

MINUTES

Commission Meeting

August 27, 2013

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 2600 Washington Avenue, Newport News, Virginia with the following present:

Jack G. Travelstead	Commissioner
Robert Beck S. Lynn Haynie Ken Neill	Associate Members
J. Bryan Plumlee Whitt G. Sessoms, III J. Edmund Tankard	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Jane McCroskey Linda Farris	Chief, Admin-Finance Bs. Systems Specialist, MIS
Rob O'Reilly Joe Grist Jim Wesson Joe Cimino Stephanie Iverson Renee Hoover Alicia Nelson	Chief, Fisheries Management Deputy Chief, Fisheries Mgt. Head, Conservation/Replenishment Fisheries Mgmt. Sr. Manager Fisheries Mgmt. Mgr. Biological Collection Prgm. Supvr. Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham Samantha Hoover Sally Roman Laurie Williams Adam Kenyon	Game Fish Coordinator Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist
Rick Lauderman Warner Rhodes Bill Franklin David Deemer	Chief, Law Enforcement Deputy Chief, Law Enforcement Marine Police Officer Marine Police Officer

Commission Meeting

**16982
August 27, 2013**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Julliette Giordano	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Ream	Project Compliance Techician
Rob Butler	Surveyor

Virginia Institute of Marine Science (VIMS):

Mark Luckenbach Rom Lipicius

Others present:

Stephen Wilson	Tom Flounders	Arthan Jennette
Steve Leap	Linda K. Wilson	Richard Green
Susan Eley	Tom Eley	Jim Bateman
Bill Meagher	Rev. Randy Garner	Dorothy Brandon
William Brandon	Dewey L. Clemmons, Jr.	
Zachery Norton	Grace Childs	Ted Broderson
Doris Fulwider	Inge Curtis	Corval Bareford
Mark Thompson	George Johnson	Donald Charity
Sam Frye	Debbie Frye	Kenny Lamm
Stephanie Barber	John Spencer	Cindy Frame Stone
Donna Moore	Sherry Ashe	Brenda Charity
Jessica Bassi	James Smith	Richard Machen
Jason Moles	Lee Stephens	Karen L
J. M. Lihewich	Robert Leitz	Michael Francisco
Maxine Francisco	Michael Cochran	Andy Lacatell
Kent Carr	James	David Daigneault
Cindy Steger	Robert H. Scott	Kenneth Kurkowski
Ted Williams	Karen Williams	John Bateman
Patricia Bateman	Jenn Arosa	Freddie Linton
N. C. Carr	John Forrest	Francescom Caffari
Robert Hogge	Carol Hogge	Sherry McCulloch
Jess McCulloch	Tim Wivell	Chris Moore
Ken Smith	A. W. Williams	Joe Martin
Danielle McCulloch	Mike Croxton	Tammy Croxton

Commission Meeting

**16983
August 27, 2013**

Sara O'Reilly

and others.

* * * * *

Commissioner Travelstead called the meeting to order at approximately 9:34 a.m. Associate Member A. J. Erskine was absent due to illness.

Commissioner Travelstead congratulated Colonel Rick Lauderman, Chief of Law Enforcement, for the excellent work done that resulted in the agency being awarded a Certificate of Merit from the Virginia Department of Homeland Security. The Department of Homeland Security decided the Marine Resources Commission was one of the top performers of all State agencies for establishing formal preparedness plans for continued, uninterrupted operations in the event of emergencies, including physical security, records retention, and preservation of digital information.

* * * * *

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

* * * * *

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

Commissioner Travelstead asked for a motion for the agenda.

Associate Member Tankard moved to approve the agenda. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

* * * * *

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

Associate Member Plumlee moved to approve the July 23, 2013 meeting minutes. Associate Member Tankard seconded the motion. The motion carried, 5-0-1. Associate Member Beck abstained. He noted he was absent from the previous meeting.

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

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

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

Commissioner Travelstead asked for public comments. There were none. He then asked for a motion.

Associate Member Tankard moved to approve the page two item 2A. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

- 2A. **DEPARTMENT OF THE NAVY, #13-0982**, requests authorization to directionally drill two (2) 34.5 KV submarine power distribution cables beneath a 2,310-foot section of Little Creek Cove within Joint Expeditionary Base Little Creek in Virginia Beach. There will be no direct impacts to the waterway in this effort to upgrade the Base’s electrical power distribution system.

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

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

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

- 5. **DEPARTMENT OF THE NAVY, #13-0837**, requests authorization to impact 500 square feet of State-owned submerged land and 500 square feet of non-

vegetated wetlands as a result of the installation of 100 linear feet of riprap revetment extending a maximum of ten feet channelward of mean low water adjacent to Building 252 and Wharf 1 at St. Julian Creek Annex situated along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a Subaqueous and Wetlands permit.

Tony Watkinson, Chief, Habitat Management, explained that this application for permit had been handled by the new process established at the June Commission meeting for wetlands hearings to be held by hearing officers from the Habitat Management staff appointed to hold these hearings. He noted that the City of Chesapeake did not have a wetlands board. He said the hearing was held by Justine Woodward and that testimony had been received at this hearing and a summary of the results was provided by staff in the Commission notebooks. He noted there was one slide for the Commission review. He said that staff felt the project was acceptable and should be approved. He said he did not believe it was necessary to open the record for any further testimony.

Justine Woodward, Environmental Engineer, Sr., stated she had nothing else to add to the previous comments, but would answer any questions. There were none.

Commissioner Travelstead asked that if the members were comfortable with the new process and as there were no objections expressed from the Board members, he asked for a motion.

Associate Member Plumlee moved to approve the project, as proposed. Associate Member Beck seconded the motion. The motion carried, 6-0.

Permit Fee.....	\$100.00
Wetlands Permit Fee.....	\$ 10.00
Total Fees.....	\$110.00

* * * * *

- 6. MATHEWS LAND CONSERVANCY, #12-1539.** Appeal by 40 freeholders of the Mathews County Wetlands Board decision to approve the installation of a rowing and sailing center on pilings extending over intertidal wetlands along the East River at 1039 Williams Wharf Road.

Commissioner Travelstead explained the hearing process for Wetlands Appeals for the new board members and other attendees for the hearing.

Mike Johnson, Environmental Engineer, Sr., gave the briefing of the staff evaluation with slides.

After some questions were answer for clarification by staff, Mr. Johnson read their recommendation into the record.

“After careful review of the record, staff is unable to conclude that the Mathews County Wetlands Board erred in their decision to approve the rowing and sailing support center. Furthermore, the rationale they provided is consistent with the requirements of § 28.2-1302.10.B of the Code of Virginia, and the loss of vegetated wetlands will be mitigated for on-site at a ratio of greater than 6:1 which is consistent with the established guidelines. We believe the Board provided proper notice of the hearing for the project (the Wetlands Ordinance only requires public notice for the hearing not specific impacts), that they appropriately considered and understood the extent of the water dependent uses of the facility, and they understood the need for the size and nature of the facility as well as the various uses. As such, staff recommends the Commission uphold the decision of the Mathews County Local Wetlands Board.”

Mr. Johnson’s comments are a part of the verbatim record.

Commissioner Travelstead asked if there was a representative for the protestants.

Colonel Steve Wilson, adjacent property owner and protestant, was sworn in and his comments are a part of the verbatim record. He stated that the building was too large and they felt it was not water dependent. He said it had been said there was a need for parking space for three rowing crews. He stated that at the July Wetlands Board meeting all of the issues were not discussed, such as the wrap-around deck. He said at the January Wetlands Board meeting they had said that they could not approve the large building and the amount of encroachment and he noted at the May meeting there was a small change made in the size and location. He said they were concerned the building would be used for other purposed. He requested that the Wetlands Board approval be overturned and to asked that the project be redesigned and reduced to agree with a August 2011 plan.

Commissioner Travelstead asked if there was a representative for the Wetlands Board present.

Ken Kurkowski, Chairman of the Wetlands Board was sworn in and his comments are a part of the verbatim record. Mr. Kurkowski said that the Board had considered the project three times and the changes made moved the structure and reduced its size as well as there was mitigation on site to compensate for the loss of wetlands. He said actually it was six times more than what is required for mitigation compensation and no action was required for the un-vegetated wetlands by the Board.

After some discussion and questions, Lee Stevens, attorney for the applicant, was present and his comments are a part of the verbatim record. He said that as required by §28.2.1313 there had been thorough discussion and this activity had been ongoing for 20 years and was endorsed by Mathews County. He said the rowing team had been around

since 1985 and other groups had been established as a result of the original group. He said the status of this group is non-profit and any activities are for fundraising. He said there was a conservation easement so it had to be open to the public forever. He stated the Wetlands Board had done a remarkable job and they request the Board's decision be upheld.

James Smith representing the Conservancy was present and his comments are a part of the verbatim record. Mr. Smith explained that they were using the rooms for exercising, awards ceremonies, and team meetings. He said there was also the Regatta.

Commissioner Travelstead read Section 28.2-1313 of the Code of Virginia for the record.

Associate Members Plumlee, Sessoms, and Tankard all expressed their agreement that the Wetlands Board had done a good job and had met all the requirements of the Code. They also felt that the mitigation compensation was done in a way that exceeded the required amount.

Associate Member Tankard moved to uphold the Mathews County Wetlands Board as this was reasonable use of wetlands. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

No applicable fees - Wetlands Appeal

* * * * *

- 7. FIRST SIMPLE CHURCH, #13-0625**, requests authorization to install a 5-foot wide by 77-foot long church community pier extending a maximum of 67 feet channelward of mean low water with a 14-foot by 6-foot L-head and two (2) sets of 4-foot wide stairs adjacent to property situated along the Chickahominy River at 16401 Chickahominy Bluff Road in Charles City County. The project is protested by six nearby property owners.

Julliette Giordano, Environmental Engineer, Sr., gave the briefing of the information provided in the evaluation. Her comments are a part of the verbatim record.

Commissioner Travelstead asked if the recommendation from VIMS had been complied with. Ms. Giordano stated VIMS had asked for this change because of the SAV beds.

After some further clarification questions, Commissioner Travelstead asked for any supporters of the project that wished to comment.

Robert P. Childs, supporter, was sworn in and his comments are a part of the verbatim record. Mr. Childs explained that when they first came there they had found a lot of debris put there by others in the area which they had worked to remove and now the area

was better than before. He stated that baptisms were going to occur at the pier and they had worked to resolve all of the issues.

In response to a question about access by others of the public, Mr. Childs responded there were 40 members and 40 to 50 attendees and there were no plans for a lot of growth. He noted the area had been posted for church members only. He said they were non-traditional but there were no other unusual activities and it was a simple church with a simple message.

Debbie Frye, church member, was sworn in and her comments are a part of the verbatim record. Ms. Frye said they came to the area in 2005 and sent out a letter to the community inviting questions and inquiries. She explained that one neighbor had already let them know very strongly that they were not welcome on their land. She said their use was within the law and they have seen their neighbor spying on them and taking pictures. She stated that they had greatly improved the area and they had been complimented on their efforts.

Cindy Stone, church member, was sworn in and her comments are a part of the verbatim record. Ms. Stone said that they had a boat and would only use in an emergency. She said they did not want to damage the cypress trees.

Stephanie Barber, church member, was sworn in and his comments are a part of the verbatim record. She said she appreciated the concerns others had for their privacy, but everyone has a right to use their property. She noted too that one of their neighbors had been taking pictures when they were holding an activity being held at the church.

Dr. Sam Frye, pastor of the church, was sworn in and his comments are a part of the verbatim record. Dr. Frye explained that the Methodist preaches the message of Christ and they were just using the area that was theirs to use. He said the complaints started in April 2012 and the County had been out to visit the site and determined nothing was being done wrong and the laws were being complied with as it was zoned as A-1 agricultural and the church was a non-profit organization. He said they did not plan for growth, they would just put another church in another site. He said the members had been bullied and harassed by the neighbors. He noted the church building was built in 1990 and since then had been used for other purposes prior to their arrival. He said the church has spent money to make improvements.

Commissioner Travelstead asked if someone in opposition wished to comment.

Doris Fulwider, Inge Curtis, John Spencer, Dewey Clemmons, Brenda and Donald Charity, protestants, were sworn in and their comments are a part of the verbatim record. Their concerns were: others from the public could come there causing safety issues, increased traffic, litter, concern regarding the effects from the trees and bushes that had been removed and equipment that was left there on the wildlife, destruction of the

wetlands, impact on access to their own property, the pier would cause erosion along the shoreline, the structure proposed was longer than the original plan, and it would decrease their property values. The bike path and benches installed directly behind property invade their privacy. They all asked that the project not be approved.

Commissioner Travelstead stated that some of these concerns were not within the VMRC jurisdiction and the Commission was only considering the pier construction on State-owned bottomland.

Dr. Frye in his rebuttal comments stated that no cypress trees had been cut down and to curb the erosion they had put gravel down. He explained the one parking lot was for overflow parking and not designed for parking. He said it was the only access for the handicap members. He noted that a sign was installed saying for Church use only. He said when he was told about the bench issue he told them they would move it if it did present a problem.

Commissioner Travelstead stated the matter was before the Commission.

After some further discussion, Associate Member Plumlee said it was nothing different from a residential pier, just a community pier. He noted it would not add any more people and the area would be used the same whether the pier was there or not. He moved to approve the project, as proposed. Associate Member Beck seconded the motion. The motion carried, 6-0.

Royalty Fees (encroachment 419 sq. ft. X \$0.30/sq. ft.).....	\$125.70
Permit Fee.....	\$100.00
Total Fees.....	\$225.70

* * * * *

8. MARK THOMPSON, #13-0258. Appeal of the Mathews County Wetlands Board decision to deny an 8-foot wide boat ramp and associated scour protection along Milford Haven at 520 Old Ferry Road.

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

Conrad Bareford, attorney for the applicant was present and his comments are a part of the verbatim record.

Mark Thompson, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Thompson said that when his family acquired the property it was decided

that an easement for watermen would be included in the deed as their property was away from the waterfront and they could take their boats and offload them at this location. He said he was ordered to remove the rip rap that had been at the location since 1968 by the Wetlands Board at their April 9 meeting. He said the boat ramp he installed was not asphalt, but lego-type forms to allow the easement access to water. He said he was just trying to honor the easement established in the deed. He noted that a public ramp had been installed since he had moved there to live.

Tony Watkinson, Chief, Habitat Management, explained that the wetlands violation involved both the rip rap and boat ramp and Mr. Thompson complied with the order for removal. He said Mr. Thompson then applied for a new boat ramp which was denied. He said this is what was being heard at this meeting.

Commissioner Travelstead asked if there was evidence of the prior boat ramp. Mr. Johnson stated that they reviewed an aerial of the area and could not tell.

When asked about pictures by Associate Member Beck, Mr. Johnson stated that no photos were entered into the Wetlands Board record and a motion would be necessary to open the record.

Associate Member Sessoms asked about the importance of the easement. Mr. Thompson explained that when his grandfather bought the land he deeded a perpetual access to the watermen. Associate Member Sessoms asked if any watermen use it now. Mr. Thompson stated there were two watermen.

Associate Member Plumlee inquired if anyone had asked for improvements. Mr. Thompson stated that he was just making it to allow minimal access and to protect the shoreline.

Mr. Bareford explained that the plat shows the easement to go to water, which was presented to the Wetlands Board during the violation hearing as well as other evidence.

Associate Member Tankard asked if the boat ramp was mentioned in the deed. Mr. Bareford said that was a gray area and blocks were used to allow growth to occur and protect the shoreline and allow access also.

Commissioner Travelstead asked if the Wetlands Board representative was present.

Ted Broderson, member of the Wetlands Board, was present and his comments are a part of the verbatim record. Mr. Broderson said the order was for all that Mr. Thompson had installed and to restore the area.

Associate Member Plumlee asked about the adverse impacts. Mr. Broderson said that it needs to go into the water for access with a boat not to just stop at the bank. He stated it was on the property line of the adjoining property owner on the north.

Mr. Bareford stated it was a small impact and they asked it be remanded or approved to allow an appropriate structure.

After some further discussion, Commissioner Travelstead asked staff if the record needed to be opened. Mr. Watkinson stated the record needed to be opened if they wish to view photos of the site. **Associate Member Plumlee moved to open the record in order to see the slide of the shoreline. Associate Member Tankard seconded the record. The motion carried, 6-0.**

Mr. Johnson showed the Board staff slide of the shoreline and stated the water was one foot deep at low tide.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Beck moved to overturn the Wetlands Board decision. Associate Member Sessoms seconded the motion. Associate Member Plumlee pointed out that they need to have findings in support of the motion. He said you cannot tell what was there before as it is not in the record so the record was not sufficient to base their decision. He said it was arbitrary and conspicuous as it was a 30 to 40 foot of area impacted and no wetlands of value were present. Associate Member Tankard said based on Section 28.2-1313, he did not see how the Commission can say the Wetlands Board erred as he could not see that a right of way was the same as a boat ramp. He further said that he felt there was no case established to remand or overturn the decision of the Wetlands Board. The motion carried, 5-1. Associate Member Tankard voted no.

No applicable fees – Wetlands Appeal

* * * * *

- 9. **WILLIAM K. CARR, #2013-026 and NOAH C. CARR, JR., #2013-075,** request authorization to lease oyster planting grounds of up to 250.00 acres and 25.00 acres respectively within the James River near Huntington Park upstream of the James River Bridge in the City of Newport News. Application #2013-026 is protested by Richard Green, an adjacent leaseholder, and application #2013-075 is protested by numerous parties (by signed petition).

Ben Stagg, Environmental Engineer, Sr., gave the briefing of the information in the staff's evaluation. His comments are a part of the verbatim record. He noted that this was two applications, but made by a father and son, and could be heard together. He

added that staff felt a separate motion would be necessary for each application. He noted that the one by Kent Carr was being protested by Richard Green and the Noah Carr application was protested by a petition.

Commissioner Travelstead asked the applicant if he wished to comment.

Noah Carr, applicant, was present.

Kent Carr, applicant, was present and his comments are a part of the verbatim record. Mr. Carr said originally he had applied next to this area that had been denied and left for the harvest of oysters by watermen. He said later the same area was applied for by Mr. Green, protested by watermen, but given to Mr. Green. He said to protest this application because it is polluted was not valid objection and this area would provide him a buffer.

Commissioner Travelstead asked if the protestant wished to comment.

Richard Green, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Green said the application for lease by Noah Carr should be left open for watermen and it was closed due to sewage in the Deep Creek area. He stated the area for lease by Kent Carr had nothing there and there was no reason to go in there except to harvest oysters.

Commissioner Travelstead closed the public hearing.

Commissioner Travelstead asked Dr. James Wesson how many approximate acres were in the James River. Dr. Wesson stated about 10,000 acres. Commissioner Travelstead asked if there was a reason to add this to the public bottom. Dr. Wesson responded no, but there was concern because of condemnation reasons.

Associate Member Tankard moved to approve both applications for lease. Associate Member Haynie seconded the motion. The motion carried, 6-0.

* * * * *

10. PUBLIC COMMENTS:

Kent Carr expressed concern over communications from the Virginia Department of Health over oyster icing requirements during warm water months, and felt the Commission needed to examine its harvest reporting requirements, he was being told wrong on how he should report his oyster harvest.

John Forrest explained that he had toured an oyster larvae hatchery on Gwynn's Island and was very impressed. He said that he has heard there is a problem with finding markets for commercially caught spiny dogfish. He said the two U. S. exporters had

been blacklisted by the foreign market and there was no U. S. market.

Commissioner Travelstead told him some European buyers have halted purchases of spiny dogfish from U. S. suppliers, and there was a need for concern about it.

* * * * *

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

Stephanie Iverson, Fisheries Management, Manager, gave the presentation for this item. Her comments are a part of the verbatim record. Ms. Iverson explained that Keith Jenkins was the only one not at the hearing. She provided a hand out with two changes.

Ms. Iverson explained that James Marshall was on probation since May 22, 2012, when he failed to report one time. She said he had been sent all notifications required and the Marine Police Officer had not been able to serve him notice of a hearing until now. She noted that he was currently up to date. She explained that the staff recommendation was for six months license suspension and two year probation after that time.

James Marshall, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Marshall explained that he cannot read or spell and his boss fills out the paperwork for him and he thought it was reported. He said he harvest oysters for a living and if he loses his license he will not be able to make a living.

Some of the Associate Members said they felt that they did not have any options, but to accept the staff recommendation. Associate Member Tankard moved to accept the staff recommendation for six months all licenses suspended and after that two year probation. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

Ms. Iverson explained that they had sent Francesco Caffari all the appropriate notifications since May 2012 and also tried to call him. She said he was missing 13 months of reporting. She said he brought in a letter but the person did not send any reports into the office. She reiterated that no reports were received from the other individual.

Francesco Caffari, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Caffari said he thought the reporting had been done by someone else, the Captain who did it for everyone else.

Associate Member Tankard moved to accept the staff recommendation for two year probation. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

Ms. Iverson explained that all appropriate notifications has been sent Robert Hogge since April 2012 and staff had even called him. She said he told them he worked with someone else and he was told by staff to submit a letter. She said he has now submitted the necessary data so that he is up to date for 2012 and 2013. She said staff recommended two year probation.

Robert Hogge, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Hogge stated he worked with someone else and thought it had been done. He said he worked gill nets and harvested oyster. He added he had never before been called to come before the Commission.

Associate Member Plumlee moved to accept the staff recommendation for two year probation. Associate Member Haynie seconded the motion. The motion carried, 6-0.

Ms. Iverson said that Keith Jenkins was presently incarcerated and it will have to wait. Commissioner Travelstead stated that staff should find out when he will be available and the Board would hear it at that time.

* * * * *

12. PUBLIC HEARING: (1) Proposed amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2013-2014 public areas harvest seasons and (2) proposed amendments to Chapter 4VAC20-260-10 et seq., "Pertaining to Designation of Seed and Clean Cull Areas," to modify oyster culling procedures."

James Wesson, Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record.

Chapter 4VAC 20-720-10, et seq., "Pertaining to Restrictions on Oyster Harvest":

Dr. Wesson explained that there were two public hearings today, the first being to establish the public oyster harvest seasons. He said that all of the same areas were proposed to be opened, except for the areas that are rotated each year. He added that the Rappahannock River Rotation Area 4 was changed as some of the area was removed that usually gets a good spatset, but the oysters rarely make it market size. He said staff wants to leave this area for the Oyster Replenishment Program to use as a seed area. He said that Rappahannock River Areas 7 and 8 did not have a lot of strike but there were a good number of oysters present.

Dr. Wesson said that at the Shellfish Management Advisory Committee meeting two watermen from Saxis came to that meeting to ask that additional area in the Pocomoke Sound be opened to harvest. He said this was Public Grounds 9 and 10, which staff went with watermen to look at and they showed him a significant number of oysters there that could be harvested. He said these oysters were the result of oyster strike that occurred in 2010 and 2012. He said that staff recommended advertising for a public hearing in September to consider their request. He said staff was recommending that each area be opened for one month and after this year the area rotation strategy would be utilized.

Commissioner Travelstead opened the public hearing.

John Forrest, waterman, was present and his comments are a part of the verbatim record. Mr. Forrest said when Rappahannock River Rotation Area 5 was open they only were only able to work three weeks. He said the second issue was that the oyster regulation was too complicated and the rules should be all in one regulation. He said that there was nothing opened for the Mobjack Bay.

Dr. Wesson explained that the Mobjack Bay area was a part of the rotation strategy in combination with the York River and would be opened every 3rd year.

Mr. Forrest said that Area 5 had a lot shells but no oysters. He noted that in Area 4 some of the area had been removed which was in the Corrotoman River which is a good spatset area. He said this spatset needed to be transplanted to other public ground and not reserved for private leaseholder. He said this was being taken away from the public and it was making it so they had a smaller area to work in. He said it was okay to cut the area, but only if it were seed oysters transplanted to other public grounds.

Commissioner Travelstead closed the public hearing and asked for a motion for approval of the amendments to Chapter 4VAC20-720-10 et seq. and the request for public hearing for Pocomoke Sound, Public Grounds 9 and 10.

Associate Member Tankard moved to approve Chapter 4VAC20-720-10, et seq., as recommended by staff and moved to advertise for the public hearing for Pocomoke Sound, Public Grounds 9 and 10. Associate Member Plumlee seconded the motion. The motion carried, 6-0.

Chapter 4VAC 20-260-10, et seq., "Pertaining to Designation of Seed and Clean Cull Areas":

Dr. Wesson explained that the amendments to this regulation were to modify the culling procedures, which required the oysters to be loose in a pile in the boat. He said that several years ago there had been a request to allow the watermen to keep the oysters in the 'orange' basket versus in a loose pile. He said that SMAC had recommended that one or the other be used and when he talked with watermen they want to use the 'orange'

basket. He noted that the oysters still have to be sold in the legal tub when they offload, as is required the Code of Virginia. He said Law Enforcement want to be able to use one or more baskets to put in the tub in order to measure for the inspection and if a violation is found then the whole load is put back overboard. He said staff recommended approval of the amendments to Chapter 4VAC20-260-10 et seq.

Commissioner Travelstead noted to clarify that the baskets do not all have to be actually orange in color. He opened the public hearing and there were no public comments.

Associate Member Plumlee moved to approve the staff recommendation. Associate Member Beck seconded the motion. The motion carried, 6-0.

* * * * *

13. DISCUSSION: Recommendations from the Law Enforcement Subcommittee involving the Schedule for Revocation of Licenses, as Authorized by Section 28.2-232 of the Code of Virginia.

Rob O'Reilly, Chief, Fisheries Management, gave the briefing for this item. His comments are a part of the verbatim record.

Mr. O'Reilly said at the August 2012 Commission meeting Commissioner Travelstead requested the establishment of a committee to review the current issues related mainly to administration of the provisions of Section 28.2-232 of the Code of Virginia. This provision establishes the Commission's authority to implement sanctions in the form of revoking fishing privileges and prohibiting the issuance, reissuance, or renewal of any licenses if, after a hearing, it finds a harvester has violated any subtitles of the provision. Commissioner Travelstead had stated at the August 2012 Commission meeting that the current sanctions for court-adjudicated violations of regulations and laws governing natural resources were inadequate in promoting conservation and protection of natural resources. The Commissioner also proposed the committee review an expansion of the allowance of pre-payable fines for violations of natural resource laws and regulations. The striped bass weight quota system and oyster poaching were also issues requested for review by the Committee.

Mr. O'Reilly explained that striped bass management, ranking of violations and resulting action and final disposition were provided in the staff's report and staff recommendation is for the Commission to accept the final report.

Associate Member Plumlee asked if this would be a part of a regulation or just a matrix table. Mr. O'Reilly said it would not be a regulation. Commissioner Travelstead stated it would be guidelines for the Board and was here to be adopted by the Board. He said this information would be taken into consideration on a case-by-case basis, but other things would also be looked at for making decisions.

Associate Member Plumlee stated that this would make uniform the treatment of all violators when their cases are heard by the Board.

Commissioner Travelstead asked for a motion. Associate Member Plumlee moved to approve the guidelines presented by staff. Associate Member Haynie seconded the motion. The motion carried, 6-0.

* * * * *

14. DISCUSSION: Proposed recommendations for the 2013 - 2014 commercial blue crab fishery to include a Commission decision on a staff proposal to establish a limited winter crab dredge fishery season.

Rob O'Reilly, Chief, Fisheries Management, explained that this was a informational hearing and a request for a public hearing to discuss a limited Crab Dredge Fishery for this fall. He said that there would be others to talk about the Blue Crab Advisory Panel Report and individuals from VIMS would discuss the Crab Dredge Fishery Study on Incidental Mortality which was completed this past year.

Paula Jasinski, representing the Blue Crab Advisory Panel, gave a brief presentation on the advisory panel's activities for almost two years. Her comments are a part of the verbatim record. She explained that they had set goals and missions for the panel to establish long-term financial and abundance of stocks stability, ways to make the industry profitable year round, attracting new watermen to the industry as the current average age of watermen in the industry was rising, and a website was available with the minutes of the meeting and reports by the panel. They had notified the more than 1500 watermen in the crabbing industry of the meetings as an outreach effort. She noted that 14 from the crab industry, harvesters and buyers, were on the panel. She said they would continue with their efforts as a panel and in their outreach efforts and have a final panel report by the fall of 2013.

Danielle McCulloch, VIMS representative, gave a presentation with slides on the Crab Dredge Study that was done in the past year. She provided information about the study process and protocol methods followed during the actual crab dredging by the four watermen selected for the study. A Crab Dredge subcommittee was formed made up of VMRC staff and VIMS staff as well as the four crab dredge study participants to establish the process and protocol methods. The project period was December 20 through March 15 this past winter season.

Rom Lipicius, VIMS representative, gave a presentation with slides. He explained that the primarily they were looking for the discard mortality on the blue crab and anything that was bycatch species was looked at as incidental mortality. He said the crab was the targeted species in this study so they did not look too closely at the incidental catch. He

went on to explain some of the results in detail of the study. His comments are a part of the verbatim record.

Mr. O'Reilly discussed the information provided on the stocks, fishery, management and the establishment of a limited Crab Dredge Fishery. These comments are a part of the verbatim record. He read the staff recommendation for the proposed limited crab dredge fishery:

Establishing a limited crab dredge fishing season that begins no later than January 1, 2014 and ends no later than February 28, 2014, with a maximum, tightly controlled, quota of 1.5 million pounds that would be subject to conservation equivalency (compensation) measures, a maximum participation of 37 individuals who meet the qualifications establish by the limited entry criteria, crab dredging areas, season, time, daily limits, license sales, and any additional provisions established in this evaluation and subject to the findings of the dredge gear working group.

Joe Grist, Deputy Chief, Fisheries Management, gave a presentation on the proposed 2014 conservation equivalency measures for the crab pot fishery in order to provide a savings for a winter crab dredge fishery season, a crab pot season extension, or both. His comments are a part of the verbatim record. There were two conservation equivalency options provided to the Crab Management Advisory Committee as follows:

- 1) Open the 2014 crab pot season on April 1, 2014 instead of March 17, 2014. This could provide a possible savings ranging from 332,000 pound to 1,200,000 pounds.
- 2) Establish conservation equivalency bushel limits in 2014 based on a CMAC recommended recasting of projected harvest data to include an industry recognized attainable exceptional harvest amount, by crab pot license category, but to remove extraordinary harvest reports that were unrealistic.

Mr. Grist also noted that in the event that neither a season extension, or a limited winter crab dredge fishery season, are adopted, then bushel limits for 2014 should still be established as either the maximum threshold, as identified by harvesters as an exceptional day, or a modified recommendation based on CMAC and staff discussions prior to an October public hearing. He explained that a survey would be mailed out industry-wide about the proposed management options and equivalency measures. He said then there would need to be a crab dredge fishery working group meeting held specifically to discuss season and area recommendations, and a final CMAC meeting for their review and recommendations.

Mr. O'Reilly read the staff recommendation:

Staff recommends advertising for an October 22, 2013 public hearing to consider the following:

1) Establishing a 2014 male blue crab season, excluding crab dredge gear, that begins March 17, 2014 and ends November 30, 2014, and a female blue crab season, excluding crab dredge gear, that begins March 17, 2014 and ends November 20, 2014.

2) Establishing a 2014 crab agent provision that requires crab licensee's with approved agents in 2012, and who have complied with all reporting requirements, to submit a 2014 crab agent registration application to the Commission by February 28, 2014 to be eligible for one of the 153 agent slots. If the number applications by eligible licensees as of March 1 is less than the approved 153 agent slots, then any application for a crab agent will be considered until the 153 agent slots is filled.

3) Establishing a limited crab dredge fishing season that begins no later than January 1, 2014 and ends no later than February 28, 2014, with a maximum, tightly controlled, quota of 1.5 million pounds that would be subject to conservation equivalency (compensation) measures, a maximum participation of 37 individuals who meet the qualifications establish by the limited entry criteria, crab dredging areas, season, time, daily limits, license sales, and any additional provisions established in this evaluation and subject to the findings of the dredge gear working group.

4) Extending the 2013 crab pot season for female and male crabs to December 15 and subject to conservation equivalency (compensation), measures.

5) Establishment of 2014 conservation equivalency (compensation) measures through crab pot, license category specific, daily harvest and possession bushel and barrel limits.

Commissioner Travelstead explained that he recommended that the Board give as much space for when they make their decision. He asked what was the pleasure of the Commission.

Associate Member Tankard expressed his concern with limiting the crab dredge fishery to 37 individuals.

Associate Member Plumlee said he would recommend that the Blue Crab dredge fishery issue be in a separate motion.

Associate Member Plumlee moved that it be advertised for public hearing in October for the Commission to consider and decide whether the moratorium will be continued or there will be a limited, controlled Blue Crab Dredge Fishery season; and, that priority would be given to those watermen that have recently participated in the Blue Crab Dredge Fishery and reported the most effort. Associate Member Tankard seconded the motion. The motion carried, 6-0.

Associate Member Plumlee moved to advertise the four remaining recommendations for the 2014 Blue Crab Fishery by staff for a public hearing in October. Associate Member Haynie seconded the motion. The motion carried, 6-0.

* * * * *

- 15. **REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-960-10, "Pertaining to Black Sea Bass," to allow for the culture of black sea bass by permitted aquaculture facilities.

Joe Grist, Deputy Chief, Fisheries Management, gave the presentation and explained this was a request to hold a public hearing in September to consider amendments to the regulation to allow for the aquaculture of black sea bass by permitted facilities. He explained this there were two facilities that had been provided scientific collection permits to develop facilities for the culture of black sea bass. He said one of them has indicated they are going to be ready to market their black sea bass in approximately 16 months. He said this same strategy was done for the development of the aquaculture of cobia and similar restrictions would be applied to regulate and insure that there were no conflicts with the wild harvest fishery.

Commissioner Travelstead stated it was agreed by the Board to hold a public hearing in September on this matter.

* * * * *

- 16. **SETTING DATE OF NOVEMBER/DECEMBER COMMISSION MEETING:**

Commissioner Travelstead suggested that an alternate single date of December 10, 2013 be set for combining the November and December Commission meetings. He noted the November meeting was in the week of Thanksgiving and the December meeting was on Christmas Eve.

After some further discussion, it was the general consensus of the Board members to re-schedule and combine the November and December meetings and hold this meeting on Tuesday, December 10th.

Commission Meeting

**17001
August 27, 2013**

* * * * *

There being no further business, the meeting was adjourned at approximately 6:08 p.m.
The next regular meeting will be held Tuesday, September 24, 2013.

* * * * *

Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary