

MINUTES

Commission Meeting

April 22, 2014

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 2600 Washington Avenue, Newport News, Virginia with the following present:

John M. R. Bull	Commissioner
Robert Beck	
James D. Close	
A. J. Erskine	
S. Lynn Haynie	Associate Members
Ken Neill, III	
Whitt G. Sessoms, III	
J. Edmund Tankard	
Paul Kugelman	Assistant Attorney General
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Manager
Alicia Nelson	FMS (RFAB/CFAB Coordinator)
Lewis Gillingham	Director, VSWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Sampling Supervisor
Jason Schaffler	Fisheries Mgmt. Sr. Analyst
Laurie Williams	Fisheries Mgmt. Specialist
Jillian Daniel	Fisheries Mgmt. Technician
Rachael Maulorico	Fisheries Mgmt. Planner
Warner Rhodes	Deputy Chief, Law Enforcement
Lisa Gruber	Sr. Marine Police Officer
Stephen Holliday	Marine Police Officer
Thomas Wilkins	Marine Police Officer

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Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Juliette Giordano	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present:

Mike Oesterling	Michael Neale	Bill Wheaton
Marvin Milton	Joe Irre	A. Houghton
P. Milton	E. Griffenhager	J. Holt
Mohammad H. Shar	Kim Huskey	Andy Lacatell
Bob Grant	Ellis W. James	Milton H. Annis, Jr.
Charles Browne	Eric Ferguson	Anthony Hogge
Kenneth Heath	Jay Odell	Todd Janeski
Laura McKay		

and others

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Commissioner Bull called the meeting to order at approximately 9:36 a.m. All Associate Members were present.

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

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

Tony Watkinson, Chief, Habitat Management, explained that Item 6 Marshall B. Cox, Sr., #13-087S, application for lease was withdrawn by the applicant.

Robert O'Reilly, Chief, Fisheries Management, explained that for Item 12, Arthur Bender withdrew his request and Edward Bender requested a postponement of this hearing until the next month's meeting. A hand out was provided.

Commissioner Bull asked for a motion to approve the agenda.

Associate Member Tankard moved to approve the agenda, as amended. Associate Member Haynie seconded the motion. The motion carried, 7-0.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the March 25, 2014 Commission meeting minutes.

As there were no corrections or changes, Commissioner Bull asked for a motion to approve the minutes. **Associate Member Sessoms moved to approve the minutes, as written. Associate Member Beck seconded the motion. The motion carried, 7-0.**

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

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

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

Commissioner Bull asked for public comments. There were none. He asked for a motion.

Associate Member Erskine moved to approve the four page two items, 2A – 2D. Associate Member Sessoms seconded the motion. The motion carried, 7-0.

2A. CHESAPEAKE LANDING HOME OWNERS ASSN., #14-0197, requests authorization to install two (2) 46-foot wide breakwaters measuring 230 linear feet and 130 linear feet and extending a maximum of 120 feet channelward of mean

low water, install a 75 linear foot sill, and place 1,333 cubic yards of clean sand as beach nourishment upon State-owned subaqueous bottom along the Chesapeake Bay Shoreline adjacent to the Chesapeake Landing development adjacent to Thimble Shores Court in the City of Hampton. Staff recommends approval of the project with a royalty assessment of \$900.00 for the placement of fill as beach nourishment upon 18,000 square feet of State-owned subaqueous bottom at a rate of \$0.05 per square foot.

Royalty Fees (beach nourishment 1,800 sq. ft. @ \$0.05/sq. ft.).....	\$ 900.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,000.00

2B. NEWPORT NEWS DEPARTMENT OF ENGINEERING, #14-0130, requests authorization to replace the existing James River Fishing Pier with a 24-foot by 32-foot deck channelward of mean low water, a 12-foot wide open pile pier extending 1,190 feet channelward of the proposed deck and install a 12-foot by 40-foot floating dock with associated 30-foot long gangway for boat access along the James River upstream and adjacent to the Rat 17 James River Bridge in the City of Newport News. Staff recommends approval of the project with a time-of-year restriction of March 15 through June 30 to protect anadromous fish and adherence to a VDOT-approved monitoring plan to prevent damage from pile driving operations to the James River Bridge.

Permit Fee.....	\$100.00
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2C. CORMAN-WAGMAN A JOINT VENTURE, #13-1539, requests authorization to remove an existing bridge crossing and to replace with a 51.5-foot wide bridge and to construct a second 58.5-foot wide bridge crossing over a total of 114 linear feet of Accotink Creek, including the use of temporary cofferdams associated with the widening of U.S. Route 1 between Telegraph Road and Mount Vernon Memorial Highway in Fairfax County. All construction will adhere to a time of year restriction from February 15 to June 30 of any year protective of anadromous fish in addition to standard conditions for erosion and sediment control and instream construction. This project is a design build project for the Federal Highway Administration (FHWA), Eastern Federal Lands Highway Division (EFLHD), and Virginia Department of Transportation (VDOT), and all permits will be transferred to FHWA, EFLHD, and VDOT upon completion of the project.

Permit Fee.....	\$100.00
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2D. DEPARTMENT OF THE ARMY, #13-1912, requests authorization to remove an existing pier and pile clusters and install a 17-foot by 395-foot pier with a 17-foot by 196-foot T-head and eight (8) wet slips, a 10-foot by 10-foot utility

platform, and a 196-foot wave screen using existing pilings in Gunston Cove adjacent to Wilson Road in Fairfax County. All instream construction work will adhere to a time-of-year restriction from February 15 to May 14 of any year with all instream work from May 15 to June 30 of any year requiring the use of a bubble curtain protective of anadromous fishes. All in stream construction work will also adhere to standard conditions for erosion and sediment control.

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

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.

When asked if a closed meeting was needed, Paul Kugelman, Assistant Attorney General and VMRC Counsel responded no.

5. JAMES HILL, #14-0293, requests authorization to construct approximately 71 linear feet of riprap revetment adjacent to his property at 823 Falls Creek Drive situated along a manmade canal to the Southern Branch of the Elizabeth River in Chesapeake. The project requires a wetland permit.

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

Since the City of Chesapeake no longer administers the Wetlands Zoning Ordinance, a public hearing for the proposed project was held by VMRC Habitat Management Division at the main office on April 15, 2014. In addition to VMRC Staff, the hearing was attended by Mr. Robert E. Simon, with Waterfront Consulting, Inc. No concerns were raised at the public hearing or as a result of the public interest review.

Since the proposed revetment is located within a manmade canal, staff believed the project was warranted and reasonable and recommended approval of the project conditioned upon the purchase of 120 square feet of wetlands credits from the Libertyville Mitigation Bank.

Associate Member Tankard moved to approve the project, as submitted, in accordance with the staff recommendation, conditioned upon the purchase of 120 square feet of wetlands credits from the Libertyville Mitigation Bank in Chesapeake. Associate Member Beck seconded the motion. The motion carried, 7-0.

Wetlands Permit Fee.....	\$300.00
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- 6. **MARSHALL B. COX, SR., #13-087S**, requests authorization to lease approximately 6.23 acres of Oyster Planting Ground situated in The Gulf, north of Smith Beach, Northampton County. The application is protested.

Application for lease withdrawn by the applicant.

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- 7. **PUBLIC HEARING: ARLINGTON PLANTATION HOMEOWNER'S ASSOCIATION, INC.**, requests a permanent extension to the 47.15 acres of oyster planting ground set-aside area at the mouth of Old Plantation Creek. The area was originally set-aside for ten (10) years by the Commission on February 24, 2004, due to submerged aquatic vegetation (SAV) in the area.

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

The movement of sand along this shoreline and the shoaling of Old Plantation Creek have been an historical problem. It is already difficult for small boats to enter the creek near low tide and the addition of oyster ground leases could make navigating the restrictive channel even more of a challenge. Additionally, VIMS has noted the presence of SAV in the area. VMRC Regulation 4 VAC 20-335-30-F, states that no new structures shall be placed on existing stands of submerged aquatic vegetation. This would include clam nets. Based on the above, staff recommended the 47.15 acres be set aside from oyster ground leasing for an additional ten (10) years.

Commissioner Bull opened the public hearing.

Martin Milton, representative for the Arlington HOA, was present and his comments are a part of the verbatim record. Mr. Milton said the SAV in the area needed to be preserved as it was important to other species; that leasing the area limited its use to one user; and it needed to be opened to all users. He requested that this area be set aside permanently.

Kim Huskey, Ex. Dir., Virginia Seafood Council, was present and her comments are a part of the verbatim record. Ms. Huskey said they were against a permanent closure and

that because the SAV is present, the Commission can deny any application for lease. She added there was recreational use in the area and suggested a five (5) year closure.

P. Milton, resident, was present and his comments are a part of the verbatim record. Mr. Milton stated that they wanted this area permanently closed and if leased it would cover the existing SAV and a large part of the area was already leased. He stated further leasing would impact use of the area by others and limit access to the Bay. He said the aquaculture nets would get damaged by boating traffic.

Mike Oesterling, representative for the Shellfish Growers Association of Virginia, was present and his comments are a part of the verbatim record. He said the Commission could protect what is necessary by reopening the area and making determinations for leasing any of the area when appropriate. He said he felt that the SAV and channel preclude those areas from being leased. He said there are some who have expressed interest in possibly leasing but the shifting sand could be a concern, but they needed to be able to try and find out.

After much discussion, Associate Member Tankard moved to accept the staff recommendation and set the area aside for another ten (10) years. Associate Member Beck seconded the motion.

Associate Member Haynie after further discussion about her concerns with the length of time, made a substitute motion to set the area aside for five (5) years. Associate Member Erskine seconded the motion. The substitute motion failed with a vote of 2-6. Associate Members Close, Beck, Neill, Sessoms, and Tankard and the Chair voted no. The original motion by Associate Member Tankard carried, 6-2. Chair voted yes. Associate Members Haynie and Erskine both voted no.

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15. REQUEST FOR MAY PUBLIC HEARING: Request to establish the Summer Period commercial Quota, as 14,105 pounds for SCUP.

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

Mr. O'Reilly explained that last November the ASMFC decided to increase the quota for the summer period for the Atlantic Coast States to 8,548,442 pounds. Virginia's share for the summer period was 14,105 pounds, which was a decrease from the 15,120 pounds for the summer period in 2013.

Mr. O'Reilly explained that staff recommended the Commission authorize advertisement of this change in the summer scup quota to 14,105 pounds, for a May public hearing.

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

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16. REQUEST FOR PUBLIC HEARING: Amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks" to increase Virginia's commercial spiny dogfish seasonal quota from 4,408,894 pounds to 5,329,491 pounds.

Robert O'Reilly, Chief, Fisheries Management gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly explained that after the PCB's problems a year ago; the European situation; and the different trip limits in the Mid Atlantic and New England were concerns because the total quota could not be realized. The Mid-Atlantic Fishery Management Council (MAFMC) held a webinar to discuss either abolishing the trip limit (as the New England Council did) or staying with the 4,000 pound limit instead of the trip limit.

Mr. O'Reilly explained that staff recommended the advertisement of a May public hearing to change Virginia's commercial quota for spiny dogfish from 4,408,894 pounds to 5,329,491.

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

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9. UNLAWFUL TAKING OF OYSTERS OFFENDER.

Ronald W. Collier, Sr. – not present.

Stephen Holliday, Marine Police Office, explained the changes and convictions. His comments are a part of the verbatim record.

Harvest oysters from the James River sanctuary (4VAC 20-650-30) – summons 12/23/13; conviction 2/13/2014.

Commercially taking seed oysters without an oyster tag being filled out for the day's load (4VAC20-1230-30) – summons 5/16/13; convicted 8/22/13.

In accordance with Section 28.2-528 of the Code of Virginia, staff recommended the Commission revoke all of Mr. Collier's licenses to take or catch fish, shellfish, or marine organisms for a period of one year from his conviction date of 2/13/14 and ending 2/12/15.

After much discussion, some of the Board members stated that they felt that the staff recommendation for one-year revocation was too lenient. Associate Member Tankard moved for two years revocation of all licenses until 2/12/16. Associate Member Beck seconded the motion. The motion carried, 8-0. Chair voted yes.

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8. PUBLIC COMMENT.

Mr. Ellis W. James spoke regarding a concern over the killing of sharks and the impact it may have on cow nose ray populations. He also spoke on the importance of submerged aquatic vegetation (SAV) and his concerns that there was insufficient funding. His comments are a part of the verbatim record.

No Action Taken.

Mr. Kenny Heath requested the Commission investigate the length and spacing of certain fixed fishing devices relative to Section 28.2-307 of the Code of Virginia. His comments are a part of the verbatim record.

No action taken.

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

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

John White – not present.

Ms. Iverson stated that Mr. White was not present.

Anthony Hogge – was present and sworn in.

Ms. Iverson explained that Mr. Hogge had been placed on probation for two years from October 4, 2014 until October 3, 2015 by the Commission at its meeting on September 23, 2013. She stated that he had not submitted any reports since March 2013 and he told staff he would bring his reports in by March 31, 2014. She explained that he has now reported for January 2014; and, for February and March 2014 he reported ‘no activity’. She stated Mr. Hogge was present at this hearing.

Mr. Hogge said that in January he had been laid up from an automobile accident and he usually fills out reports with someone else. He said he wants to go scalloping and just wanted to get rid of all his licenses. He said he had worked on the water all of his life, but he now wanted to get out of the Virginia waters.

Ms. Iverson stated that staff recommended suspension for 6 months, followed by one year probation until 10/21/15. During which time any violation of Chapter 4VAC 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. Hogge appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull asked if he was now up to date. Ms. Iverson stated yes.

Associate Member Erskine moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0.

Milton Annis Jr. – present and sworn in

Ms. Iverson stated that all required notifications had been done. Mr. Annis contacted staff after the MPO notice and his issues had been resolved.

Mr. Annis stated that he admitted to his failure to report. He said he was trying to get himself organized and would try to do better.

Ms. Iverson said that staff recommended probation for two years until 4/21/16. During which time any violation of Chapter 4VAC 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. Annis appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation for two years probation. Associate Member Haynie seconded the motion. The motion carried, 7-0.

Eric H. Ferguson – present and sworn in.

Ms. Iverson stated that all required notifications had been done. She stated that Mr. Ferguson was now up to date.

Mr. Ferguson stated it was his fault as he usually did keep his records right and it would not happen again.

Ms. Iverson stated that staff recommended probation for two years until 4/21/16. During which time any violation of Chapter 4VAC 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. Ferguson appearing before a hearing of the Commission on license(s) suspension.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation for two years probation. Associate Member Neill seconded the motion. The motion carried, 7-0.

John White – not present.

Ms. Iverson stated that John White was still not present. Paul Kugelman, Assistant Attorney General and VMRC Counsel, stated that if he were given proper notice then the hearing could be continued.

Ms. Iverson stated he was sent all required notifications for the last month's meeting and Mr. White had notified staff that he could not appear at the last hearing for medical reasons and the Commission had already suspended his licenses as of October 2013 until he appeared before the Commission.

Ms. Iverson stated that he was now up to date, but he just had not come to the hearing.

Commissioner Bull asked what the pleasure of the Commission was.

Associate Member Tankard moved to continue this until the Mr. White comes before the Commission at the May meeting. Commissioner Bull reiterated that this suspension could only be continued until October 2015 in accordance with the Code Section 28.2-232 which says the maximum penalty could be two years only for a violation. Associate Member Haynie seconded the motion. The motion carried, 7-0.

Mr. Kugelman stated that a letter be sent by staff regarding today's hearing and that Mr. White be told him that he cannot get his licenses until he appears before this board or until October 2015.

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- 12. FORMAL HEARING:** Concerning ineligibility to obtain horseshoe crab pound net permits (Arthur Peter Bender); a Class B Horseshoe Crab Dredge Permit (Arthur Peter Bender); and, a Class A Horseshoe Crab Dredge Permit (Edward Bender).

This was continued at the request of Edward Bender. (Note: Arthur P. Bender withdrew his request.)

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- 13. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass" to establish the 2014 recreational season and possession limit for black sea bass.

Sally Roman, Fisheries Management Specialist gave the briefing of the information provided in staff's evaluation with slides.

Staff recommended establishing the 2014 recreational season and possession limit for black sea bass. The minimum landings size remains at 12.5 inches TL. The possession limit will be 15 fish. The open recreational fishing season will be from May 19 through September 18 and October 18 through December 31.

There were no questions or public comments. Commissioner Bull stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 7-0.

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- 14. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-1230-10 et seq. "Pertaining to Restrictions on Shellfish" to amend public and private warm-water shellfish management measures.

James Wesson, Head, Conservation and Replenishment, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Staff recommended adoption of amendments to Chapter 4VAC20-1230-10 et seq., "Pertaining to Restrictions on Shellfish" to clarify harvest restrictions on shellfish and icing requirements for oysters harvested during the warm water months.

Joe Grist, Deputy Chief, Fisheries Management, stated that this had been reviewed by the Regulatory Review Committee and advertised for public hearing in accordance with the Code of Virginia.

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

Associate Member Erskine moved to accept the staff recommendations. Associate Member Close seconded the motion. The motion carried, 7-0.

- 10. MID-ATLANTIC REGIONAL PLANNING BODY:** Laura McKay of the Virginia Department of Environmental Quality and Jay O'Dell will brief the Commission on mapping being done on important offshore recreation and commercial fish resources as part of the Mid-Atlantic Regional Planning body's work on regional marine planning in a non-regulatory, cooperative effort to identify regional goals and objectives in marine planning.

Laura McKay, representative for the Dept. of Environmental Quality, gave her presentation and her comments are a part of the verbatim record.

No action was necessary.

There being no further business, the meeting was adjourned at approximately 1:38 p.m. The next regular Commission meeting will be Tuesday, May 27, 2014.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary