

## MINUTES

## Commission Meeting

November 1, 2016

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	
James E. Minor	Associate Members
Ken Neill, III	
John E. Tankard	
John E. Zydron	
Matthew Hull	Assistant Attorney General
Laurie Naismith	Director, Public Relations
Katherine Leonard	Recording Secretary
Terri Short	Accounting Manager, Admin-Fin
Todd Sperling	Business Systems Specialist, Sr.
Dave Lego	Business Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Joe Cimino	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Management Mgr.
Jill Ramsey	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Ryan Jiorle	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Sean Sheline	Fisheries Mgmt. Specialist
Susan March	Fisheries Mgmt. Technician
Adam Kenyon	Fisheries Mgmt. Specialist
Samantha Hornsby	Fisheries Mgmt. Specialist
Katie May Laumann	Fisheries Mgmt. Specialist
Chris Davis	Fisheries Mgmt. Specialist
Christine Ford	Fisheries Mgmt. Specialist
Megan Wood	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator RFAB/CFAB
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Mike Morris	Marine Police Officer

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Patrick West	Marine Police Officer
Allen Marshall	Marine Police Officer
Robert Griffin	Marine Police Officer
Stephan Ovide	Marine Police Officer
Alex Tucker	Marine Police Officer
Steve Bennis	Marine Police Officer
Gary Fox	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Chip Neikirk	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Chief Engineer, Western Shore
Mark Eversole	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Maulorico	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Daniel Faggert	Surveyor, Engineering/Surveying
Bradley Reams	Program Support Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Jim Holt	Mary Tarver	Rob Kerr
Brenda Wise	Craig Palubinski	Sherry Ashe
Ken Kurkowski	Bobbi Case	Rob Case
John M. Witherspoon	Louise Witherspoon	Jeff Watkins
Edna Griffenhagen	Sandra Deibler	Mark Sanford
Carter Parks	Kim Huskey	Jeffrey Harper
Frank M. Urquhart Jr.	Daniel F. Adams	Nam Vu
Cuong D. Vu	David O'Brien	Donald Edwards
Woodrow Crook	David Owens	Simon Marce
John K. West	Lisa West	John M. West
Sabrina Hogge	James West	Robert Hogge
Carol Hogge	Andy Lacatell	

and others.

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Commissioner Bull called the meeting to order at approximately 9:44 a.m. Associate Members Erskine and Kellum were absent and Associate Member Minor arrived late to the meeting at approximately 10:05 a.m.

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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.

Robert O'Reilly, Chief, Fisheries Management, explained that there was another request by staff for public hearing to be held at the December 13, 2016 Commission meeting to consider increasing license fees which would be Item 22.

**Associate Member Tankard moved to approve the agenda, as amended. Associate Member Zydron 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 September 27, 2016 Commission meeting minutes.

**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). There were no page two items to be heard.

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3. **CONSENT AGENDA ITEMS:** There were no consent items to be heard.

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

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- 5. **JEAN CASE, #16-1320.** Commission review and appeal by 41 freeholders of the Mathews County Wetlands Board decision to authorize the installation of 525 linear feet of riprap revetment along the East River shoreline at 726 Turpin Lane in Mathews County.

Tony Watkinson, Chief, Habitat Management, explained to the Board members that the Wetlands Board was holding a hearing to reconsider a new application and the appellants have asked that the review by the Commission be continued.

Mr. Watkinson stated that the staff recommendation was to continue the matter in hopes of a resolution being reached. He noted that a representative of the Wetlands Board and the applicant were both present.

Commissioner Bull asked if there were any public comments and there were none. He asked, what was the will of the Commission?

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

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- 6. **GEORGE P. ARNOLD, #16-0863,** requests authorization to construct 63 linear feet of riprap revetment along a jurisdictional beach; and construct a 200-foot long by 5-foot wide open-pile private pier with a 12-foot by 16-foot T-head platform, an 8-foot by 12-foot floating pier, and two (2) boatlifts along Willoughby Bay adjacent to 1119 Little Bay Avenue in the City of Norfolk. The project requires a dune/beach and subaqueous permit.

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

Ms. Maulorico explained that the property is clearly experiencing erosion and sediment loss. The close proximity of the house to the escarpment and the bulkhead of the neighboring property give the applicant very few options for minimizing or avoiding impacts to the jurisdictional beach. The proposed pier is reasonably sized for a single

family private pier and would otherwise qualify for statutory authorization if the applicant were a riparian landowner. Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1408 and §28.2-1205 of the Code of Virginia, staff recommended approval of the project, as proposed.

Brenda Arnold, applicant, was sworn in and her comments are a part of the verbatim record. Ms. Arnold explained that this project was needed in order to prevent further erosion of the shoreline which was getting closer to her house.

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

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

Permit Fee	\$100.00
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- 7. **CHESAPEAKE LANDING HOME OWNERS ASSOCIATION, #16-1200**, requests authorization to install a 20-foot wide stone groin extending 70 feet channelward of mean low water with a 20-foot by 30-foot stone spur and place 50 cubic yards of beach nourishment upon 300 square feet of subaqueous bottom along the Chesapeake Bay shoreline near Thimble Shoals Court in the City of Hampton. The project requires a dune/beach and subaqueous permit.

Mike Johnson, Environmental Engineer, Sr., gave the briefing to the information provided in the staff’s evaluation, with slides. His comments are a part of the verbatim record. Mr. Johnson noted that because this was a dune/beach permit request the VMRC staff had held a public hearing on October 16, 2016 and there were no comments from the public.

Mr. Johnson explained that there was erosion ongoing at the site and that the existing groin had failed, which had contributed to the observed erosion. Therefore staff believed that an erosion control structure was appropriate in this area, and after consultation with the Virginia Institute of Marine Science, that a groin was acceptable. Accordingly, after evaluating the merits of the project and after considering all of the factors contained in §28.2-1408 of the Code of Virginia, staff recommended approval of the project, as proposed

Robert Kerr, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Kerr stated that he was just trying to save the beach area.

Commissioner Bull asked for public comments and there were none. He stated the matter was before the Commission for discussion or action.

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

Royalty Fees (encroachment 300 sq. ft. @ \$0.05 per sq. ft.)	<b>\$ 5.00</b>
Permit Fee	<b>\$100.00</b>
Total Fees	<b>\$150.00</b>

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- 8. **G. H. GUY, III, #16-1373**, requests authorization to construct an armor stone sill, three (3) Class II stone breakwaters, four (4) stone spurs and place 1,630 cubic yards of sandy backfill along approximately 1,600 linear feet of shoreline to facilitate the establishment of 12,625 square feet of tidal wetlands and beach grass vegetation for the purpose of erosion control at property (432 Bellevue Lane) situated along the York River in King and Queen County. The project requires a dune/beach and subaqueous permit.

Randy Owen, Environmental Engineer, Sr., gave the briefing for the information provided in the staff’s evaluation, with slides. His comments are a part of the verbatim record. Mr. Owen noted that because this was a dune/beach permit request, VMRC staff had held the public hearing on October 12, 2016 and no one was present.

Mr. Owen explained that the project, as designed, met the definition of a living shoreline, as codified in §28.2-104.1 of the Code of Virginia. This legislation, adopted by the 2011 General Assembly, encouraged the use of living shorelines as the Commonwealth’s preferred alternative for stabilizing tidal shorelines. VIMS stated that the project appeared sound in addressing erosion control while incorporating a significant amount of estuarine habitat. The applicant additionally agreed to VIMS recommendations which should reduce the project’s potential for adverse environmental impact and improve ecosystem functions. The proposed structures and backfill will not encroach on any leased shellfish beds or submerged aquatic vegetation. After evaluating the merits of the project, and after considering all of the factors contained in §28.2-14030.B and §28.2-1205.A of the Code of Virginia, staff recommended approval of the project, as proposed. Staff also recommended the assessment of a royalty in the amount of \$90.75 for the proposed beach nourishment of 1,815 square feet of State-owned submerged land at a rate of \$0.05 per square foot.

Commissioner Bull asked the applicant or agent to comment.

Craig Palubinski, agent for the applicant was sworn in and his comments are a part of the verbatim record. Mr. Palubinski explained that he had no further comments to add and would answer any questions.

Associate Member Minor arrived to the meeting at approximately 10:05 a.m.

Commissioner Bull asked for public comments and there were none. He stated the public hearing was closed and the matter was before the Commission for discussion and action. He further asked, what was the will of the Commission?

**Associate Member Neill moved to accept the staff recommendations. Associate Member Ballard seconded the motion. The motion carried, 6-0-1. Associate Member Minor abstained as he had just arrived to the meeting.**

Royalty Fees (filling 1,815 sq. ft. @ \$0.05/sq. ft.	\$ 90.75
Permit Fee	\$100.00
Total Fees	\$190.75

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- VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT), #15-1582,** requests authorization to replace the existing Route 460 bridge with a clear span bridge consisting of four (4) travel lanes and associated road shoulders over 20 linear feet of the Blackwater River, install a culverted crossing over 20 linear feet of Burnt Mills Swamp raising and widening the existing Route 460 highway to four (4) travel lanes with associated road shoulders, and install (4) four travel lanes and associated road shoulders over 750 linear feet of Ennis Mill Pond near Shiloh Drive and over 20 linear feet of Ennis Mill Pond between Shiloh Drive and the existing Route 460 highway as part of the Virginia Department of Virginia Route 460 Improvement Project in Isle of Wight County. The project is protested by an adjacent property owner and the City of Norfolk.

Mike Johnson, Environmental Engineer, Sr., gave the briefing for the information provided in the staff’s evaluation, with slides. His comments are a part of the verbatim record. Mr. Johnson noted that a representative from VDOT was present.

Mr. Johnson explained that typically, when Virginia Department of Transportation projects were reviewed by the VMRC it was through the General Permit process which resulted in an administrative decision for issuance of the permit. In this instance, the U. S. Army of Corp of Engineers (ACOE) required an “Individual Permit” disqualifying the project from being reviewed under our General Permit #1 process. Accordingly, a regular subaqueous permit was required along with the standard public interest review. Two objections were received during the public interest review. Both objections were

primarily related to non-tidal wetlands which are not within the purview of the VMRC. Mr. Johnson noted that the mitigation plan for non-tidal wetlands had been reviewed by both the US Army Corp of Engineers and the Virginia Department of Environmental Quality (DEQ) and approved. Also, comments from the Virginia Department of Conservation and Recreation and Department of Game and Inland Fisheries did not list any concerns with resources that the VMRC exerts jurisdiction over. 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.

Caleb Parks, representative for VDOT, was sworn in and his comments are a part of the verbatim record. Mr. Parks stated that VMRC staff had done a good job and they had worked with VMRC, DEQ, and the ACOE to minimize the impacts of the project and to work out a mitigation plan. He said they had received permits from the ACOE and DEQ. He explained that they had worked with the City of Norfolk and agreed to develop the best management controls.

Commissioner Bull opened the public hearing to comments pro or con.

Frank M. Upqhart, Jr., protestant, was sworn in and his comments are a part of the verbatim record. Mr. Upqhart explained that he owned property where the new lanes were proposed and the project should be moved to the south side to avoid impacts. He said to relocate would have less impact on the swamp and cost less.

Commissioner Bull closed the public hearing and there were no public comments. He stated the matter was before the Commission for discussion and action. He asked, what was the will of the Commission?

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

Permit Fee	\$100.00
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- 10. **CUONG D. VU, #16-0309**, requests authorization to construct an 80-foot by 18-foot spur-breakwater extending from an existing revetment and a 145-foot by 18-foot riprap breakwater with 650 cubic yards of sand placed landward of the breakwater as beach nourishment adjacent to property situated along the York River at 8901 Cook Drive in Gloucester County. The project is protested by an adjoining property owner.

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

Mr. Neikirk explained that where appropriate, breakwaters were a preferred alternative to manage shoreline erosion. The proposed modifications to the existing breakwaters coupled with the addition of sand landward of the structure should improve the effectiveness of the breakwater and also minimize the potential for the breakwater to adversely affect the neighboring shorelines. 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(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

Jeff Watkins, agent/contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Watkins stated that staff had explained the project properly and he would answer any questions.

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

**Associate Member Ballard stated that he was sensitive to the protestant concerns, but all had been done to minimize impacts to the protestant and the project, as proposed, was the preferred method. He moved to accept the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

Permit Fee	\$100.00
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- 11. CITY OF VIRGINIA BEACH, #16-1273**, requests authorization to install two (2) new channel marker buoys in the Keelings Drain section of the City’s Eastern Branch of the Lynnhaven River municipal channel. The proposal is protested by an adjacent oyster ground leaseholder.

Justin Worrell, Environmental Engineer, Sr., gave the briefing for the information provided in the staff’s evaluation, with slides. His comments are a part of the verbatim record. He read the staff evaluation addendum into the record and provided it as a handout. He also noted that the applicant’s representative was present as well as the leaseholder who was protesting the project.

Mr. Worrell explained that staff understood the oyster ground leaseholder’s concerns to a certain degree, as the placement of the two new channel markers would direct mariners to

waters overlying a portion of his existing lease. However in keeping with Chapter 6 (Planting Grounds) of Section 28.2 of the Code of Virginia, the Commission leased oyster ground strictly for the propagation of shellfish, and such a lease did not grant the leaseholder any right to restrict the public's right to navigate the waters above the lease. In this proposal there would be no actual placement of channel markers over the existing leased area, therefore the City needed no specific approval from the leaseholder, only the Commission's permit to install the channel markers. The public already had the right to navigate in the identified area now without the additional markers. Staff felt that the City's effort to temporarily direct mariners in this naturally deeper area was reasonable and within the Commission's permitting capabilities as found in Section 28.2- 1203 of the Code. Mr. Edwards can continue to work his leased bottom in the subject area provided no hazards to navigation were later identified, but that condition already applies to shellfish propagation activities within existing leases. Ultimately, staff felt that the City's proposal was reasonable and responsible and recommended that the Commission approve the request to install the two floating channel marker buoys, as proposed.

Commissioner Bull asked if the City's representative wished to comment.

Phil Roehrs, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Roehrs explained that the City was working with the U. S. Coast Guard to place aids to navigation to guide the many vessels that navigate the area to the deep water. He explained also that this did not involve any dredging at the present time.

The hearing was opened for public comments.

Donald Edwards, leaseholder-protellant, was sworn in and his comments are a part of the verbatim record. Mr. Edwards explained that the city was trying to condemn half of the lease and the city had provided an unlawful survey and false information; and, the charts of the area have never been right. He said he would not be able to work his lease if these markers were allowed. He suggested the markers put there in 2015 be removed since it was never done properly as there was no U. S. Coast Guard permit and no survey. He noted that the public was not properly notified with the revised edition of the proposal only noticed on the original proposal.

There were no additional public comments.

**After much discussion by the members of the Board about the fact that the leaseholder would still be able to work his lease, the city minimizing the impact on the leaseholder by only putting in two markers, and the proposed marking of deep water by the city to make navigation safer was good for the amount of boating in this area, Associate Member Neill moved to approve the staff's modified recommendation to approve the amended proposed project. Associate Member Zydron seconded the motion. Mr. Worrell reminded the Commission the staff**

**recommendation included the addendum provided by staff. The motion carried, 7-0. Chair voted yes.**

Permit Fee	\$25.00
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- 12. PORTSMOUTH ENGINEERING DEPARTMENT, #15-0769**, requests after-the-fact authorization for a temporary sheet-pile cofferdam installation for the replacement of a previously approved articulated concrete boat ramp with a concrete slab at the Portsmouth City Park along the Western Branch at the Elizabeth River in the City of Portsmouth.

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

Ms. Maulorico said that when reviewing after-the-fact applications, staff considers whether the project would likely have been favorably reviewed had the application been considered prior to construction. In this case, the cofferdam was on its way to approval but staff needed to conduct the public interest review before it could be authorized. The applicant had previous authorization by the Corp of Engineers and two previous maintenance requests that did not require VMRC authorization. They moved forward in the planning process assuming this case would be the same. Accordingly, staff recommended approval of the after-the-fact request, as proposed. Staff further recommended that no civil charge be assessed but recommended that approval of the after-the-fact authorization be conditioned upon the payment of a triple permit fee of \$300.00 as provided for in §28.2-1206(D) of the Code of Virginia for after-the-fact projects.

Commissioner Bull asked the city’s representative if they wished to comment.

Jeffrey Harper, City of Portsmouth representative, was sworn in and his comments are a part of the verbatim record. Mr. Harper explained that they tried to respond to the Order to Comply, but it was difficult to contact VMRC staff. He explained that they thought the project was within the footprint of what was done before and only substituted the material being used. He stated the Corps and the Wetlands Board approved it and it was the desire of the public to keep the ramp open.

There were no public comments.

**Associate Member Tankard moved to approve the staff recommendation. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.**

Permit Fee (ATF Triple Permit Fee)	\$300.00
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**13. MARK SANFORD, Oyster Planting Ground Application #2012-038**, requests authorization to lease approximately one (1) acre of oyster planting grounds within the Eastern Branch of the Lynnhaven River in the City of Virginia Beach. The application is protested.

Ben Stagg, Chief Engineer, Western Shore, gave the briefing for the information provided in the staff’s evaluation, with slides. His comments are a part of the verbatim record. He gave the Board members a handout of the letter from the protestant, Lynnhaven Now.

Mr. Stagg explained that it should be noted that the area encompassed within the survey of this application was completely sub-tidal. Staff also believed the adjacent marsh islands in this area were State-owned, however, staff still did not recommend including any of the intertidal area in the oyster planting ground application. While cages may not be appropriate on this particular lease, staff believed properly shelled, the requested area would support wild oyster production and/or spat on shell production. After evaluating the project and weighing the concerns expressed by Lynnhaven River Now, staff concluded that leasing of this area was appropriate and recommended approval of the 0.89 acre area, as surveyed.

The applicant was asked if he had comments.

Mark Sanford, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Sanford explained that he needed this lease and he would not object to dredging over any of his leases. He stated that there was no other bottom available.

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

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

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**14. PUBLIC COMMENT:**

**Mark Sanford**

Mr. Sanford requested the Commission look into lowering the minimum size for the speckled trout to 12 inches, the as it is for the grey trout. Commissioner Bull instructed Mr. Sanford to get with Robert O'Reilly, Chief, Fisheries Management Division.

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**15. OFFENDERS:**

**David Owens** – Present and sworn in.

Mike Morris, Marine Police Officer, was present and sworn in.

Matthew Hull, Assistant Attorney General and VMRC Counsel, explained that in January 2016 Mr. Owens was given one year revocation of all licenses, which the Commission's decision was appealed to the Isle of Wight Circuit Court and the Court now ordered the matter to be reheard by the Commission. He further explained that there was a mistake in the record that said Mr. Owen plead "guilty" and actually he plead "no contest" when the officer presented the case to the Commission. He stated that now the Commission needed to take action to affirm or lower Mr. Owen's license revocation of one year.

Harry W. Crook, attorney for Mr. Owens, was present and his comments are a part of the verbatim record. Mr. Crook explained that in the record when the officer presented the case it was stated that Mr. Owens plead guilty, but he did not plead guilty, but plead no contest which was often misunderstood. He stated he advises anyone not to plead guilty if they are not guilty. He said now the judge has sent the case back to the Commission to reconsider their previous decision. He said they were requesting that the Commission terminate the revocation of Mr. Owen's licenses.

There was discussion by several of the Board members that felt the Commission acted appropriately when it made its decision for the one year revocation considering the fact that Mr. Owens was found guilty in court and with his past history of violations; and, felt the previous decision should stand.

Commissioner Bull stated that he did concentrate on the pleading of guilt and he agreed with the others as there was a conviction in the court, but he suggested changing the revocation to 10 months instead of the 12 months. Associate Member Zydron suggested that there be a probation period. Mr. Hull explained that he felt that Commission could not impose additional probation time as there was not sufficient evidence to make it a longer penalty period.

Mr. Crook stated that they agreed to a probation period as is within the authority of the VMRC.

**Associate Member Zydron moved to end the nine month revocation immediately and to place Mr. Owens on one year probation immediately, starting November 1, 2016, through October 31, 2017. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

Commissioner Bull explained the Commission needed to decide whether to proceed with the hearing in Richard Fluharty's absence. He noted that Mr. Fluharty had been served in person to be here for the hearing today.

Commissioner Bull stated that there was a consensus of all Board members to proceed with the hearing.

Gary Fox, Marine Police Officer was sworn in and gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

**Richard Fluharty** – not present.

August 9, 2013—Forged a Public Record/Document—18.2-168 of the Code of Virginia; Plea Agreement--Amended 8-31-15: Knowingly Give a False Report of any Crime to a Law Enforcement Officer with Intent to Mislead—18.2-461; August 31, 2015, Accomack County General District Court; Fine: \$200.00, Court Cost: \$25.00; 6 months 10 days Jail with 6 months suspended; 2 years Good Behavior.

December 12, 2013—Forged a Public Record/Document—18.2-168 of the Code of Virginia; Plea Agreement—Amended 8-31-15: Knowingly Give a False Report of any Crime to a Law Enforcement Officer with Intent to Mislead—18.2-461; August 31, 2015, Accomack County General District Court; Fine: \$200.00, Court Cost: \$25.00; 6 months 10 days Jail with 6 months suspended; 2 years Good Behavior.

December 5, 2014—Fail to Report Mandatory Harvest Report (Oyster)—4 VAC 20-610-60; August 31, 2015, Accomack County General District Court; Fine: \$50.00, Court Cost: \$25.00.

December 15, 2014—Forged a Public Document/Record—18.2-168 of the Code of Virginia; Plea Agreement--Amended 8-31-15: Knowingly Give a False Report of any Crime to a Law Enforcement Officer with Intent to Mislead—18.2-461; August 31, 2015, Accomack County General District Court; Fine: \$200.00, Court Cost: \$111.00; 6 months 10 days Jail with 6 months suspended; 2 years Good Behavior.

January 5, 2015—Fail to Report—4 VAC 20-610-20; August 31, 2015, Accomack County General District Court; Fine: \$100.00, Court Cost: \$25.00.

February 5, 2015—Fail to Report Mandatory Harvest Report (Oysters)—4 VAC 20-610-60; August 31, 2015, Accomack County General District Court; Fine: \$150.00 with \$150.00 suspended; Court Cost: \$25.00.

March 3, 2015—Fail to Report Mandatory Harvest Report—4 VAC 20-610-60; August 31, 2015, Accomack County General District Court; Fine: \$150.00, Court Cost: \$25.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. Given the severity of the situation, the number of convictions, and the specific details of this case involving a non-resident illegally harvesting oysters, staff is recommending a two year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Fluharty's Commission-issued licenses for a period of two years from the date of this Commission meeting, November 1, 2016, through October 31, 2018. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Fluharty's licenses during this revocation period. Staff recommended the Commission revoke Mr. Fluharty's fishing privileges, within the Commonwealth's tidal waters, for a period of two years from the date of this Commission meeting, November 1, 2016, through October 31, 2018.

Matthew Hull, Assistant Attorney General and VMRC Counsel, stated that pursuant to Code Section 28.2-232 the Commission can only revoke licenses for tidal fisheries violations and pursuant to Code Section 28.2-634 can convict for other violations, such as failure to report. In response to a question, Mr. Hull explained that prior to the Code amendment the maximum was for two years.

**Associate Member Zydron moved to accept the staff recommendation for revocation of all Mr. Fluharty's Commission-issued licenses and fishing privileges, within the Commonwealth's tidal waters for two years, starting November 1, 2016, through October 31, 2018. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.**

Robert Griffin, Marine Police Officer, was sworn in and gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

**Robert N. Hogge, Jr.** – was present and sworn in.

September 18, 2015--Take Oysters from Public Rock Out of Season—§28.2-506 of the Code of Virginia; March 31, 2016, Newport News Circuit Court; Fine: \$0.00, Court Cost: \$110.00; 12 months Jail with 12 months suspended, Good Behavior for three years.

January 25, 2016--More than One Basket Onboard while Culling Oysters—4 VAC 20-260-50; February 25, 2016, Isle of Wight General District Court; Fine: \$50.00, Court Cost: \$89.00.

Joe Cimino, 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. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Hogge's Commission-issued licenses for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Hogge's licenses during this revocation period. Staff recommended the Commission revoke Mr. Hogge's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017. Staff also recommends the Commission place Mr. Hogge on probation for a period of two years immediately following this revocation period, November 1, 2017, through October 31, 2019. Any failure on Mr. Hogge's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the two years probation would result in Mr. Hogge appearing before the Commission for another hearing on license revocation.

Mr. Hogge said he did take the oysters and he had pleaded guilty and been placed on probation by the court. He noted he could go to prison if he does anything else. He said to take his license now would take his livelihood and it is the only thing he does for a living. Mr. Hogge noted that his lawyer did not come to the hearing and he did not know where he was. He asked for probation.

After some discussion, Commissioner Bull asked, what was the will of the Commission?

**Associate Member Tankard moved to accept the staff recommendation to revoke all of Mr. Hogge's licenses and fishing privileges, within the Commonwealth's tidal waters for one year, starting November 1, 2016, through October 31, 2017, and to be placed on probation immediately following, starting November 1, 2017, through October 31, 2019. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.**

Commissioner Bull stated that Anthony D. Hogge was notified of the hearing today and a call was received yesterday by staff from a woman who said he would be working and could not appear at this hearing. He asked if the Board members wanted to proceed with the hearing. It was the consensus of all Board members to proceed with the hearing.

Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information contained in the staff's evaluation. His comments are a part of the verbatim record. Both investigation photographs and a handout of Mr. Hogge's signed statements were available to the Commission for review.

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**Anthony D. Hogge** – was not present.

October 22, 2015--Theft of Oysters, Clams, Shell, Etc.--Class 1 Misdemeanor—§28.2-527 of the Code of Virginia; May 18, 2016, Middlesex County Circuit Court—Plea Agreement; 12 months Jail with 12 months suspended for 5 years Good Behavior; Fine: \$00.00, Restitution: \$500.00 to Oyster Replenishment Fund.

October 22, 2015--Closure of Sanctuary Areas--Class 1 Misdemeanor—4 VAC 20-650-30; May 18, 2016, Middlesex County Circuit Court Plea Agreement  
Fine: \$100.00, Court Cost: \$00.00.

April 22, 2016--Unlawfully Fail to Affix Harvester Tag to Harvested Oysters—§28.2-201 of the Code of Virginia; 4 VAC 20-1250-30; May 18, 2016, Gloucester County General District Court; Fine: \$75.00, Court Cost: \$86.00.

May 31, 2016--Fail to Report Seafood Harvest to Mandatory Reporting--VMRC—4 VAC 20-610-60; July 5, 2016, Williamsburg/James City County General District Court; Fine: \$250.00, Court Cost: \$91.00

May 31, 2016--Use 2016 VMRC Striped Bass Tags Belonging to Another—4 VAC 20-252-160; July 5, 2016, Williamsburg/James City County General District Court; Fine: \$150.00, Court Cost: \$30.00.

May 31, 2016--Harvest Atlantic Striped Bass without a 2016 VMRC Striped Bass Permit—4 VAC 20-252-130; July 5, 2016, Williamsburg/James City County General District Court; Fine: \$150.00, Court Cost: \$30.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Hogge's Commission-issued licenses for a period of five years from the date of this Commission meeting, November 1, 2016, through October 31, 2021. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Hogge's licenses during this revocation period. Staff recommended the Commission revoke Mr. Hogge's fishing privileges, within the Commonwealth's tidal waters, for a period of five years from the date of this Commission meeting, November 1, 2016, through October 31, 2021.

**Associate Member Zydron moved to accept the staff recommendation revoke all Mr. Hogge's licenses and fishing privileges, within the Commonwealth's tidal waters for five years starting November 1, 2016, through October 31, 2021. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information contained in the staff's evaluation. His comments are a part of the verbatim record.

**Richard K. Hogge** – was present and sworn.

**April 29, 2016-- No 2016 VMRC Striped Bass Permit—4 VAC 20-252-130;** July 5, 2016, Williamsburg/James City County General District Court; Fine: \$150.00, Court Cost: \$30.00.

**April 29, 2016--Use 2016 VMRC Striped Bass Tags Belonging to Another—4 VAC 20-252-160;** July 5, 2016, Williamsburg/James City County General District Court; Fine: \$150.00, Court Cost: \$91.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that two convictions of failure to possess a commercial license (striped bass license), without eligibility, within a 24 month period, should result in at least two years probation. The Commission guidelines also specify that two convictions involving improper use of commercial harvester tags, within a 12 month period, should result in at least one year probation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission place Mr. Hogge on probation for a period of two years from the date of this Commission meeting, November 1, 2016, through October 31, 2018. Any failure on Mr. Hogge's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the two years probation would result in Mr. Hogge appearing before the Commission for a hearing on license revocation.

Mr. Hogge said he was caught the striped bass along with Anthony Hogge. He said he thought his son had gotten the tags from the other individual.

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

**Associate Member Tankard moved to accept the staff recommendation to place Mr. Hogge on probation for two years from November 1, 2016, through October 31, 2018. Associate Member Ballard seconded the motion. The motion carried, 6-1. Chair voted yes. Associate Member Neill voted no.**

Warner Rhodes, Deputy Chief, Law Enforcement, explained that staff received a call this morning from Donald Broadwell who stated he would not be able to attend the hearing as he would be attending a class at VIMS.

Commissioner Bull stated that it was the consensus of the Board members to proceed with the hearing.

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Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information contained in the staff's evaluation. His comments are a part of the verbatim record.

**Donald Broadwell** – was not present.

September 5, 2015--Fail to Fully Report Commercial Fishing and Mandatory Harvest Reports to VMRC—Class 1 Misdemeanor—4 VAC 20-610-60; June 24, 2016, Newport News General District Court Plea Agreement; Fine: \$50.00, Court Cost: \$91.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. Mr. Broadwell was put on probation during the August 2014 Commission Meeting for two years, August 26, 2014, through August 25, 2016, for failure to report. The Commission's guidelines for sanctions specify that two convictions of failure to submit mandatory harvest reports, within a 12 month period, should result in at least one year revocation on the offender's second appearance. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. Broadwell's Commission-issued licenses for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Broadwell's licenses during this revocation period. Staff recommended the Commission revoke Mr. Broadwell's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017.

**After much discussion, Associate Member Tankard moved to accept the staff recommendation to revoke all Mr. Broadwell's licenses and fishing privileges, within the Commonwealth's tidal waters for a period of one year from November 1, 2016, through October 31, 2017. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.**

Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information contained in the staff's evaluation. His comments are a part of the verbatim record.

**James L. West** – present and sworn in.

**October 22, 2015--Theft of Oysters, Clams, Shell, Etc.—Class 1 Misdemeanor—§28.2-527 of the Code of Virginia;** May 18, 2016, Middlesex County Circuit Court—Plea Agreement; 90 days Jail with 90 days suspended for 3 years Good Behavior; Fine: \$100.00, Restitution: \$300.00 to Oyster Replenishment Fund.

**October 22, 2015--Closure of Sanctuary Areas--Class 3 Misdemeanor—4 VAC 20-650-30;** May 18, 2016, Middlesex County Circuit Court Plea Agreement; Fine: \$100.00,

Court Cost: \$00.00. Waives right to appeal decision of the Virginia Marine Resources Commission regarding action VMRC may take regarding licensure of the Defendant.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams from a sanctuary, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. West's Commission-issued licenses for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017. Staff also recommended the Commission prohibit the issuance, reissuance, and renewal of any of Mr. West's licenses during this revocation period. Staff recommended the Commission revoke Mr. West's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017.

Mr. West explained that he was on the sanctuary as he was with the wrong person. He said he usually works with other people and he made a mistake. He said he was punished in the court and he asked that he be allowed to keep his licenses as this was his only livelihood. He said his girlfriend had medical problems at the present time. He said he was pleading for mercy and asked for a second chance. In response to a question, he said he had worked on the water since he was eleven years old.

**After much discussion, Associate Member Zydron moved to revoke all of Mr. West's licenses and fishing privileges for 30 days starting November 1, 2016, through November 30, 2016, immediately followed by 4 years and 11 months probation, starting December 1, 2016, through October 31, 2021. Associate Member Minor seconded the motion. The motion carried, 5-2. Chair voted and Associate Member Neill voted no.**

Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information contained in the staff's evaluation. His comments are a part of the verbatim record.

**John K. West** – present and sworn in.

**October 22, 2015--Theft of Oysters, Clams, Shell, Etc.—Class 1 Misdemeanor--§28.2-527 of the Code of Virginia;** May 18, 2016, Middlesex County Circuit Court Plea Agreement; Fine: \$100.00, Court Cost: \$300.00 Restitution to Oyster Replenishment Fund; 90 days jail with 90 days suspended for 3 years Good Behavior.

**October 22, 2015--Closure of Sanctuary Areas--Class 3 Misdemeanor—4 VAC 20-650-30;** May 18, 2016, Middlesex County Circuit Court Plea Agreement; Fine: \$100.00, Court Cost: 0.00; Waives right to appeal decision of the Virginia Marine Resources Commission regarding action VMRC may take regarding licensure of the Defendant.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams from a sanctuary, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommended the Commission revoke all Mr. West's Commission-issued licenses for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. West's licenses during this revocation period. Staff recommended the Commission revoke Mr. West's fishing privileges, within the Commonwealth's tidal waters, for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017.

Mr. West explained that he did not know he was on the sanctuary he just went where other vessels went.

Mrs. Lisa West was present and her comments are a part of the verbatim record. Mrs. West explained that he had an accident as a child which caused him to lose all of his memory and had to learn all over again. She said she had read the regulation to him. She said that their lawyer that helps them all the time worked together with her to speak for her husband. She said they have two children and she watched the video and explained it to him. She said they were asking for leniency as she was disabled and he was the family provider. She stated he would not do it again. She said she needed the printed document to explain it to him and she was seeking a tutor to teach him as well as her how to help him.

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

**After some discussion, Associate Member Zydron moved to revoke all of Mr. West's licenses and fishing privileges for 30 days, starting November 1, 2016, through November 30, 2016, immediately followed by 4 years 11 months probation, starting December 1, 2016, through October 31, 2021. Associate Member France seconded the motion. The motion carried, 5-1. Chair voted no. Associate Member Minor had left the meeting earlier for the rest of the day.**

Patrick West, Marine Police Officer, was sworn in and gave the briefing of the information contained in the staff's evaluation. His comments are a part of the verbatim record.

**John M. West** – present and sworn in.

October 22, 2015-- Unlawfully Harvesting Oysters with a Scrape in an Unauthorized Area—Class 6 Felony—§28.2-523 of the Code of Virginia; May 18, 2016, Middlesex County Circuit Court Plea Agreement. Amended charge Solicit/Instigate Trespass—Class 1 Misdemeanor--§18.2-120 of the Code of Virginia; 12 months Jail with 11 months

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suspended for 5 years Good Behavior (sentence is to run concurrently with another);  
Fine: \$00.00, Court Cost: \$00.00.

October 22, 2015--Theft of Oysters, Clams, Shell, Etc.--Class 1 Misdemeanor—§28.2-527 of the Code of Virginia: May 18, 2016, Middlesex County Circuit Court Plea Agreement; 12 months Jail with 11 months suspended for 5 years Good Behavior (sentence is to run concurrently with another). Fine: \$00.00, Court Cost: \$00.00, Restitution: \$500.00 to Oyster Replenishment Fund.

October 22, 2015;--Closure of Sanctuary Areas--Class 3 Misdemeanor—4 VAC 20-650-30; May 18, 2016, Middlesex County Circuit Court Plea Agreement; Fine: \$100.00, Court Cost: \$00.00.

Joe Cimino, Deputy Chief, Fisheries Management read the staff recommendation. The Commission’s guidelines for sanctions specify that one conviction of harvesting oysters or clams from a sanctuary, within a 12 month period, should result in at least one year revocation. In accordance with §28.2-232 of the Code of Virginia, staff recommends the Commission revoke all Mr. West’s Commission-issued licenses for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017. Staff also recommends the Commission prohibit the issuance, reissuance, and renewal of any of Mr. West’s licenses during this revocation period. Staff recommends the Commission revoke Mr. West’s fishing privileges, within the Commonwealth’s tidal waters, for a period of one year from the date of this Commission meeting, November 1, 2016, through October 31, 2017.

Mrs. Lisa West, stepmother, was present and her comments are a part of the verbatim record. Mrs. West explained that this was her stepson who was single dad. She said he did do wrong, but he not been in trouble before. She said he had three children to support and one had a medical issue. She said he had said he was sorry and asked the Commission to show leniency as he would not do it again.

Mr. West said that he would not lie about it and he has fines to pay and has to pay support for 3 children every month.

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

**Associate Member Zydron moved to accept the staff recommendation to revoke all of Mr. West’s licenses and fishing privileges, within the Commonwealth’s tidal waters for one year, starting November 1, 2016, through October 31, 2017. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.**

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**Commission Meeting**

- 16. PUBLIC HEARING:** Amendments to Emergency Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify current commercial summer flounder management measures.

Joe Cimino, Deputy 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. Cimino explained that industry had requested that an amendment to the regulation be considered to push back the start date for the opening of the second period. This change would stagger Virginia's open period to occur after New Jersey's and right before North Carolina's allowing vessels to spread out the amount of quota being landed so as not to flood the market. The trip limit would need to be lowered from 10,000 pounds to 7,500 pounds to ensure the quota would last through the end of the year. Staff recommended adopting amendments to Chapter 4 VAC 20-620-10 et seq."Pertaining to Summer Flounder," to modify the landing period and start date, and to set the trip limit at 7,500 pounds.

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 accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.**

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- 17. PUBLIC HEARING:** Amendments to Emergency Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to clarify eligibility for transferring the oyster resource user fee.

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.

Mr. O'Reilly explained that a moratorium on eligibility for the oyster resource user fee for all gears was established at the August 2016 Commission meeting. At the same time criteria for transferring eligibility for the oyster resource user fee for all gears were established. These criteria were clarified by emergency amendments to the regulation at the September 2016 Commission meeting.

Mr. O'Reilly said that staff recommended adoption of the emergency amendments to Chapter 4VAC20-720-10, et seq., "Pertaining to Restrictions on Oyster Harvest", clarifying the criteria for transferring eligibility for the oyster resource user fee for all gears.

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

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

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- 18. PUBLIC HEARING:** To modify Chapter 4 VAC 20-490-10 et seq., “Pertaining to Sharks,” to comply with Addendum IV to the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan for Coastal Sharks by January 1, 2017.

Lewis Gillingham, Director, SWFT, gave the briefing of the information provided in the staff’s evaluation with slides. His comments are a part of the verbatim record.

Mr. Gillingham explained that Addendum IV to the Coastal Sharks FMP allows commercial fishermen operating in state waters to land smooth dogfish carcasses with corresponding fins removed from the carcass as long as the total retained harvest, by weight, is comprised of at least 25 percent smooth dogfish. Commercial fishermen can retain smooth dogfish in an amount less than 25 percent of the total harvest provided the smooth dogfish fins remain naturally attached to the carcass. Additionally, commercial fishermen can retain other sharks on board regardless of the percent harvest composition of smooth dogfish, but the fins of other shark species must remain naturally attached to the carcass through landing. Staff recommended amending Chapter VAC 20-490-10 et seq., “Pertaining to Sharks,” to establish a commercial harvest composition requirement of at least 25 % of smooth dogfish, by weight, in order to completely process and remove smooth dogfish fins at sea to comply with Addendum IV to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks.

Commissioner Bull opened the hearing to public comments and there were none. The public hearing was closed and he stated the matter was before the Commission for discussion and action. He asked, what was the will of the Commission?

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

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- 19. PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-490-10 et seq., “Pertaining to Sharks,” to establish an alternate trip limit for the commercial spiny dogfish fishery.

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.

Mr. O'Reilly said that the Finfish Management Advisory Committee (FMAC) met on September 19, 2016 and unanimously voted for the following recommendations to the Commission: 1) retain the 5,000 pound trip limit for the 2016-2017 season; 2) establish a 5% tolerance on the 5,000-pound trip limit; and, 3) raise the trip limit from 5,000 pounds to 6,000 pounds (no tolerance), if less than 80 percent of the quota has been harvested by February 15, 2017. The FMAC noted that the 2016-17 quota was lower than the previous season, so the entirety may be harvested by April 30, 2017. The 2015-2016 quota was 5,463,565 pounds and 4,066,283 pounds were landed in Virginia. The tolerance on the 5,000-pounds means permitted harvesters could have up to 5,250 pounds on board their vessels.

Mr. O'Reilly explained that staff recommended the Commission adopt these amendments to Chapter 4VAC20-490-10 et seq. "Pertaining to Sharks," to allow for a tolerance to the current 5,000-pound commercial trip limit, as well as an increase in the trip limit to 6,000 pounds, if by February 15, 2017 landings in Virginia are less than 80% of the 2016-17 quota.

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

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**20. PUBLIC HEARING:** Proposed amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to streamline buyer reporting requirements.

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 Section H in 4VAC 20-252-130 et seq. establishes reporting requirements for Striped Bass Buyer Permittees. This regulation requires each permitted striped bass buyer, during the month of December, to call the Marine Resources Commission interactive voice recording system on a daily basis and report regardless of activity. With the current procedures that are in place for reporting and the fact that all Virginia commercial striped bass harvesters are part of an ITQ system that is

continuously monitored by staff, the December reporting requirement has become redundant and no longer necessary.

Ms. Ramsey explained that staff recommended approving amendments to Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass,” to streamline buyer reporting requirements.

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

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

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**21. REQUEST FOR PUBLIC HEARING:** Amendments to Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass,” Chapter 4 VAC 20-510-10 et seq., “Pertaining to Amberjack and Cobia,” and Chapter 4 VAC 20-1120-10 et seq., “Pertaining to Tilefish and Groupers,” to streamline and standardize mandatory reporting requirements for recreational fisheries.

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

Mr. Jiorle stated that the VMRC currently requires reporting of harvest for two recreational fisheries: the spring trophy striped bass fishery and the tilefish-grouper complex. Beginning in 2017, cobia will be the third species with mandatory recreational reporting. Because all of these programs arose at different times and for different reasons, the data anglers are required to report are not uniform across these three species. Furthermore, they now require more pieces of information than the VMRC could effectively use in recreational fisheries management, and this complexity could be deterring compliance, which was low for all three fisheries. Staff recommended advertising for a December public hearing to consider changes to the mandatory recreational reporting requirements for these three fisheries. The proposed changes include reducing the number of required data reporting and standardizing these requirements across the three fisheries.

**After much discussion, Associate Member Neill moved to accept the staff recommendation for a public hearing to be held on December 13, 2016. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.**

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22. **REQUEST FOR PUBLIC HEARING:** Amendments to Chapter 4VAC20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees," to increase license fees.

Robert O'Reilly, Chief, Fisheries Management, gave the briefing for this request for public hearing. His comments are a part of the verbatim record. He provided information documents for the Board members.

Mr. O'Reilly explained that this was a request for a public hearing at the December 13, 2016 Commission meeting.

Commissioner Bull explained that staff had been asked to come up with a 7% cut in the budget for the agency; and, an increase in the license fees would be needed.

**Associate Member Neill moved to approve the staff's request for a public hearing to be advertised to consider increasing the license fees. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.**

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There being no further business, the meeting was adjourned at approximately 4:35 p.m. The next Commission meeting will be Tuesday, December 13, 2016.

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John M. R. Bull, Commissioner

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Katherine Leonard, Recording Secretary