

MINUTES

Commission Meeting

September 27, 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	
A. J. Erskine	
Wayne France	
Lynne Kellum	
James E. Minor	Associate Members
Ken Neill, III	
John E. Tankard	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Director, Human Resources
Erik Barth	Director, MIS
Todd Sperling	Business Systems Specialist, Sr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Management Mgr.
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Sean Sheline	Fisheries Mgmt. Specialist
Susan March	Fisheries Mgmt. Technician
Rick Lauderman	Chief, Law Enforcement
Steve Bennis	Marine Police Officer

Commission Meeting

**17709
September 27, 2016**

Patrick West	Marine Police Officer
Tom Wilkins	Marine Police Officer
Robert Griffin	Marine Police Officer
Stephan Ovide	Marine Police Officer
Nathan Clark	Marine Police Officer
Steve York	Marine Police Officer

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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Mark Luckenbach
--------------	------------	-----------------

Others present:

M. Reed Knight	John Meekins	Hap Chalmers
Mike Oesterling	Kim Huskey	Wilmer Stowemer
Maynard West	Herma Guimard	Chris Schellhammer
Ryan Lecr	Frederick Evans	Carson Forrester
Laurie Sorabella	Brent James	Peter Nixon
Ann Marie Deel	G. D. Spence	Beverly Ludford
Lee Gregory	John Murray	Tim Solanic
Marty Corman	Ann Copeland	Jennifer Johnson
Wayne Gibson	George Kotarides	Stacy Kotarides
Jim Wooton	R. B. Chisholm	Charlie Gregory
Millie Jones	Chantel Finch	Rhyan Finch
John Aspenwall	Justine Woodward	Michael Normant
David Kaplan	Jordan Storm	William Copeland
Lauren Brocclethi	Steve McNult	Dave Mayfield
Ellen Zeltmann	Jackie Shannon	Dave Handzo
Jennifer Berkerdeihor	Meade Stone, Jr.	Jill Tyler
Chuck Gathier	John Forte	Mary Jane Dodson

Commission Meeting

**17710
September 27, 2016**

Jeremiah Wrotery	John Vigliotta	Karen R. Peterson
David O'Brien	Rob Feddor	Nadium Youngs
Ned Harris	Eleanor Harris	Chris Ludford
Josh Bourne	Heather Noah	Katie Johnson
Rick Bartlett	Thomas Walker	Tom Gallivan
Chris Moore	Heather Lush	Mike Sledd
Montana Carse	Hank Arnold	Frank J. West
Ben McFarlane	John Fall	Kann Gober
Todd Jamski	Keith Jenkins	Carol R. Hogge
Andy Lacatell	Jeff Deem	Robert Hogge

and others.

* * * * *

Commissioner Bull called the meeting to order at approximately 9:38 a.m. All Associate Members were present at the meeting.

* * * * *

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

* * * * *

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

Tony Watkinson, Chief, Habitat Management, noted that there was another page two item that had been added to the agenda for Virginia Electric Power Company, 15-1336.

Robert L. O'Reilly, Chief, Fisheries Management, noted that there was an additional fisheries item to make some housekeeping changes to Regulation 720 for the transfer mechanism for the Oyster Resource User Fee, all gear eligibility, that should be heard after Item 11.

Associate Member Erskine moved to approve the agenda, as amended. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

* * * * *

MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the August 23, 2016 Commission meeting minutes.

Associate Member Kellum moved to approve the minutes, as presented. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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

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

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

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

Associate Member Zydron moved to approve Items 2A and 2B, as presented. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

- 2A. CITY OF ROANOKE, #15-0486,** requests authorization to construct two (2) 16-foot wide prefabricated pedestrian bridges across the Roanoke River as part of the Bridge the Gap Greenway Phase II segment of the Roanoke River Greenway system, with the first bridge to be constructed in the vicinity of Aerial Way Drive and landing at the Norfolk Southern Materials Yard, and the second bridge originating from the Materials Yard and landing on the south side adjacent to flood reduction bench cuts in the City of Roanoke.

Permit Fee	\$100.00
------------	----------

- 2B. VIRGINIA ELECTRIC AND POWER COMPANY, #15-1336** Requests authorization to construct five (5) 230kV electric transmission lattice towers and to suspend two (2) 230kV circuits across a 5,900 linear foot section of the Nansemond River, at the existing Line 223/226 river crossing, approximately one mile upstream of the Route 17/Mills E. Godwin Bridge in the City of Suffolk. The existing towers and lines will be removed upon completion of the project. Staff recommends approval with permit conditions to include a Time of Year Restriction for instream work from February 15 through June 30 of any year to protect anadromous fish species, the use of bubble curtains during all pile driving activities, the establishment of buffer zones during construction activities to

protect five potentially significant submerged cultural resources and a royalty of \$59,458.00 for the encroachment of five (5) tower structures and two (2) electric circuits over 5,900 linear feet of State-owned submerged land.

Royalty Fee (encroach 11,800 lin. ft. @ \$300/lin. ft.)	\$35,400.00
Royalty Fee (encroach 12,029 sq. ft. @ \$2.00/sq. ft.)	\$24,058.00
Permit Fee	\$ 100.00
Total Fees	\$59,558.00

* * * * *

3. CONSENT AGENDA ITEMS:

3A. CORMAN MARINE CONSTRUCTION, INC., #16-1206, requests authorization to retain six (6) temporary mooring buoys recently installed in the York River, southeast of Gaines Point in Gloucester County, to facilitate the staging of barges and pipe during the construction of the new HRSD York River Treatment Plant Outfall and Diffuser. The applicant has agreed to pay a civil charge of \$6,000.00 in lieu of further enforcement action. Staff recommends approval contingent on the removal of all buoys upon completion of the project, acceptance of the aforementioned civil charge and an annual encroachment royalty of \$300.00, assessed at a rate of 1/10th the normal rate of \$500.00 per commercial buoy.

Tony Watkinson, Chief, Habitat Management, informed the Commission that there was one consent item to be heard, Item 3A. He reviewed the item for the Board. His comments are a part of the verbatim record.

There were no public comments, pro or con. Commissioner Bull stated the matter was before the Commission.

Associate Member Zydron moved to approve the consent item as presented. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Royalty Fee (encroach 6 buoys @ 1/10 th normal rate of \$500/buoy)	\$ 300.00
Permit Fee	\$ 100.00
Civil Charge	\$6,000.00
Total Fees	\$6,400.00

* * * * *

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

* * * * *

- 5. **ROBIN ORR, #16-1274**, requests authorization to construct 144 linear feet of timber bulkhead, to replace an existing deteriorating bulkhead, and construct 98 square feet of vegetated wetlands along a tributary canal to Drum Point Creek, at the riparian residence of 2706 W. Meadow Drive in the City of Chesapeake. This project requires a VMRC wetlands permit.

Rachael Maulorico, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record. She noted that VMRC staff had held the Wetlands Board meeting on September 7, 2016.

Ms. Maulorico explained that removal of the existing bulkhead will result in the loss of high marsh vegetation that has become established landward of the bulkhead. The applicant has proposed replanting this area following construction of the new bulkhead with 98 square feet of *Spartina alterniflora*. As such, this is a conversion of one wetland type for another and there is no overall vegetated wetland loss. No additional compensation is necessary based on VMRC’s Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

Ms. Maulorico stated that after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed.

Richard Bartlett, engineer for the project was sworn in and his comments are a part of the verbatim record. Mr. Bartlett stated he wanted to thank staff and the landowner for moving the bulkhead.

The public hearing was opened and there were no comments, pro or con.

The Commissioner Bull stated that the matter was before the Commission for discussion and action.

Associate Member Erskine moved to approve the staff recommendation. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

Wetlands application fee prepaid, no further fees were applicable.

* * * * *

6. **PUBLIC HEARING: AMENDMENTS TO CHAPTER 4VAC-20-335-10 ET.SEQ., “PERTAINING TO ON BOTTOM SHELLFISH ACTIVITIES,”** to establish permit requirements and/or buffer distances from mean low water for the placement of aquaculture structures on oyster planting ground leases within the City of Virginia Beach.

Ben Stagg, Chief Engineer, gave the briefing of the information provided in the staff’s evaluation with slides. Mr. Stagg provided some handouts, including the Work Group Report, and additional written public comments. His comments are a part of the verbatim record.

Mr. Stagg explained that staff had carefully evaluated the past resolutions from the General Assembly concerning efforts to promote the shellfish industry and the resulting recommendations endorsed by the Commission. Staff had also carefully considered the recommendations and work of a recent Shellfish Task Force, the recommendations from the Lynnhaven Work Group, and the comments that had been received following the public notice of the proposed regulatory amendments. Accordingly, considering the intensely developed nature of most of the residential shoreline in the Lynnhaven River system, and the near shore user conflicts associated with such development, as well as the recreational use, including boating activity along the City’s residential shorelines, staff recommended the Commission consider adopting the following version of new item “J” for regulation 4 VAC 20-335-10 et seq. along with minor wording changes to the regulation title and the creation of a definition of aquaculture cages. Staff believed such changes were in keeping with the intent of the recommendation contained in House Document 15 and that other areas in the Lynnhaven should be suitable for aquaculture use, as authorized by the current on bottom regulation, provided all aquaculture structures were deployed pursuant to the regulation requirements and the lease grounds were marked as required.

Modify the regulation title:

"AUTHORIZES *COMMERCIAL* SHELLFISH AQUACULTURE STRUCTURES"

Modify definitions as follows:

“Aquaculture Structure” means devices, such as cages, trays, nets, *bags*, etc., used to contain or protect shellfish.

“Aquaculture Cage” means any enclosed structure made of rigid material designed to protect and grow molluscan shellfish.

Modify the regulation adding new item J:

J. No currently deployed or new aquaculture cages shall be authorized under this regulation in residential areas within the City of Virginia Beach without the consent of the residential land owners within 210 feet from the mean low water line. The leaseholder shall provide the following information: the name, address and telephone number of the leaseholder; the plat file number of the lease where the cages are proposed; the approximate size of the area that will contain the cages and their location depicted on a copy of the lease plat; the maximum number of cages to be placed within 210 feet of the mean low water line on the leasehold at any given time. Residential property owner acknowledgement forms for such property owners may be submitted by the leaseholder. Such forms shall be signed by the residential property owner and shall indicate his comments on the request. Should such forms not be provided in the request, the Commissioner, or his designee, shall notify the adjacent owners of the pending cages placement request for their consent. For cages deployed as of September 27, 2016, the leaseholder shall have 18-months to remove or relocate such cages from the above described area, or obtain the consent of the adjacent residential land owners as described above, or seek authorization to retain the cages by permit under Title 28.2 of the Code of Virginia or by other regulation. Any encroachment fees and/or royalties required under 28.2 of the Code of Virginia, or by other regulation, for aquaculture cages that previously would have been allowed per this regulation shall be waived within the City of Virginia Beach

Commissioner Bull opened the public hearing.

Those that support changes:

Steve Jones
Rob Feddor
John Forte
Dave Handzo
John Aspenwall
Ellen Zeltman
Millie Jones
Steve Minolte
Chris Schellhammer

Those opposed to changes:

Mike Oesterling
John Vigliotta
Hap Chalmers
Kim Huskey
Chris Ludford
Bryan Plumlee
Ned Harris
Wayne Gibson
Beverly Ludford
Laurie Sorabella
Brent James
Ryan Ramstead
Mark Sanford
Mike Gurley

All of these individual comments are a part of the verbatim record.

Commissioner Bull closed the public hearing.

After expressing appreciation for the work done by staff and the work group and much discussion whether to take any action at all, Associate Member Ballard moved to not make any changes to the regulation. Associate Member Minor seconded the motion. The motion carried, 7-2. Chair voted no and Associate Member Neill voted no.

Mr. Stagg asked the Commission for a decision on whether the moratorium put in place by the Commission on the approval of any new general oyster ground lease applications in the Lynnhaven River can be rescinded.

After some discussion Associate Member France moved to remove the moratorium. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

7. PUBLIC COMMENTS: None

8. PRESENTATION: Dr. Jon Hare of National Oceanic and Atmospheric Association (NOAA) will give a presentation on effects of climate change on distribution of fish stocks.

Dr. Jon Hare from NOAA gave a presentation on the effects of climate change on distribution of fish stocks, with slides. His comments are a part of the verbatim record.

9. OFFENDERS.

Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information for the case. His comments are a part of the verbatim record.

Jeffrey Scott West – was present and sworn in.

October 22, 2015 -- Theft of Oysters, Clams, & Shell, etc.; Class 1 Misdemeanor, §28.2-527 of the Code of Virginia; June 1, 2016, Middlesex County Circuit Court, Fine: \$100.00; Court Cost: \$300.00 in Restitution to the Oyster Replenishment Fund; 90 days Jail with 90 days suspended for 3 years Good Behavior.

October 22, 2015 -- Closure of Sanctuary Area, Class 1 Misdemeanor, 4 VAC 20-650-30;
June 1, 2016, Middlesex County Circuit Court, Fine: \$100.00, Court Cost: \$0.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oyster or clams from a sanctuary, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. West's Commission-issued licenses for a period of one year from the date of this Commission meeting, September 27, 2016, through September 26, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. West's licenses during this revocation period. Staff recommended the Commission revoke Mr. West's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, September 27, 2016, through September 26, 2017. Staff also recommended the Commission place Mr. West on probation for a period of two years immediately following this revocation period, September 27, 2017, through September 26, 2019. Any failure on Mr. West's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the two years probation would result in Mr. West appearing before the Commission for another hearing on license revocation.

Mr. West stated that the boat Captain would like to speak for him.

Anthony P. Hogge was present and sworn in. His comments are a part of the verbatim record. Mr. Hogge explained that it was totally his fault and he made the decision to work in this sanctuary and it was beyond the control of Mr. West. He said the Commission should take his licenses as it was his boat and his fault.

When asked, Mr. West stated he did try to tell the captain to get out of the area where they were working. He explained that he had worked only on the water since he was 14 years old and he was a single father with a young son to support.

Commissioner Bull asked, what was the will of the Commission?

Associate Member Tankard moved to accept the staff recommendation to revoke all Mr. West's Commission-issued licenses and fishing privileges, within the Commonwealth's tidal waters for a period of one year from the date of this Commission meeting, September 27, 2016, through September 26, 2017 and followed by probation for a period of two years, September 27, 2017, through September 26, 2019. Associate Member Neill seconded the motion. The motion carried, 8-1. Chair voted yes. Associate Member France voted no.

Robert N. Hogge – was present.

Commissioner Bull explained that a letter from Mr. Hogge's attorney had been received by fax the previous day requesting a continuance, because he was scheduled to be in court for the same day as this hearing.

After some discussion, Associate Member Zydron moved to grant the request for a continuance. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Commissioner Bull asked the Commission if they wanted to proceed with the hearing in the absence of James R. Tyrell.

Associate Member Neill moved to go ahead and hear the case of James R. Tyrell. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member France recused himself because of a conflict.

Thomas Wilkins, Marine Police Officer, was sworn in and gave the briefing for the information provided in the staff's evaluation. His comments are a part of the verbatim record.

James R. Tyrell – was not present.

December 13, 2015, No License Tag on Gill Net (Not Displayed)--§28.2-234(2) of the Code of Virginia; February 9, 2016, Westmoreland County General District Court. Fine: \$100.00, Court Cost: \$89.00.

February 1, 2016, Fail to Pay License Fee and Obtain Gill Net License for 2016--§28.2-201 of the Code of Virginia; 4 VAC 20-1090; April 12, 2016, Westmoreland County General District Court. Fine: \$50.00, Court Cost: \$28.00.

February 1, 2016, Fail to Pay License Fee and Obtain Fish Pot License for 2016--§28.2-201 of the Code of Virginia; 4 VAC 20-1090; April 12, 2016, Westmoreland County General District Court. Fine: \$50.00, Court Cost: \$28.00.

February 5, 2016, Fail to Remove Gill Net within 24 Hours after Receiving Verbal Warning of Violation--§28.2-201 of the Code of Virginia; 4 VAC 20-550-20; April 12, 2016, Westmoreland County General District Court. Fine: \$150.00, Court Cost: \$89.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that two commercial gear convictions, 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. Tyrell

on probation for a period of one year from the date of this Commission meeting, September 27, 2016, through September 26, 2017. Any failure on Mr. Tyrrell'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. Tyrrell appearing before the Commission for a hearing on license revocation.

After some discussion, Commissioner Bull asked, what was the will of the Commission?

Associate Member Ballard said that due the severe violations, he moved for two year probation, starting September 27, 2016, through September 26, 2018. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member France had recused himself from this case.

Stephan Ovide, Marine Police Officer, was sworn in and gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Frank J. West – was present and sworn in.

June 1, 2016, Illegal Net Inside Boundary of Reef—§28.2-201 of the Code of Virginia; 4 VAC 20-755-30; July 25, 2016; York County General District Court. Fine: \$150.00, Court Cost: \$86.00.

June 1, 2016, Illegal Net Inside Boundary of Reef—§28.2-201 of the Code of Virginia; 4 VAC 20-755-30; July 25, 2016; York County General District Court. Fine: \$150.00, Court Cost: \$25.00.

June 1, 2016, Illegal Net Inside Boundary of Reef—§28.2-201 of the Code of Virginia; 4 VAC 20-755-30; July 25, 2016; York County General District Court. Fine: \$150.00, Court Cost: \$25.00.

June 1, 2016, Illegal Net Inside Boundary of Reef—§28.2-201 of the Code of Virginia; 4 VAC 20-755-30; July 25, 2016; York County General District Court. Fine: \$150.00, Court Cost: \$25.00.

June 1, 2016, Obstructing State Waters—§62.1-194.1 of the Code of Virginia; July 25, 2016, York County General District Court. Fine: \$100.00, Court Cost: \$25.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that two commercial gear convictions, 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. West on probation for a period of one year from the date of this Commission meeting, September 27, 2016, through September 26, 2017. Any failure on Mr. West'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. West appearing before the Commission for a hearing on license revocation.

Mr. West explained that his chart plotter had been stolen and the other one was broken. He said he usually worked in the York River. He added he had not intended to break any laws. He noted he had heart surgery last year. When asked for assurance that he would not do this again. Mr. West assured the Board it would not happen again and he would get the part he needed for his chart plotter.

Commissioner Bull suggested the Commission might consider six months probation.

Associate Member Ballard stated after the last case he agreed with Commissioner Bull and moved for six month probation, starting September 27, 2016, through March 26, 2017. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

* * * * *

10. FAILURE TO REPORT: Cases involving failure to report commercial harvest, in accordance with Chapter 4 VAC-20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting.”

Stephanie Iverson, Fisheries Management Manager, gave the briefing of the information provided in the staff’s evaluations. Her comments are a part of the verbatim record.

Jessie M. Large – was present.

Ms. Iverson explained that Mr. Large was missing his February 2016 report and was sent all notifications as required, plus a notice was delivered by a Marine Police Officer. She noted that he was up to date now with all his reports

Mr. Large stated that he received all his mail through his post office box address and he did not receive any of those notices. When asked, he stated that it would not happen again.

Ms. Iverson read the staff recommendation for Mr. Large that he be placed on probation for a period of two years, beginning the date of this hearing, September 27, 2016 and ending on September 26, 2018. During this probation period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations by Mr. Large may require Mr. Large to appear before a hearing of the Commission for possible license(s) suspension.

Associate Member Zydron noted that this was the only violation Mr. Large had ever had and moved to place Mr. Large on three month probation, starting September 27, 2016, through December 26, 2016. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Keith Jenkins – was present.

Ms. Iverson explained that Mr. Jenkins was usually reported as a helper for Carlton Haywood. She noted that the old box number had been cancelled and staff now had Mr. Jenkins new mail box and phone information. Ms. Iverson said that there was still one month, January, not resolved and Mr. Haywood would be submitting the information for January.

Ms. Iverson explained that staff recommended suspension of all licenses and permits issued to Mr. Jenkins for a period of six months, beginning the date of this hearing, September 27, 2016 and ending March 26, 2017 immediately followed by two year probation until September 26, 2018. During this suspension and probation period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations by Mr. Jenkins may require Mr. Jenkins to appear before a hearing of the Commission on license(s) suspension.

Mr. Jenkins explained that his house burned down and he thought his wife had reported as he was out of state and she was supposed to have reported no activity. He asked the Commission not to revoke his licenses.

After some discussion, Commissioner Bull asked, what was the will of the Commission?

Associate Member Zydron moved to accept the staff recommendation. Associate Member Kellum said that in the past licenses were suspended until the reporting problem was resolved and then the individual was put on probation. Associate Member Zydron amended his motion to suspend all licenses until all reporting was up to date and to be followed with two years probation. Associate Member Kellum seconded the amended motion. The motion carried, 9-0. Chair voted yes.

* * * * *

- 11. PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-650-10 et seq., “Establishment of Oyster Sanctuary Areas”, to allow oyster harvesters using hand tongs only to cross through sanctuary areas provided they do not have oysters on board.

Jim 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.

Mr. Wesson explained that staff recommended approval of the amendments to Chapter 4VAC20-650-10 et seq., "Establishment of Oyster Sanctuary Areas", to make it unlawful for any person to possess any hand scrape, dredge, or patent tong gear that could be used to harvest shellfish on public or unassigned oyster grounds within 100 feet of any oyster sanctuary area, and such possession should be considered as prima facie evidence of a violation of the Chapter.

The public hearing was opened and there were no public comments, pro or con.

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

Robert O'Reilly, Chief, Fisheries Management, explained that staff was asking for emergency action in order to clarify requirements for transferring eligibility for payment of the oyster resource user fee in Chapter 4VAC 20-720-10, et seq., "Pertaining to Restrictions on Oyster Harvest." He noted that the State Registrar's office had advised staff that this change would have to be done by the normal process. His comments are a part of the verbatim record. A copy of the draft emergency Chapter was given to the Board members.

Associate Member Neill asked if this was a request for emergency action as well as the advertisement for a public hearing. Mr. O'Reilly responded, yes.

After some discussion, Associate Member Erskine moved to accept the staff's recommendations. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

* * * * *

12. REQUEST FOR PUBLIC HEARING: Amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify current commercial summer flounder management measures.

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

Mr. Cimino explained that the industry has requested that an amendment to the regulation be considered by the Commission to push back the start date for the opening of the second period for the summer flounder fishery. He stated that staff recommended adopting emergency amendments to Chapter 4 VAC 20-620-10 et seq. "Pertaining to Summer Flounder," to modify the landing period and trip limit. Staff also recommended advertising for a November public hearing to adopt the amendments as a permanent part of the regulation.

After some discussion, Associate Member Neill moved to accept the staff's recommendations. Associate member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

- 13. REQUEST FOR PUBLIC HEARING:** To modify the commercial smoothound shark filleting at sea provisions established in Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to comply with specifications established by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Coastal Sharks. Compliance is required by January 1, 2017.

Lewis Gillingham, Director, SWFT, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Gillingham explained that the Atlantic States Marine Fisheries Commission adopted Addendum IV to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks at their August meeting and set a compliance mandate for states of January 1, 2017. Addendum IV establishes management measures for at sea processing of smooth dogfish state waters that complements existing federal waters requirements. Specifically the addendum requires the harvest of smooth dogfish comprise at least 25 % of the total retained harvest, by weight, for fishermen operating in state waters to enable them to land smooth dogfish carcasses processed and all fins removed.

Mr. Gillingham said that staff requested the Commission advertise for a November 2016 public hearing to modify Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to comply with Addendum IV to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks by January 1, 2017.

Associate Member Kellum moved to accept the staff's recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

- 14. REQUEST FOR PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to establish an alternate trip limit for the commercial spiny dogfish fishery.

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

Mr. O'Reilly explained that the May 1, 2016 through April 30, 2017 Virginia spiny dogfish quota is 4,356,944 pounds. This quota represents 10.795% of the Atlantic coastal quota of 40,360,761 pounds.

Mr. O'Reilly further explained that the FMAC met on September 19, 2016 and unanimously voted for the following recommendation to the Commission: 1) retain the 5,000 pound trip limit for the 2016-2017 season; 2) establish a 5% tolerance on the 5,000-pound trip limit; and, 3) raise the trip limit from 5,000 pounds to 6,000 pounds (no tolerance), if less than 80 percent of the quota has been harvested by February 15, 2017.

Mr. O'Reilly stated that staff recommended advertising amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks," to allow for a tolerance to the 5,000-pound commercial trip limit, and an increase in the trip limit to 6,000 pounds, if by February 15, 2017 landings in Virginia are less than 80% of the 2016-17 quota. Staff requested the advertisement of a November 1 public hearing.

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

* * * * *

15. REQUEST FOR PUBLIC HEARING: Proposed amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to streamline buyer reporting requirements.

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

Ms. Ramsey explained that this regulation requires each permitted striped bass buyer, during the month of December, to call the Marine Resources Commission interactive voice recording system on a daily basis and report regardless of activity. With the current procedures that are in place for reporting and the fact that all Virginia commercial striped bass harvesters are part of an ITQ system that is continuously monitored by staff, the December reporting requirement has become redundant and no longer necessary.

Ms. Ramsey stated that staff recommended the Commission advertise for a public hearing on November 1, 2016, to amend Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to streamline buyer reporting requirements.

After some discussion, Associate Member Erskine moved to accept the staff recommendation for the advertising for a public hearing at the November 1 meeting. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

* * * * *

- 16. RECOMMENDATION:** From the Recreational Fishing Advisory Board (RFAB) on funding for meeting expenses and travel.

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

Mr. O'Reilly explained that at the September 12, 2016 RFAB meeting, it was announced that the funds set aside for advisory board travel were running low, with less than \$1,000 remaining. Travel expenses, covering mileage and meals, average \$350 per meeting. The Board voted unanimously to add an additional \$2,000 to the cost center to cover advisory board travel for the next few cycles.

Mr. O'Reilly stated that staff supported the funding recommendations from the RFAB, for expenditures totaling \$2,000 from the VSRFDF, for meeting and travel expenses.

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

* * * * *

There being no further business, the meeting was adjourned at approximately 4:38 p.m. The next Commission meeting will be Tuesday, November 1, 2016.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary