

MINUTES

Commission Meeting

July 26, 2016

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 Bull	Commissioner
Wayne France	
Lynne Kellum	
James E. Minor	Associate Members
Ken Neill, III	
John E. Tankard	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Director, Human Resources
Todd Sperling	Business Systems Specialist, Sr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Management Mgr.
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Adam Kenyon	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Steve York	Marine Police Officer

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Steve Holliday	Marine Police Officer
Bill Hawkins	Marine Police Officer
Patrick West	Marine Police Officer
Steve Bennis	Marine Police Officer
Austin Brown	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Chief Engineer Western Shore
Mark Eversole	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Maulorico	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Daniel Faggert	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Oula Shehab Dandan	John VanRosendek	Mike Oesterling
Johnny Cope	Donald T. Watkins	Chris Self
Tommy Garner	Cory Richard Atack	Anthony Martin
Philip Ryan Cedena	Vincent Joseph	Charles M. Southall, III
Thomas Timberlake	Kelly Timberlake	Rick Jones
Ellen Edwards	Kim Huskey	Gary Wojcerchowski
Robbie Brown	David O'Brien	Steve Bogg
Kate Queen	Julian Cox	Ann Arseniu
Lisa Carol Rose	Andy Lacatell	Scott Wivell
James F. Holloway	Willie West	Yan Chen

and others.

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Commissioner Bull called the meeting to order at approximately 9:45 a.m. Associate Members Erskine and Ballard were both absent.

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

APPROVAL OF AGENDA: Commissioner Bull asked if there were any changes from the Board members or staff. There were none.

Associate Member Zydron moved to approve the agenda. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the June 28, 2016 Commission meeting minutes. There was one change made by Associate Member Kellum for Item 9. She said the abstentions were made by Associate Members Kellum and Neill.

Associate Member Zydron moved to approve the minutes, as amended. Associate Member Kellum seconded the motion. The motion carried, 7-0. Chair voted yes.

Commissioner Bull swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

2. PERMITS (Projects over \$500,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were two page two items to be heard, Items 2A and 2B. He reviewed the items for the Board. His comments are a part of the verbatim record.

There were no public comments. Commissioner Bull stated the public hearing was closed and the matter was before the Commission for discussion and action.

Associate Member Zydron moved to approve Items 2A and 2B. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

2A. VIRGINIA POWER AND ELECTRIC COMPANY, #16-0710, requests authorization to perform maintenance dredging, by hydraulic method, up to 150,000 cubic yards of State-owned subaqueous land, on an as-needed basis, within the intake channel for the Surry Nuclear Power Plant, in the James River in Surry

County. The dredge material will be contained in an adjacent upland site. Staff recommends approval with special conditions to include: a time-of-year restriction to protect anadromous fish from February 15- June 30 of any year, a time-of-year restriction to protect spawning oysters from June 30 – August 31 of any year, and in the event of an emergency situation where immediate dredging is required, the Commissioner, or his designee, upon request from the permittee, may grant relief from the time-of-year restrictions to conduct emergency dredging.

Permit Fee	\$100.00
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2B. CHERRY HILL CONSTRUCTION, INC., #15-0777, requests authorization to modify an existing VMRC Subaqueous Permit to install a 23-foot wide by 9-foot high grate constructed of 3/8-inch rebar across Boush Creek and install five culvert openings and a concrete ditch opening into the concrete walls of Boush Creek channel as part of the I-564 Intermodal Connector Project in the City of Norfolk.

No applicable fees – permit modification.

3. CONSENT AGENDA ITEMS. None.

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. Matthew Hull, Assistant Attorney General informed Commissioner Bull that a closed meeting was necessary.

Associate Member Kellum 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:

Green vs VMRC, Owen vs VMRC, and Ward vs VMRC

Associate Member Minor seconded the motion. The motion carried, 7-0. The Chair voted yes.

Associate Member Kellum 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 Neill seconded the motion. Commissioner Bull requested a Roll Call vote:

AYES: Bull, France, Kellum, Minor, Neill, Tankard and Zydron.

NAYS: NONE

ABSENT DURING VOTE: Associate Members Erskine and Ballard

ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Member Erskine and Ballard

Motion carried, 7-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

5. **TOMMY GARNER**, #12-1423, requests authorization to modify an existing VMRC Subaqueous Permit and install a boat lift and 12-foot long bench seat on a previously authorized non-riparian pier along Deep Creek at 632 Snug Harbor Lane in the City of Newport News.

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

Mr. Johnson explained that Mr. Garner was granted the authorization to construct a non-riparian pier with a single boat slip consisting of two mooring piles at 632 Snug Harbor Lane by the Commission at the January 26, 2016, meeting. The installation of the mooring piles was approved as it would provide a safe way to dock a vessel for extended periods at this pier. The installation of a boat lift would further enhance the safety of mooring a vessel and eliminate the need to use antifouling paints which are toxic to marine invertebrates.

Mr. Johnson stated that with regard to the riparian concerns, it should be noted that the physical space was already used by the vessel tied up between the pier and mooring piles. The installation of the boat lift would not increase the encroachment. Matters involving property rights and riparian areas were matters for the appropriate civil courts. VMRC did not have the authority to define riparian boundaries.

Mr. Johnson said that the issue regarding other properties having the same easement as Mr. Garner's property was not raised during the initial review of the application and was unknown by staff at the time this pier was permitted. Materially, this does not change the fact that the Newport News Circuit Court ruled the pier could be built and allowed for mooring for vessels of up to 25 feet in length. If the other parties desire to create mooring slips on this pier, a new permit application would need to be submitted.

Mr. Johnson stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project, as proposed.

Johnny Cope, attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Cope said that the bench was within the easement approved by the Court and the boat lift would be between the two pilings previously approved by the Commission. He added it was within the footprint.

Vincent Joseph, adjoining property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Joseph said he did not object to the bench but he did object to the boat lift. He said he was concerned they would moor the boat in his riparian area and impact navigation and enjoyment of his pier. In response to a question, he stated he was aware of the easement allowing the pier and mooring one boat.

Ellen Edwards, adjoining property owner and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Edwards read a statement in opposition to the boat lift. She said there was no riparian right ruling by the court only the approval of a 6 foot easement where his pier is located. She asked the Commission to deny the request and noted that two others had requested use of the pier and with more than one it was no longer a private pier.

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Rick Jones was sworn in and his comments are a part of the verbatim record. Mr. Jones said Mr. Gardner was entitled to the pier within the 6 foot easement, but the piles and lift were outside of the easement. He said the pilings should not have been approved by the Commission.

Matthew Hull, Assistant Attorney General and VMRC Counsel stated that the Virginia Marine Resources Commission does not establish the riparian area and the permit does not address that, but it does decide on the best use of state-owned bottomlands.

Mr. Cope read from the court order for the easement for the pier and a boat of not more than 25 feet long.

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

After further discussion, Associate Member Tankard moved to deny the boat lift and to approve the bench. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

No applicable fees – Permit Modification.

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Associate Member France recused himself from participating in this matter and left the meeting room.

- 6. ATACK PROPERTIES, INC., #15-1740, request authorization to retain two (2) timber jetties constructed without VMRC authorization and to construct a new tending pier adjacent to a previously authorized community boat ramp at property situated along the Rappahannock River in Richmond County.**

Randy Owen, Environmental Engineer, Sr. gave the briefing of the information provided in the staff evaluation, with slides. His comments are a part of the verbatim record.

Mr. Owen explained that the VMRC and Richmond County Wetlands Board staff representatives met with the applicant, the contractor and the design consultant on at least four separate dates prior to the submission of the original application and approval of the community boat ramp. At all times the applicant, Cory Atack, and contractor sought advice on how to proceed to insure project compliance. Ironically, the contractor called VMRC staff and asked for an inspection of the jetties prior to proceeding with the ramp's construction.

Mr. Owen stated the agent's omission of the jetties from the drawings and their construction, therefore, appears to be an oversight on the part of the contractor. Jetties are

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traditionally included in the drawings and design of boat ramps on water bodies, such as the Rappahannock, with large fetches and rough water conditions. The jetties also typically constitute a necessary component of the cofferdam and form typically used to pour and cure the concrete in the dry.

Mr. Owen said that Mr. Self was an experienced marine contractor. He apologized to the Richmond County Wetlands Board for this oversight and took full responsibility for the violation. Both he and the applicant have been very cooperative with staff in preparing this matter for both the Wetlands Board and the Commission. It was noteworthy that the Wetlands Board unanimously approved the project and determined that a civil charge was not appropriate in this case. It is staff's opinion that neither party intended to circumvent the permit process. This was supported by the multiple pre-application site visits for this project and a long history of similar meetings with this contractor in the Richmond County area.

Mr. Owen explained that in light of the comments received from VIMS and SEAS, the existing timber jetties and proposed tending pier appear to be necessary components for the safe use of the ramp and they are not expected to negatively impact adjacent properties. Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as modified, finding that the anticipated public and private benefits exceed the anticipated public and private detriments. Although the jetties were constructed without prior authorization, staff believes that a civil charge is not warranted in this case given the project's extensive pre-application coordination history with staff and the apparent oversight leading to the construction of the unauthorized jetties. Should the Commission concur, project approval would be contingent on an additional royalty in the amount of \$147.00 for the encroachment of the timber jetties over 84 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot and the tending pier over 210 square feet at a rate of \$0.30 per square foot.

Richard Atack, applicant was sworn in and his comments are a part of the verbatim record. Mr. Atack explained that they were trying to comply with all rules and had held four meetings. He said they agreed that the timber jetties were left off the original application. When asked, he stated they agreed with the royalty fees.

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

Associate Member Tankard moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 6-0. Chair voted yes.

Royalty Fees (encroach 84 sq. ft. @ \$1.00/sq. ft.)	\$ 84.00
Royalty Fees (encroach 210 sq. ft.)	

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@ \$0.30/sq. ft.)	\$ 63.00
Total Fees	\$147.00

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Associate Member France returned to the meeting.

- 7. **CHRISTOPHER P. CADENA and PHILIP R. CADENA, #2015-097S**, request authorization to lease approximately 40 acres of oyster planting ground in Upshur Bay, Accomack County. The application is protested by Ann Arseniu.

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- 8. **ANN E. ARSENIU, #2015-103S**, requests authorization to lease approximately 120 acres of oyster planting ground in Upshur Bay, Accomack County. The application includes the Cadena’s 40-acre application.

Hank Badger, Environmental Engineer, Sr. and Chief Engineer, Eastern Shore gave the briefing of the information provided in the staff evaluation, with slides. His comments are a part of the verbatim record.

Mr. Badger explained that in accordance with §28.2-605 of the Code of Virginia, all applications for assignment of general oyster-planting grounds shall be made in writing to the Commission. Applications shall be considered in the same order in which they are received, except that no application for any ground then under lease shall be valid for that portion under lease.

Mr. Badger said that the Surveying and Engineering Department routinely helps applicants fill out oyster planting ground applications. It was not unusual for applicants to take the incomplete application with them for a variety of reasons including ground inspection, obtaining signature and obtaining application fees. It’s also not unusual for an application to be submitted weeks, months or not at all after our initial contact with an applicant. An application is not considered complete until VMRC has received the completed signed application with a \$25 application fee. Once we receive a completed application as stated in §28.2-605, applications are considered in the same order in which they were received.

Mr. Badger stated that staff was sympathetic towards Ms. Arseniu’s situation; however, her application was not complete when her husband left the Belle Haven office on April 8, 2015, and for that matter neither was the Cadena’s application. Therefore, based on §28.2-605 of the Code of Virginia which stated that applications shall be considered in the same order in which they are received, staff recommended approval of the Cadena’s 40 acre application since it was received first. Staff also recommended approval of the remaining approximately 80 acres to Ms. Arseniu.

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Christopher Cadena, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Cadena said that he found this area on the website and had been looking at it for a long time and he wanted to put some clam seed to grow on it. He said he had others leases and he had been using them.

Commissioner Bull asked for comments pro or con for the Cadena application.

Ann Arseniu, protestant, was sworn and her comments are a part of the verbatim record. Ms. Arseniu stated that she was protesting this application and she was the first to apply according to the Code of Virginia. She said they planned to use the area and Mr. Cadena did not have any immediate plans. In response to a question, she stated that nothing was said that the application had to be received at the Newport News office. She said they sent a check and it cleared and nothing was said that payment had to be with the application. She noted that her husband had offered to pay at the Belle Haven Office.

After much discussion, Associate Member Zydron moved to approve the staff recommendation to approve the 40 acres for Mr. Cadena and the 80 acres for Ms. Arseniu. Associate Member France seconded the motion. Motion failed, 3-3-1. Chair voted no. Associate Members Kellum and Tankard voted no. Associate Member Minor abstained.

Associate Member Minor moved to approve 20 acres for Mr. Cadena and 20 acres for Ms. Arseniu. Commissioner Bull asked for a second to the motion. The motion failed for lack of second.

After further discussion, Association Member Zydron again made a motion for accepting the staff recommendation to approve the 40 acres for Mr. Cadena and the 80 acres for Ms. Arseniu. Associate Member France seconded the motion. The motion carried, 5-2. Chair voted yes. Associate Members Kellum and Tankard both voted no.

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9. **ANTHONY W. MARTIN, #2014-095; SUE MARTIN, #2014-097; JAMES DALE MARTIN, #2014-098; JOHN I. MARTIN, #2014-099; ANTHONY W. MARTIN, #2014-100; JOHN MARTIN, #2014-121; MARTIN OYSTER CO., #2014-096; MARTIN AND MARTIN, #2014-120.** The applicants are seeking numerous leases of 175.00 acres (1) and 250 acres (7) within the Chesapeake Bay in the City of Poquoson. The applications are the subject of a petition of protest signed by 50 individuals.

Ben Stagg, Chief Engineer, Western Shore gave the briefing of the information provided in the staff evaluation, with slides. His comments are a part of the verbatim record.

Mr. Stagg explained that after evaluating the multiple requests by the various applicants and weighing the concerns of those protesting the application, and without a more detailed plan on the proposed uses of the application areas, staff cannot support the leasing of such a large area. Therefore, staff is compelled to recommend denial of all the proposed application areas. If the applicants can provide additional information and rationale on the use of these areas that seems appropriate, staff could possibly support the leasing of a smaller area, particularly if a new innovative method of cultivating shellfish is proposed. However, depending on the nature of any potential aquaculture operation that might be proposed it may be more appropriate to review the project through our standard Joint Permit Application (JPA) process. The JPA process does not require the area be leased. Should the Commission approve any or all of the pending applications, they will have to be surveyed in the field, which could result in additional concerns and protests and the matter may need to be brought back to the Commission for further review.

When asked, Jim Wesson, Head, Conservation and Replenishment Department, stated that staff did not recommend putting James River seed in this area because the higher salinity which would not be good for the James River seed and plus what seed survived and spawned would change the make-up of the oysters in the area making them less resistant to diseases.

John Martin, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Martin stated he felt that this was a waste of the Commission's time and maybe should consider withdrawing the applications. He had thought it would be viable to plant James River seed here and the next year start cage aquaculture.

Anthony W. Martin, co-applicant, was sworn and his comments are a part of the verbatim record. Mr. Martin stated that since 1986 there were clams present in the area at one time. He stated there was sand, shell, and rock in the area and the channel was a small boat channel not a shipping channel and it would not stop others from using the area. He said they could still use nets there, no problem. When asked, Mr. Martin said if they had to choose it would be three long areas. He noted there were good tasting clams there.

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

Commissioner Bull noted that it was not for VMRC to be concerned about an applicant's finances.

Associate Member Neill stated that he was concerned with what might harm the Chesapeake Bay and moved to accept the staff recommendation to deny all the applications. Associate Member Zydron seconded the motion. After further discussion the motion carried, 6-1. Chair voted no.

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- 10. DONALD T. WATKINS, #2016-025, requests authorization to lease approximately five (5) acres of oyster planting grounds in the Poquoson River in the City of Poquoson. The application is protested by numerous local residents.**

Ben Stagg, Chief Engineer, Western Shore gave the briefing of the information provided in the staff evaluation, with slides. His comments are a part of the verbatim record.

Mr. Stagg explained that after evaluating the applicant's request, evaluating the revised application area, and weighing the concerns of those protesting the application, staff recommended leasing an area, as surveyed, containing 8.16 acres to the Watkins.

Donald Watkins, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Watkins stated that Commission staff had covered the matter very well. He said the cages would not be stainless steel and would not be put in water less than 4 feet at low tide. He said the cages would only be in the water from April through October. He stated that one third of the area could be used and not be a hazard to navigation. He added it would be a small area. He noted this would be a one man operation. In response to a question, he stated that there would be about 40 cages.

John VanRosendek, adjacent property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. VanRosendek stated that the original area was too shallow and you can walk out on it. He said that area should be reserved for others and the new area he would agree with.

Robbie Brown, Poquoson Resident, was sworn in and his comments are a part of the verbatim record. Mr. Brown explained showed the Board members where he had a duck blind with the use of a staff picture 300 yards out from his house and it was on the proposed lease area. He said he would need access from September to January when he hunts. He added he needed access from his house to deep water for his boat. He said he was concerned with the cages being there. He stated that storm events he thinks would move the cages onto others' property.

Charles M. Southall, III, Poquoson resident and also on the City Council, was sworn in and his comments are a part of the verbatim record. Mr. Southall stated he had received a lot of calls, which he has referred to the Virginia Marine Resources Commission. He stated they were all concerned about safety. He stated this was a recreational area and the cages being in shallow water concern them. He said that there was nothing said about cages in the boater safety course. He said if it was in deeper water it would be no safety hazard.

Kate Queen, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Queen said that she was here for the last application and protested it for the same reasons back in 2011. She said the triangle area is in shallow water and the wind speeds can from three knots to 20 knots quickly in the area. She asked that if a storm caused

damage, was there a plan to correct the problems. She stated that she was concerned if this turned into a commercial operation it would become a high traffic area.

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

After further discussion, Associate Member Zydron moved to approve the smaller area for leasing and to set the rest of the area aside. Associate Member Minor seconded the motion. Matthew Hull, Assistant Attorney General and VMRC Counsel stated that setting the area aside would require a regulation. Mr. Stagg stated it would take additional action by the Commission. Associate Member Zydron amended the motion to allow for the smaller area in deeper water to be leased. Associate Member Minor agreed with the amendment. Associate Member Tankard stated he felt this was not an appropriate area for leasing. The motion carried, 6-1. Associate Member Tankard voted no.

When asked by Commissioner Bull, Mr. Stagg stated the inshore line of the lease area would be established in 4 feet of water.

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11. PUBLIC COMMENT.

Julian Cox, resident of Poquoson, gave a brief PowerPoint presentation of the Poquoson River area and the various users of the area. He provided some history of the area and expressed his concerns with the conflict between users, recreational versus aquaculture. His comments are a part of the verbatim record.

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12. OFFENDERS.

Robert O'Reilly, Chief, Fisheries Management read into the record legal guidelines established to clarify what is meant when the Commission revokes a fisherman's and/or waterman's Commonwealth tidal fishing licenses and fishing privileges. This was the result of a meeting of John Bull, Commissioner; Rick Lauderman, Chief, Law Enforcement; and Matthew Hull, Assistant Attorney General and VMRC Counsel.

Mr. O'Reilly explained that this would be posted on Town Hall websites and on the VMRC website.

Associate Member France asked if this would not allow watermen who work on the Potomac River to land their catch in Virginia. Mr. O'Reilly responded yes.

Commissioner Bull asked for a motion.

Associate Member Tankard moved to adopt these guidelines. Associate Member Minor seconded the motion. The motion carried, 6-1. Chair voted yes. Associate Member France voted no.

***GUIDELINES ON THE SCOPE OF LICENSE AND PRIVILEGE REVOCATION
ORDERS ISSUED UNDER VIRGINIA CODE § 28.2-232***

Section § 28.2-232 of the Code of Virginia authorizes the Virginia Marine Resources Commission (the “Commission”) to revoke the licenses and fishing privileges of a person who has violated certain laws for a period of up to five years. People who have had their licenses and fishing privileges revoked have expressed confusion about the activities they are forbidden to engage in after the revocation order is issued. The Commission has promulgated this guidance document to help clear up that confusion by expressing its view of the law. Note, however, that this guidance document does not have the force of law and is not binding on the Commission, law enforcement officers, prosecutors, or other officials. Note also that this document does not constitute legal advice. The Commission encourages any person who has had their licenses and privileges revoked to consult with a private attorney to discuss the legality of any contemplated work in the fishing industry.

A revocation order that revokes a person’s licenses necessarily forbids the person from engaging in any activity for which a license is required under the Code of Virginia or the Commission’s regulations. Thus, for example, a person who has had his fishing licenses and privileges revoked will not be allowed to use any commercial gear to harvest fish or other marine organisms, fish recreationally, purchase another fisherman’s catch for commercial resale, or land seafood caught in other jurisdictions in Virginia for commercial purposes.

In addition, the revocation of a person’s fishing privileges forbids the person from engaging any activity that constitutes fishing, as that term is defined in Virginia Code § 28.2-100, in the Commonwealth’s tidal waters. In addition to the actual using, setting, or operating the gear used to harvest marine organisms, the statute defines the term “fishing” to include all operations involved in taking or catching marine organisms and transporting or preparing for market those marine organisms. In other words, a person whose fishing privileges have been revoked is forbidden from doing any work onboard a fishing vessel that in any way pertains to the harvesting of marine organisms, preparing them for market, or transporting them from the place of harvest to the land. Thus, for example, a person under a revocation order would be forbidden from driving a boat while the boat has gear in the water or while it has marine organisms on board, culling oysters, or assisting other crewmembers with the use of any gear.

While the scope of the order is expansive, it does not forbid all activities pertaining to fishing or boating. A person under a revocation order may still fish commercially in other jurisdictions so long as the person complies with all applicable licensing requirements in those jurisdictions. The person's catch can even be landed in Virginia so long as the person whose licenses and privileges have been revoked is not driving the boat in Virginia waters and some other person onboard has a valid seafood landing license. In addition, the person whose licenses and privileges have been revoked is not forbidden from fishing recreationally in those inland waters subject to the jurisdiction of the Department of Game and Inland Fisheries. Nor is the person forbidden from engaging in boating or other recreational activities in the tidal waters that do not involve the harvest of marine organisms. The person may also participate in the fishing industry by preparing seafood for, and transporting it to, market so long as those activities occur on land. Thus, the person could drive a truck transporting seafood to a seafood buyer or from a buyer to retail stores and could work in a seafood processing facility.

Once the revocation period has elapsed, the person that was the subject of the order will be allowed to immediately purchase a commercial fisherman's registration license and any other license that the person would otherwise qualify for were it not for the revocation order.

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Bill Hawkins and Steve Holliday, Marine Police Officers, were sworn in and each gave their briefings of the summons and convictions for Mr. Chen. Their comments are a part of the verbatim record.

Bi Chao Chen – was not present.

April 29, 2016--Officer Bill Hawkins; Crabbing after License being Revoked—4 VAC 20-1280-30; June 17, 2016, Norfolk General District Court, Fine: \$50.00, Court Cost: \$94.00

May 6, 2016—Steve Holliday; Fish After License/Privilege has been Revoked—2nd Offense—4 VAC 20-1280-30; June 17, 2016, Norfolk General District Court, Fine: \$00.00, Court Cost: \$94.00, 12 months Jail with 12 months suspended, Good Behavior for 2 years.

May 6, 2016—Officer Steve Holliday; Use More than 5 Crab Pots Recreational (18)—4VAC20-670-30(C); June 17, 2016, Norfolk General District Court, Fine: \$50.00, Court Cost: \$33.00.

Robert O'Reilly, Chief, Fisheries Management read the staff recommendation. Mr. Bi Chao Chen, a commercial fisherman registration licensee, was convicted on

June 17, 2016, for one count of using more than 5 crab pots recreationally (18 total) (4VAC20-670-30C); for one count of fishing after his licenses/privileges had been revoked (second offense) (4VAC20-1280-30); and, for one count of crabbing after his licenses were revoked (4VAC20-1280-30). Mr. Chen's licenses were revoked during the January 2016, Commission Meeting for two years, January 26, 2016, through January 25, 2018, for seven finfish and gear convictions. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Chen's Commission-issued licenses for a period of four years from the date of this Commission meeting, July 26, 2016, through July 25, 2020. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Chen's licenses during this revocation period. Staff recommended the Commission revoke Mr. Chen's fishing privileges, within the Commonwealth's tidal waters, for a period of four years from the date of this Commission meeting, July 26, 2016, through July 25, 2020. Staff recommended the Commission take discretionary action concerning the potential of a civil penalty.

Yan Chen, daughter, was sworn in and her comments are a part of the verbatim record. Ms. Chen explained that her father did not understand that the revocation included more than just catching fish. She said he was not able to come to the hearing because of a business meeting. She noted he was not selling them commercially. She said he enjoyed very much catching fish and crabs and did not understand that it meant everything on the water. She said even if he was here, she would be speaking for him. In response to a question, she said he would not be catching seafood but just riding in the boat.

After further discussion, Associate Member Tankard moved to put Mr. Chen on four year revocation to include licenses and fishing privileges, starting July 26, 2016, through July 25, 2020. Associate Member Kellum seconded the motion. The motion carried, 7-0. Chair voted yes.

Patrick West, Marine Police Officer, was sworn in and gave the briefing on the summons and conviction for Mr. West. His comments are a part of the verbatim record.

Willie J. West, Jr. – was present and sworn in.

October 22, 2015, Closure of Sanctuary Areas—Class 3 Misdemeanor—4 VAC 20-650-30; March 7, 2016, Middlesex County General District Court, Fine: \$50.00, Court Cost: \$86.00, \$100.00 to Oyster Replenishment Fund

October 22, 2015, Theft of Oysters, Clams, Shell, Etc.—Class 1 Misdemeanor--§28.2-527 of the Code of Virginia; March 7, 2016, Middlesex County General District Court, Fine: \$100.00, Court Cost: \$86.00, \$200.00 to Oyster Replenishment Fund

Robert O'Reilly, Chief, Fisheries Management read staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams from a sanctuary, within a 12 month period, should result in at least one year

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revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. West's Commission-issued licenses for a period of one year from the date of this Commission meeting, July 26, 2016, through July 25, 2017. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. West's licenses during this revocation period. Staff recommends the Commission revoke Mr. West's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, July 26, 2016, through July 25, 2017.

Mr. West explained that he had no control over the boat was taken and it was his first year harvesting for oysters. He explained that he worked in other fisheries so he did not know the rules for harvesting oysters.

After further discussion, Associate Member Minor made a motion for Mr. West to be placed on two years probation. There was no second to the motion, so the motion failed.

Associate Member France moved to accept the staff recommendation for one year revocation of all licenses and fishing privileges, starting July 26, 2016, through July 25, 2017. Associate Member Neill seconded the motion. The motion carried, 6-1. Chair voted yes. Associate Member Minor voted no.

James F. Holloway, Jr. – present and sworn in.

Mr. Holloway requested a continuance of his case as he had only seven business days for his notice of this hearing to arrange for representation by an attorney.

Associate Member Zydron moved to continue the case until the August 2016 Commission meeting. Associate Member Kellum seconded the motion. The motion carried, 6-1. Chair voted yes. Associate Member Tankard voted no.

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13. **PUBLIC HEARING:** To make permanent emergency amendments to Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees," for the recreational 5 crab pot license to be consistent with the changes in Section 28.2-226.2 of the Code of Virginia.

Ryan Jiorle, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record.

Mr. Jiorle explained that staff recommended amendments to the regulation be adopted to be consistent with upcoming changes in Section 28.2-226.2 of the Code of Virginia, effective 7/1/16, the fee for a recreational five crab pot license, currently \$36, will be

raised to \$46 for those license holders who do not install a turtle/terrapin excluder device on their crab pots. Those who install the excluder devices may still purchase a 5 crab pot license for \$36. These statutory changes were initiated by Senate Bill 283 to encourage terrapin conservation in the recreational crab pot fishery.

There were no public comments. Commissioner Bull stated the matter was before the Commission for discussion or action.

Associate Member Neill moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 14. REQUEST FOR AUGUST PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-450-10 et seq., “Pertaining to the Taking of Bluefish”, to establish the 2016 Virginia commercial bluefish quota.

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

Ms. Ramsey explained that the 2016 commercial quota and recreational harvest limit for bluefish are in the process of being adjusted based on final recreational harvest estimates for 2015 that were released in June of 2016. It is expected that National Marine Fisheries service will send out final specifications in the Federal Register by the end of July 2016 and may reflect a decrease in Virginia’s Commercial bluefish quotas.

Ms. Ramsey noted that in 2016, there may not be a transfer of quota from the recreational sector to the commercial sector, and Virginia’s 2016 final quota allocation may be much lower than original projected (from 650,00 to 390,000). The 2016 commercial quota and recreational harvest limit will be set once the final recreational harvest estimates for 2015 have been released in 2016. Staff recommended advertising for a public hearing to adopt amendments to Chapter 4 VAC 20-450-10 et seq., “Pertaining to the Taking of Bluefish”, to establish the 2016 commercial bluefish quota.

Associate Member Neill moved to accept the staff recommendations to be advertise for a public hearing at the August 2016 Commission meeting. Associate Member Kellum seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 15. REQUEST FOR AUGUST PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2016-2017 public oyster harvest seasons and management measures that could include, but are not limited to, lower bushel limits and effort limitations.

Jim Wesson, Head, Conservation and Replenishment, gave the briefing of the proposed changes for the upcoming 2016-2017 Public Oyster Harvest Season and the recommendations for how the Commission can establish effort limitations, with slides. His comments are a part of the verbatim record.

Mr. Wesson explained that the staff recommended the following:

- 1) Initiate effort control by voluntary attrition based on the required purchase of the All Gear Oyster Resource User Fee sales each year.
- 2) No new All Gear Oyster Resource User Fee sales until the fishery are less than 600.
- 3) Entry only by immediate family transfer or transfer from individuals with at least 40 days of harvest the previous year.

Other harvest restriction changes:

- 1) Maintain the Friday off for hand scrape and dredge gear types from October-December.
- 2) Add PG 106 to the open hand tong areas in the Yeocomico River.
- 3) Subdivide Rotation Area 2 in the Pocomoke-Tangier Sound dredge into two sections, beginning a three year rotation system in that area. Area 2 would be open from December 1, 2016, through February 28, 2017.

After much discussion, Associate Member France requested that Public Ground Number 106 in Yeocomico River be opened from December 1, 2016, through December 31, 2016. He also requested that Rotation Area 4 be opened from October 1, 2016, through October 31, 2016 and December 1, 2016, through December 31, 2016. Rotation Area 4 would be closed for the month of November, 2016.

Associate Member Tankard moved to accept the staff recommendations, as amended, for a public hearing in August, 2016. Associate Member Neill seconded the motion. The motion carried, 7-0.

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- 16. REQUEST FOR AUGUST PUBLIC HEARING:** Amendments to Chapter 4 VAC20-260-10 et seq., “Pertaining to Designation of Seed Areas and Clean Cull Areas,” to establish baskets (circular plastic mesh containers of not less than 2500 cubic inches but not more than 3000 cubic inches), filled level across the entire top, as the only unit of measurement for buying or selling clean cull oysters harvested from public oyster grounds.

Jim Wesson, Head, Conservation and Replenishment, gave the briefing of the proposed changes for the measure requirements of market oysters (clean cull oysters), with slides. His comments are a part of the verbatim record.

Mr. Wesson explained that the staff recommendations were as follows:

- 1) Make the “orange” plastic basket the only standard of measure for the public market (clean cull) oyster harvest.
- 2) Change the description from 2,500-3,000 cubic inches to 2,566 cubic inches-top inside diameter 17”, bottom inside diameter 13.5”; inside height 14”.

After some discussion, Associate Member Tankard moved to accept the staff recommendations to be advertised for a public hearing at the August, 2016 Commission meeting. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 17. RECOMMENDATIONS:** From the Commercial Fishing Advisory Board (CFAB).

Alicia Nelson, Coordinator for RFAB and CFAB, gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

Ms. Nelson explained that the estimate of funds available from the Marine Fishing Improvement Fund (MFIF) is \$90,000. This summer, two VMRC-managed projects, a blue crab data collection project, and a mandatory reporting outreach project (described below), have been proposed that would require funding from the MFIF.

Proposed Projects:

Virginia Commercial Blue Crab Biological Sampling Project 2016/17: \$30,000:

The purpose of this project is to collect biological samples from the commercial blue crab fishery in the Virginia portion of the Chesapeake Bay and its tributaries, for the purpose of better characterizing the commercial crab harvest reported through Virginia’s

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Mandatory Harvest Reporting Program as it pertains to width, weight, sex, and maturity of blue crabs.

Biological sampling of commercially caught blue crabs will be conducted from late-summer through late-fall 2016 and spring 2017. These crabs will be sampled by contractual employees through dockside-intercepts or intercepts at local seafood buyers.

There is no certainty that the blue crab project can be funded, except periodically, but it is important to obtain samples when financial resources are available.

Mandatory Reporting Outreach \$10,000:

The Mandatory Reporting Program (MRP) has been in effect since January 1, 1993. However, there are newly licensed harvesters that are added annually through our delayed entry program and the reporting system has experience changes over the last twenty three years. Commercial license holders make consistent mistakes that could be avoided with on-hands training. Currently all commercial licensed holders have to report any harvest kept by the 5th of the following month. They have two options to report (paper and online). Both options require commercial license holders to know how to report accurately; however, both options produce multiple errors that require a large amount of staff time to correct. Staff will develop FAQ materials, tutorials and hold training sessions in each region. Staff has already been requested to provide this training by an Eastern Shore watermen's group.

The Commercial Fishing Advisory Board (CFAB) advises the Commission on expenditures from the MFIF. The CFAB was polled, and all the CFAB members who responded supported funding both of these projects, totaling \$40,000 from the MFIF. Staff recommends funding both projects totaling \$40,000 from the Marine Fishing Improvement Fund (MFIF).

Commissioner Bull stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 18. RESCHEDULING** the October Commission Meeting date for November 8 and setting the date of November/December Commission Meeting for December 13.

Commissioner Bull explained that the ASMFC meeting will be in Maine this year the same week as the October 2016 Commission meeting. He stated that key staff would need to attend the ASMFC meeting and he requested the October meeting be changed to Tuesday, November 1, 2016. He noted that he originally looked at November 8th, but that

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is Election Day. He said also that he requested, because of the upcoming holidays, the November-December meeting be combined and rescheduled for Tuesday, December 13, 2016.

Associate Member Zyrdon moved to change the regular October meeting to November 1, 2016 and the November-December meetings be combined and heard on December 13, 2016. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 5:30 p.m. The next regular Commission meeting will be Tuesday, August 23, 2016.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary