

MINUTES

Commission Meeting

October 27, 2015

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

John M. R. Bull	Commissioner
Chad Ballard, III G. Wayne France S. Lynn Haynie James E. Minor, III Ken Neill, III John E. Tankard, III John E. Zydron	Associate Members
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Louise Atkins	Administrative Office Specialist
Jane McCroskey Linda Hancock Todd Sperling Dave Lego	Chief, Administrative-Finance Director, Human Resources Business Systems Specialist, Sr. Business Systems Specialist
Robert O'Reilly Joe Cimino Jim Wesson Stephanie Iverson Samantha Hoover Rachael Maulorico Jill Ramsey Lewis Gillingham Laurie Dozier Adam Kenya Alicia Nelson Elizabeth Ward	Chief, Fisheries Mgmt. Fisheries Mgmt. Manager Sr. Head, Conservation/Replenishment Fisheries Mgmt. Manager Fisheries Mgmt. Specialist Fisheries Mgmt. Planner Fisheries Mgmt. Planner Director, SWFT Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist RFAB/CFAB Coordinator Fisheries Mgmt. Technician
Rich Lauderman Warner Rhodes Gerald Pitt Jennifer Baylis Shawn Hixenbaugh	Chief, Law Enforcement Deputy Chief, Law Enforcement Marine Police Officer Marine Police Officer Marine Police Officer

Commission Meeting

**17490
October 27, 2015**

Chip Dize	Marine Police Officer
Ronald Cagle	Marine Police Officer
Charles Hall	Marine Police Officer
John Richardson	Marine Police Officer
Russell Dunton	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Reams	Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Emily Hein
--------------	-----------------	------------

Others present:

Daniel Adams	Vern Mosick	Jala Masumi
Laura Howard	Whis Howard	Kerry Kennedy
Kim Koelsch	Laura Rader-Dixon	Cela Burge
Michael Norment	Kimberly Larkin	Jeff Austin
Steve Kuntz	Hank Jones	Catherine Fulton
Lonnell Coffen	Richard Harr	Andy Wilks
Leona Adams	Virginia B. Odem	Susan Glass
Terrie Laycock	Winder H. Bill	Catherine Adams
Alexander Adams	Lisa Rose	Robert Johnson
Mike Shackelford	Mariah Mears	Price Clarke
Bryan Plumlee	John H. Lewis	Brett Lewis
Adrienne Sakyi	Jerry Decatur, Jr.	Stetson K. Reynolds
Bin Lin	Yuan Anv Dong	Israel Chirino
Juan C. Volle	Mark Bender	Jeff Dameron
Cecil Dameron	Andy Lacatell	Freddie Linton
Jeff Linton	Larry Taylor	Spencer Headley
Jimmy Clay	Bob Allen	Michael Pruitt
David Bell	Ken Smith	Bill Mullis
Ty Farrington	Rebecca Heady	Darryl Hurley
Arnold Evans	Chris Moore	Joyces Church
Rhea Jane Mauari	Robert L. Holland	Tom Mingl

and others.

* * * * *

Commissioner Bull called the meeting to order at approximately 9:30 a.m. Associate Members Minor and Haynie both arrived late due to heavy traffic.

* * * * *

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

* * * * *

APPROVAL OF AGENDA: Commissioner Bull asked if there were any changes from the Board members or staff. There were no changes.

Associate Member Tankard moved to approve the agenda. Associate Member Zydron seconded the motion. The motion carried, 6-0. Chair voted yes.

* * * * *

MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the September 22, 2015 Commission meeting minutes. There were no changes.

Associate Member Zydron moved to approve the minutes. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.

* * * * *

Commissioner Bull swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

* * * * *

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 five page two items to be heard, 2A through 2C. He reviewed these items for the Board. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for any public comments for any of the items presented and there were no public comments. He stated the matter was before the Commission.

Associate Member Zydron moved to approve the three page two items, as presented. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

2A. LANE/CORMAN JOINT VENTURE, #15-1268, requests authorization to construct a 710-foot long, two-lane clearspan bridge across the South Fork Rivanna River to improve safety and operational deficiencies along the U S Route 29 corridor, between Hilton Heights Road and Towncenter Drive, in Albemarle County. This project is a design build project for VDOT and all permits will be transferred to VDOT upon completion of the project.

Permit Fee	\$100.00
------------	----------

2B. SHIRLEY CONTRACTING COMPANY, LLC, #15-1243, requests authorization to widen the I-64 crossing of the original stream bed of the Warwick River, within Lee Hall Reservoir, with the installation of additional bridge structure over 3,275 square feet of State-owned subaqueous bottom, the installation of eight 2-foot by 2-foot support pilings, a turbidity curtain, and the excavation of 111 cubic yards of subaqueous bottom and the placement of 315 cubic yards of fill to construct a temporary construction access pad in the City of Newport News. This project is a design build project for VDOT and all permits will be transferred to VDOT upon completion of the project.

Permit Fee	\$100.00
------------	----------

2C. CITY OF VIRGINIA BEACH and ARMY CORPS OF ENGINEERS, #09-1686, request authorization to modify and extend their permit, which authorized the one-time placement of approximately two million cubic yards of beach quality sand along the five- mile stretch of Sandbridge Beach, situated along the Atlantic Ocean in Virginia Beach. The modification will include up to three additional nourishment cycles of the beach area between the Navy’s Dam Neck Fleet Training Center to the north and the Back Bay National Wildlife Refuge to the south. As previously authorized, sand will be hydraulically pumped from the Sandbridge Shoals borrow area, located approximately three nautical miles offshore. The new permit expiration date will be July 31, 2020, and all previous permit conditions shall apply.

No applicable fees.

3. CONSENT AGENDA ITEMS. None.

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

Associate Member Tankard 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:

A law suit and the effects of an execute order.

Associate Member Zyrdon seconded the motion. The motion carried, 8-0. The Chair voted yes.

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

AYES: Chad Ballard, III, G. Wayne France, S. Lynn Haynie, James E. Minor, III, Ken Neill, III, John E. Tankard, III, John E. Zyrdon, and John Bull

NAYS: NONE

ABSENT DURING VOTE: A. J. Erskine

ABSENT DURING ALL OR PART OF CLOSED MEETING: A. J. Erskine

Motion carried, 8-0.

Louise Atkins, Office Administrative Specialist

5. **CITY OF NEWPORT NEWS, #15-0019**, requests authorization to mechanically dredge up to 1,510 cubic yards of State-owned subaqueous land, and maintenance dredge up to 1,510 cubic yards of subaqueous material per annual dredge cycle, to maintain depths of minus seven (-7) feet MLW, at the Newport News Menchville Marina along Deep Creek at 520 Menchville Road South in the City of Newport News. The project is protested.

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

Mr. Johnson explained that the marina and riparian lands to the south are owned by the City of Newport News. The marina is leased by a third party who handles the day-to-day operations. As a result of the city owning the property, the Newport News Local Wetlands Board did not hold a hearing or issue a permit for the wetlands impacts of the project as it is considered exempt under the Wetlands Zoning Ordinance adopted by the City of Newport News.

Staff believes the project is justified and that the impacts to tidal wetlands and State-owned subaqueous bottom have been minimized to the extent possible. Staff also feels that the use of the area by residents as recreational public access was inappropriate due to potential conflicts with marina operations and hazardous environmental conditions.

Mr. Johnson explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project conditioned on the use of the proposed turbidity curtain and in conformance with our standard dredge conditions, which shall include: providing a post-dredge bathymetric survey within 30 days of the completion dredging operations, a pre-dredge conference be held on-site prior to the commencement of dredging activities, and maintenance dredging operations may be initiated after a 15 day notification has been submitted to the VMRC.

Richard Harr, representative for the City of Newport News, was sworn in and his comments are a part of the verbatim record. Mr. Harr stated that he did not have anything to add to staff's comments and would answer any questions. In response to a question,

Mr. Harr explained that there would still be an access area and they would use the sand further down for a ramp.

Catherine Adams, protestant, was sworn in and her comments in opposition are a part of the verbatim record. Ms. Adams was concerned with the impacts to the recreational activity in the area and having a beach and a ramp for access to the water.

Lonnell Coffen, representing Menchville Marina, was sworn in and her comments in support of the project are a part of the verbatim record. Ms. Coffen said she would like to be able to use the slips at the marina.

Commissioner Bull stated the matter was before the Commission.

Associate Member Ballard moved to approve the project with the staff recommendations. Associate Member Minor seconded the motion. The motion carried, 8-0.

Permit Fee	\$100.00
------------	----------

- 6. **RIVER REACH ASSOCIATION, INC., #15-0867**, requests authorization to install one (1) uncovered boatlift at an existing community pier on Sturgeon Creek at the end of Bluebird Lane in Middlesex County. The project is protested by an adjacent property owner.

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

Mr. Woodward explained that staff believed that an uncovered boatlift does not represent a significant impact to the creek, and in fact, lessens the need for toxic bottom paint typically used on boats moored in the water. The protestants' property is elevated approximately 15 feet above the creek such that the prevailing view is over the pier. Furthermore, the River Reach community pier was present when the Howards purchased their waterfront property.

Mr. Woodward stated that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.

Vern Mosely, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Mosely stated the lift would be located near the land.

Laura and Lewis Howard, protestants were sworn in and their comments in opposition are a part of the verbatim record. They expressed their concerns that this would not be the only application, but there would be more in the future. The pier was built as close to their property line as possible, impacting their view and access to the water for recreational purposes. They felt that approval of this application would set a precedent.

Associate Member Zydron moved to approve the project, as proposed and recommended by staff. Associate Member Neill seconded the motion. The motion carried, 6-2. Chair voted yes. Associate Member Tankard and France both voted no.

Permit Fee	\$25.00
------------	---------

7. **MILL CREEK SHELLFISH, #15-0898**, requests authorization to construct a 168-foot long by 4-foot wide commercial pier which includes a 10-foot long by 4-foot wide L-head to accommodate intake pipes, pumps and the mooring of a boat situated at the mouth of Mill Creek a tributary to Cherrystone Creek in Northampton County. The project is protested by a nearby property owner.

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

Mr. Badger explained that since VMRC’s jurisdiction is only the channelward 50 feet of the proposed pier, staff’s concern is mostly related to navigation along Mill Creek. The Commission’s Subaqueous Guidelines, Section IV, “*Piers and Wharfs*” indicates that piers should encroach no more than one third the distance across the waterway except in unusual channel configurations. The applicant’s pier falls within the guidelines and it is staff’s opinion that the pier should not adversely affect navigation within Mill Creek.

Mr. Badger stated that after evaluating the merits of the entire project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommends approval of the project as proposed, with a royalty in the amount of \$600.00 for the encroachment of the pier, open L-head pump platform and boat slip over 400 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot.

Henry S. Jones, III and Henry S. Jones, Jr. were sworn in and their comments are a part of the verbatim record. Mr. Jones (Jr.) expressed their concern was that they needed water access for the project and had looked for several years to find a location for the project. He said that they felt they had nowhere else to go to get to deep water as Cherrystone Creek was nearly completely leased. Mr. Jones said that they did not intend to moor a boat there for any length of time, just for short periods.

Commissioner Bull opened the public hearing.

Dr. Catherine Fulton, protestant, was sworn in and her comments are a part of the verbatim record. Dr. Fulton expressed her concerns with the impacts of this project on historical highland property which needs to be investigated by the U. S. Army Corps of Engineers and she wanted the project moved to another location. There is now illegal clamming in the area which needs to be investigated and the decision on this matter should be postponed. She noted that in September 2004 the Commission established this area as an area where no activity would be allowed. She provided some photographs of the area at low tide. She explained that her property went to the middle of the Creek.

When asked by Associate Member Tankard about her ownership to the middle of the creek, Mr. Badger stated that there was no Kings Grant establishing her ownership to the middle of the creek.

Associate Member Haynie asked staff to clarify the 2004 Commission action, Mr. Badger explained that Dr. Fulton at that time protested an application for an oyster ground lease in the creek and at that time the Commission established an area from the an area, which was not be leased.

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

Associate Member Tankard said that he sympathizes with the protestant, however, the applicant's pier would not be any longer than the protestants. Commissioner Bull said he did have some concerns about navigation in such a tight, shallow creek but he would agree with the staff recommendation. He stated that he trusted Mr. Badger's many years of experience working in the area. Associate Member Zydron noted that the protestant had said that there were very few people now on the creek and he felt the shallowness of the water already hindered navigation.

Associate Member Tankard moved to approve the staff's recommendation. Associate Member Zydron seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member Ballard abstained.

Royalty Fee (encroachment 400 sq. ft. @ \$1.50/sq. ft.)	\$600.00
Permit Fee	\$100.00
Total Fees	\$700.00

8. **ROUTE 28 CORRIDOR IMPROVEMENTS, LLC, #15-0529**, request for authorization to construct a four-lane, clear-span, roadway bridge, with associated temporary fill for construction access, over Broad Run as part of the final segment of the Pacific Boulevard Extension Project in Loudoun County. The project is protested by an adjacent property owner.

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

Mr. Woodward explained that the Commission's jurisdiction is limited in this case to the submerged lands below the ordinary high water line in Broad Run. Based on our public interest review, staff believes the impacts to the waterway have been minimized reasonably. There will be no permanent structures within the waterway as the bridge will span Broad Run entirely, and the temporary impacts resulting from construction access should be minimal provided standard in-stream work conditions are followed.

Mr. Woodward said that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project with the inclusion of the standard in-stream work conditions. Specifically, those conditions are:

- a) The instream construction activities authorized shall be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half the flow of the waterway shall be obstructed at any point in time.
- b) The cofferdams and any excess material will be removed to approved upland areas upon completion of construction, and that the streambed shall be restored to its pre-existing contours and conditions.
- c) The construction should be performed during low-flow conditions to the greatest extent possible.
- d) The Virginia Erosion and Sediment Control Handbook (3rd Edition, 1992) will be followed throughout construction.

Mr. Woodward stated that staff recommended that the Permittee be required to execute a transfer of the permit to the Virginia Department of Transportation upon completion and acceptance of the project. Because this is a local government project, with VDOT as one of the funding partners, staff does not recommend a royalty. This is consistent with past Commission action and with the advice of the Office of the Attorney General related to Public Private Partnership roadway projects where VDOT is not the applicant but is involved in the design and funding, and will ultimately add the roadway to their public roadway system for management and future maintenance.

Kimberly Larkin and Jeff Austin, representing the applicant, were sworn in and their comments in support are a part of the verbatim record. Ms. Larkin noted that they did avoid the historical sites.

Commission Meeting

Commissioner Bull asked for comments, pro and con.

Terry Laycock, representing Loudon County, was sworn in and her comments in support are a part of the verbatim record. Ms. Laycock said that the people in this locality need the parallel road to give access to the main road and they have invested in the cost to have this road built. She said the county and state both support the project. She noted the people in the community, county, and VDOT have all worked together over the last 8 to 10 years to build this access road. She said they were asking for approval.

There were no comments in opposition. The public hearing was closed.

Commissioner Bull stated that the matter was before the Commission for discussion and action.

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

Permit Fee	\$100.00
------------	----------

- 9. **PUBLIC HEARING:** Proposed amendments to REGULATION 4 VAC 20-290-10 ET SEQ. "PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND" and REGULATION 4 VAC 20-335-10 ET SEQ. "AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES." The amendments are proposed to address the marking requirements for leases and areas within leases containing aquaculture structures based on a review by the Shellfish Management Task Force and input from both the Shellfish Management Advisory Committee and the agency Regulatory Review Committee.

Hank Badger, Chief Engineer, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Badger explained that the marking of oyster planting ground leases often presents user conflict issues, staff believes the revisions being proposed will allow for more effective enforcement, and provide some additional options and standardization for leaseholders when marking active work areas. It is hoped that such revisions will reduce conflicts associated with the marking of leases, active work areas and the aquaculture structures themselves. Staff recommended approval of the modifications being proposed for the marking of oyster planting ground leases with an effective date of January 1, 2016.

Mr. Badger reviewed some suggested changes by the Shellfish Management Task Force, the Shellfish Management Advisory Committee and the Regulatory Review Committee, which had been added to the draft regulation.

After some discussion, Commissioner Bull opened the public hearing.

Michael Norment, was sworn in and his comments are a part of the verbatim record. Mr. Norment stated he felt the signage was appropriate but that the actual wording may increase the poaching. He said he would like to see the definition changed for the ‘can’ buoy and that red tape would be more visible than white.

Robert Johnson was sworn in and his comments are a part of the verbatim record. Mr. Johnson stated he would like the stakes 300 feet rather than 600 feet apart.

The public hearing was closed.

After further discussion, Associate Member Ballard moved to approve the staff recommendations for Chapters 4VAC 20-290-10 et seq and 4VAC 20-335-10 et seq. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

10. PUBLIC COMMENT:

Michael Shackelford - Requested that the Commission reinstate his dogfish permit. The Commission requested that staff work with Mr. Shackelford on this matter and to put it on the January 2016 Commission agenda.

11. OFFENDERS:

John A. Masiak – present and sworn in

Henry Reichle, Marine Police Officer, was sworn in and he gave the briefing of the summon and conviction from the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Unculled oysters; summons issued February 6, 2015 pursuant to Code Section 20-260-50, amended to Chapter 4VAC 20-260-40; convicted March 11, 2015 in the Gloucester County General District Court (Criminal), fine \$350.00, court cost \$121.00.

Ronald Cagle, Marine Police Officer, was sworn in and he gave the briefing of the summon and conviction. His comments are a part of the verbatim record.

No required escape panel on eel pot; summons issued April 28, 2015 pursuant to Chapter 4VAC 20-500-50; convicted June 10, 2015 in the Gloucester County General District Court (Criminal), fine \$50.00, court cost \$25.00.

Fish pot/eel pot improperly marked summons issued April 28, 2015 pursuant to Code Section 28.2-712; convicted June 10, 2015 in the Gloucester County General District Court (Criminal), fine \$50.00, court cost \$121.00.

Adrienne Sakyi, attorney for Mr. Masiak, was present and her comments are a part of the verbatim record. Ms. Sakyi stated that Mr. Masiak was not charge by the administrative code for the fish/eel pot marking violation but by the State Code. She said there were no aggravating factors as there was no trouble by Mr. Masiak or damage and with the length of time he had his license there have not been enough history of violations or of failure to report.

Matthew Hull, VMRC Counsel, explained in Code Section 28.2-232 any conviction can result in a penalty if repeated violations, violation of health or safety laws, or if there was abuse to the officer, the Commission can impose a revocation of licenses up to two years.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 100 percent over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with Code Section 28.2-232, staff recommended the Commission place Mr. Masiak on probation for a period of one year from the date of Commission meeting, October 27, 2015, through October 26, 2016. Any failure on Mr. Masiak'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. Masiak appearing before the Commission for a hearing on license revocation.

Ms. Sakyi stated there were no history and aggravating factors against the officer. They asked that the Commission deviate from the staff recommendation for less probation time.

After further discussion, Associate Member Tankard stated he did not feel there was a need for any leniency and moved to accept the staff recommendation for one year probation, starting October 27, 2015, through October 26, 2016. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

Stetson K. Reynolds – present and sworn in.

Russell Dunton, Marine Police Officer, gave the briefing of the summons and convictions from the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Oyster no shade; summons issued May 27, 2015 pursuant to Chapter 4VAC 20-1230-D; conviction on July 28, 2015 in the Northampton County General District, fine \$100.00, court cost \$91.00.

Mr. Reynolds explained that the cover blew off to the side. He said he caught the oyster around 9 am and put them back in the water, then pulled them back out around 2 pm. When asked why he didn't show the cover to the officer, he responded he thought the officer saw it. When asked, Mr. Reynolds said he had been working on the water 50 years, since he was 10 years old. His comments are a part of the verbatim record.

Mrs. Reynolds was sworn in and her comments are a part of the verbatim record. Mrs. Reynolds said they were not selling them just taking them to the seaside to put them in cages. She noted that they had no other income.

Joe Cimino read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of failure to follow warm water restrictions, with a 12-month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all Mr. Reynolds' licenses to take or catch fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016. Staff also recommends that the Commission revoke Mr. Reynolds' fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016.

Associate Member Ballard stated he was in favor of two year probation rather than revocation because of his lack of any history of violations. Associate Member Tankard stated he felt the testimony was inconsistent. Associate Member Ballard moved for two year probation, starting October 27, 2015, through October 26, 2017. Associate Member Haynie seconded the motion. Mr. Dunton noted that Mr. Reynolds was very cooperative. The motion carried, 7-1. Chair voted yes. Associate Member Tankard voted no.

Jeffrey S. West – present and sworn in.

Chip Dize, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. Mr. Dize gave the briefing of the summons and violations from the information provided in the staff's evaluation.

Have in possession over legal limit of crabs (26 bushels); summons May 4, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-300-20 (amended 20-270-51B); convicted June 10, 2015 in the Gloucester County General District Court, fine \$500.00, court cost \$121.00.

Mr. West stated that he thought he was allowed 29 bushels. He said he was asking for mercy as this was he knew and his only livelihood.

After further discussion and questions, Joe Cimino, Fisheries Management Manager, Sr. read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of exceeding the bushel limits by 5 bushels or more, within a 12 month period, should result in at least one year probation. However, since Mr. West harvested more than double his legal limit, Fisheries and Law Enforcement staff are recommending 2 years probation. In accordance with Code Section 28.2-232, staff recommends the Commission place Mr. West on probation for a period of two years from the date of this Commission meeting, October 27, 2015, through October 26, 2017. Any failure on Mr. West'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. West appearing before the Commission for a hearing on license revocation.

Commissioner Bull stated the matter was before the Commission.

Associate Member France moved to accept the staff recommendation for two year probation, starting October 27, 2015, through October 26, 2017. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Lin Bin (Recreational) – present and sworn in. (An individual from the audience volunteered to interpret.)

Charles Hall, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. Mr. Hall gave a briefing of the summons and violation from the information provided in the staff's evaluation.

Have in possession out of season oysters; Summons issued May 14, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-40; convicted in York County General District Court, fine \$75.00, court cost \$86.00.

In response to questions, Mr. Bin indicated that he just picked up a couple of oysters along the shore and that he did not know he should not take the oysters. He said he had been coming every night for two weeks, but did not take any oysters.

Joe Cimino, Fisheries Management Manager, Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, with a 12 month period, should result in at least one year revocation. In accordance with Code Section 28.2-282, staff recommends the Commission revoke all Mr. Bin's licenses to take or catch fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016. Staff also recommends the Commission revoke

Mr. Bin's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016.

After some further discussion, Associate Member Tankard moved to one year probation, starting October 27, 2015, through October 26, 2016. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

Rodriguez Israel Chirino (Recreational) – was present and sworn in.

Ronald Cagle, Marine Police Officer, sworn and his comments are a part of the verbatim record. Mr. Cagle gave a briefing of the summons and violation from the information provided in the staff's evaluation.

Mr. Chirino said it was his first year fishing and he did not know about all the rules. He has been told about the website and where to look up the rules.

Joe Cimino, Fisheries Management Manager, Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oyster during a closed season, with a 12 month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommends the Commission revoke all Mr. Chirino's licenses to take or catch fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016. Staff also recommends the Commission revoke Mr. Chirino's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016.

In response to Commissioner Bull, Mr. Chirino acknowledged that he now has his recreational license.

Associate Member Zydron moved for 12 month probation, starting October 27, 2015, through October 26, 2016. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Juan Carlos Valle (Recreational) – present and sworn in. (An individual from the audience volunteered to interpret.)

Ronald Cagle, Marine Police Officer, sworn and his comments are a part of the verbatim record. Mr. Cagle gave a briefing of the summons and violation from the information provided in the staff's evaluation.

Have in possession oysters during closed season; summons issued May 25, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-40; convicted on July 27, 2015 in the York County General District Court, fine \$75.00, court cost \$86.

Having in possession undersized crabs (45); summons issued May 25, 2015 pursuant to Code Section 28.2-708; convicted on July 27, 2015 in the York County General District Court, fine \$150.00, court cost \$25.00.

When questioned, he said he was with a group who was further up the shore from him and they were going to cook the crabs for chowder. He said it took two to three hours to catch them. He further said that he was taking the blame for his grandfather who was returning to El Salvadore. He said he knew there was a size limit, but he did not know what it was.

Joe Cimino, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommends the Commission revoke all of Mr. Valle's licenses to take or catch fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016. Staff also recommends the Commission revoke Mr. Valle's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, October 27, 2015, through October 26, 2016.

In response to questions, Mr. Valle stated he was at the mercy of the Commission. He said that when he got his license he did not get any information regarding the rules.

Commissioner Bull stated the matter was before the Commission.

Associate Member Zydron moved for 12 months probation, starting October 27, 2015, through October 26, 2016. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Yuan Quin Dong (Recreational) – present and sworn in.

John Richardson, Marine Police Officer was not present.

Taking shellfish (clams) from Condemned Area; summons issued June 29, 2015 pursuant to Code Section 28.2-810; convicted July 21, 2015 in the Virginia Beach General District Court, fine \$50.00, court cost \$91.00.

After some discussion, it was decided to proceed and to offer Mr. Dong probation the same as the others with similar violations.

Associate Member Zydron moved to place Mr. Dong on 12 months probation, starting October 27, 2015, through October 26, 2016. Associate Member Minor seconded the motion. Commissioner Bull suggested six months probation might be better in this matter. Associate Member Zydron amended his motion to six months, starting October 27, 2015, through April 25, 2016. Associate Member Minor seconded the amended motion. The motion carried, 8-0.

Associate Member Zydron suggested the Commission ask Mr. Dong if he agreed with this decision. Mr. Dong was asked by Commissioner Bull and he agreed.

Darrin M. Crow (Recreational) – not present.

Commissioner Bull noted that Mr. Crow had been convicted in court and had failed to appear for four months in a row. He suggested that this case be continued or to proceed. Associate Member Neill suggested proceeding in Mr. Crow's absence and it was agreed.

Ronald Cagle, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. Mr. Cagle gave the briefing of the summons and violations from the information provided in the staff's evaluation.

Harvesting with commercial license; summons issued on August 17, 2014 pursuant to Code Section 28.2-241; convicted October 8, 2014 in the Gloucester County District Court (Criminal), fine \$100.00, court cost \$25.00.

Harvesting crabs on Sunday; summons issued on August 17, 2014 pursuant to Chapter 4VAC 20-270-20; convicted on October 8, 2014 in Gloucester County General District Court (Criminal), fine \$50.00, court cost \$25.00.

Larceny; summons issued August 17, 2014 pursuant to Code Section 18.2-96; convicted October 8, 2014 in Gloucester County General District Court (Criminal)

Joe Cimino, Fisheries Management Manager, Sr., noted that Mr. Crow's licenses to take or catch fish, shellfish, or marine organisms had been suspended at the August 25, 2015 Commission meeting until he appeared before the Board for the above violations.

After further discussion, Associate Member Tankard moved for two years revocation of all Mr. Crow's licenses to take or catch fish, shellfish, or marine organisms in the tidal waters of the Commonwealth and all Mr. Crow's fishing privileges, starting October 27, 2015, through October 26, 2017. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

- 12. FAILURE TO REPORT:** Cases involving failure to report commercial harvests, in accordance with Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Management Manager, gave the briefing of the information provided in the staff's evaluation. Her comments are a part of the verbatim record.

Staff recommended Mr. Decatur (4907) be placed on probation for a period of two years, beginning the day of his hearing, October 27, 2015 and ending on October 26, 2017. During this probation period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations by Mr. Decatur may require Mr. Decatur to appear before a hearing of the Commission for possible license(s) suspension.

Jerry L. Decatur, Jr. – was present and sworn in.

When asked Ms. Iverson responded that Mr. Decatur was now up to date.

When asked what happened to his reporting, Mr. Decatur stated that he fished with his Dad in March and April.

After some discussion regarding Mr. Decatur's previous record in 2010 through 2015, plus having lost his license for a striped bass violation for two years, Associate Member Zydron moved to revoke Mr. Decatur's licenses for one year, starting October 27, 2015, through October 26, 2016. Associate Member Minor seconded the motion. Commissioner Bull suggested this might be too much. Associate Member Zydron amended his motion to 6 months revocation of Mr. Decatur's licenses. Associate Member Minor moved for a substitute motion to change it to the staff's recommendation for two year probation. Associate Member Haynie seconded the motion. The motion failed, 4-4.

Associate Member Zydron moved to revoke Mr. Decatur's licenses for 6 months, starting October 27, 2015, through April 26, 2016. Associate Member Tankard seconded the motion. The motion carried, 5-3. Chair voted yes. Associate Members France, Haynie, and Minor all voted no.

Ms. Iverson gave the briefing of the information provided in the staff's evaluation. Her comments are a part of the verbatim record.

Staff recommended Mr. Britt (008082) be placed on probation for a period of two years, beginning the day of his hearing, October 27, 2015 and ending on October 26, 2017. During this probation period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding

regulations by Mr. Britt may require Mr. Britt to appear before a hearing of the Commission for possible license(s) suspension.

Michael Britt – was present and sworn in.

When asked, Ms. Iverson indicated Mr. Britt was caught up with his reporting as of October 23, 2015.

Commissioner Bull noted that this was an annual problem since 2008 for Mr. Britt. Mr. Britt explained that he had gotten divorced, moved, and had a child during this time.

After some discussion, Associate Member Zydron moved to revoke Mr. Britt's licenses for six months. Associate Member Tankard made a substitute motion to accept the staff recommendation to place Mr. Britt on two year probation. Associate Member Minor seconded the substitute motion. The motion failed, 4-4.

Associate Member Ballard made a substitute motion for six months revocation, starting October 27, 2015, through April 26, 2016, followed by one year probation, starting April 27, 2016, through April 26, 2017. Associate Member Haynie seconded the motion. The motion carried, 7-0-1. Associate Member Minor abstained.

Ms. Iverson informed the Commission that Mr. Richard Johnson was currently under suspension of his license until he appeared before the Commission.

Richard Johnson – not present.

Commissioner Bull stated that Mr. Johnson would continue to have his licenses suspended until he appeared before the Commission, continuing from the date of Commission meeting, August 25, 2015, through August 24, 2017.

- 13. POUND NET:** Case involving protests of an application to the Commission to license a pound net at a new location, in accordance with Chapter 4 VAC 20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review."

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

Mr. O'Reilly said the provisions of Chapter 4 VAC 20-25-10 et seq. (effective 2004) that guide the Commission's decision concerning licensing of a pound net at a new location were 'borrowed' from §28.2-1205 of the Code of Virginia that established permits for the use of state-owned bottomlands:

§ 28.2-1205. Permits for the use of state-owned bottomlands.

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;
2. Marine and fisheries resources of the Commonwealth;
3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;
4. Adjacent or nearby properties;
5. Water quality; and
6. Submerged aquatic vegetation (SAV).

Mr. O'Reilly also explained that staff knows this particular site was applied for several years ago by a different individual. That individual decided to locate his pound net at an alternate site, rather than being perceived as creating a fractious situation with adjacent landowners. Staff also learned from Law Enforcement that this particular site does not have a previous license history.

Mr. O'Reilly stated that staff recommends denial of the proposed pound net at a new location approximately 1700 feet southwest of Tankard's Beach by Mr. Edward M. Bender.

Edward M. Bender, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bender said that he wanted to use this site to catch his own horseshoe crabs. This pound net location was for his personal use.

The public hearing was opened.

Celia Birch, Attorney representing Richard and Kimberley Hanna, was present and her comments are a part of the verbatim record. Ms. Birch explained that the Hanna's were opposed to the location of the pound nets because it was adjacent to their property. She further explained that they were concerned with the safety of their children who swim in the area of the net, navigational impacts, and concerns with the possible predators of other fish being attracted by the net. She said they were requesting denial of the pound net in this location.

Bryan Plumlee, Attorney representing Donald and Price Clarke, was present and his comments are a part of the verbatim record. Mr. Plumlee explained that they were opposed the net in this location when there were already other nets nearby as well and there had not been a net before in this location. He said they were also concerned with the impacts to their recreational use of the area.

Price Clarke, property owner and protestant, was present and her comments are a part of the verbatim record. Ms. Clarke said she was not opposed to Mr. Bender having a pound net, only opposed to it being in this location.

Mariah M. Pollard, property owner and protestant, was present and her comments are a part of the verbatim record. Ms. Pollard explained that she was opposed to the application because of concerns with the safety of her children swimming in the area. She said she would be hemmed in from the north and south if the net was allowed.

In response to a question, Mr. Bender stated that the net does not go on the property only to the mean low water.

The public hearing was closed.

After further discussion Associate Member Neill moved to accept the staff recommendation to deny the application. Associate Member Zydron seconded the motion. The motion carried, 8-0. The Chair voted yes.

- 14. PUBLIC HEARING:** Request to codify the emergency amendment of Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" established at the September meeting, that rescinded all effort control provisions adopted August 25, 2015 and clarified requirements associated with possession and harvest of oysters for commercial purposes of the recently adopted limited entry oyster fishery requirements for 2016, as part of this chapter.

Commissioner Bull explained that this was a public hearing to approve the emergency actions taken by the Commission to rescind the limited entry measures adopted by the Commission at the September meeting. He said the public hearing was held as the result of a petition from Eastern Shore watermen submitted to the Commission.

Jim Wesson, Head, Conservation and Replenishment, explained that this was as Commissioner Bull had explained as to what occurred at the last Commission meeting and he explained that also at that time emergency action was taken to clarify requirements associated with possession and harvest of oysters.

Public hearing was opened.

Lisa Rose, waterman, was present and her comments are a part of the verbatim record. Ms. Rose asked how the method of limited entry was calculated and also where the money collected from the licenses was spent. She stated that none of the watermen she spoke with understood what was being done to manage the public harvest and there were some who do agree that there were too many harvesters in the oyster fishery.

Commissioner Bull explained that the limited entry actions had already been repealed. He asked Mr. Wesson to explain about the funding.

Mr. Wesson explained that out of the 1,800 licenses for dredges and hand scrapes less than a 1,000 paid the users fee. He said that the user fees were used for oyster replenishment, but the gear license fees went to the Marine Product Board, as their funding. He noted that the shells were being placed on both harvest areas and sanctuary areas with the majority going on the harvest areas.

Ms. Rose also asked about what the Shellfish Advisory Committee had decided. Mr. Wesson explained that the Shellfish Advisory Committee had voted to not take any action and staff had provided an alternate plan.

Ken Smith was present and his comments are a part of the verbatim record. Mr. Smith said he agreed with Ms. Rose that most watermen do not understand some the management measures. He said more areas needed to be open to harvest to allow them to catch the larger than 3 inch oysters that were 4 and 5 inches and were being left to die. He added that more oyster grounds needed to be worked to help the oysters to grow. He said that there needed to be a different plan to get the highest return from the public oyster grounds.

The public hearing was closed.

After some discussion, Associate Member Neill moved to make permanent the emergency amendments to Chapter 4VAC 20-720-10, et seq., “Pertaining to Restrictions on Oyster Harvest, to rescind all effort control provisions adopted August 25, 2015 and to clarify requirements associated with possession and harvest of oysters for commercial purposes. Associate Member Haynie seconded the motion. The motion carried, 8-0. The Chair voted yes.

15. **PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters” to consider whether to close the commercial winter crab dredge fishing season, under Chapter 4 VAC 20-1140-10 et seq.

Joe Cimino, Fisheries Management Manager Sr., gave the presentation. His comments are a part of the verbatim record.

Mr. Cimino explained that at the June 25, 2015 CMAC meeting a motion was endorsed to allow a limited winter dredge fishery season opening with up to a one million pound total allowable catch (TAC) split amongst individuals that indicate they will participate in the fishery. No individual quota would exceed 900 bushels, with conservation equivalency as developed by staff, with the ability to adjust the TAC under one million pounds depending on participation. Mr. Cimino noted that the motion made by CMAC passed with 10 members in favor, one opposed, and one abstention. Some of the reasons they cited for this vote included: taking effort off of the oyster resource, it is an issue of fairness with other harvest methods, and it will help establish a year round market for crabs. Several CMAC members and members of the public were in favor of bushel limits as an option for conservation equivalency and were opposed to any changes in crab pot seasons.

Mr. Cimino explained that the staff recommended amending Chapter 4 VAC 20-1140 et seq., "Prohibition of Crab Dredging in Virginia Waters" to close the winter crab dredge fishery season from December 1, 2015 through March 31, 2016.

The public hearing was opened.

The following individuals spoke in favor of opening the Crab Dredging Fishery. Some of these individuals were crab dredge watermen who had been cut out of the fishery. They felt that this was discrimination against one group of watermen because none of the other crab fisheries were closed. They said that the studies done by VIMS had shown that this gear was no more harmful maybe than the peeler pot fishery. They all requested that the crab dredge fishery be reopened. Their comments are a part of the verbatim record.

James Close, Ken Smith, and Bill Mullis

The following individuals spoke in opposition.

Robert Allen was present and his comments in opposition are a part of the verbatim record. Mr. Allen stated the Saltwater Fishery Group was not in favor of reopening the crab dredge fishery.

Phil Davey, Maritime Lawyer from Norfolk was present and his comments in opposition are a part of the verbatim record.

Ty Farrington, waterman, was present and he spoke in opposition to the reopening of the crab dredge fishery. He felt that this fishery was exploiting the stocks and he had submitted a letter in total opposition.

The public hearing was closed. After further discussion, the matter was before the Commission for discussion.

After some discussion, Associate Member Minor moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-1.

- 16. PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-1090-10 et seq., “Pertaining to License Requirements and License Fees,” to establish an eel pot license. At this time eel pots and fish pots can be purchased under a single license.

Rachael Maulorico, Fisheries Management Specialist, gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

Ms. Maulorico explained that staff Recommended adopting the proposed amendments to 4VAC 20-1090-10 et seq., “Pertaining to Licenses Requirements and License Fees” to establish an eel pot license with the categories of: 1) up to 100 eel pots, 2.) over 100 but not more than 300 eel pots and 3.) over 300 eel pots.

There were no public comments.

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

- 17. PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to consider changes to current commercial summer flounder vessel possession and landing limitations, as well as seasonal time periods associated with the landing of summer flounder harvests from federal waters.

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

Mr. O’Reilly explained that staff recommended the Commission adopt amendments to Chapter 4 VAC 20-620-10 et seq. “Pertaining to Summer Flounder”. These amendments establish a consecutive 30-day landing period, beginning November 1, 2015, for any legally licensed Summer Flounder Endorsement Licensee landing summer flounder, harvested outside of Virginia waters. The first 30-day landing period will have a 10,000

pound vessel trip limit, the second 30-day landing period will have a 5,000 pound vessel trip limit.

There were no public comments.

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

18. REQUEST FOR PUBLIC HEARING: Marking requirements, for eel pot, as part of Chapter 4 VAC 20-140-10 et seq., “Pertaining to identification of crab pots, peeler pots, and fish pots.”

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

Mr. O’Reilly explained that a public hearing was held at the February, 2015 Commission meeting to limit the use of fish pots by active crab pot or peeler pot fishermen. The public hearing was prompted by Law Enforcement’s concern over an increasing number of commercial crab pot licensees who are also harvesting crab in additional pots, many that were designed and identical to peeler pots, but are being placed in the water as licensed fish pots. The Commission heard public comment that day on concerns that hoop net fishermen and eel pot fishermen would be negatively impacted by a fish pot limit. The Commission voted 5-3 to limit the number of fish pots that can be set by a crab pot licensee, but asked that definitions for fish pots and hoop nets be developed in the future.

Mr. O’Reilly stated that staff requested the advertisement for a public hearing to amend Chapter 4VAC 20-140-10, et seq., establishing marking requirements for the eel pots.

There were no public comments.

Associate Member Tankard moved to advertise for the public hearing. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

19. RECONSIDERATION OF PUBLIC HEARING: Modifications to the 2015-2016 public oyster harvest season for two areas, Public Ground Number 9 and Public Ground Number 10, in the Pocomoke Sound west of Saxis, Virginia.

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

Mr. Wesson stated that this month, staff surveyed Public Ground Number 9, Public Ground Number 10, and all of Pocomoke Sound from Onancock Rock north to Saxis. Generally, there was almost no spatset in Pocomoke Sound this year. The number of market oysters is the lowest that we have observed since beginning surveys in this area 15 years ago. Public Ground Number 10, which is scheduled to open on November 2 for a two week season, has less than one market oyster per meter (Figure 1). In 2013, Public Ground Number 10 had approximately three market oysters per meter. Public Ground Number 9 currently has 1.3 market oysters per meter. Prior to the harvest season in 2013, it had 6.5 market oysters per meter. Almost no cultch (Figure 2) is on these two areas at the current time.

Mr. Wesson explained that during the fall oyster survey, staff checked the area called Pultz Bar which had a very small amount of market oysters, but the largest spatset that has been seen on this bar in the 45 years of records that we checked. The potential windfall from this unusual spatset will be significantly reduced by harvest activity attempting to catch the very small quantity of market oysters. He said staff wanted to advertise for a public hearing on December 8, 2015 to consider rescinding the opening of this area.

The public hearing was opened.

These individuals spoke in support of opening to the harvest of oysters Public Ground Number 9 in Pocomoke Sound, Saxis, Virginia.

Don Barne, Bill Bailey, Freddie Linton, Melanie Bailey, and Donald Porter.

After much discussion, Associate Member Zydron moved to open for harvest, Pocomoke area Public Ground Number 9, for harvest by oyster hand scrape, from November 16 through November 27, 2015. Associate Member Minor seconded the motion. The motion carried, 8-0. The Chair voted yes.

Mr. Wesson explained that he had a number of requests from watermen on the Seaside of Eastern Shore to allow them to use hand tong gear for harvesting on public grounds. During several conversations with individuals, he said he was told that this had been done in the past. He said he felt this should be done on a trial basis. He said staff was requesting to advertise for a public hearing on this matter at the December 8, 2015 Commission meeting.

Associate Member Zydron made a motion for advertising for a public hearing at the December 8, 2015 meeting to consider rescinding the opening of Pultz Bar in Mobjack Bay for the month of January. He stated he was amending the motion to include the advertisement of a public hearing at the December Commission meeting to consider allowing, on a trial basis, the use of the hand tong gear on the public

oyster grounds on the Seaside of Eastern Shore. Associate Member Minor seconded the motion. The motion carried, 8-0. The Chair voted yes.

* * * * *

20. DISCUSSION: Report on potential description of fish pot gear.

The Commission unanimously agreed to delay this item until the January 26, 2016 Commission meeting.

* * * * *

21. DISCUSSION: The Virginia Institute of Marine Science will give a presentation on the results of an investigation of the potential impact on Gwynn’s Island bridge rehabilitation work on mortality in a nearby oyster hatchery.

The Commission unanimously decided to delay this discussion item until the December 8, 2015 Commission meeting.

* * * * *

22. REQUEST FOR A PUBLIC HEARING: Request for a December public hearing. Establishment of the 2016 commercial black sea bass quota.

Robert O’Reilly, Chief, Fisheries Management, gave the briefing of the information regarding this request for public hearing. His comments are a part of the verbatim record. He noted that there would be a 22% increase in the commercial quota and a 21% increase in the recreational quota.

Mr. O’Reilly stated that the staff was requesting a public hearing for the December 8th, 2015 Commission meeting.

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

* * * * *

There being no further business, the meeting was adjourned at approximately 6:40 p.m. The next regular Commission meeting will be Tuesday, December 8, 2015.

John M. R. Bull, Commissioner

Commission Meeting

**17517
October 27, 2015**

Minutes Prepared by:

Katherine Leonard, Recording Secretary

Recorded by:

Louise Atkins, Administrative Office Specialist

Linda Hancock, Director, Human Resources