

MINUTES

Commission Meeting

June 27, 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	
Heather Lusk	
James E. Minor	Associate Members
Ken Neill, III	
John Zydron	
John Tankard	
Kelci Block	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Matthew Hull	Policy Manager
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Administration-Finance
Todd Sterling	Bs. Systems Specialist, Sr.
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Adam Kenyon	Fisheries Mgmt. Specialist
Hunter Smith	Fisheries Mgmt. Specialist
Chris Davis	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator

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Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
David Drummond	Marine Police Officer
Gerald Pitt	Marine Police Officer
John Callomore	Marine Police Officer
Jamie Hogge	Marine Police Officer
Austin Brown	Marine Police Officer
Clinton Smith	Marine Police Officer
Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Peabody	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping
Daniel Faggert	Surveyor, Engineering/Surveying
Bradley Reams	Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Mark Luckenbach
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Others present:

Harold Bohannon	Corey Gray	Chuck Roadley
Ronnie Bailey	Le-Ha Anderson	Stephanie Harrington
Russell Meadows	Courtney Clements	Steve Chafin
Kevin Curtis	Rick Linker	Kevin F
Gaylene Watson	Jeff Brut	Roy Hallowell
Edward Chappell	Kathleen Rothschild	Margaret N. Fowler
C. Wayne Williamson	Eric Bartlett	David Harmeyer
Cole Winchester	Jerry Hughes	Shanna Cahill
Nancy Hargan	Jack Hargan	Al Riutort
Dorothy Canter	Randi Akers	Bill Parr
Dan Clements	Gilliatti Brad	Elizabeth Kosteliz
Leighton Powell	Justin Sarafin	Patti Cougleridg
Robert Beck	Laura Brown	James Brunkow
Bonnie Hofmeyer	Kathy Allen	Sharee Williamson
Laurie E. Horner	Pamela Goddard	Joseph McCauley
Lauren Pudvan	Kerry Collins	Patty VonOhker

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Margaret Pritchard	Jameson Brunkow	Andy Lacatell
Antonio Hill	Mark Sanford	Timothy Wivell
Michael Ware	Philip Hatchett	Chris Moore
Tamara Dietrich	Peter Nixon	Mike Avery
Rolway Guenero	Cynthia Hill	

and others.

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Commissioner Bull called the meeting to order at approximately 9:35 a.m. Associate Member Ballard was absent.

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

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

The agenda was approved by general consensus of the Board members.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the May 23, 2017 Commission meeting minutes. There were no changes.

Associate Member Tankard moved to approve the minutes, as presented. Associate Member Zydron seconded the motion. The motion carried, 5-0-3. Chair voted yes. Associate Members Erskine, Lusk, and Minor abstained as they did not attend the meeting. Mrs. Heather Lusk was newly appointed to the board by the Governor.

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

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

Tony Watkinson, Chief, Habitat Management, reviewed the one item for the Board. His comments are a part of the verbatim record.

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

Associated Member Erskine moved to approve the project, as presented. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.

- A. **KINDER MORGAN OPERATING L.P. "C", #17-0648:** Requests authorization to maintenance dredge up to 80,000 cubic yards, on an annual dredge cycle to maintain depths of -38 and -52 feet mean low water along the James River for Piers IX and X of their facility located at 1900 Harbor Access Road in the City of Newport News.

Permit Fee	\$100.00
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- 3. **CONSENT AGENDA ITEMS:**

- A. **GLEN MALSTROM, #17-0649:** Requests after-the-fact authorization to retain 70 linear feet of vinyl replacement bulk heading, aligned a maximum of two feet channelward of a deteriorating bulkhead, situated along Chincoteague Bay adjacent to Lot #1320 on Blackbeard Road in the Captains Cove subdivision, Accomack County. The agent/contractor has agreed to pay a civil charge of \$3,000.00, in lieu of further enforcement action. Staff recommends approval contingent on the acceptance of the aforementioned civil charge, triple royalties of \$420.00 and a triple permit fee of \$75.00.

Tony Watkinson, Chief, Habitat Management, reviewed the one item for the Board. His comments are a part of the verbatim record.

Associate Member Tankard asked if the contractor had agreed to the amount of the civil charge and Mr. Watkinson responded yes.

It was noted that the contractor was not present.

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

Associate Member Erskine moved to approve the request and agreed to the civil charge and fees. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Royalty Fees (encroachment 140 lin. ft. @ \$3.00/lin. ft.) (ATF Triple Royalties)	\$ 420.00
Permit fee (ATF Triple fee)	\$ 75.00
Civil Charge	\$3,000.00
Total fees	\$3,495.00

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

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5. **MARIE JUSTICE, #17-0601:** Requests authorization to construct 145 linear feet of riprap revetment, landward of an existing deteriorated bulkhead, along the Eastern Branch Elizabeth River, at residence of 106 Lenwill Drive in Chesapeake. The project requires a wetlands permit.

Rachael Peabody, 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. Peabody explained that removal of the existing bulkhead would result in the conversion of 234 square feet of non-vegetated wetland to intertidal rip rap and 8 square feet of vegetated wetlands to intertidal rip rap. The project would result in net gain of 24 square feet of new non-vegetated wetlands. No compensation was deemed necessary based on VMRC’s Wetlands Mitigation-Compensation Policy and Supplemental Guidelines. Although the project would still result in a hardened shoreline, the proposed riprap would provide improved habitat compared to the timber bulkhead, and should provide a longer lasting treatment to address the applicant’s erosion with minimal disruption to the established vegetation landward of the structure. Therefore, 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.

Commissioner Bull opened the public hearing to comments both pro and con. There were no comments. He closed the public hearing and 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, 8-0. Chair voted yes.

Applicable Wetlands Permit Fee paid.

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6. **VIRGINIA ELECTRIC AND POWER COMPANY, #13-0408:** Requests authorization to cross State-owned bottomlands to construct a new 27.75 mile overhead transmission line known as the Surry, Skiffs Creek, Whealton Substation project that will span the James River from Surry County to James City County and includes crossings of Wood Creek in James City County and Skiffs Creek between James City County and Newport News, as well as Lee-Hall and Harwood's Mill reservoirs. The project is protested by a number of organizations and residents.

Ben Stagg, Director, Shellfish Aquaculture, Leasing and Mapping, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record.

Mr. Stagg noted that the both the leaseholders who were objecting to the overhead crossing had withdrawn their protests. He also noted that the State Corporation Commission and the U. S. Army Corps of Engineers had already completed their review of the project and had approved the permit requests.

Kelci Block, Assistant Attorney General and VMRC Counsel, stated that the agency got its authority from Code of Virginia, Section 28.2-1205 and must consider the use of the submerged state-owned bottom and not upland construction. Also they must consider the Public Trust, the impact on other users, marine life, tidal wetlands, adjoining property owners, and the impact to the submerged aquatic vegetation. An Attorney General's opinion limited this to direct and physical effects on adjoining properties; and, it was not necessary to question other agencies' review.

Mr. Stagg explained that the magnitude of this project has resulted in extensive public interest review and public comment. Staff had carefully evaluated the direct impacts to both shellfish and finfish and had considered all the factors and consulted with other agencies, as required under § 28.2-1205(A) and (B) of the Code of Virginia. Based on these evaluations and the mitigation techniques that the applicant had agreed to implement concerning the installation of the river towers and fender system, such impacts should be reduced and mitigated to the greatest extent practicable while allowing the project to be constructed. Staff believed the review of this project by the Army Corps of Engineers under the auspices of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA) had adequately addressed those issues through their provisional permit and would provide for

mitigation of impacts as required by these acts for the project. Alternatives analyses were conducted and carefully evaluated by the SCC and ACOE and alternatives were deemed to not meet the requirements or were too costly to implement.

Mr. Stagg stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in the § 28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the following special conditions:

1. All instream piling installation shall utilize bubble curtains, isolation chambers, cushion blocks and ramp up methods.
2. No hollow steel pilings shall be installed between February 15 through June 15 of any year.
3. Instream pile driving of hollow steel pilings shall be confined to one tower location at a time.

Mr. Stagg explained that if the Commission determines that the time-of-year restriction is not feasible, staff would still recommend strict adherence to all other conditions. In the event the Commission determines that limiting pile driving activities to a single location at a time is not possible, staff would recommend strict adherence to all other conditions and further that pile driving be limited to no more than two locations.

Mr. Stagg stated that staff also recommended a royalty in the amount of \$170,083.00 for the encroachment of the structures over State-owned subaqueous.

Kevin Curtis and Corey Gray, representatives for the applicant, were both sworn and their comments are a part of the verbatim record.

Mr. Curtis, VEPCO Representative, explained that they needed this transmission line in this area in order to meet the needs of the customers in the area. He said that they had gotten approval by the State Corporation and the U. S. Army Corps of Engineers. He said that the time-of-year restriction would impact their ability to get the project completed by the ACOE permit deadline of 2020. He noted that this had been reviewed by all and this was the best alternative. They requested approval with a change in the time of year restriction to allow them to work on driving the pilings year round.

Mr. Gray reviewed what the VMRC jurisdiction required them to consider for a project. He said for other uses VEPCO tried to minimize the impacts and spent a lot of time on this. He said that it would not impact navigation and the leaseholders both had withdrawn their protests. He said they had coordinated with VIMS, VMRC and the NWFS consulting them about the endangered species and the Atlantic Sturgeon would be minimally impacted. He said they had considered the fisheries resources, non-tidal wetlands, impacts on adjoining property owners, submerged aquatic vegetation, water quality and impacts on historical sites. He also expressed concerns with the time of year

restriction impacting the completion of the project by 2020. He said the bubble wrap and other suggestions should protect the fish and drown out the noise of the pilings being driven. He requested the Commission approve the project and allow them to work during the time of year restriction period.

Russell Meadows, Project Manager, was sworn in and his comments are a part of the verbatim record. Mr. Meadows noted that with the time of year restriction there would be no way to meet their deadline of the year 2020.

Commissioner Bull opened the public comments for those in support of the project. The following individuals were sworn in and their comments of support are a part of the verbatim record.

Laurie Elaine Horner Roy Hollowell Harold Bohannon

Commissioner Bull invited those in opposition to come forward and comment. These individuals mainly spoke to the impact of this overhead transmission line crossing on the historical sites in the area and concerns that they felt no alternatives had been adequately considered and no environmental impact study had been required.

Nancy Hargan Sharee Williamson Jameson Brunkow
Elizabeth Kosterliz Edward Chappell Bonnie Hofmeyer
Margaret Fowler Dorothy Canter Joseph McCauley
Robert Beck Pamela Goddard

Ms. Williamson provided for the Commission's record additional letters of protests.

The applicant's representatives were asked to make rebuttal comments.

Mr. Curtis explained that VEPCO was looking for a long-term solution and not just the bottom-line but the cost to customers and they were trying to do the project with the least impacts. His comments are a part of the verbatim record.

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

Associate Member Erskine asked how much oyster productivity was happening in the area. Mr. Stagg explained there was private ground activity and strike occurred here but that freshets occur which kill the oysters. He added there was more productivity to the south.

Associate Member France asked about the fossil shell reserves that the State had been utilizing for its restoration projects. Andrew Button, Head, Conservation and Replenishment explained that there were still some shells in this area, but most had been

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used for the State’s projects. He added that the State was now using another location in the lower James River for its purposes.

Commissioner Bull explained that the ACOE had considered everything that had been studied for years, and the Commission considered the impacts on the water bottom and the appropriate way to install the piles and lessen the impacts.

Lyle Varnell, representing VIMS, was present and his response to the question of the time-of-year restriction being changed was that VIMS was concerned about the impact of the noise of driving the pilings into the submerged bottom on the finfish species in the area and that VIMS supported maintaining the time-of-year restriction, February 15 to June 15 of any year. His comments are a part of the verbatim record.

After much discussion, Associate Member Zydron moved to approve the staff recommendations but to include a change in one permit condition and allow for the driving of two towers at same time. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair yes.

Royalty Fee (Tower encroach 49,211 sq. ft. @ \$2.00/sq. ft.)	\$ 98,422.00
Royalty Fee (Fender encroach 2,712 sq. ft. @ \$2.00/sq. ft.)	\$ 5,424.00
Royalty Fee (Ariel encroach 22,079 lin. ft. @ \$3.00/lin. ft.)	\$ 66,237.00
Permit Fee	\$ 100.00
Total Fees	\$170,183.00

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- 7. **COLONIAL PIPELINE COMPANY, #15-1211:** Requests authorization to modify an existing permit to allow for the installation, by directional bore method, of a 14-inch diameter petroleum transmission replacement line, in an existing easement, a minimum 80 feet beneath a 4,200 linear foot wide section of the Nansemond River in the City of Suffolk. The project is protested by an oyster ground leaseholder.

Mark Eversole, 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. Eversole noted that Ms. Mary Hill who is protesting the project was not present, but had submitted a second letter of protest. He provided a handout of the letter to the Board members.

Mr. Eversole explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the modification with the assessment of a royalty in the amount of \$12,600.00, for encroachment beneath 4,200 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot of encroachment.

Chip Little, Colonial Pipeline representative, was sworn in and his comments are a part of the verbatim record. Mr. Little stated he could answer any questions or Mr. Mock who was with him.

Terry Mock, Colonial Pipeline representative, was sworn in and his comments are a part of the verbatim record. Mr. Mock explained that the U. S. Department of Transportation’s regulation required the inspection to be done annually to check for problems with the pipes and if there was a problem then they had to repair it or replace it. He said it was decided to replace the pipeline. He said the petroleum has to be displaced and then grout/gravel run through the pipe to make sure the pipe is clear of all petroleum. He said the pipe is then capped on each end. He said any other method would impact the area disturbing the bottom and the leases with the turbidity. He explained that originally in 1963 the ditch was dredged with a clam shell dredge so the pipe could be installed and after the pipe was put in it was allowed to recover naturally. At that time, Ms. Hill’s lease did not exist.

Commissioner Bull opened the public hearing. There were no comments so the public hearing was closed. He 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, 8-0. Chair voted yes.

Royalty Fees (encroach 4,200 lin. ft. @ \$3.00/lin. ft.)	\$12,600.00
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- 8. **PEACOCK HOLDINGS VA LLC, Violation #17-07:** Consideration by the Commission to allow submittal of an after-the-fact application or proceed to a restoration hearing for a violation involving the construction of two screened roof additions, to include use as a restaurant, bar, seating and preparation areas located on a previously permitted marina pier at the Oyster Farm Marina situated along Kings Creek in the Town of Cape Charles.

Hank Badger, 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. Badger said that staff believed the structural additions and change of use on C pier would be more appropriate on the upland and the unauthorized additions and associated activities are not water dependent. Accordingly, staff believed the structures should be returned to their original use. If Peacock Holdings VA LLC was unwilling to voluntarily remove the structures, a restoration hearing would need to be scheduled, which requires at least 30 days' notice. If the Commission believed the case should proceed to a restoration hearing, the Commission must determine if the use of the structures could continue. Likewise, if an after-the- fact application was accepted the Commission must also determine if the use of the structures could continue while the public interest review was being completed.

Bill Parr, representative for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Parr stated that his area had been used with a dock and restaurant and this was an effort to restore the Cape Charles area. He said they had given authority to the manager to do what he could to bring back customers to the marina. He said he did not supervisor his activities and had told him about the permit for additional buildings and he was supposed to get all permits including the one from VMRC. He said this was not done intentionally and he agreed that they had done wrong. He said the County and Health Department had both approved it to be used as is being done. He said Marine Police Officers utilize the facilities for their boats. He said they were trying to make it a boat destination which is important for the County for revenue and important to the tourism in the area. He said he requested approval for submittal of an after-the-fact permit application.

Commissioner Bull explained that the Board needed to decide whether to hold a restoration hearing or to allow for the submission of an after-the-fact permit application requiring a public hearing. He asked what direction the Board wanted to go.

Associate Member Zydron moved to accept an after-the-fact permit application, allowing the applicant to continue to operate; and, with a 90-day deadline for submitting an after-the-fact permit application. Associate Member Erskine seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 9. BRIEFING AND REQUEST FOR PUBLIC HEARING:** Proposed "Living Shoreline Group 2 General Permit for Certain Living Shoreline Treatments Involving Submerged Lands, Tidal Wetlands, and/or Coastal Primary Sand Dunes and Beaches." This second general permit regulation is being developed pursuant to §28.2-104.1 of the Code of Virginia.

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

Mr. Neikirk explained that with the concurrence of the Commission, staff proposed to move forward with distributing the draft general permit to the wetlands boards and other interested parties for comment. In addition, staff recommended the Commission authorized staff to advertise the proposed general permit for public hearing at the September 26, 2017, Commission meeting in order to consider adoption of the general permit. This action would be in accordance with the provisions of §§28.2-103 and 28.2-104.1(B) of the Code of Virginia.

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

Associate Member Tankard moved to accept the staff recommendation to advertise for a public hearing at the September 2017 Commission meeting. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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10. PUBLIC COMMENTS:

Mike Avery, representing the Virginia Saltwater Sport Fishing Association, spoke during the public comment period, requesting the Commission repeal the ban on using a gaff to land cobia caught recreationally. He provided a petition with 562 signatures in favor of repealing the ‘no gaff’ restriction. His comments are a part of the verbatim record.

No action was taken by the Commission.

Cole Winchester was present and his comments are part of the verbatim record. Mr. Winchester requested that the Commission grant him an exception and allow him to obtain his commercial registration card. Mr. Winchester explained that he missed the April 30th deadline to renew his card because the Post Office did not pick up his mail at his residence, which he did not realize until it was too late. He stated he brought it to the attention of staff on May 3rd and at that time his request for an exception was denied. Mr. O’Reilly explained the deadline had been changed from February to April, which allowed an individual an additional two months to renew their Commercial Fisherman License for the current year and the only exception that staff was authorized to accept and approve was for medical reasons, which was established in regulation.

After discussion about staff reviewing Mr. Winchester’s history in order to make a decision for his request for an exception, Associate Member Neill moved to allow the Commissioner to make a decision on this case at his discretion. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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11. OFFENDERS:

11(2) **Jerry DeCatur, Jr.** – present and sworn in.

Warner Rhodes, Deputy Chief, Law Enforcement, provided a handout of a document that had been left out of the Commission notebooks regarding Mr. DeCatur's case.

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

July 30, 2016, Improperly Marked Crab Pot Floats--4VAC 20-140-25; September 26, 2016, Mathews County General District Court; Fine: \$75.00, Court Cost: \$121.00.

John Collamore, 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.

February 10, 2017, Leave Crab Pots in Water After Season--4 VAC 20-270-40; March 6, 2017, Middlesex County General District Court; Fine: None, Court Cost: \$86.00.

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

November 1, 2016, Fish Crab Pot without Required Cull Rings--§28.2-201 of the Code of Virginia; 4 VAC 20-700-20; December 5, 2016, Middlesex; County General District Court; Fine: \$150.00, Court Cost: \$25.00.

November 1, 2016, Improperly Marked Commercial Crab Pots--§28.2-712 of the Code of Virginia; 4 VAC 20-140-25; December 5, 2016, Middlesex County General District Court; Fine: \$150.00, Court Cost: \$121.00.

Philip Hatcher, Attorney, was present and his comments are a part of the verbatim record. Mr. Hatcher explained that Mr. DeCatur had worked on the water since he was 13 years old. He stated Mr. DeCatur had paid his fines and had not been disrespectful to the officer.

Mr. DeCatur said that he had 425 crab pots and at the end of the year he was missing 7 crab pots, which he called VMRC to report this to Officer Austin Brown. He said he had bought his buoys off Gregg's list and did not remove all of the numbers. He said he has now fixed the buoys as well as the cull rings. He said he is now trying to fix them as he works. He said he is complying with the law and has been checked by other Officers and has not had any more violations. He stated that he had been an active waterman for over 20 years.

Stephanie Iverson, Fisheries Management Manager, Sr., explained that the Commission's guidelines for sanctions specify that after three court-adjudicated convictions of Category 3 violations, (violations which are not listed in Tables 4 through 8) require a harvester to appear before the Commission. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Decatur on probation for a period of one year from the date of this Commission meeting, June 27, 2017, through June 26, 2018. Any failure on Mr. Decatur'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. Decatur appearing before the Commission for a hearing on license revocation.

Associate Member Tankard moved to accept the matrix guidelines and put Mr. DeCatur on one year probation, starting June 27, 2017, through June 26, 2018. Associate Member Neill seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member France voted no.

11(1) **Scott Hainley**

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

July 21, 2016, Have Over the 255 Crab Pot Limit in a Tributary--4 VAC 20-880-30(A); February 27, 2017, Mathews County General District Court; Fine: \$350.00, Court Cost: \$86.00.

July 21, 2016, Have Over the Crab Pot Limit for Which Licensed--4 VAC 20-270-50(C); February 27, 2017, Mathews County General District Court; Fine: \$250.00, Court Cost: \$25.00.

Mike Ware, Attorney, was present and his comments on behalf of Mr. Hainley are a part of the verbatim record. Mr. Ware stated that the Commission could excuse the violations and take no action. He said Mr. Hainley was always courteous to the Officer. He stated everyone makes mistakes and noted that both of these violations occurred on the same day.

Stephanie Iverson, Fisheries Management Manager, Sr., explained the Commission's matrix of guidelines for sanctions specify that two convictions of placing/setting/fishing crab pots exceeding the harvesters license limit by 50%, within a 24 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Hainley on probation for a period of one year from the date of this Commission meeting, June 27, 2017, through June 26, 2018. Any failure on Mr. Hainley's part to obey any of the laws or

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regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Hainley appearing before the Commission for a hearing on license revocation.

Associate Member France moved to accept the matrix guidelines and put Mr. Hainley on one year probation, starting June 27, 2017, through June 26, 2018. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

11(3) **Antonio Hill**

Kenneth Davenport, 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.

January 30, 2017, Removal of Shellfish (Oysters) from Polluted Grounds--§28.2-810(A) of the Code of Virginia. May 4, 2017, Isle of Wight County General District Court; Fine: \$100.00 with \$100.00 suspended; Probation 12 months; Court Cost: \$86.00.

Mr. Hill explained that it was in the morning and he was just gathering oysters and no sign was there. He said that when he checked later there was a sign but it was obstructed from view by a fallen tree. In response to a question, he said he had intended to eat the oysters not sell them.

Stephanie Iverson, Fisheries Management Manager, Sr., explained the Commission's guidelines for sanctions specify that one conviction of harvesting oysters from a condemned area, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to revoke all Mr. Hill's Commission-issued licenses for a period of one year from the date of this Commission meeting, June 27, 2017, through June 26, 2018. The Code of Virginia also allows that the Commission prohibits the issuance, reissuance, and renewal of any of Mr. Hill's licenses during this revocation period. In accordance with §28.2-232 of the Code of Virginia the Commission may revoke Mr. Hill's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, June 27, 2017, through June 26, 2018.

In response to a question as to whether the matrix guidelines apply to Mr. Hill's case when he did not have Commercial Registered Fisherman license, Ms. Iverson stated that shellfish were dangerous to eat whether it was harvested recreationally or for commercial purposes.

Associate Member Erskine moved to accept the matrix guidelines and put Mr. Hill on one year probation, starting June 27, 2017, through June 26, 2018. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

11(4) **Toan Nguyen**

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

It was noted that he was representing Steve York and Brandon Price as they were in Court and unable to attend the Commission meeting.

June 7, 2016, Officer Steve York; Possess Undersized Whelk 52 in a Bushel—4 VAC 20-890-30. July 27, 2016, Portsmouth General District Court; Fine: \$250.00/\$125.00 suspended, Court Cost: \$90.00.

March 10, 2017, Officer Brandon Price; Over Limit Crab Harvest (1 Bushel)--§28.2-201; VAC 20-270-51. May 2, 2017, Hampton General District Court; Fine: \$500.00, Court Cost: \$91.00.

Stephanie Iverson, Fisheries Management Manager, Sr., explained the Commission's matrix of guidelines for sanctions specify that one conviction of possession of 50% or greater 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, the matrix guidelines suggest to the Commission to place Mr. Nguyen on probation for a period of one year from the date of this Commission meeting, June 27, 2017, through June 26, 2018. Any failure on Mr. Nguyen'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. Nguyen appearing before the Commission for a hearing on license revocation.

Mr. Nguyen explained there was a mistake in the number of whelk which was actually 20 not 25, so he was only one bushel over the limit of whelks.

Commissioner Bull said that he believed that Mr. Nguyen would do better and would not be seen here again. He suggested six months probation.

Associate Member Tankard moved for Mr. Nguyen to be put on six month probation, starting June 27, 2017, through December 26, 2017. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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12. PUBLIC HEARING: Proposal to rescind the commercial fee increase that was scheduled to go into effect in December 2017.

Associate Member Minor left at approximately 4:28 pm for the remainder of the meeting.

Matt Hull, Policy Manager, gave the briefing of this item. His comments are a part of the verbatim record.

Mr. Hull explained that there had been an error in the advertisement of the notice by one of newspaper, so the notice was deficient and the Commission cannot take action today. He said the Commission can hear those items that are time sensitive and take emergency action. He noted that because of the General Assembly actions the Commission needs to repeal the commercial fee increase.

Associate Member Erskine moved to continue the matter and re-advertise for a public hearing at the July meeting. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 13. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," that would establish the May 1, 2017 through April 30, 2018 commercial spiny dogfish harvest quota as 4,220,814 pounds and remove the weekly buyer reporting requirement.

Jill Ramsey, 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.

Ms. Ramsey explained that because of the mistake in the public hearing notice in one of the newspaper, staff is asking for the Commission to adopt the proposed amendments by emergency action and advertise for a public hearing at the July meeting in order to make these amendments permanent.

Ms. Ramsey stated that the Spiny dogfish management board approved a commercial quota of 39,099,717 pounds for the 2017 fishing season (May 1, 2017 – April 30, 2018). Virginia receives 4,220,814 pounds, which is a 10.8% share of the commercial quota.

Ms. Ramsey said that Federal dealers are required to report weekly through the federal reporting system (SAFIS). VMRC's requirement for these dealers to report to us weekly was redundant and no longer necessary. However, staff would want to continue to keep in place the regulation section that required buyers to call in their purchases once it was announced that 80% of Virginia's quota has been landed.

Ms. Ramsey stated that staff recommended the Commission adopt the amendments to the regulation by emergency action in order to establish the 2017-18 commercial spiny dogfish harvest quota at 4,220,814 pounds and streamline the buyer reporting process; and, allow staff to re-advertise a public hearing notice for the July meeting,

Commissioner Bull opened the public hearing.

Tim Wivell requested that the vessel limit be changed to 6,000 pounds now instead at the end of the year. His comments are a part of the verbatim record.

Mark Sanford suggested that the Commission was setting a hard number and should not include the 5% rollover each year.

Robert O'Reilly, Chief, Fisheries Management, explained that action would be necessary by the ASMFC.

The public hearing was closed.

Associate Member Erskine moved to take the staff recommendation to adopt an emergency regulation and to advertise for a public hearing at the July meeting. Associate Member Lusk seconded the motion. The motion carried 7-0. Chair voted yes.

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14. PUBLIC HEARING: Proposal to amend Chapters 4 VAC 20-270-10 et seq., "Pertaining to Crabbing"; 4 VAC 20-1140-10 et seq., "Prohibition of Crab Dredging in Virginia Waters"; and, 4 VAC 20-752-10 et seq., "Pertaining to the Blue Crab Sanctuary."

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

Mr. O'Reilly explained that this was the 4th lowest number of juvenile crabs over the years. He said that Dr. Lipcius was not at the meeting. He noted the winter crab dredge fishery had been closed for 9 years and it was not a good year to open it now.

Mr. O'Reilly explained that because of a mistake in the public hearing notice in one of the newspaper, staff is asking for the Commission to adopt the proposed amendments by emergency action for Regulations 4VAC 20-270-10, 4VAC 20-1140-10, and 4VAC 20-752-10 and advertise for a public hearing at the July meeting in order to make these emergency amendments permanent.

Commissioner Bull opened the public hearing.

Pete Nixon, crabber, was present and his comments are a part of the verbatim record. Mr. Nixon said that the Commission needed to hold off making a decision for another 30 or 60 days as there was just too much information to take in and this does not need to take effect until November. He asked why do this now?

Mark Sanford, crabber and member of CMAC, was present and his comments are a part of the verbatim record. Mr. Sanford said he agreed with Mr. Nixon about delaying making a decision.

Chris Moore, representative for Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. Mr. Moore said that there is a better population of crabs but there needs to be more work on the economic status and a survey modification to include the offshore areas, which is not included now.

Mr. Nixon stated the population was not better because there was an abundance of females and no male crabs. He said what is protected is in the center of the Bay. He said it is not good because it is only one side of the species. He said another country experienced this and the industry collapsed.

After some discussion, Commissioner Bull stated that an emergency regulation is necessary now.

Associate Member Neill moved to approve the staff recommendations for adopting an emergency regulation and advertising for a public hearing at the meeting in July. Associate Member Zydron seconded the motion. Motion carried, 6-1. Chair voted yes. Associate Member Erskine voted no.

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15. DISCUSSION: To increase Virginia's portion of the coast wide total allowable catch of menhaden, in accordance with recent ASMFC actions

Alex Aspinwall, Fishery Management Specialist, gave the briefing of the information in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Aspinwall explained that the ASMFC approved an increase in the coast-wide total allowable catch (TAC) or landings of menhaden. The 2017 total allowable catch or landings is 200,000 metric tons. For Virginia, the quota (allowable catch or landings) for all 3 sectors, combined, increases to 372,443,990 pounds in 2017. The purse seine menhaden reduction sector share = 90%; the purse seine menhaden bait sector share = 8.4%; and, the non-purse seine menhaden bait sector share = 1.6% of the total allowable catch or landings.

Mr. Aspinwall stated that staff recommended the Commission approve the advertisement for a public hearing for proposed amendments to Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden," to increase Virginia's portion of the coast-wide total allowable catch or landings of menhaden and to modify the non-purse seine bait sector gear-specific quota allocation.

Commissioner Bull stated this was a request for the advertisement of a notice for a public hearing.

Associate Member Tankard moved to approve the advertisement for a public hearing. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.

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16. DISCUSSION: Recreational blue crab fishery issues concerning cull ring use and practices involved in fishing recreational crab pots.

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

VMRC's Law Enforcement Division had brought two issues to Fisheries staff for discussion. The first issue is another individual being 'agent' for the owner of the recreational crab pots. A second issue involves a type of crab pot that is being sold and then used recreationally that does not have two separate chambers as required in Chapter 4VAC 20-670-10 "Pertaining to Recreational Gear Licenses".

Mr. Cimino said that staff recommended referring these issues to the Regulatory Review Committee for review to changes to the regulation.

Commissioner Bull stated that it was the general consensus of the Board members that these matters will be sent to the Crab Management Advisory Committee (CMAC) and the Regulatory Review Committee.

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There being no further business, the meeting was adjourned at approximately 5:56 p.m. The next Commission meeting will be Tuesday, July 25, 2017.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary