

MINUTES

Commission Meeting

April 25, 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:

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| John Bull | Commissioner |
| Chad Ballard | |
| A. J. Erskine | |
| Lynn Kellum | |
| James E. Minor | Associate Members |
| Ken Neill, III | |
| John Zydron | |
| John Tankard | |
| Kelci Block | Assistant Attorney General |
| Don Anderson | Chief, Environmental Section |
| Laurie Naismith | Director, Public Relations |
| Katherine Leonard | Recording Secretary |
| Terri Short | Accounting Mgr. |
| Todd Sperling | Business Systems Specialist, Sr. |
| Dave Lego | Business Systems Specialist |
| Robert O'Reilly | Chief, Fisheries Mgmt. |
| Joe Cimino | Deputy Chief, Fisheries Mgmt. |
| Andrew Button | Head, Conservation/Replenishment |
| Jill Ramsey | Fisheries Mgmt. Specialist |
| Lewis Gillingham | Director, SWFT |
| Ryan Jiorle | Fisheries Mgmt. Specialist |
| Nancy McElligott | Fisheries Mgmt. Specialist |
| Alex Aspinwall | Fisheries Mgmt. Specialist |
| Adam Kenyon | Fisheries Mgmt. Specialist |
| Samantha Hornsby | Fisheries Mgmt. Specialist |
| Katie May Laumann | Fisheries Mgmt. Specialist |
| Megan Wood | Fisheries Mgmt. Specialist |
| Alicia Nelson | Coordinator, RFAB/CFAB |
| Adam Kenyon | Fisheries Mgmt. Specialist |
| Hunter Smith | Fisheries Mgmt. Specialist |
| Chris Davis | Fisheries Mgmt. Specialist |

Commission Meeting

**17852
April 25, 2017**

Rick Lauderman
Warner Rhodes
Brandon Price
TK Fitchett
Kyle Jones
Clayton Dameron

Chief, Law Enforcement
Deputy Chief, Law Enforcement
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Randy Owen
Mark Eversole
Mike Johnson
Rachael Peabody
Jay Woodward
Jeff Madden
Daniel Faggert
Bradley Reams

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.
Surveyor, Engineering/Surveying
Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Others present:

Genny Padgett
Rebecca Francese
Andy Lacatell
Valerie Rhea

Don Padgett
Kim Huskey
Bob Morecock
Frank Johnson

Stephen Czapleg
Don Adams
Jerry W. Rhea, Jr.
James Carman

and others.

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Commissioner Bull called the meeting to order at approximately 9:39 a.m. Associate Member Tankard was absent. Associate Member France 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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APPROVAL OF AGENDA: Commissioner Bull asked if there were any changes from the Board members or staff.

Robert O'Reilly Chief, Fisheries Management explained that staff was requesting that another item be added to take emergency action to amend 4VAC 20-720-10, et seq. to clarify when payment of the Oyster Resource User Fee All Gear was required to maintain eligibility for the public oyster fishery.

Commissioner Bull stated this would be Item 13.

Associate Member Zydron moved to approve the agenda, as amended. Associate Member Neill 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 March 28, 2017 Commission meeting minutes. There were no changes.

Associate Member Kellum moved to approve the minutes, as presented. Associate Member Minor seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member Tankard abstained as he did not attend the meeting.

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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 these three items for the Board. His comments are a part of the verbatim record.

After some discussion, Commissioner Bull stated the matter was before the Commission for discussion and action.

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

- A. LEHIGH CEMENT CO. LLC, #17-0321:** Requests authorization to construct 300 linear feet of new bulkhead two (2) feet channelward of an existing bulkhead, including a concrete cap, along Hampton Roads, at the Lehigh Cement Company

facility at 8791 Hampton Boulevard in Norfolk. Staff recommends approval with a royalty of \$3,000.00 for the filling of 600 square feet of State-owned subaqueous land at a rate of \$5.00 per square foot and \$1,200.00 for the encroachment over 600 square feet at a rate of \$2.00 per square foot.

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| Royalty Fee (fill 600 sq. ft. @ \$5.00/sq. ft.) | \$3,000.00 |
| Royalty Fee (encroachment 600 sq. ft. @ \$2.00/sq. ft.) | \$1,200.00 |
| Permit Fee | \$ 100.00 |
| Total Fees | \$4,300.00 |

- B. CITY OF HAMPTON, #17-0304:** Requests authorization to install an 8-foot wide open-pile pier extending 90 feet channelward of mean low water with a 7.5-foot wide by 55-foot long aluminum gangway attached to a 30-foot wide by 209-foot long floating pier designed to cradle sailing vessels along Mill Creek at the Hampton Recreation Center on Fort Monroe in the City of Hampton.

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| Permit Fee | \$100.00 |
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- C. TELXIUS, #16-1304:** Requests authorization to install a trans-Atlantic fiber optic telecommunications cable extending from a previously permitted and existing submerged conduit within the Atlantic Ocean adjacent to 920 Vanderbilt Avenue (Croatan Beach Municipal Parking Lot) in Virginia Beach to the Commonwealth's three (3) nautical mile offshore boundary. The submerged cable will be installed by a cable sea plow within a 100 meter corridor to a depth of approximately 1.5 meters below the seabed. Staff recommends approval with a royalty of \$45,570.00 for the encroachment under 15,190 linear feet of State-owned submerged bottom at a rate of \$3.00 per linear foot.

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| Royalty Fee (encroachment 15,190 lin. ft. @ \$3.00/lin. ft.) | \$45,570.00 |
| Permit Fee | \$ 100.00 |
| Total Fees | \$45,670.00 |

- 3. CONSENT AGENDA ITEMS:** None

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

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- 5. **DONALD and MARY PADGETT, #17-0022** Request authorization to install approximately 50 linear feet of 5-foot tall interlocking PVC sheet piling, immediately adjacent to an exposed concrete house foundation, situated at 347 Villa Road, adjacent to the James River in Surry County. The project requires a dune/beach permit.

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 there was currently erosion and undermining of the concrete slab and it was staff's opinion that it would worsen over time during storm and high water events. Therefore, staff believed that the sheet pile wall was appropriate for this situation and that the impact of the proposal was minimal. After evaluating the merits of the project and after considering all of the factors contained in §28.2-1408 of the Code of Virginia, staff recommended approval of the project, as proposed.

Donald Padgett, applicant was sworn in and his comments are a part of the verbatim. Mr. Padgett said that he did not originally do this and had the piling added to protect the exposed area from erosion.

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

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

Dune/Beach Permit - No applicable fees.

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- 6. **VIRGINIA BEACH DEPARTMENT OF PUBLIC WORKS, #17-0174** Requests authorization to retain two (2) existing channel marker buoys in the Keelings Drain section of the City's Eastern Branch of the Lynnhaven River municipal channel.

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

Mr. Watkinson stated that given the history of the municipal channel and the fact that the City previously installed these marker buoys to aid in navigation, and after considering all of the factors in Section 28.2-1205 of the Code of Virginia, staff feels that after-the-fact approval was in order with the requirement of a triple permit fee but no civil charges as this was a municipality project.

Daniel F. Adams, representative for the City, was sworn in and his comments are a part of the verbatim record. Mr. Adams stated they agreed with the staff recommendation and would answer any questions from the Board.

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

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

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| Permit Fee (ATF-triple fee) | \$75.00 |
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- 7. **DISCUSSION:** Update of 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."

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

Mr. Watkinson explained that staff was recommending the Commission consider updating 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 described the public notice requirements for projects or activities requiring a permit from the Virginia Marine Resources Commission (Commission) pursuant to the requirements of Chapter 12 of Title 28.2 of the Code of Virginia. The updated regulation was 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 was intended to identify certain projects or activities for which a notice was not necessary. These changes were intended to streamline the Commission's permit review process and expedite permit issuance in certain instances. Staff noted that there had not been any changes to this regulation since the mid-1980's.

Mr. Watkinson stated that staff was requesting Commission concurrence to take this item to the regulatory review committee, then bring this back with a draft regulation in order to schedule a Commission public hearing.

Commissioner Bull stated the matter was open to discussion and questions.

Following questions and discussion, Associate Member Erskine moved that staff take the draft regulation to the Regulatory Review Committee and then bring the matter back before the Commission Board. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes.

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11. DISCUSSION Presentation of 2016-2017 Blue Crab Winter Dredge Study results

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the Blue Crab Winter Dredge Study results with slides. His comments are a part of the verbatim record.

Mr. O'Reilly noted that the current estimate of spawning-age (age-1+) female abundance (253 million) is the highest abundance in the 28 seasons of the Bay-wide winter dredge survey and exceeded the healthy, target abundance of 215 million age-1+ female crabs for the first time since 2010. This abundance of crabs will provide for harvests throughout the spring and much of the summer, but the magnitude of the harvest will be tempered by market conditions, price being paid to watermen and a general shortage of picking houses.

Mr. O'Reilly stated that staff recommended a discussion at the May Commission meeting to determine what changes to the blue crab regulations should be considered for advertisement by the Commission for its June public hearing.

After some discussion, Associate Member Kellum moved to hold a meeting with the Crab Management Advisory Committee (CMAC) to discuss their recommendations and bring the matter back to Commission at their May meeting. Associate Member Minor seconded the motion. The motion carried, 8-0.

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12. REQUEST FOR AN EMERGENCY AMENDMENT Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)", to establish the 2017 Virginia Summer period commercial quota as 11,812 pounds.

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 the summer period is currently from May 1 through October 31 of each year. The Virginia summer period commercial scup quota for 2017, as established by the ASMFC, is 11,812 pounds. In 2016, the Virginia summer quota was 13,154 pounds. Historically, Virginia lands the entire summer quota in one vessel trip the first week that the season is open. An emergency amendment in April is needed in order to avoid exceeding the 2017 summer quota.

Ms. Ramsey stated that staff recommended the Commission adopt by emergency regulation the 2017 Virginia commercial summer (May through October) scup quota of 11,812 pounds. Staff also recommended advertising for a May 2017 public hearing to adopt the amendments, as permanent.

Commissioner Bull asked for any public comments and there were none. He asked, what was the will of the Commission?

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

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8. PUBLIC COMMENTS: None.

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9. OFFENDERS:

(1) **Jerry W. Rhea, Jr.** – was present and sworn in.

Brandon Price, Marine Police Office, 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. At the request of Associate Member Zydron Mr. Price introduced a video for the Commission record.

July 12, 2016, Engage in Virginia’s Commercial Fishery While Revoked--4 VAC 20-1280-30; December 6, 2016, York County General District Court: Fine: \$35.00, Court Cost: \$86.00.

July 15, 2016, Engage in Virginia’s Commercial Fishery While Revoked--4 VAC 20-1280-30; December 6, 2016, York County General District Court; Fine: \$35.00, Court Cost: \$86.00.

July 18, 2016, Engage in Virginia’s Commercial Fishery After Revoked--§28.2-201 of the Code of Virginia; 4 VAC 20-1280-30; December 6, 2016, York County General

District Court; Fine: \$100.00, Court Cost: \$231.00; 30 days jail with 30 days suspended conditioned upon Good Behavior for two years;

August 4, 2016, Engage in Virginia's Commercial Fishery after revoked--§28.2-201 of the Code of Virginia; 4 VAC 20-1280-30; December 6, 2016, York County General District Court; Fine: \$100.00, Court Cost: \$231.00.

Joe Cimino, Deputy Chief, Fisheries Management explained that in accordance with §28.2-232 of the Code of Virginia, all Mr. Rhea's Commission-issued licenses may be revoked for a period of five years from the date of this Commission meeting, April 25, 2017, through April 24, 2022. The Commission may also prohibit the issuance, reissuance, and renewal of any of Mr. Rhea's licenses during this revocation period. The Code of Virginia also allows the Commission to revoke Mr. Rhea's fishing privileges, within the Commonwealth's tidal waters, for a period of five years from the date of this Commission meeting, April 25, 2017, through April 24, 2022, and to take discretionary action concerning the potential of a civil penalty.

Mr. Rhea explained that he had a family to support as well as health issues. He further explained that he was helping the waterman and did not intend to engage in the fishery, just observe. He said that because of his illness the other watermen were working other days on the pots. He said he was given three bushels of crabs to pay him. He said he had worked on the water for 26 years and now he was working another job.

Valerie Rhea, wife, was sworn in and her comments are a part of the verbatim record. Mrs. Rhea stated that Mr. Rhea was a good person and they had been high school sweethearts. The lawyer's letter stated he could haul crabs. She explained it was a hard adjustment to make a living with losing his license. She said their house was going into foreclosure and they were filing bankrupt right now. She said he had gotten another job and things were starting to get better.

Mr. Rhea said he was doing another job that he liked and had not been near a boat for 7 months.

Commissioner Bull stated the matter was before the Commission.

After further discussion, Associate Member Neill moved for 5 year revocation of all licenses and fishing privileges and no civil penalty, starting April 25, 2017, through April 24, 2022. Associate Member Zydron seconded the motion. The motion carried, 6-1. Chair voted no. Associate Member Kellum had left the meeting for the day.

(2) James A. Carman – present and sworn in.

T. K. Fitchett, 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.

December 8, 2015, Non-Resident Catch in the Commonwealth for Market or Profit---- §28.2-634 of the Code of Virginia; November 10, 2016, Accomack County Circuit Court; Fine: \$250.00, Court Cost: \$166.00.

Joe Cimino, Deputy Chief, Fisheries Management explained that the Commission's matrix of guidelines for sanctions specify that one conviction of a non-Virginia resident harvesting oysters in Virginia waters, within a 12 month period, should result in at least a two year revocation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to revoke all Mr. Carman's Commission-issued licenses for a period of two years from the date of this Commission meeting, April 25, 2017, through April 24, 2019. The Code of Virginia also allows that the Commission to prohibit the issuance, reissuance, and renewal of any of Mr. Carman's licenses during this revocation period. In accordance with §28.2-232 of the Code of Virginia the Commission may revoke Mr. Carman's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, April 25, 2017, through April 24, 2019.

Robert Morecock, Attorney for Mr. Carman, was present and his comments are a part of the verbatim record.

Mr. Fitchett responded to questions by Mr. Morecock. He said he saw Mr. Carman in the cabin both in Virginia and Maryland. He said when he checked the GPS it was 1,500 feet. He answered that it was an ongoing problem, and not always Mr. Carman. He responded that that all violations in the past had been for crabs. He said that Mr. Carman had observed the GPS and buoys. He said there was maybe a bushel of oysters. He said Mr. Carman was working when he was approached.

In response to other questions, Mr. Fitchett said it was a good calm day. He said that someone almost every day comes across the line and other officers do see this too.

In response to Mr. Morecock's questions, Mr. Carman said he had worked the water for 45 years and he had two boats and 4 people working with him. He said he was single with an 82 year old mother and a brother with brain cancer. He said he had accidentally entered into Virginia waters. He explained he had had health issues so he had not work for 3 months. He said he was not paying appropriate attention and went over the line just a little bit. He said he had harvest oysters all his life and had not had any oyster violations. He said he got the GPS in 2015 and he was still new to the operation of it. He said he had worked since he was 11 years old with his Dad and it has been the only way he has made his living. He said it was important that the resource was there and he had

just made a mistake. He stated the oyster rock was shared by Virginia and Maryland watermen.

Mr. Morecock said that felt like a fish out of water as he was use to going to the court. He stated that with it was a 32 foot boat and 1,500 feet into Virginia waters with a small amount of bushels. He stated it was not necessary to revoke Mr. Carman's license and that probation had been given to others. He said Mr. Carman was a responsible person and he had worked 45 years with no oyster violations.

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

After further discussion, Associate Member Zydron moved for six month revocation of all licenses, starting April 25, 2017, through October 24, 2017 and 4 and one half years probation, October 25, 2017, through April 24, 2022. Associate Member Minor seconded the motion. The motion carried, 5-2. The Chair voted yes. Associate Members Ballard and Tankard both voted no.

When Mr. Carman asked, Commissioner Bull stated he would have to work with Law Enforcement personnel to get his gear removed from the water.

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10. PUBLIC HEARING Proposed amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the 2017 Virginia commercial bluefish quota as 1,014,773 pounds.

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 on March 13, 2017, the National Marine Fisheries Service released the revised coast wide commercial bluefish quota as 8.54 million pounds. This is an increase from the 2016 quota. Virginia receives 11.8% of the coast-wide quota which results in a 2017 Virginia bluefish commercial quota of 1,014,773 pounds.

Ms. Ramsey stated that staff recommended the Commission approve amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the 2017 commercial bluefish quota at 1,014,773 pounds.

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

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

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13. REQUEST FOR AN EMERGENCY AMENDMENT Request for an emergency amendment to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” to modify the timing when oyster harvesters may pay the oyster resource user fee.

Andrew Button, Head, Conservation and Replenishment, gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record. He gave the Board a copy of the draft emergency regulation, as a handout.

Mr. Button explained that staff recommended the adoption of the emergency amendment to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” to modify the timing when oyster harvesters may pay the oyster resource user fee. The staff recommended that advertisement of a public hearing to be held at the May 2017 meeting to make these amendments permanent.

Commissioner Bull opened the hearing to public comments and there were none.

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

Associate Member Tankard moved to accept the staff recommendation to advertise for a public hearing at the May 2017 meeting. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 1:50 p.m. The next Commission meeting will be Tuesday, May 23, 2017.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary

Commission Meeting

**17863
April 25, 2017**