

MINUTES

Commission Meeting

January 26, 2010

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
David Grandis	Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Fishing Tournament
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Jamie Green	Assist. Area Supervisor, MA
Bill Whitehurst	Marine Police Officer
Mike Stallings	Marine Police Officer
Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.

Ben McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Other present included:

Sandra Brubaker	Robert Whitaker	Scott Kennedy	Charles Brown
Loretta Cummings	Susan Welk	Daniel M. Bacot	Phill Roahrs
David O'Brien	Carl Eason	Bob Simon	David Merger
Tara Fisher	James W. Rouzie	Ray Glissor	Mark Ahlstrom
Davis Wilson	C. Frederickson	Rommel B. Tamayo	Edward Alleyne
William Judy	Tom Vogt	William Curdts	Ann Rogers
Judy Beale	Mike Gorin	Steve Sonles	Chyrel Coloff
Stan Coloff	Cate Ogden	Andy Soyars	Karen Gorin
Carolyn Schutt	William R. Goettle	Albert Spells	Blair Curdts
Susan Lohles	Brenda Knupp	Jim Knupp	Scott Dewhirst
George Burke	Charles Huff	Kevin Phillips	Kirk Havens
Ellis W. James	Russell Burke	Robert West	Carlton L. Kellum, Jr.
Tracy Firman	John Ridley	Vernon Ward	Joshua Merritt
Charles Wiemmer	Wes Greene	David C. Walker	Lain Reynolds
Tommy Eskridge	Donnie Porter	Kenneth Heath	Thomas Heath
Linda Heath	Charles Rowe, Jr.	Gordon West, Jr.	Ricky Guthrie
James Saunn, Sr.	Daniel Marshall	Glen Mills	Mark Bender
Pete Bender	Lisa Bell	Com Nealon	

and others.

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Commissioner Bowman called the meeting to order at approximately 9:40 a.m. Associate Members Holland (General Assembly, Richmond) and Laine (death in the family) were absent. Commissioner Bowman announced that there was a quorum present so the meeting could proceed.

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At the request of Commissioner Bowman, Associate Member Fox gave the invocation and Bob Grabb, Chief, Habitat Management led the pledge of allegiance.

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

Tony Watkinson, Deputy Chief, Habitat Management explained that Item # 5, James River Association, 09-1316, was moved to the Page Two Items because the protest had been resolved and Item #10, Clancy Herr, 04-0992, was moved to the Page Three Consent Items as an agreement had been reached between the staff and the applicant.

Commissioner Bowman asked for a motion to approve the agenda, as amended. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.**

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MINUTES: Commissioner Bowman requested a motion for approval of the December 15, 2009 Commission meeting minutes, if there were no corrections or changes.

Associate Member Tankard moved to approve the December 15, 2009 minutes, as presented. Associate Member McConaugha seconded the motion. The motion carried, 7-0. 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, Deputy Chief, Habitat Management Division, summarized the 19 items for the Board. (Note: Item 5, James River Association, 09-1316, had been added to this item). His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Commission Meeting

Associate Member Fox expressed his concern that royalty charges for long-term encroachment were too small, since it prohibited the use by other Commonwealth citizens.

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

Associate Member Fox moved to approve all of the projects. Associate Member Robins seconded the motion. The motion carried, 7-0. The Chair voted yes.

2A. CITIZENS TELEPHONE COOPERATIVE, #09-1570, requests permission to cross five (5) jurisdictional streams (Mill, Wilson, Fox, Bridle, and Saddle Creeks) with aerial fiber optic cables as part of an Open Access Fiber Optic Network Project running entirely within a VDOT Right-of-Way from the Town of Independence in Grayson County to the Smyth County line on Route 16. Staff recommends a royalty of \$684.00 be assessed for the encroachment over 228 linear feet of State-owned subaqueous bottom at a rate of \$3.00 linear foot.

Royalty Fees (crossing 228 cu. ft. @ \$3.00/cu. ft...)	\$684.00
Permit Fee	\$100.00
Total Fees	\$784.00

2B. GASLIGHT LANDING, LLC, #05-1221, requests permission to modify existing dock configuration by the addition of 12 mooring piles, associated with the Gaslight Landing project adjacent to property at 207 Mill Street, situated along Occoquan River in Prince William County.

No applicable fees – Permit Modification

2C. KINDER MORGAN, #08-1690, requests permission to modify an existing permit (#08-1690) to authorize the use of a temporary dam and flume system to dewater 1800 square feet of state-owned bottom in order to install articulated concrete mats on top of exposed petroleum pipeline segments. The impact area will be increased by 2,475 square feet to a total of 4,275 square feet of subaqueous river bottom of the Blackwater River in Franklin County. Recommended approval with an additional royalty in the amount of \$1,237.50 for the encroachment over 2,475 square feet of State-owned subaqueous bottom at a rate of \$.50 per square foot.

Royalty Fees (encroachment 2,475 sq. ft. @ \$0.50/sq. ft.)	\$1,237.50
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2D. CITY OF ALEXANDRIA, #09-1060, requests authorization to install a 450 foot long multi-use concrete trail and associated riprap over Cameron Run that will connect to the existing Holmes Run trail in the City of Alexandria.

Permit Fee.....	\$100.00
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2E. FEDERAL HIGHWAY ADMINISTRATION, #08-1194, requests authorization to modify their previously authorized permit to drive sheet piles to a depth of -42.52 feet below mean low water in front of previously authorized riprap adjacent to the Colonial Parkway College Creek bridge within the Colonial Parkway National Historic Park in James City County.

No applicable fees – Permit Modification

2F. CHESAPEAKE PUBLIC WORKS, #09-1653, requests authorization to replace the four (4) existing reinforced concrete pipe (RCP) culverts beneath Campostella Road just north of Military Highway with one (1) dual, 12-foot by 5-foot concrete box culvert and one (1) 10-foot by 5-foot concrete box culvert to alleviate flooding and improve flow of an unnamed tributary to Milldam Creek in Chesapeake. Recommend approval with our standard in-stream work conditions.

Permit Fee.....	\$100.00
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2G. COLUMBIA GAS TRANSMISSION, LLC, #09-1680, requests authorization to replace and/or repair gas pipeline segments (VM-127 and VM-128) in multiple waterbodies, as needed, in Isle of Wight County and the City of Newport News. Recommend that a royalty of \$3.00 per linear foot be determined based on each individual crossing, if replaced.

Permit Fee.....	\$100.00
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2H. RICHMOND DEPARTMENT OF PUBLIC UTILITIES, ET AL, #06-0294, requests a modification of the time-of-year restriction in their existing permit which authorizes the construction of a temporary work causeway and the installation of 500 linear feet of submerged 60-inch diameter water line to facilitate the rehabilitation and replacement of a 54-inch treated water conduit situated adjacent to and within the James River between the Richmond Water Treatment Plant and the Byrd Park Pump Station in the City of Richmond. Recommend a new instream work time-of-year restriction of March 1 through August 31 to protect anadromous fish and freshwater mussel species, as recommended by the Department of Game and Inland Fisheries.

No applicable fees – Permit Modification

2I. NEWPORT NEWS DEPARTMENT OF PUBLIC UTILITIES, #09-1717, requests authorization to rehabilitate the existing sheet-pile dam and abutments with new steel sheeting and concrete work, replace and relocate the former fish ladder, replace the manual boat lock structure and place riprap scour protection to facilitate repairs to Walkers Dam in New Kent County. Recommend approval with our standard instream permit conditions and the agreement to adhere to any instream work time-of year restrictions as recommended by the Department of Game and Inland Fisheries.

Permit Fee.....	\$100.00
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2J. RIVERS REST MOTEL & MARINA, #09-1408, requests authorization to construct two floating dock extensions and 720 linear feet of floating wave break to facilitate the construction of 30 additional wet slips, transient docking and to provide protection from boat wakes and severe weather at their existing marina situated along the Chickahominy River in Charles City County. Recommend approval with an encroachment royalty of \$84,713.00 for the encroachment of the new slips over 84,713 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty Fees (encroachment 84,713 sq. ft. @ \$1.00/sq. ft.).....	\$84,713.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$84,813.00

2K. U.S. ARMY CORPS OF ENGINEERS & CITY OF VIRGINIA BEACH, #09-0427, requests authorization to modify the existing Cape Henry Beach nourishment permit to allow the truck-hauling of beach quality sand from the City-owned Maple Street dredged material management area to the easternmost end of Cape Henry Beach. A maximum of 50,000 cubic yards of beach quality sand will be delivered and spread along the beach within the overall boundaries of the Lynnhaven Fishing Pier and First Landing State Park situated along the Chesapeake Bay.

No applicable fees – Permit Modification

2L. RIVANNA WATER AND SEWER AUTHORITY, #08-0041, requests a modification to their previously authorized project to now replace the existing Meadow Creek Interceptor, sanitary sewer line with approximately 214 linear feet of new ductile iron pipe and/or other suitable pipe material ranging between 36 and 48 inches in diameter, crossing below Meadow Creek at five locations in the City of Charlottesville and Albemarle County. Staff recommends inclusion of our standard in-stream conditions.

No applicable fees – Permit Modification

2M. BEDFORD COUNTY, #09-0932, requests authorization to conduct a stream restoration project along approximately 3,472 linear feet of the South Fork of Goose Creek, to include channel modifications, bank grading, and the installation of log and rock vane structures, rock cross vanes, modified J-hook structures, toe wood stabilization, rock and notched log sills, a footbridge, and two temporary stream crossings for construction access, located immediately south of Montvale Elementary School in Bedford County.

Permit Fee.....	\$100.00
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2N. CITY OF ROANOKE, #09-1581, requests authorization to replace portions of and to widen the existing Berkley Road bridge, which crosses approximately 42 linear feet of Glade Creek in the City of Roanoke. The proposed project calls for an approximately 30-foot wide bridge to replace the existing 22-foot wide structure, the installation of approximately 80 linear feet of riprap bank/scour protection adjacent to the bridge's wing walls, and the installation of temporary cofferdams to allow for portions of the project to be constructed in the dry. Staff recommends inclusion of the standard in-stream conditions.

Permit Fee.....	\$100.00
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2O. BAE SYSTEMS, #09-1600, requests authorization to install and backfill approximately 465 linear feet of steel sheet pile bulkhead a maximum of 4 feet channelward of an existing, deteriorated bulkhead located between Piers 3 and 5 at their facility situated along the Southern Branch of the Elizabeth River in the City of Norfolk. The proposed project also includes the dredging of approximately 500 cubic yards of State-owned subaqueous material and the placement of approximately 150 cubic yards of clean fill to establish a proper slope for the installation of approximately 465 linear feet of riprap bulkhead toe/scour protection extending approximately 20 feet channelward of the proposed bulkhead.

2P. METRO MACHINE CORPORATION, #09-1708, requests authorization to install a 2-foot 6-inch wide by 448-foot long fascia beam supported by 21 plumb piles on the channelward side of an existing wharf along the west side of a wet slip, immediately south of Pier 1 at their facility situated at the confluence of the Eastern and Southern Branches of the Elizabeth River in the City of Norfolk.

Permit Fee.....	\$100.00
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2Q. URBANNA HARBOR YACHT CLUB ASSOCIATION, #07-1620, requests authorization to revise their existing permit so as to allow the construction of a total of 2521 linear feet of floating pier which includes a 20 foot wide gap between the two large pier sections, a new utility pier connection near the upstream end of the pier and more channelward alignment of the downstream end of the pier at their pier facility situated along Urbanna Creek in Middlesex County. Uncovered boatlifts are also proposed to be re-installed in four specified slips.

No applicable fees – Permit Modification

2R. TOWN OF SMITHFIELD, #09-0649, requests authorization to modify their previously issued permit, specifically to modify the alignment of a previously authorized elevated pedestrian walkway over Little Creek, a tributary to Cypress Creek, in the Town of Smithfield in Isle of Wight County in conjunction with the Windsor Castle Park project.

Permit Fee.....	\$100.00
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2S. JAMES RIVER ASSOCIATION, #09-1316, requests authorization to construct a 70-foot wide by 300-foot long by two-foot high Atlantic Sturgeon spawning reef, using riprap granite stone, within the James River at the Turkey Island Cutoff, near the Presquile National Wildlife Refuge in Chesterfield County. The applicant has also requested authorization to install one buoy at the midpoint of the proposed reef to accommodate hydrosonic monitoring equipment. The project was protested by Vulcan Materials Company, but had been resolved.

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).

Bob Grabb, Chief, Habitat Management gave the presentation. His comments are a part of the verbatim record. (Note: Item #10, Enforcement: Clancy Herr, 04-0992, was added to the Page Three Consent Items, as 3C.)

3A. FEDERAL HIGHWAY ADMINISTRATION, #09-1215, requests after-the-fact authorization for emergency repairs to Colonial Parkway including the installation of a 6-inch concrete pile jacket installed around the damaged piling in Powhatan Creek in Colonial National Historic Park in James City

County. The applicant has agreed to a triple permit fee of \$300.00 in lieu of further enforcement action. No civil charge is recommended.

Mr. Grabb explained that on July 22, 2009, the Colonial Parkway bridge over Powhatan Creek was hit and damaged by a workboat belonging to Cottrell Contracting Corp. that was being used in a dredging operation in the James River. The support piling hit by the workboat was almost severed and Colonial Parkway in the vicinity of the bridge has been closed since. The Federal Highway Administration called VMRC a few weeks later to inform us of the incident and let us know that they planned to make emergency repairs to the bridge. Emergency repairs on the piling were begun on October 2, 2009 and completed on November 2, 2009. Staff received completed project drawings from the Federal Highway Administration (FHA) on December 2, 2009. A 6-inch concrete pile jacket was installed around the damaged piling.

Mr. Grabb said that staff had completed a full public interest review regarding the change, including contacting both adjoining property owners and running another newspaper advertisement. Neither adjoining property owner voiced an objection to the as-built project. Given the emergency nature of the work, staff was recommending approval with triple permit fees (\$300.00), which the applicant had agreed to pay. No civil charge was recommended.

Commissioner Bowman asked for questions of staff. Associate Member Robins asked why was there a triple fee being charged.

Mr. Grabb explained that in accordance with the Code and in keeping with past actions, the Commission normally charges a triple permit fee for an after-the-fact application and the applicant had agreed to pay it.

Commissioner Bowman asked if there was anyone present in support or opposition who wished to speak. There were none. He asked for a motion.

Associate Member Schick moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Permit Fee (ATF – Triple Fees).....	\$300.00
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3B. MR. & MRS. JOHN SCHAFFER, #91-0059, request after-the-fact authorization to retain 31 linear feet of replacement timber bulkhead, installed approximately 1 foot channelward of the existing bulkhead serving 4024 N. Witchduck Road, situated along the Western Branch of the Lynnhaven River in Virginia Beach. A draft permit was originally completed, however the applicants

never signed the permit copies, nor paid the \$75.00 permit fee. The applicants have agreed to a triple permit fee of \$225.00 in lieu of further enforcement action. No civil charge is recommended.

Mr. Grabb explained that the replacement bulkhead was actually installed in 1991 after the original application was submitted, but prior to a draft permit being issued. At that time, staff continued to process the request and then administratively issued a draft permit which included a triple permit fee of \$75.00. The draft permit was sent to the applicants in care of their agent/contractor, however the executed permit documents and permit fee were never sent back to the Commission. According to the applicants, they did not recall that their agent/contractor ever informed them of the necessary permit execution along with the requisite fee.

Mr. Grabb said that staff discovered that a final Commission permit was never issued for the installed bulkhead after the applicants recently submitted an application to expand their existing private pier. A second public interest review was recently completed, including adjoining property owner notifications and a newspaper advertisement, and no opposition was received. The City of Virginia Beach approved the replacement bulkhead in 1991.

Mr. Grabb stated that the applicants had agreed to a second triple permit fee of \$225.00 to complete the original permit requirements in lieu of further enforcement action. A royalty for the filling of State-owned submerged bottom was originally assessed in the draft permit; however, in 1991 the Commission did not have the authority to collect such monies and they were later forgiven by Act of the Legislature. In this case staff did not feel a civil charge was warranted given that the draft permit was previously prepared and sent out for execution and there had not been any further encroachment since that time. Therefore staff recommended that the Commission endorse the consent agreement and grant after-the-fact approval for the replacement bulkhead.

Commissioner Bowman asked for questions of staff. There were none. He asked if anyone was present in opposition or support who wished to comment. There were none. He asked for a motion.

Associate Member Schick moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 7-0.

Permit Fee (ATF Triple Fees).....	\$225.00
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3C. CITY OF FREDERICKSBURG, #08-1541, requests after-the-fact authorization to retain 172 linear feet of new 36-inch sewer line installed beneath the CSX Bridge in the City of Fredericksburg. The new 36-inch sewer line was to be

installed in a cofferdam not obstructing more than one-half of the stream at a given time. Instead, the contractor (WC Spratt) installed three (3) 36-inch culverts and covered the culverts with earthen material to construct a roadway to access the area to install the sewer line. The contractor has agreed to a civil charge in the amount of \$8,000.00, and the City triple permit fees, in lieu of further enforcement action.

Mr. Grabb explained that on October 21, 2008, the Commission authorized the issuance of a permit (#08-1541) to the City of Fredericksburg for the replacement of a sewer line that would encroach over approximately 331 linear feet of Hazel Run. A special condition of the executed permit stipulated that all in-stream construction activities were to be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half of the width of the waterway would be obstructed at any point in time. In addition, the erosion and sediment controls stipulated in the "Virginia Erosion and Sediment Control Handbook" (3rd Edition, 1992) were to be followed throughout construction.

In this case, Mr. Grabb further explained that instead of conducting work in a cofferdam and obstructing only half of the stream at a given time, the contractor made a decision to install three (3) 36-inch culverts on the bottom of Hazel Run the entire length of the CSX Bridge. They then placed earthen fill material on top of the culverts to construct a roadbed for equipment access to remove and replace the sewer line. Apparently this work was initiated on September 11, 2009.

Mr. Grabb stated that the unauthorized activity was reported to VMRC by the City's permit agent (Williamsburg Environmental Group) on September 24, 2009, and a site inspection was conducted by VMRC Staff on September 29, 2009. Based on a finding that the work was in violation of the authorized permit, a Notice to Comply was issued on October 6, 2009, that required City of Fredericksburg, WEG and WC Spratt (the contractor) to submit a restoration plan using dam and flume technology and a detailed plan to remove the culverts along with all earthen materials and restore the streambed to its original contour and condition. The restoration plan was to be submitted within 15 days of the receipt of the Notice to Comply and had to be approved by VMRC staff. A Notice to Comply was issued on October 6, 2009.

Mr. Grabb said that the restoration plan was submitted on October 30, 2009, and was approved by VMRC staff on November 12, 2009. The replacement of the sewer line and the implementation of the restoration plan started on November 17, 2009. The last culvert was removed November 19, 2009, and the site was restored to pre-construction contours and conditions by November 20, 2009.

Mr. Grabb explained that although the area had been restored, in this case, based on the information provided, it appeared the contractor, WC Spratt, made a conscious decision in the field to undertake the culvert installation and fill rather than install the cofferdam

as required by the permit. As such, staff felt they were responsible for the violation and staff recommended the Commission accept their agreement to pay a Civil Charge of \$8,000.00 in lieu of the need for any further enforcement action. The City had also agreed to pay a triple permit fee of \$300.00.

Commissioner Bowman asked for questions of staff. There were none. He asked if there was anyone present in support or opposition who wished to comment. There were none. He asked for a motion.

Associate Member Robins moved to approve the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Permit Fee (ATF Triple Fees, City)...	\$ 300.00
Civil Charge (Contractor).....	\$8,000.00
Total Fees.....	\$8,300.00

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3D. ENFORCEMENT: CLANCY HERR, #04-0992. Show Cause hearing to discuss why Mr. Herr should not be found in violation of §§ 28.2-1203 and 28.2-1212 of the Code of Virginia for the construction of a 298-foot long pier without a permit from the Commission and in excess of that authorized by staff, at his property situated along Pungoteague Creek in Accomack County. Continued from the November 24, 2009, Commission meeting.

Mr. Grabb explained that subsequent to the Commission’s your November meeting, several things had occurred. On January 11, 2010, Judge Tyler issued an Order approving Mr. Herr’s riparian apportionment, as depicted in a survey plat by Robert Kennedy, “Apportioned Riparian Area,” dated December 22, 2009. That Order also required Mr. Herr to reduce the length of his existing pier by 50 feet to accommodate navigable access to the cove (The plat depicts the pier after the 50-foot reduction.). As a result, the pier was to be reduced 50 feet from 288 feet to 238 feet. Mr. Herr’s contractor is undertaking that removal now and staff hoped that the removal would be completed by the hearing on January 26, 2010.

Mr. Grabb explained further that once the existing pier had been reduced by 50 feet, staff believed it would be within Mr. Herr’s riparian area as granted by Judge Tyler. Since the pier would no longer obstruct navigable access into the cove, staff also considered that the violation would be resolved.

Mr. Grabb stated that although there was now no longer any "authorization" required from the Marine Resources Commission, staff believed a civil charge was still appropriate, given the original violation and the fact that the Herrs had enjoyed the use of

the illegal pier for several years. Staff believed that a \$1,200.00 civil charge was warranted given a minimal environmental impact and moderate degree of deviation. Mr. Herr has agreed to pay that \$1,200.00 civil charge in lieu of any further enforcement actions permitted by Code.

Commissioner Bowman asked if there any questions of staff. There were none.

Staff indicated that Mr. Eason who was representing Mr. Herr was present.

Carl Eason, Attorney for Mr. Herr, stated that his client accepted the staff’s recommendation. (He did not come forward and his comments may not be audible on the recording.)

Commissioner Bowman asked if there was anyone present in support or opposition who wished to speak. There were none. He asked for a motion.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried. 7-0.

Civil Charge.....	\$1,200.00
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4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.

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

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5. JAMES RIVER ASSOCIATION, #09-1316, requests authorization to construct a 70-foot wide by 300-foot long by two-foot high Atlantic Sturgeon spawning reef, using riprap granite stone, within the James River at the Turkey Island Cutoff, near the Presquile National Wildlife Refuge in Chesterfield County. The applicant has also requested authorization to install one buoy at the midpoint of the proposed reef to accommodate hydrosonic monitoring equipment. The project is protested by Vulcan Materials Company.

Moved to Page Two Items – Protest Resolved.

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- 6. YORK RIVER YACHT HAVEN ASSOCIATES, #09-0013**, requests authorization to remove the two (2) existing open-pile piers closest to the mouth of Sarah Creek and install two (2) new floating piers in a slightly revised alignment which will extend 304 feet and 155 feet channelward of mean high water and contain 48 wetslips at their marina facility situated along Sarah Creek at 8109 Yacht Haven Road in Gloucester County. The project is protested by an adjacent property owner.

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

Mr. Neikirk explained that the York River Yacht Haven Marina was located near the mouth of Sarah Creek, a tributary of the York River in Gloucester County. York River Yacht Haven is a full service marina with 305 boat slips. They proposed to remove two existing open-pile piers and construct two floating piers. One of the piers currently extended approximately 300 feet channelward of the marina and provided 27 wetslips. That pier is referred to as Pier #1. The other pier extends approximately 100 feet channelward of the marina and was a commercial structure that had served the aquaculture operations that used to be conducted at the marina. Pier #1 was proposed to be replaced with an 8-foot wide by 304-foot long floating pier with 33 wetslips. The old aquaculture pier was proposed to be replaced with an 8-foot wide by 155-foot long floating pier with 8 wetslips. Both new piers were proposed to be realigned so they angled slightly toward the mouth of the creek so that they were basically parallel with the other piers at the marina. An 8-foot wide by 250-foot long floating marginal wharf was proposed along the landward side of the piers to provide access to the shorter pier and provide some side-to mooring space. In total, the improvements would provide slips and mooring space for approximately 47 boats, approximately 20 more than were currently provided at the facility.

Mr. Neikirk said that the project was being protested by Mr. Frank Dobson and Ms. Joan Whiteley, the owners of the adjacent property located at the mouth of Sarah Creek. They stated that they were concerned with the length of the piers, increased number of boat slips and the possible adverse environmental impacts associated with the project.

Mr. Neikirk stated that in their report dated January 20, 2010, VIMS stated that the additional wetslips would likely increase, incrementally, the introduction of pollutants into the waterway and that there would be some shading impacts to the shallow water community. They recommended the implementation of best management practices to reduce the potential environmental impacts.

Mr. Neikirk noted that the Health Department had stated that the project was in compliance with their Sanitary Regulations for Boat Moorings. The piers were to be located in an area which was currently classified by the Health Department, as seasonally

condemned. They did not anticipate the project would necessitate an increase in the size of the existing seasonal condemnation.

Mr. Neikirk stated that the Department of Conservation and Recreation did not anticipate that the project would adversely affect any of their programs although their Chesapeake Bay Local Assistance Division noted that the applicability of the Chesapeake Bay Act requirements were regulated by the local government. The Department of Environmental Quality had determined that a Virginia Water Protection Permit would not be required. No other State agencies had commented on the proposal.

Mr. Neikirk noted that the project would not encroach on any public or privately leased oyster planting ground.

Mr. Neikirk explained that on the plan view drawings, the applicants had depicted what they believed would be the riparian boundary between their facility and the adjacent property owned by Ms. Whiteley and Mr. Dobson. It was important to note, however, that the riparian areas had not been apportioned by the Circuit Court. The proposed 155-foot long pier would extend nearly to the estimated riparian boundary.

Mr. Neikirk said that staff did not believe the project, as proposed, would adversely affect navigation within Sarah Creek. The project also appeared to generally conform to our Marina Siting Criteria and Subaqueous Guidelines.

Mr. Neikirk stated that York River Yacht Haven was a large facility, however, they had implemented numerous best management practices (BMPs) to help mitigate environmental impacts. Wastewater from the operation was handled by HRSD which also helps to mitigate some of the potential water quality impacts. Where possible, staff believed it was preferable to expand and improve existing marinas in lieu of developing new marinas in more pristine areas.

Mr. Neikirk said that staff was concerned with the extension of the shorter aquaculture pier to the estimated riparian boundary with the adjacent property. Even if the riparian boundary had been apportioned by the court, staff generally believed it was mutually beneficial to allow some offset from the coterminous boundary between parties to provide for some shared access past the structures. In this case, if the adjacent property owner were to also construct a pier to near their side of the riparian boundary, it would prevent access to the downstream side of the pier and the proposed marginal wharf.

Mr. Neikirk explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project conditioned upon the downstream pier being reduced by 36 feet. Such a reduction would result in the elimination of three (3) slips.

In accordance with §28.2-1206 B (iii) of the Virginia Code, staff believed the project was currently exempt from having to pay any encroachment royalties.

Commissioner Bowman asked for questions of staff. There were none.

Dan Bacot, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bacot explained that he was operating under a ten year plan to replace all old piers as finances were available. He said this would be the last of the old piers. He stated that Pier #1 was 50 years old and the aquaculture pier was 60 years old. He said this was an effort to update and modernize in order to provide for all of the recreational community. He said there was extreme disrepair and damage resulting from a hurricane. He said there was a fully functioning pump out station that is available to the public for their use. He said this repairing will allow them to fill two more full-time jobs.

Commissioner Bowman asked about the two full-time jobs. Mr. Bacot explained that there needs to be one employee for each 50 boats to be able to run and maintain the facility.

Commissioner Bowman asked if the boaters rented the slips or were they transient. Mr. Bacot stated that there were both. He said their job was to provide access to water for all of Virginia's citizens.

Commissioner Bowman asked if he would accept the 36-foot reduction. Mr. Bacot explained that he could accept the reduction, but he had spent a lot for one-half acre and he needed to recover that expense. He said this project was not doing much harm and was not encroaching on his neighbor's riparian rights.

Associate Member Fox asked if he planned to continue with aquaculture. Mr. Bacot said that it had not gone correctly and he had had problems with growout. He said he needed a cage system and to take it out to the oyster ground, but the ground was too muddy.

Commissioner Bowman asked if anyone was present in opposition who wished to speak. There were none. He then asked for discussion or action by the Board.

Associate Member Schick explained that he was familiar with the area and this was a good facility and benefitted the citizens. He said the area was well protected and the piers can be closer because of the kind of area that it is in. He moved to approve the project as applied for. Associate Member McConaugha seconded the motion

Commissioner Bowman stated that staff had done a good job arriving at a reasonable compromise and recommendation for the 36 foot reduction. He said this marina is owned, but in disrepair, but can be fixed. He said the 36 feet made the pier not too far away and could impact the rights of others when they move into this area.

Associate Member Fox said that he shared the concerns of the protestants and it was not relevant that the owners did not use their property as they still had riparian rights. He stated that it was not necessary that the pier be cut back by 36 feet, as it could be less. Commissioner Bowman asked if he were making a substitute motion. **Associate Member Fox stated that he moved to adopt the staff recommendation and the pier to be reduced by 36 feet. Commissioner Bowman asked for a second of motion and there was no second. The substitute motion failed for lack of second.**

Commissioner Bowman asked for a vote on the original motion to approve the project as applied for, which was made by Associate Member Schick. That motion carried, 7-0.

Permit Fee.....	\$100.00
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- 7. **MR. AND MRS. BILL BRUBAKER, #09-0398**, request authorization to install a two-point private mooring system centered near 37° 31' 32" North Latitude and 76° 25' 3" West Longitude, north of the existing Mariners Point Homeowners Association pier and approximately 100 feet channelward of the Villas at Wilton Creek in Middlesex County. The project is protested by several residents along the creek, as well as the several owners associations within the Coves at Wilton Creek development.

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

Mr. Neikirk explained that Mr. and Ms. Brubaker owned a unit in the Mariners Point Villas within the Coves at Wilton Creek development located along Wilton Creek in Middlesex County. They also owned the right to use an assigned slip at the Mariners Point community pier located in the waters adjacent to the development. The assigned slip was located at the downstream end of the community pier and measured approximately 14 feet wide by 40 feet long.

Mr. Neikirk said that the Brubakers owned a 49-foot long Krogen Express trawler with a stated beam of 15' 9 and a draft of approximately 4' 6". Obviously, the Brubakers vessel would not fit in their assigned slip. The proposed mooring system was designed to enable them to moor their vessel in the waters near their villa.

Mr. Neikirk stated that the proposed two-point mooring system utilized two helical screw anchors with associated mooring tackle and two standard mooring balls. The vessel was designed to be moored between the two mooring balls with one attached to the bow and the other attached to the stern. This system reduced the footprint of the mooring by eliminating the 360° swing radius associated with a typical single-point mooring and it

allowed the vessel to be located closer to shore. The proposed mooring was sited approximately 100 feet channelward of the shoreline. The water depth at the proposed mooring location was approximately minus seven (-7) feet at mean low water. Development along the creek is primarily residential.

Mr. Neikirk explained that the project was protested by several residents along Wilton Creek, as well as, the Wilton Creek Owners Association, the Mariner's Point Unit Owners Association, the Coves at Wilton Creek Owners Association, and the Villas at Wilton Creek Unit Owners Association. Their concerns included; adverse impacts on navigation, adverse impacts on the riparian rights associated with the development, the possible violation of an agreement reached concerning the maximum number of slips allowed adjacent to the development, a safety concern should the boat break from its mooring, the possible establishment of a precedent for moorings within the creek, and adverse impact on the creek's historic ability to serve as a "hurricane hole."

Mr. Neikirk said that by letter dated June 9, 2009, the Coast Guard stated they had no objection to the project but added that the Brubakers would need to submit a Private Aids to Navigation application and that the vessel was required to be marked in accordance with Coast Guard regulations when utilizing the mooring.

Mr. Neikirk stated that the Health Department stated in their letter dated June 15, 2009, that the project was in compliance with their Sanitary Regulations for Boat Moorings. No other agencies commented on the project.

Mr. Neikirk said that the project would not encroach on any public or privately leased oyster planting ground.

Mr. Neikirk explained that staff did not believe that the proposed mooring would have a significant impact on navigation. Additional moorings in the vicinity, however, could adversely affect navigation. A single mooring at the proposed location would probably have only a minimal adverse impact on navigation and the aesthetic concerns expressed by the nearby property owners. Staff believed, however, that many of the other concerns expressed by the opposition were warranted. It is important to note that the adjacent shoreline is owned by the association and the mooring could adversely affect the riparian rights associated with their property.

Mr. Neikirk said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff was compelled to recommend denial of the project, as proposed. Although to date the association has been reluctant to do so, staff would be willing to entertain an application from the Association to modify the slip assigned to the Brubakers such that it would better accommodate their vessel.

Commissioner Bowman asked for questions, there were none. He asked if the applicant was present.

Sandra Brubaker, applicant, was sworn in and her comments are a part of the verbatim record. Mrs. Brubaker explained that they were originally told that the size of the slip was 16 feet by 40 feet and it was not quite correct. She said they had asked the Association if they could move the pilings to make it 16 feet wide and that they would pay for it. They were told that they could not do this as it would set a precedent for others to want to do the same. She said they had suggested that they be allowed to use the transient slip and the Associate told them no. She said they would like to keep their boat where they live.

Commissioner Bowman asked for questions.

Associate Member Robins asked about the original pier application. Mrs. Brubaker explained that they were allowed to have 20, but only built 19, but after there was damage due to Hurricane Isabel the 20th slip was built. She said they purchased the slip from the Association.

Commissioner Bowman asked if the protestants were present and wished to speak.

George Burke, President of the Mariners Homeowners Association, was sworn in and his comments are a part of the verbatim record. Mr. Burke explained that the aesthetics would be impacted as the cove-like area would be obstructed by the change. He said that it would impact the access on both sides of a shoal for the small boats use of the area, and access to the transient slip by guest of the homeowners. He continued by saying that this would impact the safety of the facility as there was a lot weather events that occur during bad storms. He said that the homeowners' agreement limited them to 20 slips. He said there would be two mooring balls and if they did not use it would it be rented? He said there was also concern that other mooring balls would be added later and the Homeowner's Association could not police them.

Commissioner Bowman asked if there were questions.

Associate Member Tankard noted that he had addressed four points, but wanted to know if they had considered making a slight change and allow anchoring at the dock. Mr. Burke said he was not on that committee, but two issues would be raised. He said that making that change would not change the fact that the boat would stick out further and could impact navigating the small creek. He said the other issue was the pump out station and the boat was put there, the Federal government would not let them change it.

Commissioner Bowman stated that this case gave him a bad taste as the resident should be able to make use of the facility as they are paying for it. He said the pump out station involved simple plumbing.

Mr. Burke indicated on a slide where the pump out station was located and explained that they were told by the agency that it was not appropriate to pump out onto the shoal.

Associate Member Schick stated that this was something to be solved by a structural engineer, not VMRC.

Commissioner Bowman said that common ground needed to be found so everyone would be happy and he wished there was a solution.

William R. Curdts, protestant and resident on the creek, was sworn in and his comments are a part of the verbatim record. Mr. Curdts stated he lived on the opposite side of the creek and was President of the Wilton Creek Improvement Association. He said there were 51 lots with 25 having water frontage. He said they met and unanimously opposed the mooring balls in the creek as there needed to be a line drawn on the number of slips to be allowed. He said the facility was already built to the maximum. He said since 1987 there had been concern with the density of boats in the area. He said originally the VMRC had denied the 49 slips because there would be too many, but it was appealed and the courts gave the developer 40 slips which included inland lots. He said hearings were held and an agreement was made to restrict the number of boats on Wilton Creek. He said he had not been able to find the documents. He said the facility is already at its limit. He noted the cruising guide indicates that this area is a safe harbor in bad weather events. He stated it was also a prime recreational area.

Stan Coloff, protestant and Wilton Creek resident, was sworn in and his comments are a part of the verbatim record. Mr. Coloff stated he was concerned that once this was allowed there would be more to follow. He said the creek is narrow and he was concerned with impacting navigation. He said there were concerns that the use of the pump out station would be impacted. He said the water depth at the pump out station is shallow and care had to be taken to navigate it.

Commissioner Bowman asked for any questions. Associate Member Tankard asked if it was better to have the boat at the dock or tied to mooring buoys. Mr. Coloff suggested that there were other marinas in the area with easier access and other options.

James Knupp, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Knupp explained that there were 42 occupied homes in the area and there was a close association with others on the creek. He said that small boats are used in this area. He said that he did not feel that this project would enhance the property values or access in the area. He said someone cannot have one size boat when purchased property and then buy another that will not fit the slip. He said they were not responsible for solving their problem. He said the boat could be kept in another location and the homeowner association wants this application denied.

William R. Goettle, protestant and resident of Mariners Point, was sworn in and his comments are a part of the verbatim record. Mr. Goettle said the mooring balls was proposed to be placed in front of his property and he felt this was a bad precedent to set. He stated that the applicant was not a full-time resident, which meant they would not keep up with their boats and it might be a hazard. He said for public health reasons and the agreement involving the Federal grant and if they moved it they would be exceeding the footprint. He said the construction size of the slip was to be 16 feet, but obstructions made it so some could not be 16 feet. He stated the trawler located there was only 42 feet.

Mrs Brubaker stated that next month when they retire they will become full-time residents. She said their old boat did fit the slip and they knew the slip was smaller, but were told they could ask the board to make any changes by a boardmember, real estate agent, and other residents.

Commissioner Bowman asked for discussion or action for this matter.

Associate Member Robins said he appreciated the protestants concerns for these mooring balls, but the staff recommendation would be a good solution. He said that the Commission cannot make the Association amend the slip, but the staff would look favorably on a change. He said the staff recommendation was right to deny the mooring balls and to suggest that the piling be moved one-foot. He said he hoped the Association would look at this suggestion. He moved to accept the staff recommendation.

Commissioner Bowman asked for discussion or action by the board.

Associate Member Robins stated that he appreciated the concerns of the protestants as regards the mooring balls. He stated also that the staff recommendation was a good solution and the Commission cannot require the Association to make any changes. He said that it was the Commission who were authorized to approve pump out stations, not others and he said he felt that a 49-foot boat would not impede navigation. He said the staff recommendation was right considering all the protests when they said a mooring buoy was not appropriate in this area and to make the suggestion to move the piling just one-foot; which he hoped the Association would consider. He stated he moved to accept the staff recommendation. Associate Member Schick seconded the motion. He said that he was concerned that there was a non-riparian application being considered and if this mooring buoy, as well as others, were approved, it would become a problem. He stated that he felt that a mooring buoy application should never have come before the Commission. Associate Member Tankard stated that he had reservations, as well. He explained that a slight deviation of the dock would solve the problem and then no mooring buoy would be necessary. The motion carried, 7-0.

No applicable fees – Permit Denied

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8. **APPALACHIAN POWER COMPANY, #08-2132**, requests authorization to install a new aerial 138kV transmission line running from Penhook to Westlake and crossing over a total of 175 linear feet of the Blackwater River in Franklin County. The project is protested by one of the adjacent property owners.

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

Mr. Bacon explained that Appalachian Power Company proposed to construct a 14.8-mile 138kV line entirely within its existing right-of-way. The majority of the transmission lines were located in rural or agricultural areas. New structures would consist of single poles with two (2) lines hanging from the structure. Poles would be placed to avoid all stream impacts. The stated purpose of the Appalachian Power Company Penhook to Westlake 138kV line project was to serve the growing electrical demand in the region. In addition to the one jurisdictional stream crossing over the Blackwater River, the line would also cross several non-jurisdictional streams with drainage areas less than five (5) square miles.

Mr. Bacon stated that an individual letter of protest had been received from Mrs. Ann Rogers. Mrs. Rogers owned property along the Blackwater River near the crossing. The easement for the transmission line, however, did not cross her property. Mrs. Rogers objected to the transmission line because she believed that there would be impacts to the waterways and the adjacent upland properties along the proposed route.

Mr. Bacon said that the Department of Game and Inland Fisheries (DGIF) had expressed no objection to the project as long as the crossings were accomplished by aerial means and no stream impacts would occur. The Department of Conservation and Recreation (DCR) had, however, expressed concern regarding potential upland erosion and sediment issues. These should be addressed through implementation of erosion and sediment control regulation requirements. No other State agencies had commented on the proposed project.

Mr. Bacon explained that while staff was sympathetic to the landowners whose upland property may be affected by the project, it appeared these upland concerns were outside the Commission's jurisdiction. In addition, staff believed those issues were considered by the Franklin County Board of Supervisors at its October 31, 2006, advertised public hearing. Their decision concurred with the Planning Commission's Comprehensive Review for the approval of the Penhook to Westlake Project.

Mr. Bacon stated that since there should be no direct impact to State-owned subaqueous land and after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in

§28.2-1205(A) of the Code of Virginia, staff recommended approval of the application for a permit to install the aerial lines over State-owned subaqueous land, with the following conditions:

- 1) Any streambeds or banks impacted by the project shall be restored to pre-existing contours and conditions upon completion of construction.
- 2) The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) and the approved Sediment and Erosion Control Plan for the project will be followed throughout construction.
- 3) Any proposed deviation in crossing method or location must be formally authorized by the Commission.

Mr. Bacon said that if it were to be approved, staff would also recommend the assessment of a royalty in the amount of \$1,050.00 for the encroachment of each of the two lines over 175 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Commissioner Bowman asked if the applicant was present and wished to comment.

Robert Whitaker, representative for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Whitaker stated that the project was within the boundaries of Smith Lake and was started in the Fall of 2004 with rigorous siting studies being done. He said the County denied their request in 2005. He said they then did another siting study, which the County did approve it in October 2006. He said that all other required permits had been received from other agencies with jurisdiction. He said a species study had also been done on the Pinch-Smooth Love Flower. He said after they received the protest by Ms. Rogers they arranged to meet with her on site in October 2009. They discussed her concerns and agreed to mitigate as much as was possible.

Commissioner Bowman asked what her concerns were. Mr. Whitaker stated that they were about the aerial crossing and the disruption for birds and for cutting down of trees. He said any removal would be done manually in order to make way for the crossing. Commissioner Bowman asked if equipment was used to remove the foliage from the stream. Mr. Whitaker said that no equipment could be used because of the steepness of the area.

Commissioner Bowman asked for questions. There were none. He asked if anyone in support of the project was present. There were none. He then asked for anyone in opposition who was present and wished to speak.

Ann Rogers, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Rogers provided handouts printed by the County for the Blue Way Program. She said there small boating use of the rivers. She said that there is quite a bit of

recreational use. She noted some of the pictures to demonstrate this use. She said she was concerned with the company's use of standard practices to clear the way for the crossing. She said this was also an area with a status of being a scenic waterway. She said the overhang of the trees along the bank was used by the fish as they tend to hang out under the overhang. Also, the trees contribute to the scenic appearance. She said another of her concerns was the damage to the bank with the trees being removed. She said she was requesting a written enforceable protocol on existing and proposed plans. She said this was of value to the locals and the County. She asked the Commission to protect the tree cover.

Associate Member Fox asked about the location of the existing power line. Ms. Rogers explained it was 800 feet towards the bridge. She said she thought that removing the trees was the standard practice and she was concerned with the new crossing. She again addressed the issue of having an agreement in writing to protect the area.

Commissioner Bowman explained that the Commission could not compel any action on the existing line, only what was before the Commission now.

Mr. Whitaker in his rebuttal explained that the existing crossing was 100 feet, the distributor crossing or supplier of 34,000 volts. He said the distributor was lower, closer to the ground. He said the structure was 24 feet and usually the 25-foot trees can be allowed to stay, but that was on the distributor.

Commissioner Bowman asked about their plan for the 25-foot trees. Mr. Whitaker said they leave them as far as practical. Commissioner Bowman asked if there was a clear understanding of this. Mr. Whitaker stated they sent a letter to Ms. Rogers, dated October 5, 2009 explaining their use of manual clearing and buffer zones in the area of the river and wetlands. He said there would be selective clearing and they would provide a document.

Commissioner asked for questions. Associate Member Fox asked about their intent to cut trees adjacent to the river. Mr. Whitaker said the 75-foot trees would be cut, but they would not cut the 15-foot brush along that area.

Commissioner Bowman asked for discussion or action by the Board.

Associate Member Robins stated that this was a scenic area and he appreciated the protestant's concerns, but that most of them were not under VMRC's jurisdiction. He said the applicant's representative had been responsive to these concerns. He said he moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

Royalty Fees (crossing 175 lin. ft. @	
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Commission Meeting

**15756
January 26, 2010**

\$3.00/lin. ft.).....	\$1,050.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,150.00

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Associate Member Robins left the meeting for a short time.

- 9. **PUBLIC HEARING:** To amend the initial inventory of ungranted shores of the sea, marsh and meadowlands in order to establish a metes and bounds boundary between the property of Commonwealth and the U.S. Fish and Wildlife Service at the Eastern Shore National Wildlife Refuge near Wise Point in lower Northampton County.

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

Associate Member Robins returned and Associate Member Schick left the meeting.

Mr. Badger explained that in 1995, the General Assembly enacted legislation that became Chapter 15 of Title 28.2 of the Code of Virginia "Ungranted Shores of the Sea, Marshes and Meadowlands," which provided for the protection and management of these lands and their related resource values. The Virginia Marine Resources Commission was designated as the lead agency to manage the ungranted state lands on the Eastern Shore in consultation with the Virginia Coastal Land Management Advisory Council.

Mr. Badger stated that staff had verified the location of the line in the field and concurred with the findings of the surveyor retained by the U.S. Fish and Wildlife Service to establish this boundary. As such, staff recommended the Commission approve the proposed metes and bounds boundary between the property of the Commonwealth and the U.S. Fish and Wildlife Service at the Eastern Shore National Wildlife Refuge near Wise Point in lower Northampton County, as stipulated by §28.2-1510.

Mr. Badger said that staff further recommended the Commission designate the Commissioner or his designee to sign the metes and bounds boundary documentation

Mr. Badger stated that the applicant was concerned that the MOU for Fisherman Island will not be included. He stated no one was present for this matter.

Commissioner Bowman asked if there were any questions. He asked if the plat for this was to be recorded in Northampton County. Mr. Badger responded yes, but it was not finished and he was not sure who would sign it. Commissioner Bowman asked if we would survey and provide the number. Mr. Badger responded yes, we would record their plat and then we would survey the State's portion and put it to the record.

Commissioner Bowman opened the public hearing.

Susan Rice, was sworn in and her comments are a part of the verbatim record. Ms. Rice said that they supported the project, but wished to make one correction to the wording. She said where it says, Eastern Shore, it should say Eastern Shore of Virginia.

Commissioner Bowman asked for action by the Board.

Associate Member Tankard moved to accept the staff recommendation with the noted change in name. Associate Member Robins seconded the motion. The motion carried, 6-0. Associate Member Schick was absent during this presentation.

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10. ENFORCEMENT: CLANCY HERR, #04-0992. Show Cause hearing to discuss why Mr. Herr should not be found in violation of §§ 28.2-1203 and 28.2-1212 of the Code of Virginia for the construction of a 298-foot long pier without a permit from the Commission and in excess of that authorized by staff, at his property situated along Pungoteague Creek in Accomack County. Continued from the November 24, 2009, Commission meeting.

Moved to Item #3C Consent Items – Resolved.

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The Commission broke for lunch at approximately 11:58 a.m. The meeting was reconvened at approximately 1:00 p.m.

Associate Member Schick returned to the meeting.

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11. PUBLIC COMMENTS:

Ellis W. James - asked the Commission to, whenever possible, encourage improved water quality through contamination monitoring by other State agencies.

Russell P. Burke - a graduate student at the Virginia Institute of Marine Science, proposed a public-private partnership with the Rappahannock Preservation Society to distribute large reef balls as fish habitat to reduce algae in the Chesapeake Bay. He said the project would cost \$5 million a year for five years.

Associate Member Robins - briefed the Commission on a recent Crab Management Advisory Committee discussion on terrapin excluder devices that recreational crab potters may want to install on their pots.

Associate Member Ernie Bowden - suggested reactivation of a Commercial Striped Bass Advisory Committee to study regulations and practices, and to suggest potential changes. Commissioner Bowman agreed to do so.

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12. SUMMER FLOUNDER: Request for public hearing to consider amendments to Regulation 4VAC20-620-10 et seq., to establish recreational fishery measures for 2010.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation with slides. His comments are a part of the verbatim record. Mr. O'Reilly explained that these actions would be the setting of the 2010 recreational summer flounder measures and it was a request for a public hearing in February.

Mr. O'Reilly stated that he would give a little background information for explaining why these options are being recommended for the Commission's consideration. He explained that the 2009 minimum size limit was 19-inches and 5-fish possession limit. He said the 2009 target for Virginia landings was 345,000 fish and Virginia's estimated landings were 30% below the targeted amount. He said that the data was preliminary since the staff usually has the data for September, October, November, and December before now.

Mr. O'Reilly said that released fish accounted for 90% of the data for the past two years. He said in earlier years it was 50%. He stated that releases had always been a big issue with fishermen as they did not like having to throw back the fish.

Mr. O'Reilly explained that Virginia had an estimated target of 345,000 fish for 2009 and only 241,000 fish were caught resulting in a 30% underage. He said that lots of States reported underages, except for Maryland, New Jersey and Delaware.

Mr. O'Reilly said that in 2010 the total projected allowable landings for both the commercial and recreational fisheries was 22.13 million pounds, which is nearly 20% greater than the total for 2009. He said for Virginia the 2010 target amount will be 426,000 summer flounder, more than the 241,000 fish in 2009. He stated that as has been suggested in previous years, staff believes the long-term performance should be taken into account for setting the 2010 management measures. He said that looking at the data, it would indicate that the net overages of composite of targets is 2% (9-year period) and that equals an adjusted 2010 target of 417,480 fish. He stated that Virginia had exceeded its target 4 of 11 years, since 1999. He said the two greatest overages occurred in 2001

and 2006. He said if the 2010 size limit was the same as 2007, the projected amount of harvest is expected to be lower because the abundance of 18-19-inch fish is projected to be lower than in 2007. He said that in 4 of the most recent 5 years, Wave 3 had resulted in the highest landings, and in 2007 when there was an 18 ½-inch size limit, Wave 3 produced higher landings than Wave 4.

Mr. O'Reilly said that the following options were recommended by the Ad Hoc Committee at their meeting in January:

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

Mr. O'Reilly explained that the ten members were split on options A and B. He said one member expressed his concern that the 18-inch size limit with a closed season would take the fishery over the target. He stated that a second member explained that the bag limit change would not give the percentage of savings necessary and the 4-fish bag limit may help more than the data suggests. He said the Ad hoc Committee members felt that the 18 ½-inch may result in an overage, but after two years of being 30% under quota, the risk was not large, and there should be an increase in the quota for 2011.

Mr. O'Reilly explained that staff had submitted the Virginia plan, containing the above options to the ASMFC. The plan was in the Commission's evaluation packet and provided justifications for the three options. He said the ASMFC Technical Committee will review these options and make recommendations to the ASMFC Management Board. He noted the Management Board would be meeting February 2 to make their decision on the options for 2010.

Mr. O'Reilly explained that staff was requesting the advertisement of a February 23 public hearing and recommended advertising options A, B, and C.

Commissioner Bowman asked if there were questions of staff.

Associate Member Robins said that the committee had discussed the 18 1/2-inch size limit resulting in an overage. He said the Council would take action via omnibus amendment that involve a payback system for recreational fishery overages.

Mr. O'Reilly explained that he thought that the Committee had not considered the reaction to certain types of actions. He suggested that this should be left up to the Technical Committee who would be meeting tomorrow. He said the Management Board would meet February 2 and they would decide then. Associate Member Robins said that the stock increased was not factored in. Mr. O'Reilly said there was a slight downtrend

in the abundance of 18-19 inch summer flounder, from results of the recent stock assessment.

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation for the advertisement of a February public hearing to consider options A, B, and C. Associate Member McConaugha seconded the motion. The motion carried, 7-0.

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13. SUMMER FLOUNDER: Request for public hearing to consider amendments to Regulation 4VAC20-620-10 et seq., to adjust the commercial bycatch fishery limits.

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

Mr. Grist explained that staff had met with a special industry committee. He said the following suggestions to adjust the commercial summer flounder bycatch fishery were made:

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

Mr. Grist said that staff recommended advertising a February public hearing and the recommendations for amending the summer flounder bycatch allowance.

After some discussion, Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation to advertise a February public hearing. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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- 14. GREY TROUT (WEAKFISH):** Request for public hearing to consider amendments to Regulation 4VAC20-380-10 et seq., to establish new restrictions for the commercial and recreational fisheries to comply with the Interstate Fishery Management Plan.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave a slide presentation that stressed the declines in the coast-wide fisheries, spawning stock, and stock abundance of weakfish. His comments are a part of the verbatim record.

Mr. O'Reilly explained Addendum IV was in the Commission's packets and he suggested they review it and this would provide them with questions for the next month's public hearing, if approved, in February.

Mr. O'Reilly said that in November 2009, the Management Board had met and recommended that drastic measures be taken for the reduction in the harvest including a coast-wide moratorium. He said the proposal to be provided was a lot less onerous as a moratorium, but it would be difficult to regulate discards, as some states harvested weakfish as a part of a mixed species fishery. He noted, the stock assessment, had indicated the largest source of current mortality was from natural sources, such as predation. He said that the ASMFC proposed addendum could result in a 61% reduction of the commercial landings, on a coast-wide basis. In Virginia the commercial landings reduction could be 42%.

Commissioner Bowman asked for action by the Board.

Associate Member Fox moved to accept the staff recommendation to advertise for a February public hearing. Associate Member McConaugha seconded the motion. The motion carried, 7-0.

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- 15. SHARKS:** Request for public hearing to consider amendments to Regulation 4VAC20-490-10 et seq., to establish new restrictions for the shark fisheries to comply with the Interstate Fishery management Plan.

Lewis Gillingham, Head, Saltwater Fishing Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham said that this was a request for a public hearing. He said that the Interstate Fishery Management Plan for Coastal Sharks was adopted in September 2008 by the Spiny Dogfish and Coastal Shark Management Board. He said that compliance by the States was originally slated for January 2009.

Mr. Gillingham explained that Attachment 1 was submitted to the ASMFC as required for compliance review and lists of compliance components of the Interstate Plan and the sections(s) of Regulation 4VAC 20-490-10, et seq. that contain these elements.

Mr. Gillingham said that staff recommended advertising the requirement that all smooth dogfish possessed by recreational fishermen have their head, tail and all fins attached, as well as specific reporting requirements for any individual granted an exemption permit for the harvest of sharks for research or display, for a February public hearing.

Associate Member Tankard moved to accept the staff recommendation to advertise for a February public hearing. Associate Member Robins seconded the motion. The motion carried, 7-0.

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16. BLACK SEA BASS AND SCUP: Request for public hearing to consider amendments to regulations 4VAC20-950-10 et seq. and 4VAC20-910-10 et seq., to establish commercial and recreational fishery measures for 2010.

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

Ms. Nelson explained that in November, staff received a memorandum from the ASMFC announcing the 2010 Commercial Black Sea Bass and Scup quotas.

Ms. Nelson said that the black sea bass 2010 coast-wide recreational and commercial catch was 2.71 million pounds. She said the coast-wide recreational quota was 1,137,810 pounds and the commercial quota was 1,093,190 pounds. She explained that Virginia would received 20% of the commercial quota (218,638 pounds and be divided in the directed fishery (178,638 pounds) and the bycatch fishery (40,000 pounds). She further explained that after May 1, 2010 the bycatch fishery would be reduced by 10,000 pounds and transferred to active members of the directed fishery who had landed at least 500 pounds in any two of the previous three years.

Ms. Nelson stated that the National Marine Fisheries Service on October 5, 2009, announced the recreational fishery was closed, in federal waters, for 180 days because the quota had been exceeded. To compensate for the overage, the Atlantic States Marine Fisheries Commission recently announced a new recreational open season from June 1 through June 30, and from September 1 through September 30, which previously the season had been year-round.

Ms. Nelson said that on January 8, 2010, the Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee and the Black Sea Bass Monitoring Committee had held a joint meeting to discuss the status of the 2010 black sea bass TAC.

The outcome of that meeting was a request to the NMFS for an emergency regulation to increase the TAC from 2.71 to 4.5 million pounds. The NMFS may accept this proposal as proposed, or accept it with a reduced TAC, or reject it between now and the February public hearing. If the TAC is changed the proposed commercial quotas and the recreational season for 2010 will be updated with modified specifications.

Ms. Nelson explained that Addendum 1 to the Scup Fishery Management Plan provided that the annual coast-wide quota is divided among three periods. The Winter I period extends from January 1 through April 30; the Summer period extends from May 1 through October 31; and the Winter II period extends from November 1 through December 31.

Ms. Nelson further explained that during the Summer period, there are State-by-State scup quotas. In November, staff received a memorandum from the ASMFC announcing the State shares for the 2010 Summer period commercial scup fishery. Virginia's Summer period scup quota has been increased from 4,887 pounds to 6,861 pounds, for 2010.

Ms. Nelson said that staff recommended the advertisement for a public hearing, to set the 2010 commercial black sea bass quota as no less than 178,638 pounds for the directed fishery and 40,000 pounds for the bycatch fishery, establish a recreational black sea bass open season that would, at a minimum, be opened during the months of June and September, 2010, and to set the 2010 summer period commercial scup quota of 6,861 pounds.

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation to advertise a February public hearing. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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17. AMERICAN SHAD: Request for public hearing to consider amendments to regulation 4VAC20-530-10 et seq., to establish a commercial bycatch fishery for 2010.

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 a request for a public hearing in February.

Mr. O'Reilly said that the future of the 5-year allowance of bycatch of American shad for Virginia was uncertain at this time. He said the Atlantic States Marine Fisheries

Commission was scheduled to renew discussion on Amendment 3 to this interstate fishery management plan, at its February meeting. He said the Management Board was holding a meeting either February 3 or 4. He said the bycatch fishery may be in jeopardy.

Mr. O'Reilly stated that VIMS was the only one that kept whole-net bycatch mortality data.

Mr. O'Reilly said that staff requests the advertisement for a February public hearing to establish the bycatch allowance of American Shad, for 2010.

Commissioner Bowman asked for action by the Board.

Associate Member Schick moved to accept the staff recommendation to advertise for a February public hearing. Associate Member Fox second the motion. The motion carried, 7-0.

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18. OYSTER: Request for public hearing to consider amendments to regulation 4VAC20-720-10 et seq., to reopen rotational harvest area 5 in the Rappahannock River during March, 2010.

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

Dr. Wesson said that staff was requesting the advertisement for a public hearing in February to discuss reopening Rotation Area 5 in the Rappahannock River. He said that there was enough stock available for a small fishery for local harvesters. He said there was still a little stock according to the harvest reports.

Commissioner Bowman asked for action by the Board.

Associate Member Fox moved to accept the staff recommendation to advertise for a February public hearing. Associate Member Schick second the motion. The motion carried, 7-0.

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

Associate Member Robins recused himself because of business conflict and left the meeting during this presentation.

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

David Chris Walker. Mr. Walker was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that staff was missing a report for August and the unreported days accounted for 5703 horseshoe crabs during that month. He said that he also did not call in landings for his horseshoe crab endorsement license as required by Regulation 900. He noted that after Mr. Walker received his notice, he had turned in all missing reports, and all horseshoe crabs were accounted for.

Commissioner Bowman asked for the staff's recommendation. Mr. Grist said that staff recommended 12-month probation for non-reporting violation and the revocation of his horseshoe licenses for 6 months starting now through July 26.

Mr. Walker explained that he was guilty. He said Thomas Bowden who he sold to had the crab records, but he never turned them in.

Commissioner Bowman asked for action by the Board.

Associate Member Bowden said that he felt this was a misunderstanding as the buyer had told Mr. Walker that he did not need to report as he had reported. He explained that he had spoken with Mr. Walker and corrected him so he knows better now. He moved for 12 months probation for the mandatory report, but not the revocation of his license, as Mr. Walker needed this for his livelihood to support his family. He said if there were any more problems with his reporting then they would come back and take his licenses. Associate Member Tankard seconded the motion. The motion carried, 6-0. Associate Member Robins was absent.

Commissioner Bowman expressed his concern with the overage of the quota causing management problems. He said this fishery was under a microscope and some wanted to stop all harvest of horseshoe crabs. He stated this was very serious.

Guy Olsen Pruitt, Jr. Mr. Pruitt was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Pruitt was missing mandatory reports for January, May, June, and August as required by Regulation 610-60. He said there were unreported days in July (2) and August (8) to account for 9,993 horseshoe crabs. He further said that Mr. Pruitt failed to call in his landings for his restricted horseshoe crab endorsement license

as required by Regulation 900-35. He said that Mr. Pruitt had spoken with staff, and his reports were now up-to-date. He explained staff recommended one year probation and 6 months suspension of his horseshoe restricted endorsement license.

Commissioner Bowman asked Mr. Pruitt to explain what happen.

Mr. Pruitt explained that he had put it off and it had just gotten away from him. Commissioner Bowman stated that he did not report 10,000 horseshoe crabs. He asked for action by the Board.

Associate Member Bowden stated that it was important for environmental groups to keep up with most problems and definitely important to keep this up-to-date. He moved for 12 months probation and to not revoke his restricted horseshoe endorsement license. He stated that any other horseshoe crab reporting problems would result in the taking of his license. Associate Member Tankard seconded the motion. The motion carried, 6-0.

William T. Eskridge, III. Mr. Eskridge was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Eskridge was missing mandatory reports for June and August as required by Regulation 610-60. He said he also had 9 days in August of unreported horseshoe crabs which accounted for 4,367 crabs. He said he did not call in his landings as required for his restricted endorsement license as required by Regulation 900-35. He said since he was notified, Mr. Eskridge had turned in his missing reports and all his horseshoe crabs were accounted for. He said staff recommendation was the same as the previous cases.

Mr. Eskridge explained that it was just his ignorance as this was his first time in the fishery.

Associate Member Bowden stated that he must understand and do right in the future. He moved for 12 months probation and no revocation of his license. Associate Member Tankard seconded the motion. The motion carried, 6-0.

David McCulloch. Mr. McCulloch was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. McCulloch was missing mandatory reports for May as required by Regulation 610-60. He said he had 3 days in May which accounts for 1,235 horseshoe crabs. He explained further that Mr. McCulloch had not picked up his HCEL, but had landed more than the bycatch limit of 500 horseshoe crabs per day as prohibited by Regulation 900-25E. He said that the staff was recommending the same, 1-year probation and revocation of all his horseshoe licenses.

Mr. McCulloch explained that he was guilty as he was relying on others to do the reporting.

Commissioner Bowman asked for action by the Board.

Associate Member Bowden moved for 12 months probation pending his getting the reporting issue resolved. Associate Member Schick seconded the motion. The motion carried, 6-0.

Kenneth Heath. Mr. Heath was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained Mr. Heath had unreported one day in July which accounts for 600 horseshoe crabs. He explained further that he had landed on 9 days more than the bycatch limit of 500 horseshoe crabs per day, as prohibited by Regulation 900-25E,

Mr. Grist said that staff recommended the same for Mr. Heath, 1-year probation and revocation of his horseshoe crab licenses.

Mr. Heath explained that if he did not catch more on day he would wait until he had two vats of crabs. He said he did keep his daily reports for catch or sales. He said he sold his catch when the trucks came in to buy.

Associate Member Bowden asked if he had resolved his missing reports with staff. Mr. Grist responded no, he had not resolved them.

Mr. Heath stated he had just gotten back from Florida today.

Associate Member Bowden moved for 12 months probation pending Mr. Heath getting the reporting issue resolved. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Donald C. Porter. Mr. Porter was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Porter was missing mandatory reports for March, April, and June as required by Regulation 610-60. He said he had unreported 16 days in June which accounts for 4,692 horseshoe crabs. He said also that Mr. Porter had landed on June 21 and June 22 more than the bycatch limit of 500 horseshoe crabs per day, as prohibited by Regulation 900-25E. He said that Mr. Porter had explained how his catch had been reported on the buyer's report and that he and his son had worked together and some had been reported by the buyer and some had been reported under his son's name, but not on the buyer's report. He said on the buyer's report it showed two days where they were over the limit. He said that there were still 10 missing days of reporting and 1,984

horseshoe crabs were unaccounted for. He said staff recommended the 12 months probation and revocation of all his horseshoe crab licenses.

Commissioner Bowman asked if the missing crabs could be accounted for. Mr. Grist responded, yes.

Associate Member Bowden asked Mr. Porter if he understood what was needed. Mr. Porter said he could explain the fish house and his son's being put on the same report.

Associate Member Bowden moved for 12-month probation, pending Mr. Porter getting the reporting issues resolved. Associate Member Schick seconded the motion. The motion carried, 6-0.

Arthur Peter Bender. Mr. Bender was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Bender's call-in reports did not match either the mandatory harvest reports or the buyer's reports as required by Regulation 900-35. He said staff recommended one year probation.

Mr. Bender stated that he looked at his call-in harvest and the buyer's numbers did match. He said he accepted the staff recommendation. He said he had called in 2 males and 1 female and he did not understand what was wrong.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Mr. Grist stated that all the rest were the same. He said staff recommended 1-year probation, if all reporting problems were resolved.

Louis J. Reynolds Mr. Reynolds was sworn in, and his comments are a part of the verbatim record.

Mr. Grist said that Mr. Reynolds had been missing mandatory reports for January and February as required by Regulation 610-60. He said he also had unreported one day in June which accounted for 296 horseshoe crabs.

Mr. Grist said that since he received his notice, Mr. Reynolds had turned his missing reports and all horseshoe crabs were accounted for. He stated he was up-to-date.

Mr. Reynolds stated he had missed one day in 14 years.

Associate Member Bowden stated that being this was a first offense and he agreed with Mr. Reynolds. He moved for no probation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Charles R. Winbrow, Jr. Mr. Winbrow was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Winbrow had been missing mandatory reports for August, as required by Regulation 610-60. He said he had unreported 6 days of horseshoe crab harvest in June which accounted for 1,556 horseshoe crabs.

Mr. Winbrow stated that the reports he had sent in were correct. He said he was in Costa Rica when the notice was sent out and he called in to comply. He said he had corrected this with the buyer.

Associate Member Bowden stated that the harvester and buyer reports not matching was not a violation of mandatory reporting. He moved to issue only a warning with no probation. Associate Member Schick seconded the motion. The motion carried, 6-0.

Aaron Mathews Mr. Mathews was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Mathews was missing mandatory reports for February, March, April, May, June, July and August as required by Regulation 610-60. He said he had unreported 12 days in June which accounted for 3,310 horseshoe crabs. He said Mr. Mathews after receiving his notice called in to report "No activity" for February through May and July. He said he faxed his report in for June on January 14, 2010 and there were no discrepancies, but staff had not received the hard copy.

Mr. Mathews explained that he only uses his commercial card for horseshoe crabs so there were no reports to file. He said it was his fault that he did not report.

Associate Member Bowden asked if his reporting was up-to-date and he needed to understand how important it was for him to keep his reports up to date. Mr. Grist stated that the hard copies had been received, but noted this was not his first offense.

Associate Member Bowden moved to accept the staff recommendation for 1 year probation. Associate Member Schick seconded the motion. The motion carried, 6-0.

Kenneth W. Green Mr. Green was sworn in, and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Green was missing mandatory reports for May, June, July and August as required by Regulation 610-60. He said he had 1 unreported day in June which accounts for 272 horseshoe crabs.

Mr. Grist said that since receiving the notice, Mr. Green had called in to report “No Activity” for May, July, and August. He said he sent in his June report which was received January 20, 2010. He said that all horseshoe crabs had been accounted for. He added this was a first offense.

Mr. Green said when he got the notice in March for not reporting, he called the office and spoke with someone and told them that he did not have any activity. He said they took this on the phone.

Associate Member Bowden moved for issuing a warning with no probation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Bryan White – not present.

Mr. Grist explained that he had called today to say he could not be present.

Commissioner Bowman instructed staff to send a notification of a hearing in February.

Gerhard Peemoeller Mr. Peemoeller was sworn in and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Peemoeller did not report 100 horseshoe crabs on July 24, 2009. He said Mr. Peemoeller had talked with staff about the unreported crabs and staff had not received the updated reports.

Mr. Peemoeller explained that he had the documents and had reported 160 females and he did not know what happen. He said he can straighten it out.

Commissioner Bowman noted this was not a first offense and recommended a one-year probation.

Associate Member Bowden moved for one year probation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Edward M. Bender Mr. Bender was sworn in and his comments are a part of the verbatim record.

Mr. Grist said that Mr. Bender had 3 unreported days that accounted for 255 horseshoe crabs. He said Mr. Bender’s brother (Peter) had informed staff that the crabs reported were wholesale harvest to Bernie’s Conch, however Mr. Bender did not notify the dealer.

Mr. Bender stated that these crabs had been accounted for already by his brother and he did not want to make a double report.

Commissioner Bowman announced that this case was being dismissed.

Josh Merritt, Jr. Mr. Merritt was sworn in and his comments are a part of the verbatim record.

Mr. Grist explained that Mr. Merritt had unreported 14 days which accounted for 789 horseshoe crabs. He said that Mr. Merritt had talked with staff and believed that his buyer had made an error. He said as of January 21, the issue was still not resolved. He noted this was a first offense.

Mr. Merritt said he did not understand what happen as he does his catch reports daily. He said he is working 3 jobs at the same time.

Commissioner Bowman asked if he had any summons. Mr. Merritt said this was his first year harvesting horseshoe crabs.

Associate Member Bowden moved to issue a warning with no probation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Keith Like

Mr. Grist explained that a letter requesting a continuance had been received. No action was taken.

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20. REPEAT OFFENDERS

Associate Member Robins returned to the meeting.

Sergeant Jamie Green, Assistant Middle Area Supervisor, gave the presentation. His comments are a part of the verbatim record.

Tracy Firman – summonsed on December 16, 2009 for possession of unculled oysters

Sergeant Green explained that staff was recommending 12 months probation and if he received any other violations during that time he would have to appear before the Commission.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 7-0.

James A. Green – summonsed on December 3, 2009 for possession of uncultured oysters.

Sergeant Green explained Mr. Green had appeared in court and was given 12 months probation, but the fine was deferred. He said that staff was recommending 12 months probation.

Mr. Green did not comment.

Associate Member Robins moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 7-0.

Ricky K. Guthrie – summonsed on December 3, 2009 for possession of uncultured oysters.

Sergeant Green explained that staff was recommending 12 months probation.

Mr. Guthrie did not comment.

Associate Member Robins moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 7-0.

Carlton Lee Kellum, Jr. – summonsed on December 4, 2009 for possession of uncultured oysters.

Sergeant Green explained that staff was recommending 12 months probation.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 7-0.

Daniel W. Marshall – summonsed on December 3, 2009 for possession of uncultured oysters.

Sergeant Green explained that the court had dismissed this case. He explained that staff recommended giving his gear and license back with a warning.

Commissioner Bowman said it will be given back in accordance with the court dismissal.

Glen F. Mills – summonsed on December 3, 2009 for possession of uncultured oysters.

Sergeant Green explained that the court had dismissed this case and staff recommended the same be done here in this case as with Mr. Marshall's.

Commissioner Bowman said that would be done.

Christopher S. Nelson – summonsed on November 19, 2009 for possession of uncultured and undersized oysters.

Sergeant Green explained that Mr. Nelson was not present, but was summonsed to be present at this hearing. He noted Mr. Nelson was convicted in Court and they had not received any notice of why he was not able to be present.

Commissioner Bowman asked for action by the Board.

Associate Member Tankard moved to suspend all licenses until he comes before the Board. Sergeant Green explained that he was acting as an agent and his right to be an agent should be suspended. Commissioner Bowman asked Mr. Travelstead if that was allowed by Regulation, which he responded yes. Commissioner Bowman stated that his right to act as an agent was suspended. Associate Member Schick suggested also suspending any other licenses he has. Sergeant Green explained that he did not have a commercial card. Associate Member Robins seconded the motion. The motion carried, 7-0.

Charles O. Rowe, Jr. – summonsed on December 3, 2009 for possession of uncultured oysters.

Sergeant Green explained that the court had dismissed this case. He stated that staff recommended dismissal with a warning.

Commissioner Bowman agreed with the staff recommendation.

Vernon L. Ward – summonsed on December 16, 2009 for possession of uncultured oysters.

Sergeant Green explained that Mr. Ward was found guilty by the Court. He said staff recommended 12 months probation. He explained that possession was in the law and with one pile both were guilty and as the boat captain he was responsible.

Associate Member Robins moved to accept the staff recommendation. Associate Member Fox seconded the motion.

Mr. Ward asked if he could get his license and gear returned to him. Sergeant Green instructed him to come to the office to get it back.

Gordon D. West, Jr. – summonsed on December 3, 2009 for possession of uncultured oysters.

Sergeant Green said that staff was recommending the release of his gear and license and to be issued a warning.

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Robert W. West – summonsed on December 4, 2009 for possession of unculled oysters.

Sergeant Green said that staff was recommending 12 months probation. Commissioner Bowman instructed Mr. Green to see the Sergeant for his license and gear.

Associate Member McConaugha moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 7-0.

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There was no further business and the meeting was adjourned at approximately 2:51 p.m. The next regular meeting will be held Tuesday, February 23, 2010.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary