

## MINUTES

## Commission Meeting

April 26, 2016

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 E. Tankard, III	Acting Chair
Chad Ballard	
AJ Erskine	
Lynne Haynie	
Wayne France	Associate Members
James E. Minor	
Ken Neill, III	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Administration-Finance
Linda Hancock	Director, Human Resources
Eric Barth	Director, MIS
Todd Sperling	Business Systems Specialist, Sr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Management Mgr.
Jill Ramsey	Fisheries Mgmt. Planner
Lewis Gillingham	Director, SWFT
Laurie Dozier	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Ryan Jiorle	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Ron Cagle	Marine Police Officer
David Drummond	Marine Police Officer
Jamie Hogge	Marine Police Officer
Nathan Clark	Marine Police Officer

**Commission Meeting**

**17606  
April 26, 2016**

Steve Holliday  
Henry Reichle  
Carl Dize  
Casey Springfield  
William Franklin  
Fred Mitchell

Marine Police Officer  
Marine Police Officer  
Marine Police Officer  
Marine Police Officer  
Marine Police Officer  
Marine Police Officer

Tony Watkinson  
Chip Neikirk  
Jeff Madden  
Hank Badger  
Randy Owen  
Ben Stagg  
Mark Eversole  
Justin Worrell  
Mike Johnson  
Rachael Maulorico  
Jay Woodward  
Brad Reams  
Daniel Faggert

Chief, Habitat Management  
Deputy Chief, Habitat Management  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Chief Engineer Western Shore  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Specialist  
Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell                      Emily Hein

Others present:

Curtis Hickman	Robert Frasier	Stephen Williams
Wayne Chatfield-Taylor	Alison Williams	Antony Opperman
Bill Jones	Matt Dana	Oscar Stanley
Brandy Rosser	Wilmur Stoneman	Sean Golden
Mary Doss	Ricky Wood	Greg Brezinski
Randy Hiedy	Tim Murphy	Dorothy Long
Jessica Bossi	Jeff Deem	Kim Huskey
Robert R. Grasty	Henry S. Marshall	Michelle Jenkins
Phillip Brown	Ed R	Ian Brady
Tim Brady	Klein Pruitt	Brook M. Small
Clinton Steel	Will Branson	Chris Moore
Mike Avery	Wes Blow	

and others.

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Associate Member Tankard, Acting Chair called the meeting to order at approximately 9:35 a.m. John Bull, Commissioner, was absent.

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At the request of Associate Member Tankard, Acting Chair, Associate Member Erskine said the invocation and Tony Watkinson, Chief, Habitat Management, led the pledge.

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**APPROVAL OF AGENDA:** Associate Member Tankard, Acting Chair asked if there were any changes from the Board members or staff. There were none.

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

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**MINUTES:** Associate Member Tankard, Acting Chair asked if there were any changes or corrections to be made to the March 22, 2016 Commission meeting minutes. There were no changes.

**Associate Member Erskine moved to approve the minutes, as presented. Associate Member Minor seconded the motion. The motion carried, 6-0-2. Chair voted yes. Associate Members Kellum and France abstained as they were both absent at the last meeting.**

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Associate Member Tankard, Acting Chair 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, informed the Commission that there were four page two items to be heard, 2A through 2D. He reviewed these items for the Board. His comments are a part of the verbatim record.

Associate Member Tankard, Acting Chair, stated the matter was before the Commission for discussion and action.

Associate Member Zydron moved to approve the four page two items A through D, as proposed. Associate Member Minor seconded the motion. The motion carried, 8-0.

- 2A. DEPARTMENT OF THE NAVY, #16-0021**, requests authorization to reinstall magnetometer sensor tubes and cables at -55 feet mean low low water (MLLW), requiring 2,345 cubic yards of fill on State-owned submerged lands by deploying a turbidity curtain and releasing sediments at -30 MLLW in the Elizabeth River at the Lambert’s Point Deperming Facility, in Portsmouth.

Permit Fee	\$100.00
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- 2B. NORFOLK SOUTHERN RAILWAY COMPANY, #16-0246**, requests authorization to hydraulically dredge approximately 162,000 cubic yards of State-owned submerged bottomlands to maximum depths of -45 feet mean low low water (MLLW) in the existing ship berth and approaching channel along Pier P, and install 1,250 linear feet of sheet-pile shoring along Pier P in the Port of Hampton Roads on the Elizabeth River in the City of Norfolk. Dredged material will be pumped to the Craney Island Dredged Material Management Area. Staff recommended approval with special condition that the sheet pile shoring be driven by a vibratory hammer and a royalty in the amount of \$28,800.00 for the dredging of 64,000 cubic yards of new material at a rate of \$0.45 per cubic yard.

Royalty Fees (dredge 64,000 cu. yds. @ \$0.45/cu. yd.	\$28,800.00
Permit Fee	\$ 100.00
Totals Fees	\$28,900.00

- 2C. CITY OF PORTSMOUTH, #15-1359**, requests authorization to repair and replace approximately 3,660 linear feet of bulkhead and boardwalk, a maximum 3.8 feet channelward of the existing bulkhead, with 16 mooring dolphins, along the Southern Branch of the Elizabeth River, paralleling Water Street from the Downtown Tunnel to Tidewater Yachts property, in the City of Portsmouth.

Permit Fee	\$100.00
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- 2D. CSX TRANSPORTATION, #10-1552**, requests authorization to modify their existing permit to include the construction of a temporary stone causeway composed of non-erodible materials, channelward of the mean low water mark, which will allow equipment access to construct 700 linear feet of class III riprap revetment extending a maximum 20 feet channelward of MLW to stabilize an eroding shoreline along the Potomac River adjacent to the Cherry Hill Third Rail project currently under construction in Stafford County. Staff recommended

approval with a royalty of \$6,291.00 for the filling of 2,097 square feet of State-owned subaqueous land at a rate of \$3.00 per square foot.

Royalty Fees (Fill 2,097 sq. ft. @ \$3.00/sq. ft.)	\$6,291.00
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- 3. **CONSENT AGENDA ITEMS.** None.

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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** A closed meeting was not necessary.

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- 5. **DAVID ROLFE, #15-1175,** requests authorization to construct a single-family dwelling with an associated retaining wall along the Chesapeake Bay at 818 North First Street in the City of Hampton. The project requires a Coastal Primary Sand Dune/Beach permit.

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

Mr. Johnson noted that staff conducted a public hearing for the project on April 12, 2016. The meeting was attended by the applicant and Ms. Dorothy Soter who owns property located at 812 North 1<sup>st</sup> Street. Ms. Soter did not have any concerns with the project, as it pertains to the jurisdiction of the VMRC.

Mr. Johnson stated that in keeping with the historical use of Malo Beach, the VMRC has approved permits for the construction of single family dwellings in this area provided the project meets requirements to protect the beach resource as much as possible. These requirements have been to require any houses and their appurtenant structures be aligned such that they do not encroach any further channelward than those of adjacent properties and that the house be built upon pilings. The applicant’s proposal meets these requirements.

Mr. Johnson explained that after evaluating the merits of the project and after considering all of the factors contained in §28.2-1408 of the Code of Virginia, staff recommended approval of the single-family dwelling and retaining wall as proposed.

Greg Brezinski, agent for the applicant, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Brezinski requested approval of the project and provided a handout for the Board.

There were no other public comments.

Associate Member Tankard, Acting Chair, stated the matter was before the Commission for discussion or action.

**Associate Member Erskine moved to approve the project, as proposed. Associate Member Neil seconded the motion. The motion carried, 8-0.**

No applicable fees.

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6. **CENTURYLINK, #16-0051**, requests authorization to relocate an existing, previously unpermitted, underground fiber optic telecommunication line across the Shenandoah River onto temporary poles located on either side of the river adjacent to the Route 624 Morgan Ford Road crossing near the Town of Front Royal in Warren County. The temporary line and poles will be removed once the permanent line is installed on the proposed new bridge under an agreement with VDOT. The project is protested by an adjacent upland property owner on the north side of the river.

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

Mr. Woodward explained that after evaluating the merits of the proposed temporary, aerial fiber optic line installation, and subsequent relocation to the new VDOT bridge, and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project as currently proposed. Given the complexity of the project, the minimal degree of impact to State bottom, and the diligent work by the applicant and VDOT to resolve the situation regarding the current unauthorized line, staff is reluctant to recommend a civil charge or triple royalties in this case. However, staff does recommend a standard permit fee of \$100.00 and a royalty at the standard rate of \$3.00 per linear foot for the encroachment of the replacement line over 330 linear feet of State owned submerged land in the Shenandoah River below the Ordinary High Water line, for a total royalty of \$990.00. Staff did not object to the abandonment of the deactivated line and conduit in the river bed, but would encourage VDOT to remove the structure should it become problematic during construction of the new bridge structure. Since §28.2-1209 of the Code of Virginia allows public service corporations to abandon

cable, conduit and pipes upon approval by the Commission, staff recommended approval in this case.

When questioned about whether on state-owned bottom or private property, Matthew Hull, Assistant Attorney General and VMRC Counsel, explained this was a question for the courts to resolve and until that is done the area is considered state-owned bottom.

After some further discussion, the applicant or representative was asked to comment.

Robert Frazier, applicant's representative, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Frazier explained that the conduit was included with the telecommunication line running along the bridge railing and the conduit would protect it from the water. He noted that the west side of the bridge when they bored into the bottom was all bedrock and the NW side the poles and line was temporary and will be removed after the project is completed.

Steven Williams, applicant's representative, was sworn in and his comments are a part of the verbatim record. Mr. Williams said that he affirms what staff has done and that all was being done within the easement.

Wayne C. Taylor, protestant, was sworn in and his comments in opposition are a part of the verbatim record. Mr. Taylor said that he was representing the farming community. He noted that the some of the farmland area was in a conservation reserve. He said this is the third time this had been attempted as it originally was in the Virginia Outdoor Foundation area and it was denied and it was no better in any of the other areas. He said there were lawsuits pending to take the land back and the site is historical and there are artifacts located in the area. He stated the bridge had not been changed since 1925. In response to question regarding an easement, he stated the easement had been granted for putting it underground.

Matt Dana, VDOT District Designer, was sworn in and his comments in support are a part of the verbatim record. Mr. Dana explained that the easement document does say the easement includes 'and other structures', which he read.

Brandy Rosser, representative for the Warren County Economic Development Authority, was sworn in and her comments in support are a part of the verbatim record. She stated that they support the fiber optic line crossing.

Doug Stanley, Warren County Administrator, was sworn in and his comments in support are a part of the verbatim record. Mr. Stanley said that the line crossing was important to the Community and asked the Board to support the project.

The public hearing was closed. Associate Member Tankard stated the matter was before the Commission for discussion.

After some further discussion, Associate Member Erskine moved to accept the staff recommendation. Associate Member France seconded the motion. The motion carried, 8-0.

Royalty Fees (Encroachment 330 sq. ft. @ \$3.00 sq. ft.)	\$ 990.00
Permit Fee	\$ 100.00
Totals Fees	\$1,090.00

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7. COUNTY OF WARREN, #16-0144, requests authorization to construct a 20-foot wide, concrete, public boat ramp into the Shenandoah River as part of the Farms Riverview Boating Access Facility in Warren County. The project is protested by three nearby property owners.

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

Mr. Woodward explained that after evaluating the merits of the proposed public access project, and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project as proposed, with the inclusion of permit conditions. Specifically, those recommended permit conditions are as follows:

- 1) The instream construction activities shall be accomplished during low flow periods and within cofferdams constructed of non-erodible materials in such a manner that no more than half the flow of the waterway is obstructed at any point in time and all excavated material shall be stockpiled in a manner that prevents reentry into the waterway.
- 2) All areas of State-owned bottom and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters, and all barren areas shall be re-vegetated with native vegetation.
- 3) Erosion and sediment control measures shall be in strict conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction.
- 4) All wet pouring of concrete shall be done in the dry in such a manner to allow it to harden and cure prior to contact with open water.



Associate Member Tankard asked if someone representing the County wished to comment.

Doug Stanley, Warren County Administrator, was sworn in and his comments in support are a part of the verbatim record. Mr. Stanley provided a PowerPoint presentation for the Commission. He said they had received VDGIF funding in order to build this boat ramp and they need to get the project done in a timely manner in order to not lose this funding.

Shawn Golden, protestant, was sworn in and his comments in opposition are a part of the verbatim record. He said he was the upper adjacent property owner to the project and his biggest concern was that he was not contact prior to any other meetings. He stated he was opposed 100%. He noted the site was shallow and had a drop off in the middle. He stated his was not useable for prop boats most of the year and another area further away would have better water depth. He stated it was a waste of time and money.

Brandy Rosser, Warren County, was sworn in and her comments are a part of the verbatim record. Ms. Rosser explained that the Board of Supervisors held a separate public hearing in the community and there was a good turnout. She said the concerns expressed at the meeting were about cleanliness and security.

The public hearing was closed and the matter was before the Commission for discussion.

**Associate Member Ballard moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0.**

Permit Fee	\$100.00
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- 8. JOSEPH R. HEALY, #2014-281**, requests authorization to lease approximately 25 acres of planting grounds within Elmington Creek in Gloucester County. The application is protested by a nearby highland property owner.

Ben Stagg, Chief Engineer, gave the briefing with slides of the information provided in the staff's evaluation. His comments are a part of the verbatim record. Mr. Stagg noted that an e-mail had been received from the protestant who had applied for a riparian lease in this area, saying that he was in the hospital. The riparian applicant had said that he would send a representative to indicate where the riparian lease should be located. Mr. Stagg stated that this riparian location to be indicated by the applicant should be included in the motion. In response to a question Mr. Stagg said that the Commission can reduce the lease to exclude the polluted area. Also in response to questions, Mr. Stagg said that Mr. Healy had indicated he has cultivated and managed his existing 185 acre lease.

Mr. Stagg explained that after evaluating the request of Mr. Healy, who indicated he wished to use the area for traditional on-bottom use, considering the area of the application that is currently restricted for direct market harvest of shellfish, and after the weighing the concerns of the protestant, staff recommended leasing of an area within non-restricted classification waters containing 7.92 acres. Staff also would strongly urge Mr. Healy to complete the required training requirements and obtain the proper permits and/or licenses needed for shellfish handling, propagation and harvest.

Associate Member Tankard asked if the applicant or representative wished to comment.

Joseph Healy, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Healy stated that on the first lease there have been no oysters to harvest, even with him turning the bottom and planting shells. He said he had checked the area that was polluted and they found good ground.

The public hearing was opened for public comment.

Charles Wilson, protestant representative, was sworn in and his comments are a part of the verbatim record. Mr. Wilson said he was speaking for Mr. Farinholt while he is in the hospital. He stated that the Commission should require optimal use and balance between all users. He said that this was profiteering and just applying for all ground and not the resource but for the lease itself. He provided photographs for the Commission. He said there was little productivity. He noted that Mr. Farinholt had tried to communicate with Mr. Healy. He said the protestant requested the Commission deny the application.

As there was no one else wishing to comment, the public hearing was closed for discussion by the Commission.

After further discussion, Jim Wesson, Department Head, Conservation and Replenishment was asked to comment. Mr. Wesson explained that they only survey in the Mobjack Bay. He noted that there was a state reef in the North River which was productive and there was concerns with leasing areas determined as condemned.

After much discussion, the public hearing was closed.

Associate Member Ballard stated that the applicant already had 185 acres to grow oysters and he moved to deny this application. Associate Member Zydron seconded the motion. Motion failed, 4-4. Associate Member Erskine, Neill, Tankard, and Kellum all voted no.

Associate Member Zydron moved to deny all but the portion below the mid line of 7.92 acres and not in the condemnation area. Associate Member Minor seconded the motion. The motion failed, 4-4. Associate Members Neill, Tankard, Kellum, and France all voted no.

**Associate Member Neill moved to accept the staff recommendation for the 7.92 acres and to not include the restricted harvest area. Associate Member Kellum seconded the motion. The motion carried, 7-1. Associate Member Ballard voted no.**

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9. **JOSEPH R. HEALY, #2014-298**, requests authorization to lease approximately 71 acres of planting grounds within Blackwater Creek in Mathews County. The application is protested by two nearby highland property owners.

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

Mr. Stagg explained that after evaluating the request of Mr. Healy, who indicated he wishes to use the area for traditional on bottom use, and the weighing the concerns of the protestants, staff recommended leasing of an area within Blackwater Creek and Hampton Creek containing 63.60 acres. Staff also would strongly urge Mr. Healy to complete the required training requirements and obtain the proper permits and/or licenses needed for shellfish handling, propagation and harvest.

Associate Member Tankard asked the applicant if he wished to comment. Mr. Healy said that the protest was because of the impact to property value and now they want a pier and there is no house there so it is not an appropriate protest. He requested the lease be approved as he has applied for it.

Public hearing was opened.

Mary Doss, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Doss said she was speaking for her father who was sick at the time and had not sent in his protest. She explained that this would impact the navigation and the poles there now impede access by their sail boat. She provided a picture. She said the channel was narrow and silted so there was barely six feet of water depth and needs to be dredged. She said it impacts other recreational activity.

Dorothy Long, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Long said that this would impact the SAV in the area specifically in the Blackwater Creek. She noted that there was only one road to provide access to the lease.

Associate Member Tankard asked VIMS for comments. Lyle Varnell, representing VIMS said that the presence of SAV comes and goes and he would have to look at the data. Mr. Stagg noted that there had not been any in the area since 2003 until this year it had show up in spots.

The public hearing was closed.

Mr. Healy in his rebuttal comments said that the impact to navigation was not true and he knows the area.

**After further discussion, Associate Member France moved to accept the staff recommendation which was modified to exclude the areas to accommodate the existing private piers and for all riparian leases applied for by the highland property owners. Associate Member Minor seconded the motion. The motion carried, 8-0.**

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**10. PUBLIC COMMENTS. None.**

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**11. OFFENDERS.**

David Drummond and Steve Holliday, Marine Police Officers, were sworn in and presented the briefings of the violations. Their comments are a part of the verbatim record.

**Freddie K. Pruitt** – present and sworn in.

August 20, 2014 – obstructed cull rings C0480; Section 28.2-201 of the Code of Virginia; 4VAC-20-700-20(B); September 20, 2014; Accomack County General District Court; fine \$150.00, court cost \$121.00

November 18, 2014 – untagged oysters; Section 28.2-201; 28.2-1250-10; December 16, 2014, Newport news General District Court; fine \$50.00; court cost \$91.00.

October 8, 2015—obstructed cull rings pot C0480; Section 28.2-201 of the Code of Virginia; 4VAC 20-700-20(B); December 9, 2015; Accomack County General District Court; fine \$250.00; court cost \$121.00.

Joe Cimino, Deputy Chief, Fisheries Management, read the staff recommendation. The Commission’s guidelines for sanctions specify that after three court-adjudicated convictions of Category 3 violations (violations which are not listed in Tables 4 through 8) require a harvester to appear before the Commission. The Commission’s new guidelines for sanctions, established on July 1, 2015, specify that two convictions obstructed cull rings, with a 24 month period, should result in at least two years probation. In accordance with Section 27.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Pruitt on probation for a period of two years from the date of this Commission meeting, April 26, 2016, through April 25, 2018. Any failure on Mr. Pruitt’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. Pruitt appearing before the Commission for a hearing on license revocation.

Mr. Pruitt explained that he understood the laws about the cages and as for the untagged oysters he had not filled out the tags as the weather was very bad and he was waiting to get to the dock. He promised to make sure this never happened again.

Mrs. Freddie K. Pruitt, Jr. explained that she had called her husband to get him to come home to watch their child and the oysters had never left the boat. She noted that the court had been lenient and she would help from now on to make the cull rings are open. She said this was their livelihood.

After much discussion, Associate Member Neill asked counsel was it two years maximum probation or 5 years. Matthew Hull, Assistant Attorney General and VMRC Counsel said it was the last one 5 years.

**After further discussion, Associate Member Minor said that due to Mr. Pruitt's numerous convictions in the past, he moved to place Mr. Pruitt on five year probation, starting April 26, 2016, through April 25, 2021. Associate Member Neill seconded the motion. Associate Member Zydron moved for six months revocation followed by four years six months probation. Associate Member Erskine seconded the motion by Associate Member Zydron. The motion failed 4-4. Associate Members Kellum, France, Minor, Tankard all voted no. The motion carried for the motion by Associate Member Minor, 7-1. Associate Member Erskine voted no.**

David Drummond, Marine Police Officer, was sworn in and presented the briefing of the violations. His comments are a part of the verbatim record.

**Christopher G. Beauchamp** – was present and sworn in.

June 24, 2015 – possession of uncultured crabs (46) in one bushel; Section 28.2-708 of the Code of Virginia; August 12, 2015; Accomack County General District Court; fine \$50.00; court cost (\$86.00).

July 4, 2015 – possession of uncultured crabs (21) in one bushel; Section 28.2-708 of the Code of Virginia; August 12, 2015; Accomack County General District Court; fine \$150.00; court cost \$86.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that two convictions of possession of more than 20 undersized crabs per bushel, within a 24 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Beauchamp on probation for a period of one year from the date of this Commission meeting, April 26, 2016, through April 25, 2017.

Any failure on Mr. Beauchamp's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Beauchamp appearing before the Commission for a hearing on license revocation.

Mr. Beauchamp explained that he was owner of the Onancock Seafood and he had been asked by watermen to hold their crab catch and he was not buying. He accepted the blame and asked that he be allowed to keep his licenses. He said he would change this practice and check the crabs as he gets them.

**After some discussion, Associate Member France moved to accept the staff recommendation for placing Mr. Beauchamp on one year probation, starting April 26, 2016, through April 25, 2017. Associate Member Kellum seconded the motion. The motion carried, 8-0.**

Henry Reichle, Carl Dize, Casey Springfield, Ron Cagle, and Jamie Hogge, Marine Police Officers were all sworn in and gave their briefings of the violations. Their comments are a part of the verbatim record.

**Phillip E. Brown** – present and sworn in.

January 19, 2015 -- Have in Possession Unculled Oysters—4 VAC 20-260-40; February 11, 2015, Gloucester County General District Court; Fine: \$25.00, as of April 1, 2016, that fine is past due; Court Cost: \$86.00.

January 22, 2015 --Crab Pots in Waters between December 1, 2014, and March 16, 2015—4 VAC 20-270-40C; March 11, 2015, Gloucester County General District Court; Fine: \$200.00; Court Cost: \$121.00.

March 2, 2015 -- Leave Crab Pots Out of Season—4 VAC 20-270-40; April 28, 2015, York County General District Court; Fine: \$50.00; Court Cost: \$86.00.

April 18, 2015--Failure to Fish Gill Net--§28.2-201 of the Code of Virginia; 4 VAC 20-550-20; July 28, 2015, Gloucester County Circuit Court; Fine: \$100.00; Court Cost: \$166.00;

September 8, 2015 -- Required Distance between Gill Net and Fixed Fishing Device (within 300 Yards)—4 VAC 20-1220-30; October 14, 2015; Gloucester County General District Court; Fine: \$50.00; Court Cost: \$96.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that after three court-adjudicated convictions of Category 3 violations, (violations which are not listed in Tables 4 through 8) require a harvester to appear before the Commission. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Brown on probation for

a period of one year from the date of this Commission meeting, April 26, 2016, through April 25, 2017. Any failure on Mr. Brown's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Brown appearing before the Commission for a hearing on license revocation.

Mr. Brown explained that he had taken some crab pots out, he was not aware of any fyke nets in the area, and he did not know about the rule. He said weather and family sickness had prevented him from taking care of all the nets. He said he did not do the culling as others did it and he did not pay attention. He stated he did not intentionally try to break the law.

**After some discussion, Associate Member Erskine moved for placing Mr. Brown on five year probation, starting April 26, 2016, through April 25, 2021. Associate Member Minor seconded the motion. The motion carried 8-0.**

Henry Reichle and William Franklin, Marine Police Officer were both sworn in and gave their briefing of the violations. Their comments are a part of verbatim record.

Associate Member France recused himself from the hearing.

**Harry S. Marshall, Jr.** – present and sworn in.

June 24, 2014—Violations of Harvest Restrictions—Crab Sanctuary—§28.2-201 of the Code of Virginia; 4 VAC 20-752-30; August 4, 2014, Middlesex County General District Court. Fine: \$50.00, as of April 1, 2016, that fine has been paid; Court Cost: \$86.00.

December 29, 2015 -- Possess 8 Quarts Unculled Oysters—§28.2-510 of the Code of Virginia; January 25, 2016, Northumberland County General District Court; Fine: \$110.00; Court Cost: \$86.00

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 100% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Marshall on probation for a period of one year from the date of this Commission meeting, April 26, 2016, through April 25, 2017. Any failure on Mr. Marshall's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Marshall appearing before the Commission for a hearing on license revocation.

Mr. Marshall explained that he misjudged where he was by what he thought was the crab sanctuary and he had just started putting his crab pots out. He said he had never

harvested oysters in an area that was unfamiliar to him and it was just a mistake. He stated that it would not happen again.

**Associate Member Erskine moved to accept the staff recommendation for one year probation, starting April 26, 2016, through April 25, 2017. Associate Member Kellum seconded the motion. The motion carried, 7-0-1. Associate Member France recused himself.**

Fred Mitchell, Marine Police Officer, was sworn in and gave the briefing of the information for the violations. His comments are a part of his verbatim record.

**Clinton W. Steel** – was present and sworn in.

December 29, 2015—Possess Unculled Oysters 8 Quarts—§28.2-510 of the Code of Virginia; January 25, 2016, Northumberland County General District Court; Fine: \$110.00; Court Cost: \$93.84.

Joe Cimino, Deputy Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 100% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Steel on probation for a period of one year from the date of this Commission meeting, April 26, 2016, through April 25, 2017. Any failure on Mr. Steel's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Steel appearing before the Commission for a hearing on license revocation.

Mr. Steel said that he was wrong and that he would not do it again.

**Mrs. Kellum stated that there were no past convictions for Mr. Steel and she moved to accept the staff recommendation for one-year probation, starting April 26, 2016, through April 25, 2017. Associate Member France seconded the motion. The motion carried, 8-0.**

J. M. Simms, Marine Police Officer was sworn in and gave the briefing of the information for the violations. His comments are a part of the verbatim record.

**Ronald L. Haywood** – not present and the Commission agreed to go ahead with the hearing as his wife was present to represent him.

December 30, 2015—Possess Unculled Oysters 6 Quarts—§28.2-510 of the Code of Virginia; February 8, 2016, Northumberland County General District Court; Fine: \$110.00 with \$110.00 suspended for one year Good Behavior; Court Cost: \$86.00



Joe Cimino, Deputy Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Haywood on probation for a period of one year from the date of this Commission meeting, April 26, 2016, through April 25, 2017. Any failure on Mr. Haywood's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Haywood appearing before the Commission for a hearing on license revocation.

Brook M. Small, representing Mr. Haywood, was sworn in and her comments are a part of the verbatim record. Ms. Small read a letter from Mr. Haywood that explained that he was out on another new job and could not come to the meeting. It said he understood he had done wrong and he accepted responsibility. It also said he would never come back again before the Board.

**Associate Member Erskine moved to accept staff recommendation for one year probation for Mr. Haywood, starting April 26, 2016, through April 25, 2017. Associate Member Minor seconded the motion. The motion carried, 8-0.**

Steve Holliday, Marine Police Officer, was sworn in and he giving the briefing of the information about the violations. His comments are a part of the verbatim record.

**Robert R. Grasty** – present and sworn in.

August 14, 2015—Possess Rockfish Out of Season (1)—§28.2-201 of the Code of Virginia; 4 VAC 20-252-50; September 22, 2015, James City County General District Court; Fine: \$50.00; Court Cost: \$101.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of commercial possession striped bass out of season, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Grasty on probation for a period of one year from the date of this Commission meeting, April 26, 2016, through April 25, 2017. Any failure on Mr. Grasty's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Grasty appearing before the Commission for a hearing on license revocation.

Mr. Grasty explained that he knew he did not do right and apologized. He said he would appreciate if the Commission would consider probation.

**Associate Members Neill and France both agreed that with numerous violations in the past one year probation they felt was not enough. Associate Member Neill moved that Mr. Grasty be placed on probation for three years, starting April 26, 2016, through April 25, 2019. Associate Member Minor seconded the motion. The motion carried, 8-0.**

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**12. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks" to establish the May 1 through April 30 commercial spiny dogfish harvest quota.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information in the staff's evaluation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that all Atlantic coast states will enact lower spiny dogfish quotas for the May 1, 2016 through April 30, 2017 fishing season, as compared to the previous several years. About a 20% decrease in the 50.6 million pounds coast-wide quota means the Virginia quota will be 4,356,944 pounds for the 2016-17 fishing season. Staff recommended the Commission adopt the 2016-17 commercial spiny dogfish quota (4,356,944 pounds).

There were no public comments. Associate Member Tankard asked for a motion.

**Associate Member Erskine moved to approve the staff recommendation. Associate Member France seconded the motion. The motion carried, 8-0.**

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**13. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-900-10 et seq., "Pertaining to Horseshoe Crabs" concerning a proposed revision of the May 1 through June 7 prohibition that makes it unlawful for any individual to harvest horseshoe crabs within 1,000 feet in any direction of mean low water.

Adam Kenyon, Fisheries Management Specialist, gave the briefing with slides of the information in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Kenyon explained that staff received a letter from Edward Brady, a pound net fisherman in the horseshoe crab industry, that requested that staff revise Chapter 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs" (Attachment I). Under current regulation it is "unlawful for any individual to harvest horseshoe crabs from any shore or tidal waters of Virginia, within 1,000 feet in any direction of the mean low water line, from May 1 through June 7." Industry is concerned that this regulation prohibits licensed horseshoe crab fisherman from harvesting horseshoe from traditional fixed gear, such as

pound net, when horseshoe crabs are available to be harvested by the gear. Staff recommended the Commission amend Chapter 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs" to prohibit the harvest horseshoe crabs within 500 feet in any direction of mean low water by pound net gear from May 1 through June 7.

Public hearing was opened.

Ed Brady, Eastern Shore Pound Netter, was sworn in and his comments are a part of the verbatim record. Mr. Brady stated he agreed with the staff recommendation and this way they can catch their quota.

There were no further public comments, the hearing was closed.

**Associate Member Minor moved to accept the staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 8-0.**

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- 14. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup" to establish the May 1 through October 31 commercial scup harvest quota

Katie May Laumann, Fisheries Management Specialist, gave the briefing with slides of the information provided in the staff's recommendation. Her comments are a part of the verbatim record.

Ms. Laumann explained that the Virginia summer period commercial scup quota for 2016, as established by the ASMFC as 13,154 pounds. Staff recommended the Commission adopt the 2016 Virginia commercial summer (May through October) scup quota of 13,154 pounds.

The public hearing was opened. There were no public comments and the hearing was closed. Associate Member Tankard asked for a motion.

**Associate Member Minor moved to accept the staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 8-0.**

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- 15. REQUEST FOR AN EMERGENCY AMENDMENT:** Industry proposal to increase the number of days that summer flounder harvested commercially from offshore may be landed in Virginia during the second landing period that began April 7.

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

Mr. Cimino explained that industry had requested that an amendment to the regulation be considered to extend the current 30 day landing period that began on April 7, 2016. This proposal would not allow any increase in quota or landings; it would only allow vessels to spread out the amount of quota being landed so as not to flood the market.

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 to increase the number of days that summer flounder harvested commercially from offshore may be landed in Virginia during the second landing period that began April 7. Staff also recommended advertising for a May public hearing to adopt the amendments as a permanent part of the regulation.

Associate Member Tankard asked for a motion.

**Associate Member Erskine moved to accept the staff recommendation. Associate Member Kellum seconded the motion. The motion carried, 8-0.**

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**16. REQUEST FOR A PUBLIC HEARING:** Proposal to amend Chapters 4 VAC 20-270-10 et seq. "Pertaining to Crabbing" and 4 VAC 20-1140-10 et seq., "Prohibition of Crab Dredging in Virginia Waters" in order to ensure conservation of the blue crab resource and 2015/2016 Bay-wide Winter Dredge Survey.

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

Mr. O'Reilly explained the recommendations of the Crab Management Advisory Committee.

Recommendations of the Crab Management Advisory Committee (CMAC)

At its recent meeting on April 19, there were only six of 15 members in attendance. However, these six members unanimously recommended the following management measures for the July 5, 2016 through July 4, 2017 crab management season:

- 1) An extension of the crab pot season, from March 1 through December 20. In 2015 the season ended November 30. In 2 previous years (2012 and 2013), the season ended December 15. The start of the crab season (for crab pots) has been March 17 since 2007.

2) For gear other than crab pot, a season from April 1 through October 31. In 2016 the start of the season for these gears other than crab pot was April 21. In 2015 the season for these other gears closed September 25.

3) The Commission should allow crab pound gear except the crab pound (crab catcher) to be placed in position, starting 2 weeks before the legal harvest season for that gear.

Mr. O'Reilly said that since there were 15 CMAC members, staff sent an e-mail of these recommendations to the full committee and asked that they discuss these options among themselves and share the discussion with staff.

Mr. O'Reilly stated that staff recommended a discussion at the May Commission meeting to determine which changes to the blue crab regulations should be considered for advertisement by the Commission at its June public hearing.

As no action was necessary at this time.

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**17. DISCUSSION:** Continued discussion and updates on the 2016 recreational cobia fishery.

Robert O'Reilly, Chief, Fisheries Management, explained that this matter of the cobia had been postponed until May in order to give staff time to address these issues with the states in the south. He noted that Virginia had been impacted more than North Carolina, South Carolina, and Georgia. His comments are a part of the verbatim record.

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

Associate Member Tankard open the hearing for some public comments.

There were those present who commented in opposition to accepting the Federal regulations, to closing the fishery in June, and to keeping to the quota of 120,000 pounds allocated to Virginia. They are felt that Virginia was being treated unfairly. Those who spoke in opposition were:

- Wes Blow
- Mike Avery
- Jeff Deem

The hearing was closed to further public comments.

Mr. O'Reilly recommended advertising for a May public hearing to consider regulatory amendments for the 2016 recreational cobia fishery, that include but are not limited to, establishment of a higher minimum size limit; establishment of a daily vessel limit; establishment of variable fishing seasons; establishment of a prohibition on gaffing cobia; establishment of a recreational cobia fishery permit; and, a closure of Virginia waters to the recreational harvest and possession of cobia, once federal waters are closed to recreational fishing for cobia.

Associate Member Tankard asked for a motion.

**Associate Member Minor moved to accept the modified staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Associate Member Erskine was absent.**

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**18. REQUEST FOR A PUBLIC HEARING:** Proposal to establish Chapter 4 VAC 20-1310-10 et seq. to comply with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Jonah Crab by June 1, 2016. The proposed regulation establishes minimum size limits, gear restrictions, and possession limits for the harvest of Jonah crab. Request for May public hearing.

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

Mr. Cimino explained that staff requested that the Commission advertise for a May 2016 public hearing to establish Chapter 4 VAC 20-1310-10 et seq. to comply with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Jonah Crab by June 1, 2016.

Associate Member Tankard asked for a motion.

**Associate Member Neill moved to accept the staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 7-0. Associate Member Erskine absent.**

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**Commission Meeting**

**17627  
April 26, 2016**

There being no further business, the meeting was adjourned at approximately 4:59 p.m.  
The next regular Commission meeting will be Tuesday, May 24, 2016.

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Associate Member John E. Tankard  
Acting Chair

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Katherine Leonard, Recording Secretary