

**MINUTES****Commission Meeting****December 9, 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	
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
Erik Barth	Bs. System Manager
Dave Lego	Bs. System Specialist
Joe Grist	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Mgmt. Manager
Lewis Gillingham	Director, SWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Sampling Supervisor
Laurie Williams	Fisheries Mgmt. Specialist
Rachael Maulorico	Fisheries Mgmt. Planner
Ande Ehlen	Fisheries Mgmt. Specialist
Alicia Nelson	RFAB Coordinator
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
James Simms	Marine Police Officer, Sr.
Shawn Hixenbaugh	Marine Police Officer

**Commission Meeting**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	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.
Mark Eversole	Environmental Engineer, Sr.
Brad Reamy	Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Mike Whiteside	Monroe Farmer	Chuck Roadley
Wayne Moore	Katie Crum	Bekky Jucksch
Dennie Bartol	Bob Livengood	Shawen Bartol
Steve Bennett	Charles Downey	Sherry Nicely
Michael Nicely	Earl Downey	Ellis W. James
Jamie Oliver	Christine Bruner	Walter Beck
Tom Foley	John Brooks	Zach Christman
Alice Wellford	Mark Williams	Hill Wellford
Richard Mohelier	Mac Garrett	Emilie Franke
Thomas Swartzwelder	Lewie Lawrence	Delegate Keith Hodges
Ric Wellford	Andy Lacatell	Jonathan Conway
Daniel P. Rhea	Robert West	John Edwards
Jason Smith		

and others.

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

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

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

As there were no changes, Commissioner Bull stated the matter was before the Commission.

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

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

Associate Member Neill explained that he had referenced an organization he was involved with and the minutes stated the CCA and it should be the Peninsula Salt Water Sport Fisherman’s Association (PSWSFA).

Commissioner Bull stated that the matter was before the Commission.

**Associate Member Erskine moved to approve the minutes, as amended. Associate Member Haynie seconded the motion. The motion carried, 8-0. 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 questions of staff and any public comments for any of the items presented and there were none.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine 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. LUCK STONE, #14-1555**, requests authorization to repair/replace three (3) 6-leg commercial dolphins, in their existing locations, and to mechanically remove/dredge one out cropping of bedrock which rises 5.2 feet above the river bottom and hinders barge traffic in the James River, adjacent to the Luck Stone South Richmond Plant in the City of Richmond. Recommend approval with a time-of-year restriction between February 15 and June 30 of any year to protect anadromous fish, and a royalty of \$3.65 for dredging 8.1 cubic yards of State-owned submerged land at \$0.45 per cubic yard, and a royalty of \$117.75 for encroachment over State-owned submerged lands for three dolphins.

Royalty Fee (dredging 8.1 cu. yds @ \$0.45/cu. yd.)	\$ 3.65
Royalty Fee (encroachment 235 sq. ft. @ \$0.50/sq. ft.)	\$117.50
Permit Fee	\$100.00
Total Fees	\$221.15

- 2B. NORFOLK DEPARTMENT OF PUBLIC WORKS, #14-1548**, requests authorization to replace the existing Spotico Creek culvert with a new 4.1-foot wide by 16-foot long pre-cast concrete arch culvert, install a new riprap outfall structure resulting in the filling of approximately nine (9) cubic yards of State-owned submerged land, relocate existing utility lines, including the pile-supported aerial crossing of an 8-inch sanitary sewer line across 13 linear feet of State-owned submerged land, and to include the use of temporary cofferdams and turbidity curtains to facilitate construction of the culvert replacement within the Berkley subdivision of Norfolk.

Permit Fee	\$100.00
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- 2C. PLAINS MARKETING, L.P., #11-1227**, requests a permit modification to construct a new 3-foot wide by 70-foot catwalk and repair/reconfigure an existing vehicle turnaround area on an existing marine terminal in the York River at 2201 Goodwin Neck Road in York County.

No applicable fees – Permit Modification

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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, Matthew Hull, Assistant Attorney General and VMRC Counsel indicted that no closed meeting was necessary.

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5. **ISLE OF WIGHT COUNTY, #14-1236,** requests authorization to construct a 15-foot wide pedestrian/bicycle bridge over approximately 210 linear feet of Jones Creek, a tributary to the Pagan River in Isle of Wight County. The bridge structure is associated with a proposed 10-foot wide shared use trail from the Town of Smithfield to the Carrollton Nike Park. The application is protested by adjacent property owners.

Ben Stagg, Environmental Engineer, Sr., gave the presentation of the information provided in the staff’s evaluation. His comments are a part of the verbatim record. He provided a handout from the agent for the project.

Mr. Stagg provided a power point presentation for the project. He noted that two adjacent property owners had provided letters of objection to the project. Those objections included a number of issues that are outside the jurisdiction of VMRC. There were questions from Associate Commissioners about the height of the structure. Staff noted that the pedestrian bridge would have a clearance at or greater than the VDOT highway bridge immediately downstream of the proposed bridge.

Mr. Stagg further noted that the Commission staff believes many of the concerns expressed by Ms. Edwards are outside the scope and jurisdiction of VMRC. The bridge structure, as proposed, does not appear to create any adverse navigation issues. Since the structure is proposed to be placed upon pilings, staff does not believe there will should any settling issues. While, staff also understands Mr. Saunders’ concerns related to a permanent pathway immediately adjacent to the residential property, no specific information has been provided concerning the bridge structure itself. Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project with a time of year construction restriction from February 15 through June 30 of any year to protect anadromous fish species.

Jamie Oliver, with Isle of Wight County-Dept. of Transportation, was sworn in and spoke briefly and answered a few questions asked by the Board. She explained that this had been public noticed since 2008 and public meetings had been held. She stated the

widening of the highway bridge was to be done in the future which was a part of the 25 year plan.

Robert Livengood, a Smithfield resident, and local marine contractor, spoke indicating he was unaware of the project until attending this hearing for another matter and then expressed concerns about the clearance of the proposed structure, the distance between support pilings within the creek and the lack of notification of land owners upstream of the bridge.

**After considerable discussion, Associate Member Zydron made a motion to table the matter until the January 27, 2015 Commission meeting. Associate Member Erskine seconded the motion. Staff requested clarification if the motion was to include running a revised public notice with a corrected bridge width and this was confirmed to be part of the motion by both Associate Members Zydron and Erskine. The motion carried, 6-2. Associate Members Close and Neill voted no. Chair voted yes.**

Continued until January 27, 2015 Commission meeting.

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- 6. **DENNIE BARTOL, #14-1370**, requests authorization to install a 17-foot by 39-foot open-sided boathouse and 12-foot by 17-foot gazebo on a statutorily authorized open-pile private pier along the James River at 9 Hopemont Drive in the City of Newport News. The project is protested by an adjacent property owner.

Mike Johnson, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. He noted that the Commission is only considering the boathouse and gazebo, not the pier as it is statutorily exempt. He said that the existing pier, with an existing boathouse, is damaged and needs to be replaced. He also noted that the project is protested by Wallace Garner an adjacent property owner to the north of the project. He explained that the protestant concerns include impacts to aesthesis, property value and previous impacts to his property regarding pier debris from the applicant’s previous pier and that he would not protest the project if the pier were relocated to the south by approximately 120 feet.

After evaluating the merits of the project against the concerns expressed by those in opposition to the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project citing there would be little additional impact to the protestant’s view shed from the roof structures and that the potential issues regarding riparian rights were best addressed by the individual parties and any required legal actions by the appropriate Court.

Robert Livengood, agent for the applicant was sworn in and his comments are a part of the verbatim record. He stated the reason for the pier being located close to the property line was to utilize an existing timber boat ramp to minimize impacts to the existing riprap revetment. He also stated this pier would be constructed to a higher quality than the previous pier to limit future storm damage.

Wayne Moore, counsel for the protestant, was present and his comments are a part of the verbatim record. He stated that Mr. Garner’s view shed would be impacted and that his property values would decrease by the installation of the roof structures.

In his rebuttal testimony, the applicant stated that the pier had been in the current location since the 1980’s and had been damaged by a hurricane and repaired. It was again damaged by another storm, but was not repaired until he had decided what his best course of action would be regarding the repair/replacement resulting from the second storm.

Commissioner Bull asked for any further comments, pro or con. There were none. The matter was before the Commission for discussion and action.

Associate Member Zydron stated that while he would like to see a compromise between the two parties he felt that the protestant’s unwavering position for relocating the pier 120 feet to the south was unacceptable and that compromise was not possible.

Associate Member Haynie stated that she felt the relocation of the pier to utilize the footprint of the existing timber boat ramp, minimizing impacts to the revetment was a good idea.

**Associate Member Zydron moved to approve the project as proposed and recommended by staff. The motion was seconded by Erskine. The motion carried, 8-0. Chair voted yes.**

Permit Fee	\$100.00
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- VULCAN CONSTRUCTION MATERIALS L.P., #14-1413**, requests authorization to construct a commercial pier and set eight dolphins to provide for the loading of sand and gravel barges at the proposed Black Marsh Sand and Gravel Facility at property situated along the Rappahannock River in Caroline County. The project requires a wetlands and a subaqueous permit and is protested.

Randy Owen, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation and his comments are a part of the verbatim record. He advised the Commission that three additional protests to the project had been received

after 5:00 p. m., Monday, December 8, 2014. Copies of the protestants' letters were provided as a handout.

Mr. Owen utilized a PowerPoint presentation with the information from the staff's evaluation of the project. Mr. Owen advised that Vulcan Construction was seeking authorization to construct a commercial pier and set eight dolphins to provide for the loading of sand and gravel barges at the proposed Black Marsh Sand and Gravel Facility situated along the Rappahannock River in Caroline County. Although Vulcan did not currently operate sand mines on the Rappahannock River, two existing competitor mines were noted by staff within three miles of the proposed facility. It was additionally noted that a Federal channel existed from the mouth of the Rappahannock River and upstream to Fredericksburg. He noted that sand and gravel barge traffic was common on the Rappahannock River in years past along with commercial deliveries of fuel oil upstream to Fredericksburg.

Staff further explained that the project had received protests from a number of individuals. This group collectively expressed their concerns that the proposed barge traffic would adversely impact the upper Rappahannock River's ecology and natural resources and threaten the safety of the boating public. The protestants, he explained were asking the Commission to consider a number of permit conditions that would limit the barge traffic on the River from the facility, the length and drafts of the barges, and any future expansion of the facility.

Staff concluded that the navigation of the river offsite was governed by the U. S. Coast Guard and the U. S. Army Corps of Engineers, and not by VMRC.

After evaluating the merits of the project against the concerns expressed by those in opposition to the project and considering all of the factors contained in §28.2-1302 and §28.2-1205 of the Code of Virginia, staff recommended approval of the project, as proposed, finding that the anticipated public and private benefits exceeded the anticipated public and private detriments. Staff additionally recommended an instream work time-of-year restriction of February 15 to June 30 to protect anadromous fishes and a one-time royalty assessment in the amount of \$4,421.40 for the encroachment of the proposed pier and dolphins over 2,210.7 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Walter Beck, representing the applicant was sworn in and Vulcan Construction's Attorney, Dan Jordanger, presented brief remarks and arguments, electing to hold the balance of their comments for rebuttal.

After asking for and receiving no additional speakers in support of the project, Commissioner Bull asked for any speakers in opposition.



**Commission Meeting**

Hill Wellford, representing himself as a concerned Essex County citizen and representative for the Essex County Countryside Alliance, was sworn in and presented his concerns as primarily noted in the Alliance's December 2, 2014, letter to the Commission. He further explained that he was additionally a member of the Friends of the Rappahannock and the Rappahannock Wildlife Refuge Friends, and that these groups additionally shared similar concerns, particularly over any increase in barge traffic and industrialization of the upper Rappahannock. He concluded that he believed that the Commission did, in fact, have authority to include permit restrictions that would govern the barge traffic on the River as it related to the potential for adverse impacts to State-owned bottomlands.

Three additional speakers voiced their opposition to the project. These included two Essex County citizens, Alice Wellford and MacDowell Garrett, and Richard Moncure, representing the Friends of the Rappahannock were all sworn in and their comments are a part of the verbatim record. The three expressed similar concerns as that noted by Mr. Wellford, again requesting that the Commission consider permit restrictions to govern the barge traffic on the River.

Mr. Jordanger and Mr. Beck provided rebuttal comments and answered a number of questions posed by the Commission. These centered largely on what dialogue Vulcan Construction had developed with the protestants and if they had considered and agreed to any voluntary measures to alleviate the protestant's concerns. Mr. Jordanger advised that Vulcan Construction had agreed and stated that the average loaded draft of their barges would be 10.5 feet, and that this was captured in revised project drawings presented to VMRC staff. This, he and Mr. Beck felt, would minimize or negate the potential for groundings and adverse impacts to the subaqueous bottomlands expressed by the group.

Lyle Varnell, representative for the Virginia Institute of Marine Science, recommended that the Commission consider a permit condition that would mandate the use of bubble curtains during the installation of any approved hollow steel pilings. This, he said, would minimize the potential for adverse impacts to freshwater fishes.

The Commission closed the public hearing, thanked everyone for their comments and stated the matter was before the Commission for discussion and motion.

**Associate Member Zydron advised the Board that he felt that the Commission should limit their review to that which was in their jurisdiction, specifically the encroachment of the pier and barge loading facility. He felt that the regulatory control of the offsite barge traffic was rightly before the Federal authorities that regulate the Rappahannock River's vessel traffic. He then made a motion to approve the project as recommended by staff. Associate Member Sessoms seconded the motion. Associate Member Erskine asked if a friendly amendment would be accepted to include the VIMS' recommendation for bubble curtains to be used during the installation of the steel columns to less the impact on the freshwater fish**

**in the area. Associate Members Zydron and Sessoms accepted the amendment. The motion carried, 8-0. Chair voted yes.**

Royalty Fees (encroachment 2,210.70 sq. ft. @ \$2.00/sq. ft.	\$4,421.40
Permit Fee	\$ 100.00
Total Fees	\$4,521.40

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- 8. **CHARLES F. DOWNEY, #14-1485**, requests after-the-fact authorization to retain a 7-foot wide by 240-foot long cable-supported suspension bridge across 120 linear feet of the Cowpasture River located near Clifton Forge in Alleghany County. The project is protested by an adjacent property owner.

Mark Eversole briefed the Commission on the project, utilizing a PowerPoint presentation and the staff evaluation of the project. His comments are a part of the verbatim record. Mr. Eversole advised that Mr. Downey sought after the fact authorization to retain a 7-foot wide by 240-foot long cable-supported suspension bridge across 120 linear feet of the Cowpasture River located near Clifton Forge in Alleghany County, and that the project was protested by an adjacent property owner. The PowerPoint presentation and staff evaluation are contained in the official Commission record and are available for review.

Commissioner Bull then opened the public hearing. Mr. Downey, the applicant, spoke first. He explained that he had spoken with Mr. Whiteside (the protestant) prior to starting construction of the bridge and thought that there were no problems between them as far as the bridge construction was concerned. He further stated that he had called the Building Inspection Department with Alleghany County and was advised that no permits were needed for this type of project. In conversations with the Cowpasture River Preservation Association (CRPA), a group of local, concerned citizens, they advised Mr. Downey to build the bridge at least 20 feet above the ordinary high water mark, as in the most recent severe flooding events, the river crested at almost 20 feet above ordinary high water. Mr. Downey apologized for starting construction of the bridge without a permit from VMRC, but admitted that he had never heard of the agency until a DEQ representative told him about the agency.

Mr. Mike Whiteside spoke next, in opposition to the project. Mr. Whiteside explained that he did not oppose the construction of the bridge, that he felt Mr. Downey is within his rights to build it. What he is opposed to is the fact that there is no oversight of the design or construction of the bridge by any local, state, or federal authority. He stated that he is also troubled by the repairs made to the access road to the bridge, which crosses his property. Concrete trucks rutted the road, and Mr. Downey repaired those ruts by filling them with loose asphalt and shale. Mr. Whiteside fears this will break down and

flow into the river during periods of high water, thus polluting the river. He stated that his main objection to the project was the asphalt road repairs, as he is opposed to pollution of the river.

The third speaker was Mr. Monroe Farmer, a board member of the CRPA and friend of Mr. Whiteside. He reiterated Mr. Whiteside's concerns that he is not opposed to the bridge, but rather the pollution and sediment that may enter the river due to the upland work on the bridge. He also expressed a concern that there needs to be some oversight by some governmental agency.

The final speaker was Mr. Stephen Bennett, a step son of Mr. Downey, and co-owner of the suspension bridge. He explained that he owns property on the east side of the river and wants to build the suspension bridge in an effort to keep more vehicles out of the river, by giving them an alternate method of crossing the river than the existing ford. He further explained that he works for CSX railroad, and in discussions with local CSX officials, they are also in favor of the suspension bridge because it will decrease the numbers of people who access the east side of the river by using an existing railroad bridge crossing. Mr. Bennett also explained that he and Mr. Downey had repaired the access road to the bridge with shale and crushed asphalt. He also explained that the dirt road is, and has been, a public right of way to access the river ford. He also mentioned that Mr. Whiteside has "cut away the bank" of the river, creating an erosion problem of his own. Mr. Bennett noted that Mr. Downey's construction company has recently constructed a similar suspension bridge in the town of Clifton Forge. He said that they took the plans for that bridge and beefed them up a bit to support ATVs, and used that design to build the suspension bridge which is the subject of this hearing. He reiterated that the county does not require inspections. He finished his talk by mentioning that the Protestants had stated that they had lived around the Cowpasture River for some number of years. He wanted the Commission to know that he had been born and has lived for over 50 years near the river and that Mr. Downey has lived there for over 80 years. They want to protect the river as well.

Commissioner Bull then closed the public hearing and asked Mr. Matthew Hull, Assistant Attorney General and VMRC legal counsel, to briefly discuss what the Commission's jurisdiction covers in this case. Mr. Hull explained that the Commission has jurisdiction over that portion of the bridge that spans the Cowpasture River. He further explained that upland issues such as the condition of the access road are out of the Commission's jurisdiction.

The Board then proceeded to discuss the project. Associate Member Haynie asked staff to describe the condition of the access road and whether staff noticed any problems or asphalt in the roadway. Mr. Eversole explained that staff had parked their car at the end of the gravel road and had then ridden down to the site in Mr. Downey's truck. There were ruts and water as it had recently rained. Mr. Eversole stated that he had not seen any

asphalt, but noted that the asphalt had been mentioned in the DEQ site visit report and the DEQ staff member had stated that it was not of concern.

Commissioner Bull stated the matter was before the Commission.

**Associate Member Erskine made a motion to approve the project pursuant to staff's recommendation with the addition that erosion control measures be installed as appropriate. Associate Member Neill seconded the motion. Mr. Eversole reminded the Commission that staff's recommendation for triple permit fees and a \$1000.00 civil charge. The motion carried, 8-0. Chair voted yes.**

Civil Charge	\$1,000.00
Permit Fee	\$ 75.00
Total fees	\$1,075.00

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Following the vote, Mr. Monroe Farmer spoke up, stating that the Commission really had no jurisdiction over this matter, as this portion of the Cowpasture River was privately owned, due to the existence of a King's Grant. Commissioner Bull asked staff if they were aware of this and if the discussion of a King's Grant had been raised in earlier discussions with anyone involved in the application process. Mr. Eversole stated that Mr. Farmer's statement at this hearing today about a King's Grant was the first time the subject had even been mentioned. Matthew Hull, Assistant Attorney General and VMRC Counsel stated that it would need to be proven. Commissioner Bull then stated that the ruling of the Commission stood, but that the Commission would certainly review any documentation that could be provided concerning the possibility of private ownership of the river in the location of the bridge.

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**9. PUBLIC COMMENTS.**

Ellis W. James of Norfolk requested the Commission pay close attention to issues of water quality, fracking, and water abundance.

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**10. FAILURE TO REPORT:** Cases involving failure to report commercial harvests, in accordance with Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Management Manager, gave the presentation on the individuals involved in the cases of failure to report commercial harvest. Her comments

are a part of the verbatim record.

**Jonathan Conway** – was present and sworn in

Ms. Iverson explained that Mr. Conway was initially notified by staff that he had failed to report for the month of January 2014 by 1<sup>st</sup> and 2<sup>nd</sup> notification postcards. Staff made several phone calls to Mr. Conway regarding his missing harvest reports and left him a message because he was not reached. Mr. Conway was also sent a letter November 4, 2014, regarding his reporting status for 2014 showing him the months for which he was missing harvest reports. Mr. Conway returned staff's call but not until after he had already received a personal service letter for a hearing on December 9, 2014. Staff has now received all of his reports as well as all of his correct contact information.

Staff recommended Jonathan Conway be placed on probation for a period of two years ending on December 8, 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. Conway appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull asked Mr. Conway if he understood what his being on probation meant. Mr. Conway stated yes.

**Associate Member Erskine moved to accept the staff recommendation of two year probation, starting 12/09/2014, ending 12/08/2016. Associate Member Sessoms seconded the motion. The motion carried, 8-0. Chair voted yes.**

**Robert West** – present and sworn in

Ms. Iverson explained that Robert West was initially notified by staff that he had failed to report for the months of February and March 2014 by 1<sup>st</sup> and 2<sup>nd</sup> notification postcards for each month of missing harvest. Mr. West called staff in response to one of the postcards and informed staff that he had worked with his brother and was on those reports. Staff received those reports; however, it was discovered that Mr. West was not listed as an additional harvester on his brother's March 2014 report. Staff immediately called Mr. West and informed him how he could resolve the situation. Mr. West told staff at that time that he would get the situation resolved. Mr. West was sent a 3<sup>rd</sup> and final notification, by certified mail, for all missing harvest reports. This 3<sup>rd</sup> notification by certified mail was received by Mr. West on August 15, 2014. At that time, he was missing harvest reports for February, March, June and July 2014. Mr. West was delayed from the September and October Commission potential case lists to allow him additional time to resolve his compliance issue. He was again sent a 3<sup>rd</sup> notification for all missing harvest reports which he received on November 1, 2014. Staff made additional phone calls to Mr. West regarding his missing harvest reports and also received calls from Mr. West during which he informed staff several times that he

would bring his reports to the office. Mr. West has not brought reports to staff at the office to date. Mr. West reported no activity for the month of February 2014 but not until November 6, 2014. He is now totally up to date and everything has been resolved.

Staff recommends Robert West be placed on probation for a period of two years ending on December 8, 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. West appearing before a hearing of the Commission on license(s) suspension.

Mr. West explained that he had turned in the March report when he was at VMRC and left it on the counter, but it was apparently misplaced. He said he understood the importance of keeping up with his reporting and was now doing his reporting on-line as it was easier.

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

**Associate Member Haynie moved to accept the staff recommendation for two years probation, starting 12/09/14, ending 12/08/16. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.**

**Kevin R. Wyatt** – was not present.

Ms. Iverson explained that Mr. Wyatt was currently on suspension until he appeared before the Commission. She stated he was not at the hearing. She explained that it was up to the Commission whether to continue the matter.

Commissioner Bull stated that the matter would be continued by general consensus of the Board.

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- 11. LICENSE EXCEPTION APPEALS:** Individual appeals of decision to deny exceptions to the two year waiting period for a Commercial Fisherman Registration License.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefings for the individual cases. His comments are a part of the verbatim record.

Mr. Grist explained the criteria for the two year delay application process and the transfer and exception application process.

The following section of Chapter 4 VAC 20-610-10 et seq. provides the requirements an applicant must satisfy in order to be exempt from the 2-year waiting period. Each applicant for the 2-year delay receives this information.

**4VAC20-610-30. F. Exceptions to the two-year delay may be granted by the Commissioner if he finds any of the following:**

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.
2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.
3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The Commission will hear requests at their March, June, September, and December meetings.

Under no circumstances will an exception be granted solely on the basis of economic hardship.

Staff recommended denial of the appeals, by the three individuals, of the agency's decision to deny their requests for an exception to the 2-year delayed entry into the commercial fisheries.

**Daniel P. Rhea** – Poquoson – was present and sworn in.

Mr. Rhea explained he needed to obtain a commercial card now and he had been working on the water all of his life. He stated he could not get hired without it.

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

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

**Richard Wayne Hyatt, Jr.** – Hampton – was not present.

Commissioner Bull stated the matter was before the Commission.

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

**Steven K. Wood** – Exmore – was not present.

Commissioner Bull stated the matter was before the Commission.

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

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**12. RECOMMENDATIONS:** From the Recreational Fishing Advisory Board, on funding projects from the Virginia Saltwater Recreational Fishing Development Fund.

Alicia Nelson, RFAB Coordinator, gave the presentation of the information provided in the staff's evaluation.

The estimate of funds available, for projects, as of October 31, 2014, from the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF), is \$3,447,039 after subtracting agency obligations.

The RFAB reviewed the following projects and voted to recommend the Commission fund all projects as presented, with the exception of four projects. Projects D, L, and Q were withdrawn by the applicants, and project K was not recommended for funding. Asterisks (below) indicate projects proposed for joint funding from the Marine Fishing Improvement Fund (MFIF). The chairman abstained from all votes unless there was a tie. Draft minutes from the November 17, 2014 RFAB meeting are attached to this evaluation. The minutes will be finalized at the January 12, 2015 RFAB meeting.

Multi-Year Fishing Events for 2015 Renewal; The RFAB took items A through C and E through J as a group. The RFAB voted for approval with 5 in favor and 0 opposed.



**Commission Meeting**

- A. 28<sup>th</sup> Annual Knights of Columbus Annual Kids Fishing Day. Greg Brown, \$7,351.48.
- B. 2015 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. Joseph Stephenson; George Reich, Great Bridge Fisherman's Association. \$3,825.
- C. "Take a Kid Fishing Day" 2015. Charlie Koski, Chincoteague Island Charter Boat Association \$1,469.
- D. Withdrawn by applicant- Seventh Annual Youth Fishing Adventure Day. Bob Hewlett, Bob Pride, Virginia Charter Boat Association. \$13,210.
- E. 2015 ESVAC Children's Fishing Conservation and Educational Outings (Saxis and Morley's Wharf Fishing Piers). David Page, Eastern Shore of Virginia Anglers Club. \$2,000.
- F. 2015 Sunshine Children's Fishing Program (Year 13). Denny Dobbins, Portsmouth Angler Club/Sunshine Program. \$8,450.
- G. 2015 Norfolk Youth Head Boat Fishing Trip (Year 4). Ned Smith, Norfolk Anglers Club. \$1,160.
- H. 2015 Children's Fishing Clinic (Year 18). Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. \$7,500.
- I. 2015 Kiwanis Club Children's Fishing Clinic (Year 14). Wesley Brown, Capital District Kiwanis Club. \$7,500.
- J. 2015 Virginia Beach Anglers Club/Seton Youth Shelter Children's Fishing Trip. Robert Burstein, Virginia Beach Anglers Club. \$2,300.

Access Projects

- K. King and Queen County Recreational Fishing Pier and Non-power Boat Access (Mattaponi River). Thomas Swartzwelder, King & Queen County. \$136,853.25.

Mr. Randolph made a motion to not approve the project, based on the fact that the project does not provide substantial benefits to the saltwater recreational angler, as required by Virginia Code 28.2-303.3, and because the project is located in a currently designated freshwater area and requires a freshwater fishing license. The motion was seconded by Mr. Bannister. The RFAB approved the motion to deny the project with 5 in favor and 0 opposed.

- L. Withdrawn by applicant- Mathews County East River Boat Yard Fishing Pier. Mindy Moran, Mathews County. \$33,000.

Research Projects for 2015 Renewal (\* indicates joint funding from the commercial fund)

M. Virginia Game Fish Tagging (Year 21). S. Musick, L. Gillingham, VIMS and VMRC. \$78,536. The RFAB voted for approval with 5 in favor and 0 opposed.

N.\* 2015 Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 13). M. Fabrizio, T. Tuckey, VIMS. \$59,530. (\$29,765 from VSRFDF, and \$29,765 from MFIF) The RFAB voted for approval with 4 in favor and 1 opposed.

O.\* Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2015. R. O'Reilly, VMRC. \$338,925. (\$290,507 from VSRFDF, and \$48,418 from MFIF) The RFAB voted for approval with 5 in favor and 0 opposed.

New Research Projects for 2015

P. Speckled trout, *Cynoscion nebulosus*, in Virginia: are genetic differences temporally stable? J. McDowell, S. Musick, VIMS. \$62,791. The RFAB voted for approval with 4 in favor and 1 opposed.

Q. Withdrawn by applicant- Virginia Fishing Pier Partner Program: A Pilot Project. S. Barco, Virginia Aquarium and Marine Science Center Foundation. \$38,095.

The projects recommended by the RFAB to the Commission for funding total \$503,154.48 from the VSRFDF and \$78,183 from the MFIF.

Staff supported the project funding recommendations from the RFAB, for expenditures totaling \$503,154.48 from the VSRFDF, and partial funding of projects N and O, totaling \$78,183 from the MFIF.

Commissioner Bull stated that a motion would be needed for all items, except for Item K.

**Associate Member Neill moved to accept the staff recommendation, for approval of all items, except Item K. Associate Member Erskine seconded the motion. The motion carried, 8-0. Chair voted yes.**

K. King and Queen County Recreational Fishing Pier and Non-power Boat Access (Mattaponi River). Thomas Swartzwelder, King & Queen County. \$136,853.25.

Commissioner Bull asked for public comments.

Delegate Keith Hodges, General Assembly representative for the King and Queen County area, was present and his comments in support of funding the pier are a part of the verbatim record.

Thomas Swartzwelder was present and his comments in support of funding the pier are a part of the verbatim record.

Lewie Lawrence, representing the Middle Peninsula District Planning Commission, was present and his comments in support are a part of the verbatim record.

**After much discussion, Associate Member Sessoms moved to refer Item K back to the RFAB with the Commission’s recommendation to provide 2/3 funding with the County to provide 1/3 funding to the RFAB for them to discuss; and, then bring it back to the Commission at its regular meeting on January 27, 2015. Associate Member Neill stated that it needs to go back to the RFAB with all the information and normally it would be funded but that it needed to be located in a saltwater license area. He seconded the motion. The motion carried, 8-0. Chair voted yes.**

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- 13. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to comply with Addendum IV to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan.

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.

Staff recommended adopting amendments to Chapter 4 VAC 20-252-10 et seq. “Pertaining to the Taking of Striped Bass” to that include: establishing the annual commercial coastal quota as 138,640 pounds; establishing the annual commercial Chesapeake Bay quota as 1,064,997 pounds; establishing the recreational coastal daily possession limit as 1 fish per person per day; establishing a Spring Recreational Striped Bass Trophy Permit, with reporting requirements and sanctions for failure to report participation in the recreational striped bass trophy-size seasons; and establishing sanctions for Striped Bass Charter Boat Permittees who fail to report participation in any of the recreational striped bass seasons.

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

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

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- 14. **PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-500-10 et seq., "Pertaining to the Catching of Eels" to comply with the Interstate Fishery Management Plan requirements for American eel.

Ande Ehlen, Fisheries Management Specialist, gave the briefing of the information provided in the staff's presentation. Her comments are a part of the verbatim record.

Staff recommended adopting proposed amendments to Chapter 4 VAC 20-500-10 et seq., "Pertaining to the Catching of Eels", to establish (1) an Eel Buyer Permit; (2) reporting requirements for those who purchase eels from a legally licensed harvester; and, (3) a requirement that any lawful harvester who self-markets or retails eels, to any individual or business, shall obtain an Eel Self-Market Permit.

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

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

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- 15. **PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-900-10 et seq., "Pertaining to Horseshoe Crabs" to establish the 2015 Virginia commercial landings quota.

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 the Commission adopt amendments to Chapter 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs," to establish the 2015 Virginia horseshoe crab commercial quota as 172,828 crabs.

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

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

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**Commission Meeting**

- 16. **PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-280-10 et seq., "Pertaining to Speckled Trout and Red Drum" to amend the daily bycatch landing limit definition for speckled trout.

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. At its March 24, 2014 meeting, the Commission established a commercial fishery bycatch limit of speckled trout, up to 100 pounds, once 80% of the commercial quota has been attained, with the requirement that any bycatch landing limit shall also contain at least an equal amount (pounds) of other species.

Staff recommended adopting amendments to Chapter 4 VAC 20-280-10 et seq., "Pertaining to Speckled Trout and Red Drum" to modify the phrasing of the daily bycatch landing limit for commercial speckled trout.

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

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

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- 17. **PUBLIC HEARING:** Proposed final adoption of emergency amendments to Chapter 4 VAC 20-620-10 et seq. "Pertaining to Summer Flounder" to modify commercial summer flounder management measures.

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.

Staff recommended the Commission adopt the emergency amendments as final amendments to Chapter 4 VAC 20-620-10 et seq. "Pertaining to Summer Flounder". These amendments establish a consecutive 20-day landing period, beginning December 1, 2014, for any legally licensed Summer Flounder Endorsement Licensee landing summer flounder, harvested outside of Virginia waters.

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

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

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**Commission Meeting**

- 18. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-1270-10 et seq. "Pertaining to Atlantic Menhaden" to revise the reference years for the total allowable landings.

Lewis Gillingham, Director, SWFT, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

The provisions signed into the Code of Virginia in February 2013 contain an expiration date of January 1, 2015. Chapter 4 VAC 20-1270-10 et seq. "Pertaining to Atlantic Menhaden," contains similar language and its provisions are set to expire on January 1, 2015. In addition, Chapter 4 VAC 20-1270-10 et seq. "Pertaining to Atlantic Menhaden" references 2013 and 2014 in establishing the appropriate quota time periods and these time periods should be 2015 and through June 30, 2016.

Staff recommended the Commission adopt amendments that modify the reference years for the total allowable landings of commercially caught menhaden and extend the provisions of Chapter 4 VAC 20-1270-10 et seq. "Pertaining to Atlantic Menhaden" until July 1, 2016.

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

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

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- 19. REQUEST FOR EMERGENCY AMENDMENTS:** Proposed emergency amendments to establish the 2015 commercial black sea bass quota in Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass".

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 the Commission adopt emergency amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass" to establish the 2015 quota as 448,000 pounds and a public hearing at the January 22, 2014 Commission meeting to establish the 2015 directed fishery quota as 408,000 pounds and bycatch fishery commercial quota as 40,000 pounds.

There were no public comments.

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

**Commission Meeting**

**17281  
December 9, 2014**

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There being no further business, the meeting was adjourned at approximately 4:07 p.m.  
The next regular Commission meeting will be Tuesday, January 27, 2015.

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John M. R. Bull, Commissioner

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Katherine Leonard, Recording Secretary