

MINUTES

Commission Meeting**May 28, 2013**

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:

Jack G. Travelstead	Commissioner
Robert Beck	
J. Carter Fox	
S. Lynn Haynie	
Joseph C. Palmer, Jr.	Associate Members
J. Bryan Plumlee	
Richard B. Robins, Jr.	
Whitt G. Sessoms, III	
J. Edmund Tankard, III	
Paul Kugelmann, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Mgr.
Renee Hoover	Biological Collection Prgm. Supvr.
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham	Game Fish Coordinator
Samantha Hoover	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Laurie Williams	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Kelsey Rooks	Fisheries Mgmt. Technician
Warner Rhodes	Deputy Chief, Law Enforcement
Jamie Green	Captain, Middle Area
Robert Parks	Sr. Marine Police Officer

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Enrique Sanchez	Marine Police Officer
Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Julliette Giordano	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Karen Duhring
Troy Tuckey		

Others present:

John Ware	Daniel Proctor	Artha Jennette
David Adams	Donald Rice	Peter Kauneckas
Kathy Batkin	Ken Kurkowski	Chris Waran
David O'Brien	Ken Smith	Peggy Sauver
Sarah Wootton	Andy Lacatell	Bill Goodwin
Tommy Pruitt	Ida C. Hall	Chuck Roadley
Mark Bender	Clifton Burton	Jerome Burton
Peter Nixon	Kenneth Kearn	Chris Moore
Rich Bartlett	Barbara Wilson	Lee Stephens
Jim Smith	Bill Meagher	Bob Simon
Richard Hawley	George B. Little Jr.	William Rhoades
Brian Siff	Tom Ulsaker	Mimz Ulsaker
Stephen Wilson	Linda Wilson	Michael Francisco
Thomas Tucker		

and others.

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Commissioner Travelstead called the meeting to order at approximately 9:34 a.m. All Associate Members were present.

At the request of Commissioner Travelstead, Associate Member Robins gave the invocation; and Tony Watkinson, Chief of Habitat Management led the pledge of allegiance.

Commissioner Travelstead, at this time, swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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

Commissioner Travelstead asked for a motion for the agenda.

Associate Member Plumlee moved to approve the agenda. Associate Member Fox seconded the motion. The motion carried, 8-0.

MINUTES: Commissioner Travelstead asked for a motion for approval of the April 23, 2013 Commission meeting minutes, if there were no corrections or changes. There were no changes.

Commissioner Travelstead announced the minutes for the April 23, 2013 Commission meeting were approved by consensus of the Board. Associate Member Robins stated he would abstained as he was absent at the last meeting.

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 was one page two item to be heard. He reviewed the item for the Board. His comments are a part of the verbatim record.

Commissioner Travelstead asked for any questions or public comments. There were none. He then asked what the pleasure of the Commission was.

Associate Member Tankard moved to approve item 2A. Associate Member Beck seconded the motion. The motion carried, 8-0.

2A. **COLUMBIA GAS OF VIRGINIA, #13-0071**, requests authorization to cross 495 linear feet of the James River from Buckingham County to Fluvanna County by directionally drilling a minimum of ten feet below the substrate to install a 24-inch steel natural gas line for the Dominion Bremono Bluff Power Plant in Fluvanna County. Recommend approval with a royalty of \$1,485 for the crossing of 495 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (crossing 495 lin. ft. @ \$3.00/lin. ft.).....	\$1,485.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,585.00

3. **CONSENT AGENDA ITEMS.** None

4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** Commissioner Travelstead asked Paul Kugelman, Assistant Attorney General and VMRC Counsel if a meeting was necessary and he responded no.

5. **MATHEWS LAND CONSERVANCY, #12-1539.** Appeal by 26 freeholders of the Mathews County Wetlands Board decision to approve the construction of a rowing and sailing center building on pilings extending over wetlands, two (2) 16-foot wide by 80-foot long floating piers with two (2) 12-foot by 23-foot gangways, an 8-foot wide open-pile pier extending 62 feet channelward of an existing bulkhead with a 14-foot wide by 100-foot long T-head deck, and a 182 linear foot riprap revetment with associated backfill along the East River at 1039 Williams Wharf Road in Mathews County.

Mike Johnson, Environmental Engineer gave the briefing on the wetlands appeal. His comments are a part of the verbatim record. He said that the Commission must decide if the record should be open. He explained also that the original application had been modified in order to reduce the impacts on wetlands, which was heard at the second Wetlands Board meeting, but no public comments were received by those who spoke at the previous hearing.

Paul Kugelman, Assistant Attorney General and VMRC Counsel said he agreed with staff's advice and that Code Section 28.2-1302 (7B) does allow the Commission to remand the matter back to the Wetlands Board or the Commission can reopen the record and make its own decision. He said the modified application was a different application and public comments should have been allowed.

Commissioner Travelstead stated he felt that the record did not need to be reopened as there was reason here already to remand. He stated that public comments would be received for that specific issue.

Steve Wilson, protestant and adjacent property owner, was sworn in and his comments are a part of the verbatim record. Mr. Wilson said he was prepared to speak at the second Wetlands Board meeting but was not allowed to speak. He noted that the modification to reduce the encroachment on wetlands was still tremendous as the encroachment involved over 7,000 square feet of wetlands.

Kenneth Kurkowski, Wetlands Board representative, was sworn in and his comments are a part of the verbatim record. Mr. Kurkowski stated that he agreed that a mistake had been made by the Wetlands Board and agreed with remanding the matter back to the Wetlands Board.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Plumlee moved to remand the matter back to the Wetlands Board. Associate Member Fox seconded the motion. Associate Member Plumlee stated that this was a Wetlands Board hearing procedural error as the public was not allowed to comment at the second meeting.

Lee Stephens, Land Conservancy Attorney, was present and his comments are a part of the verbatim record. Mr. Stephen said the second meeting was to discuss the reduction in the size of the building to reduce the encroachment on wetlands in order to lessen the impact to them. He questioned whether or not some of the petitioners for this appeal, who signed the document, were acceptable.

Associate Member Plumlee said that there were enough freeholders involved for the VMRC to hear the matter and they should have been allowed to make comments at the Wetlands Board hearing. He stated his motion remained the same.

Associate Member Robins stated that the application was modified and the Code of Virginia said there needs to be public comments.

The motion carried, 8-0.

No applicable fees – Wetlands Appeal

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6. **RICHARD A. HAWLEY, #12-1244**, requests after-the-fact authorization to retain approximately 227 linear feet of timber retaining wall and 108 linear feet of vinyl bulkhead next to an existing boat ramp that was recently resurfaced, resulting in impacts to approximately 1,150 square feet of vegetated wetlands, adjacent to his property at 104 Cove Circle situated at the confluence of a manmade canal and the Eastern Branch of the Elizabeth River in Chesapeake. The project will require a Wetlands permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing on the staff's evaluation with slides. Her comments are a part of the verbatim record.

Associate Member Tankard questioned if Mr. Hawley knew he need a permit before doing any improvements. Ms. Woodward responded yes and the City had a memorandum for record stating he needed to make an application for the improvements.

Associate Member Tankard questioned staff regarding the status being moderate deviation. Ms. Woodward stated it was determined by staff to be a minimal impact on wetlands and a moderate deviation because an application was necessary.

Commissioner Travelstead asked if the applicant or a representative wished to comment.

Robert Simon, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Simon stated the assessment did start in 2005 and the fill was removed, but at the recommendation of the City staff a silt fence was installed and is still there. The applicant did all that the City recommended for establishing a living shoreline, but it did not work. He said the impact was to 90 square feet of wetlands and 50 percent were re-vegetated. It was not 250 square feet of vegetated wetlands impacted. He said at a meeting of the Commission in 2010 it was determined that it was a man-made canal and not within VMRC's jurisdiction so a permit was not needed. He said the applicant had retained the structure that was built at the City's instruction. He said the violation had been resolved.

Richard Hawley, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Hawley said the bulkhead was to keep the shoreline from falling into the canal.

Associate Member Plumlee asked what were the permit requirements? Mr. Hawley said he had to put in a vinyl bulkhead and to refill and seed. He said the storms were causing a continuous need to maintain the area by putting trees in the area and to raise the area so the plants and trees could grow. He stated the canal was not navigable. He explained that he had grown up in the area and saw all the changes and everyone else maintained their

property by keeping up with the maintenance of their bulkheads. He stated he should have gotten a permit.

Commissioner Travelstead stated the matter was before the Commission.

After further discussion, Associate Member Plumlee said he moved to leave the structures and not require any assessed civil charges. He stated the money would be better spent to order to developing a compensation plan to replace the 1,150 square feet of wetlands that were lost and which was required. Associate Member Beck seconded the motion. Associate Member Robins said this was done without a permit and he did not agree with the motion that there should not be civil charges assessed. He said he agreed with the staff recommendation to leave the structures and the assessment of a civil charge. Commissioner Travelstead asked if the civil charge assessed should be \$2,000.00. Associate Member Plumlee agreed to add to the motion the reduced amount of \$2,000.00 for a civil charge. Commissioner Travelstead asked for a vote on the amended motion. The amended motion carried, 8-0.

Wetlands Permit Fee.....	\$ 10.00
Civil Charge.....	\$2,000.00
Total Fees.....	,\$2010.00

- 7. **PCN, LLC #12-1534**, requests authorization for the use and development of tidal wetlands and for encroachment over State-owned bottom including the dredging of 1,144 cubic yards of State-owned bottom including a 30 linear foot temporary bulkhead for construction access, associated with the construction and installation of an approximately 2,654 linear foot steel sheet pile wall with riprap scour protection along Curles Neck Swamp tributary to the James River and extending from an existing earthen levee to a U.S. Army Corps of Engineers Dredge Material Management Area at Curles Neck Farm in Henrico County. The project will require a tidal wetlands permit and a permit for use of State-owned bottomlands. The project is protested by two adjacent property owners.

Juliette Giordano, Environmental Engineer, Sr., gave the briefing of the staff's evaluation with slides. Her comments are a part of the verbatim record.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, said that the terms of the consent order was to issue the original 1989 permit and have it accepted. Associate Member Plumlee asked if the current applicant was ready to accept the original 1989 permit. Ms. Giordano responded yes, they area.

Associate Member Sessoms stated that the previous owners did get the job done and were maintaining it, but it was all done on private property. Ms. Giordano said that the protestants want access to the main stream of the Creek.

Dale Mullan, Environmental Attorney representing the applicants, was present and his comments are a part of the verbatim record. Mr. Mullan stated that there were two owners at the current time, Bill Goodwin and Tommy Pruitt. He noted that the rights and responsibilities do remain with the current owners. He said he agreed that this was not illegal as the May 1989 permit did refer to a Court Order. He said the permit was legal and could be limited. Mr. Goodwin said that he and Mr. Pruitt both agree to sign the 1989 permit.

Associate Member Beck asked why did the protestants want to gain access. Mr. Mullan said he did not know maybe to fish. He said from March 1 to July 1 they leave the gates open for wildlife and aquatic fish.

Chuck Roadley, Williamsburg Environmental Group and representing the applicant was sworn in and his comments are a part of the verbatim record. Associate Member Fox asked about the wall's purpose. Mr. Roadley said that it was to control water levels enough to allow plant growth, but it did not protect the areas from storms and floods.

Commissioner Travelstead asked if there would be a three year monitoring of fish in the area. Mr. Mullan stated it could show that adjustments are necessary for the water management plan. He said they hesitate to add this as a permit condition to be required to make changes because some scientist in the future could tell them to do so.

Commissioner Travelstead asked if anyone wished to comment in opposition.

William Rhoades, Protestant, was sworn in and his comments are a part of the verbatim record. Mr. Rhoades said the dam had changed Curles Neck from a stream to a river because of the impacts to the tidal flow. He said that he requested that approval by VMRC be deferred. He said the National Wildlife Refuge should seek a request as well to designate a landing area for citizens to access the State-owned bottom.

Bryan Siff, Protestant was sworn in and his comments are a part of the verbatim record. Mr. Siff said he requested VMRC deny the request and order removal of all illegal levees. He said he had a constitutional right to fish in State-owned bottom.

Associate Member Fox said they needed to know who owned the tidal areas. Mr. Kugelman said that was not for VMRC to decide if there is a Kings Grant.

George Little, Jr., protestant was sworn in and his comments are a part of the verbatim record. Mr. Little said he had been a resident in the area for 75 years. He said his issue was having public access to State-owned bottom. He said there had been breaches in the

levee since the 70's which were repaired by a bulkheads and levees. He said the only permit issued was for after-the-fact and there were no permits for some of the additional structures and they should be removed.

David O'Brien, NMFS, was sworn in and his comments are a part of the verbatim record. He said they were requesting a continuance. He said NOAA was concerned with the impacts to the migration of the anadromous fish, as well as the spawning nursery and habitat. He said the restoration objectives were not adhered to. He said he requested it be deferred until the data has been provided by the applicant to be used for an adaptive management plan.

Mr. Mullan said they had suggestions to offer when he made his rebuttal comments and suggested that the Board break for lunch and return to discussion after that.

Commissioner Travelstead asked what was the pleasure of the Commission.

After some more discussion, Commissioner Travelstead announced a 40 minute lunch break and to return to Item 7 after lunch.

Mr. Mullan said that they had met with Mr. Kugelman and staff. He said they agreed to give the Board the opportunity to have the monitoring done and develop a post management plan, water management during the assessment would comply with Court Order and Permit of 1989 to open gates from March 1 to July 7; and agreed to notify the Commission on completion of construction. He provided a hand-out which he read.

Mark Luckenbach, VIMS, was present and his comments are a part of the verbatim record. Dr. Luckenbach said that pre-construction study was wiser for getting data, which VIMS recommended. He said VIMS could assist with the adapting of the management plan. He said they suggested three years.

Troy Tuckey, VIMS, was present and his comments are a part of the verbatim record. Mr. Tuckey said one year was not sufficient to determine stock levels and abundance and several years would be necessary to catch the variables that could impact the stocks.

Tommy Pruitt, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Pruitt said that there had not been a draw down since 2006.

Associate Member Robins aside if they were open to system monitoring as suggested by VIMS prior to construction. Mr. Pruitt said he was concerned with being asked to wait three years.

After further discussion, Associate Member Beck suggested an agreement be made by changing Item 5 to the handout so as to keep the Commission's authority.

Mr. Kugelman stated the applicant must agree. Mr. Pruitt stated that they would agree with the change being made to Item 5.

Associate Member Sessoms stated he agreed with Mr. Beck because the breach needed to be repaired and the dam had been operated since 1968.

After much discussion, Associate Member Robins moved to approve the permit with specific conditions, as follows:

- **Three year post construction monitoring plan and assessment for river hearing and eel utilization, with the monitoring and assessment plan subject to staff approval.**
- **A Water Management Plan subject to with staff approval.**
- **Review of the water management and the fishery monitoring plans after three years.**

Associate Member Tankard in a substitute motion moved to accept the staff recommendation. Associate Member Plumlee seconded the motion. Associate Member Palmer stated that it had worked for 45 years and should be left the way it was and to just let them have the original permit. The substitute motion failed, 3-5.

The original motion passed, 6-2. Associate Members Tankard and Plumlee both voted no.

After some further discussion about the issuance of the original 1989 permit, Associate Member Robins offered to amend the motion to allow issuance of the previously authorized original permit in the name of the new owner and adding a condition to the new permit that the VMRC and the applicants would enter into a process to amend the water management plan in the original permit and amend the Consent Order in order to allow modifications to be made to the water management plan. Associate Member Palmer seconded the motion. The motion carried, 8-0.

Royalty Fee (dredge 1,144 cu. yds. @ \$0.45/cu. yd.).....	\$ 514.80
Royalty Fee (encroachment 2,848 sq. ft. @ \$1.00/sq. ft.).....	\$2,848.00
Permit Fee.....	\$ 100.00
Wetlands Permit Fee.....	\$ 10.00
Total Fees.....	\$3,472.00

Commission Meeting

8. WILLIAM AND TERESA MITCHELL, #13-0324, request authorization to construct 110 linear feet of timber pile bulkhead and associated backfill aligned a maximum of two (2) feet channelward of an existing deteriorating bulkhead resulting in impacts to 43 square feet of vegetated wetlands and 148 square feet of non-vegetated wetlands adjacent to 4104 Mingo Trail situated along the Indian River in Chesapeake. The project requires a Wetlands permit.

Associate Member Beck left the meeting.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the staff's evaluation with slides. She explained that the applicant had submitted revised drawings and plans that eliminated the impact to the vegetated wetlands. Her comments are a part of the verbatim record.

Richard Bartlett, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bartlett said that they appreciated VMRC staff for working with the applicants.

As there were no further public comments, Commissioner Travelstead asked for a motion.

Associate Member Plumlee moved to approve the permit as modified in the revised plans. Associate Member Sessoms seconded the motion. The motion passed 7-0.

Wetlands Permit Fee.....	\$10.00
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9. GERALD WILSON, #13-0595, requests authorization to construct 116 linear feet of vinyl bulkhead and associated backfill aligned a maximum of one (1) foot channelward of an existing deteriorating bulkhead resulting in impacts to 58 square feet of vegetated wetlands adjacent to 3601 White Heron Run situated along Indian River in Chesapeake. The project requires a Wetlands permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the staff's evaluation with slides. Her comments are a part of the verbatim record.

Richard Bartlett, agent for the applicant, was sworn in and his comments are a part of the verbatim record. He noted that vinyl sheets were used for the bulkhead, which are more expensive and have a life of 50 years. He noted also that there was an easement in the area for the Virginia Power line.

Associate Member Plumlee asked if there had been erosion occurring. Mr. Bartlett stated that the toe was kicking out allowing some erosion.

As there were no further questions or public comments, Associate Member Plumlee moved to approve the permit as there was minimal impact but with mitigation for the vegetated wetlands impacts through the purchase of mitigation bank credits. Associate Member Fox seconded the motion. The motion carried, 7-0.

Wetlands Permit Fee.....	\$10.00
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10. KEN SMITH, OYSTER PLANTING GROUND APPLICATIONS #2012-118 AND #2012-119, requests authorization to lease up to 75 and 100 acres respectively within the Chesapeake Bay near the mouth of Barnes Creek in Northumberland County. Both applications are protested by numerous residents in the area.

Ben Stagg, Environmental Engineer, Sr., gave the briefing for the staff’s evaluation with slides. His comments are a part of the verbatim record.

As there were no questions, the applicant was asked to comment.

Ken Smith, applicant was sworn in and his comments are a part of the verbatim record. Mr. Smith provided handouts of maps showing the leases. He said he intended to use alternative materials to collect spat as he had seen evidence of it occurring on any number of materials. He had pictures as evidence of this as a hand out. He also wanted to use cages for aquaculture. He noted that he had included in his plans to work with students from James Madison University (JMU) in his research.

Commissioner Travelstead asked if there were others to comment either pro or con.

Ida Hall, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Hall provided a handout and said she was concerned with the location of the proposed leases and agreed with staff that this was a dynamic area. She said that she had not heard of any involvement of the watermen in this discussions for the proposal so how could this be beneficial to them. She offered the use of her lease for this research. She stated she was opposed to both lease applications.

Peter Kauneckas, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Kauneckas said he was requesting denial of both lease applications. He added he was concerned there was a connection to the Bluff Point organization’s plans for the area. He noted that all of Barnes Creek was leased out and the bridge upriver at high tide cannot be traversed with a boat.

Donald Rice, protestant and property owner was sworn in and his comments are a part of the verbatim record. He stated he was concerned with the impact of structures on the

bottom as it would impact other user groups. He said at the mouth the high energy of the area would cause cage movement. He said he was also concerned that there was a connection with the Bluff Point organization. He said he requested that the lease applications be denied.

Mr. Smith in his rebuttal comments said he was not employed by Bluff Point and had no plans to be involved with them. He said he had plans to utilize watermen, but he does not always talk with the watermen first.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Palmer made a motion to approve the two lease applications. Associate Member Sessoms seconded the motion.

Associate Member Fox said he was concerned with the impacts to navigation and the fact that there was a fetch in the area. He felt that there could be structure movement and felt that the area was too large for an experiment. He stated he did not agree to both the leases, but would be if the area was reduced.

Associate Member Tankard stated he agreed with Associate Member Fox as it was the same as what was at the August meeting. He said for experimentation he did not see allowing too big of an area.

Associate Member Robins stated the part that was denied in August was being requested. He said at the August meeting there was conflict information and there was mitigation regarding the strip in the middle.

Commissioner Travelstead said that the upper portion of area 2 was denied at the August meeting and the offshore area part was the preferred. He asked what acreage Mr. Smith would accept. Mr. Smith stated he did not know as his plan was evolving, not for commercial gain, but for research.

The motion failed 2-5. Associate Member Robins, Tankard, Fox, Plumlee, and Haynie voted no.

After some further discussion, Commissioner Travelstead asked what was the pleasure of the Commission.

Associate Member Fox moved to approve a 40 acre area on the right, not on the bar. Associate Member Haynie seconded the motion. The motion carried, 6-1. Associate Member Palmer voted no.

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11. PUBLIC COMMENTS.

Associate Member Palmer left the meeting.

Crab Industry

Peter Nixon, waterman, was present and his comments are a part of the verbatim record. Mr. Nixon expressed his serious concerns over the failing crab industry and the fact that past management measurements did not improve it. He stated he had made it known at that time that these measures would not work and the Board members now present were not knowledgeable enough to make these decisions.

Mark Bender

Mark Bender, Eastern Shore waterman, was present and his comments are a part of the verbatim record. Mr. Bender requested that the Commission help in getting a summons resolved that was issued to his daughter for the placement of her nets on an established reef site. He noted that the reef site was not marked and needed to be marked. He also noted that others in the area had done the same thing and only been given warnings.

Commissioner Travelstead stated it was not appropriate for the Commission to take any action prior to the Court hearing.

No action was taken.

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12. REPORT on results from a Fisheries Management Staff and Industry meeting about user conflict in the Horseshoe Crab Fishery within Tom's Cove.

Associate Member Robins left the meeting.

Adam Kenyon, Fisheries Management Specialist, gave the briefing of the staff's evaluation. His comments are a part of the verbatim record. The report was the result of the Commission's request at the April 23, 2013 Commission meeting for the staff and industry to meet and find a resolution for the user conflict. During this meeting the groups agreed that April 1 through May 31 all gill nets 1,200 feet long and in the Toms Cove area the gill nets would have to be set in such a manner that the offshore end of any gill net would have to be at least 800 feet from the mean low water line. In addition, no part of any gill nets set in the Toms Cove area, can be closer than 500 feet to any part of any other gill net. From June 1 through June 30, gill nets in the Toms Cove area may only be set from sunrise to sunset. The Toms Cove area would be defined as the water east of a line connecting Assateague Point to Fishing Point to mean low water line.

Mr. Kenyon said that the staff recommendation was to advertise for a public hearing in June to discuss the amendment to the regulation.

Associate Member Fox moved to advertise for the public hearing at the June Commission meeting. Associate Member Plumlee seconded the motion. The motion carried, 5-0. Associate Member Robins abstained.

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- 13. **PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC20-1090-10 et seq., "Pertaining to Licensing Requirements and Licensing Fees" to establish oyster user fees as provided by H 1400; with a request for a June public hearing to rescind or amend regulations that contain references to the Oyster Tax Harvest and Reporting System, effective July 1, 2013.

Associate Member Robins returned to the meeting.

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

Mr. O'Reilly explained that the amendments to Chapter 1090 were the results of changes made to the Code of Virginia to the eliminate the Oyster Harvest and Tax reporting system and the establishment of the Oyster Resource User Fee, in place, effective July 1, 2013. He noted that two additional changes to the regulations were necessary. The first being the Senior Lifetime Saltwater Fishing License for \$5.00 and the second, being the new licenses required as a result of changes to the Regulation 4VAC 20-1270-10, et seq. "Pertaining to Atlantic Menhaden". He added that a further hearing would be necessary to repeal Regulation 4VAC 20-200-10, et seq., "Pertaining to the Requirements for Reporting Oyster Transactions and Payment of Taxes" and the reference to this old reporting and tax system in Regulation 4VAC 20-610-10, et seq., Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

After some questions of clarification of staff, the public hearing was opened. There were no public comments. The public hearing was closed.

Associate Member Plumlee moved to approve the amended regulation. Associate Member Fox seconded the motion. The motion carried, 6-0.

Commissioner Travelstead announced that Regulation 4VAC 20-200-10, et seq. and Regulation 4VAC 20-610-10, et seq. were approved for a public hearing in June.

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14. REPEAT OFFENDERS.

Jamie Green, Captain, Law Enforcement, gave the briefing for the violations. His comments are a part of the verbatim record. He explained that Willie F. Shiflette, Jr. was charged with three violations and convicted in the court:

- 1) November 2011 for harvesting oysters in a closed area in the Rappahannock River.
- 2) May 2012 for possession of dark sponge crabs.
- 3) November 2012 for harvesting oysters in a closed area in the Rappahannock River.

Willie F. Shiflette, Jr., was sworn in and his comments are a part of the verbatim record. Mr. Shiflette explained that he did not realize the area was closed and another time, it was foggy weather. He noted that other boats were working there also.

Commissioner Travelstead asked for the pleasure of the Commission.

Associate Member Plumlee moved to accept the staff recommendation for 12 months probation. Commissioner Travelstead explained that if any other violation occurred during the 12-month period Mr. Shiflette would come back before the Commission for a revocation hearing. Associate Member Tankard seconded the motion. The motion carried, 6-0.

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15. FAILURE TO REPORT: Cases involving failure to report commercial harvests, in accordance with Chapter 4VAC20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Joe Cimino, Fisheries Management Manager Sr., gave the briefing on the staff's evaluation. His comments are a part of the verbatim record.

Joseph K. Forrest

Mr. Cimino stated that staff received a call that Joseph Forrest had a health issue and would not be able to attend. He noted that Mr. Forrest had been cooperative, but one report was still missing. He said the other months were reported as no activity.

Mr. Cimino explained that staff's recommendation was for suspension of all licenses until Mr. Forrest provided all the required reports and two years probation once all reports were turned in. Staff also recommended removing Mr. Forrest's requirement to appear before the Commission due to health issues.

Associate Member Plumlee moved to accept the staff recommendations. Associate Member Fox seconded the motion. The motion carried, 6-0.

Billy N. Pate

Mr. Cimino stated that Mr. Pate had been cooperative and all of his reports were up to date. He stated staff recommendation was for a two-year probation.

Billy N. Pate was sworn in and his comments are a part of the verbatim record. Mr. Pate said that he had misplaced the reports and when he looked for them he found them.

Associate Member Plumlee moved for the 2-year probation. Associate Member Fox seconded the motion. The motion carried, 6-0.

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16. POUND NETS: Cases involving protested locations for new pound nets, in accordance with Chapter 4VAC20-25-10 et seq., “Pertaining to Pound Net Siting Public Interest Review.”

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing of the staff’s evaluation with slides. His comments are a part of the verbatim record.

Edward M. Bender – application for two pound net locations in the Chesapeake Bay (EP0083 and EP0085).

Commissioner Travelstead asked the applicant if he wished to comment.

Mark Bender, applicant, requested to make his comments after the protestant had made his comments.

Kenneth Heath, protestant was present and his comments are a part of the verbatim record. Mr. Heath explained that he had two pound nets (EP0014 and EP0019) which had been surveyed incorrectly using old poles, and no net, and the proposed net (EP0085) was in conflict with his location. He asked to reclaim his original pound net sites instead of allowing the new pound net site to be approved.

Mark Bender, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bender said that Mr. Heath had applied for three licenses and he had spoken with the surveyor and selected these sites. He said the 1,200 feet requested for EP0085 was easier to shorten than lengthen, and was willing to shorten the net to still place it in the same area, while allowing Mr. Heath to regain some of his original pound net site.

After further discussion and questions, Commissioner Travelstead stated the matter was before the Commission.

Associate Member Plumlee moved to approve EP0083 for the adjusted location. Associate Member Fox seconded the motion. The motion carried, 6-0.

Commissioner Travelstead asked what was to be done for EP0085. He noted that Mr. Bender had agreed to shorten this net.

Mr. Heath stated that EP0014 was now 600 feet and he wanted 1,150 feet.

After further discussion, Associate Member Plumlee moved to approve EP0085 taking 200 feet off the seaward end and 200 feet off the landward end. Associate Member Tankard seconded motion. The motion carried, 6-0.

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Clifton W. Burton – application for a pound net location in Maddox Creek, Tributary of the Potomac River (NP172)

Associate Member Robins left the meeting.

Joe Grist briefed the Commission from the staff's evaluation with slides. He noted the staff recommendation was for denial. He added that there were 21 protest letters that had been received expressing concerns with the impact of the net causing a hazard to navigation.

Clifton W. Burton, applicant, was sworn in and his comments are a part of the verbatim record.

Commissioner Travelstead asked if anyone was present to comment in opposition to the net. There were no public comments. He stated the matter was before the Commission.

Associate Member Plumlee asked if a time-of-year for removing the nets could be done here. Mr. Grist stated the pilings were permanent and cannot be removed.

Associate Member Tankard said that with the amount of boat traffic, safety was a true issue and the Commission must consider all other users in the area.

Associate Member Plumlee moved to deny the net. Associate Member Fox seconded the motion. Associate Member Tankard asked if Mr. Burton could apply for another location. Commissioner Travelstead responded yes. The motion carried, 4-0-1. Associate Member Robins abstained.

17. RECOMMENDATIONS OF THE RECREATIONAL FISHING ADVISORY BOARD: Recreational Fishing Advisory Board, on funding projects from the Virginia Saltwater Recreational Fishing Development Fund.

Associate Member Robins returned to the meeting.

Alicia Nelson, Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator), gave the briefing for the staff's evaluation. She said that the seven projects were recommended for approval by the RFAB. She noted that project G was withdrawn by the applicant. The estimated funds available for projects is \$1,428,873 after subtracting the \$1.5 million to meet the annual agency obligations:

The RFAB recommended the Commission fund the following projects:

- A) 2013 Chincoteague Island Charter Boat Association "TAKE A KID FISHING DAY." Charlie Koski, Chincoteague Island Charter Boat Association. **\$2,088.65 Vote 8-0**
- B) 2013 Knights of Columbus Annual Kids Fishing Day (Year 26). Greg Brown, **\$7,453.13 Vote 8-0**
- C) 2013 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. Joseph Stephenson; Paul Anderson, Great Bridge Fisherman's Association. **\$5,350 Vote 8-0**
- D) 2013 Youth Developmental "Hooked on Fishing" Adventure (Year 6). Bob Hewlett, Bob Pride, Virginia Charter Boat Association. **\$12,960 Vote 8-0**
- E) 2013 Saxis and Morley's Wharf Fishing Piers Youth Fishing Tournaments (Year 12). Allen Evans, Eastern Shore of Virginia Anglers Club. **\$2,000 Vote 8-0**
- F) 2013 Sunshine Children's Fishing Program (Year 11). Denny Dobbins, Portsmouth Angler Club/Sunshine Program. **\$7,725 Vote 8-0**
- G) *Withdrawn by the applicant (*2013 Tidewater Anglers Club Fishing Program*)
- H) Restoration of Submerged Aquatic Vegetation (SAV) Habitat in Chesapeake Bay and the Virginia Coastal Bays. Robert Orth, VIMS. **\$148,286 Vote 8-0**

Ms. Nelson noted the total of the projects was \$185,862.78.

Ms. Nelson explained that the state contract for the telephone intercept portion of the Fisherman Identification Program (FIP) will soon expire and negotiations are ongoing to

find another contractor. She explained that based on past cost, the estimated yearly cost for this service would be \$75,000.00 and that the RFAB approved full funding for this service on an annual basis.

Ms. Nelson noted that a July 8th work session was scheduled to discuss the long term funding of the VSRFDF, stream-lining the application process for sponsored fishing events, and to update the Board on the Artificial Reef Program.

When asked for a motion, Associate Member Fox moved to approve the recommendations of the RFAB. Associate Member Plumlee seconded the motion. The motion carried, 5-0.

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- 8. REQUEST FOR JUNE PUBLIC HEARING** to establish the 2013 and 2014 Virginia commercial bluefish quotas.

Commissioner Travelstead announced that the request for public hearing was approved.

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- 9. REQUEST FOR JUNE PUBLIC HEARING** to amend Chapter 4 VAC-20-490-10 et seq., to allow federal waters landings of spiny dogfish during May 1, 2010 through April 30, 2012 to serve as a basis for harvesters to be part of this limited access fishery.

Commissioner Travelstead announced that the request for public hearing was approved.

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- 20. EMERGENCY REGULATION:** for 4 VAC 20-270-10 et seq., “Pertaining to Crabbing,” to ensure that any harvest, possession or vessel limits are daily limits.

Rob O’Reilly, Chief, Fisheries Management, gave the briefing on the staff’s evaluation. His comments are a part of the verbatim record. Mr. O’Reilly explained that Law Enforcement Division had reported to Fisheries Management staff that individuals were circumventing the daily vessel limit established by regulation by making several trips during the 8 hour workday.

Mr. O’Reilly explained that this emergency action was necessary so that the word “daily” could be added in the regulation to take care of the loophole. He noted that staff recommended a June public hearing.

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Associate Member Robins moved to adopt the emergency regulation and to advertise for a June public hearing. Associate Member Tankard seconded the motion. The motion carried, 5-0.

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There being no further business, the meeting was adjourned at approximately 6:25 p.m. The next regular meeting will be held Tuesday, June 25, 2013.

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Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary