

MINUTES

Commission Meeting

July 23, 2013

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:

Jack G. Travelstead	Commissioner
A. J. Erskine	
S. Lynn Haynie	
Ken Neil, III	Associate Members
J. Bryan Plumlee	
Whitt G. Sessoms, III	
J. Edmund Tankard, III	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Mgr.
Renee Hoover	Biological Collection Prgm. Supvr.
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Laurie Williams	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Shawn Hixenbaugh	Marine Police Officer
Ronald Cagle	Marine Police Officer

Commission Meeting

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Julliette Giordano	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Tech.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach
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Others present:

Rick Lockhart	George Morrison	Hope Morrison
Dulany Morrison	Marian Cunningham	Eleanor Porter
Charles Hogge	Joe McCarthy	Joel Pinnex
Jay Brewer	Jennifer McCloud	Kim Huskey
Julian Walker	Andy Lacatell	Michael H. Gibson
Ray Wimbrow	Eric Weller	Susan C
Arnold Evans	A. W. Williams	Freddie Linton
Christie Davis	Danny Bowden	

and others.

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Commissioner Travelstead called the meeting to order at approximately 9:31 a.m. Associate Member Beck was absent.

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

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Commissioner Travelstead, at this time, swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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Commissioner Travelstead announced the appointment by Governor McDonnell of two new Associate Members, Dr. Ken Neil and Mr. A. J. Erskine to the Board.

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

Commissioner Travelstead announced that John Daniel, Attorney for the protestants, Piedmont Environmental Council, requested a continuance of Item 7. White Cloud Nine Ventures, L. P., #12-0164. He said Item 7 would be heard in two parts. Item 7A would be discussion and decision of whether or not to grant a continuance and Item 7B would be the hearing, if the matter was not continued. No other changes were made to the agenda.

Commissioner Travelstead asked for a motion for the amended agenda.

Associate Member Plumlee moved to approve the agenda, as amended. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

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MINUTES: Commissioner Travelstead asked for a motion for approval of the June 23, 2013 Commission meeting minutes, if there were no corrections or changes. There were no changes.

Associate Member Haynie made a motion to approve the June 23, 2013 meeting minutes. Associate Member Sessoms seconded the motion. The motion carried, 4-0-3. Associate Member Tankard stated he would abstain, as he was not present at the last meeting. Associate Members Neill and Erskine were attending their first 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 Board that there were no Page Two Items.

3. CONSENT AGENDA ITEMS.

Tony Watkinson, Chief, Habitat Management, informed the Board that there were no Consent Items.

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. Commissioner Travelstead asked Paul Kugelman, Assistant Attorney General and VMRC Counsel if a meeting was necessary and he responded no.

5. CHARLES HOGGE, #13-0628, requests authorization to construct a 14-foot by 32-foot open-sided boathouse at the channelward end of a private, noncommercial, open-pile pier extending 67 feet channelward of mean high water adjacent to his property situated along the Northeast Branch of Sarah Creek at 8560 Blakes View Road in Gloucester County. The project is protested by an adjacent property owner.

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

There were no public comments.

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

Associate Member Plumlee moved to accept the staff recommendation to approve the project with the origin of the pier being moved 25 feet (approximately 70 feet west of the downstream property line) and the pier to be oriented generally perpendicular to the shoreline extending in a south-southwest direction. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

Permit Fee.....	\$100.00
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6. **JOSEPH MORRISSEY, #12-1645**, requests after-the-fact authorization to retain a 112 linear foot cinder block bulkhead encroaching over 2,546 square feet of non-vegetated tidal wetlands at his property situated along the James River at 1308 Chaffins Bluff Lane in Henrico County. The project requires a wetlands permit. Continued from the June 25, 2013, Commission meeting.

Julliette Giordano, Environmental Engineer, Sr., gave the briefing of the information in the staff's evaluation with slides. Her comments are a part of the verbatim record.

After some discussion, the applicant was asked to comment.

Honorable Joseph Morrissey, applicant, was present and his comments are a part of the verbatim record. Mr. Morrissey explained that he had two others with him to provide comments, an engineer and the contractor. He further explained that it was brought to his attention that the structure next to his property was deteriorating and various items of the debris were going into the water. He said he decided to collect the debris in the water and used it as backfill for his bulkhead. He provided 3 sets of photos as handouts. He stated because of the crumbling structure he did not feel he needed a permit as he was not on State-owned bottom. He provided additional photos. He said vegetation had been added and the retaining wall. He said he felt he was being a good steward of the land and was not trying to avoid getting any permits.

Joel Pinnex, engineer, was sworn in and his comments are a part of the verbatim record. Mr. Pinnex explained that the current drain field had a pipe running into the James River and it was found not to be acceptable so the design was upgraded to protect the environment and to minimize runoff of stormwater nutrients. He noted the area had been stabilized and vegetation maintained with a small pond, as well as a new septic system. He said merit was deserved for what was being done for the protection of the environmental and being a good steward of the land.

Jay Brewer, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Brewer explained what was done and noted that that 2 to 3 ½ tons of debris along about 50 yards of beach was collected in a period of 2 to 3 weeks and used in the bulkhead.

Commissioner Travelstead asked Delegate Morrissey to comment regarding the staff recommendation. Delegate Morrissey said VMRC staff had worked with him and visited the site. He said he was trying to do something to correct the bank which was eroding and he felt it was an emergency situation.

Associate Member Erskine asked if the material of opportunity was not there would he do the same. Delegate Morrissey stated no, but he would have done something about the eroding bank.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Plumlee stated that people need to learn that there were government agencies involved that need to be contacted. He said the civil charge was needed to teach individuals to follow the process and come to VMRC first. He moved to accept the staff recommendation to approve the permit with conditions that the applicant must implement and adhere to strict erosion and sediment control measures with a civil charge of \$1,000.00 based on minimal impact and a minor degree of deviation or non-compliance; based on the Civil Charge Matrix. Associate Member Tankard seconded the motion. He said he agreed with Associate Member Plumlee that the law must be adhered to and a \$1,000.00 civil charge should be assessed. The motion carried, 6-0.

Civil Charge.....	\$1,000.00
Permit Fee.....	\$ 25.00
Total Fees.....	\$1,025.00

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7A. WHITE CLOUD NINE VENTURES, L. P., #12-0164, request by the Piedmont Environmental Council. adjacent property owners and protestants, for a continuance for the request for approval of the permit that would allow the bridge to remain over State-owned bottom.

John Daniel, Attorney for the protestants, was present and his comments are a part of the verbatim record. Mr. Daniel stated that he had been retained the previous Saturday to come here and speak on the behalf of Piedmont Environmental Council who were adjacent property owners and protesting the retaining of the bridge structure. He explained that the adjacent property owners had not been notified of the hearing and there was a conservation easement in the area. He noted that there was currently a lawsuit regarding the America Trust Conservation Easement. He said that the bridge crossing was within the VMRC jurisdiction and an important access to the property. He added the bridge was being used in-appropriately and a parking lot had been provided because of the use of the bridge. He stated a decision by the Court was necessary before the Commission took any action. He said if the Commission approves the bridge it might bear weight on what the Court decides.

Commissioner Travelstead asked if he had a copy of the complaint. Mr. Daniel stated yes, the complaint only, there were no exhibits.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, noted that the Court date was for April 7, 2014 and that it was a Circuit Court case that was pending.

Associate Member Sessoms stated he could not see VMRC making a decision on the bridge as it relates to the use of the property.

Associate Member Plumlee asked if this was a request to have the hearing continued until after the Court date, April 7, 2014. He added that the continuance would not stop the use of the bridge. Mr. Daniel stated that it should be stopped as it was built without a review by the Commission and a VMRC permit being issued. He said that it should be posted as closed until the bridge was approved and was permitted.

Associate Member Tankard asked if a cease and desist order could be requested. Mr. Kugelman explained that in the Code Section 28.2 is where the VMRC jurisdiction is established for issuing permits for use over State-owned bottom. He said that the Commission is restricted to establishing if the bridge was for private or commercial use and to the creation of the structure. He said the Commission could not restrict how the bridge was to be used. He noted that the Commission could order the removal of the bridge. He also added that the Commission would need to approve the application for permit before taking the stop use action requested.

Mr. Daniel said there was no law that said they should be allowed to continue to use the bridge since there has been no review and approval of a permit by the Commission. This should mean that VMRC does have the power to stop use of the bridge.

Commissioner Travelstead asked if the applicant was present.

Jennifer McCloud, partner and applicant, was sworn in and her comments are a part of the verbatim record. Ms. McCloud explained that she does run the farm. She stated she objected to the request of the protestants. She read from the attorney's letter which said the conservation easement was not a part of the approval for the permit. She noted that the easement was complied with in every way and she was here to get a decision on the project. She requested that the continuance request be denied. She added that the attorney was making this all seem so complicated and it was just a tactic to delay and to be used to impact the Court's decision.

Mr. Kugleman stated that he agreed that they were within the restrictions of the conservation easement. He read from the easement document which said no structure on protected property and this was a bridge and not a building.

Associate Member Plumlee stated the bridge was not in the lawsuit. Ms. McCloud said it was not the bridge but the building that was the concern in the Court case.

Associate Member Sessoms asked about the building. Ms. McCloud explained that it was a farm building and agriculture was an acceptable use. She added they did all they thought had to be done properly for permitting. Associate Member Sessoms asked what

was the bridge used for. Ms. McCloud said that it was used to transport equipment for the construction of the building.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Plumlee moved to allow the continuance beyond the Court date of April 7, 2014 for the lawsuit. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

7B. WHITE CLOUD NINE VENTURES, L.P., #12-0164, requests after-the-fact authorization to retain the placement of 130 cubic yards of Class II riprap on State-owned subaqueous bottom and an 18-foot wide access road crossing with an open box culvert over 35 linear feet of the Little River at a parcel identified as MCPI#397-26-7021 near the confluence of the Little River and Hungry Run in Loudoun County. The project is protested.

Continuance granted no further action at this time.

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8. PUBLIC COMMENT:

Rick Lockhart introduced himself to the Commission as the representative of the Virginia Charter Boat Association.

Kim Huskey, Executive Director of the Virginia Seafood Council, welcomed new Associate Members, A. J. Erskine and Ken Neill to the board and extended her condolences on the passing of Associate Member Joe Palmer.

A.W. Williams, waterman, told the Commission he and others objected to an application made by Linda Williams to lease oyster grounds in Pocomoke Sound in an area that was considered by waterman to be important to the public oyster fishery. Hank Badger explained that staff was making arrangements to meet with all parties to work this out and if it was not resolved then the matter would have to be brought before the Board for a decision.

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9. POUND NET: Case involving protests of an application to the Commission to license a pound net at a new location, in accordance with Chapter 4VAC20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review."

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing on the staff's evaluation with slides and his comments are a part of the verbatim record. Mr. Grist explained that the proposed pound net was inshore of the Gwynn's Island Artificial Reef and there were two protestants that the net would be in view of their property on Gwynn's Island.

Associate Member Plumlee asked if there had been a study done in the area on the impact on endangered species. Mr. Grist responded no.

Commissioner Travelstead asked if there was anyone at the hearing wishing to comment.

Eric Weller, applicant, was not present.

Christie Davis, protestant, was present and her comments are a part of the verbatim record. Ms. Davis stated that the campground in the area had plans for the construction of a pier 100 plus feet which would be close the site of the pound net. She added that this pound net would be in the path of where the dolphins go and the nets would trap and kill them. She noted there was a lot of recreational activity in the area as well.

Mr. Grist said the Virginia Marine Science Museum in Virginia Beach kept track of the dolphin activity and they were not aware of anything happening there. He said this activity usually occurred in the vicinity of Fisherman's Island and up the Bay to the Maryland line, along the east and south sides of the Bay.

Commissioner Travelstead asked if there were endangered turtles in the area. Mr. Grist said it was possible, but he did not have evidence of takes in this area. Mr. Grist said there were sea turtle takes in the Virginia Beach area. Commissioner Travelstead asked if this was above the area where modified leaders were required. Mr. Grist stated that the proposed pound net location was north and outside of the regulated area. He read the requirement as established for the area in the Lower Bay.

Commissioner Travelstead stated the matter was before the Commission as to whether the Board should take action now or wait until the applicant was present.

Associate Member Tankard moved to delay the matter until the applicant can be present. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

- 10. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs" to provide time of year and placement restrictions for gill nets in Toms Cove, Accomack County.

Adam Kenyon, Fisheries Management Specialist, gave the briefing on the staff's evaluation with slides. His comments are a part of the verbatim record. Mr. Kenyon explained that this is a user conflict issue between the horseshoe crab hand harvesters and gill nets set in shallow water in the area of Tom's Cove. He explained also that the hand harvesters were being prevented from getting to the horseshoe crabs. He explained that a compromise had been reached between the two user groups.

Mr. Kenyon noted that the changes shown in the draft regulation were on page 5 of 10 or page 9 of the evaluation.

- 1) Horseshoe crabs shall only be harvested from a gill net, daily, after sunrise and before sunset.
- 2) From April 1 through May 31, any gill net licensed as over 600 feet and up to 1,200 feet in length, shall have at least one anchored end 800 feet from the mean low water line.
- 3) It shall be unlawful for any person to place, set, or fish any gill nets within 500 feet of any other gill net.
- 4) From June 1 through June 30, it shall be unlawful to place, set, or fish any gill net after sunset or before sunrise.

The public hearing was opened.

Ernie Bowden, waterman, was present and his comments are a part of the verbatim record. Mr. Bowden said he did not agree with all of the compromise information provided by staff. He said it was agreed to about the 800 feet, but it was not for the 500 feet and he was opposed to the 500 feet. He said all the rest of the State now was 200 feet and it was not fair to make them 500 feet. He recommended adopting all except for the 500 feet as it would cause problems.

Charles Wimbrow, waterman, was present and his comments are a part of the verbatim record. Mr. Wimbrow said he agreed with the 500' as it will help give them room to harvest. He said they were not trying to get anyone in trouble, they just want to work. He said they needed to work together.

Danny Bowden, waterman, was present and his comments are a part of the verbatim record. Mr. Bowden stated the conflict between the two fisheries was the result of the prices being up on both horseshoe crabs and rockfish. He said that parallel to the shoreline would be more efficient. He stated he could live with what was agreed to here.

Rob O'Reilly, Chief, Fisheries Management, explained that at the May 16, 2013 meeting they talked with Law Enforcement and with the group. He said the compromise was written down, reviewed, and agreed to by all attendees. He noted that staff had not recommended the 500 feet.

The public hearing was closed.

Commissioner Travelstead stated that the matter was before the Commission.

After some further discussion, Associate Member Tankard moved to amend the regulation as recommended by staff, excluding the 500’ between the gill nets. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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- 11. **REQUEST FOR PUBLIC HEARING:** (1) Proposed amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2013-2014 public harvest seasons and (2) proposed amendments to Chapter 4VAC20-260-10 et seq., "Pertaining to Designation of Seed and Clean Cull Areas," to modify oyster culling procedures."

Jim Wesson, Head, Conservation and Replenishment, gave the briefing of the staff evaluation with slides. His comments are a part of the verbatim record.

Dr. Wesson said the public hearing was requested in August to establish the seasons for public oyster ground harvest. He noted that the public ground harvest was up and the stock assessment showed a very good spat set for both 2010 and 2012. He stated that there had been a light set in 2011 as a result of the weather causing bad water quality. He said management strategy was to set up rotation areas in some areas. He said there should be a good catch in the Rappahannock River Rotation Areas 2 and 4, but not so much in the Great Wicomico River. He noted that in Rotation Area 4 there were a number of oysters found in the sampling of stocks in the area for the watermen to catch. He said it was proposed for the same season lengths as the prior season, just changes in harvest areas where rotation areas were established. He explained that there was a change in Rotation Area 4 as an area in the Corrotoman would be deleted because the oysters in this area seem to provide a better source for seed oysters than for market oysters, which can be harvested in the spring for transplanting by leaseholders when the area can be open for an Oyster Replenishment Seed Transplanting Project. He added that in the York River this year Area 2 would be opened and in Tangier Sound Area 1 would be opened. He said there were also amendments in the regulation to eliminate references to the oyster tax and added references to the Oyster Resource User Fee.

There were no questions.

Dr. Wesson explained that in Regulation 260 amendments were proposed for the culling inspection requirements which would allow for the use of "orange" baskets, which currently requires oysters remain loose on the bottom of the boat. He said that all other States allow carrier conveyances. He noted it would still be required that the legal oyster tub be used at the point of sale, as required by Code.

Commissioner Travelstead announced that the public hearing request was approved, by consensus.

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- 9. **POUND NET:** Case involving protests of an application to the Commission to license a pound net at a new location, in accordance with Chapter 4VAC20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review." (Item continued from earlier in the meeting.)

Eric Weller, applicant, was present and his comments are a part of the verbatim record.

Commissioner Travelstead asked Mr. Weller why he was requesting his pound net be located in this area. Mr. Weller explained that he was contemplating moving to the Mathews area and it looked to be a good area for a net.

Associate Member Plumlee asked if he had seen much recreational activity in the area. Mr. Weller said that the campground area seemed to have filled in so that boats could not get out and he had not seen significant inshore boat traffic.

Commissioner Travelstead asked if the inshore end of the net was too close for small boats to travel. Mr. Weller said that it would be 2,400 feet away which should leave enough room.

Commissioner Travelstead stated that unless there were significant problems the Commission could grant the application.

Associate Member Tankard said that he agreed that even with the campground there was no traffic issue and there were no porpoise or turtle problems. He moved to approve the pound net location. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

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Rob O'Reilly Chief, Fisheries Management announced and congratulated Allison Watts who was a Fisheries Planner with the Division for the last three years who had decided to take a job with the City of Newport News Engineering Department. He explained that she had been given some challenging projects regarding Striped Bass compliance, the Blue Crab report, and the Summer Flounder recreational fishery during her time with the Marine Resources Commission.

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Commission Meeting

**16980
July 23, 2013**

There being no further business, the meeting was adjourned at approximately 2:30 p.m.
The next regular meeting will be held Tuesday, August 27, 2013.

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Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary