

## MINUTES

## Commission Meeting

February 26, 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
J. Carter Fox	
S. Lynn Haynie	
Joseph C. Palmer, Jr.	Associate Members
Richard B. Robins, Jr.	
J. Edward Tankard, III	
Whitt G. Sessoms, III	
Paul Kugelman, 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. Senior Mgr.
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
Ande Ehlen	Fisheries Mgmt. Technician
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
James Rose	Captain, NA
Bruce Ballard	Captain, ES
Jamie Green	Captain, MA
Ron Berryman	1 <sup>st</sup> Sgt., Assistant Supervisor, SA
Jeff Copperthite	Master Marine Police Officer
Tom Fitchett	Master Marine Police Officer

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Gary Fox	Sr. 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.
Jordan Creed	Environmental Engineer, Sr.
Bradley Reams	Program Support Technician Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Robert Fisher
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Others present:

Joseph H. Bell	David Birch	Rob Rodgers
Chris Frye	J. Lawson Olson	John Holt, Jr.
Andy Lacatell	John B. Holt	Mike Hutt
Brad O’Berry	Mark Bender	Ashley Bender
Wade Walker	Chris Moore	Bob Fisher
T. Hazelwood	Bob Allen	Kim Huskey
David Bell	John Daniel	

and others.

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Commissioner Travelstead called the meeting to order at approximately 9:35 a.m. Associate Members Beck and Plumlee were absent.

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

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

**Commissioner Travelstead stated the agenda was approved by the Board.**

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

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**MINUTES:** Commissioner Travelstead asked for a motion for approval of the January 22, 2013 Commission meeting minutes, if there were no corrections or changes.

**Commissioner Travelstead stated the minutes were approved by the Board. Associate Member Fox noted he was not present at the last meeting and abstained.**

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

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

There were no questions or public comments. Commissioner Travelstead asked for a motion from the Board.

**Associate Member Tankard moved to approve items 2A and 2B. Associate Member Fox seconded the motion. The motion carried, 6-0.**

**2A. CITY OF NORFOLK, #12-1623,** requests authorization to replace a derelict timber groin at Sarah Constant Beach Park with a rock/sheet pile groin that will extend approximately 115 feet channelward of mean low water, to include a temporary mooring buoy adjacent to the work site, and to include the placement of approximately 6,250 cubic yards of material channelward of mean low water as beach nourishment, from approximately 3<sup>rd</sup> View Street to Ocean View Beach Park situated along Chesapeake Bay in Norfolk.

Permit Fee.....	\$100.00
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- 2B. **CHESAPEAKE DEPARTMENT OF PUBLIC WORKS, #11-0012**, requests authorization to modify their existing permit for the construction of new north and south bound fixed-span bridges along Dominion Boulevard (U.S.Route 17) crossing over the Southern Branch of the Elizabeth River to include installation of two (2) temporary falsework towers, each comprised of eight (8) 30-inch diameter pipe piles, beams and tower sections, and a temporary 30-foot wide by 190-foot long open-pile trestle pier to allow construction access to work barges.

No applicable fees – Permit Modification

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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission).

There were no consent items.

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- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.**

No closed meeting was required.

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- 5. **JOSEPH BELL, #12-1705**, requests authorization to construct a second, non-commercial open-sided boathouse at his property (116 Cove Drive) situated along Goose Creek in York County. The project is protested.

Randy Owen, 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. He explained that there were several protestants and all but one had been resolved.

Wade Webb, Contractor for the applicant, was sworn in and his comments are a part of the verbatim record. In answer to the question raised earlier by the Board, the roof was 4 feet making the structure a total of 15 feet above the existing deck.

Commissioner Travelstead asked for anyone in opposition who wished to speak and there were none. He stated the matter was before the Commission.

**Associate Member Robins said he appreciated the protestant’s concerns but the dimensions of the structure were reasonable and the staff recommendation was appropriate and he made a motion to approve the request. Associate Member Fox seconded the motion. The motion carried, 6-0.**

Permit Fee.....	\$25.00
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- 6. **GRANT ANCARROW, #11-0533**, requests a permit modification for after-the-fact authorization to retain a wooden stairway, an upstairs room, two overlook platforms, and additional upstairs flooring that was constructed on a previously permitted, partially sided, non-commercial boathouse adjacent to his property located at 1 Haile Road situated along Piscataway Creek in Essex County.

Bradley Reams, Program Support Technician, Sr., gave the briefing of information in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Randy Owen, Environmental Engineer, Sr., in answer to a question by the Board stated that there was boating traffic in the summer in this area and when the boathouse was originally approved administratively, the siding on the boathouse was requested by the applicant and to provide added protection for the boat. His comments are a part of the verbatim record.

Tony Watkinson, Chief, Habitat Management, in answer to a question by the Board regarding the proposed civil charge explained that the permit deviation was determined to be moderate degree and not a major because of the recommended limit for future use. His comments are a part of the verbatim record.

John Daniel, Attorney representing Mr. Ancarrow, was present and his comments are a part of the verbatim record. Mr. Daniel explained that the applicant had been cooperating with the staff and had agreed with the staff’s recommendation on everything but the removal of the stairs. He noted that this 2<sup>nd</sup> floor was only added to give the structure more stability and stop the swaying of the building so there was no further construction to be done. He stated the rest he felt was more for aesthetics.

Commissioner Travelstead asked if there was anyone else to speak for the applicant or anyone in opposition. There were no more public comments. He stated the matter was before the Commission.

**After much discussion by the Board, Associate Member Sessoms moved to approve the request, but allowing the stairs to remain and with the proffers agreed to by the applicant and a permit restriction to be added for the upstairs to only be used to**

store boating equipment. He added the civil charge assessment would remain \$2,000.00. Associate Member Palmer seconded the motion.

Associate Member Tankard said he felt what was done for the upstairs would suggest a residence above the boathouse and he moved to consider this a major non-compliance issue with a civil charge assessed for \$3,000.00. Associate Member Fox seconded the amendment motion. The motion carried, 4-2. Associate Members Robins and Sessoms both voted no.

The original motion made by Associate Member Sessoms with the amended civil charge motion was voted on and carried, 6-0.

Civil Charge.....	\$3,000.00
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- 7. **HELEN BIRCH, #12-1183**, requests after-the-fact authorization to retain six (6) support piles that were installed to stabilize two (2) existing permitted concrete breakwaters adjacent to her property along Chincoteague Channel at 3708 Main Street in the Town of Chincoteague.

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information in the staff's evaluation with slides. His comments are a part of the verbatim record. He explained that this was not maintenance as there were new pilings in a new footprint area. He noted this was an extremely minor deviation but it could not be approved administratively.

David Birch, representing the applicant, was sworn in and comments are a part of the verbatim record. Mr. Birch stated he thought he was just doing maintenance on the structure in order to keep it from failing. He noted he had asked the Town Council and was told they did not need anything.

There was no one present in opposition.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Palmer said he felt nothing egregious was done here and he moved to allow them to keep the pilings without a civil charge. Associate Member Sessoms seconded the motion. The motion carried, 6-0.

Permit Fee.....	\$25.00
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8. PUBLIC COMMENT:

Striped Bass Tagging Program

Associate Member Robins asked staff to prepare a presentation for the Commission that examines the status of the striped bass tagging program, focusing on the characteristics of commercial landings, including fish weight and location of landings, rate of discards, and how it relates to the individual transferable quota now used in that commercial fishery.

After some discussion with staff, Commissioner Travelstead said the Board agreed to move this matter forward and take it to FMAC for their review.

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9. **MR. RICKY LEE ZIPP, NOTICE TO COMPLY:** Mr. Ricky Lee Zipp has failed to remove a 1971 Bristol Sloop sail boat #VA 6418 AU that is resting on state bottom after being notified to do so. This situation is being pursued by MPO J. A. Copperthite of the Law Enforcement Division.

Jeff Copperthite, Master Marine Police Officer, gave the briefing on the staff's evaluation. Officer Copperthite noted that this had been ongoing for some time and that Mr. Zipp only took possession of the boat after it was abandoned.

**Associate Member Robins moved to have staff notify Mr. Zipp that he has to remove the boat by the next Commission meeting and if it is not removed by that time, the Commission will seek a Court order for it to be removed by Mr. Zip at his expense; and, further that the Commission would pursue a civil penalty. Associate Member Tankard seconded the motion. The motion carried, 6-0.**

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10. **DISCUSSION:** A Review of Law Enforcement assets and response to oyster poaching.

Richard Lauderman, Chief, Law Enforcement, gave the briefing on the status of this issue. His comments are a part of the verbatim record.

Rob O'Reilly, Chief, Fisheries Management explained that staff had sent a survey form to all the Committees (FMAC, CMAC, SMAC) and asked them to indicate the level of severity for various fishery offenses. He noted that there had been some responses from members of some of the committees and the survey was progressing. His comments are a part of the verbatim record.

Commissioner Travelstead stated that the Commission did not hear much from Law Enforcement at the meetings and there might be a need for the Commission to require quarterly reports; as all fisheries have enforcement problems.

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Commissioner Travelstead appointed three Board members to serve on the Law Enforcement Subcommittee to discuss measures to address the increased oyster poaching violations by the industry:

Associate Members Haynie, Palmer, and Robins

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- 11. PUBLIC HEARING:** To consider two proposals to utilize the Marine Fishing Improvement Fund: the Virginia Marine Products Board Proposal for Continuing to Test Market Chesapeake (Cownose) Ray, and, the Virginia Institute of Marine Science Proposal to determine male cownose ray movement after mating in the Chesapeake Bay.

**Alicia Nelson**, Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator), gave the briefing on the information in the staff's evaluation. Her comments are a part of the verbatim record.

The Commercial Fishing Advisory Board (CFAB) was provided a copy of the two project proposals, as follows, for their review:

- A. Proposal to Continue to Develop a Market for Chesapeake (Cow nose) Ray. Year 6. Mike Hutt, VMPB. \$55,900.
- B. Proposal to Determine Male Cownose Ray Movement After Mating in Chesapeake Bay: a Potential Fishery Management Concern. Robert Fisher, VIMS. \$26,123.

Mrs. Nelson explained that five out of eight CFAB members commented on proposed projects. Three members were in favor of both projects, and two members were in favor of continuing the market development for cownose ray (item A), but not in favor of any new projects (item B). Those members who were not in favor of item B felt that the funds should not be focused solely on cownose rays.

She noted that staff recommended funding approval of both projects from the Marine Fishing Improvement Fund (MFIF), totaling \$82,023.00.

Dr. Robert Fisher of VIMS explained that they needed to do this study as the males and females mate in May and June and then the males leave the area. He said that they want



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to find out where the males go. Dr. Fisher noted that as the females have only one pup a year this might be important information to have in the future for determining reproductive needs.

There were no other public comments. Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Palmer said that he could see a need for a study as proposed by project A, but because of budget cuts he recommended not approving project B at this time. He made a motion to approve project A and not project B. Associate Member Sessoms seconded the motion**

**After further discussion by staff and the Board, Associate Member Robins made a substitute motion, because he said he felt there was no understanding of the male’s movements, which was needed and moved to approve both projects A and B. Associate Member Fox seconded the motion. The motion carried, 5-1. Associate Member Palmer voted no.**

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- 12. PUBLIC HEARING:** Proposed adoption of emergency amendments to Chapter 4VAC20-950-10 et seq. “Pertaining to Black Sea Bass”, to lower the recreational black sea bass fishery possession limit of 25 fish to 15 fish, through the end of February 2013, in order to comply with the interstate fishery management plan requirements for black sea bass.

Rob O’Reilly, Chief, Fisheries Management, gave the briefing on the information in the staff’s evaluation with slides. His comments are a part of the verbatim record.

There were no public comments.

After some clarification questions were answered by staff, Commissioner Travelstead asked what was the pleasure of the Commission.

**Associate Member Robins moved to approve the emergency amendments, as a part of the final regulation. Associate Member Fox seconded the motion. The motion carried, 6-0.**

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- 13. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-620-10 et seq., “Pertaining to Summer Flounder,” to establish the 2013 recreational fishery management measures; and to consider an industry request to increase the current landing limit of 10,000 pounds, from the commercial summer flounder fishery

outside of Virginia, to 12,500 pounds, per 15-day landing period, effective the first Monday in March.

Allison Watts, Fisheries Management Specialist, reviewed the information in the staff's evaluation with slides for the Board, explaining the proposed change to the commercial vessel trip limit was in response to an industry request. Her comments are a part of the verbatim record.

There were no public comments during the Commercial Fishery portion of the public hearing.

After some discussion, Commissioner Travelstead asked about the pleasure of the Commission.

**Associate Member Palmer moved to accept the staff recommendation for the Commercial Fishery, which was to change the trip limit from 10,000 pounds to 12,500 pounds. Associate Member Tankard seconded the motion. The motion carried, 5-0-1. Associate Member Robins abstained.**

Ms. Watts provided additional handouts to the Board which included additional public comments received for the recreational issue. She continued her review of the staff's evaluation regarding the recreational fishery and her comments are a part of the verbatim record. She explained that Virginia has an opportunity to liberalize its management measures for 2013 from the 2012 measures. Staff recommended a 16-inch minimum size limit, four fish possession limit and no closed season for the 2013 recreational fishery.

After further discussion of the staff and board, Commissioner Travelstead asked for comments from the public.

Bob Allen, active angler and representative for the Angler Association, was present and his comments are a part of the verbatim record. Mr. Allen explained that, as he had told the adhoc committee, Virginia had been conservative with its creel limit, which had caused the State to be under its target. He said that some of the individuals that he spoke with were in the Recreational Fishery community and at that time he took a poll. He said even at a 15.5-inch minimum size limit and four-fish limit, the landings projections for 2013 are under quota and this could mean that Virginia's quota could be lost. He said they were concerned also because other States were not controlling their fisheries. He noted that 90% of what was caught was done so by private boat owners. He said the Commission should consider not being so conservative and he recommended 15.5-inch minimum size limit and the four-fish limit. He stated this was the same as FMAC.

There were no other public comments.

Rob O'Reilly, Chief Fisheries Management said there was new data and concern by ASMFC that a reallocation of quota was needed. He added no one was taking the quota, it was not a quota grab, it was unused liberalization potential being pooled for use by other States.

After further discussion between the staff and the Board, Commissioner Travelstead said that the matter was before the Commission.

**Associate Member Robins moved to accept Option C, 16-inch minimum size limit and a four-fish limit with no closed season. Associate Member Palmer seconded the motion. The motion carried, 6-0.**

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- 14. **PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-530-10 et seq., "Pertaining to American Shad" to consider the establishment of a limited permitting system, for the American shad bycatch allowance fishery, to comply with interstate management plan requirements and to assign fishing permits in a fair and equitable manner.

Adam Kenyon, Fisheries Management Specialist, reviewed the information in the staff's evaluation. His comments are a part of the verbatim record.

There were no questions from the Board.

Commissioner Travelstead opened the public hearing. There were no public comments. He asked about the pleasure of the Commission.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Fox seconded the motion. He noted that the changes were reasonable. The motion carried, 6-0.**

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- 15. **PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-270-10 et seq., "Pertaining to Crabbing" to define barrel limits that correspond with previously establish bushel limits for the upcoming 2013 crab pot season that begins March 16, 2013; and, to consider establishing per trip vessel limits for the crab harvest. Proposed amendments to Chapter 4VAC20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" to consider options to limit the use of agents in the crab pot and peeler pot fisheries.

Renee Hoover, Biological Collection Program, Supervisor, reviewed the information in the staff's evaluation. Her comments on the barrel limit for blue crabs are a part of the verbatim record.

After some clarification discussion, Commissioner Travelstead asked for public comments. There were none.

**Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0.**

Ms. Hoover continued with her review regarding changes for limiting the use of agents for crab license holders. She explained that there was a proposal to preserve the number of agents (153) approved in 2012 while giving a 10% buffer for those that did not use an agent in 2012. Her comments are a part of the verbatim record.

The public hearing was opened.

John Holt, a new waterman to the fishery, was present and his comments are a part of the verbatim record. Mr. Holt said he was concerned as he was just entering the fishery and had planned to work part-time and have an agent work part-time. He said in all fairness he should not be denied his application submitted before the changes occurred.

Mark Bender, crabber on the Eastern Shore, was present and his comments are a part of the verbatim record. Mr. Bender explained that he had agreed to the 27 bushels limits established in the fall, but his 87 year old father did use an agent. He stated the bigger crabbers controlled the price for market and this action would be a negative impact to himself and his family; as active crabbers with only 85 crab pot licenses.

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

**Associate Member Robins said this was a reasonable measure for 2013 and he moved to accept the staff recommendation. Associate Member Palmer seconded the motion. The motion carried, 4-2. Both Associate Members Tankard and Haynie voted no.**

Associate Member Palmer suggested making some kind of change to help Mr. Bender and also suggested this be brought before the CMAC and to notify Mr. Bender. Mr. O'Reilly explained that there would not be a public hearing until May as there would be a status report in April on the Crab Dredge Study.

Commissioner Travelstead noted later in the meeting that it might be doable to combine licenses as long it did not involve latent pot licenses; so an increase in crabbing activity or harvest would not occur.

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- 16. **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.”

Stephanie Iverson, Fisheries Management Manager, gave the briefing on the two cases being brought back before the Commission from the previous month.

**Ricky K. Guthrie** – was not present at the hearing

Commissioner Travelstead, as Mr. Guthrie was not at the hearing, announced that Mr. Ricky K. Guthrie’s license was suspended until he comes to the Board meeting.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, asked if Mr. Guthrie knew about this hearing and did staff have a signed certified receipt of his notification letter. Ms. Iverson responded yes, and added it was a personal delivery by a Marine Police Officer.

**Wade D. Walker**

Ms. Iverson stated Mr. Wade Walker was present. She stated he had all of his reporting up to date as of this date.

Wade Walker was sworn in and his comments are a part of the verbatim record. Mr. Walker stated he had gotten his missing reports in today.

Ms. Iverson stated the staff’s recommendation was for two years probation.

**Associate Member Palmer moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0.**

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- 17. **REQUEST FOR PUBLIC HEARING:** Request to establish regulations pertaining to Atlantic menhaden, to comply with requirements established by HB2254/SB1291 and Amendment 2 to the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan for Atlantic Menhaden.

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

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Paul Kugelman, Assistant Attorney General and VMRC Counsel, noted that the Code of Virginia gave the scope of VMRC's authority for the menhaden fishery and that he would be available to work with staff on developing management measures.

Commissioner Travelstead stated that the Board agreed to hold the public hearing.

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There being no further business, the meeting was adjourned at approximately 3:30 p.m. The next regular meeting will be held Tuesday, March 26, 2013.

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Jack G. Travelstead, Commissioner

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Katherine Leonard, Recording Secretary