

MINUTES

Commission Meeting

September 22, 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:

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| John M. R. Bull | Commissioner |
| Chad Ballard, III | |
| A. J. Erskine | |
| G. Wayne France | |
| S. Lynn Haynie | Associate Members |
| James E. Minor, III | |
| Ken Neill, III | |
| John E. Tankard, III | |
| John E. Zydron | |
| J. Duncan Pitchford | Assistant Attorney General |
| Laurie Naismith | Director, Public Relations |
| Katherine Leonard | Recording Secretary |
| Linda Hancock | Director, Human Resources |
| Dave Lego | Business Systems Specialist |
| Robert O'Reilly | Chief, Fisheries Mgmt. |
| Joe Cimino | Fisheries Mgmt. Manager Sr. |
| Jim Wesson | Head, Conservation/Replenishment |
| Samantha Hoover | Fisheries Mgmt. Specialist |
| Rachael Maulorico | Fisheries Mgmt. Planner |
| Jill Ramsey | Fisheries Mgmt. Planner |
| Lewis Gillingham | Director, SWFT |
| Laurie Dozier | Fisheries Mgmt. Specialist |
| Warner Rhodes | Deputy Chief, Law Enforcement |
| Jeff Copperthite | 1 st Sgt., Southern Area |
| Pat West | Marine Police Officer |
| David Drummond | Marine Police Officer |
| Brandon Price | Marine Police Officer |

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| 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. |
| Ben Stagg | Chief Engineer, Eng-Survey |
| Mark Eversole | Environmental Engineer, Sr. |
| Justin Worrell | Environmental Engineer, Sr. |
| Mike Johnson | Environmental Engineer, Sr. |
| Bradley Reams | Program Support Technician |
| Rob Butler | Surveyor, Engineering-Survey |

Virginia Institute of Marine Science (VIMS):

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| Lyle Varnell | Emily Hein |
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Others present:

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| Thomas H. James III | William S. Edwards | Mr. and Mrs. Ryan |
| Ben Johnson | Vern Mosley | Joseph Melzer |
| Jim Hudgins | Bart Johnson | Chris Pritchard |
| Bill Nachman | Jim Cahoon | Kerry Kennedy |
| Cela Burge | Shannon C. Fedors | Michael Norment |
| Charles Williams | Andy Lacatell | Steve Taylor |
| Jeff Huenteman | James Pruett | Richard Green |
| Lisa Rose | Scott Griffith | Steven W. Purcell |
| Gregory Purcell | Keith Jett | James R. Firth |
| Neal Gough | Jim Dawson | Katie Dawson |
| Rick Hyatt | Ron Sheppard | Philippe T. Carter, II |
| Booker Webb | Samatha Sheppard | Andrew M. Turner |
| Jeremy R. McElligott | Randy Harding | Glen Harding |
| Felicia West | Ernie George | James E. Headley |
| Luther Headley | Freddie Linton | Jeff Linton |
| Larry Taylor | Mike Clair | Harry Doernte |
| John C. "Chris" Ludford | Vernon Ward | Marc Brown |
| Taylor Brown | Richard Gibson | Roger Hurley |
| Johnnie Tynes, Jr. | Doug Buckley | Penny Buckley |
| Joseph Martin | Darryl Hurley | Chris Cory |
| L. William | Jacob Williams | William Crewe |
| William Crewe, Jr. | Patrick Watson | David Bradshaw |
| George Parks, Jr. | Cameron Z. Mann | Chris Moore |
| Phillip Williams | Brock Williams | A. W. Williams |
| Tye Burns | Kim Huskey | Andrew Shannon |
| David C. Westcott | Wes Ressins | Austin Firth |

Commission Meeting

**17468
September 22, 2015**

Brandon Martin
Ty D. Farrington

Eric Martin

Keith Martin

and others.

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Commissioner Bull called the meeting to order at approximately 9:45 a.m. Associate Member Minor arrived late at approximately 9:50 am.

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

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

Commissioner Bull explained that the Item for VIMS' presentation was pulled from the agenda and he said a discussion of the limited entry management measures passed at the August 25, 2015 meeting would be heard before the Public Comment item. He also noted that the Board needed to discuss the combining of the November and December Commission meetings and what date.

Tony Watkinson, Chief, Habitat Management explained that another item needed to be added at the end of the public hearing items to request a public hearing for the October Commission meeting to discuss amendments to Chapters 4VAC 20-290-10 and 4VAC 20-335-10 regarding marking of private oysters grounds and commercial aquaculture operations.

Robert O'Reilly, Chief, Fisheries Management said that staff was requesting the addition of an item to discuss recommendations of the RFAB for the funding of three projects proposed by the Department of Game and Inland Fisheries (DGIF).

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

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the August 25, 2015 Commission meeting minutes. There were no changes.

Associate Member Zydron moved to approve the minutes. Associate Member Haynie seconded the motion. The motion carried, 8-0. 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 2E. He reviewed them 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.

Susan Connor, USACOE representative, was present and her comments are a part of the verbatim record. Ms. Connor thanked the Board for approval of the project and offered to answer any questions.

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

Associate Member Neill moved to approve the five page two items, as presented. Associate Member Tankard seconded the motion. The motion carried, 9-0. Chair voted yes.

2A. FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, #15-0906, requests authorization to restore and stabilize approximately 9,724 linear feet of Flatlick Branch, utilizing a variety of techniques based on Natural Channel Design (NCD) principles including stone streambank stabilization, root wad installation, rock vanes and drop structures. The project is located within the Flatlick Stream Valley Park between Sully Road (Route 28) and Lee Jackson Memorial Highway (Route 50) in Fairfax County.

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| Permit Fee | \$100.00 |
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2B. CITY OF ALEXANDRIA, #15-1095, requests authorization to remove a low profile concrete weir/fair weather pedestrian crossing and install a clear span pedestrian bridge across a 90-foot wide section of Holmes Run, and to restore

approximately 600 linear feet of perennial stream by removing concrete and sheet pile structures and the sediments that have accumulated behind them, and creating a more natural stream channel using existing cobbles, boulders and native plantings. The project is a part of the City of Alexandria’s Holmes Run Bike Trail project, located near the intersection of Holmes Run Parkway and North Van Dorn Street in the City of Alexandria.

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| Permit Fee | \$100.00 |
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- 2C. **ARMY CORPS OF ENGINEERS, #15-0154**, requests authorization to construct two (2) oyster restoration reefs over a total of approximately 40 acres of State-owned submerged bottom in the lower Piankatank River. The reefs will be constructed using only Class A1 (VDOT Spec) quarry stone riprap material, placed using a barge-mounted excavator, will extend no higher than 18 inches above the natural river bottom, and be located in minimum water depths of minus six (-6) feet at mean low water a minimum of 1,000 feet offshore of Roanes Point, and in minus nine (-9) feet of water approximately 3,000 feet offshore of Burton Point in Mathews County. Recommend approval with the requirement for a pre-construction conference once the contractor has been selected to review the terms, conditions and all details of permit prior to installation.

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| Permit Fee | \$100.00 |
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- 3. **CONSENT AGENDA ITEMS.** None.

- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** No closed meeting was necessary.

- 5. **RIVERVIEW AT THE PRESERVE, LLC, #15-0415**, requests authorization to construct three (3) storm water outfalls, to include riprap scour protection, and to construct a community-use pier with an approximate 30-foot by 30-foot roofed pavilion in association with the Riverview subdivision located at the southern terminus of Tranquility Trace situated along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a wetlands and a subaqueous permit.

Justin Worrell, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record. He provided a copy of the letter for mitigation to be made a part of the record.

Mr. Worrell explained that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) and §28.2-1302(10)(B) in the Code of Virginia, staff recommended approval of the project, as proposed, conditioned upon the purchase of 1,464 square feet of tidal wetlands credits from the Libertyville Mitigation Bank, and the payment of the encroachment royalty.

Jim Kahoon, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Kahoon explained that the staff's had covered the information regarding the project in their evaluation and this had been ongoing for many months, during which time they contacted all necessary agencies, both State and federal. He noted that they could not extend the pipe as recommended by VIMS and they have done all they can to protect the wetlands.

Commissioner Bull opened the public hearing for comments pro and con. There were no public comments and he state the matter was before the Commission for discussion or action.

Associate Member Neill moved to approve the staff's recommendation. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

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| Royalty Fee (1,500 sq. ft. @ \$1.50/sq. ft. | \$2,250.00 |
| Permit Fee | \$ 100.00 |
| Total Fees | \$2,350.00 |

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- 6. WILLIAM S. EDWARDS, #15-1033**, requests authorization to install two (2) 3-foot wide by 12-foot long piers and six (6) mooring piles to create two (2) additional rental boat slips, at an existing commercial marina, along Edwards Creek at 768 S. Bay Haven Drive in Mathews County. The project is protested by an adjacent property owner.

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

Mr. Johnson explained that while staff was sensitive to Mr. Savage's concerns regarding the impacts to the aesthetics of his property and potential encroachments of his riparian area. The parcel owned by Mr. Edwards has been zoned commercial by the County of Mathews and has been in operation for several years. Staff felt the addition of two boat slips did not constitute a large increase in the ongoing activities for the facility. After review of aerial photography and Mathews County parcel maps staff was of the opinion the proposed slips did not interfere with the access to and use of Mr. Savage's property

from the water. Accordingly, 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, as proposed.

Patricia Ryan, was sworn in and her comments are a part of the verbatim record.

Commissioner Bull asked for public comments, pro or con. He stated that since there were no public comments the matter was before the Commission for discussion or action.

Associate Member Erskine moved to accept the staff recommendation, as submitted. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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| Permit Fee | \$25.00 |
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- 7. **SHANNON FEDORS, #2014-075**, requests reconsideration of her application to lease up to 50 acres of oyster planting grounds within York River near the Allen Islands in Gloucester County, which was denied at the August 25, 2015, Commission meeting. The request is based upon the applicant not receiving the notice of the meeting until after the August meeting date.

Ben Stagg, Chief Engineer, Engineering and Surveying, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Mr. Stagg explained that this application was heard at the August meeting and it was denied because of haul seine activity in the area. Ms. Fedors notice of the meeting was mailed late by staff and received late by her. It may be necessary to ask VMRC Counsel for an opinion on whether this hearing can proceed.

J. Duncan Pitchford, Assistant Attorney General and VMRC Counsel, explained that the Commission did have the authority to reconsider their decision.

Mr. Stagg explained that staff originally recommended denial because of the haul seining activity in the area and now staff adds to their original information that there is SAV in the area, therefore, staff does not recommend leasing the area because of the presence of the SAV and the haul seining activity. If approved, it could require an additional public hearing if it is protested during the surveying process. Mr. Stagg noted the Bonnaville application was approved last month when staff recommended denial because of haul seining activity. When asked why there was no mention of the presence of SAV at the

previous meeting, staff explained it was an oversight by staffs since th recommendation for denial was based on the haul seine activity.

Shannon Fedors, application, was sworn in and her comments are a part of the verbatim record. Ms. Fedors said the notice was dated Thursday and received by her the following Wednesday, after the Commission meeting. She stated she was willing to amend the application to exclude the SAV, but strike had been good in the York River last year. She said she had other leases in other rivers and another small lease near this one where she was utilizing cage aquaculture.

Commissioner Bull asked for public comments, pro or con. There were none.

After some discussion, Commissioner Bull stated the matter was before the Commission.

Commissioner Bull asked Richard Green to comment. Richard Green was sworn in and his comments are a part of the verbatim record. Mr. Green stated this area has been traditionally leased and he did not object and he understands about not leasing an area with SAV present.

Commissioner Bull stated the matter was before the Commission for a motion.

Associate Member Ballard stated that he recognized the concerns of the other Associate Members but he felt that enough had been done to approve the application but to exclude the area where SAV was present. Associate Member Erskine seconded the motion.

After further discussion about concerns of proper notice to all parties involved, Associate Member Zydron offered a substitute motion to continue this matter until the October meeting and to readvertise the application with the Commission covering the cost of the advertisement. Associate Member Neill seconded. The motion failed, 3-5.

Associate Member Ballard's original motion carried, 8-0-1. Chair voted yes. Associate Member Neill abstained.

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- 8. THOMAS H. JAMES III, #2015-100, requests authorization to lease approximately ten (10) acres of oyster planting ground in the Chesapeake Bay, north of The Gulf in the Old Town Neck area of Northampton County. The application is protested and submerged aquatic vegetation is present in the lease request area.**

Hank Badger, Chief Engineer, Engineering and Surveying, 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 planting of shellfish in this area would destroy the widgeon grass present and inhibit any SAV restoration. Also, Regulation 4 VAC 20-335-30, which authorizes certain shellfish aquaculture structures on leased ground, states that no new structures (including nets) shall be placed on existing stands of submerged aquatic vegetation. The restoration of SAV habitat is a goal of the Chesapeake Bay Agreement and staff recognizes the important habitat such areas provide. Accordingly, staff strives to avoid leasing areas that have productive SAV habitat.

Mr. Badger further explained that the Virginia Institute of Marine Science's SAV maps indicate that there has been submerged aquatic vegetation in the area that Mr. Thomas has applied for eight of the last ten years and their 2014 map indicates the area is almost completely covered. Staff, therefore, is unable to support the applicant's request for approximately ten (10) acres of Oyster Planting Ground in this area and recommends denial.

Thomas H. James III, applicant, was sworn in and his comments in support of his application are a part of the verbatim record. Mr. James explained that the widgeon and eel grass were not present in the area as much as in years past. He explained further the sand bar movement would impact him as well as the grasses. In response to a question, Mr. James stated that the VIMS map does not correctly show where the grasses are located or the actual amount that is in the area. He said the 2006 slides show clam beds and no SAV. He said with the shortage of boat ramp access on the shore he needed a site with access.

Commissioner Bull asked for public comments, pro or con.

Cela Burge, Attorney for the protestants, was present and her comments are a part of the verbatim record. Ms. Burge reminded the Commission that the staff recommendation was following the existing policy of the Commission, which was to deny the application because of the presence of the SAV. They requested denial of the application for lease.

Commissioner Bull closed the public hearing. He stated the matter was before the Commission for discussion or action.

After further discussion, Commissioner Bull stated again the matter was before the Commission.

Associate Member Erskine stated that he understood that the applicant wanting to lease this area, but it was not an appropriate area for this activity; therefore, he

moved to accept the staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

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9. **CHRISTOPHER N. PRITCHARD, #2014-323**, requests authorization to lease up to 30 acres of oyster planting grounds within Horn Harbor in Mathews County. The application is protested by a number of local highland property owners.

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

Mr. Stagg explained that while staff acknowledged the continued objections of a few of the highland property owners, staff also believed the modified survey represented a fair compromise considering all the original objections and the remaining objections to the final survey of the application area. Therefore, staff recommended approval of the modified surveyed area of 24.96 acres.

Christopher Pritchard, applicant was sworn in and his comments in support of his application are a part of the verbatim record. Mr. Pritchard explained that he did not plan to use cages, but to shell the grounds to build the shore up. He added that there were oysters already present.

Commissioner Bull asked for public comments in support of the request.

Darwin Harding, was sworn in and his comments are a part of the verbatim record. Mr. Harding explained that the application for riparian rights was done just to block this application and not to actually use for growing oysters. He said it was wrong to allow this and the individuals should be able to work together.

Commissioner Bull asked for public comments in opposition to the request.

Bart Johnson, highland property owner and protestant, was sworn in and his comments in opposition are a part of the verbatim record. Mr. Johnson explained that he was not aware that cages were not being used. He said that the cages would be a hazard to navigation.

Steve Taylor, highland property owner and protestant, was sworn in and his comments in opposition are a part of the verbatim record. Mr. Taylor stated that he agreed with Mr. Johnson as he too had concerns with the cages being used because of the low tide even though they were limited to no higher than 12 inches off the bottom. He said there was recreational activity and they do use their riparian rights but for different purposes. He added he was not opposed to traditional use of the lease, just against the use of cages.

Mr. Pritchard explained that he always used shells as it was not feasible for him to use cages.

As there were no further public comments, Commission Bull closed the public hearing. He stated the matter was before the Commission for discussion and action.

Associate Member Tankard stated that he supported the staff recommendation and made a motion for approval. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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DISCUSSION: Reconsideration of limited entry management measures approved by the Commission at its meeting on August 25, 2015 to establish a limited entry oyster fishery for oyster dredge and oyster hand scrape licenses.

Commissioner Bull stated that the oyster fishery is important to the Bay, the economy, and watermen. The number of licenses had increased three times over what it was 10 years ago. The recent spatsets in 2013 and 2014 were not as good leaving less resource with a larger pool of watermen to harvest it. He said there were 1,819 oyster hand scrape and oyster dredge licensees. The Commission was trying to limit the fishery to help the fishery and full time watermen and the less than 20 days of harvest reported was not quite right and confusing. He said it was adopted with good intentions, but more work is needed. He stated that there would be time for accepting public comments.

After much discussion about the criteria for limited entry and impacts, Commissioner Bull stated that this was a hard decision to be made by the Commission. The 20 day rule had unintended consequences and other criteria could be used and the industry does not see the need for license control or significant control. There needs to be more discussion with different criteria and maybe some will understand more.

Commissioner Bull stated that the SMAC should look at this all again and the Commission can consider it next summer. Commission should send it to SMAC for guidance.

Commissioner Bull opened the public hearing.

A number of individuals spoke in opposition to keeping the limited entry measures approved by the Commission at the August meeting. Their comments are a part of the verbatim record.

Those who commented:

Richard Green, Charles Williams, Rick Hyatt, Ben Johnson, Marc Brown, David McGinnis, Reed Williams, Pat Watson, Wes Robbins.

Commissioner Bull asked what did the Commission want to do.

Associate Member Erskine moved to rescind the limited entry and send it back to the SMAC with instructions and a deadline of next summer. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

Robert O'Reilly, Chief, Fisheries Management asked if this emergency action could include the clarifying of the language regarding the quotas and harvest limits requested by Law Enforcement and also advertise it for a public hearing in October.

Associate Member Neill moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

10. PUBLIC COMMENTS. None

11. OFFENDERS.

Johnnie Tynes – present and sworn in

Jeff Copperthite, 1st Sergeant, Law Enforcement, gave the presentation of the information relating to the summons and convictions and his comments are a part of the verbatim record.

Fail to Fish Commercial Gill Net Tag # 20449; summons issued on June 17, 2015 pursuant to Chapter 4VAC 20-550-20; conviction on August 11, 2015, Surry County General District Court (Criminal), fine \$250.00 with \$150.00 suspended, court cost \$86.00.

Fail to fish commercial gill net tag #10266; summons issued on June 17, 2015 pursuant to Chapter 4VAC 20-550-10; convicted August 11, 2015, Surry County General District Court (Criminal), fine \$250.00 with \$150 suspended, court cost: \$86.00.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that two commercial gear convictions, within a 12 month period, should result in at least 6 months revocation during the offender's second Commission appearance. These violations occurred during Mr. Tyne's probationary period. In accordance with Code Section 28.2-232, staff recommended the

Commission revoke all Mr. Tyne's licenses to take or catch fish, shellfish, and marine organism for a period of six months from the date of this Commission meeting, September 22, 2015, through March 21, 2016. Staff also recommends the Commission revoke Mr. Tyne's fishing privileges, within the Commonwealth's tidal waters, for a period of six months from the date of this Commission meeting, September 22, 2015, through March 21, 2016.

Mr. Tynes explained that the fact that he was on probation was inexcusable, but he had not been well and able to fish the gear. He said he was divorced and had custody of all five of his children. He explained that today at the meeting he was not feeling well at all and was having difficulty with just organizing his thoughts. He explained that he had no health insurance and was only to try to take care of his health issued on his own.

After some further discussion, Associate Member Zydron moved to accept the staff recommendation to revoke all of Mr. Tyne's licenses and fishing privileges for six months, starting September 22, 2015, through March 21, 2016. Associate Member Neill seconded the motion. The motion carried, 8-1. Chair voted yes.

James L. West – present and sworn in

Patrick West, Marine Police Officer, Law Enforcement, gave the presentation of the information relating to the summons and convictions and his comments are a part of the verbatim record.

No gear license (hand scrape); summons issued December 1, 2014 pursuant to Code Section 28.2-201 and Chapter 20-720-75, convicted on July 20, 2015, Newport News General District Court (Criminal), fine \$50.00, court cost \$91.00.

Quotas and harvest limits, summons on December 1, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-90; convicted July 20, 2015, Newport News General District Court (Criminal), fine \$50.00, court cost \$30.00.

No gear license (hand scrape); summons issued December 2, 2014 pursuant to Code Section 28.2-201 and Chapter 20-720-75, convicted on July 20, 2015, Newport News General District Court (Criminal), fine \$50.00, court cost \$150.00.

Quotas and harvest limits, summons on December 2, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-90; convicted July 20, 2015, Newport News General District Court (Criminal), fine \$50.00, court cost \$221.00.

No gear license (hand scrape); summons issued January 1, 2015 pursuant to Code Section 28.2-201 and Chapter 20-720-75, convicted on June 18, 2015, Gloucester County General District Court (Criminal), fine \$100.00, court cost \$86.00.

Quotas and harvest limits; summons issued on January 2, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-80; convicted June 18, 2015, Gloucester County General District Court (Criminal), fine \$216.00, \$360.00 restitution paid to Oyster Replenishment Fund, court cost none.

Quotas and harvest limits, summons on January 6, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-80; convicted June 18, 2015, Gloucester County General District Court (Criminal), fine none, court cost \$206.00.

Mr. West stated that he did not know it required a license in the past did not have to have them and he was never notified that it was required.

Joe Cimino, Fisheries Management Manager Sr., read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of catching more than 50% over the limit of shellfish, within a 12-month period, should also result in at least one year probation; and, that two convictions of harvesting oysters without a gear license, within a 12-month period, should also result in one year probation. However, given the severity and number of convictions, Fisheries and Law Enforcement are recommending one year revocation. In accordance with Code Section 28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. West's licenses to take or catch fish, shellfish, or marine organism for a period of one year from the date of this Commission meeting, September 22, 2015, through September 21, 2016. Staff also recommended the Commission revoke Mr. West's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, September 22, 2015, through September 21, 2016.

After much discussion, Associate Member Ballard said that a waterman needed a license each year and it should have been obtained once he was told. He moved for placing Mr. West on two-year probation, starting September 22, 2015, through September 21, 2017. Associate Member Minor seconded the motion. The motion carried, 7-2. Chair voted no and Associate Member Tankard voted no.

Michael Clair – present and sworn in

David Drummond, Marine Police Officer, Law Enforcement, gave the briefing of the summons and convictions and his comments are a part of the verbatim record.

Participate in taking oysters with a non-resident; summons on December 15, 2014 pursuant to Code Section 28.2-635; convicted on June 8, 2015, Accomack County General District Court (Criminal), fine \$500.00 with \$100.00 suspended, court cost \$86.00.

Given the severity and specific details of this case, Fisheries and Law Enforcement staff are recommending a two year revocation. In accordance with Code Section 28.2-232,

staff recommended the Commission revoke all Mr. Clair's licenses to take or catch fish, shellfish, or marine organism for a period of two years from the date of this Commission meeting, September 22, 2015, through September 21, 2017. Staff also recommended the Commission revoke Mr. Clair's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, September 22, 2015, through September 21, 2017.

Chester Smith, Attorney representing Mr. Clair, was present and his comments are a part of the verbatim record. Mr. Smith said that there had been only one prior violation and they were requesting that the Commission not revoke his licenses. He said the Commission should consider the fact that he had pleaded guilty in court and not put additional punishment on Mr. Clair and his family. He added that Mr. Claire worked hard to support his family. In response to prior violations and convictions, he said Mr. Claire had prepaid his fines and did not think they were considered convictions. He said that everyone should have a second chance in order to support his family and he was requesting that he be placed on probation as he had no other means of making a living.

In response to his attorney's questions, Mr. Claire stated he did not think when he prepaid the fines, these were considered convictions and Ms. Perry was a very good culler and he needed someone to work with. He stated he thought it was okay to use an agent. He said he had never been questioned before by a Marine Police Officer. He said he wants the Commission to give him the two year probation. He stated he had been on the water for 35 years.

Associate Member Minor stated he believed in second chances and moved for the two year probation, starting September 22, 2015, through September 21, 2017. Associate Member Neill seconded the motion.

After further discussions, Associate Member Tankard offered a substitute motion to accept the staff recommendation to revoke all Mr. Claire's licenses and fishing privileges, starting September 22, 2015, through September 21, 2017. Associate Member Zydron seconded the motion. Associate Member Erskine suggested just one year revocation and Associate Members Tankard and Zydron both said no. The motion carried, 6-2-1. Chair voted yes. Associate Members Minor and Erskine voted no. Associate Member Ballard abstained.

Vernon Ward – present and sworn in

Brandon Price, Marine Police Officer, gave the briefing of the information on the summons and convictions. His comments are a part of the verbatim record.

Possession uncultured oysters undersize (8 quarts); summons issued on April 30, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-260-40; convicted on June 1, 2015, Newport News General District Court (Criminal), fine \$150.00, court cost \$91.00.

Joe Cimino, Fisheries Management 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. Ward on probation for a period of one year from the date of this Commission meeting, September 22, 2015, through September 21, 2016. Any failure on Mr. Ward'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. Ward appearing before the Commission for a hearing on license revocation.

Mr. Ward asked that the Commission not take his license as he had kids at home to feed.

Associate Member Tankard moved to accept the staff recommendation for the one year probation, starting September 22, 2015, through September 21, 2016. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.

Richard Gibson, Jr. – present and sworn in

Brandon Price, Marine Police Officer, gave the briefing of the information on the summons and convictions. His comments are a part of the verbatim record.

Possession uncultured oysters undersize (8 quarts); summons issued on April 30, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-260-40; convicted on June 1, 2015, Newport News General District Court (Criminal), fine \$150.00, court cost \$91.00.

Joe Cimino, Fisheries Management 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. Gibson on probation for a period of one year from the date of this Commission meeting, September 22, 2015, through September 21, 2016. Any failure on Mr. Gibson'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. Gibson appearing before the Commission for a hearing on license revocation.

Mr. Gibson explained that he was just doing the tonging and someone else was doing the culling. He stated that he tried to obey the law and had only worked one day on this boat.

Associate Member Haynie moved to place Mr. Gibson on six month probation. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Darren Crow – not present

Joe Cimino, Fisheries Management Manager Sr., explained that Mr. Crow was not present.

Warner Rhodes, Deputy Chief, Law Enforcement, stated that they checked the hallway and he was not present.

Associate Member Zydron moved to suspend all of Mr. Crow’s licenses until he appeared before the Commission. Association Member Minor seconded the motion. The motion carried, 9-0. Chair yes.

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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."

Laurie Dozier, Fisheries Management Specialist, explained that Richard Johnson was not present at this hearing and he had not appeared at the August 2015 Commission meeting at which time the Commission suspended all Mr. Johnson’s licenses until he did appear before the Commission.

Associate Member Zydron moved to continue with Mr. Johnson’s license suspension until he did appear before the Commission. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

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13. DISCUSSION: Report from the recent law enforcement subcommittee meeting.

Robert O’Reilly, Chief, Fisheries Management, gave the presentation with slides and his comments are a part of the verbatim record.

Mr. O’Reilly explained that there had been changes in the Code as regards Code Section 28.2-232 where there was now a five year revocation of all licenses and fishing privileges and a penalty where only a commercial fisherman could be fined up to \$10,000.00. This was used when the violation occurred when the individual had already had all of his licenses and fishing privileges revoked for two years. He noted that the funds that result from this fine would go to the Marine Product Board. He explained there was a change in Code Section 28.2-528 that was for the theft of oysters and only allowed for a maximum of five year license revocation. He stated that this would become effective July 1, 2015.

Staff recommends the Commission adopts the new schedule of existing sanctions as modified by Law Enforcement, as well as sanctions for new natural resource violations that were not previously listed in the guidelines for sanctions. Staff recommends that the Commission consider the severity of the initial violation when determining fines. Staff knows the Commission may want to develop other means for assessing fines for those individuals who fish while under revocation. These fines are only for commercial fishermen who are convicted of a violation while licenses have been revoked and any initial revocation has to have occurred after July 1, 2015.

Associate Member Zydron moved to accept the staff’s recommendations. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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

Cancelled – to be rescheduled for a later date.

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- 15. DISCUSSION:** Report on FMAC discussions of cow nose rays, spiny dogfish and other issues, with possible staff request for public hearings.

Lewis Gillingham, Director, SWFT, gave the presentation with slides and his comments are a part of the verbatim record.

After some discussion, Commissioner Bull said it was consensus of the Board to wait for the workshop and come back to look at this again.

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- 16. REQUEST FOR AN EMERGENCY AMENDMENT:** of Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” Emergency Regulation, to clarify the provisions of the recently adopted limited entry oyster fishery requirements for 2016.

No action taken.

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17. **PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest” the Commission shall consider the following proposal for the 2015-2016 public oyster harvest season for two areas in the Pocomoke Sound west of Saxis, Virginia, whereby the lawful seasons and areas for the harvest of oysters by hand scrape from the public oyster grounds are as follows: Pocomoke Sound, Public Ground Number 9 November 16, 2015 through November 27, 2015, and Pocomoke Sound, Public Ground Number 10: November 30, 2015 through December 11, 2015.

Jim Wesson, Dept. Head, Conservation and Replenishment, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Wesson explained that after going to the area and doing a survey of the public ground 11 and prior surveys of public grounds 9 and 10 staff did not recommend opening these areas for the harvest of oysters. He said what little amount of oysters that were found at this location may be the only broodstock available for these areas and the areas that are opened in the Pocomoke and Tangier Sounds.

After some discussion, Commissioner Bull opened the public hearing.

A number of individual watermen spoke in favor of opening these areas. Their comments are a part of the verbatim record.

Those present who commented in support of opening these areas: Bill Baliss, Freddie Linton, Arnold Evans, Phillip Williams, Melanie Bailey and Thomas Pruitt all of the Saxis, Virginia area.

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

In response to a question from the Board, Mr. Wesson explained there was a need for shells for cultch in these areas and it had been discussed, but it was decided that it should not be done since so many Maryland watermen were poaching here.

After further discussion, Commissioner Bull stated the matter was before the Commission.

Associate Member France moved to open public ground 10 in the Pocomoke Sound for two weeks and then do an assessment of the area after the area closed. Associate Member Minor seconded the motion. After further discussion on when the two-week period should be set, on suggestion of Associate Member Erskine, it was decided that the area be opened the first two weeks of November, starting November 2, 2015, through November 13, 2015. When asked by Associate Member Ballard about the tracking of harvest, staff responded that the mandatory reporting was not

available for making an assessment of the harvest that quickly. The motion carried, 8-1. Chair voted yes. Associate Member Neill voted no.

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18. **PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters” to establish a permit for incidental harvest of lobsters in state waters, in accordance with amendments to the fishery management plan for American lobster, established by the Atlantic States Marine Fisheries Commission.

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

Mr. Cimino explained that the vast majority of harvest of American lobster occurred in federal waters. VMRC’s management measures have been kept consistent with federal regulations, as well as the measures adopted by the ASMFC Fishery Management Plan (FMP). This draft amendment will bring the State back into compliance with the FMP. Staff recommended amending Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters” to establish a permit for incidental harvest of lobsters in state waters.

Commissioner Bull opened the hearing to public comments in support.

Jim Dawson, Chincoteague Fisherman, was present and his comments are a part of the verbatim record. Mr. Dawson explained that the fish pot which was used for catching all fish was different from a lobster trap and this incidental catch permit for lobster needed to be done. He stated he requested approval.

Ty Farrington, waterman, was present and his comments are a part of the verbatim record. Mr. Farrington asked if a permit was needed in the Bay, for all gears.

Harry Doernte, waterman, was present and his comments are a part of the verbatim record. Mr. Doernte said he agreed with Mr. Dawson and Mr. Farrington that there needed to be a permit required.

As there were no further public comments, Commissioner Bull stated the matter was before the Commission for discussion and action.

Associate Member Minor moved to accept the staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 19. **REQUEST FOR PUBLIC HEARING:** Propose amendments to Chapter 4 VAC 20-1090-10 et seq., “Pertaining to Licensing Requirements and License fees” to establish an eel pot license.

Joe Cimino, Fisheries Management Manager, Sr., gave the briefing for the request for a public hearing. His comments are a part of the verbatim record.

Mr. Cimino explained that the fish pot and eel pot license was the same license now and this proposed amendment to regulation would make them separate licenses with the same individual license cost. The purpose of this amendment was to conform to the requirements of the Atlantic States Marine Fisheries request to manage the American eel fishery.

Associate Member Erskine moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0.

- 20. **REQUEST FOR PUBLIC HEARING:** Propose amendments to Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder” that modify current commercial summer flounder management measures.

Joe Cimino, Fisheries Management Manager Sr., gave the briefing for the request for a public hearing. His comments are a part of the verbatim record.

Mr. Cimino explained that this was a proposal 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.

Associate Member Erskine moved to accept the staff recommendation to hold a public hearing in October. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

- 21. **REQUEST FOR AN OCTOBER PUBLIC HEARING:** to consider maintaining the closure of the blue crab winter dredge fishery, for the 2015-2016 season.

Robert O’Reilly, Chief, Fisheries Management gave the briefing for the request for public hearing. His comments are a part of the verbatim record.

Mr. O'Reilly noted that the Crab Management Advisory Committee were in support of opening of the Crab Dredge Fishery. He noted that this fishery had been closed since the 2008-2009 season.

After some discussion, Associate Member Erskine moved to accept the staff recommendation to hold a public hearing in October. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

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22. REQUEST FOR PUBLIC HEARING: Proposed amendments to Regulation 4VAC 290-10 et seq. "Pertaining to Marking of Leased Oyster Planting Ground" and Regulation 4VAC 20-335-10 et seq., "Authorizes Shellfish Aquaculture Structures." The amendments are proposed to address the marking requirements for leases and areas within lease 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.

Ben Stagg, Chief Engineer, gave the briefing of the information regarding the proposed amendments to the two regulations. His comments are a part of the verbatim record.

Mr. Stagg explained that these two regulations would be reviewed by the Regulatory Review Panel in the agency.

Mr. Stagg said that staff recommended these amendments be advertised for a public hearing in October.

After some discussion, Associate Member Tankard moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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23. REQUEST FOR APPROVAL: Recommendations from the Recreational Fishing Advisory Board on funding projects from the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF).

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 the DGIF representative requested that funding be expedited in order for construction to be completed prior to anadromous fish closures in the rivers.

The projects are listed below:

A) Town Point Boat Landing Renovation and Expansion, Phillip Lownes, Department of Game and Inland Fisheries \$61,265.

B) Fox Hill Boat Landing and Parking Lot Improvements, Phillip Lownes, Department of Game and Inland Fisheries \$137,500.

C) West Point Landing Renovation and Expansion, Phillip Lownes, Department of Game and Inland Fisheries \$120,545.

The total approved funding from VSRFDF is \$319,310 for the three projects.

Mr. O'Reilly said that the staff recommended approval.

Associate Member Neill moved to approve the staff recommendations. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

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The Commission agreed to combine the November and December Commission meetings and hold one meeting on December 8, 2015

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There being no further business, the meeting was adjourned at approximately 5:50 p.m. The next regular Commission meeting will be Tuesday, October 27, 2015.

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John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary