

## MINUTES

## Commission Meeting

December 10, 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	
James D. Close	
A. J. Erskine	
S. Lynn Haynie	Associate Members
Ken Neill, III	
Whitt G. Sessoms, III	
J. Edmund Tankard, III	
Paul Kugelman	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Joe Grist	Deputy Chief, Fisheries Mgt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Manager
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham	Director, VSWFT
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Adam Kenyon	Biological Collection Prgm. Supvr.
Jason Schaffler	Fisheries Mgmt. Analyst
Rick Lauderman	Chief, Law Enforcement
Jamie Green	Captain, Law Enforcement (MA)
Brad Ramsey	Marine Police Officer
Steve Head	Sr. Marine Police Officer
Mike Morris	Sr. Marine Police Officer
Jeff Copperthite	1 <sup>st</sup> Sgt., Law Enforcement (SA)

**Commission Meeting**

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justine Woodward	Environmental Engineer, Sr.
Juliette Giordano	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luckenbach	Rom Lipcius
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Others present:

David Morris	Roger Habech	William R. Martin
Dudley Biddlecomb	Paul Halder	Mike Bowler
Jim Cahoon	Chip Jones	Pamela Russell
Lynton S. Land	Wade Hall	Edwin A. Sisson, Sr.
Alfred C. Henderson	Chip Hudnall	Michael Anaya
Stephen Miller	Margaret Miller	Joe Andrew
John Milleson	David Butler	Warren Deal
George Banes	Gerald M. Johnson	Robert Crate II
Myles Foeta	Judy Usry	J. W. Usry
Andy Lacatell	Ken Roller	C. J. Bodnar
Brittany Voll	Jackie Shannon	Tommy Leggett
Shannon Cahill	Chris Dodson	Stephen Quina
Ken Wivel	Greg Steele	Kevin Kohlon
Richard Duncan	Janet Cox	Jason Flowers
Susan Conner	Robert Irby	Mark Hudgins
Anthony Cario	Nicholas A. Green	Michael McGurkey
John Nilland	Kim Huskey	Jim Lang
Timothy Farrat	Charles Wimbrow	Michael H. Gilman
Joel Kubin	Ken Smith	Dean Nininger
Elgin Nininger	Brian Ewell	Carmel Gomez
Scharlene Floyd	Robert Berg	Tracy Bonnville
Chris Ludford	John Forrest	Jim Ellenson
Chris Moore	A. Gomez	

and others

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Commissioner Travelstead called the meeting to order at approximately 9:33 a.m. Associate Member Plumlee was absent.

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

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Commissioner Travelstead announced the appointment by Governor McDonnell of a new board member, James D. Close, a lifelong waterman from the Moon Virginia area.

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

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

Tony Watkinson, Chief, Habitat Management said that there were individuals who will be at the last two Habitat Items (Item 11 Paul and Mechele Halder and Item 12 Robert Irby) to be heard at this meeting that come from the Northern and Western Virginia areas and requested that they be heard earlier because of the pending bad weather in the afternoon.

Commissioner Travelstead explained that with the full agenda the Commission would have to play that by ear as there was a lot to be accomplished at this meeting.

Joe Grist, Deputy Chief, Fisheries Management, explained that there was one additional fishery item that needed to be heard which was a request for emergency action for Chapter 4VAC 20-260-10, "Pertaining to Designation of the Clean Cull Areas and Seed Areas", to clarify some language regarding the culling and inspection procedures. Commissioner Travelstead stated that this request would be made agenda Item 21.

**Associate Member Tankard moved to approve the agenda, as amended. Associate Member Erskine seconded the motion. The motion carried, 7-0.**

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**MINUTES:** Commissioner Travelstead asked if there were any changes or corrections to be made to the October 22, 2013 Commission meeting minutes.

Commissioner Travelstead announced that as there were no changes or corrections, the October 22, 2013 Commission meeting minutes were approved. Associate Member Close was attending his first 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 were five page two items to be heard. He reviewed the items for the Board. His comments are a part of the verbatim record.

Commissioner Travelstead asked for public comments. There were none. He then asked, what was the pleasure of the Commission?

**Associate Member Tankard moved to approve the page two items 2A through 2E. Associate Member Beck seconded the motion. The motion carried, 7-0.**

**2A. METRO FIBER NETWORKS, INC., #13-1568**, requests authorization to install a new submerged fiber optic cable, by directional bore and jet plow method, beneath 4,115 linear feet of the York River between Yorktown and Gloucester Point, approximately 1,000 feet upstream of the Coleman Bridge, to provide additional connectivity to the VIMS campus and Gloucester Point residents in Gloucester County. Recommend approval with a royalty of \$12,345.00 for the encroachment of the line beneath 4,115 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (Encroach 4,115 ln. ft. @ \$3.00/ln. ft.).....	\$12,345.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$12,445.00

**2B. LOUDOUN WATER, #10-2020**, requests authorization to modify a previously-authorized permit for a water intake and associated infrastructure to include boring 15 linear feet a minimum of six (6) feet below Sycolin Creek for two (2) 8-inch electrical conduits, and one (1) 4-inch communication conduit as a part of the Potomac River Water Supply Project in Loudoun County.

No applicable fees

2C. **PER PROPERTIES, #12-0592**, requests authorization to modify a previously approved project, to create 26,136 square feet of oyster reef next to an existing reef located north of the Jordan Bridge along the Southern Branch of the Elizabeth River in Chesapeake. The reef expansion is proposed as part of PER’s mitigation plan resulting from impacts associated with the construction of a grain terminal adjacent to their property at 3991 Elm Avenue situated on the Southern Branch of the Elizabeth River in Portsmouth.

No applicable fees

2D. **ROANOKE ENGINEERING DEPARTMENT, #13-0914**, requests authorization to rehabilitate the existing 9<sup>th</sup> Street bridge, to include replacement of the existing superstructure with a 40-foot 10-inch wide bridge deck, across approximately 80 feet of the Roanoke River in the City of Roanoke. No in-stream work is required. Recommend approval contingent upon the acceptance of a Memorandum of Understanding between the Department of Historic Resources and the permittee.

Permit Fee.....	\$100.00
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2E. **CAVALIER GOLF AND YACHT CLUB, #13-0935**, requests authorization to remove and replace the existing North and East fixed pier facilities (including slips and associated mooring piles) with floating docks and new mooring piles; to install a 10-foot by 150-foot floating attenuator pier; install an 8-foot by 60-foot paddle board dock; add a 5-foot by 10-foot gas dock extension; and add an 8-foot by 50-foot extension to the westernmost floating dock, all adjacent to the private marina located at 1052 Cardinal Road in the Birdneck Point subdivision, situated along Little Neck Creek in Virginia Beach. Staff recommends approval with a royalty of \$28,984.50 for the total encroachment over 19,323 square feet of State-owned submerged land at a rate of \$1.50 per square foot.

Royalty Fees (Encroach 19,323 sq. ft. @ \$1.50/sq. ft.).....	\$28,984.50
Permit Fee.....	\$ 100.00
Total Fees.....	\$29,084.50

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3. **CONSENT AGENDA ITEMS.** None

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

VMRC Counsel stated that no closed meeting was necessary.

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**5. COLONIAL PIPELINE COMPANY, #05-2245,** requests an extension to an existing Wetland Permit previously issued by the City of Chesapeake and set to expire December 31, 2013, authorizing the repair and/or maintenance of underground petroleum pipelines at six (6) designated stream crossings in the City of Chesapeake.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record. Ms. Woodward noted that the City of Chesapeake had rescinded the local Wetlands Ordinance therefore the Commission was now responsible for making a decision for the permit extension request.

Ms. Woodward explained that staff recommendation was to grant the extension through December 31, 2015.

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

**Associate Member Tankard moved to approve the permit extension. Associate Member Beck seconded the motion. The motion carried, 7-0.**

No applicable fees – Wetlands Permit Extension

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**6. VIRGINIA ELECTRIC AND POWER COMPANY, #13-1284,** requests authorization to construct a 1,050 linear foot riprap revetment adjacent to their facility at 2701 Vepco Street situated along the Southern Branch of the Elizabeth River in Chesapeake. The project requires a wetlands permit.

Justine Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. Her comments are a part of the verbatim record.

Ms. Woodward said that staff recommends approval of the project to construct a 1,050 linear foot riprap revetment adjacent to their facility at 2701 Vepco Street situated along the Southern Branch of the Elizabeth River in Chesapeake; conditioned upon the inclusion of VIMS’ recommendation for the shoreline area where the buried toe is

proposed and where excavated material is proposed to be replaced to re-establish the existing grade, and be planted with appropriate wetland sprigs where the elevation is suitable for establishing wetland vegetation. Since Dominion will be satisfying the compensation requirements through the purchase of 9,350 square feet of wetland credits from Libertyville Mitigation Bank, staff did not recommend any long-term monitoring requirements for the plantings as recommended by VIMS.

The applicant’s representative indicated they had no comments.

There were no public comments. Commissioner Travelstead stated the matter was before the Commission.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Sessoms seconded the motion. The motion carried, 7-0.**

Wetlands Permit Fee.....	\$10.00
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- 7. **SUSTAINABILITY PARK LLC, #12-0925**, requests authorization to construct a boat launch facility, including two (2) boat ramps with fixed tending piers, and a floating dock adjacent to property situated along the James River at 13101 North Enon Church Road in Chesterfield County. The project requires a wetlands permit and a subaqueous permit.

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

Ms. Giordano explained that staff recommended approval of both the wetlands and subaqueous components of the project as proposed with a royalty of \$2,947.00 for the 760 square foot encroachment of the boat ramps over state-owned bottom at a rate of \$0.50 per square foot, the 2,530 square foot bold outline encroachment including the tending piers and floating dock system at a rate of \$1.00 per square foot, and the removal of 60 cubic yards of State-owned submerged land at a rate of \$0.45 per cubic yard. Compensation for the wetlands impacts is not being requested due to the fact that the vegetation being impacted is an unlisted species.

Associate Member Tankard asked why the wetlands species that were present in the area not on the protected wetlands list. Tony Watkinson, Chief, Habitat Management explained that when the General Assembly passed the Wetlands Act in 1972 it seemed most of the focus was saltwater plants area rather than freshwater.

The applicant’s representative indicated that they had no comments.

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

**Associate Member Beck moved to approve the project as recommended by staff. Associate Member Tankard seconded the motion. The motion carried, 7-0.**

Royalty Fees (Dredge 60 cu. yds. @ \$0.45/cu. yd.).....	\$ 27.00
Royalty Fees (Encroach 2,530 sq. ft. @ \$1.00/sq. ft.).....	\$2,530.00
Royalty Fees (Encroach 760 sq. ft. @ \$0.50/sq. ft.).....	\$ 380.00
Wetlands Permit Fee.....	\$ 10.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,047.00

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**8. PACE HOMES, INC., #13-1052.** Appeal of the Hampton Wetlands Board decision to deny a riprap storm water outfall apron along the Hampton River at the terminus of North Boxwood Street in the City of Hampton.

Mike Johnson, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record. Mr. Johnson noted that anything not in the Wetlands Board meeting record would require a motion to open the record.

Mr. Johnson explained that it appears the only rationale used by the Board in denying the project was based upon their judgment that the direct discharge of storm water runoff from the proposed street, without any kind of BMP treatment, was undesirable and would constitute an unacceptable impact to the wetlands. While staff believes the Board’s efforts to prevent untreated storm water discharge into the wetlands are laudable, staff’s opinion was that this rationale likely exceeded the Wetlands Board’s statutory jurisdiction. Furthermore, the City of Hampton had already reviewed the storm water management plan and determined that it met the regulations for storm water management and runoff. While there was some limited discussion regarding an alternate site, staff did not believe the Wetlands Board adequately discussed the need for the apron to be located in the wetlands and should have further explored avoiding or minimizing the riprap apron’s impacts to tidal wetlands by relocating it further landward and possibly outside of the existing tidal wetlands.

The applicant’s representative indicated that they did not have any comments.

The Wetlands Board representative indicated that they did not have any comments.

There were no public comments. Commissioner Travelstead said that the Wetlands Board's reason for denial was outside of their authority. He further explained that he felt the Commission could overturn, approve, or remand the matter, but did not recommend the Commission substitute their decision for that of the Wetlands Board.

**Associate Member Sessoms moved to remand the matter back to the Wetlands Board. Associate Member Beck seconded the motion. The motion carried, 7-0.**

No applicable fees – Wetlands Appeal

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9. **ARMY CORPS OF ENGINEERS, #13-1115**, requests authorization to dredge approximately 48,000 cubic yards of fossilized oyster laden sediment from two established shell dredge sites, in the vicinity of Tribell Shoals, in the James River for the placement of approximately 24,000 cubic yards of clean oyster shell on seven (7) established oyster reef sanctuary sites on Baylor Grounds in the Great Wicomico River in Northumberland County, including the placement of Class I riprap on the sanctuary sites to deter poaching. The project is protested by area waterman.

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

Mr. Madden explained that staff recommended approval of the project with the incorporation of the special conditions so the impact to the adjacent leases and marine resources can be reduced:

- A 1-inch screen shall be used to retain the fossil shell during the dredging/mining process utilizing a sorting protocol similar to that used during Commission replenishment projects.
- The poaching deterrent riprap shall be no larger than Class 1A size stone.
- The applicant shall require that any vessel operating over the oyster sanctuaries or adjacent private leases maintain a minimum clearance between the prop and the bottom substrate of 1½ feet at all times.
- The applicant agrees to coordinate an on-site meeting between the selected contractor and the affected oyster planting ground lease holders adjoining the sanctuary reef sites prior to commencement of the authorized activities in the Great Wicomico River.

As with other permits issued to the federal government, the following permit condition would be substituted for the standard condition to indemnify and save harmless the

Commonwealth of Virginia from any liability arising from the establishment, operation or maintenance of the project:

- If any loss or damage to the Commonwealth is caused by or contributed to, in whole or in part, by the Permittee arising from the establishment, operation, or maintenance of said project, the liability of the Permittee therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act of August 2, 1946, as amended.

Susan Conner, representative for the Army Corps of Engineers, was sworn in and her comments are a part of the verbatim record. Ms. Connor reviewed her presentation and indicated that they had made concessions in order to work with the protestors and address their concerns.

After further discussion regarding the rip rap, Mr. Madden indicated that there were additional letters of support.

Rom Lipcius, representative from VIMS, explained that there was evidence from their sampling that poaching had occurred on the sanctuary areas and the rip rap was necessary. He expressed VIMS' support of the project as proposed. His comments are a part of the verbatim record.

There were no further speakers in support of the project.

Commissioner Travelstead asked for anyone present in opposition to comment.

All protestors were sworn in and their comments are a part of the verbatim record. They were concerned with the rip rap they felt was not necessary; the stones proposed would impact their private oyster ground leases by causing damage and limiting their access to work their oyster grounds; the contractor would not be properly supervised; the vessels and equipment would not be appropriate for the work being done and cause damage in the area, especially on their leases; the buffer between the work area and leases was too close at just 30-foot; and the limited source of cultch material (shells) that were available for oyster restoration. Some even felt that the Corps project was not necessary.

The individuals who spoke in opposition:

Wade Hall  
Pamela Russell  
Alfred C. Henderson  
Lynton Land  
Chip Hudnall  
Ken Smith

Ms. Conner, representative for the Corps, in her rebuttal comments said that the rip rap was to protect their projects; the restoration project was nothing that had not been done before; and they did not expect to get the resource back to its historic levels.

Commissioner Travelstead asked if the Commission denied the rip rap would the project be continued. Ms. Conner stated yes, but she would need to check with their leadership back at the office.

Commissioner Travelstead stated the matter was before the Commission.

**After further discussion, Associate Member Tankard moved to accept the staff recommendations except for the class 1A stone be made class 1 stone to be used for the rip rap. Associate Member Neill seconded the motion. The motion failed 4-3. Associate Members Close, Erskine, Haynie, and Sessoms all voted no.**

**Associate Member Erskine moved to accept the staff recommendation but to eliminate the stone rip rap. Associate Member Sessoms seconded the motion. Associate Member Haynie made a motion to amend the current motion to include a 60 foot buffer between the work area and the nearby leases. The amendment of the motion did not receive a second. Commissioner Travelstead asked for a vote for the motion offered by Associate Member Erskine. The motion carried 5-2. Associate Members Tankard and Neill both voted no.**

Permit Fee.....	\$100.00
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- 10. **XANTERRA KINGSMILL, LLC, #13-1345**, requests authorization to construct an approximately 526-foot long elevated boardwalk with two (2) 695 square foot gazebos with 17.5-foot high roof structures and timber rails and a 6-foot wide by 90-foot long community pier with a 60-foot T-head and a 695 square foot gazebo with a 17.5-foot high roof structure and timber rails associated with the construction of the Kingsmill Resort Riverwalk adjacent to property situated along the James River in James City County. The project is protested by numerous residents of the Kingsmill Community.

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

Ms. Giordano explained that staff recommends approval of the amenity pier and gazebo but not the elevated timber boardwalk. In addition, staff recommends a royalty of \$1,259.00 for the encroachment of the amenity pier over 1,259 square feet over State-owned bottom at a rate of \$1.00 per square foot. Staff also recommends that should the Commission approve the elevated boardwalk over State-owned bottom, approval include

a royalty of \$8,463.00 for the encroachment of the boardwalk over 8,463 square feet of State-owned bottom at a rate of \$1.00 per square foot.

Commissioner Travelstead asked the applicant’s representative if they had any comments.

Chris Dodson, project engineer, was sworn in and his comments are a part of the verbatim record. Mr. Dodson explained that they had already reduced the project by 38% to reduce the encroachment on state-owned bottom and staff recommending that the boardwalk be moved back inshore more would not work.

Commissioner Travelstead asked if anyone in opposition wished to comment.

All protestants were sworn in and their comments are a part of the verbatim record. They expressed their concerns that it was not to be open to the public, but to club members only; the massive size of the boardwalk was not necessary for the golf carts to access it; impact to the vista with all of the structures; natural vegetation removed; loss of the beach; impacts to the river; and the changes it would make to the environment.

The individuals who spoke in opposition:

- Michael McGurky
- John Nilland
- Darryl Johnson
- Susan Griffin
- Kevin Kohlon

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

**Associate Member Tankard moved to accept the staff recommendation because he felt the boardwalk was not necessary for additional access in the area as well as not being a reasonable use of state-owned bottom. Associate Member Neill seconded the motion. The motion carried, 7-0.**

Royalty Fees (Encroach 1,259 sq. ft. @ \$1.00/sq. ft.).....	\$1,259.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,359.00

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- 11. PAUL and MECHELE HALDER, #12-1726,** request after-the-fact authorization to retain a concrete boat ramp and a 77-foot by 55-foot pier with an 820 square foot boathouse adjacent to property situated along the Port Walthall Channel of the Appomattox River in Chesterfield County. The project requires a wetlands permit and a subaqueous permit.

Commissioner Travelstead left the meeting. Associate Member Tankard took over the hearing as acting chair.

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

Ms. Giordano explained that staff recommends approval of the boat ramp, floating dock, and boathouse but is compelled to recommend denial of a portion of the pier decking. Staff also recommends that Mr. Halder be directed to remove the decking channelward of MLW on the upriver section of the pier between the boat ramp and the footprint of the original pier. Following removal of the excess decking, a permit would be issued for the boathouse, boat ramp, and remaining pier. Should the Commission decide to approve any portion of the after-the-fact request, staff recommends a civil charge in the amount of \$3,000.00 for a minor degree of deviation or non-compliance and a moderate degree of impact.

Ms. Giordano further explained that since the existing structures currently constitute a violation of Chapter 12, Article 1 of the Code of Virginia, staff also recommends the Commission require any after-the-fact permit be executed and any required restoration be completed within 90 days. Failure to complete the actions within 60 days would necessitate this matter being brought back to the Commission for further enforcement measures.

Associate Member Tankard asked for comments from the applicant.

Paul Halder, owner and applicant, was sworn in and his comments are a part of the verbatim record. Mr. Halder stated that there was a wharf present in the 1890's as he found pilings under the present structure, which he thought grandfathered any new structure. He said he would have to remove the old pilings too.

Commissioner Travelstead returned to the meeting. He asked if there was anyone in support or opposition to the project.

Roger Haybeck, Real Estate Agent, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Haybeck said he as an agent had told the applicant about the property and this was 10 years after the fact. He said VMRC had plenty of time during that time to do their job. He said the dock was a structure that

would be hard to remove as it was not just a couple of boards. He said fine Mr. Halder, but do not require him to remove it.

Commissioner Travelstead asked the applicant if he agreed with the civil charge. Mr. Halder said yes, if he can retain all of the structures.

Associate Member Neill asked if there was any environmental benefit to the structure being removed. Tony Watkinson, Chief, Habitat Management, stated that there would be a little environmental benefit, but it would return state-owned bottom for public use and not just for one individual's use.

Associate Member Neill asked VMRC Counsel for his advice as far as the legality. Paul Kugleman, Assistant Attorney General and VMRC Counsel explained that it is within the VMRC jurisdiction, which allowed for a wide range of choices. He stated that VMRC has in the past waived taking any action as far as assessing a civil charge or further enforcement action.

**Associate Member Beck moved to grant the after-the-fact permit allowing all structures to be retained with a civil charge of \$2,000.00. The motion failed for lack of second.**

**Associate Member Neill moved to grant the after-the-fact permit with no civil charge and all structures to be retained. Associate Member Beck seconded the motion. The motion carried, 4-3. Associate Members Tankard, Erskine and Haynie all voted no.**

Permit Fee.....	\$25.00
Wetlands Permit Fee.....	\$10.00
Total Fees.....	\$35.00

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- 12. ROBERT "TRES" IRBY, #12-1783**, requests after-the-fact authorization to retain previously unauthorized concrete rubble placed along his property shoreline to be used as base material for a proposed 365 linear foot riprap revetment situated along the James River at 1519 Rustling Cedar Lane in Henrico County. This project requires a wetlands permit and a subaqueous permit. The project is also protested by nearby property owners.

Juliette Giordano, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation. Her comments are a part of the verbatim record. She noted the applicant was present.

Ms. Giordano explained that staff recommends the Commission approve the request by Mr. Irby but with a permit condition stipulating a 180-day limit to complete the sections of the revetment incorporating the unauthorized material. Staff also recommends a civil charge in the amount of \$1,000.00 for a minimal degree of impact and a minor degree of deviation or non-compliance and a requirement to provide project drawings with benchmark distances.

Robert Irby, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Irby said he was just trying to protect his property. He said he spoke with the County and was told to stay within 2,500 square feet. He said he had been here since 1992 and lost a number of mature trees and 2,500 feet of his property.

Commissioner Travelstead asked if there was a problem with the staff recommendation.

Mr. Irby said he had no problem with the completion deadline, but he did with the civil charge because with family health issues and paying the fine, he would not be able get done what was required by the Commission.

There were no other public comments. Commissioner Travelstead stated the matter was before the Commission.

**Associate Member Beck moved to accept the staff recommendation but reducing the civil charge to only \$100.00. Associate Member Tankard seconded the motion. The motion carried. 7-0.**

Permit Fee.....	\$ 25.00
Wetlands Permit Fee.....	\$ 10.00
Civil Charge.....	\$100.00
Total Fees.....	\$135.00

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**13. PUBLIC COMMENT.**

**SPINY DOGFISH**

Chris Ludford, waterman, requested that the Commission increase the daily trip limit for Spiny Dogfish.

Joe Grist, Deputy Chief, Fisheries Management, said that staff agreed with the request and recommended that the daily trip limit be increased from 3,300 pounds to 4,000 pounds and the emergency Chapter be made effective January 1, 2014. He said a public hearing would need to be held at the January 28, 2014 Commission meeting. He further explained that this did not increase the total annual harvest quota for spiny dogfish, it only

increased the daily landing limit for permitted harvesters. He provided the Commission with a draft copy of the Emergency Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks."

There were no other public comments.

Commissioner Travelstead referred to the Code of Virginia, Section 28.2-210, which said this emergency action could be taken by the Board for the protection of the seafood industry.

**After some further discussion, Associate Member Sessoms moved to adopt the emergency chapter and advertise for a public hearing in January. Associate Member Tankard seconded the motion. The motion carried 7-0.**

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**DERELICT VESSELS**

James Lang, Attorney representing Carmelo Gomez gave a presentation on a large number of dilapidated vessels that have accumulated over the years near a vessel salvage company located in a cove of the Elizabeth River in Norfolk. He said the vessels are impacting other businesses in the area, such as the Gomezes and the vessels are also an environmental and navigational hazard. He asked that the Commission to use its authority and take the necessary steps for the removal of the vessels, which the City of Norfolk had been trying to do.

After some further discussion, Commissioner Travelstead instructed staff to work closely with the City to investigate and determine who owns the vessels, contact the owners to remove them, and to take the appropriate legal actions, if necessary, to require their removal.

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**14. REPEAT OFFENDERS.**

**Dean Alan Nininger** – was sworn in and his comments are a part of the verbatim record.

Brad Ramsey, Northern Area Marine Police Officer, gave the presentation and his comments are a part of the verbatim record.

Summons issued March 21, 2012 for failure to tag one striped bass at the place of capture; and summons issued March 18, 2013 for illegal possession of Commercially caught striped bass (25 fish) and illegal use of striped bass tags (25 tags).

Officer Ramsey explained that the staff recommendation was for one year probation.

Mr. Nininger explained the fish had been taken from their nets and tagged in the Potomac River not in Virginia prior to coming into the land. He said the officer was mistaken and the weather was such that visibility from the fog would have made it impossible for the officer to see him tagging the fish out that far. Officer Ramsey upon questioning explained that his vision was not impaired by the weather and he could actually see the navigational buoy that was several thousand yards out.

**After some further discussion, Associate Member Tankard moved to approve the staff recommendation for one year probation. Associate Member Erskine seconded the motion. The motion carried, 7-0.**

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**David A. Turner** - was sworn in and his comments are a part of the verbatim record.

Mike Morris, Southern Area Marine Police Officer, gave the presentation and his comments are a part of the verbatim record.

Summons issued August 10, 2013 for no layer of ice or refrigeration of oysters; no shading on vessel; no shellfish tags; and no oyster aquaculture permit.

Officer Morris read the staff recommendation:

In accordance with Section 28.2-232 of the Code of Virginia, staff recommends the Commission revoke all of David A. Turner's licenses to take or catch fish, shellfish or marine organisms for a period of one year, for being convicted of the above violations when boarded at Deep Creek Marina in Newport News.

Following one year revocation, staff further recommends he be placed on probation for a period of one year. Any failure on his part to obey any of the laws or regulations relating to the Marine Resources Commission during the one year probation would result in Mr. Turner appearing before the Commission for a hearing for license revocation.

Associate Member Neill asked what licenses and permits did Mr. Turner possess.

Mr. Turner explained that he had a commercial card and shaft tong licenses. He said that he thought the ice was necessary only when he would be working after the cut off time and he had finished by 8:30 am.

**After some further questions and discussion about the importance of the warm weather regulations, Associate Member Tankard moved to approve the staff's recommendation for one year revocation of all licenses to be followed by one year probation. Associate Member Beck seconded the motion. The motion carried, 7-0.**

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- 15. 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 of the briefing information and her comments are a part of the verbatim record.

Ms. Iverson explained that Thomas Freeman was not present and that he was on probation already and was served to appear at the last Commission meeting.

Paul Kugelman asked if he was notified of the hearing and the possible penalties. Ms. Iverson said he was notified. Mr. Kugelman stated that the Commission could take action at this hearing.

**Thomas N. Freeman** – was not present.

Ms. Iverson explained further that Mr. Freeman was currently on probation until March 2015. She said all required notifications had been done. She said staff recommendation was for six months suspension of all licenses followed by one year probation.

**After some discussion, Associate Member Erskine moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0.**

\* \* \*

**Tracy A. Bonnaville** – was sworn in and his comments are a part of the verbatim record.

Ms. Iverson explained that Mr. Bonnaville was currently on probation until May 2014. She said that an audit of a buyer found missing reports and staff called him after issuing a service letter and he claimed there was no activity.

Mr. Bonnaville said he had sent in his reports and had called after he got a notice and was told his reports were received. He said he had sent in May, June, and July on November 20<sup>th</sup> and was told all was fine but they needed his contact information. He said he was not aware that they had not been received his reports until December 2 and he had brought in his copies.

Ms. Iverson stated that all calls are logged in and there was one call but he spoke with two people. Mr. Bonnaville said he just thought his contact information was needed.

Commissioner Travelstead stated that staff recommendation was for six months suspension followed by one year probation.

**Associate Member Tankard moved to accept the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0.**

\* \* \*

**Timothy L. Forrest** – was sworn in and his comments are a part of the verbatim record.

Ms. Iverson explained that all required notifications had been sent. She said that staff recommendation was for two year probation as long as the missing reports were turned in.

Mr. Forrest said the other guy usually did the reporting and he was working the dock.

Commissioner Travelstead asked him about the missing reports. Mr. Forrest stated that the buyer was getting the information together. He agreed to turn the reports into the office by the following week.

**Associate Member Haynie moved to accept the staff recommendation for two year probation contingent on the missing reports being turned in by December 20. Associate Member Beck seconded the motion. The motion carried, 7-0.**

\* \* \*

**Nicholas A. Green** – was sworn in and his comments are a part of the verbatim record.

Ms. Iverson explained all required notification had been done. She that there were still outstanding reports due and staff recommendation was for two-year probation based on him turning in the missing reports.

Mr. Green stated that he had sent in his reports and the green cards had been turned in for the missing months. He said he brought the copies in since he had mailed the originals.

Commissioner Travelstead stated the staff recommendation was for two year probation.

**Associate Member Haynie moved to accept the staff recommendation. Associate Member Neill seconded the motion.**

**After some discussion about staff notification requesting that he update his mailing and contact information and staff not receiving what he said he mailed in, Ms. Iverson explained that it was the waterman's responsibility to make sure their records were up to date. Associate Member Tankard offered a substitute motion and moved to put Mr. Green on one year probation. Associate Member Neill seconded the motion. The motion carried, 7-0.**

\* \* \*

**Brian M. Ewell** – was sworn in and his comments are a part of the verbatim record.

Ms. Iverson explained that all required notifications had been done and staff recommendation was for two year probation.

Mr. Ewell explained that he had no card in January 2013 and all of his records were turned in except for March. When asked, he said he would get it and mail it tomorrow.

**Associate Member Beck moved to accept staff recommendation contingent on the March report being turned in. Associate Member Sessoms second the motion. The motion carried, 7-0.**

\* \* \* \* \*

**16. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-900-10 et seq. “Pertaining to Horseshoe Crabs” to establish commercial management measures for the 2014 fishing season.

Adam Kenyon, Biological Collection Program Supervisor, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record. He reviewed the changes in the copy of the draft Chapter 4 VAC 20-900-10, et seq.

Mr. Kenyon explained that the staff recommended amending the regulation as follows:

- 1) Establish the 2014 Virginia horseshoe crab quota as no greater than 172,828 horseshoe crabs;
- 2) Establish a quota category-specific licensing system;
- 3) Establish quota category-specific daily vessel trip limits;
- 4) Establish a dredge gear prohibition in Virginia Blue Crab Sanctuary Area 2 which is the historical (1942) Sanctuary;
- 5) Define possession limits by time-of-day, beginning at 12:00 P.M. of the current day and ending at 11:59 A.M. of the following day; and,
- 6) Establish permit eligibility requirements for individuals who have received a horseshoe crab license or permit transfer from May 1, 2011 through December 10, 2013.

Commissioner Travelstead opened the public hearing.

Mike Gibson, waterman, explained that he wanted the possession time limits by time of day to stay at midnight to midnight. He said this is working for the watermen and it should not be changed.

Charles Wimbrow, waterman, said a control date should be established because the catch is down and there is a short season with only 15 harvesters. He added that the possession limits by time-of-day should remain the same as there had not been any tickets since 1998 for double trips and the change would hurt them because of a safety issue in the cove when the weather is bad.

Mr. Grist explained that the time of day amendment for the hand harvest fishery was a recommendation from the Law Enforcement staff to only allow one trip overnight to prevent double trips. Currently, it is difficult to enforce the trip limits for the hand harvest fishery due to when they are conducted at night. He said the officers have made a strong case for the change they recommended, however, the staff could monitor this specific concern for another year and come back to the Commission with another request the next year for their consideration.

Commissioner Travelstead asked for a motion.

**Associate Member Tankard said he felt limits by time of day should be kept the same because there have been no issues to date. He moved to accept all of the staff recommendations, except for the possession limits by time-of-day. Associate Member Erskine seconded the motion. Associate Member Neill suggested that Law Enforcement staff come back to the Commission and explain their problems. The motion carried, 7-0.**

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- 17. PUBLIC HEARING:** Proposed amendment to Chapter 4VAC20-252-10 et seq. "Pertaining to the Taking of Striped Bass" to establish the recreational and commercial striped bass harvest quota and management measures for the 2014 fishing season.

Sally Roman, Fisheries Management Specialist, gave the briefing of the information provided in the evaluation. Her comments are a part of the verbatim record.

She explained that this was a public hearing and there were three changes. She reviewed the changes that were in the copy of the draft regulation.

Staff recommends adopting amendments to Chapter 4VAC 20-252-10 et seq. "Pertaining to the Taking of Striped Bass", to establish the 2014 Chesapeake Bay recreational and commercial striped bass harvest quotas as 1,402,325 pounds each. Staff recommends establishing a 12 pound minimum weight to convert an individual's Coastal Area harvest

quota in pounds to quota in numbers of fish. Staff also recommends allowing for further development of alternatives to reduce administrative burdens in the commercial striped bass fishery.

The public hearing was opened and there were no comments. Commissioner Travelstead asked what the pleasure of the Commission was.

**Associate Member Haynie moved to adopt the staff recommendations. Associate Member Beck seconded the motion. The motion carried, 7-0.**

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- 18. PUBLIC HEARING:** Proposed amendment to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks" to establish commercial processing tolerances at seas for smooth dogfish. These amendments are proposed for compliance with the fishery management plan requirements for smooth dogfish.

Lewis Gillingham, Director, Virginia Saltwater Fishing Tournament, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Staff recommends amending Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks," to establish a maximum smooth dogfish fin to carcass weight ratio of 12% and extend the time period commercial fishermen may process smooth dogfish at sea to year round.

There were no public comments. Commissioner Travelstead asked for a motion.

**After some discussion, Associate Member Neill moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0.**

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- 19. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-500-10 et seq., "Pertaining to the Catching of Eels," to establish gear-specific harvest seasons, amend size and possession limits, for the harvesting of American eel, and establish buyer reporting requirements. These amendments are proposed for compliance with the interstate fishery management plan requirements for American eel.

Adam Kenyon, Biological Collection Sampling Program Supervisor, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record. He provided a copy of the draft regulation as a handout.

Staff recommends the adoption of the following amendments to Chapter 4VAC20-500-10 et seq., "Pertaining to the Catching of Eels,":

- 1) Establish a gear-specific harvest season closure for all commercial gears, except pots and traps, from September 1 through December 31;
- 2) Establish a recreational possession limit of 25 eels, per individual, per day;
- 3) Establish a 9-inch minimum recreational and commercial size limit; and,
- 4) Establish a charter and head boat possession limit of 50 eels, per captain and crew, per day.

There were no public comments. Commissioner Travelstead asked for a motion.

**After some discussion, Associate Member Neill moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.**

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**20. RECOMMENDATIONS:** From the Recreational and Commercial Fishing Advisory Boards, on funding projects from the Virginia Saltwater Recreational Fishing Development Fund.

Alicia Nelson, Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator), gave the briefing on the information provided in the staff's evaluation. Her comments are a part of the verbatim record. She explained that Item F had been denied by RFAB, but staff recommended its approval because of it ties in value to Project C.

Ms. Nelson explained that the estimated funds available, for projects, as of October 31, 2013, from the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF), is \$1,865,155. Total annual agency obligations are approximately \$1.9 million which includes the annual match for Federal Sportfish Restoration Funding.

**PROJECT RECOMMENDATIONS BY RFAB:**

**Multi-Year Projects for 2014 Renewal**

A) Virginia Game Fish Tagging (Year 20). S. Musick, L. Gillingham, VIMS and VMRC. **\$77,672. The RFAB voted for approval with 8 in favor and 0 opposed.**

B) \*2014 Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 12). M. Fabrizio, T. Tuckey, VIMS. **\$51,676. (\$25,838 from VSRFDF, and \$25,838 from MFIF) The RFAB voted for approval with 8 in favor and 0 opposed.**

C) \*Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2014. R. O'Reilly, VMRC. **\$240,740.** (\$206,349 from VSRFDF, and \$34,391 from MFIF) **The RFAB voted for approval with 8 in favor and 0 opposed.**

D) \*Cooperative (VMRC, Virginia Tech, ASMFC) Efforts to Utilize Alternative Methods for the Upcoming Stock Assessment of Weakfish. R. O'Reilly, VMRC, Y. Jiao, VPI, P. Campfield, ASMFC. **\$20,000.** (\$15,000 from VSRFDF, and \$5,000 from MFIF) **The RFAB voted for approval with 8 in favor and 0 opposed.**

(NOTE: asterisks indicate projects proposed for joint funding from the Marine Fishing Improvement Fund (MFIF)).

**New Projects for 2014**

E) Town of Saxis Pier Enhancement Project - withdrawn by applicant

F) Patterns in prey selectivity of key sportfishes in Chesapeake Bay. R. Latour, J. Graves, VIMS. **\$38,446. The motion to approve failed, with 3 in favor of funding the project, and 4 opposed.**

G) Genetic investigation into the distinctiveness of Tautog, *Tautoga onitis*, off the coast of Virginia. J. McDowell, H. Small, J. Graves, K. Reece. **\$76,031. The RFAB voted for approval with 8 in favor and 0 opposed.**

H) Speckled trout, *Cynoscion nebulosus*, in Virginia: are these fish genetically distinct? J. McDowell, J. Graves, S. Musick, T. Murray. VIMS. **\$70,005. The RFAB voted for approval with 8 in favor and 0 opposed.**

The projects recommended by the RFAB to the Commission for funding total \$470,895 from the VSRFDF and \$65,229 from the MFIF.

There were no public comments. Commissioner Travelstead asked for a motion.

**After some discussion, Associate Member Tankard moved to approve the recommendations of the RFAB/CFAB, but to include project F as recommended by staff. Associate Member Erskine seconded the motion. The motion carried, 7-0.**

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**21. REQUEST FOR AN EMERGENCY REGULATION AND A PUBLIC HEARING ON JANUARY 28, 2014**

Jim Wesson, Head, Conservation and Replenishment, gave the briefing of information regarding the matter. His comments are a part of the verbatim record. He provided a copy of the draft Emergency Chapter as a handout.

Dr. Wesson explained that there was some misinterpretation of this subdivision and it caused confusion in the field. He said in the Subdivision 4VAC 20-260-40 (F) is where it describes that seed oysters so closely attached to the market size oysters did not need to be removed if it would be killed and that it would be included in the tolerance. It was interpreted that it would be put in the container for measuring quarts of oysters to be too small to be kept and of course being the seed was attached to the large oyster the container filled up quickly causing too many small oysters over what was the tolerance and tickets were issued to some waterman.

Dr. Wesson explained that Fisheries staff had worked with Law Enforcement staff to change the wording.

Joe Grist, Deputy Chief, Fisheries Management, explained that all of Law Enforcement had agreed with the proposed change and it would be made effective tomorrow. He noted that the 30 days would run out before the next meeting and a public hearing would be necessary at the January meeting, and the officers could use their discretion until a public hearing could be held.

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

**Associate Member Tankard moved to approve the emergency amendment and the advertisement of a public hearing at the January meeting. Associate Member Haynie seconded the motion. The motion carried, 7-0.**

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There being no further business, the meeting was adjourned at approximately 5:45 p.m. The next regular Commission meeting will be Tuesday, January 28, 2014.

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Jack G. Travelstead, Commissioner

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Katherine Leonard, Recording Secretary