaugha said that Option B was less risk and if you go over the quota there must be pay back later.

Associate Member Fox stated that there was concern because of the lack of knowledge to add an inch and 4 to 5 fish. He stated that staff was smarter and he supported Option B

Commissioner Bowman said he felt strongly both ways and concurred with Mr. Laine when looking at the data and the underages, that it would be okay. He said he had seen over the years the high percentages disappear quickly. He said that in waves 1 and 2 there had been significant catches that were not anticipated.

Commissioner Bowman explained that if the data were available then he would go with A, but the data was not kept and he was concerned with going over the quota. He said he would go with the motion for Option B.

Commissioner Bowman asked for a vote on the motion.

The motion carried, 8-1. The Chair voted yes. Associate Member Laine voted no.

* * * * *

12. PUBLIC HEARING: Consideration of amendments to Regulation 4VAC20-620-10 et seq., to adjust the commercial summer flounder bycatch fishery limits.

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

Mr. Grist explained that on December 2, 2009 staff met with Meade Amory, Fella Daniels, Michelle Peabody, and Associate Member Bowden to develop options to discourage any future practice of harvesting large quantities of croaker that are not marketable and would be discarded, just so vessels can direct their effort on summer flounder. Their options were as follows:

- Flounder bycatch landings shall not exceed 10% of the combined landings of black sea bass, squid, scup, scallops, and mackerel. The vessel's catch must be landed, and sold, in its entirety.
- Flounder bycatch landings shall not exceed 10% of the landings of Atlantic croaker, or 1,500 pounds total, whichever is lower. The vessel's catch must be landed, and sold, in its entirety.
- The Atlantic State Marine Fisheries Commission will receive an update on stock status for Atlantic croaker later this year. If the stock status update indicates a need for more conservative croaker regulations, then the 1,500 pound flounder bycatch cap, when landing Atlantic croaker, should be revisited.

Mr. Grist explained further that the draft regulation 4VAC 20-620-10, et. seq. was amended in subsections 40(A) through (C), pages 3 through 5, which, provided that it shall be unlawful for any person harvesting summer flounder outside of Virginia's water to do any of the following, except during defined open seasons:

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

Mr. Grist said that this proposal had been advertised in accordance with Section 28.2-209 of the Code of Virginia for a public hearing today.

Mr. Grist stated that staff recommended adoption of the amendments to Regulation 4VAC 20-620-10 et seq.

Commissioner Bowman asked for questions of staff.

Associate Member McConaugha asked if the bycatch was subtracted. Mr. Grist stated that overall commercial landings were allowed. He said in the past this has been taken advantage of, which was not the intent and this would stop that as much as possible with these actions.

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

Associate Member Bowden said he concurred that this does go towards addressing the problem, as the croaker were not as abundant. He said there was a good year class, but it may not survive. He added that these did not fix the problem, but they did help.

Associate Member Bowden moved to accept the staff recommendation, but to add that if the ASMFC should make a change, the Commission would reconsider the matter. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

13. PUBLIC HEARING: Consideration of amendments to Regulation 4VAC20-380-10 et seq., to establish new restrictions for the grey trout (weakfish) commercial and recreational fisheries to comply with the Interstate Fishery Management Plan.

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

Mr. O'Reilly explained that at last month's meeting staff provided the Commission with the technical information as well as the status of the stocks for this species relative to the ASMFC's recent findings.

Mr. O'Reilly reviewed the summary of the management measures required for implementation for the Virginia weakfish, under Addendum IV:

- Reduce the recreational possession limit to one fish, which is currently set at six. (Section 60, A and B, pages 4 and 5 of the draft regulation.)

- Implement a 100-pound landings limit, per vessel, per day or trip, whichever is a longer period of time, for directed fisheries, gill net, haul seine, pound net, out-of-state trawl, for the open season. Currently, there is no limit. (Section 50, E, page 3)
- Reduce the bycatch limit to 100 pounds, per vessel, per day or trip, whichever is the longer period of time, for all non-directed fisheries, such as gill net haul seine, pound net, and out-of-state trawl, would be subject to this bycatch limit. Currently, there is a maximum of 450 pounds per vessel, based on three license holders being aboard the vessel. (Section 50, F, pages 3 and 5)
- Any gear type, other than gill net, haul seine, pound net or out-of-state trawl, would be limited to 100-pound, per vessel, per day or trip, which is the longer period of time, from April 1 through March 31. Currently, there is no limit, for gears, such as, commercial hook and line or fyke net. (Section 30, C, Page 1)
- Reduce the out-of-state trawl fishery's allowance for undersized fish, less than 12 inches total length to 100 fish. There is a no sales prohibition. The current limit is 300-fish with a no sale prohibition.

Mr. O'Reilly explained that the ASMFC implementation date is May 1, 2010 to allow time for States which depend on the legislative process to adopt these provisions. He said that staff was recommending a March 1, 2010 implementation date. He explained that Associate Member Bowden had informed staff that the gill net fishermen would rather delay the implementation until May 1 because of the spring croaker fishery will contain by-catch of weakfish beyond a 100-pound trip limit. He stated that staff had put together some data which was in the packet for the members review. He said that since the directed fishery begins March 16, staff tabulated data of croaker trips that contained weakfish from March 16 through April 30 for 2007 and 2008. He explained that in 2007 there were 645 gill net trips that harvested croaker and weakfish which occurred from March 16 through April 30, and nearly 15% of those trips would have exceeded the 100-pound weakfish trip limit had it been in effect. He said during the same period in 2008 only 2.1% of 420 croaker trips showed that harvested weakfish in an amount greater than 100 pound. He said in both years most gill net croaker trips harvested less than 50 pounds of weakfish. He said in 2007 it was 73% and in 2008 it was 93% of the landings were less than 50 pounds of weakfish during March 16 through April 30.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked about the status of the stocks. Mr. O'Reilly said abundance is low; everything is low and not just for Virginia, but coastwide.

Associate Member Schick asked if the depletion of the stocks was due to natural mortality. Mr. O'Reilly explained that a majority of the problem was being caused by environmental or natural mortality.

Commissioner Bowman opened the public hearing.

Keith Like, pound net fisherman from Eastern Shore, was present and his comments are a part of the verbatim record. Mr. Like stated that there are a few months that the fishermen need the catch, but they must also do their part. He said he was concerned that more fish traps or pound nets were going in that had not been fished for years, which would cause a different effect. He said the trout fishery was a good one.

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

Associate Member Bowden said that not just anyone can argue that the trout stocks are in bad shape, the worst since the late 60's. He said no one had a handle on what the problem is, being it is natural mortality. He said in North Carolina, the ASMFC have a problem because the fish are abundant in some places and low in others. He suggested the effective date of May 1 because fishing is not the cause of the problem. He explained that with a recovering fishery, removals do slow down the recovery. He said the problem was getting age zero fish past age one. He said Virginia did not want to get into the same situation as North Carolina and this year will be telling as the bycatch occurred mostly in the fall and in Virginia Beach in the spring. He said that some States would not make the May 1 deadline and the big players were North Carolina, Virginia, and New Jersey. He said he hated the discarding of 15 percent. He said that 15% that were over 100 pounds was not a lot of weight. He said you throwback 100 to save 1 and lose 10% of the throwbacks. He explained that survival was higher in the fall as drift nets were a more closely attended fishery.

Commissioner Bowman asked for action by the Board.

Associate Member Bowden moved to accept the staff recommendation, but with the ASMFC implementation date of May 1. Associate Member Holland seconded the motion.

Associate Member Robins stated that he could not support the motion. He said the ASMFC could have done stronger recommendations to give the fishery every chance to recover. He said the ASMFC's recommendations were good, but they had delayed the implementation.

The motion carried, 7-2. The Chair voted yes. Associate Members Robins and Tankard both voted no.

* * * * *

- 14. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-490-10 et seq., to establish new restrictions for the shark fisheries to comply with the Interstate Fishery management Plan.

Lewis Gillingham, Head, Saltwater Fishing Tournament, gave the presentation. His comments are a part of the verbatim record. Mr. Gillingham said that the draft regulation was submitted to the ASMFC and they had determined that pending the adoption of the two substantive changes in the draft regulation that Virginia will be in compliance with all requirements of the Interstate Fishery Management plan.

Mr. Gillingham explained that if adopted the regulation will require all recreational fishermen to land smooth dogfish with head, tail, and all fins attached and require any individual granted an exemption permit for the harvest of shark for research or display to meet specific reporting requirements.

Mr. Gillingham stated that the proposed amendments had been advertised in accordance with Section 28.2-209 of the Code of Virginia, for a public hearing today.

Mr. Gillingham said that the staff recommended adoption of the draft amendments as a part of the final Regulation 4VAC 20-490-10, et seq.

Commissioner Bowman asked for questions of staff. There were none. He opened the public hearing. There were no public comments and the public hearing was closed.

Commissioner Bowman asked for action by the Board.

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

* * * * *

- 15. PUBLIC HEARING:** Consideration of amendments to regulations 4VAC20-950-10 et seq. and 4VAC20-910-10 et seq., to establish commercial and recreational black sea bass fishery measures and scup commercial fishery measures.

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record. Ms. Nelson stated that this was a public hearing.

Ms. Nelson said that in January 2010 the Mid-Atlantic Fishery Management Council's Scientific and Statistical committee and the Black Sea Bass Monitoring committee held a joint meeting to discuss the status of the 2010 black sea bass total allowable catch (TAC). She said the outcome of the meeting was that a request was made to NMFS for an emergency regulation to increase the TAC from 2.71 to 4.5 million pounds.

On February 2, 2010, NMFS increased the quota to 4.5 million pounds by emergency rule. She stated the emergency rule would be effective for 180 days, beginning February 10, 2010. She said NMFS may extend the emergency regulation for the remainder of the year.

Ms. Nelson said that Virginia received 20% of the increased commercial quota, or 351,722 pounds (this is 133,084 pounds higher than the 2009 quota of 218,638).

Ms Nelson said that with the recent increase in TAC, the new black sea bass open season will be a split season from May 22 through August 8, and from September 4 through October 4.

Ms. Nelson explained that for the scup commercial fishery, in November, staff received a memo from the ASMFC announcing the state shares for the 2010 summer period commercial scup fishery. She said that Virginia's summer period quota had been increased from 4,887 to 6,861 pounds, for 2010.

Ms. Nelson noted that to date staff had not received any public comments on either of these issues.

Ms. Nelson explained that the staff recommended the adopted of the amended Regulation 4VAC 20-950-10, et seq., which established the 2010 commercial black sea bass quotas as 311,722 pounds, for the directed fishery and 40,000 pounds for the bycatch fishery and a split recreational open season from May 22 through August 8 and from September 4 through October 4. She said staff also recommended the adoption of the amended Regulation 4VAC 20-910-10, et seq., to set the 2010 Virginia summer period commercial scup quota as 6,861 pounds.

Commissioner Bowman asked for questions of staff. There were none. He opened the public hearing. There were no public comments, so the public hearing was closed.

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

Associate Member McConaugha moved to adopt the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes. Associate Member Fox left during the presentation and was absent during the motion and vote.

* * * * *

- 16. PUBLIC HEARING:** Consideration of amendments to regulation 4VAC20-720-10 et seq., to reopen Rotation Area 5, in the Rappahannock River, to the harvest of oysters, by hand scrape, during the month of March 2010.

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

Dr. Wesson explained that the Temple Bay area (Rotation Area 5) of the Rappahannock River was opened to hand scrape for October, 2009. Harvests were relatively good in that area. He said that the Commission had promised to look at this area later to see if an additional month of harvest could be added. The reported catch per man was still reasonable at the end of the season in October. Based on areas that were checked by staff for the stock assessment most the resource had been harvested but there might be enough resource to support a small fishery for March.

Dr. Wesson said that he had contacted Kellum Seafood and their records indicated that the average catch per boat was 11 bushels at the end of the open season. He said this indicated that stocks were left.

Associate Member Fox returned to the hearing.

Commissioner Bowman read into the record Mr. Kellum's letter, which said, ... "Please find herein support from our company on opening the Rappahannock River Temples Bay area 5 hand scrape beds for the month of March, as advertised... Our company procured a large amount of these oysters during the October season and found the stock population to be good and also healthy. We purchased 5,024 bushels during the season with an average per boat of 11 bu. The opening week average was 12 bu. and the ending week average was 9 bu., showing a very sustainable harvest... We do, however, oppose opening the Rappahannock Parrotts Island area 3 hand scrape beds for harvest. This area provided a good November harvest, however, the weekly average fell by 8 bu. by the end of the season..."

Dr. Wesson said that there were requests to extend the Pocomoke-Tangier area as well as other areas. He stated that the rule established by the Commission for these requests was to not reopen areas.

Dr. Wesson stated that staff recommended reopening for the month of March, Rotation Area 5, in the Rappahannock River for hand scrape, with all regulations pertaining to harvest in that area.

Commissioner Bowman asked if there were questions of staff.

Associate Member Bowden stated that the Pocomoke/Tangier Sounds had a different season, which started late. He said they could not catch oysters all the time when there

was ice and lost 8 days in January and 9 days in February. He stated that no one was present to make the request.

Dr. Wesson explained that bad days had been factored into this year with the long season. He said he had talked to two watermen who were still catching their limit. He said there was a good balance in this area and this should not be pushed and next year the staff would recommend that the harvest area be rotated to another one.

Associate Member McConaugha asked if reopening the area would damage all the small oysters. Dr. Wesson showed on the chart that there was a small number of spat so there were hardly any to damage. He said the stocks were widely distributed in the deep water and 2010-2011 it was set to restock.

Commissioner Bowman opened the public hearing. There were no public comments so the public hearing was closed. He stated that staff was recommending reopening the area in March. He said the matter was before the Commission.

Associated Member Laine moved to amend the regulation as recommended by staff. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

17. REQUEST FOR PUBLIC HEARING to consider amendments to regulation 4VAC20-960-10 et seq. That would revise the closed season, for the commercial tautog fishery.

Laura Lee, Fisheries Management Specialist gave the presentation. Her comments are a part of the verbatim record. Ms. Lee noted for Commissioner Bowman that she had not been present earlier in the meeting to be sworn in. She was sworn in at this time.

Ms. Lee said that there was a letter from Jim Dawson requesting a change in the closed season for the Tautog fishery and he was recommending the close season start May 1 and end November 12.

Ms. Lee stated that staff was recommending the advertisement of a public hearing to consider modifying the dates of the commercial tautog fishery closed season.

Commissioner Bowman said that the matter was before the Commission.

Associate Member Holland moved to accept the staff recommendation for a public hearing in March. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

18. REQUEST FOR PUBLIC HEARING to consider new regulations pertaining to public health and warm-water shellfish harvest restrictions.

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

Dr. Wesson explained that for the past several years, with guidance from the Division of Shellfish Sanitation, the Commission had added a number of restrictions for shellfish harvest during the warmest months of the year. He further explained that these restrictions had been adopted to protect public health from natural pathogens in the water that can become significant health risks in humans if the shellfish are subjected to temperature abuse after harvest. He said that the Food and Drug Administration (FDA) continued to require additional restrictions to protect public health.

Dr. Wesson stated that the restrictions that relate to warm water harvest and public health will be incorporated in Regulation 4VAC 20-1230-10, et seq., "Pertaining to Restrictions on Shellfish." and they will be more stringent this year and will be even more the next year.

- Oyster harvests after the morning curfew will be limited to a 3-hour period (from the time leaving the dock to return to the dock) only if the harvester gets a special permit from VMRC and has an approved GPS track logger to verify the trip. The GPS track loggers are relatively inexpensive (\$100-\$150 each) and are available from a number of sources.
- Icing on the boat will no longer be allowed to extend the harvest period beyond the daily cutoff time because it was not possible to develop icing standards that could be enforced in Court.
- A special permit will be required to move and handle wild oyster seed after May 1st, since portions of this activity will likely occur after the daily harvest time limit has passed.
- A special Cage Oyster Aquaculture Husbandry permit will be required for cage aquaculturists to handle oysters for routine husbandry after the daily time limit from May through September.
- A significant amount of additional recordkeeping is also being required of all harvesters and certified shellfish dealers from May through September.

Commissioner Bowman asked if the Health Department staff would be here at the public hearing. He said that Virginia had the best programs for this, but it was getting difficult now and he wanted someone here from the Virginia Department of Health, Division of Shellfish Sanitation. He stated this was getting too complex and detailed.

Dr. Wesson stated that this was going to be hard for some of the industry to comply.

Associate Member Bowden said that different strategies were needed for the Bayside and Seaside of Eastern Shore as on the seaside the watermen worked at the bottom of the tide, which is 30 minutes and they had to pole the whole way out to their lease, so that they would have less than 1½ hours to harvest. He also said the other options just do not work. He asked about the special permit for husbandry. He said on the seaside this was an issue with this group, as they were the biggest abusers. He said it would be hard on them and there were ways around it. He said the problem was that the seaside shellfish were always under heat abuse. Associate Member Bowden said with ice for refrigeration it would work on the seaside, but without ice the seaside would be closed.

Commissioner Bowman asked if offloading points being established so industry can offload and allowing the use of ice would be a problem. Dr. Wesson said those in the industry would need to be asked, but it would make it hard on Law Enforcement.

Associate Member Tankard asked about the husbandry permit process. Dr. Wesson said that a permit form would be issued and each permittee would have to establish standards for operating procedures, which would need to be attached to the form. This would make it so Law Enforcement would be able to see that they were following an established procedure when they were to check them.

Associate Member Fox asked if *vibrio* was in all oysters. Dr. Wesson explained that it was present all the time. Associate Member Fox asked if being overheated caused the problem. Dr. Wesson responded yes and explained that it would take 15 or more days to get the shellfish to return to a safe level, if they were to be put back in the water. He stated that depuration worked for *ecoli*, but not for *vibrio*.

Associate Member Holland asked about the problem with ice. Dr. Wesson explained that it presented a problem for Law Enforcement as they do not have thermometers and ways for checking the ice requirement. He said some of the watermen do a good job, but others do not use ice or the best practice. He said if it was not in the regulation the Court would not uphold it.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Bowden moved to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Kent Carr, waterman, requested an opportunity to address the Commission. Commissioner Bowman stated that the public hearing would be next month, but agreed to let him speak.

Mr. Carr said last summer he used ice for his oysters and this summer he would be put out of business. He said that if regulations were needed the Commission needed to work

with watermen to do it as it was done in the past. He said he used a vat with ice and Law Enforcement checked him regularly in the Deep Creek area and he did not receive any tickets. He said there had been two cases with smaller oyster houses, but those were not in very good shape and he would not want to get any seafood from those establishments. He said the watermen were the ones being punished. He said he could not be at the next meeting, but he asked that the watermen be allowed to continue with the use of ice. He asked that the Commission work with the watermen to get better regulations for this issue. He stated these were rough economic times for him.

Commissioner Bowman stated that the Health Department was the driving force and this was just an enforcement tool for VMRC. He asked that the watermen work with the Commission to get something workable.

Mr. Carr asked to meet with the Commissioner after the hearing.

* * * * *

19. REQUEST FOR APPROVAL of the 2010 Oyster Replenishment Program, and the associated Procurement Procedures.

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

Dr. Wesson explained that because of the budget cuts the replenishment program did not have any general funds. He said there was no money for seed and likely no money for shells. He explained that it was a possibility that the Maryland Department of Natural Resources would purchase some or all of the shells in Virginia from the shucking houses with the VMRC serving as the contracting officer for this process. He said there were federal monies available, but it came with stipulations. He reviewed the proposal, which follows, for the board.

Commissioner Bowman asked for questions of staff. There were no questions.

Commissioner Bowman asked if anyone was present to comment.

Kent Carr, waterman, was present and his comments are a part of the verbatim record. Mr. Carr explained that he worked the York River and there were plenty of shells and there was no need to add more. He said that most of the oysters in this area were 3 ¼-inch oysters. He said the shells should be put back into the Mobjack Bay as there was more area for watermen to work. He said the Commission needed to leave the York River alone. He said the York River and the Mobjack Bay were the only places to go to harvest and there were oysters there for the next year. He said this was the first year they were able to work the York River and get a day's work. He said that Pultz Bar and Towe

Stake should be enlarged with shells and it would mean more area for watermen to work and less small oysters would be caught.

Commissioner Bowman asked for questions of Mr. Carr.

Associate Member Fox stated that there was no state money only federal funds for the York River and it cannot be used for the Mobjack Bay area. Dr. Wesson explained that the Commission cannot ask to switch the project location. He explained further that the shells here were old and in bad shape. He said this project would revitalize the York like the Mobjack. He said he wished there was money and he did submit proposals for the Mobjack and James, but it did not rank high for getting NOAA funds. He said he thought it would at least be 50% sanctuary and 50% harvest area but that did not happen. He said this area is small and that rotational strategy was a benefit for bigger areas but not for small ones.

Dr. Wesson said that they would be paying watermen to clean the area and move the small oysters onto another area so as not to cover anything and the area could be harvested later. He said there was 400 acres of good bottom in the York. He said with good shell we could see good results and this was the best shot.

Mr. Carr said he had worked in the York River and there was strike there. He said if they were moved there was a chance they would be killed and piling them up so this would suffocate them. He said the money was only going to packers who have larger vessels to use and the working watermen should be able to get some of this work.

Douglas F. Jenkins, Sr., President, Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that there was still nothing for the tributaries of the Potomac River. He said if 100,000 bushels were harvested in these areas, there should be \$50,000 of the Oyster Replenishment Tax money that should be used for this activity. He said for everywhere else there were funds to do things. He suggested setting up 10 acres in the Great Wicomico River. From this area seed could be moved to the Potomac River tributaries, such as Nomini, Yeocomico, and the Coan Rivers. He said these were a part of Virginia, just like the rest of the areas were. He said the oysters taken from these areas realized \$40 a bushel for the watermen and they shucked out at 10 pints per bushel, which resulted in the bushels' value being \$120 for the packers. He said the oysters grew faster and meatier in these areas than in any other areas in the State. He said the way the plan is now, they would get nothing.

Commissioner Bowman asked the staff to respond to these comments.

Dr. Wesson explained that in the Great Wicomico the State had an agreement with the Corps of Engineers saying we cannot take any seed. He said the plan was to meet in the spring to see what the status of the agreement was. He said all the general funds were

lost to the budget cuts and the Special Fund Tax money helps pay the operating expenses of the program.

Associate Member Fox asked if the General Assembly were to return money back for purpose, would it be considered? Dr. Wesson responded yes, but seed from the Great Wicomico River could not be used..

Commissioner Bowman reminded the Board that they would need to approve the procurement procedures for the program.

Associate Member Fox moved to approve the proposed plan with associated procurement procedures, as presented. He stated he hoped the General Assembly would provide additional funding. Associate Member Tankard seconded the motion.

Associate Member Bowden asked about the York River project using the larger vessels. Dr. Wesson explained that being there were no general funds. Because the project was small, the larger boats could do a better job of planting by blowing the shells off with water. The watermen could not do it by shoveling for just \$1.00 a bushel.

Associate Member Schick asked if there was a plan to work something out to get into the Potomac tributaries as there was no strike there and seed needed to be moved there. He suggested trying to get some federal funds for a project. He said a long range plan was needed for the Potomac River tributaries to get restoration work done.

Dr. Wesson stated that with federal funds the driving force was sanctuaries and Maryland's new plan to make half of their area sanctuaries was making it difficult for Virginia. He noted that Maryland had not had any seed or shell planted for four years. He said he had forgotten one item and explained that there was \$1 million of Crab Disaster Funds for watermen in Northern Neck to participate in the Watermen Aquaculture Training Program. Then they could harvest them once the oysters had grown out, whenever they wanted since they were on private oyster grounds.

Associate Member Bowden said that some of the participants from last year's project still had not received any of the seed oysters. Dr. Wesson explained that all had been done but seven because of the late start last year. Also, the hatcheries could not provide the proper type of seed for the Seaside. He said there were plans for getting this seed in the spring and hatcheries were currently producing it. He stated that what they had did not suit the Seaside.

The motion carried, 8-0. The Chair voted yes. Associate Member Robins recused himself from participating because of financial conflicts.

Associate Member Fox stated that the spat reports provided by staff indicated that the spat was low. He said an article in the newspaper were saying how great the spat was in the Great Wicomico River. Dr. Wesson explained that this article was based on 2007 data and now staff had 2009 data. He explained further that the standing stocks were declining to about 50% of what was there in the river in 2007.

PROPOSED 2010 OYSTER REPLENISHMENT PROGRAM PLAN:

A statement of the procurement procedures is included at the end, and these methods must be approved along with the plan.

<u>Funding Sources</u>	<u>Matching Requirement</u>	<u>Amount</u>
<u>Non-Federal</u>		
General Funds (GF) State		-0-
<u>Federal</u>		
U. S. Navy – Little Creek		\$10,000
NOAA – York River		\$1,224,000
NOAA – Piankatank		\$336,901
NOAA – Rappahannock		\$44,838
Federal ARRA Stimulus – Seaside Eastern Shore		\$1,000,000
NOAA – Blue Crab Disaster Oyster Aquaculture		
Spat on Shell		\$500,000
Cage Aquaculture		\$395,000

Bay and Tributaries:

Seed Transfer: There are currently no funds available to move oyster seed onto public grounds. Attached is “Benefit versus Cost” report for seed movement over the past three years (Table #'s 1 and 2). The goal was to have a dollar return or better for each dollar spent. Overall, staff explained there had been a \$1.37:\$1.00 return, with some sites doing significantly better and some sites significantly less. The most likely reasons, for the large difference between shell plants, were “whether or not” the site was discovered by

cow nose rays. The return from the best sites was exceptional, but in others, the rays almost got everything before harvesting began.

In 2008 and 2009, there were modest spat sets in the Piankatank River (Table #3, Dredge Survey). Counts are 400-500 oysters per bushel. In 2008, private industry was allowed to take up to 20,000 bushels of seed oysters from the Piankatank River. Staff would like to offer this program again in 2010.

The seed oysters are harvested by private industry under VMRC supervision and a bushel of shell was replanted on the same oyster beds by the private industry participants in the summer (under VMRC supervision).

NOAA – Chesapeake Bay Office – Oyster Restoration

York River

There has been no restoration of public oyster bars in the York River for more than 35 years. There are remnants of several large oyster bars in the York River and there are more than 250 acres of excellent oyster habitat that can be restored (Map 1). These areas have been surveyed and are ready for shell restoration, and hopefully in the future, the implementation of a rotational harvest strategy. VMRC received funding to restore approximately 90 acres of oyster habitat. Live oysters will be cleaned off the areas by watermen contractors prior to shell planting. Dredged, fossil shells will be planted on these restoration sites at a rate of 10,000 bushels of shells per acre. The granting agency was requiring that two acres of oyster sanctuary be created for each acre of harvest area.

90 Acres @ 10,000 bu./ac. @\$1.30/bu.	\$1,170,000
90 Acres @ \$600/ac for watermen to clean	\$ 54,000

Total Cost **\$1,224,000**

Piankatank River

The second part of the NOAA Oyster Restoration grant is for the Piankatank River which is a State seed production area. There are currently four 3-dimensional sanctuary reefs in this river. Over the past several years, a new veneer of shell and spat on shell have been added to 2 ½ of these reefs. This grant will be used to add a veneer of house shells over the remaining part of Burton Pt. Reef and all of Palaces’ Bar Reef. Approximately one-foot of new shell will be used to cover these reefs.

The two-dimensional reef areas in the Piankatank are used for wild seed harvest for both the private industry and State projects. Shells on these sites degrade over time, and funds from this grant are being used to add a light coating of shell to some of these areas. House shells will be used for this project.

Commission Meeting

**15808
February 23, 2010**

100,000 – 150,000 bu./house shells for 3-D sanctuary reefs @ \$1.00 - \$2.00/bu.	\$150,000 - \$300,000
1,000-1,500 bu./house shells/acre @ \$1.00 – \$2.00/bu. on 40 acres of seed production bars	\$40,000 - \$100,000
Total 190,000 – 210,000 bushels of house shells	\$337,901

Rappahannock River

NOAA Funds are available to add new shells on sanctuary areas only. These sites will be chosen based on the annual fall patent tong survey and will be added at a rate of 1,000-1,500 bu./acre.

40,000 bushels of house shells @ 1,000 – 1,500 bu./ac. @ \$1.12/bushel \$44,858

Seaside Eastern Shore:

The Marine Resources Commission, the Nature Conservancy and the Virginia Institute of Marine Science received an American Recovery and Reinvestment Act (Stimulus Project) Award in 2009 to do oyster, eelgrass, and bay scallop restoration on the Seaside of the Eastern Shore. It will be the largest oyster restoration project that MRC has ever done on Seaside. The lack of shells has always limited the amount of oyster restoration on the Eastern Shore. For this project, dredged, fossil shells from the James River will be barged to the Seaside, and be offloaded onto the small shell planting barges that we normally use. The project will have to be bid through the normal Request for Proposal process of the State, but we are estimating now that approximately 19 acres of reefs will be constructed at various locations on Seaside. Twenty thousand bushels of shells/acre will be used at each location, with an estimated cost of \$2.50/bushel, resulting in a total of \$950,000. Most of these restoration sites will be on TNC-MRC sanctuary areas. As planned now, 12 acres of sanctuary reefs will be constructed on TNC-MRC sanctuary areas, and 7 acres will be constructed on State bottom. Only two of the restoration sites on State bottom will be open for harvest.

19 acres @ 20,000 bu./ac. @ \$2.50/bu. \$950,000

There is the possibility that the bid price for the construction on Seaside will be more or less than staff had estimated. If the cost is slightly higher, some of the reefs may be constructed in the same way that has been done for many years, which is by dredging local, fossil shells. If the cost per bushels is less than anticipated, there also may be the possibility to use the extra funding to do some additional reefs with the local contractors.

3 Acres @ 20,000 bu./ac. @ 1.75/bu. \$105,000

TNC-MRC Alternative Substrate Experiment – “Oyster Castles”

Since oyster restoration efforts on Seaside are limited by a lack of shell cultch, staff continues to work with the Nature Conservancy to test alternative substrate. Staff has been using one design for reef balls in Magothy Bay and Smyth Island that has performed very well, but the reef balls are very expensive and hard for volunteers to handle.

Staff would like to test a design that has been called “oyster castles,” this year. These oyster castles are manufactured from certified marine friendly concrete in a modified cinderblock mold that is an eight-inch deep and one-foot square block made by Allied Concrete in Charlottesville. The blocks are notched and interlockable for stability and can be stacked in various designs to establish oyster reefs. In our experiments, we intend to stock the blocks to 18” in height. The castles will be deployed in 90 – 540 square foot units on TNC fees simple shoreline on Box Tree Farm and Brownsville Farm (pictures and drawings are attached). Both areas will be designated as oyster sanctuary areas in the future. These reef castle structures will be constructed by TNC volunteers. It is anticipated that, over time, the oyster castles will be covered with so many oysters that detection of the “castle” will be visually impossible and the reef will begin to provide ecosystem services like water filtration, broodstock for spawn for other areas, and habitat. A picture has been included to show “before” and “after” pictures for the oyster castles.

NOAA Blue Crab Disaster Oyster Aquaculture Training Projects:

This project to train crab industry participants in either spat on shell or cage oyster aquaculture was approved last year. In 2009, we advertised for crab industry participants to sign up for either project. More than 90 crab industry participants signed up for the spat on shell project and 72 signed up for the cage oyster aquaculture project. There was sufficient NOAA funds for all of the cage aquaculture participants, but not for all of the spat on shell participants. For the spat on shell project, a lottery was conducted, and all of the applicants have been assigned a ranked position in the project. Thirty-six individuals were given contracts for the spat on shell program in 2009. We intend to continue down the list and give contracts to as many of the crabbers as possible by the end of the project in three years. Very few of the SOS participants completed any work in 2009, and we will begin again on this project this summer. Of the 72 crab industry participants that applied for the cage aquaculture project, 60 accepted a contract, and all but 7 received their cages and seed oysters in the Fall of 2009.

In 2010, we will begin again with the 2009 spat on shell project and try to complete that activity. The price for eyed oyster larvae has increased since 2009. We will re-advertise for the production of eyed oyster larvae at the new price (Notice attached). We will also advertise again for cage oyster aquaculture participants to see if there is additional interest among crabbers. We have funding for an additional 60-70 participants in the

cage aquaculture project. If there is not enough interest to use all of the funds, we can use these funds to proceed further down the list of applicants for the spat on shell project.

Year II – Crab Disaster Oyster Aquaculture

Spat on Shell, 36-40 participants	\$500,000
Cage Oyster Aquaculture, 60-70 participants	\$380,000
Total	\$880,000

* * *

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2010 OYSTER REPLENISHMENT PROGRAM:

General:

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

This section of the Code states that:

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

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

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.50 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$0.625 per bushel of oyster shells at the shucking house. Loading, transporting and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2010 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

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

The agency anticipates that all other 2010 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act. The dredging of fossil shells for the Restoration projects in the York River and the Seaside of the Eastern Shore will be handled through the Request for Proposal process. Generally, up to 20 percent of the shells that are handled in this activity are considered 'fines' and are not desirable as cultch material. In the Request for Proposal process, these bidders will be allowed to purchase these 'fine' shells and have that value included as a credit in the price to dredge and plant the whole shells in our project. This should save the Commission money on the projects, and result in a better restoration product on the ground.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2010 Replenishment Program.

* * * * *

20. INDIVIDUAL CASES CONCERNING FAILURE TO REPORT COMMERCIAL HARVESTS IN COMPLIANCE WITH COMMISSION REGULATION

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

Keith Like

Mr. Grist explained that there were no missing reports for Mr. Like, just unreported 3 days to account for 276 horseshoe crabs.

Mr. Grist said that Mr. Like had been granted a continuance on his hearing to the February Commission meeting. After received his notice of the compliance hearing, he faxed in his updated reports. Staff still had not received the hard copies.

Mr. Grist stated that staff recommended one-year probation, pending receipt of the documents.

Keith Like was sworn in and his comments are a part of the verbatim record. Mr. Like explained that 2 days were mistakes and the others he completely forgot.

Commissioner Bowman asked if there were any questions of Mr. Like. There were none. He asked for action by the Board.

Associate Member Tankard moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes. Associate Member Robins recused himself from participation because of financial conflict.

Sea King Corporation

Mr. Grist explained that there were missing mandatory reports for March, April, May, July and August as required by regulation. He said there was one day unreported in June to account for 179 horseshoe crabs.

Mr. Grist explained also that Mr. White could not be at the January meeting, so his case was moved to this month's meeting. After receiving his compliance hearing notice, Mr. White called to report "no activity" for all missing months. He had faxed the updated report for 1/14/10, but staff had not received the hard copy.

Mr. Grist stated that staff recommended one-year probation, pending receipt of the documents.

Commissioner Bowman asked for action by the Board.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes. Associate Member Robins recused himself from participation because of financial conflict.

* * * * *

21. REPEAT OFFENDERS

Sergeant Jamie Green gave the presentation and his comments are a part of the verbatim record.

Christopher S. Nelson

Sergeant Green explained that Mr. Nelson had been charged with possession of unculled oysters while dredging on public ground, area 3, in the Rappahannock River. He said in accordance with the regulation all his permit were forfeited.

Sergeant Green said he was not at this hearing, but had called in today but did not provide a valid excuse for his absence from this hearing. He added that two weeks ago another charge was issued to Mr. Nelson.

Commissioner Bowman asked for action by the Board.

Associate Member Tankard moved to suspend his right to act as an agent until he appeared before the Commission. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

Jerry W. Rhea, Jr.

Sergeant Green explained that Mr. Rhea was charged for possession of unculled oysters while dredging in Mobjack Bay. He said he was convicted by the Court.

Sergeant Green said that he had been charged with commercially taking oysters from a closed area and the charge had been dismissed by the Court. He added that he had been previously convicted of possession of unculled oysters.

Sergeant Green stated that staff recommended a 12-month probation and if any further violations occur during that time, he would have to come before the Commission.

Jerry W. Rhea, Jr. was sworn in and his comments are a part of the verbatim record. Mr. Rhea said that he was not the captain of the boat and did not know there were small oysters on the boat.

Commissioner Bowman asked for action by the Board.

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

Allen H. Roberts

Sergeant Green explained that Mr. Roberts had been charged with possession of unculled oysters while dredging in the Mobjack Bay. He said he was convicted by the Court and put on 12-month probation. He said his licenses had been forfeited until he appeared before the Commission.

Sergeant Green said that the staff recommendation 12-months probation and if there were any further violations he would have to appear before the Commission.

Allen H. Roberts was sworn in and his comments are a part of the verbatim record. Mr. Roberts stated that he was not a repeat offender.

Commissioner Bowman explained that this was just a generic term used to describe this item.

Associate Member Fox stated that it was on the document that he was not a repeat offender.

Commissioner Bowman asked for action by the Board.

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

* * * * *

There was no further business and the meeting was adjourned at approximately 2:39 p.m. The next regular meeting will be held Tuesday, March 23, 2010.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary