

MINUTES**Commission Meeting****August 26, 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	
Robert G. Beck	
A. J. Erskine	
S. Lynn Haynie	Associate Members
Ken Neill, III	
Whitt G. Sessoms, III	
John E. Zydron	
Matthew R. Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Hancock	Human Resources Mgr.
Todd Sterling	Bs. System Specialist, Sr.,
Dave Lego	Bs. System Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Director, SWFT
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
Kelsey Rooks	Fisheries Management Tech.
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Steven Holliday	Marine Police Officer
James Vanlandingham	Marine Police Officer
Trevor Johnson	Marine Police Officer

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 Reamy	Program Support Technician
Paul Rogers	Surveyor

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Emily Hein
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Others present:

Dustin Crenshaw	Tom Perry	John Conway
Alan Hogge	Louis W. Stone	Mike Oesterling
Cynthia E. Hall	Jeff Hammer	Michael J. Bradley, Jr.
Jeff Watkins	Walker Goter	William Crewe
Tim Fuert	Dana Schinavo	Vagher Amper
Jefferies Busic	Richard Green	Bernard West
B. Zsimevich	Carroll Wilson	Darryl Hurley
Mike Insley, Jr.	Mike Insley	Charles Insley, Jr.
Mike Insley, III	Ken Paulson	Nathan Grident
Larry Taylor	Mike Clair	Donnie Gunn
Breck Williams	Ryan Greer	Phillip Withbow
Jo	Stephen West	Timmy Marshall
David O'Brien	Roger Hurley, Jr.	Ty Burns
Tim Wivell	Charles Insley	Ernest I. George
Hank Jones	Kim Huskey	Chris Moore
John Forrest	Danny Bowden	Ernest Bowden
John Shertanlief	Ken Smith	Andy Lacatell
Chris Coates	Raymond Crowley	James M. Deal
Robert West	Jason Smith	Lynwood Wilkins
Tommy Kellam	Joshua West	

and others

Commissioner Bull called the meeting to order at approximately 9:35 a.m. Associate Member Close was absent. There was a quorum present so the meeting moved forward.

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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 5 Wetlands Appeal by the applicant. It was agreed to hear it as scheduled to discuss the request for continuance.

Commissioner Bull announced that it was the general consensus of the Board to approve the agenda, as presented.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the July 22, 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 Neill seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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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 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.

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

Associate Member Zydron moved to approve the page two items, 2A through 2C, as submitted. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

2A. DEPARTMENT OF THE NAVY, #14-0415, requests authorization to construct a 223 linear foot timber pile breakwater to protect an open-pile boat ramp and floating tending pier situated along Willoughby Bay at Naval Station Norfolk in Norfolk.

Permit Fee	\$100.00
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2B. CHESAPEAKE DEPARTMENT OF PUBLIC WORKS, #11-0012, requests authorization to modify an existing permit associated with the construction of new north and southbound fixed-span bridges along the Dominion Boulevard (U.S. Route 17) crossing over the Southern Branch of the Elizabeth River in Chesapeake. The modification request includes the installation of temporary cofferdams, two around each of the new river piers 13SB and 14SB associated with the southbound bridge, and two around each of the original abutments to be demolished, and the installation of two temporary false work towers. Original permit conditions remain in effect.

No applicable fees – Permit Modification

2C. DEPARTMENT OF THE ARMY, #13-1912, requests authorization to modify an existing permit to include the installation of 104 feet of replacement steel sheet-pile bulk heading, encroaching a maximum of 2 feet channelward of the deteriorating structure, at Fort Belvoir and adjacent to Gunston Cove off Wilson Road in Fairfax County.

No applicable fees – Permit Modification

3. CONSENT AGENDA ITEMS. None

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. When asked, Matthew Hull, Assistant Attorney General and VMRC Counsel indicated that a closed meeting was necessary to discuss current litigation matters.

Associate Member Sessoms moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:

Discuss current litigation matters.

Associate Member Beck seconded the motion. The motion carried, 8-0. The Chair voted yes.

Associate Member Sessoms moved for the following:

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member's knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

Associate Member Zydron seconded the motion. Commissioner Bull held a Roll Call vote:

AYES: Ballard, Beck, Bull, Erskine, Haynie, Neill, Sessoms, and Zydron

NAYS: NONE

ABSENT DURING VOTE: Close

ABSENT DURING ALL OR PART OF CLOSED MEETING: Close

Motion carried, 8-0.

Katherine Leonard, Recording Secretary

Associate Member Sessoms moved that the Commission appeal a decision of a Judge to reinstate two watermen their commercial fishing licenses. Associate Member Beck seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 5. **ROBERT PY, #14-0439.** Commission review on appeal by the applicant of the July 9, 2014, decision by the Norfolk Wetlands Board to deny his after-the-fact request to retain 80 linear feet of riprap revetment, to install 115 linear feet of concrete retaining wall, and restore vegetated wetlands adjacent to his property at 461 Peace Haven Drive situated along the Eastern Branch of the Elizabeth River in Norfolk.

Tony Watkinson, Chief, Habitat Management, explained that the applicant’s attorney submitted a letter requesting a continuance of the wetlands appeal hearing as they were trying to resolve the matter with the City of Norfolk. He said that staff suggested that this be continued until the October meeting as there was another wetlands appeal that could be very time consuming at the September meeting. He said the Board needed to make a decision on whether the continuance should be granted.

Cindy Hall, Deputy City Attorney and representative for the Wetlands Board, was present and her comments are a part of the verbatim record. Ms. Hall explained there was an appeal and injunction in place and they had met with the applicant’s attorney. She said that the restoration had been started and they expected a resolution of the matter. She reiterated that the hearing in October would be better since this could be a lengthy hearing.

Associate Member Zydron moved to approve the request by the applicant for a continuance until the October Commission meeting. Associate Member Erskine seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 6. **MICHAEL AND LINDA BRADLEY, #14-0450.** Request authorization to construct a 17-foot by 28-foot open-sided boathouse adjacent to an existing private, noncommercial pier situated along the York River at 5436 York Haven Lane in Gloucester County. The project is protested by an adjoining property owner.

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 staff believed the open-sided design only minimally adds to any visual obstruction already presented by the pier and boat located in a boatlift. After evaluating

the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommends approval of the project, as proposed.

Commissioner Bull asked if the applicant or a representative was present.

Mike Bradley, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bradley said he purchase the property five year ago and had done a lot to improve it and now the last thing to be done was the boathouse. In response to questions, Mr. Bradley stated he did not know why it was being protested by his neighbor. He also added that he had not contacted the neighbor.

Linda Bradley, applicant, was sworn in, but did not comment.

Commissioner Bull asked if anyone was present pro or con for this item. There were none. He noted that the protestant was not present. He stated the matter was before the Commission.

Associate Member Beck moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Permit Fee	\$25.00
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7. THOMAS PERRY, #14-0491. Requests authorization to deploy multiple lines of commercial oyster aquaculture floats, anchored to the bottom over 25 acres of Chesapeake Bay, approximately one-half mile north of Windmill Point in Lancaster County. The project is protested by a nearby riparian landowner.

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

After considering all of the factors in §28.2-1205 of the Code of Virginia and weighting all comments in the record, and the concerns raised by the protestant, staff recommends approval with the following special conditions:

- (1) Approval of no more than 500 floats over the first two years with an annual reporting requirement of production. The applicant could apply to expand the proposal after two-years, with an additional public interest review.
- (2) The submittal of revised drawing depicting the area necessary for 500 floats in order that staff can assess an appropriate royalty at a rate of \$0.005 per square foot annually.
- (3) A surety bond in the amount of \$7500.00 to cover the cost of removal of all 500 floats, lines, augers, etc. in the event of failure.

There are several other special conditions regularly required by VMRC for floating aquaculture permits. These include:

- The permit and authorization to retain the structures shall be valid for a period of five years. After five years, the Permittee may request the Commission re-evaluate the project and seek authorization to continue the activity for an additional period of time;
- The public shall not be excluded from any areas not physically occupied by the authorized structures;
- The Permittee shall properly maintain all structures and shall remove all structures within five (5) days upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures;
- All structures must be individually tagged per the Corps' requirements and marked and located in accordance with all applicable U.S. Coast Guard requirements;
- The applicant will adhere to the storm contingency plan and Hurricane Evacuation Route dated received May 21, 2014;
- Should unforeseen conflicts arise, the Commission may elect to hold an additional public hearing, at which time they may elect to revoke the permit and direct removal of any or all of the authorized floats;
- All commercial aquaculture activities conducted in association with the structures authorized herein shall be conducted in compliance with all relevant VMRC and Department of Health regulations;
- The permit shall not be issued until all approvals have been secured from VDH;
- The Permittee shall be required to remove or relocate any of the structures which are determined to be in the way of any approved shoreline projects requested by the adjacent upland property owner within their riparian area.

Staff felt that these special conditions, along with the standard permit conditions, will further minimize any potential adverse impacts to property and resources and provide sufficient safeguards to allow this commercial aquaculture enterprise to move forward.

Commissioner Bull asked if the applicant and a representative wished to comment.

Tom Perry, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Perry provided a PowerPoint presentation. He discussed where he wanted to go with the project and the site requirements and location. When he was asked by Commissioner Bull if he had any problems with the staff recommendation. Mr. Perry responded no, it was reasonable. He provided two handouts with signatures of watermen who supported the project.

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

Associate Member Beck moved to accept the staff recommendation to approve a five-year permit for a reduced project of 500 aquaculture floats with all of the special and usual permit conditions; with an option to reapply for an expansion of the project after two years. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 8. LOUIS W. STONE, #11-0617.** Commission consideration of a permit violation associated with a dredging project in an unnamed cove of Wilton Creek, adjacent to property at 61 Churchill Road in Middlesex County, including the role of the contractor, Haywood Marine Construction.

Jay Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation.

Mr. Woodward indicated that staff recommended the Commission confirm that a violation did occur and that both Mr. Stone and Contractor bear responsibility. Furthermore, in consideration of the Guidance for Civil Charge Assessments Pursuant to Section 28.2-1213 of the Code of Virginia adopted by the Commission, considering the degree of impact and deviation and non-compliance noted above, staff recommended the assessment of a \$6,000.00 civil charge for both the permittee and contractor in lieu of the need for further enforcement action. Should the permittee or contractor not agree staff recommends this matter be referred to the Office of the Attorney General in order seek Civil Penalties.

Louis Stone (applicant) and Vaugh Haywood (contractor) were both sworn and their comments are a part of the verbatim record.

Mr. Stone explained that he had hired Mid Atlantic Resources to obtain all the necessary permits, which he paid to be done. He said at a meeting with the Corps and VMRC staff the contractor talked about crossing the wetlands, but was told this could not be done. That contractor just walked away and did not do the project. He said it was a couple of years before he found another contractor, which was Mr. Haywood, to do the dredging. He said that he did not know the difference between mechanical and hydraulic and he was told mechanically by Mr. Haywood. He said following Memorial Day the project was started, as he had had a meeting with the VMRC staff and the Corps and the contractor. He said this had not been done intentionally and he had paid for all that was needed and paid to have it planted back. He said he did not know he had to know the law that he had hired others do that.

Mr. Haywood explained that there were two guts between the property and they wanted to come through at one location straight to the dredge site. He said he had never seen the paperwork that said it had to be done with a barge. He said he had only worked for

someone else for a dredging project and had never done one himself. He said he only built docks and piers. He said the high penalty proposed was unfair.

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

Associate Member Sessoms said it was hard to understand how the applicant and contractor did not know that they were doing it wrong and dredging in State waters is significant.

Matthew Hull, Assistant Attorney General and VMRC Counsel explained that if it were taken to Court by the Attorney General’s office, the civil penalties could be as much as \$25,000 per day for every day of the violation.

Associate Member Beck moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Tony Watkinson, Chief Habitat Management, noted that both parties needed to agree to the civil charges if they did not want to go to Court.

Commissioner Bull asked the two parties if they agreed to accept the civil charge of \$6,000.00 for each of them. Mr. Stone asked if they could consult with an attorney. Commissioner Bull stated that they needed to get back with the Commission in a day or two. Mr. Hull stated they could be given a week and Associate Member Beck suggested two weeks. Mr. Stone asked about who he needed to contact and was told Mr. Watkinson. Mr. Watkinson explained that staff would be sending a letter of findings to them with a date for them to respond by.

Applicant – civil charge	\$6,000.00
Contractor – civil charge	\$6,000.00

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Hank Badger, Co-Chief Engineer, Engineering and Surveying, gave the briefing of the information provided in the staff’s evaluation. He suggested to the Commission that he be allowed to present all five applications for lease at the same time and that the Commission make separate motions at the end. His comments are a part of the verbatim record.

9. **DONALD C. PORTER, SR., #12-087S.** Requests authorization to lease 6.60 acres of Oyster Planting Ground situated near the State line in Pocomoke Sound, Accomack County. The application is protested.

Based on Fisheries Management staff comments of support for the application for lease and the fact that §28.2-551, states that the Baylor survey is conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks, and shoals and that there are no other public oyster beds, rocks, or shoals.” Staff recommends approval of the above oyster ground applicant for 6.60 acres.

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10. **DONALD C. PORTER, SR., #13-104S.** Requests authorization to lease 84.89 acres of Oyster Planting Ground situated in Pocomoke Sound near North End Point in Accomack County. The application is protested.

Based on Fisheries Management staff comments in support of the application for lease and the fact that §28.2-551, states that the Baylor survey is conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks, and shoals and that there are no other public oyster beds, rocks, or shoals, and that the area has been leased in the past. Staff recommends approval of the above oyster ground applicant for 84.89 acres.

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11. **HARVEY A. DREWER, II, #13-027S.** Requests authorization to lease 145.49 acres and 3.26 acres of Oyster Planting Ground situated in the Robin Hood Bay area of Pocomoke Sound, Accomack County. The application is protested.

Based on Fisheries Management staff comments in support of the application for lease and the fact that §28.2-551, states that the Baylor survey is conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks, and shoals and that there are no other public oyster beds, rocks, or shoals.” Staff recommends approval of the above oyster ground applicant for 145.49 acres and 3.26 acres.

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12. **LEONARD WILLIAM WHITE, #13-102S.** Requests authorization to lease 96.80 acres of Oyster Planting Ground situated adjacent to Public Ground #9 in Pocomoke Sound, Accomack County. The application is protested.

Based the comments by Fisheries Management staff in opposition to the application for lease and on the area being used for navigation and is unlikely to produce shellfish, staff cannot support Mr. White’s application and recommends the application be denied.

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13. **ADRON W. WILLIAMS, #13-114S.** Requests authorization to lease 124.58 acres of Oyster Planting Ground situated west of Long Point in Pocomoke Sound, Accomack County. The application is protested.

Staff is unclear as to the applicant's intentions, since Mr. Williams signed the petition protesting all the applications in Pocomoke Sound including his own. Based on Fisheries Management staff concerns that the leasing of oyster ground in this area may impact the adjacent Tangier and Pocomoke Sounds Management Area, where the watermen in this area depend heavily on the public harvest, staff recommends denial of Mr. Williams' application. Staff also believes the leasing of the ground is not in the best interest of the Commonwealth.

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Commissioner Bull asked if there were public comments, pro or con.

Michael Clair, waterman and Arnold Ray Evans, waterman, were both sworn in and their comments are a part of the verbatim. They stated they were opposed to the approval of these lease applications for just three individuals and noted that these were rocks that were harvested in the past by watermen as they were the best beds to work as they were protected from the weather.

Commissioner Bull stated that the matter was before the Commission.

Associate Member Beck moved to approve the staff recommendation and to lease to Mr. Porter the 6.6 acres. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

Associate Member Erskine moved to approve the staff recommendation to lease to Mr. Porter the 84.89 acres. Associate member Beck seconded the motion. The motion carried, 8-0. Chair voted yes.

Associate Member Haynie moved to approve the staff recommendation to lease to Mr. Drewer the 145.49 acres and 3.26 acres. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

Associate Member Beck moved to approve the staff recommendation to deny the application for lease to Mr. White. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

Associate Member Beck moved to approve the staff recommendation to deny the application for lease to Mr. Williams. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

14. PUBLIC COMMENT: There were no public comments.

15. UNLAWFUL TAKING OF OYSTERS OFFENDERS.

Steve Holliday, Marine Police Office, gave the presentation for the two cases and his comments are a part of the verbatim record.

Vernon L. Ward

Illegally harvesting oysters from an oyster sanctuary (4VAC 20-650-30) 03/05/14; convicted in the Newport News District Court 05/30/14, fine \$100.00, Court Cost \$101.00.

As authorized under Code Section 28.2-528 and in accordance with the VMRC guidelines, staff recommended the Commission revoke all of Mr. Ward’s licenses to take or catch fish, shellfish, or marine organisms. Staff recommended that the revocation extend for two years from Mr. Ward’s conviction date of 05/30/14 and ending on 05/29/16, as provided by Code Section 28.2-528.

Associate Member Erskine stated with the three previous convictions and now illegally harvesting in an oyster sanctuary area, he moved to revoke all of Mr. Ward’s licenses for six months. Associate Member Zydron seconded the motion. The motion carried, 7-1. Chair voted no.

David S. Lockett, Jr.

Illegally harvesting oysters from oyster sanctuary (4VAC 20-650-30) 03/05/14; convicted in the Newport News District Court 05/30/14, fine \$100.00, Court Cost \$101.00.

As authorized under Code Section 28.2-528 and in accordance with the guidelines, staff recommended the Commission revoke all of Mr. Lockett’s licenses to take or catch fish, shellfish, or marine organisms. Staff recommended that the revocation extend for two years from Mr. Lockett’s conviction date of 05/30/14 and ending on 05/29/16, as provided by Code Section 28.2-528.

Associate Member Erskine stated with the five previous convictions and now illegally harvesting in a sanctuary area, he moved to revoke all of Mr. Luckett's licenses for one year. Associate Member Zydron seconded the motion. The motion carried, 7-1. Chair voted no.

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

Stephanie Iverson, Fisheries Management Manager, gave the presentation on the three cases. Her comments are a part of the verbatim record.

Philip B. Brown – was not present.

Ms. Iverson said that it was up to the Commission to hear the case in his absence or suspend all of Mr. Brown's licenses until he does appear before the Commission. She noted that there had been no contact made by Mr. Brown as to why he could not be present.

Staff recommends Mr. Brown be placed on probation for a period of two years ending on August 25, 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. Brown appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull stated the matter was before the Commission.

Associate Member Sessoms moved to suspend all licenses until Mr. Brown appeared before the Commission. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

Lacy C. Rose – was not present.

Ms. Iverson explained that Mr. Rose was up to date through May 2014, but still missing June 2014. Ms. Iverson stated that he contacted staff and he had extenuating circumstances that would not allow him to appear.

Staff recommended Mr. Rose be placed on probation for a period of two years ending on August 25, 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. Rose appearing before a hearing of the Commission on license(s) suspension.

Associate Member Zydron moved to continue the case until the next month’s meeting. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

Donald G. Broadwell – was present and sworn in.

Ms. Iverson explained that Mr. Broadwell was up-to-date for most of reporting, he still needed to provide additional dates of harvest for the months of February and July.

Staff recommended Mr. Broadwell be placed on probation for a period of two years ending on August 25, 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. Broadwell appearing before a hearing of the Commission on license(s) suspension.

Mr. Broadwell explained that it seemed too hard to do so much of his reporting at one time and he was changing to keeping a daily log of his reports.

Associate Member Neill moved to approve the staff recommendation for two years probation, subject to Mr. Broadwell getting his harvest data up-to-date. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

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17. PUBLIC HEARING: Amendments to Chapter 4 VAC 20-70-10 et seq., “Pertaining to the Harvesting of Clams” and 4 VAC 20-1090-10 et seq., “Pertaining to Licensing Requirements and License Fees” to establish a gear license and limitations for use of hand held water vacuums, or water rakes, for the harvesting of cultured hard clams on leased ground.

Jim Wesson, Head, Conservation and Replenishment, explained that staff had requested a public hearing at last month’s Commission meeting to hold a public hearing to make this a gear license and to establish a fee. He said that when staff did some further studying of the Code of Virginia it was determined that this change could not be done by regulation and it was necessary for the General Assembly to make a change in the Code of Virginia. He said that staff recommended that there be no change at this time.

Associate Member Zydron moved to accept the staff recommendation. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 18. PUBLIC HEARING:** 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; modify tending requirements and provide a definition for small mesh gill nets.

Robert O’Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Staff recommends amending Chapter 4 VAC 20-751-10 et seq. “Pertaining to the Setting and Mesh Size of Gill Nets” to create the Assateague Island Small-Mesh Gill Net Area, and to limit the amount of gill nets, set by any individual harvester, within the Assateague Island Small-Mesh Gill Net Area from August 15 through October 15, to become effective August 27, 2014.

Staff recommends the Commission adopt emergency amendments to Chapter 4 VAC 20-751-10 et seq. to remove tending requirements for small-mesh gill nets from August 15 through October 15 on the ocean of Northampton and Accomack counties, to prohibit the use of agents within the Assateague Island Small-Mesh Gill Net Area, and a provision to allow the Commissioner discretionary authority to permit the use of an agent in the Assateague Island Small-Mesh Gill Net Area, to become effective August 27, 2014, and advertising these emergency amendments for a public hearing and final approval at the September 23, 2014 public Commission meeting.

Staff recommends advertising, for a September 23, 2014 public hearing, amendments to Chapter 4 VAC 20-430-10 et seq. “Pertaining to the Marking and Minimum Mesh Size of Gill Nets” to achieve conformity with federal marine mammal take reduction plans.

The public hearing was opened.

Ernest Bowden, waterman, and Danny Bowden, waterman, both said that they supported the staff recommendation for Chapter 4 VAC 20-751-10 and appreciated the efforts by staff to facilitate a compromise.

After further discussion, Associate Member Zydron moved to approve the staff recommendations. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 19. PUBLIC HEARING:** 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.

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 recommends extending the overall 2014 recreational season by three days in September through September 21. This extension of the black sea bass season through September 21 was approved by the ASMFC in August 2014 as a result of the final federal rule established for black sea bass recreational management measures for 2014 published by NMFS on July 3, 2014.

The public hearing was opened. There were no public comments, pro or con.

Associate Member Beck moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 20. PUBLIC HEARING:** (1) 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 and a management control date; (2) 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) 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) 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 briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Staff requests approval of amendments to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” which include: harvest seasons and areas, as described in draft Section 40, and establishing a control date for management of all public oyster fisheries in Virginia.

Staff recommends approval of amendments to Chapter 4 VAC 20-260-10 et seq., “Pertaining to Designation of Seed and Clean Cull Areas,” to return to culling oysters loose into a pile on the boat, rather than culling directly into baskets, and making it unlawful for any person to buy, sell,

or report clean cull oysters by any measure other than a lawfully described container.

Staff recommends approval of amendments to Chapter 4 VAC 20-1230-10 et seq., "Pertaining to Restrictions on Shellfish" adding requirements for all shellfish harvesters to complete a Shellfish Harvest Safety Certification course by 2015.

After some further discussion, the public hearing was opened.

Charles Insley, Poquoson waterman, was present and his comments are a part of the verbatim record. He stated that channel markers on the Wreck Shoal Sanctuary were not working for marking the area as they were on chains and moved. He said there needed to be two more pilings added to mark it properly. He explained that he was opposed to the reduction in the vessel bushel limit; the baskets being used should be left up to the waterman to decide to put them in baskets or to keep loose on the bottom of the vessel; and opposed to the time limit being changed from 2 pm to 12 noon, as the weather impacts how they work.

Kim Huskey, Executive Director for Virginia Seafood Council, was present and her comments are a part of the verbatim record. Ms. Huskey stated they were opposed to getting rid of the orange baskets as it was a help to members of the Council that worked in the Rappahannock and Great Wicomico Rivers and would make it a hardship to get rid of the basket.

Alan Hogge, waterman, was present and his comments are a part of the verbatim record. Mr. Hogge stated that he was opposed to the change in the bushel limit and the time limit.

Richard Green, waterman, was present and his comments are a part of the verbatim record. Mr. Green stated that he was opposed to the change in bushel limit and the time limit. He added that he suggested raising it to 10 bushels. When asked about the orange baskets, he stated that they were great and it should not be changed because they were better able to keep track of their catch.

Tommy Kellum with Kellum Oyster Company was present and his comments are a part of the verbatim record. Mr. Kellum stated that he opposed getting rid of the orange baskets because they worked great and shortened the offloading time. He said he was not against the control date for use when future actions are taken as long as it protects the industry's investment, but the Commission must consider the average age of those in the fishery now and the need for younger fisherman to come along later. He said the misuse of the baskets was all put on the watermen, but the buyers are responsible as well.

Samuel Coates, waterman was present and his comments are a part of the verbatim record. Mr. Coates said he supported keeping the orange baskets but not a shrimp basket. He felt that the US bushel should be used.

Jeff Hammer, waterman was present and his comments are a part of the verbatim record. Mr. Hammer said that the orange basket had been good for the watermen because it made it safer for them because of stability problems when working on the water in a small vessel.

Public hearing was closed. The matter was before the Commission.

After much discussion, Associate Member Zydron moved to approve staff recommendations, except to continue to allow the use of the orange baskets. Associate Member Sessoms seconded the motion. Mr. Wesson reiterated that this would still allow for putting them in a loose pile on the deck of the vessel or to use the orange baskets. The motion carried, 8-0. Chair voted yes.

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21. DISCUSSION: Proposed amendment to Chapter 4 VAC 20-490-10 et seq., “Pertaining to Sharks” to raise Spiny dogfish trip limits; modify the definition of small mesh gill nets and large mesh gill nets; and amend shark finning regulations.

Lewis Gillingham, Director SWFT, gave the briefing on the information provided in the staff’s evaluation.

Staff recommended the Commission authorize advertisement of an increase of the spiny dogfish possession limit from 4,000 to 5,000 pounds. Staff also recommended the Commission allow advertisement of a change in the definitions of small and large gillnets, for a September public hearing. Mr. Gillingham indicated staff was no longer requesting any modification to the existing language in Chapter 4 VAC 20-490-10 et. seq. involving shark finning.

The matter was before the Commission.

Associate Member Erskine moved to advertise for a public hearing. Associate Member Haynie seconded the motion. The motion carried, 8-0. Chair voted yes.

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22. SETTING DATE OF NOVEMBER/DECEMBER COMMISSION MEETING FOR DECEMBER 9.

Commissioner Bull explained that the Board needed to decide if there should be an alternate date set to combine the November and December Commission meetings. He suggested the 2nd Tuesday in December that was the 9th.

He stated the matter was before the Commission.

Commission Meeting

**17215
August 26, 2014**

Associate Member Haynie moved to make the change to Tuesday, December 9, 2014. Associate Member Beck seconded the motion. The motion carried, 8-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 4:15 p.m. The next regular Commission meeting will be Tuesday, September 23, 2014.

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John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary