

MINUTES

Commission Meeting

June 28, 2016

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

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

Commission Meeting

**17646
June 28, 2016**

Steve Holliday
Richard Haynie
Zach Widgeon

Marine Police Officer
Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Jeff Madden
Hank Badger
Randy Owen
Ben Stagg
Mark Eversole
Justin Worrell
Mike Johnson
Rachael Maulorico
Jay Woodward
Brad Reams
Daniel Faggert

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Chief Engineer Western Shore
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Specialist
Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Marie Wallace
Steve Nichols
Ken Campbell
Pete Con
Tanisher Washington
David Kledzik
Gina Hunt
Scott Wivell
Lisa Rose
William Y. Moore
George N. Firman, Sr.
Albert "Tripp" Bugg
Francisco Prado

George Bialkowski
Joe Hines
Ricky Woody
Bob Livengood
Curtis Hickman
Martin Walker
Richard Green
Zack Crumb
Mark Sanford
Dennis W. Parker
Anthony T. Belvin
Johnny Cope
Renee Yates

David Saunders
Lisa Campbell
Carl Vivello
Christ Loy
KimHuskey
Peyton Mason
Tim Wivell
Brooks Pruitt
Romeo Lumaban
William T. Belvin
Michael Diggs
Chris Moore

and others.

Commissioner Bull called the meeting to order at approximately 9:34 a.m. Associate Member Zydron was absent. Associate Member Minor left early at approximately 3:18 p.m.

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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.

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

Commissioner Bull stated that the agenda was approved by consensus of the Board.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the May 24, 2016 Commission meeting minutes. There were no changes.

Associate Member Erskine moved to approve the minutes, as presented. Associate Member Minor seconded the motion. The motion carried, 8-0.

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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 was three page two items to be heard, Items 2A through 2C. He reviewed the items for the Board. His comments are a part of the verbatim record.

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

Associate Member Tankard moved to approve Items 2A through 2C. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

Commission Meeting

- 2A. **DEPARTMENT OF THE NAVY, #16-0447**, requests authorization to place fill within an approximately 3,300 foot long by 6 foot deep excavated trench for the replacement of underground electric and fiber optic cables in the Elizabeth River adjacent to the Navy Deperming Station in the City of Norfolk.

Permit Fee	\$100.00
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- 2B. **VIRGINIA NATURAL GAS, #16-0647**, requests authorization to install 787 linear feet of 12-inch steel pipeline using horizontal directional drilling methods, approximately 68 feet below the substrate of the Lafayette River, adjacent to the Granby Street Bridge in the City of Norfolk. Staff recommends approval with a royalty in the amount of \$2,361.00 for the encroachment over 787 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

Royalty Fees (encroach 785 lin. ft. @ \$3.00/lin. ft.)	\$2,361.00
Permit Fee	\$ 100.00
Total Fees	\$2,461.00

- 2C. **CORMAN-EV WILLIAMS, A JOINT VENTURE, #16-0194**, requests authorization to relocate and realign a portion of Broad Creek that runs adjacent to and under Military Highway south of Lewis Road, and to construct riprap splash protection for a new storm water outfall in Broad Creek in order facilitate improvements to 1.58 miles of Military Highway in the City of Norfolk. Staff recommends approval with a condition that the permit shall be transferred to VDOT upon completion of the project.

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.** Matthew Hull, Assistant Attorney General informed Commissioner Bull that a closed meeting was necessary.

Associate Member Kellum moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by

Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:

Actual litigation matters, Green vs VMRC and Claire vs VMRC and provide legal advice for license revocation cases.

Associate Member Neill seconded the motion. The motion carried, 8-0. The Chair voted yes.

Associate Member Kellum moved for the following:

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member's knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

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

AYES: Bull, Ballard, Erskine, France, Kellum, Minor, Neill, and Tankard.

NAYS: NONE

ABSENT DURING VOTE: Associate Member Zydron

ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Member Zydron

Motion carried, 8-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

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5. **KENNETH CAMPBELL, #15-0939**, requests authorization to grade and lower existing tidal wetlands and remove existing intertidal rubble to restore navigable access to an existing canal inlet; and install a new portion of a riprap revetment and create vegetated wetlands at 3904 Parkway Road, situated along the Western Branch of the Elizabeth River in Chesapeake. The project requires a wetlands permit.

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

Mr. Worrell explained that since this was a wetlands permit and the City of Chesapeake does not have a Wetlands Board, VMRC staff held a public hearing at the VMRC main office on June 7, 2016. Mr. and Mrs. Campbell, their engineer and agent David Kledzik, and one neighbor, Mr. Kenny Casper, attended the hearing. No objections were stated during the hearing.

Mr. Worrell stated that after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10) (B) in the Code of Virginia, staff recommended approval of the project, as proposed. This was an effort to improve navigation to existing canal-front properties that do not have direct access to the Western Branch of the Elizabeth River, and staff supported the efforts of the applicant to widen the canal inlet's mouth between his existing private pier and a reconstructed riprap revetment. There were both tidal vegetated and non-vegetated wetlands impacts associated with the project, however they were considered tidal wetlands conversions and not losses of overall tidal wetlands areas. In fact, there was an overall net gain of tidal wetlands, as the project included the creation of jurisdictional vegetated wetlands on the upland side of the new revetment section. Finally, staff recommended approval of the project, as submitted, with no further requirements for on-site mitigation/compensation or the purchase of wetlands bank credits; however, staff did recommend a permit condition requiring that the contractor excavate existing intertidal areas only during low water conditions when the bottom substrate was exposed.

Kenneth Campbell, applicant, was sworn in and his comments in support are a part of the verbatim record.

David Kledzik, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Kledzik explained that they had worked with staff and agreed with all of the agreed to details.

As there were no other public comments, the public hearing was closed. Commissioner Bull stated that the matter was before the Commission for discussion or action.

Associate Member Erskine moved to accept the staff recommendations. Associate Member Minor seconded the motion. The motion carried, 8-0.

Permit Fee	\$300.00
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- 6. **JAMES RIVER WATER AUTHORITY, #14-0343**, requests authorization to install a 5.82 MGD raw water intake along the north bank of the James River and a submerged waterline beneath the Rivanna River, near the Town of Columbia, in Fluvanna County. The project is protested.

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

Mr. Owen explained that the project, as proposed, required Commission authorization for the encroachment over State-owned submerged land pursuant to Title 28.2, Chapter 12 of the Code of Virginia. While staff acknowledged and was sympathetic to the protestants concerns, it was imperative to note that the Commission’s jurisdiction over this project was limited to the physical encroachment of the intake over the State-owned submerged lands within the James River and the transmission line beneath the Rivanna River. Any project impacts to historic artifacts/resources associated with the construction of the pump house and upland infrastructure were outside of the Commission’s jurisdiction.

Mr. Owens said that because of the protestants’ concerns, staff did solicit comments from the Department of Historic Resources on December 8, 2015. They advised that they were unable to provide input until their coordination of the project was completed with the Corps of Engineers, pursuant to Section 106 of the National Historic Preservation Act. It was staff understanding that their coordination was still pending.

With respect to the project’s potential to impact the subject waterways, Mr. Owens noted that the project’s impact on the water quality of the James River is determined by DEQ’s permit and not this Commission. Staff noted that all of the recommendations of DGIF have been incorporated into DEQ’s permit. Relative to navigation and aesthetics, the intake’s design will keep it submerged at all times and marked by a buoy.

Accordingly, in light of DEQ’s jurisdiction and authority to regulate the raw water withdrawal and 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, as proposed, finding that the anticipated public and private benefits exceeded the anticipated public and private detriments. Staff additionally recommended an instream work time of year from March 15 to June 30 to protect anadromous fishes and freshwater mussels, a mussel survey and relocation prior to construction, as well as an additional work time of year August 15 to September 30 to protect State-listed mussel species.

Additionally, staff recommended that the permit be held in abeyance until an easement or right of access across Mr. Bialkowski’s property is obtained for the Rivanna River crossing.

Steve Nichols, representative of the Water Authority Board and County Administrator, was sworn in and his comments are a part of the verbatim record. Mr. Nichols stated that there was a need for this area and surrounding areas where development was occurring. He said this would provide a long term water supply. He said they had worked to minimize the impacts to the historical landmarks that are very important to the area and its citizens.

Joseph C. Hines, consultant for the applicant, was sworn in and his comments in support are a part of the verbatim record. Mr. Hines there had been a study conducted to justify the withdrawal of the water from the river.

David J. Saunders, design engineer, was sworn in and his comments in support are a part of the verbatim record. In response to a question, Mr. Saunders said the blasting would be done by a licensed professional.

George Bialkowski, protestant, was sworn in and his comments in opposition are a part of the verbatim record. Mr. Bialkowski explained that there was potential to adversely impact historically important land and resources associated with the Point of Fork Farm and general area in Fluvanna County. He said that the applicant should instead construct a previously approved intake in area located upstream of the project area. He said this intake structure was not needed, just wanted. He added that no one was starving for water.

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

Associate Member Neill moved to approve the staff recommendations with all conditions read. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Permit Fee	\$100.00
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- GUY WALLACE, #16-0562**, requests authorization to install a 10-foot by 20-foot floating dock as an addition to an existing private pier, and after-the fact authorization for a 29-foot by 15-foot enclosed boathouse along Bennetts Creek at 6000 Bennetts Creek in the City of Suffolk.

Rachael Maulorico, Environmental Engineer, Sr., gave the briefing of the information provided in the staff evaluation with slides. Her comments are a part of the verbatim record.

Ms. Maulorico explained that reviewing after-the-fact applications, staff considers whether the project would likely have been favorably reviewed had the application been considered prior to construction. In this case, the boathouse is a reasonable size to house a private recreational boat and appears to be water dependent in nature. Additionally, the structure has been present for years with no record of concerns or objections.

Ms. Maulorico stated that after evaluating the merits of the project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the proposed 10-foot by 20-foot floating dock and after-the-fact authorization to retain the enclosed boathouse. In this instance, staff did not recommend a civil charge for the unauthorized structure, because it was built by previous owners.

Bob Livengood, marine contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Livengood explained that this structure was the same as others in the area. He stated the applicant was not aware that the work had been done without a permit.

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

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

Permit Fee	\$25.00
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- 8. HOG ISLAND BAY SAV SET-ASIDE AREA:** Staff requests authorization to reduce the seagrass restoration set-aside area in Hog Island Bay, southeast of High Shoal Marsh by 45.18 acres in Northampton County. The redefined set-aside area would now be 462.72 acres. The request is based on the area not being suitable to sustain submerged aquatic vegetation.

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

Mr. Badger explained that staff requested comments from VIMS on the status of SAV in the set-aside area and the two aforementioned oyster ground applications. VIMS noted that both application areas supported a fair amount of SAV in 2015. Mr. Farlow's application, however, is bisected by the above-mentioned shoal where VIMS has not

mapped submerged aquatic vegetation (SAV) and does not expect SAV to colonize due to its shallow nature. The application for Mr. Turner has had SAV mapped on the majority of the area and has relatively dense SAV in the northwest portion. VIMS recommended only removing the 45 acre area that is too shallow to support SAV growth.

Mr. Badger said that given the fact that VIMS did not expect SAV to colonize on the shallow water shoal portion of the existing area that has been set-aside; staff recommended the Commission redefine the area set-aside by removing the 45 acre area, as recommended by VIMS. The reduced set-aside area would be 462.72 acres. Should the Commission remove the above 45 acres from the set aside area, staff would submit Mr. Farlow’s application to the standard public interest review for oyster ground and terminate Mr. Turner’s application since it would still be inside the (redefined) area set-aside and could not be leased.

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

Associate Member Tankard moved to accept the staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member Ballard abstained from voting.

Permit Fee	\$100.00
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After much discussion about the concerns for making policy changes for managing the submerged aquatic vegetation with regards to private oyster ground leasing, Associate Member Ballard suggested that Commissioner Bull instruct the Shellfish Management Advisory Committee (SMAC) to study the current SAV policies and to make recommendations for possible changes to the policies. He said VIMS should be included in this study. Commissioner Bull stated the matter would be referred to the SMAC and to include also the U. S. Army Corps of Engineers and the Department of Environmental Quality.

- 9. RICHARD GREEN, #2014-161**, requests authorization to lease up to 105 acres of oyster planting grounds within the James River in the City of Newport News. The application is protested by J. H. Miles Company, Inc.

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

Mr. Stagg explained that after evaluating Mr. Greens’ request and weighing the concerns of those protesting the application, staff recommends leasing an area containing 104.68

acres. If this area is approved, there will be no available ground left for the pending application of the J. H. Miles Company, Inc., and that application will be voided.

When asked, Jim Wesson, Department Head, Conservation and Replenishment, explained that the area was not a part of the Baylor ground but unassigned grounds that have been worked by the waterman and the area has been productive. He continued to explain that there was a lot of mud in this area with spots having oysters. He stated it had been shelled by the clam industry in the past.

In response to a question, Mr. Stagg explained that all the area south have been vacant until recently. He added that he did not think it had ever been leased.

Commissioner Bull asked Mr. Green to comment.

Richard L. Green, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Green stated that he had thought it was a part of the Baylor grounds for years. He said as it was open and he had applied for it and the policy for applications for lease was 1st come, 1st served. In response to a question, Mr. Green stated he can move shells from some of his other leases and move seed oysters from his upriver leases.

Commissioner Bull asked for public comments, pro or con.

Joseph Melzer, leaseholder, was sworn in and his comments are a part of the verbatim record. Mr. Melzer stated that his ground was next to this area and he had concerns about problems with poaching. He requested that it be left open.

Mr. Green in his rebuttal comments said that anyone working for him would be told to stay within his lease area. He said that if they did not they would not be working for him.

As there were no other public comments, Commissioner Bull closed the public hearing. He stated that matter was before the Commission for discussion or action.

Associate Member Minor moved to accept the staff recommendation. Associate member Tankard seconded the motion. After much discussion, the motion carried, 5-1-2. Chair voted no. Associate Members Kellum and Neill both abstained from voting.

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10. **J. H. MILES COMPANY, INC., #2014-253**, requests authorization to lease up to 105 acres of oyster planting grounds within the James River in the City of Newport News. The application was submitted in association with a protest to a prior application for the same area by Richard Green.

No action taken.

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- 11. **PUBLIC HEARING:** Chapter 4 VAC 20-1320-10 et seq., “Pertaining to a restricted area within the James River at the Maritime Administration James River Reserve Fleet.” The Commission proposes to adopt Regulation 4 VAC 20-1320-10 et seq., establishing a restricted area, within the James River, at the Maritime Administration James River Reserve Fleet, Fort Eustis, Virginia.

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

Mr. Stagg explained that the proposed regulation is based upon a request from James River Fleet Superintendant for the U. S. Maritime Administration, for assistance in enforcing the area under federal regulation pursuant to Title 33, Chapter 1, Subchapter P, Part 162 (33 CFR 162.270) within the James River and the creation of a safety/restricted area to prevent unauthorized vessels in and around the James River Reserve Fleet.

Mr. Stagg stated that the new regulation would provide additional regulatory authority pursuant to the Code of Virginia, §§ 28.2-201 and 28.2-106.2 for the Virginia Marine Police to enforce Virginia law that prohibits entrance into restricted areas. The Reserve Fleet Superintendant has also noted opposition to pending oyster ground leases within this area. While some leases already exist within the area defined in this regulation, staff believes approval of this regulation will provide additional rationale to not lease any new areas within the defined area. Current leaseholders will still be allowed to work their leases within the defined area; however, they will need to adhere to the 500 foot buffer distance from any anchored ships as required by both the federal regulation and this regulation.

Mr. Stagg said that staff recommended approval of the proposed regulation.

Martin Walker, James River Reserve Fleet Superintendant, was sworn in and he stated that staff had presented the matter well. His comments are a part of the verbatim record.

As there were no other public comments, Commissioner Bull stated the matter was before the Commission for discussion or action.

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

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Commission Meeting

12. PUBLIC COMMENT:

Rob O'Reilly, Chief of Fisheries Management briefed the Commission regarding a letter received from Mr. Robert Meyers of Exmore, Virginia to the Commission regarding the June 21, 2016 menhaden spill. Mr. O'Reilly informed the Commission that he had spoken with a representative of the company who holds the menhaden bait license to get that side of the story. He said he was told that an insurance representative was on site for four days talking with property owners to reassure them the fish would be picked up. He said he was also told that a clean-up firm had been hired and they had worked cleaning up the fish from Thursday through Saturday at 5:00PM. The letter was made a part of the Commission record.

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13. OFFENDER:

David Drummond, Marine Police Officer, was sworn in and gave the briefing of the summons and convictions. His comments are a part of the verbatim record.

Brooks D. Pruitt – was present and sworn in

March 18, 2016 Possession of 7 Bushels of Crabs over Limit of 21 Bushels (28 total)-- §28.2-201 of the Code of Virginia; 4 VAC 20-270-51; April 6, 2016, Accomack County General District Court; Fine: \$100.00, Court Cost: \$86.00

Robert O'Reilly, Chief, Fisheries Management explained that Mr. Pruitt's licenses were revoked during the September 2014, Commission Meeting for six months, September 23, 2014, through March 22, 2015, followed by one year of probation, March 23, 2015, through March 22, 2016, for three natural resource convictions.

Mr. O'Reilly read the staff recommendation. The Commission's guidelines for sanctions specify that if a person put on probation by the Commission fails to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during their probationary period should result in an appearance before the Commission for a hearing on license revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Pruitt's Commission-issued licenses for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Pruitt's licenses during this revocation period. Staff recommends the Commission revoke Mr. Pruitt's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Staff also recommended the Commission place Mr. Pruitt on probation for a period of one year immediately following this

revocation period, June 28, 2017, through June 27, 2018. Any failure on Mr. Pruitt'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. Pruitt appearing before the Commission for another hearing on license revocation.

Albert Bugg, Attorney, was present and his comments are a part of the verbatim record. Mr. Bugg explained that Mr. Pruitt was 72 years old and had been a waterman for most of that. He explained also that Mr. Pruitt had health issues and that he did not intend or realize that he was wrong. He requested that the Commission consider extending the probation or less revocation time of 6 months rather than a year. He said Mr. Pruitt needed to get back to work.

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

Associate Member Minor moved for three years probation. Associate Member Kellum seconded the motion. The motion failed, 4-4. Associate Member France, Tankard, Neill, and the Chair all voted no.

Associate Member Erskine moved for six months revocation of all licenses and fishing privileges, starting June 28, 2016, through December 27, 2016, followed by two years probation, starting December 28, 2016, through December 27, 2018. Associate Member Neill seconded. The motion carried, 8-0. Chair voted yes.

Steven York, Marine Police Officer was sworn in and gave the briefing of the information regarding the summons and convictions. His comments are a part of the verbatim record.

John E. Jorette, Jr. – present and sworn in.

February 19, 2016, Possess Undersized Whelk 59/Barrel--4 VAC 20-890-30; March 8, 2016, Virginia Beach General District Court; Fine: \$250.00, Court Cost: \$111.00

Robert O'Reilly, Chief Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 100% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Jorette on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on Mr. Jorette'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. Jorette appearing before the Commission for a hearing on license revocation.

Mr. Jorette said that the conch measurement rule was not clear and it was not done correctly by the Marine Police Officer. He asked that the Commission address the method of measuring.

When asked, Mr. York explained that he followed procedures that he has used in the past.

Commissioner Bull stated the matter was before the Commission.

Associate Member Minor moved to accept the staff recommendation for one year probation, starting June 28, 2016, through June 27, 2017. Associate member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Commissioner Bull requested staff to address Mr. Jorette's request about the procedures for measurement with the Finfish Management Advisory Committee (FMAC).

Casey Springfield, Marine Police Officer, was sworn in and gave the briefing of the summons and convictions. His comments are a part of the verbatim record.

William Y. Moore – present and sworn in.

March 31, 2016, Possession Unculled Oysters/Undersized (6 ½ Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; May 6, 2016, Newport News General District Court; Fine: \$75.00, Court Cost: \$91.00

Robert O'Reilly, Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Moore on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on

Mr. Moore'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. Moore appearing before the Commission for a hearing on license revocation.

John Cope, Attorney, was present and his comments are a part of the verbatim record. Mr. Cope explained that Mr. Moore was only tonging and a coworker was doing the culling. He noted that Mr. Moore had worked on the water since he was a teenager, 40 plus years. He said he should not be considered an habitual violator. He stated that probation was not appropriate and no action should be taken against Mr. Moore.

Commissioner Bull stated the matter was before the Commission.

After some discussion, Associate Member Ballard moved for six month probation, starting June 28, 2016, through December 27, 2016. Associate Member Erskine seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member France voted no.

Case Springfield, Marine Police Officer, was sworn in and gave the briefing of the summons and convictions. His comments are a part of the verbatim record.

Dennis W. Parker – present and sworn in.

March 31, 2016, Possession Unculled Oysters/Undersized (6 ½ Quarts)—§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; May 6, 2016, Newport News General District Court; Fine: \$75.00, Court Cost: \$91.00.

Robert O'Reilly, Chief, Fisheries Management, read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Parker on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on

Mr. Parker'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. Parker appearing before the Commission for a hearing on license revocation.

Mr. Parker stated that it was an honest mistake as he had not had a ticket in 3 years. He requested no probation as he had lost his license 3 years ago and had just got it back. He said was not intentional. He said he had been culled three other times and this was the only time there was a problem.

Commissioner Bull stated the matter was before the Commission.

Associate Member France moved for the staff recommendation of one year probation. Associate Member Minor seconded and he later withdrew his seconded. Associate Member Tankard seconded.

After some discussion and Mr. Parker's angry outburst, Associate Member Ballard made a substitute motion for two year probation, starting June 28, 2016, through June 27, 2018. Associate Member Minor seconded the motion. Commissioner Bull stated that he agreed with the one year probation. The motion carried, 5-3. Chair voted no. Associate Members France and Tankard both voted no.

Steven Holliday, Marine Police officer was sworn in and gave a briefing on the summons and convictions. His comments are a part of the verbatim record.

Steve York, Marine Police Officer was sworn in and gave a briefing on the summons and convictions for Officer Griffin. His comments are a part of the verbatim record.

William Belvin – present and sworn in.

December 23, 2015, Possession Undersized Oysters (6 Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-210-30; February 2, 2016, Isle of Wight General District Court; Fine: \$100.00, Court Cost: \$89.00

January 15, 2016, Officer Robert Griffin; Leave Dock before Sunrise—4 VAC 20-720-60; On January 15, 2016; February 25, 2016, Isle of Wight General District Court; Fine: \$10.00, Court Cost: \$124.00

Robert O'Reilly, Chief, Fisheries Management, read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Belvin on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on Mr. Belvin'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. Belvin appearing before the Commission for a hearing on license revocation.

Mr. Belvin said he left early but he was not looking at the he left at sunrise. He asked how the measure was supposed to be done. He said he had no prior convictions, no trouble, and he had two kids and a wife to take care of. In response to a question, he said he had been working on the most of his life on the water and had held licenses since he was 18 years old.

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

Associate Member Minor moved for six months probation, starting June 28, 2016, through December 27, 2016. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes.

Steve Holliday, Marine Police Officer, was sworn in and gave the briefing of the summons and convictions. His comments are a part of the verbatim record.

Anthony Belvin – present and sworn in.

December 23, 2015; Possession Undersized Oysters (6 Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-260-30; February 2, 2016, Isle of Wight General District Court; Fine: \$100.00, Court Cost: \$89.00

Robert O'Reilly, Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Belvin on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on Mr. Belvin'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. Belvin appearing before the Commission for a hearing on license revocation.

Mr. Belvin stated that a mistake was made and he would try not to do it again. He stated the Officer acted very professional.

Associate Member Erskine stated that Mr. Belvin did not have any history and he moved for six month probation, starting June 28, 2016, through December 27, 2016. Associate Member France seconded the motion. The motion carried, 8-0. The Chair voted yes.

Steve Holliday, Marine Police Officer, was sworn in and gave the briefing of the summons and convictions. His comments are a part of the verbatim record.

George N. Firman - present and sworn in.

December 23, 2015; Possess Undersized Oysters (6 Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-260-30; February 2, 2016, Isle of Wight General District Court; Fine: \$100.00, Court Cost: \$89.00

Robert O'Reilly, Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Firman on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on

Mr. Firman'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. Firman appearing before the Commission for a hearing on license revocation.

Mr. Firman stated that the Officer had been fair. He explained that he had been working on the water since 1977 and had one conviction in 1978.

Associate Member Kellum stated that because Mr. Firman had no history and she moved for six month probation, starting June 28, 2016, through December 27, 2016.

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Associate Member Neill seconded the motion. The motion carried, 8-0. The Chair voted yes.

Steve Holliday, Marine Police Officer, was sworn in and gave the briefing of the summons and convictions. His comments are a part of the verbatim record.

Francisco Prado – present and sworn in.

January 27, 2016; Possess Undersized Oysters (6 Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-260-30; February 23, 2016, Newport News General District Court; Fine: \$150.00, Court Cost: \$91.00

Robert O'Reilly, Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission place Mr. Prado on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on

Mr. Prado'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. Prado appearing before the Commission for a hearing on license revocation.

Mr. Prado explained that he had been working on a boat scalloping and this was his first year harvesting. He stated the Captain would not listen and he was the one culling. He would help sometimes.

Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine made a motion to put Mr. Prado on six month probation, starting June 28, 2016, through December 27, 2016. Associate Member Neill seconded the motion. The motion carried, 8-0. The Chair voted yes.

Steve York, Marine Police Officer was sworn in and gave a briefing on the summons and convictions for Officer Griffin. His comments are a part of the verbatim record.

Michael Diggs – present and sworn in.

December 8, 2015, Officer Robert Griffin; Hand Scrape without Permit—4 VAC 20-720-90; January 14, 2016, Isle of Wight General District Court; Fine: \$150.00, Court Cost: \$124.00

Robert O'Reilly, Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters

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without the proper gear license, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Diggs on probation for a period of one year from the date of this Commission meeting, June 28, 2016, through June 27, 2017. Any failure on Mr. Diggs' 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. Diggs appearing before the Commission for a hearing on license revocation.

Romeo Lumaban, Attorney for Mr. Diggs, was present and his comments are a part of the verbatim record. Mr. Lumaban explained that Mr. Diggs was not aware that he needed to renew the permit. He said Mr. Diggs had not had a violation in 9 years. He said he had been to court and paid his fine and this was punished enough. He said they were requesting the Commission to not accept the staff recommendation and place administrative action on Mr. Diggs as this was his livelihood and no one was perfect.

Mr. Diggs explained that it was a free permit and he had one the prior year. He said the others on his crew were present at the hearing. He said he did not say anything ugly to Officer Griffin.

Pete Lindsay, was sworn in and his comments are a part of the verbatim record. Mr. Lindsay said they had caught their limit and there was no bad language used by Mr. Diggs to the Officer.

Commissioner Bull stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation for one year probation, starting June 28, 2016, through June 27, 2017. Associate Member Erskine seconded the motion. The motion carried, 8-0. The Chair voted yes.

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14. PUBLIC HEARING: Proposal to amend Chapters 4 VAC 20-270-10 et seq., "Pertaining to Crabbing"; 4 VAC 20-1140-10 et seq., "Prohibition of Crab Dredging in Virginia Waters"; and, 4 VAC 20-670-10 et seq., "Pertaining to Recreational Gear Licenses." Proposal to rescind Chapter 4 VAC 20-30-10 et seq., "Pertaining to the Licensing of Crab Traps and Pounds" and incorporate those provisions into 4 VAC 20-460-10 et seq., "Pertaining to the Use of Crab Traps and Pounds."

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 provided two hand outs, letter from Chris Moore of the Chesapeake Bay Foundation and Seth Rux a Seaside Eastern Shore crabber.

Associate Member Minor left the meeting for the rest of the afternoon.

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Mr. O'Reilly explained that staff recommended the Commission adopt the following regulatory amendments: Chapters 4 VAC 20-270-10 et seq., "Pertaining to Crabbing" (establish March 1-December 20 as the commercial crab pot season): 4 VAC 20-1140-10 et seq., "Prohibition of Crab Dredging in Virginia Waters" (maintain the closed winter crab dredge fishery season): 4 VAC 20-670-10 et seq., "Pertaining to Recreational Gear Licenses" (eliminate the reference that a closed season is defined in Section 28.2-709 of the Code of Virginia): 4 VAC 20-30-10 et seq., "Pertaining to the Licensing of Crab Traps and Pounds" (rescission of this chapter and incorporate those provisions into 4 VAC 20-460-10 et seq.): 4 VAC 20-460-10 et seq., "Pertaining to the Use of Crab Traps and Pounds" (to allow crab pound harvesters 2 weeks, in advance of the open season, to establish all auxiliary gear related to the crab pound, except the head or retention box).

Commissioner Bull opened the public hearing.

There were public comments about the bushels limits being lower from the spring to fall; concerns were expressed with opening the crab dredge fishery at all and on the other side of it that it would not be opened; comments were made about the recreational pots and the reporting; and, one suggestion made was to have a year round season. Those who spoke were:

Zach Crowe
Chris Moore, Chesapeake Bay Foundation.
Mark Sanford
Scott Wivell
Lisa Rose

Commissioner Bull closed the public hearing.

Associate Member Neill moved to accept the staff recommendation. Associate Member Ballard seconded the motion. Associate Member Erskine explained that he was concerned with allowing crabbing by the recreational crab pot licenses holders.

Associate Member Erskine offered a substitute motion to accept the staff recommendations but exclude the recreational gear licenses recommendation. Associate Member France seconded the motion. The motion carried, 4-3. The Chair voted no. Associate Members Tankard and Neill voted no.

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15. REQUEST FOR AN EMERGENCY REGULATION: To amend Chapter 4 VAC 20-1090-10 ET SEQ., "Pertaining to Licensing Requirements and License Fees" to make changes to recreational five crab pot licensing consistent with upcoming changes in Section 28.2-226.2 of the Code of Virginia.

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

Mr. Jiorle explained that there were changes made by the General Assembly in Section 28.2-226.2 of the Code of Virginia, effective July 1, 2016, for the fee for a recreational five crab pot license, currently \$36, to be increased to \$46 for those license holders who do not install a turtle/terrapin excluder device on their crab pots and for those license holders of a five crab pot license who install the excluder devices the price would remain the same, \$36. These statutory changes were initiated by the General Assembly in Senate Bill 283 to encourage terrapin conservation in the recreational crab pot fishery.

Staff recommended adoption of the emergency regulation Chapter 4VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees", to be consistent with the Code of Virginia changes that would be effective July 1, 2016; and, to advertise for a public hearing in July to make these changes a permanent part of the regulation.

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

Associate Member Neill moved to advertise for a public hearing in July to make the changes permanent in the regulation. Associate Member France seconded the motion. The motion carried, 7-0. The Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 4:30 p.m. The next regular Commission meeting will be Tuesday, July 26, 2016.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary