

MINUTES

Commission Meeting

December 10, 2012

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

Jack G. Travelstead	Commissioner
Robert G. Beck	
J. Carter Fox	
S. Lynn Haynie	
J. Bryan Plumlee	Associate Members
J. Edward Tankard, III	
Whitt G. Sessoms, III	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Katherine V. Leonard	Recording Secretary
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Senior Mgr.
Stephanie Iverson	Fisheries Mgmt. Mgr.
Renee Hoover	Biological Collection Program, Supervisor
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Adam Kenyon	Fisheries Mgmt. Specialist
Lewis Gillingham	Game Fish Coordinator
Samantha Hoover	Fisheries Mgmt. Specialist
Laura Williams	Fisheries Mgmt. Technician
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
John Richardson	Marine Police Officer
Patrick West	Marine Police Officer

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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Robert Orth	Roger Mann
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Others present:

Fay Holloway, Jr.	Tray S. Thompson	Charles J. Kenneth
David G. Stephens	Rebecca Francese	Mathew Roth
Lloyd Riggs	Marian Riggs	Myles Pocta
David Bradshaw	Alex Post	Michael Hild
Ben McGinnis	R. M. Challoner	Bryan Irving
Dotty Carlson	Edwin Ruark	Paul Seitz
Joe Foxwell	Neal Foxwell	David O'Brien
Allie Walton	Carolyn Walton	Andy Laccatell
Scott Harper	Keith Skiles	Bob Croonenberghs
R. Winder	Michael Gibson	Douglas F. Jenkins
James Saunders	Lloyd M. Mill	Kenneth Heath
Herman Hogge	Ronald O. Burroughs	Thomas William
Joey Williams	Walter Rogers	Pete Bender
Lisa Bell	Susan Rice	Curtis Jenkins
Wayne France	Kim Huskey	Kelly Place

and others.

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Commissioner Travelstead called the meeting to order approximately 9:30 a.m. Associate Members Palmer and Robins were both absent.

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At the request of Commissioner Travelstead, Associate Member Fox 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. Both Mr. O'Reilly and Mr. Watkinson indicated there were none.

Associate Member Tankard moved to approve the 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 September 25, 2012 Commission meeting minutes, if there were no corrections or changes.

Commissioner Travelstead announced it was the consensus of the Board to approve the September 25, 2012 meeting minutes.

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

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

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

Associate Member Tankard moved to approve item 2A through 2D. Associate Member Fox seconded the motion. The motion carried, 6-0.

2A. NORFOLK SOUTHERN CORPORTION, #12-1627, requests authorization to remove an existing railroad bridge over Clear Creek between Rose Avenue SE and 12th Street SE and construct in place a new 22-foot wide by 40-foot long

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clearspan trestle with riprap scour protection at milepost CV-464.01 in the City of Norton in Wise County. Recommend approval with our standard instream permit conditions, coordination with the Department of Game and Inland Fisheries to ensure avoidance of trout stocking and angling activities and an encroachment royalty in the amount of \$630.00 for the encroachment of the new bridge over 315 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royalty Fees (315 sq. ft. encroachment @\$2.00/sq. ft.).....	\$630.00
Permit Fee.....	\$100.00
Total Fees.....	\$730.00

2B. CITY OF VIRGINIA BEACH DEPARTMENT OF PUBLIC WORKS, #12-1169, requests authorization to remove and replace the Shore Drive - Lesner Bridge (U.S. Route 60) over the Lynnhaven Inlet in Virginia Beach. The new bridge will consist of four lanes and associated pedestrian pathways on both the eastbound and westbound structures and will be 117 feet wide by 1,528 feet long, of which 800 linear feet will be over State-owned bottom. There will be a vertical clearance of approximately 45 feet above the mean high water elevation of the existing federal navigational channel. In addition to annual maintenance dredging of the City’s municipal channel at Crab Creek, approximately 5,000 cubic yards of State-owned submerged bottom will be mechanically dredged along Crab Creek and within the Inlet to allow for the creation of a staging basin at the City’s Beach and Boat Ramp facility. Initial mechanical dredging adjacent to Crab Creek will be limited to a maximum depth of minus eight (-8) feet mean low water and to a time-of-year-restriction of October 1 – February 28 to protect shellfish and summer flounder. If necessary, additional maintenance dredging of Crab Creek outside of the time-of-year restriction may occur provided the City submits the requisite bathymetric surveys indicating shoaling. All sandy material dredged from Crab Creek and the Inlet will be offloaded at the staging basin and truck-hauled to the nearby Ocean Park beach for beach nourishment efforts landward of mean low water. The deconstructed bridge will be transported by barge to approved VMRC artificial reefs within the lower Chesapeake Bay.

Permit Fee.....	\$100.00
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2C. DEPARTMENT OF THE NAVY, #12-1347, requests authorization to remove and replace the existing concrete boat ramp directly west of Pier 34 at Joint Expeditionary Base Little Creek in Virginia Beach. The new concrete ramp will consist of fixed slab and open-pile support sections with overall dimensions of 154 feet wide by 287 feet long, extending approximately 100 feet channelward of mean low water. A 12-foot wide by 66-foot long fixed concrete pier will be

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constructed down the center of the ramp including two, 4-foot by 36-foot gangways attaching to a 12-foot wide by 71-foot long floating tending pier. All ramp demolition and construction activities will occur within temporary sheet-pile design cofferdams.

Permit Fee.....	\$100.00
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- 2D. **LYON SHIPYARD, INC., #12-1453**, requests authorization to maintenance dredge 35,000 cubic yards of material by mechanical methods, on an as-needed basis, to achieve maximum navigable depths of minus twenty feet (-20) mean low water adjacent to their existing bulkhead and minus thirty-one (-31) feet mean low water within a 100-foot by 400-foot basin adjacent to their existing drydock facility at 307 Campostella Road situated along the Eastern Branch of the Elizabeth River in Norfolk. Dredged material will be barged to the Craney Island Dredged Material Management Area (CIDMMA) and disposed of in the rehandling basin.

Permit Fee.....	\$100.00
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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).

No consent items.

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

Associate Member Plumlee moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:

- 5. Ram Island Rod and Gunning Club, Inc, #12-1665

Associate Member Tankard seconded the motion. The motion carried, 6-0.

Associate Member Plumlee moved for the following:

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and,

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member’s knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and,
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

Associate Member Tankard seconded the motion. Commissioner Travelstead held a Roll Call vote:

AYES: Beck, Fox, Haynie, Plumlee, Sessoms, Tankard, and Travelstead.

NAYS: NONE

ABSENT DURING VOTE: Palmer and Robins

ABSENT DURING ALL OR PART OF CLOSED MEETING: Palmer and Robins

Motion carried, 7-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

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5. **RAM ISLAND ROD and GUNNING CLUB, INC., #12-1665**, requests after-the-fact authorization for improvements to the house structure constructed on pilings in Back Bay in the Pungo area of Virginia Beach that now includes a 625 square foot second story with stairs, surrounding decking and piers, which measure 8-feet wide on the northern and eastern sides, 15-feet wide on the southern side, and 10-feet wide with two accompanying 10-foot wide by 24-foot long finger piers on the western side, as well as an 8-foot by 14-foot floating dock.

Electric power is provided by an overhead line, on poles, that extends from the structure approximate 370 feet to a service pole at the upland near the end of Ship's Cabin Road.

Tony Watkinson, Chief, Habitat Management, gave the briefing covering the information in the staff evaluation with slides. His comments are a part of the verbatim record.

After some discussion, Commissioner Travelstead asked if the applicant's representative wished to comment.

John Daniel, attorney for the Riggs Family, was present and his comments are a part of the verbatim record. Mr. Daniel stated that they were requesting that the Commission decide that the State did not have jurisdiction first before discussing the after-the-fact permit application.

Thomas Kliene, attorney for the Riggs Family, was present and his comments are a part of the verbatim record. Mr. Kliene noted that the area within the description is the same as it exist today.

There were no public comments.

Commissioner Travelstead noted that this issue would be taken up first.

After much discussion, Associate Member Sessoms moved that the Commission decline and not take jurisdiction over the 2.75 acres, but added that Commission would not be making a finding as to whether the State does have jurisdiction. Associate Member Plumlee seconded the motion. The motion failed, 3-4. Associate Members Fox, Haynie, and Tankard all voted no. The Chair voted no.

Associate Member Fox moved to accept the Attorney General's opinion and to move forward on the joint permit application. Associate Member Haynie seconded the motion. The motion carried, 4-3. The Chair voted yes. Associate Member Beck, Plumlee, and Sessoms all voted no.

Mr. Daniel stated they did agree in part with after-the-fact permit application staff recommendation. He noted that the power line had been repaired in accordance with the Corps recommendation of 14 feet versus the 20 feet as required by staff. He provided a handout of the letter from the Corps.

He said they disagreed with the staff recommendation regarding the second story that there should be an engineering study done, as to its stability. He added that he wished to provide rebuttal testimony after the protestants comments.

Commissioner Travelstead asked for any public comments, pro or con.

Dottie Carlson, protestant, was present and sworn in. Her comments are a part of the verbatim record. Ms. Carlson stated that this had been an ongoing issue for a long time. She added that the Riggs family had shown disregard for agencies and requirements.

After some rebuttal comments by Mr. Daniel and discussion, Commissioner Travelstead asked for a motion.

Associate Member Tankard moved to approve the after-the fact permit application to include the repair of the powerline and there would be no civil charges assessed. Associate Member Fox asked if this included the second story. Associate Member Tankard agreed that it did include the second story. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

Permit Fee.....	\$100.00
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- 6. **ANDERSON’S NECK OYSTER COMPANY (DBA ANDERSON’S NECK, LLC) #12-0990**, requests authorization to moor two *Osterplexes*, four floating upwellers and to deploy approximately 1,670 OysterGro™ floats, attached to 139 longlines, above their leased oyster ground associated with a proposed commercial oyster grow-out facility in Morris and Poropotank Bays in King and Queen and Gloucester Counties. The project is protested.

Randy Owen, Environmental Engineer, Sr., gave the briefing covering the information provided in the staff evaluation. Mr. Owen noted that King and Queen County officials supported the project (Item 3-F), but were still working with the applicant and the Commission should proceed with its part. He read the staff recommendation into the record. His comments are a part of the verbatim record.

After some discussion between the members and staff, Commissioner Travelstead asked if the applicant wished to come forward and make comments.

Michael Hild, applicant, was present and sworn in. His comments are a part of the verbatim record. He noted that he had worked with staff to modify the size of the project to address the concerns of the protestants and staff. He requested that the permit be for ten years the same as the lease term.

Commissioner Travelstead asked if anyone was present in opposition who wished to speak.

Charles Kenneth, leaseholder in Morris Bay and protestant, was present and sworn in. His comments are a part of the verbatim record. Mr. Kenneth said he was also speaking

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for an adjoining property, Mr. Taylor. He explained that there was a lot of recreational and commercial fisheries activities in the area that would be impacted and they were concerned with the project being made larger in the future.

David Stevens, property owner in the Poropotank River and protestant, was present and sworn in. His comments are a part of the verbatim record. Mr. Stevens said he was also concerned with the impact on recreational users in the area.

Edward Ruark, commercial crabber and protestant, was present and sworn in. His comments are a part of the verbatim record. Mr. Ruark said he crabbed with crabs pots in the middle of the area and noted that sometimes the number of crab pots in the area made it so you could walk on them. He noted that staff had done a good job of reducing the area of the project.

Commissioner Travelstead asked for rebuttal comments from the applicant.

Mr. Hild said he did not agree with some of the comments but he did intend to be a good neighbor and not exclude other users from the area.

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

Associate Member Plumlee said that he moved to approve the staff recommendation, but to make the permit for a 10-year period. Associate Member Tankard seconded the motion. Associate Member Plumlee agreed the motion included the requirement of a \$25,000 bond. The motion carried, 6-0.

Royalty Fees (724,485 sq. ft. encroachment @\$0.005/sq. ft.).....	\$3,622.42
Royalty Fees (1,120 sq. ft. encroachment @\$0.15/sq. ft.).....	\$ 168.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,870.42

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- MICHAEL CHALLONER, #12-1481**, requests authorization to replace a failing 100 linear foot long timber bulkhead with a 100 foot long timber bulkhead in line with or immediately channelward of the existing bulkhead, install Class II stone armor on an existing concrete groin extending 56 feet channelward of the proposed bulkhead, install Class II stone toe protection on an existing concrete groin extending 40 feet channelward of the proposed bulkhead, replace a failed timber groin with a new timber groin extending 82 linear feet channelward of the proposed bulkhead, and place 138 cubic yards of sand along the shoreline as

beach nourishment at his property situated along the James River at 15 Barclay Rd in the City of Newport News. The project requires a Subaqueous Permit and a Coastal Primary Sand Dune and Beach Permit.

Mike Johnson, Environmental Engineer, Sr., gave the briefing covering the information provided in the staff evaluation. His comments are a part of the verbatim record. Mr. Johnson noted that there were revised drawings and he would explain that change.

After some further discussion, Commissioner Travelstead asked if the applicant or a representative wished to comment.

Mathew Roth, representing the applicant, was present and sworn in. His comments are a part of the verbatim record. Mr. Roth provided some photos as a handout. He said they were concerned that staff was recommending that the groin be shorten from the way it had existed since it had worked in stabilizing the beach.

Commissioner Travelstead asked if anyone in opposition wished to comment. There were none. He stated the matter was before the Commission.

Associate Member Tankard said the groin should be the same as it was and he moved to approve the project as applied for. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

Royalty Fees (340 sq. ft. encroachment @ \$0.05/sq. ft.).....	\$ 17.00
Royalty Fees (34 sq. ft. encroachment @ \$0.50/sq. ft.).....	\$ 17.00
Permit Fee.....	\$100.00
Total Fees.....	\$134.00

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8. FAYE R. HOLLOWAY, JR., #2012-009, requests authorization to lease up to 170 acres of oyster planting grounds in the Piankatank River, near Berkley Island, in Middlesex County. The application is protested by an adjacent oyster ground leaseholder.

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

Commissioner Travelstead asked if the applicant wished to comment.

Fay R. Holloway, Jr., applicant, was present and sworn in. His comments are a part of the verbatim record. Mr. Holloway stated as there was some hard bottom in the area and that he intended to use traditional methods of planting shell and seed on the bottom.

There were no public comments. Commissioner Travelstead stated that the matter was before the Commission.

Associate Member Plumlee moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 6-0.

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9. FAYE R. HOLLOWAY, JR., #2012-017, requests authorization to lease up to 21 acres of oyster planting grounds in the Piankatank River, at the Twigg Ferry Road Bridge (Route 3), in Middlesex County. The application is protested by two adjacent oyster ground leaseholders.

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

Commissioner Travelstead asked if the applicant wished to comment.

Faye R. Holloway, Jr., applicant, was present and sworn in. His comments are a part of the verbatim record. Mr. Holloway indicated that his comments were the same as before.

There were no public comments. Commissioner Travelstead stated the matter was before the Commission.

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

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10. RECOGNITION OF BILL LAINE AND KYLE SCHICK.

Commissioner Travelstead presented Associate Member William B. Laine with a certificate of distinguished service for his 4 years on the Commission Board. Commissioner Travelstead read from the certificate. Associate Member Kyle J. Schick was unable to be present.

Associate Member Laine expressed his pleasure of serving during his time on the board as well as his appreciation of the great job that had been done by the Board and the members of staff.

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11. PUBLIC COMMENT.

No public comments.

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

Dr. Robert Orth, Virginia Institute of Marine Science gave a presentation on the Status of Submerged Aquatic Vegetation with slides. His comments are a part of the verbatim record.

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13. PUBLIC HEARING: Proposed amendments to Chapter 4 VAC20-900-10 et seq., “Pertaining to Horseshoe Crabs” to establish the 2013 annual quota, quota permit categories, limited entry, and transfer requirements.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing covering the information in the staff evaluation. His comments are a part of the verbatim record. He provided a revised copy of the draft regulation.

Commissioner Travelstead noted that everyone had been invited to the industry meeting, but some could not attend. Mr. Grist responded yes.

Commissioner Travelstead opened the public hearing.

Kenneth Heath, pound netter, was present and his comments are a part of the verbatim record. Mr. Heath stated that he was opposed to transfers by hardship only being allowed for the horseshoe crab permits and that a son cannot get the his father’s or another relatives permit until they passed away. He stated it was not right for a fourth generation waterman family member to have to wait.

Michael Gibson, waterman was present and his comments are a part of the verbatim record. Mr. Gibson said he approved of the limited entry for horseshoe crab fishery and he knew of others that also strongly agreed. He stated that too many had been allowed into the fishery after the control date had been established and the limited entry fishery would help to make this a more viable fishery for those who are in it already.

Charles Linbrook, Chincoteague waterman was present and his comments are a part of the verbatim record. Mr. Linsbrook stated he agreed with Mr. Gibson to make this a

limited entry fishery. He noted that the criteria as far as harvest to getting in was very generous as it required the catch of just one horseshoe crab, but now there were too many watermen in the fishery.

Commissioner Travelstead shared comments from Eric Wimer, watermen of the Seaside Eastern Shore by way of a telephone conversation. He explained that Mr. Wimer was concerned moving ahead with making this a limited entry fishery until all of the effects of such a change are understood.

Mr. Grist stated the staff recommendations were in the revised draft copy of the regulation. He noted that the trawl fishery could be caught short on quota if the other gears were to be allowed to harvest east of the COLREGS line, and staff also recommended limiting all horseshoe crab harvest east of the COLREGS line to trawl and dredge gears only.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Plumlee moved to accept the staff recommendation. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

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- 14. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting” to reclassify the current requirements for reporting and permitting of aquaculture product owners and harvesters.

Joe Grist, Deputy Chief, Fisheries Management gave the presentation with slides. He provided two handouts to the Commission. His comments are a part of the verbatim record.

Commissioner Travelstead opened the public hearing. There were no public comments. He stated the matter was before the Commission.

Associate Member Plumlee moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 6-0.

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- 15. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC20-252-10 et seq., “Pertaining to Striped Bass” to establish the 2013 recreational and commercial striped bass harvest quota, the commercial striped bass harvest season and quota transfer requirements. Proposed amendments to Chapter 4 VAC20-

751-10 et seq., "Pertaining to the Setting and Mesh Size of Gill Nets" to establish the 2013 stretch mesh size exception time period.

Rob O'Reilly, Chief, Fisheries Management, gave the presentation with slides. His comments are a part of the verbatim record. He noted that there had been several phone calls protesting the 14% reduction in the commercial striped bass quota for 2013.

Joe Grist, Deputy Chief, Fisheries Management, reviewed information regarding the 2013 commercial season and quota. His comments are a part of the verbatim record.

Commissioner Travelstead opened the public hearing.

Wayne France, Twin Rivers Waterman Associate President, was present and his comments are a part of the verbatim. Mr. France stated they were opposed to the proposed 14% reduction of quota on catch for the commercial fishery. He noted that in the last 20 years the commercial fishery had overages only two times. He added that there needed to be more controls put on the recreational fishermen. He stated the commercial industry was in compliance and reporting their harvest.

Doug Jenkins, waterman, was present and his comments are a part of the verbatim record. Mr. Jenkins said he felt that it was not fair to penalize the commercial fishermen and he felt there was faulty data on the recreational fishery which generally cause the overages to occur which results in cuts to the industry. He said that the quota should not be cut, but given back to the commercial fishery. He provided some handouts to the Commission.

Kelly Place, commercial fisherman and a member of the ASMFC Panel representing Virginia for the past 14 years was present and his comments are a part of the verbatim record. Mr. Kelly explained that he had only just heard about the hearing two days prior. He suggested that the 14% cut not be made as the State will not be out of compliance for the upcoming fishing year. He also suggested that the recreational fishery needed more restrictions. He recommended that the cut on the commercial fishery not be 14%, but 7% instead; as a needed compromise.

George Trice, commercial fisherman, was present and his comments are a part of the verbatim record. He stated that the commercial fishery is paying for the recreational fishery overages and they need to get the cut. He added that the commercial fishery is much more accountable and VMRC knows what they catch.

Commissioner Travelstead closed the public hearing.

After some further discussion between the board and staff, Commissioner Travelstead stated the matter was before the Commission.

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

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- 16. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass" to establish the 2013 recreational season and commercial landing quota.

Rob O'Reilly, Chief, Fisheries Management, gave the briefing covering the information in the staff evaluation. His comments are a part of the verbatim record. He noted that no public comments had been received. He explained that in the first regulation the harvest season would be closed as of November 19, 2012. In the second regulation there would be an allowance for the recreational season to be opened from January 1 through February 28, 2013, but when the MAFMC and ASMFC hold their meetings that might be changed. The second regulation also established the 2013 Commercial Fishery quota 356,000 pounds.

Commissioner Travelstead opened the public hearing and there were no public comments. He stated the matter was before the Commission.

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

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- 17. RICHARD BRADFORD:** Appeal of decision to deny his exception to the two year waiting period for a Commercial Fisherman Registration License.

Joe Grist, Deputy Chief, Fisheries Management gave the briefing covering the information in the staff evaluation. His comments are a part of the verbatim record. He stated the staff recommendation was to deny the request.

Richard Bradford was not present.

Commissioner Travelstead asked the Commission what it wanted to do. He asked staff when Mr. Bradford would be allowed to come back to the Commission. Mr. Grist stated in the next appeal month, by regulation, which would be March, 2013. Commissioner Travelstead stated that Mr. Bradford could put in a two-year delay application without any further decision by the Commission. When asked Mr. Grist said no application had been received, it was an exception being requested, which had already been denied two times.

Commissioner Travelstead asked if the matter should be tabled.

After some discussion, Associate Member Tankard moved to table the matter. Associate Member Fox seconded the motion. The motion carried, 6-0.

Mr. Grist asked if this could be heard in January if Mr. Bradford wanted. The Board agreed, but said that it would be last time this would be heard.

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18. POUND NETS: Mr. Arthur P. Bender of Cheriton, Virginia has applied to license a pound net at a new location in the lower eastern Chesapeake Bay. There are public comments in opposition to this new pound net location.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing covering the staff evaluation. His comments are a part of the verbatim record. He provided copies of additional public comments.

Arthur Bender was present and his comments are a part of the verbatim record. Mr. Bender said he would answer any questions from the Commission.

Associate Member Tankard asked if he worked from the boat at net #1. Mr. Bender explained that he worked well off the beach at the end of the net approximately 1,000 feet. He added that he would be glad to move the net off the beach so as not to impact the beach area.

Commissioner Travelstead asked how many feet would he be willing to move it. Mr. Bender stated 25 feet or a reasonable distance.

Commissioner Travelstead opened the public hearing. He asked for public comments.

Susan Rice, Refuge Manager at Fisherman Island, was present and her comments are a part of the verbatim record. Ms. Rice stated they agreed with the staff recommendation for net #1 to deny it. She added that there were no other pound nets in this location. She said this would save enforcement time for them to make sure of compliance. She explained that the island did have significant accretion occurring.

Ms. Rice said that the location of net #2 was where wildlife species did feed in an area nearby. She expressed her concern with further pound nets being allowed in the area.

Commissioner Travelstead explained that the space between pound nets had to be at least 900 feet and any additional nets would mean this shore had reached its capacity.

After further comments, Commissioner Travelstead asked for a motion.

Associate Member Fox moved to deny net #1 and accept net #2. Associate Member Plumlee seconded the motion. The motion carried, 5-1. Associate Member Tankard voted no.

Mr. O'Reilly said Mr. Bender would have to buy a license now if this was done now. Commissioner Travelstead asked VMRC Counsel for advice. Paul Kugelman, Assistant Attorney General and VMRC Counsel said the matter could be reopened and a substitute motion made.

Associate Member Plumlee moved to reopen the matter. Associate Member Fox seconded the motion. The motion carried, 6-0.

Associate Member Fox moved to accept net #2 and deny net #1 and allow Mr. Bender one year to reestablish a site for net #1. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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19. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-260-10 et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas", to revise oyster culling and inspection procedures for Seaside of the Eastern Shore.

Rob O'Reilly, Chief, Fisheries Management, gave a briefing covering the information in the staff evaluation requesting a public hearing. His comments are a part of the verbatim record.

Commissioner Travelstead asked for a motion.

Associate Member Fox moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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There being no further business, the meeting was adjourned at approximately 5:41 p.m. The next meeting was previously rescheduled by the Commission to be held Tuesday, January 22, 2013.

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Jack G. Travelstead, Commissioner

Commission Meeting

**16871
December 10, 2012**

Katherine Leonard, Recording Secretary