

## MINUTES

Commission Meeting

December 15, 2009

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
J. T. Holland )	
William E. Laine )	
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
Lisa Gruber	Marine Police Officer
Andrew Mister	Marine Police Officer

**Commission Meeting**

**15705  
December 15, 2009**

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
Molly Shackelford	Office Services Specialist

Virginia Institute of Marine Science (VIMS):

Lyle Varnell  
Carl Hershner

Other present included:

Randy Sutton	Mike Marini	U. E. Ferguson, Jr.	J. Rawleigh Simmons
Ron Edwards	Earl Barton	Robert E. Lehman	Charles Maresh
Chuck Ferguson	Laurie Murphy	F. A. Heatwale	William Rogers
Judy Beale	Bobby Whier	Gordon McPherson	Steve Carter
Ellis W. James	Jonathan Lowe	Wayne Hudgins	Richard Green
Christina M. Lecker	Mike Pegg	Ronald N. Berzofsky	Todd Lumadue
Mark Thomas Crossland			

and others.

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Commissioner Bowman called the meeting to order at approximately 9:38 a.m. All Associate Members were present.

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At the request of Commissioner Bowman, Associate Member Robins 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.

Bob Grabb, Chief, Habitat Management explained that for Item 2b. James River Association, #09-1316 a protest had been received and this would have to be rescheduled for a later meeting.

Commissioner Bowman asked for a motion to approve the agenda, as amended. **Associate Member Tankard moved to approve the agenda, as amended. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman requested a motion for approval of the November 24, 2009 Commission meeting minutes, if there were no corrections or changes.

**Associate Member Robins moved to approve the minutes, as presented. Associate Member Laine seconded the motion. The motion carried, 9-0. 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).

Bob Grabb, Chief, Habitat Management Division, summarized the four page two items, 2A, 2C through 2E, for the Board. (Note: Item 2B, James River Association had been pulled). His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

There being no 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 Schick moved to approve the projects. Associate Member McConaugh seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**2A. CITY VIEW TWO, LLC, ET AL, #07-0645**, requests a permit modification to install a 24-foot wide by 300-foot long temporary work trestle in Thalia Creek to aid in the construction of the new Constitution Drive roadway connection and bridge in Virginia Beach. The trestle will be installed using 24-inch diameter hollow piles, maintain a minimum vertical clearance of three (3) feet above mean high water, and may remain in Thalia Creek a maximum of one year.

No applicable fees – Permit Modification

**2B. JAMES RIVER ASSOCIATION, #09-1316**, requests authorization to construct a 70-foot wide by 300-foot long by 2-foot high, Atlantic Sturgeon spawning reef, using rip rap granite stone. The reef is to be situated 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 floating buoy at the midpoint of the proposed reef to accommodate hydrosonic monitoring equipment. No royalty is recommended given the nature of the project.

Item pulled – Protest Received – to be rescheduled

**2C. LOUDOUN WATER, #09-1578**, requests authorization to install 75 linear feet of 16-inch re-use water main beneath Broad Run near the Broad Run Water Reclamation Facility in Loudoun County. Staff recommends a royalty in the amount of \$225.00 for the encroachment under State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 75 lin. ft. @ \$3.00 per lin. ft.).....	\$225.00
Permit Fee.....	\$100.00
Total Fees.....	\$325.00

**2D. CITY OF PORTSMOUTH, #09-1412**, requests authorization to replace the existing culverts beneath Johnson Avenue with a 64-foot long, 8-foot wide, by 4-foot high box culvert with associated wing walls and riprap scour aprons; and to dredge approximately 21.3 cubic yards of subaqueous material from the upstream (south) side of Johnson Avenue to remove accumulated sediment to a maximum depth of -1.6 feet at mean low water to restore flow along an unnamed tributary to the Western Branch of the Elizabeth River in the City of Portsmouth.

Permit Fee.....	\$100.00
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**2E. MARINE CORPS BASE QUANTICO, #06-0753**, requests reactivation and a one-year extension of their permit to construct a new 35-foot wide steel plate

girder bridge with concrete deck, crossing approximately 140 linear feet of Chopawamsic Creek; reinstall by directional bore method water, sanitary, electrical, and communication utility lines and conduits; and install and backfill 35 linear feet of sheet-pile retaining wall/bulkhead around the upstream corner of the north bridge abutment and 48 linear feet of riprap bank stabilization along the south bridge abutment's embankment, adjacent to the Quantico Marine Corps Base in Stafford County. The permit expired on October 31, 2009. No additional work is proposed and the Permittee agreed to abide by the permit conditions set forth in the original permit document.

No applicable fees – Permit Reactivation and Extension.

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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's Board).
- 3A. **CHARLES MARESH, #09-1004,** requests after-the-fact authorization to retain a gravel boat ramp which extends 10 feet channelward of mean low water into Tabbs Creek at his property at 728 Scott Road in Lancaster County. Mr. Maresh proposes to reduce the width of the ramp from 15 feet to 10 feet, has accepted full responsibility for the violation, and has agreed to the payment of a \$600.00 civil charge and triple permit fees of \$75.00 in lieu of further enforcement action.

Bob Grabb, Chief, Habitat Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Grabb explained that the boat ramp was discovered by the Lancaster County Wetlands Board staff during a routine inspection of a proposed riprap revetment on Mr. Maresh's adjacent parcel of land. Subsequent review of VMRC and County records showed that a permit was never issued.

Mr. Grabb said that according to Mr. Maresh, in August of 2002, he had contracted with Theodore Fisher and Sons, Inc., to extend his gravel driveway and install a gravel boat ramp for access to the creek. Mr. Maresh indicated that when he specifically asked about the permit process for the ramp, he was told by Mr. Eric Fisher that they would take care of that as well. Also, Mr. Maresh stated that while he was approached several times about payment advances by the contractor during construction, in the end the contractor did not finish the job and would not return his phone calls.

Mr. Grabb stated that through his lawyer, Mr. Maresh learned that there were several claims against Fisher and Sons, Inc., and he was told that attempts to recover his losses or rectify the failure of Mr. Fisher to obtain the necessary permits would be futile. As such,

Mr. Maresh would like to retain the ramp. He had indicated, however, that he was willing to reduce the width of the ramp from the current 15 feet to 10 feet.

Mr. Grabb explained that staff did not believe the ramp represented a significant, detrimental impact to State bottom. In light of this, and given the fact that the project was not protested, staff would likely have supported the proposal had Mr. Maresh applied for the structure ahead of time. In addition, Mr. Maresh now intended to reduce the footprint of the structure over State bottom by one-third, and restore the subaqueous and intertidal areas where the gravel was to be removed. While it was ultimately the landowner's responsibility to secure all necessary authorizations prior to any construction along the shoreline or in State waters, staff believed the applicant acted in good faith by hiring a known contractor in the area who assured him they would take care of the permit process.

Mr. Grabb said that in this case, staff had had no more success in contacting or locating the contractor than the applicant. Mr. Maresh had been very cooperative throughout the process and in order to resolve this matter he had agreed to pay a civil charge in the amount of \$600.00 in light of the minor environmental impact and minor degree of non-compliance on his part in this case.

Mr. Grabb stated that staff recommended approval of the after-the-fact request, with the understanding that the existing ramp would be reduced from 15 to 10 feet in width, and with triple permit fees of \$75.00 and a civil charge of \$600.00, in lieu of any further enforcement action, as permitted by Code.

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

Charles Maresh, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Maresh stated that the staff comments were correct. He said he had asked the contractor if he would take care of the permits, which he said he would, but he had not nor had he finished the work. He said that he had checked and been told that the contractor had other claims filed against him and he would not be able to gain anything by pursuing it. He said he actually had to hire another contractor to complete the work.

Commissioner Bowman explained that there were State agencies for dealing with contractors and asked him if he agreed to the assessment of fees. Mr. Maresh stated he did.

Commissioner Bowman asked for a motion by the Board.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Civil Charge.....	\$600.00
Permit Fee (Triple).....	\$ 75.00
Total fees.....	\$675.00

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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. RON EDWARDS, #09-0990.** Commission reconsideration of a request for after-the-fact authorization to retain a 115-foot replacement pier which was widened from three (3) feet to five (5) feet and an adjacent, new, 30-foot long by 6-foot wide open-pile commercial pier at his restaurant and marina facility at the confluence of Greenvale Creek and the Rappahannock River in Lancaster County.

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

Mr. Woodward reminded the Commission that Mr. Edwards was not at the October 27, 2009 public hearing when the Commission considered his after-the-fact application. At that time the Commission voted to deny his request, but agreed to allow Mr. Edwards to be heard if he could provide legitimate justification for not attending the meeting.

Mr. Woodward explained that there was new information in the briefing and referred to item number 7 which included letters of support received by staff. He noted that the attorney for Mr. Edwards also had some letters of support that he would provide.

Commissioner Bowman stated that the Commission had heard the briefing at last month's meeting and briefly recounted what had occurred. He said that no permit had been acquired by the applicant for the project and that he had not appeared at the last hearing as he was notified to do. He explained that the Commission made a decision in which they included an allowance for Mr. Edwards to be heard if he was able to justify his absence. He instructed staff to go ahead with the new information.

Mr. Woodward said that item 6A was the letter of finding for the last meeting that was sent to Mr. Edwards, dated October 29, 2009. He said item 7D included a bad zip code and Mr. Edwards had stated that he did not receive the notice for October's meeting. He stated that both letters had been sent by certified mail, return receipt and one was

received by Mr. Edwards. He stated that staff felt that the others had been received as well.

Commissioner Bowman asked if they had been returned to the Commission. Mr. Woodward responded no.

Mr. Woodward explained there was a letter dated December 11 from Mr. John Groner on behalf of a Men's Club, dated December 11, 2009. He noted that the Men's Club were allowed to use this pier for their activities. He reiterated that Mr. Simmons, the attorney, had some more support letters. He said they were requesting to be allowed to keep the pier, as it was built.

Mr. Woodward explained that the Wetlands Board had heard the item at their October meeting and approved an after-the-fact permit with a civil charge and triple fees, which had not been paid as yet. He explained that there had been an existing structure which had been enlarged and elevated with an addition. He said there had not been an approval of any revised drawings. He said there had been an issue with 8 additional, temporary pilings, but when he was instructed to remove them, Mr. Edwards did so. He said in the meantime a barge used had sunk and at low tide was out of the water, but at high tide it was under the water. He stated that the barge was still there. He said that originally staff recommended that the structure remain as it was, but that a civil charge of \$1,800 should be assessed against Mr. Edwards for a minor degree of environmental impact and a severe degree of non-compliance be done. Commissioner Bowman asked if staff still stood by their recommendation. Mr. Woodward said they did.

Commissioner Bowman asked if there were questions for staff.

Associate Member Tankard asked staff to explain how they determined the minor degree of impact. Mr. Woodward explained that the barge had sunk since then and this could be handled as a derelict vessel by the Law Enforcement Division. He said this had just occurred a week ago, so it had not been addressed with the applicant. He said that the pilings had been removed resolving that violation and that the structure did not cause an environmental impact since it and all associated structures were open-piled. If he had applied for a permit as he was required to do, staff would likely have approved the project. He said this was a commercial dock which served the restaurant and watermen.

Commissioner Bowman asked if the work was done by him. Mr. Woodward stated that others were hired for the barge and crane to drive in the pilings. Commissioner Bowman asked if the applicant had been cooperative with staff. Mr. Woodward said that he had had no contract with Mr. Edwards, but that Mr. Edwards had called and sent in a letter, as well as receiving correspondence from Mr. Edwards' Attorney.

Associate Member Robins asked about the actions to be taken or available to be taken in regards to the barge. Commissioner Bowman stated that Law Enforcement personnel

would handle this as a derelict vessel. He said a letter for removal would be sent and if it were not removed then a summons would be issued for a hearing by the Court.

Associate Member Fox asked about when staff spoke with Mr. Edwards in April and he was told he would need a permit. Mr. Woodward said at that first meeting he was told by Mr. Edwards that he was buying the property and was told of his plans. He said he told Mr. Edwards then that any work on the shoreline or near the shoreline would need to be reviewed in advance. He said he also told him that for the Wetlands Board, the Corps, VMRC, DEQ, and any other agency there was a permitting process in place. Associate Member Fox asked if Mr. Woodward had thought Mr. Edwards had understood. Mr. Woodward stated he thought Mr. Edwards had understood.

Commissioner Bowman asked if the applicant or his representative were present and wished to comment.

Rawleigh Simmons, attorney for Mr. Edwards, was present and his comments are a part of the verbatim record. Mr. Simmons stated, yes, his was in the wrong and should have applied for the permit prior. He noted that Mr. Edwards had said he did not get any notice all along. He said it was his staff that pointed out that the zip code was wrong. He said he had talked with Mr. Edwards and VMRC staff about Mr. Edwards credibility once it was found to be true that it was a wrong zip code. He stated staff had said if it were applied for, it would likely have been approved. He said he had some pictures. He stated the project was a repair project that mushroomed and Mr. Edwards was at fault. He stated the impact was minimal and 8 pilings had been removed. He explained that the barge had sunk because of the weather recently and when the person who works for Mr. Edwards returned from vacation on December 20<sup>th</sup>, the work would be done. He had photos which he displayed on the overhead projector for the past two-week period. He explained that Mr. Edwards because of this issue was under a lot of fees from the Wetlands Board and he was waiting to pay them until VMRC made their decision. He said with his other expenses his finances were being impacted and this could impact his complying with it all. He stated that the Methodist Men's Club held their rockfish tournament at this dock as well as the watermen used it. He said that J & W Seafood, Kevin Williams, and his neighbors supported this project. He said there were only a few places where watermen could offload their harvest. He again reiterated that there were no protests by the neighbors and they could only see this as an improvement. He said he was asking the Commission to consider granting this permit as it was constructed and to assess reasonable penalties.

Ron Edwards, applicant, was sworn in and his comments are a part of the verbatim record. Commissioner Bowman asked him if he owned the crane that drove the pilings. Mr. Edwards said it was not the same crane and he had bought it for future use. Commissioner Bowman asked who drove the pilings. Mr. Edwards stated that Weston Conley drove the pilings as he allowed him to use the facility as he needed. He asked Mr. Conley what it would cost and was told if he got the material he would charge \$80

per hour. He said that from that conversation and from others he had he thought he did not need a permit because it was all replacement, which turned out to be bad advice. He stated he was wrong.

Commissioner Bowman asked him if the barge would be removed by December 25<sup>th</sup>. Mr. Edwards responded yes. Commissioner Bowman stated that if were not done, then the Commission would need to take this to court.

Associate Member Schick stated that Mr. Edwards had taken some bad advice, after he was told by VMRC staff what was needed to be done. Mr. Edwards explained that when he came to the area he had not heard of VMRC and he had met staff, but he was simply overwhelmed by the whole thing. He said he was prepared to do whatever it took to get it passed and he would sign the document and pay double without any protest. He stated it was not done intentionally.

Commissioner Bowman asked for questions. He said that he understood how things can happen, but that VMRC could not turn a blind eye to this situation. He said the civil charge was lower than for some of the other, smaller violations that had occurred.

Mr. Simmons stated that the Commission needed to do what it needed to do.

Commissioner Bowman asked for a motion by the Board.

**Associate Member Fox said that given the fact that staff had talked with him and he still did not get a permit, normally they would assess \$1,800 each for the expanding dock and the new dock. He said but considering Mr. Edward’s situation, he would move to accept the staff recommendation with an assessment of \$1,800 civil charge and triple permit fees. Associate Member Schick suggested including in the motion that he must provide the name and address of the individual who drove the pilings and did the construction. Associate Member Tankard said he agreed with Mr. Fox and this was a facility that was used by watermen and others which would make it of value to them, as well as considering Mr. Edwards finances. Mr. Grabb reminded the Commission that a deadline for payment was necessary. After some discussion, among all parties, Associate Member Fox made an amendment to the motion to make the deadline for payment of the fees March 15, 2010. Associate Member Holland seconded the motion. The motion carried, 9-0.**

Civil Charge.....	\$1,800.00
Permit Fee (triple).....	\$ 75.00
Total Fees.....	\$1,875.00

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6. **MARK CROSSLAND, #09-0548**, requests after-the-fact authorization to retain a 448-square foot, flat-roofed boathouse, an 18-foot by 26-foot L-head and a 41-foot by 15-foot deck (1,085 square feet of deck) adjacent to his property at 18336 Possum Point Road, situated along Quantico Creek in Prince William County. Continued from the September 22 and November 24, 2009, Commission meetings.

Dan Bacon, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Bacon stated the only changes were that letters were sent to the Contractors.

Commissioner Bowman asked him to read Mr. Conner's letter into the record. Mr. Bacon read the entire letter which explained that he did have cancer and was not well enough to attend the meeting. He said in the letter that he did not build the structure.

Commissioner Bowman asked Mr. Bacon to read the staff's recommendation into the record.

Mr. Bacon read that when reviewing proposals to build over State-owned submerged lands, the Commission's Subaqueous Guidelines directed staff to consider, among other factors, the water dependency and necessity of the proposed structure.

Mr. Bacon read that staff did not consider the flat roofed deck and larger than authorized pier platform to be either water dependent or necessary. In addition, the sum total of all of the combined deck areas was now in excess of the 400 square feet authorized by Code. The pier platform area alone was approximately 501 square feet, and the flat roofed deck added an additional 448 square feet resulting in a total deck area of 949 square feet.

Mr. Bacon read that as such, staff recommended the Commission direct the removal of the flat roofed structure and staircase. At a minimum, in lieu of complete removal and reconstruction of the roof, staff believed the stairs and railings should be removed. Staff would have no objection to the Commission approval of the additional 101 square feet of pier platform since this represented only a minor increase in the pier deck area over that which was authorized by Code, and the neighbors had not objected.

Mr. Bacon read that should the Commission elect to grant approval for all or any portion of the unauthorized structures, staff believed an appropriate civil charge should be assessed to Mr. Crossland. In this case, while staff believed the environmental impact was minor, they did consider the degree of deviation major considering the fact that Mr. Crossland was a practicing attorney and he should have been aware of the legal requirements for permits, as well as, the fact that he had not been willing to divulge the contractor information. In the event staff was able to determine the role of the contractor, additional action against him may also be warranted.

After some clarification discussion regarding the staff recommendations, Commissioner Bowman asked Mr. Crossland to come forward and comment.

Mark Crossland, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Crossland stated that he understood what Mr. Connor had said, but he told him to do all the work so Mr. Connor was the contractor and just hired others to do the work. He stated also that he did not hire Mr. Delaney. Mr. Connor said that another contractor told him to get the permit after the work was done. He also expressed his concern over Commissioner Bowman's comments to him. Commissioner Bowman stated that he was just being direct and got frustrated.

Mr. Crossland stated that staff never sent him any correspondence and he did what he thought he was supposed to do. He said he did not hire Delaney, Mr. Connor did. He said he did not know Mr. Delaney.

Commissioner Bowman asked him if he knew him now and asked him if he never went out to supervise the work and see who was doing it.

After some further discussion, Commissioner Bowman asked for further discussion or a motion.

**Associate Member Schick moved to direct the removal of the roof and that it be reconstructed as it was originally approved; order the removal of the staircase; and to allow the extra 100 plus square footage. Associate Member Holland seconded the motion. Associate Member Robins suggested that the Commission require the replacement of the roof with an A-frame; to order removal and to reapply. He said that the other part should be a higher degree of impact and severe degree of non-compliance. He stated the structure was not water dependent and the applicant knew that it did not agree with the permit. He said he agreed with the removal order for the staircase. Associate Member Schick stated he would accept the \$1,800 civil charge based on a minimal degree of impact and major degree of deviation. Associate Member Robins asked that the motion be restated. Associate Member Schick stated it was to direct removal of the roof and staircase for the boathouse deck; retention of the additional square footage of the deck; and the penalty would be based on a minor degree of impact and a major degree of deviation. The fees were to be assessed at \$1,800 with triple permit fees. Associate Member Holland who seconded the original motion stated he accepted the changes. The motion carried, 9-0.**

Commissioner Bowman explained that this could be appealed and asked if Mr. Crossland understood the motion. He explained that in regards to the additional decking, the flat roof and staircase had to be removed and the additional decking square footage could remain, plus he would pay the fees.

Mr. Crossland asked about the time he was allowed to get this paid. Commissioner Bowman asked staff about how much time he would have to pay the fees. Mr. Grabb suggested 90 days. Mr. Crossland asked if he had 90 days to remove the structures. Commissioner Bowman stated that he would need to work with staff.

Civil Charge.....	\$1,800.00
Permit Fee (triple).....	\$ 75.00
Total Fees.....	\$1,875.00

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- 7. **ROBERT LEHMAN, #09-0937**, requests authorization to construct a 646-square foot open-sided boathouse at the channelward end of a proposed private open-pile pier at property situated along Boathouse Creek in York County. The project is protested by an adjacent property owner.

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

Mr. Owens explained that the project is located at 309 Anchor Drive along Boathouse Creek in the Dare section of York County. Boathouse Creek, a tributary of Chisman Creek, is residentially developed and contains numerous private open-pile piers and at least two open-sided boathouses.

Mr. Owens said that Mr. Lehman submitted an application on July 8, 2009, seeking authorization to construct a 90-foot long, private open-pile pier with a 10' x 25' L-head and floating dock, finger pier and a 700-square foot boathouse. On October 21, 2009, revised drawings were submitted depicting the mean low water (MLW) elevations in the project vicinity. The drawings additionally reflected a modified pier design, reducing the pier's total length to 80' and the boathouse to 646 square feet.

Mr. Owens stated that Mr. Lehman was notified by letter dated November 3, 2009, that his pier and boat lift were authorized by Statute in accordance with §28.2-1203.A.5 of the Virginia Code. He was further advised, however, that a permit would be required for the boathouse since the upstream adjacent property owner, Mr. and Mrs. William Roberts, had filed several objection letters on that aspect of the project.

Mr. Owens explained that the Roberts' objections to the project included adverse view impacts from their lot as well as neighboring lots, property devaluation, and a concern that the project might interfere with navigation into and out of a small cove situated immediately upstream. The protestant owned the vacant lot (Lot 5) situated immediately adjacent to Mr. Lehman's property and the cove. They actually resided on the adjoining upstream property.

Mr. Owens stated that in response to the concerns raised by the Roberts, VMRC staff and the Corps of Engineers requested MLW soundings within the cove and Boathouse Creek. Those soundings, depicted in the revised drawings, confirmed that an adequate thoroughfare existed between the proposed pier and boathouse and the entrance to the cove. The soundings further suggested that the head of the cove ebbs bare, and possessed a controlling depth of one-foot at low tide in its downstream reach.

Mr. Owens said that York County had not issued its building permit for the pier and boathouse at this time. The Corps issued its Regional Permit #18 for the pier and boathouse on November 4, 2009.

Mr. Owens explained that the total square footage of the proposed open-sided boathouse was below the 700 square-foot threshold provided for in §28.2-1203.A.5 of the Code. The MLW soundings confirmed that the pier should not impede navigation in Boathouse Creek nor within the cove adjacent to Lot 5. Had the boathouse proposal not been protested by the adjoining property owner, staff would have considered it statutorily authorized along with the private pier. In this case, staff believed the open-sided design only minimally added to the visual obstruction already presented by the pier and boatlift. While staff was sensitive to the concerns raised by the Roberts, private piers and open-sided boathouses were very common along the waterways in York County. Therefore, after consideration of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the 19-foot by 34-foot open-sided boathouse depicted in the revised drawings dated received October 21, 2009.

Robert Edward Lehman, applicant, was sworn in and his comments are a part of the verbatim record. Commissioner Bowman asked if he wished to address the staff's presentation. Mr. Lehman stated staff's comments were accurate. He said that great consideration had been given to planning this project. He said he tried to make sure that he did not encroach on his neighbors. He stated he had spoken with his neighbors as well as Mr. Roberts prior to submitting his application for permit. He said he explained all of his plans and they did not object, but did not sign off on it. He said that in regards to the visual impact, Mr. Roberts was 34 feet away from the sideways gable and it would impact others more if he were to move it. He said he had considered the winds in the area. He stated he was requesting approval.

Commissioner Bowman asked if anyone in opposition were present and wished to comment.

William Roberts, protestant, was sworn in and his comments are a part of the verbatim record. He said Mr. Lehman's comments were not accurate. He said he was never contacted prior to the application be made and only heard after the application was made and he was sent notice and asked to sign off. He said he had been on vacation and did not see the letter (dated 11/16/09) until November 27<sup>th</sup>. He stated he had been gone two weeks. He said it was never discussed with him, but he had talked to others. He said the

site had been marked with only two bamboo sticks and the aerial slide was the first time he had seen the entire project. He said the angle was different from what was in the exhibits and what was shown in the aerial. He said he had some slides, but the staff's were better. He said that other neighbors were concerned and thought they needed to change the angle and shift it up further where there are trees, to improve the view. He had a letter from both Kelly and Barefoot lots 2 and 3 that were requesting changes. He said he had contacted Mr. Lehman two times and he had met with Mr. Owens at the first site inspection when there was only the two sticks. He said he objected and he had had only 2 days notice. He said he had met with Mr. Lehman's representative and requested a couple of times to meet with Mr. Lehman. He said he sent a letter about the changes and he received a message back that there were no changes. He said he suggested redirection of the dock and that it be moved further up for better water depth. He said he had lived there for 25 years and the winds from Chisman Creek did not make a difference and he was requesting neighborly consideration.

Commissioner Bowman asked for questions from the Commission.

Associate Member Tankard stated that an angled dock would interfere with the opening of the cove area and become a navigation issue. Mr. Roberts responded yes, which he addressed in his original letter. He said he had never seen a schematic of the design and he was told the Corps said it was okay. He said it would take a lot of maneuvering to get the boat out. He said that the navigational impact was one of the first issues addressed by them.

Associate Member Robins asked him to clarify the visual impacts on the slide, which Mr. Roberts did. Commissioner Bowman asked him to explain how it would be shifted. Mr. Roberts said that exhibit #2-6 did not match the slide. He said if it were moved down or angled it would not be so drastically in their sight.

Associate Member Tankard said that exhibit #2-6 showed the channel as 80 feet wide. Mr. Roberts said that exhibits #2-1 and #2-6 was how it should be changed. Associate Member Tankard said it did lock in the middle of the channel of the cove. Mr. Roberts stated that Mr. Owens said that navigation was not a problem, but he believed it was.

Associate Member Fox stated that it appeared to have deep water there and there was no need for a long pier. He said that rotating it would not change the view, but would get better water depth.

Commissioner Bowman asked the applicant for any rebuttal comments. Associate Member Fox stated that he would have deeper water if he were to move and shorten the pier. Mr. Lehman said in exhibit #2-4 the pier was angled at less than 90° and his intent was not be less than 80°. He said the water depth at high tide was 4 ½ to 5 feet. He said if it were angled it could be seen inside his home and the flag belonging to his neighbor

indicated the wind directions, which concerned him. He said Mr. Roberts had protested construction of one of the homes which he built for his brother-in-law.

**There being no further discussion, Commissioner Bowman asked for action by the Board. Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 9-0.**

Permit Fee.....	\$25.00
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- 8. **REQUEST FOR 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.

Mr. Badger stated that this was a request for a public hearing. He said he would give some background now and more information at the public hearing.

Mr. Badger explained that as a result of years of research, conducted by the Virginia Institute of Marine Science beginning in 1988, and with the support of the Virginia Marine Resources Commission’s surveying staff, 28,507 acres of unclaimed and ungranted State lands were identified and inventoried on Virginia’s Eastern Shore (27,722 acres on Seaside and 785 acres on Bayside). Although most of these lands were marsh, there were some uplands, fringe marshes and now beaches included in the acreage identified as being State-owned. The initial inventory maps were filed with the clerk’s offices of Accomack and Northampton Counties in 1992.

Mr. Badger said 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 value. A management plan was created through a cooperative effort among the Marine Resources Commission, the Department of Game and Inland Fisheries, the Virginia Coastal Land Management Advisory Council, other participating and affected State agencies, the local governments and residents of Accomack and Northampton Counties, and other legislatively designated entities. In 1999 the Commission adopted the Management Plan for the Ungranted State Lands, Regulation 4 VAC 20-345-10, et seq.

Mr. Badger said that the U. S. Fish and Wildlife Service had requested the establishment and adoption of the Boundary Line Agreement between their Wildlife Refuge property and the Ungranted State Lands near Wise Point in Lower Northampton County. Based on extensive research by a licensed surveyor they had provided a Boundary Line Agreement survey showing the proposed line.

Commissioner Bowman asked him where in the Code gave the Commission its authority to take such action. Mr. Badger explained that it was in Section 28.2-1510 of the Code of Virginia. He said that actually staff felt that this authority was not needed, as basically it was just defining a line for the original inventory. He said it was a question of action that was needed by the VMRC, since they had approved the management plan in 1992..

Bob Grabb, Chief, Habitat Management explained that it was necessary to hold a public hearing to establish metes and bounds for separating the State and Federal properties. He stated it was necessary to establish these boundary lines. He noted for the Commission that no additional land was being added, but that would be done later in the spring.

Associate Member Holland asked staff if they agreed with the boundaries. Mr. Grabb responded yes. Mr. Badger stated that this had been going on for the past two years.

David Grandis, Assistant Attorney General, stated that authority was given to the Commission in Section 28.2-1510 of the Code to make this amendment, but only after a public hearing were to be held.

Mr. Badger stated that the staff recommended the advertisement of a public hearing.

**Associate Member Robins moved to accept the staff recommendation for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

\* \* \* \* \*

Commissioner Bowman asked Law Enforcement staff to make this presentation at this time.

**14. REPEAT OFFENDERS.**

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

**Christopher S. Nelson**

Sergeant Green explained that Mr. Nelson was not easy to notify and contact was not made until December 8<sup>th</sup>. Commissioner Bowman suggested continuing this until the

January meeting. Sergeant Green stated that none of his equipment and gear had been seized.

**Carl O. Lawson**  
**Henry Charles Parker**

Sergeant Green explained that Mr. Lawson was not present and had been served notice in timely manner.

Commissioner Bowman asked if Mr. Parker was present. Sergeant Green explained that Mr. Parker had called Lt. Col. Rhodes to let the Commission know that he was not well.

Commissioner Bowman asked about the violation. Sergeant Green explained that it was for possession of unculled oysters and permits were taken. He explained also that the permits were presently not valid since the area had closed December 1st. He said there were no other seizures made.

Commissioner Bowman asked about the staff recommendation. Sergeant Green said that for punishment staff recommended probation. Commissioner Bowman asked if this had gone to court. Sergeant Green stated no. Commissioner Bowman explained that in accordance with Section 28.2-232 no action could be taken by the Commission until there was a court conviction. He said it had to wait until after the court hearing. He further explained that for a repeat offender there must be 3 violations in a year unless it was a violation of the regulation. He said if he should get one more violation then they could be brought back to the Commission.

Sergeant Green stated that when there was a seizure, the Commission must decide to give it back even if it had not yet been heard by the Court. He said some others were here that did have their equipment seized.

Commissioner Bowman asked Sergeant Green to go on to the next ones.

**Richard Green**

Sergeant Green called for Richard Green to come forward. He explained that on December 3, 2009, 10:30 a. m., Mr. Green was charged with possessing unculled oysters in the Mobjack Bay area. He said at that time his dredge and license were seized pursuant to regulation. He was told to come to the Commission to have his seize license and gear returned to him.

Richard Green was sworn in and his comments are a part of the verbatim record. He explained that he was told that he must come to the Commission meeting to get his license and gear given back. He explained that in the East River area of the Mobjack Bay the oysters were usually 3 ¼ to 3 ½ inches and bill shaped which made it difficult to cull

on board and to dispose of the undersized oysters when there was rough weather which caused the boat to toss. He said a bulk of the oysters they were caught with were barely under three inches and they did the best to cull the smaller ones, which he believed a vast majority of the watermen try to do.

Commissioner Bowman asked about the staff recommendation. Sergeant Green said twelve months probation starting today and the return of his license and dredge.

Commissioner Bowman asked for a motion by the Board. **Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Gordon McPherson**

Sergeant Green explained that on December 11, 2009 Mr. McPherson was charged with unculled oysters in the Mobjack Bay and in the same location. He stated that his dredge and license had been seized and he informed Mr. McPherson to come to the Commission. He said the staff recommended twelve months probation starting immediately and the return of his gear and license.

Gordon McPherson was sworn in and his comments are a part of the verbatim record. Mr. Gordon stated his case was the same as the previous.

Commissioner Bowman asked for a motion by the Board. **Associate Member Holland moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**David W. Hudgins/Jonathan R. Lowe**

Sergeant Green explained that these individuals were summons on December 11, 2009 for unculled oysters while dredging in the Mobjack Bay area. He stated that the license and gear were seized and the mate was told to come to the Commission.

Commissioner Bowman asked if the mate was present. Sergeant Green explained that the gear and license were seized and the mate had the wrong gear code for his license. He said the staff recommended twelve months probation and the return of the license and gear.

David W. Hudgins was sworn in and his comments are a part of the verbatim record. Mr. Hudgins explained that he agreed with staff recommendation, but the oysters were so close to the correct size it was impossible to check them all.

Mr. Hudgins said it was blowing 25 miles per hour winds that day when Officer Miller came along side his boat doing some damage to his boat. Commissioner Bowman stated

that it was currently being investigated. Mr. Hudgins stated that Mr. Green had covered it well on how much different the Mobjack Bay area was from the Rappahannock.

Commissioner Bowman asked for a motion by the Board.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 9-0.**

Commissioner Bowman asked about Mr. Lowe and stated that Mr. Lowe was not off the hook because of his possessing the wrong license.

Sergeant Green explained that Jonathan Lowe had been in possession of the wrong gear license which was for working in the Pocomoke and Tangier Sound. He said Mr. Lowe would have to obtain the correct license. He noted that in this instance Mr. Lowe was lucky that they did not have more than the one catch limit on board the boat.

\* \* \* \* \*

Commissioner Bowman announced the lunch break at approximately 11:30 p.m. The meeting was reconvened at approximately 12:10 p.m.

\* \* \* \* \*

**9. PUBLIC COMMENTS**

**PUBLIC OYSTER GROUND HARVEST SEASONS**

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

Mr. Travelstead explained that Mr. Jenkins was not present because of eye surgery he was undergoing today.

Mr. Travelstead said he had talked with Mr. Doug Jenkins regarding the opening of the public oyster grounds for seasons and he believed that a number of the Board members had also been called.

Mr. Travelstead said that the issue concerned the public harvest for the Oyster Replenishment Program in the Potomac River Tributaries and the Wicks area of the Rappahannock. He said as a result of public notice, 202 individuals had been contracted with to harvest in these areas for the purpose of determining if the seed plants could produce a 1:1 ratio for cost and benefits. He stated it had been the recommendation of the Blue Ribbon Oyster Panel to go without any more seed movement where this could not be met. He explained that in the Rappahannock, five areas had been opened and in 7

days they were closed. In the Nomini hand tongers caught their 8 bushel limit by 8:30 in the morning in 1 ½ hours. He stated that this showed that there were a lot of oysters in the area.

Mr. Travelstead explained further that Mr. Jenkins felt it harmed the oyster rocks to allow the hand scrapes to be used once the hand tongers were finished in the Nomini River area. He explained that staff would allow the hand tongers to work in the area. If some oysters remained then the hand scrapes would be allowed to work in the area to clean up the rocks. It did not make sense to leave the large oysters that were now culled separately and returned loose on the bottom by being worked for the cownose rays. He said in the Yeocomico and Coan Rivers where there were small areas, staff was not allowing the use of hand scrapes. He said the project was going well and that Mr. Jenkins was pleased with staff efforts.

Associate Member Fox said he felt it made sense for staff to limit the hand scrapes to one or two days. He said Mr. Jenkins was also concerned that with the Rappahannock River area being closed, that the watermen, who do not live in the area, would come to the Potomac River Tributaries to work. He said that since these were public rocks, he did not see how the Commission could stop them.

Mr. Travelstead explained Mr. Jenkins made a suggestion to open all areas at the same time next year so that other watermen would stay in their areas, which would be less complicated.

Associate Member Schick said he had talked with Mr. Jenkins about opening all areas at the same time. He said that for the Nomini and other small areas, the Commission should only allow hand tongs to be used.

Associate Member Bowden said that he had a big concern that there was a report of catches being over the limit and these individuals were not being penalized for their excessive catch.

Mr. Travelstead stated that these had been investigated. He explained there were contracts for this project and the Marine Police cannot enforce the bushel limit on those under contract. He said in the contract if there is a violation, the contract can be taken and the individual would no longer be allowed to participate in the project. He said staff was made aware of this happening one day and these individuals were called and told that their contracts could be repealed so the situation was controlled. He stated that the Marine Police had noticed this happening and reported it.

Associate Member Robins asked when to expect a report for the seed plant analysis. Dr. James Wesson, Head, Conservation and Replenishment Department, explained that the project will be done after the 1<sup>st</sup> of the year and staff would include this information in the Replenishment Plan.

Associate Member Robins said Mr. Jenkins' suggestion to open all areas at the same time was one of the Blue Ribbon Oyster Panel's recommendations. Mr. Travelstead said that the opening of all areas could be considered when the next regular season was discussed.

Dr. Wesson explained that when the overages were reported to him, he went to the shucking houses and checked with them and got the real numbers.

Associate Member Fox asked if any action was needed. Mr. Travelstead responded no, if the Commission was satisfied with what staff had done.

Commissioner Bowman stated it was appreciated the way the staff had adapted in order to work with the industry.

Associate Member Fox asked if Mr. Jenkins would be notified of what had occurred at this meeting. Mr. Travelstead responded yes.

No action was necessary.

\* \* \* \* \*

**10. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs", to reduce the 2010 commercial harvest quota and enhance quota management and harvest control measures.

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

Associate Member Robins stated that he would be excusing himself from the discussion and any action taken since he was involved with this fishery.

Ms. Nelson provided a new draft regulation as a handout.

Ms. Nelson said that there were three tiers of horseshoe crab harvesters in Virginia: those that qualified for a Horseshoe Crab Endorsement License (HCEL), who could harvest up to 5,000 horseshoe crabs per day, those that qualified for a Restricted Horseshoe Crab Endorsement License (RHCEL), who could harvest up to 2,500 horseshoe crabs per day, and those registered Commercial Fishing License holders or Seafood Landing License holders who do not hold either a HCEL or RHCEL and harvested less than 500 horseshoe per day as bycatch. Both endorsement licensees are required to call-in to report their daily harvest. When it is projected that 85% of the quota has been harvested, the landing limits for both licenses (HCEL and RHCEL) are reduced to 2,500 and 1,000 crabs, respectively.

Ms. Nelson said that this is the first year since 2006, when the Commission adopted the Addendum IV provisions, that the quota was exceeded. This overage would have to be paid back in 2010. The increase in the horseshoe crab harvest was not known on a timely basis because of the lack of proper reporting. Only two of the nine harvesters actively harvesting called in their daily reports. The majority of the license holders failed to call in daily reports and since the monthly reports are not due until the 5<sup>th</sup> of the following month, staff was not aware of the overall increase in harvest.

Ms. Nelson said in early August, staff had received the mandatory monthly reports for July. The receipt of the buyer reports allowed staff to project that the horseshoe crab harvest had already reached the 85% trigger and was close to reaching 100% of the quota amount. Staff called for any delinquent data and verified all harvest amounts, which resulted in the closing of the fishery August 17, 2009. Because of the under reporting by the harvesters required to call in daily and the fact that non-restricted license holders were only required to report monthly, it meant that over sixty percent of the 2009 harvests records were not available to staff, on a timely basis. It was noted that most of overage of the quota occurred east of the COLREGS line.

Ms. Nelson explained that in order to better monitor the horseshoe crab harvest and to prevent future quota overages, staff had developed a number of improvements to the regulation. These amendments were as follows:

**Landing Limit Triggers:** Staff proposed to reduce the landing limit trigger from 85% to 50% of the quota to provide for improved management of the harvest and prevention of future quota overages.

**Bycatch Permit:** Staff proposed to establish a by-catch permit for non-HCEL or RCEL license holders and establishing a harvest and landing limit of 500 horseshoe crabs per day. The 500 crabs per day limit will be reduced to 250 per day, once the 50% of the quota has been reached.

**Buyer Reporting Requirements:** Staff proposed a weekly written buyer report and daily call-in requirement for buyers during the entire season.

**Areas east of the COLREGS Line:** Staff proposed to reduce the landing limits of all horseshoe crab permits in waters east of the COLREGS line, when 50% of the allowable harvest, from these waters has been taken. Landing limits would be reduced in the these waters in two ways: 1) when 50% of the overall quota has been harvest or 2) when 20% of the quota has been harvested from the waters east of the COLREGS line.

Ms. Nelson noted that no public comments had been received.

Ms. Nelson said that staff recommended adoption of the amendments to Regulation 4VAC 20-900-10, et seq., to payback the 2009 overage, reduce the landing limit triggers from 85% to 50%, establish a bycatch permit, adjust reporting requirements for buyers, and establish additional landing triggers for the waters east of the COLREGS line.

After some discussion mostly for clarification purposes, Associate Member Tankard asked, was the overage because of fishermen, east or west, that did not report. Ms. Nelson explained that a lot of it was east of the COLREGS line, but there was some all over.

Associate Member Fox stated that he was concerned with the non-reporting and penalizing those for it. Ms. Nelson explained that there would be hearings for non-compliance next month. Commissioner Bowman stated that these individuals may not be allowed to fish next year.

Associate Member Tankard asked about Mr. Fox's comments about non-reporting and if this had always been an issue or was it a one time issue. Ms. Nelson stated that most of these fishermen were not active in the previous years and had just come back to the fishery this year. She noted that harvest was 50% of the quota during the lower harvest pressure years. Associate Member Tankard stated that the penalty was not needed in the past as historically it had worked well.

Commissioner Bowman explained that this was just an adjustment for managing and keeping the overages from happening again. He said there had been a false security established because of the low harvest years. He stated that the Commission was attempting to manage the fishery for maximum yield and to prevent future overages.

Commissioner Bowman opened the public hearing. There were no public comments, so the public hearing was closed. He asked for discussion by the Board.

Associate Member Bowden stated this problem would be addressed next month and those actions would educate the people. He said a lack of croaker had impacted some fishermen, so that they had returned to the horseshoe crab fishery in order to make a living.

Commissioner Bowman asked for action by the Board.

**Associate Member Bowden moved to accept the staff recommendations. Associate Member McConaugha seconded the motion. The motion carried, 8-0. Associate Member Robins was not present during this item.**

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- 11. PUBLIC HEARING:** Proposed amendments to Regulations 4VAC20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Reporting", and 4VAC20-670-10 et seq., "Pertaining to Recreational Gear Licenses".

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

Mr. Grist explained that with the loss of the old keypunch contractor, the staff will be acquiring a new data entry contractor in the next several months. He said that staff felt that this was the time to make changes in the reporting requirements.

Mr. Grist said that staff was proposing that reporting requirements be added for some of the recreational fisheries, such as gill net, crab pots, and crab traps. He stated that during 2009, there were 902 recreational gill net licenses; 248 recreational crab pot licenses (up to 5 pots); and 157 recreational crab trot line licenses sold. He said that annual reporting has been poor and difficult to monitor.

Mr. Grist stated that commercial daily/monthly harvest reporting was a separate system. He said in section 50 of the Draft Regulation 4 VAC 20-670-10 amendments have been proposed by staff to require daily harvest reports on a monthly basis for these recreational licenses.

Mr. Grist explained that staff proposed to define what agents and helpers were and to require their being added to the report. He said there were usually less than 5 helpers in most cases. He said that staff asked that a requirement be added that there be no more than 5 helpers.

Mr. Grist said that for non-compliance staff had done all that they could with the watermen with calls, letters, and to be heard by the Commission, as a deterrent. He explained that staff was recommending adding a non-compliance section to Regulation 610 (Section 65) and 670 (Section 55). These new section would provide a matrix of penalty options for the Commission to serve as a minimum guide for rulings depending on the severity of the non-compliance issue.

Commissioner Bowman asked how many would come for review by the Board. Mr. Grist stated that he was not sure until the new notification system was implemented. Commissioner Bowman stated that Commercial Fishermen had a lot to do, a lot to report, all while having a business to run. He said with recreational it was fun, not work and he felt less sympathetic with them for not reporting. He said that this will make a lot more work for staff and the Commission. He said there was too much to be done by staff trying to manage the fishery and the same rules should not be used for the recreational fisheries, since it was not for a livelihood.

Associate Member Fox stated that reporting the number of crabs was easy, but that for recreational gill net fishing, those individuals would not know the weight of their catch, as they were catching them just for eating and not for sales.

Commissioner Bowman asked for comments by the Board.

Associate Member Robins suggested that staff work on Regulation 670 and to move forward with Regulation 610. He asked staff to explain what was being captured by the helper field. Was it just capture all licenses or to capture helpers? Mr. Grist said that on the form there would be a reminder to fill it out and these amendments would establish a number limit and clarity would be provided by establishing a definition.

Associate Member Robins asked staff to explain the Regulation 610 compliance process. Mr. Grist stated that January harvest is due to be reported on February 5<sup>th</sup> and if not on time, staff would send a card that the January report was missing. He said in March the 2<sup>nd</sup> month missing, a second notice would be sent and come April a letter to come to the Commission hearing in May would be sent. He explained that a 3-month notification would now be automatically printed and staff would only have to put it in the mail.

Mr. Grist explained that the third notice would be for the hearing and the matrix for the minimum punishment would be recommended by staff not by the Commission.

Associate Member Robins asked if this would be in the new contractor's agreement. Mr. Grist responded yes.

Commissioner Bowman opened the public hearing. There were no public comments, so the hearing was closed.

Commissioner Bowman asked for action by the Board.

**Associate Member Robins stated that stronger consequences were needed for non-timely reporting. He said there was a range of other options for the recreational fisheries. He moved to approve the staff's recommendation for commercial harvest reporting and to refer the recreational recommendations to the staff for further consideration. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

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12. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-20-10 et seq., "Pertaining to the Licensing of Fixed Fishing Devices", to establish new requirements to maintain priority rights to the pound net location.

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

Mr. O'Reilly said that this was for pound nets only. He noted that there was a copy of the public notice in the Commission notebooks. He said he had reviewed the aspects of these proposed changes at last month's meeting. He said that the industry, FMAC, and staff's proposal would establish a new requirement for setting and fishing a pound net. He said it would be based on the calendar year and, if priority rights were lost, they would also lose their license for failure to set and fish the pound nets.

Mr. O'Reilly explained that since 2004 waivers to these requirements were approved mainly because of weather impacts from storms such as Hurricane Isabel and Tropical Storm Ernesto. He said that FMAC had proposed a compromise to allow individuals to enter the fishery, since it had been a limited entry fishery since 1994 and traditionally there were vacancies each year. He said staff recommended the adoption of the amendment to Regulation 20. He said starting in 2009, pound nets must be set and fished at least once during two consecutive years, so those nets would have to be set and fished in 2010 in order to keep their priority rights in 2011. He said that the staff recommendation included that amendment.

Commissioner Bowman opened the public hearing. There were no public comments so the hearing was closed. He asked for action by the Board.

**Associate Member McConaugha moved to accept the staff recommendation for pound nets. Associate Member Fox seconded the motion. The motion carried, 9-0.**

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**13. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-490-10 et seq., "Pertaining to Sharks", to prohibit the transfer of a Spiny Dogfish limited Entry Permit.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist stated that this was the public hearing and all information regarding this matter had been discussed at the last meeting.

Commissioner Bowman opened the public hearing. There were no public comments so the hearing was closed.

Commissioner Bowman asked for action by the Board.

**Associate Member Bowden moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 8-0. Associate Member Robins was not in the hearing.**

**Commission Meeting**

**15731  
December 15, 2009**

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There was no further business and the meeting was adjourned at approximately 1:00 p.m.  
The next regular meeting will be held Tuesday, January 26, 2010.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary