

MINUTES

Commission Meeting

May 23, 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	
Wayne France	
Ken Neill, III	Associate Members
John Zydron	
John Tankard	
Kelci Block	Assistant Attorney General
Matt Hull	Policy Manager
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Todd Sperling	Business Systems Specialist, Sr.
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation/Replenishment
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
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
Alicia Nelson	Coordinator, RFAB/CFAB
Adam Kenyon	Fisheries Mgmt. Specialist
Hunter Smith	Fisheries Mgmt. Specialist
Chris Davis	Fisheries Mgmt. Specialist

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Warner Rhodes	Deputy Chief, Law Enforcement
Austin Brown	Marine Police Officer
Clinton Smith	Marine Police Officer
John Callamore	Marine Police Officer
Barry Mizzelle	Marine Police Officer
Donald Bond	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Randy Owen	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Dir., Shellfish Aquaculture Leasing/Mapping
Daniel Faggert	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell Emily Hein Mark Luckenbach Rom Lipcius

Others present:

Craig Palubiniski	Rob Bloxom	Bradley Berrene
Chris Bauge	Kristina Bauge	Leo Flora
Mike Oesterling	Rick Hyatt	Harry Bowen
Jacob Bowen	Lynn Uher	Chuck Archer
Ellen Edwards	Terry Joseph	Michael Newsome
Bonnie Newsome	Pat Mumey	Pam Mumey
Kim Huskey	Katie Crum	Justin Apfel
Andrew A. Cockrell	Susan Betts	Toni Buccaulli
R. M. Hixson	L. M. Perkinson	D. W. Perkinson
John Christie	Chris Moore	James L. Riggins
James L. Riggins, Jr.	Wayne Williams	Andy Lacatell
Philip Hatchett	Gabby Saluta	Michael Seebo
Jackie Shannon		

and others.

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**17865
May 23, 2017**

Commissioner Bull called the meeting to order at approximately 9:35 a.m. Associate Members Erskine, Kellum, and Minor were all absent. Commissioner Bull announced there was a quorum present.

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

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

Tony Watkinson, Chief, Habitat Management, noted that there were originally five Oyster Ground Lease applications, now there were only four applications because the protest had been resolved and that application had been withdrawn. He also said there had been another page two item added, Virginia Natural Gas. He noted the agenda reflected these changes.

Associate Member Zydron moved to approve the agenda, as presented. Associate Member Ballard seconded the motion. The motion carried, 6-0. Chair voted yes.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the April 25, 2017 Commission meeting minutes. There were no changes.

Associate Member Zydron moved to approve the minutes, as presented. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

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

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

Tony Watkinson, Chief, Habitat Management, reviewed these two items for the Board. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

Associated Member Tankard moved to approve the projects, as presented. Associate Member France seconded the motion. The motion carried, 6-0. Chair voted yes.

A. VULCAN CONSTRUCTION MATERIALS, LLC, #17-0403 Requests authorization to maintenance dredge 5,048 cubic yards of State-owned submerged lands to achieve maximum depths of -18 feet at mean low water around the concrete unloading pier on an as-need basis, construct and maintain a total of 13 wood or steel mooring dolphins, and construct a 5-foot by 5-foot concrete winch platform along the Elizabeth River at Vulcan's Westminster Facility located 3425 Westminster Avenue in Norfolk. Staff recommends approval with a time-of-year restriction for any hollow steel pile driving between February 15 and June 30 of any year to protect spawning and juvenile fishes and the use of wooden pile cap cushions, bubble curtains, and "Ramp-up" techniques should impact hammers be needed for the installation of hollow steel pilings. Staff also recommends approval with a royalty of \$1,605.24 for the encroachment over 802.62 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royal Fees (encroachment 802.62 sq. ft. @ \$2.00/sq. ft.)	\$1,605.24
Permit Fee	\$ 100.00
Total Fees	\$1,705.24

B. VIRGINIA NATURAL GAS, #17-0459 Requests authorization to place a new 24-inch, steel, natural gas line using horizontal directional drill methods, below the substrate of the Eastern Branch Elizabeth River, adjacent to Harbor Park in the City of Norfolk. Staff recommends approval with a royalty of \$3,150.00 for the encroachment over 1,050 linear feet of State-owned submerged bottom at a rate of \$3.00 per linear foot.

Royal Fees (crossing 1,050 lin. ft. @ \$3.00/lin. ft.)	\$3,105.00
Permit Fee	\$ 100.00
Total Fees	\$3,205.00

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3. CONSENT AGENDA ITEMS:

A. TOWN OF COLONIAL BEACH, #17-0431 Requests on behalf of their licensee, Mr. and Mrs. Robert Lane, after-the-fact authorization to retain a 10-foot by 12-foot, uncovered boat lift and associated lift piles, installed adjacent to a private non-riparian pier, situated along the Potomac River at 401 Irving Avenue in the Westmoreland County. Mr. and Ms. Lane, had agreed to pay a \$1,000.00 civil charge and triple permit fees of \$75.00, in lieu of further enforcement action.

Tony Watkinson, Chief, Habitat Management, 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 no applicants were present.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

Associate Member Ballard moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. The Chair voted yes.

Civil Charge	\$1,000.00
Permit Fee	\$ 75.00
Total Fees	\$1,075.00

B. THE RESERVE COMMUNITY ASSOCIATION, LLC, #16-1473 Requests authorization to retain four (4) unauthorized boatlifts and to add five (5) additional boatlifts, two (2) 5-foot by 15-foot finger piers, a 5-foot by 12-foot split level landing to access a 4-foot by 16-foot gangway and an 8-foot by 16-foot floating platform in Gunston Cove adjacent to Community Association property in The Reserve Community in Fairfax County. The applicant had agreed to a \$2,000.00 civil charge for the unauthorized boat lifts. Staff recommended approval with royalty of \$603.00 for an additional 402 square feet of encroachment over State-owned submerged land and triple permit fees of \$300.00.

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information provided in the staff’s evaluation. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated the matter was before the Commission for discussion and action.

Craig Palubiniski, agent for the project was present and he offered to answer any questions. There were no questions.

Associate Member Ballard moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. The Chair voted yes.

Royal Fees (encroachment 402 sq. ft. @ \$1.50 sq. ft.)	\$ 603.00
Permit Fee (Triple)	\$ 300.00
Civil Charge	\$2,000.00
Total Fees	\$1,705.24

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

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- 5. **CHRISTOPHER BAUGE, #16-1591** Requests authorization to construct an 18-foot by 32-foot open-sided boathouse as part of the private riparian pier construction adjacent to 1432 Five Hill Trail in the Sea Breeze Farm subdivision, situated along Dix Creek in Virginia Beach. The proposal is protested by an adjoining property owner and other neighbors.

Justin Worrell, 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. Worrell explained that the total square footage of the proposed open-sided boathouse is well below the 700 square-foot exemption criteria contained in §28.2-1203(A) (5) of the Code. Had the boathouse proposal not been protested by the adjoining property owner, staff would have considered it statutorily authorized along with the private pier proposal. In this case, staff believed the open-sided design only minimally adds to a visual obstruction presented by a pier and boat lift. Furthermore, the City of Virginia Beach does not prohibit open-sided boathouses, and private piers with similar open-sided roof structures are very common along the waterways in Virginia Beach. While staff is sensitive to the protests of the neighbors, there are other pier and boathouse/gazebo roof structures within Dix Creek. Therefore, staff recommended approval of the 18-foot by 32-foot open-sided boathouse, as proposed.

In response to a question from the Board, Tony Watkinson, Chief, Habitat Management, explained that it was the Attorney Generals’ opinion that view impact issues were a zoning matter and the Commission was required to only consider direct impacts.

Christopher Bauge, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bauge explained that he had made changes to lessen impacts to those who

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protested the matter. He said he has met with everyone involved and he was not going to use this structure for parties or put a lot of furniture in it. He explained that the two closes marinas that he could keep his boat do not have any vacancies at the present and he just wants to provide protection for his boat. He noted that there were other such structures in the area and handed out pictures for the Board to see them. He requested that his proposal be approved.

Commissioner Bull opened the public hearing for those in support of the project and there were none. He asked for those in opposition who wished to speak.

Michael Newsome, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Newsome explained that as an adjoining neighbor he was acting as a mediator for all others in the area and they just want moderation in the scope of what is proposed to be done.

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

Associate Member Zydron moved for approval of the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

Permit Fee	\$ 100.00
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- 6. **VINCENT JOSEPH, #16-1708** Requests authorization to install a 20-foot by 23.67-foot floating dock with a 3-foot by 16-foot gangway on an existing private pier to facilitate the mooring of two jet-skis at 607 Burcher Road in the City of Newport News. The project is protested by two neighbors.

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 stated that while VMRC does not have the legal authority to determine riparian boundaries, staff believed that Dr. Joseph had made a reasonable attempt to locate the floating dock in the waters opposite his riparian parcel and the request appeared appropriate. Any legal challenges concerning impacts to riparian property rights should be addressed in the proper court of law. Accordingly, 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 project, as proposed.

Vincent Joseph, applicant, was sworn in and his comments are a part of the verbatim record. Dr. Joseph said he was requesting an extension to his gangway with the floating dock. He stated it was not easy to get on a jet ski and the platform would help. He noted that Ellen Edwards who is an adjoining property owner did not object and Mr. Garner has his own pier on the riparian line and on Ms. Edwards' riparian area. He said he did not want to interfere with anyone else. He just wanted to be able to use his jet ski.

Commissioner Bull opened the public hearing for comments.

Ellen Edwards, adjoining property owner, was sworn in and her comments are a part of the verbatim record. Ms. Edwards said she had no problem with the platform.

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

Associate Member Tankard moved to accept the staff's recommendation. Associate Member Zydron seconded the motion. The motion carried, 6-0. Chair voted yes.

Permit Fee	\$ 25.00
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- 7. HARRY BOWEN, JR., Oyster Planting Ground Application #2016-093**
Requests authorization to lease approximately ten (10) acres of oyster ground in Hungars Creek near the Waverly subdivision in the Church Neck area of Northampton County. The project is protested by an adjacent property owner.

Hank Badger, 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. Badger explained that when staff receives an oyster ground application protest, the department policy has been to try and find common ground. If both parties are willing to compromise and an agreement can be reached that results in a lease that appears acceptable to staff, a survey is made and the oyster ground is assigned. The Commission only sees an application if staff cannot resolve the protest administratively, or if there are other factors that staff cannot support (SAV, navigation, public use, etc). In this case, staff worked with both sides back in 2012 and a compromise was reached to not lease the area within 200 feet of mean low water along this reach of Hungars Creek to Mr. Cole and Mr. Heath. Even though the area was not set-aside, staff in good faith cannot support leasing the area now, even though the area could grow oysters and clams. Therefore, based on Section 28.2-607-1 of the Code of Virginia, staff believed it was in the public interest not to lease the area.

Commissioner asked for comments from the applicant.

Harry Bowen, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bowen stated that the highland was subdivided in 2001, but there was never any development so there were no piers. He said he had been in the aquaculture business for 30 years and he could not find any conflicts in the area and he wanted to expand his business.

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

After much discussion by the Board members regarding the status of the area requested based on the past history of not leasing, Associate Member Zydron moved to table the decision of the application for lease until the June Commission meeting and have staff notify all parties. Associate Member Neill seconded the motion, but he stated he did agree with all that had been said by other members. Commissioner Bull stated that the Commission did not want to change any previous decisions and staff agreements that were made previously were valid, but now someone was applying for what was good clam ground and they were working their existing leases. He said the highland property was not developed, so he agreed that it should be leased.

After further discussion, Associate Member Zydron made an amended motion to table the application until the July Commission meeting and all landowners and leaseholders were to be notified. Associate Member Neill seconded the amended motion. The motion failed by a 2-4 vote. Associate Members Ballard, France, and Tankard all voted no. The Chair voted no.

Associate Member Tankard moved to approve Harry Bowen's lease application. Associate Member France seconded the motion. The motion carried, 5-1. Associate Member Zydron voted no. The Chair voted yes.

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- 8. ROBERT S. BLOXOM, Oyster Planting Ground Application #2015-076**
Requests authorization to lease 75 acres in Kegotank Bay in Accomack County. The project is protested by two hand harvesters that work the seaside of Accomack County.

Hank Badger, 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. Badger explained that staff was sympathetic towards the hand harvesters' situation, however, Mr. Bloxom had submitted an application well within the limits spelled out in § 28.2-609 of the Code of Virginia. The area was not in a channel, there was no submerged

aquatic vegetation and it appeared that the hand harvesters did not work the area. Therefore, based on §§ 28.2-605 and 28.2-609 of the Code of Virginia, staff recommended approval of Mr. Bloxom's application for 72.37 acres of oyster planting ground in Kegotank Bay as surveyed and mapped.

Robert S. Bloxom, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bloxom explained that because of the sand movement in the area of his existing leases, he needed to find stable and suitable ground for his aquaculture operation. He stated this was what he needed.

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

Associate Member Zydron moved to approve Robert Bloxom's lease application. Associate Member Tankard seconded the motion. The motion carried, 6-0. The Chair voted yes.

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- 9. RODERICK D. HYATT, Oyster Planting Ground Application #2016-099**
Requests authorization to lease approximately 105 acres of oyster ground within the Thorofare in York County. The application is protested by numerous residents in the area.

Ben Stagg, Director of Shellfish Aquaculture Leasing and Mapping, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. He provided a hand out of the revised staff's evaluation to the Board members.

Mr. Stagg explained that upon further review of two Joint Permit Applications submitted in 2017 by landowners along Dandy Loop Road, staff had concluded that the smaller 2.86 acres of area may still conflict with these pier extension requests. Additionally, some of this same area may also be used for temporary mooring and/or anchoring of boats during storm events and allowing a lease where structures may be placed could create an unnecessary use conflict. Staff therefore recommended leasing of the revised area of approximately 72 acres.

Commissioner Bull asked if the applicant wished to comment.

Roderick D. Hyatt, applicant was present and sworn in. His comments are a part of the verbatim record. Mr. Hyatt stated that over the past year, he had made adjustments trying to accommodate neighbors. He explained that he had purchased other leases and

commercial properties in the area. He said he had bought the other leases from Mr. McCulloch and on the new leases he did not intend to use cages.

Commissioner Bull opened the public hearing for comments, pro or con.

Lynn Perkinson, protestant was present and her comments are a part of the verbatim record. Ms. Perkinson explained that she lived in the Dandy Loop area. She stated that the revised lease size helped her and there was lots of recreational activity in the area, especially in the summer. She said along the shoreline it impacts the navigation of kayaks in the area. She stated that northeasters come through this area and move the oysters onto the shore. She added it will impact the turtle population in the area.

Toni Buccaulli, resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Buccaulli explained that he bought into the area to enjoy recreational activities and he agreed with Ms. Perkinson. He said that deer, turtles, and dolphins also use the area. He provided a letter of protest from Mr. Hockaday, as a handout.

Richard Hixson, protestant and resident, was sworn in and his comments are a part of the verbatim record. Mr. Hixson said this was known as "Sandbox" as it was an active bottom. He said the channel had been dredge and it had changed the shoreline. He said he moved there in 1972 and the spit area was an island, which is now gone. He stated he had no access to the cove and he might need to dredge through that area or decide to build a pier. He said this would make things hard on him.

Jimmy Riggins, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Riggins explained that this would impact the crabbers from setting their pots and he lived on the big red point, which was a King's Grant area. He said others use it for commercial crabbing and with cages they would not be able to set up their crab pots. He stated that if you add shells there you cannot catch crabs. He said this was not a good location as there could be winds from the south east and north east as well as recreational activity, such as skiing.

Bradley Berrene, Attorney, resident and protestant, was present and his comments are a part of the verbatim record. Mr. Berrene said this was an area used by everyone for recreational activities and this would make it unsafe for others.

James Riggins, Jr., resident and protestant, was sworn and his comments are a part of the verbatim record. Mr. Riggins explained that his family had lived there for generations and they had tried growing oysters in the area and it had not worked since there was no strike. He said he worked with his father. He said the area was a thoroughfare and it was used by a lot of people. Boats go through the area running at high speed. He said it was dangerous for crab potters as well. He said the commercial crab industry should be considered and other fisheries in the area.

John Christie, resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Christie explained that he was glad the small area was removed as it was what impacted him. He said he was concerned with the maintenance of buoys and cages. He said other leaseholders who used buoys had left them to just sink.

Mr. Hyatt explained in his rebuttal that a cleanup was being done now and that he would continue to maintain them.

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

Associate Member Zydron moved to deny the application for lease of Mr. Hyatt. Associate Member Neill seconded the motion. The motion carried, 5-1. Associate Member France voted no. The Chair voted yes.

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12. OFFENDERS:

Jerry L. Decatur, Jr.

Philip Hatchett, Attorney for Mr. DeCatur, was present and requested a continuance of this case because of a date conflict and him not being prepared. He apologized and said his calendar was clear for next month. His comments are a part of the verbatim record.

Commissioner Bull suggested tabling the matter until the June meeting, which was on the fourth Tuesday of the month.

Associate Member Zydron moved to grant the request for a continuance. Associate Member France seconded the motion. The motion carried, 6-0. The Chair voted yes.

Raymond L. Elbourn

Commissioner Bull explained that Mr. Elbourn's case had been continued after a letter of request was received from his Attorney, William L. Viverette. He stated he had approved the request for a continuance. No objections were raised by the Board members.

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10. **ANDREW MYLES COCKRELL and ANDREW DANDRIDGE COCKRELL, Oyster Planting Ground Application #2014-291** Request authorization to lease approximately 1.30 acres of oyster ground within the Little Wicomico River in Northumberland County. The application is protested by an adjacent leaseholder

Ben Stagg, Director of Shellfish Aquaculture Leasing and Mapping, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record.

Mr. Stagg explained that staff reviews each application relative to the specific circumstances associated with the location and other uses of the area. For this application, it appears leasing of the very near shore area may cause a conflict with the adjoining highland property owner. While the applicant would need to traverse across another oyster ground lease to reach the proposed lease application area, this is the case throughout the state where multiple leases adjoin each other. Use of both areas should be possible if both leaseholders work together to avoid gear conflicts. Staff recommended leasing of a modified area containing 0.81 acres and excluding the inshore area, as originally surveyed.

Andrew D, Cockrell, co-applicant, was sworn in and his comments are a part of the verbatim record. Mr. Cockrell explained that they needed more area so to have more cages. He stated this was hard bottom with deep water. He said the concerns were of theft by the protestant and he had always been able to work with the protestant. In answer to a question, Mr. Cockrell explained that they currently had maybe six leases with 200 to 300 acres. He said this area was close to their business and it was good bottom. He said he needed the deep water to keep the oysters from freezing in the winter. He said when the piers were built he did not have any objections.

Commissioner Bull opened the public hearing for comments, pro or con.

Richard Harding, Purcell Seafood, was sworn in and his comments are a part of the verbatim record. Mr. Harding apologized with the statement about theft. He said a precedent was set when he applied in 1998 and was denied. He asked why not allow it back then and now it was okay. He felt he had a gentleman's agreement with staff.

Commissioner Bull closed the public hearing as there were no more comments, pro or con. He stated the matter was before the Commission for discussion and action.

After some discussion, Associate Member Ballard moved to deny the Cockrells' lease application. Associate Member Tankard seconded the motion. The motion carried, 5-0-1. Associate Member France abstained. The Chair voted yes.

11. PUBLIC COMMENTS: None

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13. PUBLIC HEARING: To make permanent emergency amendments to Chapter 4 VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," that modified the timing when oyster harvesters may pay the oyster resource user fee.

Andrew Button, Department Head, Conservation and Replenishment, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record.

Mr. Button explained that staff recommended approval of the amendments to Chapter 4VAC 20-720-10, Pertaining to Restrictions on Oyster Harvest," modifying the time when oyster harvesters must pay the oyster resource user fee for all gears.

"Only individuals who paid the oyster resource user fee described in § 28.2-541(A)(ii) of the Code of Virginia in any year, from 2013 through 2016, may pay that fee in 2017, for harvest of oysters from public ground in 2017. In any year following 2017, eligibility to pay the oyster resource user fee described in § 28.2-541 (A) (ii) of the Code of Virginia shall be limited to those individuals who paid the oyster resource user fee for harvest of oysters from public ground in the previous year."

After a little discussion, Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated that the matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. The Chair voted yes.

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14. PUBLIC HEARING: To make permanent emergency amendments to Chapter 4VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)," that established the 2017 Virginia Summer period commercial quota as 11,812 pounds.

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 stated that the summer period is currently from May 1 through October 31 of each year. The Virginia summer period commercial scup quota for 2017, as established by the ASMFC, is 11,812 pounds. In 2016, the Virginia summer quota was 13,154

pounds. Historically, Virginia lands the entire summer quota in one vessel trip the first week that the season is open.

Ms. Ramsey explained that staff recommended the Commission adopt the emergency amendments adopted at the April 25, 2017 Commission meeting for the 2017 Virginia commercial summer period (May through October) scup quota of 11,812 pounds.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated that the matter was before the Commission for discussion and action.

Associate Member Ballard moved to approve the staff recommendation. Associate Member France seconded the motion. The motion carried, 6-0. The Chair voted yes.

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

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

Mr. O'Reilly explained that staff recommended the Commission adopt the 2017 Virginia commercial black sea bass quota as 824,080 pounds, whereby the 2017 directed commercial black sea bass fishery quota is 784,080 pounds and the 2017 commercial black sea bass bycatch fishery quota is 40,000 pounds.

Commissioner Bull opened the public hearing for comments and there were none. He closed the public hearing and stated that the matter was before the Commission for discussion and action.

Associate Member Neill moved to accept the staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 6-0. The Chair voted yes.

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16. **DISCUSSION:** Consider amendments to Chapter 4 AC 20-490-10 et seq., "Pertaining to Sharks," that would establish the May 1, 2017 through April 30, 2018 commercial spiny dogfish harvest quota as 4,220,814 pounds.

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 on October 25, 2016, the Atlantic States Marine Fisheries Commission (ASMFC) released a memo setting the 2017 fishery specifications for spiny dogfish. The Commission's Spiny dogfish management board approved a commercial quota of 39,099,717 pounds for the Coastal States for the 2017 fishing season (May 1, 2017 – April 30, 2018). Virginia received 4,220,814 pounds, which is a 10.8% share of the total commercial quota. Currently Virginia has three licensed federal dealers who purchase dogfish who are required to report weekly through the federal reporting system (SAFIS). VMRC also requires these dealers to report weekly, which is redundant and no longer necessary. However, the VMRC Regulation will still require buyers to call in their purchases, once it is announced that 80% of Virginia's quota has been landed.

Miss Ramsey explained that staff recommended the Commission advertise for a June 2017 public hearing to consider adopting Virginia's 2017-18 commercial spiny dogfish quota of 4,220,814 pounds and to streamlining the buyer reporting process. She noted that the industry was in agreement with the change in the buyer reporting.

Associate Member Neill moved to approve the staff recommendation to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 6-0. The Chair voted yes.

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17. **REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapters 4VAC 20-270-10 et seq., "Pertaining to Crabbing"; 4VAC 20-1140-10 et seq., "Prohibition of Crab Dredging in Virginia Waters"; 4VAC 20-1040-10 et seq., "Pertaining to Crabbing Licenses"; and, 4VAC 20-752-10 et seq., "Pertaining to the Blue Crab Sanctuary."

Robert O'Reilly, Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation with slides. His comments are a part of the verbatim record. There was a handout of additional public comments given to the Board members.

Rom Lipcius, VIMS, was present and his comments are a part of the verbatim record. Dr. Lipcius explained the Winter Dredge Survey provided the best predictors, but there also needed to be a survey done in the shallow waters, which has not been done in the past. He said when there were higher numbers of large size crabs present, there was also more

cannibalism. He said that management focuses on the spawning stock and the number of female crabs was 50% more than the number of juvenile crabs. He said the shallow water areas need to be added to the survey to have even better information. He said it would be expected that there would be more juveniles because of the warmer weather and the spawning season being longer. He said they have seen some very, very small juveniles in the sea grasses that might enter the fishery in the late fall. He agreed to try to be present at the public hearing.

After much discussion, it was recommended by staff that the Commission advertise the following:

1) The Commission will consider a November 30, 2017 closing date for the 2016-2017 crab pot harvest season and a March 17, 2018 opening date for the 2017-2018 crab pot harvesting season.

2) The Commission will consider whether to maintain the current maximum bushel and vessel limits for lawful crab pot license categories, from November 1 through November 15.

3) The Commission will consider whether to allow commercial crab pot harvest in a portion of the coastal area of the Blue Crab Sanctuary Area 4.

4) The Commission will consider whether to keep the winter crab dredge fishery closed for 2017-2018.

Associate Member Neill moved to accept the staff recommendation to advertise the amendments to the regulations for a public hearing at the next meeting. Associate Member Ballard seconded the motion. The motion carried, 6-0. The Chair voted yes.

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18. REQUEST FOR PUBLIC HEARING: Rescind the commercial fee increase that was scheduled to go into effect in December 2017.

Commissioner Bull gave the briefing for this item. He explained that this was a request to advertise for a public hearing to rescind the previously approved commercial fishing license fee increases scheduled to be effective December 1, 2017. The increases were proposed at the time that the agency was facing a \$937,000 General Fund budget reduction. The 2017 General Assembly Session restored monies to the agency's budget in an amount equivalent to the funding level expected to be generated from the increased commercial fishing license fees. As a result the fee increases are no longer necessary. His comments are a part of the verbatim record.

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Associate Member Tankard moved to accept the staff recommendation to advertise for a public hearing. Associate Member Neill seconded the motion. The motion carried, 6-0. The Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 3:27 p.m. The next Commission meeting will be Tuesday, June 27, 2017.

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary