

## MINUTES

## Commission Meeting

December 21, 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. T. Holland )	
William E. Laine, Jr. )	Associate Members
John E. Tankard, III )	
David Grandis	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Katherine V. Leonard	Recording Secretary
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Allison Watts	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Bill Franklin	Marine Police Officer
Brad Ramsey	Marine Police Officer
Tony Watkinson	Chief, Habitat Mgmt. Div.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Ben Stagg	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben McGinnis	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

**Commission Meeting**

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Virginia Institute of Marine Science (VIMS):

Lyle Varnell                      Roger Mann

Others present included:

Jessica Barker	Richard Green	Marc Brown	Mike Reiger
John Moore	Bruce Aitkenhead	Mary Paphides	David O'Brien
Charles Causey	Page Causey	Charles Brown	Gene Brown
David Owens	George H. Marshall	Timothy Rivera	Drew Owens
Richard Bonnville	Andrew McElligott	Jackie Samon	Chris Frye
James Wert	Billy Crewe	Billy Crewe, Jr.	Miranda Belvin
Frank Belvin	J. W. Green	Vernon Ward	John Forrest
Tim Lee Firth	Carroll Wilson	Tammy Stegall	Ellis W. James
Tommy Leggett			

and others.

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Commissioner Bowman called the meeting to order at approximately 9:32 a.m. Associate Members Fox, Plumlee, Robins and Schick were all absent. He announced there was a quorum present so the meeting could proceed.

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At the request of Commissioner Bowman, Associate Member Holland gave the invocation and the pledge of allegiance followed.

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

**Associate Member Holland moved to approve the agenda. Associate Member Tankard seconded the motion. The motion carried, 5-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman requested a motion for approval of the November 23, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

**Associate Member Holland moved to approve the minutes, as distributed. Associate Member Bowden seconded the motion. The motion carried, 5-0. The Chair voted yes.**

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

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- 2. **PERMITS** (Projects over \$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.

Commissioner Bowman asked for questions of staff.

Associate Member Tankard asked why the reassessment of the permit for Item C was being heard at this meeting. Ben McGinnis, Environmental Engineer, Sr., explained that they would be having larger barges utilizing the area then was planned originally, which made the depth inadequate. He said they need to dredge deeper.

Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed. He stated the matter was before the Commission for action.

**Associate Member Tankard moved to approve the page two items (A through H). Associate Member Laine seconded the motion. The motion carried, 5-0. The Chair voted yes.**

- 2A. **LUCK STONE, #10-1750**, requests authorization to install six new steel dolphins, repair and replace 5 existing dolphins and mechanically dredge on an as-needed basis approximately 1,050 cubic yards of bottom material, with upland disposal, to achieve maximum project depths of -14 feet MLW at their existing barge loading facility (South Richmond Facility) situated along the James River in the City of Richmond. Recommend approval with an instream time-of-year restriction of February 15 through June 30 to protect anadromous fishes and an additional dredging royalty of \$ 311.85 for the new dredging of 693 cubic yards of bottom material at a rate of \$0.45 per cubic yard and an encroachment royalty of \$480.00 for the encroachment of the new dolphins over 240 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royalty Fee (dredging 693 cubic yds. @ \$0.45/cu. yd.).....	\$311.85
Royalty Fee (encroachment 240 sq. ft. @ \$2.00/sq. ft.).....	\$480.00
Permit Fee.....	\$100.00
Total Fees.....	\$891.85

**2B. VIRGINIA ELECTRIC AND POWER COMPANY, #10-1162,** requests authorization to install two temporary construction trestles, within the York River at N 37° 14' 30.19", W 76°, 27' 3.15" and N 37° 13' 25.52", W 76°, 27' 47.05", to facilitate line splicing operations associated with the installation of a directionally bored 230kV electrical transmission line (Hayes-Yorktown 230 kV Line Project), previously authorized by an easement granted in 1987 by the General Assembly, beneath 15,469 linear feet of the York River in Gloucester and York Counties. Recommend approval contingent on the applicant's agreement to light the trestles pursuant to U. S. Coast Guard requirements.

Permit Fee.....	\$100.00
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**2C. VULCAN CONSTRUCTION MATERIALS, #07-0979,** requests a modification to their previously authorized permit to now dredge, on an as-needed basis, up to 4,444 cubic yards of State-owned subaqueous material, per dredge cycle, to establish and maintain maximum depths of -16 feet at mean low water, from within a 50-foot by 150-foot basin surrounding the terminus of the existing pier at their Westminster Sales Yard, situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. All dredged material will be transported to and disposed of at Craney Island. Recommend inclusion of the standard dredging conditions and an additional royalty assessment in the amount of \$649.80 for the dredging of an additional 1,444 cubic yards of State-owned subaqueous material at a rate of \$0.45 per cubic yard.

Royalty Fee (Dredging 1,444 cu. yds. @ \$0.45/cu. yd.).....	\$649.80
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**2D. DEPARTMENT OF THE NAVY, #10-0281,** requests authorization to demolish and replace the existing Piers 4 and 5 with a new, single pier (Pier 5) at the Norfolk Naval Shipyard situated along the Southern Branch of the Elizabeth River in the City of Portsmouth. The proposed project within the Commission's jurisdiction includes the installation of a replacement marginal wharf along Hitchcock Street between the existing Piers 4 and 5; the construction of a new 230-foot wide by 1,225-foot long Pier 5 with appurtenant moorings, fender systems, utilities, lighting, electrical substations, railroad spur, crane rails,

saltwater intake, and support structures to include restroom and saltwater pump station buildings, and a security tower.

Permit Fee.....	\$100.00
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**2E. RIVANNA WATER AND SEWER AUTHORITY, #10-1358,** requests authorization to install, by open-trench method, a concrete-encased, 24-inch diameter sewer transmission line, a minimum of three feet beneath the submerged bed of Moores Creek at the Moores Creek Wastewater Treatment Plant in Albemarle County. The proposed sewer line will be installed in the dry using a temporary dam and pump system, to divert stream flow around the work site. Recommend inclusion of the standard in-stream conditions.

Permit Fee.....	\$100.00
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**2F. DEPARTMENT OF THE NAVY, #10-1714,** requests authorization to repair and improve approximately 180 linear feet of existing revetment, by installing additional riprap extending a maximum of 11 feet channelward of mean low water, between Piers A and C at the Craney Island Fuel Depot situated along the Elizabeth River in the City of Portsmouth.

Permit Fee.....	\$100.00
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**2G. QWEST COMMUNICATIONS, #10-1882,** requests authorization to install a fiber optic cable under the bed of the Eastern Branch of the Elizabeth River, using the horizontal directional drill method, immediately east of the Norfolk Southern Railroad Bridge between the cities of Norfolk and Chesapeake. The line will replace a previously authorized, temporary line in the same location for which a royalty was paid at the rate of \$3.00 per linear foot under VMRC permit #10-0342 issued on March 23, 2010.

Permit Fee.....	\$100.00
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**2H. DAVID DICKENS, #10-1614,** requests authorization to install a 100-foot long and a 60-foot long armor stone breakwater, each with a 22-foot wide base width, located approximately 30 feet channelward of mean high water, and to place 400 cubic yards of beach quality sand landward of the breakwaters, to be sprigged with beach vegetation, adjacent to his property situated along the Potomac River in Westmoreland County.

Permit Fee.....	\$100.00
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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission). There were none.

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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** No closed meeting was required.

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- 5. **CHARLES CAUSEY, #09-0546,** requests after-the-fact authorization to retain two (2) 2-foot by 5-foot rock-filled timber gabion boxes position at the end of a previously authorized boatramp adjacent to his property at 826 King Copsico Lane situated along the Potomac River in Westmoreland County.

Dan Bacon, Environmental Engineer, Sr., gave the presentation with slides. He noted for the Commission that the applicant was present but the contractor was not present.

Mr. Bacon explained that the applicant’s residence and boat ramp were located in a residential neighborhood off King Copsico Lane in Westmoreland County. The boat ramp was located at the confluence of Nomini Bay and the Potomac River. The fetch at the site exceeded five miles and the shoreline was considered high energy. The applicant was seeking after-the-fact authorization to retain two (2) 2-foot by 5-foot timber gabion boxes that were placed at the end of the permitted boat ramp.

Mr. Bacon further explained that on April 23, 2009, Mr. Causey submitted a Joint Permit Application to replace an existing deteriorated concrete boat ramp at his property. A public interest review was conducted for the project and a permit was issued on July 1, 2009. The permit authorized the construction of a 12-foot wide by 50-foot long concrete or wooded boat ramp with two (2) 50-foot long wing walls and a 35-foot long timber groin.

Mr. Bacon said that during a routine compliance inspection on March 18, 2010, staff noted that the structures were not constructed, as authorized. Specifically, the wing walls were not constructed and gabion boxes were placed at the end of the ramp. Following the site visit, a Sworn Complaint was filed and a Notice-to-Comply was forwarded to Mr. Causey on April 1, 2010, giving him 30 days to remove the gabion boxes or apply for after-the-fact authorization to retain the boxes. The applicant responded in a timely manner to the Notice-to-Comply by providing scaled as-built drawings of all structures located channelward of mean low water and an explanation for why the boat ramp and

associated structures were constructed differently than the permit authorized. He explained in his letter dated April 22, 2010, that there was a misunderstanding between the contractor (Randolf Bowen), and his permitting agent (Mary Paphides), regarding the design and construction of the boat ramp. According to Mr. Causey's letter, Ms. Paphides forgot to include the boxes at the end of the ramp in her drawings and the contractor did not notice this omission when constructing the ramp. There was no explanation provided for not building the wing walls which appeared to be an integral component of the timber boat ramp.

Mr. Bacon noted that an after-the-fact application seeking authorization to retain the structures, as constructed, was submitted on April 23, 2010. No opposition had been received from the public or State agencies.

Mr. Bacon said that staff was perplexed and concerned that Mr. Causey's contractor did not build the boat ramp and wing walls, as they were requested in the Joint Permit Application and as authorized by the permit issued to Mr. Causey. Staff also had concerns with the design of the ramp. It appeared to staff that the ramp may not be adequately secured for this high energy environment and the boat ramp structure, as well as the gabion boxes, could become dislodged and possibly become a hazard to other structures along the river. In staff's opinion, the originally permitted design was more substantial than the as-built timber boat ramp.

Mr. Bacon stated that in light of staff concerns, they recommended that Mr. Causey either remove the boat ramp in its entirety or install the wing walls, as depicted in the original permit. If the walls were constructed and the boat ramp was properly secured to the walls, staff questioned the need for the gabion baskets at the end of the boat ramp and recommended that they be removed.

Mr. Bacon said that should the Commission decide to authorize the structure as built, staff recommended a civil charge based upon a minor environmental impact and a moderate degree of non-compliance. The civil charge should be considered for both the property owner and the contractor.

Commissioner Bowman asked for questions of staff.

Associate Member Tankard said that he noticed that this was a high energy site in the slide and staff had indicated a 5-mile fetch was why staff did not feel that the structure would hold up. Mr. Bacon responded yes, it was a high energy area.

Commissioner Bowman asked what type of boat would be launched at the site. He asked if applicant was present.

Charles E. Causey, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Causey explained that it was a 14-foot boat with a small engine. He said the

remainder of the wall protected the old ramp and post were there under the ramp. He stated the staff slide was actually an extremely rough day. He stated the contractor showed him other designs of ramps that he had built with the boxes and he was told that they would hold up. He explained that where the boxes rested on boards the ramp was 16 feet at the end. He said the 2-foot extension of boards held the boxes as they were not on the bottom.

Commissioner Bowman stated that the boxes were not on the application and nothing similar except for the ramp. Mr. Causey said that he understood that the application was for either wood or concrete wing walls as it was not decided on the concrete it had wing walls. Commissioner Bowman asked what the permit was for. Mr. Bacon said the permit was for a concrete or timber boat ramp.

Commissioner Bowman asked for questions of the applicant. There were none

Commissioner Bowman asked if the agent was present.

Mary Paphides, agent for the applicant was sworn in and her comments are a part of the verbatim record. Ms. Paphides said the original application was for a 12 X 50 boat ramp with wood groins, but no wing walls were mentioned. She indicated to the Board that many mistakes had been made. She said the contractor had said he would put stones at the end of the boat ramp, and when she filled out the application she forgot to add that information. She added that when the permit was received there were mistakes in that also.

Commissioner Bowman noted that the applicant had received the original permit and signed and accepted it.

Ms. Paphides stated again that mistakes were made. Commissioner Bowman said there were no mistakes by staff, because it was built out of conformity with the permit. Ms. Paphides stated that the application said no wings. Commissioner Bowman reiterated that it was the permit that gave the authorization.

Commissioner Bowman asked for questions of the agent. There were none. He asked if anyone in support or opposition was present and wished to comment. There were none. He stated the matter was before the Commission for discussion or action.

**Associate Member Tankard said that testimony did not support that VMRC was in the wrong and it was deliberately done to end run around the permit. He said he agreed with the civil charges. He moved to approve the project and to assess a civil charge for the applicant for \$1,200.00 and the contractor for \$1,200.00.** Commissioner Bowman asked if the structure was to be kept the way it was and if there was any further work to be done. Tony Watkinson, Chief, Habitat Management, responded no, the drawings did reflect what was there. Commissioner Bowman asked if



the applicant understood. **Associate Member Laine seconded the motion. The motion carried, 5-0.**

Commissioner Bowman said the Board had agreed to keep it as it was and the civil charge was for going outside of the parameters of the permit.

David Grandis, Assistant Attorney General, stated the individuals must accept the assessment of the civil charges. Mr. Causey asked what else could be done. Mr. Grandis responded that it could be taken to court and a civil penalty be assessed. Mr. Causey said that it was not his intention to do it wrong and the contractor built it this way. Commissioner Bowman stated the contractor should know what they need to do and the permit was based on the circumstances of the environment and time. He added that he wished that the contractor was present.

Civil Charge (Applicant).....	\$1,200.00
Civil Charge (Contractor).....	\$1,200.00

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**6. PUBLIC COMMENT.**

**PETITION BY WATERMEN TO EXTEND THE SEASON FOR THE JAMES RIVER AND THOMAS ROCK HAND SCRAPES AREAS IN THE JAMES RIVER AND TO EXTEND THE HAND SCRAPE LINE FURTHER UPRIVER.**

Commissioner Bowman stated that petitions had been received from the watermen requesting these changes. He asked if someone wished to comment.

**Richard L. Green**, petitioner and waterman, was present and his comments are a part of the verbatim record. Mr. Green explained that they were requesting that the harvest season be extended as watermen were under hardship because of the bad economic times. He stated that crabbing had been good, but the market had been bad and it was the same with fishing. He said they would have no income for two or three month to carry them through. He reiterated that the extension was critical.

Commissioner Bowman asked if there questions. Associate Member Tankard asked how long they had known this was coming. Mr. Green stated that they knew, but the economy had been rough and to get money they needed badly, they were pushing it through now.

Commissioner Bowman said this would need to be done with an emergency regulation. He read from the Code Section 28.2-211, which set forth the criteria for taking emergency action. He stated he was concerned with satisfying the emergency requirements. He asked staff to comment.

Mr. Green stated they need to make a good day and now with winter here they could not work everyday.

Jim Wesson, Head, Conservation and Replenishment, was present and his comments are a part of the verbatim record. Dr. Wesson said that the seasons had been discussed with the Shellfish Management Advisory Committee as far back as June. He explained that staff had recommended that the seasons be staggered as in the past to allow the various seasons to carry the watermen through until March, but the SMAC was adamant that they wanted all areas to open at the same time on October 1<sup>st</sup>. He said in some areas there were only two months of oyster stock to catch. He stated that Area 4 in the Rappahannock and the James River were worked the most. He said the oyster stocks were quite low in the lower James River, only 11,000-12,000 bushels of oysters were there at the beginning of the season. He said that watermen working in areas they are not allowed to work with hand scrapes had propped up the season. He explained that 40 watermen times 10 bushels per licensee would equal 400 bushels per day. He added that in 20 work days that would surpass the amount of stocks available in the river. He said there are more small oysters as there had been a good spatset and if they are allowed to continue to work they would damage them for the next year. He said that staff was working to maintain a sustainable standing stock. He said in the Mobjack Bay area the rocks had been worked hard and all the oysters there were taken. Staff wished that there was enough there to continue, but there had not been a good spatset in a number of years and the last 4 or 5 years they have continued to take away what is there.

Associate Member Tankard asked how it was determined what was on the rocks. Dr. Wesson explained that the survey was done by staff and VIMS to determine the number there and the number to be there.

Commissioner Bowman asked Dr. Roger Mann of VIMS if he wished to comment.

Roger Mann, representing VIMS, was present and his comments are a part of the verbatim record. Dr. Mann explained that his concern was with the issue of moving the line for hand scraping upriver further, which has been an ongoing issue addressed by SMAC. He stated to not move the line into the upper James River as it remains productive and the only place where there is more shell production for continued recruitment. He said there were 1300 oysters per square meter here set on but pieces of shell. Staff went and sampled in the last three months. He said if these shells were broken up they would sink. He said all the small stuff was gone. He explained that the shells on top were good for spat and the shell were steadfastly preserved by allowing only hand tongs. He added that if the use of the hand tong was continued in this area, it would preserve the shell. He said moving the line and allowing the dredging would be damaging and shell piles when damaged would disappear. He said this was discussed every year and the Commission had always chosen to preserve these areas. He stated he could support extending the dredge season, but the line needed to remain where it was now.

Commissioner Bowman asked if there were any questions. There were none. He asked for further comments.

Charles Brown, waterman, was present and his comments are a part of the verbatim record. Mr. Brown explained that he had been working oysters all of his life. He said that opening all the same was great, but a majority went to the Rappahannock River and at the start of the season there were not many boats in the James River. He added that some left the Rappahannock River in November to come down to the James River and did well. He explained that in December with the winter weather they only had 8 or 9 days to work, which was less than October and November. He said the summer crabbing was bad and they were thankful for all of the areas opening at the same time, but then almost all of the other areas closed at the end of December. He said they were requesting 60 to 90 more days be added to the season as you cannot work everyday with the weather.

Mr. Brown explained that not all watermen can hand tong anymore. He said the market is the best it had been in years as now the market needs them. He said in the upper James the oysters are large and the watermen that hand tong cannot catch them. He said on Thomas's Rock the oysters were beautiful, as it does do something for the rocks to work them. He stated that approximately 200 watermen will be out of work if the area does close.

Mr. Green, waterman was present and his comments are a part of the verbatim record. Mr. Green stated he felt the same as the others as he agreed with all that was said. He said the dredge season should be extended as there were large oysters still at Thomas Rock. He said the catch all depends on the skill of the waterman, but they can make a good day.

Mr. Green said he was requesting that season extension be granted and the area line be moved. He said the line extension would not affect areas addressed and the areas were too deep for tongs. He said the dredge was suitable to be used and he would like to see it moved up some, but not all the way. He said there would be no impact on major rocks in the upper James. He stated that the use hand tongs was not going to continue as the number of watermen was going down. He said they should be dredged or they would grow out snappy. He said the private grounds near the area were dredged and they were not hurt. He said there was a lot of natural rock here in the area. He reiterated that the lower James had been worked and had gotten better. He said right now only 10 percent of the rocks were being worked and the younger people were not coming into the fishery, but going elsewhere.

Marc Brown, waterman, was present and his comments are a part of the verbatim record. Mr. Brown stated that the line should be extended 4 nautical miles to the Green channel marker #4 and new channel markers #17 and #18. He said if you compare the hand tong to the hand scrape, the hand tong was like walking. He said he had worked oysters most

of his life. He noted that the most productive grounds where once leased by J. H. Miles, which were worked. He said give them 30 days.

Mr. Brown said working the oyster was beneficial to them and would bring it back. He said he had watched staff survey at Brown Shoals and they pulled up 2 grabs of mud because staff did not know where the rocks were located. He explained that Nansemond Ridge, Cruisers, and Dog Shoal have not been worked much. He added that Brown Shoal had been worked some and Ballard's Marsh had been worked hard. He noted that Days Point had not been worked by hand tong, as it was too hard. He said the hand scrape area had been opened for a number of years and now the Commission needed to open more areas.

Mr. Brown said this had been the coldest winter and in December they had not been able to work much and if all areas were opened, others would not have to come from elsewhere. He said if you extended the line 4 nautical miles upriver, it would still be below where the hand tong was allowed.

Commissioner Bowman asked for comments from staff or VIMS.

Dr. Wesson said that the watermen were mostly working in the James River, until November 1, and when there was a flyover done yesterday they were still working. He said they can work with the dredge even in bad weather, but Pocomoke-Tangier area was different and some that had been working in James River had gone there to work. He said that the Commission had opened area when they moved the Wreck Shoal line that had not been opened for 17 years.

Associate Member Tankard said that the SMAC wanted to open all areas versus what staff recommended. He asked if the same people were here. Dr. Wesson said some, but not all showed up.

Associate Member Bowden asked if the rocks were up and down with valleys.

Dr. Wesson stated that it was all natural rocks. Associate Member Bowden asked if the areas on the maps could be harmed by the dredges. Dr. Wesson said that there were clusters of oysters in the area. Associate Member Bowden said he disagreed with Dr. Mann because with the clam dredge he had caught the same shells every year. He said the problem with dredging was that the 4-foot dredge did more damage because of its size and you did not want to kill the goose. He stated the areas up there were responsible for what was caught now. He said this winter had been the worst year because in November and December there had been bad weather. He said he was not confident that the stock was there and the use of hand scrapes could damage the rocks. He suggested granting two weeks because of the severe weather.

Commissioner Bowman asked about the weather impact. Dr. Wesson said that was factored in when staff wanted to allow 2 months, but added the one month for this

purpose. He said the dredges were very efficient and with other areas closed others would come here, possibly 60 or 70 boats. Associate Member Bowden said that watermen typically miss days to weather, but this had not been a typical winter. He said in November and December he may have worked 10 days. He stated that maybe it would not hurt to allow two weeks as he did not want to see the dredges pull the shells down so they just sink.

Associate Member Tankard said he understood that the weather had been tough to those even on land, but there was a strategy and it had worked to preserve the fishery for the industry. But there was demand, which was not always there.

Associate Member Laine said that the principle motivation for this request was economic and he sympathized with the watermen. He said the weather impacts other industries and in three months a lot had been caught. He said if the plan were to be abandoned, a price would have to be paid next year. He said it was all opened in October and he was afraid to extend the season now. He reiterated sticking with the plan.

Associate Member Holland asked if an emergency regulation was required? Commissioner Bowman responded yes, an emergency regulation would be required and would only be good for 30 days. Associate Member Holland asked how this could be done.

Commissioner Bowman explained the Code Section had to be satisfied to allow for the emergency regulation and the board's interpretation could be challenged in court. He stated it was never easy. He said when staff had been asked about the weather they said it was factored in and they had concern that over the two weeks the concentration of vessels would impact the productive rocks. He said it would potentially kill the golden goose to go to that area only. He said more damage could be done when the river was coming back.

Associate Member Bowden said the weather had been extreme and he agreed that the watermen do go to the most productive areas and nowhere else. He said that he did not think there were enough votes do anything right now, maybe 1 or 2. He suggested coming backing in January to hear and discuss opening the area in February 2011 in order to get a clearer understanding. Commissioner Bowman suggested that staff could give a status report.

**Associate Member Bowden moved to advertise for a public hearing and hear an update on the status of the areas from staff to see if an extension is warranted. Associate Member Holland seconded the motion. Associate Member Tankard asked was this good use of staff's time. Dr. Wesson said they never minded making a survey as they do survey the right areas with a number of grabs in order to account for all areas, as all are not perfectly uniform. He said weather permitting and after the holidays, staff would do a survey. Commissioner Bowman said he agreed with**

**the motion and with the analysis to be done, as there was a need to be cautious. The motion carried, 5-0. The Chair voted yes.**

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7. **REQUEST FOR A JANUARY 2011 PUBLIC HEARING:** Proposed harvest quotas (pounds) for the 2011 recreational and commercial striped bass fisheries, as specified by Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass".

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

Ms. Watts explained that this was a request for a public hearing in January to establish, as is done each year, the 2011 harvest quotas for the recreational and commercial striped bass fisheries. The proposed quota for each fishery is 1,430,361 pounds, which is 7 percent lower than in 2010. She noted that this would be further explained at the January meeting.

Associate Member Bowden asked if it was an increase or decrease. Ms. Watts stated it was a decrease.

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, 5-0.**

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8. **REQUEST FOR A JANUARY 2011 PUBLIC HEARING:** Industry-proposed modifications to possession and landing limitations and open landing seasons, for harvests of summer flounder from federal waters, as described in Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder".

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

Mr. Grist explained there were two items. He noted that this was an annual request made by industry and staff had also identified an additional issue of reporting redundancy in Section 45 of Regulation 4VAC 20-620-10, et seq. He explained vessels harvesting summer flounder in federal waters were being required to report bycatch and discards on forms for every trip landed in Virginia. He further explained that this information was already provided by federal landing reports and observer programs, and it was both an unnecessary burden and duplicative to require the same report to the Commonwealth.

Commissioner Bowman stated the matter was before the Commission.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 5-0.**

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**9. REQUEST FOR AN EMERGENCY AMENDMENT:** To Chapter 4 VAC 20-1230-10 et seq., "Pertaining to Restrictions on Shellfish", to clarify shellfish harvest requirements.

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

Dr. Wesson said the Commission had adopted this change to Regulation 1230 back in the fall. Law Enforcement looked at this regulation and expressed their concern that it was not clear that the use of the tags was required January 1, because of the mention of May through September warm water restrictions, which could impact their cases in the courts. He explained that staff was requesting an emergency regulation be adopted to clarify that the tagging is required as of January 1, which the Food and Drug Administration (FDA) has been pushing. He stated that staff had told the FDA it would be required starting January 1.

Commissioner Bowman said that Code Section 28.2-210 gives authority to make emergency regulations in order to protect the public's health. He stated this was not a public hearing and the matter was before the Commission.

**Associate Member Laine moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 5-0.**

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There was no further business and the meeting was adjourned at approximately 11:04 a. m. The next regular meeting will be held Tuesday, January 25, 2011.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary