

MINUTES

Commission Meeting

January 28, 2014

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	Acting Commissioner
James D. Close	
S. Lynn Haynie	
Ken Neill, III	Associate Members
J. Bryan Plumlee	
Whitt G. Sessoms, III	
J. Edmund Tankard, III	
Paul Kugelman	Assistant Attorney General
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Manager
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham	Director, VSWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Collection Prgm. Supvr.
Jason Schaffler	Fisheries Mgmt. Analyst
Laurie Williams	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Chris Beuchelt	Sr. Marine Police Officer
Casey Springfield	Sr. Marine Police Officer
Matt Dize	Marine Police Officer

Commission Meeting

**17064
January 28, 2014**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Juliette Giordano	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Bradley Reams	Program Support Tech., Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Robert Orth
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Others present:

Jennifer Copenhaver	Jon C. Poulson	Rob Stith
Gerry Negley	Aaron Appljits	Arthur Bender
Keith Lockwood	Robert Pruhs	Andy Lacatell
Laura McKay	Nick Meade	Jim Lang
Ernest George	Lacy Rose, Jr.	John Kirkpatrick
Joann Kirkpatrick		

and others

Acting Commissioner Bull called the meeting to order at approximately 9:30 a.m. Associate Members Beck and Erskine were absent.

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

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

Tony Watkinson, Chief, Habitat Management requested that Item 8, the VIMS presentation on the Status of SAV be heard after Habitat Item 5, John and Joann Kirkpatrick.

Acting Commissioner Bull announced that the amended agenda was approved.

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MINUTES: Acting Commissioner Bull asked if there were any changes or corrections to be made to the December 10, 2013 Commission meeting minutes.

Acting Commissioner Bull announced that as there were no changes or corrections, the December 10, 2013 Commission meeting minutes were approved. Associate Member Plumlee stated he was abstaining because he was not present at the last meeting.

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

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

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

Associate Member Plumlee stated he would be abstaining for Item 2C because of business conflicts. He suggested that there be separate motions.

Acting Commissioner Bull asked for public comments. There were none. He then asked, what was the pleasure of the Commission for items 2A, 2B, and 2C?

Associate Member Plumlee moved to approve the page two items 2A and 2B. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

Associate Member Tankard moved to approve 2C. Associate Member Haynie seconded the motion. The motion carried, 5-0-1. Associate Member Plumlee abstained.

2A. ARMY CORPS OF ENGINEERS, #13-1611, requests authorization for overboard disposal of up to 3 million cubic yards of state-owned subaqueous bottom material per dredge cycle within previously authorized placement sites, adjacent to the federal navigation channel associated with Army Corps of Engineers dredging of the James River federal navigation channel at City Point Shoal, Jordan Point Shoal, Sandy Point Shoal, and Goose Hill Shoal from Milepost 69 to Milepost 27 within the James River in the Counties of James City, Surry, Prince George, Charles City, Chesterfield and the City of Hopewell.

Permit Fee.....	\$100.00
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2B. ARMY CORPS OF ENGINEERS, #12-1255, requests a permit modification to place overboard in an unconfined manner, dredge material from the Bradford Bay Federal Project Channel onto a previously permitted placement site in Bradford Bay (centered at N37°35'02", W75°40'53") near the Town of Wachapreague in Accomack County. The placement site's dredge material will increase by 15,000 cubic yards to a maximum of 75,000 cubic yards, per dredge cycle, from the hydraulic maintenance dredging. All other permit conditions would remain the same.

Permit Fee.....	\$100.00
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2C. BAE SYSTEMS NORFOLK SHIP REPAIR, #13-0940, requests authorization to maintenance dredge a maximum of 150,000 cubic yards of State-owned submerged land on an as-needed basis, to maintain depths ranging from -36 feet to -64 feet mean low water adjacent to existing piers and drydocks at their facility located at 750 West Berkley Avenue situated along the Southern Branch of the Elizabeth River in Norfolk. Dredged material will be taken to the Craney Island Dredged Material Management Area (CIDMMA) and disposed of in the Rehandling Basin.

Permit Fee.....	\$100.00
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3. CONSENT AGENDA ITEMS.

3A. TOMMY GARNER, #13-1760, requests after-the-fact authorization to retain 596 square feet of deck space on an existing open-pile private pier, and requests authorization to install an additional 69 linear feet of 5-foot wide finger pier, a boat lift, and an additional 72 square feet of deck space on the existing pier located along Deep Creek at 635 Snug Harbor Lane in the City of Newport News. The applicant has agreed to pay a civil charge in the amount of \$2,000.00 in lieu

of further enforcement action. Staff recommends approval and acceptance of the aforementioned civil charge.

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

Acting Commissioner Bull asked if there were any public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Tankard moved to approve 3A. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

Permit Fee.....	\$ 25.00
Civil Charge.....	\$2,000.00
Total Fees.....	\$2,025.00

3B. TARKILL AQUACULTURE VENTURES, LLC, #13-1660, requests after-the-fact authorization to retain a 32-foot by 20-foot platform; a 30-foot by 7-foot finger pier; a small connecting platform; a 40-foot by 12-foot floating upweller and a 56-foot by 52-foot platform (of which a 40-foot by 40-foot portion had previous been permitted) situated adjacent to their property along Tarkill Creek at 14008 Tarkill Road in Accomack County. The applicant also requests authorization to construct a 40-foot by 30-foot second story platform with access stairs over the already constructed 56-foot by 52-foot open-sided platform. The applicant has agreed to pay a civil charge in the amount of \$2,000.00 in lieu of further enforcement action along with a triple permit fee of \$300.00 and royalties in the amount of \$3,468.00 for the additional platform encroachment over 2,312 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot and \$28.80 for the floating upweller encroachment over 576 square feet State-owned subaqueous land at a rate of \$0.05 per square foot. Staff recommends approval and acceptance of the aforementioned civil charge, permit fee, and royalty fees.

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

After some discussion, Acting Commissioner Bull asked if there were any public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Plumlee moved to approve item 3B. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Royalty Fees (encroach 2,312 square feet \$1.50/sq. ft.).....	\$3,468.00
Royalty Fees (encroach 576 square feet \$0.05/sq. ft.).....	\$ 28.80
Permit Fee (triple).....	\$ 300.00
Civil Charge.....	\$2,000.00
Total Fees.....	\$5,796.80

3C. SANDIE POINT CONDOMINIUM ASSOCIATION, #13-0239, requests after-the-fact authorization to retain an existing 10-foot wide by 16-foot long gazebo, and to install 16 additional, uncovered boatlifts at their community-use pier adjacent to Sandie Point Lane situated along the Western Branch of the Elizabeth River in Portsmouth. The applicant has agreed to pay a civil charge in the amount of \$1,000.00 in lieu of further enforcement action. Staff recommends approval and acceptance of the aforementioned civil charge.

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

Acting Commissioner Bull asked if there were any public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Plumlee moved to approved 3C. Associate Member Tankard seconded the motion. The motion carried, 6-0

Permit fee.....	\$ 100.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$1,100.00

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

When asked if a closed meeting was needed, Paul Kugelman, Assistant Attorney General and VMRC Counsel responded no.

5. **JOHN and JO ANN KIRKPATRICK, #13-0410**, request authorization to construct a 54.5-foot by 6-foot addition to their previously permitted 1,220 square foot T-head pier and dock house situated adjacent to their property along Chesconessex Creek at 18192 Robins Lane in Accomack County.

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

Acting Commissioner Bull asked if the applicant or their representative wished to comment.

Jon C. Poulson, attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Poulson explained that the area is not used by others for any purpose and the applicant was willing to mitigate or improve state-owned bottom by removing the pilings near the county dock. He provided several pictures, a copy of a quote by a contractor for the estimated costs, and a copy of an e-mail from the County administrator stating their support of the project especially the advantages of the pilings being removed because they were a hazard to navigation. He said that when they asked Tony Edwards, the owner's son, who stated his Father, would be pleased with the removal of this structure. He said they were asking the Commission for approval.

After further discussion regarding the mitigation offer and its public and private benefits, Mr. Kugelman explained that there was nothing in Section 28.2 for mitigation for this type of structure, but it would come under consideration as regards the public versus private benefits. He said the new structure would be a private benefit and the removal of the structure would be a public benefit.

Tony Watkinson, Chief, Habitat Management, explained that mitigation was usually considered for impacts to wetlands not for a private structure on state bottom.

Associate Member Plumlee explained that under 28.2-1204 the benefit would be to the adjacent property owner and this is where the VMRC was given its authority.

Mr. Kugelman noted that written permission was needed for the record from the owner of the structure to be removed. He suggested this be made a permit condition.

Acting Commissioner Bull opened the public hearing. Mr. Poulson noted that the applicant was present if he needed to comment. There were no other public comments, pro or con.

After some discussion, Associate Member Plumlee moved to approve the proposed project and to include the removal of the Edward's crab shed structure after receiving permission from its owner. Associate Member Sessoms seconded the motion. Associate Member Haynie suggested that the motion include a timeline for

the removal of the crab shed structure so that it would be removed prior to any new construction. Associate Members Plumlee and Sessoms both agreed to the amendment. The motion carried, 6-0.

Permit Fee.....	\$25.00
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8. VIRGINIA INSTITUTE OF MARINE SCIENCE: Presentation of Dr. Bob Orth's annual review of the status of Submerged Aquatic Vegetation.

Dr. Robert Orth, VIMS, was present and gave his presentation. His presentation is a part of the verbatim record.

Dr. Orth explained that he would like to continue with his current efforts. He said he would like to discuss other study proposals regarding areas for expansion of SAV resources on the Seaside of Eastern Shore to bring back to the Board at a later date. He also asked that the request for funds in the amount of \$22,000.00 to continue with ongoing SAV studies be approved.

Robert O'Reilly, Chief, Fisheries Management, explained that this funding would be split evenly between the Marine Waterway Fishing Improvement funds (MWIF MFIF) and the Recreational Fishery Advisory Board (RFAB) Virginia Saltwater Recreational Fishing Development Fund (VSRFDF) funds.

Associate Member Plumlee moved to approve the funding of the study for the total requested of \$22,000.00, \$11,000.00 to be utilized from each of the funds. Associate Member Tankard seconded the motion. The motion carried, 6-0.

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11. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks," to comply with the federal and interstate management plans for these species.

Lewis Gillingham, Director, VSWFT, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

He explained that in November the ASMFC Shark Management Board adopted Addendum III and established a compliance schedule with a very short turn-around time for the states. On February 6, 2014, the ASMFC Shark Management Board will review and take action on state proposals and states will be required to implement appropriate regulations by March 1, 2014.

Staff recommended advertising a February 25, 2014, public hearing to consider the proposed amendments to Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks," in order to amend the shark management group definitions, establish a recreational size limit of 78 inches for hammerhead sharks and increase the aggregate commercial possession limit for Large Coastal Sharks to 36 sharks to comply with the federal and interstate management plans for these species.

As there were no questions of staff, Associate Member Plumlee moved to approve a public hearing to be held in February. Associate Member Haynie seconded the motion. The motion carried, 6-0.

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6. PUBLIC COMMENT.

Derelict Vessels

James Lang, An Attorney representing a waterfront property owner, gave a talk regarding the status and removal of numerous vessels in a section of the Elizabeth River, which are abandoned or derelict. During the December Commission Meeting Mr. Lang had requested that the Commission take action for the removal of the vessels. He indicated at this hearing that three of the vessels were removed and a fourth was partially removed because the engine had been left on state bottom. He suggested that there was still more to be done. His comments are a part of the verbatim record.

Acting Commissioner Bull indicated that the Law Enforcement Division needed to complete their investigation.

Request for Extension of Public Oyster Harvest Season

Ernest George, waterman, requested that the Commission consider reopening rotational harvest Areas 2 and 4 of the Rappahannock River for two weeks in February due to extremely poor weather conditions which has prevented the watermen from being able to work. His comments are a part of the verbatim record.

The Commission discussed the request with staff. Dr. Jim Wesson, Department Head-Conservation and Replenishment, said these areas had been worked hard and need to remain closed to protect the remaining oyster stocks.

The Commission did not take any action on the request.

Horseshoe Crab Fishery

Robert O'Reilly, Chief, Fisheries Management, informed the Commission that Peter Bender had submitted two letters to staff concerning the adoption of amendments to the horseshoe crab regulation at its December 10, 2013 meeting. Mr. Bender was concerned about an increase in effort by Class B Dredge Permit Holders which would impact his harvest. There were two handouts, both from Mr. Bender.

The Commission did not take any action.

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- 9. **PUBLIC HEARING:** Proposed adoption of previous emergency amendments to Chapter 4VAC20-260-10 et seq. "Pertaining to Designation of Seed Areas and Clean Cull Areas," to clarify culling tolerances and inspection procedures for oysters taken from public oyster beds, rocks and shoals in Virginia's tidal waters.

Dr. Jim 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.

Dr. Wesson explained that language had been added to the regulation to clarify the inspection and culling procedures since there was again some confusion in the field. The issue was how small oysters adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the host oyster, should be considered in culling requirements.

Staff recommendation was to adopt the previous emergency amendments to Chapter 4VAC20-260-10 et seq. "Pertaining to Designation of Seed Areas and Clean Cull Areas," to clarify culling tolerances and inspection procedures for oysters taken from public oyster beds, rocks, and shoals in Virginia's tidal waters.

Acting Commissioner Bull opened the public hearing. There were no public comments, pro or con. He stated the matter was before the Commission.

Associate Member Plumlee moved to adopt the amendments to the regulation. Associate Member Tankard seconded the motion. The motion carried, 6-0.

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- 10. PUBLIC HEARING:** Proposed adoption of previous emergency amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks," to increase the daily commercial trip limit for spiny dogfish from 3,300 pounds to 4,000 pounds.

Joe Cimino, Fisheries Management Manager, Sr., gave the briefing for the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Cimino explained that at its December 10, 2013 Commission meeting, Chris Ludford, a commercial harvester, provided public comment that Virginia's spiny dogfish buyers had a small market but at a much lower price per pound than previous years. Mr. Ludford was requesting on behalf of spiny dogfish buyers an increase in the trip limit, to 4,000 pounds, to make harvesting spiny dogfish an economically viable option for 2014. The Commission approved the amendment by taking emergency action as well as approving the advertisement for a public hearing.

Staff recommended adoption of previous emergency amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks," to increase the daily commercial trip limit for spiny dogfish from 3,300 pounds to 4,000 pounds.

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

Associate Member Tankard moved to approve the amendment to the regulation. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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7. REPEAT OFFENDERS.

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement and Chris Beuchelt, Marine Police Officer were both present and their comments are a part of the verbatim.

Michael F. Stith:

- 10/6/12 charged and convicted for possession of undersized red drum.
- 10/6/12 charged and convicted for possession of undersized grey trout.
- 10/6/12 charged and convicted for possession of undersized speckled trout.
- 5/9/13 charged and convicted for possession of undersized striped bass.
- 5/9/13 charged and convicted for possession of undersized red drum.
- 5/9/13 charged and convicted for possession of over the limit of striped bass.

Lt. Col. Rhodes stated that Mr. Stith was not present at this hearing. He had called to tell staff that he did not have transportation. In response to questions, he stated this a for a recreational license. He said that Mr. Stith had not been present at his last court date and

he was tried in his absence and fined. He said that the Fisheries Management staff had made the recommendation for one (1) year probation.

Joe Cimino, Fisheries Management Sr. Mgr., explained that the old and new rule both said that the recommended penalty was one (1) year probation for the first appearance before the Commission. His comments are a part of the verbatim record.

Robert O'Reilly, Chief, Fisheries Management, explained that the new penalty matrix approved at the August 27, 2013 Commission meeting would be provided when an applicable repeat offender hearing occurs. His comments are a part of the verbatim record.

When asked, Officer Beuchelt read the staff recommendation:

In accordance with Code Section 28.2-232, staff recommended the Commission place Mr. Stith on probation for a period of one (1) year. Any failure on his part to obey any of the laws or regulations relating to Marine Resources Commission during the one (1) year probation would result in the Mr. Stith appearing before the Commission for a hearing of license revocation.

Acting Commissioner Bull stated the matter was before the Commission.

After some discussion about probation versus revocation and on the advice of VMRC Counsel, Associate Member Tankard moved to revoke Mr. Stith's license for two years. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

There being no further business, the meeting was adjourned at approximately 1:17 p.m. The next regular Commission meeting will be Tuesday, February 25, 2014.

John M. R. Bull, Acting Commissioner

Katherine Leonard, Recording Secretary