

## MINUTES

## Commission Meeting

November 19, 2012

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

Jack G. Travelstead	Commissioner
Robert G. Beck	
J. Carter Fox	
S. Lynn Haynie	
J. Bryan Plumlee	Associate Members
Richard B. Robins, Jr.	
J. Edward Tankard, III	
Whitt G. Sessoms, III	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Linda Farris	Bs. Systems Specialist, MIS
Katherine V. Leonard	Recording Secretary
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgmt.
Joe Cimino	Fisheries Mgmt. Senior Mgr.
Stephanie Iverson	Fisheries Mgmt. Mgr.
Renee Hoover	Biological Collection Program, Supervisor
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Adam Kenyon	Fisheries Mgmt. Specialist
Lewis Gillingham	Game Fish Coordinator
Samantha Hoover	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
James Vanlandingham	Sr. Marine Police Officer
Russell Phillips	Sr. Marine Police Officer

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Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Juliette Giordano	Environmental Engineer, Sr.
Jordan Creek	Environmental Engineer, Sr.
Bradley Reams	Program Support Technician Sr.

## Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Rom Lipicius
M. Seebo	D. McCulloch

## Others present:

Jeremy Tweedie	Laura Burbage	Joe Bozieman
Carl Bowman	E A. Stokes	Bill Powell
Susan French	Juan Crofton	Keith Aveyard
Troy M. Andersen	David C. Nelson	Carolina Booth
Benjamin Nault	Michael Drummond	Pexton Carr
Chuck Lawrence	George Bott	William W.
S. A. Madsen	Jace P. Wilson III	Chris Frye
Jerry W. Ferguson	Myles Pocta	Roshe Copeland
Kennedy Kiei-Mensah		Max Barthscome
Robert Pruhs	Chris Turner	Len Dameron
Cathy Vick	Jane Kelley	Mark Brodee
Jack Willis	Joe Benkert	Craig Paige
Jenn Arosa	Matt Mullin	Chad Boyce
Chris Moore	Sarah Smith	William E. Laine, Jr.

and others.

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Commissioner Travelstead called the meeting to order approximately 9:31a.m. He introduced new members of the Board, Associate Members S. Lynn Haynie and Robert G. Beck. After giving some background information on each new member, he noted that they were replacing Associate Members Kyle J. Schick and William E. Laine, Jr. All

members were present. Tony Watkinson introduced to the Associate Members, Jordan Creed, Environmental Engineer, Sr. who was hired to fill a position in the Habitat Management Division that was previously held by Dan Bacon. Rob O'Reilly informed the Associate Members of various promotions in the Fisheries Management Division: Joe Cimino, Fisheries Management Senior Manager; Alicia Nelson, Fisheries Mgt. Specialist (RFAB/CFAB Coordinator); Renee Hoover, Biological Collection Program Supervisor; and Samantha Hoover, Fisheries Management Specialist.

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At the request of Commissioner Travelstead, Associate Member Robins gave the invocation; and Tony Watkinson, Chief of Habitat Management led the pledge of allegiance.

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

Rob O'Reilly, Chief, Fisheries Management explained that Dr. Bob Orth of VIMS had requested that the agenda item, Status of SAV, be pulled and to be heard at the next meeting.

Tony Watkinson, Chief, Habitat Management explained that for the Len Dameron, Item 8, it was necessary to delay it until 11 a.m. as the Attorney would be arriving at approximately that time.

**Commissioner Travelstead announced that it was the consensus of the Board to accept the amended agenda.**

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**MINUTES:** Commissioner Travelstead asked for a motion for approval of the September 25, 2012 Commission meeting minutes, if there were no corrections or changes.

Associate Member Robins explained that there were corrections to be made to the minutes as to the voting of the various items. He said in all items except for Items 7 and 10, the vote should be 4-0-1 because as acting chairman he had abstained. He said Item 7

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was correct, but item 10 he had only voted on the final motion which was correct, not the substitute motion, which the vote should be 2-2.

Commissioner Travelstead asked for a motion to approve the amended minutes.

**Associate Member Robins moved to approve the amended minutes. Associate Member Tankard seconded the motion. The motion carried, 5-0-3. Associate Members Palmer, Haynie, and Beck all abstained as they were not at the last meeting.**

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

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were six page two items, A through F, to be heard. He reviewed these items for the board. His comments are a part of the verbatim record.

Associate Member Plumlee stated that because of a possible business conflict he would recuse himself from voting on item 2F.

There were no public comments. Commissioner Travelstead asked for a motion.

**Associate Member Robins moved to approve item 2A through 2E. Associate Member Fox seconded the motion. The motion carried, 8-0.**

**Associate Member Robins moved to approve item 2F. Associate Member Fox seconded the motion. The motion carried, 7-0-1. Associate Member Plumlee abstained.**

- 2A. **PLAINS MARKETING, L.P., #12-1378**, requests authorization to construct two new (2) breasting dolphins at the end of an existing pier to be used for crude oil loading into marine vessels, as well as install a marine vapor combustion system, repair and/or replace existing piping and replace two (2) operator buildings on the pier in the York River at 2201 Goodwin Neck Road in York County. Recommend approval with an encroachment royalty in the amount of \$1,200.00 for the additional encroachment of the dolphins over 600 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royalty Fees (600 sq. ft. encroachment @ \$2.00/sq. ft.).....	\$1,200.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,300.00

**2B. ARMY CORPS OF ENGINEERS, #12-1255**, requests authorization to place up to 60,000 cubic yards of dredged material, per dredge cycle, in a 1,000-foot by 1,000-foot overboard placement site in Bradford Bay centered at N37°35’02”, W75°40’53”, for the hydraulic maintenance dredging of the Wachapreague and Finney Creek Federal Project Channels near the Town of Wachapreague in Accomack County.

Permit Fee.....	\$100.00
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**2C. SUFFOLK DEPARTMENT OF PUBLIC UTILITIES, #12-0890**, requests authorization to install a 16-inch sanitary sewer force main pipeline crossing beneath ten (10) linear feet of an unnamed tidal stream by open trench method, and beneath 2,360 linear feet of the Nansemond River, by directional drill method, along the general alignment of the former Kings Highway Bridge as part of the G. Robert House, Jr. Water Treatment Plant Sewer Force Main Extension project in the City of Suffolk.

Permit Fee.....	\$100.00
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**2D. GREENE COUNTY, #11-1366**, requests authorization to construct a maximum ten (10) million gallon per day raw water intake structure in the Rapidan River in Greene County to include ten (10) intake screens spanning 55 linear feet along the river bottom encroaching a maximum of 40 feet from ordinary high water, the installation of temporary sheet piling cofferdams and turbidity curtain around the installation area, the excavation of 200 cubic yards of State-owned bottom for the placement of the intake structure, and the installation of 90 linear feet of Class A2 riprap encroaching a maximum of ten (10) feet channelward of ordinary high water adjacent to the existing Rapidan Service Authority water treatment plant to facilitate the construction of a pumped storage reservoir on an unnamed tributary of White Run in Greene County.

No applicable fees.

**2E. BAVON BEACH HOMEOWNERS ASSOCIATION AND CHESAPEAKE BEACH HOMEOWNERS ASSOCIATION, #11-1708**, requests authorization to install four (4) headland breakwaters totaling 950 linear feet with 25,000 cubic yards of sand placed landward of the breakwaters and channelward of mean low water as beach nourishment, and to extend an existing 12-inch drainage outfall pipe 109 feet channelward adjacent to their properties situated along the Chesapeake Bay in Mathews County. Staff recommends approval with a royalty in the amount of \$8,978.15 for the encroachment of the pipe on 109 linear feet of State-owned submerged land at the rate of \$3.00 per linear foot and for the encroachment of the beach nourishment upon 173,023 square feet of submerged land at the rate of \$0.05 per square foot. Additionally, staff recommends a time of

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year restriction precluding any construction activity from June 1 to September 15 to minimize adverse impacts on the Northeastern Beach Tiger Beetle, and a requirement to develop a one-time mitigation plan for the seeding of SAV in the James River as part of ongoing SAV restoration efforts by VIMS and not to exceed a cost of \$10,000.00.

Royalty Fees (109 sq. ft. encroachment @ \$3.00/sq. ft.).....	\$ 327.00
Royalty Fees (173,023 sq. ft. fill @ \$0.05/sq. ft.).....	\$8,651.15
Permit Fee.....	\$ 100.00
Total Fees.....	\$9,078.15

**2F. NORFOLK SOUTHERN CORPORATION, VMRC#12-1488,** requests authorization to rehabilitate existing mooring dolphins adjacent to Pier 6, by installing steel pipe piles around each mooring dolphin cell, followed by the placement of fiber reinforced polymer (FRP) sheet piles a maximum of 26 inches channelward of the existing cells, to include the placement of backfill and concrete between the existing cells and the proposed FRP sheet piles, resulting in 560 square feet of additional encroachment over State-owned submerged land adjacent to their Lambert's Point facility at 2200 Redgate Avenue, situated along the Elizabeth River in Norfolk. Staff recommends approval with a one-time royalty payment of \$1,120.00 for the encroachment over 560 square feet of State-owned submerged land at a rate of \$2.00 per square foot.

Royalty Fees (560 sq. ft. encroachment @ \$2.00/sq. ft.).....	\$1,120.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,220.00

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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).

Tony Watkinson, Chief, Habitat Management gave the briefings covering the information in the staff evaluations. His comments are a part of the verbatim record.

**3A. C.W. LAWRENCE JR., #03-1086,** requests after-the-fact authorization to retain additional pier widths of two to four feet for three (3) previously permitted floating docks that now measure 6-feet wide by 36-feet long, 8-feet wide by 69-feet long, and 8-feet wide by 48-feet long and the reconfiguration of a fixed pier platform that now starts at 10-feet wide, ends at a 6-foot width and is 12-feet long,

all of which are now used by patrons for the adjacent restaurant along Jones Creek at 21088 Marina Road in Isle of Wight County. Mr. Lawrence has agreed to a \$1,000.00 civil charge in lieu of further enforcement action. Staff recommends approval of the after-the-fact permit modification and acceptance of the civil charge along with a royalty in the amount of \$624.00 for the encroachment over 624 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot.

There were no questions or public comments. **Associate Member Plumlee moved to approve the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

Royalty Fees (624 sq. ft. encroachment @ \$1.00/sq. ft.).....	\$624.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$1,300.00

Note: Modification of Permit – no permit fee charge

**3B. BRISTOL VIRGINIA UTILITIES, #12-1310,** requests after-the-fact authorization to retain a buried fiber optic cable installed beneath 64 linear feet of Right Fork adjacent to State Road 643 in Buchanan County. Recommend approval with the assessment of a civil charge in the amount of \$1,000.00 and triple permit fees.

There were no questions or public comments. **Associate Member Fox moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 8-0.**

Civil Charge.....	\$1,000.00
Permit Fee.....	\$ 75.00
Total Fees.....	\$1,075.00

**3C. DOMINION POWER, #12-1043,** requests after-the-fact authorization to retain an 8-inch HDPE conduit and 35kV transmission line installed a minimum of three (3) feet below the Chickahominy Lake bottom using a hand jetting method crossing 1,320 feet of the historic Chickahominy River channel associated with the replacement of an existing aerial power line south of Route 650 in New Kent and Charles City Counties. The applicant has agreed to a \$1,000.00 civil charge. Additionally, the contractor, Crofton Diving, has agreed to \$1,000.00 civil charge. The civil charges would be in lieu of further enforcement action. Staff recommends approval of the after-the-fact permit and acceptance of the civil charges along with a royalty of \$3,960.00 for the crossing of 1,320 linear feet of the historic river channel at a rate of \$3.00 per linear foot and a triple permit fee of \$300.00.

Mr. Watkinson noted that this was an emergency situation and that they had needed to go ahead with the work prior to obtaining a permit.

Juan Crofton, representing the applicant was present and sworn in. His comments are a part of the verbatim record. He explained that because of additional damage that was brought to their attention, an emergency existed because of concerns with public safety. He added that if this emergency had not existed they would have followed the normal process of obtaining a permit.

Cathy Vick, representing the applicant was present and sworn in. Her comments are a part of the verbatim record. She confirmed Mr. Crofton’s comments.

There were no questions or other public comments. **After some further discussion, Associate Members Robins moved to approve the request with the elimination of the civil charge, but to still require payment of the royalty and triple permit fees. Associate Member Fox seconded the motion. The motion carried, 8-0.**

Royalty Fees (1,320 lin. ft. crossing @ \$3.00/lin. ft.).....	\$3,960.00
Permit Fee (A-T-F Triple).....	\$ 300.00
Total Fees.....	\$4,260.00

Note: Emergency Repair - Civil Charge waived.

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**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.**

Closed meeting was not necessary.

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**5. JOINT BASE LANGLEY-EUSTIS, #12-0972,** requests authorization to install, up to 12 times per year, a 24-foot wide, temporary causeway extending 1,210 feet channelward of mean low water with 24,960 square feet of decking and to excavate 185 cubic yards of State-owned subaqueous bottom and 410 cubic yards of jurisdictional beach and dune, to facilitate the temporary causeway installation, as part of military training exercises along the James River at the Anzio Beach area of Joint Base Langley-Eustis in the City of Newport News. The project requires a Subaqueous Permit and a Coastal Primary Sand Dune and Beach Permit.

Mike Johnson, Environmental Engineer, Sr., gave a briefing covering the information in the staff evaluation with slides. His comments are a part of the verbatim record.



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Commissioner Travelstead asked for comments from the applicant’s representative.

Benjamin Nault, applicant’s representative, was sworn in. His comments are a part of the verbatim record. He said this floating pier was in place temporarily for their field exercise; and, the floating pier would be deployed at that time and removed once the field exercise was over.

**Associate Member Tankard moved to approve the project. Associate Member Robins seconded the motion. The motion carried, 8-0.**

Permit Fee.....	\$100.00
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- 6. **KEITH W. AVEYARD, #12-1049**, requests after-the-fact authorization to retain two (2) previously unauthorized concrete block groin structures, each extending approximately 30 feet channelward of mean low water, and to retain three (3) previously unauthorized mooring poles. The applicant also is seeking authorization to install numerous PVC pipes to delineate submerged hazards; to install up to eight (8) 2-inch galvanized poles, for use to secure an also requested use of a water trampoline structure, used seasonally; to install a “zip line” apparatus extending from the upland to one of the existing mooring poles; and to place a floating platform, seasonally, at various locations within the applicant’s riparian area. All existing and proposed structures are, or will be, located within the James River (Burwells Bay) at and adjacent to the applicant’s property located at 4001 River Landing Trail in Isle of Wight County.

Ben Stagg, Environmental Engineer, Sr., gave a briefing covering the information in the staff evaluation with slides. His comments are a part of the verbatim record.

Commissioner Travelstead asked if the applicant wished to comment.

Keith Aveyard, applicant, was present and sworn in. His comments are a part of the verbatim record. Mr. Aveyard said he did not know he needed a permit and did not intentionally try to avoid getting one.

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

**After further discussion, Associate Member Sessoms moved to approve the request with conditions that PVC pipe be used, no galvanized pipe, and that signage be place on the zip line, which would be approved by staff. Associate Member Fox asked if the motion included the \$1,000 civil charge and triple permit fee. Staff reminded the members of the need to act on the groins. Associate Member Sessoms stated that the**

**groins and floating platform would be added to the motion as well as the triple permit fee and civil charge. Associate Member Fox seconded the motion. The motion carried, 8-0.**

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

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7. **DONALD FOOR, #12-0236**, requests after-the-fact authorization to retain a 46-foot long by 16-foot wide concrete low water bridge crossing on Hogue Creek to access his property on Quiet Meadows Lane from US Route 522 in Frederick County. The project is protested by an adjacent property owner.

Mike Johnson, Environmental Engineer, Sr., gave the briefing covering the information in the staff evaluation with slides. His comments are a part of the verbatim record.

Commissioner Travelstead asked if the applicant’s representative wished to comment. There were no comments by the agent for the applicant.

Commissioner Travelstead asked for public comments.

Susan French, protestant and adjacent property owner, was sworn in and her comments are a part of the verbatim record. Ms. French provided a handout. She stated that she wanted the project to be denied and an order for removal of the bridge to be issued; and, she explained her opposition to this project.

Commissioner Traveler asked if the applicant’s representative had any rebuttal comments.

Jeremy Tweetie, agent was present and sworn in. His comments are a part of the verbatim record. He noted that the bridge protected the stream from being impacted by vehicle crossings as well as providing access for emergency vehicles to get to the property.

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

**After some more discussion by the Board, Associate Member Tankard moved to deny the bridge. Associate Member Fox seconded the motion.**

**Associate Member Robins offered a substitute motion to accept the staff recommendation. Associate Member Palmer seconded the motion. As a result of further discussion, Commissioner Travelstead stated the motion is to accept the staff recommendation for approval. The motion carried, 5-3. Associate Member Tankard, Fox, and Plumlee all voted no.**

Permit Fee.....	\$100.00
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- 8. **LEN DAMERON (BENCHMARK DEVELOPERS, LLC), #07-1375**, requests Commission reconsideration of the \$9,000.00 civil charged assessed in connection with his involvement as contractor for the construction of a 170-foot long by 8-foot wide community pier with a 184-foot T-head built for Benchmark Developers, LLC (#07-1375), that was built without Commission authorization, adjacent to property situated along a cove of Hack Creek in Northumberland County.

Jeff Madden, Environmental Engineer, Sr., gave a briefing covering the information provided in the staff evaluation with slides. His comments are a part of the verbatim record. He provided some additional handouts not in the Commission packets.

There were no questions.

Commissioner Travelstead asked if the party involved in this matter or his representative wished to comment.

Honorable Richard Stewart, Attorney for the contractor of the project, was present and his comments are a part of the verbatim record. Mr. Stewart explained that Mr. Dameron did not attend the last hearing as he did not feel that he had done anything wrong, until he received the notification of the violation and fines. He stated the Commission needed to hear from Mr. Dameron.

Len Dameron, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Dameron stated he was not hired to obtain the permits and this was during the second year of his newly started business. He said he assumed all the permits were done as the County had approved it which had been posted at the project site and they usually do not do so prior to the Joint Permit Application being approved. He explained that this large of a penalty could damage his ability to stay in business. He said the staff knows him from his involvement in other projects.

Commissioner Travelstead asked for any public comments.

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David Nelson, representing Benchmark Developers, LLC, was present and sworn in. His comments are a part of the verbatim record. Mr. Nelson explained that they were requesting the Commission give them some relief from the penalties placed upon them, the same as Mr. Dameron.

Associate Member Robins asked if there could be a probation period or payment plan established. Paul Kugelman, Assistant Attorney General and VMRC Counsel stated yes, if all parties agreed.

**Associate Member Tankard moved to approve the staff recommendation, but to make it \$6,000.00 instead of the \$9,000.00 with a payment plan. Associate Member Plumlee seconded the motion. Associate Member Robins asked if consideration could be given to reduce the civil charge to \$3,000.00 with the balance due if a violation occurred during a probation period. Both Associate Members Tankard and Plumlee agreed to the \$3,000.00 now with a payment plan and the payment of \$6,000.00 if a violation occurred during a 2-year probation period. Mr. Watkinson suggested that one payment of \$1,000 could be provided now, \$1,000 at the end of the 1<sup>st</sup> year, and \$1,000 at the end of the 2<sup>nd</sup> year.**

Mr. Stewart indicated their agreement.

**The motion carried, 8-0.**

Civil Charge.....	\$3,000.00
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Commissioner Travelstead asked the Commission if they wished to consider the request made by the representative from Benchmark Developers, LLC. There was no response from any member of the Board, therefore no action was taken.

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- 9. **JERRY W. FERGUSON.** Commission reconsideration of the appropriate terms and conditions to accompany the conveyance of a causeway and island located on approximately 1.2 acres of State-owned submerged land in the Rappahannock River adjacent to an easement from State Route 600 in Middlesex County, as authorized by Chapter 201, Acts of Assembly 2006, and previously considered during the July and November 2006 Commission meetings.

Tony Watkinson, Chief, Habitat Management, explained that the Attorney was requesting a continuance of this matter.

Commissioner Travelstead announced a consensus of the Board to approve the request to continue the matter. Associate Member Fox was not present during this item.

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**10. PUBLIC COMMENT.**

**George Bott**, representing Yankee Point Racing and Cruising Club, #12-0018, said they were requesting a modification to the decision made by the Commission at its meeting on September 25, 2012, which approved the staff recommendation to modify the length of the pier by 12 feet in order to limit the number of boats that could be tied up. He explained that he had made an error on the application as to the water depth required. His comments are a part of the verbatim record.

Commissioner Travelstead asked if he was seeking approval by the Commission at this hearing. Tony Watkinson, Chief, Habitat Management explained that the Code said he could resubmit an application after a one-year period. He said they told Mr. Bott that in order to be reconsidered, he must make a request of the Commission for a hearing, not today, but it should not occur today, since there were others that would need to be notified.

**After further discussion, Associate Member Plumlee moved to reconsider the matter at the January 22, 2013 Commission meeting. Associate Member Sessoms seconded the motion. Associate Member Fox stated that the matter had been given a full and complete hearing and he was not persuaded they should change their decision made at the last meeting. The motion carried, 5-3. Associate Members Fox, Palmer, and Tankard all voted no.**

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**Mark Bender, Eastern Shore Waterman** - Mr. Bender said he was requesting an amendment to the pound net requirement to fish a net at least once in two years.

Rob O'Reilly, Chief, Fisheries Management, explained that the two year rule was established after there had been two storms (Isabel and Ernesto) that had destroyed some of the pound nets making it impossible for the pound-netters to utilize their nets that year. He said it was FMAC who recommended the two-year requirement.

Commissioner Travelstead suggested that staff meet with the Eastern Shore watermen who pound net to see what the overall situation is and to bring back it with a recommendation to the Commission. Mr. O'Reilly stated that eight other fishermen were in the same situation and staff would survey the industry and then come back to the Commission.

Mr. Bender said he would like to request that the Commission consider changing the definition of the inshore and offshore pound nets for the Eastern Shore.

Lewis Gillingham, Game Fish Coordinator, explained that the National Marine Fisheries Service (NMFS) would hear this in 2013. Commissioner Travelstead asked how long did this process usually take NMFS. Mr. Gillingham stated that last time it was two years.

Mr. Bender said he would like to see the Commission consider the conch pot requirements for use of crab as bait. He said the pots sometimes have some bait left and it would be cost effective not to have to totally replace the bait.

Associate Member Robins said this needed to be reviewed by staff and discussed with industry.

Mr. Bender said he would like the Commission to reconsider the use of the 2 1/2" cull ring in crab pots.

Associate Member Robins said this was brought up at the CMAC meeting by one member, but it did not get any further.

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- 11. VIRGINIA INSTITUTE OF MARINE SCIENCE:** Presentation of Dr. Bob Orth's annual review of the status of Submerged Aquatic Vegetation.

Continued until the January 22, 2013 Commission meeting.

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- 12. PUBLIC HEARING:** Chapter 4VAC20-1140-10 et seq. "Pertaining to Prohibition of Crab Dredging in Virginia Waters" to close the December 2012 through March 2013 crab dredge fishery season. Chapter 4VAC20-270-10 et seq., "Pertaining to Crabbing" to extend the lawful season for blue crab harvest though December 15, 2012; to open the lawful season for blue crab harvest in 2013 on March 1; to establish separate bushel limits by crab pot license category in combination with any extension of the blue crab harvest season; and restrict commercial crab harvest activities in the Virginia portion of the Albemarle watershed. To merge Chapters 4VAC20-752-10 et seq., "Pertaining to Blue Crab Sanctuaries" and Chapter 4VAC20-1210-10 et seq., "Pertaining to a Blue Crab Sanctuary" to create a uniform regulation pertaining to the closed seasons within the blue crab sanctuaries. To consider utilizing the Marine Fishing Improvement Fund to pay for expenditures for the upcoming crab dredge gear study.

Rob O'Reilly, Chief, Fisheries Management, gave a briefing of the information in the staff evaluation with slides. His comments are a part of the verbatim record. He said that there were letters of comment from Tom O'Connell, Director, Maryland Department of Natural Resources Fisheries Service and Chris Moore of the Chesapeake Bay Foundation.

He added there were four more letters recommending the closure of the 2012-2013 Winter Crab Dredge Fishery Season.

Associate Member Fox left the meeting for the rest of the day.

Commissioner Travelstead opened the public hearing.

Rom Lipicius, representative for VIMS, was present and his comments are a part of the verbatim record. Mr. Lipicius stated that they did not have any statements in regards to the Albemarle issue or for the MFIF study funding request. He said that they did approve the remaining staff recommendations.

Chris Moore, representative for the Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. He said they supported the bushel limit and; closure of the Winter Crab Dredge Fishery season, for the fifth year. He said the VIMS crab dredge study would provide better information to better manage; and agreed with staff recommendation to keep the opening date March 17 as an earlier opening would increase the catch.

Mark Bender, waterman, was present and his comments are a part of the verbatim record. Mr. Bender stated a bushel limit across the board was needed, as the bushel limit proposed on the 85-pot license would put them out of business and he said the cull ring was useless and needed to be deleted.

Chad Boyce, representative for the VDGIF, was present, and his comments are a part of the verbatim record. He explained that the restriction in the Albemarle area would preserve a historical fishery and the fish get into the peeler pots as they are attempting to restore the large-mouth bass fishery in the area.

Commissioner Travelstead closed the public hearing.

After questions and discussion with staff, Commissioner Travelstead asked for a motion for each of the five recommendations:

1. Closure of the Winter Crab Dredge Fishery Season for 2012-2013.

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

2. Staff recommendations that would extend the fall crab pot harvest season to December 15, establish license category- specific bushel limits extending from March 17 through May 15, and restrict commercial crabbing in the waters of Back Bay and North Landing River to crab pots and peeler pots.

**Associate Member Palmer moved to approve a March 16 season opening and an extension of the season until December 15 as well as the other staff recommendations. Associate Member Plumlee seconded the motion. The motion carried, 7-0.**

3. Rescind Regulation 4VAC 20-300-10, et seq.

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

4. Combine Regulations pertaining to the Crab Sanctuaries.

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

5. Winter Crab Dredge Study and MFIF funding of \$132,000.00.

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

Commissioner Travelstead congratulated staff for doing a great job in preparing for this hearing and provided the Commission's thanks to the Crab Management Advisory Committee.

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**13. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-960-10 et seq., "Pertaining to Tautog," to establish the 2013 recreational and commercial management measures.

Joe Cimino, Fisheries Management Senior Manager, gave the briefing of the information in the staff evaluation. His comments are a part of the verbatim record. He noted that additional comments had been received and he provided handouts.

There were no questions of staff.

Commissioner Travelstead opened the public hearing.

Craig Paige, Paige II Charter, was present and his comments are a part of the verbatim record. He said the closure date of April 20 caused them problem as tautog were caught in April. He said he would support the option of opening in April with a 3-fish limit just so it would give them something for April to catch.

Commissioner Travelstead announced the public hearing was closed.



After some discussion by the Board and members of staff, Commissioner Travelstead stated the matter was before the Commission.

**Associate Member Palmer moved to close the recreational fishery from May 1 – September 19 with a 16-inch size limit and three-fish possession limit. Associate Member Robins seconded the motion. The motion carried, 7-0.**

**Associate Member Robins moved to accept the staff recommendations for the commercial fishery. Associate Member Plumlee seconded the motion. The motion carried, 7-0.**

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- 14. REQUEST FOR PUBLIC HEARING:** Establish permit eligibility and transfer requirements in combination with current quota management categories for 2013 (4VAC20-900-10 et seq., “Pertaining to Horseshoe Crabs”).

Alicia Nelson, Fisheries Management Specialist, gave the briefing for this request for public hearing with slides. Her comments are a part of the verbatim record.

After some discussion by the Board and staff, Associate Member Robins stated he would be abstaining. He noted that staff had done a good job working with industry and the Commission had done a great job of working with the ASMFC.

Commissioner Travelstead announced it was the consensus of the Board to approve the advertisement for a public hearing.

\* \* \* \* \*

- 15. REQUEST FOR PUBLIC HEARING:** Industry recommendations to reclassify the current requirements for aquaculture product owner and harvester permits (4VAC20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting”).

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing for the request for a public hearing. His comments are a part of the verbatim record.

Commissioner Travelstead announced it was the consensus of the Board to approve the advertisement for a public hearing.

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- 16. **REQUEST FOR PUBLIC HEARING:** Establish the 2013 commercial and recreational striped bass harvest quota (4VAC20-252-10 et seq., “Pertaining to the Taking of Striped Bass”).

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing for the request for a public hearing. His comments are a part of the verbatim record.

Commissioner Travelstead announced it was the consensus of the Board to approve the advertisement for a public hearing.

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- 17. **REQUEST FOR PUBLIC HEARING:** Establish the 2013 recreational black sea bass recreational season (4VAC 20-950-10 et seq., “Pertaining to Black Sea Bass”).

Joe Grist, Deputy Chief, Fisheries Management, gave a briefing for a request for approval of an emergency regulation and request for advertising a public hearing. He explained that the NMFS had closed the season on November 1, 2012 because of an overage of the 2012 coast wide recreational quota of 1.32 million pounds. All states, including Virginia, needed to make their regulations match the Federal one and close the recreational fishery as well for 2012. He explained this would have been done at the October 30, 2012 meeting if it had not been for the meeting postponement due to Hurricane Sandy. He stated the payback for this quota overage may not affect the 2013 Recreational quota, and instead there could be payback required in 2014. His comments are a part of the verbatim record. He provided the Board with a handout.

Commissioner Travelstead stated that the matter was before the Commission.

**Associate Member Tankard moved to approve the emergency regulation to close the recreational season and for the advertisement of a public hearing to make the emergency regulation permanent so the closure would continue for the rest of the year. Associate Member Robins seconded the motion. The motion carried, 7-0.**

Commissioner Travelstead announced it was the consensus of the Board to approve the advertisement for a public hearing to discuss the quota for the 2013 Recreational season.

\* \* \* \* \*

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

Stephanie Iverson, Fisheries Management Manager, gave the briefing for this case. Her comments are a part of the verbatim record.

Ralph Bonnville was present and sworn in. His comments are a part of the verbatim record.

Ms. Iverson stated that Mr. Bonnville was now up-to-date for his reporting and staff recommended two-year probation.

Commissioner Travelstead explained to Mr. Bonnville that he could not have any other violations during this two-year period or he would be brought back before the Commission to consider the suspension of his license.

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

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There being no further business, the meeting was adjourned at approximately 4:34 p.m. The next meeting was previously rescheduled by the Commission to be held Monday, December 10, 2012.

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Jack G. Travelstead, Commissioner

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Katherine Leonard, Recording Secretary