COMMISSION ACTIONS September 22, 2015

1A. APPROVAL OF AGENDA. AGENDA APPROVED WITH ADDITION OF FOUR ITEMS: DISCUSSION OF OYSTER LIMITED ENTRY (NEW ITEM 9A), REQUEST FOR HEARING REGARDING LEASE MARKING REQUIREMENTS AND AQUACULTURE (NEW ITEM 22), RECOMMENDATIONS FROM THE RECREATIONAL FISHING ADVISORY BOARD (NEW ITEM 23), AND ESTABLISH THE DATE FOR THE NOVEMBER/DECEMBER COMMISSION MEETING (NEW ITEM 24). [audio]

1. MINUTES of previous meeting. COMMISSION 8/28/15 FINAL MINUTES ADOPTED AS PRESENTED. [audio]

2. PERMITS (Projects over $500,000.00 with no objections and with staff recommendation for approval). ALL PAGE 2 ITEMS APPROVED PER STAFF RECOMMENDATION. [audio]

3. CONSENT AGENDA ITEMS. NONE. [audio]

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. NONE. [audio]

5. RIVERVIEW AT THE PRESERVE, LLC, #15-0415 requests authorization to construct three (3) stormwater outfalls, to include riprap scour protection, and to construct a community-use pier with an approximate 30-foot by 30-foot roofed pavilion in association with the Riverview subdivision located at the southern terminus of Tranquility Trace situated along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a wetlands and a subaqueous permit. UNANIMOUSLY APPROVED PER STAFF RECOMMENDATION. [audio]

6. WILLIAM S. EDWARDS, #15-1033 requests authorization to install two (2) 3-foot wide by 12-foot long piers and six (6) mooring piles to create two (2) additional rental boat slips, at an existing commercial marina, along Edwards Creek at 768 S. Bay Haven Drive in Mathews County. The project is protested by an adjacent property owner. UNANIMOUSLY APPROVED PER STAFF RECOMMENDATION. [audio]

7. SHANNON FEDORS, #2014-075 requests reconsideration of her application to lease up to 50 acres of oyster planting grounds within York River near the Allen Islands in Gloucester County, which was denied at the August 25, 2015, Commission meeting. The request is based upon the applicant not receiving the notice of the meeting until after the August meeting date. AGREED TO RECONSIDER THE
LEASE REQUEST AND APPROVED FOR FURTHER PROCESSING WITH A CONDITION THAT THE LEASE NOT INCLUDE AREAS WITH SUBMERGED AQUATIC VEGETATION BY A VOTE OF 8 TO 0 WITH ASSOCIATE COMMISSIONER NEIL ABSTAINING. [audio]

8. THOMAS H. JAMES III, #2015-100 requests authorization to lease approximately ten (10) acres of oyster planting ground in the Chesapeake Bay, north of The Gulf in the Old Town Neck area of Northampton County. The application is protested and submerged aquatic vegetation is present in the lease request area. UNANIMOUSLY DENIED. [audio]

9. CHRISTOPHER N. PRITCHARD, #2014-323 requests authorization to lease up to 30 acres of oyster planting grounds within Horn Harbor in Mathews County. The application is protested by a number of local highland property owners. UNANIMOUSLY APPROVED A MODIFIED SURVEY AREA THAT EXCLUDES RECENTLY REQUESTED RIPARIAN LEASES. [audio]

9A. DISCUSSION Reconsideration of the Commission’s decision at its August meeting to limit entry in the public oyster fishery. THE COMMISSION ACTED ON SEVERAL ISSUES RELATED TO THE OYSTER FISHERY. THE MOST SUBSTANTIAL ISSUE INVOLVED THE COMMISSION’S RECONSIDERATION OF THE LIMITED ENTRY SYSTEM IT ESTABLISHED, FOR THIS FISHERY, AT ITS AUGUST 25, 2015 MEETING. IN THE MORNING, THE COMMISSIONER ADDED AN ITEM TO THE AGENDA THAT WAS DEDICATED TO THE COMMISSION’S REVIEW OF THE PREVIOUSLY ADOPTED LIMITED ENTRY SYSTEM. COMMISSIONER BULL SPECIFIED THIS ITEM WOULD OCCUR IMMEDIATELY AFTER LUNCH BUT WOULD PRECEDE THE USUAL PUBLIC COMMENT SESSION. THERE WERE ALREADY QUITE A FEW HARVESTERS IN ATTENDANCE.


COMMISSIONER BULL ALSO INDICATED THAT THE INTENTION OF LIMITED ENTRY WAS SOUND, IN THAT OVER 1,800 LICENSES ARE HELD, AND THE RESOURCE CANNOT SUSTAIN THAT AMOUNT OF EFFORT, IF EVERYONE BECOMES ACTIVE. OTHER COMMISSION MEMBERS AGREED THAT CONSERVATION MEASURES WERE NEEDED BUT, AS THE COMMISSIONER NOTED, THE CURRENT LIMITED ENTRY PLAN MAY NOT BE THE BEST
CONSERVATION APPROACH. ONE COMMISSION MEMBER NOTED THAT HE THOUGHT THE LIMITED ENTRY SYSTEM WAS DESIGNED TO ELIMINATE LICENSES THAT WERE PURCHASED AFTER THE CONTROL DATE. ANOTHER ASSOCIATE MEMBER STATED THAT MAYBE THOSE INDIVIDUALS WHO HELD LICENSES BUT NEVER REPORTED ANY OYSTER HARVEST SHOULD BE REMOVED FROM THE FISHERY. AFTER EXTENSIVE DISCUSSION, SEVERAL COMMISSION MEMBERS EXPRESSED INTENT IN ALLOWING THE SHELLFISH MANAGEMENT ADVISORY COMMITTEE TO RENEW IT EFFECTS TO PROVIDE AN EFFORT REDUCTION PLAN, AND IT WAS HOPED THAT WOULD BE PROVIDED TO THE COMMISSION IN SUMMER 2016, AT THE EARLIEST.

COMMISSIONER BULL INDICATED THAT THE INDUSTRY MAY HAVE TO ENDURE LEAN HARVESTS, UNTIL A BETTER EFFORT CONTROL SYSTEM WAS IN PLACE. THE COMMISSIONER ALLOWED PUBLIC COMMENT ON WHAT WAS, BY THAT TIME, TACIT AGREEMENT BY THE COMMISSION THAT IT WAS READY TO RESCIND THE LIMITED ENTRY SYSTEM. SINCE USUALLY AN AGENDA ITEM SUCH AS THIS WOULD BECOME AN EMERGENCY REGULATION THAT DOES NOT REQUIRE PUBLIC COMMENT, IT WAS EVIDENT THAT MANY, IN THE ALMOST FULL ROOM, WERE GLAD THE COMMISSIONER PROVIDED AN OPPORTUNITY FOR COMMENT FROM ALL PERSONS WHO WANTED TO COMMENT.

ABOUT A DOZEN INDIVIDUALS COMMENTED. MANY STARTED BY FINDING FAULT WITH THE LIMITED ENTRY SYSTEM, BUT THE COMMISSIONER REMINDED THEM THEIR COMMENTS SHOULD CONSIDER A COMMISSION ACTION THAT WOULD REVERSE THE LIMITED ENTRY SYSTEM. IN GENERAL, THE PUBLIC WAS RELIEVED TO FIND THE COMMISSION WAS WILLING TO RESCIND THE ACTION IN AUGUST THAT WOULD REMOVE LICENSEES FROM THE 2016 PUBLIC FISHERY.

BEFORE THIS AGENDA ITEM CONCLUDED, THE COMMISSION VOTED UNANIMOUSLY TO RESCIND THE CURRENT LIMITED ENTRY SYSTEM AND ASKED THAT THE SHELLFISH MANAGEMENT ADVISORY COMMITTEE AND STAFF WORK TOWARD AN EFFORT CONTROL SYSTEM FOR THE FUTURE. THERE WILL BE AN OCTOBER 27 PUBLIC HEARING TO ADOPT THIS EMERGENCY ACTION AS PART OF THE FINAL REGULATION 4 VAC 20-720-10 ET SEQ., "PERTAINING TO RESTRICTIONS ON OYSTER HARVEST."

ANOTHER OYSTER ISSUE INVOLVED A REQUESTED CHANGE TO REGULATION 4 VAC 20-720-10 ET SEQ., BY THE LAW ENFORCEMENT DIVISION. THE LAW ENFORCEMENT DIVISION FOUND A LOOPHOLE IN THE CURRENT REGULATION, CONCERNING HARVEST LIMITS. AT PRESENT THE REGULATION REQUIRES SEVERAL LICENSES OR FEES TO BE PAID BY A LICENSEE BEFORE THAT LICENSEE IS ABLE TO POSSESS A HARVEST UP TO EIGHT BUSHELS PER DAY. THE LOOPHOLE IS THAT HARVESTERS COULD HARVEST A SMALLER AMOUNT OF BUSHELS THAN EIGHT AND BE EXEMPT FROM THE PAYMENT OF THE OYSTER RESOURCE USER FEE AND PURCHASE OF THE GEAR LICENSES. BY EMERGENCY ACTION, THE COMMISSION ADOPTED MODIFIED LANGUAGE THAT WOULD CLOSE THIS LOOPHOLE. THE EMERGENCY AMENDMENT PRECLUDES ANYONE FROM HARVESTING ANY OYSTERS, FOR COMMERCIAL PURPOSES, UNLESS THAT PERSON OBTAINS
10. PUBLIC COMMENTS MR. RICHARD GREEN STATED TO THE COMMISSION THAT EACH OYSTER BOAT CARRIES TWO-THREE WATERMEN, SO THE NUMBERS OF LICENSES IS NOT DIRECTLY RELATED TO THE NUMBER OF BOATS BEING USED. HE ALSO STATED THAT HE FEELS THAT WATERMEN SHOULD BE ABLE TO MOVE BETWEEN FISHERIES TO MAKE THEIR LIVING. MR. CHARLES WILLIAMS WOULD LIKE THE COMMISSION TO CONSIDER THAT HE PAYS FOR HIS LICENSE EVERY YEAR EVEN THOUGH HE DOES NOT USE IT, IN ORDER FOR IT TO STAY ACTIVE SO THAT IT CAN BE PASSED ON TO HIS CHILDREN AND GRANDCHILDREN. MR. RICK HYATT STATED TO THE COMMISSION THAT HE HAD JUST BOUGHT A BOAT AND IS IN THE PROCESS OF GETTING HIS COMMERCIAL CARD, AND HE WAS EXPRESSING CONCERN ABOUT CUT BACKS. MR. BEN JOHNSON, WHO IS A MEMBER OF THE SHELLFISH ADVISORY BOARD, ASKED THE COMMISSION TO TAKE THE RECOMMENDATIONS OF SMAC SERIOUSLY. HE STATED THAT SMAC RECOMMENDED FOR THE 2015-2016 OYSTER SEASON TO REMAIN STATUS QUO. MR. MARK BROWN ASKED THE COMMISSION TO ADDRESS THE ISSUE OF JULY 1, 2014 AS THE CONTROL DATE FOR ELIMINATING LICENSES. HE ALSO STATED THAT SHELLS WERE BEING PLACED BY VMRC OVER HEALTHY OYSTER BEDS. MR. BROWN FEELS THAT THE NUMBER OF OYSTER LICENSEES WENT UP FROM 900 TO 1800 BECAUSE OF THE FACT THAT EACH PERSON ON A BOAT IS NOW REQUIRED TO PURCHASE A LICENSE. DAVE MAGINNES WHO IS CURRENTLY PRODUCING A DOCUMENTARY ABOUT THE CHESAPEAKE BAY, STATED THAT HE BELIEVES VIRGINIA'S OYSTERS ARE DOING WELL BECAUSE OF THE ROTATIONAL AREAS. MR. REED WILLIAM WANTED THE COMMISSION TO KNOW THAT HE DOES NOT FAVOR THE FOUR DAY WORK WEEK. MR. PAT WASHINGTON STATED THAT THE REGION IN WHICH A WATERMEN LIVES NEEDS TO BE CONSIDERED. MR. WES ROBINS FEELS THAT THE LARGE AMOUNT OF PEOPLE IN THE OYSTER FISHERY OCCURS BECAUSE OF THE FUNNELING DUE TO THE REMOVAL OF OTHER FISHERIES, PARTICULARLY THE CRAB DREDGE FISHERY. MR. CHRIS LUDFORD INTRODUCED HIMSELF TO THE COMMISSION.

11. OFFENDERS: THE COMMISSION HEARD 6 CASES OF OFFENDERS WITH NATURAL RESOURCE VIOLATIONS.

12. FAILURE TO REPORT Cases involving failure to report commercial harvests, in accordance with Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting." THE COMMISSION HEARD 1 CASES FOR THE FAILURE TO REPORT COMMERCIAL HARVEST TO THE COMMISSION'S MANDATORY HARVEST REPORTING PROGRAM.

13. DISCUSSION Report from the recent law enforcement subcommittee meeting. THE COMMISSION UNANIMOUSLY ADOPTS THE NEW SCHEDULE OF EXISTING SANCTIONS AS MODIFIED BY LAW ENFORCEMENT, AS WELL AS SANCTIONS FOR NEW NATURAL RESOURCE VIOLATIONS THAT WERE NOT PREVIOUSLY LISTED IN THE GUIDELINES FOR SANCTIONS. THE COMMISSION WILL
CONSIDER THE SEVERITY OF THE INITIAL VIOLATION WHEN DETERMINING FINES. THESE FINES ARE ONLY FOR COMMERCIAL FISHERMEN WHO ARE CONVICTED OF A VIOLATION WHILE REVOKED AND ANY INITIAL REVOCATION HAS TO HAVE OCCURRED AFTER JULY 1, 2015. [audio]

14. DISCUSSION The Virginia Institute of Marine Science will give a presentation on the results of an investigation of the potential impact of the Gwynn’s Island bridge rehabilitation work on mortality in a nearby oyster hatchery. REMOVED FROM AGENDA. [audio]

15. DISCUSSION Report on FMAC discussions of cownose rays, spiny dogfish and other issues, with possible staff request for public hearings. THE COMMISSION HEARD A SUMMARY OF FMAC’S COMMENTS AND DECIDED BY UNANIMOUS CONSENT TO WAIT UNTIL NOAA CBP HOLDS A WORKSHOP ON THIS MATTER BEFORE PROCEEDING. [audio]

16. REQUEST FOR AN EMERGENCY AMENDMENT of Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," Emergency Regulation, to clarify the provisions of the recently adopted limited entry oyster fishery requirements for 2016. REMOVED FROM AGENDA AFTER ACTION RELATED TO ITEM 10 (between time 5:20 and 8:00 minutes approx.) [audio]

17. PUBLIC HEARING Request to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" the Commission shall consider the following proposal for the 2015-2016 public oyster harvest season for two areas in the Pocomoke Sound west of Saxis, Virginia, whereby the lawful seasons and areas for the harvest of oysters by hand scrape from the public oyster grounds are as follows: Pocomoke Sound, Public Ground Number 9 November 16, 2015 through November 27, 2015, and Pocomoke Sound, Public Ground Number 10: November 30, 2015 through December 11, 2015. THE COMMISSION UNANIMOUSLY APPROVED AMENDMENTS TO CHAPTER 4 VAC 20-720-10 ET SEQ., "PERTAINING TO RESTRICTIONS ON OYSTER HARVEST" TO HAVE A HAND SCRAPE SEASON FOR PUBLIC OYSTER GROUNDS IN POCOMOKE SOUND, PUBLIC GROUND NUMBER 9, NOVEMBER 16, 2015, THROUGH NOVEMBER 27, 2015 AND PUBLIC GROUND 10 NOVEMBER 30, 2015 THROUGH DECEMBER 11, 2015. [audio]

18. PUBLIC HEARING Amendments to Chapter 4 VAC 20-110-10 et seq., "Pertaining to Lobsters" to establish a permit for incidental harvest of lobsters in state waters, in accordance with amendments to the fishery management plan for American lobster, established by the Atlantic States Marine Fisheries Commission. THE COMMISSION VOTED UNANIMOUSLY TO AMEND CHAPTER 4 VAC 20-110-10 ET SEQ., "PERTAINING TO LOBSTERS" TO ESTABLISH A PERMIT FOR INCIDENTAL HARVEST OF LOBSTERS IN STATE WATERS. [audio]

19. REQUEST FOR PUBLIC HEARING Proposed amendments to Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License fees" to establish an eel pot license. THE COMMISSION VOTED UNANIMOUSLY TO HOLD A PUBLIC HEARING AT THE OCTOBER COMMISSION MEETING FOR AMENDMENTS TO CHAPTER 4 VAC 20-1090-10 ET SEQ., "PERTAINING TO LICENSING REQUIREMENTS AND LICENSE FEES" TO ESTABLISH AN EEL POT
20. REQUEST FOR PUBLIC HEARING Proposed amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder" that modify current commercial summer flounder management measures. THE COMMISSION VOTED UNANIMOUSLY TO HOLD A PUBLIC HEARING AT THE OCTOBER COMMISSION MEETING FOR PROPOSED AMENDMENTS TO CHAPTER 4 VAC 20-620-10 ET SEQ., "PERTAINING TO SUMMER FLOUNDER" THAT MODIFY CURRENT COMMERCIAL SUMMER FLOUNDER MANAGEMENT MEASURES. [audio]

21. REQUEST FOR PUBLIC HEARING to consider maintaining the closure of the blue crab winter dredge fishery, for the 2015-2016 season. UNANIMOUSLY APPROVED REQUEST FOR A PUBLIC HEARING. [audio]

22. REQUEST FOR PUBLIC HEARING Proposed amendments to Chapter 4 VAC 20-290-10 et seq., "Pertaining to Marking of Leased Oyster Planting Ground" and Chapter 4 VAC 20-335-10 et seq., "Authorizes Shellfish Aquaculture Structures". The amendments are proposed to address the marking requirements for leases and areas within lease containing aquaculture structures based on a review by the Shellfish Management Task Force and input from both the Shellfish Management Advisory Committee and the agency Regulatory Review Committee. UNANIMOUSLY APPROVED REQUEST FOR A PUBLIC HEARING. [audio]

23. RECOMMENDATION RFAB recommendations for projects. THE COMMISSION APPROVED FUNDING FOR THREE DEPARTMENT OF GAME AND INLAND FISHERIES ACCESS PROJECTS. A) TOWN POINT BOAT LANDING RENOVATION- $61,265 B) FOX HILL BOAT LANDING AND PARKING LOT IMPROVEMENTS- $137,500 C) WEST POINT BOAT LANDING AND EXPANSION- $120,545 [audio]

24. DISCUSSION Establishing meeting date for November/December Commission Meeting. COMMISSION VOTED TO HOLD A COMBINED MEETING FOR NOVEMBER AND DECEMBER 2015 ON TUESDAY, 12/8/15 BEGINNING AT THE NORMAL TIME OF 9:30AM. [audio]

Page 2 Items [audio]

2A. FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, #15-0906 requests authorization to restore and stabilize approximately 9,724 linear feet of Flatlick Branch, utilizing a variety of techniques based on Natural Channel Design (NCD) principles including stone streambank stabilization, root wad installation, rock vanes and drop structures. The project is located within the Flatlick Stream Valley Park between Sully Road (Route 28) and Lee Jackson Memorial Highway (Route 50) in Fairfax County. UNANIMOUSLY APPROVED AS PROPOSED. [audio]

2B. CITY OF ALEXANDRIA, #15-1095 requests authorization to remove a low profile concrete weir/fair weather pedestrian crossing and install a clear span pedestrian bridge across a 90-foot wide section of Holmes Run, and to restore approximately 600 linear feet of perennial stream by removing concrete and sheet pile structures and the
sediments that have accumulated behind them, and creating a more natural stream channel using existing cobbles, boulders and native plantings. The project is a part of the City of Alexandria’s Holmes Run Bike Trail project, located near the intersection of Holmes Run Parkway and North Van Dorn Street in the City of Alexandria. **UNANIMOUSLY APPROVED AS PROPOSED. [audio]**

2C. **ARMY CORPS OF ENGINEERS, #15-0154** requests authorization to construct two (2) oyster restoration reefs over a total of approximately 40 acres of State-owned submerged bottom in the lower Piankatank River. The reefs will be constructed using only Class A1 (VDOT Spec) quarry stone riprap material, placed using a barge-mounted excavator, will extend no higher than 18 inches above the natural river bottom, and be located in minimum water depths of minus six (-6) feet at mean low water a minimum of 1,000 feet offshore of Roanes Point, and in minus nine (-9) feet of water approximately 3,000 feet offshore of Burton Point in Mathews County. Recommend approval with the requirement for a pre-construction conference once the contractor has been selected to review the terms, conditions and all details of permit prior to installation. **UNANIMOUSLY APPROVED PER STAFF RECOMMENDATION. [audio]**