

MINUTES

Commission Meeting

January 26, 2016

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

John M. R. Bull	Commissioner
Chad Ballard, III	
A. J. Erskine	
G. Wayne France	
S. Lynn Kellum	Associate Members
Ken Neill, III	
John E. Tankard, III	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Erik Barth	Business Systems Specialist Mgr.
Todd Sperling	Business Systems Specialist, Sr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Management Mgr.
Alicia Nelson	Coordinator, RFAB/CFAB
Samantha Hornsby	Fisheries Mgmt. Technician
Jill Ramsey	Fisheries Mgmt. Planner
Lewis Gillingham	Director, SWFT
Laurie Dozier	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Katie May Lauman	Fisheries Mgmt. Specialist
Ryan Jiorle	Fisheries Mgmt. Specialist
Elizabeth Ward	Fisheries Mgmt. Technician
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Mike Morris	Sr. Marine Police Officer
Patrick West	Marine Police Officer
Matt Dize	Marine Police Officer

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Casey Springfield
Gary Fox
John Poch

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
Brad Reams
Daniel Faggert

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

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
Robert Orth

Mark Luckenbach

Emily Hein

Others present:

David A. Anderson
Terry Joseph
Johnny Cope
Carl Setterholm
Renee K. Hanrahan
Jackie Shannon
Bob Cox
Rockey Rhea
Paul Richardson

Richard Jones
Jessica Bassi
Tommy Garm
Sharon Setterholm
Thomas Timberlake
Calvin West
Vernon Ward
Michael Greene
Katie Johnson

Ellen Edwards
Chrissy Garner
Bob Livengood
Allan C. Hanrahn
Steven Back
Timmy Jenkins
David Owens
Andrew Johnson
Heather North

and others.

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Commissioner Bull called the meeting to order at approximately 9:34 a.m. Associate Member Minor was absent.

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

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Introduction of new employees:

Daniel Faggert - surveyor in the Habitat Management Division, Engineering and Surveying Department.

Elizabeth Ward - Fisheries Management Technician in the Fisheries Management Division, Mandatory Reporting Program.

Ryan Jiorle - Fisheries Management Specialist in the Fisheries Management Division, Administrative Office.

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

Joe Cimino, Deputy Chief, Fisheries Management, explained that the staff was requesting that the Commission pull Item 12 regarding Mr. Shackelford's request for the return of his dogfish permit and send this matter back to FMAC for further discussion and review.

Associate Member Erskine moved to approve the agenda, as amended. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the December 8, 2015 Commission meeting minutes. There were no changes.

Associate Member Zydron moved to approve the minutes, as presented. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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

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

Tony Watkinson, Chief, Habitat Management, informed the Commission that there were three page two items to be heard, 2A through 2C. He reviewed these items for the Board. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for any public comments for any of the items presented. As there were no comments, pro or con, he stated the public hearing was closed and the matter was before the Commission for discussion and action.

Associate Member Erskine moved to approve the three page two items, A through C, as submitted. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

2A. DEPARTMENT OF THE NAVY, #15-1118, requests authorization to repair the existing landing craft boat ramp at Joint Expeditionary Base Little Creek, situated along the Chesapeake Bay in Virginia Beach. Approximately 600 linear feet of steel sheet piles will be installed immediately along the channelward side of the existing boat ramp toe and encapsulated within a two-foot wide concrete cap. A temporary sheet pile cofferdam system will be installed a maximum of 30 feet channelward of the boat ramp toe to allow for construction in the dry.

Permit fee	\$100.00
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2B. CITY OF NORFOLK, #15-1380, requests authorization to replace and extend six (6) storm water outfalls a maximum of 212 feet channelward of mean low water along the Chesapeake Bay at 12th View Street, 11th View Street, 4th View Street, Elnora Street, Chesapeake Street, and 5th Bay Street to facilitate an Army Corp of Engineers beach nourishment project in the City of Norfolk.

Permit fee	\$100.00
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2C. DEPARTMENT OF THE NAVY, #15-1384, requests authorization to construct a 10-foot by 40-foot fixed fuel dock extension, remove and replace the existing Alpha and Bravo marina piers by installing two (2) new floating docks with finger piers, concrete anchor piles and timber fender piles, creating a maximum of 84 boat slips near the intersection of Amphibious Drive and Okinawa Road, situated along Little Creek, within Joint Expeditionary Base Little Creek in Virginia Beach.

Permit fee	\$100.00
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3. CONSENT AGENDA ITEMS. None.

- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** A closed meeting was not necessary.

- 5. **TOMMY GARNER, #12-1423,** requests authorization to install a 5-foot wide open pile private pier extending 220 feet channelward of mean low water with a 16-foot by 18-foot L-head deck and two mooring piles along Deep Creek and extending from an existing water access easement at 632 Snug Harbor Lane in the City of Newport News. Continued from the March 24, 2015, Commission meeting.

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

Mr. Johnson noted that at the March 24, 2015 Commission meeting this matter was continued pending a decision by the Virginia Supreme Court regarding Garner V. Edwards. This was an appeal by the property owner, Ms. Edwards, of the 7th Judicial Circuit Court in Newport News order detailing Mr. Garner’s property rights for the construction of a pier channelward of an easement on Ms. Edwards’ property. On December 7, 2015, the Virginia Supreme Court refused to hear Ms. Edwards’ appeal of the lower court ruling, leaving their decision to stand. That lower court decision stated that Mr. Garner did have the ability to construct a pier 6 feet in width extending in a line channelward of the easement on Ms. Edwards’ property and to moor a vessel up to 25-feet in length at the pier. Accordingly, 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.

Commissioner Bull asked if the applicant or his representative wished to comment.

Johnny Cope, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Cope stated that they agree with staff. He said the Supreme Court had ruled in Mr. Gardner’s favor to allow him to build his pier. He said that the staff recommended approval and there was no need to hear additional public comments. He read from the Court Order that stated that Mr. Gardner and future owners had a right to have a pier. He said they were asking for approval today.

Bob Livengood, contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Livengood stated they needed the additional length to get the water depth for the boat and since there was no boat lift this would keep the boat off the bottom. He explained that the mooring piles made it so they were able to dock the boat.

Commissioner Bull opened the public hearing.

Richard Jones, representing Ellen Edward and Terry Jones, was sworn in and his comments are a part of the verbatim record. Mr. Jones said that the pier was 60 to 70 feet longer than the Joseph pier and even longer than the Edwards pier. He said that the Court ruling was just for the highland easement and not the riparian apportionment. He stated this had not been done and filed with the court. He added that there was no agreement between the parties involved.

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

Matthew Hull, Assistant Attorney General and VMRC Counsel, explained that the easement and the riparian apportionment were different and the Commission does not adjudicate property rights, but approve use of state-owned bottom.

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

Permit fee	\$100.00
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- 6. **DAVID A. and TAMERA R. ANDERSON, #15-1236**, request authorization to install 105 linear feet of quarry stone riprap revetment in front on an existing, deteriorated timber bulkhead, extending a maximum of 13 feet channelward of mean low water, at property on the Rappahannock River on Brandon Point Road in Middlesex County. The project is protested by an adjacent property owner.

Jay Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Woodward explained that after evaluating the merits of the project and weighing the concerns of the protestant, and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project conditioned on the use of Class III stone or larger for the revetment's armor layer.

Commissioner Bull asked if the applicants or a representative wished to comment.

David Anderson, applicant, was sworn in and his comments in support are a part of the verbatim record. Mr. Anderson stated that they agreed with the staff recommendation and to using the Class III stones.

The public hearing was closed as there were no public comments, pro or con. Commissioner Bull stated the matter was before the Commission.

Associate Member Erskine moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.

Permit fee	\$100.00
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- 7. **THOMAS JONES, #15-1521**, requests authorization to install a 33-foot by 16-foot open-sided boathouse on a statutorily authorized private pier along the Pagan River at 506 Pagan Road in Isle of Wight 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. His comments are a part of the verbatim record.

Mr. Johnson explained that Section §28.2-1203(A)(5) of the Code of Virginia provides statutory authorization for private piers meeting certain design criteria. This section also authorizes the construction of open-sided boathouses measuring 700 square feet or less designed to cover a boat at private piers, provided that they are not objected to by the adjoining property owners and are allowed by local ordinances. Accordingly, 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 boathouse, as proposed.

Commissioner Bull asked if Mr. Jones or a representative wished to comment.

Bob Livengood, contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Livengood, in response to a previous question, explained that it was 25 feet above sea level on the bluff, so that you actually looked over the top of the boathouses.

Commissioner Bull opened the public hearing, for comments pro or con.

Allan Hanrahan, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Harahan stated that there were 24 residents that enjoy the view and were opposed to any additional docks and piers in this section of the Pagan River. He noted that when piers are damaged by a storm, the debris always ends up in the wetlands on his property. He said he felt this was damaging the wetlands.

Commissioner Bull closed the public hearing. Mr. Bull noted for the record that the pier was allowed by law, and the Commission at this hearing was only considering the boathouse.

The public hearing was closed.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

Permit fee	\$25.00
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- 8. CARL SETTERHOLM, #2014-028 and DONNA MELZER, #2014-088,** request authorization to lease oyster planting grounds within the York River downstream of the U. S. Route 17, Coleman Bridge in Gloucester County. Continued from the August 25, 2015, Commission meeting.

Ben Stagg, Chief Engineer, Engineering and Surveying, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Mr. Stagg explained in light of the continued concerns expressed by the Department of Historic Resources and due to the probable presence of significant historical resources in these areas, staff cannot support a recommendation to lease either application at this time and recommended denial of both applications. Should a bottom study be conducted in the future that better delineates areas where leasing could be safely allowed, the matter could be revisited by the Commission.

Carl Setterholm, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Setterholm explained that the area he was requesting had previously been leased and actively harvested in the past.

There was much discussion by the Board members about the fact that unlike the other application, Mr. Setterholm’s area did have history of being previously leased and worked, some concerns were expressed that someone else would be able to apply for the same area should the VMRC just deny the application, concern about setting a precedent by setting the area aside so it is not available to be leased, and that there was no funding available for the study to be done by either agency.

Associate Member Ballard made the motion to approve the oyster ground lease application #2014-028 for Carl Setterholm; approval being contingent upon a study being conducted that was acceptable to VMRC staff and the Virginia Department of Historic Resources staff that confirmed the leasing of this area would not adversely

impact any valuable historic resources; and if the study was not conducted within two years, the application would be automatically denied. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

Mr. Stagg noted that staff had spoken with William Melzer twice about the hearing on the second lease application in the York River. Mr. Melzer had indicated that he might be present at this hearing today and he was not present.

Commissioner Bull asked for public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Ballard stated that this area had not been leased previously and was further offshore, which made this application for lease different from the first application.

Associate Member Ballard moved to deny the application for lease by Donna Melzer (#2014-088). Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

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9. PUBLIC COMMENTS.

Associate Member Erskine brought up for discussion concerns regarding legislation pending before the General Assembly to institute a moratorium on the leasing of new private oyster ground leases for a set period of time within the Lynnhaven River system in Virginia Beach.

After much discussion, Associate Member Erskine made a motion to implement a temporary suspension on the issuance of any new leases of oyster ground within the Lynnhaven River system for seven months; and, during this time a study group involving stakeholders would be formed to meet and review this matter in order to make recommendations to address user conflicts associated with the commercial use of leased oyster ground and the concerns of highland property owners and other users of the waterway. Associate Member Zydron seconded the motion. The motion carried, 7-0-1. Commissioner Bull abstained.

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10. OFFENDERS.

Gary Fox, 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.

Commission Meeting**Edward Bruce Lowery, Jr.** – not present

December 7, 2012--Forged a Public Document—18.2-168 of the Code of Virginia; Plea Agreement--Amended 8-31-15: Knowingly Give a False Report of any Crime to a Law Enforcement Officer with Intent to Mislead—18.2-461 of the Code of Virginia. August 31, 2015, Accomack County General District Court. Fine: \$200.00, Court Cost: \$25.00; 6 months 10 days Jail with 6 months suspended; 2 years Good Behavior.

December 4, 2013--Forged a Public Record—§18.2-168 of the Code of Virginia; Plea Agreement—Amended 8-31-15: Knowingly Give a False Report of any Crime to a Law Enforcement Officer with Intent to Mislead—§18.2-461 of the Code of Virginia. August 31, 2015; Accomack County General District Court. Fine: \$200.00, Court Cost: \$111.00; 6 months 10 days Jail with 6 months suspended; 2 years Good Behavior.

December 5, 201--Failure to Report Mandatory Harvest Report—4 VAC 20-610-60; August 31, 2015, Accomack County General District Court. Fine: \$50.00, Court Cost: \$25.00.

December 15, 2014--Forged a Public Record—18.2-168 of the Code of Virginia; Plea Agreement—Amended 8-31-15: Knowingly Give a False Report of any Crime to a Law Enforcement Officer with Intent to Mislead—18.2-461: August 31, 2015, Accomack County General District Court. Fine: \$200.00, Court Cost: \$25.00; 6 months 10 days Jail with 6 months suspended; 2 years Good Behavior.

January 5, 2015--Failure to Report Mandatory Harvest Oyster Report—4 VAC 20-610-60; August 31, 2015, Accomack County General District Court, Fine: \$100.00, Court Cost: \$25.00.

February 5, 2015--Failure to Report Mandatory Harvest Report—4 VAC 20-610-60. August 31, 2015, Accomack County General District Court, Fine: \$150.00 with \$150.00 suspended; Court Cost: \$25.00.

March 5, 2015--Failure to Report Mandatory Harvest Report—4 VAC 20-610-60; August 31, 2015, Accomack County General District Court, Fine: \$150.00, Court Cost: \$25.00.

Joe Cimino, Deputy Chief, Fisheries Management, read the staff recommendation. Given the severity of the situation, the number of convictions, and the specific details of this case involving a non-resident illegally harvesting oysters, staff is recommending a two year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. Lowery's licenses to take or catch fish, shellfish or marine organisms for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Lowery's licenses during this revocation period. Staff recommended the Commission revoke Mr. Lowery's fishing

privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018.

When asked by Commissioner Bull whether the Board should proceed in Mr. Lowery's absence with the hearing, Associate Member Neill suggested that the Commission proceed with this hearing.

After some discussion, Associate Member Erskine made a motion to accept the staff recommendation to revoke all Mr. Lowery's license and fishing privileges, starting January 26, 2016, through January 25, 2018. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

Joe Cimino, Deputy Chief, Fisheries Management, explained that Bi Chao Chen was not present. He said he received a call from another party letting staff know that Mr. Chin was in New Hampshire and the person calling would let Mr. Chen know about the hearing.

Commissioner Bull stated the Commission would proceed with the hearing.

Matt Dize, Marine Police Officer, was sworn in and he presented the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim.

Bi Chao Chen – was not present

February 11, 2015 Over the Limit Commercial Red Drum—4 VAC 20-280-40D; September 8, 2015, Chesapeake General District Court, Fine: \$500.00, Court Cost: \$87.00.

February 11, 2015 Oversized Commercial Red Drum—4 VAC 20-280-30D; September 8, 2015, Chesapeake General District Court, Fine: \$500.00, Court Cost: \$26.00.

February 13, 2015 Possession of Oversized Red Drum (3 Fish, 25" maximum Length)—4 VAC 20-280 September 8, 2015, Chesapeake General District Court, Fine: \$2,500.00, Court Cost: \$112.00, 12 Months Jail with 11 months suspended; Commercial fishing License revoked 3 years; privileges to fish revoked 3 years; 3 years probation; relinquish all fishing equipment previously seized by State (nets, buoys, anchors).

February 13, 2015—Over the Limit Commercial Speckled Trout—4 VAC 20-280-50(B); September 8, 2015, Chesapeake General District Court, Fine: \$500.00, Court Cost: \$26.00.

February 13, 2015—Exceeding Distance Gill Net May be Set Across Waterway (Longer than ¼ Distance--§28.2-309(A) of the Code of Virginia; September 8, 2015, Chesapeake General District Court, Fine: \$500.00, Court Cost: \$26.00.

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February 13, 2015—Exceeding Distance Gill Nets May be Set Across Waterway (Longer than ¼ Distance--§28.2-309(A) of the Code of Virginia; September 8, 2015, Chesapeake General District Court, Fine: \$500.00, Court Cost: \$26.00

February 13, 2015—Improper Marking of a Gill Net—4 VAC 20-430-20; September 8, 2015, Chesapeake General District Court, Fine: \$500.00, Court Cost: \$26.00.

Mr. Cimino read the staff recommendation. The Commission's guidelines for sanctions specify that two convictions of exceeding the commercial possession limit or two convictions of oversized fish, within a 12 month period, should result in at least one year probation. However, given the severity of the situation and the number of convictions, staff is recommending a two year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Chen's licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Chen's licenses during this revocation period. Staff recommended the Commission revoke Mr. Chen's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018.

Associate Member Kellum made a motion to accept the staff recommendation to revoke all of Mr. Chen's licenses and fishing privileges for two years, starting January 26, 2016, through January 25, 2018. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

Patrick West, Marine Police Officer, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Michael L. Greene – present and sworn in.

January 7, 2015--Money or Signature Etc. by False Pretense (Class 4 Felony)—§18.2-178 of the Code of Virginia—Plea Agreement—Obtaining Money by False Pretense--Reduced to Class 1 Misdemeanor; October 5, 2015, Gloucester County Circuit Court—Fine: \$360.00 to Oyster Replenishment Fund; 12 months in Gloucester Jail—all suspended; 3 years Good Behavior; Court Cost: \$252.00.

January 8, 2015--Quotas and Harvest Limits—§28.2-201 of the Code of Virginia; June 18, 2015, Gloucester County General District Court; \$360.00 to Oyster Replenishment Fund; Fine: \$0.00; Court Cost: \$86.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting greater than 50% over the limit of shellfish, within a 12 month period, should result in at least

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one year probation. However, given the severity of the situation and the number of convictions, staff is recommending a two year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. Greene's licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Green's licenses during this revocation period. Staff recommends the Commission revoke Mr. Greene's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018.

Mr. Greene explained that he was only trying to help others and did not profit from this violation.

Associate Member Tankard made a motion to accept the staff recommendation to revoke Mr. Greene's licenses and fishing privileges for two years, starting January 26, 2016, through January 25, 2018. Associate Member Ballard seconded the motion. The motion carried, 6-1-1. Chair voted yes. Associate Member Neill voted no. Associate Member France recused himself from participating in this matter.

Patrick West, Marine Police Officer, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Calvin W. West – present and sworn in.

January 7, 2015--Quotas and Harvest Limits—§28.2-201 of the Code of Virginia; October 5, 2015, Gloucester County Circuit Court; Fine: \$360.00 to Oyster Replenishment Fund; 30 days Jail—suspended; 3 years Good Behavior, Court Cost: \$263.00.

January 7, 2015--Money or Signature Etc. by False Pretense (Class 4 Felony)—§18.2-178 of the Code of Virginia—Plea Agreement—Obtaining Money by False Pretense--Reduced to Class 1 Misdemeanor; October 5, 2015, Gloucester County Circuit Court—Fine: \$360.00 to Oyster Replenishment Fund; 12 months in Gloucester Jail—all suspended; 3 years Good Behavior; Court Cost: \$697.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting greater than 50% over the limit of shellfish, within a 12 month period, should result in at least one year probation. However, given the severity of the situation and the number of convictions, staff is recommending a two year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. West's licenses to take or catch fish, shellfish, or marine organism for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018. Staff

also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. West's licenses during this revocation period. Staff recommends the Commission revoke Mr. West's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018.

Mr. West explained that he asked Mr. Green if it was okay and was told by Mr. Green that he called Law Enforcement Officer and was told it was okay. He said he was asking for mercy and that the Board not to take his licenses as he had a family to feed.

Associate Member Zydron stated he supported the staff recommendation.

Associate Member Erskine moved to approve one year revocation of all of Mr. West's licenses and all of his fishing privileges, starting January 26, 2016, through January 25, 2017. Associate Member Ballard seconded the motion. The motion carried, 5-2-1. Chair voted yes. Associate Members Tankard and Zydron both voted no. Associate Member France recused himself from participating in this matter.

Patrick West, Marine Police Officer, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Timothy Lee Jenkins – present and sworn in.

January 7, 2015--Quotas and Harvest Limits—§28.2-201 of the Code of Virginia; 4 VAC 20-720-80. October 5, 2015, Gloucester County Circuit Court—convicted of Harvesting Over the Daily Limit; Fine: \$360.00 to Oyster Replenishment Fund; 30 days in Gloucester Jail—suspended; 3 years Good Behavior; Court Cost: \$263.00.

January 7, 2015--Money or Signature Etc. by False Pretense (Class 4 Felony)—§18.2-178 of the Code of Virginia—Plea Agreement—Obtaining Money by False Pretense--Reduced to Class 1 Misdemeanor; October 5, 2015, Gloucester County Circuit Court—Fine: \$00.00; 12 months in Gloucester Jail--suspended; 3 years Good Behavior; Court Cost: \$697.00.

January 8, 2015--Quotas and Harvest Limits—§28.2-201 of the Code of Virginia; 4 VAC 20-720-80; October 5, 2015, Gloucester County Circuit Court—Fine: 00.00; 30 days jail—suspended; 3 years Good Behavior; Court Cost: \$263.00

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting greater than 50% over the limit of shellfish, within a 12 month period, should result in at least one year probation. However, given the severity of the situation and the number of convictions, staff is recommending a two year revocation. In accordance with §28.2-232

of the Code of Virginia, staff recommends the Commission revoke all Mr. Jenkins' licenses to take or catch fish, shellfish, or marine organism for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Jenkins' licenses during this revocation period. Staff recommends the Commission revoke Mr. Jenkins' fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018.

Mr. Jenkins stated that Mr. Green had lied in court and to VMRC. He asked why would he jeopardize his losing his licenses for \$50.00. He stated he needed his licenses to be able to work to feed his children.

Commissioner Bull stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation to revoke Mr. Jenkins licenses and fishing privileges for two years, starting January 26, 2016, through January 25, 2018. Associate Member Tankard seconded the motion. The motion carried, 7-0-1. Associate Member France recused himself from participating in this matter.

Mike Morris, Senior Marine Police Officer gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Vernon Ward – present and sworn in.

July 17, 2014—Taking Oysters Out of Season—§28.2-506 of the Code of Virginia; August 26, 2015, Isle of Wight County Circuit Court, Fine: \$0.00, Court Cost: \$266.00, 90 days Jail/90 days suspended; one year Good Behavior.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. Mr. Ward is currently on probation from September 22, 2015, through September 21, 2016, for possession of uncultured oysters. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation. However, given Mr. Ward's continued disregard for the natural resources of the Commonwealth of Virginia, staff is recommending a two year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Ward's licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Ward's licenses during this revocation period. Staff recommended the Commission revoke Mr. Ward's fishing privileges, within the Commonwealth's tidal waters for a

period of two years from the date of this Commission meeting, January 26, 2016, through January 25, 2018.

Mr. Ward explained that the Commission surveyor had marked the private grounds and he was within the area marked. He said he was told in court that if he pleaded guilty, it would not affect his licenses. He noted the judge did not charge him with a fine only the court cost. He stated that since he had been on probation he had been doing better to keep out of trouble.

Associate Member Neill asked if this violation occurred before the probation. Commissioner Bull said this was not a violation of the probation.

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

Associate Member Ballard moved to accept the staff recommendation to revoke Mr. Ward's licenses and fishing privileges for two years, starting January 26, 2016, through January 25, 2018. Associate Member Tankard seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member Neill voted no.

Mike Morris, Senior Marine Police Officer gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

David N. Owens – present and sworn in.

July 17, 2014—Taking Oysters Out of Season—§28.2-506 of the Code of Virginia; August 26, 2015, Isle of Wight County Circuit Court, Fine: \$0.00, Court Cost: \$108.00, 90 days Jail/90 days suspended; one year Good Behavior.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Owens' licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of this Commission meeting, January 26, 2016, through January 25, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Owens' licenses during this revocation period. Staff recommended the Commission revoke Mr. Owens' fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, January 26, 2016, through January 25, 2017.

Mr. Owens explained that he had helped to mark the private grounds. He noted he was told by his lawyer to plead guilty.

Commissioner Bull stated the matter was before the Commission.

Associate Member Ballard moved to accept the staff recommendation to revoke for one year all of Mr. Owens' licenses and fishing privileges, starting January 26, 2016, through January 25, 2017. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.

Mike Morris, Senior Marine Police Officer gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Rocky W. Rhea— present and sworn in

August 14, 2014—Failure to Properly Maintain Layers of Ice on Oysters—§28.2-201 of the Code of Virginia; 4 VAC 20-1230-10, August 26, 2015, Isle of Wight County Circuit Court, Fine: \$250.00, Court Cost: \$108.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one warm water violation conviction, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. Rhea's licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of this Commission meeting, January 26, 2016, through January 25, 2017. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Rhea's licenses during this revocation period. Staff recommends the Commission revoke Mr. Rhea's fishing privileges, within the Commonwealth's tidal waters for a period of one year from the date of this Commission meeting, January 26, 2016, through January 25, 2017.

Mr. Rhea said he had enough ice to layer the oysters, but he had to wait one hour in 100° weather so the ice melted. In answer to a question, he said his lawyer told him to plead guilty.

Associate Member France moved for two year probation. The motion failed for lack of a second.

Associate Member Kellum moved to revoke all of Mr. Rhea's oyster licenses and privileges. Associate Member Ballard seconded the motion. After some discussion about the seriousness of the violation, the motion and seconded were withdrawn.

Associate Member Erskine moved for six months revocation of all licenses and privileges. Associate Member Zydron suggested one year and six months probation to follow the six month revocation, which was agreed to by the motion maker, starting January 26, 2016 through January 25, 2018. Associate Member Zydron seconded the amended motion. The motion carried, 5-3. Associate Members Tankard and Ballard both voted no. Chair voted no.

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

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

Ms. Iverson stated that staff recommended that Mr. Johnson's licenses remain suspended until all delinquent reports have been correctly submitted. At such time when those reports are received, staff recommended that Mr. Johnson (4907) be placed on probation for a period of two years, beginning the day his reports are received and ending two years thereafter. During this probation period, any violation of Chapter 4 VAC 20-610-10 et seq. or any of the laws relating to the Marine Resources of the Commonwealth and corresponding regulations by Mr. Johnson may require Mr. Johnson to appear before a hearing of the Commission for possible license(s) suspension.

Richard J. Johnson – not present

Ms. Iverson explained that she had spoken with Mr. Johnson and he indicated he would be present at this hearing. She said that he was not present and had been on license suspension since the August 2015 Commission meeting. She noted that it was up to the Commission whether to continue the suspension and wait until he appeared before the Board or proceed with his hearing today.

Associate Member Neill stated that this needed to be heard today.

Matthew Hull, Assistant Attorney General and VMRC Counsel, stated that the Commission could consider the 5 months suspension which has been in effect since the August 2015 and place Mr. Johnson on the remaining one year and seven months license revocation.

Associate Member Zydron moved to revoke all Mr. Johnson's licenses and fishing privileges for one year and seven months, starting with the date of this Commission meeting, January 26, 2016, through August 24, 2017. Associate Member Erskine seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 12. **MICHAEL SHACKELFORD:** Requested that the Commission reinstate his dogfish permit.

Item pulled from agenda – returned to FMAC for further review.

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13. VIRGINIA INSTITUTE OF MARINE SCIENCE: Presentation of Dr. Bob Orth's annual review of the status of Submerged Aquatic Vegetation.

Dr, Robert Orth, VIMS, gave his presentation with slides. His comments are a part of the verbatim record.

Dr. Orth requested that the funding for the continuance of this project be approved.

Robert O'Reilly, Chief of Fisheries Management, explained that the total amount of funding was \$22,000.00. He further explained that \$11,000.00 was from the Marine Fisheries Improvement Fund and \$11,000.00 was from the Virginia Saltwater Recreational Fishing Development Fund.

Associate Member Tankard moved to approve the funding, as recommended by staff. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

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14. PUBLIC HEARING: To make permanent emergency amendments to Regulation 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," establishing the last harvest month of the James River hand scrape season as January 2016 rather than March 2016.

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

Mr. Wesson explained that staff recommended adoption of emergency amendments to Chapter 4VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to change the last month of the oyster hand scrape season for the James River Area and the Thomas Rock Area (James River) from the month of March to the month of January, 2016. The legal harvest season will be from November 1, 2015 through January 31, 2016.

The public hearing was opened for public comments, pro or con. There were no public comments.

Associate Member Erskine moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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15. DISCUSSION: Report on potential description of fish pot gear.

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

Mr. Cimino explained that a public hearing was held at the February, 2015 Commission meeting to limit the use of fish pots by active crab pot or peeler pot fishermen. The Law Enforcement's had expressed concern over the increasing number of commercial crab pot licensees who are also harvesting crabs in additional pots. During public comments fisherman that use hoop nets and eel pots expressed their concerns that they would be impacted by a fish pot limit. The Commission at that time decided to limit the number of fish pots used by crab licensees and requested that staff work on developing definitions for fish pots and hoop nets.

Mr. Cimino said that after surveying various fish pot licensees and asking them to define their fish pots, staff had found that fish pot construction differs between fisherman, target species, geographical area, and season. It was also found that many of the fishermen differentiated their fish pot from peeler pots by the bait that is used and the mesh size of the bait bin. Also a survey of fish pot regulations by other states was conducted and found that most states have defined pot gears by the primary target species and by the mesh size or vent size that is needed for that fishery.

It was suggested and agreed by the Commission that this matter be referred back to the Finfish Management Advisory Committee and the Crab Management Advisory Committee.

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16. REQUEST FOR A FEBRUARY PUBLIC HEARING: On proposed amendments to Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to modify commercial possession limits for Large Coastal Sharks and adjust the list of commercially permitted and prohibited sharks.

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

Mr. O'Reilly explained that staff was requesting a February 2016 public hearing to consider adoption of reassigning the blacknose shark to the list of commercially prohibited sharks and to add changes to the possession limit for the Aggregated Large Coastal and Hammerhead group sharks, as prescribed by the National Marine Fisheries Service (NMFS) and announced on our website.

Associate Member Kellum moved to advertise for a public hearing at the February 2016 Commission meeting, as recommended by staff. Associate Member Erskine seconded the motion. The motion carried, 8-0. Chair voted yes.

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

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

Mr. Cimino provided two handouts to the Board, which included a letter from Amory Company, Inc. and a copy of the draft Emergency Regulation.

Mr. Cimino explained that the regulation changes requested by industry: 1) Allow vessels to possess on board their North Carolina trip limit of summer flounder while coming to Virginia to offload black sea bass, scup and squid. 2) Make an adjustment to the directed fishery opening in Virginia. The landing period, dates and trip limit would be adjusted for March.

Mr. Cimino explained that staff recommended adopting the emergency 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. Staff also recommended advertising for a February public hearing to adopt the emergency amendments as a permanent part of the regulation.

The public hearing was opened. There were no public comments.

Commissioner Bull asked, what the Commission wanted to do.

Associate Member Erskine moved to accept the staff recommendation for the Emergency Regulation and to advertise for a public hearing at the February 2016 Commission meeting. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 4:15 p.m. The next regular Commission meeting will be Tuesday, February 23, 2016.

Commission Meeting

**17556
January 26, 2016**

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary