MINUTES

Commission Meeting **January 24, 2012**

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
J. Carter Fox William Laine, Jr. Joseph C. Palmer, Jr. Richard B. Robins Kyle J. Schick Whitt G. Sessoms, III J. Edward Tankard	Associate Members
Jack G. Travelstead	Chief, Fisheries Management
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Director, Public Relations
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation-Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Tournament
Stephanie Iverson	Fisheries Mgmt. Manager
Allison Watts	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Renee Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Ben Major	Area Supervisor, SA
Steven York	Marine Police Officer
Casey Springfield	Marine Police Officer

Tony Watkinson	Chief, Habitat Mgmt.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Julliette Giordano	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Tech

Virginia Institute of Marine Science (VIMS):

Lyle Varnell Roger Mann

Others present:

Bruce Wood	Bob Cunningham	W. Tayloe Johnson, Jr.
Robert E. Lewis	Susan Luebkert	Mal Luebkert
Rebecca Francese	M. L. Chamberlain	Jim Breeden
R. Harold Jones	J. Jorgensen	Ann Simpson
Crystal Simpson	Grayson Simpson	David O'Brien
Andy Lacatell	Paige Hogge	Andrew Sturgis
Todd Sturgis	Edwin J. O'Malley	Clarence A. Jewell
Dana Lilliston	Keith Lilliston	Harry Doernte

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Commissioner Bowman called the meeting to order at approximately 9:35 a.m. Associate Member Plumlee was absent.

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At the request of Commissioner Bowman, Associate Member Robins gave the invocation and Associate Member Schick led the pledge of allegiance. Associate Member Robins said that in lieu of a prayer past Associate Member, Wayne McLeskey, who had passed away recently, be remembered with a moment of silence.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes from the Board members or staff.

Warner Rhodes, Deputy Chief, Law Enforcement, requested that another item for repeat offenders be added as Item 19. Commissioner Bowman responded that it be added and that if the parties should arrive early and the matter needs to be heard earlier to let him know. Lt. Col. Rhodes said all parties involved were told to appear at 1:00 p.m. for their hearing.

As there were no other changes, Commissioner Bowman asked for a motion for approval of the agenda by the Board.

Associate Member Schick moved to approve the agenda, as amended. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commissioner Bowman noted for the record that there was a quorum present and the meeting could proceed.

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MINUTES: Commissioner Bowman requested a motion for approval of the December 6, 2011 Commission meeting minutes, if there were no corrections or changes.

Commissioner Bowman asked for a motion to approve the minutes.

Associate Member Laine moved to approve the minutes. Associate Member Fox seconded the motion. The motion carried, 8-0. 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 $500,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, gave the presentation. His comments are a part of the verbatim record. Mr. Watkinson read into the record the two items, A & B. He noted that the staff recommendation for 2B allowed for the balance of fees to be paid.

Commissioner Bowman asked for questions. There were none. He opened the public hearing and asked for comments from attendees either pro or con. There were none. He stated the matter was before the Commission.

Associate Member Tankard moved to approve the page two Items A and B. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

2A. CITY OF VIRGINIA BEACH, #11-1201, requests authorization to mechanically dredge approximately 100,000 cubic yards of State-owned submerged bottom to achieve maximum navigable depths of minus six (-6) feet mean low water in the Western Branch of the Lynnhaven River municipal channel. Dredged material will be offloaded at the City's Thalia Creek transfer facility and transported by sealed trucks to the Whitehurst Borrow Pit for disposal. Staff recommends approval with time-of-year restrictions north of Hebden Cove for dredging between April 1 and June 30 to protect juvenile summer flounder, and for dredging between July 1 and September 30 to protect shellfish resources.

Permit Fee…….	$100.00

2B. COVE POINT CONDOMINIUMS, #05-2207, requests authorization to convert their existing permit's annual royalty payment into a one-time final royalty payment. In 2006, the Commission approved the request to fill and encroach over State-owned bottomlands of Little Neck Creek in Virginia Beach, including an annual royalty of $4,025.55 representing 1/10th of $40,255.50. At the time of Commission approval in 2006, permits with royalty amounts exceeding $10,000.00 were assessed annual royalty payments at a value of 1/10th the total royalty amount. Having paid the annual royalty amount for six (6) years, the Permittee would like the option of paying the remaining balance of the royalty if the assessment had been a one-time payment as we now typically assess. Staff recommends that the Commission accept the Permittee's offer of a final royalty payment of $16,102.20, as it will complete the entire original royalty amount.

Royalty Fee (Final)…….	$16,102.20

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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).

3A. **CARLENE SAVEDGE, #10-0688**, requests after the fact authorization to retain 55 linear feet of riprap channelward of an existing bulkhead and 15 feet of marsh toe sill adjacent to her property at 113 East Sherwood Avenue situated along Mill Creek in the City of Hampton. Staff recommends approval with triple permit fees and a civil charge of $600.00 from the contractor.

Tony Watkinson, Chief, Habitat Management reviewed the background information provided by the staff evaluation. He added that the agent/contractor had accepted the responsibility and agreed to pay.

Ms. Savedge's agent and contractor, Jeff Jorgensen, filed a Joint Permit Application on May 4, 2010, requesting authorization to install 110 linear feet of riprap scour protection channelward of an existing bulkhead, 40 linear feet of riprap revetment, 107 linear feet of marsh toe sill, and to place sand nourishment behind the marsh toe sill with plantings of native vegetative species as part of a living shoreline erosion control project. A 55 linear foot section of riprap scour protection and 15 linear feet of the marsh toe sill were determined to be within VMRC's jurisdiction.

Staff began the public review process on May 5, 2010, with notifications to the adjoining property owners and a request to the Daily Press for a legal notification publication. No objections were received from the adjoining property owners but no proof of publication was received by staff.

In May of 2011, staff contacted Mr. Jorgensen, by phone, to discuss the fact we still had not received certification of the publication of the public notice. During that conversation, Mr. Jorgensen told staff he had completed the project. We informed him that since the work had been completed without a VMRC Subaqueous Permit it constituted a violation of §28.2-1203 of the Code of Virginia.

Upon checking his files Mr. Jorgensen, acknowledged that he had not received a subaqueous permit from VMRC. He stated he had received permits from the Hampton Local Wetlands Board and the U.S. Army Corps of Engineers but had mistakenly overlooked the lack of a VMRC permit.

Staff conducted a site visit in June of 2011, and found all of the work had been completed within the specifications of the application submitted to VMRC.

On November 2, 2011, VMRC received the proof of publication from the Daily Press showing that the legal notification had been published on May 12, 2010. Staff then informed Mr. Jorgensen that the legal notification had been published.

Mr. Jorgensen has asked VMRC to hold him solely responsible for the violation since he was hired as the agent and he told Ms. Savedge that all of the proper permits had been attained. Based upon past interactions with Mr. Jorgensen, staff believes that this was

indeed an oversight on the agent's part and that there was no deliberate attempt to circumvent the permitting process. This project is also part of a living shoreline project which has improved the current condition of the shoreline along Mill Creek.

Staff recommends approval of the after-the fact application and acceptance of a civil charge based upon minimal environmental impact and a minimal degree of deviation. The agent has agreed to pay a civil charge in the amount of $600.00 and triple permit fees in lieu of further enforcement action.

Commissioner Bowman asked if this agent/contractor had been a problem in the past. Mr. Watkinson responded that he usually was good and this was just an oversight.

Commissioner Bowman asked for questions. There were none. He asked if anyone present, pro or con, wished to comment.

Jeff Jorgenson, agent/contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Jorgenson explained that this was an oversight on his part and gave his apologies for the time involved by the Board and the staff.

Commissioner Bowman asked for action by the Board.

Associate Member Schick moved for approval, as presented. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Civil Charge…….	$600.00
Permit Fee (Triple)……...	$ 75.00
Total Fees…….	$675.00

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3B. RICHARD MEREDITH, et al, #11-1191, requests authorization to retain an existing 3-foot wide by 32-foot long private non-commercial pier, including a 5-foot by 19-foot L-head, serving as a second pier for 3048 Sand Bend Road in the Back Bay Meadows subdivision, situated along Back Bay in Virginia Beach. Staff recommends after-the-fact approval with a triple permit fee of $300.00.

Tony Watkinson, Chief, Habitat Management reviewed the background information provided by the staff evaluation.

In 2007, staff processed application #07-0274 and issued a permit to the Meredith family to install a boat ramp on the eastern end of their property located at 3048 Sand Bend Road. That application also included an associated 13-foot long tending pier, for which staff granted an NPN (No Permit Necessary) exemption in accordance with Virginia Code

§28.2-1203.A.5, believing that the proposed private pier was the only pier to serve the residential property.

After receiving the current application and comparing it to their #07-0274 permit and a recent permit (#10-0017) issued to the adjacent property owner, Lehman Garrison, it became clear that an older pier structure, located near the northwestern corner property line, existed solely for use by the Meredith family at 3048 Sand Bend Road. As the pier dates back to at least the early 1970's, a subsequent property line, intended to subdivide the Meredith's parent tract, was located on the upland in such a manner that it terminated at the bulkhead directly adjacent to the beginning of the pier.

In reviewing the matter with the project agents from both the 2007 and 2011 applications, it appears that neither one was aware of the fact that the original pier belonged to the Meredith family at 3048 Sand Bend Road. Furthermore, staff does not believe that the Meredith family intentionally tried to mislead the Commission in 2007 when a separate boat ramp and tending pier were requested on the eastern end of the property.

Since clarifying the pier's history and ownership, the Merediths have requested authorization to retain the original pier as they feel its location and elevation allow easier access and use of their catamaran. As such, staff conducted a public interest review for both the bulkhead request and the after-the-fact pier. No objections were received. The City of Virginia Beach and the U.S. Army Corps of Engineers have no concerns regarding the original pier's existence, and both agencies have approved the bulkhead request. If there were no questions regarding the two existing piers, staff would have administratively issued the replacement bulkhead permit.

Given the age and use of the original pier, and the associated history of its location along a shared property line, staff recommends that the Commission grant an after-the-fact permit for the pier with a triple permit fee of $300.00, but no civil charge. Regarding the replacement bulkhead request, staff recommends approval with a royalty of $220.00 for the filling of 220 square feet of State-owned submerged bottom at a rate of $1.00 per square foot.

Mr. Watkinson reiterated that staff recommended that the applicant be required to pay a triple permit fee with no civil charge. He noted that the pier that required a permit had been in existence since the 1970's.

Commissioner Bowman explained that this had been a misunderstanding between the applicant and the staff and not just a flagrant action. Mr. Watkinson responded, yes, in confirmation.

Commissioner Bowman opened the public hearing and asked if anyone, pro or con, wished to comment. There were none. He stated the matter was before the Commission.

Associate Member Schick moved for approval, as presented. Associate Member Robins seconded the motion. The motion carried, 8-0.

Royalty Fees (dredge 220 sq. ft. @ $1.00/sq. ft……	$220.00
Permit Fee (Triple)……	$300.00
Total Fees…….	$520.00

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4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. VMRC Counsel indicated that a closed meeting was not necessary.

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5. LAWRENCE GREY, #11-1518, requests authorization to construct a 300-linear foot riprap revetment channelward of an eroding bluff extending 10-feet over jurisdictional beach adjacent to his property situated along the James River at 13901 Weyanoke Road in Charles City County. Deferred from the December 6, 2011, Commission meeting.

Tony Watkinson, Chief, Habitat Management, gave the presentation. Mr. Watkinson reviewed some of the background as provided in the staff's evaluation, which included staff's recommendation to table the matter until the February meeting. His comments are a part of the verbatim record.

At the December 6, 2011, Commission hearing the applicant's agent requested that the Commission defer their decision on the Grey's proposed project to install 160-linear feet of riprap revetment and to backfill approximately 2,680 square feet of jurisdictional beach until the January 24, 2012, meeting. The applicant has since revised the project per staff's recommendation to encroach no greater than 10 feet channelward of the eroding bluff. On January 5, 2012, the applicant's agent submitted revised drawings proposing construction of a 285-foot riprap revetment extending 10 feet channelward of the base of the eroding bluff. While the revised project reduces the channelward encroachment over the jurisdictional beach, the new proposal includes an additional length of 125 feet, exceeding the originally proposed 160-foot length. Staff believes that this extra 125 feet of revetment requires new advertisement and notification given the scope of changes.

Staff received the revised project drawings on January 5, 2012, which did not allow for the minimum 20-day notification period for the January 24, 2012, meeting required under §28.2-1403(C)(6) of the Virginia Code. Staff proposed two options to the applicant's agent concerning the continuation of the Commission hearing. We suggested the Commission could make a decision on the 160-foot revetment proposal at the January 2012, meeting and hear the additional 125 feet of revetment at the February 28, 2012,

hearing. As an alternative, we stated the applicant could defer consideration on all aspects of the project until the February 28, 2012, hearing. On January 17, 2012, the applicant submitted written confirmation requesting the Commission defer a decision on the entire project until the February 28, 2012, hearing. Thus, staff recommends that the Commission defer a decision on the original and revised proposed revetment until the February 28, 2012, hearing.

Commissioner Bowman asked for a motion.

Associate Member Robins moved to continue this matter until the February meeting. Associate Member Fox seconded the motion. The motion carried, 8-0.

The matter is continued until the February meeting.

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6. **MARTIN CHAMBERLAIN, #11-1047**, requests authorization to install a 155 linear foot marsh toe sill with a 10-foot base width, adjacent to his property situated along the Great Wicomico River in Northumberland County. The project is protested by an adjacent property owner.

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

Mr. Madden explained that the Chamberlain property is located in a residential area along the Great Wicomico River, approximately seven miles east of Heathsville. The shoreline has a southern exposure to the river and a narrow fringe marsh. Mr. Chamberlain is requesting to install a 155 foot long, continuous, riprap, marsh-toe sill. The structure will be constructed using Class 1A and Class 1 riprap. The sill will have a ten-foot base width and achieve a maximum height of one-foot above the mean high water elevation along the entire length of the sill. The sill will follow the present shoreline contours with the landward extent of the sill aligned seven feet channelward of the existing marsh. The proposed sill will connect with the neighbor's riprap on the west side of the property and extend to the east property line which he shares with the protestant.

Mr. Madden stated that the project is protested by Mr. Malcolm Luebkert, Jr., the property owner immediately to the east of the Chamberlain's property on the Great Wicomico River. Mr. Luebkert's shorefront is dominated by a bulkhead which does not extend to the property line he shares with Mr. Chamberlain. As a result, there appears to be an approximately four-foot gap between the existing bulkhead on the Luebkert property and the proposed sill which butts up to the property line. Mr. Luebkert believes the sill will impound water behind the structure and deflect waves toward his bulkhead return wall. He also believes that there is increased potential for erosion in the vicinity of the gap between his bulkhead and the proposed sill.

Mr. Madden noted that in an attempt to resolve this issue, the Northumberland County Wetlands Board, on October 11, 2011, approved this project in modified form. They authorized the applicant to install a short (5-foot long) return wall, aligned perpendicular to the east terminus of the sill. The rationale agreed upon was that any water flowing behind the sill would be dispersed by the return wall before it made it to Mr. Leubkurt's property. However, since Mr. Chamberlain cannot extend his sill beyond his property line, the four-foot gap would remain between Chamberlain property line and Mr. Luebkert's bulkhead to the east.

Mr. Madden explained that staff has consulted with VIMS, who advised that the opposing ends of the sill should be tapered and that a minimum five-foot wide depression be created in the center of the sill. The depression should slope down to a height of 1½ feet above the substrate. Both measures would allow additional tidal exchange between the marsh and the river. Mr. Madden explained that staff had received revised drawing which were included in the record which reflected VIMS recommendations for a riprap sill structure with tapered ends and a lowered 5-foot section he referred to as a saddle.

Mr. Madden stated that on July 19, 2011, Engineering and Survey staff received an application from Mr. Luebkert for a lease in the vicinity of the proposed sill. The lease has not as yet been granted to Mr. Luebkert. The proposed sill is not over any substrate within the Baylor survey and will not encroach over any currently leased oyster ground.

Mr. Madden said that Staff is aware that any structure in the water column may have an impact on adjacent property or structures. The applicant proposes a living shoreline design which is intended to provide protection to his upland property while encouraging the growth of wetland vegetation. Staff believes if the applicant agrees to the modifications outlined previously by VIMS, this structure will have the desired effect of attenuating head-on wave force which will likely protect the marsh. Accordingly, after evaluating all of the factors in §28.2-1205 of the Code of Virginia, staff recommends approval of the project contingent upon the applicant submitting revised drawings depicting the depression in the center and the sloped terminal sections.

Commissioner Bowman asked for questions.

Associate Member Fox asked how far was the fetch and in which direction. Mr. Madden responded that it was well over 500 feet, facing south towards the upper reaches of the Great Wicomico River.

Associate Member Fox stated that was not big. Mr. Madden agreed and explained this was not a high wave environment, but there had been some erosion.

Associate Member Tankard asked if the revetment was necessary, as there was not significant erosion. Mr. Madden explained there was no head on waves and boat traffic caused the wake.

Associate Member Schick said that there was a lack of the wetlands so there was some erosion and this would keep it all in check in order to protect the wetlands.

Commissioner Bowman asked if the structure would provide protection. Mr. Madden said that the riprap sill would reflect wave action. Commissioner Bowman asked if the riprap sill would cause erosion for the neighbor. Mr. Madden stated it was possible.

Lyle Varnell, VIMS, was present and his comments are a part of the verbatim record. Mr. Varnell explained it was possible, but the wave deflection did not look significant as it faced west and the wave action was from the east off of the Bay. He noted that all structures have the potential to impact others.

Commissioner Bowman asked if this was the desirable method, as it was a better proposal for here then at the neighbor's. Mr. Varnell responded yes, they recommend the proposed structure.

Associate Member Robins said the gap was a concern, but the applicant cannot close the gap, but if he goes ahead with the current project, then the protestant can close the gap. Mr. Madden responded yes, he can.

Commissioner Bowman asked if the applicant was present.

Robert Lewis, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Lewis explained that staff had gone over all the information, but he did want to add two more things. He stated that at the Wetlands Board meeting the application was reviewed because of the protestant. He said in 2000 Mr. Leubkert's structure was permitted to be constructed perpendicular to the shoreline and he was aware of the triangular wedge area, but he did not construct the bulkhead in the area. He said that they cannot go onto to Mr. Leubkert's property to fix this problem area between the protestant's property and his clients proposed sill. He added that the protestant was notified by the Wetlands Board, but he never came to them.

Commissioner Bowman asked if anyone in support of the project was present and wished to comment. There were none.

Mal Leubkert, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Leubkert stated that he was here at the hearing to protect his property rights. He provided a copy of a survey which provided a standard to determine where the lease and property were located. He said the proposal puts the mlw at the point, 3 feet into the Great Wicomico River. He added that there was a gentle slope on the property and putting the mlw at 3 feet was too far out. He said the mlw line was straight and there was no curve. He stated the proposal was wrong. He said that they request the Commission reject the plan, as proposed. He said the revision changed 30 feet of the proposal and 20 percent of the rock sill was approved by the Wetlands Board. He noted the minutes of

the Wetlands Board did not approve the 2012 revisions as it was only approved in November. He said the timing of the revisions for the proposal, pages 2 and 3, were received January 17, 2012 and he received them January 19, 2012. He said the second page was mailed January 19, 2012, which he received January 21, 2012. He said he would request more time to evaluate the changes. He said staff had had time, but he had not. He asked that his property be protected from weather impacts and the proposal harms his property. He said the survey was done of the mlw and the stake on the slide did not conform to the survey by Engineering-Surveying. He added that the 3 feet of property did not belong to him or the applicant, but to the State. He said there were photos that showed rocks and then showed no rocks in the area. He said he wished to urge the Commission to make the low line consistent with the Thomplin-Keyser survey. He asked that the Commission and the Wetlands Board revisit this matter.

Commissioner Bowman asked if there was a defect in the notice and review process by the Wetlands Board. Mr. Madden stated, absolutely no. Commissioner Bowman asked if the mlw line and marking did not encroach on land in public trust. Tony Watkinson, Chief, Habitat Management, explained that a portion of it was on State-owned bottom being heard today and the sill was to protect the property. He said the picture of the drawings showed the benchmarks and markers of the survey. He explained the low water line changes with erosion and accretion and the sill was tied to the reference point and at the distance set. The application was being reviewed in accordance with the Code Section 28.2-1205 for the sections that needed to be approved.

Associate Member Robins asked about the site drawing showing the mean high and mean low waters and if the application described what was on State –owned bottom. Mr. Watkinson said that the drawings all looked good. Mr. Madden said he agreed as he had walked the site in the field and he indicated the saltmarsh on a staff slide. He said Mr. Lewis set the point using instruments.

Paul Kugelman asked if this procedure was for a wetlands board decision appeal. Mr. Watkinson responded this hearing was for what was protested on State-owned bottom. He said it had been approved by the Wetlands Board. He said the concern about the structure being on the adjacent property was taken care of when the Wetlands Board required that a return be put on the sill and revised drawings were submitted prior to the permit being issued, which they did. Mr. Watkinson stated this was the joint permit process and the same document was used. Commissioner Bowman said that the VMRC was the clearing house. Mr. Watkinson said that the DEQ and Corps all use the same document. Mr. Kugelman asked if there were revised drawings. Mr. Watkinson said that new drawings were submitted in response to the VIMS recommendation and staff's suggestion that the modification would be recommended. Mr. Kugleman said it was properly before the Commission and with drawings. Associate Member Schick noted that the Wetlands Board approved the plan, as modified. Mr. Madden responded yes. Associate Member Schick said the approval was based on the receipt of a modified plan.

Mr. Watkinson said the revised drawing for the return was required by the Wetlands Board.

Commissioner Bowman asked VIMS to comment. Lyle Varnell explained that the VIMS recommendation for the wave energy prospective was the tapered end, which would decrease the wave reflection and dissipating factor to decrease the wave energy. He said the tidal movement was slow in this area. He added the rock structure in the flood plains would reduce the water getting behind the structure and maintenance required. He said the modified design would make it no greater and even less because of the saddle. He said there would be no increase in the environmental effects.

Commissioner Bowman said the matter was ready for discussion or action. He offered the applicant's agent an opportunity to make rebuttal comments.

Robert Lewis, agent for the applicant said that the beach nourishment portion was approved by the Wetlands Board and the rock sill was here now before the Commission. Per the staff and VIMS recommendations it had been revised. He noted that the mlw was always changing unless this was a location with harden shoreline. He said that Mr. Leubkert's bulkhead changed the mlw when erosion occurred. He said and if they missed the mlw line, VIMS had recommended moving it further out.

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

Associate Member Schick moved to approve the project, as presented by staff. Associate Member Robins seconded the motion. He said that based on staff and VIMS comments this was the best proposal and nothing can be done about the gap. He added that the modification had been done correctly. Commissioner Bowman noted that this matter had been properly adjudicated in accordance with Code Section 28.2-1205. The motion carried, 8-0.

Permit Fee…….	$100.00

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7. **BRUCE WOOD, #11-1325**, requests authorization to deploy 117 three-foot long by 2.5-foot wide commercial oyster floats secured by helical screw anchors, galvanized chain and polypropylene rope over his leased ground at two locations in Nomini Creek in Westmoreland County. The project is protested by an adjacent property owner.

Jeff Madden, Environmental Engineer, Sr., gave the presentation with slides.

Mr. Madden explained that Mr. Wood is a commercial waterman who leases oyster planting ground in the vicinity of his home situated along the western shore of Nomini

Creek. Mr. Wood proposes to establish two (2) oyster aquaculture grow out areas by deploying a total of 234 oyster aquaculture floats. Half of the floats are proposed to be placed on his lease #16884, referred to as Area A. Area A is located in a protected cove, close to shore, and within sight of his pier. The remaining 117 floats will be placed further south and upstream, closer to Carys Point, on his lease #17644. This site is referred to as Area B and is located over hard bottom where he also intends to develop an oyster reef on the bottom.

Mr. Madden said that the proposed floats are 3-foot long by 2.5-foot wide and will be lashed together in 13 rows with nine floats strung within each row. The oyster float arrays will be secured to the bottom by helical screw anchors driven into the substrate. All of the aquaculture floats will be located above Mr. Wood's leased ground. The oysters harvested from the floats will be transported to Mr. Wood's existing pier, where they will be loaded onto vehicles for transport to market. There will be no sale or sorting of oyster product at the pier. In addition, there will be no storage or handling of oyster floats on Mr. Wood's private pier.

Mr. Madden stated that the project is protested by Mr. Wood's upstream neighbor, Ms. Crystal Simpson. Her property is adjacent to Area A and she has expressed concerns that the oyster floats would impact navigation and depreciate her property value. She has retained Mr. James Breeden as legal counsel. Mr. Breeden has indicated to staff that he intends to file a riparian suit in the Westmoreland Circuit Court, claiming that the oyster floats would encroach into his client's riparian area. Staff is not aware if the suit has been filed.

Mr. Madden noted that Mr. Wood has explained that the location for the Area A was chosen because it provides a protected location away from boat traffic and is within sight of his pier. He believes the ability to easily see the floats from his property will help deter theft and allow him to notice any damage to the floats in a timely manner. Area B, while not nearly as secure a location, nor as well protected from wave action, was chosen because it was above the area where he intends to place shell to develop an on-bottom oyster reef. Mr. W. Royce Ball, the property owner adjacent to Area B, has indicated that he has no objection to the proposal.

Mr. Madden explained that the Westmoreland County Wetlands Board determined the project did not require a wetlands permit. The County has also determined the proposed activities are allowable under the current zoning of the property. No State agencies have commented on the project.

Mr. Madden said that staff believes that shellfish aquaculture operations generally have positive environmental impacts associated with animal filtering nearby waters, incidental spawning and larval recruitment, and by providing substrate and habitat for other species. The siting of aquaculture operations, however, often presents challenges. In this case, there is no pier in the vicinity of Area A which would be impacted by the proposed

development. Should there come a time when an upland property owner elects to build a pier or other shoreline structure near the grow-out area, the floats could be relocated or re-oriented to accommodate the construction. It is important to note that our permit would grant no authority to the Permittee to encroach upon the property rights, including riparian rights, of others. Any disagreement concerning the impact of the project on Ms. Simpson's property rights would need to be resolved by the appropriate Circuit Court.

Mr. Madden explained that consequently, in consideration of the factors contained in § 28.2-1205 of the Code of Virginia, staff recommends approval of the project with the understanding that the private pier adjacent to Mr. Wood's home will be for the landing and transfer of oysters and that there will be no storage or maintenance of oyster floats on the pier. In addition, staff recommends an annual royalty of $450.00 for the encroachment of the floats over 90,000 square feet of State-owned submerged lands at a rate of $0.005 per square foot, with the following special conditions:

- The permit and authorization to retain the structures shall be valid for a period of five years. After five years, the Permittee may request the Commission re-evaluate the project and seek authorization to continue the activity for an additional period of time;
- The public shall not be excluded from any areas not physically occupied by the authorized structures;
- The Permittee shall properly maintain all structures and shall remove all structures within five (5) days upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures;
- The structures must be marked and located in accordance with all applicable U.S. Coast Guard requirements;
- Should unforeseen conflicts arise, the Commission may elect to hold an additional public hearing, at which time they may elect to revoke the permit and direct removal of any or all of the authorized floats;
- All commercial aquaculture activities conducted in association with the structures authorized herein shall be conducted in compliance with all relevant VMRC and Department of Health regulations;
- The Permittee shall be required to remove or relocate any of the structures which are determined to be in the way of any approved shoreline projects requested by the adjacent upland property owner.

Commissioner Bowman asked for questions.

Associate Member Fox asked about Area A on the drawing. Mr. Madden said yes and referred to the slide, adding that Mr. Breedon was the Attorney for the Protestant and noted that they were taking this matter to the court regarding the riparian area question. Commissioner Bowman stated that VMRC did not determine the riparian area.

Associate Member Tankard asked if the applicant agreed with the seven conditions. Mr. Madden said the applicant had indicated that he would abide by all the rules.

Associate Member Schick questioned who would determine if the structures were in disrepair. Mr. Madden indicated that it would be the Law Enforcement Division or Habitat Division staff.

Associate Member Robins asked about the water depth and boat activity in the area. Mr. Madden said it was an area that had a drop off and there was a shoal around the point. He said there was significant water depth around the pier, 3 feet to 5 feet.

Associate Member Fox asked if Site B was more exposed. Mr. Madden said he felt it was, but the floats would be over an established on an bottom reef with the cages above it to get strike.

Associate Member Laine asked if the strike occurred then they would be removed to work and then placed back. Mr. Madden responded yes.

Associate Member Fox asked if the anchoring would be adequate. Mr. Madden responded yes, that Mr. Woods lived there and would attend them directly.

Commissioner Bowman asked if the Coast Guard had any lighting requirements. Mr. Madden responded no, but they could be provided.

Commissioner Bowman asked the applicant if he wished to comment.

Bruce Wood, applicant was sworn in and his comments are a part of the verbatim record. Mr. Wood explained that Area A was existing and ongoing and he had shelled it using shells he collected from the area restaurants. He said the creek was an area for the strike to occur. He said there was approximately 1,000 bushels of shell and the racks were on the bottom. He indicated that the boat traffic goes up the river. He added there was space between the property line and the project.

Commissioner Bowman asked how far? Mr. Wood indicated 50 to 75 yards. He said he has been robbed of some of his cages which he reported to the Marine Police Officer. He stated he was trying to clean up the creek and a lot of area was closed as of yesterday. He said the oysters eat the algae.

Commissioner Bowman asked when he had acquired the lease. Mr. Wood stated in 2002 after he retired in 2001.

Associate Member Tankard asked about anchoring security. Mr. Wood stated that it was no problem as this was the standard method for the east coast, nothing new. He said the

floats are connected and with the height and depth can be anchored to the cages on the bottom.

Associate Member Laine asked if the boats can see the structures. Mr. Wood said the area was silted in and in this area cages were no problem. Associate Member Laine asked if he used a small motorized boat. Mr. Wood said he uses a Carolina skiff and just goes carefully, as it was not navigable.

Associate Member Schick asked if he would be marking with buoys. Mr. Woods responded yes. Associate Member Schick asked about using lights. Mr. Wood responded that he would use what was required. He said he would research it and do what was necessary, if required to by the Coast Guard.

Commissioner Bowman asked if anyone was present to speak in support. Opposed?

Crystal Simpson, protestant was sworn in and her comments are a part of the verbatim record. Ms. Simpson said on the NW side was her property and the Nancy Ball property had been given to her. She said there was another property given to her and one owned by her parents. She stated that they were concerned that they would be cut off from accessing the water. She said the four lots were approximately 9 acres and surrounded the Wood property.

James C. Breeden, attorney for the protestant was present and his comments are a part of the verbatim record. Mr. Breeden said their concerns were for the location of Area A and its impacts to navigation. He stated they had no objections to the southerly portion. He said they were told originally that there would be 12 floats, but now it was 15 floats proposed. He said Area A was close to the shoreline and would impact their right to wharf out. He said they believe this impacts their riparian shore and suggest that Area A be relocated nearer to his property so he can monitor it better.

Commissioner Bowman asked for questions.

Associate Member Tankard asked if the spot to move the floats to was to the left. Mr. Breeden said Ms. Simpson could comment more, but they wanted it moved to the other side closer to Mr. Wood's pier and moved out from the shore and to narrow it.

Ms. Simpson said her family had lived here since the 1930's. She noted that Neville Ball had been a waterman and that they respect the watermen. She said they just objected to the large size and location near to their property because it cuts off their water access. She explained that Mr. Wood had told her father that he planned for 6 to 12 floats and they were surprised at the 15 proposed in front of her house. She said she had asked to meet with him in order to resolve the problems, but it could not be arranged. She said they did have a phone conversation about the relocation of Area A to the left side of the

pier. She said this would impact them less and protect their property that had been held by the family for many years. She suggested they look for a compromise.

Mr. Wood said that on January 19, 2012 there was a phone conversation about Area A, but indicated on the slide that there were trees chopped down in the water making the area unusable. He said Area B was the least desirable because there were only 2 feet of water and 9 feet of mud with no access.

Commissioner Bowman stated that he understood their concerns. Mr. Wood stated it was only a concern for the aesthetic for the bottom cages. Commissioner Bowman stated they had the right to their aesthetic concerns.

Associate Member Tankard asked about a compromise. Mr. Wood stated he had nowhere to go that would be ready and that he may have to consider building another reef.

Associate Member Sessoms explained that in looking at item 3-2, he owns a similar property and 40 to 50 feet from the shoreline it would severely restrict them from use of two properties. Mr. Wood stated again that it would not be blocking the area.

Associate Member Schick said that according to the diagram that corner #3 was Area A. Mr. Wood stated it was closer to corner #4. Associate Member Schick said that #1 and #2 were in question and that was parallel to the dock and the floats were off from the pier. Mr. Wood stated it was shown as going straight out. Associate Member Schick asked if on the north side there would not be any floats. Mr. Wood responded no. Associate Member Schick asked about the water depth for the cages. Mr. Wood responded 3 ½ feet at low tide. Associate Member Schick noted that the area was already not navigable.

Associate Member Laine asked if he could leave a separation. Mr. Wood responded yes, that the floats would be removed during the winter months so the oysters would not freeze. He noted that there was not a lot of area to compromise as there was a bottom type and water depth issue.

Associate Member Fox said on item 3-2, the floats on the drawing are not consistent with what is being said. Mr. Wood said he had explained where they were on the slide and stated that they would not interfere. He said that they were off a little bit, but not by much. He indicated the poles on the slide and said the protestant would have to build a pier ½ mile long.

After some further discussion on the accuracy, Commissioner Bowman explained that the Commission pursuant to Code Section 28.2-1205 must consider the nearby property owners and their concerns regarding aesthetics.

Commissioner Bowman asked for discussion or action.

Associate Member Schick moved to approve the project, but that the floats in Area A not be located below or south of the property line extended into the waterway. Associate Member Fox seconded the motion. After some further discussion on clarification of the motion and a description of the property line location, the motion, including the conditions recommended by staff, carried, 7-0. The Chair voted yes. Associate Member Robins left the meeting at approximately 11:15 a.m.

Royalty Fees (Annual) (encroachment 90,000 sq. ft. @ $.005/sq. ft.)……...	$450.00

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8. PUBLIC COMMENTS:

Request for Extension of Rappahannock River Area 8, through the month of February, 2012.

Paige Hogge, Rappahannock River Seafood Buyer, was present and her comments are a part of the verbatim record. Ms. Hogge asked that the Commission consider extending the season for the Rappahannock River Area 8. She said there are small oyster businesses, such as Walton's, Buster's and Ferguson, et als. who catch their own oysters to shuck. She said it needed to be open for February since there is still demand for their oysters. She said the federal government gets taxes, the state gets taxes, as well as the county.

Commissioner Bowman asked about the health of the stocks. Ms. Hogge said there were only small oysters in Area 7, because it had been worked hard and Area 8 had not been worked as hard.

Commissioner Bowman asked staff for comments. Dr. James A. Wesson explained that the main oyster bar was Morattico, which when sampled had one spat, 29 small and 9 market oysters per bushels. He said there had not been a spatset last year as usually occurs in this area and the industry had already had several months to work there.

Commissioner Bowman asked if this would be an emergency regulation. Dr. Wesson stated, yes, and this would set a precedent for areas where there are more stock. He noted that in the James River there had been several months of harvest and the small oyster have declined faster than the bigger ones. He said that they did not want to work it so hard that there would not be any for next year. He said in another area it was not extended and there were more stocks there now.

Commissioner Bowman said that with an emergency regulation the Commission must consider the Public Trust doctrine and the Commission was concerned with proceeding

with an emergency regulation. He asked VMRC Counsel if this was justified by the Code for Virginia.

Paul Kugelman asked if was to protect shellfish. Dr. Wesson stated it was a request based on the economics for the people in the area. Mr. Kugleman asked if watermen asked to protect industry, what happens to the industry? Dr. Wesson explained they wanted an extension for one more month.

Commissioner Bowman asked the need for emergency regulation for economics. Ms. Hogge said that there are few jobs in the area and this was an economic need for the area. She explained that there were no local fishermen in the striped bass fishery and they have to wait until the crab season starts. She reiterated that there were few jobs in this rural community. She said they could work it and clean it up for the strike to occur.

Mr. Kugelman stated he felt that she made a case for an emergency regulation.

Associate Member Tankard stated that this had been debated in the past, why was it here now. Mr. Wesson said that the seasons had been set in proportion to the amount of stocks and other areas will be opened, but this area was to close January 31, as it was a different opening and closing from other areas.

Associate Member Schick said that there were not a lot of extra oysters and continuing would grind on the small oysters that would be available for next year.

Associate Member Fox asked when did the season start. Dr. Wesson responded December 1 and it was open for two months.

Associate Member Tankard said the weather had been good and allowed for harvesting. Mr. Tankard stated that he believed there was no emergency and no environmental factors involved.

Commissioner Bowman announced that the action by the Commission would be to take no action.

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The Commission broke for lunch at approximately 12 noon and reconvened at approximately 1:51 p.m.

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9. PUBLIC HEARING: Establish the 2012 by-catch allowance of American shad, as part of Chapter 4VAC20-530-10 et seq., "Pertaining to American Shad."

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

Mr. O'Reilly stated that this was an annual event, following the ASMFC's review each year. He further stated that this was the seventh year a bycatch fishery had been allowed.

Mr. O'Reilly said Table 5 in the evaluation provided a summary through 2011. He noted that there had been a modest bycatch allowed for staked and anchored gill nets and 131 fish were reported by 8 fishermen. He said that in the York River the catch was 82% of the overall catch for the State, since 2006. He said the regulation needed to be updated to bring forward the 2012 date.

Mr. O'Reilly said that the status of the fishery was questionable, and any State that did not have proof of a sustainable fishery would be put under a moratorium. He said there was a moratorium in the State at present since 1994 and then in the ocean since 2005, and only the by-catch allowance was allowed.

Mr. O'Reilly explained that the York River t stock of American shad was already in decline, according to VIMS. He said there was improvement in the Rappahannock, but not enough to indicate sustainability.

Mr. O'Reilly stated that FMAC was told at their meeting January 23, 2012 that sustainability was not as clear cut as the herring fishery and this could be the last year according to the way it stands now. He added that staff recommended approval of the amendments to the regulation.

After some further discussion, Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He stated the matter was ready for action.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried 7-0. The Chair voted yes.

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10. PUBLIC HEARING: Establish an additional measurement device of the Virginia standard oyster bushel, as part of Chapter 4VAC20-260-10 et seq., "Pertaining to Designation of Seed and Clean Cull Areas."

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

Dr. Wesson explained that the Commission had approved the alternate Virginia bushel container for use to measure oysters. He said that this was just a housekeeping matter to make this a permanent part of the regulation. He said to date approximately 10 of these containers had been bought.

Commissioner Bowman opened the public hearing. There were no public comments. He said the matter was before the Commission.

Associate Member Laine moved to accept the staff recommendation. Associate Member Palmer seconded the motion. The motion carried, 7-0. The Chair voted yes.

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11. PUBLIC HEARING: Establish separate commercial management measures for Golden tilefish, Blueline tilefish, and Sand tilefish, as part of Chapter 4VAC20-1120-10 et seq., "Pertaining to Tilefish and Grouper."

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

Mr. Grist provided background information on the origination of Regulation 4VAC 20-1120-10, et seq., "Pertaining to the Tilefish and Grouper" on April 24, 2007, which provided for a recreational possession limit of 7 tilefish per person, one grouper per person, a commercial daily possession limit of 300 pounds of tilefish per vessel, and 175 pounds of grouper per vessel.

Mr. Grist explained the update to the Mid-Atlantic Fishery Management Council's Golden Tilefish Management Plan in 2011 provided an opportunity for updating the current regulation's commercial possession limit for tilefish, as was requested by industry members.

Mr. Grist explained that prior to the FMAC meeting the preceding night, Monday, January 23, the staff would have recommended amendments to Chapter 4VAC 20-1120-10, et seq. as follows:

1. Deletion of combined tilefish definition.
2. Edit recreational harvest and possession limit tilefish definition.
3. Edit recreational landing permit tilefish definition.
4. Commercial golden tilefish possession limit of 500 pounds and to close the fishery when NOAA Fisheries announces a closure.
5. Combined possession limit of 200 pounds for blueline tilefish and sand tilefish when landed commercially.

At the FMAC meeting, the consensus opinion was to promote the tilefish fishery catch, allowing for the direct targeting of either golden tilefish or blueline tilefish. FMAC recommended that the golden tilefish limit increase to 500 and the combined possession limit for blueline tilefish and sand tilefish be set at 300 pounds. He said this passed with a vote of 8-0-1 to approve.

Mr. Grist then noted that Harry Doernte sent in a letter of comment and he recommended no changes and to keep the status quo. Mr. Doernte noted concerns about the age, maturity, and distribution of tilefish and the relative ease to fish out established locations.

Mr. Grist then presented multiple options before the Commission for discussion, and noted that staff did not have a preferred option.

Option 1 would be status quo, or no change, as represented in Mr. Doernte's letter.

Option 2 would be to take the staff's original recommendation to provide a commercial golden tilefish possession limit of 500 pounds and a combined possession limit of 200 pounds for blueline tilefish and sand tilefish landed commercially.

Option 3 would be to take the FMAC recommendation to increase the golden tilefish limit to 500 pounds and the leave the others, blueline and sand tilefish at 300 pounds.

Option 4 would be a hybrid recommendation to have a combined tilefish limit 500 pounds per trip with a 200 pound limit, within the combined 500 pounds, for blueline tilefish. This option combined the concerns of Mr. Doernte and FMAC to provide an in between option.

Mr. Fox asked to differentiate between the options. Mr. Grist explained the differences between each. Mr. Fox noted that options 2 and 3 were considerably more than option 1.

Associate Member Tankard said that FMAC, 500 and 300 was a liberal recommendation. He noted that Mr. Doentre's recommendation was significantly different. Mr. Grist explained it was more of a way to maximize a catch and be more of a directed fishery rather than a bycatch fishery. Mr. Grist further explained that was the issue for the Commission to discuss, whether to move more toward a directed fishery or maintain as a bycatch fishery.

Associate Member Tankard asked what the big issue between having a directed or a bycatch fishery for tilefish. Mr. Grist said that Mr. Doentre's letter went directly to that, as his arguments were the same presented to the Commission in years past by members of staff, VIM, and other institutions. He said these species colonize and do not migrate, which results in pockets of fish. He said if all are caught then you have to go to another pocket. He added that they have seen in the South Atlantic fishery evidence that the fish can be fished out from locations and then there would not be a return of the species for

approximately 20 years. He noted that the previous Commission measures have hopefully staved off problems with management expansion from the South Atlantic Fishery Management Council.

Commissioner Bowman asked for discussion or action.

Associate Member Tankard said he did not know anyone who caught tilefish, but Harry Doentre knows and offers a conservative option one. He said he moved to approve option one.

Commissioner Bowman asked for a second for the motion, but there was no seconds. He stated the motion failed for lack of a second.

Associate Member Schick stated that option four would not make this a directed fishery. Mr. Grist said that it meets the MAFMC Plan for allowing 500 pounds for the golden tilefish, but not for the others. He said it provides the ability to the harvesters to bring in the 500 pounds for golden tilefish as allowed by the MAFMC.

Mr. Fox stated he could see some justification for increasing it from 300 pounds to 500, but not for a combined 700 or 800 pounds for tilefish, and favored option four.

Associate Member Fox said that if the Commission went to option four it would be a middle of the ground amendment and he favored option four. He moved to adopt option four. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

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12. REQUEST FOR EMERGENCY REGULATION: Raise the Winter I commercial scup possession and landing limit from 30,000 pounds to 50,000 pounds, as part of Chapter 4VAC-20-910-10 et seq., "Pertaining to Scup (Porgy)."

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

Mr. O'Reilly explained that this was an emergency regulation request and this was different from the oyster issue for scup allocation is on a yearly basis. He said in Code Section 28.2-210 emergency regulations were allowed in order to protect the industry.

Mr. O'Reilly said that the Winter I period extends through January 1 through April 30, and it is currently unlawful for any person to possess aboard any vessel in Virginia more than 30,000 pounds of scup or land more than 30,000 pounds of scup during each consecutive 7-day landing period. He said there are six buyers who buy the scup, and at this time of year, without flounder landings, depend on the scup. He referred to page 2 of

3 of the draft regulation where the changes in poundage are shown from 30,000 pounds to 50,000 pounds.

Mr. O'Reilly said that staff recommended an effective date for this emergency regulation of January 30, 2012, so that this can be acted upon at the February Commission within the 30 day limit. Paul Kugelman, Assistant Attorney General and VMRC Counsel said after reading Code Section 28.2-209, that an emergency regulation has only a 30-day shelf life. Commissioner Bowman noted that the Commission did not have to enact the emergency regulation on the date it was approved.

Commissioner Bowman opened the public hearing.

Meade Amory, Amory Seafood, was present and his comments are a part of the verbatim record. Mr. Amory said he represented the six packers and it was necessary for immediate action to be taken. He noted that the season started any day now and they agreed with the staff recommendation.

Commissioner Bowman asked if anyone else present, in support or opposed wished to comment. There were none. He stated the matter was ready for action by the Commission.

Associate Member Laine moved to adopt the emergency regulation as recommended by staff. Associate Member Palmer seconded the motion. The motion carried, 7-0. The Chair voted yes.

Associate Member Tankard moved to advertised for a February public hearing. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

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13. ANDREW STURGIS: Decision on his request to establish four pound nets in Bay-side waters of the Eastern shore.

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

Mr. Travelstead stated that the request for the four pound nets was re-advertised and comments were received again with the same objections. He noted that there were six letters and a petition with 106 signatures.

Mr. Travelstead reviewed the comments.

1) Staff did not recommend net one as it was in the middle of SAV.

2) Mr. O'Malley objected to both nets one and two and asked that net two be moved further offshore or eliminated.

3) For net three there were no objections and it was away from the SAV.

4) Staff objected to net four as it was partially in SAV.

Mr. Travelstead stated this was all in the evaluation. He noted that Mr. Sturgis and Mr. O'Malley were both present.

Commissioner Bowman asked for questions.

Associate Member Fox asked about the concerns expressed on how he applied for the nets.

Mr. Travelstead said it was his confusion, as in the past there was a 161 cap on the number of nets available. He explained that if the nets were lost and a number of individuals applied for them, then a lottery would be held. He said at the present time the number is not near the cap and now anyone can apply until the number reached the cap.

Commissioner Bowman said if a number were to open they might consider the cap set. Mr. Travelstead said that he was not sure that we ever hit the cap as there are still a number of openings on the website to track. He stated that Mr. Sturgis wants to expand the number of nets he holds. He said he has one already, was applying for four now, and wanted to apply for three more for a total of eight nets.

Commissioner Bowman opened the public hearing. He asked for those in support of the request who wished to comment.

Andrew Sturgis, applicant, was present and his comments are a part of the verbatim record. Mr. Sturgis explained where net #1 would be there are two individuals who own clam ground and work with dredges in the SAV. He said he just wants a piece of chain to go to the shoreline and a 20 X 20 net for two or three months a year. He said that Mr. O'Malley could go around it where the deep water is located.

Associate Member Tankard said he heard of the chain and anchoring used by others going to dry land, and you were not proposing to do that. Mr. Sturgis stated no, just to the low water mark.

Associate Member Fox asked if he would consider moving #1 and #4 nets offshore. Mr. Sturgis said he would consider moving them inshore because the fish go there, but not offshore. He noted that fish go along the shoreline where the water is shallow. Associate Member Fox asked if he understood their concerns about the SAV. Mr. Sturgis responded yes.

Commissioner Bowman asked if anyone else wished to comment in support.

Todd Sturgis, father of applicant, was present and his comments are a part of the verbatim record. Mr. Sturgis explained that his son had said it all. He said pound nets work better when they inshore and he would rather shorten it on the offshore end where there is 6 to 8 feet of water for a boat to work.

Commissioner Bowman asked him how long he had worked pound nets. Mr. Sturgis said he was just helping his son last year and before he had worked with some of his neighbors for about eight years. He said he was a bricklayer by trade, but if short of work would work with his son.

Commissioner Bowman asked for those in opposition of the request who wished to comment.

Edwin J. O'Malley, Jr., protestant, was present and his comments are a part of the verbatim record. Mr. O'Malley said a standard should be applied when the Commission is considering the regulation. He said the Commission should consider the Public Trust Doctrine which is in the Code. He said the Commission needs to balance the interest of the public. He said he respected the commercial watermen and he was not concerned with nets # 3 and #4. He stated he did object to net #1 because of the SAV and the navigational impacts. He said net #2 should be offshore away from the low water mark as he would not object as long as a small boat can navigate along the shore. He said he agreed with the compromise as stated. He stated the four additional nets would take up 22 acres of bottom and he already had 4 nets that take up 26 acres.

Associate Member Tankard stated that staff was recommending #2, #3 and # 4 nets. Mr. O'Malley said net #1 should be eliminated, #3 and #4 were okay, and #2 should be moved further offshore, 100 to 150 feet.

Commissioner Bowman asked for rebuttal comments by Mr. Sturgis. There were none. He stated the matter was before the Commission for discussion or action.

Associate Member Palmer stated that there are not many young people going into the fisheries. He said he was not happy to put net one in the SAV, but he would like to see Mr. Sturgis get at least three nets.

Associate Member Schick said he saw no problems with him getting all four, but just they need to come off of the SAV.

Associate Member Tankard said he knew the Sturgis family and they were good folks and this was a good compromise recommended by staff. He said net two should be further offshore, and nets three and four, as proposed.

Associate Member Laine said he was concerned about the location of nets one and four in the SAV. Mr. Travelstead said one and four were both in SAV and four was objected to by the Turners and was only partially in SAV.

Associate Member Schick moved to approve the requests for nets two, three, and four, conditioned on net two being moved approximately 100 feet offshore and net four be adjusted so that it was no longer in the SAV. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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14. FAILURE TO REPORT: Cases involving failure to report commercial harvests, in accordance with Chapter 4VAC20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

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

Mr. Grist explained that the individuals were sent first and second notifications of missing harvest reports by postcards, the third notice was a letter with a deadline for submission of the missing reports, and the final notice was by certified letter with a submission deadline. He said finally, a personal service letter, delivered by a Marine Police Officer, instructing the harvester to appear before the Commission. He explained that the notification of these individuals was started in July 2011 for reports missing back to April 2011. He noted that there were three individuals that were notified to be here and they were present.

Mr. Grist said that the first was for a Clarence A. Jewell for not reporting from March to May 2011. He said that he has resolved these reports and staff recommended probation for one year, which means there can be no other violations during the 12 months or Mr. Jewell will be brought back before the Commission.

Clarence A. Jewell was sworn in and his comments are a part of the verbatim record.

Commissioner Bowman asked him if he fished in the Potomac River and if he had ever been summons by the Potomac River Fisheries Commission for problems with his reporting. Mr. Jewell responded no.

Commissioner Bowman said the Board could either asked questions, discuss or take action on this matter.

Associate Member Fox said he had problems with so many notices and Mr. Jewell not responding. He asked Mr. Jewell why he ignored the notices. Mr. Jewell explained that he had personal problems with his teenager who kept his mail so that he did not get it. He

said she was no longer around and he had given staff his cell phone number for future use. Associate Member Fox said the notices being ignored was a serious matter. Mr. Jewell said he also was having a conflict with an agent and they both thought the other was reporting.

Commissioner Bowman reiterated that the staff recommendation was just that a recommendation and in accordance to Code Section 28.2-232, the Commission could revoke a license for up to two years.

Associate Member Schick moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

Commissioner Bowman warned Mr. Jewell that if he were to come back before the Commission his license could be revoked.

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Mr. Grist said the next case was for Phillip Jethro, Jr. which was the same as before, Mr. Jethro was missing reports for April, June – December 2011. He was sent all the notifications which he did not respond to and was notified to appear before the Board by the Marine Police Officer. He said that Mr. Jethro had resolved the missing harvest reports.

Phillip Jethro, Jr. was sworn in and his comments are a part of the verbatim record.

Mr. Jethro explained that he resolved the reporting issue. He said when he got his Virginia license, he had a mailing issue with getting his renewal and he had since gotten a post office box. He said after he got his notice on his door, he called the Marine Police Officer. He said this was his livelihood and he did not want to lose it. He stated that North Carolina had strict reporting requirements for crabs landed in North Carolina. He said he had come to the office the prior day and found out he was 3 years behind in his reporting, which he worked on until late into the night and turned those on this day. He asked that he not be put on probation because of his ignorance. He would do his reporting for both Virginia and North Carolina. He said that he had a problem with reporting both as the IRS could look at his records and count these crabs twice. He said he needed help with this double reporting. Mr. Grist responded that staff could help him resolve this problem.

Associate Member Palmer asked him about any summons for crabbing he received in 2011. Mr. Jethro said he had three and one he was found guilty and paid a fine of $1,000. He said he had put his name on his pots, as well as his girlfriend's pots as both were licensed to have 255 pots. He said he removed his name and put hers back onto her pots. Associate Member Palmer stated he was charged for 800 pots. Mr. Jethro responded yes, it was a large number. Associate Member Palmer asked him about some crabs he caught

on the 4th of July and took to North Carolina. Mr. Jethro said it was not true as it was a misunderstanding. He stated he can crab on Saturday in North Carolina and these crabs were caught in North Carolina and landed at Horn Pt.

Commissioner Bowman asked about the staff's recommendation. Mr. Grist responded it was for one year probation.

Associate Member Palmer stated that he admitted to crabbing 800 pots when he only had a 255 pot license and because of his actions this caused problems for the Virginia watermen. He moved for a two year revocation of license. Commissioner Bowman added that this was pursuant to Code Section 28.2-232. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

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Mr. Grist explained that the next case was for Dana Lilliston. He explained she had been sent all notifications and had finally responded after the Marine Police Officer notified her. He said she had not reported for January-December 2011 and as of this morning she had resolved most of this and the remainder should be resolved by the end of the day. He said that staff recommended one year probation.

Dana Lilliston was present at the hearing.

Keith Lilliston was sworn in and his comments are a part of the verbatim record. He said he had reported on his report and understood he put her number on his report.

Mr. Grist said the reports were incorrectly filled out.

Mr. Lilliston said he was given the letter, but he did not call. Commissioner Bowman stated that he needed to verify that he was right with the Government. Mr. Lilliston said he found that out.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 7-0. The Chair voted yes.

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19. REPEAT OFFENDERS:

Justin John Stevens

Captain Ben Major, was sworn in and his comments are a part of the verbatim record.

Captain Major explained that on August 20, 2010 Mr. Stevens was summonsed for cobia being over the quota (9 fish-3 people) and August 10, 2011 he was summonsed for concealed fish in a compartment constructed on the boat. He said one fish was under the minimum size of 37 inches. He said Mr. Stevens was convicted by the Court.

Associate Member Fox asked if it was 9 fish each day. Captain Major said it 9 fish on the first summons and 3 fish with 6 fish concealed for the second one.

Associate Member Laine asked how long, in time, between the convictions. Captain Major responded one year.

Justin John Stevens was sworn in and his comments are a part of the verbatim record. Mr. Steven explained he had already gone to court and had his license taken.

Commissioner Bowman said the Commission was considering the revocation of his license as authorized by Code.

Mr. Stevens reiterated that the Court took his license for two years, even the copy of the license was taken by them.

Captain Major explained that it was suspended for 18 months. He said staff recommended that the two years revocation be from the first violation.

Mr. Stevens asked how the Commission could do the same thing as the Court. Commissioner Bowman said the Commission was the one authorized by the Code of Virginia to do so.

Associate Member Tankard stated this was a premeditated offense and moved for revocation of his license to start from the last conviction. Associate Member Schick seconded the motion. The motion carried, 7-0.

Commissioner Bowman restated the motion was for two years revocation from the last conviction. Mr. Stevens asked how he could appeal the Commission decision. Commissioner Bowman said in the Newport News Circuit Court or at the Circuit Court in the area he resides. He added he would be notified by letter of the appeal process.

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15. REQUEST FOR PUBLIC HEARING: Establish the 2012 recreational summer flounder measures, as part of Chapter 4VAC20-620-10 et seq., "Pertaining to Summer Flounder."

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

Ms. Watts explained that this public hearing request was for the establishment of the 2012 recreational summer flounder management measures. She said that the 2012 Virginia recreational summer flounder landings quota is 466,000 fish, a decline from the last year's quota of 570,000 fish.

Ms. Watts said that table 2 provided the 2012 recreational quotas (targets in number of summer flounder). She said recreational quotas change every year, but the percentage of total coast-wide quota remained the same and is based on 1998 landings.

Ms. Watts said that the 2011 Virginia recreational landings were 268,684 fish, nearly 53% under the 2011 quota of 570,000 fish. She said that all nine of the states were below the coast-wide quota the last three years.

Ms. Watts explained that the 2011 fishery was managed by a 17 ½ inch minimum size, four-fish limit, and no closed season.

Ms. Watts said that the Ad hoc committee offered four options for the 2012 fishery, with Option D as the unanimous preference. The options are as follows:

A) 17 ½ inches minimum size limit, 5-fish limit, no closed season
B) 17 inches minimum size limit, 5-fish limit, no closed season
C) 17 inches minimum size limit, 4-fish limit, no closed season
D) 16 ½ inches minimum size limit, 4-fish limit, no closed season

Ms. Watts said that the committee members felt that the effort (trips) was the driver and the landings, and effort has been in decline in recent years.

Ms. Watts explained that the Finfish Management Advisory Committee (FMAC) had met the previous evening and gave their preference as Option D, with Option B as their second choice. Staff would present the proposals to the ASMFC Summer Flounder, Scup and Black Sea Bass Technical Committee, and then the ASMFC Management Board would review the approved options. The final approved options will be provided at the public hearing.

Ms. Watts said that staff recommended the advertisement of a February 28, 2012 public hearing to establish the recreational summer flounder fishery management measures.

Commissioner Bowman asked for questions.

Associate Member Laine asked which option would mean the greater number of fish caught, B or D. Ms. Watts responded Option D. Associate Member Laine asked about the amount of increase in landings expected by going from a four-fish limit to a five-fish limit, and Ms. Watts stated the landings would not increase by a large amount.

Associate Member Tankard asked when fish are caught what is the mortality rate. Ms. Watts responded 10 percent. Associate Member Tankard asked how the percentage of mortality played into the quotas being determined.

Rob O'Reilly, Deputy Chief, Fisheries Management explained that mortality was taken care of up front when the stock assessment was done. He said the 10 percent comes in based on considering the discards, which are at 94% of the total catch. He said the quotas reflect that. He said if the states go over the Annual Catch Limit (harvests plus an added 10 percent for discard mortality) then it requires a payback proportional to each state's share of the quota.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Tankard moved to advertise the public hearing. Associate Member Schick seconded the motion. The motion carried, 7-0. The Chair voted yes.

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16. REQUEST FOR PUBLIC HEARING: Revise the requirements associated with registration of the Fisherman Identification Program, as part of Chapter 4VAC20-1240-10 et seq., "Fisherman Identification Program."

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

Mr. Travelstead said this was to tweak the regulation and improve enforcement. He said in a couple of court cases the officers did not see the individual actually catch the fish, which affected the cases. He said the language is now to "catch" and staff recommended adding the language "attempting" to amend the regulation.

Commissioner Bowman asked for action by the Commission.

Associate Member Laine moved to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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17. REQUEST FOR PUBLIC HEARING: Establish the 2012 commercial horseshoe crab quota, as part of Chapter 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crab."

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

Ms. Watts said that staff was recommending a public hearing to establish the quota for horseshoe crabs and to potentially change the allocations of the quota by gear type. She noted that staff would meet with industry before the public hearing.

Commissioner Bowman asked for questions.

Associate Member Fox asked how the allocations by gear type were first determined. Ms. Watts responded by mandatory reporting.

Joe Grist, Head, Plans and Statistics explained that it was complicated as there was restricted and non-restricted bycatch. He said that there was no open season to have available for buyers. He said they were checking with industry to see how this can be resolved.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Fox moved to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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18. REQUEST FOR PUBLIC HEARING: Establish the 2012 commercial black sea bass directed and by-catch fisheries' harvest quotas, as part of Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass."

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

Mr. O'Reilly explained that it was an annual event to establish the commercial quotas and this needed to be done for 2012. He said the quota was 1.71 million pounds, which is 20 percent of the coast-wide quota. He said Virginia's commercial quota is 342,200 pounds, with the directed quota set as 302,000 pounds and the by-catch quota set as 40,000 pounds.

Mr. O'Reilly said that staff recommended the public hearing to establish the quotas.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Tankard moved to advertise for the public hearing. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 2:30 p.m. The next regular meeting will be held Tuesday, February 28, 2012.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary