

## MINUTES

## Commission Meeting

March 26, 2013

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 Beck S. Lynn Haynie Joseph C. Palmer, Jr. Bryan Plumlee Richard B. Robins, Jr. J. Edward Tankard, III	Associate Members
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Jane McCroskey Linda Farris	Chief, Admin-Finance Bs. Systems Specialist, MIS
Rob O'Reilly Joe Grist Jim Wesson Stephanie Iverson Renee Hoover Alicia Nelson	Chief, Fisheries Management Deputy Chief, Fisheries Mgt. Head, Conservation/Replenishment Fisheries Mgmt. Mgr. Biological Collection Prgm. Supvr. Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham Samantha Hoover Allison Watts Ande Ehlen Laurie Williams Adam Kenyon	Game Fish Coordinator Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Technician Fisheries Mgmt. Technician Fisheries Mgmt. Specialist
Rick Lauderman Warner Rhodes Chris Miller Steve Head	Chief, Law Enforcement Deputy Chief, Law Enforcement Master Marine Police Sr. Marine Police

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Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present:

William Goodson	Craig Palubinski	Buddy Wyker
Robert Schuster	Jami Schuster	Mark McElroy
Kristen Donofrio	Brian Ogres	Morgan Evans
Danny Winall	Jenn Arosa	Kim Huskey
Chris Moore	Troy Libertino	Danny Bowden
Ernie Bowden	James Shackelford	Andy Lacatell
Jimmy Kellum	Henry Dixon	Gary Hadger
Susan Gaston		

and others.

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Commissioner Travelstead called the meeting to order at approximately 9:35 a.m. Associate Members Fox and Sessoms were absent. Associate Members Beck and Palmer left after the lunch break for the rest of the day.

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At the request of Commissioner Travelstead, Associate Member Tankard 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.

Warner Rhodes, Deputy Chief, Law Enforcement, explained that they had not been able to get the party involved notified of this hearing, therefore, the matter was being pulled from the agenda.

**Associate Member Robins moved to approve the amended agenda. Associate Member Plumlee seconded the motion. The motion carried, 6-0.**

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**MINUTES:** Commissioner Travelstead asked for a motion for approval of the February 26, 2013 Commission meeting minutes, if there were no corrections or changes.

**Commissioner Travelstead stated the minutes were approved by the Board. Associate Members Plumlee and Beck abstained as they were not present at the previous 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 was one page two item for the U. S. Army Corps of Engineers to be heard. He reviewed this item for the Board. His comments are a part of the verbatim record.

There were no questions or public comments. Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Tankard moved to approve item 2A. Associate Member Plumlee seconded the motion. The motion carried, 6-0.**

**2A. U.S. ARMY CORPS OF ENGINEERS, #12-0255,** requests authorization to add a third placement site to the already permitted placement sites along the western shore of Tangier Island, and the Tangier Island Uppards. The additional placement site would be located approximately 1,500 feet west of the Uppards placement site between the minus five (-5) foot and minus eight (-8) foot contours in the Chesapeake Bay. The new site would only be used to place overboard in an unconfined manner of up to 5,000 cubic yards of dredged material, per dredge cycle, from the maintenance dredging in the two Federal Project Channels near

Tangier Island in Accomack County. All other permit conditions would remain the same.

No applicable fees

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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).
- 3A. **ELGIN NININGER, #12-1663,** requests after-the-fact authorization to retain a 120 square foot commercial pier extension, and a 144 square foot commercial pier extension on separate piers adjacent to his property situated along Rosier Creek at 2066 Ridge Road in Westmoreland County. The applicant has agreed to a \$1,000.00 civil charge, a triple permit fee, and triple royalties in lieu of further enforcement action.

Tony Watkinson, Chief, Habitat Management gave the briefing on the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0**

Royalty Fees (triple fees) (encroachment 264 sq. ft. @\$6.00 per sq. ft.).....	\$1,584.00
Permit Fee (triple fees).....	\$ 75.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$2,659.00

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

No closed meeting was required as confirmed by the VMRC Counsel.

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- 5. **DOZIER MARINE, INC., #13-0010,** requests authorization to dredge by mechanical method 45 cubic yards of subaqueous bottom to lower depths from a

370 square foot subtidal area to minus six (-6) feet at mean low water, construct a 110 linear foot bulkhead with associated backfill of 75 square feet of subaqueous bottom, and install two (2) 90 foot long open pile piers, two (2) 35-foot long vinyl jetties, a 4-foot wide by 76-foot long concrete floating pier, a 40-foot extension of a 4-foot wide concrete floating pier, and two (2) 4-foot wide by 18-foot long gangways to facilitate the construction of a travel lift at the Regatta Point Yachting Center along Broad Creek at 137 Neptune Lane in Middlesex County. The project is protested by an adjacent property owner.

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

Craig Palubinski, Bayshore Designer, LLL representing the applicant was sworn in and his comments are a part of the verbatim record. Mr. Palubinski answered some questions and responded yes to Associate Member Robins question regarding agreeing to not allowing overnight mooring on the outboard side of the structure.

Commissioner Travelstead noted that Ms. Lillian J. Bowe the protestant was not present at the meeting.

There were no other comments pro or con. Commissioner Travelstead asked for a motion.

**Associate Member Beck moved to approve the project. Associate Member Robins seconded the motion and asked if an amendment could be added to prohibit overnight mooring on the property line side of the neighbor. Mr. Beck stated no, as there could be a need in case of an emergency such as a vessel taking on water and threatening to sink. The motion carried, 6-0.**

Royalty Fees (dredge 45 cu. yds. @ \$0.60 per cubic yard).....	\$ 27.00
Permit Fee.....	\$100.00
Total Fees.....	\$127.00

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- ROBERT J. SCHUSTER, #13-0036**, requests authorization to attach a 6-foot by 12-foot floating dock to his existing private pier and to retain an unauthorized osprey pole and platform installed approximately 40 feet southwest of his pier adjacent to 4237 Cheswick Lane, situated along the Western Branch of the Lynnhaven River in Virginia Beach.

Justin Worrell, Environmental Engineer, Sr., gave the briefing on the information provided in the staff evaluation with slides. His comments are a part of the verbatim record.

The applicant was present but did not have any comments.

There were no public comments in support or opposition.

Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Robins moved to approve the project. Associate Member Tankard seconded the motion. The motion carried, 6-0.**

Permit Fee (triple).....	\$75.00
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- 7. **WESTERN VIRGINIA WATER AUTHORITY, #12-1641**, requests after-the-fact authorization to retain seven (7) cubic yards of riprap fill material that was placed a maximum of four (4) feet channel ward of ordinary high water and was installed as part of an emergency repair to an exposed 18-inch sanitary sewer main within an existing right-of-way easement adjacent to the corner of Salem Turnpike and Westside Boulevard situated along Peters Creek in Roanoke.

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

Philip Martin, representing the applicant was present but did not make any comments, but offered to answer any questions. There were no questions.

There was no one in opposition present. Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Plumlee moved to approve the application. Associate Member Robins seconded the motion. The motion carried, 6-0.**

Permit Fee (triple).....	\$75.00
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- 8. **DEBORAH PORTELA, #13-0132**, requests authorization to impact 1,548 square feet of sandy beach adjacent to the York River to install 95 linear feet of riprap extending ten (10) feet channelward of mean high water at 10142 Sycamore

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Landing Road in James City County. The project requires a Coastal Primary Sand Dune and Beach Permit.

Jordan Creed, Environmental Engineer, Sr., gave the briefing on the information in the staff evaluation. Her comments are a part of the verbatim record.

The applicant and her agent were present but did not comment other than to offer to answer questions.

There was no one present in opposition. Commissioner Travelstead stated the matter was before the Commission.

**Associate Member Tankard moved to approve. Associate Member Robins seconded the motion. The motion carried, 6-0.**

Permit Fee.....	\$25.00
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- 9. **HESS CORPORATION, #13-0284**, requests authorization to temporarily impact approximately 160 square feet of vegetated wetlands resulting from the installation of a steel sheet pile wall to minus two (-2) feet below grade adjacent to their facility at 4020 Buell Street situated along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a Wetlands permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing on the information in the staff evaluation. Her comments are a part of the verbatim record.

Mark McElroy representing the applicant was sworn in and his comments are a part of the verbatim record. In response to a question from the Board he explained that their only intent was to recapture the ground water.

There were was no one present in opposition. Commissioner Travelstead stated the matter was before the Commission.

**Associate Member Robins moved to approve the project including the conditions recommended by staff. Associate Member Plumlee seconded the motion. The motion carried, 6-0.**

Wetlands Permit Fee.....	\$10.00
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- 16. REQUEST FOR PUBLIC HEARING:** Proposed adoption of amendments to Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass", to lower the recreational black sea bass fishery possession limit of 25 fish to 20 fish, for the May 19 through October 14 and November 1 through December 31 season, and to establish the 2013 commercial directed fishery quota as 394,000 pounds. These amendments are proposed for compliance with the interstate fishery management plan requirements for black sea bass.

Allison Watts, Fisheries Management Specialist, gave the briefing on the information provided in the staff evaluation. Her comments are a part of the verbatim record.

Ms. Watts explained that this was a proposed reduction in the recreational black sea bass fishery possession limit from 25 fish to 20 fish, for the May 19 through October 14 and November 1 through December 31 season. Additionally, an amendment to the 2013 commercial directed fishery quota is proposed as 394,000 pounds. She said these amendments will put Virginia in compliance with the interstate fishery management plan requirements.

Commissioner Travelstead announced there was a request to advertise for a public hearing, which was approved by the Board.

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- 17. REQUEST FOR PUBLIC HEARING:** Modification of the limited entry system for the commercial spiny dogfish fishery to reduce the number of permits and establish an increased trip limit of 4,000 pounds.

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

Rob O'Reilly, Chief, Fisheries Management was present and his comments are a part of the verbatim record. He explained that the FMAC intends to do the same as the Commission, but on a step by step basis. He said FMAC wanted this first step now for the May 1 start of the next season quota and there was not enough time to do the rest. He said that anyone that has served on the Ad hoc committee or FMAC over the past few years were aware of what is being proposed and staff will start earlier next year, prior to the 2014 season.

Associate Members Robins and Plumlee were both concerned that the industry was not aware of the proposed reduction in the number of permittees and that there could be some transfers once all the new management measures were established. Associate Member



Robins suggested that the FMAC be reconvened in order to work on this over the next two months.

Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Robins moved to notify the permit holders that the Commission was working on limiting the number of permits as has been done in other fisheries. He further moved to hold a public hearing, but continuing to work with FMAC to establish a long-term objective prior to the 2014 fishing year. Associate Member Plumlee seconded the motion and stated that there was a need to get more information from the industry. Commissioner Travelstead instructed staff to send a letter to all permittees in the fishery for the public hearing and the long-term goal was to establish a 40-permit limit. He stated this would be giving them a fair warning. The motion carried, 6-0.**

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- 13. DISCUSSION:** of private ground leasing in Tangier Sound for Blue Crab Disaster aquaculture participants and approval of a Procurement Procedure to allow private individuals to harvest fossil shell for private use as it relates to the 2013 Oyster Replenishment Plan.

Jim Wesson, Head, Conservation and Replenishment, gave the briefing of the information provided in the staff evaluation with slides.

Associate Member Tankard stated that staff should move forward with processing the application by Dan Dise for a lease in Tangier Sound Management area.

Commissioner Travelstead stated that staff needed to provide a written process for handling applications for leases in this area and the Commission would review any applications on a case by case basis before the application process was started.

Commissioner Travelstead stated that as they were no objections by the board, staff could move forward with this matter.

Mr. Wesson said the second item was approval for allowing the dredging of shells by leaseholders for planting on their leases from a public ground area designated by staff on the Seaside of the Eastern Shore. He said there would be a fee of \$0.50 per bushel of shell and a contract would be necessary between the agency and the individual requesting permission to dredge shell.

Commissioner Travelstead asked where would the funds from the sale of the shells go. Mr. Wesson stated it would work just like the seed project and go into the Special Oyster Replenishment Fund.

Associate Member Robins asked if these shells could go out of the State. Mr. Wesson said no, they would be for planting on private oyster ground in Virginia only.

Associate Member Plumlee stated that where the shells go should be tracked. Commissioner Travelstead asked if the contract would include a lease number. Mr. Wesson stated, yes.

Commissioner Travelstead asked what was the pleasure of the Commission.

Mr. Wesson noted that the procurement procedures should be included.

**Associate Member Robins moved to approve the staff recommendation and advertise for shell harvest including the procurement procedures. Associate Member Tankard seconded the motion. The motion carried, 6-0.**

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**Associate Members Beck and Palmer did not return to the meeting after the lunch break.**

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**10. PUBLIC COMMENTS.** No public comments.

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**11. REPEAT OFFENDERS.** Pulled from the agenda

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**12. PUBLIC HEARING:** Establish regulations pertaining to Atlantic menhaden, as authorized by the Code of Virginia, to comply with requirements established by Amendment 2 to the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan for Atlantic Menhaden.

Rob O’Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff evaluation with slides. His comments are a part of the verbatim record.

Mr. O’Reilly noted that this was the first time that the agency had been given any authority to establish management measures for the fishery and noted that the Code of Virginia provided a termination date, for any management measures, of January 1, 2015.

Mr. O’Reilly stated the staff recommended approval of Chapter 4VAC 20-1270-10, et seq.

The public hearing was opened.

Monty Diehl, Omega Protein representative, was present and his comments are a part of the verbatim record. Mr. Diehl suggested that there be a change in the reporting requirements from the Captain's fishing report daily to offloads reports, which would not be available until after several days, as these are the real numbers as the Captain's report were only estimates. He said that weekly offloads were available on Monday. He also added that the Commission consider daily call in reporting be required when there was only 2% to 5% left of the quota.

Commissioner Travelstead asked if this could be added to the regulation as what is proposed is what the General Assembly requires. Paul Kugelman, Assistant Attorney General and VMRC Counsel stated that the Commission could add any additional reporting requirements.

Jimmy Kellum, representing Kellum Corporation, was present and his comments are a part of the verbatim record. Mr. Kellum explained that the Corporation holds the license and they are only the agents. Mr. Kugelman said that the Corporation is the individual in this context.

Mr. Kellum said they had a problem with the \$996.00 license fee because if they catch a certain amount of pounds the fee doubles. Commissioner Travelstead stated the fee was established by the General Assembly and the Commission did not have the authority to change it, it would need to go back to the General Assembly. Mr. Kellum asked if the program could be changed by the Commission going to the Secretary of Natural Resources, Governor or General Assembly. He said another problem was with 318 million pounds for a 10 year average and their bait boats' catch is 26 million pounds could the Commission transfer unused quota between the sectors in order to utilize the total quota. Commissioner Travelstead said this was established by State law to allocate to 3 sectors and it was not transferable and any change would need to go to the General Assembly. Mr. Kellum stated that there needed to be recourse for the transferring of the unused quota so that it was not lost to another State.

Mr. Kellum stated that the Commission should use the Captains' daily reports as required by Code. Commissioner Travelstead stated that the Commission could establish additional reporting requirements.

Fred Rogers, representing himself, was present and his comments are a part of the verbatim record. Mr. Rogers said he was one of the first bait dealers and had sold his boat in 2007 and now he would no longer be allowed to participate in the fishery with the new laws. He added he would have 4 boats left out, which was not fair and this could cause a shortage in bait. Commissioner Travelstead stated this should have been addressed with the General Assembly. He added that the Code provisions set up the ITQ eligibility requirements.

Chris Moore, Chesapeake Bay Foundation representative, was present and his comments are a part of the verbatim record. Mr. Moore said these efforts by the General Assembly were meant to get the State of Virginia into compliance as the fishery was overfished and this would bring the stocks back.

The public hearing was closed.

After some discussion between the staff and the board regarding additional reporting requirements, Mr. Kugelman stated that the Code did not limit the Commission from adding additional reporting requirements and the industry input would help.

Commissioner Travelstead said that this needs to be added to the regulation in order to obtain more accurate data as Code Section 28.2-204 was too broad. He recommended adding this to Section 60 (A) on page 4 of the regulation. He stated there was a need to accurately monitor these quotas.

Mr. O'Reilly said that staff would recommend what Mr. Diehl had suggested. He suggested adding the "following week", either Tuesday or Wednesday and for the last 2 or 3% of the quota, require daily telephone calls. He provided some additional written public comments, as a handout.

Commissioner Travelstead stated the matter was before the Commission.

**Associate Member Robins moved to adopt the staff recommendation to include the additional reporting requirement in order to obtain the most accurate data. Associate Member Tankard seconded the motion. For clarification of what was to be done, Commissioner Travelstead stated that additional reporting would be required by the Wednesday of the following week throughout the season with daily phone calls to be required when 97% of the quota were reported as caught. The motion carried, 4-0.**

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**14. 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 presentation. Her comments are a part of the verbatim record.

**Jarrold R. Vrablitz**

Ms. Iverson stated that Mr. Vrablitz had been sent post card notifications and all of his reports were received today. She said staff recommended probation.

Jarrold R. Vrablitz was sworn in and his comments are a part of the verbatim record.

Commissioner Travelstead explained that probation was for 2 years and no violations could occur during that time or Mr. Vrablitz would be notified to appear again before the Commission Board. He asked what was the pleasure of the Commission.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 4-0.**

**Thomas N. Freeman**

Ms. Iverson stated that Mr. Freeman has been a participant in the Crab Dredge Study. She said he was notified by post card and all of his reports were turned in as of today.

Commissioner Travelstead noted that the staff recommendation was for 2 year probation and asked what was the pleasure of the Commission.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 4-0.**

**Troy D. Libertino**

Ms. Iverson explained that Mr. Libertino had not reported his private ground oysters to mandatory reporting. She said staff recommended a 2-year probation.

Troy D. Libertino, was sworn and his comments are a part of the verbatim record. Mr. Libertino stated that staff had told him all he needed to do was to get the taxes caught up.

Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Plumlee moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 4-0.**

**James F. Shackelford**

Ms. Iverson explained that Mr. Shackelford was in violation of his 2-year probation period which occurred in 2011. She said since he was already on probation staff felt this needed to be a decision of the Commission.

James Shackelford was sworn in and his comments are a part of the verbatim record. Mr. Shackelford explained that he did report and he had called in to get some more forms mailed to him and he never received them. He said he did not receive any postcards during the year and never received a yearly supply of the forms.

After some discussion, Commissioner Travelstead asked what was the pleasure of the Commission.

Associate Member Tankard asked if for 2012 there were no reports for crabs. Commissioner Travelstead stated he turned them in so that he could renew his commercial.

**Associate Member Tankard moved to revoke his license for 12 months. Associate Member Plumlee seconded the motion.**

**Associate Member Robins made a substitute motion to revoke his license for 60 days with two years probation. Associate Member Haynie seconded the motion. The motion carried, 3-2. The Chair voted yes. Associate Members Tankard and Plumlee both voted no.**

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**15. REQUEST FOR EMERGENCY AMENDMENTS:** to Chapter 4 VAC 20-900-10 et seq, "Pertaining to Horseshoe Crabs", to establish mesh size and twine size specifications for gill nets harvesting horseshoe crab.

Adam Kenyon, Fisheries Management Specialist, gave the briefing on the information in the staff evaluation. His comments are a part of the verbatim record. He said the establishment of a mesh and twine size was to prevent the accidentally catch of sea turtles and dolphins. He provided a handout of the draft emergency regulation and read into the record the amendment. He added this was a request for a public hearing in April.

Mr. Kenyon explained that a second issue had come up where there has been user conflict in the Chincoteague area which needs to be looked at. Mr. Tommy Mason had reported that his clam nets were being cut when the horseshoe harvesters worked in the shallow water at night which has caused him to have to replace his nets and cost him money. Hand outs of Mr. Mason's comments were given to the Board.

Commissioner Travelstead suggested having something done to educate the license holders about this matter. He said he believed there was harvesting being done during the night hours in the shallow waters. Associate Member Robins suggested that the Commissioner send a letter to the license holders and let them know what is happening. Commissioner Travelstead agreed to this suggestion.

The public hearing was opened by Commissioner Travelstead.

Ernie Bowden was present and his comments of support are a part of the verbatim record. He expressed his concern that with the increased prices of the horseshoe crabs that more watermen will want to get into the fishery and this fishery needs to remain a bycatch

fishery. He was also concerned that the Wildlife Refuge would try to stop them from working in the waters around the refuge.

Danny Bowden was present and his comments of support are a part of the verbatim record. Mr. Bowden with his comments indicated his agreement with the previous comments and with the staff recommendations.

Associate Member Robins said he appreciated the staff bringing these matters to the board, but that he would be abstaining from the vote.

**Associate Member Plumlee moved to accept the staff recommendation on the emergency amendments to the regulation. Associate Member Tankard seconded the motion. The motion carried, 3-0-1.**

Commissioner Travelstead announced the Board agreed to advertise for a public hearing in April.

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There being no further business, the meeting was adjourned at approximately 2:36 p.m. The next regular meeting will be held Tuesday, April 23, 2013.

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Jack G. Travelstead, Commissioner

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Katherine Leonard, Recording Secretary