

MINUTES

Commission Meeting

June 23, 2015

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 M. R. Bull	Commissioner
Chad Ballard, III James D. Close S. Lynn Haynie Whitt Sessoms Ken Neill, III John E. Zydron	Associate Members
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Linda Hancock	Human Resources Mgr.
Todd Sterling Dave Lego	Business Systems Specialist, Sr. Business Systems Specialist
Robert O'Reilly Joe Grist Jim Wesson Joe Cimino Stephanie Iverson Lewis Gillingham Samantha Hoover Adam Kenyon Rachael Maulorico Laurie Dozier Alicia Nelson	Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Head, Conservation/Replenishment Fisheries Mgmt. Manager, Sr. Fisheries Mgmt. Manager Director, SWFT Fisheries Mgmt. Specialist Biological Sampling Supervisor Fisheries Mgmt. Planner Fisheries Mgmt. Specialist RFAB/CFAB Coordinator
Warner Rhodes Mike Morris Brandon Price	Deputy Chief, Law Enforcement Marine Police Officer, Sr. Marine Police Officer

Commission Meeting

**17402
June 23, 2015**

Thomas Wilkins
Henry Reichle
Gerald Pitt
Zach Widgeon

Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Jeff Madden
Hank Badger
Mike Johnson
Randy Owen
Ben Stagg
Mark Eversole
Jay Woodward
Justine Woodward
Justin Worrell
Bradley Reams

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Chief Engineer, Eng.Survey
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Marijke Noens
Kristen Scheler
David Lockett
Martin Gary
Roger Belvin
Willie Shiflette

Selina Pradhan
Conor Makepeace
Tom Olexr
Chris Moore
Charles Davenport
Rachael Lockett

Mike Oesterling
Donna Melzer
Andy Lacatell
Hank Jones
Ava Shiflette
Norman Risavi

and others.

Commissioner Bull called the meeting to order at approximately 9:30 a.m. Associate Member Erskine was absent.

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

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

Commissioner Bull stated that the agenda was approved by consensus of the Board members.

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MINUTES: Commissioner Bull asked if there were any changes or corrections to be made to the May 26, 2015 Commission meeting minutes. There were no changes.

Donna Melzer, waterman, presented the Commission with two petitions to rehear the Oyster Ground Lease Applications denied at the May 26, 2015 Commission and to rehear the establishment of the Daily Relay Permit pursuant to Chapter 4VAC 20-1290-10 et seq. "Pertaining to Restrictions on the Harvest of Shellfish in Condemned Shellfish Areas", approved and made effective June 1, 2015.

Commissioner Bull accepted the two petitions and after some discussion with VMRC Counsel, no further action was taken.

Associate Member Zydron moved to approve the minutes, as presented. Associate Member Sessoms seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member Haynie abstain because she was absent from the last meeting.

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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, informed the Commission that there were two page two items to be heard, 2A and 2B. He reviewed them for the Board. His comments are a part of the verbatim record.

Commissioner Bull opened the public hearing for any public comments for any of the items presented and there were none. He stated the public hearing was closed and the matter was before the Commission.

Associate Member Neill moved to approve the page two items. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Commission Meeting

- 2A. COLUMBIA GAS TRANSMISSION, #15-0506**, requests authorization to cross the South Fork Shenandoah River with a new natural gas pipeline, trenched a minimum of five (5) below the natural river bed, near Grove Hill in Page County. Recommend approval with standard instream work conditions including all work be done in the dry behind temporary cofferdams such that no more than one-half of the river flow is blocked at a time, strict adherence to erosion and sediment control laws, complete restoration of the river bed and banks upon completion of the installation of the new line, and a royalty in the amount of \$729.00 for the encroachment over 243 linear feet of State-owned submerged land at the proscribed rate of \$3.00 per linear foot.

Royalty Fees (encroachment 243 lin. ft. @ \$3.00 per lin. ft.)	\$729.00
Permit Fee	\$100.00
Total Fees	\$829.00

- 2B. JOINT BASE LANGLEY-EUSTIS, #14-0777**, requests authorization to install a 30-foot wide by 868 linear foot long fuel dock with a 75-foot by 50-foot L-head and associated mooring pile, and a 20-foot wide emergency response boat ramp extending a maximum of 15 feet channelward of mean low water along the Southwest Branch Back River at Joint Base Langley-Eustis in the City of Hampton.

Permit Fee	\$100.00
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3. CONSENT AGENDA ITEMS.

- 3A. ROBERT D. LAMB, JR., #15-0438**, requests after-the-fact authorization to retain a 275-foot long by 5-foot wide commercial pier, which includes a 105-foot long by 16-foot wide L-head, and to install two (2) mooring piles situated adjacent to his property along Cherrystone Creek at 2112 Cherrystone Road in Northampton County. The pier is part of an aquaculture shellfish operation and the L-head had not existed for over 20 years. The applicant has agreed to pay a civil charge in the amount of \$1,000.00 in lieu of further enforcement action and royalties in the amount of \$2,917.50 for the encroachment of the pier platform 1,945 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot. Staff recommends approval and acceptance of the civil charge, triple permit fee and royalties

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.

Mr. Watkinson explained that staff recommended approval of the two mooring piles and after-the-fact authorization for the L-head platform and pier, with the assessment of a civil charge based on a minimal impact and a minor degree of deviation or non-compliance. The applicant had agreed to pay a civil charge in the amount of \$1,000.00 in lieu of further enforcement action along with a triple permit fee of \$75.00 and royalties in the amount of \$2,917.50 for the encroachment of the pier and L-head platform over 1,945 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot. Staff recommended approval of the after-the-fact request for a permit with the aforementioned triple permit fee, royalty fee, and conditioned upon receipt of the \$1,000.00 civil charge.

It was noted that the applicant was not present.

Commissioner Bull opened the public hearing for any public comments, pro or con. There were none. He stated the matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes.

Royalty Fee (encroach 1,945 sq. ft. @ \$1.50/sq. ft.)	\$2,917.50
Permit Fee (ATF Triple)	\$ 75.00
Civil Charge	\$1,000.00
Total Fees	\$3,992.50

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

- 5. SHENANDOAH TELEPHONE COMPANY, #15-0426,** requests authorization to relocate an existing aerial telephone line across the North Fork Shenandoah River, to the south of the Artz Road Bridge in Shenandoah County. The project is protested by an adjacent property owner.

Jay Woodward, 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. Woodward explained that the need to relocate the existing telephone line in light of the proposed bridge work appears reasonable to staff. Moreover, staff believes that attaching the line to an existing aerial crossing line over the river minimizes any additional impacts to the river, from both an environmental and view-shed perspective.

In addition, staff does not believe the request would pose an impact to navigation, given the types of boats (canoes, kayaks, small john boats, etc.) likely to use this stretch of the river as it will be suspended a minimum of 30 feet above the river surface at normal flow. After evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommended approval of the project as proposed, with a royalty in the amount of \$510.00 at the prescribed rate of \$3.00 per linear foot for the encroachment of the line over 170 linear feet of State-owned submerged land (not including the mid-stream island).

It was noted that the applicant was not present.

Commissioner Bull asked for public comments, pro or con. There were none. He stated that matter was before the Commission.

Associate Member Neill moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Royalty Fees (encroach 170 lin. ft. @ \$3.00/lin. ft.)	\$510.00
Permit Fee	\$100.00
Total Fees	\$610.00

- 6. COUNTY OF WESTMORELAND, #15-0522**, requests request authorization to install a sewer line, by directional drill method, under 586 linear feet of Lower Machodoc Creek, 223 linear feet of Jones Branch, and 468 linear feet of Mount Pleasant Branch, to serve the communities of Cabin Point, Glebe Harbor, Tidwells and Drum Bay. The project is protested by an adjacent property owner.

Jeff Madden, 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. Madden explained that Mr. A. J. Erskine had submitted a letter stating that the Lower Machodoc had the most productive private grounds in the State of Virginia. He was not objecting to the permit, but in his letter he suggested that the Commission require the issuance of a bond in case of damage or a plan be established in event there was a sewage system failure and the oyster grounds were closed to harvest and established as a shellfish condemnation area.

Mr. Madden stated that staff was sensitive to the concerns raised by the adjacent property owner, it was abundantly clear that there existed a real and present danger to the health of the community within the service area and the adjacent waters were adversely affected by the existing failing septic systems. The new sewer line would take 300 septic systems off

line and provide over 300 families with a safer method of waste disposal. In addition, the immediate area surrounding the drilling sites would be subject to the “Frac-out” contingency plan which is on file and would address any potential discharge of any drilling fluids associated with the directional drilling process. As such, after evaluating the merits of the project against the concerns expressed by the individual in opposition, and considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff believed the public and private benefits outweighed the public and private detriments and recommended approval of the project, as submitted.

Norman Risavi, County administrator, was sworn in and his comments are a part of the verbatim record. Mr. Risavi explained that this sewer line would be connected to an existing non-discharge plant and they had worked with the Planning District and the Commission to discuss possibly planting seed oysters or possible grants. He said that there were procedures and policies to keep the area environmentally safe.

After some discussion, Commissioner Bull asked for any other public comments and there were none. He stated the matter was before the Commission.

Associate Member Sessoms stated he supported the project as there were concerns with the leaking septic systems and this project was removing environmental impacts. He moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Permit Fee	\$100.00
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- RICHARD and RITA PORTERFIELD, #15-0378**, request after-the-fact authorization to retain a 65-foot long, private use, non-riparian pier and two (2) vinyl sheet-pile, groins which extend from their upland property, across a riparian strip of beach owned by Timberneck Land, LLC, and into the Rappahannock River at 196 Montgomery Cove Road in Deltaville, Middlesex County.

Jay Woodward, 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. Woodward said that staff did not believe that the pier or groins had any detrimental impact on the marine environment since the time of their construction in 2009, and had no objection to allowing them to remain over State bottom now that staff knew that the riparian owner did not object to them. While there were other remaining issues involving access to the intertidal beach area and upland easement, these areas were wholly outside of Commission jurisdiction and appeared to now be addressed and resolved by the agreement reached between the parties. He said staff recommended after-the-fact

approval of the portions of the pier and groins which extended channelward of the mean low water line into the Rappahannock River with a triple permit fee of \$75.00 given the after-the-fact nature of the request. Because of the confusing property situation and erroneous information contained in the original application, along with the cooperative nature of the applicant, and the amicable agreement reached between the parties involved to resolve the matter, staff did not recommend a civil charge in this instance.

It was noted that the applicant was not present.

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

Associate Member Neill moved to accept the staff recommendation. Associate Member Close seconded the motion. The motion carried, 7-0. Chair voted yes.

Permit Fee (ATF Triple)	\$75.00
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- 8. **DAVID D. and CHRISTOPHER W. HUFF, #15-0385**, request after-the-fact authorization to retain a 112-foot long, private use, non-riparian pier from their upland property across a riparian strip of beach owned by Timberneck Land, LLC, and into the Rappahannock River at 182 Montgomery Cove Road in Deltaville, Middlesex County.

Jay Woodward, 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. Woodward said that staff did not believe that the pier had any detrimental impact on the marine environment since the time of its construction in 2006, and had no objection to allowing it to remain over State bottom now that staff knew that the riparian owner did not object to it. While there were other remaining issues involving access to the intertidal beach area and upland easement, these areas were wholly outside of Commission jurisdiction and appeared to now be addressed and resolved by the agreement reached between the parties. He said staff recommended after-the-fact approval of the portion of the pier which extended channelward of the mean low water line into the Rappahannock River with a triple permit fee of \$75.00 given the after-the-fact nature of the request. Because of the confusing property situation and erroneous information contained in the original application, along with the cooperative nature of the applicants, and the amicable agreement reached between the parties involved to resolve the matter, staff did not recommend a civil charge in this instance.

Commission Meeting

The applicant was not present.

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

Associate Member Neill moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

Permit Fee (ATF Triple)	\$75.00
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- 9. **BRIEFING AND REQUEST FOR PUBLIC HEARING:** Proposed “Living Shoreline Group 1 General Permit for Certain Living Shoreline Treatments Involving Tidal Wetlands.” The general permit regulation is being developed pursuant to §28.2-104.1 of the Code of Virginia.

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

Mr. Neikirk explained that the “Group 1” General Permit was developed to authorize the simple enhancement of an existing tidal wetland area through the placement of sand fill to improve the growing condition for wetlands vegetation. As currently written, the Group 1 general permit would allow the placement of biodegradable fiber logs and oyster shell bags to assist in retaining the sand fill and protecting the planted wetland. All activities would be confined to areas landward of mean low water. If the application met the criteria and both the wetlands board and VMRC concurred with the use of the general permit process, VMRC would issue the general permit. Given the limited potential to adversely impact the environment, adjoining neighbors or the general public and the desire to streamline the permit review process, there would not be a public notice or required notification of adjoining property owners. It was also proposed that there be no application or permit fee. Staff wanted to encourage the living shoreline techniques be used where appropriate and believed this incentive approach would be beneficial.

After some discussion, Commissioner Bull asked for a motion on the staff’s request for a public hearing at the August meeting.

Associate Member Neill moved to approve the staff’s request for a public hearing. Associate Member Sessoms seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 14. **REQUEST FOR A JULY PUBLIC HEARING:** To modify the criteria for an exception to the two-year delay process for a Commercial Fisherman Registration License within Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," as provided by Section 28.2-241 of the Code of Virginia.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing of the request for a public hearing from the information provided in the staff's evaluation. His comments are a part of the verbatim record.

After some discussion, Commissioner Bull asked for a motion on the request by staff for a public hearing.

Associate Member Haynie moved to approve the request by staff for a public hearing. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 15. **REQUEST FOR A JULY PUBLIC HEARING:** To revise the lawful season and area for the harvest of clams by patent tong from the Newport News Shellfish Management Area, and prohibit additional lease applications within any shellfish management area that are described in Chapter 4 VAC 20-560-10 et seq., "Pertaining to Shellfish Management Areas."

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing of the request for a public hearing and his comments are a part of the verbatim record. He noted that this was originally scheduled to be heard at today's meeting, but staff was requesting that it be re-advertised for the July meeting.

Commission Bull asked for a motion on the request by staff for a public hearing.

Associate Member Neill moved to approve the staff's request for a public hearing at the July meeting. Associate Member Close seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 10. **PUBLIC COMMENT:** There were no public comments.

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11. OFFENDERS:

Mike Morris, Marine Police Officer, Sr., was sworn in and his comments are a part of the verbatim record. Mr. Morris gave the briefing of the summons and convictions information provided in the staff's evaluation.

David S. Lockett, Jr. – present and sworn in.

Commercial Possession of unculled oysters from the public rocks; summons issued on October 8, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-280-30; convicted November 20, 2014 in the Isle of Wight County General District Court (Criminal), fine \$110.00, court cost \$89.00.

Taking and Commercial Possession of unculled oysters from the public rocks—9 quarts shell and small oysters; summons January 28, 2015 pursuant to Code Section 28.1-510; convicted February 12, 2015 in Isle of Wight County General District Court (Criminal), fine \$110.00, court cost \$89.00.

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission guidelines for sanctions specify that one conviction of possession of greater than 100 percent over the tolerance of undersized shellfish, with a 12 month period, should result in at least one year probation. However, this violation occurred while his licenses were revoked. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Lockett's licenses to take or catch fish, shellfish or marine organisms for a period of two years from the date of this Commission meeting, Jun 23, 2015, through June 22, 2017. Staff also recommended the Commission revoke all of Mr. Lockett's fishing privileges within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, June 23, 2015, through June 22, 2017.

Mr. Lockett noted that there was a right to work law and this work was all that he knew. He had worked on the water all of his life. He said that he did not do anything both times. He said he owned the boat and the other two watermen were paying him to use his boat.

Rachael Lockett, wife, was sworn in and her comments are a part of the verbatim record. Ms. Lockett stated she could not believe what was happening now, he had already been punished. She stated the rules were too strict and he was not a criminal.

After some discussion, Associate Member Ballard moved to approve the staff recommendation for two year revocation of Mr. Lockett's licenses and fishing privileges, starting June 23, 2015, through June 22, 2017. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

Willie F. Shiflette, Jr. – present and sworn in.

Henry Reichle, Marine Police Officer, was sworn in and explained the summons and convictions from the information provided in the staff's evaluation. His comments are a part of the verbatim record.

Take or catch oysters from public rocks of the Commonwealth at any time other than provided; summons issued December 15, 2014 pursuant to Code Section 28.2-506; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00.

Take or catch oysters from public rocks of the Commonwealth at any time other than provided; summons issued December 17, 2014 pursuant to Code Section 28.2-506; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00.

Take or catch oysters from public rocks of the Commonwealth at any time other than provided; summons issued December 19, 2014 pursuant to Code Section 28.2-506; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00.

Steal oysters valued at \$200 or more and belonging to the Commonwealth of Virginia; summons issued December 19, 2014 pursuant to Code Section 18.2-96; reduced to petit larceny; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$-0-, court cost \$206.00, 6 months jail/6 months suspended for 3 years; restitution of \$1,333.87 to the Virginia Oyster Replenishment Fund.

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, within a 12-month period, should result in at least one year revocation and one conviction of illegally harvesting oysters from public or private grounds, within a 12 month period should also result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Shiflette's licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting, June 23, 2015, through June 22, 2017. Staff also recommended the Commission revoke all of Mr. Shiflette's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, June 23, 2015, through June 22, 2017.

Mr. Shiflette explained that he had paid all the fines, plus the restitution. He stated he thought he was in Area 6 which was open.

After some discussion, Commissioner Bull stated that the matter was before the Commission for discussion or action.

Associate Member Zydron moved to approve the staff recommendation for two year revocation of licenses and fishing privileges, starting June 23, 2015, through June 22, 2017. Associate Member Sessoms seconded the motion. The motion carried 6-0-1. Chair voted yes. Associate Member Haynie recused herself from this hearing.

Ava Marie Shiflette - present and sworn in.

Thomas Wilkins, Marine Police Officer was sworn in and his comments are a part of the verbatim record. Mr. Wilkins gave the briefing of the summons and convictions from information provided in the staff's evaluation.

Hand Scrape License Required in Hand Scrape Area (Area #1); summons issued on October 10, 2014 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-75 (A); convicted on November 12, 2014 in the Lancaster County General District Court (Criminal), fine \$100.00, court cost \$86.00.

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Henry Reichle, Marine Police Officer was sworn in and his comments are a part of the verbatim record. Mr. Reichle gave the briefing of the summons and convictions from information provided in the staff's evaluation.

Larceny of Oysters (reduced to Petit Larceny); summons issued on December 15, 2014 pursuant to Code Section 18.2-96; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$-0-, court cost \$155.00, 6 months jail all suspended 3 years, restitution of \$1,133.87 to Virginia Oyster Replenishment Fund.

Larceny of Oysters (reduced to Petit Larceny); summons issued on December 17, 2014 pursuant to Code Section 18.2-96; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$-0-, court cost \$206.00, 6 months jail all suspended 3 years, restitution of \$1,133.87 to Virginia Oyster Replenishment Fund.

Take or catch oysters at time other than permitted; summons issued on December 19, 2014 pursuant to Code Section 28.2.506; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00.

Take or catch oysters at time other than permitted; summons issued on December 23, 2014 pursuant to Code Section 28.2.506; convicted on March 16, 2015 in the

Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00.

Take or catch oysters at time other than permitted; summons issued on December 26, 2014 pursuant to Code Section 28.2.506; convicted on March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00.

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, with a 12 month period, should result in at least one year revocation; and one conviction of illegally harvesting oysters from public or private grounds, within a 12 month period, should also result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Ms. Shiflette's licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting, Jun 23, 2015, through June 22, 2017. Staff also recommended the Commission revoke all of Ms. Shiflette's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of the Commission meeting, June 23, 2015, through June 22, 2017.

Ms. Shiflette stated it was up to the Commission as she had pleaded guilty and paid all of the fines and fees.

Commissioner Bull stated the matter was before the Commission.

Associate Member Zydron moved to approve the staff recommendation to revoke all licenses and fishing privileges for two years, starting June 23, 2015, through June 22, 2017. Associate Member Ballard seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member Haynie recused herself from this hearing.

Roger L. Belvin – present and sworn in.

Henry Reichle, Marine Police Officer, gave the briefing of the summons and convictions as provided in the staff's evaluation. His comments are a part of the verbatim record.

Take or catch oysters from public rock or shoals at any time other than that provided; summons issued December 3, 2014 pursuant to Code Section 28.2-506; convicted March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00

Take or catch oysters from public rock or shoals at any time other than that provided; summons issued December 15, 2014 pursuant to Code Section 28.2-506; convicted March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$145.00

Take or catch oysters from public rock or shoals at any time other than that provided; summons issued December 17, 2014 pursuant to Code Section 28.2-506; convicted March 16, 2015 in the Middlesex County General District Court (Criminal), fine \$50.00, court cost \$206.00, restitution within six months in the amount of \$446.49 to the Oyster Replenishment Fund.

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, with a 12 month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Belvin's licenses to take or catch fish, shellfish, or marine organisms for a period of one year from the date of this Commission meeting, Jun 23, 2015, through June 22, 2016. Staff also recommended the Commission revoke all of Mr. Belvin's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of the Commission meeting, June 23, 2015, through June 22, 2016.

Mr. Belvin said the first day he tried to tell them that he thought they were in the closed area, but he was told they were not. The lawyer suggested the plea agreement, which he agreed to. He said he had four little children and he was still paying off the fine. He said they added his name to the oyster sales tickets for the other dates to get the eight bushels more, which he did not get paid. He stated this was all he had done all his life.

Commissioner Bull stated the matter was before the Commission.

Associate Member Neill moved to approve the staff recommendation for one year revocation of all of Mr. Belvin's licenses and fishing privileges, starting June 23, 2015, through June 22, 2016. Associate Member Zydron seconded the motion. The motion carried, 6-0-1. The Chair voted yes. Associate Member Haynie recused herself from the hearing.

Charles F. Davenport – present and sworn in.

Brandon Price, Marine Police Officer, gave the briefing of the summons and convictions as provided in the staff's evaluation. His comments are a part of the verbatim record.

Fail to register as a commercial waterman; summons issued on January 31, 2015 pursuant to Code Section 28.2-241, convicted on April 27, 2015 in the York County General District Court (Criminal), fine \$35.00, court cost \$25.00.

Commercially take oysters on Saturday; summons issued on January 31, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-60(A); convicted on April 27, 2015 in the York County General District Court (Criminal), fine \$35.00, court cost \$25.00.

Fail to display harvest tag on oysters; summons issued on January 31, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-1250-30(A); convicted on April 27, 2015 in the York County General District Court (Criminal), fine \$35.00, court cost \$25.00.

Harvest oysters during closed season; summons on January 31, 2015 pursuant to Code Section 28.2-201 and Chapter 4VAC 20-720-40(B); convicted on April 27, 2015 in the York County General District Court (Criminal), fine \$50.00, court cost \$86.00.

Harvest oysters from condemned area; summons issued on January 31, 2015 pursuant to Code Section 28.2-810; convicted on April 27, 2015 in the York County General District Court (Criminal), fine \$100.00, court cost \$25.00.

Joe Grist, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters during a closed public season, with a 12 month period, should result in at least one year revocation and one conviction of harvesting oysters from a condemned area, with a 12 month period, should result in at least one year revocation. In accordance with Code Section 28.2-232, staff recommended the Commission revoke all of Mr. Davenport's licenses to take or catch fish, shellfish, or marine organisms for a period of two years from the date of this Commission meeting, Jun 23, 2015, through June 22, 2017. Staff also recommends the Commission revoke all of Mr. Davenport's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of the Commission meeting, June 23, 2015, through June 22, 2017.

Mr. Davenport explained that he was just asked for a ride and did not know what was going on. He said he was told the oysters were for a party but the oysters were sold. He said he has found out who his friends really are and they are no longer his friends, as he had had no further contact with them. He said he did not know where the oysters came from.

After some discussion, Associate Member Zydron moved to accept the staff recommendation for two years revocation of all of Mr. Davenport's licenses and fishing privileges. Commissioner Bull stated this was in Virginia waters only. Associate Member Close noted that Mr. Davenport could still work offshore scalloping. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

Stephen Perriello – not present.

Joe Grist, Deputy Chief, Fisheries Management, explained that staff did receive a notice from Mr. Perriello that he would be offshore scalloping for 12 days and would not be able to attend the hearing. Mr. Perriello did receive and sign for his letter notifying him of this

hearing. He asked the Commission if they wanted to proceed with the hearing. His comments are a part of the verbatim record.

Commissioner Bull stated that the Commission could decide to suspend Mr. Perriello's licenses until he appeared before the Commission.

Associate Member Neill moved to suspend all of Mr. Perriello's licenses until he appeared before the Commission. Associate Member Close seconded the motion. The motion carried, 7-0. Chair voted yes.

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12. PUBLIC HEARING: Amendments to Chapter 4 VAC 20-70-10 et seq., "Pertaining to the Harvesting of Clams," and Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees," to establish a gear license and harvesting criteria for hand-held "water rake" for the harvest of cultured hard clams on leased ground.

Jim Wesson, 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. He provided handouts of the revised Chapter 20-70-10 et seq. and Chapter 20-1090-10 et seq.

Staff recommended adoption of the amendments to Chapter 4 VAC 20-70-10 et seq., "Pertaining to the Harvesting of Clams," and Chapter 4 VAC-20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees" to establish a gear permit for a hand-held "water vacuum" or "water rake" for the harvest of cultured hard clams on leased ground; effective July 1, 2015.

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

Mike Oesterling, East Coast Shellfish Growers Association of Virginia, was present and his comments are a part of the verbatim record. Mr. Oesterling thanked the Commission for working with industry to get this passed.

Hank Jones, Commercial Clammer on Eastern Shore, was present and his comments are a part of the verbatim record. Mr. Jones stated being allowed to use this gear was important to the clam industry because of its efficiency and being such a marvelous piece of equipment. He explained that thanks to the Commission the clam industry in Virginia was the envy of the rest of the world.

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

After some discussion, Associate Member Ballard moved to accept the staff recommendation. Associate Member Haynie seconded the motion. The motion carried, 7-0. Chair voted yes.

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13. PUBLIC HEARING: Amendments to Chapter 4 VAC 20-1270-10 et seq., “Pertaining to Atlantic Menhaden” to increase Virginia’s portion of the coast-wide total allowable landings of menhaden, in accordance with recent ASMFC actions, and to modify the requirements for sector quota deductions when an overage to Virginia’s total allowable landings occurs.

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

Staff explained that the amendment would increase Virginia’s total allowable landings of menhaden, in 2015 and 2016. The proposed allowable commercial landing amount is 349,873,884 pounds. This would be portioned out to the 3 different sectors of the menhaden fishery: purse seine menhaden reduction, 315,036,445 pounds; the purse seine menhaden bait, 29,313,757 pounds; and, the non-purse seine menhaden bait, 5,523,682 pounds.

Staff recommended the Commission adopt the proposed amendments that would establish an increase in total allowable landings, for 2015 and 2016, as well as the proportional, sector-based increases. Staff also recommended the Commission adopt the amendment that will make this regulation conform to the Code of Virginia, in terms of the process for paying back overages of quota.

Commissioner Bull opened the public hearing for any public comments. There were no public comments. He stated the matter was before the Commission for discussion or action.

Associate Member Haynie moved to accept the staff recommendation. Associate Member Close seconded the motion. The motion carried, 7-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 1:35 p.m. The next regular Commission meeting will be Tuesday, July 28, 2015.

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Commission Meeting

**17419
June 23, 2015**

John M. R. Bull, Commissioner

Katherine Leonard, Recording Secretary