

MINUTES

Commission Meeting

April 23, 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
J. Carter Fox	
Robert Beck	
S. Lynn Haynie	
Joseph C. Palmer, Jr.	Associate Members
Bryan Plumlee	
Whitt G. Sessoms, III	
J. Edmund Tankard, III	
Paul Kugelman, Jr.	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin-Finance
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Mgr.
Renee Hoover	Biological Collection Prgm. Supvr.
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham	Game Fish Coordinator
Samantha Hoover	Fisheries Mgmt. Specialist
Allison Watts	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Laurie Williams	Fisheries Mgmt. Technician
Adam Kenyon	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
David Deemer	Marine Police Officer
Russell Phillips	Sr. Marine Police Officer

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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.
Julliette Giordano	Environmental Engineer, Sr.
Jordan Creed	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Others present:

George Juntein	Rebecca Francese	Tim Mullane
Steve McGee	Regina Freeman-Cnoez	Christine Atkinson
Jousita Hin	Charles Wimbrow	Randy Birch
Jon Smith	Michael Gibson	David Kledirk
Andy Lacatell	Chris Moore	Peter Nixon
Ernest Bowden Jr.	Mark Ross	Cornelius Drew
Mitchell G. Kellum	Pam	

and others.

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Commissioner Travelstead called the meeting to order at approximately 9:40 a.m. Associate Member Robins was absent.

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

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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.

Rob O'Reilly, Chief, Fisheries Management, explained that the Item 15, Archer P. Bender applicant had withdrawn his application.

Commissioner Travelstead asked for a motion.

Associate Member Plumlee moved to approve the amended agenda. Associate Member Fox seconded the motion. The motion carried, 7-0.

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MINUTES: Commissioner Travelstead asked for a motion for approval of the March 26, 2013 Commission meeting minutes, if there were no corrections or changes. There were no changes.

Commissioner Travelstead asked for a motion.

Associate Member Plumlee moved to approve the minutes. Associate Member Palmer seconded the motion. The motion carried, 5-2. Associate Members Fox and Sessoms abstained as they were both absent from the previous 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 two page two items to be heard. He reviewed these items for the Board. His comments are a part of the verbatim record.

Associate Member Plumlee stated he would abstain for Item 2B because of a business conflict.

There were no questions or public comments. Commissioner Travelstead asked for a motion for Item 2A.

Associate Member Tankard moved to approve item 2A. Associate Member Fox seconded the motion. The motion carried, 7-0.

Motion for Item 2B.

Associate Member Tankard moved to approve item 2B. Associate Member Fox seconded the motion. The motion carried, 6-0-1. Associate Member Plumlee abstained.

2A. CITY OF NORFOLK, #13-0092, requests authorization to replace four (4) deteriorated stormwater outfall structures by installing 18-inch and 30-inch diameter ductile iron pipes and associated timber support structures extending a maximum of 202 feet channelward of mean low water, including the removal of approximately 24 cubic yards of submerged material to facilitate construction of the outfall structures in the vicinity of 9th View Street, Mason Creek Road and 5th Bay Street along the Chesapeake Bay, and in the vicinity of 1001 Little Bay Avenue along Willoughby Bay in Norfolk.

Permit Fee.....	\$100.00
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2B. BAE SYSTEMS, #13-0360, requests authorization to install a 44.1-foot wide by 54-foot long crane platform, a 24.7-foot wide by 35-foot long maintenance platform, and 15 associated battered piles, resulting in approximately 2,233 square feet of encroachment over State-owned submerged land adjacent to their facility at 750 West Berkley Avenue situated along the Southern Branch of the Elizabeth River in Norfolk.

Permit Fee.....	\$100.00
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3. CONSENT AGENDA ITEMS. None

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

5. TYLER WIND, #13-0202, requests authorization to construct a private, open-pile pier with an L-head and floating dock totaling 1,020 square feet, a 1,480 square foot non-commercial, dual-slip boathouse and roofed shelter, and set a piling 100-foot offshore for a clothesline mooring system at his property located at 19365 Tidewater Trail situated along the Rappahannock River in Essex County.

Randy Owen, Environmental Engineer, Sr., gave the briefing on the information provided in the staff evaluation with slides. His comments are a part of the verbatim record.

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

Tyler Wind, applicant, was sworn in and his comments are a part of the verbatim record. He provided a Powerpoint presentation for Board Members. He read a letter of support into the record from Mr. Croxton. He explained that he would be willing to compromise by 1) moving of the clothesline mooring inshore; 2) reducing the length of the deck; 3) reducing the size of the floating dock.

After some questions by the Board members, Commissioner Travelstead stated the matter was before the Commission.

Associate Member Beck moved to grant his request as modified by the applicant. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

Permit Fee.....	\$100.00
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- 6. **SMITH IRON & METAL CO., INC., #12-0558**, requests authorization to mechanically dredge 2,700 cubic yards of State-owned bottom in the James River to a maximum depth of minus -15 MLW, maintenance dredge on an as-needed basis, and to fill and dredge tidal wetlands in a man-made cove for the installation of a 500-foot bulkhead and a 111-foot by 73-foot boat ramp associated with the development of a marine terminal at 1304-1308 Bellwood Road in Chesterfield County. Both a subaqueous and a wetlands permit are required. Additionally, the project now involves Commission consideration of enforcement action for work conducted without a wetlands permit.

Julliette Giordano, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation with slides.

Commissioner Travelstead asked if the applicant was represented. He noted that the wetlands violation would be heard first.

George Duncan, applicant representative, was sworn in and his comments are a part of the verbatim record. Mr. Duncan explained that he thought they had obtained all the necessary permits, such as DEQ and Corps permits. He stated they had just been overaggressive at working the site. He said he had paid for mitigation. He stated that he only worked on his property and honestly thought all the permit requirements were done but would accept the civil charge.

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Commissioner Travelstead asked for a motion for the wetlands violation.

Associate Member Plumlee moved to accept the staff recommendation with the \$6,000 civil charge. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Commissioner Travelstead asked for a motion for the subaqueous encroachment.

Associate Member Tankard moved to approve the staff recommendation. Associate Member Plumlee seconded the motion. The motion carried, 7-0.

Royalty Fee (dredge 2,700 cu. yds. @ \$0.45/cu. yd.).....	\$1,215.00
Permit Fee.....	\$ 100.00
Wetlands Permit Fee.....	\$ 25.00
Civil Charge (Wetlands Violation)	\$ 6,000.00
Total Fees.....	\$ 7,340.00

- 7. **SIX M LLC, #12-1516**, requests authorization to install and backfill 96 linear feet of steel sheet pile bulkhead, extending a maximum of four feet channelward of mean low water, adjacent to their property at 425 Campostella Road situated along an unnamed tributary to the Eastern Branch of the Elizabeth River in Norfolk. The project is protested by an adjacent property owner.

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

After some questions of staff, Commissioner Travelstead asked if the applicant’s representation was present.

Timothy McMullane, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. McMullane explained that they had purchased the property from Norfolk Dredging and numerous vessels were already there, which no one owns. He said the protest was made for the bulkhead as there was a question of ownership and the crane was on their property.

After some discussion, Commissioner Travelstead asked if he agreed with the staff’s recommendation. Mr. McMullane said that he agreed with the permit condition to allow for access by navigation as he can easily do it since all of his ships are slated to go.

Commissioner Travelstead asked if anyone wished to comment pro or con.

Regina Gomez, representing the protestor, was sworn in and her comments are a part of the verbatim record. Ms. Gomez said that there was very little access with the congestion of the vessels and asked where would they go while the work was going on with the bulkhead. She requested that while the bulkhead was being built the vessels be placed elsewhere.

Paul Kugelman, Assistant Attorney General and VMRC Counsel, said the protestant’s issue was not under the authority of the VMRC and the managing of the vessels was under the authority of the Corps, in order to maintain a thoroughfare. He added that VMRC cannot make this a condition of the permit to build the bulkhead. He reiterated that the Corps manages the right of way.

Associate Member Plumlee said it was evident that VMRC cannot consider such a permit condition and moved to approve the 96 linear feet of bulkhead with the backfill, if the DEQ’s conditions were met. He added this did not include a VMRC permit condition regarding the navigational issue. Associate Member Palmer seconded the motion. Associate Member Fox noted that the bulkhead would improve the situation and lessen the environmental impact to the area. Commissioner Travelstead noted that this would not include any royalty fees and no permit condition. The motion carried, 7-0.

Permit Fee.....	\$100.00
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- 13. REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC20-1090-10 et seq., “Pertaining to Licensing Requirements and Licensing Fees” to establish oyster user fees as provided by H 1400.

Rob O’Reilly, Chief, Fisheries Management, gave the briefing on the information provided by the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. O’Reilly noted that staff recommended advertisement of the public hearing for the May 2013 meeting, regarding the amendments to 4VAC 20-1090-10, et seq.

John Bull, Director, Public Relations, added that this was also a request for a public hearing to discuss the creation by the Commission of an optional lifetime senior recreational saltwater fishing license. He said that seniors age 65 and older are exempt from having to buy a saltwater fishing license. He said that this license would be made available at a one-time cost of \$5 for those senior anglers who chose to obtain a paper saltwater fishing license in order to take advantage of a license reciprocity agreement with Maryland

Commissioner Travelstead announced the Commission approved by consensus the public hearing for the May 2013 meeting.

8. PUBLIC COMMENTS: None

9. PUBLIC HEARING: Proposed amendments to Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass," to lower the recreational black sea bass fishery possession limit of 25 fish to 20 fish, for the May 19 through October 14 and November 1 through December 31 season, and to establish the 2013 commercial directed fishery quota as 394,000 pounds.

Allison Watts, Fisheries Management Specialist, gave the briefing for the information provided by the staff's evaluation. Her comments are a part of the verbatim record.

Commissioner Travelstead opened the public hearing and there were no public comments. He stated the matter was before the Commission.

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

10. PUBLIC HEARING: Proposed amendments to Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks" to modify the limited entry system for the commercial spiny dogfish fishery, increase the daily trip limit to 3,300 pounds and increase the landing quota to 4,408,894 pounds.

Joe Cimino, Fisheries Management Senior Manager, gave the briefing on the information provided by the staff's evaluation with slides. His comments are a part of the verbatim record.

After some discussion, Commissioner Travelstead opened the public hearing.

Ernest Bowden, Eastern Shore waterman, said they did not want to go to 4,000 pounds as it would be more than the market could stand. He said it went from 13¢ to 15¢ which meant the price was up this year. He stated that the change would eliminate the uncertainty of using the barrels and they did not want a \$500 fine for a \$15 fish. He added that 90% of the watermen used barrels.

Mr. Cimino read the staff recommendation for amending Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks", which was to accept the FMAC recommendations to reduce

the number of eligible permittees to 77, and increase the daily trip limit to 3,300 pounds and increase the landing quota to 4,408,894 pounds.

Associate Member Palmer moved to approve the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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11. PUBLIC HEARING: Proposed amendments to Chapter 4 VAC20-900-10 et seq., "Pertaining to Horseshoe Crabs," to establish mesh size, twine size and permit specifications for gill nets harvesting horseshoe crabs.

Adam Kenyon, Fisheries Management Specialist, gave the briefing for the information provided by the staff's evaluation with slides. His comments are a part of the verbatim record.

Commissioner Travelstead opened the public hearing.

Michael Gibson, Charles Wimbrow, Randy Birch, Jon Smith, Aaron Mathews, and Ernie Bowden all spoke to this issue. They all agreed that the number of gill nets, closeness to the beach and the smallness of the Tom's Cove area were causing user conflicts between the horseshoe hand harvesters and the gill netters, who primarily harvest drum and rockfish in the area. It was an issue that had developed in this past year. They did not want to cut the gill netters from the area only to set a limit of how close to the beach their nets could be set and to limit them to the daytime, no nets overnight. The nets were keeping the horseshoe crabs from reaching the beach where the hand harvesters work. Most of them felt that an emergency regulation should be established to address this user conflict issue.

Commissioner Travelstead suggested that the two groups meet and discuss this issue in order to come up with a working solution for both fisheries.

The public hearing was closed. Commissioner Travelstead stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation to make the emergency amendments approved at the April meeting as a permanent part of the regulation. Associate Member Fox seconded the motion. The motion carried, 7-0.

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Commissioner Travelstead said that for the gear conflict discussed today the Commission could adopt an emergency regulation or if not, staff could meet with the industry to discuss the matter and come up with a solution that could be brought back to the May

meeting. At that time an emergency regulation could be adopted, if necessary and a final regulation be adopted in June at a public hearing.

Commissioner Travelstead suggested that the industry members present meet in the adjoining room and at that meeting they could try to come back to the Board today with some resolution. After that meeting, it was agreed by the Board and industry members present that the Commission not take any action today on this user conflict issue and have the staff report back at the next meeting with the results of the another industry meeting when some further action could be taken.

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12. DISCUSSION: Blue Crab Winter Dredge Study results and timeline for future management measures.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing on the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record.

It was noted by Commissioner Travelstead that action by the Board would be necessary for the moratorium of the Crab Dredge Fishery to be continued.

Pete Nixon, crabber, was present and his comments are a part of the verbatim record. Mr. Nixon stated that last year's harvest season was the worst it had been in 40 years. He said the decline in stocks in the lower Bay continues because the management measures now in place are not working and need to be changed. He said there had been a changed in the character of the crab fishery from mainly the Bay to the estuaries. He noted the big boat crabbers were gone. He said a sanctuary area was needed as there were hardly any male crabs to be caught in Virginia. He said the crab and peeler pots were being fished in areas that pots were never before. He reiterated that there needed to be an area where the crabs can be allowed to breed and grow out to a good size. He said the volume and quality were down and customers were being lost. He said there were peddlers on the side of the road selling North Carolina caught crabs and taking that revenue back to North Carolina.

No further action was taken.

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- 14. 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 and her comments are a part of the verbatim record. Ms. Iverson noted that two of the individuals were not present, Mr. Forrest and Mr. Pate.

Cornelius Drew Jr. - was sworn in and his comments are a part of the verbatim record.

Ms. Iverson explained that Mr. Drew had been missing several months of harvest reports and they had all been resolved now. She noted he had received all notifications of the missing reports and notified of the meeting. She said staff recommended two-year probation.

Mr. Drew said he thought he had turned in his reports. He said when he later checked he found them, because he had forgot to submit them.

Associate Member Palmer asked if Mr. Drew had been cooperative and Ms. Iverson responded, yes.

Associate Member Tankard moved to accept the staff recommendation of two-year probation. Associate Member Beck seconded the motion. The motion carried, 7-0.

Mitchell G. Kellam – was present and sworn in. His comments are a part of the verbatim record.

Ms. Iverson stated that Mr. Kellum had received all the normal notifications of a missing March 2012 report, but did not respond so that now he was missing March through October 2012 and February and March 2013.

Mr. Kellam stated that he would get the rest of his reports into staff within the next few days. He said he was missing 4 days for March and April.

Commissioner Travelstead said it does get frustrating for staff when some ignore the notices and he noted that the staff recommendation was for two-year probation. He asked for a motion.

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

John Forrest – not present

Ms. Iverson said Mr. Forrest had a medical issue and did not work except for two months and for those two months someone else worked his gear. She said he was two months out of compliance.

Commissioner Travelstead stated the Board agreed to carry this matter over to the May meeting. He noted the reports needed to be turned in before next month’s meeting.

Billy N. Pate – staff had not been able to notify Mr. Pate of the meeting today, no action was taken.

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- 15. POUND NETS:** Cases involving protested locations for new pound nets, in accordance with Chapter 4VAC20-25-210 et seq., “Pertaining to Pound Net Siting Public Interest Review.”

Pulled from the agenda - application withdrawn by applicant.

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There being no further business, the meeting was adjourned at approximately 3:04 p.m. The next regular meeting will be held Tuesday, May 28, 2013.

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Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary