

MINUTES

Commission Meeting**May 25, 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)	
J. T. Holland)	
William E. Laine, Jr.)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
Jack G. Travelstead	Chief, Fisheries Management
David Grandis	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
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.
Laura M. Lee	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Casey Springfield	Marine Police Officer
Bill Hawkins	Marine Police Officer

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Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	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.
Justin Worrell	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Carl Hershner
Roger Mann	Rom Lipcius

Others present included:

David O'Brien	Chuck Labiak	Bernadette LaCasse	John Kloke
Rosemary Eaton	Doris Leitner	Sawn Leary	Jene Christie
Ellis W. James	Robert W. Jensen	Laura Engelung	David R. Butler

and others.

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Commissioner Bowman called the meeting to order at approximately 9:50 a.m. All Associate Members were present.

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At the request of Commissioner Bowman, Associate Member Holland gave the invocation and John Bull, Public Relations Director 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 the Item 6, Department of the Navy was pulled at the request of the applicant in order to allow them time to evaluate legal issues. Commissioner Bowman noted a letter that was received

from a Mrs. Barnett making the request. He added that the staff had requested time to give the Board a briefing on the Status of their evaluation of the offshore energy opportunities. He said this would become item 6.

Associate Member Fox reminded the Board that from reading the previous month’s minutes that the Marshall application for leased ground had been continued for 30 days. Commissioner Bowman thanked Associate Member Fox for bringing the matter to his attention and explained that both parties had requested another 30-day continuance to allow them to continue their negotiations.

Jack Travelstead, Chief, Fisheries Management, requested another fisheries item be added to discuss taking emergency action to correct errors in Regulation 4VAC 20-752-10, et seq., Pertaining to Blue Crab Sanctuaries, for the definitions for some of the sanctuary boundary lines. He requested that this be the last agenda item. Commissioner Bowman stated this would be made Item 12.

Commissioner Bowman asked for a motion. **Associate Member Robins moved to approve the amended agenda. Associate Member Laine 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 April 27, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Tankard moved to approve the minutes, as circulated. Associate Member McConaugha 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).

Tony Watkinson, Deputy Chief, Habitat Management Division, summarized the eight items for the Board. (Note: He indicated a correction in the item 2A, changing the linear feet from 852 to 2,400.) His comments are a part of the verbatim record.

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

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Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed. He asked for action by the Board.

Associate Member Laine moved to approve the page two items, as read. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

2A. FAIRFAX COUNTY PARK AUTHORITY, #10-0203, requests authorization to restore approximately 2,400 linear feet of Big Rocky Run utilizing rock structures, rock cross vanes, and J-hook rock vanes within Ellanor C. Lawrence Park in Fairfax County.

Permit Fee.....	\$100.00
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2B. POTOMAC & WESTMORELAND SHORES CIVIC CORP., #10-0546, requests authorization to modify and existing approved community pier by adding a 6-foot long by 3-foot wide catwalk and two (2) additional mooring piles to support two (2) PWC lifts adjacent to property at Lot 25A Blk A Section 3 Westmoreland Shores Subdivision situated along Monroe Bay in Westmoreland County. Staff recommends the assessment of a royalty in the amount of \$108.00 for the additional encroachment of 72 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot.

Royalty Fees (encroachment 72 sq. ft. @ \$1.50/sq. ft.).....	\$108.00
Permit Fee.....	\$100.00
Total Fees.....	\$208.00

2C. PITTSYLVANIA COUNTY SERVICE AUTHORITY, #10-0413, requests authorization to install approximately 40 linear feet of new 10-inch water main a minimum of 3-feet beneath the stream bed of Dry Fork Creek, associated with the Dry Fork Creek Waterline Extension project in Pittsylvania County. The new waterline will be installed by the directional bore method.

Permit Fee.....	\$100.00
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2D. ROBERT S. GOLLAHON, #10-0361, requests authorization to install approximately 90-linear feet of new 18-inch sanitary sewer line a minimum of 3-feet beneath the stream bed of Potomac Creek associated with Central Stafford Commerce Center project in Stafford County. The new sanitary sewer line will be installed by the directional bore method. Staff recommends the assessment of a royalty in the amount of \$270.00 for the encroachment of 90 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 90 lin. ft. @ \$3.00/lin. ft.).....	\$270.00
Permit Fee.....	\$100.00
Total Fees.....	\$370.00

2E. SPOTSYLVANIA COUNTY DEPARTMENT OF PUBLIC UTILITIES, #10-0291, requests authorization to construct a total of 350 linear feet (Reach A) of riprap revetment extending a maximum of 6-feet channelward of ordinary high water, and to construct 150 linear feet (Reach B) of riprap revetment extending a maximum of 16-feet channelward of ordinary high water in Massaponax Creek, associated with the Massaponax Interceptor Replacement Phase 2 Stream Stabilization project in Spotsylvania County.

Permit Fee.....	\$100.00
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2F. WASHINGTON COUNTY SERVICE AUTHORITY, #10-0400, requests authorization to construct a 12 MGD raw water intake, previously authorized by VMRC Permits #91-0420 & #02-1007, in the original streambed of the South Fork Holston River Reservoir near its confluence with the Middle Fork Holston River in Washington County. The intake structure will be a submerged 10-foot wide by 57-foot long concrete channel equipped with six (6) passive drum screens (1-mm mesh openings) and operated with a 0.25 fps maximum approach velocity. Recommend approval contingent on our standard instream permit conditions and a requirement that the intake structure shall be marked in accordance with TVA regulations to minimize navigation impacts.

Permit Fee.....	\$100.00
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2G. CITY OF LYNCHBURG, #08-2207, requests a modification to their previously authorized permit, to now replace the existing Florida Avenue Bridge with a new 26-foot, 2-inch wide span bridge crossing over 19 linear feet of Fishing Creek in the City of Lynchburg. The proposed modification increases the width of the bridge to accommodate a sidewalk for pedestrian traffic.

No applicable fees – Permit modification

2H. CITY OF ROANOKE, #09-1780, requests authorization to install approximately 120 linear feet of riprap stream bank stabilization alongside the Tinker Creek Greenway trail crossing beneath an existing railroad trestle along Tinker Creek at its confluence with the Roanoke River, and to construct a 14-foot wide by 240-foot long pedestrian bridge, crossing over the Roanoke River immediately upstream of Tinker Creek, in order to connect the Tinker Creek and Roanoke River Greenway trails in the City of Roanoke. The proposed project also calls for

the temporary installation of a solid-fill construction causeway extending approximately 110 feet into the Roanoke River, to facilitate the construction of the proposed pedestrian bridge. Staff recommends the inclusion of the standard in-stream conditions, and a condition which requires the removal of the construction causeway within 60 days of the completion of bridge construction.

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).
- 3A. **JOHN D. MUNFORD, II, #10-0332,** requests after-the-fact authorization to retain the existing 30-foot by 17.5-foot enclosed (two sides) private boathouse located directly adjacent to the existing bulkhead protecting 600 55th Street, situated along Crystal Lake in Virginia Beach. Mr. Munford also seeks authorization to install and backfill 93 linear feet of replacement timber bulkhead, aligned a maximum of one foot channelward of the existing structure. Staff recommends a royalty for the proposed bulkhead of \$54.00 for the filling of 54 square feet of State-owned submerged bottom at a rate of \$1.00 per square foot. Staff does not recommend a civil charge or triple permit fees be assessed for the enclosed boathouse since it existed at the property when it was purchased by Mr. Munford, and because of the length of time the structure previously existed at the site.

Tony Watkinson, Deputy Chief, Habitat Management gave the presentation. His comments are a part of the verbatim record.

Mr. Watkinson explained that staff performed a site inspection on March 4, 2010, pursuant to the bulkhead replacement request and noticed the existing enclosed boathouse. The boathouse, while in excellent condition, was enclosed on two sides with an entrance and exit on the southern and northern sides. Since staff was not aware of any past Commission approval for this specific structure, staff requested that the agent/applicant provide further historical information.

Mr. Watkinson stated that the applicant submitted correspondence stating that the enclosed boathouse existed when he purchased the property in 1992, and provided further City tax records indicating that the structure existed as early as 1971. The applicant requested that he be allowed to keep the structure since it protected a custom built "Dyer 29" Maine Lobster Craft.

Mr. Watkinson said that given the age of the boathouse, and the fact that it existed prior to Mr. Munford purchasing the property, staff recommended that the Commission authorize the enclosed boathouse by approving the after-the-fact request with no civil charge or triple permit fees. Regarding the replacement bulkhead request, staff recommended approval with a royalty of \$54.00 for the filling of 54 square feet of State-owned submerged bottom at a rate of \$1.00 per square foot.

Commissioner Bowman asked if anyone was present for this project.

Dave Butler, Engineer for the project stated he did not have any comments, but would answer any questions the Board might have. There were no questions.

Commissioner Bowman asked for action by the Board.

Associate Member Laine moved to approve the project. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Royalty Fees (filling 54 sq. ft. @ \$1.00/sq. ft.).....	\$ 54.00
Permit Fee.....	\$100.00
Total Fees.....	\$154.00

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

- 5. JOHN KLOKE, #10-0150,** requests authorization to construct a 29-foot wide by 59-foot long open-sided boathouse near the channelward end of his existing private, noncommercial, open-pile pier situated along Queens Creek at 451 Queens Creek Road in Mathews County. The project is protested by several nearby property owners.

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

Mr. Neikirk explained that the Kloke property was situated along the northern shore of Queens Creek in the Hallieford area of Mathews County. Their existing pier extended approximately 80 feet channelward of mean high water. Development along this shoreline was primarily residential and there were other open-sided and enclosed boathouses in the immediate vicinity.

Mr. Neikirk stated that the Klokes proposed to construct a 59-foot by 29-foot open-sided boathouse at the channelward end of their existing pier. A 5-foot wide finger pier was proposed to be constructed around the perimeter of the boathouse and would be partially covered by the overhang of the proposed boathouse roof. Two uncovered lifts were also planned for a smaller boat and a personal watercraft. With the additions, the pier would extend 109 feet channelward of mean high water. The peak of the proposed roof was 19 feet above the elevation of mean high water. The boathouse was designed to provide shelter for a 53-foot trawler which had not yet been purchased.

Mr. Neikirk said that the project was protested by seven property owners along Queens Creek in the vicinity of the project. Their concerns included adverse impacts on aesthetics and navigation. Some of those opposed to the project specifically believed the structure would adversely affect navigation into a small tributary of Queens Creek located immediately west of the project site.

Mr. Neikirk noted that the project did not encroach on any public or privately leased oyster planting ground. No State agencies had commented on the boathouse portion of this project.

Mr. Neikirk stated that the proposed boathouse was to be quite large, however staff did not believe the structure would have a significant adverse impact on navigation. If approved as proposed, there would still be a clearance of approximately 170 feet between the end of the Klokes' boathouse and the closest boathouse across the waterway and the water between these two structures appeared to be relatively deep. Staff believed the open-sided boathouse would only minimally add to the visual obstruction that would be presented by a large vessel moored at the end of the existing pier.

Mr. Neikirk explained that in 1998, the General Assembly amended §28.2-1203(A)(5) of the Code of Virginia to provide statutory authorization for the construction of open-sided boathouses measuring 700 square feet or less and designed to cover a single boat at a private, non-commercial pier, provided the boathouse was not objected to by the adjoining property owners and was allowed by local ordinances. Although neither adjoining property owner objected to this project, VMRC authorization was still required because the proposed boathouse was significantly larger than 700 square feet. In fact, the proposed boathouse measured 1,711 square feet.

Mr. Neikirk said that since no maximum size limit for boathouses had been established, projects were reviewed on a case-by-case basis. In instances where an applicant presented sufficient rationale for a large open-sided boathouse and where the waterway appeared to support the large boathouse and associated vessel without significantly affecting other uses of the waterway, staff had often recommended approval of such structures. Staff generally strived to assure that the boathouse was no larger than what was reasonably needed for the stated vessel but believe that an open-sided design only minimally added to any visual obstruction over that presented by the boat moored under

the boathouse roof. Localities had the authority to regulate boathouses through their zoning ordinances and staff believed they were better positioned to evaluate aesthetic impacts of such structures.

Mr. Neikirk stated that staff believed the proposed boathouse was reasonably sized for the vessel Mr. Kloke “states” he intended to purchase. Staff, also, understood his desire to secure approval for the boathouse prior to purchasing the vessel. Staff believed, however, that it would be appropriate to have some assurance that the Klokes had actually purchased the stated vessel or a similarly sized vessel prior to the construction of the boathouse.

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 receipt of a bill of sale or other appropriate documentation from the Klokes verifying their purchase of the vessel stipulated in the application or another similarly sized vessel.

After some discussion regarding sizes of the boathouses in the immediate area, Commissioner Bowman asked if the applicant or representative wished to comment.

John G. Kloke, applicant was sworn in and his comments are a part of the verbatim. Mr. Kloke stated that the facts of the project had been fairly presented by staff. He explained that this was a retirement home that he purchased one or two years earlier and he had spent \$1.5 M. He said the marina in the area he found to be poorly managed and he did not want to keep his boat at that marina. He said he was inquiring into the purchase of a trawler. He added that he would accept the permit condition.

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

William A. Leitner, protestant was sworn in and his comments are a part of the verbatim record. Mr. Leitner explained that he was 500 yards up the little creek on the left-hand side. He said he had been accessing this creek for ten years. He stated the deep water was on the side of the boathouse, which would put them navigating in the shallower water. He stated this was an extremely large building.

Commissioner Bowman asked if he owned a boat and if he did what was the draft. Mr. Leitner said he had a 22-foot boat with a 2-1/2-foot draft. He said on the project side the water depth was about five feet.

Associate Member Tankard asked if the deep water was right at the boathouse. Mr. Leitner said he normally comes by the pier.

Jene Christie, protestant was sworn in and her comments are a part of the verbatim record. Ms. Christie indicated on the slide where her boathouse was located. She said she was concerned with the incoming channel into Queens Creek. She said that channel was not dredged but every 12 years and she had lived there for 24 years. She said it was dredged last time using special funding and there were no more funds for the future. She said her boat was 36 feet with a 35" draft. She said she was concerned that the spoil placed on each side would silt in on her side and she would not be able to keep her boat there any more.

Commissioner Bowman asked about what she was opposed to. Ms. Christie stated she opposed the impact to the navigation.

Associate Member Schick asked about the water depth on her side. Ms. Christie stated it was four feet at mean low tide.

Mrs. Robert Layden, protestant was sworn in and her comments are a part of the verbatim record. Mrs. Layden said she was representing her husband as well. She said she was also speaking for a Mrs. James Hutson. She explained that she and her husband live on the creek. She explained that the Narrows Marina was a marina with deep water in the area. She said it was a safe marina with all the amenities. She said it does not look real good, but the bad weather had had an impact on it. She said she was concerned with the project's impact on navigation. She said the depth was in the main creek not in the project area. She noted she owned a 25-foot Parker and she came in and out of the creek, but was always careful. She said she had provided a letter of rebuttal for the record. She said they were requesting the boathouse be moved further east or the pier be extended to put the boathouse in the deeper water.

Sharon Leary, protestant was sworn in and her comments are a part of the verbatim record. Ms. Leary explained that she lived on the creek and owned a 25-foot Parker with a 2 to 2-1/2-foot draft. She said she was concerned with the impacts to navigation as there were no markers in the area and the east side of the creek was very shallow. She said she suggested that it be moved further east as it would be impeding the navigating in the area.

Rosemary Eaton, protestant was sworn in and her comments are a part of the verbatim record. Ms. Eaton stated that she lived across from the pier. She explained that she was concerned with the aesthetics as she owned a small craft and sailboat only. She stated that the structure being 19 feet tall meant it would be like a two-story building. She said 700 square feet was allowed and this was 1,700, which is very large.

Commissioner Bowman asked for discussion or action by the Commission.

Associate Member Robins said that he read in the staff’s narrative that the distance between the piers was 175 feet and asked what the depth was. Mr. Neikirk said yes to the distance and explained that on the NOAA Chart there was 4 feet of water at the dock.

Associate Member McConaugha asked about the structure being 19 feet tall. Mr. Neikirk explained that it was 15 feet above the mean high water.

Associate Member Fox asked about the height of the Christie’s boathouse. Mr. Neikirk said he did not know but would estimate it was 10 to 11 feet above the deck and 13 to 14 feet above the mean high water.

Associate Member Holland moved to accept the staff recommendation. Associate Member Schick seconded the motion. Associate Member Schick noted that with the 175 feet between and 4 to 5 feet of water navigating the area should not be a problem. Associate Member Fox noted that even without the boathouse, the boat would still obstruct the view. Associate Member Robins said he felt that the depths were similar between the 170-foot distance and would have no significant impact. He said it was critical that the scale of the boathouse be relevant to the size of the boat. Associate Member Fox reminded the Commission that the staff recommendation included that a condition of approval was providing proof of purchase of the larger vessel. The motion carried, 9-0. The Chair voted yes.

Permit Fee.....	\$100.00
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- 6. **DEPARTMENT OF THE NAVY, #09-0358**, requests after-the-fact authorization for the replacement of approximately 300 linear feet of their CEP-102 and CEP-111 bulkheads located on the south side of Pier 1 at Naval Station Norfolk, situated along Hampton Roads in the City of Norfolk. The proposed project also calls for the installation of approximately 300 linear feet of riprap bulkhead toe stabilization overlain by articulated concrete mats extending a maximum of 47 feet channelward of the adjacent bulkheads.

Pulled from the agenda at the request of the applicant.

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- 6A. **OPPORTUNITIES FOR OFFSHORE WIND ENERGY IN STATE TERRITORIAL WATERS:** Briefing by staff on Virginia Marine Resources Commission’s (VMRC) effort to determine whether sufficient and appropriate subaqueous land exists in State territorial waters to support the generation and transmission of electrical or compressed air energy from offshore wind.

Tony Watkinson, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record. He explained that this review was conducted in response to Acts of Assembly 2009, Chapter 766 (SB 1350) and a report was provided to the General Assembly in late February. He indicated that in order to depict potential opportunities for wind development and identify resource and use conflicts the report included maps that showed the States tidal waters covering State-owned submerged lands, which were considered to be important factors for the appropriate siting of leases and permitting for offshore wind energy facilities.

Mr. Watkinson explained that there were lots of conflicts and issues in the Bay and near the shores. He said that Section 28.2-1208 of the Code of Virginia had been amended to authorize the Virginia Marine Resources Commission to lease areas for renewable energy in addition to the authority to lease for mineral resources. The amendments also authorized royalties. He said the Subaqueous Minerals Management Plan is to be maintained to include Renewable Energy in the State's waters. The plan would become the State Subaqueous Minerals and Coastal Energy Management Plan in lieu of a Subaqueous Minerals Management Plan.

He said currently there were no turbines in the United States located in water only on land. He said the types ranged from community to industrial scales.

He said that most wind resources, those that were Class 5 and 6 required for commercial development were located offshore in federal waters. He said sites offshore from Virginia Beach had been evaluated for wind energy development, but the military activities needed to be avoided. He said the Dam Neck area had been considered as a location for the power lines from offshore turbines and it was near other electrical infrastructures. He said there was a Class 5 wind area in the bay near the Silver Beach area where there appeared to be lesser conflict. He said the focus was the offshore area near Virginia Beach.

He said the next step was to amend the mineral plan to include coastal energy.

After more discussion, Associate Member Robins thanked the staff and asked if the resources in the federal waters had been assessed. Mr. Watkinson said he did not know or was not aware of it, but that an Environmental Impact Statement (EIS) would have to be developed that would include an assessment of those resources.

Associate Member Fox asked about the Nantucket Sound Project. Mr. Watkinson said that there had been articles about it. He said he understood Cape Winds project had been approved by the Federal government, but legal challenges started a number of years ago. He said the Minerals Management Service (MMS) was now given the power to make assessments in Federal waters. He said it was moving forward. Associate Member McConaugha stated the last assessment by MMS was in the 70's.

David Grandis, Assistant Attorney General, asked about what would be involved when considering approval of a request. Mr. Watkinson explained that there would need to be a public interest review and detailed analysis of a proposed lease area. He added that where there would be less user conflict and resource threat, it would be easier to approve. He said that the greater impacts identified in the lease area the more difficult and problematic it would be to approve.

No action taken.

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7. PUBLIC COMMENTS:

Ellis W. James, Norfolk Resident and member of the Sierra Club, expressed his concerns regarding the disastrous oil spill and methods of dispersal being used in the Gulf of Mexico and the possible impacts to the Atlantic Coast and its fisheries. His comments are a part of the verbatim record.

Robert W. Jensen, representing the Rappahannock River Preservation Society, was present and made comments regarding the success and continuance of their oyster restoration efforts in the Rappahannock River. His comments are a part of the verbatim record.

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Commissioner Bowman adjourned for lunch at approximately 11:10 a.m. He reconvened the meeting at approximately 12:08 p.m.

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8. PUBLIC HEARING: Consideration of final blue crab regulations, including closure of the crab dredge fishery for the 2010/2011 season, continuation of the crabbing license sales moratorium, and repeal of the prohibition on the harvest of dark sponge crabs from July 1-July 15.

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

Mr. Travelstead stated that the evaluation for last month's meeting was in the Commission's packets.

Mr. Travelstead explained that there were three Regulations for which the staff recommended changes:

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1) 4VAC 20-370-10, pertaining to dark sponge crabs, which prohibits possession from March 17 through July 15. He said staff recommended backing the date up to June 30 to allow the possession of dark sponge crabs, starting July 1. He said this was supported by the Virginia Institute of Marine Science.

2) Continue the closure of the winter dredge fishery for another season. He said there a previous study by Tom Miller at the Chesapeake Bay laboratory author of the Blue Crab Stock Assessment currently being done that was done in 2001. He explained that the model indicated, "...that a substantive reduction in the winter dredge fishery played a role in sustainability of the crab stock." He said there were three journal articles which emphasized the impacts of dredging on bottom habitat. He stated that VIMS supported this change.

3) Continue the sale of crab licenses moratorium. He said the reduction of licenses was a long-term goal and would not help overnight.

Mr. Travelstead said in figure 1 which was the current waiting list, the potential for adding 60,000 pots back into the fishery could occur in 2011 in accordance with the regulation. Figure 2 show the successful buyback program which eliminate 70,000 pots. He said the watermen can transfer back into the fishery. He said 23 watermen out of 359 came back into the fishery. Figure 3 showed the eligible crabbers that can get back into the fishery, which is less than the 1980's effort, but still not where it should be yet. Figure 4, provided good news, showing that the number of peeler pots dropped off because of the management measures adopted. Figure 6, showed the value of the fishery not only increased, but doubled recently. He said the watermen had started economically benefiting from this fishery. He said licenses were eliminated and the harvest had actually been allowed to rise because abundance increased. He said there was a need to continue the license sale moratorium and begin to address how those on the waiting list will be allowed to return to the fishery. He said the Commission should begin the development of a plan and this matter should be discussed with the BCMAC. He stated that VIMS supported this action.

Commissioner Bowman asked for questions of staff.

Associate Member Schick said that the graph showed that the best ratio of pounds to value had been achieved. He said one year ago, there was larger value, but quantity higher and that is not the same as today. Mr. Travelstead stated that there are fewer watermen, so the dollars are being distributed to fewer watermen.

Associate Member Robins stated that staff expected that next year the ones on the waiting list becoming active. He said an analysis needed to be done, so that they could re-enter the fishery appropriately. He added that the new stock assessment would be out in 2011. Rob O'Reilly, Deputy Chief, Fisheries Management explained that the peer review would be done in March 2011 so in the last third of the year the final should be out.

Associate Member Robins suggested that the analysis be initiated by staff with VIMS to be included. Since the buy back program had been done staff needed to look at the capacity and fishery sustainability. He said the number of licensees was at a low level and the target amount of 200 million crabs was met. He said it needed to be determined as to what was appropriate as to level of harvest and level of capacity.

Commissioner Bowman stated that he concurred with Mr. Robins as to needing more time to come up with a methodical and well thought out approach so as to not go back to where the fishery was. He said it was the consensus of the Board to begin and there was a need to use all of the tools available.

Associate Member Tankard said that with reaching the stock capacity, the Commission did have to allow the waiting list people back in. Mr. Travelstead said the three years was being conservative with a year quota of 200 million of adult crabs to be able to return their license. He said a lot of licenses were purchased from the waiting list licensees due to the Buy Back Program.

Associate Member Fox asked if a transfer could be done for those on the waiting list when it was father to son. Mr. Travelstead responded no, it was on hold. Associate Member Fox asked if a licensee dies, was his license gone. Mr. Travelstead stated it was an inactive license and would be of value to sell, but if someone were to buy it they would want to work.

Commissioner Bowman opened the public hearing. There were no public comments.

Associate Member Robins stated that the fishing mortality was below the threshold and if the winter dredge fishery had not been closed, then it would be a good argument for other measures being needed. **Associate Member Robins said he moved to accept the staff recommendations. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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9. **BLACK SEA BASS:** Request for public hearing to consider amendments to Regulation 4VAC20-950-10 et seq. that would revise the closed season for the recreational black sea bass fishery.

Alicia Nelson, Fisheries Management Specialist, gave the presentation and her comments are a part of the verbatim record. Ms. Nelson stated that this was a request for a public hearing to discuss the closed season for the recreational black sea bass fishery.

Ms. Nelson explained that the recreational black sea bass fishery quota is managed on a coast-wide basis. On October 5, 2009, the National Marine Fisheries Service announced the recreational black sea bass fishery was closed in federal waters for 180 days because

the quota had been exceeded. Virginia remained opened because in most years, landings from Virginia State's waters comprised a small percentage of the overall landings during the time period of a closure.

Ms. Nelson noted that the NMFS originally announced that the black sea bass total allowable catch for 2010 would be status quo with the 2009 TAC (2.71 million pounds). The Mid-Atlantic Fishery Management Council's Scientific and Statistical committee and the Black Sea Bass Monitoring Committee were later asked to review the 2010 TAC, and the end result was an increase in the 2010 TAC to 4.5 million pounds.

Ms. Nelson explained that originally the Atlantic States Marine Fisheries Commission (ASMFC) established a 2010 open season for the recreational black sea bass fishery, from May 22 through August 8 and from September 4 through October 4. She said previously this was open year-round. The ASMFC approved a new 2010 black sea bass recreational season from May 22 through October 11 and from November 1 through December 31. The new season is anticipated to achieve a 26% reduction in landings.

Ms. Nelson said that staff recommended advertising for a June public hearing, to modify the open recreational black sea bass season to May 22 through October 11 and from November 1 through December 31.

Commissioner Bowman asked if there were questions. There were none. He said the matter was before the Commission for action.

Associate Member Holland moved to accept the staff recommendation to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

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- 10. BLUEFISH:** Request for a June Public Hearing to establish the 2010 commercial bluefish quota, as part of Regulation 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish."

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly stated that this was an annual event to request the advertisement for a public hearing to discuss the 2010 commercial quota for bluefish. He said there were 500 additional pounds more than the 2009 quota. He said this matter needed to be done and that staff recommended advertising for the public hearing.

Commissioner Bowman said the matter was before the Commission for action.

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

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11. **REQUEST:** Approval for the Conservation and Replenishment Program and the Chesapeake Bay Foundation to place reef balls for oyster reef restoration on Palaces Bar reef in the Piankatank River and at a site in the Lafayette River near the Hermitage Museum in Norfolk.

Jim Wesson, Head, Conservation and Replenishment, gave the presentation with slides.

Dr. Wesson explained that the Chesapeake Bay Foundation has a NOAA grant to use volunteers to build small, concert reef balls, to be placed in the Chesapeake Bay for oyster habitat improvement. These small reef balls are constructed with marine safe concrete. The reef balls are 18 inches tall and 24 inches wide and have several openings on the surface. A portion of these structures will be set in tanks with oyster larvae before deployment in the Bay and the rest will be deployed to receive spatset naturally.

Dr. Wesson said that the first reef ball deployment site will in the Lafayette River near the shoreline of the Hermitage Museum in Norfolk. Shells were planted on this site in 2007. Wave action was severe at this location and all of the shells were washed away from the site. Fifty reef balls will be placed at this high-energy location to build oyster habitat. The Lafayette River is a new focus site for CBF's oyster restoration efforts for the next several years. The CRD staff had worked with CBF to design and position these reef balls on locations for the best chance of success. The Lafayette has other potential sites for oyster restoration, but often the bottom is not suitable for shells or shells are not available. In addition, since shells are limited, this type of structure may work better for oyster restoration in areas that are always condemned for harvesting, thereby, saving the shells for projects that improve harvest areas.

Dr. Wesson stated that the second deployment area will be on one of the MRC's sanctuary reefs in the Piankatank River. Palaces Bar reef was the first 3-dimensional reef constructed in 1994. This two-acre site would be getting a new veneer of oyster shells this spring. After the shellplanting is done, the CBF will place approximately 150 oyster reef balls within the boundaries of that reef.

Commissioner Bowman asked for questions of staff.

Associate Member McConaugha stated that if staff was looking for a natural set, the Hermitage site was not the right place. Dr. Wesson explained that 2 sites in the Lafayette had done well. He said that there is no hard bottom and there is too much wind.

Associate Member McConaugha asked about the Elizabeth River. Dr. Wesson stated that in the Elizabeth there had been 100 oysters per meter set on the shell plants.

Being there were no further questions, Commissioner Bowman asked for action from the Commission.

Associate Member Tankard moved to approve the project. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.

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12. EMERGENCY REGULATION: Correction of the definition of the boundary lines for the Blue Crab Sanctuary in Regulation 4VAC 20-752-10, et seq., "Pertaining to the Blue Crab Sanctuary."; Request for a Public Hearing at the next meeting to make the change permanent.

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

Mr. O'Reilly gave a little background information on the establishment of the Blue Crab Sanctuary. He explained that Law Enforcement had had problems with the green flashing buoy not being on line in the York River and that the eastern-southern line for the Wolftrap location was not as the regulation said it should be. Another correction on page three of the regulation was that the letter W for west needed to be added to a coordinate description. He said that staff suggested striking any coordinates with navigational aid lights or buoys. He added that in the past week, it had come up that the 1942 sanctuary did not have any coordinates in the Code of Virginia, which set precedence. He explained that the staff, Law Enforcement Division personnel, and the public used the navigational aids and incorrect coordinates complicated the Law Enforcement's role. He said that over time the staff would come back to establish these lines. He added, too, that the western side was the main area of problem.

Mr. O'Reilly said that staff had only recommended a temporary solution for now and to look into making further changes and come back at that time to seek the Commission's approval of the new coordinates.

Commissioner Bowman asked for Surveying-Engineering staff to comment. Ben Stagg, Chief Engineer, Engineering and Surveying Department, said that of the two found the north latitude was on the charts, but the longitude west two were off in the opposite directions. Either the chart was looked at incorrectly or there was a conversion problem, staff did not know.

Commissioner Bowman asked, if with the technology now, staff was certain they could get this corrected. Mr. Stagg responded yes, within a centimeter of accuracy.

Commissioner Bowman asked how long it would take. Mr. Stagg stated not long they could locate all know intermediate points based on depths.

Commissioner Bowman asked if it would be done for the public hearing next month. Mr. O'Reilly said that would be an aggressive schedule and staff suggested going back to the original navigational aids or markers. Commissioner Bowman asked if the emergency regulation would expire in 30 days. Mr. O'Reilly stated staff was suggesting that it be made permanent next month without the coordinates, until the corrected coordinates were available; and then come back for a hearing.

Commissioner Bowman asked Law Enforcement staff if this was a problem for them. Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement responded no.

Commissioner Bowman asked for action by the Board.

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

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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, June 22, 2010.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary