

MINUTES

Commission Meeting

August 23, 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 Bull	Commissioner
Chad Ballard	
A. J. Erskine	
Wayne France	
Lynne Kellum	
James E. Minor	Associate Members
Ken Neill, III	
John E. Tankard	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Hancock	Director, Human Resources
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Management Mgr.
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Adam Kenyon	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Samantha Hornsby	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
William Thompson	Marine Police Officer

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Clayton Dameron
Patrick West
Chris Beuchelt

Marine Police Officer
Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Jeff Madden
Hank Badger
Randy Owen
Ben Stagg
Mark Eversole
Justin Worrell
Mike Johnson
Rachael Maulorico
Jay Woodward
Daniel Faggert
Bradley Reams

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Chief Engineer Western Shore
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Surveyor, Engineering/Surveying
Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Others present:

Mike Oesterling
Karen Forget
George Kotaidis
Bob Livengood
Kim Huskey
David Mayfield
Rebecca Chambliss
Kathleen Perry
Jason Winder
Mike Ware
Lacy Rose
Jacob Williams
Freddie Linton
Ray McElligott
Duane Whalen
Benjamin Murphy
Kent Carr

Millie Jones
John Stephenson
Stacy Kotaidis
James Mercer
Meade G. Stone, Jr.
Beverly Ludford
Elizabeth Profita
Marc Brown
Dan Dise
Lisa Rose
David Freeman
Scott Wivell
Jeff Linton
Timothy Marshall
Michael Wainwright
Thomas Lane
Ty Farrington

Hap Chalmers
Suzanne Stephenson
Robert Wilmoth
Krystal Stannard
Chris Ludford
Andy Lacatell
Mike Clair
J. C. Hudgins
Lonnie Moore
Shawn Rose
Heywood Williams
Tye Burns
Thomas Crosswell, Jr.
Peyton Mason
Richard Hayes
Chris Moore

and others.

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Commissioner Bull called the meeting to order at approximately 9:38 a.m. Associate Member Tankard arrived late to the meeting.

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

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

Robert L. O'Reilly, Chief, Fisheries Management, noted that there was an additional fisheries item to advertise for a public hearing to discuss an amendment for Regulation 4VAC20-650-10, pertaining to oyster sanctuaries, to allow boats to cross the sanctuary area with hand tongs on board the boat, but without any oysters.

Associate Member Erskine moved to approve the agenda, as amended. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the July 26, 2016 Commission meeting minutes.

Associate Member Minor moved to approve the minutes, as presented. Associate Member Zydron seconded the motion. The motion carried, 6-0-2. Chair voted yes. Associate Members Erskine and Ballard both abstained since they were not present at the last meeting.

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

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

Tony Watkinson, Chief, Habitat Management, informed the Commission that there was one page two item to be heard, Item 2A. He reviewed the item for the Board. His comments are a part of the verbatim record.

There were no public comments. Commissioner Bull stated the public hearing was closed and the matter was before the Commission for discussion and action.

Associate Member Erskine moved to approve Item 2A, as presented. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

- 2A. **BAE SYSTEMS, #13-0827**, requests authorization to modify an existing VMRC subaqueous permit to include adjustment of the footprint of the current buoys and security barrier, the addition of five (5) new anchor buoys and an additional 544 linear feet of security barrier at their facility located along the Southern Branch of the Elizabeth River at 750 West Berkeley Avenue in the City of Norfolk.

No applicable fees – Permit Modification

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

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

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Associate Member Tankard arrived to the meeting.

5. **ROBERT WILMOTH, III, #16-0535**, requests authorization to construct a 30-foot long by 12-foot wide private, noncommercial, timber, open-sided boathouse adjacent to his property situated along Aquia Creek at 311 Voyage Cove in Stafford County. The project is protested by an adjacent property owner.

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 explained that this shore-parallel boathouse orientation was a very common strategy along Aquia Creek. The proposed pier and boathouse extended only 40 feet

channelward of mean low water along a section of Aquia Creek that is 150 feet wide. Staff believed that the objections to the project were largely due to the complexity of accessing the creek down the steep bluff. Mr. Wilmoth had made reasonable accommodations for his neighbor to provide for continued access to their pier which is already oriented very close to their shared extended property line. The boathouse is an open-sided, single slip configuration and of a size appropriate for a 21-foot boat.

Mr. Madden explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

Robert Wilmoth, III, was present and sworn in and his comments are a part of the verbatim record. Mr. Wilmoth stated that staff had explained the project well. He added that he had tried to reconcile with the protestants and had made some changes.

James Mercer protestant was sworn in and his comments are a part of the verbatim record. Mr. Mercer provided some pictures as a hand out. He said he was concerned with the stability of the cliff and the negative impacts on navigation. He also gave a copy of the engineer’s report concerning the stability of the cliff.

Crystal Stannard, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Stannard stated that the Wilmoth property was very bare and others in the area had not protested. She said their dock was staggered so you can get around it. She added that there was a need to protect the cliff and keep access for their boat to the waterway.

Mr. Wilmoth in rebuttal comments said that they had consulted others in the area and they had considered twisting the pier around, but then they would be in violation of the Army Corps of Engineers permit. He said that there had been a lot of scrutiny by the County which took two weeks. He noted that they made sure the contractor was insured.

As there were no further comments, pro or con, Commissioner Bull stated the public hearing was closed. He added that the matter was before the Commission for discussion or action.

Associate Member Zydron moved to accept the staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 9-0. Chair voted yes.

Permit Fee	\$100.00
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- 6. SUZANNE McCANNA, #16-0490**, requests authorization to retain an existing 7-foot by 19-foot enclosed storage building and construct a 10-foot by 10-foot floating dock addition to an existing private pier along Bennetts Creek at 5972 Bennetts Creek Lane in the City of Suffolk.

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. Maulorica stated that staff found it difficult to conclude that the storage shed itself was a water dependent addition to the authorized private riparian pier. Staff understood the applicants' desire to store their kayaks in an easily accessible location for trouble-free launching. However, staff does not feel that a shed with sides was necessary for such kayak storage over water and was not necessary for the applicant's use of the pier. While the shed was used to store some other water related articles, it could serve the same purpose if constructed on the McCanna's property rather than State-owned submerged land. It was staff's opinion that an enclosed storage shed violated the public trust doctrine that serves to prevent further proliferation of unnecessary structures over the Commonwealth's property. The shed located over the water also increased the threat of building materials and shed contents to enter the waterway during a storm. Staff had no objection to approval of the additional floating dock.

Ms. Maulorica explained that the applicants after-the fact request had been subjected to a public interest review. No other State agencies had commented on the project. No protests had been received related to the project. Staff recommended removal of the sides of the existing shed to qualify the structure for statutory authorization. The applicant had communicated they were not interested in this option and would like to retain the structure as-built. If the Commission felt the shed was appropriate to authorize, staff further recommended that that approval of the shed be conditioned upon the payment of a triple permit fee of \$75.00 as provided for in § 28.2-1206(D) of the Code of Virginia for after the fact projects. Additionally, if the Commission chooses to authorize the shed to remain, staff recommended the Commission considered accepting a civil charge in lieu of further enforcement actions for the unauthorized construction. Staff believed a civil charge of at least \$3,000.00 would be appropriate in this instance, based upon a minimal impact and a major degree of deviation or non-compliance.

Bob Livengood, Marine Contractor, was sworn in and his comments are a part of the verbatim record. Mr. Livengood explained that the shed had been there for 20 years with no complaints. He said he was not the one who constructed it, he had only made application on behalf of the applicants for the boat lift. He said at that time it found that the shed existed. He stated the applicant had been concerned that the boating equipment he stored in the shed would be stolen, as this had happen before there was a shed. He said they were requesting they be allowed to keep the structure with a reduction in the civil charge amount.

John A. Stevenson, was sworn in and his comments are a part of the verbatim record. Mr. Stevenson explained that this was all within the original footprint of the original structure. He said he had constructed the enclosed shed about two weeks after the pier was finished and he requested that they be allowed to keep it. He explained that he was concerned with his boating equipment being stolen.

Suzanne McCanna, applicant, was sworn in and her comments are a part of the verbatim record. Ms. McCanna explained that a \$3,000.00 civil charge would be unfair as they had not intended to do anything illegal.

As there were no further public comments, Commissioner Bull closed the public hearing and stated the matter was before the Commission for discussion or action.

After much discussion about the Commission considering water dependence of a structure and whether this violation warranted the high amount of civil charge, Associate Member Ballard moved to approve the storage building as constructed with the staff recommendation for a \$3,000.00 civil charge with the \$75.00 triple permit fee. Associate Member Zydron seconded the motion but suggested the motion be amended to include the approval of the floating dock. Associate Member Ballard agreed with the amendment. Tony Watkinson, Chief Habitat Management explained staff recommended the \$3,000.00 civil charge because there was a large amount of deviation and the existing structure as it is constructed and used now was not considered water dependent. The motion carried, 7-2. The Chair voted no and Associate Member Erskine voted no.

Permit Fee (ATF Triple)	\$ 75.00
Civil Charge	\$3,000.00
Total Fees	\$3,075.00

7. REPORT OF RECOMMENDATIONS FROM THE LYNNHAVEN RIVER SHELLFISH WORK GROUP.

Ben Stagg, Chief Engineer – Western Shore, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Mr. Stagg noted for the board that additional information had been added to the notebooks since the information was mailed to them and also gave them copies of three additional public comments.

Mr. Stagg explained that after review of the work group report and their suggestions, should the Commission wish to consider regulatory changes recommended by the work group, staff requested the Commission provide any recommended changes and request

the Commission approve a public notice for a public hearing for action on any such proposed regulatory modifications and at which future meeting the public hearing be held.

Commissioner Bull opened the hearing to some public comments.

Hap Chalmers, Lynnhaven Oyster Company, was present and his comments are a part of the verbatim record. Mr. Chalmers stated he was on the workgroup and all total there were four watermen and the rest were residents on the Lynnhaven River so not all were represented from Virginia Beach.

Mike Oesterling, member of the workgroup, was present and his comments are a part of the verbatim record. Mr. Oesterling stated he was opposed to piece meal regulating and the Commission did already have the authority to address user conflicts.

Karen Forget, member of Lynnhaven River Now, was present and her comments are a part of the verbatim record. Ms. Forget stated she was on the workgroup. She explained that there were a variety of recommendations and the Commission makes the final determination.

Bryan Plumlee, representing Chris Ludford, was present and his comments are a part of the verbatim record. Mr. Plumlee said that the 150 foot buffer recommendation and the user plan should be done on a state-wide basis.

Millie Jones, Virginia Beach resident and member of the workgroup, was present and her comments are a part of the verbatim record. Ms. Jones stated that the Lynnhaven River in Virginia Beach was different from the rest of the Bay area and it was the largest city with a large amount of tourism. She said there should be different requirements for this area. She said there needed to be regulation changes for Virginia Beach and not the rest of the State.

Beverly Ludford, leaseholder in Virginia Beach, was present and her comments are a part of the verbatim record. Ms. Ludford stated she was against any changes in the regulations. She stated that there were no presentations by the watermen during the workgroup meetings. She said they worked according to all rules, laws and regulations and worked with those around them; and, any changes would impact them financially. She stated the changes to the regulation were not necessary and the residents just do not want them in the river.

John Forte, member of the workgroup, was present and his comments are a part of the verbatim record. Mr. Forte he preferred the permit process and the 150 foot buffer was not necessary.

Meade Stone, member of the workgroup, was present and his comments are a part of the verbatim record. Mr. Stone said he supported the permit process. He said the area of the Lynnhaven River was densely populated and safety was a concern to the recreational public and the top concern were the cages.

John Stephenson, resident on the Lynnhaven River, was present and his comments are a part of the verbatim record. Mr. Stephenson said most homeowners were concerned that there was not enough due process and notification. He said he supported controlling aquaculture in the river and to consider all others in the area.

Rob Feddor, nearby resident, was present and his comments are a part of the verbatim record. Mr. Feddor stated he supported the permit process and in addition to this area it should be considered for other areas as well when it is in developed areas. He stated the Commission has the power and responsibility to consider all and do the right thing. He said with the current system it was not known what cages were out there or how many. He noted that he felt there should be the 150 foot buffer.

Chris Ludford, aquaculturist in the Lynnhaven River, was present and his comments are a part of the verbatim record. Mr. Ludford stated that there were 12 oyster farms in the area and he was speaking for 7 or 8. He said he did not agree with the suggestions of the workgroup and that there had been only one grower on the workgroup.

No further public comments were taken.

Mr. Stagg noted that there were a number of the suggestions to the Code of Virginia that had been made by the workgroup, which required action by the General Assembly and not by the Marine Resources Commission.

Associate Member Ballard noted that the public hearing must be limited to regulatory changes and not legislation changes.

After much discussion, Associate Member Neill moved to advertise for a public hearing to consider proposed amendments to the regulation to create a requirement to obtain either a permit or the consent of nearby residential property owners to place aquaculture cages on leased oyster planting ground within the City of Virginia Beach. The public hearing was to be scheduled for the September 2016 meeting. Associate Member Zydron seconded the motion. The motion carried, 7-2. The Chair voted yes. Associate Members Kellum and Erskine both voted no.

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8. **REQUEST FOR COMMISSION ACTION** regarding the seven-month lease assignment moratorium in the City of Virginia Beach, previously approved at the Commission meeting held on January 26, 2016.

Ben Stagg, Chief Engineer – Western Shore, gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. Stagg noted that the moratorium on the leasing expires in seven days and when staff consulted with the Attorney General’s office their opinion was that the riparian lease applications cannot be delayed, as it was a right given by the Code of Virginia.

Mr. Stagg said that staff recommended, at a minimum, that they be directed to continue the processing of riparian lease applications within the Lynnhaven River effective immediately. Staff had no specific recommendation concerning the continued processing of regular leases within the City of Virginia Beach.

Associate Member Zydron moved to continue the moratorium for six months, exempting the riparian applications. Associate Member France seconded the motion. There was no vote.

After further discussion, Associate Member Zydron in a substitute motion, moved to continue the moratorium for six months on all applications. Associate Member France seconded the motion.

After some more discussion, Associate Member Zydron amended his previous motion to extend the moratorium for up to six months, except to allow the processing of the riparian applications. Associate Member France seconded the motion. The motion carried, 8-1. The Chair voted yes and Associate Member Erskine voted no.

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9. **PUBLIC COMMENTS:**

Michael Clair - Mr. Clair asked the Commission to consider clarifying the standards used for fisheries violations. He was not aware that a matrix was developed by a Fisheries and Law Enforcement Division Committee and reviewed and adopted by the marine police and the Commission. The Commissioner directed the Chief of the Marine Police, the Fisheries Division and the Administration and Finance Divisions meet with Mr. Claire to discuss suspension, prohibition, and revocation polices.

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10. OFFENDERS:

David A. Turner – not present.

Commissioner Bull asked if the Commission wished to proceed with the hearing of this case or to continue the case. It was the general consensus of the Board to proceed.

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

January 21, 2016; Operate an Illegal Oyster Processing Establishment – No Certificate of Inspection—12 VAC 5-150-20; June 27, 2016, Hampton General District Court; Fine: \$500.00 with \$250.00 of fine suspended, 2 years probation; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

January 21, 2016; No Valid VMRC 2016 Oyster Shucking License--§28.2-504 of the Code of Virginia; June 27, 2016, Hampton General District Court; Fine: \$250.00 with \$200.00 of fine suspended; 2 years probation; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

January 28, 2016; No Shucking License--§28.2-504 of the Code of Virginia; June 27, 2016, Hampton General District Court; Fine: \$250.00 with \$200.00 of fine suspended; 2 years probation; banned from commercial fishing; in the tidal waters in the City of Hampton; Court Cost: \$145.00.

January 28, 2016; Operate Illegal Shellfish Processing Establishment/No Certificate of Inspection--12 VAC 5-150-20; June 27, 2016, Hampton General District Court; Fine: \$500.00 with \$250.00 of fine suspended; 2 years probation; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

February 17, 2016; Engage in Commercial Fishing while Revoked--§28.2-201 of the Code of Virginia; 4 VAC 20-1280-30; June 27, 2016, Hampton General District Court; Fine: \$2,500.00 with \$2,000.00 of fine suspended; 2 years probation; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

February 17, 2016; Possess, Store, Sell Condemned Shellfish--§28.2-810 of the Code of Virginia; June 27, 2016, Hampton General District Court; Fine: \$1,000.00 with \$750.00 of fine suspended; 2 years probation; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

February 18, 2016; Removal of Oysters from Polluted Area--§28.2-810 of the Code of Virginia; June 27, 2016, Hampton General District Court; Fine: \$1,000.00 with \$750.00

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of fine suspended; 2 years probation; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

February 29, 2016; Harvest Oysters from Closed Area—4 VAC 20-720-40; June 27, 2016, Hampton General District Court; Fine: \$0.00; 180 days Jail with 165 days suspended for 2 years good behavior; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$231.00.

February 29, 2016; Take Shellfish from Condemned Area--§28.2-810 of the Code of Virginia; June 27, 2016, Hampton General District Court; Fine: \$0.00; 180 days Jail with 165 days suspended for 2 years good behavior; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

February 29, 2016; Fishing After Revocation of License by Commission-2nd Offense—4 VAC 20-1280-30; June 27, 2016, Hampton General District Court. Fine: \$0.00; 180 days Jail with 165 days suspended for 2 years good behavior; banned from commercial fishing in the tidal waters in the City of Hampton; Court Cost: \$145.00.

Joe Cimino, Deputy Chief, Fisheries Management, explained that Mr. Turner first appeared before the Commission as a natural resource offender during the December 2013, Commission meeting. The Commission decided to revoke his licenses, under 28.2-232, for 12 months, 12/10/2013, through 12/09/2014, followed by one year probation, 12/10/2014, through 12/09/2015, owing to four natural resource convictions including two warm water convictions. Mr. Turner appeared a second time before the Commission during the January 2015, Commission meeting. The Commission decided to revoke Mr. Turner's licenses and privilege, under 28.2-232, for two years (the maximum sentence allowed at the time), January 27, 2015, through January 26, 2017, owing to violating his revocation with two new oyster convictions including harvesting oysters from a condemned area.

Mr. Cimino read the staff recommendation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Turner's Commission-issued licenses for a period of five years from the date of this Commission meeting, August 23, 2016, through August 22, 2021. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Turner's licenses during this revocation period. Staff recommended the Commission revoke Mr. Turner's fishing privileges, within the Commonwealth's tidal waters, for a period of five years from the date of this Commission meeting, August 23, 2016, through August 22, 2021. Staff recommended the Commission take discretionary action concerning the potential of a civil penalty.

After some discussion after the seriousness of this case, Associate Member Zydron moved to accept the staff recommendation for five years revocation of all licenses and fishing privileges, starting August 23, 2016, through August 22, 2021, and to

include the maximum civil penalty of \$10,000.00. Associate Member Erskine seconded the motion. The motion carried, 9-0. The Chair voted yes.

James Holloway, Jr. - not present

Commissioner Bull explained that staff had been informed by Mr. Holloway's attorney that he had a conflict with this hearing date and requested a continuance. It was the general consensus of the Board that this request be approved.

Jason Winder – was present and sworn in

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

February 10, 2016; Have in Possession Unculled Oysters--§28.2-201 of the Code of Virginia; 4 VAC 20-260-30; April 20, 2016, Newport News General District Court; Fine: \$150.00, Court Cost: \$91.00

Joe Cimino read the staff recommendation. Mr. Winder was put on probation during the July 2015, Commission Meeting for one year, July 28, 2015, through July 27, 2016, for harvesting oysters during a closed public season. The Commission's guidelines for sanctions specify that if a person put on probation by the Commission fails to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during their probationary period, should result in an appearance before the Commission for a hearing on license revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. Winder's Commission-issued licenses for a period of one year from the date of this Commission meeting, August 23, 2016, through August 22, 2017. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Winder's licenses during this revocation period. Staff recommends the Commission revoke Mr. Winder's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, August 23, 2016, through August 22, 2017. Staff also recommends the Commission place Mr. Winder on probation for a period of one year immediately following this revocation period, August 23, 2017, through August 22, 2018. Any failure on Mr. Winder'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. Winder appearing before the Commission for another hearing on license revocation.

Michael Ware, Attorney for Mr. Winder, was present and his comments are a part of the verbatim record. Mr. Ware explained that Mr. Winder did not know the season had closed and he was here today being responsible. He said Mr. Winder had pre-paid the fines and did not realize he would have to come before the Board. He said that this was the only way that Mr. Winder had to make a living and asked the Board to consider

probation as the revocation would impact his family. He said Mr. Ware had misunderstood what probation meant and this violation was not egregious and taking his livelihood had not met the criteria of the Code Section 28.2-232. He asked that if the Commission decides for revocation that they only revoke Mr. Winder's oyster licenses and allow him to continue with other fisheries to give him a way to make a living. He said they were requesting two year probation.

Associate Member Minor made a motion to place Mr. Winder on three year probation. Associate Member France seconded the motion. The motion failed, 3-6. The Chair voted no and Associate Members Ballard, Erskine, Neill, Tankard, and Zydron all voted no.

After further discussion, Associate Member Zydron moved to place Mr. Winder on six month revocation of all licenses and fishing privileges, starting August 23, 2016, through February 22, 2017, followed by three years probation, starting February 23, 2017, through February 22, 2020. Associate Member Neill seconded the motion. Motion carried, 7-2. The Chair voted yes. Associate Members France and Kellum both voted no.

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11. **PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the 2016 Virginia commercial bluefish quota as 580,287 pounds.

Jill Ramsey, Fisheries Management Specialist, gave the briefing of the information provided in the staff evaluation with slides. Her comments are a part of the verbatim record.

Ms. Ramsey explained that the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC) had established the 2016 coast-wide bluefish commercial quota as 4.88 million pounds. This was a decrease from the 2015 quota of 5.12 million pounds. Virginia receives 11.8% of the coast-wide quota which resulted in a 2016 Virginia bluefish commercial quota of 580,287 pounds that was a 4.6% decrease from 2015.

Ms. Ramsey explained that staff recommended approving amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the 2016 commercial bluefish quota as 580,287 pounds.

Commissioner Bull asked for public comments, pro or con and there were none. He stated that the public hearing was closed and the matter was before the Commission for discussion or action.

Associate Member Kellum moved to approve the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 9-0. The Chair voted yes.

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12. PUBLIC HEARING: Amendments to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest,” to establish the 2016-2017 public oyster harvest seasons and management measures that could include, but are not limited to, lower bushel limits and effort limitations.

Jim Wesson, Head-Conservation and Replenishment gave the briefing of the information provided in the staff evaluation with slides. His comments are a part of the verbatim record.

Mr. Wesson explained that to protect oyster stocks, the stability of the oyster fishery, and the cultch and future productivity of public oyster beds, staff requested approval of the amendments to Chapter 4VAC 20-720-10, et seq., “Pertaining to Restrictions on Oyster Harvest”, which included:

- Maintain the freeze, begun on February 23, 2016, on the sale of Oyster All-Gear Resource User Fees that allows any harvester to use one or more gear types to harvest oysters and possess any bushel limit (4VAC 20-720-15(B)).
- To maintain eligibility in the oyster fishery, these individuals must purchase the oyster all gear user fee by April 30, 2017 and by January 1, in each subsequent calendar year (4VAC 20-720-15(B)).
- No new sales of oyster all gear user fees until the number of user fee holders drops below 600 (4VAC20-720-15(C))
- Individuals may transfer an oyster all gear user fee to immediate family members or to another individual, if the transferring individual has 40 or more days of oyster harvest the previous calendar year (4VAC20-720-15(D)).
- Exceptions to maintenance of eligibility to purchase the oyster all gear user fee may be granted based on documentation for medical hardship or active military service.

Mr. Wesson also explained that staff recommended additional amendments:

- Approve season dates and areas as described in 4VAC20-720-40.
- To add a December 1, through December 31, 2016 hand tong season for Public Ground No. 106 in the Yeocomico River.
- Amendments to subdivision 4VAC20-720-20, to subdivide the Pocomoke Sound and Tangier Sound Management Area into 3 rotation areas.

Associate Member Zydron asked if the letter of request from Delegate Gordon Helsel to continue the matter for a later date should be decided upon first.

Commissioner Bull stated he had talked with Delegate Helsel the previous week and let him know that the delay of 60 days would put the matter into the upcoming oyster season. He said Delegate Helsel gave him the letter at that time.

After much discussion, Commissioner Bull opened the hearing to the public for comments.

Fred Linton, waterman, was present and his comments are a part of the verbatim. Mr. Linton explained that there had been a decline in Pocomoke-Tangier and they only go 16 days to work in area 9 and 10 and he did not see a decline there. He said in area 2 there was nothing there to catch. He didn't agree with the three year rotation. He said staff needed to go with him to let him show them what was there because he does not believe the reports by staff. He said that staff will not let them help decide where to plant the shells and they were planted on mud. He noted that Maryland watermen are working on areas 9 and 10 and the areas should be opened so that they can have somewhere to work. He added there was strike on areas 9, 10, and 11.

Scott Wivell, waterman, was present and his comments are a part of the verbatim record. Mr. Wivell stated that areas 9 and 10 needed to be opened.

Dan Dise, Tangier waterman, was present and his comments are a part of the verbatim record. Mr. Dise stated he agreed with most of the staff recommendation, but not with the three year rotation plan for Pocomoke-Tangier Sound. He said the two year rotation was okay. He said he was able to catch his daily limit last year. He said it was drastic move to split the Pocomoke-Tangier area into three areas. He noted that the Code of Virginia said the Commission must consider the economic impacts on Tangier Island.

Kent Carr, waterman, was present and his comments are a part of the verbatim record. Mr. Carr said he agreed with Mr. Dise about the Pocomoke-Tangier Sound, it is their main livelihood. He said that more areas needed to be opened. He said that Mobjack Bay was closed too much because there had been spat strike and it needed to be worked to cultivate the bottom. He said to cut the number of watermen was not the way to go as the cuts would put them out of business. He said everyone needed to work together.

Bill Bailey, waterman, was present and his comments are a part of the verbatim record. Mr. Bailey stated that he felt the staff charts were flawed.

Lisa Rose, waterman, was present and her comments are a part of the verbatim record. Ms. Rose said that from what information the waterman said today, strike is happening everywhere and on anything and more areas needed to be opened. She said that VMRC, VIMS, and watermen needed to survey together and with all gears. She said what the watermen had learned was from personal experience. She said that there had been strike and the watermen need to work. She said if there was a problem, then it needed to be worked on together to solve it.

Mike Clair, waterman, was present and his comments are a part of the verbatim record. Mr. Clair stated that the Commission needed to open areas 9 and 10 in Pocomoke Sound. He noted that cutting to four work days a week keeps the harvest down.

Melanie Baxter was present and her comments are a part of the verbatim record. Ms. Baxter said that her father's commercial card had been left to his granddaughter, but she had not been able to purchase the oyster gears because he did not pay the fees in 2015.

Ty Farrington, waterman, was present and his comments are a part of the verbatim record. Mr. Farrington stated he never received a notice of the freeze on oyster licenses and he maintains two, his and his mate's. He said his mate quit and now that he needs a new mate to work with him he cannot get him the oyster licenses because of the 40 days of harvest requirement for transfers. He said the watermen are forced to work small areas. He said there should be a grandfather clause if someone had worked on the water their whole life. He said the Senator of the General Assembly still did not understand and wanted limited entry looked at more.

The public hearing was closed. Commissioner Bull stated the matter was before the Commission for discussion or action.

After much discussion, Associate Member Erskine moved to accept the staff recommendations, except for the Pocomoke-Tangier Sound remaining as a two year rotation, with an area 1 and 2 and also to add grandparents for the transfer between family members of the eligibility of the oyster resources user fee all gear. Associate Member Kellum seconded the motion. Associate Members Erskine and Kellum agreed. Associate Member Erskine suggested that staff meet again with SMAC to discuss the Pocomoke-Tangier Area. Matthew Hull, Assistant Attorney General and VMRC counsel suggested adding grandchild to the transfer wording for family. The motion carried, 9-0. The Chair voted yes.

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13. **PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-260-10 et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas," to establish baskets (circular, plastic, mesh containers of not less than 2500 cubic inches but not more than 3000 cubic inches), filled level across the entire top, as the only unit of measurement for buying or selling clean cull oysters harvested from public oyster grounds.

Jim Wesson, Head-Conservation and Replenishment gave the briefing of the information provided in the staff evaluation with slides. His comments are a part of the verbatim record.

Mr. Wesson noted that the Code does not authorize the Commission to prohibit the watermen from using the Virginia tub and allow the use of the basket as the only measure.

Mr. Wesson explained staff request approval of amendments to Chapter 4VAC20-260-10, et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas", to establish the requirement that baskets and tubs shall be filled level across the entire top. There were two new definitions, as follows:

The new definition of the basket will be a plastic mesh container equaling 2,566 cubic inches with a top inside diameter of 17 inches, bottom inside diameter of 13.5 inches, and an inside height of 14 inches (4VAC20-260-15).

A new definition, "Level full" means a basket or tub that is filled entirely to the upper rim, but not filled higher than the upper rim (4VAC20-260-15).

Commissioner Bull opened the public hearing.

The watermen who addressed Commission had some concerns about requiring there to be 'level full' to the rim of the baskets. Most commented that the oysters start out level but that they tend to settle in the basket by being moved or by the movement of the boat especially if the weather was bad. A few were concerned with how it could be enforced by the Law Enforcement and that it was not always easy to completely fill the last basket as it may be only half bushel. One asked if it mattered if the oysters were being taken to Maryland. Those who spoke were:

Lisa Rose, Michael Clair, Dan Dise, Marc Brown, Ty Farrington, and Scott Wivell.

Commissioner Bull closed the public hearing and stated the matter was before the Commission for discussion or action.

Associate Member Erskine noted that the Shellfish Management Advisory Commission past this unanimously.

Associate Member Minor moved to accept the staff recommendations for the definition of basket with level measure to rim of the basket or tub. Associate Member France seconded the motion. The motion carried, 9-0. The Chair voted yes.

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14. **REQUEST FOR PUBLIC HEARING:** Consider amendments to the Chapter 4VAC20-650-10, et seq., "Establishment of Oyster Sanctuary Areas" to allow oyster harvesters using hand tongs only to pass through an oyster sanctuary as long as they are not carrying oysters on board.

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

Mr. Wesson explained that staff recommended that Chapter 4 VAC 20-650-10 et seq., "Establishment of Oyster Sanctuary Area," be amended to allow oyster harvesters using hand tongs only to cross through sanctuary areas provided they do not have oysters on board. Staff request advertising for a public hearing request.

Associate Member Neill moved to accept the staff recommendation for a public hearing. Associate Member Minor seconded the motion. The motion carried, 9-0. The Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 5:35 p.m. The next regular Commission meeting will be Tuesday, September 27, 2016.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary