

## MINUTES

## Commission Meeting

May 24, 2011

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

|                          |                                 |
|--------------------------|---------------------------------|
| Steven G. Bowman         | Commissioner                    |
| Ernest L. Bowden, Jr. )  |                                 |
| J. Carter Fox )          |                                 |
| J. T. Holland )          |                                 |
| William Laine, Jr. )     | Associate Members               |
| J. Bryan Plumlee )       |                                 |
| Richard B. Robins, Jr. ) |                                 |
| Kyle J. Schick )         |                                 |
| John E. Tankard, III )   |                                 |
| Jack G. Travelstead      | Chief, Fisheries Mgmt.          |
| David Grandis            | Assistant Attorney General      |
| Paul Kugelman            | Assistant Attorney General      |
| 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.   |
| Joe Grist                | Head, Plans and Statistics      |
| Lewis Gillingham         | Head, Saltwater Tournament      |
| Sonya Davis              | Fisheries Mgmt. Specialist, Sr. |
| Joe Cimino               | Fisheries Mgmt. Specialist, Sr. |
| Alicia Nelson            | Fisheries Mgmt. Specialist      |
| Allison Watts            | Fisheries Mgmt. Specialist      |
| Warner Rhodes            | Deputy Chief, Law Enforcement   |
| Steven Head              | Marine Police Officer           |
| Robert Parks             | Marine Police Officer           |

**Commission Meeting**

Tony Watkinson  
Chip Neikirk  
Ben Stagg  
Randy Owen  
Justin Worrell  
Dan Bacon  
Hank Badger  
Jay Woodward  
Mike Johnson  
Bradley Reams

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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present included:

|                 |                 |                   |                    |
|-----------------|-----------------|-------------------|--------------------|
| Rob Szetela     | Bethany Smith   | Lauren Webb       | Ashley Rose        |
| Abigail Clark   | Justin Thibault | Jeremiah Brown    | James Chapman      |
| Sandra Campbell | Earl Sorey      | Kevin M. Lundgren | Sebastian Pluirski |
| Scott McPowell  | Tim Davis       | Lynn James        | Arne Hasselquist   |
| Bud Hurst       | Andrew Larkin   | Reed Jeavons      | William Douglas    |
| David Thornton  | Christen Watts  | Joe Yarovac       | Ellis W. James     |

and others.

\*\*\*\*\*

Commissioner Bowman called the meeting to order at approximately 9:34 a.m. All of the Associate Members were present.

\*\*\*\*\*

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

**ANNOUNCEMENT:**

Commissioner Bowman announced that David Grandis, Assistant Attorney General, currently acting as the Board’s legal Counsel would not be here after this meeting as he was being reassigned to another State agency. He introduced to the Commission the new VMRC Counsel, Mr. Paul Kugelman, Assistant Attorney General, who would be replacing Mr. Grandis starting with the June 28, 2011 meeting.

\* \* \* \* \*

**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes from the Board members or staff. There were none.

Commissioner Bowman asked for a motion by the Board.

**Associate Member Robins moved to approve the agenda. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**MINUTES:** Commissioner Bowman requested a motion for approval of the April 26, 2011 Commission meeting minutes, if there were no corrections or changes. There were none.

**Associate Member Tankard moved to approve the minutes, as noted. Associate Member Bowden seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member Schick abstained as he was absent for the April Commission 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, Chief, Habitat Management Division, summarized these items for the Board. He stated that there were eight items (A-H). His comments are a part of the verbatim record.

Mr. Watkinson noted that the General Assembly in its last session raised the project cost requirement for the hearing of the items referred to as page two items by the Board. He said that starting July 1<sup>st</sup>, the amount for projects will be \$500,000 or more and are not protested.

Mr. Watkinson explained that for Item 2G, Chesapeake Department of Public Works, #11-0012, staff wanted to add special conditions that included a time-of-year restriction

and that use of bubble curtains be required, if they wished to work during the anadromous fish spawning period.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked if buoy for the N/NW Lynnhaven Inlet would be lighted. Mr. Watkinson responded yes.

Associate Member Fox asked how many of the current page two items were for a half million dollars. Mr. Watkinson responded that he did not know.

Associate Member Plumlee stated that he would be abstaining for items 2A, 2C, and 2G, because they were clients represented by his firm.

Commissioner Bowman opened the public hearing and asked if anyone wished to speak pro or con for these items. There were none.

Commissioner Bowman asked for a motion.

**Associate Member Robins moved to approve page two items 2A, 2C, and 2G with staff amendments. Associate Member Tankard seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member Plumlee abstained.**

**Associate Member Holland moved to approve page two items 2B, 2D, 2E, 2F, and 2H. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**2A. NORFOLK SOUTHERN RAILWAY COMPANY, #11-0102,** requests authorization to modify an existing permit to now maintenance dredge 170,000 cubic yards of State-owned subaqueous material, to re-establish minimum depths of -53 feet at mean low water on the south side of Pier 6 at their Lamberts Point facility situated along the Elizabeth River in the City of Norfolk. Staff recommends inclusion of the standard dredging conditions.

No applicable fees – Permit modification

**2B. DEPARTMENT OF THE AIR FORCE, #11-0273,** requests authorization to install approximately 5,400 linear feet of riprap revetment, extending a maximum of 15 feet channelward of mean low water, and approximately 3,150 linear feet of riprap breakwater/sill with 2,000 cubic yards of associated sand nourishment and vegetation, extending a maximum of 45 feet channelward of mean low water, along their shoreline at Langley Air Force Base situated along the Northwest and Southwest Branches of the Back River in the City of Hampton.

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

- 2C. McALLISTER TOWING OF VIRGINIA, #11-0346**, requests authorization to install approximately 400 linear feet of replacement bulkhead aligned a maximum of two (2) feet channelward of an existing deteriorated bulkhead, adjacent to their property situated along the Elizabeth River at 914 A Pearl Street in the City of Norfolk. Staff recommends the assessment of a royalty in the amount of \$2,400.00 for the encroachment over 800 square feet of State-owned subaqueous bottom at a rate of \$3.00 per square foot.

|   |            |
|---|------------|
| Royalty Fees (encroachment on 800 sq. ft. @\$3.00/sq. ft.)..... | \$2,400.00 |
| Permit Fee.....   | \$ 100.00  |
| Total Fees.....   | \$2,500.00 |

- 2D. AT &T CORPORATION, #10-1117**, requests authorization to install a fiber optic cable, by directional bore method, a minimum of ten (10) feet beneath the streambed impacting 28 linear feet of Cedar Run, 29 linear feet of Crooked Run, 71 linear feet of Robinson Run, 37 linear feet of Great Run, 126 linear feet of the Rapidan River, and 162 linear feet of Rivanna River in Culpepper, Orange and Albemarle Counties. Staff recommends the assessment of a royalty in the amount over \$1,359.00 for the encroachment over 453 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

|  |            |
|--|------------|
| Royalty Fees (encroachment 453 lin. ft. @\$3.00/lin. ft.)..... | \$1,359.00 |
| Permit Fee.....  | \$ 100.00  |
| Total Fees.....  | \$1,459.00 |

- 2E. CITIZENS TELEPHONE COOPERATIVE, #11-0206**, requests authorization to install a fiber optic cable, by aerial, bridge attachment or directional bore method, impacting 32 individual streams/rivers in Wythe, Pulaski, Floyd, Giles, Montgomery, Roanoke, and Botetourt Counties. Staff recommends the assessment of a royalty in the amount of \$6,717.00 for the encroachment over 2,239 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

|   |            |
|---|------------|
| Royalty Fees (encroachment over 2,239 lin. ft. @\$3.00/lin. ft.)..... | \$6,717.00 |
| Permit Fee.....   | \$ 100.00  |
| Total Fees.....   | \$6,817.00 |

- 2F. **WAYNESBORO DEPARTMENT OF PUBLIC WORKS, #11-0331**, requests authorization to install by open-trench method a 4-inch diameter, concrete encased sewer line impacting 86 linear feet of the South River in the City of Waynesboro. Staff recommends approval with our standard in-stream construction conditions.

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

- 2G. **CHESAPEAKE DEPARTMENT OF PUBLIC WORKS, #11-0012**, requests authorization to construct new north and south bound fixed-span bridges along Dominion Boulevard (U.S. Route 17) crossing over the Southern Branch of the Elizabeth River. The new bridges will provide 95 feet of vertical clearance above mean high water and 125 feet of horizontal clearance within the existing Federal navigation channel, as well as additional vehicle and pedestrian travel lanes to coincide with additional improvements to Dominion Boulevard between the Interstates 464/64 interchange and a point approximately 0.75 miles south of Cedar Road.

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

- 2H. **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, #11-0475**, requests authorization to install a scientific environmental observation buoy in the Chesapeake Bay at coordinates 36° 58.767' N Latitude and 76° 02.62' W Longitude, approximately 3.7 nautical miles north of First Landing State Park in Virginia Beach. A steel mooring chain will permanently attach the buoy to a 2,500 pound concrete or steel anchor.

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

\*\*\*\*\*

- 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 none.

\*\*\*\*\*

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

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

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

**Chincoteague Inn versus VMRC**

**Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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

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

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

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

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

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

**AYES: Bowden, Bowman, Fox, Holland, Laine, Plumlee, Robins, Schick, and Tankard.**

**NAYS: NONE**

**ABSENT DURING VOTE: NONE**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: NONE**

**Motion carried, 9-0. The Chair voted yes.**

---

**Katherine Leonard, Recording Secretary**

\* \* \* \* \*

5. **SHRI GANISH, LLC, #10-1708**, requests authorization to install 15 steel posts on three-foot centers, attached below-grade with steel angle segments, extending from an existing timber groin landward to the dune, on the beach at their property situated along the Chesapeake Bay, immediately north of the Salt Ponds Inlet on Grandview Beach in the City of Hampton. The project will require a Coastal Primary Dune and Beaches Permit.

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

Mr. Johnson explained that Mr. Robert Szetela, along with three other individuals who are the principal owners of Shri Ganesh, LLC, owns 8.4 acres of property identified as Salt Ponds Parcels 1A and 2 located at the terminus of Grandview Beach, immediately north of Salt Ponds Inlet in the City of Hampton. The parcels are undeveloped.

Mr. Johnson said that the applicant was seeking to install 15 bollards perpendicular to the beach, on three-foot centers, extending from the landward terminus of an existing groin to the dune face which will impact 45 linear feet of jurisdictional beach. The intent of the bollards is to create a barrier to vehicular access to his property. The bollards would consist of 3-inch by 6-inch hot dipped galvanized steel beams eight feet in length. The bollards would be installed to a depth of approximately five (5) feet by digging a trench into the beach and connected by bolting angled trusses approximately six inches from the bottom of the bollards. The trench would then be refilled with the excavated sand. All equipment would be brought to the site by boat and access to the site would be by right-of-way from the northern end of the beach.

Mr. Johnson said that Mr. Szetela was requesting the installation of the bollards to prevent trespassers from accessing his property. On weekends and holidays it had been documented that people use modified golf carts to drive the length of the half-mile beach and use Mr. Szetela's property as a staging ground for various recreational activities. Mr. Szetela was concerned that the people illegally accessing his property represented a potential liability and he would like to preclude such use. Mr. Szetela had indicated that previous efforts to limit trespassers on his property by asking local law enforcement to protect his private property rights and placing no trespassing sign on his property had not been successful.

Mr. Johnson noted that to date, no protests had been received by staff.

Mr. Johnson said that in the VIMS Shoreline Report, dated May 13, 2011, they stated that the project was not water dependant but noted that it would not have any significant direct impacts on the beach and dune system. They were concerned there may be indirect



impacts by changing the way people access Mr. Szetela's property, specifically by driving around the bollard barrier and over the dunes. The Department of Conservation and Recreation noted the proposed bollards were within the Resource Protection Area and were not part of a shoreline erosion project. They stated that the applicant should submit a water quality control impact assessment and apply for an exception under the City of Hampton's Chesapeake Bay Preservation Area Program.

Mr. Johnson said that staff believed that the bollards would not have a significant direct negative impact on the ecological and physical functions of the beach and dune. While staff was aware that the placement of the bollards on the beach might encourage people to illegally access Mr. Szetela's property by traveling through the dune area.

Mr. Johnson noted that staff could understand his desire to protect his property. Therefore, after evaluating the merits of the project, and considering all of the factors contained in §28.2-1404(10)(B) of the Code of Virginia, staff recommended approval of the project.

Commissioner Bowman asked for questions for staff.

Associate Member Plumlee asked if the policy for public access on the Chesapeake Bay to the shore and beach differed from Ocean. Commissioner Bowman stated that it was owned by the local government unless it was owned as private property. Associate Member Plumlee asked if the right of access was provided by the Constitution and the Public Trust Doctrine or a King's Grant. He asked was there a policy adopted by the Commission. David Grandis, Assistant Attorney General and VMRC Counsel stated that if it did not impede the use below mean low water no policy was needed requiring access over private property. Associate Member Plumlee asked if it was different in other areas.

Tony Watkinson, Chief, Habitat Management, said he was not aware of the establishment of commons for the beach in Hampton where the public access is allowed. He said this was done along the Atlantic Coast but was unaware of any along the Bay.

Associate Member Fox asked if these activities occur on City property. Mr. Johnson said that they could.

Associate Member Tankard asked if there was a contingency plan for individuals accessing the property through the dune area. Commissioner Bowman stated it would be to call the police. Mr. Watkinson said the dunes and grasses were not exempt from recreational use.

Associate Member Holland asked about the staff slide showing the vehicles on the beach and why the police did not do something. Commissioner Bowman stated that the applicant should be asked that question.

Commissioner Bowman asked if the applicant was present.

Robert Szetela, representative for Shri Ganish, was sworn in and his comments are a part of the verbatim record. Mr. Szetela said he was familiar with the area as he had been here a long time. He said it was not a major problem until four or five years before when the City Ordinance was established allowing the golf carts here. He said the number of golf carts had increased. He stated that there was 3,700 feet of beach along here. He said that other residents had gone to the city but the ordinance was still in effect. He said he had complained to the City about the trespassing and even told some individuals but they still did it anyway. He said that staff had done a very good job of presenting the matter. He noted that on holiday weekends there were about 60 or 70 vehicles.

Commissioner Bowman asked if there was any dispute as to ownership. Mr. Szetela stated no. He said with so many the police resist coming out there if they did not have more than one officer. He said that with so many other enforcement issues trespassing was not a priority for the City. He said he had met with the City on April 26<sup>th</sup>. He added that the City never designated public access to private property. He said that he had done all he could for now and there were cases in court that were still pending. He said that most of the people who live here respect the no trespassing, but it is others outside who bring in the golf carts. He said here at this site there is the most desirable sand in the most secluded area. He explained the poles would be three feet apart to prevent the vehicles not the pedestrian traffic. He said walking was okay and with leashed pets, but no vehicles or no alcohol. He said that behind the dune there had been grass growing but with the carts driving on the dunes, it was now gone. He noted that in real estate law he had the right to protect his property.

Commissioner Bowman said were some of the slides shown by staff given to them by Mr. Szetela. Mr. Szetela said he might have provided a couple of them.

Associate Member Schick asked if the City had asked him to block access? Mr. Szetela said no, but he was asked to post the area.

Mr. Grandis asked if there had been an easement granted in this area. Mr. Szetela said he was not aware of any.

Commissioner Bowman asked if anyone in support of the project was present to comment.

Sebastian Pluirski, supporter, was sworn in and his comments are a part of the verbatim record. Mr. Pluirski said he had witness all the trespassing and provided photos taken the precious year. He said at night they have bonfires and golf carts are present.

Commissioner Bowman asked if anyone else in support wished to comment. He asked if anyone in opposition was present who wished to speak.

Arnie Hasselquist, protestant and resident, was sworn in and his comments are a part of the verbatim record. Mr. Hasselquist said he requested denial of this project. He said the City says there is to be no fence.

Bud Hirst, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Hirst stated this was a fence and he owned the property further north. He said he objected to the barrier and, if it were allowed, it would set a precedent and others will want to do it also. He said it did not provide for any positive environmental impact and only forces people to walk through the dune. He reiterated that it had very little positive impact only negative. He said that there was no legal access from Grandview. He said Mr. Szetela trespassed on their properties and they never had thought to prevent use by others. He said for thirty years others have used this area and the carts actually put less pressure on the beach than the foot traffic.

Lynn James, Grandview property owner at White Marsh Beach was sworn and her comments are a part of the verbatim record. Ms. James provided a letter from Gayle E. Cozzens regarding the project. She said she also had a powerpoint presentation with slides. Commissioner Bowman read Ms. Cozzens letter into the record, which was opposed to the project as it would set a precedent. Ms. James said that no golf cart access was okay, but she was concerned that in the case of emergencies no emergency vehicles could get to the area. She said she was opposed to the 3-foot pole barrier. She also said it would set a precedent.

James Chapman, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Chapman said he lived on Lighthouse Drive and was here in protest like the others. He provided pictures and his comments in writing, which he read.

Mr. Szetela in his rebuttal comments stated he had not given permission for access to the property and that he would not prevent access for emergency vehicles. He said it was not a fence, but a barrier to prevent access. He reiterated he did not want golf carts to come on the property and he could not see the impact of the poles. He said this was 3,000 feet from others and their property rights need to be enforced.

Commissioner Bowman asked for discussion or action by the Commission.

Associate Member Plumlee stated he did not like the proposal as it was proposed, as it needs to be less intrusive. He said the Virginia Beach Wetlands Board allowed for beach rights and property rights. He said it was okay to protect against erosion, but not to prevent intrusion.

Associate Member Fox said he agreed with Mr. Plumlee but the applicant does own the property and does not want trespassing to occur and it should not occur. He said the protestants talked about safety issues with the proposal, but that was not an important

argument. He said he did not like the proposal, but he also did not like the applicant’s problem here.

**Associate Member Robins stated that there was no perfect solution. He stated that the applicant was within his rights to pursue this matter, as the Commission did look at the public versus the private benefits. He added that the City had not been controlling this situation and were not concerned with the ability of emergency vehicles to get on the beach. He said this was private property here. He moved to approve the project. Associate Member Laine seconded the motion. The motion carried, 8-1. The Chair voted yes. Associate Member Plumlee voted no.**

|                 |         |
|-----------------|---------|
| Permit Fee..... | \$10.00 |
|-----------------|---------|

\* \* \* \* \*

- 6. **DAVID THORNTON, #11-0509**, requests authorization to repair, reconstruct, and extend landward two (2) existing vinyl groins adjacent to his property situated along the York River at 8774 Blue Gate Lane in Gloucester County. Both Coastal Primary Sand Dunes and Beaches and Subaqueous Lands permits are required.

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

Mr. Neikirk explained that the project site is located along the York River in the Bena area of Gloucester County. The shoreline consisted of a sandy beach with a wide shallow sandy subtidal flat channelward of the beach. There was submerged aquatic vegetation extending well channelward of the beach. There were numerous groins along the shoreline both upstream and downstream of Mr. Thornton’s property. The downstream property owner recently completed a similar project.

Mr. Neikirk stated that Mr. Thornton was seeking authorization to repair or reconstruct two existing vinyl groins and to extend those groins further landward since they had become detached from the shoreline due to erosion. The total length of the proposed groins is 101 feet with 55 feet of the structures extending channelward of mean low water.

Mr. Neikirk said that the landward groin extensions would impact approximately 50 square feet of jurisdictional beach and the replacement of the groins would impact approximately 110 square feet of State-owned submerged land. Gloucester County had not yet adopted the beaches and dunes ordinance which was made available to them by virtue of Code changes effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk stated that the existing groins were installed under a permit issued to a previous owner in 2003. Mr. Thornton's sandy beach had eroded and migrated landward beyond the landward ends of the previous damaged vinyl groins. The two landward groin extensions were designed to prevent flanking of the structures and to stabilize the sand on the landward portion of the beach.

Mr. Neikirk noted that no comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification.

Mr. Neikirk explained that in VIMS comments dated May 16, 2011, they stated that the extension of the groins into the upland would have only minimal environmental impacts and would allow the groins to function more efficiently. They suggested beach nourishment be added to the created groin cell to minimize adverse impacts related to the interruption of sand transport. No other agency comments were received.

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

Mr. Neikirk stated that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a condition that a minimum of 40 cubic yards of sand must be placed within the created groin cell within 14 days of the completion of the new groin. Additionally, as a permit clarification, staff would recommend a condition stating that no portion of the reconstructed groins shall extend channelward of the end of the existing groins as marked by the tall pilings.

Commissioner Bowman asked if the applicant wished to come forward and comment.

David Thornton, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Thornton stated that staff had done a great job. He explained that he had lost two feet of his yard since he became the property owner June 2011 because of erosion. He added that water actually came over the groin.

Commissioner Bowman asked if there were questions.

Associate Member Tankard asked Mr. Thornton if staff's recommendation to add sand for nourishment was acceptable. Mr. Thornton responded yes.

Commissioner Bowman asked if anyone was present, pro or con, who wished to comment. There were none.

**Associate Member Tankard moved to accept the staff recommendation with the amendment to require nourishment. Associate Member Fox seconded the motion. The motion carried 9-0. The Chair voted yes.**

|  |         |
|--|---------|
| Royalty Fees (encroachment 11 sq. ft. @ \$0.50/sq. ft.)..... | \$55.00 |
| Permit Fee.....  | \$25.00 |
| Total Fees.....  | \$80.00 |

\*\*\*\*\*

**7. PUBLIC COMMENTS:** There were no public comments.

\*\*\*\*\*

**8. RIVER HERRING:** Discussion of compliance with ASMFC River Herring Amendment 2, which requires a state-wide moratorium on all harvests on January 1, 2012, or proof of a sustainable fishery. Request for Public Hearing.

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

Mr. Travelstead stated that it was not often that they asked for a moratorium, in fact, it had been over 20 years. He said that the river herring was consists of two species of fish: alewife and blueback herring.

Mr. Travelstead explained that in May 2009 the ASMFC Management Plan for River Herring was amended to require a moratorium by January 1, 2012. He said present harvest data indicating a classical, total stock collapse. He asked the Board to notice the more recent years versus the past levels of harvest.

Mr. Travelstead said the amendment contained a provision which required states to prove their fisheries were sustainable or implement a moratorium. He added that ASMFC had already looked at plans for Maine, New Hampshire, and North and South Carolina and had approved them.

Commissioner Bowman asked staff to explain sustainable. Mr. Travelstead said that it was a level of harvest that would do no long term harm to the stock and could continue at that level for long period of time.

Mr. Travelstead said that some states had already declared a moratorium, such as North Carolina in 2007 and Massachusetts, Rhode Island and Connecticut.

Mr. Travelstead stated the question staff had today for the Commission was whether Virginia should adopt a moratorium or submit a sustainable fishery management plan for review by ASMFC.

Mr. Travelstead noted they also need to be able to monitor the fishery in order to prove the fishery is sustainable. He said there had been a lot of monitoring for striped bass by staff, which cost \$0.5 million per year and the State did not provide funds for such activities for river herring. He said there had been federal funding decades ago to look at the anadromous fish, but it was diverted to striped bass and other species and not to river herring.

Mr. Travelstead said that Figure 8 showed the types of data it would take to convince the ASMFC that the stocks were sustainable. He stated that data would be needed for the past. He said that other States had been doing monitoring for decades for all fish, but not Virginia.

Mr. Travelstead explained that Figure 9 showed that New Hampshire had a sustainability plan which had been approved the ASMFC. To not have a moratorium there must be regulations to maintain the fishery, if only a small one. He noted that the State of Maine had done the same, but in North Carolina a moratorium had been implemented in 2007. He said that North Carolina had presented a plan for a small fishery for research purposes and it was approved. He said North Carolina prepared a full blown stock assessment in 2005, but in 2007 the moratorium was implemented as a result.

Mr. Travelstead said Figure 13 showed how other sister agencies had been contacted for a data source on river herring , such as VIMS and VCU and there was no data to support a sustainable fishery for river herring.

Mr. Travelstead noted the market and desirability by consumers was not the same as in the past.

Associate Member Fox said that in the 50's and 60's there were canning plants that processed herring roe. Mr. Travelstead said that Cowart Seafood was the last cannery for herring in Virginia and that ended when North Carolina closed their fishery in 2007.

Associate Member Fox asked if herring was a bycatch fishery in the York River. Mr. Travelstead noted that river herring were a bycatch in some gill nets, pound nets, and offshore trawl nets.

Associate Member Fox asked about the recreational hook-and-line fishery. Mr. Travelstead said only catch and release would be allowed under a moratorium.

Associate Member Plumlee asked if a moratorium on could be phased-in. Mr. Travelstead said the ASMFC moratorium was required to start January 1, 2012.

Commissioner Bowman said at Claremont and Hopewell you could catch them with dip nets, but there were no numbers for catching them now, and no enforcement had been necessary as the fishery was in bad shape. He stated that staff's chart was accurate. He said when he caught them as a child in the Appomattox River, the stocks were plentiful.

Associate Member Robins said that all along the coast there was concerns for the stocks as the resource was down sharply. He said the Mid-Atlantic Fishery Management Council was considering plans to reduce river herring bycatch in the offshore fisheries.

Associate Member Bowden said he had been fishing a long time and he caught mackerel and herring. He said he caught three this spring. He said that there was a need to get the ASMFC to do something. He said in New Jersey that herring were used for crab bait, which was available in the past but not now. He said the Council needed to move fast as the fish were not there. He said this was also a concern for the north, not just the mid-Atlantic.

Commissioner Bowman asked for action by the Commission.

**Associate Member Robins moved to advertise moratorium for a public hearing in June. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**9. SPINY DOGFISH:** Discussion of state commercial harvest quota and quota monitoring needs; request for public hearing.

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

Mr. Grist explained that on November 23, 2009, the Marine Resources Commission (MRC) adopted Emergency Regulation 4 VAC 20-490-10, et seq., making it unlawful to transfer any Spiny Dogfish Limited Entry Permit and requested a December public hearing on the emergency regulation. On December 15, 2009, MRC approved amendments incorporating the options, as permanent.

Mr. Grist further explained that on April 27, 2010, MRC adopted additional amendments to the regulation to prevent the use of agents by limited entry permittees, but to also allow the Commissioner, or his designee, to grant exceptions to the transfer prohibition based on documented cases of significant hardship due to medical condition, military active duty, or the retirement or death of an immediate family member.

Mr. Grist said that on March 23, 2011, the ASMFC-Spiny Dogfish and Coastal Sharks Board approved Addendum III to the Interstate FMP for Spiny Dogfish. Virginia



received 10.795% of the annual coast-wide quota for May 1, 2011 through April 30, 2012, or 2,159,000 pounds.

Mr. Grist said that the spiny dogfish sub-committee met on May 16, 2011 to discuss the current 2011-2012 spiny dogfish season. Only three of the six members attended the meeting, with an additional five from the industry. Staff explained each item the subcommittee concurred with staff on. Each item is recommended for advertising a June public hearing for amending the regulation, as follows:

Mr. Grist said that the staff recommendations would be advertised for a June public hearing for amending the regulation, as follows:

- a) Establish a May 1 through April 30 spiny dogfish annual quota of 2,159,000 pounds with a roll-over provision for up to five percent,
- b) Clarify the state specified possession limits,
- c) Establish a buyer reporting system for quota monitoring,
- d) Establish a control date of April 30, 2011, for future management actions, limits, etc.
- e) Consider any dogfish reported in the months of November through February to be recognized as spiny dogfish when determining qualifications for a spiny dogfish limited entry permit.

Mr. Grist stated that the buyer on the subcommittee agreed to the reporting requirement if the staff would put the data on the website so they could see the status of the quota.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked for more comments on the control date – limited entry. Mr. Grist said that the subcommittee had requested the control date, and it had not been before FMAC. He said the helper was given equal credit, there were more licenses established than was likely intended. If, at a later date, it was determined that licensee numbers needed to be changed, then the control date would be a useful too.

Commissioner Bowman said that the staff had worked hard to protect the quota for Virginia as there was fighting among the States and had done a good job protecting Virginia's interest. He stated the matter was before the Commission.

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

\* \* \* \* \*

The Commission broke for lunch at approximately 12 Noon and reconvened the meeting at approximately 12:45 p.m.

\* \* \* \* \*

Jack Travelstead explained that there had been a proposal suggested by staff for the 2011 Holiday Commission meeting dates to be changed. He said it was suggested that there be a single meeting for the November and December meetings in the first week of December. He said that it would be Tuesday, December 6<sup>th</sup>, which is the week before the MAFMC.

Commissioner Bowman explained that there was a concern with any wetlands appeals to be heard. Tony Watkinson, Chief, Habitat, stated that a wetlands appeal must be heard with 45 days.

Commissioner Bowman said that this would have to be discussed if it were to come up, and announced that it was the consensus of the Board to accept the change to a Tuesday, December 6, 2011 meeting date.

\* \* \* \* \*

- 10. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-450-10 et seq., "Pertaining to the Taking of Bluefish," to establish the 2011 commercial bluefish quota.

Allison Watts, Fisheries Management Specialist, gave the presentation and her comments are a part of the verbatim record.

Ms. Watts said this was a public hearing to establish the commercial quota for Bluefish for 2011 at 1,113,727 pounds.

Ms. Watts stated that while Virginia did not reach its quota last year, there is a decrease in quota in 2011. This is due to lower recruitment levels from last year's coastwide stock assessment. She added it was necessary to amend Regulation 450. She noted that staff had not received any public comments.

Commissioner Bowman asked for questions. There were none.

Commissioner Bowman opened the public hearing for comments, pro or con, and there were no public comments. He announced the matter was before the Commission.

**Associate Member Robins moved to amend the quota, as staff recommended. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

**11. PUBLIC HEARING:** Proposed amendment to Regulation 4VAC20-270-10 et seq., "Pertaining to Crabbing," to allow for an alternate daily time period for crabbing, under special permit.

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

Mr. O'Reilly explained that Ty Farrington of the Crab Management Advisory Committee requested that there be a daily time limit for crab and peeler potting and had suggested 4 a.m. to noon 8-hour time limit through August and a 5 a.m. to 1 p.m. 8-hour time limit starting in September. He said this made each time limit an hour earlier. He said that last year this was requested in late August, for September, and denied.

Mr. O'Reilly said that staff had advertised this public hearing as approved by the Commission. He added that on April 22<sup>nd</sup> the CMAC met and the votes were split as five supported the change. He said this was a diverse committee as six were not crab harvesters.

Mr. O'Reilly explained that Captain James Rose, Supervisor for the Northern Area, had told him that different time limits would be complicated and impact his manpower. Mr. O'Reilly noted that Law Enforcement had reviewed the regulation and found it to be okay. He said that Law Enforcement and other crabbers know who does the alternate hours, such as is available for medical hardships.

Mr. O'Reilly said in Mr. Farrington's letter he requested that this alternate time limit, 4 a.m. to noon, be started in June (rather than May) and end August 31, with September established as a 5 a.m. to 1 p.m. 8-hour time limit, rather than the current 6 a.m. to 2 p.m. time limit. He said overall staff had looked at this as a concession. He said the Commission had only done minor alternate times before and they wanted to be able to keep control of the situation. He said if someone wants to change from the alternate 8-hour time limit, it should not be allowed. He suggested establishing a cutoff date of May 15 (2012) to choose a time limit and after that they would be locked in and no further change allowed.

Mr. O'Reilly explained that staff recommended the adoption of the amendments to Regulation 270, to allow for an alternate daily time period for crabbing, under a special permit.

Commissioner Bowman asked for questions.

Commissioner Bowman said that for an individual permit, Law Enforcement would have to establish who the individual is and time of day determined. He said how would they determine the permit situation. Mr. O'Reilly stated that once the individual had been checked, it would deter them from continuing illegally. Commissioner Bowman said that would require effort by the Law Enforcement, does Law Enforcement staff agree with this.

Mr. O'Reilly said this had been a close call for staff (to seek an alternate 8-hour time limit permit) and if there were problems, staff would ask the Commission to rescind the permit.

Associate Member Tankard said administratively this would be a close call and he asked Law Enforcement to comment. Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement, said it would not be close for them as they would have to check all to determine time, whether it was medical, alternate or conventional. He said that if they check for medical, all the others have to go back to port.

Associate Member Robins asked if there were two permits on a vessel or only one. Mr. O'Reilly said if there is only one permit on the vessel then the one on the vessel without a permit must receive the summons.

Commissioner Bowman said there was concern with there being a loophole which allows for an overage and Law Enforcement cannot be responsible as it was difficult to enforce.

Associate Member Fox asked if Law Enforcement was advised of the individual permits or was a list available. Mr. O'Reilly said if a list were to be provided, as it would be done one time.

Associate Member Tankard asked if two hours made that much difference. Mr. O'Reilly said the fishermen of the product were concerned because of the heat, whether they can sell both to a buyer and self-market. He said it was a big deal for hard potters, but peeler potters did not want to do this.

Associate Member Robins asked, with the concern for the heat on the market, if an evaluation by could be done by Law Enforcement for the Commission on how it worked for enforcement. Lt. Col. Rhodes responded, yes, they could do that. Commissioner Bowman said he hoped they could do that and get back to the Commission as soon as it possible.

Associate Member Schick suggested that the Commission consider not allowing people with alternate times and conventional times on the same vessel.

Mr. O'Reilly explained that the evaluation did not mention the May 15 cut-off date, but was mentioned by staff to put it in the regulation. Associate Member Fox noted that for this year it was past the May 15<sup>th</sup> cut-off date. Mr. O'Reilly said that staff can take care

of the permits this year, but May 15 would be the cut-off to apply for the alternative time limit permit next year.

Commissioner Bowman opened the public hearing for comments, pro or con. As there were none the public hearing was closed. He announced the matter was before the Commission.

There were no public comments.

Associate Member Robins said that he appreciated Law Enforcement's concerns as they were significant. He suggested this be done as a pilot program and amend the regulation to multiple crabbers must have same permit status.

Mr. O'Reilly suggested that the Commission wait for the Law Enforcement and Fisheries staff reports.

**Associate Member Robins moved to approve the amendment to the crab regulation for the alternate work hours and to require multiple crabbers on board the vessel to have the same permit status. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

\* \* \* \* \*

There was no further business and the meeting was adjourned at approximately 1:14 p. m. The next meeting will be held Tuesday, June 28, 2011.

---

Steven G. Bowman, Commissioner

---

Katherine Leonard, Recording Secretary