

MINUTES

Commission Meeting

September 26, 2017

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 Bull	Commissioner
Chad Ballard	
Christina Everett	
Wayne France	
James Minor	Associate Members
Ken Neill, III	
John Tankard	
John Zydron	
Kelci Block	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Matthew Hull	Policy Manager
Katherine Leonard	Recording Secretary
Sheri Crocker	Chief, Admin/Finance
Todd Sperling	Bs. Systems Specialist, Sr.
Dave Lego	Bs. Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Jill Ramsey	Fisheries Mgmt. Specialist
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Chris Davis	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Sydney Alhale	Fisheries Mgmt. Specialist

Commission Meeting

**17947
September 26, 2017**

Rick Lauderman
Austin Brown
Patrick West
Stephan Ovide
Fred Mitchell
Marshall Reedy
Case Springfield
Steve Bennis

Chief, Law Enforcement
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Sr. Marine Police Officer

Tony Watkinson
Chip Neikirk
Mark Eversole
Rachael Peabody
Jeff Madden
Justin Worrell
Hank Badger
Jay Woodward
Randy Owen
Ben Stagg

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing and Mapping

Daniel Faggert
Bradley Reams
Paul Rogers

Surveyor, Engineering/Surveying
Program Support Technician
Surveyor, Engineer/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
Emily Hein

Others present:

Brett Wayman
Mike Barber
Andy Lacatell
Rocky Rhea

Ann Stifel
Kim Huskey
David West
Jose Soto

Este Stifel
Kyle Sanyo
Timmy Jenkins
Thomas Crosswell, Sr.

and others.

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Commissioner Bull called the meeting to order at approximately 9:37 a.m. Associate Member Lusk was absent from the meeting.

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

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

No changes by Board Members or staff.

Commissioner Bull stated he wanted to add an Item 16 to discuss for combining the November/December regular Commission meeting dates to early December, 2017, either Tuesday, December 5th or December 12th.

Associate Member Zydron moved to approve the agenda, as presented. Associate Member Minor 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 August 22, 2017 Commission meeting minutes. There were no changes.

Associate Member Zydron moved to approve the minutes, as presented. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor abstained as he was not present at the meeting.

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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.):

Tony Watkinson, Chief, Habitat Management, reviewed the two items, A and B, for the Board members. Mr. Watkinson’s comments are a part of the verbatim record.

There were no public comments.

Associated Member Neill moved to approve the 2 page two items. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

- 2A. **DEPARTMENT OF THE NAVY, #17-1006**, requests authorization to repair and replace approximately 1,585 linear feet of fender pile system along Pier 8 along Hampton Roads at Naval Station Norfolk in the City of Norfolk.

Permit Fee	\$100.00
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- 2B. **MARINE HYDRAULICS INTERNATIONAL, INC., #17-1093**, requests authorization to mechanically maintenance dredge, on an as-needed basis, up to 85,000 cubic yards of State-owned subaqueous material per annual cycle, to restore water depths to -38 feet below mean low water within a 450-foot wide by 1,396-foot long basin on the south side, and a 180-foot by 235-foot basin on the north side of their pier at the Lamberts Point facility located on the Elizabeth River in the City of Norfolk. Material will be barged to the Craney Island Dredged Material Management Area. This is a re-authorization and will replace permit #10-1974.

Permit Fee	\$100.00
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3. CONSENT AGENDA ITEMS:

- 3A. **TANGIER-RAPPAHANNOCK, LLC, #17-0791**, requests after-the-fact authorization to retain two (2) uncovered boatlifts and a 28-foot long by 5-foot wide tending pier and to install two (2) additional uncovered boatlifts and a 28-foot long by 8-foot wide tending pier, adjacent to property situated along Cockrells Creek in Northumberland County. The applicant has agreed to pay a \$1,000.00 civil charge and triple permit fees of \$75.00, in lieu of further enforcement action.

Tony Watkinson, Chief, Habitat Management, reviewed the one consent item, A, for the Board members. Mr. Watkinson’s comments are a part of the verbatim record.

Mr. Watkinson noted that the applicant had realized their mistake as they thought they had all the required permits for the project and have agreed to the civil charge and triple permit fee.

Mr. Watkinson explained that staff recommended approval of the after-the-fact request to retain the uncovered lifts and tending pier, as well as, authorization to install two additional new lifts and a tending pier in existing slips conditioned on the payment of a \$1,000.00 civil charge and a triple permit fee of \$75.00 in lieu of further enforcement action.

The applicant indicated that he did not want to comment. Commissioner Bull opened the public hearing to comments, pro or con. There were none. He stated the public hearing was closed and the matter was before the Commission for discussion or action.

Associate Member Tankard moved to approved the after the fact application, civil charge, and triple permit fees. Associate Member Minor seconded the motion carried, 8-0. Chair voted yes.

Civil Penalty	\$1,000.00
Permit Fee (ATF triple fees)	\$ 75.00
Total fees	\$1,075.00

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

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5. **BRETT G. WAYMAN**, Oyster Planting Ground Application #2016-005, requests authorization to lease approximately 60 acres of oyster planting grounds within Purtan Creek, a tributary to the York River in Gloucester County. The application is protested by an adjacent property owner and leaseholder and the National Park Service.

Ben Stagg, Director, Shellfish Aquaculture, Leasing, Mapping, gave the briefing of the information provided in the staff’s evaluation, with slides. Mr. Stagg’s comments are a part of the verbatim record.

Mr. Stagg explained that staff reviews each oyster planting ground application relative to the specific circumstances associated with the location, suitable bottomland, proposed use by the applicant, and other uses of the area. For this application, it appears leasing of any area along the shoreline of the Werowocomoco site will create a conflict with and possible adverse impact to potentially significant historic and archeological artifacts that may lie upon or under the subaqueous bottomlands in this area. Staff cannot support leasing of any of the area in Purtan Bay to the east of the existing leases Plat File number 11357 (Lumsden) and Plat File number 11356 (Stifel) including the area within Leigh Creek. Additionally, pursuant to VMRC Regulation 4 VAC 20-1290 ET SEQ, the area within Purtan Bay, Purtan Creek and the unnamed creek included in the application that are currently restricted for shellfish harvest also cannot be leased. The remaining area within non-restricted waters classification and located to the west of Plat File 11357 (Lumsden) and south of Plat File 11356 (Stifel) containing approximately 10.50 acres appears to be suitable for leasing and should not present any direct impacts to the Protestants property and is a considerable distance from the Werowocomoco site.

Brett Wayman, application, was sworn in and his comments are a part of the verbatim record. Mr. Wayman explained that there was a history of watermen in his family. He stated this had been a 3 year process for him as he started out applying for ground in the

Propotank but it was protested and then it was established as condemned by the VDH-Division of Shellfish Sanitation and finally the Commission made a decision to not lease these restricted areas. He said he worked with staff and found another area that was clean and not condemned and he probed the bottom and found shells were already there. He stated he did not want to harvest them only give back to the community. He said he wanted to shell and seed the bottom to help the environment to preserve history of the area and prevent others from harvesting. He said that the protestant's pier probably did more damage to the bottom with all the equipment required to build her pier. He said another leaseholder in the area had 10,000 acres and worked them continuously. In response to a question, he stated he did not plan to use cages and he has learned from others' experience that cages do not work there. When asked if he would accept the area recommended by staff, he said he had not check that area.

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

Estee Stifle, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Stifle stated she supported the park service and would like the 60 acres set aside as a sanctuary area, not a commercial operation. She said the two creeks were shallow and there was recreational activity in the area and she felt the artifacts were known to be in the area. She said the park service had started to survey for archeological purposes. In response to question, she stated she had two leases, but did not harvest them just allowed them to grow.

John Davy, Parks Service representative, was sworn in and his comments are a part of the verbatim record. Mr. Davy stated that he would answer any questions and the presentation by staff covered this matter well. In response to question, he stated the staff recommendation was acceptable as they were just concerned with the artifacts that are in the area.

Mr. Wayman in rebuttal said that the fact that there were two piers, and marsh in the area should have been considered when they were built. He said why stop him when Ms. Stifle had two leases.

Commissioner Bull closed the public hearing. He stated the matter was before the Commission for discussion and action.

Associate Member France moved to accept the staff recommendation for approval of the smaller area of 10.5 acres and to set the condemned area aside not to be leased. Associate Member Zydron seconded the motion.

After much discussion about concerns regarding setting an area aside to not allow the leasing, Associate Member Ballard made a substitute motion to accept the staff recommendation to approve the 10.5 acre lease; and, not include in the set aside in the motion. Associate Member Everett seconded the motion. The motion carried, 6-2. Chair voted no and Associate Member Zydron voted no.

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- 6. **ROBERT F. RIPLEY, JR.**, Oyster Planting Ground Application #2015-026, requests authorization to lease approximately 37 acres within Purtan Bay in Gloucester County. The application is adjacent to property purchased by the National Park Service from the applicant.

Ben Stagg, Director, Shellfish Aquaculture, Leasing, Mapping, gave the briefing of the information provided in the staff’s evaluation, with slides. Mr. Stagg’s comments are a part of the verbatim record.

Mr. Stagg explained that staff reviewed each oyster planting ground application relative to the specific circumstances associated with the location, suitable bottomland, proposed use by the applicant, and other uses of the area. For this application, it appeared leasing of any area along the shoreline of the Werowocomoco site would create a conflict with and possible adverse impact to potentially significant historic and archeological artifacts that may be present upon or under the subaqueous bottomlands in this area. Assigning the area to Mr. Ripley and then transferring the lease to the Virginia Department of Historic Resources for protection of the historic nature of the site appeared to be contrary to the Code of Virginia. Staff could not support the leasing of any of the area in Purtan Bay to the east of the existing leases (Plat File number 11357-Lumsden and Plat File number 11356-Stifel), including the area within Leigh Creek. Therefore, staff recommended denial of the entire Ripley application and further that the Commission in a separate action set the area aside as an area not to be leased with a clear rationale for such action, if deemed appropriate.

It was noted that the applicant, Robert Ripley, was not present at the hearing.

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

Associate Member Ballard moved to accept the staff recommendation to deny the entire Ripley application. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 7. **REQUEST FOR COMMISSION CONSIDERATION** to set aside from shellfish leasing approximately 41 acres of subaqueous bottomlands for the protection of potential archaeological resources adjacent to highland property known as Werowocomoco, currently owned by the National Park Service in Purtan Bay and Purtan Creek, tributaries to the York River in Gloucester County.

Ben Stagg, Director, Shellfish Aquaculture, Leasing, Mapping, gave the briefing of the information provided in the staff's evaluation, with slides. Mr. Stagg's comments are a part of the verbatim record.

Mr. Stagg explained that since the Wayman application was approved for a portion of the amount applied for, 10.5 acres and the Ripley application had been denied, staff recommended that an area of approximately 30.5 acres be designated as an area set aside and not to be leased. The rationale for this recommendation was based on the area being immediately adjacent to the Werowocomoco site and the likelihood that significant historic resources may lie within and upon the subaqueous bottomlands within the area.

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

Associate Member Zydron moved to accept the staff recommendation to set this area aside, 30.5 acres. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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8. **BRIAN TERRY**, Oyster Planting Ground Application #2015-160, requests authorization to lease 40 acres of Oyster Planting Ground in Craddock Creek, Accomack County. The project area has submerged aquatic vegetation (SAV).

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

Mr. Badger explained that the VMRC's new SAV Guidance Policy was adopted by the Commission at the August 22, 2017 meeting and states that new structures or leasing of oyster planting grounds on any SAV beds annually mapped by VIMS during at least one of the previous five years should not be leased.

Mr. Badger said that the density levels in the past five years have varied in this area between less than 10% in some areas to greater than 70% coverage in others. The planting of shellfish in this area would directly impact the widgeon grass and eelgrass present and prevent any SAV restoration efforts. He explained that the Virginia Institute of Marine Science's SAV maps indicated that there had been submerged aquatic vegetation in the area that Mr. Terry had applied for most of the last ten years and the VIMS 2016 map indicated the area was completely covered. Staff, therefore, was unable to support the applicant's request for approximately 40 acres of oyster planting ground in this area and recommended denial.

Associate Member Zydron was acting as chair while Commissioner Bull was absent.

Brian Terry, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Terry said he was requesting approval of his lease application. In response to questions, he explained there was potential for 500,000 to 2.5 million oysters and in the other areas he might want to grow clams. He said that when the grasses did return, he could move the cages to areas where there were no grasses. He said on his existing leased grounds he had caged oysters and clams, too. He noted that storms could be severe on that part of the grounds that were exposed to the Chesapeake Bay.

Commissioner Bull opened the public hearing.

After much discussion, Mr. Terry stated that he was willing to compromise to get his request approved today. Mr. Badger stated the staff recommendation would still be to deny the application.

As there were no additional public comments, Commissioner Bull stated the public hearing was closed and the matter was before the Commission for discussion and action. He asked, what was the will of the Commission?

Associate Member Ballard made a motion to accept the staff recommendation for denial. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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As time allowed before the lunch break, it was decided to move some of the fishery items forward. It was suggested that Items 14, 16, and then 15 be heard at this time.

14. RECOMMENDATION: Recommendations from the Recreational Fishing Advisory Board (RFAB) on proposed project expenditures from the Virginia Saltwater Recreational Fishing Development Fund.

Alicia Nelson, Coordinator, RFAB/CFAB, gave the briefing of the information provided in the staff's evaluation. Ms. Nelson's comments are a part of the verbatim record.

Ms. Nelson explained that on September 11, 2017, the RFAB met to review and recommend projects for the 2017 funding cycle. The estimate of funds available, as of September 11, 2017 from the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF) is \$1,684,723. The RFAB reviewed 12 projects (A through L below) and voted to recommend the Commission fund all of the fishing events and research projects, and recommended partial funding of the two access projects in York County and Smithfield. Recommended expenditures total \$684,283 from the VSRFDF.

2018 Fishing Events

- A) 2018 Knights of Columbus Annual Kids Fishing Day. Greg Brown, **\$7,500. The RFAB unanimously recommended funding**
- B) 2018 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. Joseph Stephenson; George Reich, Great Bridge Fisherman’s Association. **\$3,825. The RFAB unanimously recommended funding**
- C) 2018 Saxis and Morley's Wharf Children’s Fishing and Conservation Educational Outings. Fred Chemi, Eastern Shore of Virginia Anglers Club. **\$2,200. The RFAB unanimously recommended funding**
- D) 2018 Virginia Beach Anglers Club/Seton Youth Shelter Children’s Fishing Trip. Robert Burstein, Virginia Beach Anglers Club. **\$2,500. The RFAB unanimously recommended funding**
- E) 2018 Norfolk Youth Head Boat Fishing Trip. James “Ike” Eisenhower, Norfolk Anglers Club. **\$1,200. The RFAB unanimously recommended funding**
- F) 2018 Children's Fishing Clinic. Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. **\$7,500. The RFAB unanimously recommended funding**
- G) 2018 Kiwanis Club Children's Fishing Clinic. Wesley Brown, Capital District Kiwanis Club. **\$7,500. The RFAB unanimously recommended funding**
- H) 2018 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Anglers Club/Sunshine Program. **\$9,900. The RFAB unanimously recommended funding**

Access Projects for 2017

- I) Wormley Creek Waterfront Improvements – Project Amended. Bonnie Fitz, York County. **\$161,321. The RFAB unanimously recommended partially funding the project (option 2) in the amount of \$95,830.**
- J) Clontz Park Boat Ramp-Additional Funding Request -Project Amended. Peter Stephenson, Town of Smithfield. **\$317,185. The RFAB recommended (with 1 abstention) partially funding the project (option 2) in the amount of \$156,185.**

Research projects for 2017

- K) Marine Sportfish Collection Project, Year 11, Adam Kenyon, VMRC. **\$12,000. The RFAB unanimously recommended funding**

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L) Virginia Game Fish Tagging. Susanna Musick (VIMS), Lewis Gillingham (VMRC). **\$82,971. The RFAB unanimously recommended funding**

M) *Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 15). Mary Fabrizio, Troy Tuckey, VIMS. \$26,960. **(\$13,480 from VSRFDF, and \$13,480 from MFIF) The RFAB unanimously recommended funding**

N) Federal Assistance (Sportfish Restoration) Matching Funds, Federal FY 2018. Robert O'Reilly, VMRC. **\$236,828. The RFAB unanimously recommended funding**

O) Quantifying the Economic and Behavioral Effects of Alternative Regulatory Measures in Virginia's Recreational Cobia (*Rachycentron canadum*) Fishery (Year 2). Andrew Scheld, VIMS. **\$44,864. The RFAB unanimously recommended funding**

Ms. Nelson stated that staff recommended funding projects A through H and projects K through O, and partially funding projects I and J, for expenditures totaling \$684,283, from the recreational license fund (VSRFDF), and \$13,480 from the Marine Fishing Improvement Fund (MFIF).

Commissioner Bull asked, what was the will of the Commission?

Associate Member Tankard moved to approve the staff recommendations to approve the recommendations of the RFAB. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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16. DISCUSSION: To set date for the combined November and December meeting.

It was the general consensus of the Board Members to combine the two meeting and hold the joint meeting on December 12, 2017.

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15. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Groupers", to set new possession limits and recreational season for blue-line tilefish.

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

Mr. Cimino explained that the National Marine Fisheries Service (NMFS) approved Amendment 6 to the Tilefish Fishery Management plan (FMP). Amendment 6 would establish a recreational blue-line tilefish fishing season that would be open from May 1 through October 31 of each year. Although harvest of blue-line tilefish occurs almost exclusively in federal waters staff recommended establishing this same season in Virginia. NMFS will also establish a possession limit which would depend on the type of vessel used. Anglers fishing from private vessels would be allowed to keep up to three blue-line tilefish per person per trip. Anglers fishing from a for-hire vessel that has been issued a valid Tilefish Charter/Party Permit, but does not have a current U.S. Coast Guard safety inspection sticker could retain up to five blue-line tilefish per person per trip. Finally, anglers on for-hire vessels that have both a valid Tilefish Charter/Party Permit and a current U.S. Coast Guard safety inspection sticker could retain up to seven blue-line tilefish per person per trip. Staff also recommended amending our regulation to reflect this vessel limit. However, staff knows that this has been a contentious issue, especially with the private sector that does not support being held to a lower possession limit.

Mr. Cimino stated that staff recommended the Commission advertise for an October 2017 public hearing to modify the recreational harvest and possession limits, and to establish a recreational fishing season.

Associate Member Neill approved the staff recommendation to advertise for an October 2017 public hearing. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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9. PUBLIC COMMENTS: No public comments.

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10. OFFENDERS.

(10-1) Rocky W. Rhea – was present and sworn in.

Matt Hull, Policy Manager, was sworn in and explained that this was a request by Mr. Rhea for reconsideration of the revocation of his license.

Mr. Rhea explained that he was requesting the return of his licenses because of the hardship on his family he has to support and even though he has tried he has had been unable to find work. He said if the Commission would return his licenses, now instead of January 2018, he would accept a longer probation period of four years.

Commissioner Bull asked for a motion three times for Mr. Rhea's request for the return of his licenses and there was no motion made by the Board members. No action was taken.

(10-2) Carlton Duncan – was not present.

Commissioner Bull noted that Mr. Duncan had told him he would be present. He asked for a motion three times for Mr. Duncan's request for reconsideration of his licenses revocation and there was no motion by the Board members. No action was taken.

(10-3) Timmy L. Jenkins – was present and sworn in.

Mr. Jenkins stated that it had been 20 months since he lost all of his licenses and now he has lost everything. He said friends have tried to help him and he has a handicap child plus three other children and he needed to get back to work. He said needs to be able to pay his fines and the court ordered payment to the Oyster Replenishment Fund. He stated he has learned his lesson.

Commissioner Bull asked him if this would happen again. Mr. Jenkins responded that he promised it would not. Commissioner Bull asked for a motion.

Commissioner Bull noted that the other individual had since gotten his licenses back, but not including the oyster licenses and he was the Captain.

After further discussion, Commissioner Bull asked for a motion three times for Mr. Jenkins's request for reconsideration of his request to return his licenses that had been revoked and there was no motion offered by the Board members. No action was taken.

(10-4) Thomas P. Crosswell, Sr. – was present and sworn in.

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

June 17, 2015, Officer Fred Mitchell, Un-culled Crabs 45 per Bushel--§28.2-708 of the Code of Virginia; August 13, 2015, Essex County General District Court.
Fine: \$150.00, Court Cost: \$121.00.

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

January 19, 2017, Officer Austin Brown, Possession of Un-culled Oysters—§28.2-201 of the Code of Virginia; 4 VAC 20-260-50; February 8, 2017, Gloucester County General District Court; Fine: \$100.00, Court Cost: \$86.00.

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

March 14, 2017, Officer Case Springfield, Possession of Un-culled Oysters (8 Quarts)—4 VAC 20-260-40; June 9, 2017, Newport News General District Court; Fine: \$50.00, Court Cost: \$101.00. As of 8/9/17 the fine and cost have not been paid.

Mr. Croswell explained that he was selling the crabs that he bought from the Crab Express. He stated he did not harvest them. He is a fifth generation watermen and he depends on these sales to support his family. He said the top of the basket had correct size crabs and the smaller crabs were all at the bottom of the basket.

Robert O'Reilly, Chief, Fisheries Management, explained to the Commission the matrix of the guidelines for sanctions specifying that one conviction of possession of at least 50% over the tolerance of undersized shellfish and one conviction of possession of more than 20 undersized crabs per bushel (70 per barrel), within a two year period, should result in at least a six month revocation of all shellfish licenses. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest the Commission revoke all of Mr. Croswell's shellfish licenses for a period of six months from the date of this Commission meeting, September 26, 2017, through March 25, 2018. The Code of Virginia also allowed that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Croswell's shellfish licenses during this revocation period.

Associate Member Minor made a motion to place Mr. Croswell's on two year probation only. Associate Member France seconded the motion.

Associate Member Tankard made substitute motion for longer probation period of five years for Mr. Croswell, starting September 26, 2017, through September 25, 2022. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

10(5) Jackie L. Hall, Jr. – was not present.

Commissioner Bull noted that Mr. Hall was sent a summons to appear before the Board at this hearing.

Commissioner Bull asked if the Commission wished to proceed with the hearing in Mr. Hall's absence. It was the general consensus of the Board members to proceed with the hearing.

Steven Ovide, Marine Police Officer, was sworn in and gave the briefing of the information provided in the staff's evaluation. In response to question Mr. Ovide noted that Mr. Hall admitted to having done this in the past and he took responsibility for his action.

March 27, 2017, Theft of Oysters—§28.2-527 of the Code of Virginia; July 20, 2017, Gloucester County General District Court; Fine: \$250.00 with \$250.00 suspended; Court Cost: \$656.00; Reduced to Theft of Oysters Etc. Less than \$200.00--Class 1 misdemeanor; 12 months Jail with 11 months 15 days suspended.

March 27, 2017, Harvest Oysters Out of Season—§28.2-506 of the Code of Virginia; July 20, 2017, Gloucester County General District Court; Fine: \$250.00, Court Cost: \$25.00.

March 27, 2017, Possess Oysters for Commercial Purposes without a Commercial Fisherman's License—4 VAC 20-720-80; July 20, 2017, Gloucester County General District Court; Fine: \$50.00; Court Cost: \$145.00.

Robert O'Reilly, Chief, Fisheries Management read that the Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed public season, within a two year period, should result in a three year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Hall on probation for a period of three years from the date of this Commission meeting, September 26, 2017, through September 25, 2020. Any failure on Mr. Hall's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the three-year probation would result in Mr. Hall appearing before the Commission for a hearing on a license revocation.

Associate Minor moved to accept the staff recommendation.

Associate Member Ballard said that he was concerned with Mr. Hall's violation history and the fact that he does not have any licenses and could obtain one while on probation. He made a substitute motion to move for two year revocation for all oyster licenses.

After further discussion, Associate Member Ballard in a substitute motion moved for one year revocation. He finally said he would withdraw his substitute motion.

Kelci Block, Assistant Attorney General and VMRC Legal Counsel, in answer to questions, read the applicable Code Section and said she would feel uncomfortable with revocation since there were no licenses. She did say that to revoke the license was the same as prohibition from receiving a license.

Associate Member France in a substitute motion moved for five year probation for Mr. Hall, starting September 26, 2017, through September 25, 2022. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

(10-6) Jose M. Soto – was present and sworn in.

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

April 14, 2017, Possession of Untagged Striped Bass 25 Untagged Striped Bass—4 VAC 20-252-160; June 5, 2017, Middlesex County General District Court; Fine: \$100.00; Court Cost: \$121.00

April 14, 2017, Possession of Undersized Striped Bass—4 VAC 20-252-140; June 5, 2017, Middlesex County General District Court; Fine: \$300.00, Court Cost: \$25.00.

April 14, 2017, Commercially Fish without a Permit (Striped Bass Permit)—4 VAC 20-252-120; June 5, 2017, Middlesex County General District Court; Fine: \$300.00; Court Cost: \$25.00.

Robert O'Reilly, Chief, Fisheries Management read that the Commission's guidelines for sanctions specify that one conviction of possession untagged striped bass, within a two year period, should result in a two year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Soto on probation for a period of two years from the date of this Commission meeting, September 26, 2017, through September 25, 2019. Any failure on Mr. Soto'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. Soto appearing before the Commission for a hearing on a license revocation.

Mr. Soto explained that he did not know about the size limit or about the tags. He said the fish were dead so he thought he could keep them. He stated he had done this before. He also responded to a question that it would not happen again.

Commissioner Bull asked, what was the will of the Commission?

Associate Member Tankard moved to accept the staff recommendation of two year probation for Mr. Soto, starting September 26, 2017, through September 25, 2019. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

(10-7) William K. Sawyer – was present and sworn in.

Marshall Reedy, Marine Police Officer was sworn in gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

September 18, 2015, Unculled Crabs 34 Small Crabs in 1 Bushel—§28.2-708A of the Code of Virginia; On December 9, 2015; Accomack County District Court; December 9, 2015, Accomack County General District Court; Fine: \$100.00, Court Cost: \$121.00.

April 8, 2017, Unculled Crabs 25 in 1 Bushel—§28.2-708A of the Code of Virginia; June 14, 2017, Accomack County General District Court; Fine: \$50.00, Court Cost: \$86.00.

Robert O’Reilly, Chief, Fisheries Management read that the Commission’s matrix of guidelines for sanctions specify that two convictions of possession of more than 20 undersized crabs per bushel (70 per barrel), within a two year period, should result in at least a two-year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Sawyer on probation for two years from the date of this Commission meeting, September 26, 2017, through September 25, 2019. Any failure on Mr. Sawyer’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. Sawyer appearing before the Commission for a hearing on a license revocation.

Mr. Sawyer admitted he was guilty. He explained that if someone worked for him and culled wrong he sent them home. He stated it was hard to keep an eye on every little thing and it was hard to get and keep good help. In response to a question about the recommendation for probation, Mr. Sawyer said he did not like it, but he was afraid to disagree and have the punishment get more severe. He said he would just have to go alone and cull the oysters himself.

Commissioner Bull asked, what was the will of the Commission?

Associate Member Neill moved to accept the staff recommendation for two year probation for Mr. Sawyer, starting September 26, 2017, through September 25, 2019. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 11. **REQUEST FOR AN EMERGENCY AMENDMENT:** To amend Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a closure date for the commercial Cobia fishery.

Ryan Jiorle, Fisheries Management Specialist, gave the briefing of the information in the staff’s evaluation, with slides. Mr. Jiorle’s comments are a part of the verbatim record.

Before addressing this item on the agenda, Mr. Jiorle provided an update on the mandatory recreational reporting program for cobia, describing participation as well as summarizing compliance issues that staff planned to address in the coming months. He noted that a more complete presentation on the VMRC's mandatory recreational reporting program and its results would be given at a future Commission meeting.

Mr. Jiorle noted that the federal waters were already closed on September 5, 2017, therefore, staff recommended the Commission adopt emergency amendments to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a closure of the commercial cobia fishery. Staff also recommended a public hearing be advertised for the October meeting.

Associate Member Tankard moved to establish the closure date as September 26, 2017. Associate Member Ballard seconded the motion. After further discussion about being too short of a time to let fishermen know, Associate Member Tankard amended his motion to a October 1, 2017 season closure date for the cobia fishery and advertise for an October public hearing. Associate Member Ballard seconded the amended motion. The motion carried, 8-0. Chair voted yes.

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12. REQUEST FOR AN EMERGENCY AMENDMENT: To amend Chapter 4 VAC 20-260-10 et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas," to establish inspection procedures for oysters kept in individual baskets in a vessel.

Andrew Button, Head, Conservation and Replenishment, gave the briefing of the information in the staff's evaluation, with slides. Mr. Button's comments are a part of the verbatim record.

Mr. Button explained that the version approved before 2014 allowed the officer to check either the open pile in any conveyance or baskets on the boat for conformity with oyster culling standards. However, in 2014 this regulation was amended and the ability of the police officer to cull baskets on the boat was inadvertently eliminated.

Mr. Button stated that staff recommended the approval of the emergency amendments for Chapter 4VAC20-260-10, et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas", to establish inspection procedures for oysters kept in individual baskets, especially on the boat. Staff also recommended a public hearing be advertised for the October meeting.

Commissioner Bull asked for public comments, pro or con. There were none. He asked the Commission, what do you want to do?

Associate Member Ballard moved to accept the staff recommendation and advertise for a public hearing at the October meeting. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 13. REQUEST FOR AN EMERGENCY AMENDMENT:** Proposal to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish fall 2017 commercial offshore summer flounder fishery management measures that include a change to the season start date and lower the Virginia landing limit.

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

Mr. Cimino stated that staff recommended adopting emergency amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the landing period and trip limit. Staff also recommended advertising for an October public hearing to adopt the amendments as a permanent part of the regulation. He provided the Commission with a corrected draft regulation for an opening date of October 16, 2017 and the trip limit of 2,000 pounds.

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

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There being no further business, the meeting was adjourned at approximately 3:14 p.m. The next Commission meeting will be Tuesday, October 24, 2017.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary