

MINUTES**Commission Meeting****February 25, 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
A. J. Erskine	
S. Lynn Haynie	
Ken Neill, III	Associate Members
J. Bryan Plumlee	
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
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
Bill Thompson	Marine Police Officer
David Drummond	Marine Police Officer
Steve York	Marine Police Officer
Mike Morris	Marine Police Officer
Jamie Hogge	Marine Police Officer
Ron Cagle	Marine Police Officer
Chip Dize	Marine Police Officer

Commission Meeting

**17076
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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.
Bradley Reams	Program Support Tech., Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Emily Hein
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Others present:

Doug Campbell	Tim Mauzy	Larry Bullock
Sydney Speight	Bob Simon	Carl Eason
Rick Bartlett	Ricky Woody	R. Lockhart
Terrell Bauers	Tim Locklerr	Willis Robertson
Ray Watson	Walter Apelt	George B. Baker
Harry Bowen, Jr.	Richard Owens	Rufus Ruark, Jr.
Jim Wharton	Jim Keeling	W. F. Allen
Craig Palubinski	Thomas Gaskins	Kyle Sawyer
Kim Huskey	Buddy Wyker	Jim Lang
Richard Green	James Young	Bill Wick
Nancy Long	Carl Smith	Phil Townsend
L. M. Bell	Ed Bender	Emily Davies
Pete Mansfield	Lance Shores	Beth Synowiec
Mel Ramy	Keith Nuttall	Jon Lucy
Robert Gammisch	Doug Purcell	Marvin Hardistt
Ed Lawrence	W. C. Tice	Rich Calvin
M. Womack	Andy Lacatell	Bob Reed
Joe Shelton	Lewis W. Brothers	C. Meade Amory
Matt Rinck	Tom Elliott	B. J. Baloga
Curt Heath	Chris Ludford	Robert Holloway
Susanna Musick	Dennis Porter	Timothy Locklear
Donna Locklear	Peter Bender	

and others

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Commission Meeting

**17077
February 25, 2014**

Acting Commissioner Bull called the meeting to order at approximately 9:32 a.m. Associate Members Beck, Close, Sessoms, and Tankard were absent. The meeting proceeded with a quorum.

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

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

Tony Watkinson, Chief, Habitat Management informed the Commission that Item 11, Marshall Cox was pulled from the agenda.

Robert O'Reilly, Chief, Fisheries Management, requested that Item 20, Speckled Trout be heard after the Item 12, Public Comment because of the number of attendees from long distances that might be in attendance at today's hearing.

Acting Commissioner Bull asked for a motion to approve the amended agenda.

Associate Member Plumlee moved to approve the agenda, as amended. Associate Member Erskine seconded the motion. The motion carried, 5-0. Chair voted yes.

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MINUTES: Acting Commissioner Bull asked if there were any changes or corrections to be made to the January 28, 2014 Commission meeting minutes.

As there were no corrections or changes, Acting Commissioner Bull asked for a motion to approve the minutes. **Associate Member Plumlee moved to approve the minutes. Associate Member Haynie seconded the motion. The motion carried, 4-0-1. Chair voted yes. Associate Member Erskine abstained as he was absent for the January 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.

Acting Commissioner Bull asked for public comments. There were none. He asked for a motion.

Associate Member Plumlee moved to approve all of the page two items. Associate Member Erskine seconded the motion. The motion carried, 5-0.

- 2A. **LOUDOUN WATER, #10-2020**, requests authorization to modify a previously-authorized permit for the Potomac River Water Supply Project in Loudoun County to include boring 58 linear feet of the raw water transmission line a minimum of 3 feet below Sycolin Creek, install 30 linear feet of riprap not more than 21 feet channelward of ordinary high water in the Potomac River and 26 linear feet of riprap not more than 7 feet channelward of ordinary high water in the Potomac River for protection of two storm water outfalls, moving the location of the raw water intake structure and pipes approximately 35 feet downstream in the Potomac River, and moving the location of the temporary cofferdam approximately 60 feet downstream in the Potomac River.

No applicable fees

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- 2B. **CITY OF ALEXANDRIA, #13-1814**, requests authorization to install temporary cofferdams and repair four existing weirs in Cameron Run by placing 190 linear feet of riprap at weir #2; 200 linear feet of riprap, as well as repairing an existing concrete energy dissipater using cast-in-place concrete at weir #3; 145 linear feet of riprap at weir #4; and 140 linear feet of riprap at weir #5 adjacent to the 3600 – 4000 blocks of Eisenhower Avenue in the City of Alexandria.

Permit Fee.....	\$100.00
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- 2C. **CORMAN CONSTRUCTION, #14-0011**, requests authorization to replace the existing west bound and east bound triple span bridges with two (2) single span bridges crossing over Tuckahoe Creek which will include the use of temporary cofferdams to remove the existing bridge pilings associated with the expansion of Interstate 64 within the existing Virginia Department of Transportation right of way between Rockville Road and Pouncey Tract Road in Goochland and Henrico

Counties. 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
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3. CONSENT AGENDA ITEMS. None

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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.

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5. WALTER COLLINS, #14-0019, requests authorization to construct 35 linear feet of riprap revetment adjacent to his property at 4026B Tanglewood Trail situated along an unnamed cove to the Eastern Branch of the Elizabeth River in Chesapeake. The project requires a wetlands permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. She noted that since the City of Chesapeake had not adopted the Wetlands Ordinance, the wetlands public hearing was held by staff as required here at the VMRC main office on February 18, 2014. Her comments are a part of the verbatim record.

Staff recommended approval of the project conditioned upon the purchase of 12 square feet of wetlands credits from the Libertyville Mitigation Bank.

Acting Commissioner Bull asked for questions.

Associate Member Plumlee asked if this mitigation bank was in the same watershed area. Ms. Woodward responded yes.

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

Associate Member Plumlee moved to approve the project and to include the purchase of 12 square feet of wetlands credit from the Libertyville Mitigation Bank. Associate Member Erskine seconded the motion. The motion carried, 5-0.

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6. **DOUG CAMPBELL, #11-1159**, requests authorization to install a six-foot wide, private, open-pile pier extending 145 feet channelward of mean low water with a 14-foot by 16-foot deck and a 15-foot by 32-foot covered boat slip along Lyons Creek at 156 Pasture Road in the City of Poquoson. The project is protested by an adjacent property owner and an oyster ground leaseholder.

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.

Staff recommended approval of the project, as proposed.

Acting Commissioner Bull asked, why was an application received in 2011 here at the Commission in 2014. Mr. Johnson explained that there were riparian issues and the court apportionment took a while.

Acting Commissioner Bull asked for the applicant or representative to comment.

Carl Eason, Attorney for the Campbells, was present and his comments are a part of the verbatim record. Mr. Eason explained that the time to amend was up as the court order was established and only the straight portion of the existing pier was over the lease. He added that it was a minimal project proposed.

Acting Commissioner Bull asked if there any other public comments either pro or con.

Harvey Brown and George Baker, protesters, were sworn in and their comments are a part of the verbatim record. Mr. Brown explained he was a full time waterman and was a participant in the Blue Crab Disaster Fund project. He said where his lease is located sometimes falls within the condemned shellfish harvest area when the Health Department decides it needs to be changed. He said the dock was in the deepest part and his cages were between the dock and the channel. He said they were asking for the change so the area for his cages was not limited as the dock cuts into the deepest part of the lease.

Walter Apelt, protester, was sworn in and his comments are a part of the verbatim record. Mr. Apelt said that this structure would impact his view and the suggestion to move it north would help. He said he was involved in the court riparian apportionment and it had been expensive. He said he did not object to the pier and t-head but he did have a problem with the boathouse. He said the boat house was larger than was needed for their boat and there was a marina about one and a half miles away where they could dock the boat.

Mr. Eason in his rebuttal comments stated that the order was issued in October 2012 and no one had objected to the court adjudication. He said it cannot be changed as the alignment was binding. He said the boat house was within the 700 square feet encroachment allowed by the Code of Virginia.

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

Associate Member Plumlee moved to approve the project as proposed as recommended by staff. Associate Member Neill seconded the motion. The motion carried, 5-0.

Permit Fee.....	\$100.00
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- 7. TEMPLETON PAVING, LLC, #12-1690, #13-0622, #13-0623, #13-0624, #13-0627**, requests reauthorization to dredge by dragline, between 100 – 7,500 cubic yards of sand per year from State-owned submerged land at their Haedens Bridge site in Goose Creek, Joppa Mill site in Goose Creek, and Otter-Anderson site in the Big Otter River in Bedford County, their Otter #2 site in the Big Otter River in Campbell County and at their Rivanna-Kent site in the Rivanna River in Fluvanna County. Authorization is also requested for a bridge crossing over Wolf Creek at their Joppa Mill site in Bedford County. The Campbell County Site is protested by an adjacent property owner.

Juliette Giordano, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record. She noted the Templeton representative was present.

Associate Member Plumlee stated that he felt that there was too much to be considered by them at one meeting.

Staff recommendation for approval of the projects was based on the following conditions:

- Adherence to a time-of-year restriction from March 15 to June 30 of any year at the mining sites in Bedford and Campbell Counties protective of the endangered Roanoke log-perch;
- Agreement to conduct mussel survey and relocation at the Rivanna-Kent site prior to each dredge cycle, and subsequent adherence to a time-of-year restriction from April 15 through July 31 and August 15 through September 30 of any year protective of the mussel species;
- Agreement to cooperate with DGIF on monitoring efforts at their mining sites;

- Installation of erosion and sediment control measures consistent with Mineral Mining Regulations and construction specifications for perimeter dikes and outlet sediment traps; or minimum design and implementation standards as described in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 to contain runoff from the dredge material stockpile area;
- Agreement to no additional bank clearing or grading at the project site and all dredge equipment shall operate from the bank on the landward side of the perimeter berm to be constructed at the top of the bank;
- Agreement to provide documented proof that the restoration of the site is covered under the Minerals Reclamation Fund through DMME;
- Agreement that no more than the permitted number of cubic yards will be removed from each site annually.

Larry Bullock, applicant’s representative, was sworn in and his comments are a part of the verbatim record. Mr. Bullock explained they had purchased Templeton in 2011 and they want to do what is right. He said that there were five mining operations and Haeden and Joppla were the two primary sites. He said that the DMME permits were issued in 1982 and 1989. He stated that they need sand for the asphalt mix and that they agreed with the staff’s recommendation. He said they were requesting approval.

Acting Commissioner Bull asked for other public comments either pro or con. There were none.

After much discussion about the two projects and the assessment of a civil charge as well as royalty fees, Acting Commissioner Bull stated the matter was before the Commission.

Associate Member Plumlee moved to approve a 5-year permit with a one -time royalty assessment of \$2,250 for the Haedens Bridge (#13-0622) and Joppa Mill (#13-0623) mining sites on goose creek in Bedford County with a \$1,000 civil charge for both applications and the assessment of a back royalty payment of \$2,250 for each site for mining that occurred during the previous five years. The approval of the Haeden’s Bridge (13-0622) and Joppa Mill (13-0623) applications included the conditions for each project recommended by staff. Associate Member Erskine seconded the motion. The motion carried, 5-0. The chair voted yes.

Haeden’s Bridge (13-0622)

Royalty Fee ((A-T-F) dredge 7,500 cu. yds. @ \$0.30/cu. yd.).....	\$2,250.00
Royalty Fee (dredge 7,500 cu. yds. @ \$0.30/cu. yd.).....	\$2,250.00
Permit Fee.....	\$ 100.00
Civil Charge.....	\$1,000.00

Haeden’s Bridge (13-0622 Cont.)

Total Fees.....	\$5,600.00
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Joppa Mill (13-0623)

Royalty Fee ((A-T-F) dredge 7,500 cu. yds. @ \$0.30/cu. yd.).....	\$2,250.00
Royalty Fee (dredge 7,500 cu. yds. @ \$0.30/cu. yd.).....	\$2,250.00
Royalty Fee (encroach 470.25 sq. ft. @ \$1.00/sq. ft.).....	\$ 470.25
Permit Fee.....	\$ 100.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$6,070.25

Otter #2 (13-0624); Otter-Anderson(12-1690); and Rivanna-Kent (13-0627)

Associate Member Plumlee moved to continue the above referenced three items. Associate Member Erskine seconded the motion. The motion carried, 5-0. Chair voted yes.

Tony Watkinson, Chief Habitat Management, noted that besides these issues today there were other mining projects of the same type and the Commission did need to look into how to handle them and establish a procedure to be followed.

- 8. THOMAS DALE GASKINS SEAFOOD, #13-1744,** requests authorization to construct an 18-foot wide by 40-foot long, open-pile, timber deck addition to an existing 48-foot long, L-head pier and to change the use of the structure from a private pier to a commercial seafood landing pier situated along Ellyson Creek in Northumberland County. The project is protested by adjacent and nearby property owners.

Jeff Madden, Environmental Engineer, Sr., gave the briefing on the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record. He provided a hand out from the applicant which he indicated was a letter of support for the project.

Staff recommended approval of the project with the following special conditions:

- The Permittee shall install and maintain waste receptacles on the pier;
- The Permittee shall develop and implement a spill contingency plan to address accidental spills associated with the use of the pier;
- The Permittee agrees to the one-time payment \$1692.00 for the encroachment on 1128 square feet of State-owned submerged land at a rate of \$1.50 per square foot.

Craig Palubinski, agent for the applicant was sworn in and his comments are a part of the verbatim record

Thomas Gaskins, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Gaskins stated this was a small fishing operation, family-owned. He said they load and unload pound nets and unload seafood such as fish and crabs.

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

After some discussion about limiting the number of boats that can be tied to the pier, Associate Member Eskrine moved to approve the project with the condition that no more than four boats were allowed to be tied to the pier at the same time. Associate Member Haynie seconded the motion. The motion carried, 5-0. Chair voted yes.

Royalty Fee (encroach 1,128 sq. ft. @ \$1.50/sq. ft.).....	\$1,692.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,792.00

- 9. TOWN OF PORT ROYAL, #13-1903**, requests authorization to construct a 206-foot long by 8-foot wide community fishing pier with a 40-foot by 10-foot T-head and a dry hydrant comprised of an 80-foot long 6-inch diameter PVC pipe on the pier and to construct a 35-foot long canoe/kayak launch ramp varying in width from 10-foot to 16-foot with a 35-foot long and a 30-foot long riprap groin along each side of the ramp adjacent to Town of Port Royal property off of King Street situated along the Rappahannock River in Caroline County. The project is protested by both adjoining property owners.

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

Staff recommended approval of the project, as proposed. Given the location and limited scope of the project staff did not feel a time-of-year restriction was necessary for the proposed construction since any impact on anadromous species should be minimal.

Craig Palubinski, agent for the applicant was sworn in and his comments are a part of the verbatim record.

Acting Commissioner Bull asked if anyone else had comments, pro or con.

Nancy Long, representative for the Town was sworn in and her comments are a part of the verbatim record. Ms. Long said the area was always open and was the proper location for a pier or dock as there was no other landing in the area.

Acting Commissioner Bull asked for other public comments, pro or con.

Timothy Locklear and Donna Locklear, protestants, were sworn in and their comments are a part of the verbatim record. They had concerns about the following:

- 1) Impact property values;
- 2) Close to private property;
- 3) Impact their riparian rights;
- 4) No licensed engineer designed;
- 5) Within the VDOT right of way;
- 6) VDOT sponsored a survey, but no plat was provided;
- 7) There was access available at King Street;
- 8) Two other right of ways were not used by public;
- 9) The area had flooded in the past;
- 10) Noise pollution currently not controlled by the town;
- 11) Boundary line adjacent was not complete;
- 12) Agreement between town and county was questionable; and
- 13) No funds to maintain area.

There were no other public comments.

Acting Commissioner Bull stated the matter was before the Commission.

After further discussion, Associate Member Erskine moved to approve the project conditioned on the structure being moved eight feet northward. Associate Member Plumlee seconded the motion. The motion carried, 5-0. Chair voted yes.

Permit Fee.....	\$100.00
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- 10. **DONALD J. GAWEN, #13-1566**, requests authorization to construct a 60-foot long by 12-foot wide by 6 inch thick, concrete private boat ramp which will extend 50 feet channelward of mean low water adjacent to property situated along a cove of Murphys Mill Creek, a tributary to White Point Creek in Westmoreland County. The project is protested by an adjacent property owner.

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

Staff recommended approval of the project with a condition limiting the length of the ramp to that which was necessary to reach a maximum depth of minus three (-3) feet at mean low water.

Craig Palubinski, agent was sworn in and his comments are a part of the verbatim record.

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

Associate Member Plumlee moved to approve the project as recommended by staff. Associate Member Haynie seconded the motion. The motion carried, 5-0. Chair voted yes.

Royalty Fee (encroach 480 sq. ft. @ \$0.50/sq. ft.).....	\$240.00
Permit Fee.....	\$100.00
Total Fees.....	\$340.00

- 11. **MARSHALL B. COX, SR., #13-087S**, requests authorization to lease approximately 6.23 acres of Oyster Planting Ground situated in The Gulf north of Smith Beach, Northampton County. The application is protested by three oyster ground leaseholders.

Pulled from the agenda.

12. PUBLIC COMMENTS:

Derelict Vessels

James Lang, an Attorney representing a waterfront property owner, gave a presentation regarding the status for the removal of numerous vessels in a section of the Elizabeth River, which are abandoned or derelict. He said that there were still a number of vessels that needed to be removed. He provided a handout for his presentation.

Bill Thompson, Marine Police Officer, gave a status report on the derelict vessels and stated that 32% had been resolved and that they were working with Mr. Mullane on the rest. Officer Thompson said that Mr. Mullane had requested 30 days to come up with a plan for further removals. He explained that Vessel A a large vessel Mr. Mullane had contested ownership but had agreed to remove it. He further explained that Vessel B he planned to remove it by utilizing it for a reef project in June. He said that for Captain George, Vessel O, Mr. Mullane was contesting ownership but agreed to remove it within 30 days. He said it was advertised by the city as an abandoned vessel. He said that Vessel R was for sale by Greenleaf and Associates and there was a possible buyer. He said that Vessel Q Mr. Mullane said it was not owned by him, but he was utilizing it to tie up his vessels. He said further that the City and Mr. Mullane were seeking funding for its removal. His comments are a part of the verbatim record.

Associate Member Haynie asked how Mr. Mullane would moor his vessels after the larger vessel was removed. Officer Thompson said that Mr. Mullane had plans to utilize mooring dolphins and that was in the works.

There were no other public comments.

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20. DISCUSSION: Report from FMAC on speckled trout winter cold-stun events and fishery management considerations.

Robert O'Reilly, Chief Fisheries Management, gave the briefing on the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. He provided a hand out of 40 additional letters of comments regarding the speckled trout.

Acting Commissioner Bull explained that the need for an emergency action would be based on the concerns for the status of the stocks.

Mr. O'Reilly said yes and he referenced Code of Virginia, Section 28.2-210, which authorized the VMRC to make emergency regulations.

After some discussion, Acting Commissioner Bull asked for questions. There were none. He asked for those in room in attendance for this item to raise their hands if they favored the proposed closure and then for those not in favor of the proposed closure. The only hands raised were for those in favor of the closure.

Acting Commissioner Bull asked for public comments.

Bob Reed, commercial charter boat operator, was present and his comments are a part of the verbatim record. Mr. Reed said that he supported the FMAC and staff recommendation to close the fishery and to stop it immediately. He suggested making it a closure for all user groups, as it was not fair to just close the recreational fishery.

Beth Synowiec, recreational fisherman, was present and her comments are a part of the verbatim record. Ms. Synowiec explained that she was a FMAC member and that she had had lots of calls and most did agree with the closure but before March 1. She asked why the commercial industry was not included.

Chris Ludford, commercial fisherman, was present and his comments are a part of the verbatim record. He said this closure would be an issue for the commercial industry as the quota was 290-300,000 pounds for the recreational fishery and less than 30,000 pounds for the commercial fishery and the quota was nearly caught already.

Acting Commissioner Bull closed the public hearing and asked for a motion.

Associate Member Erskine moved to accept the staff recommendation for the emergency regulation to close the recreational fishery from March 1 through July 31, 2014; and, to include the advertisement for a public hearing in March. Associate Member Haynie seconded the motion. After much discussion, the motion carried, 5-0. Chair voted yes.

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13. REPEAT OFFENDERS:

William F. Allen – present

Acting Commissioner Bull explained that since the notification of this hearing another violation had been added. He asked Mr. Allen if he wished to continue the matter until the March meeting. Mr. Allen stated he wanted to delay the hearing.

Lamont A. Green – not present

Jamie Hogge, Marine Police Officer, gave the briefing on the case against Mr. Green and explained the charges. Her comments are a part of the verbatim record.

Four striped bass over the possession limit; summons 11/14/13; convicted 12/16/13

Officer Hogge explained that the offense had occurred after the Commission had adopted the guidelines set forth by the Law Enforcement Subcommittee's Sanction report, adopted August 27, 2013. Officer Hogge read the staff recommendation which said that in accordance with the Code Section 28.2.232, staff recommended the Commission place Mr. Green on probation for a period of one year. Any failure on his part to obey any of the laws or regulation relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Green appearing before the Commission for a hearing on license revocation.

Warner Rhodes, Deputy Chief, Law Enforcement, explained that a certified letter of notification had been sent to a New Jersey address and the return receipt had been signed by someone else. It was noted that there was possibility that Mr. Green was in the military.

After some discussion about notification concerns and possible issues relating to the active military, Paul Kugelman, Assistant Attorney General and VMRC Counsel, recommended the Commission bypass this case and take no action at this time.

Associate Member Erskine moved to table the matter until there was appropriate notification. Associate Member Plumlee seconded the motion. The motion carried, 5-0. Chair voted yes.

Curtis E. Heath – present and sworn in.

David Drummond, Marine Police Officer, briefed the Commission on this case and explained the charges. His comments are a part of the verbatim record.

Shellfish not tagged and no shade on the clams – summons September 17, 2013; court conviction of all charges on October 22, 2013.

Officer Drummond explained that the offenses had occurred after the Commission had adopted the guidelines set forth by the Law Enforcement Subcommittee's Sanction report, adopted August 27, 2013. Officer Drummond said that in accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Heath licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of the Commission meeting.

When asked by the Commission board members, Mr. Heath responded he had not had his licenses taken away. He explained that he had forgotten the cover in his truck and that the shellfish had only been exposed for 15 to 20 minutes, the time it takes to get to the dock. He said he had used the cover over the shellfish before and he realized that this

was required to protect the shellfish from bacteria. He said the tag was blank because his pen was broken and it did not write.

Acting Commissioner Bull stated the matter was before the Commission.

Associate Member Plumlee moved to accept the staff recommendation and revoke all licenses for one year. Associate Member Neill seconded the motion. Upon questioning, Mr. Heath said he did usually use the tags and when asked said that his reporting was up-to-date. Associate Member Erskine said that he felt there was flexibility for a one-time offense and suggested six months revocation of all commercial licenses. Associate Members Plumlee and Neill both agreed to the amendment. The motion carried, 5-0. Chair voted yes.

James C. Keeling – present and sworn in.

Acting Commissioner Bull explained that since the notification of this hearing another violation had been added. He asked Mr. Keeling if he wished to continue the matter until the March meeting. Mr. Keeling stated he wanted to proceed with the hearing today.

Mike Morris, Marine Police Officer, briefed the Commission on this case and explained the charges. His comments are a part of the verbatim record.

Commercially taking oysters between sunset and sunrise and no shading on vessel – summons 9/30/13; convicted for both violations in Court 11/7/13

Officer Morris explained that the offenses had occurred after the Commission had adopted the guidelines set forth by the Law Enforcement Subcommittee's Sanction report, adopted August 27, 2013. Officer Morris said that in accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Keeling's fishing privileges, within the Commonwealth's tidal waters and revoke all licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of the Commission meeting.

Mr. Keeling explained that his pole had broken and the very next day he would not even need it and he was taking the oysters from his private grounds to a refrigerated truck. He said he was told he had to throw the oysters back overboard.

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

Associate Member Plumlee moved to place Mr. Keeling on two year probation and if there was another offense during that time he would be brought back before the board for a revocation hearing. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes.

James Marshall – present.

Acting Commissioner Bull explained that since the notification of this hearing another violation had been added. He asked Mr. Marshall if he wished to continue the matter until the March meeting. Mr. Marshall stated he wanted to delay the hearing.

Richard T. Owens – present and sworn in.

Chip Dize, Marine Police Officer, briefed the Commission on this case and explained the charges. His comments are a part of the verbatim record.

No shading over shellfish – summons issued 9/23/13; court conviction 11/25/13

Officer Dize explained that the offenses had occurred after the Commission had adopted the guidelines set forth by the Law Enforcement Subcommittee's Sanction report, adopted August 27, 2013. He said that in accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Owens' fishing privileges, within the Commonwealth's tidal waters and revoke all licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of the Commission meeting.

Rufus Ruark was present and sworn in. His comments on behalf of Mr. Owens are a part of the verbatim record. Mr. Ruark explained that Mr. Owens had removed the shading at his direction and he had thought the requirement was not required after September 1st. He requested that Mr. Owens' licenses not be revoked and that his (Ruark) licenses should be the ones to be revoked.

Associate Member Erskine stated that the Commission could not take Mr. Ruark's licenses and there was a need for consistency as shading violations were important. He moved to place Mr. Owens on two-year probation. Associate Member Plumlee seconded the motion. The motion carried, 5-0. Chair voted yes.

William K. Sawyer – present and sworn in.

David Drummond, Marine Police Officer, briefed the Commission on this case and explained the charges. His comments are a part of the verbatim record.

Obstructed Cull Rings Pot – summons issued 4/30/13; convicted in court 6/12/13
Undersized Channeled Whelk – summonses issued 10/15/13 and 10/21/13; convicted in court 11/13/13

Officer Drummond explained that the one violation occurred prior to the new sanction guidelines which were adopted August 27, 2013 and two violations for being over the possession limit for channel whelk were after the new sanction guidelines were adopted August 27, 2013. The first one was under the prior rules that said with three offenses

within one year the watermen would be given one year probation, which is the same as new sanction guidelines. Staff recommendation was to put Mr. Sawyer on probation for one year and if he failed to obey any of the laws or regulations relating to Marine Resources of the Commonwealth during the one year shall result in Mr. Sawyer appearing before the Commission for a license revocation hearing.

Mr. Sawyer was asked to address these convictions for the Commission. He said it was not fair to his family or to himself and he felt he was being targeted. He said he pleaded guilty to the first two convictions, but the third was for channel whelk that was not his as he had just moved them off of the scale when he came ashore. He informed the Commission that he had since received additional tickets. His comments are a part of the verbatim record.

Acting Commissioner Bull stated the matter was before the Commission

Associate Member Plumlee moved for 12 months probation as recommended by staff. Associate Member Erskine seconded the motion. Acting Commissioner Bull stated that Mr. Sawyer had displayed a bad attitude and deserved more. The motion carried, 4-1. Chair voted no.

Martin W. Womack – was present and sworn in

Steve York, Marine Police Officer, briefed the Commission on this case and explained the charges. His comments are a part of the verbatim record.

Over the recreational possession limit of sheepshead – 7 fish; summons 8/31/13; convicted in court 10/22/13

Officer York explained that this violation took place after the Commission adopted the guidelines set forth by the Law Enforcement Subcommittee's Sanction report, adopted August 27, 2013. According to the new guidelines, the conviction exceeding the possession limit by 100% within a 12 month period results in a staff recommendation of one year probation. Staff recommendation was to put Mr. Womack on probation for one year probation and if he failed to obey any of the laws or regulations relating to Marine Resources of the Commonwealth during the one year probation shall result in Mr. Womack appearing before the Commission for a license revocation hearing. The new guidelines stipulated that a second violation within the one year probation would result in a six months revocation of all licenses.

Mr. Womack explained that there were other people on the boat and they had their legal limits, but he was in possession of all of the fish, which was not legal, as the other individuals were not in the truck. He said he pleaded no contest when it went to court. He apologized and said he would not make the mistake again.

Associate Member Plumlee moved to accept the staff recommendation for 12 months probation. Associate Member Erskine seconded the motion. The motion carried, 5-0. Chair voted yes.

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14. RAYMOND WATSON: Commission consideration of an order to remove a vessel located on state-owned submerged lands at Urbanna Yachting Center in Urbanna Creek in Middlesex County.

Ron Cagle, Marine Police Officer, briefed the Commission explaining the status of the order to remove a derelict barge by Mr. Watson. His comments are a part of the verbatim record.

Willis Robertson, attorney for Mr. Watson, was present.

Ray Watson, was present and sworn in. His comments are a part of the verbatim record. Mr. Watson stated the vessel was not in his name and he did not run Urbanna Yachting Center as it was owned by someone else.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, asked if there was a conviction and fine at Court. Mr. Watson responded he was convicted in Court.

Acting Commissioner Bull asked him if he appealed the conviction. Mr. Watson stated no. He also asked Mr. Watson why he signed the legal document with the Commission agreeing to remove the barge. Mr. Watson explained that he wanted to move forward and he had hired a contractor who had to withdraw because of the excessive amount of the insurance requirements for him to do the job. He explained also that if he was still required to remove the barge, he would need time to find another contractor.

Mr. Robertson explained that they were dealing with a big organization and they needed an agreement from them to go on the property for the barge to be removed. He said they were requesting 90 days to get the barge removed.

Sydney Speight, Attorney for the Town of Urbanna, was present and his comments are a part of the verbatim record. Mr. Speight stated the barge was a safety hazard and they were requesting that Mr. Watson be required to remove it.

Peter Mansfield, member of Middlesex County Board of Supervisors, was sworn in and his comments are a part of the verbatim record. Mr. Mansfield stated he was not speaking for the board but for himself. He stated that there had not been an honest attempt to remove it. He explained that the County Attorney had brought a suit against Mr. Watson to get the barge removed and Mr. Watson was found to be owner and documentation proved it. He said that the barge is a hazard and the Commission should require the

structure be marked. He also said that Mr. Watson should not be given 3 months to remove it or it will come back before the Commission again. He said something needed to be done, with fines being levied.

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

Associate Member Plumlee moved to order removal of the barge and require proper marking for navigational safety. He added that removal would be required in 30 days of this date and after that 30th day Mr. Watson was to be taken to court by the Attorney General’s office for being in violation. He said the marking of the area was to be done in seven (7) days of this date by a professional contractor and if not done after the 7th day Mr. Watson was to be taken to court by the Attorney General’s office for being in violation. Associate Member Erskine seconded the motion. The motion carried, 4-0-1. Chair voted yes and Associate Member Haynie abstained.

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- 15. REQUEST BY INDUSTRY:** Amendments to Chapter 4VAC20-620-10 et seq. “Pertaining to Summer Flounder” to establish March 12, 2014 as the starting date, and establish a 20-day landing period, for the upcoming directed fishery season for summer flounder.

Meade Amory, Amory’s Seafood, was present and his comments are a part of the verbatim record. Mr. Amory said that he and other buyers request that the start date be changed to the second Wednesday, March 12, 2014 and the length of the landing period be changed to 20 consecutive days.

Rob O’Reilly, Chief, Fisheries Management was present and his comments are a part of the verbatim record. Mr. O’Reilly explained that the draft emergency chapter indicates a March 12th start date and to lengthen the within season landing period to 20 days. He stated that the 12,500 pounds limit was the same. He said a public hearing needs to be advertised for March. He stated the staff recommended adopting the emergency regulation and advertisement of a public hearing in March.

There were no public comments.

Associate Member Plumlee moved to adopt the emergency regulation and advertise for a public hearing. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes.

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16. **FORMAL HEARINGS:** Concerning ineligibility to obtain horseshoe crab pound net permits (Arthur Peter Bender and Edward H. Bender); a Class B Horseshoe Crab Dredge Permit (Arthur Peter Bender); and, a Class A Horseshoe Crab Dredge Permit (Edward H. Bender).

Arthur P. Bender, was sworn in and his comments are a part of the verbatim record. Mr. Bender explained that the pound net fishery was a family business and they only fished offshore not inshore. He said he made a mistake in his reporting years ago and now he cannot get both licenses, restricted and non-restricted, which he had in the past. He said he was the only one who had had the restricted and unrestricted license and it was unconstitutional to take it from the only one who held the license.

Associate Member Erskine asked if Mr. Bender if he attended the December 10, 2013 public hearing. Mr. Bender responded no, he did not realize it would affect him.

Acting Commissioner Bull asked if anyone else wished to comment.

Mark Bender, brother and waterman, was sworn in and his comments are a part of the verbatim record. Mr. Bender explained that it was a matter of reporting and he had reported for all, brother's, father's and self. He stated he did not know this would cause a problem.

After much discussion, Acting Commissioner Bull stated the matter was before the Commission. Associate Member Plumlee moved to deny the request. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes.

Edward Bender, father and waterman, was sworn in and his comments are a part of the verbatim record. Mr. Bender stated that the public notice and full draft regulation was not properly done as the Code of Virginia requires. He said the notice had to be posted in the newspaper and also the regulation was to be available in the office 15 days prior to meeting. He felt that the regulation adopted at the December 10, 2013 meeting was null and void. He provided a handout of his comments.

Associate Member Plumlee moved to reopen the Peter Bender issue. Associate Member Erskine seconded the motion. The motion carried, 5-0. Chair voted yes.

After some discussion and advice of VMRC Counsel, a motion was made by Associate Member Plumlee to advertise for a public hearing at the March 25, 2014 meeting to reaffirm actions taken at the meeting on December 10, 2013. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes.

After careful consideration, Associate Member Plumlee moved to deny both Arthur P. Bender and Edward Bender requests without prejudice and rehear both requests

at the March meeting. Associate Member Erskine seconded the motion. The motion carried, 5-0. Chair voted yes.

- 17. **PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks," to comply with the federal and interstate management plan 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.

Staff recommended adopting amendments to Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks," that modify the shark management group definitions to be consistent with Addendum III of the ASMFC's Interstate Fishery Management Plan for Atlantic Coastal Sharks, establish a recreational size limit of 78 inches for hammerhead sharks and increase the combined commercial possession limit for the aggregated large coastal sharks and hammerhead sharks from 33 to 36 sharks.

There were no questions or public comments.

Associate Member Plumlee moved to adopt the staff recommendations. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes.

Robert O'Reilly, Chief, Fisheries Management informed the Commission that the public notice was dated February 11, 2014 so the meeting date of the 25th was counted.

Associate Member Neill asked if the regulation was required by March 1. Mr. O'Reilly said it was required by the ASMFC. Associate Member Plumlee suggested that the Commission hear it again to reaffirm action taken today. Mr. O'Reilly stated it would be re-advertised.

- 18. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-280-10 et seq. "Pertaining to Speckled Trout and Red Drum," to lower the commercial maximum size limit, and increase the commercial possession limit, for red drum.

Joe Grist, Deputy Chief, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Staff recommended advertising for a March 25, 2014 public hearing amendments to 4VAC20-280-10 et seq. "Pertaining to Speckled Trout and Red Drum," to lower the

commercial maximum size limit from 26 inches to 25 inches, and increase the commercial possession limit from 3 fish to 5 fish, for red drum.

Associate Member Plumlee moved to advertise for a public hearing in March. Associate Member Haynie seconded the motion. The motion carried, 5-0. Chair voted yes.

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19. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4VAC20-950-10 et seq. "Pertaining to Black Sea Bass," to establish the 2014 commercial quota and recreational season and possession limit for black sea bass.

Sally Roman, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation. Her comments are a part of the verbatim record.

Staff recommended advertising for a March 25, 2014 public hearing to establish the 2014 commercial quota at 434,000 pounds, to reduce the recreational possession limit from 20 to 15 fish, and to establish the 2014 recreational open season as May 19 through December 31, with the number of closed days in September and October to be specified at a later date.

Associate Member Plumlee moved to advertise for a March public hearing to establish the commercial quota for black sea bass. Associate Member Neill seconded the motion. Upon questioning, Ms. Roman stated for the commercial quota, the Commission needed to take action today and the decision for the recreational quota could be delayed. The motion carried, 5-0. Chair voted yes.

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21. DISCUSSION: Request approval of the 2014 Oyster Replenishment Plan and the associated Procurement Procedures.

Jim Wesson, Head, Conservation and Replenishment, gave the briefing of the information provided in the staff's evaluation. He also provided some information of what the Shellfish Management Advisory Committee (SMAC) has been discussing about possible limiting of effort for public oyster ground harvest. His comments are a part of the verbatim record.

Associate Member Plumlee moved to approve the 2014 Oyster Replenishment Plan and associated procurement procedures. Associate Member Erskine seconded the motion. The motion carried, 5-0. Chair voted yes.

2014 Oyster Replenishment Plan:

FUNDING SOURCES: **AMOUNT:**

Non Federal

General Fund (GF)	\$2,000,000
The Nature Conservancy (TNC) Piankatank	\$ 500,000
Secretary of Natural Resources Nassawadox Fund (SNRF)	\$ 47,225
Non-General Funds (NGF) Various Sources	\$ 155,000

Federal

NOAA – Blue Crab Disaster Oyster Spat on Shell	\$ 250,000
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Seed Transfer:

Most of the areas in the Chesapeake Bay and tributaries that are harvested for oysters received a very light spatset in 2013. That may result in a decline in market harvest in 2015. Generally, the Benefits (\$) to Cost (\$) ratio for moving seed oysters with State funds for growout on public grounds is less than one, which is contrary to the recommendation of the BRP. The Conservation and Replenishment Department (CRD) program moved 10,000 bushels of seed oysters from the James River to the Nomini River in 2013. Staff is recommending moving 10,000 bushels of James River seed oysters again in 2014. Half of this would go to the Rappahannock River hand tong area at Bowlers Rock, and half would go to hand tong rocks in the Yeocomico River. Significant spatset does not occur in these growout areas far up these rivers, so the only way to have any harvest is by moving seed oysters. The cost for each bushel of seed to be harvested, transported, and planted in these areas will be at least \$8.50/bushel. Funds from Oyster Resource User Fees will be used for this project.

10,000 bushels of seed oysters @ \$8.50/bu.	\$85,000 (NGF)
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Piankatank River

In the Piankatank River, VMRC manages a very successful program to allow private industry a modest harvest of seed oysters each year (Figure 2). In this program, private leaseholders sign up for the amount of seed oysters that they would like to harvest from

the public seed grounds, and they must replace two bushels of shell for each bushel of seed oysters taken. The total standing stocks of oysters in the Piankatank River declined in 2013, but stocks are still relatively high in comparison to other years. Counts per bushel are relatively high (600-800 oysters/bushel). Staff recommends that 20,000 bushels of seed oysters be offered to the private industry in 2014. They can either pay VMRC for shell replacement, or they can plant the shells themselves. All of this activity occurs under the VMRC supervision. The cost per bushel will be higher in 2014 because of an increase in costs per bushel for shell ($\$2.60 \times 2 = \5.20 /bushel of seed oysters).

Great Wicomico River

There is a similar program for seed oysters in the Great Wicomico River. There was a light spatset in 2013, but standing stocks are still relatively high (Figure 3). Two of the oyster rocks will be available and again participants will replace each bushel of seed oysters harvested with 2 bushels of shell. Staff is recommending up to 20,000 bushels of seed oysters be offered for harvest in 2014. Shell costs are higher for the Great Wicomico River than for the Piankatank River, so the seed will cost more. The cost per bushel ($\$6.60$ /bu.) for high-quality seed oysters in this program is still a very good deal for local harvesters and leaseholders. Replacing old shell with new shell appears to more than compensate for the modest loss of seed oysters from the system.

Shellplanting:

Bay and Tributaries:

Shells on public beds naturally degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most areas, the half life of shells appears to be 3 to 4 years. Shells must be replaced regularly and the CRD staff determines the areas that are in need of new shell from the results from the VIMS-VMRC annual patent tong survey. All of the \$2 million appropriation for 2014 will be used for adding new shell to those areas in most need of shell. Funds for oyster restoration will never be enough to maintain the public beds at maximum productivity, but if the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained. In Table 1, there is a list of all of the areas and acreages of oyster beds that staff would like to shell in 2014. Shell costs continue to increase, especially since 2010, and \$2 million in funds will not be sufficient to add shells to all of these areas. VMRC-CRD will purchase as many house shells as possible for an established price of \$2.00 per bushel. Private individuals, the State of Maryland, and other oyster restoration partners in Virginia are offering to buy shells at values higher than \$2.00/bushel, so it is unknown how many house shells will be available. After purchasing all of the house shells that are available, the remaining appropriated General Funds will be used to dredge fossil shells for shellplanting. VMRC intends to advertise with a Request for Proposal (RFP) for fossil shell dredging and planting to begin on June 15, 2014.

400 – 700 acres of oyster shell restoration
@ 1,000 bushels/acre @ \$2.50 - \$4.00/bushel = \$1,900,000 (GF)

Seaside of Eastern Shore:

Approximately 4 acres of harvest areas will be planted with shells harvested from local shell deposits.

4 acres @ 10,000 bushels of shells/acre @ \$2.50/bushel = \$100,000 (GF)

Alternative Cultch Projects:

Piankatank River

The supply of shells for oyster restoration on public and private beds and for private aquaculture is extremely limited. With the expansion of oyster aquaculture and the potential oyster restoration projects from a long list of oyster restoration partners, oyster shell is being used at a rapid rate, and competition for the resource is intense. The total quantity of fossil shell remaining in Virginia that could be mined economically is unknown but certainly finite, and decreasing. This finite nature of shell has caused great difficulty for VMRC to partner with both the Army Corps of Engineers and NOAA in recent years because of a federal requirement to do restoration projects on sanctuaries. In many of these proposed projects, State shell supply has been the only source of match for completing the projects. Shell is the only cultch that is readily available that can be used in the harvest process by industry. Oyster larvae will attach to almost any substrate that is clean and hard. All types of alternate substrates have been tested by accident in the natural Bay waters, and by scientifically monitored projects. Granite, concrete, tire chips, toilet pieces, reef balls, coal ash, and slag have worked well for oyster larval attachment. The Nature Conservancy approached VMRC in 2013 with an idea to secure private funds for work with VMRC and ACOE in the Piankatank River. TNC has offered \$500,000 for a new sanctuary area in the Piankatank River. The area for this sanctuary is approximately 20.7 acres and mostly within an area that had been previously leased on the north shore of the Piankatank River (Figure 4). Staff is proposing to use an alternative substrate for this project. The material that we propose is clean, ground concrete. The concrete will be processed to the same size as shell. This will allow staff to monitor both the biological success or failure of this type of cultch and the ability to handle the material in restoration projects. With the decreasing availability of shell, the few shell planting contractors that have worked on VMRC projects for years are finding less and less work for their boats. In this project, the concrete will be ground to shell size, transported by truck to a mobilization site, loaded on the shell boats by a loader and conveyor, and washed overboard from the vessels, just like shell. If this material handles like shell, it may be an acceptable alternative for industry on private ground. The TNC funds will also provide needed matching funds for the ACOE to conduct a project in the Piankatank River to build additional sanctuaries with alternative substrate. Staff is also

proposing to plant a small area in the Rappahannock River Rotational Area 2 with the ground concrete. This area was open for harvest this past fall and will not be open again in our rotation system until 2016. A joint permit application (JPA) has been submitted for the test of the ground concrete as an alternate cultch.

20.7 acres sanctuary site in the Piankatank River
near Fishing Bay using ground concrete. \$500,000 (TNC)

5 acres harvest site in the Rappahannock River Rotational
Area 2 using ground concrete \$ 50,000 (NGF)

Nassawadox Creek Reef

Funds were received from the Former Secretary of Natural Resources to do a small reef sanctuary project in Nassawadox Creek on the Bayside of the Eastern Shore. This project will use "Oyster Castles" to create about an acre of oyster sanctuary. This project will occur in the spring.

Nassawadox Creek \$ 47,225 (SNRF)

NOAA Blue Crab Disaster Oyster Aquaculture Training Projects:

This project to train crab industry participants in either spat on shell or cage oyster aquaculture was approved in 2009. Thus far VMRC has provided equipment to 132 crabbers for a small cage aquaculture operation and provided training. VMRC has also assisted 110 crabbers in spat on shell aquaculture. The spat on shell program was very successful in 2013. In total 900 million oyster eyed larvae were set on almost 26,000 bushels of shells for 2013. Virginia hatcheries were very productive in 2013. NOAA has extended this project through 2014. To complete the project in 2014 about 900 million oyster eyed larvae will be needed.

Staff has added a notice advertisement to allow all 110 spat on shell participants to apply for additional oyster eyed larvae if a small amount of funding remains, towards the end of the project. Applicants can sign up for lots of 7 million oyster eyed larvae and staff will have a lottery to determine who would get larvae first, and continue to offer larvae until the funding is gone. The participant would have to have his tank ready with shell for the immediate deployment of larvae as they become available until the funding is exhausted.

Spat on shell training \$250,000 (NOAA)

Cow Nosed Rays:

Cow nosed ray predation continues to be the single largest impediment to success with both public and private seed planting. A tremendous amount of progress has been

made to find uses for the ray meat, to develop processing methods, and to advertise the project. Funds must be combined from a number of sources to keep this project moving forward. In the past, these MRC funds have been used to help subsidize the harvest of rays by the watermen. MRC funds will again be used to purchase 133,000 pounds of cow nosed rays @ \$0.15/pound.

133,000 pounds of cow nosed rays @ \$0.15/pound = \$20,000 (NGF)

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2014 OYSTER REPLENISHMENT PROGRAM:

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures, and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters, shell bed cleaning, and excavated shells, the Commission will set the per bushel price to be paid. For the production of oyster eyed larvae, the Commission will set a price per million larvae. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$1.50 per bushel for conch shells, \$1.00 per bushel for clam shells, and \$2.00 per bushel of oyster shells at the shucking house. Loading, transporting, and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2014 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the

purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

The Commission will also set the price per ton for ground concrete that will be used as an alternative cultch material. Loading, transporting, and planting costs for this material will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Public Notices will be posted and all interested parties may apply. Contractors will be selected by lottery, or allowed to provide the material until the project is completed.

The agency anticipates that all other 2014 oyster replenishment activities will be completed using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2014 Replenishment Program.

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22. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4VAC20-510-10 et seq. “Pertaining to Amberjack and Cobia” to establish a commercial hook-and-line possession limit of 6 cobia per vessel.

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

Staff recommended advertising for a March 2014 public hearing for proposed amendments to Chapter 4VAC20-510-10 et seq. “Pertaining to Amberjack and Cobia” to establish a commercial hook-and-line possession limit of six cobia per vessel per day.

After some discussion, Associate Member Plumlee moved to advertise the public hearing. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes.

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Commission Meeting

**17104
February 25, 2014**

There being no further business, the meeting was adjourned at approximately 7:40 p.m.
The next regular Commission meeting will be Tuesday, March 25, 2014.

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John M. R. Bull, Acting Commissioner

Katherine Leonard, Recording Secretary