

## MINUTES

## Commission Meeting

July 28, 2015

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 A. J. Erskine G. Wayne France S. Lynn Haynie James E. Minor, III Ken Neill, III John E. Tankard, III John E. Zydron	Associate Members
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Director, Human Resources
Dave Lego	Business Systems Specialist
Robert O'Reilly Joe Grist Jim Wesson Stephanie Iverson Samantha Hoover Adam Kenyon Rachael Maulorico Laurie Dozier Jill Ramsey Jennifer Farmer Susan March Nancy McElligott Melanie Ramirez	Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Head, Conservation/Replenishment Fisheries Mgmt. Manager Fisheries Mgmt. Specialist Biological Sampling Supervisor Fisheries Mgmt. Planner Fisheries Mgmt. Specialist Fisheries Mgmt. Planner Regulatory Coordinator Fisheries Mgmt. Tech Fisheries Mgmt. Tech Office and Admin. Specialist
Warner Rhodes Jamie Hogge Stephan Ovide	Deputy Chief, Law Enforcement Marine Police Officer Marine Police Officer

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Phil Koury  
Steve Holliday

Marine Police Officer  
Marine Police Officer

Tony Watkinson  
Chip Neikirk  
Jeff Madden  
Hank Badger  
Randy Owen  
Ben Stag  
Mark Eversole  
Jay Woodward  
Justine Woodward  
Justin Worrell

Chief, Habitat Management  
Deputy Chief, Habitat Management  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Chief Engineer, Eng.Survey  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Michelle Batts  
Charlie Coslett  
James Beazley  
Mary Bellows  
Wes Keck  
Greg Mackey  
Steve Kuntz  
Sanjerv Suri  
Frank Pleva  
Kevin DuBois  
Jason Palonis  
Len Engstrom  
Arthur Woods  
Stacy Porter  
M. H. Schoelwer  
Richard Green  
Jason Windag  
Chris Christman  
Ray Crowder

Keith Batts  
Christine Conrad  
Jason Delacroft  
Mike Mundy  
Amanda Mayhew  
Mike Oesterling  
Geoffrey Cowan  
Corey Gray  
Philip Briggs  
Tarlton Brewer  
David O'Brien  
Carl M. Smith  
Richard West  
Joy Gwaltney  
John Brown  
Donna Melzer  
Robert Hayslett  
Bob Fisher  
Carrol M. Elinsmith

George Bott  
Emily Davies  
Jason Bellows  
Tom Guy  
Jacob Heisey  
Kim Larkin  
Michae Hewitt  
Chris Flint  
Trista Lmrich  
Curtis Hickman  
Pamela Boatwright  
H. Chris Antigone  
Joan West  
Andy Lacatell  
Shelton Avery  
Chris Moore  
Ken Smith  
William Davis

and others.

\* \* \* \* \*

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Commissioner Bull called the meeting to order at approximately 9:30 a.m. All Associate Members were present.

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

Commissioner Bull introduced the three new Associate Members: Mr. Tankard, Mr. Minor, and Mr. France.

Robert O'Reilly, Chief, Fisheries Management announced the resignation of Joe Grist, Deputy Chief, Fisheries Management, who was leaving for a new position with the City of Newport News. He acknowledged Joe's nine years with the Commission and his contributions to the agency: and, congratulated him on his new position.

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**APPROVAL OF AGENDA:** Commissioner Bull asked if there were any changes from the Board members or staff. There were no changes.

**Associate Member Erskine moved to approve the agenda. Associate Member Neill seconded the motion. The motion carried, 9-0.**

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**MINUTES:** Commissioner Bull asked if there were any changes or corrections to be made to the June 23, 2015 Commission meeting minutes. There were no changes.

**Associate Member Zydron moved to approve the minutes, as presented. Associate Member Haynie seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Member Tankard abstained.**

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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).

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

Commissioner Bull opened the public hearing for any public comments for any of the items presented and there were none. He stated the public hearing was closed and the matter was before the Commission.

**Associate Member Erskine moved to approve the page two items. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.**

**2A. NORFOLK SOUTHERN CORP., #15-0196**, requests authorization to construct a living shoreline, to include three (3) riprap sill structures totaling approximately 1,270 linear feet, to include associated sand fill and vegetated wetlands plantings landward of the structures, at their Lambert’s Point facility situated along the Elizabeth River in Norfolk.

Permit Fee	\$100.00
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**2B. TRANSCONTINENTAL GAS PIPELINE COMPANY, LLC, #15-0428**, requests authorization to install by the open-cut method, a 24-inch diameter natural gas pipeline a minimum of five (5) feet beneath a 66-foot wide section of Reedy Creek, approximately three quarters of a mile south of Totaro, in Brunswick County. Staff recommends approval with standard instream permit conditions and a royalty of \$198.00 for crossing 66 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fee (crossing 66 lf @ \$3.00/lf)	\$198.00
Permit Fee	\$100.00
Total Fees	\$298.00

**2C. HAMPTON YACHT CLUB, INC., #15-0227**, requests authorization to install a seven-foot wide open pile commercial pier extending 259 feet channelward of an existing bulkhead, a five-foot by 107-foot T-head, 11 four-foot by 50-foot finger piers and one (1) four-foot by 35-foot finger pier to facilitate 25 boat slips, 52 linear feet of bulkhead, a 70.5-foot by six-foot floating dock with 95 square feet of additional deck space and a pump-out facility, and to mechanically dredge 3,000 cubic yards of State-owned subaqueous bottom to attain depths of minus nine (-9) feet mean low water along the Hampton River at 515 Bridge Street in the City of Hampton. Staff recommends approval with standard dredging permit conditions and a royalty in the amount of \$42,409.00 for the dredging of 3,000 cubic yards at \$0.45 per cubic yard, the outline of the proposed piers over 27,054 square feet of subaqueous bottom at \$1.50 per square foot, and the filling of 104 square feet of State-owned subaqueous bottom at a rate \$2.00 per square foot.

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Royalty Fee (dredging 3,000 cu. yd. @ \$0.45/cu. yd.)	\$ 1,350.00
Royalty Fee (filling 104 sq. ft. @ \$2.00/sq. ft.)	\$ 208.00
Royalty Fee (encroach 27,054 sq. ft. @ \$1.50/ sq. ft.)	\$40,581.00
Permit Fee	\$ 100.00
<b>Total</b>	<b>\$42,239.00</b>

**2D. CITY OF VIRGINIA BEACH, #15-0549,** requests authorization to annually dredge, by either mechanical or hydraulic methods, approximately 27,000 cubic yards of State-owned submerged bottomlands within the existing Crab Creek municipal channel adjacent to the Lynnhaven Boat Ramp and Beach Facility in Virginia Beach. The interior channel will be dredged to maximum depths of minus six (-6) feet mean low water from the ramp to the turning basin at the southernmost point, and a maximum of minus nine (-9) feet for the exterior channel from the turning basin to the end point where it connects to the existing Lynnhaven Inlet Federal Navigational Channel south of the Lesner Bridge. A time-of-year-restriction will be imposed to prevent dredging from March 1 – September 30 to protect juvenile flounder. Dredge spoils will be mechanically offloaded either on-site, or hydraulically pumped to the Ocean Park Beach situated along the Chesapeake Bay. The City may also mechanically offload at the Maple Street Dredged Material Management area situated along Long Creek for only the first three years of the permit, as necessary. The City identified the Maple Street area as a possible offloading location because of potential site access concerns at the Lynnhaven Facility and Ocean Park Beach due to the ongoing Lesner Bridge staging and construction.

Permit Fee	\$100.00
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**3. CONSENT AGENDA ITEMS.** None

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**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** No closed meeting was necessary.

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**5. VIRGINIA ELECTRIC & POWER CO., #15-0533,** requests authorization to cross the Rappahannock River with a new, 115kV transmission line immediately downstream of the Route 3 Norris Bridge between Middlesex and Lancaster

Counties. The existing line will be removed from the bridge and the new line will be suspended on ten (10) new towers, with a fender system to be installed around the two new towers on either side of the navigation channel. The project is protested by a citizen in Urbanna.

Jay Woodward, Environmental Engineer, Sr., gave the briefing of information provided in the staff's evaluation with slides. He noted that originally there was only one protest letter, but since the previous week a number of others in opposition had been received. He also noted that VEPCO had agreed to the time of year restrictions. His comments are a part of the verbatim record.

Mr. Woodward explained that staff understood the need by VEPCO to maintain electrical reliability to the Northern Neck citizens, but remained concerned over the potential adverse impacts to sensitive fisheries resources resulting from the driving of hollow concrete or fiber piles. Staff appreciated the efforts by the applicant to mitigate these impacts with measures that have been used in the past with some degree of success, but staff continued to recommend the standard anadromous species time-of-year restriction between February 15<sup>th</sup> and June 30<sup>th</sup> of any year.

Mr. Woodward also explained that regarding the Peregrine falcon, staff recommended a time-of-year restriction from February 15<sup>th</sup> through July 15<sup>th</sup> of any year for any construction activity within 600 feet of any active nest. If the nest was found to be inactive or the chicks had fledged or had been relocated, as confirmed by the Virginia Department of Game and Inland Fisheries, staff would be willing to waive the TOY restriction administratively in this area of the project.

Mr. Woodward said that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project with the time-of-year restrictions for anadromous fish and the Peregrine falcon. However, staff would request authorization to administratively waive the Peregrine Falcon restriction if the nest was found by DGIF to be inactive, or if the chicks have fledged, or if they have been relocated by DGIF. In addition, staff recommends a royalty in the amount of \$30,960.00 for the encroachment off the transmission line crossing over 10,320 linear feet of State-owned submerged land at the prescribed rate of \$3.00 per linear foot, and a royalty in the amount of \$33,160 for the open-pile, commercial encroachment of the tower bents and fender system over 16,580 square feet of State-owned submerged land at the prescribed rate of \$2.00 per square foot for a total royalty of \$64,120.00.

Tony Watkinson, Chief, Habitat Management said that VIMS recommended that the use of the ramp up method for pile driving be made a condition of the permit and that the bubble curtain in waters less than 25 feet be required year round as well.

After some discussion, Commissioner Bull asked for comments from representatives of VEPCO.

Wes Keck, Project Manager and Greg Mackey, Communication Manager for project, were both sworn in.

Mr. Keck provided a slide presentation. He said the reasons for replacement of the wiring and placement over the water like the other lines, is that the bridge is aging and there will be repairs necessary for VDOT to make; reliability of the service to Northern Neck customers; and safety. He said they had considered the impacts to SAV, oyster leases and wetlands. Response to service of the crossing would mean the company would be able to respond quickly to restore service and if it were underground, it would mean months. He said there would be no highland changes as would be necessary if put underground.

Mr. Mackey said that they communicated with all highland property owners within 500 feet prior to making this application and had spoken with citizens.

Commissioner Bull asked if there were any comments from the public in support of the project.

Charlie Custalow was sworn in and his comments in support of the project are a part of the verbatim record.

Commissioner Bull asked for those in opposition.

Emily Davies, Jason Bellows, Frank Plava, George Bock, and Joy Gwaltey were all sworn in and their comments in opposition to the project are a part of the verbatim record. All expressed their concerns with the impacts to aesthetics and the view, environment, and navigation; the need for more input from public and discussion before a decision should be made; and that the method preferred by all in opposition would be an underground crossing.

Jason Bellows, Lancaster County Board of Supervisors provided a petition in opposition to the project, as proposed.

Mr. Keck in his rebuttal comments said that to make it an underground crossing would impact service loss during severe storms, would have to be made a lower voltage, and as proposed, they would be using an existing overhead crossing.

Christine Conrad, Consultant for VEPCO, was sworn in and her comments are a part of the verbatim record. Ms. Conrad said that in weighing the impacts of the overhead versus the underground crossing, VMRC had to weigh the public and private benefits. She said the project as proposed lessen some of the impacts especially to navigation, to oyster ground leases and to the marine resources. She said the impacts to the resources will be

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lessened by the time of year restrictions and the use of the bubble curtain and the ramp up methods from the installation of the pilings. There would be no impacts to wetlands and the underground method would require more impacts to the highland. She added there were no impacts to Saltwater Aquatic Vegetation (SAV).

After further discussion and in response to a question about legality of considering an underground today, Matthew Hull, VMRC Counsel explained that there was already an application for permit for an overhead crossing of state-owned bottom and it could be changed, but if it were to be changed to an underground crossing it could not be considered today. He added an underground crossing would result in many different impacts.

**After further discussion, Associate Member Zydron moved to accept the staff recommendation including time-of-year restrictions and the use of the bubble curtain year round and the “ramp up” methods to lessen noise impact on marine life in the area during installation of the concrete pilings. Associate Member Minor seconded the motion. The motion carried, 8-0-1. Associate Member Haynie abstained because of business interest conflicts. Chair voted yes.**

Royalty Fee (crossing 20,320 ln. ft. @ \$3.00/ln. ft.	\$30,960.00
Royalty Fee (encroach 16,580 sq. ft. @ \$2.00/sq. ft.	\$33,160.00
Permit Fee	\$ 100.00
<b>Total</b>	<b>\$64,220.00</b>

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- 6. MR. B’S OYSTER COMPANY LLC, #14-1632**, requests authorization to deploy a total of 512 commercial aquaculture floats in an 8,100 square foot area along the West Yeocomico River at Oyster Shell Point in Northumberland County. The project is protested by an upland property owner.

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

Mr. Madden explained that while staff was sensitive to the Walkers’ concerns, the applicant had indicated he did not intend to use the County ramp and staff did not anticipate adverse impacts on the vegetated wetlands or waters. Accordingly, after evaluating the merits of the project against the concerns expressed by the individuals in opposition, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project with an annual royalty in the amount of \$40.50 for the encroachment of the floats over 8,100 square feet of State-owned

submerged land at a rate of \$0.005 per square foot and with the following special conditions:

- The Permittee agrees that any activity related to Mr. B's Oyster Company, LLC, conducted on the private, noncommercial pier, currently owned by Mr. George Freeman, will be confined to the loading and unloading of oyster cages and product and further that there will be no cage storage, sorting, cleaning or sales activity at the pier.
- The Permittee agrees to post a bond or supply a sufficient letter of credit in the amount of \$15.00 for each oyster bag deployed in the array and that the Bond or similar instrument remain in force through the life of the permit.
- The permit and authorization to retain the structures shall be valid for a period of five years. After five years, The Permittee may request the Commission re-evaluate the project and seek authorization to continue the activity for an additional period of time.
- The public shall not be excluded from any areas not physically occupied by the authorized structures.
- The Permittee shall properly maintain all structures and shall remove all structures within five (5) days upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures.
- The structures must individually marked with identification tags, and be marked and located in accordance with all applicable U.S. Coast Guard requirements.
- Should unforeseen conflicts arise, the Commission may elect to hold an additional public hearing at which time they may elect to revoke the permit and direct removal of any or all of the authorized floats.
- All commercial aquaculture activities conducted in association with the structures authorized herein shall be conducted in compliance with all relevant VMRC and Department of Health regulations.

Commissioner Bull asked if the applicant wished to comment.

Tarleton Brewer, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Brewer requested the application be approved and he would answer any questions from the Board. In response to a question he explained that he had been oyster gardening in the area and this project was just larger. He also answered that he would flip the bags to clean them and any additional work would all be done on the vessel.

Commissioner Bull stated this was a public hearing and asked for any additional comments from the public, pro or con. There were none. He stated the matter was before the Commission.

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Associate Member Ballard moved to accept the staff recommendation. Associate Member Minor seconded the motion. Associate Member Haynie asked that the special conditions be included as permit conditions. Associate Members Ballard and Minor agreed. The motion carried, 9-0.

Royalty Fee (encroach 8,100 sq. ft. @\$0.005/sq. ft. (annually))	\$ 40.50
Permit Fee	\$ 25.00
Total	\$ 65.50
Bond (512 floats @ \$15.00/bag)	\$7,680.00

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- 7. **KEITH BATTS, #14-1664**, requests authorization to construct an 11-foot by 13-foot open-sided gazebo over the reconstructed private pier head serving 2102 Turnstone Quay in the Broad Bay Point subdivision, situated along Ferebee Cove in Virginia Beach. The project is protested by an adjoining property owner.

Justin Worrell, Environmental Engineer, Sr., gave the briefing of the information of the staff's evaluation with slides. He noted the applicants and protesters were all present. His comments are a part of the verbatim record.

Mr. Worrell explained that there were at least two roof structures on existing piers within the cove, and there were multiple roof structures on existing piers beyond the mouth of the cove situated along Broad Bay. The total square footage of the proposed open-sided gazebo was well below the 400 square-foot exemption criteria contained in §28.2-1203(A)5 of the Code and had the gazebo proposal not been protested by the adjoining property owner, staff would have considered it statutorily authorized along with the private pier expansion. In this case, staff believed the open-sided design only minimally adds to the visual obstruction already presented by the pier and boatlift. While staff was sensitive to the protests of the neighbor, the City of Virginia Beach did not prohibit open-sided boathouses and gazebos, and private piers with similar open-sided roof structures were very common along the waterways in Virginia Beach. Therefore, staff recommended approval of the 11-foot by 13-foot gazebo, as proposed.

Commissioner Bull asked if the applicant wished to comment.

Keith Batts, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Batts said he had lived in Virginia during his time in service and in his retirement for a long time. He stated he had removed the roof over the boatlift leaving 140 feet of coverage for the gazebo. He said to move the gazebo to the other size of the pier was too costly. He provided pictures of other covered structures in the area. He said he was requesting approval.

Commissioner Bull asked for public comments, pro or con.

Richard West, protestant, was sworn in and his comments are a part of the verbatim record. Mr. West stated they did not object to the gazebo, just the location. He said they purchased the property because of the view of all the area and activity. He also said they did not put a structure on their pier so as not to impact the neighbors. He said they were requesting that it be moved to the other side of the pier from their view and increased activity.

Commissioner Bull stated the matter was before the Commission for discussion or action.

**Associate Member Tankard moved to approve the project, as proposed. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.**

Permit Fee	\$25.00
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- 8. **SHIRLEY CONTRACTING COMPANY, LLC, #15-0076**, requests authorization to fill approximately 14,000 square feet (1,994 square feet is temporary for construction access) of Horsepen Run, a tributary to the Potomac River in association with the proposed widening of the Route 606/Loudoun County Parkway near the Dulles Greenway interchange in Loudoun County. The project is protested by an adjacent property owner.

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

Mr. Woodward explained that this was a Design Build project in partnership with VDOT. Had VDOT been the applicant, the project would likely have qualified for the VMRC General Permit (VGP #1) for public transportation projects undertaken by VDOT and thus not required VMRC notification of adjoining property owners nor a public hearing in the event of an objection. However, Design Build projects were reviewed as any typical VMRC Subaqueous Bed application, requiring full public notice and public interest review.

Mr. Woodward stated that staff believed the applicant had attempted to address all environmental concerns, but due to many existing infrastructure constrains and other factors, the proposal would result in unavoidable loss of State-owned submerged land from the necessary fill for the widened roadbed. Staff understood the concerns listed by the protestant but believed the potential impacts to private property resulting from this project were the purview of others. The VMRC permit only authorizes impacts to the

State-owned bottomlands of Horsepen Run. The improvements to the dam were authorized by DCR.

Mr. Woodward said that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project with the inclusion of the standard in-stream work conditions to address the recommendations of both DCR and DGIF, in order to minimize impacts to public lands and waters downstream. Specifically, those conditions were:

- a) The instream construction activities authorized shall be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half the flow of the waterway shall be obstructed at any point in time.
- (b) The cofferdams and any excess material will be removed to approved upland areas upon completion of construction, and that the streambed shall be restored to its pre-existing contours and conditions.
- (c) The construction should be performed during low-flow conditions to the greatest extent possible.
- (d) The Virginia Erosion and Sediment Control Handbook (3rd Edition, 1992) will be followed throughout construction.

Mr. Woodward stated that in addition, staff recommended that the Permittee be required to execute a transfer of the permit to the Virginia Department of Transportation upon their acceptance of the structure(s) authorized herein. Because this was a Design-Build project, with VDOT as one of the funding partners, staff did not recommend a royalty in this case. This was consistent with past Commission action, pursuant to the advice of the Office of the Attorney General, as related to Public Private Partnership roadway projects where VDOT was not the applicant but was involved in the design and funding, and would ultimately add the roadway to their public roadway system.

Commissioner Bull asked for representatives of the applicant to comment.

Kimberley Larkin with Dewberry representing the applicant was sworn in and her comments are a part of the verbatim record. Ms. Larkin said this was a two-lane road and there was daily traffic of 240,000 vehicles. She said this filling was allowing them to widen the draw roadway to four lanes. She said there were others present to provide comments, if necessary.

Commissioner Bull asked for public comments, pro or con.

Sanjerv Suri, representing VDOT, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Suri explained that the project was vital to

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the Northern Virginia area and it would alleviate the traffic congestion. He noted that VDOT was involved in the project.

Arthur Woods and H. Chris Antigone, protestants were sworn in and their comments are a part of the verbatim record. They provided a powerpoint. They were concerned with the spillway that would cause water to enter Mr. Woods property. They were not opposed to the roadway widening project only to the emergency spillway impacting the private property and there were alternatives that could be done.

Geoffrey Cowan and Steven Kuntz, both representing Dewberry were sworn in and their comments are a part of the verbatim record.

Mr. Kuntz explained that they were widening from two lanes to four lanes and the spillway was being extended because they were raising the bridge crossing 15 feet and the colvert was causing the problem.

Mr. Cowan explained that there were two alternatives, armor spillway and to relocate the emergency spillway away from the dam. He said it was less expensive if the project, as proposed, was approved.

After some discussion Commissioner Bull stated the matter was before the Commission for discussion or action.

**After some further discussion, Associate Member Erskine moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. Chair voted yes.**

Permit Fee	\$100.00
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- 9. **PUBLIC HEARING:** Proposed “Living Shoreline Group 1 General Permit for Certain Living Shoreline Treatments Involving Tidal Wetlands.” The general permit regulation is being developed pursuant to §28.2-104.1 of the Code of Virginia.

Chip Neikirk, Deputy Chief, Habitat Management, gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the Lynnhaven River Now, The Elizabeth River project, City of Virginia Beach, the VIMS Center for Coastal Resources Management and the Agency’s Regulatory Review Committee made recommendations for possible changes in the draft regulation. While incorporating several of the recommendations into the draft

general permit regulations, staff noted the need to include definitions of fiber logs, fiber mats, and shell bags. Definitions for these terms were added to the current draft.

Mr. Neikirk said that staff did not believe any of the changes to the draft constitute a significant change nor did they alter the primary purpose of the general permit regulation. Staff was of the opinion that they clarify the intent and process and serve to address some potential deficiencies of the original draft.

Mr. Neikirk said that in the proper setting, living shoreline techniques can effectively control shoreline erosion while providing water quality benefits and maintaining natural habitat and coastal processes and staff believed this streamlined process will provide an incentive for landowners to utilize this approach in proper settings. Accordingly, staff recommends the Commission approve the "Living Shoreline Group 1 General Permit for Certain Living Shoreline Treatments Involving Tidal Wetlands." with the recommended changes presented in this most recent draft. Staff recommended an effective date of September 1, 2015, to provide staff an opportunity to present the new general permit regulation to the wetlands boards and to respond to any questions they may have concerning the processing of this new permit.

Commissioner Bull asked for public comments.

Pam Boatwright, Elizabeth River Now, said they supported the regulation and the VMRC staff review was complete.

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

**After some further discussion, Associate Member Neill moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**10. PUBLIC COMMENTS:**

**John Brown** - a recreational licensee expressed serious concern over the speckled trout fishery. Mr. Brown presented a powerpoint presentation of the speckled trout catch covering the past four years for the Commission. He said this was his personal analysis and not scientific research. He encouraged the Commission to consider adopting more restrictive regulations for the speckled trout fishery.

**Ken Smith** - President Virginia Watermen's Association spoke about the winter crab dredge survey and the decisions to be made by the Commission on this subject at the

upcoming September meeting. He stated he supported opening the winter crab dredge fishery.

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**11. OFFENDERS:**

**David Mosher** – was not present.

Joe Grist, Deputy Chief, Fisheries Management, explained that Mr. Mosher was notified on 06/30/2015 the hearing and the notice was received and signed by Mr. Mosher.

Warner Rhodes, Deputy Chief, Law Enforcement, explained that staff had received a message for Mr. Mosher last week that he would not be able to attend, but there was no further contact made by Mr. Mosher with staff.

Commissioner Bull stated the Commission could proceed with the hearing or continue with the suspension of Mr. Mosher’s licenses.

**After some discussion, Associate Member Tankard moved to suspend his licenses and fishing privileges within tidal waters of the Commonwealth until he appeared before the Commission. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.**

**Jason W. Winder** – was present and sworn in.

Steve Holliday, Marine Police Officer, gave the briefing of the summons and convictions as provided in the staff’s evaluation. His comments are a part of the verbatim record.

Commercial possession of unculled oysters; summons issued on November 19, 2014 pursuant to Code Section 28.2-510; conviction on December 11, 2014 in the Newport News General District Court (Criminal), fine \$150.00, court cost \$126.00.

Harvest of oysters during closed season; summons issued January 28, 2015 pursuant to Code Section 28.2201 and Chapter 4VAC 20-725-50; conviction March 23, 2015 in the York County General District Court (Criminal), fine \$125.00, court cost \$86.00.

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission’s guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12-month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all Mr. Winder’s licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of this Commission meeting, July 28, 2015, through July 27, 2016. Staff also recommended the Commission revoke Mr.

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Winder's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, July 28, 2015, through July 27, 2016.

Mr. Winder explained that two years ago he had a violation he thought he could keep one bushel for personal use. He said on November 19, 2014 he was just doing his job and was not culling.

Commissioner Bull stated the matter was before the Commission for action.

**Associate Member Zydron said this was Mr. Winder's first time and he had not previously been on probation so he moved to put Mr. Winder on probation for one year, starting with the Commission meeting date July 28, 2015, through July 27, 2016. Associate Member Tankard told Mr. Winder he needed to know the rules or he would be back before the Board. He seconded the motion. The motion carried, 9-0. Chair voted yes.**

**Stephen Perriello** – was not present.

Joe Grist, Deputy Chief, Fisheries Management, explained that Mr. Perriello must be still offshore scalloping.

Commissioner Bull stated the Commission could proceed with the hearing or continue the suspension of Mr. Perriello's licenses.

**Associate Member Zydron moved to continue with Mr. Perriello's licenses suspension until he appeared before the Commission. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

**Robert E. Hayslett** – present and sworn in.

Phillip Koury, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. Mr. Koury explained the summons and convictions from the information provided in the staff's evaluation.

Commercial possession of uncultured oysters (9 quarts); summons issued pursuant to Code Section 28.2-510; conviction on February 12, 2015 in the Isle of Wight County General District Court (criminal), fine \$110.00, court cost \$89.00

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 100 percent over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with Code Section 28.2-232, staff recommended the Commission place Mr. Hayslett on probation for a period of one year from the date of this Commission meeting, July 28, 2015, through

July 27, 2016. Any failure on Mr. Hayslett's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Hayslett appearing before the Commission for a hearing on license revocation.

Mr. Koury noted that Mr. Hayslett had prepaid his fines and was cooperative. He added he was not the captain of the vessel and had been working with David Lockett.

Mr. Hayslett explained that he had been working since he was ten years old and had only two prior violations, the last one being three years ago. In response to a question, he said he was now working on his father's boat.

**Associate Member Erskine moved to accept the staff recommendation for one year probation, starting July 28, 2015, through July 27, 2016. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**12. 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."

**Howard E. Wainwright** – present and sworn in.

Stephanie Iverson, Fisheries Management Manager, gave the briefing of the information provided in the staff's evaluation. She noted that he had submitted harvest reports October, November, and December 2014 and April and May 2015 today and he was still missing his harvest report for January 2015.

Staff recommended Mr. Wainwright be placed on probation for a period of two years ending on July 27, 2017. 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. Wainwright appearing before the Commission for a licenses suspension hearing.

Mr. Wainwright said he did not realize he was to come here and be heard by the Board, he thought he was simply working with staff to submit some of the missing harvest reports. He said he had not worked since 1980 and in 2011 he obtained a boat and had worked for the past season. He said the only ticket he had received was for oysters in a basket and in a pile. He said he apologized and that it would not happen again. He added he now knew what to do. In response to a question, he said he would get the last of the missing harvest information from the buyer this week.

Commissioner Bull stated that staff was recommending two year probation.

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**After some discussion, Associate Member Erskine moved to accept the staff recommendation for two year probation, from July 28, 2015, through July 27, 2017. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 13. PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting” to modify the criteria for an exception to the two-year delay process for a Commercial Fisherman Registration License.

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

Mr. O’Reilly explained that staff supported the exception process that was effective in Chapter 4 VAC 20-610-10 et seq., back in January 1, 1994: As provided in Section 28.2-243 of the Code of Virginia, the Commission may grant exceptions to the two year delayed registration required under this regulation. Any person requesting an exception shall provide said request in writing to the Commission 30 days in advance of the meeting at which the Commission will hear the request. Exceptions to the two year delay may be granted under the following conditions:

- 1) The applicant for an exception can demonstrate a previous history of fishing a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and
- 2) The applicant can demonstrate a significant hardship caused by unforeseen circumstances, such as problems associated with health or a call to active military duty. Applicants seeking an exception on the basis of health.

Mr. O’Reilly stated that Section 4 VAC 20-610-40 provides a necessary amendment to both the registration time period as well as the 2-year delay application process. Currently, the registration period for a CFRL extends from December 1 through the end of February. Staff and the Regulatory Review Committee proposed that registration period be extended through April. The Regulatory Review Committee noted that more and more CFRL holders are filing for exceptions to the registration process, simply because they cannot meet the current deadline for renewing their CFRL. Often it is a financial consideration, but there are also cases where renewals correspond to the availability of crabbing licenses in March. Staff supported the Regulatory Review Committee recommendation.

Mr. O’Reilly said that currently, one can only apply to the 2-year delayed entry, from December 1 through the end of February, and a CFRL is provided to the applicant to delayed

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entry two years from the date, within this 3-month application period, the person applied to delayed entry. The Regulatory Review Committee proposed that the application for the delayed entry should not be confined to a 3-month period, and allowing applications anytime during the year is more practical, as it makes it less difficult to enter the 2-year delay. If the applicant entered the delayed entry on March 10, 2016, that applicant's CFRL would be provided on March 9, 2018.

Mr. O'Reilly stated that staff recommended the Commission adopt the amendments found in subdivision 30 and 40 of Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting".

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

**Associate Member Neill moved to accept the staff recommendations and approve the amendments to the regulation. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.**

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14. **PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-560-10 et seq., "Pertaining to Shellfish Management Areas" to establish the lawful season of harvest of clams by patent tong from the Newport News Shellfish Management Area, and prohibit additional lease applications within this clam management area.

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

Mr. Grist explained that staff recommended adoption of amended Chapter 4VAC 20-560-10 ets., "Pertaining to Shellfish Management Areas" to establish the lawful season for harvest of clams by patent tong from the Newport News Shellfish Management Area as May 1 through September 30; modify the definition of the Newport News Shellfish Management area boundary; and, prohibit approval of any additional lease applications within the Newport News Shellfish Management Area.

Jim Wesson, Head, Conservation and Replenishment, in response to questions said this was the first year when there was no public clam relay and the area can be opened by the Commission for waterman to harvest clams during the summer months.

Associate Member Erskine noted that at the VDH-DSS meeting on a later date, the clam industry would probably see more warm weather rules placed on clams.

Commissioner Bull opened the public hearing.

William Davis, waterman, was present and his comments are a part of the verbatim record. Mr. Davis said that the issue was pretty much covered by staff and they want to work elsewhere in the winter and in the summertime be allowed to catch clams in this area.

Donna Melzer, waterman, was present and her comments are a part of the verbatim record. Ms. Melzer asked if this would jeopardize the existing leases in the area? Mr. Grist responded no.

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

**Associate Member Haynie moved to accept the staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**15. DISCUSSION ITEM:** Consideration of a petition (pursuant to section 28.2-214 of the Code of Virginia) requesting a review of the \$150.00 fee for a Daily Restricted Shellfish Area Relay Permit established by Regulation 4VAC20-1290-10 et seq, Pertaining to Restrictions on the Harvest of Shellfish in Condemned Shellfish Areas, effective June 1, 2015. The Commission will accept public comment on the petition.

Donna Melzer, waterman, was present and her comments are a part of the verbatim record. Ms. Melzer explained that the Code does not allow the Commission to raise fees to \$150.00, it only allows for a \$5.00 increase.

Matthew Hull, VMRC Counsel, explained that the Commission did not use this to determine the fee and it is the right of the Commission to approve it.

Commissioner Bull explained that the petition was to be decided on and the Commission would decide whether to reconsider its prior regulatory action. He said he was concerned if the petition was even valid as the individuals who signed the petition were not watermen.

Associate Member Erskine said that SMAC had talked about this and what other states charged. He said this did not eliminate relaying shellfish but streamlined the process of relaying and did not take access of any resource as they are still available to be relayed.

Commissioner Bull stated that Ms. Melzer had the right to appeal by due process as the petition does not change anything regarding the \$150.00 decision by the Board.

**Associate Member Zydron moved to retain the status quo. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**16. DISCUSSION ITEM:** Status of oyster stocks on public oyster grounds for the 2015-2016 harvest season.

Dr. James Wesson, Head, Conservation and Replenishment, gave the briefing of the information for the status of oysters stocks with slides. His comments are a part of the verbatim record.

Dr. Wesson explained that the increased effort with oyster dredges and oyster hand scrapes has resulted from the stocks being improved for the past several years. Now is the time to start managing the effort being put on the oyster stocks because of the low spat set in some of the last five years and the possible decline in the abundance of oysters. This lack of spatset will mean there could be little or no oysters to be harvested in the near future. The increase in the number of exceptions, transfers, and the two year delay applications for a commercial card in the last couple of years have resulted because of the desire by most of these individuals to come into the public oyster fishery.

Dr. Wesson said that staff recommended a public hearing in August to discuss the 2015-2016 Public Oyster Harvest Seasons and effort management measures for sustaining stocks for the future of the fishery.

Associate Member Erskine explained that the majority of the SMAC members voted to keep the status quo. They were opposed to the reduction in the bushel limit to four bushels. They also discussed the younger watermen who want to work in the oyster fishery and the need to allow for transfers of the active gear licenses.

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**17. REQUEST FOR AUGUST PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2015-2016 public oyster harvest seasons and management measures that could include, but are not limited to, lower bushel limits and effort limitations.

**Associate Member Erskine moved to advertise for a public hearing in August. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 18. **REQUEST FOR AUGUST PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-490-10 et seq., “Pertaining to Sharks,” to request establishing a prohibition on the use of any bow hunting gear to take, capture, or kill any ray or skate species.

Robert O’Reilly, Chief, Fisheries Management, gave the briefing for this item and said it was a request for public hearing in August 2015.

**After some discussion on taking any action at this time, Associate Member Neill moved to postpone a public hearing on the prohibition of taking, catching, or killing of the ray or skate species by bow hunting gear until after the Finfish Management Advisory Committee (FMAC) has had an opportunity to discuss the matter thoroughly. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 19. **REQUEST FOR AN AUGUST PUBLIC HEARING:** To conform the penalty section of Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum” with recent changes to the Code of Virginia.

Robert O’Reilly, Chief, Fisheries Management gave the briefing for this request for a public hearing. Mr. O’Reilly explained that the General Assembly repealed, Code Section 28.2-304 and currently Chapter 4VAC 20-280-10 does not address the penalty for a Class 1 Misdemeanor violation and this wording needs to be added to that regulation. His comments are a part of the verbatim record.

Commissioner Bull explained that the General Assembly repealed this Code Section as they determined it was not appropriate so the reference to the penalty no longer exists.

**Associate Member Neill moved to approve the staff’s request for a public hearing in August. Associate Member Haynie seconded the motion. The motion carried, 9-0. Chair voted yes.**

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There being no further business, the meeting was adjourned at approximately 4:45 p.m. The next regular Commission meeting will be Tuesday, August 25, 2015.

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**17442  
July 28, 2015**

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John M. R. Bull, Commissioner

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Katherine Leonard, Recording Secretary