

MINUTES

Commission Meeting

August 25, 2015

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:

John M. R. Bull	Commissioner
Chad Ballard, III	
A. J. Erskine	
G. Wayne France	
S. Lynn Haynie	Associate Members
James E. Minor, III	
Ken Neill, III	
John E. Tankard, III	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Director, Human Resources
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Fisheries Mgmt. Manager Sr.
Jim Wesson	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager
Samantha Hoover	Fisheries Mgmt. Specialist
Rachael Maulorico	Fisheries Mgmt. Planner
Jill Ramsey	Fisheries Mgmt. Planner
Lewis Gillingham	Director, SWFT
Warner Rhodes	Deputy Chief, Law Enforcement
Jamie Green	Captain, Middle Area
Chris Beuchelt	Sr. Marine Police Officer

Commission Meeting

**17444
August 25, 2015**

Steve Holliday
David Drummond
Thomas Fitchett
Richard Pruitt
Brandon Price

Marine Police Officer
Master Marine Police Officer
Master Marine Police Officer
Master Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Jeff Madden
Hank Badger
Randy Owen
Ben Stagg
Mark Eversole
Justine Woodward
Justin Worrell
Mike Johnson
Bradley Reams
Rob Butler
Virginia Institute of Marine Science (VIMS):

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Chief Engineer, Eng-Survey
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Program Support Technician
Surveyor, Eng-Survey

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Richard Green
Shane Antonik
Bob Simon
Neville Reynolds
Jim Cahoon
Jerome Bonniville
Eddie Goldmen
Thomas J. Pruitt
Kim Husley
Arnold Evans
Larry Taylor
Edwin A. Cooper
Robert Orsinger
James M. Deal
Tye Burns
Mark Coffee
An Sullivan
J. Williams
Jon Connor
George H. Marshall

Carissa Agnese
Joe Ketchum
Jon Simon
Kevin Glover
Robert Pruhs
Sharon Setterholm
Donna Melzer
Lari Anne Pruitt
Doug Buckley
Freddie Linton
Douglas Crockett
Marc Brown
Allen Smith
David Bell
Mike Dryden
Kenneth Green
David Mosher
Andy Lacatell
Thomas Clark
Daniel Marshall

Chuck Roadley
Rebecca Francese
Mike Oesterling
Richie Turner
Jennifer Bonniville
Carl Setterholm
Jeff Paxton
John Broadwater
Jim Martin
Jeff Linton
Guy Pruitt
Taylor Brown
Darren Insley
Darryl Hurley
Tommy Leggett
Stephen Perrlillo
L. Wilkens
John Dryden
Michael Insley, Jr.
Raymond Firth

Commission Meeting

Mac Firth	Tim Breen	Zack Christman
Chris Moore	Eric Ferguson	John West
Timothy Marshall	Carroll Wilson	Don Porter
Charles Insley	Jeff Hammer	Brian Terry
Greg Hoffman	Jack Smith	Thomas Crockett
Rose Lynch	Kent Carr	Mike Insley
William Crewe, Jr.	William Crewe	

and others.

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Commissioner Bull called the meeting to order at approximately 9:40 a.m. All Associate Members were present.

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At the request of Commissioner Bull, Associate Member Erskine said the invocation and Tony Watkinson, Chief, Habitat Management, led the pledge.

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APPROVAL OF AGENDA: Commissioner Bull asked if there were any changes from the Board members or staff. There were no changes.

Associate Member Erskine moved to approve the agenda. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the July 28, 2015 Commission meeting minutes. There were no changes.

Commissioner Bull stated that the minutes were approved by the consensus of the Board.

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Commissioner Bull swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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Commission Meeting

2. **PERMITS** (Projects over \$500,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were five page two items to be heard, 2A through 2E. He reviewed them for the Board. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for any public comments for any of the items presented and there were none. He stated the public hearing was closed and the matter was before the Commission.

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

- 2A. **ARMY CORPS OF ENGINEERS, #15-0786**, requests authorization to place up to 500,000 cubic yards of dredge material per dredge cycle, from the Tribell Shoal Federal Channel, in a previously approved and utilized open-water disposal area adjacent to the north reach of the Federal Channel in the James River, centered at approximately N37-13.0683, W76-40.3785 in James City and Surry Counties. Staff recommends approval and a time-of-year restriction for dredge material placement from February 15th through June 30th of any year to protect anadromous fish species.

Permit Fee	\$100.00
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- 2B. **METRO FIBER NETWORKS, INC., #15-0701**, requests authorization to install two (2) 1.36-inch diameter fiber optic telecommunication cables, using direction boring and ploughing methodologies, under 13,455 linear feet of State-owned subaqueous bottom of Hampton Roads, east of the Hampton Roads Bridge Tunnel, from Fort Monroe to Willoughby Spit in the Cities Hampton and Norfolk. Staff recommends approval of the project with a royalty of \$80,730.00 for the encroachment under 26,910 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot and a special permit condition that the applicant shall adhere to the submitted frac-out monitoring response plan.

Royalty Fees (encroach 26, 910 lin. ft. @ \$3.00/lin. Ft.)	\$80,730.00
Permit Fee	\$ 100.00
Total Fees	\$80,830.00

- 2C. **BAE SYSTEMS, #13-0827**, requests authorization to modify an existing permit, to install an additional 3,877 linear feet of security barrier which encircle and protect U.S. Naval ships undergoing overhauls and repairs at their facility at

750 West Berkley Avenue situated along the Southern Branch of the Elizabeth River in Norfolk. Existing permit conditions remain in effect.

No applicable fees.

2D. ELIZABETH RIVER CROSSINGS, OPCO LLC, #11-1116, requests authorization to modify an existing permit, to extend the Norfolk permanent bulkhead wall an additional 66-feet channelward, to include 12 steel pipe piles as part of a pipe pile fender system for additional protection, and to include a backfill type change of 0.18 acres of ordinary fill to 57 stone to facilitate the construction of an additional tunnel for the Mid-town crossing as part of the U.S. Route 58 Downtown Tunnel/Mid-town Tunnel/Martin Luther King Freeway Expansion Project across the Elizabeth River between the cities of Norfolk and Portsmouth.

No applicable fees.

2E. SUFFOLK DEPARTMENT OF PUBLIC WORKS, #15-0491, requests authorization to replace the existing bridge with a new 30-foot wide bridge across approximately 42 linear feet of Spivey Run Swamp, to include a new support structure in the middle of the bridge to be constructed utilizing precast concrete bottomless culverts, headwalls and wing-walls, riprap, cast-in place footings, stone bedding, and to include the use of temporary sheet piles to allow for the placement of the footings in the dry, located along Arthur Drive in Suffolk.

Permit Fee	\$100.00
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3. CONSENT AGENDA ITEMS.

3A. ASSOCIATED CONTRACTING, #14-1245, requests after-the-fact authorization to retain a 6-foot wide by 86-foot long private, non-riparian pier with a 10-foot wide by 10-foot long L-head platform adjacent to 623 West Ocean View Avenue, which is bordered by a City platted street, situated along Willoughby Bay in Norfolk.

Tony Watkinson, Chief, Habitat Management, informed the Commission that there was one consent item to be heard. He gave the briefing of the information for this item. His comments are a part of the verbatim record.

Mr. Watkinson explained that since the public interest review had been completed, staff would have administratively issued a permit for the non-riparian pier upon receipt of a copy of the City's encroachment permit. Mr. Punch has accepted full responsibility for not securing the permit prior to construction of the replacement pier. Additionally, the

City of Norfolk typically requires a copy of the VMRC authorization for a project before a building permit is issued.

Mr. Watkinson stated that staff believed the project was warranted and reasonable. In lieu of further enforcement action by the Commission, staff recommended after-the-fact approval of the non-riparian pier contingent upon Mr. Punch’s agreement to pay a triple permit fee of \$75.00 pursuant to Section 28.2-1206 of the Code of Virginia, and a \$1,000.00 civil charge based on a minor degree of deviation and a minimal degree of impact, as identified in the Commission’s Guidance for Civil Charge Assessments.

Noel Ketchem, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Ketchem explained that he had a contractor to do everything including obtaining any permits.

The public hearing was opened and there were no public comments, pro or con. Commissioner Bull stated the matter was before the Commission.

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

Permit Fee (Triple ATF)	\$ 75.00
Civil Charge	\$1,000.00
Total Fees	\$1,075.00

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

- 5. SEAGATE TERMINALS, L.L.C., #14-1667,** requests authorization to modify an existing authorized project, to impact additional non-vegetated wetlands resulting from the construction of an outfall, to construct a 10-foot by 20-foot fire suppression equipment platform and intake pipe on the proposed concrete access dock, to construct an approximate 1,240 square foot mooring dolphin and associated fender system on the southern end of the main wharf, to include additional 6-pile timber bumpers on the southeast and southwest corners of the main wharf, to relocate the proposed 19-pile timber clusters, and to construct two (2) pipe piles with rolling tire fender systems north of the South Norfolk Jordan Bridge in association with a proposed marine terminal facility adjacent to their property located at Jefferson Street situated along the Southern Branch of the Elizabeth River in Chesapeake.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation with slides. Her comments are a part of the verbatim record.

Ms Woodward explained the modification request and reviewed the written comments provided by Mr. Kevin Crum with South Norfolk Jordan Bridge LLC, dated received August 11, 2015, She said that after considering the factors contained in §28.2-1205(A) and §28.2-1302(10)(B) of the Code of Virginia, staff recommended approval of the modification request. The permit conditions approved by the Commission at their March 24, 2015 meeting would remain in effect and the one-time standard royalty payment of \$60,750.00 for the dredging of 135,000 cubic yards of State-owned subaqueous material would be required (reduced from 137,500 cubic yards) and the permit expiration date was recommended to be February 24, 2020. She also noted the Commission’s prior approval is also contingent on the purchase of 1,014 square feet of tidal wetland credits from the Libertyville Mitigation Bank.

When asked by the Commissioner if he wished to comment, the representative for the applicant indicated that he had no comments, but would answer any questions from the Board.

There were no public comments, pro or con. Commissioner Bull stated that the matter was before the Commission for discussion or action.

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

Royalty Fees (dredge 135,000 cu. yds. @ \$0.45/cu. yd.)	\$60,750.00
Permit Fee	\$ 100.00
Total Fees	\$60,850.00

- 6. CHERRY HILL CONSTRUCTION, INC., #15-0777**, requests authorization to impact tidal wetlands in Boush Creek associated with the construction of the I-564 Intermodal Connector Project, which includes 2.5 miles of roadway alignment, including two (2) bridge crossings of Boush Creek, in the City of Norfolk. The proposal also includes impacts to State-owned submerged lands along the Elizabeth River resulting from the construction of an associated outfall. The project requires a wetlands and subaqueous permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation with slides. Her comments are a part of the verbatim record. She noted that Chuck Roadly representative for the applicant was present.

Ms. Woodward stated that staff believed the project was warranted and reasonable and would result in substantial improvements to the existing transportation system around Naval Station Norfolk and the Norfolk International Terminals. Accordingly, staff recommended approval of the project conditioned upon the purchase of 50,530 square feet of tidal wetlands credits from the Libertyville Mitigation Bank.

Commissioner Bull opened the public hearing and asked for public comments, pro or con. There were none. He stated the matter was before the Commission for discussion or action.

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

Permit Fee	\$100.00
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- 7. **JEFFREY PAXTON, #14-1604**, requests after-the-fact authorization to retain an existing oversized pier that encroaches over approximately 800 square feet of State-owned submerged land and to construct a 32-foot wide by 41-foot long open-sided roof over two (2) existing boatlifts and existing pier decking, and to construct four (4) mooring piles adjacent to 2634 Janson Drive situated along Drum Point Creek in Chesapeake.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation with slides. Her comments are a part of the verbatim record.

Ms. Woodward stated that accordingly, after evaluating the merits of 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 proposed open-sided roofed structure and mooring piles. Staff was, however, concerned about the additional encroachment resulting from the deck extension and floating structures over State-owned submerged land and the extent to which they are necessary in addition to the previously existing structures supporting water-dependent access and activities. As such, staff recommended denial of the after-the-fact request to retain the 10-foot by 12-foot deck extension and a 6-foot by 24-foot long floating dock with gangway access, an associated 5-foot by 16-foot L-head feature, and a drive-on personal watercraft lift located at the end of the previously existing T-head and adjacent finger pier. Should the Commission wish to consider allowing Mr. Paxton to retain these structures, staff recommended removal of the northernmost finger pier and 10 foot by 12-foot deck extension and replacement with the floating dock and associated appurtenances to include the drive-on watercraft lift. Should the Commission authorize the retention or relocation of the floating pier and drive-on watercraft lift, staff recommended a triple permit fee of \$300.00 and a \$1,000.00 civil charge based upon a

minor degree of deviation and a minimal degree of impact associated with the previously unauthorized structures.

Commissioner asked Mr. Paxton if he wished to comment.

Robert Simon, Waterfront Construction, was sworn in and his comments are a part of the verbatim record.

Jeffrey Paxton, applicant, was sworn in and his comments are a part of the verbatim record.

Mr. Simon explained that the property was purchased back in 1998 and a no permit necessary was issued and some of the construction was done by the prior owner. When it was found out by Mr. Paxton that no permits were issued he said that Mr. Paxton was the one who informed the Marine Resources Commission of this fact. He added there was no opposition or impacts to navigation. They requested that the Commission allow Mr. Paxton to keep it and Mr. Paxton agreed to the civil charge.

Mr. Paxton said that he was a contractor and had to deal with permits since he was in business for 25 years. He stated he did not intentionally do this without permits and he took responsibility for which he was sorry. In response to questions he stated that he had not had any opposition to the roof and he had spoke with other property owners.

Commissioner Bull asked for public comments, pro or con. There were none. He stated the matter was before the Commission for discussion or action.

Associate Member Zydron moved to approve the project, as is, with the triple permit fee and civil charge of \$1,000.00. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

Permit Fee (Triple ATF)	\$ 300.00
Civil Charge	\$1,000.00
Total Fees	\$1,300.00

- OYSTER PLANTING GROUND APPLICATIONS: JEROME BONNIVILLE, #2013-163; JEROME BONNIVILLE, #2013-164; CARL SETTERHOLM, #2014-028; JENNIFER BONNIVILLE, #2014-040; JENNIFER BONNIVILLE, #2014-050; SHANNON FEDORS, #2014-075; JOHNNIE TYNES, #2014-091; DONNA MELZER, #2014-088.** All applications are the subject of a protest and a petition requesting the Commission set the areas aside for either public clam grounds or as areas not to be leased and left for other public uses to include clamming, fish haul areas, fixed fishing device

areas and crabbing. All the applications are within the York River downstream of the U. S. Route 17 Coleman Bridge in Gloucester and York Counties.

Ben Stagg, Chief Engineer, Engineering and Surveying, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record. Letter received

Staff carefully reviewed the objections provided in the petition/letters for all the pending applications noted in those documents. Due to specific user conflicts, the lack of shellfish resources in some of the application areas, the unlikelihood that much of the deeper areas contain substantial shellfish resources, the unlikelihood that such areas will be planted with either cultch or seed, and the probable presence of significant historical resources in some of the application areas. Mr. Staff said that staff could not support a recommendation to lease any of the pending applications and recommends denial of applications 2013-163, 2013-164, 2014-028, 2014-040, 2014-050, 2014-075, 2014-091, and 2014-088.

Jerome and Jennifer Bonnaville, applicants, were sworn in and their comments in support of their applications for leases in the York River are a part of the verbatim record.

Mr. Bonnaville stated that he had found oysters in these areas. He said he had been in the seafood business his whole life and had even clammed in the area. He said his upriver leases had proven to have oysters to catch and he can put shells in these areas applied for as he has done elsewhere.

Ms. Bonnaville explained that other users groups have been allowed to work on their other leases and it would not be a conflict.

Commissioner Bull asked for public comments, pro or con.

Richard Green, waterman, was sworn in and his comments in support of setting aside this area as a clamming area. He said that this area had never been leased. He said this area had been worked in the past but the resource needed time to recover as clams are slower to grow and now they are showing up in this area.

John Broadwater, was sworn in and his comments in support of not leasing these areas because potentially historical structures are in this area that go back to the Revolutionary War. He said there was a large vessel that General Cornwallis used in battle for the Revolutionary War that is offshore of the VIMS' pier in 12' to 15' water line.

Carl Setterholm, applicant, was sworn in and his comments in support of his lease application are a part of the verbatim record. He explained that he worked his area in the past and there were oysters on the bottom. He said he had not seen any haul seiners in a long time in the area.

Applicants, Johnnie Tynes and Shannon Fedors were not present at the hearing.

Donna Melzer, applicant was sworn in and her comments in support of her application are a part of the verbatim record. She explained that historically this could be set aside and right now she has applied for this area first, no one else had applied for it. She said she has paid her \$25 for the application fee and the application process is 60-90 days. She said she planned to put oysters there as it was good hard bottom and away from the polluted leases. She said it would be protected by the water depth.

Commissioner Bull asked if there any public comments on these applications, pro or con.

Richard Green, watermen, explained that a small area of deeper water within the Setterholm application was a major clam area and this area was slow to recover because the clam is slow to grow. He said 30 to 40 boats would work here. He requested this be set aside permanently.

Bryan Hubbard, waterman, was sworn in and his comments in support of the setting aside the public clamming ground. He said he had harvested clams in these areas and clamming was not as good in the last several years.

Commission Bull closed the public hearing. He stated that a motion was necessary to deny or approve the request to set this area aside for public clamming.

Associate Member Tankard moved to deny the petition. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

JEROME BONNIVILLE, #2013-163; JEROME BONNIVILLE, #2013-164; JENNIFER BONNIVILLE, #2014-040; JENNIFER BONNIVILLE, #2014-050

Mr. Stagg explained that the haul seiners worked in the area, there were historical artifacts in the area, and there was a permitted mooring area. Originally staff had recommended denying all four applications, but the Commission would have to make that decision.

Associate Member Erskine moved to approve Lease Applications 2014-040 pending survey, to approve 2013-163 pending survey and no historical resources being found, and to deny Lease Applications 2013-164 and 2014-050. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

CARL SETTERHOLM, # 2014-028 and DONNA MELZER, #2014-088

Associate Member Zydron moved to table this decision on these applications (2014-028 and 2014-088) until staff can coordinate with the Department of Historic Resources to determine if there is significant historic resources in the area.

Associate Minor seconded the motion. The motion carried, 7-2. Associate Member Tankard and the Chair voted no.

SHANNON FEDORS, #2014-075 and JOHNNIE TYNES, #2014-091

Associate Member Ballard moved to deny these applications for lease (2014-075 and 2014-091). Associate Member Tankard seconded the motion. The motion carried, 6-3. Chair voted yes. Associate Members Erskine, Minor, and France all voted no.

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9. PUBLIC COMMENTS.

Richard Green, commercial waterman asked the Commission to consider setting up a committee for each river to make decisions about public ground oyster harvest.

Bryan Hubbard, commercial waterman asked the Commission to consider changing the bushel size to a true bushel.

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10. OFFENDERS.

Robert B. Boas – present and sworn in

Jamie Green, Captain, Middle Area, was sworn in and his comments are a part of the verbatim record.

Harvest oysters during closed season; summons issued April 3, 2015 pursuant to Code Section 28.2-201 and 4VAC 20-720-40; convicted May 13, 2015 in Gloucester County General District Court (Criminal), fine \$50.00, court cost \$86.00.

Mr. Boas said he showed the officer what he had and could take in the months with the letter R. In response to a question he stated he was taking them for personal use.

Joe Cimino, Fisheries Management Manager, Sr., read the staff recommendation. The Commission’s guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12-month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Boas’ licenses to take or catch fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, August 25, 2015, through August 24, 2016. Staff also recommended the Commission revoke Mr. Boas’ fishing privileges, within the Commonwealth’s tidal waters, for a period of

Commission Meeting

one year from the date of this Commission meeting, August 25, 2015, through August 24, 2016.

Commissioner Bull stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation that Mr. Boas' licenses and fishing privileges be revoked for one year, starting August 25, 2015, through August 24, 2016.

Gregory W. Parks, Jr.

Thomas Fitchett, Marine Police Officer was sworn in and he gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Over limit on oysters (18 bushels); summons issued November 4, 2014 pursuant to Chapters 4VAC 20-270-80 and amended to 4VAC 20-720-10, 04/08/15; convicted on April 8, 2015 in Accomack County General District Court (Criminal), fine \$100.00, court cost \$121.00.

Richard Pruitt, Master Marine Police Officer, was sworn in and he gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Take oysters in condemned area; summons issued on November 29, 2015; convicted on May 6, 2015 in the Accomack County General District Court (Criminal), fine \$1,250.00 with \$1,000 suspended, 34 days in jail with 30 days suspended, 3 years probation, court cost \$231.00.

Oystering out of season; summons on November 29, 2014 pursuant to Chapter 4VAC 20-720-40; convicted May 6, 2015 in the Accomack County General District Court (Criminal), fine \$1,100.00 with \$1,000 suspended, 30 days jail with 30 days suspended, 3 year probation, court cost \$145.00.

Mr. Parks stated that all of it was true. He said he miscounted the number of bushels he thought it was 16 and he was not selling and did not see the signs. He added he needed his livelihood to support his family.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation; and, one conviction of harvest oysters from a condemned area, within a 12 month period, should also result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all Mr. Parks licenses to

take or catch fish, shellfish, or marine organisms for a period of one year from the date of this Commission meeting, August 25, 2015, through August 24, 2016. Staff also recommends the Commission revoke Mr. Park's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, August 25, 2015, through August 24, 2016.

After some discussion, Commissioner Bull stated the matter was before the Commission.

After further discussion, Associate Member Zydron moved for Mr. Parks to be placed on two year probation, starting August 25, 2015, through August 24, 2017. Associate Member Minor seconded the motion. Associate Members Erskine and Ballard both felt that being in a condemned area would impact the industry and the public health. Commissioner Bull stated he could not support the current motion. Mr. Erskine suggested six months revocation of all Mr. Park's licenses and fishing privileges and followed by 18 months probation starting August 25, 2015, through August 24, 2017. Associate Members Zyrdon and Minor both agreed with the amendment. The motion carried 9-0. Chair voted yes.

Edwin A. Cooper – was present and sworn in.

Richard Pruitt, Master Marine Police Officer, was sworn in and he gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Oyster out of season; summons issued on November 29, 2014 pursuant to 4VAC 20-720-40; conviction on May 6, 2015 in the Accomack County General District Court (Criminal); fine \$1,100.00 with \$1,000.0 suspended, 30 days jail with 30 days suspended, 3 years probation, court cost \$145.00.

Take oyster in condemned area; summons issued pursuant to Code Section 28.2-810; convicted in the Accomack County General District Court (Criminal), fine \$1,250.00 with \$1,000 suspended, 34 days jail with 30 days suspended, 3 years probation, court cost \$231.00.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation; and, one conviction of harvesting oysters from a condemned area with a 12 month period should also result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Cooper's licenses to take or catch, fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, August 25, 2015, through August 24, 2016. Staff also recommends the Commission revoke Mr. Cooper's fishing privileges, within the

Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, August 25, 2015, through August 24, 2016.

Mr. Cooper explained he did not know it was against the law. He stated he had five kids to feed. He said he had no other job and he grew up working the water.

After some further discussion, Commissioner Bull stated the matter was before the Commission.

Associate Member Tankard moved for placing Mr. Cooper on two year probation, starting August 25, 2015, through August 24, 2017. Associate Member Minor seconded the motion. Associate Member Neill stated that someone licensed as a commercial waterman should know the laws. Commissioner Bull agreed with Mr. Neill. The motion carried, 5-4. Chair voted no. Associate Members Neill, France, and Haynie all voted.

Donald A. Crockett

David Drummond, Marine Police Officer, was sworn in and gave the briefing for the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Possession of unculled channeled whelk; summons issued on May 10, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-890-30; convicted on July 22, 2014 in the Northampton County General District Court (Criminal), fine \$100.00, court cost \$121.00.

Fail to tag oysters; summons issued December 15, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-1250-30; conviction on April 8, 2015 in Accomack County General District Court (Criminal), fine \$35.00, court cost \$86.00.

William Franklin, Marine Police Officer, was sworn in and gave the briefing for the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Set pots in crab sanctuary; summons issued on June 2, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-752-30; conviction on June 25, 2014 in Lancaster County General District Court (Criminal), fine \$100.00, court cost \$86.00.

Mr. Crockett explained that he did not feel that he was in the wrong area since he was in Area 2. In response to questions, Mr. Crockett stated he has worked for 10 years with no convictions since he retired from the Marines and get his commercial card.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions, after three court-adjudicated convictions of

Category 3 violations, (violations which are not listed in Tables 4 through 8) require a harvester to appear before the Commission. In accordance with Code Section 28.2-232, staff recommended the Commission place Mr. Crockett on probation for a period of two years from the date of Commission meeting, August 25, 2015, through August 24, 2017. Any failures on Mr. Crockett's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the two year probation would result in Mr. Crockett appearing before the Commission for a hearing on license revocation.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation for two year probation, starting August 25, 2015 through August 24, 2017. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.

Darin M. Crow – not present.

Commissioner Bull explained that the Commission could take action or suspend all Mr. Crow's licenses until he appeared before the board

Associate Member Zydron moved to suspend all of Mr. Crow's licenses until he appeared before the Commission. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

David D. Mosher – present and sworn in.

Steven Holliday, Marine Police Officer, was sworn in and gave the briefing for the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Harvest oysters during a closed season; summons issued on January 8, 2015 pursuant to 4 VAC 20-720-40; conviction on February 24, 2015 in Hampton General District Court (Criminal), fine \$90.00, court cost \$121.00.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation; and, one conviction of harvesting oysters from a condemned area with a 12 month period should also result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Mosher's licenses to take or catch, fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, July 28, 2015, through July 27, 2016. Staff also recommends the Commission revoke Mr. Mosher's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, July 28, 2015, through July 27, 2016.

Mr. Mosher explained that he had taken only one bushel and there were no signs telling him he could not take them.

Commissioner Bull stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation for revocation of licenses and fishing privileges, starting July 28, 2015 through July 27, 2016. Associate member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

Stephen M. Perriello – present and sworn in.

Chris Beuchelt, Marine Police Officer was sworn in and his comments are a part of the verbatim record. He gave the briefing of the information provided in the staff evaluation.

Fail to have tight fitting lid on sanitation device (class 1); summons issued on October 28, 2014 pursuant to Chapter 4VAC 20-1100-20B; conviction on December 15, 2014 in the Middle County General District Court (Criminal), fine \$35.00, court cost \$86.00.

Brandon Price, Marine Police Officer was sworn in and his comments are a part of the verbatim record. He gave the briefing of the information provided in the staff evaluation.

Unculled oysters (8 quarts); summons issued on December 4, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-260-30; conviction on December 16, 2014 in the Newport News General District Court (Criminal); Mr. Perriello pled guilty along with three other co-defendants and Judge Mills accepted their plea of guilty and merged all four cases into one conviction for the captain of the vessel (Mr. Perriello), fine \$500.00, court cost \$101.00.

Harvest of oysters by hand scrape in designated hand tong area: summons issued on December 22, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-70A; conviction on January 27, 2015 in the Newport News General District Court (Criminal), Mr. Perriello was present. Judge Kerns found Mr. Perriello guilty but found the remaining co-defendants on board not guilty because Judge Kerns felt the captain was responsible for navigating the vessel across the line, fine \$100.00, court cost \$101.00.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of great than 100 percent over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. Mr. Perriello was also convicted of a Class 1 misdemeanor for failure to have a tight fitting lid on his sanitation device. In accordance with Code Section 28.2-232, staff recommended the Commission place Mr. Perriello on

probation for a period of two years from the date of this Commission meeting, August 25, 2015, through August 24, 2017. Any failure on Mr. Perriello's part to obey any laws or regulations relating to the marine resources of the Commonwealth during the two year probation period would result in Mr. Perriello appearing before the Commission for a hearing license revocation.

Commissioner Bull stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation for two year probation, starting August 25, 2015, through August 24, 2017. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

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11. **FAILURE TO REPORT:** Cases involving failure to report commercial harvests, in accordance with Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Management Manager, gave the briefings for the information provided in the staff evaluations with slides. Her comments are a part of the verbatim record.

Ms. Iverson said that Mr. Orsinger was initially placed on probation from July 22, 2014 through July 23, 2016 by the Commission at its September 23, 2014 meeting. She explained that the staff recommended suspension of all licenses and permits issued to Mr. Orsinger for a period of one year, beginning the date of this hearing, August 25, 2015, immediately followed by one year probation until August 24, 2017. During this suspension period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations by Mr. Orsinger will require Mr. Orsinger to appear before a hearing of the Commission on license(s) suspension.

Associate Member Neill asked what all had Mr. Orsinger done that was wrong? Ms. Iverson stated he had failed to respond to the notice, which was the result of bad contact information, and he had not reported.

Robert E. Orsinger – was present and sworn in

Mr. Orsinger explained that he was only a deck hand and he worked with Ernest Lewis and they sold the crab harvest to David Bell.

David Bell, was sworn in and his comments are a part of the verbatim record. He explained that Mr. Lewis did the reporting of the crabs not Mr. Orsinger, although the buyer records had Mr. Orsinger's name on the records mistakenly.

After some further discussion Commissioner Bull stated the matter was before the Commission.

Associate Member Neill moved to continue Mr. Orsinger's current probation until July 23, 2016. Associate Member Zydron seconded the motion. The motion carried, 9-0.

Stephanie Iverson, Fisheries Management Manager, gave the briefings for the information provided in the staff evaluations with slides. Her comments are a part of the verbatim record.

Ms. Iverson explained that staff recommended suspension of all licenses and permits issued to Mr. Ferguson for a period of one year, beginning the day of his hearing, August 25, 2015, immediately followed by one year probation until August 24, 2017. During this suspension period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations by Mr. Ferguson will require Mr. Ferguson to appear before a hearing of the Commission on license(s) suspension.

Eric H. Ferguson – was present and sworn in.

Mr. Ferguson explained that he was working with someone. He said he called and spoke with staff and reported he had no activity. He noted that his address was incorrect and he only got the 2nd notice and he was just culling.

Commissioner Bull noted that Mr. Ferguson had a history of non-compliance.

After some further discussion Commissioner Bull stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 7-2. Chair voted yes. Associate Members France and Minor voted no.

Stephanie Iverson, Fisheries Management Manager explained that Mr. Johnson was not present and the Commission could decide whether to continue hearing the case today. Her comments are a part of the verbatim record.

Richard Johnson – was not present.

Associate Member Zydron moved to continue the matter and to suspend Mr. Johnson licenses until he appeared before the Commission. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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12. **PUBLIC HEARING:** Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” request to establish the 2015-2016 public oyster harvest seasons and management measures that could include, but are not limited to, lower bushel limits and effort limitations.

Jim Wesson, Head, Conservation and Replenishment Dept., gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. Wesson explained that to protect oyster stocks, the stability of the oyster fishery and the cultch and future productivity of public oyster beds, staff requests approval of amendments to Chapter 4VAC 20-720-10, et seq., “Pertaining to Restrictions on Oyster Harvest,” which include:

- All individuals currently eligible to purchase an oyster hand scrape or oyster dredge license that have not purchased these gear types after June 30, 2013 become ineligible for the purchase of these gear types after November 30, 2015. (4VAC 20-720-15B-D)
- All individuals that purchased an oyster hand scrape or oyster dredge gear license, but reported no harvest during the 2013-2014 or 2014-2015 oyster harvest season become ineligible to purchase these gear types after November 30, 2015. (4VAC 20-720-15B-D)
- All individuals that purchased an oyster hand scrape or oyster dredge license and reported less than 20 days of harvest during the 2013-2014 and/or 2014-2015 oyster harvest seasons become ineligible to purchase these gear types after November 30, 2015. (4VAC 20-720-15B-D)
- A gear transfer process be established, that would begin on January 1, 2016. This process allows current oyster hand scrape and oyster dredge licenses to be transferred within families, at death, or between commercial fishermen under prescribed conditions. (4VAC 20-720-15F)
- An appeal process is established for a commercial fisherman to appeal the status of license ineligibility. (4VAC 20-720-15E)

Staff recommended these further amendments to limit effort by methods other than limited entry.

- Oyster patent tong license be added to the list of suspended licenses sales and that the suspended license sales be limited to the time period beginning July 1, 2013. (4VAC 20-720-15B)
- No person shall serve as an agent for any public oyster gear licenses. (4VAC 20-720-15G)
- Amendments to season dates and areas as described in 4VAC 20-720-40.

- From October 1, 2015, through December 31, 2015. It shall be unlawful to take, catch, or possess oysters on Wednesday from the public oyster grounds or unassigned grounds from all oyster hand scrape and oyster dredge areas that are open for harvest. (4VAC 20-720-60B)
- Amendments to allow a maximum of 8 bushels per registered commercial fisherman licensees who have paid an oyster resource user fee, with a maximum daily vessel limit of 16 bushels for hand scrape and dredge areas. (4VAC 20-720-80A)
- Amendments to allow a maximum of 8 bushels per man, with the vessel limit determined by the number of registered commercial fisherman licensees who have paid the oyster resource user fee multiplied by 8 for all hand tong areas except the James River and for the Deep Rock Patent Tong Area. (4VAC 20-720-80B)
- Amendments to establish a maximum limit of 12 bushels of clean cull oysters per man, with the vessel limit determined by the number of registered commercial fisherman licensees who have paid the oyster resource user fee multiplied by 12 for all James River Hand Tong Areas.(4VAC 20-720-80C).

After further discussion, Commissioner Bull opened the public hearing.

A number of the public present at the hearing gave their comments regarding their concerns with the changes proposed for the public oyster industry at this hearing. They were concerned with the limited entry being established for the oyster hand scrape and oyster dredge gear licenses, the economic hardship impacting the watermen and the industry, the cutting back of the bushel limit for the vessel and number of days they would be allowed to work in a week and if the work week days were cut, make it Friday, the improvement of the oyster industry in the Gulf area and increased competition, not opening up more areas to be worked, not necessary to have a limited entry public oyster fishery, no changes were necessary for the James River and a need to re-open the public oyster ground areas in Saxis opened in the fall of 2013 (public ground numbers 9 and 10). Their comments are all a part of the verbatim record.

Those present that commented:

Ann Sullivan, Donna Melzer, Jeff Hammer, Kent Carr, Marc Brown, Lori Pruitt, Richard Green, Bill Bailey, Freddie Linton, J. C. West, Rickie Turner, Don Porter, Dallas Smith, Kenny Green, Bryan Hubbard, and Carl Setterholm.

Associate Member Erskine explained that the Shellfish Management Advisory Committee met months ago and they made a motion that passed 9 to 3 to keep the status quo for the industry, the limited entry for licenses not be done before January 1, 2016, and to wait until December when the preliminary reports would be available.

After much discussion, Commissioner Bull stated that the matter was before the Commission.

Associate Member Neill moved to approve staff recommendation for effort control measures with transfers allowed starting January 1, 2016. Associate Member Erskine seconded the motion. The motion carried, 8-1. Associate Member France voted no.

After much discussion, Associate Member Ballard moved to accept the remaining staff recommendations, with two exceptions: keep the vessel bushel limit as 24 bushels and the 4-day work week be established for open Monday through Thursday and close on Friday. Associate Member Haynie seconded the motion. The motion carried, 8-1. Chair voted yes and Associate Member Tankard voted no.

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13. PUBLIC HEARING: Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum,” request to conform the penalty section with recent changes to the Code of Virginia.

Jill Ramsey, Fisheries Management Specialist, gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

Ms. Ramsey explained that the General Assembly of Virginia repealed Code Section 28.2-304 relating to channel bass (red drum) through Senate Bill 343, at the prompting of Commissioner Bull. This bill repealed an obsolete section of the Code restricting the taking of channel bass and penalties for violation of red drum conservation measures. Code Section 28.2-903 remains in the regulation and establishes penalties for any violation.

Ms. Ramsey stated that staff recommended the Commission adopt the draft amendments to 4VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum,” to conform the penalty section with recent changes to the Code of Virginia.

The public hearing was opened and there were no public comments, pro or con. Commissioner Bull stated the matter was before the Commission for discussion or action.

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

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- 14. **REQUEST FOR SEPTEMBER PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-110-10 et seq., "Pertaining to Lobsters," to establish a bycatch permit for the harvest of American lobster in State waters.

Joe Cimino, Fisheries Management Manager, Sr., gave the briefing for the request for a public hearing. His comments are a part of the verbatim record.

Mr. Cimino explained that this regulation amendment would establish a permit for incidental harvest of lobsters in state waters, in accordance with amendments to the Fishery Management Plan for American lobster which was established by the Atlantic States Marine Fisheries Commission (ASMFC).

After some discussion, Associate Member Erskine moved to advertise for the public hearing on September 22, 2015. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 15. **DISCUSSION ITEM:** The Virginia Institute of Marine Science will give a presentation on the results of an investigation of the potential impact of the Gwynn's Island bridge rehabilitation work on mortality in a nearby oyster hatchery.

No presentation was given.

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There being no further business, the meeting was adjourned at approximately 6:20 p.m. The next regular Commission meeting will be Tuesday, September 22, 2015.

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John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary