

MINUTES

Commission Meeting

July 22, 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	Commissioner
Chad Ballard, III	
James D. Close	
A. J. Erskine	
S. Lynn Haynie	Associate Members
Ken Neill, III	
John E. Zydron	
Matthew R. Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Erik Barth	Bs. System Mgr./Anslst Sr.
Todd Sterling	Bs. System Specialist, Sr.,
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Director, VSWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Sampling Supervisor
Laurie Williams	Fisheries Mgmt. Specialist
Rachael Maulorico	Fisheries Mgmt. Planner
Ande Ehlen	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Chris Miller	1 st Sgt., Middle Area
Steven Head	Marine Police Officer
Henry Reichle	Marine Police Officer

Commission Meeting

**17174
July 22, 2014**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Brad Reams	Program Support Technician
Robert Butler	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Emily Hein
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Others present:

Kevin DuBois	Lee Rosenberg	Andrew Burcher
Jennifer McCloud	Willie Skenes	Mary Skenes
Robert Walker	Linda Walker	Meredith Malone
Adam Melita	James Irre	Thelma Drake
Vic Yarkovic	William Stiles	Jeff Watkins
Ned Ruffin	Ricky Woody	Charles Robison
Ben McGinnis	Tim Zimmerman	Neal N. Zimmerman
Grant Etheridge	Kim Huskey	Bob Livengood
Scott Stiles	Robert Orsinger	Keith D. Jenkins
Earl Gautreanx	James Jenkins	Arthur A. Bender

and others

Commissioner Bull called the meeting to order at approximately 9:34 a.m. Associate Members Beck and Sessoms were both absent. There was a quorum present so the meeting moved forward.

Commissioner Bull introduced the two new Associate Members John E. Zydron and Chad Ballard, III.

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

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

Tony Watkinson, Chief, Habitat Management stated that there was a request to continue the Item 6 Wetlands Appeal by the applicant and appellants. It was agreed to hear it as scheduled to discuss the request for continuance.

Associate Member Erskine moved to approve the agenda, as submitted. Associate Member Haynie seconded the motion. The motion carried, 6-0.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the June 24, 2014 Commission meeting minutes.

As there were no corrections or changes, Commissioner Bull asked for a motion to approve the minutes. **Associate Member Erskine moved to approve the minutes, as written. Associate Member Haynie seconded the motion. The motion carried, 5-0-2. Associate Members Zydron and Ballard were attending their first meeting.**

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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 two page two items to be heard. He reviewed the items for the Board. His comments are a part of the verbatim record.

Commissioner Bull asked for public comments. There were none. He stated the matter was before the Commission.

Associate Member Erskine moved to approve the page two items, 2A and 2B, as submitted. Associate Member Neill seconded the motion. The motion carried, 6-0.

2A. CITY OF ALEXANDRIA and ARLINGTON COUNTY, #14-0724, requests authorization to conduct a stream restoration project including the use of rock j-hooks, fill and excavation, relocation of the non-tidal stream channel, the construction of a temporary riprap access road with four (4) temporary culverts, and the use of temporary cofferdams along an approximately one-mile stretch of Four Mile Run between Mount Vernon Avenue and Route 1 in Arlington County and the City of Alexandria. All instream construction will adhere to a time-of-year restriction for anadromous fish from February 15 - June 30, as well as standard conditions for erosion and sediment control and instream construction.

Permit Fee	\$100.00
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2B. DEPARTMENT OF THE NAVY, #14-0509, requests authorization to replace the fender system at 52 locations along the north and south sides of piers 9 and 10 situated along Hampton Roads at Naval Station Norfolk. Each fender module will consist of five (5) pre-stressed concrete piles faced with low-friction panels and an 8-foot by 14-foot foam filled fender.

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, Matthew Hull, Assistant Attorney General and VMRC Counsel responded no.

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5. WILLIE SKENES, JR., #14-0686, requests authorization to construct a replacement bulkhead adjacent to his property at 1157 Sunlight Drive situated along a manmade canal to the Southern 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. Her comments are a part of the verbatim record.

Commission Meeting

The City of Chesapeake no longer administers the Wetlands Zoning Ordinance, a public hearing for the proposed project was held by VMRC Habitat Management Division at our main office on July 15, 2014. In addition to VMRC Staff, the hearing was attended by Mr. Troy Savage, with REMSA, Inc. No concerns were raised at the public hearing or as a result of the public interest review.

The proposed bulkhead is replacing a similar structure and is located within a manmade canal. Staff believed the project was warranted and reasonable. After evaluating the merits of the project and after considering all of the factors contained in §28.2-1303(10)(B) of the Code of Virginia, staff recommended approval of the project as proposed.

Willie Skenes, Jr., applicant was sworn in and his comments are a part of the verbatim record. Mr. Skenes explained that the old bulkhead had been damaged by Hurricane Isabel and when his house was elevated, he used the debris from that to repair the bulkhead. He was then informed that this was not proper fill and he needed to use sand. He noted that the Chesapeake Bay Preservation had approved his current proposal with two stipulations: 1) remove debris and 2) plant two trees on the waterside.

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

Associate Member Erskine moved to approve the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Permit Fee	\$300.00
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- 6. **COTTAGE LINE CIVIC LEAGUE, #13-1899-D, NICHOLAS VANDERGRIFT, #13-1809-D, JUDITH SWYSTUN ET AL., #13-1808-D, CATHERINE McCOY, #13-1803-D, CATHERINE McCOY, #13-1804-D, THOMAS AND THELMA DRAKE, #13-1799-D.** Commission review on appeal by 52 freeholders of the June 11, 2014, decision by the Norfolk Wetlands Board to approve the above-referenced applications in modified form with special conditions, to include excavating sand from the dune as proposed or to a minimum height of 14 feet, and relocating the excavated sand channelward of the existing dune face along the Ocean View shoreline adjacent to the Chesapeake Bay.

Tony Watkinson, Chief, Habitat Management, explained that the applicant requested a continuance and all parties were in agreement. He noted that this request must be approved by the Commission. He added that the City of Norfolk was also in agreement

with the request. He explained further that the representative for the appellants could not be present at the August meeting because of a conflict.

William A. Skiles, Jr., representative for the appellants, stated there was no problem with the continuance, but he could not be present in August because of a scheduled family vacation. His comments are a part of the verbatim record.

Commissioner Bull asked for a decision by the Board for this request.

Associate Member Erskine moved to postpone this hearing until the September Commission meeting. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Continued until September 2014 Commission meeting.

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7. WHITE CLOUD NINE VENTURES L.P., #12-0164, requests after-the-fact authorization to retain the placement of 130 cubic yards of Class II riprap on State-owned subaqueous bottom and an 18-foot wide access road crossing with an open box culvert over 35 linear feet of the Little River at a parcel identified as MCPI#397-26-7021 near the confluence of the Little River and Hungry Run in Loudoun County. The project is protested. Continued from the July 23, 2013, Commission meeting.

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

Staff's recommendation for this project remains as written in our July 23, 2013, evaluation which was read into the record:

“Staff understands the need for the applicant to have access to her property and feels that the bridge crossing is an appropriate structure to provide such access. Staff has reviewed the protestants' concerns regarding the historic resources, potential conflicts with a conservation easement on the property, and lack of local authorization. According to the Department of Historical Resources, the impacts to historic resources resulting from the bridge construction appear negligible and based upon documentation provided by the applicant the conservation easement does not appear to be an issue for the bridge installation. It is also apparent to staff that there may have been some confusion regarding the necessity of filing a Joint Permit Application and obtaining a VMRC Subaqueous permit, even after consultation with U.S. Army Corp of Engineers personnel. Had a Joint Permit Application been submitted for this project before work had commenced, staff would have likely recommended approval of the project with

appropriate special permit conditions that would take into account the possible presence of the endangered Green Floater.”

“Referring to the “Guidance for Civil Charge Assessments” adopted by this Commission, staff believes that the impact of the project is minimal due to the small amount of encroachment and minor effect on natural resources associated with the installation of the bridge and riprap. Staff considers the Degree of Deviation or Non-compliance to also be minor due to the possible lack of information from the USACOE regarding the need of the applicant to obtain permits from VMRC for structures involving encroachment over subaqueous bottom. Therefore, referencing the guidance, staff believes a civil charge in the amount of \$1,000 is appropriate. Additionally, §28.2-1206(D) of the Code of Virginia allows for the imposition of triple permit fees for work that has commenced at the time of application.”

“Accordingly, after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommends approval of the project with the assessment of triple permit fees in the amount of \$300.00 and conditioned upon the applicant’s agreement to pay a civil charge in the amount of \$1,000.00 in lieu of further enforcement measures.”

Andrew Burcher, attorney representing the applicant, was present and his comments are a part of the verbatim record. Mr. Burcher explained that his client thought that she had done all that was necessary because when she spoke with the Army Corps of Engineers they stated she did not need a joint permit from them.

Jennifer McCloud, applicant, was sworn in and her comments are a part of the verbatim record. Ms. McCloud reiterated what her attorney had said that she had sought to obtain all permits necessary and was told by the ACOE staff that she did not need a permit. She explained that the bridge was needed in the operation of her farm to transport farm equipment necessary to her raising and harvesting her heritage wheat and to accessing the buildings she used for her farm. She added that utilizing Highway 50 was impractical. She stated that she should not be penalized because she was given bad information by someone that is a part of the joint permit application process.

As there were no other public comments, pro or con, Mr. Burcher was asked if he had any rebuttal comments.

Mr. Burcher stated that they requested the permit be granted without any permit fees and that the penalty fees should be waived. He explained that she had tried to do all that was necessary and this was important to her livelihood.

Associate Member Zydron moved to approve the proposal as presented with no permit fees and penalty fees as recommended by staff. Associate Member Haynie seconded the motion.

Associate Member Neill stated that he supported staff’s recommendation to allow the bridge with the permit fees and penalty fees because of a previous case that the Commission had heard under the same type of circumstances where fees and penalties had been assessed against that individual. He stated that the Commission needed to be consistent.

Associate Member Zydron stated that he felt that the applicant had tried to do what was necessary and the ACOE did not give her the information she needed. He said to be fair and equitable the fees should be waived and it would not be equitable to follow the staff recommendation in this respect.

Associate Member Erskine stated he agreed with Associate Member Neill that the applicant was responsible to obtain all necessary permits and he felt the Commission should not waive the fees and penalties even though this was a minor deviation.

After some further discussion, the motion carried, 4-3. Associate Members Erskine, Ballard, and Neill all voted no. Chair voted yes.

Permit Fee	\$100.00
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- 8. **EDMUND S. RUFFIN, JR. #14-0362**, requests authorization to construct an 18-foot by 36-foot open-sided boathouse over an existing boat slip at a private, non-commercial open-pile pier adjacent to his property situated along the Ware River at 6740 Ware Neck Road in Gloucester County. The project is protested by an adjoining property owner. Continued from the May 27, 2014, Commission meeting.

Chip Neikirk, Deputy Chief, Habitat Management gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record. Mr. Neikirk noted that this matter had been heard before by the Commission but was continued at the request of the contractor. The contractor provided a modification of the project at that time and stated that the applicant, who was not present, had agreed only to this modification to possibly resolve the protests. The contractor stated if this was not acceptable then he requested a continuance so that the applicant could be present. Mr. Neikirk noted also that there were two new members present that had not heard the matter.

Commissioner Bull asked if the applicant or his representative wanted to comment.

Nathan Ruffin, applicant and Jeff Watkins, contractor were both sworn in. Mr. Ruffin said that prior to the 2009 when the pier was built there was no pier in this location.

He noted the distance from the shore to the boatlift was 330 feet or 110 yards. He stated that originally he did not anticipate the need for a boat house roof, until he saw what impacts there are on a boat when it is exposed to the weather. He said he had called the Walkers prior to his talking with Mr. Watkins, but he never heard from them until two months ago when they said they objected. He said he asked the contractor how he could lessen the impact and changes had been made. He said he spoke with Mr. Walker again, but they said they were still protesting it. He provided new photographs.

Commissioner Bull opened the public hearing for comments, pro or con.

Linda and Robert Walker, adjoining property owners and protestants, were sworn in. Mrs. Walker provided a hand out. She explained that they were notified of the May meeting, but they should have been notified of the pier because when the application was filled out in 2009 and it had been checked yes, indicating there would a roof. She stated the pier was angled and in front of their property and they had not been allowed to address the pier. She said that staff told them that the application saying yes to a roof was a mistake. She said that they have been told by realtors that the impacted view would impact the sale of their property.

Mr. Walker said that the law said they must be notified because on the original pier application the applicant had check yes for a boat house roof. He said it VMRC's fault and he said they wondered why there was a joint permit application process.

Mr. Neikirk said that on the application there was only one place where a roof was indicated and the applicant was only given permission for a pier, no boat house roof. He said the application now in 2014 was for the boat house roof and the adjoining property owners were notified.

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

Associate Member Erskine asked what would or would not have been approved. Mr. Neikirk stated that if the boat house roof was under the 700 square feet it was allowed by the Code of Virginia if there were no protests from the adjoining property owners.

Commissioner Bull again stated the matter was before the Commission.

Associate Member Neill moved to approve the staff recommendation as modified by the applicant. Associate Member Zydron seconded the motion. Associate Member Erskine stated that the revision was for a lower hip roof. Mr. Neikirk stated yes. The motion carried, 7-0. Chair voted yes.

Permit Fee	\$25.00
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9. **GRANT ETHRIDGE, #14-0691**, requests authorization to construct a 5-foot by 222-foot open-pile private use pier to include a 5-foot by 52-foot finger pier, a 5-foot by 12-foot jet-ski finger pier, and to construct a 17-foot by 39-foot open-sided boathouse roof adjacent to his property situated along the Nansemond River at 2603 Nansemond Drive South, in the City of Suffolk. The request is protested by the oyster ground leaseholder over whose lease the pier will encroach.

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

Mr. Stagg explained, the oyster ground leaseholder, Ms. Newman would like the pier relocated as far south as possible along the Ethridges' shoreline. He noted, however, it appeared the leased ground contains shellfish and shell resources within all the riparian waters along the applicants' property and the oyster ground lease continues well to the south of the Ethridges' southern property line. Since the ground is productive and the substrate appears suitable throughout the lease, §28.2-1205(D) of the Code of Virginia, requires the Commission to issue a permit for the pier and states further that the permit may reasonably prescribe the design and location of the pier to minimize impacts on the leased ground. Mr. Stagg indicated it remains unclear why the location of a minimal pier structure in the originally proposed location would present any greater impact to the lease than the alternate location suggested by the leaseholder. Therefore, after evaluating the merits of the request, the leaseholder's concerns, and after considering all of the factors contained in § 28.2-1205(D) of the Code of Virginia staff recommended approval of a 5-foot wide by 222-foot long pier with two mooring pilings along the originally proposed alignment requested by the applicant. Staff would have no objection to some movement of the pier to the south, but would suggest it not be placed immediately adjacent to the upland property boundary.

Grant Etheridge, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Etheridge explained that he wanted to start the pier in March so that it could be done before his son's wedding. He said he had called the staff and the leaseholder involved. He stated the neighbors had approved his proposal. When he spoke with the leaseholder and someone else he told them he was willing to move it or make a modification. He said it was a 5-foot pier now and the size of the L head was for safety reasons since there were small children who would use it. He provided a drawing showing his suggested modification. He noted that Ms. Newman had numerous leases, but he had only one backyard. He noted also that he paid a lot more for his property than was paid for the lease.

Bob Livengood, contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Livengood said this was a minimal encroachment with a 5-foot

walkway. He said there would be minimal boat tie up as most traffic would go over the land and marsh.

Commissioner Bull asked if there were public comments in support and there were none. He asked for comments in opposition.

Carol Newman, leaseholder and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Newman explained that she had the lease for a long time and there was a small productive area and then there were mud flats. She said the ground does have a lot of oysters on it. She noted that she had not seen a modified plan. She said it would impact her oyster harvest and she had over \$1,000 per year investment. She stated he had a right to have a pier as long as it was minimal and reasonable with the least impact on the oysters. She said these oysters were her livelihood and she had worked here for 8 or 9 years.

After some discussion, Associate Member Zydron suggested that the parties meet in the next door library to discussion where to locate the pier and what the dimensions should be.

Upon the return of all parties, Mr. Stagg said that there had been a modified plan agreed upon and the protest was withdrawn. He explained that the location would be changed but the pier would still have the original footprint with the L head, finger piers and boathouse for the jet skis. He said it would be 225 feet long and 5 feet wide, but moved halfway between the original location and the property line. He said the leaseholder had agreed to remove the shells and oysters, if there, after it is marked by October 31. He noted that staff recommendation was for the modified version. He said that there was a roof proposed for the boat house and over the proposed slip.

Both Mr. Zimmerman and Ms. Newman said that they agreed.

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

Associate Member Zydron moved to approve the project as modified. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

Permit Fee	\$100.00
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Commission Meeting

- 10. DISCUSSION:** Update on implementation of procedures and permits to authorize log recovery from State-owned bottoms.

Tony Watkinson, Chief, Habitat Management, gave a report updating the Board members on this matter. His comments are a part of the verbatim record.

Justin Worrell, Environmental Engineer, gave a briefing on the two projects that have successfully been through the permitting process. His comments are a part of the verbatim record.

Staff indicated the process was working well and the original permittee was promptly complying with all permit conditions. No recovery operations have occurred under the second permit. Staff said they saw no reason to modify the process endorsed by the Commission prior to issuance of the original permit other than a change to allow use of a timber consultant to determine the value of each recovered log, nor was there a need for further updates unless there were problems with any permits.

- 11. PUBLIC COMMENT.** None

- 12. REPEAT OFFENDERS (4):**

Chris Miller, 1st Sgt, Middle Area-Law Enforcement, gave the presentation of these cases. His comments are a part of the verbatim record.

Kenneth Wayne Jenkins – not present

Code Section 18.2-95 – stole oysters from an oyster planting ground as defined in Code Section 28.2-560 valued at \$200.00 or more and belonging to York River Oyster Holdings, LLC (unclassified felony)

Code Section 28.2-516—have on board a boat, a dredge or equipment normally used for dredging oysters without a license or permit to dredge. (Class 6 Felony)

Code Section 28.2-517—Dredge on oyster planting ground that has not been properly designated & marked in accordance with 28.2-607. (Class 3 Misdemeanor)

Convicted in the Circuit Court of York County on the 27th of March, 2014 on all charges as written, sentencing is pending and scheduled for the 14th of August, 2014.

As authorized under Code Section 28.2-528 of the Code of Virginia and in accordance with the referenced guidelines, staff recommended the Commission revoke all of Mr. Jenkins licenses to take or catch fish, shellfish, or marine organisms, for a period of one year from his conviction date 3/27/14 and ending 3/26/15.

Commission Meeting

The other two convictions entered on 3/27/14 are for one count of having unlawful oyster dredging equipment on his boat and one count for taking oysters on improperly marked oyster ground which further demonstrate Mr. Jenkins has had more than one conviction within a one year period.

Daniel T. West – not present

Code Section 18.2-95 – stole oysters from an oyster planting ground as defined in Code Section 28.2-560 valued at \$200.00 or more and belonging to York River Oyster Holdings, LLC (unclassified felony)

Code Section 28.2-516—have on board on board a boat, a dredge or equipment normally used for dredging oysters without a license or permit to dredge. (Class 6 Felony)

Code Section 28.2-517—Dredge on oyster planting ground that has not been properly designated & marked in accordance with 28.2-607. (Class 3 Misdemeanor)

Convicted in the Circuit Court of York County on the 27th of March, 2014 on all charges as written, sentencing is pending and scheduled for the 14th of August, 2014.

As authorized under Code Section 28.2-528 of the Code of Virginia and in accordance with the referenced guidelines, staff recommended the Commission revoke all of Mr. West's licenses to take or catch fish, shellfish, or marine organisms, for a period of one year from his conviction date 3/27/14 and ending 3/26/15.

The other two convictions entered on 3/27/14 are for one count of having unlawful oyster dredging equipment on his boat and one count for taking oysters on improperly marked oysters ground further demonstrate Mr. West has had more than one conviction within a one year period.

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

Associate Member Zydron stated that the industry needed to know that the Commission is serious about these violations. He moved for two years suspension as of March 27, 2014 until March 26, 2016 for both Mr. Jenkins and Mr. West. Associate Member Erskine seconded the motion. The motion carried, 7-0.

Commissioner Bull explained that the next two were noticed in accordance with Code Section 28.2-232.

Earl J. Gautreaux, III

February 21, 2014

No 2014 VMRC Oyster Shucking license in accordance with Chapter 4VAC 20-1090-30; convicted in Gloucester County General District Court on 6/26/14; fine \$100.00; cost \$25.00.

No Certificate of Inspection to Operate an Oyster Shucking Establishment in accordance with Chapter 12 VAC 5-150-20; convicted in Gloucester County District Court on 6/26/14; fine \$100.00; Cost \$86.00.

Unlawfully Fish without a Valid 2014 VMRC Commercial Fishing License in accordance with Chapter 4 VAC 20-610-30; convicted in the Gloucester County General District Court on 6/26/14; fine \$100.00; Cost \$96.00.

March 19, 2014

Unlawfully Commercial Fish without a valid 2014 VMRC Commercial registration in accordance with Chapter 4 VAC 20-610-30; convicted in Gloucester County General District Court on 6/26/14; Fine \$500.00 with \$400.00 suspended, 3-year probation unsupervised; cost \$25.00

No valid 2014 VMRC Oyster Shucking License in accordance with 4 VAC 20-1090-30; convicted Gloucester County District Court on 6/26/14; fine \$2,500.00 with \$2,400.00 of fine suspended; 3-year probation unsupervised; 12 months jail suspended; cost \$25.00

Operate Establishment to shuck oysters without a Certification of Inspection by the State Health Commission in accordance with Chapter 12 VAC 5-150-20; convicted Gloucester County District Court on 6/26/14; fine \$500.00 with \$400.00 suspended, 3-year probation unsupervised; cost \$25.00.

Earl J. Gautreaux's commercial licenses were revoked under Code Section 28.2-232 of the Code of Virginia for two years from 9/24/13 through 9/23/15, owing to repeat offender violations of failure to report and harvesting over the daily limit of oysters. During this license revocation period he received six convictions on two separate dates.

In accordance with Code Section 28.2.232 of the Code of Virginia, staff recommended the revoke all of Mr. Gautreaux's fishing privileges with the Commonwealth tidal waters, and revoke all of his licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting (7/22/14).

1st Sgt Miller in response to a question from the Board, stated that Mr. Gautreaux was cooperative and helpful.

Mr. Gautreaux, III, was sworn in and comments are a part of the verbatim record. Mr. Gautreaux, in response to the question of what happen, explained that he did not know what happen, he just got caught up and it escalated. He stated that with the previous

revocation the others got their cards back in January and he had no money to get his license back.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation for Mr. Gautreaux was two years revocation to include all fishing privileges in the Commonwealth's tidal waters and revocation of all licenses to take or catch fish, shellfish, or marine organism to start from the Commission meeting date, 7/22/14 until 7/21/16. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

Willie C. Jenkins, Jr.

February 21, 2014

No Certificate of Inspection to operate an oyster shucking establishment in accordance with Chapter 12 VAC 5-150-20; convicted in Gloucester County General District Court on 6/26/14; find \$500.00 with \$500.00 suspended, 3-year probation; cost \$25.00.

Unlawfully fish with a valid 2014 VMRC Commercial Fishing Registration in accordance with Chapter 4 VAC 20-610-10; convicted in Gloucester County General District Court on 6/26/14 find \$500.00 with \$400.00 suspended; cost \$25.00.

No valid 2014 VMRC Oyster Shucking license in accordance with Chapter 4 VAC 20-1090-30; convicted in Gloucester County General District Court on 6/26/14; find \$2,500.00 with \$2,400.00 of fine suspended; 3-year probation; 12-month jail suspended; cost \$86.00.

March 19, 2014

No Certificate of Inspection to operate an Oyster Shucking Establishment in accordance with Chapter 12 VAC 5-150-20; convicted Gloucester County District Court on 6/26/14; fine \$500.00 with \$500.00 suspended, 3-year probation; cost \$25.00.

Unlawfully Commercial Fish without a valid 2014 VMRC Commercial registration in accordance with Chapter 4 VAC 20-610-30; convicted in Gloucester County General District Court on 6/26/14; Fine \$100.00; cost \$25.00

No valid 2014 VMRC Oyster Shucking License in accordance with 4 VAC 20-1090-30; convicted Gloucester County District Court on 6/26/14; fine \$2,500.00 with \$2,400.00 of fine suspended; 3-year probation; 12 months jail suspended; cost \$86.00

Staff noted that Mr. Jenkins has had six convictions for two separate dates in one year.

In accordance with Code Section 28.2-232 of the Code of Virginia, staff recommended the Commission revoke al of Mr. Jenkin’s fishing privileges within the Commonwealth’s tidal waters, and revoke all of his licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting (7/22/14).

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement said that Mr. Jenkins’s attorney called the previous week to inform VMRC that he had a doctor appointment.

Associate Member Erskine moved to accept the staff recommendation to revoke all of Mr. Jenkin’s fishing privileges within the Commonwealth’s tidal waters, and revoke all of his licenses to take or catch fish, shellfish, or marine organisms for a period of two years to start from the Commission meeting date, 7/22/14 until 7/21/16. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

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

Stephanie Iverson, Fisheries Manager, gave the briefing of the following cases of failure to report. Her comments are a part of the verbatim record.

Keith D. Jenkins – present and sworn in

Ms. Iverson stated that Mr. Jenkins had been sent all required notifications.

Staff recommended Mr. Jenkins, having already served a six month suspension, be placed on probation for a period of two years ending on July 21, 2016 provided that his missing reports are submitted and his application for an exception to the delayed entry into the fishery is accepted. During which time, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations will result in Mr. Jenkins appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull asked if Mr. Jenkins was current now with his reporting. Ms. Iverson stated that he was not able to provide reports for Oct and Dec 2012, but he did turn in all the rest.

Mr. Jenkins said he needed his commercial card back to have a livelihood. He stated he would do better. When he was asked why he did not report, he explained that he was having family problems at the time.

After some further discussion, Associate Member Neill moved to accept the staff recommendation for two-year probation from 7/22/14 until 7/21/16. Associate Member Close seconded the motion. The motion carried, 7-0. Chair voted yes.

James S. Jenkins, Jr.

Ms. Iverson noted that all reports had been received today.

Staff recommended Mr. Jenkins be placed on probation for a period of two years ending on July 21, 2016. During which time, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations will result in Mr. Jenkins appearing before a hearing of the Commission on license(s) suspension.

Mr. Jenkins stated that he had mailed the reports, but they were not received by VMRC.

Associate Member Erskine moved to accept the staff recommendation for two-year probation from 7/22/14 until 7/21/16. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Scott L. Stiles, Sr. was present and sworn in.

Ms. Iverson stated that he had been sent all notification and was all up to date as of today.

Mr. Stiles explained that in the middle of the winter he had some family health issues that lasted for six months and he lost his phone service. He stated that he accepted that it was his fault.

Staff recommended that Mr. Stiles be placed on probation for a period of two years ending on July 21, 2016. During which time, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations will result in Mr. Stiles appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation for two-year probation from 7/22/14 until 7/21/16. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Robert E. Orsinger

Ms. Iverson said that Mr. Orsinger had not turned in harvest to date for both June and July of 2013. He was sent all notifications and numerous phone calls were made. She

explained when they finally got him he said that he thought another harvester who he had been working with had reported his harvest.

Staff recommended that Mr. Orsinger be placed on probation for a period of two years ending on July 21, 2016. During which time, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations will result in Mr. Stiles appearing before a hearing of the Commission on license(s) suspension.

Associate Member Zydron asked who was primarily responsible for the reporting. He asked if there was any benefit for the non-reporter. Ms. Iverson stated that each is responsible, but the other harvester did not add Mr. Orsinger's MRC ID number on the report. She added there was no benefit because non-reporting meant he had to come here for a hearing.

Commissioner Bull asked Mr. Orsinger if he understood the importance of his making sure his harvest was reported. Mr. Orsinger said he did understand.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation for two-year probation from 7/22/14 until 7/21/16. Associate Member Close seconded the motion. The motion carried, 7-0. Chair voted yes.

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14. POUND NET: Case involving protests of an application to the Commission to license a pound net at a new location, in accordance with Chapter 4 VAC20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review."

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

Edward H. Bender, applicant, was not present.

After some discussion for clarification, Commissioner Bull asked if the applicant or his representative wanted to comment.

Arthur P. Bender was present and his comments are a part of the verbatim record. Mr. Bender indicated he did not have any comments and would answer any questions.

Commissioner Bull asked for other public comments and there were none. He stated the matter was before the Commission.

Associate Member Ballard moved to accept the staff recommendation for the pound net for this location. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.

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15. PUBLIC HEARING: To amend Chapter 4 VAC 20-450-10 et seq., “Pertaining to the Taking of Bluefish,” to establish the Virginia 2014 commercial bluefish quota as 886,040 pounds.

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

Staff recommended amending Chapter 4 VAC 20-450-10 et seq., “Pertaining to the Taking of Bluefish”, to establish the 2014 commercial bluefish quota as 886,040 pounds.

Associate Member Zydron asked why the change was necessary. Ms. Maulorico explained that due to uncertainties of some data in the current stock assessment, recruitment was overestimated for previous years and the quota must be adjusted to account for it. Additionally, Virginia must be in compliance with the recommendations of the ASMFC and MAFMC.

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

Associate Member Erskine moved to accept the staff recommendation to approve the 2014 Bluefish quota of 886,040 pounds. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

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16. PUBLIC HEARING: To amend Chapter 4 VAC 20-1090-10 et seq. “Pertaining to Licensing Requirements and License Fees” to update the recreational license fees for the Combined Sport Fishing License, the 5-day Combined Sport Fishing Trip License, and the Tidal Boat Sport Fishing License.

Lewis Gillingham, Director, Saltwater Fishing Tournament, gave the briefing for the information provided in the staff’s evaluation. His comments are a part of the verbatim record. Mr. Gillingham provided a handout.

Staff recommended adoption of amendments to Chapter 4 VAC 20-1090-10 et seq. “Pertaining to Licensing Requirements and License Fees” to update the recreational license fees for the Combined Sport Fishing License, the 5-day Combined Sport Fishing Trip License, and the Tidal Boat Sport Fishing License.

Commissioner Bull explained that this was not a fee increase, but the Game and Inland Fisheries Commission changes being added. He stated it was just “housekeeping”.

Matthew Hull, Assistant Attorney General and VMRC Counsel, explained that the wording should say that the \$1.00 fee paid to the agent was separate and not a fee increase, but only reflected the actual cost.

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

Associate Member Haynie moved to accept the staff recommendation with VMRC Counsel’s modification. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 17. 2014 – 2015 OYSTER FISHERY ISSUES:** (1) Proposed amendments to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” to establish the 2014-2015 public oyster harvest seasons; (2) Proposed amendments to Chapter 4 VAC 20-260-10 et seq., ”Pertaining to Designation of Seed and Clean Cull Areas,” to modify oyster culling procedures; (3) Proposed amendments to Chapter 4 VAC 20-1230-10 et seq., “Pertaining to Restrictions on Shellfish,” to require Shellfish Harvest Safety Certification of all shellfish harvesters by 2015; and (4) proposed amendments to Chapter 4 VAC 20-610-10 et seq. “Pertaining to Commercial Fishing and Mandatory Harvest Reporting”, to require each individual harvester to report his harvest of public oysters separately.

Jim Wesson, Head, Conservation and Replenishment, gave the presentation of the information from the staff’s evaluation. His comments are a part of the verbatim record.

Proposed amendments:

- 1) Establishment of a “control date” of July 1, 2014. Future calculations or distributions of oyster fishery rights and entry limitations will be based on this,
- 2) The proposed season dates, including opening Rotation Areas 1 and 6 in the Rappahannock River, Rotation Area 1 in the York River, and Rotation Area 2 in Pocomoke and Tangier Sounds,
- 3) A one-month longer market harvest season on Seaside (November 1 - March 31),
- 4) A one-month extension to the seed oyster harvest season in the James River (October 1 - May 31),
- 5) To reduce harvest effort by hand scrapes and dredges only, change daily harvest time limit from 2:00 p.m. to 12:00 p.m.,

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- 6) The boat limit to be reduced from 24 to 16 bushels per day. Both of these changes should reduce the time that the dredges and hand scrapes are pulling across the shells on the bottom of the harvest areas,
- 7) Return to the old culling procedure where harvested oysters would remain loose on the pile on the bottom of the vessel, until the harvester comes to shore to offload. The harvester will be allowed only one basket on the vessel to measure the daily limit,
- 8) Define a plastic mesh basket of not less than 2500 cubic inches and not more than 3000 cubic inches as a legal measure for oysters to reflect a change in the Code Section 28.2-526 that went into effect July 1, 2014,
- 9) Require all oyster harvesters to individually report daily oyster harvest,
- 10) Require all shellfish harvesters to take a Shellfish Harvest Safety Certification course by 2015.

Staff recommended approval for advertising for a public hearing the amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," Chapter 4 VAC 20-260-10 et seq., "Pertaining to Designation of Seed and Clean Cull Areas," Chapter 4 VAC 20-1230-10 et seq., "Pertaining to Restrictions on Shellfish," and Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" at the August 26, 2014 meeting.

After some discussion, Associate Member Haynie moved to accept the staff recommendation to advertise the amendments to the regulations for an August public hearing. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

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18. **DISCUSSION:** Proposed amendments to Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass" to extend the overall 2014 recreational season by three days in September, pending a final decision by the ASMFC.

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

Staff recommends advertising for an August public hearing to extend the overall 2014 recreational season by three days in September through September 21, pending a final decision by the ASMFC.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation to advertise for public hearing at the August meeting. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

- 19. **DISCUSSION:** Proposed amendments to Chapter 4 VAC 20-751-10 et seq. “Pertaining to the Setting and Mesh Size of Gill Nets” to limit the amount of gill nets, set by any individual harvester, east and north of Chincoteague Inlet.

Joe Cimino, Fisheries Management Manager, Sr., 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 an August public hearing to consider amendments to Chapter 4 VAC 20-751-10 et seq. “Pertaining to the Setting and Mesh Size of Gill Nets” to limit the amount of gill nets, set by any individual harvester, east and north of Chincoteague Inlet.

Associate Member Erskine moved to accept the staff recommendation to advertise for a public hearing the August meeting. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

- 20. **REQUEST FOR PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-70-10 et seq.,”Pertaining to the Harvesting of Clams”, to establish a gear license for hand- held “water vacuums or water rakes” for the harvesting of cultured hard clams on leased ground.

Jim Wesson, Head, Conservation and Replenishment, gave the briefing on the information provided in the staff’s evaluation. He provided a handout of the staff’s evaluation. He said that clam aquaculturists on the Seaside Eastern Shore have been using this gear for years even though it is a hydraulic hand-held dredge to work their clam beds. He said that the Code prohibits the use of a hydraulic dredge in Virginia waters, but the Marine Resources Commission has been issuing a permit for this gear under the Code Section 28.2-205 since 1995. His comments are a part of the verbatim record.

Staff recommended advertising amendments to Chapter 4 VAC 20-70-10 et seq., “Pertaining to the Harvesting of Clams,” to establish a gear license for a hand-held “water vacuum” or “water rake” for the harvest of cultured hard clams on leased ground for a public hearing at the August 26, 2014 meeting.

Robert O’Reilly, Chief, Fisheries Management, noted that this would include an amendment to Chapter 4VAC 20-1090-10 et seq., to add this gear fee. He added this would have to be advertised as well.

Commissioner Bull stated the matter was before the Commission.

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Associate Member Haynie moved to accept the staff recommendation to advertise for a public hearing at the August meeting. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 3:10 p.m. The next regular Commission meeting will be Tuesday, August 26, 2014.

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John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary