

## MINUTES

## Commission Meeting

July 24, 2012

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

Jack G. Travelstead	Commissioner
J. Carter Fox	
Joseph C. Palmer, Jr.	
J. Bryan Plumlee	Associate Member
Richard B. Robins, Jr.	
Kyle J. Schick	
J. Edward Tankard, III	
Whitt G. Sessoms, III	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Director, Public Relations
Linda Farris	Bs. Systems Specialist, MIS
Linda Hancock	Human Resources Manager
Lou Atkins	Acting Recording Secretary
Rob O'Reilly	Chief, Fisheries Mgmt.
Joe Grist	Acting Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation-Replenishment
Joe Cimino	Dir., Biological Sampling Program
Stephanie Iverson	Fisheries Mgmt. Manager
Renee Hoover	Fisheries Mgmt. Specialist
Alicia Nelson	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
John Miller	Marine Police Officer
Matt Broderick	Marine Police Officer

**Commission Meeting**

Tony Watkinson	Chief, Habitat Mgmt.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Juliette Giordano	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Tech

Virginia Institute of Marine Science (VIMS):

Lyle Varnell  
Roger Mann

Others present:

Robert Livengood	Melody Livengood	Nick Livengood
Barbara Richardson	Joanna Batemen	Joyce Gill
Richard Gill	David Richardson	T. Stuart McDaniel
Leroy McDaniel	J. L. Howeth	John Armstrong
Mike Credle	David O'Brien	Dave Bugg
Jenn Aiosa	Matt Mullin	Ken Smith
Andy Lacatell	Mark Bender	Tammy Bender
Danielle Bender	Guy O. Pruitt, Jr.	Chris Brown

and others.

\*\*\*\*\*

Commissioner Travelstead called the meeting to order at approximately 9:34 a.m. Associate Member Laine was absent.

\*\*\*\*\*

At the request of Commissioner Travelstead, Associate Member Robins gave the invocation and Tony Watkinson Chief of Habitat Management led the pledge of allegiance.

\*\*\*\*\*

**APPROVAL OF AGENDA:** Commissioner Travelstead asked if there were any changes from the Board members or staff. There were none.

Commissioner Travelstead asked for a motion for approval of the agenda by the Board.

**Associate Member Robins moved to approve the agenda. Associate Member Fox seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**MINUTES:** Commissioner Travelstead asked for a motion for approval of the June 26, 2012 Commission meeting minutes, if there were no corrections or changes. There were no changes.

**Associate Member Tankard moved to approve the minutes. Associate Member Robins seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

Commissioner Travelstead, at this time, 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 two page two items to be heard. He reviewed these items for the board. He noted that item 2A's approval should be made contingent on no protests being received as a result of the public notice. He said the deadline for comment period would be the following week. His comments are a part of the verbatim record.

Commissioner Travelstead asked for a motion from the Board.

**Associate Member Schick moved to approve the page-two items, as read and that no protests were received before the public comment period ended for Item 2A. Associate Member Plumlee seconded the motion. The motion carried, 7-0.**

- 2A. **GASLIGHT LANDING, LLC #05-1221**, requests authorization to modify a previously authorized dock configuration by rotating a 4-foot by 20-foot gangway 90 degrees to run parallel to shore and installing a 6-foot by 10-foot fixed landing to the existing marginal wharf and an 8-foot by 20-foot floating dock structure to the main 8-foot by 225-foot floating dock associated with the Gaslight Landing

Project adjacent to property situated along Occoquan River at 207 Mill Street in Prince William County.

No Applicable Fees -- Permit Modification

- 2B. **DEPARTMENT OF THE NAVY, #12-0840**, requests authorization to perform upgrades to the existing fender systems, by replacing piles, chocks, wales, and blocking, at Piers 3 and 5 at Naval Station Norfolk, to include the removal of approximately 193 existing timber piles, the installation of 49 timber piles and 6-pre-stressed 24-inch concrete piles at Pier 3, and the removal of approximately 103 timber piles, and the installation of 91 timber piles at Pier 5 situated on the Elizabeth River in the City of Norfolk.

Permit Fees.....	\$100.00
------------------	----------

\* \* \* \* \*

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

There were no consent items.

\* \* \* \* \*

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

A closed meeting was not necessary.

\* \* \* \* \*

- 5. **EDWIN RICE, #09-1497**, requests authorization to construct a 24-foot long by 8-foot wide, open-sided roof, to create a crab shedding facility and to change the use of his existing 88-foot long by 6-foot wide private pier to a commercial pier, adjacent to property situated along Cockrell Creek at Buzzards Point Road in Northumberland County. The project is protested by an adjacent property owner.

Jeff Madden, Environmental Engineer, Sr. briefed the Commission and presented slides showing the project site and surrounding locale, and his statements are part of the verbatim record.

The applicant and protestant were not present.

**Associate Member Robins moved to approve the project. Associate Member Schick seconded the motion. The motion carried, 7-0.**

Royalty Fee (encroachment 480 sq. ft. @ \$1.50/sq. ft.).....	\$720.00
Permit Fee.....	\$ 25.00
Total Fees .....	\$745.00

\*\*\*\*\*

6. **ROBERT LIVENGOOD, #12-0388**, requests authorization construct a 5-foot by 66-foot finger pier, a 17-foot by 41-foot open-sided boathouse roof and a 5-foot by 13-foot finger pier at his existing private-use pier situated along Cypress Creek, a tributary to the Pagan River at 906 Talbot Drive in the Town of Smithfield. The boathouse roof request is for a second such structure at this location. The project is protested by nearby property owners.

Ben Stagg, Environmental Engineer, Sr. briefed the Commission and presented slides showing the project site and surrounding locale, and his statements are part of the verbatim record.

The applicant was present and his comments are a part of the verbatim record. He said the roof on this boathouse would be lower than the existing one. He said he was concerned with purchasing the larger boat before receiving a permit. Mrs. Livengood also spoke.

Numerous adjoining property owners were present and expressed their concerns about the impacts from the project. Photographs were entered into the record by some of the speakers.

**Associate Member Schick moved to approve the project contingent on the applicant producing a bill of sale or other appropriate documentation for a vessel, in accordance with the staff recommendations. Associate Member Palmer seconded the motion. The motion carried, 6-1. Associate Member Tankard voted no.**

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

\*\*\*\*\*

7. **BENCHMARK DEVELOPERS, LLC, #07-1375**, requests after-the-fact authorization to retain a 170-foot long by 8-foot wide community pier with a 184-foot long by 6-foot wide T-head, and a 200-square foot floating section adjacent to a common parcel situated within a cove of Hack Creek in Northumberland County. The project is protested by adjacent and nearby property owners.

**Commission Meeting**

Jeff Madden, Environmental Engineer, Sr. briefed the Commission and presented slides showing the project site and surrounding locale, and his statements are part of the verbatim record.

Various representatives for the applicant were present and their comments are a part of the verbatim record. The applicant and the agent both said that they were not aware that the contractor had built the structure the way it is now, which was not according to the plans. The contractor was not present.

Some of the protestants commented that the structures were larger than necessary, impacted navigation, caused increased activity, and that it had become a community marina instead of a community pier. Their comments are a part of the verbatim record.

**Associate Member Palmer moved to order the applicant to remove 65 feet of the pier’s T-head on the southern side so that it was an L-head, impose triple permit fees, a tripled royalty fee of \$18,918.00, and civil charges of \$9,000.00 against both the applicant and the contractor in lieu of further enforcement action. Associate Member Plumlee seconded the motion. The motion carried, 7-0.**

Civil Charge (applicant).....	\$ 9,000.00
Civil Charge (contractor).....	\$ 9,000.00
Royalty Fees (triple a-t-f) (4,204 sq. ft. encroachment @ \$1.50/sq. ft.).....	\$18,918.00
Permit Fees (triple a-t-f).....	\$ 300.00
Total Fees.....	\$37,218.00

\*\*\*\*\*

**8. PUBLIC COMMENTS:**

Virginia Watermen’s Association President Ken Smith gave an update on the progress being made by a new blue crab advisory committee working on a long-term vision on how to best structure and manage the fishery. He said committee members have been meeting periodically on Sundays for several hours since October 2011. The goal of the committee is to gain buy-in from the industry on how to address outstanding issues in the crab fishery and to restructure the fishery in ways supported by the industry while meeting agency needs of sustainability, accountability, and fairness.

\*\*\*\*\*

Commission Meeting

- 9. **REQUEST FOR OYSTER FISHERY PUBLIC HEARINGS:** (1) Proposed amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2012-2013 harvest seasons; (2) Proposed amendment to Chapter 4VAC20-260-10 et seq., "Pertaining to Designation of Seed and Clean Cull Areas," to modify oyster culling procedures; and (3) Proposed amendment of Chapter 4VAC20-560-10 et seq., "Pertaining to Shellfish Management Areas," to close the York River Shellfish Management Area.

Jim Wesson, Head, Conservation and Replenishment, briefed the Commission on the proposed 2012-2013 public oyster harvest season and harvest restrictions; closure of the York River Shellfish Management area; and allowing the use of baskets on board the boat while harvesting oysters. His comments are a part of the verbatim record.

After further discussion by the Board, there was a consensus of the members that they approve holding a public hearing at the August meeting.

\* \* \* \* \*

- 10. **REQUEST FOR PUBLIC HEARING:** Proposal to establish regulations for American lobsters landed in Virginia, in accordance with requirements of the Atlantic States Marine Fisheries Commission to achieve a 10% reduction in lobster landings from the southern New England lobster stock.

Joe Cimino, Director, Biological Sampling Program, briefed the Commission on this issue and his comments are a part of the verbatim record. In February 2012 the ASMFC American Lobster Management Board adopted Addendum XVII to Amendment III of the Interstate Fishery Management Plan. The addendum is intended to reduce exploitation on the Southern New England Stock by 10% beginning in 2013. These amendments need to be in place prior to January 2013.

It was the consensus of the Commission to approve holding a public hearing at its August meeting.

\* \* \* \* \*

- 11. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to allow the recreational harvest of striped bass by spear fishing.

Joe Grist, Acting Deputy Chief -Fisheries Management, briefed the Commission on this matter and his comments are a part of the verbatim record. Staff received a request from an Alex Wazlak, President of the Mid-Atlantic Free Diving Club to allow spear fishing for the harvest of recreational striped bass. Current regulations specifically prohibit spear fishing for striped bass, but spearfishing is allowed for many other recreational species.

After further discussion, the Commission, by consensus, approved holding a public hearing at its August meeting.

\* \* \* \* \*

- 12. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to modify the October 4 through December 31 Chesapeake Area recreational striped bass management measures that would maintain the 2-fish possession limit, 18 inch minimum size limit and 28 inch maximum size, except one striped bass may be greater than 28 inches total length.

Rob O'Reilly, Chief-Fisheries Management, gave the briefing on this matter and his comments are a part of the verbatim record. The proposed management measures now would return to those measures as established in 2004 in order for the fishery to better retain the harvest quota in accordance with the interstate fishery management plan for striped bass. These measures would be for the Chesapeake area only for the time period of October 4 through December 31.

There were no public comments.

**Associate Member Palmer moved to approve the staff recommendations. Associate Member Fox seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

- 13. POUND NETS:** Mr. Edward M. Bender of Cheriton, Virginia has applied to license and locate three pound nets at new locations in the lower eastern Chesapeake Bay. There were public comments in opposition to these new pound net locations.

Rob O'Reilly, Chief-Fisheries Management, gave the briefing on this matter with slides and his comments are a part of the verbatim record. He noted that the public notice and contact with property owners within 500 feet had been done in accordance with regulation. He discussed the various concerns of those who responded to the notice such as impacts to property values, impacts to SAV, endangerment of wild birds, etc.

Edward Bender was present and his comments are a part of the verbatim record. He provided a signed statement by his father that he would give up his license for the staked gill net, which was a condition for getting the pound nets.

No one who had protested was in attendance. There were no public comments.



Associate Member Palmer moved to approve nets 1, 2, and 3 conditioned on the father returning his staked gill net license. Associate Member Schick seconded the motion. The motion carried, 7-0.

\* \* \* \* \*

4. **FAILURE TO REPORT:** Cases involving failure to report commercial harvests, in accordance with Chapter 4VAC20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting.”

Stephanie Iverson, Fisheries Management Manager, gave the briefing on the two cases of failure to report. She explained that all required notifications were sent to the watermen prior to this hearing. Her comments are a part of the verbatim record.

Associate Member Robins recused himself.

**Guy Olsen Pruitt, Jr.** – was present and his comments are a part of the verbatim record.

Associate Member Palmer moved to put him on six-month probation. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

**Charles C. Brown** - was present and his comments are a part of the verbatim record.

Associate Member Palmer moved to put him on 12-month probation. Associate Member Fox seconded the motion. The motion carried, 6-0.

\* \* \* \* \*

There being no further business, the meeting was adjourned at approximately 4:00 p.m. The next regular meeting will be held Tuesday, August 28, 2012.

\* \* \* \* \*

---

Jack G. Travelstead, Commissioner

---

Katherine Leonard, Recording Secretary