

MINUTES

Commission Meeting

January 24, 2017

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
A. J. Erskine	
Wayne France	
Lynn Kellum	
James E. Minor	Associate Members
Ken Neill, III	
John E. Tankard	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Erik Barth	Business Systems Manager
Linda Hancock	Human Resources Mgr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Andrew Button	Head, Conservation/Replenishment
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
Adam Kenyon	Fisheries Mgmt. Specialist
Samantha Hornsby	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Megan Wood	Fisheries Mgmt. Specialist
Vernon Rowe	Fisheries Mgmt. Specialist
Vas Dunston	Fisheries Mgmt. Specialist

Commission Meeting

**17778
January 24, 2017**

Warner Rhodes
David Drummond
Harold Springfield
Ron Cagle
Patrick Turpin
Bill Hawkins

Deputy Chief, Law Enforcement
Marine Police Officer
Marine Police Officer
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
Daniel Faggert
Bradley Reams

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Chief Engineer, Western Shore
Environmental Engineer, Sr.
Surveyor, Engineering/Surveying
Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Mark Luckenbach

Emily Hein

Others present:

Bill Davis
Jim Cahoon
Dale Ryder
Tammy Halstead
Heather North
Keith W. Colonna
Joe Burket
Trent Blazine
Earnest Hardy
William Roots, Jr.
Robert West
Ian MacDonald
Bobbi Case

Ken Paulson
Carl Eason
Bill Port
Rebecca Francese
John DeMaria, Jr.
Dan Terry
Charles Duke
Johnnie Tynes
Jackie Shannon
Tim Wivell
Andy Lacatell
Dan Knott

Dennis Parker
Brian Bashana
Laurel Port
Betty Miller
John DeMaria, III
Bob Simson
Rob Case
Wade Taylor
Richard Green
Scott Wivell
William Parks
Rocky Rhea

and others.

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Commissioner Bull called the meeting to order at approximately 9:43 a.m. Associate Members Zydron and Ballard were absent.

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

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

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

Associate Member Erskine moved to approve the agenda, as presented. Associate Member Kellum seconded the motion. The motion carried, 7-0. Chair voted yes.

MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the December 13, 2016 Commission meeting minutes. There were no changes.

Associate Member Tankard moved to approve the minutes, as presented. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.

Robert L. O'Reilly, Chief, Fisheries Management, introduced Andrew Button as the new Conservation and Replenishment Department Head who replaced Jim Wesson who would be retiring, as of February 1, 2017.

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

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information provided the staff's evaluation for three page two items. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

Associate Member Neill moved to approve the three items, as presented. Associate Member Erskine seconded the motion. The motion carried, 7-0.

2A. TYCO ELECTRONICS SUBSEA COMMUNICATIONS LLC, #16-1869, requests authorization to install two (2) five-inch fiber optic telecommunications conduits within the Atlantic Ocean, directly adjacent to 920 Vanderbilt Avenue (Croatan Beach Municipal Parking Lot) in Virginia Beach within an approximate 180 meter corridor. The two conduits will be installed by horizontally directionally drilling under the beach and extend to a distance approximately 0.5 nautical miles offshore. The conduits will remain vacant with the intent of providing infrastructure for the future landing of undersea fiber optic telecommunications cables. Staff recommends approval with a royalty of \$18,228.00 for the crossing of 6,076 linear feet of State-owned submerged bottomlands at \$3.00 per linear foot.

Royalty Fees (crossing 6,076 lin. ft. @ \$3.00/lin. ft.)	\$18,228.00
Permit Fee	\$ 100.00
Total Fees	\$18,328.00

2B. ALEXANDRIA DEPARTMENT OF TRANSPORTATION AND ENVIRONMENTAL SERVICES, #16-1420, requests authorization to mechanically maintenance dredge a maximum of 50,000 cubic yards of accumulated sediments, on an annual basis, from five (5) flood control channels; Cameron Run, Holmes Run, Backlick Run, Hooffs Run and Four Mile Run, to return them to their original design configurations, in the City of Alexandria. Staff recommends approval with a time-of-year restriction from February 15 through June 30 for the dredging in Cameron Run and Four Mile Run, to protect anadromous fish species.

Permit Fee	\$100.00
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2C. LYON SHIPYARD, #16-0368, requests authorization to construct a 380-foot by 124-foot dry dock structure, two (2) mooring dolphins, and a 12-foot by 120-foot access ramp; and to mechanically dredge 81,400 cubic yards of sediment to achieve depths of -42 mean low water (MLW) with future five-year maintenance dredge cycles of 15,000 cubic yards in the Eastern Branch of the Elizabeth River adjacent to the Lyon Shipyards facility at 1818 Brown Avenue in the City of Norfolk. Non-contaminated soils from dredging will be barged to the Craney Island Rehandling Basin and contaminated soils will be barged to a transfer site

and disposed of at an approved location. Staff recommends approval of the project as proposed with special conditions to protect anadromous fish species and sound attenuation during pile driving to include: a time-of-year restriction for any pile driving from February 15 to June 30 of any year, the use of wooden pile cap cushions for impact hammer pile driving, and the use of a bubble curtain during pile driving. Staff recommends a royalty of \$36,630.00 for the 81,400 cubic yards of new dredging.

Royalty Fees (dredging 81,400 cu. yds. @ \$0.45/cu. yd.)	\$36,630.00
Permit Fee	\$ 100.00
Total Fees	\$36,730.00

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3. CONSENT AGENDA ITEMS:

3A. BLAND ENTERPRISES, #15-0643, requests after-the-fact authorization to retain a private, non-commercial 33-foot by 34-foot (1,122 square feet) open-sided, dual-slip boathouse with two (2) lifts and associated catwalks, at the channelward end of an existing pier, adjacent to riparian property situated along the Chickahominy River at 4031 S/ Riverside Drive in James City County. The contractor has agreed to pay a civil charge of \$1,000.00 in lieu of further enforcement action. Staff recommends approval contingent on the acceptance of the aforementioned civil charge and triple permit fee of \$300.00.

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information provided the staff's evaluation. His comments are a part of the verbatim record.

Mr. Watkinson explained that a full public interest review was completed, including adjoining property owner notifications and a newspaper advertisement, and no opposition was received. James City County did not require any additional approvals or permits for the after-the-fact request. Given that the applicant had agreed to a triple permit fee of \$300.00 and the contractor had agreed to a \$1,000.00 civil charge based on a minimal degree of environmental impact and a minor degree of non-compliance, staff recommended that the Commission grant after-the-fact approval for the boathouse structure as built, contingent upon the receipt of the civil charge and triple permit fee.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

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

Permit Fee (ATF Triple Fees)	\$ 300.00
Civil Charge (Contractor)	\$1,000.00
Total Fees	\$1,300.00

3B. SALT GROVE L.C., #16-1562, requests after-the-fact authorization to retain a 40-foot long by 10-foot wide floating platform, a 20-foot long by 4-foot wide gangway that leads to the floating platform and a 20-foot long by 10-foot wide section of an area the has been bulkhead and backfilled. The after-the-fact project is situated along Eyrehall Creek, which is a tributary to Cherrystone Creek and adjacent to Salt Grove Landing in Northampton County.

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information provided the staff’s evaluation. His comments are a part of the verbatim record.

Mr. Watkinson explained that staff recommended approval of the 40-foot long by 10-foot wide floating platform, the 20-foot long by 4-foot wide gangway that leads to the floating platform, and the 20-foot long by 10-foot wide section of an area the has been bulkhead and backfilled with the assessment of a civil charge based on a major degree of non-compliance and a significant amount of impact and triple royalties and a triple permit fee.

Mr. Watkinson stated that the applicant had agreed to pay a civil charge in the amount of \$10,000.00 in lieu of further enforcement action, a triple permit fee of \$75.00 and triple royalties in the amount of \$1,957.50 for the encroachment of the floating platform and gangway over 435 square feet of State-owned subaqueous land at a rate of \$4.50 per square foot, and \$1,800.00 for the bulkhead and filling of 200 square feet of State-owned subaqueous land at a rate of \$9.00 per square foot for a total royalty of \$3,757.50. Staff recommended the approval of the after-the-fact application with the assessment of a triple permit fee, and triple royalties; and, conditioned upon receipt of the \$10,000.00 civil charge.

Carl Eason, representing the applicant, was present and his comments are a part of the verbatim record. Mr. Eason stated that the applicant agreed with the staff recommendation, including the fees.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

Associate Member France moved to accept the staff recommendation to include the civil charge, triple permit fee and triple royalties. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

Royalty Fees (encroachment 435 sq. ft. @ \$4.50/sq. ft.) (ATF triple fees)	\$ 1,957.50
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Royalty Fees (filling 200 sq. ft. @ \$9.00 per sq. ft.) (ATF triple fees)	\$ 1,800.00
Permit Fee (ATF triple fees)	\$ 75.00
Civil Charge	\$10,000.00
Total Fees	\$13,832.50

3C. FEREBEE COVE CONDOMINIUM CORP., #16-0728, requests authorization to construct a 5-foot wide by 16-foot long finger pier and install one (1) uncovered boat lift; and after-the-fact authorization to retain a 5-foot wide by 16-foot long finger pier and one (1) uncovered boat lift installed without Commission authorization, all part of the existing multi-user Condominium pier adjacent to 1627 Godfrey Lane, situated along Ferebee Cove in Virginia Beach.

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Mr. Watkinson explained that had the initial application been complete and construction had not occurred prior to permitting, staff would have administratively issued a subaqueous permit for the request. However since the unauthorized construction did occur prior to obtaining the appropriate permit, staff had no choice but to prepare the after-the-fact request for a Commission hearing. Since the contractor had agreed to pay a civil charge of \$1,000.00 in lieu of further enforcement action, staff recommended approval contingent on the acceptance of the aforementioned civil charge, a triple permit fee of \$300.00, and an encroachment royalty of \$480.00. The royalty was calculated by adding the encroachment of the proposed finger pier (80 square feet at \$1.50 per square foot = \$120.00) plus the triple royalty for the installed finger pier (80 square feet at \$1.50 per square foot multiplied times 3 = \$360.00).

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

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

Royalty Fee (encroachment 80 sq. ft. @ \$1.50/sq. ft.)	\$ 120.00
Royalty Fee (encroachment 80 sq. ft. @ \$4.50/sq. ft.) (Triple Fee)	\$ 360.00
Permit Fee (ATF Triple Fee)	\$ 300.00
Civil Charge	\$1,000.00
Total Fees	\$1,780.00

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

Commissioner Bull congratulated and gave Jim Wesson, who was retiring on February 1, 2017, a service certificate in appreciation and recognition for his service of almost 25 years with the Virginia Marine Resources Commission, as the Head of the Conservation and Replenishment Department.

5. HRIBC, #16-1841, requests authorization to fill 5,464 square feet of tidal wetlands to construct two (2) culvert road crossings, and to construct two (2) storm water outfalls in jurisdictional wetlands along the Southern Branch Elizabeth River at 5100 Bainbridge Boulevard, in the City of Chesapeake. This project requires a wetlands permit.

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

Ms. Maulorico noted that the Habitat Management staff held a Wetlands public hearing at our main office on December 10, 2016. Jim Cahoon of Bay Environmental, Inc, the project’s agent, was the only attendee. No public comment was made. Staff had not received any other public comment or objections to the application.

Ms. Maulorico explained that staff felt the applicant had minimized wetland impacts to the extent possible and found the proposed mitigation through the purchase of credits at a tidal mitigation bank fulfill the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines. She further explained 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 recommended approval of the project, as proposed.

Jim Cahoon, representative for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Cahoon stated they agreed with the staff’s evaluation and this was very important to the solid waste management in region.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

Associate Member Erskine moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

Wetlands Fees paid.

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6. JEAN CASE, #16-1320, requests authorization to install two (2) stone break water spurs over 325 square feet of State-owned subaqueous bottom along the East River shoreline at 726 Turpin Lane in Mathews County. The project is protested by an adjacent property owner.

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

Mr. Johnson noted that notices of the hearing had been mailed out as required.

Mr. Johnson explained that Mr. Witherspoon, protestant, had sent a letter stating that they have had only 5 business days of notice of this hearing. He explained that they felt that Habitat staff had not sufficiently addressed their concerns about the spur and requested the Commission continue this matter to give the protestants time to prepare for a hearing.

Associate Member Neill made a motion to move forward with this hearing. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.

Mr. Johnson stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project, as proposed.

The applicant was present but did not wish to comment.

Commissioner Bull opened the public hearing to receive public comments, pro or con. There were none so the public hearing was closed. He stated the matter was before the Commission for discussion and action.

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

Permit Fee	\$100.00
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7. **CITY OF NORFOLK, #16-0013**, requests authorization to construct 82 linear feet of timber bulkhead, two feet channelward of an existing deteriorating bulkhead; and construct a 500 square foot community floating dock and kayak launch, connected by a 40-foot long by 5-foot wide gangway, along Knitting Mill Creek, at 700 W 44th Street, in The City of Norfolk. The project is protested by the adjacent property owners.

Rachael Maulorico, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation with slides. Her comments are a part of the verbatim record. She gave the Board members two hand outs of public comments, one support and one objection.

Ms. Maulorico stated that after evaluating the merits of the project against the concerns expressed by those in opposition to 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 project, as proposed.

Tammy Halstead, Civil Engineer for the City of Norfolk, was sworn and her comments are a part of the verbatim record. Ms. Halstead explained that this was a viable recreational area and funding had been given to the community for this project. She noted that the deeds show ownership by the City and this would provide access for the disabled and there were spaces for parking here at the site, as well as on Colley Avenue.

Commissioner Bull opened the public hearing for comments in support.

Colonel William J. Davis was sworn in and his comments in support of this project are a part of the verbatim record. Colonel Davis said that the veterans and handicap are all for access being provided to access the water and to be able to participate in the water activities. He requested the Commission approve the project.

Commissioner Bull asked for comments in opposition.

Keith Colonna, protestant and property owner, was sworn in and his comments in opposition are a part of the verbatim record. Mr. Colonna explained that he was concerned that this was not an appropriate area for a municipal kayak launched because of the already congested area of Colley Avenue and the shrinking availability of public parking. He stated also that he did not agree that this was all city property and where the parking spaces were proposed was actually on his property. He noted he felt that the Parks and Recreation would not be able to maintain the area.

Commissioner Bull requested comments by Matthew Hull, Assistant Attorney General and the Commission's attorney. Mr. Hull noted the Commission had no authority over the highland issues. He referenced the Code Section 28.2-1205.

Brian Barshara, protestant and property owner, was sworn in and his comments in opposition are a part of the verbatim record. Mr. Barshara said his concerns were for the safety of the water and was on the verge of a marina with the kayak activity. He stated there was a federal channel in the area. He noted the plan for some of the pilings that had been there for a long time was to cut them off to mud level which was a safety concern. He stated the pilings should actually be removed. He said that there had been an oyster replenishment project about 1/8 of a mile from this areas. He was concerned with lack of parking, the tide at high tide was 3 feet and less than 3 feet at the bulkhead at low tide. He said there were health concerns with the water still being toxic for swimming and kayaking to be allowed. He noted the Virginia Department of Health had the area closed so no shellfish harvesting was allowed. He stated that there was better location for this project then in this area.

Ms. Halstead in her rebuttal stated that there was no new construction started yet and this area was for kayaking only.

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

Associate Member Minor moved to approve the staff recommendation. Associate Member Neill seconded the motion.

Mr. Neill said he understood what the protestants issues were, but this was an old area that needed to be repaired and would be welcomed by the veterans that he knew. Associate Member Tankard stated he agreed with Mr. Neill’s comments. Commissioner Bull stated that he agreed with both the staff recommendation and the motion.

In answer to Mr. France expressed concerns regarding the cresole in the timber pilings just being cut off and allowed to seep into the water, Ms. Maulorico stated this was normally what was done and a condition could be added to the permit to cut off what can be and remove others, if possible.

Commissioner Bull asked that Lyle Varnell with the Virginia Institute of Marine Science make some comments. Mr. Varnell stated that he mirrored the staff’s recommendation and felt that to remove the pilings would stir up what was under the bottom. He could not say for sure, but it would need to be studied.

Commissioner Bull reminded the Commission that there was a motion on the table.

The motion carried, 7-0. Chair voted yes.

Permit Fee	\$100.00
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- 8. **DOMINION VIRGINIA POWER, #16-1152**, requests authorization to cross 40 linear feet of Wilson Creek with a 19.9 kV aerial electrical line with a minimum height of 28 feet above mean high water at a site located downstream of the Cunningham Lane bridge crossing in Gloucester County. The temporary aerial crossing is proposed to facilitate bridge repair work and the line will be moved back to its current location following completion of the bridge work. The project is protested by an adjacent property owner.

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

Mr. Neikirk explained that the Virginia Department of Transportation had determined the bridge required replacement and the temporary relocation of the line was necessary to facilitate that work. The bridge replacement was not the subject of this application and that project was approved under our general permit process for VDOT projects. After staff evaluated the merits of the project against the concerns expressed by those in opposition to 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 project as proposed. Staff recommended that the approval also authorize the relocation of the line upon completion of the bridge work. Staff was unable to locate a VMRC permit authorizing the existing line which was likely installed long ago. Accordingly, staff recommended the assessment of a royalty of \$120.00 for the encroachment of the line over 40 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Commissioner Bull opened that public hearing for comments. There were none and the public hearing was closed. Commissioner Bull stated the matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the staff recommendation. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.

Royalty Fees (crossing lin. ft. @ \$3.00/lin. ft.)	\$120.00
Permit Fee	\$100.00
Total Fees	\$220.00

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- 9. **JOHNNIE TYNES, JR., Oyster Planting Ground Application #2014-123**, requests authorization to lease approximately four (4) acres within the James River in the City of Newport News. The application is protested by an adjacent leaseholder.

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 due to the user conflicts within the creek areas that traverse through the Fort Eustis Military Base, the objections by the adjacent leaseholder, and the small remaining areas, staff could not support a recommendation to lease the area requested by Mr. Tynes. Furthermore, should the Commission concur with the staff recommendation it would seem appropriate to accept an application from John DeMaria to lease the area that had become subaqueous bottomlands due to erosion since his previous lease area was granted.

The applicant was asked to comment.

Johnny Tynes, Jr., applicant, was sworn in and his comments are a part of the verbatim record. Mr. Tynes said he was a commercial waterman who had applied for area because it was available and went through the process. He stated that the military did not object to his application and he wants to get what is available. When asked, he explained that he would plant seed oysters and hand tong in this area. Again when asked, he stated yes, he did have other leases in the Tylers Beach and Burwells Bay area.

Commissioner Bull asked if there was anyone who wanted to comment, pro or con.

John DeMaria, Jr., protestant, was sworn in and his comments are a part of the verbatim record. Mr. DeMaria stated that the lease had been held originally by Wishy Melzer and when he applied for the lease and the survey was done, Gerry Showalter stated that the line would be made straight. He felt that he should be given this area that had been opened up adjacent to his lease since he had originally applied for all that was available in this location.

Mr. Tynes said this was a case of haves and have not's. He said he was just starting out and he added that he would work hard and just wanted an opportunity. In response to a question about his others leases, he stated they were mostly mud. He said he had seen it done before where someone applied but were not given all that had been applied for, but then it would be leased to others.

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

Associate Member Erskine moved to accept the staff recommendation and deny the application. Associate Member Kellum seconded the motion. The motion carried, 5-2. Associate Members France and Minor voted no. The Chair voted yes.

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- 10. DENNIS PARKER, Oyster Planting Ground Application #2015-153**, requests authorization to lease approximately five (5) acres of oyster planting grounds within the James River in the City of Newport News. The application is protested by an adjacent leaseholder.

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 while staff understands the concerns of Mr. DeMaria, there appears to be area adjacent to the Parker lease that is appropriate for leasing. The concern of Mr. DeMaria regarding possible encroachment into his lease when working this area appears to be an enforcement issue as his existing lease already adjoins the existing Parker lease. Staff recommended leasing a smaller area than originally requested by Mr. Parker, excluding the northwestern most area of his application and excluding any area inside the mouth of the small creek in this area. This proposed revised area contains 4.32 acres. If leased, staff recommended that Mr. Parker be afforded the opportunity to accept the lease area, as approved, or to merge any approved area into his existing lease in this area.

Commissioner asked the applicant to comment.

Dennis Parker, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Parker stated that he originally wanted the area for hand tong, but he would use a dredge, if necessary. He said he had no problem with the existing lease between Mr. DeMaria and himself, but he did have plans for this area.

The hearing was opened to public comments, pro or con.

Charles Duke was sworn in and his comments are a part of the verbatim record. Mr. Duke said he supported this application. He noted that he was the financial backer and had worked on the water for three years. He said the .62 acre area that staff recommended not approving was a good area and should be included for Mr. Parker.

John DeMaria, protestor and leaseholder, was sworn in and his comments are a part of the verbatim record. Mr. DeMaria explained that he had requested this area originally when he applied for the ground, but the surveyor at the time said they did not go to shore and made the survey line of the area straight. He stated that he and Mr. Cowart were on the boat when the survey was originally done. He said he was assured at the time that the area would not be leased then or in the future. He said he requested an adjustment be made to include the applied for area since he had applied for it originally.

After some discussion about whether to lease the area applied for or possibly to set it aside, Commissioner Bull closed the public hearing and asked for a motion.

Associate Member Tankard moved to approve the application, as submitted. Associate Member Minor seconded the motion. The motion carried 4 to 3. The Chair voted no. Associate Members Erskine and Kellum both voted no.

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11. PUBLIC COMMENT:

Scott Wivell

Mr. Wivell suggested the Commission consider lessening the minimum number of bushels to be shucked for commercial sale from 1,000 to 500 or 250 for those watermen who want to shuck and sell their own catch. The Commissioner suggested he take this matter to the Shellfish Management Advisory Committee.

Richard Green

Mr. Green requested the Commission extend for at least two weeks oyster harvesting by hand scrape in the James River, to recover some of the lost days of harvest due to bad weather. The Commission was presented a petition. After some discussion, no action was taken.

Tim Wivell

Mr. Wivell raised some concern about fishing outside the three mile limit and being stopped by the Marine Police Officers. The Commissioner suggested that Mr. Wivell contact Rick Lauderman, Chief and Warner Rhodes, Deputy Chief both of the Law Enforcement Division to discuss his concerns in this matter.

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12. OFFENDERS:

Rocky W. Rhea – was present and sworn in.

Harold C. Springfield, 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.

May 11, 2016; Fishing after license/privilege has been revoked (Commercial); 4 VAC 20-1280-30; June 14, 2016, Hampton General District Court; Fine: \$500.00, Court Cost: \$121.00.

Stephanie Iverson read the staff recommendation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. Rhea's Commission-issued licenses for a period of five years from the date of this Commission meeting, January 24, 2017, through January 23, 2022. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Rhea's licenses during this revocation period. Staff recommended the Commission revoke Mr. Rhea's fishing privileges, within the Commonwealth's tidal waters, for a period of five years from the date of this Commission meeting, January 24, 2017, through January 23, 2022. Staff recommended the Commission take discretionary action concerning the potential of a civil penalty.

William Roots, attorney for Mr. Rhea, was present and his comments are a part of the record. Mr. Roots stated that the officer's presentation of the court record of a conviction should not be allowed because it was hearsay evidence. He also objected to the fact that Mr. Rhea's case was previously heard by the Commission with him absent as he had not signed any waiver for the hearing to proceed without him being present. He said what the conviction was based on him being on the vessel shoveling the fish was not a violation as stated in the Code of Virginia under Title 28.2.

Matthew Hull, Assistant Attorney General and VMRC Counsel, explained that it was the court record and was allowed for the Commission to use in their hearing. He also stated that because Mr. Rhea was not being that was his waiver to proceed with the hearing in his absence. He also referred to Code Section 28.2-100 which said that it involved all activity, catching, transporting, or preparing for market fish and shellfish.

Mr. Roots in his rebuttal stated that there was insufficient evidence to take Mr. Rhea's licenses and this case should be sent back to court or the Commission should not take Mr. Rhea's licenses. He said Mr. Rhea was not out on the water and was preparing the fish for market for someone else. He asked that he not lose his license for five years, but to fine him so that he can go out and work to pay it back. He even suggested giving Mr. Rhea community service.

After much discussion, Commissioner Bull asked for a motion.

After further discussion, Associate Member Tankard moved to accept the staff recommendation. The motion failed for lack of second.

Associate Member Minor moved for one year license revocation and fishing privileges starting January 24, 2017, through January 23, 2018 and with 3 year probation to follow, starting January 24, 2018, through January 23, 2021 and a civil penalty of \$750.00. Associate Member Tankard seconded the motion. The motion carried 6-1. Associate Member Neill voted no. Chair voted yes.

Commission Meeting

William C. Parks – was present and sworn in.

David Drummond, 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.

June 24, 2015; Possession of Unculled Crabs (41) in One Bushel—§28.2-708 of the Code of Virginia; August 12, 2015, Accomack County General District Court; Fine: \$50.00, Court Cost: \$121.00.

June 15, 2016; Possession of Unculled Crabs (34) in One Bushel—§28.2-708 of the Code of Virginia; September 27, 2016, Northampton County General District Court; Fine: \$75.00, Court Cost: \$126.00.

Stephanie Iverson read the staff recommendation. The Commission's guidelines for sanctions specify that two convictions of possession of greater than 20 undersized crabs per bushel, within a 24 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. Parks on probation for a period of one year from the date of this Commission meeting, January 24, 2017, through January 23, 2018. Any failure on Mr. Parks' 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. Parks appearing before the Commission for a hearing on license revocation.

Mr. Parks stated he had to use a substitute individual to help him to cull the crabs, which was mistake. He stated that at the time he was not trying to do anything wrong and he was ultimately responsible for what happened on the boat. When asked how this had happen two times, he explained that he totally messed up and he had been checked since and there had been no problem.

Associate Member Erskine moved to accept the staff recommendation for one year probation, from the date of this Commission meeting, January 24, 2017, through January 23, 2018. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

Justin C. Travis – was present and sworn in.

Ron Cagle, 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.

October 5, 2016; Have in Possession Unculled Oysters (8 Quarts)—§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; November 7, 2016, Middlesex County General District Court; Fine: \$150.00, Court Cost: \$121.00.

October 24, 2016; Have In Possession Unculled Oysters (8 Quarts)—§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; December 5, 2016, Middlesex County General District Court; Fine: \$150.00, Court Cost: \$86.00.

Stephanie Iverson read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 50% (or 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 recommended the Commission place Mr. Travis on probation for a period of one year from the date of this Commission meeting, January 24, 2017, through January 23, 2018. Any failure on Mr. Travis' 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. Travis appearing before the Commission for a hearing on license revocation.

Mr. Travis explained that first time he was operating the boat and there were others who did the culling. The second time he did the culling. He stated he miss the first Court date, because he was incarcerated.

Associate Member Tankard moved to accept the staff recommendation to place Mr. Travis on probation for a period of one year from the date of this Commission meeting, January 24, 2017, through January 23, 2018. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

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13. PUBLIC HEARING: To make amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass", to lower the 2017 Coastal Area Commercial Fishery Striped Bass Quota.

Alex Aspinwall, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. He provided a handout to the Commission.

Mr. Aspinwall explained that the 2016 Coastal Area Commercial Striped Bass Quota, established under section B in 4VAC 20-252-150, was set at 138,640 pounds. As described under section B in 4VAC 20-252-150, the total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 138,640 pounds of whole fish. during the 2016 commercial season, an administrative error was found by staff in which 2,499 pounds of coastal area commercial quota was given out incorrectly. During the distribution of quota, staff incorrectly allocated 141,139 pounds to the coastal area commercial fishery. In order to correct for this overage, Virginia will be required to set the 2017 Coastal Area Commercial Fishery Striped Bass Quota at 136,141 pounds.

Mr. Aspinwall stated that staff recommended the Commission adopt the quota for 2017, as 136,141 pounds and approve amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to lower the 2017 Coastal Area Commercial Fishery Striped Bass quota.

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

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

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14. REQUEST FOR PUBLIC HEARING: To make amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the landing dates, landing periods, possession limits and landing limits for summer flounder commercially harvested outside of Virginia waters.

Robert O'Reilly, Chief, Fisheries Management gave the briefing of the information provided in the staff evaluation with slides.

Commissioner Bull left the meeting and Associate Member Kellum took over as the Chair for this hearing.

Mr. O'Reilly explained that the 2016 update to the summer flounder stock assessment indicated that the spawning stock biomass remains well below the set target (42% below). Coast-wide, surveys that estimate the abundance of summer flounder suggest the stock has declined and that the juvenile abundance has been poor for six years in a row. Poor juvenile abundance translates to less fish that can recruit into the fishery for harvest. In response to all of this information the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission voted to lower the 2017 catch limits for summer flounder by 30% from the 2016 levels, for both the commercial and recreational fisheries. The commercial quota for Virginia will be just over 1.2 million pounds. This is one of the lowest quotas Virginia has had since allocation started. With over 100 active vessels in the off-shore trawl fishery considerations need to be made for this year's landing periods and landing limits.

Mr. O'Reilly stated that staff recommended the Commission advertise for a February public hearing to consider amendments to Chapter 4 VAC 20-620-10 et seq. "Pertaining to Summer Flounder," to modify the landing dates, landing periods, possession limits and landing limits for summer flounder commercially harvested outside of Virginia waters.

After some discussion, Associate Member Erskine moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. Commissioner Bull was absent during this hearing.

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Commissioner Bull returned to the meeting.

- 15. REQUEST FOR PUBLIC HEARING:** To make amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify minimum size limits and possession limits for summer flounder recreationally harvested in Virginia waters.

Katie May Laumann, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation with slides. Her comments are a part of the verbatim record.

Dr. Laumann explained that the 2017 Summer Flounder recreational harvest limit is 3.77 million pounds. This represents the lowest quota to date, and a 30% reduction from 2016's RHL, and a 41% reduction from the projected harvest in 2016. At the February ASMFC meeting, final action will be decided on regarding the Draft Addendum. Staff will have the results from that meeting and the proposed measures for the DELMARVA region by the next Commission meeting.

Dr. Laumann stated that staff recommended advertising for a February public hearing to consider 2017 recreational management measures for Summer Flounder.

Associate Member Neill moved to accept the staff recommendation to advertise for a February public hearing. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 16. REQUEST FOR PUBLIC HEARING:** To make amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the commercial black sea bass fishery quota for 2017.

Robert O'Reilly, Chief, Fisheries Management gave the briefing of the information provided in the staff evaluation with slides.

Mr. O'Reilly explained that in December, the NMFS informed the states that the combination of a quota overage, as well as much higher than anticipated dead black sea bass discards required a 31% reduction in the 2017 commercial quota. This means the 2017 quota, according to a NMFS was reduced to 1,862,322 pounds. As Virginia enjoys

20% of the coast wide quota, the total commercial black sea bass quota would be 372,464 pounds, compared to 542,000 pounds in 2016.

Mr. O’Reilly said that all the committee findings, as well as the decision of the joint meeting of the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission is to occur mid-February. Staff recommended advertising for a March public hearing on these issues, rather than change the regulation now and again in March. Staff recommended the Commission allow staff to advertise for a March public hearing to consider management measures, for the black sea bass commercial and recreational fisheries for 2017.

Associate Member Neill moved to accept the staff recommendation to advertise for a March public hearing. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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17. DISCUSSION: Request for approval of the 2017 Oyster Replenishment Plan and associated procurement procedures.

Jim Wesson, Head-Conservation and Replenishment, gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Staff recommended approval of the 2017 Oyster Replenishment Plan (ORP), as well as the associated Procurement Procedures.

After some discussion, Associate Member Erskine moved to approve the staff recommendations and the procurement procedures. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

The following is the 2017 (ORP) plan:

<u>FUNDING SOURCES:</u>	<u>AMOUNT:</u>
Non Federal	
General Fund (GF)	\$2,000,000
The Nature Conservancy	\$ 187,000
Non-General Funds (NGF) Various Sources	\$ 120,000

oyster larval attachment. In most of the mid-salinity areas in Virginia, the half life of shells appears to be 3 to 4 years. Shells must be replaced regularly, and the CRD staff determines the areas that are in need of new shell from the results from the VIMS-VMRC annual patent tong survey. All of the \$2 million appropriation for 2017 will be used for adding new shell to those areas in most need of shell. Funds for oyster restoration will never be enough to maintain the public beds at maximum productivity, but if the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained. In Table 1, there is a list of all of the areas and acreages of oyster beds that staff has determined to be in need of shell in 2017. In total, 1,100 acres of oyster beds need shell. Shell costs continue to increase, especially since 2010, and \$2 million in funds will not be sufficient to add shells to all of these areas. In Table 2, the areas that we will likely have funding to add shell this year are shown. To keep the prices as low as possible, staff will focus planting efforts in 2017 on areas in the James, York, and Rappahannock Rivers, and the Deep Rock and Mobjack Bay areas. VMRC-CRD will purchase as many house shells as possible for an established price of \$2.00 per bushel. Private individuals, the State of Maryland, and other oyster restoration partners in Virginia are offering to buy shells at values higher than \$2.00/bushel, so it is unknown how many house shells will be available. After purchasing all of the house shells that are available, the remaining appropriated General Funds will be used to dredge fossil shells for shellplanting. VMRC intends to advertise with a Request for Proposal (RFP) for fossil shell dredging and planting to begin on June 15, 2017.

400 – 500 acres of oyster shell restoration@
1,000 bushels/acre @ \$2.50 - \$4.00/bushel = \$2,000,000 (GF)

As an aside there is some uncertainty in the fossil shell dredging situation. Virginia has two permitted sites in the James River for mining fossil shell. One site is a small area near Tribell Shoals, almost to Williamsburg, where shells have been mined for approximately 15 years. There may be enough shells in that area for an additional 2 to 3 years. In 2016, a new, larger area was permitted for mining shell in the James River very near the shipyard in Newport News. This is a larger area of more than 600 acres. Shells were mined in the area in 2016, and the shell quality was excellent. The vein with fossil shells was not as thick (6-10') as in the upper James location (20-50'), but the area is larger. The shell dredge that is used to mine, clean, and process the shell (Figure 4) has been used for this work by both Maryland and Virginia since the early 70's. It is the only piece of equipment that is designed to do this type of work in the United States. The owner of the dredge wants to retire, and is in the process of selling the dredge. There is some interest by several contractors in purchasing the dredge, but no one has made a commitment at this point. The dredge is old but the price is reasonable, especially if there would be more work for the owner in the future. The single \$2 million contract in Virginia where the dredge only works for about 6 weeks makes it a risk for investors. Maryland is at least discussing beginning a shell replenishment program again. They have not planted dredge shells since 2006, and there have been problems permitting a

new site for shell dredging. If there was a high likelihood that Maryland would dredge shells again, then it would be a better investment for a private contractor to purchase and maintain the shell dredge. If there is no buyer for the shell dredge, then it would likely be scrapped or converted to a normal “mud” dredge. It is highly unlikely that any contractor would ever build another shell dredge in the future.

If there were no fossil shells then the Commission would have to make some very important decisions. There are not enough house shells to take care of the needs on the public beds. If the state begins competing for the limited quantity of house shells, then the price would escalate and shells would not be available for private ground production and spat on shell aquaculture. This would significantly limit that portion of the growth of hatchery based aquaculture.

The other choice for the Commission would be to use an alternative cultch for the restoration and public oyster beds. The CRD program has tested both ground concrete and granite. Both of these substrates have gotten great spatsets when placed on relatively firm oyster beds. Unfortunately, this substrate is not suited for the majority of the oyster beds in the Bay and its tributaries. The ideal substrate on most oyster beds is a sand-mud mix that holds shell on the surface, but would not support the more dense and heavy granite or concrete.

At this point, the best scenario for the Commission and Oyster Replenishment will be that the oyster dredge be purchased and maintained by a new contractor that has an interest in oyster restoration.

Seaside of Eastern Shore:

The CRD Program will contract for shell planting for a Nature Conservancy project and assist with the site selection and shell planting monitoring.

Approximately 7 acres will be planted with shells harvested from local shell deposits.
(CRD Notice 17-03)

7 acres @ 10,000 bushels of shells/acre @ \$2.50/bushel = \$187,000 (NGF-TNC)

Pocomoke Sound- Marshalls and Byrd Rocks:

Based on watermen’s recommendations, two rocks in upper Pocomoke Sound were planted with shell in 2014 and 2015. There has been almost no spatset in Pocomoke Sound in either of these years and some of the shells on portions of the rocks looked fine, but in other areas the shells have covered with silt. In 2016, CRD contracted with a waterman to harvest shells from some of the areas that had been covered with silt, and relocated the shells on the best parts of each bar. This project worked well, and the area received a modest spatset in 2016. Some areas on each bar still have shell under the

surface, and this year these shells will be harvested and relocated to a sanctuary area called Cod Harbor in Tangier Sound. Approximately 10,000 bushels of shell will be harvested in Pocomoke Sound and relocated on Cod Harbor. (CRD Notice 17-04).

10,000 bushels of silted shell harvested from Marshalls and Byrd rocks in Pocomoke Sound and relocated in the Cod Harbor area in Tangier Sound
@ \$2.00/bushel = \$20,000(NGF)

PROCUREMENT ACTIVITY FOR THE 2017 OYSTER REPLENISHMENT PROGRAM:

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures, and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters, shell bed cleaning, and excavated shells, the Commission will set the per bushel price to be paid. For the production of oyster eyed larvae, the Commission will set a price per million larvae. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$1.50 per bushel for conch shells, \$1.00 per bushel for clam shells, and \$2.00 per bushel of oyster shells at the shucking house. Loading, transporting, and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2015 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the

purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

The Commission will also set the price per ton for ground concrete or granite stone that will be used as an alternative cultch material. Loading, transporting, and planting costs for this material will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Public Notices will be posted and all interested parties may apply. Contractors will be selected by lottery, or allowed to provide the material until the project is completed.

The agency anticipates that all other 2017 oyster replenishment activities will be completed using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2017 Replenishment Program.

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18. DISCUSSION: Reconfiguration of the Rappahannock River Rotation Area Maps to establish a transit area for vessels traveling with hand scrapes or dredges.

Andrew Button, Head-Conservation and Replenishment, gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. Button explained that the change was made on the map and a change in the regulation was not necessary. This change was made in order to allow for transiting a vessel where the sanctuary areas two corners connect at the Route 3 bridge.

No action was necessary.

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There being no further business, the meeting was adjourned at approximately 3:45 p.m. The next Commission meeting will be Tuesday, February 28, 2017.

John M. R. Bull, Commissioner

Commission Meeting

**17803
January 24, 2017**

Katherine Leonard, Recording Secretary