

MINUTES

Commission Meeting

February 24, 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	
James D. Close	
A. J. Erskine	
S. Lynn Haynie	Associate Members
Ken Neill, III	
Whitt G. Sessoms, III	
John E. Zydron	
J. Duncan Pitchford	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Human Resources Mgr.
Erik Barth	Bs. System Manager
Dave Lego	Bs. System Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Manager, Sr.
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Director, SWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Sampling Supervisor
Rachael Maulorico	Fisheries Mgmt. Planner
Ande Ehlen	Fisheries Mgmt. Specialist
Alicia Nelson	RFAB Coordinator
Laurie Dozier	Fisheries Mgmt. Specialist
Kelsey McLain	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Andy Dunton	Marine Police Officer
Casey Springfield	Marine Police Officer
Jennifer Baylis	Marine Police Officer

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Henry Richle	Marine Police Officer
Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Brad Reamy	Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Dr. Robert Orth
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Others present:

Jeff Watkins	Tom Langley	Kenneth Green
Richard Green	Chris Frye	Keith Lockwood
John Vigliotta	Kim Huskey	Doug Buckley
Chris Moore	Carl Sloan	John Hanson
Kenneth Heath	Mathew Simpson	Craig Paige
Will Bransom	John Brown	Marvin Winder
Claude Firth	Hunter Winder	Lisa Winder
Thomas Gaskins	William Shook	Suzanna Musick
Beth Snynowiec	R. B. Allen	Andy Lacatell

and others.

Commissioner Bull called the meeting to order at approximately 9:40 a.m. Associate Member Beck was absent.

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

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

Tony Watkinson, Chief, Habitat Management, explained that there was a request by the applicant to continue Item 5, but that the request should be taken up when the item is considered as scheduled.

Robert O'Reilly, Chief, Fisheries Management, explained that for Item 20 there would be a presentation by staff which would include information new about some events two weeks ago. He said that the Commission might want to take comments at that time. He further explained that there would be two requests for emergency actions to consider extending some of the oyster harvest seasons because of weather and for the suspension of the sale of oyster hand scrape and dredge licenses. He suggested that public comments be heard on these two matters and making these discussions a part of Item 22 with the Oyster Replenishment Plan.

Commissioner Bull asked for a motion.

Associate Member Erskine moved to approve the agenda, as amended. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the January 27, 2015 Commission meeting minutes.

As there were no changes, Commissioner Bull stated that the matter was before the Commission.

Associate Member Erskine moved to approve the minutes. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

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

Commission Meeting

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were five page two items to be heard, 2A – 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 matter was before the Commission.

Associate Member Erskine moved to approve the page two items, as submitted. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

2A. APEX, #14-1692, requests authorization to dredge 13,000 cubic yards of State-owned submerged land during an initial cycle, to achieve maximum depths of -33 feet mean low water, and to maintenance dredge 10,000 cubic yards of material on an as needed basis, adjacent to their facility at 428 Barnes Road situated along the Southern Branch of the Elizabeth River in Chesapeake. Dredged material will be disposed of at an approved upland site. Staff recommends approval of the project with an instream work time-of-year restriction of February 15 to June 30 to protect anadromous fishes and a royalty assessment of \$5,850.00 for the dredging of 13,000 cubic yards of State-owned subaqueous material at a rate of \$0.45 per cubic yard.

Royalty Fees (dredge 13,000 c.y. @ \$0.45/c.y.	\$5,850.00
Permit Fee	\$ 100.00
Total Fees	\$5,950.00

2B. CHESTERFIELD COUNTY DEPARTMENT OF TRANSPORTATION, #14-1691, requests authorization to extend an existing quadruple 10-foot by 12-foot box culvert over Falling Creek, by an additional 22.5 feet northward and 24.5 linear feet southward with associated wing walls and riprap stabilization, and to install a 16-inch diameter ductile iron waterline by the open cut method, beneath an approximately 24-foot wide section of Falling Creek, as a part of the Lucks Lane road widening project in Chesterfield County.

Permit Fee	\$100.00
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2C. PRINCE WILLIAM COUNTY DEPARTMENT OF TRANSPORTATION, #14- 1779, requests authorization to widen an existing bridge crossing by 74 feet, spanning a 45-foot wide section of Kettles Run and to install riprap along 236 linear feet of the stream bank to stabilize the area beneath the bridge, as part of the Route 28 (Nokesville Road) Widening and Improvements Project, in Prince

William County. Staff recommends approval with the requirement for a mussel survey from 100 meters upstream through 400 meters downstream of the impact areas in Kettle Run, the relocation of any brook floater mussel species in coordination with the Department of Game and Inland Fisheries, a time-of-year restriction on all instream work from April 15 through June 15 and August 15 through September 30 of any year to protect the state endangered brook floater, and that all instream activities be conducted during low conditions, using non-erodible cofferdams or turbidity curtains to isolate the construction area, blocking no more than 50% of the stream flow at any given time.

Permit Fee	\$100.00
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2D. MARINE HYDRAULICS, INC., #14-1207, requests authorization to install a Port Security Barrier consisting of floating sections with under-hanging 24-inch mesh netting, secured between 18 anchor and buoy structures, which encircle and protect U.S. Naval ships undergoing overhauls and repairs at their Lamberts Point Facility along the Elizabeth River at 1215 Warrington Avenue in the City of Norfolk. Staff recommends approval with a special permit condition that Buoys D, E, and F be colored yellow and Buoys D and F be lit by a slow flashing amber light per U.S. Coast Guard requirements.

Permit Fee	\$100.00
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2E. RICHMOND DEPARTMENT OF PLANNING & DEVELOPMENT REVIEW, #14-1316, requests authorization to construct the Brown’s Island Dam Walk project across the James River by retrofitting the existing Brown’s Island Dam structure into an elevated, multi-use, universally-accessible, non-motorized route across the river between the South Belvedere Street (Rt. 1/Rt. 360) and the South 9th Street roadway bridges in the City of Richmond. Recommend approval with standard in-stream work conditions and a time-of-year restriction from February 15 and June 30 of any year to protect anadromous fish species in the area.

Permit Fee	\$100.00
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3. CONSENT AGENDA ITEMS. There were none.

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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** When asked, J. Duncan Pitchford, Assistant Attorney General and VMRC Counsel indicated that no closed meeting was necessary.

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- 5. **SEAGATE TERMINALS, L.L.C., #14-1667,** requests authorization to dredge approximately 137,500 cubic yards of State-owned submerged land to achieve maximum depths of -42 feet mean low water, to install 100 linear feet of steel sheet-pile bulkhead, 160 linear feet of riprap revetment, a 550-foot long by 80-foot wide wharf and a 615-foot long by 50-foot wide access dock with four (4) mooring dolphins and associated catwalks, and to construct approximately 600 linear feet of living shoreline in association with a proposed bulk materials handling facility adjacent to Jefferson Street situated north of the South Norfolk Jordan Bridge along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a wetlands and a subaqueous permit.

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information regarding this matter. His comments are a part of the verbatim record.

Mr. Watkinson explained that the applicant had requested a continuance to resolve concerns about the project related to future expansion of the South Norfolk Jordan Bridge. Mr. Watkinson said staff agreed with the continuance. He stated that since the required Wetlands Public Hearing had been held a decision was required within 30 days or the application would be automatically approved, unless the applicant waived their right to a decision within that time. He noted the applicant had indicated they waive their right to a decision in 30 days. He further stated that the applicant was working towards a resolution.

Commissioner Bull asked for any public comments and there were none. He asked, what was the pleasure of the Commission?

Associate Member Neill moved to continue the hearing until the March Commission meeting. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 6. **UPPER BRANDON PLANTATION, #14-1840,** requests authorization to construct three (3) stone breakwater structures, with nourishment and appropriate wetland vegetation plantings; and to place a riprap revetment along a portion of shoreline within and adjacent to the James River adjacent to the Upper Brandon Conference Center & Sporting Lodge at 1802 Upper Brandon Road in Prince George County. The project requires a wetlands and a subaqueous permit.

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

Mr. Stagg explained that the proposed project appeared to properly address an ongoing and serious erosion issue along this reach of shoreline and should provide protection of upland infrastructure assets. Staff recommended approval of the project, as requested, with a royalty of \$210.00 for the breakwater fill over 4,200 square feet of State-owned subaqueous bottomlands at a rate of 0.05 per square foot, with a permit condition that all wetland plantings be monitored for a period of three years and such plantings be replaced as needed during the monitoring period during the appropriate planting season.

Commissioner Bull asked if the applicant or a representative wished to make comments.

Jeff Watkins, agent/contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Watkins said they were requesting approval and he could answer any questions from the Board. There were none.

Commissioner Bull asked if there were any public comments. There were none. He stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

Royalty Fees (encroachment 4,200 sq. ft. @ \$0.05/sq. ft.)	\$210.00
Permit Fee	\$100.00
Total Fees	\$410.00

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- 7. **KENNETH A. and LILLIAN PAYNE, #14-1445**, requests authorization to construct a 42-foot long by 14-foot wide commercial pier with eight mooring piles to create three 36-foot long wetslips, adjacent to property situated along Branson Cove in Westmoreland County. The project is protested by an adjacent property owner.

Jeff Madden, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. Mr. Madden provided the Board with a large map from the applicant.

Mr. Madden stated that staff believed that the proposed commercial pier was a reasonable use of State-owned submerged lands and will not significantly affect the marine environment or other uses of the waterway. Any commercial competition created by the pier is outside of the jurisdiction of the Commission; however, the pier will not directly

impact the adjacent property owner’s ability to conduct similar operations at his pier. Accordingly, after evaluating the merits of the project against the concerns expressed by the individual in opposition, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.

Commissioner Bull asked the applicant if he had any comments.

Kenneth Payne, applicant, was sworn in and he stated he had no further comments.

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

Associate Member Erskine moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Royalty Fees (encroachment 2,167 sq. ft. @ \$2.00/sq. ft.)	\$4,334.00
Permit Fee	\$ 25.00
Total Fees	\$4,584.00

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- 8. **ARMY CORPS OF ENGINEERS, #09-0483**, requests authorization to increase the maximum amount of cubic yards placed in their existing overboard placement site located adjacent to State-owned marsh northwest of Peeler Point in Public Ground 61 in Upshur Bay from 100,000 to 200,000 cubic yards, per dredge cycle. All other permit conditions would remain the same. The modification is part of the Upshur Bay Federal Navigation dredging project. The project requires a wetlands and a subaqueous permit.

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

Mr. Badger noted that since a portion of the wetlands involved in the project are State-owned, the Marine Resources Commission, rather than the Accomack County Wetlands Board, must issue a permit for their use pursuant to Section 28.2-1306 of the Code of Virginia. VMRC staff held a public hearing in the Accomack County Administration Building on Monday, February 09, 2015, to receive public comments on the permit modification. In attendance were two Corps of Engineers representatives, three local citizens from the Quinby area and two oyster ground leaseholders. All were in favor of the modification stating there was a need for a deeper channel for both recreational and commercial uses. One leaseholder had some concerns that the suspended sediments might impact their clams or oysters.

Mr. Badger said that since the proposed site was already permitted and has been used since 1973, and since it did not appear that the continued use of the site would result in any significant long-term adverse impacts, staff recommended approval of the project modification, with the stipulation that all other existing permit conditions would remain the same.

Associate Member Erskine asked if there would be a time-of-year restriction for the shellfish to spawn. Mr. Badger responded yes.

Commissioner Bull opened the public hearing.

Keith Lockwood, representing the ACOE was present and sworn in. He stated he did not have anything to add to the staff's comments. He offered to answer any questions and there were none.

Kim Huskey, representing the Virginia Seafood Council, was sworn in and her comments are a part of the verbatim record. Ms. Huskey stated that the council members were not opposed, but still had some concerns for impacts on the leaseholders and about 200 clam nets were in the vicinity.

Commissioner Bull stated the matter was before the Commission.

Associate Member Ballard moved to accept the staff recommendation. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

No applicable fees.

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- 9. PUBLIC HEARING:** Removal of a portion of Additional Clam Grounds as previously set aside by the Commission in 1930, within the Ware River, in response to an application to lease oyster planting ground.

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

Mr. Stagg explained that based on information obtained by staff, after reviewing the Code of Virginia, and after reviewing public comments received concerning this matter, staff recommended the Commission remove the entire 1930 clam 'set aside' area to allow for acceptance of applications, standard public interest review and leasing in areas where such leases were appropriate. If approved, this would allow for the continued processing of the currently pending Ward Oyster Company application and would make the remaining area available for acceptance of additional applications for shellfish leasing, subject to our normal public interest review process.

Mr. Close expressed his concerns with taking the bottom from the commercial watermen who use it. He said there were some haul seiners who worked in this area and once the area was taken these watermen would not be able use it.

Associate Member Zydron asked staff why they recommended releasing the whole area. Mr. Stagg responded that other members of staff thought it would be a good area for shellfish aquaculture and there would be others that would be interested in obtaining an oyster ground lease.

Dr. Robert Orth, representing VIMS, indicated that were three primary places at the mouth of both Ware and Severn Rivers where haul seiners have worked. In response to a question, he noted that the amount of scaring was minimal in the area and acceptable; and, there were only a few haul seiners that had worked in the area.

Commissioner Bull asked for public comments, pro or con.

John Vigliotta, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Vigliotta provided a small map as a handout. He said that you need a certain depth for aquaculture cages and that from 12' to 25' was the ideal depths. He noted that he had never seen any haul seiners in the area of Jarvis Point only some watermen who patent tong in this area and it had been 5 or 6 years since he had bought any clams taken from this area. When asked, he stated that the lease request was over 100 acres, but some of it was too deep and the area requested for leasing could be reduced in size.

Richard Green, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Green stated that he had mixed feelings because when you start removing area you have got to be concerned with how much will be removed or when it will stop. He explained that the area had been worked down and you needed to allow the clams to recover so that it could serve the masses. He stated it needed to be kept open.

Commissioner Bull stated the matter was before the Commission.

After much discussion on the removal of the entire or any portions of the area and how it would impact other commercial fishery activities in the area, Associate Member Erskine moved to approve only the northern section which was 137 acres for the lease application. Associate Member Zydron seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member Close voted no.

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- 10. VIRGINIA INSTITUTE OF MARINE SCIENCE: Presentation of Dr. Robert Orth’s annual review of the status of Submerged Aquatic Vegetation.

Dr. Robert Orth, representative from VIMS, gave a presentation with slides to the Commission on the status of Submerged Aquatic Vegetation project and requested that the Commission continue the funding to support for VIMS’ work monitoring of prop scars and his work on the Seaside of the Eastern Shore to restore eelgrass and Bay scallops. His comments are a part of the verbatim record.

Robert O’Reilly, Chief, Fisheries Management in response to a question, explained that the project funding was \$22,000.00 to be taken in equal parts from the Marine Fisheries Improvement Fund (MFIF) and the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF). His comments are a part of the verbatim record.

Associate Member Neill moved to approve the funding request. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

- 11. BRIEFING: by the Chesapeake Bay Foundation on the Economic Status of the Fisheries.

Chris Moore, Senior Scientist with the Chesapeake Bay Foundation gave a briefing to the Commission on a report, entitled “Economic Benefits of Cleaning up the Chesapeake Bay.” His comments are a part of the verbatim record.

- 12. PUBLIC COMMENTS. None

- 13. OFFENDERS.

Matthew T. Simpson – present and sworn in

Henry Reichle, Marine Police Officer, gave the summary of this case. His comments are a part of the verbatim record.

02/14/2014 harvesting oysters without a hand scrape; summons issued for violation Section 28.2-201 of the Code of Virginia; convicted 03/12/2014 in Gloucester County General District Court (Criminal); fine \$50.00, court cost \$81.00.

07/17/2014 no crab license (23 bushels); summons issued for violation of Section 28.2-231 of the Code of Virginia; 08/26/2014 amended to failure to display license;

Section 28.2-231 of the Code of Virginia: convicted in Northampton County General District Court (Criminal); fine \$35.00, court cost \$86.00.

10/09/2014 hand scrape without a hand scrape gear license; summons issued for violation of Section 28.2-201 of the Code of Virginia and Chapter 4VAC 20-720-75; over the limit of oysters; summons issued for violation of Chapter 4VAC 20-720-80; convicted 11/07/2014 in Middlesex County General District Court (Criminal); fine \$150.00, court cost \$86.00.

Joe Cimino, Fisheries Management Manager, Sr., read the staff recommendation. In accordance with Section 28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Simpson on probation for a period of one year from the date of this Commission meeting, 02/24/2015, through 02/23/2016. According to the Commission's guidelines for sanctions, two convictions of harvesting oysters without a gear license, within a 12 month period, recommends one year probation. Any failure on Mr. Simpson's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in his appearing before the Commission for a hearing on license revocation.

Commissioner Bull asked Mr. Simpson if he wished to make any comments.

Mr. Simpson explained that he had just gotten a new license which was not the correct one and he was new to harvesting oysters. He said he did try to obey all of the laws.

Associate Member Neill moved to accept the staff recommendation for one year probation, starting 02/24/2015, ending 02/23/2016. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

Marvin T. Winder - was present and sworn in

Casey Springfield, Marine Police Officer, gave the briefing of this case. His comments are a part of the verbatim record.

08/26/2014 taking hard crabs from fish pots; summons issued for violation of Section 28.2-201 of the Code of Virginia and Chapter 4VAC 20-880-30(D); convicted 09/22/2014 in the York County General District Court (Criminal); find \$150.0, court cost \$86.00.

09/12/2014 taking hard crabs from fish pot; summons for violation of Section 28.2-201 of the Code of Virginia and Chapter 4VAC 20-880-30(D); convicted 09/22/2014 in York County General District Court (Criminal); fine \$100.00, court cost \$86.00.

Joe Cimino, Fisheries Management Manager read the staff's recommendation with a slide of the guidelines for sanctions. His comments are a part of the verbatim record.

Marvin T. Winder, a commercial fisherman registration licensee, had two convictions adjudicated on September 22, 2014, taking hard crabs from fish pots (Section 28.2-201 of the Code of Virginia; Chapter 4 VAC 20-880-30(D)). Mr. Winder was lawfully licensed for both crab pots and fish pots in 2014.

Mr. Cimino read that in accordance with Section 28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Winder on probation for a period of two years from the date of this Commission meeting, 02/24/2015, through 02/23/2016. According to the Commission's guidelines for sanctions, two convictions of crabbing without a license (with eligibility), with a 24 month period, recommends a one year probation. Despite the fact that the guidelines promote a one year probation, the Law Enforcement and Fisheries Management Divisions would like to propose a two year probation. Any failure on Mr. Winder'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. Winder appearing before the Commission for a hearing on license revocation.

Mr. Winder explained that he had been helping his cousin who owned the pots.

After a brief discussion, Associate Member Erskine moved to accept the staff recommendation for two year probation, starting 02/24/15, ending 02/23/17. Associate Member Neill seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member Zydron voted no.

Claude E. Firth, Jr. - was present and sworn in

Casey Springfield, Marine Police Officer, gave the briefing of this case. His comments are a part of the verbatim record.

08/26/2014 take hard crab from fish pot; summons issued for violation of Section 28.2-201 of the Code of Virginia and Chapter 4 VAC 20-880-30(D); convicted 09/22/2014 in the York County General District Court (Criminal), fine \$75.00, court cost \$86.00.

09/12/2014 take hard crab from fish pot; summons issued for violation of Section 28.2-201 of the Code of Virginia and Chapter 4 VAC 20-880-30(D); convicted 09/22/2014 in York County General District Court (Criminal), fine \$50.00, court cost \$86.00.

Joe Cimino, Fisheries Management Manager read the staff's recommendation with a slide of the guidelines for sanctions. His comments are a part of the verbatim record. Claude E. Firth, Jr., a commercial fisherman registration licensee, had two convictions adjudicated on September 22, 2014, taking hard crabs from fish pots (Section 28.2-201 of the Code of Virginia; Chapter 4 VAC 20-880-30(D)). Mr. Firth was lawfully licensed for both crab pots and fish pots in 2014.

Mr. Cimino read that in accordance with Section 28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Firth on probation for a period of two years from the date of this Commission meeting, 02/24/2015, through 02/23/2017. According to the Commission's guidelines for sanctions, two convictions of crabbing without a license (with eligibility), with a 24 month period, recommends a one year probation. Despite the fact that the guidelines promote a one year probation, the Law Enforcement and Fisheries Management Divisions would like to propose a two year probation. Any failure on Mr. Firth'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. Winder appearing before the Commission for a hearing on license revocation.

Mr. Firth said there were no little crabs, only big ones. He said he did keep his crabs out of the fish pots, but only his not Mr. Winder's. He said they each sold their own in separate containers.

Commission Bull stated the matter was before the Commission and staff recommended two year probation.

Associate Member Neill moved to accept the staff recommendation for two year probation, starting 02/24/15, ending 02/23/17. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Zydron voted no.

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14. **POUND NET:** Case involving protests of an application to the Commission to license a pound net at a new location, in accordance with Chapter 4VAC20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review."

Thomas D. Gaskins – Pound Net

Joe Grist, Deputy Chief, gave the briefing of the information provided in the staff's evaluation. He provided a handout for the Board. His comments are a part of the verbatim record.

Mr. Grist explained that staff considered the effects on marine and fishery resources within the Chesapeake Bay to be negligible. 161 pound nets are permitted within the Chesapeake Bay and the lower reaches of the James, York, and Rappahannock Rivers. This application was for one of 161 pound nets allowed. A pound net is a passive gear, dependent upon fish movement and migration to provide the catch. With proper upkeep and maintenance, by-catch, or unwanted fish, can be successfully released alive from a pound net. The proposed pound net site and nearby waters already have several licensed fixed fishing device locations. The proposed pound net site is already a current staked gill net site and the application did not represent the addition of a new fixed fishing

device to this area. Instead, if approved, Mr. Gaskins intends to forfeit his staked gill net license for the site and replace it with the proposed pound net he has applied for. Staff recommended approval of Mr. Gaskins' application, as submitted.

Commissioner Bull called on the applicant to comment.

Thomas Gaskins was sworn in and his comments are a part of the verbatim record. Mr. Gaskins explained that there was a stake net presently at the site that he used for the last five years and the site has been proven to work in this area. He stated this was the third generation of his family to use this location to work fish nets.

Commissioner Bull asked for public comments, pro or con.

Janet Shook, resident in the area of the site, was sworn in and her comments in opposition are a part of the verbatim record. Ms. Shook explained that she had only moved to this area in November 2014 and this net location would impact the small skiffs to navigate to other areas. She added she was concerned with the close proximity to the shore.

Robert O'Reilly, Chief, Fisheries Management stated that staff went by the guidelines and this pound net would still be within the 161 cap for pound net licenses.

There were no further public comments. Commissioner Bull stated the matter was before the Commission for discussion or action.

Associate Member Sessoms said that this request for a pound net location met the requirements and the site was an existing one. He moved to approve the application, as submitted. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 15. PUBLIC HEARING:** Proposed final adoption of emergency amendments to Chapter 4VAC 20-450-10 et seq. "Pertaining to the Taking of Bluefish," to establish the 2015 commercial bluefish quota.

Ande Ehlen, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation with slides. Her comments are a part of the verbatim record.

Ms. Ehlen explained that on January 27, 2015, the Virginia Marine Resources Commission adopted, under its emergency regulatory authority (Section 28.2-210 of the Code of Virginia), amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," that established the annual

commercial bluefish quota as 608,230 pounds. These emergency amendments are proposed as a part of the final regulation. The purpose of the amendments was to authorize a 2015 commercial bluefish quota.

Ms. Ehlen said that the staff recommended the Commission adopt amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the annual commercial bluefish quota, as 608,230 pounds.

Commissioner Bull opened the public hearing for comments. There were none. He stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Erskine was absent from the hearing of this matter.

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16. PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," to establish the requirements of authorized blue crab fishery agents.

Associate Member Erskine had returned to the meeting.

Joe Cimino, Fisheries Management Manager, Sr., gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Cimino explained that in February of 2013 the Commission established a cap on the number of agents allowed in the blue crab fishery. That cap was based on the number of agents requesting in the prior year (2012), when the use of agents was unrestricted, plus a 10% buffer. The 2013 cap of 168 total agents allowed was set as a year specific number in regulation when it was established. Chapter 4VAC20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" was also specific to the 2014 season and needs to be amended for 2015. By removing the year for this cap, the limit will be set as an annual cap. The amendments can be found in the draft regulation on pages 9 and 10 of this evaluation.

Mr. Cimino said that this proposal has been advertised in accordance with § 28.2-209 of the Code of Virginia for a public hearing. Staff has received no public comments to date.

Mr. O'Reilly explained that staff recommended amending Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting", to remove "2014" from the section pertaining to blue crab fishery agents and change it to annually. There were concerns expressed by the CMAC as to the number and procedure for the

crab license agents and staff recommended that the cap for the number allowed for crab license agents be changed to 125 for 2015.

In response to the question of the Commission being more or less restrictive in its action taken, Mr. O'Reilly read the public notice: "The Commission proposes to amend Chapter 4 VAC 20-610-10 et seq. to limit and specify the annual number of license agents permitted in the blue crab fishery. Currently the limit for the number of license agents permitted in the blue crab fishery is year-specific." He noted that generally the Commission does tend to be less restrictive.

Commissioner Bull opened the public hearing for public comments, pro or con. There were none.

After further discussion, Associate Member Neill moved to accept the staff recommendations, as stated. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

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17. PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-270-10 et seq., "Pertaining to Crabbing," to limit the use of fish pots by active crab pot or peeler pot fishermen.

Sally Roman, Fisheries Management Specialist, gave the briefing on the information provided in staff's evaluation with slides. She provided a hand-out to the Board of an updated draft regulation page 10.

Ms. Roman explained that the VMRC's Law Enforcement Division has continued to express concern over an increasing number of commercial crab pot licensees who are also fishing additional pots, many that are designed (exact same mesh size, openings, parlors, and cull rings) and baited identically to the hard crab pots, but that are being placed in the water as licensed fish pots.

Ms. Roman said that staff recommended amending Chapter 4 VAC 20-270-10 et seq., "Pertaining to Crabbing", to limit the use of fish pots by any individual who is an active hard crab pot or peeler pot fisherman, with exceptions for upriver areas, as well as, minnow and eel pots. Staff also recommends amending the time period for the fish pot prohibition from March 11 through 16 to March 12 through 16.

Commissioner Bull opened the public hearing asking for comments either pro or con.

Carl Sloan, commercial waterman was present and his comments are a part of the verbatim record. Mr. Sloan explained that he used hoop pots which was used the same as fish pots and requested that hoop pots be made exempt, too.

Richard Green was present and his comments are a part of the verbatim record. Mr. Green expressed his concern that the Commission did not exempt eel pots, but he is satisfied that his concern had been addressed from what he heard from staff's comments. Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation. Associate Member Zydron seconded the motion.

After some discussion about what is a hoop pot, Mr. O'Reilly stated that the Commission needed to act on what was before them now and to wait on the hoop pots. Associate Member Erskine withdrew his motion and suggested tabling the matter until the March meeting in order to resolve these issues. Associate Member Zydron agreed.

Associate Member Neill moved to accept the staff recommendation and requested that definitions for the fish pot and hoop pot be developed for the future. Associate Member Sessoms seconded the motion. After further discussion as to whether to move forward with taking action, a vote of the board members was taken for the motion before the board. The motion carried, 5-3. Associate Members Erskine, Haynie and Zydron all voted no.

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18. PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the start date and landing limit for the directed landing period.

Robert O'Reilly, Chief, Fisheries Management gave the briefing of the information provided in staff's evaluation. His comments are a part of the verbatim record. He provided the Board members with a revised copy of the draft regulation 4VAC 20-620-10 et seq.

Mr. O'Reilly explained that the industry buyers requested that the season start date be changed to March 9, instead of the scheduled March 11 (the second Wednesday of March 2015). The other provision requested for change by industry is to modify the landing amount from 12,500 pounds to 7,500 pounds

Mr. O'Reilly stated staff recommended a change in the limit only and no change in the start date.

Commissioner Bull opened the public hearing to public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 19. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-252-10 et seq. "Pertaining to the Taking of Striped Bass," to establish the annual Chesapeake Bay and Coastal recreational management measures and to modify the northwestern Chesapeake Bay management boundary for possession of commercial striped bass tags from more than one jurisdiction.

Joe Grist, Deputy Chief, Fisheries Management gave the briefing of the information provided in staff's evaluation with slides. His comments are a part of the verbatim record.

Mr. Grist explained staff recommended that the Commission advertise, for a March 24, 2015 public hearing, management measures that would establish the recreational striped bass fishery management measures for the coastal and Chesapeake Bay fisheries in 2015; modify the definitions and provisions for the northwestern Chesapeake Bay management boundary for the possession of commercial striped bass tags; and, specify the gear permitted to be used to harvest striped bass commercially.

Following a brief discussion, Commissioner Bull asked for a motion.

Associate Member Haynie moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0.

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- 20. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-280-10 et seq. "Pertaining to Speckled Trout and Red Drum," to establish the annual recreational and commercial management measures for speckled trout.

Rachael Maulorico, Fisheries Management Planner, gave the briefing of the information provided in the staff's evaluation with slides. Her comments are a part of the verbatim record.

At the recent meeting of FMAC on January 13, 2015 the committee recommended and staff supported the following management changes:

- 1. Increase the recreational possession limit from 5 to 7 fish greater than 14 inches and have two fish 24 inches or greater from April 1 through November 30. This measure will retain the bag limit of 5 fish 14 inches or greater with 1 greater than 24 inches from December 1 through March 31 as a precautionary conservation measure during the winter months.

2. Increase the commercial quota by 10 percent, remove the term by-catch from the regulation, and establish a 150 pound vessel limit when 80% of the quota is reached. These provisions are intended to reduce dead discards in the commercial fishery and allow commercial harvesters to achieve the entire commercial quota while keeping previous quota management measures in place.

Ms. Maulorico stated that staff recommended advertising for a March public hearing to amend Chapter 4 VAC 20-280-10 et seq. "Pertaining to Speckled Trout and Red Drum", to establish the annual recreational and commercial management measures for speckled trout.

Associate Member Neill said there was a downward trend in catch but he felt it was bad to go there when the Commission just made changes six months ago. He said the bycatch was a good idea to fix and the existing regulation had not been allowed time to have any effect.

Commissioner Bull opened the hearing to public comments.

Greg Paige, Charter Boat operator, was present and his comments are a part of the verbatim record. Mr. Paige said go ahead with the public hearing next month, but they needed to keep it the same of five-fish with one 24" fish. He explained that the data does not show what was actually taken and there was a lot of pressure on the fish.

Will Bransom, Norfolk Angler's Fishing Club, was present and his comments are a part of the verbatim record. He said the Commission should go ahead with the public hearing on speckled trout and red drum. He suggested that changing the limit from five fish to 7 fish. He noted he did not like the poaching that was going on.

Robert Allen, recreational fisherman, was present and his comments are a part of the verbatim record. Mr. Allen said that he recommended no action be taken and added that making changes every year caused confusion for recreational fishermen.

Mr. O'Reilly said that a number of people were concerned about the speckled trout and the FMAC will also be addressing it at the March 17 meeting.

After further discussion, Associate Member Neill moved to take no action. Associate Member Zydron seconded the motion. Commissioner Bull stated that he agreed with Dr. Neill. The motion carried 8-0. Chair voted yes.

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21. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-20-10 et seq. "Pertaining to Licensing of Fixed Fishing Devices" to amend the gear management measures for pound nets within the bottlenose

dolphin take reduction plan and the endangered species act for sea turtle take conservation areas.

Alicia Nelson, RFAB Coordinator, gave the briefing on the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

Ms. Nelson stated that staff recommended advertising, for a March public hearing, to amend Chapter 4VAC 20-20-10 et seq. “Pertaining to Licensing of Fixed Fishing Devices” to comply with the provisions of the final rule from the NMFS for Virginia pound net gear under the MMPA and ESA.

Associate Member Sessoms asked if there had been any dolphins caught by the nets and what were the results. She explained there had been a lot of interaction by the dolphins with the nets in the Lynnhaven River, but not necessarily a kill.

Commissioner Bull stated this was a request for a public hearing.

Associate Member Haynie moved to accept the staff recommendation for a March public hearing to be held. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

* * * * *

22. DISCUSSION: Request approval of the 2015 Oyster Replenishment Plan and the associated Procurement Procedures.

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

2015 Proposed Oyster Replenishment Plan:

<u>FUNDING SOURCES:</u>	<u>AMOUNT:</u>
Non Federal	
General Fund (GF)	\$2,000,000
The Nature Conservancy (TNC) Seaside of Eastern Shore	\$ 436,942
Non-General Funds (NGF) Various Sources	\$ 180,000

Seed Transfer:

James River

Most of the harvest areas in the Chesapeake Bay and tributaries received a very light spatset in 2013 and 2014. This will result in a decline in market harvest at least through the 2015-2017 seasons. The Benefits (\$) to Cost (\$) ratio for moving seed oysters with State funds for growout on public grounds is generally less than one, which is contrary to the recommendation of the BROP. The Conservation and Replenishment Department (CRD) program has moved a small amount of seed from the James River to the Potomac tributaries the last several years. Staff is recommending moving 10,000 bushels of James River seed oysters again in 2015. Half of this would go to the hand tong areas in the Coan River and half would go to hand tong areas in Nomini Creek. Spatset does not occur in these low salinity grow-out areas, so the only way to have any harvest is by moving seed oysters. The cost for each bushel of seed to be harvested, transported, and planted in these areas will be at least \$8.50/bushel. Funds from Oyster Resource User Fees will be used for this project. (CRD Notice 15-01)

10,000 bushels of seed oysters @ \$8.50/bu. \$85,000 (NGF)

Corrotoman River

Middle Ground Rock in the Corrotoman River tends to get more spatset than most areas in the Rappahannock River. This rock also routinely has die offs of oysters from anoxia, so it is preferable to move live oysters from this area to another grow out site. Rappahannock River Rotation Area 6 rarely receives a natural spatset. Approximately 5,000 bushels of oysters will be harvested from Middle Ground Rock and transplanted to harvest areas in Rappahannock River Rotation Area 6. Funds from Oyster Resources User Fees will be used for this project. (CRD Notice 15-02)

5,000 bushels of seed oysters \$3.00/bu. \$15,000 (NGF)

Piankatank River

In the Piankatank River, VMRC manages a very successful program to allow private industry a modest harvest of seed oysters each year (Figure 2). In this program, private leaseholders sign up for the amount of seed oysters that they would like to harvest from the public seed grounds, and they must replace two bushels of shell for each bushel of seed oysters taken. The total standing stocks of oysters in the Piankatank River have been relatively consistent over the past few years. Counts per bushel are relatively high (600 oysters/bushel). Staff recommended that 20,000 bushels of seed oysters be offered to the private industry in 2015. They can either pay VMRC for shell replacement, or they can plant the shells themselves. All of this activity occurs under the VMRC supervision.

The cost will be \$5.20 per bushel which is based on the cost of planting two bushels of shell ($\$2.60 \times 2 = \$5.20/\text{bushel}$ of seed oysters). (CRD Notice 15-03)

Great Wicomico River

There is a similar program for seed oysters in the Great Wicomico River. There was a fair spatset in 2014, but standing stocks are still relatively high (Figure 3). Two of the oyster rocks will be available and again participants will replace each bushel of seed oysters harvested with 2 bushels of shell. Staff is recommending up to 10,000 bushels of seed oysters be offered for harvest in 2015. Shell costs are higher for the Great Wicomico River than for the Piankatank River, so the seed will cost more. The cost per bushel (\$6.60/bu.) for high-quality seed oysters in this program is still a very good deal for local harvesters and leaseholders. Replacing old shell with new shell appears to more than compensate for the modest loss of seed oysters from the system. (CRD Notice 15-03)

Great Wicomico River ACOE Sites

The Army Corps of Engineers (ACOE) has a project in 2015 to refurbish some of their sanctuary sites that have not performed well. Portions of three oyster rocks will have large quantities of new shell added to increase the height of the oyster bar. The ACOE had anticipated a complicated construction process of having the shell contractor remove all live oysters from an area and transport the oysters to another ACOE site that varied throughout the project. The complexity of instructions resulted in extremely high bid prices for the activity. The ACOE had decided to drop this portion of the project and just cover the live oysters with new shells. As an alternative to this, MRC staff suggested to the ACOE that the VMRC-CRD could use watermen to harvest the oysters from these sites prior to shellplanting. From the VIMS-VMRC stock assessment of these areas, no more than 10,000 bushels of oysters will have to be moved. Watermen will be hired to harvest, transport, and replant these oysters onto the harvest rotation areas of the Great Wicomico River, prior to shell construction. Funds from the Oyster Resource User Fees will be used for this project. (CRD Notice 15-04)

10,000 bushels of oyster @\$3.00/bushel \$30,000 (NGF)

Shellplanting:

Bay and Tributaries:

Shells on public beds naturally degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most of the mid-salinity areas in Virginia, the half life of shells appears to be 3 to 4 years. Shells must be replaced regularly, and the CRD staff determines the areas that are in need of new shell from the results from the VIMS-VMRC annual patent tong survey. All of the \$2 million appropriation for 2015

will be used for adding new shell to those areas in most need of shell. Funds for oyster restoration will never be enough to maintain the public beds at maximum productivity, but if the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained. In Table 1, there is a list of all of the areas and acreages of oyster beds that staff has determined to be in need of shell in 2015. In total, more than 1,400 acres of oyster beds need shell. Shell costs continue to increase, especially since 2010, and \$2 million in funds will not be sufficient to add shells to all of these areas. VMRC-CRD will purchase as many house shells as possible for an established price of \$2.00 per bushel. Private individuals, the State of Maryland, and other oyster restoration partners in Virginia are offering to buy shells at values higher than \$2.00/bushel, so it is unknown how many house shells will be available. After purchasing all of the house shells that are available, the remaining appropriated General Funds will be used to dredge fossil shells for shellplanting. VMRC intends to advertise with a Request for Proposal (RFP) for fossil shell dredging and planting to begin on June 15, 2015.

400 – 600 acres of oyster shell restoration
@ 1,000 bushels/acre @ \$2.50 - \$4.00/bushel = \$2,000,000 (GF)

Seaside of Eastern Shore:

Two projects will be conducted with the Nature Conservancy. Two areas of shell and oyster castle reefs will be constructed near Man-Boy Channel in Oyster. The Nature Conservancy will contract for the oyster castles and MRC will contract for the shellplanting.

Oyster reefs will also be constructed on areas adjacent to the U. S. Fish and Wildlife Refuge on Assateague Island. Reefs will be in combination of concrete oyster castles and shell. The Nature Conservancy will contract for the oyster castle portion of the project and MRC will contract for the shellplanting.

Approximately 4 acres will be planted with shells harvested from local shell deposits.
(CRD Notice 15-05)

Oyster -- Man-Boy Channel area

2 acres @ 25,000 bushels of shells/acre @ \$2.50/bushel = \$125,000 (TNC)

Chincoteague – Assateague Island – Tom’s Cove

2 acres @ 24,125 bushels of shell/acre @ \$6.50/bu. = \$311,942 (TNC)

Alternative Cultch Projects:**Piankatank River**

The supply of shells for oyster restoration on public and private beds and for private aquaculture is extremely limited. With the expansion of oyster aquaculture and the potential oyster restoration projects from a long list of oyster restoration partners, oyster shell is being used at a rapid rate, and competition for the resource is intense. The total quantity of fossil shell remaining in Virginia that could be mined economically is unknown but certainly finite, and decreasing. This finite nature of shell has caused great difficulty for VMRC to partner with both the Army Corps of Engineers and NOAA in recent years because of a federal requirement to do restoration projects on sanctuaries. In many of these proposed projects, State shell supply has been the only source of match for completing the projects. Shell is the only cultch readily available that can be used in the harvest process by industry. Oyster larvae will attach to almost any substrate that is clean and hard. All types of alternate substrates have been tested by accident in the natural Bay waters, and by scientifically monitored projects. Granite, concrete, tire chips, toilet pieces, reef balls, coal ash, and slag have worked well for oyster larval attachment. The Nature Conservancy approached VMRC in 2013 with an idea to secure private funds for work with VMRC and ACOE in the Piankatank River. TNC offered \$500,000 for new sanctuary areas in the Piankatank River. Ground concrete was used as an alternative to shell. Concrete was ground to the size of oyster shells, transported to a storage area on Gwynn's Island, loaded onto the shellplanting boats that normally work for the oyster program, and deployed on a 20.7 acre area in Fishing Bay. The project worked very well until the quality of clean, ground concrete was exhausted, and as the contractor pulled concrete from other resources, trash began to show up in the ground concrete. The project was stopped at 8,881 tons of the planned 12,500 tons deployment. The area at Fishing Point appeared well covered, and immediately received a very heavy spatset in June 2014. Based on the sampling results from the fall survey, the new concrete sanctuary reef had the best spatset in the Piankatank River in 2014, and currently there are 247 oysters/meter on the new reef. If available, new clean concrete will be stockpiled and a second area near Iron Point will be completed with the remaining TNC funds this spring. If clean ground concrete is not available, quarry granite of the same size will be used to complete the project. This new area (Figure 4) will again be a sanctuary and will be approximately 3.2 acres.

Staff also deployed shell-size concrete on a small harvest area in the Rappahannock River in 2014. Spatsets in the Rappahannock River area are always much less than the Piankatank River. The 4.2 acre area near Bush Park has a spatset of approximately 10 oysters/meter. This is similar to shell areas nearby. This area is intended for harvest, but it appears to staff that the size of the concrete is too large for harvesting. Since this concrete is heavier than shell, in the harvesting process, it appears that the live oysters will likely be damaged by rubbing against the concrete. Staff would like to repeat this project in the Rappahannock River harvest areas with a smaller size of quarry- granite

stone. Staff will advertise for an inch to 2 inch size, again plant it with the normal shell planting boats, and monitor the results. The area will be in Rappahannock River Rotation Area 1, near Butlers Hole (Figure 5). A joint permit application (JPA) has been submitted for the test of the smaller sized granite as an alternate cultch in this area. Funds from the Oyster Resource User Fees will be used for this project. (CRD Notice 15-06)

5 acres harvest site in the Rappahannock River Rotational
Area 1 using granite stone 1,250 tons @ \$40.00/ton \$ 50,000 (NGF)

PROCUREMENT ACTIVITY FOR THE 2015 OYSTER REPLENISHMENT PROGRAM:

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures, and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters, shell bed cleaning, and excavated shells, the Commission will set the per bushel price to be paid. For the production of oyster eyed larvae, the Commission will set a price per million larvae. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$1.50 per bushel for conch shells, \$1.00 per bushel for clam shells, and \$2.00 per bushel of oyster shells at the shucking house. Loading, transporting, and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2015 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state

will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

The Commission will also set the price per ton for ground concrete that will be used as an alternative cultch material. Loading, transporting, and planting costs for this material will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Public Notices will be posted and all interested parties may apply. Contractors will be selected by lottery, or allowed to provide the material until the project is completed.

The agency anticipates that all other 2015 oyster replenishment activities will be completed using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2015 Replenishment Program.

Dr. Wesson stated that staff recommended approval of the 2015 Oyster Replenishment Plan as well as the associated Procurement Procedures.

Associate Member Erskine suggested that since a majority of the plan was approved by the SMAC that there be a motion made for the plan and another motion for the house shell price set by staff.

After some discussion, Associate Member Neill moved to accept the staff recommendation in its entirety. Associate Member Zydron seconded the motion. The motion carried, 5-2-1. Chair voted yes. Associate Members Ballard and Haynie voted no and Associate Member Erskine abstained from voting because of a business conflict.

Commissioner Bowman requested a second motion for the approval of the Oyster Replenishment Plan associated procurement procedures.

Associate Member Neill moved to accept the staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 5-2-1. Chair voted yes and Associate Members Haynie and Ballard voted no. Associate Member Erskine abstained from voting because of a business conflict.

Chapter 20-650-10 et seq., “Establishment of Oyster Sanctuary Areas”

Dr. Jim Wesson, Head, Conservation and Replenishment Department, gave the briefing of the information regarding this matter. His comments are a part of the verbatim record.

Dr. Wesson explained that the Lafayette River Task Force representatives had approached him regarding their concern with the change in the condemnation status for the Lafayette River from prohibited to restricted which would mean that someone could lease this vacant and unassigned submerged bottom because the relaying of the shellfish for depuration before marketing would be allowed. This request is to designate as sanctuary areas all areas not currently leased which are in a condemned shellfish growing areas.

Dr. Wesson explained that staff recommended advertising for a March public hearing, amendments to Chapter 20-650-10 et seq., “Establishment of Oyster Sanctuary Areas,” to designate as oyster sanctuaries and prohibit leasing of all unassigned or vacant submerged bottom that has been condemned by the Virginia Department of Health, Division of Shellfish Sanitation.

Commissioner Bull explained that the Law Enforcement Division has to supervise this relaying process which involved a significant amount of their time from enforcement efforts for other purposes and they support this concept.

Associate Member Erskine explained that there was a 6-2 vote by members of SMAC agreeing to this request. He moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Chapter 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest”

Dr. Jim Wesson, Head, Conservation and Replenishment, gave the briefing with slides of the information relating to two matters, 1) extending the Public Harvest Season in areas due to close on February 28, 2015 and 2) the suspension of the sale of oyster hand scrape and dredge licenses. A copy of a petition from Tangier watermen requesting an extension of the season in the Pocomoke-Tangier Sound Management area for enough time to cover the work days lost due to ice; copies of letters (2) also requesting this extension for same area; and a copy of the draft Emergency Regulation 4VAC 20-720-10 were all provided to the Board.

Dr. Wesson explained that the Shellfish Management Advisory Committee (SMAC) at their meeting the previous day had recommended approval for the areas that were due to close on February 28, 2015 for a two weeks extension because of lost work days due to

the icy weather. The SMAC also recommended that there be an immediate suspension on the sale of oyster hand scrape and dredge licenses while the Commission works with the committee to establish management measures to reduce the increased harvest effort being put on the public oyster ground stocks for the past two years.

After further discussion, Associate Member Zydron moved to approve the ten day extension of the areas recommended and to immediately suspend the sales of the oyster hand scrape and dredge licenses. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

23. DISCUSSION: Request for letter of support for the protection of Mid-Atlantic stock of blueline tilefish.

Robert O'Reilly, Chief, Fisheries Management, explained that staff was requesting a letter from the Commission be sent supporting the Mid-Atlantic Fishery Management Council's (MAFMC) initiative towards protection of the blueline tilefish stocks. Virginia has had conservation management measures in place for blueline tilefish since 2007, but it was one of the few states in the mid-Atlantic region to do so. The lack of conservation for blueline tilefish in other states had resulted in exploitation of the mid-Atlantic stocks. His comments are a part of the verbatim record.

After some discussion, Associate Member Neill moved to approve the staff's request to send a letter of support. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

There being no further business, the meeting was adjourned at approximately 5:06 p.m. The next regular Commission meeting will be Tuesday, March 24, 2015.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary