

## MINUTES

## Commission Meeting

March 22, 2016

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 M. R. Bull	Commissioner
Chad Ballard	
A. J. Erskine	
James E. Minor	Associate Members
Ken Neill, III	
John E. Tankard, III	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Director, Human Resources
Todd Sperling	Business Systems Specialist, Sr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Management Mgr.
Alicia Nelson	Coordinator, RFAB/CFAB
Jill Ramsey	Fisheries Mgmt. Planner
Lewis Gillingham	Director, SWFT
Laurie Dozier	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Ryan Jiorle	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Ron Cagle	Marine Police Officer
David Drummond	Marine Police Officer
Jamie Hogge	Marine Police Officer
Nathan Clark	Marine Police Officer
Fred Mitchell	Marine Police Officer
Austin Brown	Marine Police Officer
Marshall Reedy	Marine Police Officer

Commission Meeting

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Chief Engineer Western Shore
Mark Eversole	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Maulorico	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Brad Reams	Environmental Specialist
Daniel Faggert	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Emily Hein
--------------	-----------------	------------

Others present:

Warren Veazey	Greg Ray	Mike Oesterling
Wayne McCoy	George Martin	Steve Chaconas
Geoff Fout	Kenny Blanchard	Amber C. Gironnds
Kim Huskey	Brian White	Mike Avery
Randy Richardson	Terry Haydon	Debbie Haydon
Jake Hiles	Don Lancaster	Donald Bowers
Jeff Brook	Robert Matthews	Charles E. Brooks
Emory Lewis	Matthew Cook	Robert G. Samuel
Robert Johnson	Pat Burdette	Rich Gresens
Lauren Karpie	Craig Freeman	Tom Hatek
Chris DeMasi	Jerry Hu Gates	George Reich
Butch Pierce	Larry Pittman	Bill Graham
Zack Hoffman	Jon Knowski	Chris A
Justin Stevens	Jonathan Carter	Wes Blow
Joshua Anderson	Andy Lacatell	Chad Martin
Jorj Head	Daniel LeGranda	Max Flowers
Ben Shepherd	Aubrey Williams	Tucker Curran
Gerald Corduc	Alex Bell	

and others.

\* \* \* \* \*

**Commission Meeting**

**17585  
March 22, 2016**

Commissioner Bull called the meeting to order at approximately 9:35 a.m. Associate Members Kellum and France were both absent.

\* \* \* \* \*

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

\* \* \* \* \*

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

Tony Watkinson explained that Item 9, Virginia Holdings lease application was pulled because the protest had been resolved.

Robert O'Reilly, Chief, Fisheries Management, explained that there was an additional item to be added to request approval of the RFAB recommended expenditure to the Cost Center supporting the RFAB Coordinator from the Recreational Saltwater Fishing Development Fund.

**Associate Member Zydron moved to approve the agenda, as amended. Associate member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

**MINUTES:** Commissioner Bull asked if there were any changes or corrections to be made to the February 23, 2016 Commission meeting minutes. There were no changes.

**Associate Member Erskine moved to approve the minutes, as presented. Associate Member Minor seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member Ballard abstained as he was absent at the last meeting.**

\* \* \* \* \*

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

\* \* \* \* \*

**Commission 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 were three page two items to be heard, 2A through 2C. He reviewed these items for the Board. His comments are a part of the verbatim record.

After some discussion for clarification for one of the items, Commissioner Bull opened the public hearing for any public comments for any of the items presented. As there were no comments, pro or con, he stated the public hearing was closed and the matter was before the Commission for discussion and action.

**Associate Member Zydron moved to approve the three page two items A through C, as proposed. Associate Member Tankard seconded the motion. The motion carried, 7-0. Chair voted yes.**

- 2A. **NORFOLK SOUTHERN RAILWAY COMPANY, #15-1667**, requests authorization to install approximately 554 linear feet of bulkhead a maximum of five and one-half (5.5) feet channelward of an existing bulkhead, 252 linear feet of bulkhead a maximum of six and one-half (6.5) feet channelward of an existing bulkhead, 2,925 square feet of stone scour, and 115 linear feet of riprap at the Norfolk Southern Lambert's Point Dock, adjacent to Pier 6 along the Elizabeth River in Norfolk. Staff recommends approval of the project as proposed with special conditions to protect anadromous fish species to include: a time-of-year restriction from February 15 to June 15 of any year, the use of a vibration hammer to initiate pile placement, the use of wooden pile cap cushions for remaining pile driving, and the use of a bubble curtain during pile driving.

Permit Fee	\$100.00
------------	----------

- 2B. **LOUDOUN COUNTY DEPARTMENT OF TRANSPORTATION AND CAPITAL INFRASTRUCTURE, #16-0051**, requests authorization to construct a four-lane, divided, clear-span, roadway bridge, with associated temporary fill for construction access, and install a suspended, 22.3kV power line over Tuscorora Creek associated with the proposed Crosstrail Boulevard (Segment B) extension project in Loudoun County. Recommend approval with standard instream work conditions and a time-of-year restriction from April 15 through June 15 and August 15 through September 30 of any year to ensure protection of the State-threatened green floater mussels.

Permit Fee	\$100.00
------------	----------

- 2C. **HENRY COUNTY PUBLIC SERVICE AUTHORITY, #12-0052**, requests authorization to replace an existing water withdrawal structure with three (3)

intake screens and associated encasement structure encroaching over 1,400 square feet of State-owned subaqueous bottom and extending approximately 20 feet channelward of ordinary high water at the existing Henry County Public Service Authority Upper River Water Filtration Plant along the Smith River, downstream of the Philpott Dam and Town Creek, in Henry County. Staff recommends approval of the project with a time-of-year restriction of October 1 through June 30 of any given year to protect endangered Roanoke Log Perch, any excavated material shall be stockpiled in such a manner to prevent reentry into the stream, and the implementation of strict erosion control measures in accordance the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook.

Permit Fee	\$100.00
------------	----------

\* \* \* \* \*

**3. CONSENT AGENDA ITEMS.** None.

\* \* \* \* \*

**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** A closed meeting was not necessary.

\* \* \* \* \*

**5. BENNETT THOMAS, #15-1075,** requests authorization to install and backfill 142 linear feet of vinyl bulkhead a maximum of two feet channelward of the existing bulkhead; construct a 5-foot wide by 76-foot long private pier including a 12-foot by 12-foot L-head, a 14-foot by 14-foot open-sided gazebo, an uncovered boat lift, a 4-foot by 6-foot lifting float, a 118 square-foot decking area with an attached 16 linear-foot timber wave wall; install a 7-foot wide by 86-foot long marsh sill with sand backfill and wetlands vegetative plantings on the landward side; install a 6-foot wide by 47-foot long riprap revetment; and to remove and grade an existing phragmites area and plant with wetlands vegetative plantings, all adjacent to 1104 Inland Road situated along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a wetlands and subaqueous permit.

Justin Worrell, 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 noted that the VMRC held a wetlands public hearing at the main office on March 17, 2016. The applicant’s agent was the only one that attended the hearing.

Mr. Worrell explained that staff evaluated the merits of the project and considered all of the factors contained in §28.2-1205(A) and §28.2-1302(10)(B) in the Code of Virginia, staff recommended approval of the project, as proposed. Given that there were no

proposed vegetated wetlands losses, and that the proposed living shoreline was designed to protect and enhance the existing marsh, staff stated that they felt compensation was not necessary for the conversion of non-vegetated wetlands to intertidal rubble or vegetated wetlands, nor for the conversion of areas of phragmites to other vegetated wetlands. A royalty should be assessed, however, for the backfill and installation of the proposed replacement bulkhead. The assessment would normally be \$1.00 per square foot of sub-tidal bottom filled channelward of the existing wall, but in researching the application history of this site, staff learned that a replacement bulkhead was applied for in 2006 (Elizabeth Thomas, VMRC #06-2887). Although a City of Chesapeake wetlands permit was issued at that time, and Habitat Management initiated a public interest review for the subaqueous portion, a Commission permit was never issued prior to bulkhead installation. Given that history, staff recommended that the new bulkhead proposal be approved with essentially a royalty that included the payment for the area filled in association with the 2006 application and this current application. The applicant had agreed to pay the proposed royalty amount. The current application had been amended to reflect a one-foot encroachment channelward of the existing structure.

William McCoy, agent for the applicant, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. McCoy explained that the existing bulkhead had failed and the walkway had been washed away. He said that the added wave wall and doing a living shoreline would be better for the wetlands species to be planted.

Commissioner Bull opened the public hearing and asked for public comments, pro or con? There were none and he stated that the matter was before the Commission for discussion or action.

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

Royalty Fee (Filling 273 sq ft. @ \$1.00/sq. ft.)	\$273.00
Permit Fee	\$100.00
Total Fees	\$373.00

\* \* \* \* \*

- BLANCHARD CLAM COMPANY INC., #15-1076**, requests authorization to retain or replace a previously permitted crab shedding pier that is 213-foot long by 4-foot wide, and which includes a 16-foot by 12-foot enclosed shed, a 40-foot by 30-foot open-pile platform with upwellers, oyster grader and tables; and to construct a 6-foot by 4-foot enclosed water intake pump house and install 24 Taylor floats along Pungoteague Creek in the Town of Harborton, Accomack

County, to support an aquaculture shellfish operation. The project is protested by nearby property owners.

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

Mr. Badger explained after evaluating the merits of the entire project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended after-the-fact approval of the project as submitted with the following conditions:

- Permittee agrees to transfer the permit to the property owner if or when the rental agreement is terminated or the property is sold;
- To reduce noise pollution and lessen the impact to State bottom, the applicant agrees to pipe or funnel the water from the upwellers down to an elevation no higher than mean high water; and,
- The applicant agrees to maintain the structure in good condition.

Mr. Badger stated that staff also recommended a triple permit fee of \$300.00, a one-time triple royalty assessment of \$1,224.00 based on the additional platform and shed encroachment (272 square feet over State-owned submerged land) at a triple rate of \$4.50 per square foot, plus a one-time royalty of \$35.40 for the Taylor floats at a rate of \$0.05 per square foot (708 square feet) for a total royalty of \$1,259.40.

Mr. Badger said that staff recommended the Commission consider a civil charge of \$1,000.00 for the unauthorized oversized storage shed, oversized platform, water pumps and Taylor floats. This recommendation was based on minimal impact and minor deviation.

Commissioner Bull asked Mr. Blanchard if he agreed with the civil charge. Mr. Blanchard stated that it was unfair to charge him as it had been a long time and he was not aware of this until he decided to rebuild.

Commissioner Bull asked if there were any public comments, pro or con. There were none and he stated the matter was before the Commission for discussion or action.

**Associate Member Tankard stated he did support approving the permit, but without the civil charge. He moved to approve the after-the-fact request with no civil charge. Associate Member Ballard seconded the motion. Associate Member Erskine asked if this included the triple permit fee and royalty fee. Associate Member Tankard and Ballard agreed that it did. The motion carried, 7-0. Chair voted yes.**

Royalty Fees (ATF-Triple) (encroachment 272 sq. ft. @\$4.50 sq. ft.)	\$1,224.00
Royalties Fees (ATF-Triple) (708 sq. ft. @ \$0.05/sq. ft.	\$ 35.40
Permit Fee (ATF-Triple)	\$ 300.00
Total Fees	\$1,559.40

\* \* \* \* \*

- GEOFF FOUT and CHARLES BASHARA, #15-1779**, request authorization to construct a 17-foot by 79-foot, open pile, commercial restaurant deck, channelward of an existing commercial deck, extending 22 feet channelward of mean low water, and an after-the-fact permit for a 18-foot x 24-foot floating dock with a 6-foot x 20-foot access ramp, and a 16-foot x 8-foot floating dock at 4300 Colley Avenue, on Knitting Mill Creek in the City of Norfolk.

Rachael Maulorico, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation with slides. Her comments are a part of the verbatim record.

Ms. Maulorico stated that staff recommended denial of the proposed deck extension. Staff recommended approval of the after-the-fact application to retain the two floating docks and gangway with the condition that the ladder of the southern dock attaches to the current cantilevered deck. Staff further recommended that due to the after-the-fact nature of the request that approval of any the items requested be conditioned upon the payment of a triple permit fee of \$75.00 and a triple royalty fee of \$1,680.00 for the public floating docks. Furthermore, staff recommended the Commission consider accepting a civil charge in lieu of further enforcement actions. Staff believed a civil charge of \$1,000.00 would be appropriate if the project was approved, as recommended by staff, based upon a minimal impact and a minor degree of deviation or non-compliance.

Geoff Fout, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Fout said he took over in 2013 as he had been given the 1<sup>st</sup> option to buy. He stated the city approved the floating dock as it was owned by landowners and not on public land.

Tony Watkinson, Chief, Habitat Management, explained that this had been permitted in 1983 and there was no question as to whether it was state-owned bottom at that time. He stated it would have to be proven by the applicant with appropriate documentation that it was not State-owned bottom.



Mr. Fout explained that the area would be much improved with the remodeling and the City Council and the Virginia Department of Health had approved it. He stated that a larger structure had been proposed and they had made it smaller.

After further discussion, Commissioner Bull opened the public hearing for public comments, pro or con. There were none. He stated the matter was before the Commission for discussion or action.

**After much discussion, Associate Member Zyrdron moved to approve the after the fact permit, including the deck expansion, with all royalty and permit fees; and no civil charge. Mr. Watkinson stated that royalty assessment did not include the deck expansion. Associate Member Zyrdron stated it included royalties for the deck. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.**

Royalty Fees (ATF-Triple fees) (encroachment on 560 sq. ft. @ \$1.00/sq. ft.)	\$1,680.00
Royalty Fees (encroachment of 1,036 sq. ft. @ \$2.00/sq. ft.)	\$2,072.00
Permit Fee (ATF Triple Fees)	\$ 75.00
Total Fees	\$3,827.00

\* \* \* \* \*

- 8. **GREG RAY, #14-0066**, requests authorization to install four (4) 80-foot long hex box breakwaters with beach nourishment, aligned 75 feet channelward of mean low water, adjacent to his property situated along the Great Wicomico River in Northumberland County.

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

Mr. Madden stated that the staff remained concerned with the deployment of modular concrete breakwater structures in lieu of riprap breakwaters especially in locations exposed to significant wave action. The applicant had however incorporated several modifications to minimize impacts on existing aquatic resources and improve the potential to achieve the desired shoreline protection. To further minimize the potential impact on existing beds of SAV resulting from reflective wave energy, staff recommended the two southernmost breakwaters be faced with a properly sloped veneer of Class II and Class III riprap to dissipate wave energy. Staff also recommended the following five special conditions required in the past to monitor the efficacy of the modular breakwaters:

1) Permittee agrees to complete the following monitoring requirements for the authorized breakwaters to determine whether the structures are effective at preventing further erosion of the shoreline, holding sand in place, and building up additional sand for erosion control, and whether the structures themselves are stable. The monitoring shall include:

i) A fixed baseline approximately parallel to the shoreline established on the upland in a location that is reasonably expected to remain during the monitoring period and that is referenced to other fixed points so that it can be reproduced if necessary. The baseline shall have horizontal and vertical controls. The horizontal control may be local. The vertical control shall be based upon MLW. The baseline shall be marked by permanently driven steel pipes, rods, or concrete monuments on the upland and at a minimum, permanent markers shall be placed at any angle of the baseline.

ii) An array of fixed transects shall be established perpendicular to the baseline so they begin a minimum of 25 feet upstream of the structures and end a minimum of 25 feet downstream from the structures. The transects shall be positioned so there is one located at each end of the 80-foot, Hex box breakwater. The transects shall extend from the baseline and extend 50 feet channelward of the breakwater structures.

iii) Elevations shall be taken along each transect at a horizontal spacing sufficient to document any change in slope greater than  $10^\circ$  and no more than 10 feet apart starting from the baseline.

iv) All survey data should comply with H: +/- 0.2 ft.; V: +/-0.1 ft.; all other protocols for such survey shall meet the minimum standards for topographic surveys performed in Virginia pursuant to Regulation 18VAC10-20-382 of the Department of Professional and Occupational Regulation, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers & Landscape Architects.

v) A minimum of three (3) geographically fixed location survey points on the upper surface of each breakwater shall be established to assess shifting, rotation, and differential settling of the structure or its components. The location of these points must be documented in three dimensional space relative to the baseline and vertical datum at each annual survey.

vi) Photos shall be taken during each survey and shall be referenced to the established baseline, as well as close-ups of the structures. All photographs shall have a date and time stamp.

2) Permittee agrees to supply data for analysis that will continue for a minimum of 5 years and will be conducted at the following intervals:

- i) Prior to construction.
  - ii) Upon construction completion.
  - iii) Once a year for five (5) years during the same season.
    - a. After the first storm event with greater than 25 knot sustained winds and surge greater than 4.5 feet MLW.
- 3) Permittee agrees all monitoring surveys shall be submitted within 30 days following each survey interval.
- 4) Permittee agrees that all surveying must be conducted under the direct control and personal supervision of a licensed Land Surveyor (or Professional Engineer if applicable pursuant to 54.1-401 of the Code of Virginia) and stamped/sealed to that effect.
- 5) Permittee agrees that should the performance of the structure fail and result in unforeseen adverse effects on other uses of state waters and bottom lands, marine fisheries, tidal wetlands, adjacent or nearby properties, water quality or submerged aquatic vegetation, that the Permittee shall remove the structures within 90-days of receiving notification from the Commission.

After some discussion, Commissioner Bull asked if the applicant wished to comment.

Gregory Ray, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Ray explained that the eroded areas have been gone since 1950. He said the cost impacted how this project was being done with hex boxes and no amour. He stated he did not agree with the monitoring or performance bond.

Commissioner Bull opened the public hearing for public comments in support of the project.

Warren Veazey was sworn in and his comments in support are a part of the verbatim record. He suggested that the project be approved without the stone being added and he felt that there was no need for the monitoring program since this was not a new project and the same method were working at other sites.

When asked about a project in Cherrystone Creek, Hank Badger, Environmental Engineer, Sr., said that he was not familiar with the Veazey design nor if it was similar to these structures.

After further discussion, Mr. Ray in his rebuttal said that as to the navigation question, there was a Virginia public oyster reef with signage inshore of this project and he was concerned with the permit condition number five because it was not clear what performance meant, as the verbiage was vague.

VIMS’ staff was asked for comments. Lyle Varnell, representative for VIMS, explained that this area was not similar to the areas for the designs in the report by the USACOE that were used. The design of the hex box does help but not like a breakwater. He stated that any structure can work to some level but you needed to monitor the different effects depending on the area.

Commissioner Bull opened the hearing for further public comments, pro or con. There were none, he stated the matter was before the Commission for discussion or action.

**Associate Member Ballard moved to approve the project as recommended by staff with the royalty and permit fees and to amend permit condition number 5 to say ‘permanent failure’ of the structure. Associate Member Tankard seconded the motion. The motion carried, 7-0. Chair voted yes.**

Royalty Fees (fill 23,400 sq. ft. @ \$0.05/sq. ft.	\$1,170.00
Permit Fee	\$ 100.00
Total Fees	\$1,270.00

\* \* \* \* \*

- 9. **VIRGINIA WATER HOLDINGS, LLC, #2014-126**, Oyster Planting Ground Application. Applicant is seeking to lease up to 60 acres of planting grounds within the Rappahannock River in Lancaster County. The application is protested by nearby property owners.

Pulled from the Agenda – Protest Resolved.

\* \* \* \* \*

**10. PUBLIC COMMENTS.**

**Upriver Striped Bass Fishery**

Robert O’Reilly, Chief, Fisheries Management stated that he had received a request from Wayne France and Doug Jenkins that the Commission consider extending the commercial striped bass maximum size for the Rappahannock River area upstream of the 360 bridge in the City of Tappahannock through an emergency action for one week. He explained that this area had experienced an extreme weather event at that time preventing watermen from working. His comments are a part of the verbatim record.

After some further discussion, no action was taken.

**Haul Seine Fishery**

George Martin expressed his concern for the impacts of the current haul seining methods on the bass fish and the vegetation in the Potomac River tributaries. He requested the Commission look into the impact by the use of these haul seines for catching finfish. His comments are a part of the verbatim record.

Steve Chaconas was present and his comments in support of the Mr. Martin's comments and spoke to the importance of the SAV and the impacts of haul seining are a part of the verbatim record.

After some discussion, the Commission directed the Fisheries staff to work with FMAC regarding this matter.

\* \* \* \* \*

**11. OFFENDERS.**

Ron Cagle, Marine Police Officer gave the briefing of the violation, as provided in the staff's evaluation. His comments are a part of the verbatim record.

**Terry K. Haydon** – present and sworn in.

December 12, 2015-Harvesting Oysters From Closed Area (Area #2)—§28.2-201 of the Code of Virginia; 4 VAC 20-720-40; February 1, 2016, Middlesex County General District Court; Fine: \$100.00, Court Cost: \$86.00

Mr. Haydon said it was his fault and he was surprised to be so far over the line. He stated he had worked on the water for 50 years and he was learning to use his GPS so that it would not happen again. He stated he was wrong and asked the Commission to consider putting him on probation.

Robert O'Reilly, Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Haydon's Commission-issued licenses for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Haydon's licenses during this revocation period. Staff recommended the Commission revoke Mr. Haydon's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017.

**Associate Member Zydron moved to placed Mr. Hayden on one year's probation, starting March 22, 2016, through March 21, 2017. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

Ron Cagle, Marine Police Officer gave the briefing of the violation, as provided in the staff's evaluation. His comments are a part of the verbatim record.

**Brian G. White** – present and sworn in.

November 19, 2015—Harvesting Oysters from Closed Area—§28.2-201 of the Code of Virginia; 4 VAC 20-720-40; December 21, 2015, Middlesex County General District Court; Fine: \$100.00, Court Cost: \$86.00

Mr. White stated he was working by himself and it was foggy so he did not realize that he had crossed the line. He said in future he would stay away from the line. In response to a questions, he said it was the first time he had worked in the area and would like to request probation as the works the water to support his family.

Robert O'Reilly, Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. White's Commission-issued licenses for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. White's licenses during this revocation period. Staff recommended the Commission revoke Mr. White's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017.

**Associate Member Erskine moved to place Mr. White on two year probation, starting March 22, 2016, through March 21, 2018. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

Fred Mitchell, Marine Police Officer gave the briefing of the violation, as provided in the staff's evaluation. His comments are a part of the verbatim record.

**Wallace E. Lewis, Jr** - present and sworn in.

December 29, 2015—Possession of Unculled Oysters (15 Quarts)--§28.2-510 of the Code of Virginia; January 25, 2016, Northumberland County General District Court; Fine: \$110.00, Court Cost: \$86.00

Mr. Lewis said that it would never happen again and he was just helping someone else. He stated he was not keeping his dredge license as it was just not worth. In answer to question, he stated he usually just does aquaculture.

Robert O'Reilly, Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of possession of greater than 100% over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Lewis on probation for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017. Any failure on Mr. Lewis' part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Lewis appearing before the Commission for a hearing on license revocation.

**Associate Member Tankard moved to accept the staff recommendation for placing Mr. Lewis on one year probation, starting March 22, 2016, through March 21, 2017. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.**

Nathan Clark, Marine Police Officer gave the briefing of the violation, as provided in the staff's evaluation. His comments are a part of the verbatim record.

**Matthew A. Cook** – present and sworn in.

August 23, 2015—Unlawful to Exceed Crab Pot License 255 License/277 Pots—4 VAC 20-720-50; September 9, 2015, Portsmouth General District Court; Fine: \$0.00, Court Cost: \$90.00; The judge deferred disposition for the period of one year (09/07/2016) pending his good behavior.

Mr. Cook stated he just miscounted the pots, he thought had 255. He stated did not want to lose his license. He stated he was also having boat trouble at the same time. He said he has now sold all of his extra pots, so now he only has 255.

Robert O'Reilly, Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that one conviction of exceeding the bushel limit by 5 bushels or more, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Cook on probation for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017. Any failure on Mr. Cook's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Cook appearing before the Commission for a hearing on license revocation.

When he was asked, he said he was okay with the probation and it would never happen again.

**Associate Member Tankard moved to accept the staff recommendation for placing Mr. Cook on one year probation, starting March 22, 2016, through March 21, 2017. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

David Drummond, Marine Police Officer gave the briefing of the violation, as provided in the staff's evaluation. His comments are a part of the verbatim record.

**Robert G. Savage** – present and sworn in.

November 3, 2014—Possession of Unculled Crabs 20 in (1) Bushel--§28.2-708 of the Code of Virginia; December 10, 2014, Accomack County General District Court; Fine: \$75.00, Court Cost: \$121.00

July 15, 2015—Possession of Unculled Crabs 22 in (1) Bushel--§28.2-708 of the Code of Virginia; August 12, 2015, Accomack County General District Court; Fine: \$50.00, Court Cost: \$121.00

Mr. Savage said that he did have a cull stick similar to the officer's and it was made of heavy plastic. He said this was not intentional and it was a rough day. He said he accepted responsibility and this would never happen again as this was he did to make a living.

Robert O'Reilly, Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that two convictions of possession of greater than 20 undersized crabs per bushel, within a 24 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Savage on probation for a period of one year from the date of this Commission meeting, March 22, 2016, through March 21, 2017. Any failure on Mr. Savage's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Savage appearing before the Commission for a hearing on license revocation.

Associate Member Tankard said the inlet where Mr. Savage was working was very windy and made it hard to work during the month of July. He said it would be tough to measure. He moved to accept the staff recommendation for one year probation. There were no seconds to the motion, therefore, it failed.

Associate Member Zydron stated there were numerous convictions previously and Mr. Savage should have learned to not take chances and check them again at the dock.

**After some discussion, Associate Member Minor moved for two year probation for Mr. Savage, starting March 22, 2016, through March 21, 2018. Associate Member Tankard seconded the motion. The motion carried, 6-1. Chair voted no.**



**Commission Meeting**

David Drummond, Marine Police Officer and Marshall Reedy, Marine Police Officer gave their briefings of the violations, as provided in the staff's evaluation. Their comments are a part of the verbatim record.

**Patrick J. Johnson** – present and sworn in.

September 6, 2014—Possession Unculled Crabs--§28.2-708 of the Code of Virginia; October 8, 2014, Accomack County General District Court; Fine: \$150.00, Court Cost: \$121.00

June 18, 2015—Possession of Unculled Crabs 32 in (1) Bushel--§28.2-201 of the Code of Virginia; 4 VAC 20-370-20 (A, B, C); August 12, 2015, Accomack County General District Court; Fine: \$50.00, Court Cost: \$25.00

July 23, 2015—Possession of Unculled Crabs 22 in (1) Bushel--§28.2-201 of the Code of Virginia; 4 VAC 20-370-20 (A, B, C); August 12, 2015, Accomack County General District Court; Fine: \$150.00, Court Cost: \$121.00

August 4, 2015—Unculled Crabs 43 in (1) Bushel--§28.2-708A of the Code of Virginia; October 14, 2015, Accomack County General District Court; Fine: \$250.00, Court Cost: \$121.00

Robert O'Reilly, Chief, Fisheries Management read the staff's recommendation. The Commission's guidelines for sanctions specify that two convictions of possession of greater than 20 undersized crabs per bushel, within a 24 month period, should result in at least two years probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Johnson on probation for a period of two years from the date of this Commission meeting, March 22, 2016, through March 21, 2018. Any failure on Mr. Johnson's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the two years probation would result in Mr. Johnson appearing before the Commission for a hearing on license revocation.

Mr. Johnson said he was asking to allow him to keep his livelihood and that the Commission put him on probation.

**Associate Member Zydron moved to revoke Mr. Johnson's licenses and fishing privileges for one year and to be followed by one year probation, March 22, 2016, through March 21, 2018. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

12. **PUBLIC HEARING:** Establish emergency amendments that limited the payment of the all-gear oyster resource user fee (\$300) to those individuals that have

previously paid for an all-gear oyster resource user fee, as part of final Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest."

James Wesson, Head, Conservation and Replenishment, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Dr. Wesson explained that at the February 17, 2016 Shellfish Management Advisory Committee (SMAC) meeting, the committee recommended freezing the sale of the All Gear Oyster Resource User Fee to new individuals that had never purchased the user fee. The All Gear Oyster Resource User Fee (\$300.00) must be purchased each year prior to purchasing any oyster gear license. The SMAC saw this as a temporary measure to stop the entry of new oyster harvesters until after they had time to discuss effort control for the fall oyster harvest season.

Dr. Wesson stated that staff recommended adoption of emergency amendments to Chapter 4VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to make permanent limiting the payment of the All Gear Oyster Resource User Fee (\$300.00) to those individuals that had not previously paid for an All Gear Oyster Resource User Fee.

C. Robert Johnson, waterman, explained that this was not appropriate action by the Commission to use the oyster resource user fee to prevent watermen from purchasing their oyster gear licenses since it was a tax not a oyster gear. He said that this also prevented the leaseholders from obtaining seed oysters for their leases and propagating oysters was a requirement for maintaining a private oyster ground lease. His comments are a part of the verbatim record.

**After much discussion, Associate Member Tankard moved to continue the emergency action taken at the last meeting. Associate Member Neill seconded the motion. Associate Member Erskine suggested an amendment that watermen be allowed to pay the all gear oyster resource user fee to obtain their hand tong license in order to harvest seed oysters for private ground planting from the public grounds in the James River seed area for the month of May 2016. Matthew Hull, Assistant Attorney General and VMRC Counsel stated that this amendment would be subject to appropriate wording and review by the Regulatory Review Committee. Associate Members Tankard and Neill agreed with the amendment. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

- 13. PUBLIC HEARING:** Consider an amendments to Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," that would establish the Virginia commercial smooth hound shark (smooth dogfish) quota, as 922,030 pounds dressed weight.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that at the last month, staff provided information on this new commercial quota, for smooth hound sharks or smooth dogfish. As of March 15, 2016 there is a coast-wide smooth dogfish commercial harvest quota of 2,649,268 pounds dressed weight (dw) that was approved by the ASMFC (Atlantic States Marine Fisheries Commission). Virginia's share of that coast-wide quota is 922,030 pounds. This new Virginia commercial quota was recommended, by staff, to be a part of Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," for 2016. Staff recommended the Commission adopt the 922,030 pound, dressed weight, commercial smoothhound shark quota for 2016.

Commission Bull opened the public hearing for public comments pro or con. There were none. He stated the matter was before the Commission for discussion or action.

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

\* \* \* \* \*

- 14. DISCUSSION:** Consider amendments to Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks." that would establish the May 1 through April 30 commercial spiny dogfish harvest quota.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that all Atlantic coast states will enact lower spiny dogfish quotas for the May 1, 2016 through April 30, 2017 fishing season, as compared to the previous several years. About a 20% decrease in the 50.6 million pounds coast-wide quota means the Virginia quota will be 4,356,944 pounds for the 2016-17 fishing season. Virginia's share of the coast-wide quota is 10.795%. The 20% reduction in quota will not constrain any state's fishing opportunities for spiny dogfish, as processing and marketing limitations have kept this fishery's landings well under quota, for the last several years. Staff recommended the Commission approve advertising the 2016-17 commercial spiny dogfish quota for an April public hearing.

**Associate Member Zydron moved to advertise for an April public hearing. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

**15. DISCUSSION:** Continued discussion on management measures for the 2016 recreational cobia fishery.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that NOAA Fisheries announced the Atlantic Migratory Group (Georgia to New York) cobia recreational fishing season will close on June 20, 2016 in federal waters (attached). NOAA Fisheries is required to reduce the length of the recreational fishing season in 2016 because the annual catch limits for the Atlantic migratory group cobia recreational and total (recreational and commercial combined) annual catch limits were exceeded in 2015. This action is designed to ensure overfishing does not occur. In 2015, the recreational cobia annual catch limit of 630,000 pounds for the Atlantic Migratory Group was exceeded by 910,776 pounds.

Mr. O'Reilly informed the Commission that the FMAC will meet Thursday evening, March 17, 2016 to discuss cobia issues and likely provide input for Commission. Without the analysis from NOAA Fisheries regarding the impact of increasing size limit, establishing a restrictive vessel limit and a closed period of May1 through May 31 on season length, their comments will likely be general in nature but we will provide them to you at your meeting. Staff requested an April 2016 public hearing to consider adoption of a higher size limit, a vessel limit and closed season for the recreational cobia fishery in 2016.

Lewis Gillingham, Director SWFT, gave a briefing with slides of information regarding the cobia fishery. His comments are a part of the verbatim record.

After much discussion and questions of staff, Commissioner Bull announced that even though this was not the public hearing today, some public comments would be allowed.

Numerous speakers were present who spoke against the actions to be taken by the Federal government which was all based on bad data, especially the quota allowed for Virginia's cobia fishery of 120,000 pounds when North Carolina got 345,000 pounds. Some present had a charter boat business which would be impacted financially when the cobia catch accounted for as much as a third of their business or even close some of them down entirely. Most present felt that the Commission should allow a 210,000 pounds quota and take a risk with the consequences that might result. Some felt that the Commission was afraid to stand up to the Federal Government as well as Virginia was not being represented at the Federal level. Individuals who spoke were as follows:

West Blow	Jake Hiles	Jorj Head
Chandler Hogge	Randy Richardson	Josh Jordan
Mike Avery	Donald Bowers	Bill Graham

Mr. O'Reilly noted that such a stand could impact more than just the cobia fishery, but other fisheries as well.

Commissioner Bull noted that to set the limit at 210,000 pounds would have to be paid back in 2017 and could mean no fishery at all.

Associate Member Erskine suggested that with the method currently being used for collecting the fishery's data was so bad, requiring mandatory reporting for the cobia fishery could be considered.

Commissioner Bull closed the hearing to any further public comments.

**Associate Member Neill moved to accept the staff recommendation and advertise for a public hearing in April. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

**16. DISCUSSION:** Consider amendments to Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)." that would establish the May 1 through October 31 commercial harvest quota for scup.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that the Virginia summer period commercial scup quota for 2016, as established by the ASMFC, is 13,154 pounds. The summer period is from May 1 through October 31 of each year. In order to establish the 2016 summer period quota, an April public hearing is needed. Staff requested advertisement of an April public hearing that would establish the May 1 through October 31 commercial harvest quota for scup as 13,154 pounds.

**Associate Member Zydron moved to advertise for a public hearing in April. Associate Member Minor seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**17. DISCUSSION:** Proposal to modify the May 1 through June 7 prohibition that makes it unlawful for any individual to harvest horseshoe crabs within 1000 feet in any direction of mean low water.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. O'Reilly explained that staff reached out to those individuals for input and comments. All were of the opinion that the closure makes it difficult for them to harvest from a traditional fixed gear when the crabs are available. They believed that if the closure did not exist they still would not be able to harvest any additional crabs and would likely reach their quota before peak spawning times. Some individuals commented that the closure requires them to spend a lot of time and effort relocating these crabs to deeper water to keep them out of their nets. All of the pound nets permitted by these individuals are at least 500 feet off of shore. Reducing the harvest prohibition from 1,000 feet to 500 feet would eliminate the current issues of harvesting horseshoe crabs by pound nets while still protecting spawning habitat. Staff requested the Commission advertise for an April 2016 public hearing to consider changes to Chapter 4VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs" in this proposal.

**Associate Member Erskine moved to advertise for a public hearing in April. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

- 18. FISHERIES:** Approval of the \$10,000 expenditure to the Cost Center supporting the RFAB Coordinator from the Recreational Saltwater Fishing Development Fund.

Robert O'Reilly, Chief, Fisheries Management, explained that it had been brought to his attention that a request to keep funding for the cost center which supported VMRC staff's salary and benefits was necessary at this meeting in order to continue the funding of this program. He said at the last RFAB meeting they recommended the \$10,000 be added to this cost center.

**Associate Member Neill moved to approve the funding. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

There being no further business, the meeting was adjourned at approximately 6:00 p.m. The next regular Commission meeting will be Tuesday, April 26, 2016.

---

John M. R. Bull, Commissioner

---

Katherine Leonard, Recording Secretary