

MINUTES

Commission Meeting

August 22, 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
Chad Ballard	
Christina Everett	
Wayne France	
Heather Lusk	
James Minor	Associate Members
Ken Neill, III	
John Zydron	
John Tankard	
Kelci Block	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Matthew Hull	Policy Manager
Louise Atkins	Recording Secretary
Linda Hancock	Human Resources Mgr.
Todd Sperling	Bs. Systems Specialist, Sr.
Dave Lego	Bs. Systems Specialist
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
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Chris Davis	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Sydney Alhale	Fisheries Mgmt. Specialist

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**17929
August 22, 2017**

Warner Rhodes
Thomas Straughan
Kyle Jones

Deputy Chief, Law Enforcement
Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Mark Eversole
Rachael Peabody
Jeff Madden
Justin Worrell
Hank Badger
Jay Woodward
Randy Owen
Ben Stagg

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing and
Mapping
Surveyor, Engineering/Surveying
Program Support Technician

Daniel Faggert
Bradley Reams

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
Roger Mann

Mark Luckenbach
Melissa Southworth

Bob Orth

Others present:

D.C.K Coalloqly
Thomas H. James, III
Charles Allen
Ronald Gary
Dave Bugg
Tyler Nelson
Jessie Linderman
Sherrill Sturgis
Kim Huskey
Jeff Craver
Brian Wood
Andy Lacatell
James Hall
John West
Heather North
John D.

Claudia Bagwell
Robert Bennett
Jaffe Allen
Robert Bryant
Bill Ehlman
Susan Linderman
Will Dickerson
Scott Griffin
Bob Gillispie
Chris Campbell
Gary Lumlee
Tim Wivell
Kenneth Green
Jeffrey West
David Tyler Maginnes
Tom Clark

Jeffrey Rosenfeld
Catherine Bennett
Bettye Garner
Mike Oesterling
Rebecca Nelson
Jack Linderman
Any Sturgis Darby
I. L. Deihl, II
H. C. Crewe
Chris Mills
Claire Lumlee
Richard Green
James Hall, Jr.
Steven West

and others.

Commissioner Bull called the meeting to order at approximately 9:33 a.m. All Associate Members were present.

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

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

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

MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the July 25, 2017 Commission meeting minutes. There were no changes.

Associate Member Zydron moved to approve the minutes, as presented. Associate Member Ballard seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Member Minor abstained as he was not present at the meeting.

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

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

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

There were no public comments.

Associated Member Tankard moved to approve the page two item. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

2A. NORFOLK SOUTHERN, #17-0873, requests authorization to modify a previously authorized permit (#11-0102) to maintenance dredge, on an as-needed basis, up to 35,000 cubic yards of State-owned subaqueous material per dredge cycle, to maintain maximum depths of -53 feet at mean low water on either side of Pier 6 and -38 feet at mean low water on the south side of Pier 5, at the Norfolk Southern facility at Lamberts Point located along the Elizabeth River in Norfolk.

All maintenance – no applicable fees.

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3. CONSENT AGENDA ITEMS: None

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

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5. CHARLES ALLEN, #16-1896, requests authorization to construct a 450-square foot deck addition, a 90-foot long by 5-foot wide tending pier, and relocate an existing boat lift on to an existing 70-foot long private noncommercial pier, adjacent to property situated along Lower Machodoc Creek at 2130 South Tidwells Road in Westmoreland County. The pier is protested by the oyster ground leaseholder and a nearby property owner.

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

Mr. Madden explained that staff had worked diligently with Mr. Allen to reduce the impact on Ms. Wicker's leased ground. The applicant's preferred option would have been to extend his pier straight out from the existing 70-foot pier with a downstream L-head platform and moorings. However, to minimize impact and encroachment, Mr. Allen had taken steps to site the pier extension over unproductive oyster ground and limit the encroachment to a narrow 5- foot wide finger pier and the minimum moorings needed to secure his large power boat. In addition, both of the Protestants' piers extend to deeper water than Mr. Allen's proposed extension. After evaluating the merits of the project against the concerns expressed by the protestants and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project, as revised on July 26, 2017.

Dave Bugg, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bugg explained that in fairness to the applicant, he noted that there

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were two other piers in the area even longer than what is requested. He further noted that the applicant had made changes to his original application in order to lessen the impacts on others, and there was no SAV. He said the applicant did agree with the staff recommendation.

Commissioner Bull opened the public hearing and there were no comments, pro or con. He closed the public hearing and stated that the matter was before the Commission for discussion and action.

After much discussion, Associate Member Ballard moved to approve the drawings with two additional boat lifts. Associate Member Zydron seconded the motion. The motion carried, 7-1-1. Chair voted no. Associate Member France abstained.

Permit Fee	\$100.00
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- 6. **THOMAS H. JAMES III, Oyster Planting Ground Application #2015-207**, requests authorization to lease 125 acres of Oyster Planting Ground in the Chesapeake Bay south of Smith Beach in Northampton County. The project is protested by adjacent property owners.

Hank Badger, 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. Badger explained that the applicant needed areas that are in shallow water to grow his aquaculture clams. The area within his application that is in the channel would be too deep for his use and may impede navigation to the Smith Beach/Gulf area. Based on his use requirements and beach access, staff cannot support leasing the channel. Since the applicant needed shallow water, a part of his application was in conflict with the riparian owner's ability to use the water adjacent to their beachfront property to swim and boat. Staff believed that certain areas along the Chesapeake Bay where there were beaches where people swim should not be leased. Staff, therefore did not support leasing the area near the beach and staff had stated that fact in the past to other applicants and property owners along the Bay.

Mr. Badger stated that staff did, however, support leasing the area near and on the offshore sand bar that did not have SAV and did not impact navigation to the Smith Beach/Gulf area. Staff recommended approval of a portion of the application (minus the small SAV area) as bounded on the East by the channel leading into the Smith Beach/Gulf area; South by vacant bottom; West by vacant bottom; and North by the Nottingham lease, Plat File #16809, as shown on the map. The area appeared to be approximately 48 acres.

The public hearing was opened to public comments.

Thomas James, applicant was present and his comments in support are a part of the verbatim record. Mr. James stated he did not see a problem with what he was putting on the bottom and in looking at the VMRC website for other lease applications they should all be denied because of access.

Commissioner Bull asked for comments in support of the application and there were none. He asked for comments in opposition.

Claudia Bagwell, protestant, was sworn in and her comments in opposition are a part of the verbatim record. Ms. Bagwell stated that this area of the beach was used for swimming and she felt that the clam bags would present a navigational problem. When asked a question about staff's recommendation, she stated it was a reasonable compromise.

Amy Sturgis Darby, protestant, was sworn in and her comments in opposition are a part of the verbatim record. She stated that no houses were here because of the severe weather and said she would still like to be able to enjoy the beach. When asked a question about staff's recommendation, she also felt it was a reasonable compromise.

The public hearing was closed.

After further discussion, Associate Member Tankard moved to deny the application. Associate Member Neill seconded the motion. The motion carried, 8-0-1. Associate Member Ballard abstained from voting because of business conflicts.

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7. SCOTT GRIFFITH, Oyster Planting Ground Application #2014-079, requests authorization to lease approximately 15 acres of oyster planting grounds within the Western Branch Corrotoman River in Lancaster County. The application is protested by numerous nearby highland property owners.

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

Mr. Stagg explained that after careful consideration of the ongoing objections by local residents, the potential user conflicts that may occur from use of the lease, with any possible future aquaculture activity in this area, and the limited suitable remaining bottomland in this area staff recommended denial of the Griffith application.

Scott Griffith, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Griffith stated he did not plan to put down cages only do the traditional harvest by dredge and to put spat on shell and shells on the area.

The hearing was opened for public comment.

Robert Bennett, representing the Home Owners Association (HOA), was sworn in and his comments are a part of the verbatim record. Mr. Bennett stated that all property owners enjoy the waterfront, even those who are not on the waterfront. He said this was a unique community as everyone, even those not on the waterfront could have access the waterfront. He said they have amenities such a community pier and a boat ramp plus a place to store they kayaks and such.

Bill Ehlem, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Ehlem said they had three concerns safety, property value, and a commercial operation in a residential recreation area.

Rebecca Nelson, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Nelson said that she bought the house because of the land and there are no shells there now, maybe in the past.

Jeff Craven, protestant, was sworn and his comments are a part of the verbatim record. He said he had some information to give the board, some records about the applicant.

Jeffrey Rosenfeld, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Rosenfeld noted that the history of leasing was prior to the homes being built.

Mr. Griffith said he was just asking for approval of his application. He said he would like to get a refund for his survey costs if it is not approved as he was told by staff he should get the survey.

The public hearing was closed.

After further discussion, Associate Member Ballard moved to deny the application. Associate Member Tankard seconded the motion. The motion carried, 7-2. Associate Members Minor and France voted no. Chair voted yes.

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8. **ANDREW MILES COCKRELL and ANDREW DANDRIDGE COCKRELL, Oyster Planting Ground Application #2014-297**, requests authorization to lease 36.0 acres within Whays Creek in Northumberland County. The application is protested by a number of highland property owners in the area.

Ben Stagg, Director, Shellfish Aquaculture, Mapping and Leasing, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record. Mr. Stagg noted that Mr. Cockrell advised staff that he would not be at the hearing, but hoped the Commission would give him something.

Mr. Stagg explained that after careful consideration of the ongoing objections by local residents, the potential user conflicts that may occur with aquaculture activity in this area, the presence of SAV on portions of the application, staff recommended approval of the portion of the lease within Whays Creek as shown on the survey plat containing 12.07 acres. Staff did not recommend leasing any of the portion within the Great Wicomico River due to the presence of SAV, nearby property owner objections, and the potential for navigational impacts in the deeper area should on bottom-cages be considered and deployed. Staff recommended denial of that portion of the application as shown on the survey plat containing 16.96 acres. While leases cannot contain conditions similar to permit authorizations issued by the Commission, if any of either area were approved to be leased, staff recommended the Commission's approval clearly state that the applicant should use considerable diligence if on-bottom cages were to be deployed on any of the approved area.

Commissioner Bull opened the public hearing for comments.

Thomas James was present and his comments in support are a part of the verbatim record. Mr. James said he was in favor of Mr. Cockrell's application as there were very few access points in the area and could not see that the area was highly used. He said he was in favor of the application.

Brian Wood, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Wood said he was pro-aquaculture and grows oysters as a gardener. He stated that there was rampant growth of SAV and there were more access areas. He noted that Whays Creek is hard to navigate. He stated that the residents have even dredged the area where the applicant wants to lease to have access at their own expense. He said the area was not good for the cages as it was too shallow, only one foot depth. He said there are blow out tides in this area which would impact the cages. He said he teaches children oyster gardening and has been growing oysters for 12 years.

Chris Mills, protestant, resident and owner of Grandview Bed and Breakfast, was present and his comments are a part of the verbatim record. Mr. Mills said he agree with the others and he felt this should not be in his backyard.

Bob Gillespie, resident, was present and his comments are a part of the verbatim record. Mr. Gillespie said that he agreed with others but added that there are other commercial fishing activities in the area that has not been a problem. He said consideration should be given to the residents.

Cliff Ames, was present and his comments are a part of the verbatim record. Mr. Ames agreed with the others and added there would be a lot of stakes marking the grounds making it unsafe.

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Gary Lumlee, was sworn in and his comments are a part of the verbatim record. Mr. Lumlee explained that he moved to the area in 2012 to be close to family and this area met all their needs after both he and his wife had retired from the military.

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

After further discussion about the suitability of area for cage aquaculture versus the impacts to the residents, Associate Member France made a motion to deny the application. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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9. **REQUEST FOR PUBLIC HEARING:** Update to Chapter 4 VAC 20-120-10 ET SEQ. "Pertaining to the Promulgation of a Public Notice on Applications to Encroach In, On, or Over Subaqueous Lands of the Commonwealth."

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

Mr. Watkinson explained that at the Commission's direction, following a discussion regarding proposed regulation updates during the April 2017 meeting, draft regulation changes were reviewed by the agency's regulatory review committee and recommended for consideration by the Commission.

Mr. Watkinson stated that the staff was recommending the Commission update Regulation 4 VAC 20-120-10 ET SEQ. "Pertaining to the Promulgation of a Public Notice on Applications to Encroach In, On, or Over Subaqueous Lands of the Commonwealth." This regulation describes the public notice requirements for projects or activities requiring a permit from the Virginia Marine Resources Commission pursuant to the requirements of Chapter 12 of Title 28.2 of the Code of Virginia. The updated regulation is intended to address changes that have occurred to the joint state/federal public notice process that have resulted in the need for staff to almost always utilize a newspaper for a public notice. The updated regulation is also intended to identify certain projects or activities for which a notice is not necessary. These changes are intended to streamline the Commission's permit review process and expedite permit issuance in certain instances. He noted a copy of the proposed draft regulation was in the notebooks.

Mr. Watkinson stated that staff recommended the Commission authorize staff to advertise the draft regulation changes for a public hearing at the October 24, 2017, Commission meeting.

Associate Member Tankard made a motion to advertise for an October public hearing. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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10. **DISCUSSION:** Commission consideration of submerged aquatic vegetation (SAV) guidance for criteria defining SAV beds and delineating areas where there is potential for SAV restoration.

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

Mr. Watkinson explained that at the request of the Commission, a subcommittee of the Shellfish Management Advisory Committee was established to review policies defining submerged aquatic vegetation (SAV) beds and recommend any changes or guidance.

Mr. Watkinson said that as a result of several meetings with the SAV Subcommittee of the Shellfish Management Advisory Committee, staff believed these guidelines and the availability of updated SAV coverage on the oyster ground lease maps would serve to improve management of SAV resources and better inform permit applicants and shellfish growers of the presence of SAV in any given area. This should reduce potential unauthorized encroachments and the need for enforcement actions. It was also noted that the Shellfish Advisory Committee also agreed with the guidance recommendations. Staff recommended adoption of the following draft Submerged Aquatic Vegetation (SAV) Guidance for Criteria Defining SAV Beds and Delineating Areas Where There is Potential for SAV Restoration.:

For purposes of this guidance "Submerged Aquatic Vegetation" (SAV) means any of a diverse assemblage of underwater plants found in the shoal areas of Chesapeake Bay, Virginia's coastal bays and river tributaries, primarily eelgrass (*Zostera marina*) and widgeon grass (*Ruppia maritima*), and including, but not limited to: Eurasian watermilfoil (*Myriophyllum spicatum*), redhead grass (*Potamogeton perfoliatus*), wild celery (*Vallisneria americana*), common elodea (*Elodea canadensis*), water stargrass (*Heteranthera dubia*), coontail (*Ceratophyllum demersum*), water-weed (*Egeria densa*), muskgrass (*Najas minor*), pondweeds (*Potamogeton* sp.), Hydrilla (*Hydrilla verticillata*) and naiads (*Najas* sp.).

The importance of Submerged Aquatic Vegetation (SAV) as a resource and habitat within the tidal waters of the Commonwealth is well documented. The protection and restoration of SAV has been a long standing commitment of the Commonwealth and is identified in numerous Bay Program agreements and strategies for SAV management. Furthermore, when considering proposals for use

of State-owned submerged lands, including leasing of oyster planting grounds, the Commission must consider the effects of any project or activity on SAV.

SAV coverage has been mapped annually by the Virginia Institute of Marine Science (VIMS) since 1984 and potential restoration areas totaling 185,000 acres in the Chesapeake Bay (approximately 77,500 acres in Virginia) have also now been identified by the Chesapeake Bay Program partners based on historic coverage. Combined, this information has been utilized by the Commission as criteria to guide resource management decisions. Recent fluctuations in SAV coverage due to multiple factors including temperature, substrate and water depth, however, have hampered the ability to utilize the most recent year survey information as the primary criteria and basis for decisions regarding proposed projects and activities potentially affecting existing SAV beds, and the use of historic coverage for projects and activities potential impacting SAV restoration areas. This makes it necessary to consider recent multiple year coverage of SAV to define SAV beds and to identify areas for potential SAV restoration.

Criteria Defining SAV Beds: SAV Beds shall include all those areas of SAV identified and annually mapped by VIMS during at least 1 of the previous 5 years. Such beds shall be considered a “stand of SAV.”

Criteria Delineating Areas Where There is Potential for SAV Restoration: Potential areas for SAV restoration shall include all those areas of SAV, identified and annually mapped by VIMS during at least 1 of the previous 10 years, and any area specifically set aside for SAV restoration or protection by the Commission.

Review and Coordination of projects and Leasing of Oyster Planting Grounds Involving Beds of SAV or Potential SAV Restoration Areas: SAV beds as identified by the criteria for defining SAV beds and potential SAV restoration areas shall be mapped and included on the oyster planting ground maps prepared and maintained by the Commission. Such maps shall be updated annually following publication of the most recent year survey conducted by VIMS.

It shall be the Commission’s policy to avoid authorization of any new structure, including aquaculture structures on unleased bottoms, and any new activity, or leasing oyster planting grounds on any SAV bed annually mapped by VIMS during at least 1 of the previous 5 years.

Proposed encroachments or activities in SAV beds may be authorized by permit, if deemed acceptable, however, all mitigation measures to reduce impacts to SAV must be considered and compensation of SAV losses may be required. When projects and activities, or leasing, are deemed unacceptable to Commission staff considering the impacts on SAV beds or potential SAV restoration areas, the

project and activity, or lease request, may be considered by the Commission at a public hearing.

Certain aquaculture structures are authorized by Commission regulation within oyster planting ground leases provided they are not placed upon SAV beds within such leases. However, such aquaculture structures may be permitted by the Commission provided all appropriate mitigation measures to reduce impacts to SAV are included and compensation of SAV losses may be required if necessary.

When determining whether to authorize a project and activity or lease oyster planting grounds in potential SAV restoration areas the Commission Staff shall consult with VIMS regarding the potential for the project and activity, or leasing to affect SAV restoration.

Restoration of SAV Beds Around Existing and Authorized Structures: In cases where a SAV bed becomes established through natural restoration around existing or authorized structures, including aquaculture structures, such structures shall not be required to be removed. Such structures can continue to be used and replaced, but cannot be moved or relocate to cover the SAV bed.

Dr. Robert Orth, representing the Virginia Institute of Marine Science, was present and comments are a part of the verbatim record. Dr. Orth stated that VMRC staff did an excellent job and the subcommittee worked very well together. In answer to a question where his funding came from, he said that the funding comes through the Chesapeake Bay Program.

Associate Member Ballard moved to approve the guidelines. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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11. PUBLIC COMMENT:

Dr. Jim Wesson

Dr. Wesson expressed his concerns regarding the public Baylor grounds in the upper James River referred to as upper and middle Horsehead where activity has been seen and reported in the past by watermen with hand scrapes or dredges and as a result it was the only oyster rock in the entire area that the stocks are going down. He requested that more effort to monitor this situation be done by Law Enforcement.

Commissioner Bull instructed Conservation and Replenishment staff to meet with the Law Enforcement staff to work to resolve this problem.

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12. OFFENDERS:

Jeffrey Scott West – was present and his comments are a part of the verbatim record. Mr. West was requesting that the Commission reconsider the revocation of his license at the meeting on September 27, 2016 and due to end September 26, 2017. He said that he had learned his lesson and would change that day if he could because he needs to get his life back. He said he had been working on the water since he was 15 years old. He said he had gotten a job with Crab Express and he was a single parent and he needed to be able to buy his child what he needs for school that is starting soon. He said he lost his driver's license because he was not making enough to pay for his fines.

After some questions and discussion, Commissioner Bull asked for a motion. There was no motion made so no action was taken and Mr. West would remain on license revocation through September 26, 2017.

John Matthew West – was present and his comments are a part of the verbatim record. Mr. West was requesting that the Commission reconsider the one year revocation of his licenses at the meeting on November 1, 2016, ending October 31, 2017. He said he wanted to be able to get his other licenses so he could fish with his family and just not his oyster licenses. He said he had three children to support. He stated he had learned his lesson.

After some questions and discussion of Mr. West request, Commissioner Bull asked for a motion and there was none. He stated that since there was no motion, Mr. West would complete his revocation period which ends October 31, 2017.

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Matthew Hull, Policy Manager, explained that the Sanction Guidelines had to be amended again, after it had been approved at the last Commission meeting. He noted that this was a work in progress.

After some discussion between staff and the Board members, these were the proposed changes to the matrix chart:

Recommended Sanction – Two or more violations in 2 years, with listed offense being the most serious was changed for all sanctions. This was changed from five years to two years on all pages.

Place/set/fish crab pots exceeding license limit by 10% or more. This was changed from 50% and the matrix guidelines were changed, as follows:

Single violation - 1 year probation; Two or more violations in 2 years - 1 year revocation of all crabbing licenses; Listed offence occurred during probationary period - 2 year revocation of all licenses; Listed offence occurred during revocation period - 3 year revocation of all licenses

Commissioner Bull asked for a motion.

Associate Member Zydron moved to approve the amended license revocation table, as presented. Associate Member Minor seconded the motion. The motion carried, 9-0.

Commissioner Bull asked twice, once before the lunch break and after the completion of the Offender cases, if Carlton Duncan was present at the hearing. There was no response both times. Commissioner Bull stated that since Mr. Duncan was not present, the Commission would not consider his request at this hearing.

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13. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2017-2018 areas of public harvest, public oyster harvest seasons, and management measures.

Andrew Button, Head, Conservation and Replenishment, gave the briefing of the information provided in the staff's evaluation. Mr. Button's comments are a part of the verbatim record.

Mr. Button explained that staff recommended adopting Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2017-2018 areas of public harvest, public oyster harvest seasons, and management measures.

The management measures included:

1. Stagger the opening of public harvest grounds to ensure that multiple areas are open at the same time throughout the seasons.
2. Establish two harvest areas in the Great Wicomico River for new two-year rotational harvest areas (Areas 1 and 2).
3. Change the current James River Hand Scrape Area and Thomas Rock Hand Scrape Area into more areas and stagger the opening of each of the new areas (James River Areas 1, 2, and 3) to allow harvest by oyster hand scrape in October which is the same time as Rotation Area 1 of the Lower Rappahannock River to address the safety concerns of overcrowding of harvest boats working in a small area.

4. Allow the oyster patent tong gear to be used in Rotation Area 6 of the Rappahannock River for the month of November prior to the area being opened to the Oyster Hand Scrape gear for harvesting in December and January in order to encourage individuals to utilize this potentially less damaging gear type.
5. Decrease the vessel harvest limit from 24 bushels to 16 bushels in the areas opened to harvest by the oyster gears dredge, hand scrape, and patent tong, allowing for a 5-day work week, in lieu of the 4-day work week established the previous public harvest season (2016-2017).
6. Allow the re-harvest of seed oysters harvested and planted prior to December 31st after January 1st and maintain the June 1st restriction to re-harvest the seed oysters harvested and planted from January 1 through May 31st.
7. Change the time-of-day restriction for leaving the dock with an oyster hand scrape gear on board a vessel to one hour before sunrise, the same as the oyster dredge gear is now.
8. The Public Oyster Harvest Seasons for 2017-2018:

Areas opened for clean cull oyster harvest:

James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2017, through April 30, 2018. (Oyster Hand Tong)

James River Hand Scrape, Area 2: October 1, 2017, through December 31, 2017. (Oyster Hand Scrape)

James River Hand Scrape, Areas 1 and 3: December 1, 2017, through February 28, 2018. (Oyster Hand Scrape)

Milford Haven: December 1, 2017 through February 28, 2018. (Oyster Hand Tong)

Rappahannock River Area 9: November 1, 2017, through December 31, 2017. (Oyster Hand Tong)

Little Wicomico River: October 1, 2017, through December 31, 2017. (Oyster Hand Tong)

Coan River Area: October 1, 2017, through December 31, 2017. (Oyster Hand Tong)

Yeocomico River Area: October 1, 2017, through December 31, 2017. (Oyster Hand Tong)

Nomini Creek Area: October 1, 2017 through December 31, 2017. (Oyster Hand Tong)

Mobjack Bay Area: October 1, 2017, through October 31, 2017 (Oyster Hand Tong) and, February 1, 2018, through February 28, 2018 (Oyster Hand Scrape).

York River, Rotation Area 1: January 1, 2018, through January 31, 2018.

Rappahannock River, Rotation Area 1: October 1, 2017, through November 30, 2017. (Oyster Hand Scrape)

Rappahannock River, Rotation Area 6: November 1, 2017, through November 30, 2017 (Oyster Patent Tong), December 1, 2017, through January 31, 2018 (Oyster Hand Scrape).

Rappahannock River, Area 7: December 1, 2017, through January 31, 2018. (Oyster Hand Scrape)

Great Wicomico River, Rotation Area 1: December 1, 2017, through January 31, 2018.

(Oyster Hand Scrape)

Upper Chesapeake Bay - Blackberry Hangs Area: December 1, 2017, through January 31, 2018. (Oyster Hand Scrape)

Pocomoke and Tangier Sounds, Rotation Area 1: December 1, 2017, through February 28, 2018. (Oyster Dredge)

Lower Chesapeake Bay - Deep Rock Area: December 1, 2017, through February 28, 2018. (Oyster Patent Tongs)

Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2017, through March 31, 2018. (By Hand or Oyster Hand Tong)

Areas opened to seed oyster harvest:

James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2017, through May 31, 2018. (Oyster Hand Tong)

Commissioner Bull opened Public Hearing for comments.

Richard Green, James River waterman, was present and his comments are a part of the verbatim record. Mr. Green said he agreed with everything else, except for the James River he believed that if it is not broke then do not try to fix it. He said he would rather see the James River worked the way it always had been.

Scott Griffith, crabber, was present and his comments are a part of the verbatim record. Mr. Griffith stated he had a couple of questions. Commissioner Bull told him that this was not the time to ask staff questions and he should have gone to the SMAC meeting to ask his questions. Mr. Griffith stated he did not have time to attend these meetings because he was very busy with his peeler crab pots. He did say that if you cut back to two people per boat there would be more boats gearing up so that 3rd person could work.

Dr. Jim Wesson was present and his comments are a part of the verbatim record. Dr. Wesson explained that opening the James River to five months of harvest by hand scrape was not a good idea, as it will do more damage to the oysters and in October the meats in the James River oysters are not good. He said in the previous seasons Maryland had a good amount of oysters the same as here in Virginia, but they allowed harvesting for longer than they should have and now the oyster production is not good. He said opening the Mobjack Bay to hand scrape in February will only damage the smaller oysters that are there as these oysters are known to be slow to grow. He said that with the time restriction for taking the gears prior to sunrise was done this way for a reason, the Pocomoke Tangier waterman with the larger dredges need the hour to get to the rocks and with an hour for the hand scrapes you are just inviting mischief. He said as far as the crowding, the watermen need to figure that some of them can avoid the early rush and go out after the others have finished up in about two hours; plus, this puts everyone in a long line waiting to off load their catch at the shore.

Marc Brown, James River waterman, was present and his comments are a part of the verbatim record. Mr. Brown stated that he agreed with Dr. Wesson and that did not usually happen. He said that he agreed with Mr. Green about the James River that it should not be divided to allow for when there are stronger winds on one side of the river and they can move to the other side and continue to work. He said what Dr. Wesson said about opening October was true the meats were poor and are not good for shucking. He said that they do need to be allowed the one hour with their hand scrape for getting to the rocks. He noted that with the half hour, when they come out of Rescue to get below the bridge they start out behind.

David McGinnis was present and his comments are a part of the verbatim record. Mr. McGinnis explained that he had been working on a documentary about an oyster man and he wondered if there had been an economic impact statement done. Commissioner Bull stated no. Mr. McGinnis asked if this should not be done. He also asked if the Commission considered the safety of the watermen with only 2 onboard and not 3.

Heather North, representing the Chesapeake Bay Foundation, was present and her comments are a part of the verbatim record. Ms. North stated that they commended the VMRC staff on their proposal.

George B. was present and his comments are a part of the verbatim record. He said that he did not see the benefit of splitting up the James River.

Commissioner Bull closed the public hearing.

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

14. DISCUSSION: Overview of VMRC Artificial Reef Program.

Alicia Nelson, Coordinator for RFAB and CFAB, gave the presentation, with slides, of the history of the program that dates back to the 1970's, how the program was and is funded, and what was being done now to continue to provide habitat for the marine resources that then benefits the recreational fishery. Mrs. Nelson's comments are a part of the verbatim.

15. DISCUSSION: Overview of VMRC Biological Sampling Program.

Adam Kenyon, Fisheries Management Specialist, gave the presentation with slides explaining the history of the program established in 1988, all the species of fish that they

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sample and how they accomplish getting the sample information, and how this valuable data is used by the Commission to make its decisions for the management of the marine fisheries. Mr. Kenyon's comments are a part of the verbatim record.

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There being no further business, the meeting was adjourned at approximately 5:00 p.m. The next Commission meeting will be Tuesday, September 26, 2017.

John M. R. Bull, Commissioner

Meeting Recorded By:

Louise Atkins, Acting Recording Secretary

Minutes Prepared By:

Katherine Leonard