

## MINUTES

## Commission Meeting

March 28, 2017

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

John Bull	Commissioner
Chad Ballard	
A. J. Erskine	
Wayne France	
Lynn Kellum	Associate Members
James E. Minor	
Ken Neill, III	
John Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Todd Sperling	Business Systems Specialist, Sr.
Linda Hancock	Human Resources Mgr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation/Replenishment
Stephanie Iverson	Fisheries Management Manager
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Samantha Hornsby	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Megan Wood	Fisheries Mgmt. Specialist

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Rick Lauderman  
 Warner Rhodes  
 Patrick West  
 Austin Brown  
 Ron Cagle  
 John Collamore

Chief, Law Enforcement  
 Deputy Chief, Law Enforcement  
 Marine Police Officer  
 Marine Police Officer  
 Marine Police Officer  
 Marine Police Officer

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

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

## Virginia Institute of Marine Science (VIMS):

Lyle Varnell  
 Susanna Musick

Mark Luckenbach

Emily Hein

## Others present:

James A. Kelley, IV  
 Louis Galland  
 Joe Stevens  
 Grant Cooley  
 R. H. Stillman  
 Robert Cappel  
 Jonathan French  
 Deven Simmelman  
 Kyle Russell  
 Bill Cox  
 Bob Reed  
 Lee Tippett  
 Joshua Nicholson  
 Stan Ellis  
 Austin Hayne  
 Zachery Hoffman

Mike Oesterling  
 Carolyn Galland  
 Leroy Imler  
 M. J. Dodson  
 Juantia Morris  
 Jeff Deem  
 Robert Stommel  
 Jacob Abererombie  
 Case Freeman  
 Wes Blow  
 Ed Cezar  
 Dana Tippett  
 Beth Synowiec  
 Chris O'Brien  
 John Green  
 Bill Gorham

Michael Myers  
 Thomas H. James, II  
 Kim Huskey  
 Jerry Hughes  
 Brandon Morris  
 Jarrod Vrablitz  
 Larry Harmond  
 Jon Kwowski  
 Stan Bishop  
 Mike Wills  
 Andy Lacatell  
 Kelly Hoggers  
 Will Bransom  
 Alex Field  
 James Majjellsc  
 Chris DeMasi

and others.

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Commissioner Bull called the meeting to order at approximately 9:33 a.m. Associate Member Tankard was absent. Associate Member France arrived late to the meeting.

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

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Commissioner Bull 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 Bull asked if there were any changes from the Board members or staff. There were no changes.

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

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**MINUTES:** Commissioner Bull asked if there were any changes or corrections to be made to the February 28, 2017 Commission meeting minutes. There were no changes.

**Associate Member Kellum moved to approve the minutes, as presented. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.**

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**2. PERMITS** (Projects over \$500,000 with no objections and with staff recommendation for approval.): None

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**3. CONSENT AGENDA ITEMS:** None

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

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5. **MICHAEL MYERS, #17-0097:** Requests authorization to install a 14.5 foot by 34.5-foot open-sided boathouse and a 10-foot by 20-foot open-sided gazebo roof on a statutorily exempt private pier along the James River at 18015 Morgarts Beach Road in Isle of Wight County. The project is protested by an adjacent property owner.

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

Mr. Johnson explained that Code Section §28.2-1203(A)(5) provided statutory authorization for a private pier meeting certain design criteria. This section also authorized the construction of open-sided boathouses measuring 700 square feet or less designed to cover a boat and gazebos measuring 400 square feet or less at private piers, provided they were not objected to by the adjoining property owners and were allowed by local ordinances. In this instance, since Mr. and Mrs. Galland were protesting the boathouse, a VMRC subaqueous permit was required. Mr. Johnson stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the boathouse, as proposed.

The applicant was present.

Michael Myers, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Myers said he had lived at this property for 20 years and he wished to be able to enjoy the water. He stated that his waterfront was 100 feet wide and a contractor had assisted him with his proposal. He said that the adjoining property owner to the west was not protesting but the one on the east was protesting. He had hired a surveyor which had been costly as he did not intend to encroach on other riparian areas and he centered the location to have less impact. He said he and his wife had some health concerns and this would allow them to enjoy the area. They requested approval.

Public hearing was opened for public comment.

Louis Galland, protestant and adjoining property owner, was sworn in and his comments are a part of the verbatim record. Mr. Galland said he had no objection to the project as long as it was centered within the applicant's riparian area. He provided three hand-outs of maps. He said the pier to his west was built right on the riparian line and in order to be fair he felt that all property owners should place their pier in the middle of their riparian

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lot. In response to a question, he said the pier was 5 to 10 feet east of the middle of the applicant’s riparian area.

Mr. Myers in his rebuttal stated the pier was authorized and the hearing was for the boathouse roof and he believe it was already in the middle or very, very close. He requested approval.

Commissioner Bull closed the public hearing.

**Associate Member Ballard moved to approve the project, as proposed. Associate Member Minor seconded the motion. The motion carried, 8-0.**

Permit Fee	\$100.00
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Items 6 and 7 were heard at same time, same area involved in both cases.

- 6. **BROADWATER SEAFOOD, Oyster Planting Ground Application #2016-065:** Requests authorization to lease approximately ten (10) acres in Nassawadox Creek in the Occohannock Neck area of Northampton County. The project is protested by nearby property owners. This application was received in the Newport News office on the same day as the James application, #16-066.

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- 7. **THOMAS JAMES, Oyster Planting Ground Application #2016-066:** Requests authorization to lease approximately 11.50 acres in Nassawadox Creek in the Occohannock Neck area of Northampton County. The project is protested by nearby property owners. This application was received in the Newport News office on the same day as the Broadwater Seafood application, #2016-065.

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluations. His comments are a part of the verbatim record. He noted that the applications had been received the same date so there was no way to determine which was received first.

Mr. Badger explained that the existing offshore leases were stopped near the edge of the small channel leading into the small cove. This was done to provide navigational access along this stretch of Nassawadox Creek. If the channel was left vacant there would only be narrow areas between the existing leases and the channel. Staff could not support leasing the narrow areas south of the channel. Staff also cannot support leasing the cove area. The cove was shallow and leasing this area would create a navigational issue for riparian owners in the cove.

Mr. Badger also explained that there were, however, three areas between the piers along the reach that were approximately 300 feet, 480 feet and 160 feet long and could support aquaculture clams and oysters. If the Commission believed the leasing of some of the proposed area was warranted over the objection of the protestants, staff would only recommend the leasing of the three wider areas and recommended the areas be split evenly between the two applicants. Staff recommended that any leased area be located at least 50 feet away from the existing piers. This would result in three small lease areas of approximately 0.3 acres, 0.8 acres and 0.3 acres respectively, which would be subject to final survey dimensions.

The applicants were present.

James A. Kelley, Broadwater Seafood, was sworn in and his comments are a part of the verbatim record. Mr. Kelley provided a handout. He explained that 100% of his income comes from aquaculture and he had two young people who work for him. He said he would be storing market clams and using the area for overwintering.

Thomas James, applicant, was sworn in and his comments are a part of the verbatim record. Mr. James said he could not find any regulation requiring it be offset 50 feet from docks. He said there were some cases where docks did cross leases. He said also he was looking for useable ground and was not looking at the cove area because he needed at least 2 feet at low tide. He stated he had tried to get other grounds but it had been denied by the Commission. In response to a question, Mr. James said he had 13 applications currently and one had gone through the process and one was not useable.

The public hearing was opened to comments, pro or con.

Joseph Stevens, protest and highland property owner, was sworn in and his comments are a part of the verbatim record. Mr. Stevens said he had lived there for 20 years and knew the area well. He said he had seen aquaculture grow. He noted that the area was used recreationally too and there were docks along the shore every 100 feet. He said the channel was the only way in and out. He explained that the oysters grow well in cages but it blocks access. He stated that with the amount of use in the area it was not a good area to lease.

Grant Cooley, protestant, was sworn in and his comments are a part of the verbatim record. He said he agreed with Stevens as to the use of the area. He said it had been a long time since SAV had been in the area, which he felt were a result of the nets and cages. He said he was concerned with the impact to the value of his property.

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

**After some discussion, Associate Member Ballard moved to deny both applications for lease. Associate Member Zydron seconded the motion. The motion carried, 8-0.**

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**8. THOMAS JAMES, Oyster Planting Ground Application #2016-056:**

Requests authorization to lease approximately 30 acres in Nassawadox Creek in the Chesawadox area of Northampton County. The project is protested by nearby property owners.

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

Mr. Badger explained that the applicant requires areas that were in shallow water to grow his aquaculture clams. The area within his application that was channelward of the existing piers is too deep for his use and would impede navigation. As such, staff cannot support that area. Staff also cannot support leasing the cove area since the cove was shallow and leasing this area would create a navigational issue for riparian owners along the small cove. The remaining area was located between MLW and the small access channel adjacent to the Chesawadox subdivision. There are 11 private piers along this stretch of shoreline. The average distance between those piers is approximately 210 feet. In most of these areas staff believed the distances between piers was too small and cannot support leasing in these narrow areas. There were however, two areas between piers along the Chesawadox subdivision that were approximately 300 feet long and could support aquaculture clams. A third area had SAV in 2014 and staff cannot support leasing of that area. If the Commission believed the leasing of some of the proposed area was warranted over the objection of the protestants, staff would only recommend the leasing of the two wider areas that have not supported SAV recently. Staff would recommend further that any leased area be located at least 50 feet away from existing piers. This would result in two lease areas totaling approximately 0.3 acres each, which would be subject to final survey dimensions.

Thomas James, applicant, was sworn in and his comments are a part of the verbatim record. He said he had spoken with one adjacent land owner and he did not object. He said SAV is sometimes there and sometimes it is not, but it has been 10 years since it last was in this location. He said he wants to expand his business and he needs shallow water between the docks and a precedent has been set where the Commission has leased around docks.

Joseph Stevens, protestant, sworn in and his comments are a part of the verbatim record. Mr. Stevens said that his concerns were double for this location because the cove was almost all mud and not suitable to grown clams. He said there was recreational and commercial activity that occurred here and there were better placed for the applicant to go then here. He said he appreciated the watermen as they were the lifeblood of the Eastern Shore.

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Carl L. Ember, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Ember stated he agreed with Mr. Stevens.

Mr. James in his rebuttal explained that there were many docks and leases. He said others could have applied and others can also use his lease to put crab pots and fish.

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

**After some further comments, Associate Member Erskine moved to deny the application. Associate Member Minor seconded the motion. The motion carried. 8-0. Chair voted yes.**

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- 9. THOMAS JAMES, Oyster Planting Ground Application #2016-058:** Requests authorization to lease approximately 12 acres in Nassawadox Creek near Long Point in Northampton County. The project is protested by nearby property owners.

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

Mr. Badger explained that the applicant requires areas that are in shallow water to grow his aquaculture clams. The area within his application that is in the channel would be too deep for his use and would impede navigation to the north side of the creek. Staff cannot support leasing the channel. However, there is a small area on the southern portion of Mr. James's application that is not in the channel that staff could support. Therefore, staff recommends approval of a portion of the application as bounded on the East by Plat File #17704, Broadwater Seafood LLC and Public Ground (Baylor); South by Nassawadox Creek (main channel leading into Bayford); West by either Plat File # 19859, Bunce or 50 feet off the so called back channel, whichever is less; and North by 50 feet off the back channel. The area appears to be approximately 1.5 acres.

Thomas James, applicant, was sworn in and his comments are a part of the verbatim record. Mr. James stated that he did not agree with the staff recommendation. While it was too dynamic for SAV and it was not useable.

Joseph Stevens, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Stevens stated his objections were the same as the prior case. He said the staff recommendation was okay.

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

**Associate Member Ballard moved to approve the amended area as recommended by staff. Associate Member Minor seconded the motion. After further discussion, Associate Member Ballard offered a substitute motion to deny the application. Associate Member France seconded the substitute motion. The motion carried, 8-0.**

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Commissioner Bull asked if there were any other items that could be heard before lunch. Robert O'Reilly, Chief, Fisheries Management suggested hearing the request for hearing, Item 15.

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**15. REQUEST FOR PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the 2017 Virginia commercial bluefish quota.

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

Ms. Ramsey explained that the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC) have established the 2017 Coast-wide bluefish commercial quota as 8.54 million pounds (Attachment 1). This is an increase from the 2016. Virginia receives 11.8% of the Coast-wide quota which results in a 2017 Virginia bluefish commercial quota of 1,014,773 pounds. Staff recommended the Commission approve advertising the 2017 commercial bluefish quota for an April public hearing.

**Associate Member Zydron moved to accept the staff recommendation to advertise for a public hearing at the April meeting. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes.**

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**10. PUBLIC COMMENTS:** James Thomas asked how the riparian area for a permit application was determined. Mr. Thomas was told by Matthew Hull, Assistant Attorney General and VMRC Legal Counsel when there was a question about where the riparian area was located in front of waterfront property, it was up to the concerned individual to seek a legal decision from the Courts on the riparian apportionment; and, it was not within the jurisdiction of the Commission to do so.

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**11. OFFENDERS:**

**1. Robert Cappel** – was present and sworn in.

Ron Cagle, Marine Police Officer, was sworn in and gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record. It was noted that Mr. Cappel was cooperative.

October 5, 2016, Possession of Unculled Oysters (8+ Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; January 17, 2017, Middlesex County General District Court; Fine: \$250.00, Court Cost: \$121.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that one conviction of possession of 50% or greater over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Cappel on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Cappel's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Cappel appearing before the Commission for a hearing on license revocation.

Mr. Cappel explained that he had been a watermen all of his life and never had problems with harvesting oysters. He said Justin Traverse was the boat operator and he just met the others the night before. He said he did his properly and did not want to work with these people again. In response to a question he stated that he only worked harvesting oysters and crab.

**Associate Member Erskine moved to placed Mr. Cappel on one year probation, starting March 28, 2017, through March 27, 2018. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.**

**2. David K. Russell** – present and sworn in.

Ron Cagle, Marine Police Officer, was sworn in and gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record. It was noted that Mr. Russell was cooperative.

October 5, 2016, ave in Possession Unculled Oyster (8+ Quarts)--§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; January 17, 2017, Middlesex County General District Court; Fine: \$250.00, Court Cost: \$121.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that one conviction of possession of 50% or greater over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Russell on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Russell's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Russell appearing before the Commission for a hearing on license revocation.

Mr. Russell said he was on the same boat and he had been culled before with no problems. He said it was not his fault because it was not his basket. He said he tried to get an attorney. When asked why he had no 2017 licenses, he explained he was waiting to see what happened with the Commission. He said he wanted to make it right so he could continue working.

Commissioner Bull asked, what was the will of the Commission?

**Associate Member Erskine noted that he had no tickets before, so he moved for the one year probation, starting March 28, 2017, through March 27, 2018. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes.**

Associate Member Neill recused himself from the hearings of the next three offender cases and left the meeting room.

**3. Jason S. Seidnitzer** – was present and sworn in.

Patrick West, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. His comments are a part of the verbatim record. He provided pictures of the baskets of oysters.

October 26, 2016, Possession of Unculled Oysters – Over 4 Quarts--§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; December 5, 2016, Middlesex County General District Court; Fine: \$75.00, Court Cost: \$86.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that one conviction of possession of 50% or greater over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Seidnitzer on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Seidnitzer's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year

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probation would result in Mr. Seidnitzer appearing before the Commission for a hearing on license revocation.

Mr. Seidnitzer explained that he did not have any comments, other than he would not want to get any more than probation.

**Associate Member Kellum moved to place Mr. Seidnitzer on one year probation, starting March 28, 2017, through March 27, 2018. Associate Member Erskine seconded the motion. The motion carried, 7-0. Chair voted yes.**

**4. Deven Simmerman** – was present and sworn in.

Patrick West, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. His comments are a part of the verbatim record. It was noted that Mr. Simmerman was cooperative.

October 26, 2016, Have in Possession Unculled Oysters – Over 4 Quarts--§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; December 5, 2016, Middlesex County General District Court; Fine: \$75.00, Court Cost: \$86.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that one conviction of possession of 50% or greater over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Simmerman on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Simmerman's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Simmerman appearing before the Commission for a hearing on license revocation.

Mr. Simmerman explained he had pleaded guilty, but he did not feel guilty. He was checked several times that month and had no overages. He said he did not want to lose his license and did not want to be put on probation so that he could lose his license. He said he only harvested oysters from October through February and caught crabs in the summer. In answer to a question, he stated that another person's basket was checked and found wrong.

**Associate Member Erskine moved to place Mr. Simmerman on one year probation, starting March 28, 2017, through March 27, 2018. Associate member France seconded the motion. The motion carried, 7-0. Chair voted yes.**

**Commission Meeting****5. Richard Malcolm** – was not present.

Commissioner Bull stated it was the consensus of the Board members to proceed with the hearing in Mr. Malcolm's absence.

Patrick West, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. His comments are a part of the verbatim record. It was noted that Mr. Malcolm was cooperative.

October 26, 2016, Possession of Unculled Oyster – Over 4 Quarts--§28.2-201 of the Code of Virginia; 4 VAC 20-260-40; December 5, 2016, Middlesex County General District Court; Fine: \$75.00, Court Cost: \$86.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that one conviction of possession of 50% or greater over the tolerance of undersized shellfish, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Malcolm on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Malcolm's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Malcolm appearing before the Commission for a hearing on license revocation.

**Associate Member Erskine moved to place Mr. Malcolm on one year probation, starting March 28, 2017, through March 27, 2018. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.**

Associate Member Neill returned to the meeting.

Associate Member France said he said he would be abstaining for the next two offender cases and would not be participating in any discussion.

**6. Brandon W. Morris** – present and sworn in.

Austin Brown, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. His comments are a part of the verbatim record.

August 19, 2016, Act as Crab Agent While Being Licensed to Harvest Blue Crabs--4 VAC 20-610-30; December 5, 2016, Middlesex County General District Court; Fine: \$100.00, Court Cost: \$86.00.

September 5, 2016, Delinquent Mandatory Harvest Reports--4 VAC 20-610-60; January 4, 2017, Newport News General District Court; Fine: \$200.00, Court Cost: \$91.00.

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Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that two convictions of an unapproved person working as a crab agent, within a 24 month period, should result in at least a two year probation. The Commission's matrix of guidelines for sanctions also specify that two convictions of failure to submit mandatory harvest reports, within a 12 month period, should result in at least a one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Morris on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Morris' part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Morris appearing before the Commission for a hearing on license revocation.

Mr. Morris said he had corrected the reporting problem and he did not work the other person's crab pots, only his. He said he wanted to do what was right.

**Associate Member Erskine moved to place Mr. Morris on 9 month probation, starting March 28, 2017, through December 27, 2017. Associate Member Ballard seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member France abstained.**

**7. Juanita W. Morris** – present and sworn in.

Austin Brown, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. His comments are a part of the verbatim record.

August 19, 2016, Fail to Have Approved Crab Agent--4 VAC 20-610-30; December 5, 2016, Middlesex County General District Court; Fine: \$100.00, Court Cost: \$86.00.

August 5, 2016, Delinquent Mandatory Harvest Reports--4 VAC 20-610-60; January 4, 2017, Newport News General District Court; Fine: \$200.00, Court Cost: \$91.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions also specify that two convictions of failure to submit mandatory harvest reports, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Ms. Morris on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Ms. Morris' part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Ms. Morris appearing before the Commission for a hearing on license revocation.

Ms. Morris said that her son told her that he did not harvest her crabs, except when she was present. She noted she does her own reporting.

**Associate Member Ballard moved to dismiss the case of Juanita Morris. Associate Member Minor seconded the motion. The motion carried, 7-0-1. Associate Member France abstained.**

**8. Jarrold R. Vrablitz – present and sworn in.**

John Collamore, Marine Police Officer, was sworn in and his comments are a part of the verbatim record. His comments are a part of the verbatim record. He noted Mr. Vrablitz was cooperative.

January 12, 2017, Harvesting Crabs Out of Season--4 VAC 20-270-40; February 8, 2017, Gloucester County General District Court ; Fine: \$100.00, Court Cost: \$86.00.

January 12, 2017, Obstructed Cull Rings--4 VAC 20-700-20; February 8, 2017, Gloucester County General District Court; Fine: \$100.00, Court Cost: \$35.00.

Stephanie Iverson, Fisheries Management Manager, explained that the Commission's matrix of guidelines for sanctions specify that two convictions of obstructed cull rings, within a 24 month period, should result in at least a two year probation. The Commission's matrix of guidelines for sanctions also specify that two convictions of crabbing greater than or equal to 1 hour outside the lawful season, within a 24 month period, should result in at least a one year probation. In accordance with §28.2-232 of the Code of Virginia, the matrix guidelines suggest to the Commission to place Mr. Vrablitz on probation for a period of one year from the date of this Commission meeting, March 28, 2017, through March 27, 2018. Any failure on Mr. Vrablitz's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one year probation would result in Mr. Vrablitz appearing before the Commission for a hearing on license revocation.

Mr. Vrablitz explained that he works his crab pots until the last day of the season and the weather prevented him from returning. He said he did not realize that the cull rings were not in the cage properly. He said he had worked on the water since he was 15 years old and it was all he had done. He added that it would never happen again as he did not want to lose his license.

Commissioner Bull stated the matter was before the Commission.

**Associate Member France moved to accept the Commission's guidelines and place Mr. Vrablitz on one year probation, starting March 28, 2017, through March 27, 2018. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.**

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- 12. PUBLIC HEARING:** Make amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," and Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Groupers, to simplify permitting requirements for select recreational fisheries.

Ryan Jiorle, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Jiorle said that by collapsing the permits for each species as much as possible, anglers will have less of a burden to remain in compliance. In order to remain eligible for a permit in the following year, an angler must report catch or no activity, so if that angler has an individual and vessel cobia permit, he or she must do this twice to remain in compliance. The original intent of the multiple permits was to track the types of fishing Virginia anglers do, such as charter, private vessel, and pier fishing. However, the data required in the regulations could provide that information without requiring the user to keep track of multiple permits. Additionally, by placing the burden of reporting solely on the captain, a permittee fishing on another permittee's vessel would not need to also report his or her activity. This could reduce potential confusion on staff's part concerning redundant harvest reports.

Mr. Jiorle stated that the striped bass fishery was an exception to this issue because of its unique reporting requirements. It was because private anglers were only required to report trophy-sized striped bass during the spring trophy season, and for-hire captains are required to report year-round, there are different reporting requirements for the different "modes" of fishing. Thus, it could be confusing to have only one "striped bass permit," yet that same permit could have different demands depending on the type of fishing a person is engaging in. For this reason, striped bass likely needs to retain two permits: a charter permit for year-round for-hire reporting, and a single trophy permit for all private anglers fishing the spring trophy season.

Mr. Jiorle explained that staff recommended the Commission approve the proposed changes to the permitting and mandatory recreational reporting requirements for the spring trophy striped bass fishery, charter striped bass fishery, tilefish-grouper fishery, and cobia fishery. These changes include simplifying the permitting system and reducing redundant reporting.

The public hearing was opened.

Bob Reed, Charter Boat Captain, was present and his comments are a part of the verbatim record. Mr. Reed said that good things had been done by staff. He said that there had been no provisions for what he did, which is to take others out on their boats. He said he gets the permits and reports.

Jonathan French, Northern Virginia, was present and his comments are a part of the verbatim record. Mr. French that he appreciated what had been done as far as reporting transparency, which he did voluntary. He felt the data provided by the anglers should be used, as it was better data.

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

**Associate Member Neill moved to accept the staff recommendation. Associate Member Kellum seconded the motion. The motion carried, 8-0. Chair voted yes.**

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- 13. PUBLIC HEARING:** Make amendments to Chapter 4 VAC 20-950-10 et seq."Pertaining to Black Sea Bass," to establish the commercial back sea bass fishery quota for 2017.

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

Mr. O'Reilly suggested that the Commission re-advertise for a public hearing in May 2017 to consider the commercial Black Sea Bass quota. He explained that ASMFC would be meeting in early May and the Commission should wait to make its decision until after the ASMFC had met.

**After some discussion, Associate Member Zydron moved to re-advertise for a May public hearing. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.**

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- 14. PUBLIC HEARING:** Make amendments to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish management measures for the 2017 recreational cobia fishery.

Ryan Jiorle, Fisheries Management Specialist, gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Mr. Jiorle stated that this management issue is similar to that of last year because the SAFMC—whose jurisdiction is federal waters—is still the only body overseeing cobia management. Although the Atlantic States Marine Fisheries Commission (ASMFC) is developing a fishery management plan (FMP) to help the states collectively manage their state waters, this will not be in place until 2018 or later. Last year, the SAFMC implemented amendments to its management framework, but it does not change the

underlying management structure that applies only to federal waters harvest of cobia. The ASMFC is currently working on how to ensure all states will get access to recreational cobia fishing under its forthcoming FMP. One difference from last year is the nature of the federal-waters closure. Last year, Virginia and North Carolina crafted potential management responses in relation to the June 20<sup>th</sup> closure. However, the January closure for this year means the main reference point for crafting conservation-oriented regulations is the AMG recreational ACL of 620,000 pounds.

Mr. Jiorle stated that staff recommended the Commission adopt the following conservation measures for the cobia stock and its recreational fishery for 2017: 1) a 40-inch total length minimum size; 2) a one fish-per-person possession limit; 3) a daily vessel limit of two fish when two or more anglers are on board the vessel, only one of which may be greater than 50 inches total length; and 4) a season start date of June 1<sup>st</sup> and a season closure of August 31<sup>st</sup>.

The public hearing was opened.

Jonathan French, Northern Virginia weekend angler, was present and his comments are a part of the verbatim record. Mr. French stated that Virginia should match North Carolina's regulation, 4-fish vessel limit, 1-fish per person limit and gaffing is not allowed.

Bob Reed, Charter Boat Captain in Reedville, was present and his comments are a part of the verbatim record. Mr. Reed stated he was representing the VSFA and they recommended 1 fish per person/4 fish per vessel; 40 inch minimum size; 1 fish over 50 inches; no closed season and no gaffing restriction. He said they supported the angler reporting as it was better data.

Lee Tippett, Maryland Charter Boat operator, was present and his comments are a part of the verbatim record. Mr. Tippett suggested 4 fish vessel limit, 1 over 50 inches, and if possible keep gaffing, if not, that is okay too.

Joe Hughes, Chesapeake/Great Bridge, was present and his comments are a part of the verbatim record. Mr. Hughes suggested 1 fish per person, 4 fish per vessel, 40 inch minimum size, 1 fish over 50 inches, no closed season for 2017 and gaffing be allowed.

Chris O'Brien, Charter Boat Captain, was present and his comments are a part of the verbatim record. Mr. O'Brien explained that he was a conservationist and he would agree if the specie was endangered but it was not. He stated that there was a process in place and it needed to be allowed to work. He said any decision should be made with good data and science. He suggested 4 fish per vessel, no captain or mate; 40 inch minimum size; 1 fish over 50 inches, season June 1 – September 15, 2017, and to allow gaffing.

West Blow, Northern Neck recreational angler, was present and his comments are a part of the verbatim record. Mr. Blow suggested 1 fish per person; 2 fish per vessel; 1 fish over 50 inches; and no gaffing. He said we need to protect the fish to allow more to be around to spawn. He said he agreed with the August 31 season closure recommended by staff. He said that the Bay had a world class fishery and people from all over the United States come here to fish.

Austin Hayne, Charter Boat operator, was present and his comments are a part of the verbatim record. Mr. Hayne suggested that the end of September was the desirable time to catch cobia, but if ended August 31 should allow for catch and release until the end of September. He said May 15 through September 15 would mean a 90 day season. He said in four years of fishing he sees it as getting better. He said 1 fish over 50 inches was okay and gaffing was okay for controlling fighting fish, but not as concerned about that.

Zachery Hoffman, Charter Boat operator, was present and his comments are a part of the verbatim record. Mr. Hoffman said that he preferred 4 fish vessel limit, just 2 fish made it too costly, and 1 fish over 50 inches limit.

Josh Nicholson, pier fisherman, was present and his comments are a part of the verbatim record. Mr. Nicholson stated that there no shortage of cobia fish. He because of the migratory patterns, the season should be May 15 – September 15, 4 fish per vessel, 1 fish per person, 1 fish over 50 inches, 40 inches minimum and to allow gaffing.

Bill Gorham, North Carolina resident, was present and his comments are a part of the verbatim record. Mr. Gorham said needed to get the data. He said Virginia needed to unite with North Carolina with 4 fish per vessel and 2 fish over 50 inches. He said the Virginia anglers needed to be supported. He said to allow the gaffing but to require a net. He said the catch needed to be reported. He suggested the season be from June 1 through September 14.

Mike Wells, Virginia Beach, was present and his comments are a part of the verbatim record. Mr. Wells said he agreed with the staff recommendation, except for the close season.

Chris DeMasi was present and his comments are a part of the verbatim record. Mr. DeMasi explained that he had lost 21% last year and he wondered why there restrictions put on the fishery. He said this was still being based on the efforts in 2015 and nothing last year helped. He said 2 fish for six guys was not good and gaffing was done everywhere, why be concerned.

Kelly Hoggars was present and his comments are a part of the verbatim record. Mr. Hoggars suggest 4 fish vessel limit with season opening May 15. He noted he supported the rest of the staff recommendation.

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

**Associate Member Zydron moved to approve 40 inch minimum size, 1 fish per person per day, 2 fish vessel limit, 1 fish over 50 inches, season June 1 through September 15 and gaffing would be allowed only for the boat and pier. Associate Member Minor seconded the motion. After much discussion, Associate Member Ballard made a substitute motion to approve the staff recommendation with the following changes to allow for daily 3-fish per vessel limit, season closure of September 15, 2017, and gaffing would not be allowed. Associate Member Minor seconded the substitute motion. The motion carried, 8-0. Chair voted yes.**

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There being no further business, the meeting was adjourned at approximately 3:49 p.m. The next Commission meeting will be Tuesday, April 25, 2017.

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John M. R. Bull, Commissioner

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Katherine Leonard, Recording Secretary