

MINUTES

Commission Meeting

February 27, 2018

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	
Heather Lusk	Associate Members
James Minor	
Ken Neill, III	
John Tankard	
John Zydron Sr.	
Kelci Block	Assistant Attorney General
Matthew Hull	Policy Manager
Linda Hancock	Dir., Human Resources
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
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
Alex Aspinwall	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Nancy McElligott	Fisheries Mgmt. Specialist
Sydney Alhale	Fisheries Mgmt. Specialist
Sara Blachman	Fisheries Mgmt. Specialist
Anna-Mia Christmas	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Chris Davis	Fisheries Mgmt. Specialist
Allison Norris	Fisheries Mgmt. Specialist
John Cadena	Fisheries Mgmt. Specialist

Commission Meeting

**18011
February 27, 2018**

Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Robert Griffin	First Sergeant, Marine Police Officer
Thomas K. Fitchett	Marine Police Officer
Alexander Tucker	Marine Police Officer
Steven York	Marine Police Officer
Brandon Price	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Randy Owen	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Peabody	Environmental Engineer, Sr.
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping
Daniel Faggert	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Emily Hein
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Others present:

Luther Headley	Timothy Holloway	Linda Tibbs
James Tibbs	Oula Shehub	Warren Deal
Bob Occhisman	Kenneth Heath	Major Jones
William Dize	John Bridgeforth	Chris Frye
Bill Parr	David O'Brian	Chris O'Malley
Elizabeth Davis	Bruce Ballard	Brian Owen
Lori Firman	James Firman Sr.	Kirk Miles
Mark Miles	Thomas Freeman	Rocky Rhea
Domingo Flores	Butch Eason	Wes Blow
and others.		

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Commissioner Bull called the meeting to order at approximately 9:43 a.m. Associate Member France was absent.

At the request of Commissioner Bull, Associate Member Tankard said the invocation and John Bull, Commissioner, led the pledge.

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

Tony Watkinson, Chief, Habitat Management, requested Item 5 be removed from the agenda by the request of the applicant and be placed on the agenda for March 27, 2018 meeting.

Associate Member Zydron moved to approve the agenda, with recommendation to amend Item 5. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the January 23, 2018 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. Chair voted yes.

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 three page two items, A, B and C, for the Board members. Mr. Watkinson’s comments are a part of the verbatim record.

There were no public comments.

Associated Member Tankard moved to approve the page two items as presented. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

2A. HENRICO COUNTY, #17-1685, requests authorization to construct a 4-slip, 92-foot by 56-foot, enclosed boathouse for County fire and police watercraft, with associated 5 and 6-foot wide tending/access piers and four storage units. A 7-foot wide access pier will connect the boathouse to upland property situated within Henrico County’s Osborne Park. The pier and boathouse will extend approximately 100 feet channelward of mean low water into the James River. Staff recommends approval with time-of-year restrictions on all instream work to protect both anadromous fish species and the Atlantic Sturgeon. from February 15 to June 30 and August 1 through November 30 of any year.

Permit	\$ 100.00
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2B. CITY OF NEWPORT NEWS, #17-1383, requests authorization to maintenance dredge, on an-annual dredge cycle, up 17,100 cubic yards of State-owned subaqueous bottom to maintain depths of minus five and a half (-5.5) feet mean low water along Salters Creek from the existing boat ramp at Walnut Avenue extending approximately 1,000 feet offshore of the 16th Street Bridge into Hampton Roads in the City of Newport News, with disposal of dredged material at Craney Island Dredged Material Management Area and an approved upland disposal site.

Permit	\$ 100.00
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2C. CHESAPEAKE BAY BRIDGE AND TUNNEL DISTRICT, #17-2003, requests authorization to place armor rock adjacent to existing trestle bents, tunnel islands, and bridge piers on an as-needed basis over the next five years, as part of a scour protection plan to ensure the continued safe operation of the Chesapeake Bay Bridge and Tunnel. This permit will include activities and construction currently covered under the existing Commission permit #07-2648, which will expire on March 31, 2018. Permit conditions will continue to require that the District provide specific plans to the Commission for review and approval prior to any activities, and that a vicinity map and coordinates be submitted for any temporary mooring buoys used by rock barges. The District will also be required to conduct a post-construction monitoring program, initiated immediately after construction and one-year post-construction, which shall include a detailed analysis of the rock placement and adjacent bathymetry.

Permit Fee	\$ 100.00
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3. CONSENT AGENDA ITEMS: There were no consent items to be heard.

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

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- 5. **NATIONAL PARK SERVICE, #17-0921,** item continued by request of the applicant. Item removed from agenda.

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- 6. **VIRGINIA ELECTRIC AND POWER COMPANY, #18-0010,** requests authorization to install a total of 14 ground water monitoring wells within non-vegetated wetlands and install a total of ten (10) piers for well access along the Southern Branch Elizabeth River and Deep Creek, adjacent to the Chesapeake Energy Center at 2701 VEPCO Street, in Chesapeake. This project requires a wetlands permit.

Racheal Peabody, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Peabody’s comments are a part of the verbatim record.

Staff recommends the following permit conditions to comply with USCG and VIMS comments:

- 1. The applicant apply and maintain reflective material at the channelward end of all proposed piers;
- 2. All pile driving must be accomplished using vibratory methods. The applicant will contact VMRC staff if an impact hammer must be used.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) in the Code of Virginia, staff recommends approval of the project with the above conditions. No compensation is deemed necessary based on VMRC’s Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

Ms. Peabody answered several questions from Associate Members concerning the number of wells, seepage and size of the piers.

Oula Shehub, Warren Deal and Dennis Lee, Representatives for the applicant, were all sworn. and their comments are a part of the verbatim record. The representatives answered several questions from Associate Members concerning protection of the river from potential runoff and the proposed placement of the wells in the water vs. on land.

Lori Firman was sworn in and her comments are a part of the verbatim record. Ms. Firman had a concern in regards to the potential of the seawater poisoning the ground water. The Representatives for the applicant explained that the wells are constructed and sealed with clay to keep the seawater from the ground water to prevent contamination.

Public hearing was closed and the matter was before the Commission for discussion and action.

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

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7. **CHRIS O'MALLEY, #17-2146**, requests authorization to construct approximately 110 linear feet of riprap revetment along the Eastern Branch Elizabeth River at the residence of 4010 Ridgewood Court in Chesapeake. This project requires a subaqueous and wetlands permit.

Racheal Peabody, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Peabody's comments are a part of the verbatim record.

Board is acting as Wetlands board.

Removal of the existing bulkhead will result in the conversion of non-vegetated wetlands and submerged lands to intertidal riprap. No compensation is deemed necessary based on VMRC's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines. Although the project will still result in a hardened shoreline, the proposed riprap will provide improved habitat compared to the timber bulkhead and should provide a longer lasting treatment to address the applicant's erosion with minimal disruption to the established vegetation landward of the structure.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed.

Ms. Peabody answered several questions from Associate Members concerning the possibility of the project being a living shoreline and the difference in elevation.

Chris O’ Malley, applicant, was sworn and his comments are a part of the verbatim record. Mr. O’Malley stated that he sold the property however he is paying for the project to be completed. Associate Member Zydron expressed concerns regarding the completion of the project and who would be held accountable for the project.

Ms. Peabody stated that signatures from Mr. O’ Malley and the new property owner were obtained during the application process which indicates both can be held responsible. Associate Member Zydron also inquired about a bond requirement with the seller.

Tony Watkinson, Chief, Habitat Management, advised that a bond is usually not placed on these projects, however, if it is determined during post-construction inspection that the project is not completed correctly, then those responsible would be in violation.

Public hearing was closed and the matter was before the Commission for discussion and action.

Associate Member Neill made a motion to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Associate Member Ballard was not present during final vote. Chair voted yes.

Permit	\$ 25.00
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- 8. **PEACOCK HOLDINGS VA, LLC, #17-1686**, requests after-the-fact authorization to retain two (2) unpermitted screened-in covered porches and all restaurant, bar and preparation equipment on the Oyster Farm Marina’s C-pier situated along Kings Creek in the Town of Cape Charles. The project is protested by two nearby property owners.

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Badger’s comments are a part of the verbatim record.

To address the noise and lighting on C-pier, the Commission is guided by an Attorney General’s opinion that states the Commission should only consider the direct physical effects of the proposed project upon adjacent or nearby properties and is not authorized to consider broad questions of land use policy and planning. Based on this opinion, staff believes the Town of Cape Charles is the proper tribunal for noise and lighting issues.

The Commission has wrestled with the issue of structures built over the water and the concept of water dependency for years. In fact, our first Subaqueous Guidelines developed in 1979 stated that the Commission will consider the water-dependency of projects and alternatives for reducing any anticipated adverse impacts. At the July 22, 2003, meeting,

the Commission considered and adopted a definition of water dependency that had been recommended by the Commission's Habitat Management Advisory Committee. That definition was subsequently included in the Subaqueous Guidelines adopted by the Commission in 2005. The definition states:

"As defined by the Commission, water dependent means "those structures and activities that must be located in, on, or over State-owned submerged lands." When applying this definition, both of the following questions must be answered affirmatively:

- 1. Is it necessary that the structure be located over water? and,*
- 2. Is it necessary that the activity associated with the structure be over the water?*

Use of the definition for water dependency does not necessarily preclude issuance of a permit for non-water dependent structures over State-owned submerged lands. At public hearing, the Commission may determine that, while a structure is not water dependent, it is a reasonable use of State-owned submerged lands. These types of projects are evaluated on a case-by-case basis."

Staff believes the structural additions and change of use on C-pier would be a more appropriate use on the upland and that the unauthorized additions and associated activities are not water dependent. Accordingly, staff believes the structures should be returned to their original use and the two covered screened porch additions be removed.

If, however, the Commission believes the change of use and structural additions are warranted, staff would recommend a civil charge of \$3,000.00 be assessed for any authorized work. The civil charge is based on a finding of minimal impact and major degree of non-compliance.

In addition, the General Assembly in 2004 forgave all the outstanding royalties that were assessed but never collected by the Commission between February 12, 1988 and July 1, 2005. The Commission resumed its longstanding practice of assessing and collecting, either annually or one-time rents and royalties for private use of state-owned submerged lands, effective December 1, 2005. A royalty was not collected from the previous marina owner based on the 2004 actions of the General Assembly.

Since no royalty was collected for the area where the unpermitted covered screened porches now exist, staff believes a royalty is now warranted. Staff, therefore, recommends that a triple permit fee of \$300.00 and triple royalties in the amount of \$3,600.00 be assessed for the encroachment of the two covered screened porches over 1,200 square feet of State-owned subaqueous land at a rate of \$3.00 per square foot.

Bill Parr, spoke on behalf the applicant Peacock Holdings, was sworn and his comments are part of the verbatim record.

Mr. Parr apologized for the mistake in use of the permit and was present to correct the mistake. He stated that changes were made to address the protester’s concerns such as: lowering the lights at the end of the pier to soften the lights and no amplified music after 10 p.m. at the end of the pier. When asked by Associate Member Neill, Mr. Parr accepted staff recommendation for the fees and agreed the fees were fair.

Bruce Ballard, retired Marine Police Captain, Kenneth Heath, slip holder, Major Jones, and Elizabeth Davis, Cape Charles resident and slip holder were all sworn and spoke in favor of the project. Their comments are part of the verbatim record. Those in favor of the positive changes that has taken place with the marina, the local seafood and entertainment that is available and the tourism that the marina brings, just to name a few.

John Bridgeforth, originally in opposition, was sworn and his comments are part of the verbatim record. After hearing the changes that were made with the lighting at the end of the pier and no amplified music after 10 p.m., Mr. Bridgeforth was in favor, however, he would be fully in favor if the ‘no amplified music after 10 p.m.’ was in writing.

Smitty Dize, Manager of Oyster Farm, was sworn and his comments are part of the verbatim record. Mr. Dize accepted accountability for the mistake.

There were no others that came forward in opposition.

The Commission discussed the previously adopted water dependent definition and heard from Tony Watkinson, Chief, Habitat Management.

Public hearing was closed and the matter was before the Commission for discussion and action.

After some discussion, Associate Member Zydron made a motion to approve the project as proposed contingent on the fees and charges recommended by staff. Associate Member Neill seconded the motion. The motion carried, 6-1-1. Associate Member Everett voted no. Chair abstained.

Royalty Fees (encroach over 1,200 Sq. feet @ \$3.00/linear foot - ATF)	\$3,600.00
Triple Permit Fee	\$ 300.00
Civil Charge	\$3,000.00
Total Fees	\$6,900.00

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9. **JAMES E. TIBBS, #15-1621**, requests authorization to construct a 262 foot long by 6-foot wide, private, noncommercial, timber pier, extending 187 feet channelward of mean low water, with a 35-foot long by 8-foot wide L-head, a 48-foot catwalk and an uncovered boatlift, adjacent to property situated along Palmer Cove in Northumberland County. The project is protested by an oyster ground leaseholder.

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

Mr. Madden stated that taff believes that in this case the solution that is most in keeping with the intent of§28.2-1205(D) of the Code of Virginia is to authorize the construction of a 6-foot wide by 187-foot long pier, as measured from mean low water, with two mooring piles, but without the L-head and lift Mr. Tibbs has requested. The pier should additionally follow the alignment depicted in the November 15, 2017, project drawings. This would present the least encroachment over the productive Headley lease while affording Mr. Tibbs the ability to exercise his riparian rights to reach navigable water within Palmer Cove, while preserving navigable access to Palmer Cove from Lot #7.

James and Linda Tibbs, applicants, were sworn and their comments are a part of the verbatim record.

Mr. and Mrs. Tibbs explained the proposed pier with other options to attempt to satisfy the nearby oyster ground leaseholder. Mr. & Mrs. Tibbs were still requesting a boatlift and platform at the end of the pier.

Luther Headley, spoke on behalf of the applicant James Headley, in opposition of the application, was sworn and his comments are a part of the verbatim record.

Mr. Headley spoke with concerns with the length of the proposed pier being vital to the productive oyster lease. Mr. Headley answered questions from Associate Member Lusk regarding the availability to continue to work the oyster lease. Mr. Headley stated that they will lose a big section of the oyster lease.

Mr. Madden and Associate Members discussed other options for the pier that would be less intrusive over the oyster lease while allowing Mr. Tibbs the ability to exercise his riparian rights to reach navigable water.

The Commission discussed the Code requirements regarding permits for private piers and heard form Tony Watkinson, Chief, Habitat Management.

Public hearing was closed and the matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to accept the staff recommendation. The motion failed due to lack of second motion. Associate Member Ballard made a motion to accept staff recommendation to include two (2) mooring piles that will be utilized to construct an uncovered boat lift. The pier should additionally follow the alignment depicted in the November 15, 2017 project drawings. Associate Member Minor seconded the motion. Associate Members Tankard and Lusk voted no. The motion carried, 6-2. Chair voted yes.

Permit	\$ 100.00
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10. PUBLIC COMMENT

Rocky Rhea

Mr. Rhea came before the Commission requesting to transfer his Oyster User Fee, although he did not meet the requirements due to his unique circumstances. Mr. Rhea’s comments are part of the verbatim record.

Mr. Rhea indicated that he was no longer interested in participating in the Commercial Fishery and wanted to sell his Oyster User Fee due to other employment opportunities.

Rob O’Reilly, Chief, Fisheries Mgmt., provided a brief description of Mr. Rhea’s eligibility to transfer his Oyster User Fee followed by a brief explanation of regulation 4VAC20-720-15 (D). Mr. O’ Reilly’s comments are part of the verbatim record.

Andrew Button, Head, Conservation/Replenishment, presented a PowerPoint presentation explaining Mr. Rhea’s Commercial history and his ineligibility to transfer his 2018 Oyster User Fee for the Board Members. Mr. Button’s comments are part of the verbatim record.

Mr. Button presented background history then explained that Mr. Rhea is eligible to purchase his 2018 Oyster User Fee but he does not meet the requirements to transfer his Oyster User Fee because he did not have 40 days of harvest in 2017 due to being on revocation for the majority of 2017.

The public hearing was closed and the matter was before the board for discussion and action.

After discussion by the board members, there was no motion made. No action was taken.

Kirk Miles

Mr. Miles spoke on behalf of his father, Mark Miles, for a request to transfer his Oyster User Fee to a non-family member. His comments are part of the verbatim record.

Mr. Miles stated that his father only had 13 days of harvest in 2017 and he is requesting a special exemption to transfer his Oyster User Fee due to his father's age and health issues.

Rob O'Reilly, Chief, Fisheries Mgmt., stated that staff is sympathetic but regulation does not allow this type of exemption. Staff recommendation is to transfer to a family member.

There was no motion made. No action was taken.

Lori Firman

Ms. Firman spoke on behalf of her father-in-law, James E. Firman, to request an exception to purchase Oyster User Fee. Her comments are part of the verbatim record.

Rob O'Reilly, Chief, Fisheries Mgmt., explained the eligibility to purchase Oyster User Fee as stated in 4VAC20-720-15 and also explained that the Oyster User Fee is a Limited Entry fishery.

There was no motion made. No action was taken.

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11. OFFENDERS

(11 – 1) - Thomas Freeman (1468) – was present and sworn in. Mr. Freeman's comments are part of the verbatim record.

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

August 23, 2017, Over limit fish pots (51) max allowed 30: 4 VAC 20-270-40(E)

Disposition:

October 10, 2017, Hampton General District Court

Fine: \$100.00; Court Cost: \$30.00

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

July 22, 2017, 31 fish pots set in navigable channel: 28.2-710

Disposition:

October 10, 2017, Hampton General District Court

Fine: \$60.00; Court Cost: \$126.00

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

July 22, 2017, Exceed fish pot limit while having crab pots in water: 4 VAC 20-270-40

Disposition:

October 10, 2017, Hampton General District Court

Fine: \$100.00; Court Cost: \$30.00

July 22, 2017, Keep hard crab from fish pot (2): 4 VAC 20-880-30(D)

Disposition:

October 10, 2017, Hampton General District Court

Fine: \$25.00; Court Cost: \$30.00

MATRIX GUIDELINE SUGGESTION: 1 YEAR REVOCATION OF ALL CRABBING LICENSES (§28.2-232 of the Code of Virginia)

Stephanie Iverson, Fisheries Mgmt. Manager, Sr., explained to the Commission the matrix guidelines, with PowerPoint slides. Ms. Iverson's comments are a part of the verbatim record

Mr. Thomas N. Freeman, a commercial fisherman registration licensee, was convicted on October 10, 2017 for one count of having over the limit of fish pots (51) max allowed (4 VAC 20-270-40E), one count of having 31 fish pots set in navigable channel (§ 28.2-710 of the Code of Virginia), one count of exceeding fish pot limit while having crab pots in

water (4 VAC 20-270-40), and one count of keeping hard crab from fish pot (2) (4 VAC 20-880-30D).

The Commission's matrix guidelines for sanctions specify that one conviction of taking hard crabs from fish pot and one conviction of exceeding fish pot limit while having crab pots in water, should result in at least a one year revocation of all crabbing licenses. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to revoke Mr. Freeman's Commission-issued crabbing licenses for a period of one year from the date of this Commission meeting, February 27, 2018 through February 26, 2019. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Freeman's crabbing licenses during this revocation period.

Commissioner Bull asked Mr. Freeman on his thoughts about the matrix guidelines that explained the penalty. Mr. Freeman felt that the penalty would be detrimental on the 4 households that rely on his income.

Associate Member Minor made a recommendation and motion for 3 year probation. Associate Member Zydron seconded the motion. Associate Member Zydron agreed with Associate Member Minor but stated that a maximum penalty is recommended if Mr. Freeman appears before the Commission again. The motion carried, 8-0. Chair voted yes.

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12. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-960-10 et seq., "Pertaining to Tautog," to modify the recreational and commercial seasons and the recreational possession limit.

Sydney Alhale, Fisheries Mgmt. Specialist, presented the information provided in the staff's evaluation, with PowerPoint slides. for the Board members. Ms. Alhale's comments are a part of the verbatim record.

Staff recommends the Commission amend Chapter 4VAC20-960-10 et seq., "Pertaining to Tautog," to establish the 2018 recreational season from January 1 through May 15 and July 1 through December 31 and increase the recreational possession limit to 4 fish per person. Staff also recommends the Commission establish the 2018 commercial season from January 1 through January 21, March 1 through May 15, and November 1 through December 31.

The public hearing was closed and the matter was before the board for discussion and action.

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

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13. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass," to establish the commercial black sea bass fishery quota for 2018, and modify the bycatch trip limit.

Jill Ramsey, Fisheries Mgmt. Specialist, presented the information provided in the staff's evaluation, with PowerPoint slides. Ms. Ramsey's comments are a part of the verbatim record.

Staff recommends the Commission amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass," to establish the commercial black sea bass directed fishery quota for 2018 at 664,000 pounds and change the bycatch trip limit cap to 1,500 pounds.

The public hearing was closed and the matter was before the board for discussion and action.

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

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14. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)," to set commercial scup landing period dates, establish the 2018 commercial summer period quota, and vessel trip limit.

Jill Ramsey, Fisheries Mgmt. Specialist, presented the information provided in the staff's evaluation, with PowerPoint slides. Ms. Ramsey's comments are a part of the verbatim record.

Staff recommends the Commission amend Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)," to establish commercial scup landing period dates, the 2018 commercial summer period quota, and set a vessel trip limit to 5,000 pounds for the summer period.

The public hearing was closed and the matter was before the board for discussion and action.

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

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15. **DISCUSSION:** Recommendations from the Finfish Management Advisory Committee concerning any necessary conservation measures for speckled trout, following recent cold stun effects on this stock. There is potential for an emergency regulation.

Lewis Gillingham, Director, SWFT, gave the briefing of the information provided in the staff's evaluation. Mr. Gillingham's comments are a part of the verbatim record.

Staff recognizes a segment of the recreational fishing community strongly believes the Commission should provide additional regulatory support for speckled trout, one of Virginia's most valued recreational fisheries. However the staff is unable to support their belief based on existing empirical data.

Chris Ludford, proxy for February 12, 2018 FMAC meeting and Butch Easton, Va. Beach Angler's Club spoke and both recommended no closure due to lack of data.

Public hearing was closed and the matter was before the Commission for discussion and action.

Associate Member Neill made a motion to make no changes to the current regulation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

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16. **DISCUSSION:** Request for approval of the 2018 Oyster Replenishment Plan and associated procurement procedures.

Andrew Button, Head, Conservation/Replenishment, presented the information provided in the staff's evaluation, with PowerPoint slides. Mr. Button's comments are a part of the verbatim record.

Staff recommended approval of the 2018 Oyster Replenishment Plan (ORP), as well as the associated Procurement Procedures.

The Following is the 2018 (ORP):

<u>FUNDING SOURCES:</u>	<u>AMOUNT:</u>
Non Federal	
General Fund (GF)	\$2,000,000-\$3,500,000
Restoration Specific (GF)	\$0-\$500,000
The Nature Conservancy	\$ 187,000
Non-General Funds (NGF) Various Sources	\$ 130,000

Seed Transfer:

James River

The Benefits (\$) to Cost (\$) ratio for moving seed oysters with State funds for grow out on public grounds is generally less than one. The Conservation and Replenishment Department (CRD) program has moved a small amount of seed from the James River to the Potomac tributaries the last several years. Recently staff has been developing a plan to increase the benefits of moving wild seed. Staff is recommending establishing a rotational harvest strategy in the Potomac tributaries. The tributaries in the rotation would be the Coan, Nomini, and the Yecomico. Staff is recommending moving 10,000 bushels of James River seed oysters in 2018. Half of this would go to the hand tong areas in the Nomini River and half would go to hand tong areas in Yecomico River. The areas that are planted with seed would not be opened until the 2019-2020 season. In each subsequent year, two rivers would be planted and two rivers would be open to harvest. Studies have shown that yields from moving wild seed are maximized by waiting 12-18 months prior to harvest. Although spat sets are uncommon in these areas, this rotational plan may be able to increase the opportunity to take advantage of a natural spat set if it occurs. The cost for each bushel of seed to be harvested, transported, and planted in these areas will be at least \$10.00/bushel. Funds from Oyster Resource User Fees will be used for this project.

10,000 bushels of seed oysters @ \$10.00/bu. \$100,000 (NGF)

Piankatank River and Great Wicomico River

In the Piankatank River, VMRC manages a successful program to allow private industry a modest harvest of seed oysters each year. In this program, private leaseholders sign up for the amount of seed oysters that they would like to harvest from the public seed grounds, and they must replace two bushels of shell for each bushel of seed oysters taken. The total standing stocks of oysters in the Piankatank River have been relatively consistent over the

past few years. Counts per bushel are relatively good (600 oysters/bushel). Staff recommends that 17,000 bushels of seed oysters be offered to the private industry in 2018. This program will also be offered in the Great Wicomico River; however, there are less seed available in that river. Counts in the Great Wicomico River are high but there is not as much shell on the seed bars as in the Piankatank River. Staff recommends a quota of 10,000 bushels in seed oysters for private growers from the seed bars in the Great Wicomico River. Participants taking seed oysters will replace two bushels of shell for each bushel of seed.

Shellplanting:**Bay and Tributaries:**

Most of the harvest areas in the Chesapeake Bay and tributaries received a very good spatset in 2015. This will result in some improvement in market harvest for the 2017-2018 season. There was an average to good spatset in 2016 on just about every area on the western shore, including all of the tributaries. Spatsets again were poor in the Pocomoke Sound area and below average for a lot of Tangier Sound in 2016. Spat sets in 2017 were average and widespread throughout most areas. The Pocomoke sound received a below average spat set for the third consecutive year and much of the set that the Tangier sound received appeared to have settled late in the year. Shells on public beds naturally degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most of the mid-salinity areas in Virginia, the half-life of shells appears to be 3 to 4 years. Shells must be replaced regularly, and the CRD staff determines the areas that are in need of new shell from the results of the VIMS-VMRC annual patent tong survey. The majority of the appropriation for 2018 will be used for adding new shell to those areas in most need of shell. Funds for oyster restoration are not likely to be enough to maintain the public beds at maximum productivity, but if the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained. In Table 1, there is a list of all of the areas and acreages of oyster beds that staff has determined to be in need of shell in 2018. In total, 900 acres of oyster beds need shell. Shell costs continue to increase, especially since 2010, the current funds of \$2 million will not be sufficient to add shells to all of these areas. The \$2 million in general funds will most likely cover the replenishment costs. The current funds should cover the replenishment effort on 400-500 acres of bottom. If funding is increased, the CRD-VMRC will be able to replenish additional areas. VMRC-CRD will seek to plant the largest quantity of comparable shells for the lowest area dependent per-unit price. This will likely be a combination of house, fossil, and dredged shells.

400 – 800 acres of oyster shell restoration

@ 1,000 bushels/acre @ \$2.50 - \$4.50/bushel = \$2,000,000-\$3,500,000 (GF)

Seaside of Eastern Shore:

The CRD Program will contract for shell planting for a Nature Conservancy project and assist with the site selection and shell planting monitoring.

Approximately 7 acres will be planted with shells harvested from local shell deposits. (CRD Notice 18-03)

7 acres @ 10,000 bushels of shells/acre @ \$2.50/bushel = \$187,000 (NGF-TNC)

Pocomoke Sound- VA MD line:

The Pocomoke Sound has seen decreased spat sets in recent years. CRD-VMRC has invested significant effort in re-shelling portions of the lower Pocomoke. The areas in the upper Pocomoke closest to the Maryland line have not had recent significant replenishment effort. One reason for this was concern over cross boarder poaching. It was felt by some that replenishment efforts would be wasted in areas that are prone to illegal harvest. As a result, these areas have been in need of shell for several years and have not been planted. It is generally recommended that areas that are in need of replenishment be either replenished or left closed to harvest. Due in part to the concern that any oyster resource present would be poached and at the request of local watermen portions of the upper Pocomoke were opened to harvest. Although, the cause is not completely clear spat sets have been down in the years following. In 2016 and 2017 staff contracted with a local watermen to move buried shell from Marshals and Byrd rocks. This shell was replanted on less sediment prone areas in the near vicinity. In 2018 CRD-VMRC would like to do a similar project in Areas 9 and 10. An approximate 100-200 foot area along the border would be cleaned and any shells and live oysters would be moved further into Virginia. If additional funding allows, the area that is cleaned would be replanted with large stones in a thin line to prevent cross boarder dredging and create a permanent poaching resistant sanctuary. If restoration specific General Funds are added to this year's budget a portion of these could be used for the stone portion of the project. There may also be an opportunity to complete this portion of the work with other restoration partners.

15,000 bushels @ \$2.00/bushel or 10 working days @ \$2,000 a day = \$20,000-\$30,000(NGF).

7,500 tons of stone @ \$40.00/ton \$300,000 (GF) (NGF)

Alternative Cultch Projects:

The supply of shell for restoration, replenishment, and aquaculture will always be limited. The demand for shells in most years tends to be higher than the supply leading to increasing prices. Over the last several years CRD-VMRC and other restoration partners have begun using alternative substrate in certain areas. Non-harvest locations have been

planted with larger sized substrate. In the Rappahannock, two small harvest areas were planted with a smaller sized substrate. The first plant used crushed concrete that was slightly larger than ideal. Some oysters were crushed during harvesting. The second area that was planted used a slightly smaller size. This area was open to harvest recently and it appears that the size of the alternative substrate is no longer an issue. Not all areas are suitable for planting with stone or concrete. The bottom needs to be firmer than areas that can be planted with shell. The CRD-VMRC has identified a number of locations that could have suitable bottom for alternative cultch plantings. These areas tend to have sandier bottoms and low oyster densities. Staff will submit Joint Permit Applications (JPAs) for several locations. The locations would be near the Deep Rock Area, two locations in the Lower Rappahannock, the Lower James River near Nansemond Ridge, and the lower Pocomoke Sound adjacent to Onancock Rock. Only a small portion of the permitted areas would be planted at any given time.

10-50 acres @250 tons/acre @ \$40.00/ton

\$100,000-\$500,000 (GF)

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2018 OYSTER REPLENISHMENT PROGRAM:

General: Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures, and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters, shell bed cleaning, and excavated shells, the Commission will set the per bushel price to be paid. For the production of oyster eyed larvae, the Commission will set a price per million larvae. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$1.50 per bushel for conch shells, \$1.00 per bushel for clam shells, and \$2.00 per bushel of oyster shells at the shucking house. Loading, transporting, and

planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2018 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

The Commission will also set the price per ton for ground concrete or granite stone that will be used as an alternative cultch material. Loading, transporting, and planting costs for this material will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Public Notices will be posted and all interested parties may apply. Contractors will be selected by lottery, or allowed to provide the material until the project is completed.

The agency anticipates that all other 2018 oyster replenishment activities will be completed using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2018 Replenishment Program.

Associate Member Tankard made a motion to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0-1. Associate Member Ballard abstained. Chair voted yes.

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- 17. DISCUSSION:** Extension of the Public Oyster Harvest Season in areas scheduled to close February 28, 2018.

Andrew Button, Head, Conservation/Replenishment, presented the information provided in the staff's evaluation, with PowerPoint slides. Mr. Button's comments are a part of the verbatim record.

Staff recommends no extension of the Public Oyster Harvest Season.

Associate Member Ballard made a motion to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0-1. Associate Member Minor abstained. Chair voted yes.

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18. REQUEST FOR PUBLIC HEARING: To consider proposed amendments to Chapter 4 VAC 20-1230-10 et. seq., "Pertaining to Restrictions on Shellfish," to change the required recertification time interval for Shellfish Harvest Safety Training Certification to conform to National Shellfish Sanitation Program guidelines.

Andrew Button, Head, Conservation/Replenishment, presented the information provided in the staff's evaluation for the Board members. Mr. Button's comments are a part of the verbatim record.

Staff requests approval to advertise for a public hearing to consider proposed amendments to Chapter 4VAC 20-1230-10 et seq., "Pertaining to Restrictions on Shellfish" for the March 27, 2018 Commission meeting to change the required recertification time interval for Shellfish Harvest Safety Training Certification to conform to National Shellfish Sanitation Program (NSSP) guidelines.

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

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19. REQUEST FOR PUBLIC HEARING: To consider proposed amendments to Chapter 4 VAC 20-620-10 et. seq., "Pertaining to Summer Flounder," to establish the 2018 recreational fishery management measures

Rob O'Reilly, Chief, Fisheries Mgmt., presented the information provided in the staff's evaluation. Mr. O' Reilly's comments are a part of the verbatim record. Staff requests a March public hearing that would establish the 2018 recreational management measures for Summer Flounder.

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

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- 20. REQUEST FOR PUBLIC HEARING:** To consider proposed amendments to Chapter 4 VAC 20-620-10 et. seq., "Pertaining to Summer Flounder," to establish commercial vessel possession limits.

Joe Cimino, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff's evaluation. Mr. Cimino's comments are a part of the verbatim record

Staff recommends advertising for a public hearing to consider amendments to Chapter 4 VAC 20-620-10 et seq."Pertaining to Summer Flounder," to modify the possession limits for summer flounder commercially harvested outside of Virginia waters.

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

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There being no further business, the meeting was adjourned at approximately 4:51 p.m. The next Commission meeting will be Tuesday, March 27, 2018.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary