

MINUTES

Commission Meeting

September 24, 2013

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

Jack G. Travelstead	Commissioner
A. J. Erskine S. Lynn Haynie Ken Neill J. Edmund Tankard, III	Associate Members
David Grandis	Assistant Attorney General
John Bull	Public Relations Director
Katherine Leonard	Recording Secretary
Linda Farris	Bs. Systems Specialist, MIS
Rob O'Reilly	Chief, Fisheries Management
Joe Grist	Deputy Chief, Fisheries Mgt.
Jim Wesson	Head, Conservation/Replenishment
Joe Cimino	Fisheries Mgmt. Sr. Manager
Stephanie Iverson	Fisheries Mgmt. Manager
Renee Hoover	Biological Collection Prgm. Supvr.
Alicia Nelson	Fisheries Mgmt. Specialist (RFAB/CFAB Coordinator)
Lewis Gillingham	Game Fish Coordinator
Samantha Hoover	Fisheries Mgmt. Specialist
Sally Roman	Fisheries Mgmt. Specialist
Laurie Williams	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Jamie Green	Captain, Middle Area
James Rose	Captain, Northern Area

Commission Meeting

Bruce Ballard
Rob Berryman
Herbert Bell
Casey Springfield
Nathan Clark

Captain, Eastern Shore Area
Captain, Southern Area
1st Sgt., Northern Area
Marine Police Officer
Marine Police Officer

Tony Watkinson
Chip Neikirk
Jeff Madden
Justin Worrell
Hank Badger
Mike Johnson
Justine Woodward
Juliette Giordano
Jordan Creed
Randy Owen
Jay Woodward
Bradley Ream
Rob Butler

Chief, Habitat Management
Deputy Chief, Habitat Mgmt.
Environmental Engineer, Sr.
Project Compliance Technician
Surveyor

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Mark Luckenbach

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Others present:

Charles H. McCoy, Jr.	Nancy B. Welch	Amy Bohannon-Stewart
Scott Turner	Oakey Mitchell	Thelma Mitchell
Tom B. Langley	Eddie Goldman	Jim Smith
Jason Miles	Brian Fletcher	George Treiber
John Kristich	Rebecca Francesco	Col. S. E. Wilson
Dr. L. K. Wilson	John Hagou	William Goad
Carl Vogleueae	Danette Machen	Rich Lockhart
Lee Stephens	Jim Domar	Paul Mason
Linda Crewe	Tim Ulsaker	Mimi Ulsaker
Karen Lewis	Ray Twiford	Jackie Lilliston
Brian Lilliston	Freddie Linton	Jeff Linton
Chris Ludford	Andy Lacatell	Rocky Rhea
Drew Owens	Chris Robins	Danny West
Earl Gautreaux	Richard Shackelford	Timmy L. Jenkins
and others.		

Commissioner Travelstead called the meeting to order at approximately 9:35 a.m. Associate Members Beck, Plumlee, and Sessoms were all absent, but there was a quorum for the hearing.

Joe Grist, Deputy Chief, Fisheries Management introduced to the Board a new employee in the Fisheries Management Division Administrative office, Jason Schaffler, a Fisheries Management Analyst who will be working on issues that relate to striped bass and Atlantic menhaden.

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

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Commissioner Travelstead, at this time, swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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

Commissioner Travelstead asked for a motion for the agenda.

Associate Member Neill moved to approve the agenda. Associate Member Tankard seconded the motion. The motion carried, 5-0.

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MINUTES: Commissioner Travelstead asked if there were any changes or corrections to be made to the August 27, 2013 Commission meeting minutes.

Commissioner Travelstead announced that as there were no changes or corrections the August 27, 2013 Commission meeting minutes were approved.

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Commission Meeting

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 three page two items to be heard. He reviewed the items for the Board. His comments are a part of the verbatim record.

Commissioner Travelstead asked for public comments. There were none. He then asked what the pleasure of the Commission was.

Associate Member Tankard moved to approve the page two items 2A, 2B, and 2C. Associate Member Erskine seconded the motion. The motion carried, 5-0.

2A. WESTMORELAND COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, #13-0350, requests authorization to reconstruct a 15-foot high by 25-foot wide, 230-foot long earthen dam with associated stabilization and geo-synthetic clay liner core to restore Placid Lake, a manmade impoundment adjacent to Mattox Creek in Westmoreland County.

Permit Fee.....	\$100.00
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2B. BAE SYSTEMS, #13-0827, requests authorization to deploy, on an as-needed basis, 685 linear feet of security barrier between the Old Dominion Dry dock and Pier 4, consisting of fencing secured to large fender floats with four anchor points, which will encroach over 10,960 square feet of State-owned submerged land adjacent to their facility at 750 West Berkley Avenue situated along the Southern Branch of the Elizabeth River in Norfolk. The security barrier is proposed in order for BAE Systems to comply with a request by the Department of the Navy for additional security. Permittee agrees to ensure that no portion of the proposed project encroaches into the federal navigation project. Encroachment includes but is not limited to, the location of the "Catenary" at any stage of tide or weather condition.

Permit Fee.....	\$100.00
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2C. DELTAVILLE MARINA, #13-1133, requests authorization to redevelop an existing marina on Jackson Creek at 274 Bucks Lane in Middlesex County. The project will include the removal of a 270-foot long fixed pier and installation of a new, 270-foot long floating pier in the same footprint. The total number of slips will be reduced from 36 to 34 and the number of covered slips will also be reduced from 30 to 4. Staff recommended approval with no royalty fees, pursuant to §28.2-1206(B) of the Code of Virginia.

Permit Fee.....	\$100.00
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3. CONSENT AGENDA ITEMS.

3A. FAIRFIELD INN MOTEL, #13-1176, requests after-the-fact authorization to retain a 75-foot long by 4-foot wide unauthorized pier situated adjacent to their property along Chincoteague Channel at 3913 Main Street in the Town of Chincoteague. The applicant has agreed to pay a civil charge in the amount of \$1,000.00 in lieu of further enforcement action along with a royalty in the amount of \$300.00 for the encroachment over 300 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot. Staff recommends approval and acceptance of the aforementioned civil charge and royalty.

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

After a brief discussion, Commissioner Travelstead asked for a motion.

Associate Member Tankard moved to approve item 3A. Associate Member Erskine seconded the motion. The motion carried, 5-0.

Royalty Fees (encroachment 300 sq. ft. @ \$1.00/sq. ft.).....	\$ 300.00
Permit Fee.....	\$ 25.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$1,325.00

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. It was not necessary to have a closed meeting.

5. MATHEWS LAND CONSERVANCY, #12-1539, requests authorization to install an observation deck encroaching over 914 square feet of State-owned subaqueous bottom, install two 16-foot wide floating piers extending 103 feet channelward of the observation deck, and install an 8-foot wide open-pile pier extending 62 feet channelward of an existing bulkhead with a 14-foot wide by

100-foot long T-head deck along the East River at 1039 Williams Wharf Road in Mathews County. The project is protested by numerous nearby residents.

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

As there were no questions, Commissioner Travelstead asked for any public comments.

Lee Stephens, Attorney for the applicant was present and his comments are a part of the verbatim record. Mr. Stephens said there were three issues, water dependency, public benefit, and benefits for the public schools in the Mathews County area. He said that sailing races, not just training, happen at this location and that there were other racers from the East coast area that utilized this facility. He said they needed a place for competitive racing. He said this was a non-profit organization and the structure had been reduced by 25% and moved more on-shore in an effort to lessen the impacts. He said the public benefits where that there was a conservation easement. It was available to the public. He said the Godspeed boat docked here and it would benefit the children in the public schools to have access. He added it was limited to being used by non-motorized vessels. He noted that someone from the Mathews public schools was here ready to speak to those benefits.

Nancy Welch, representing the Mathews County schools, was sworn in and her comments are a part of the verbatim record. Ms. Welch provided a handout. She explained that they had utilized these facilities and were working to develop the Williams Wharf Educational Project for elementary, middle, and high school age students, K-12, in the Mathews County Public Schools Division.

Associate Member Erskine asked what the students responses have been when they come there. Ms. Welch stated it was eye-opening for them and they loved it.

Amy Stewart, representing the Mathews County Schools, was sworn in and her comments are a part of the verbatim record. Ms. Stewart said that she was a teacher of environmental education and would tie this in with their studies. She said that students would be taken here and allowed to have hands on experience and it was an advantage with it being locally accessible.

Commissioner Travelstead asked if anyone in opposition wished to comment.

Colonel Steve Wilson, adjacent property owner and protestant, was sworn in and his comments are a part of the verbatim record. Colonel Wilson said that others were at the last meeting, but were not allowed to speak only he was. He said they had more than a 100 signatures on three petitions, not just the neighbors objected. He said it was going to be used for non-aquatic activities and he was unchanged in his objections. He said it would encroach on 914 square feet with the private observation deck to be used for

private activities. He stated it was more than 12 events each year. He said there were other areas of access for the rowing teams.

Dr. Lynn Wilson, adjacent property owner and protestant, was sworn in and her comments are a part of the verbatim record. Dr. Wilson stated she would speak to the observation deck. She provided a chart and said the since the plans made in 2006 the size of the building had doubled. She stated it was not necessary to allow this large encroachment. She said she was opposed to the boathouse and observation deck.

Commissioner Travelstead asked if the applicant or representative wished to comment.

Jim Smith, President of the Land Conservancy, was sworn in and his comments are a part of the verbatim record. Mr. Smith said he had been working on the project for more than 20 years. He said the viewing deck in front of the fixed pier would be completely utilized. He noted the site plans had been done to include the application information requested. He said over the 20 years various plans had been submitted because of changes in code requirements and requirements from the County and State agencies.

After some discussion, Commissioner Travelstead stated the matter was before the Commission.

Associate Member Tankard said historically this was an industrial site and significantly impacted the environmental, but now the public schools would benefit and given some students opportunities that they would not normally have. He said that it was water dependent considering the sports viewing.

Associate Member Tankard moved to approve the project with the royalties assessed. Associate Member Neill seconded the motion. The motion carried, 5-0.

Royalty Fees (encroachment 5,901 sq. ft. @ \$1.00).....	\$5,901.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$6,001.00

- DIANE and CHARLES McCoy, #13-0437**, request authorization to install a 446 linear foot bulkhead aligned a maximum of two (2) feet channelward of an existing, deteriorating bulkhead, to include a 20 foot timber jetty adjacent to 1721 Cloncurry Road situated along the Lafayette River in Norfolk. The project is protested by an adjacent property owner.

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

Commissioner Travelstead asked if there was a channel in this area. Ms. Woodward explained that there was no channel and the low tide was about one-foot. Commissioner Travelstead asked if they would be grading in order to straighten the bulkhead. Ms. Woodward explained that staff recommendation was that the northern section be realigned.

Commissioner Travelstead asked if the applicant or their representative was present.

Tom Langley, Engineer for the project, was sworn in and his comments are a part of the verbatim record. Mr. Langley said that staff had done a credible job and did well trying to resolve the concerns of the protestants, but it did not help. He explained that the neighbors were concerned with the north end of the bulkhead and its possible impact to navigation as the proposal was to leave two feet between the old bulkhead and the new one. He said this would allow space for the contractor to work and said they could not work with the eight inch gap and it would be too expensive. He noted that the trees would be impacted if they were kept to the footprint of the old bulkhead. He said that navigation was not an issue in this area because of the lack of water. He utilized staff's slides.

Associate Member Haynie asked about the gravel being used which would allow weep holes in the bulkhead. Mr. Langley explained they want to use gravel as they were using vinyl sheets which would be tighter than if they were to use wood.

Charles McCoy, applicant, was sworn in and his comments are a part of the verbatim record. Mr. McCoy said for the north end moving of the bulkhead was too much as there was a vast distance from the next property. He said this was not an encroachment issue and the Hermitage property would be lost because of weather anyway. He said he had offered to fix theirs also, but they never responded to his offer. He said they were requesting approval, as proposed.

Commissioner Travelstead asked if there were others present in support and opposition. There were none present.

Mr. Langley said they were requesting approval and that they not be required to remove the old bulkhead.

Associate Member Erskine noted that there were several protestants to the north and asked if they used the thoroughfare and were they contacted. Ms. Woodward stated that there was no one else and the Hermitage concerns were resolved.

Associate Member Erskine moved to accept the staff recommendation. Commissioner Travelstead asked for a second and the motion failed for a lack of a second.

Associate Member Neill said that he felt there was no benefit to moving the bulkhead landward to eight inches, which would just make it more costly. He moved to approve the project as requested with royalty fees. Associate Member Tankard said he seconded the motion. He added that the staff recommendation had no merit and further delay and bad weather could result in more damage. The motion carried, 5-0.

Royalty Fees (fill 468 sq. ft. @ \$.100 sq. ft.).....	\$468.00
Royalty Fees (fill 20 sq. ft. @ \$0.50 sq. ft.).....	\$ 10.00
Permit Fee.....	\$100.00
Total Fees.....	\$578.00

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- 7. **GEORGE TREIBER, #13-0282**, requests authorization to replace 157 linear feet of an existing 18-inch wide finger pier with a 5-foot wide finger pier, to install a 72-foot long timber wave screen and an additional 3-foot wide by 30-foot long finger pier, to relocate an existing 8-foot wide by 23-foot long floating dock, and to retain a previously unauthorized 7-foot wide by 31-foot long floating dock, adjacent to an existing, private, non-commercial pier servicing 3932 High Street situated along the Western Branch of the Elizabeth River in Portsmouth.

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

Commissioner Travelstead asked if the applicant was present.

George Treiber, applicant was sworn in and his comments are a part of the verbatim record. Mr. Treiber utilized a staff slide. He said he agreed with the staff recommendation but for one issue. He said staff wanted them to remove the floating dock once the boat slip is in place and they wanted to retain the floating dock for launching of the recreational boats. He noted the dock was permitted in 1992 and he would agree to refurbish it. He said they utilized it for the Broad Bay Sailing Association training program and that it was an important asset to the program. He stated he would agree to the civil charge.

John Kristich, spoke in support, employee of the applicant, was sworn in and his comments are a part of the verbatim record. He said that there was a sailing program

which was non-profit and benefited the youth. He said it would not impact the environment.

There was no one present in opposition. Commissioner Travelstead stated the matter was before the Commission.

Associate Member Neill asked staff what their objection to the floating pier was. Ms. Woodward explained that it was the size of the structure and staff recommended allowing the pier in violation to be retained in exchange.

Associate Member Tankard asked if there was documentation about public use. Ms. Woodward said there was a statement that the pier was for private use.

Tony Watkinson, Chief, Habitat Management, said this was for private, personal use with some community use and it was only a community pier if the boats tied up at it. He said if it was for private, personal use then staff did not see the need for a floating pier of this size.

Associate Member Erskine asked how frequently was the pier used by the sailing club. Mr. Treiber stated it was on Sunday that the club was training kids to sail and twice a month there was an event. Associate Member Erskine asked if there was any opposition in the area. Mr. Treiber stated no.

Associate Member Tankard stated this activity was a positive use of the pier for the children and this needed to be an exception. He moved to accept the proposal, as proposed, and to include the civil charge. Associate Member Neill seconded the motion. The motion carried, 5-0.

Permit Fee.....	\$ 100.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$1,100.00

- 8. **O. OAKEY MITCHELL, #12-0300**, requests after-the-fact authorization to retain a previously unauthorized partially enclosed 29-foot by 29-foot boathouse, and additional pier decking, and to remove and realign a portion of his existing private-use pier, to include a bridge portion over an unnamed tidal stream tributary of Grays Creek at his property located near the end of Blue Heron Drive in Surry County. The request to retain the existing structures is protested by the Kings Landing Owners Association.

Ben Stagg, Environmental Engineer, Sr., gave the briefing for the information provided in the staff's evaluation. His comments are a part of the verbatim record.

After a brief discussion, Commissioner Travelstead asked the applicant if he wished to comment. Mr. Mitchell responded no.

Commissioner Travelstead asked if anyone present was opposed and wished to comment.

Bill Goad, protestant, Kings Landing Subdivision resident, was sworn in and his comments are a part of the verbatim record. Mr. Goad said they had contacted Mr. Mitchell numerous times and tried to arrange a meeting and when they finally met they had agreed. He said the attorney sent an agreement to them, which did not say that it was accepted that the association held ownership of the property. He said an agreement was sent by the association and Mr. Mitchell did not accept it. He said they were told by staff that they would need an agreement to not have Mr. Mitchell build on their property. He said that since no agreement was in place they still protested the project.

Mr. Stagg stated that there was no riparian apportionment approved by the Court. He added that an agreement by the HOA was signed by them but not by Mr. Mitchell.

Oakey Mitchell, applicant was sworn in and his comments are a part of the verbatim record. Mr. Mitchell provided a copy of a quick claim deed as a handout for the Board. He stated a judge would have to tell him if the HOA owned the property and he would not sign any document until it was proven who was the owner.

Associate Member Erskine stated that was a legal matter and any decision by the Commission was contingent upon the Court decision.

David Grandis said there were no property rights established by the Commission as this was a court issue. He added that this was a reasonable use of state-owned bottom, but the owner does this at his own peril depending on the court decision and the court could order to let it stay or be removed.

After some further discussion, Commissioner Travelstead said that the staff recommendation was right and the Commission could move this matter along.

Associate member Tankard moved to accept the staff recommendation for after-the-fact approval of the project to remove and realign a portion of his existing private use pier, to include a bridge portion and with the \$1,000.00 civil charge. Associate Member Neill seconded the motion. The motion carried, 5-0.

Permit Fee.....	\$ 100.00
Civil Charge.....	\$1,000.00
Total Fees.....	\$1,100.00

- 9. **JENNIFER BONNIVILLE, #2013-0019 and #2013-0020,** requests authorization to lease approximately 150 acres and 100 acres respectively, of oyster planting grounds, in the York River in York and Gloucester counties. Both applications are protested by Mr. Billy Bonniville.

Ben Stagg, Environmental Engineer, Sr., gave the briefing of the information provided in the staff evaluation. His comments are a part of the verbatim record. Mr. Stagg noted that the applicant had agreed over the telephone to staff’s recommendation to approve the northern portion of the one lease request for 84.52 acres and to deny the second application for lease. He said the applicant and protestant were not at this hearing.

Commissioner Travelstead asked for any public comments. There were none. He stated the matter was before the Commission.

Commissioner Travelstead asked if this should be delayed until the applicant can be present. Mr. Stagg said he spoke with Mr. Jerome Bonniville and was told he did not want to wait another month, as it had taken too long already.

Associate Member Erksine moved to accept the staff recommendation to approve 84.52 acres on the northern end of the on the York County side of York River and deny the second application for lease. Associate Member Neill seconded the motion. The motion carried, 5-0.

10. PUBLIC COMMENTS.

Chris Ludford, commercial hook and line fisherman, spoke on the behalf of all commercial hook and line fishermen, a number of whom were in attendance of this meeting (who he asked to stand). He said they wanted to thank several former associate members for their work on the Board. He noted that when other gears were inactive, such as pound nets and gill nets, they supplemented the supply of finfish to meet the market needs.

11. REPEAT OFFENDERS.

Herbert Bell, 1st Sgt, Northern Area Assistant Supervisor, was sworn in and his comments are a part of the verbatim record.

1st Sgt., Bell stated that all of the following had been issued summons for numerous oyster violations over 28 individual days. They had all pledge guilty to four counts in court to get a plea bargain. He added that there were buyer records that were used as

evidence of these violations. He said that staff in accordance with Sections 28.2-232 and 28.2-528 of the Code of Virginia, recommended that all licenses be revoked for one year followed by one-year probation.

Richard Shackelford Drew Owens Danny West
Earl Gautreaux Chris Robins

Commissioner Travelstead referenced the two sections of the Code and read from Section 28.2-528, which said that theft of oysters could result in revocation of all licenses. Associate Member Tankard asked about the attitude of the individuals at the time of the summons. Mr. Bell said that there were no problems.

Earl J. Gautreaux, III, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Gautreaux stated they got a bad deal as their attorney wanted them to plea down because he was charged with so many that if there was a conviction of one probably all would result the same. He said the buyer's tally sheets were used for his case. He stated he did not falsify his reports as he reported what was on the harvest ticket issued to him by the buyer.

Associate Member Erskine stated that most of the offenses were for overharvest which affects the private grounds leaseholder and the Oyster Replenishment Program who put shells overboard to improve the oyster stocks. He said there were almost daily offenses and it was stealing. He said the staff recommendation for Mr. Gautreaux was one year revocation of license and one year probation was not enough for this chronic problem.

Associate Member Tankard said Section 28-2.528 was a special law for stealing oysters and suggested two years revocation for all of these offenses.

Commissioner Travelstead said he had never seen this much disregard for the law. He said it was stealing from other watermen and the citizens of the Commonwealth. He stated he agreed with both Associate Members Erskine and Tankard. He stated the matter was before the Commission.

Associate Member Tankard moved that in accordance with Section 28.2-528 of the Code of Virginia, he moved for two year revocation and two year probation.

David Grandis, Assistant Attorney General and attorney for VMRC explained that Section 28.2-528 of the Code of Virginia says two years maximum, so it has to be limited to two years total for revocation and probation. Commissioner Travelstead asked for another motion.

Associate Member Tankard moved to revoke all licenses for two years. Associate Member Erskine seconded the motion. The motion carried, 5-0.

1st Sgt. Bell explained there were three convictions in court for Mr. Robins and the staff recommendation was for one year revocation and one year probation.

Christopher Robins, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Robins that he agreed with Mr. Gautreaux and he did the same and accepted a plea bargain. He said he was just 1 ½ bushels over the limit and it was hard to shovel in the tub just one bushel. He said he did plea bargain for one count.

Associate Member Erskine said there were citations on 1/17, 11/12, 11/16, 11/19, and 11/22/12.

Mr. Robins stated that the tickets were issued 5 to 6 months later and he did his limit, but Mr. Ruark the buyer testified in court that he did not. He said it was just once that he was over and it was not 25 to 40 bushels over.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation for one year revocation and one year probation. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Richard L. Shackelford, waterman, was sworn in and his comments are a part of the verbatim record. Mr. Shackelford said he reported what was on the yellow MRC slip and did not falsify his report. He stated he was sorry he had been over the limit but the buyer had requested a few more bushels of oysters and he felt like he was set up by the buyer. He said he had worked on the water for 43 years and never been before the Commission before.

Commissioner Travelstead asked what the pleasure of the Commission was in this case.

Associate Member Tankard moved for two year suspension of license. Associate Member Erskine seconded the motion. The motion carried, 5-0.

Daniel T. West, watermen, was sworn in and his comments are a part of the verbatim record. Mr. West said he had them loosely in the bottom and he was just one plus bushel. He said 1st Sgt. Bell said that there was zero tolerance and others had told him there was a tolerance. He said the Judge said something needed to be done and 1st Sgt. Bell said that the Commission was changing to baskets. He said he reported what was on the yellow MRC slip which was 24 bushels. He stated his attorney told him to accept a plea bargain because if he got all convictions he would probably go to jail. He said he should not be penalized based on the buyer's record and he felt he took the plea bargain too fast.

Commissioner Travelstead stated the matter was before the Commission.

Associate Member Erskine moved for one year revocation of license and one year probation. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Scott D. Owens, waterman was sworn in and his comments are a part of the verbatim record. Mr. Owens stated that the tally sheet showed the bushels were over, but that was not done. He said he took a plea bargain and he did not falsify any reports. He noted he had two convictions not 13.

Commissioner Travelstead stated the matter was before the Commission.

Commissioner Travelstead said that the Commission was using the Code Section 28.2-528 for oyster theft, but the Commission got no pleasure from revoking licenses, just that it was necessary.

Associate Member Tankard moved for two year revocation of license. Associate Member Neill seconded the motion. The motion carried, 5-0.

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12. FAILURE TO REPORT: Cases involving failure to report commercial harvests, in accordance with Chapter 4VAC20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Stephanie Iverson, Fisheries Manager, gave the presentation and her comments are a part of the verbatim record. Ms. Iverson noted that **Scott Owens** was heard in the last case which resulted in his licenses being taken for two years and recommended that the Commission move onto the next individual. She also noted that the Commission had instructed staff at a previous meeting to investigate how much longer **Keith Jenkins** would be incarcerated, which she was told by Law Enforcement was approximately six months and meant he would be out of jail by late 2013 or early 2014.

Ms. Iverson explained that all written notifications as required were sent to Mr. Hogge and all reporting except for oysters caught in December 2012 and January 2013 was turned in. She said staff recommended two year probations, but noted that the Commission still needed his oyster reports.

Anthony Hogge, waterman was sworn in and his comments are a part of the verbatim record. He said they took oysters from private grounds and along the shore, but not from James River public grounds. He said someone else reported his crab harvest. He said this was all of his income and he was told by others that they would report it.

Commissioner Travelstead asked him when he would get his oyster reports turned in. Mr. Hogge said he had called the buyer and would call again and try to get them by tomorrow

or the next day. Commissioner Travelstead asked if he could have them turned in by ten days. Mr. Hogge responded yes.

Associate Member Tankard moved to accept the staff recommendation for two years probation contingent upon receipt of reports still outstanding. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Ms. Iverson explained that all written notifications required were sent to Mr. Jenkins and he needs to turn in reports for December 2012 and February through July 2013, except April. She noted they had tried to call him but his phone number which was disconnected.

Timmy L. Jenkins, waterman was sworn in and his comments are a part of the verbatim record. He said the letter told him that he was all right and there was just a wrong phone number, which was the only notice he received. He said in April he had nothing to report and when asked what he does, he responded that he oysters, crabs and fishes whenever he can get the work. He said he worked with Don Jenkins and another waterman.

After some further discussion, Commission Travelstead asked what was the pleasure of the Commission.

Ms. Iverson explained that he did work with others as indicated by other reporting, but not for oysters in April. She said staff recommended two years probation if the April reporting was turned in.

Associate Member Tankard moved to accept the staff recommendation for two years probation contingent upon receipt of the April report that was still outstanding. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Ms. Iverson explained that Mr. Rhea was sent all written notifications required and he came in today with all his information, so he was up to date. She said staff recommended two year probation.

Rocky W. Rhea, waterman was present and sworn in.

Commissioner Travelstead asked what was the pleasure of the Commission.

Associate Member Haynie moved to accept the staff recommendation for two years probation. Associate Member Neill seconded the motion. The motion carried, 5-0.

Ms. Iverson explained that all written notifications required were sent to Mr. Morgan and he was up to date as of today. She said staff recommendation was for two year probation.

Brandon Morgan, waterman was sworn in and his comments are a part of the verbatim record. Mr. Morgan stated that this would not happen again.

Associate Member Tankard moved to accept the staff recommendation for two years probation. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Ms. Iverson explained that Ms. Lilliston had been sent all required written notifications and staff recommendation was for two year probation.

Jackie Lilliston, waterman was sworn in and her comments are a part of the verbatim record. Ms. Lilliston explained that it was her fault she had not reported, but most of the time she said that there was no activity to report and that last year in May she had a baby and after that surgery as she got sick which resulted in her being out of work until October 2012.

Commissioner Travelstead asked for a motion.

Associate Member Tankard made a motion for one year probation. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Ms. Iverson explained that Mr. Lilliston had been sent all required written notifications and was even called him. She said the staff recommendation was for two years probation.

Brian Lilliston, waterman was sworn in and his comments are a part of the verbatim record. He said it was an oversight on his part and he felt if watermen could report and look at their reporting history online it would be easier to keep up with their reporting. He said he forgets to report when he does not have any activity to report.

Associate Member Tankard moved to accept the staff recommendation for two year probation. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Rob O'Reilly, Chief, Fisheries Management gave a briefing on the history of mandatory reporting since it started approximately 20 years ago. He said there have been problems with compliance and it was an uphill battle getting harvesters to report. He explained that it hurts not having good data for the Commission to base their decisions. He said for the Law Enforcement Subcommittee the late reporting was seen as a problem.

Commissioner Travelstead stated there were multiple notifications and staff time and there was not a quick resolution of the problems. He noted that he would need to add two Board members to the Law Enforcement Subcommittee.

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- 13. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass," to allow for the culture of black sea bass by permitted aquaculture facilities.

Joe Grist, Deputy Chief, Fisheries Management, gave the briefing of the information in the staff evaluation. His comments are a part of the verbatim record. He noted that no public comments had been received to date.

Mr. Grist said that there two facilities that had been operating under a special permit. One of the facility owners had stated that they were ready for production. He reviewed the various amendments to the draft regulation, explaining the changes. He said the facilities would be exempt from the current minimum size limit for marketable black sea bass of 11 inches; allowed to import from out of state facilities black sea bass eggs, fry, and brook state; required labeling for Virginia raised and those imported; agents of the Commission to make periodic inspections of the facility and operations; and written permission from the Commission be required to place black sea bass into Virginia's waters.

Mr. Grist said that staff recommended adoption of the proposed amendments.

There was no public comment.

After some discussion Commissioner Travelstead stated the matter was before the Commission.

Associate Member Neill moved to approve Chapter 4VAC20-950-10 et seq. Associate Member Tankard seconded the motion. The motion carried, 5-0.

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- 14. PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2013 public oyster harvest season, by hand scrape, for Pocomoke Sound Public Ground Numbers 9 and 10.

Jim Wesson, Head, Conservation and Replenishment, gave the briefing for the information in the staff evaluation. His comments are a part of the verbatim record. He stated that staff recommended approval of the amendments to the regulation.

There were no public comments. Commissioner Travelstead asked what the pleasure of the Commission was.

Associate Member Tankard moved to approve 4VAC 20-720-10, et seq. Associate Member Erskine seconded the motion. The motion carried, 5-0.

Emergency amendments to 4VAC 20-260-10, et seq., “Pertaining to Designation of Seed Areas and Clean Cull Areas”

Mr. Wesson explained that there were two corrections necessary to this regulation in order to clarify the culling requirements and the culling inspection procedures. He said that some language had been left out explaining that the under minimum cull size oysters that were so closely attached to the larger oysters did not need to be removed to avoid killing them. He further said that in the procedures by the officers they did not need to empty up to four bushels and shovel a sample into a bushel tub. Instead the officers would empty the orange basket directly into the inspection tub. He said staff requested approval of the amendments as an emergency regulation and a public hearing be approved for making these changes permanent.

Associate Member Tankard moved to adopt the emergency amendments for 4VAC 20-260-10, et seq. Associate Member Haynie seconded the motion. The motion carried, 5-0.

Mr. Wesson provided a handout of a letter of request by the seaside oyster industry requesting consideration on opening up the public oyster grounds earlier than November 1. He explained that he did not feel this was necessary as the reporting of harvest from public grounds did not show a need to make the season longer. He said in recent years the private ground harvest had increased more than the public ground harvest. He said the harvesters were not reporting all of their harvest. He said even if no one came and asked again, staff could look at this again later. No action was taken.

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- 15. REQUEST FOR PUBLIC HEARING:** Proposed amendments to Chapter 4VAC20-500-10 et seq., “Pertaining to the Catching of Eels,” to establish gear-specific harvest seasons, and amend size and possession limits, for the harvesting of American eel. These amendments are proposed for compliance with the interstate fishery management plan requirements for American eel.

Adam Kenyon, Fisheries Management Specialist, gave the briefing on the information provided in the staff evaluation. His comments are a part of the verbatim record.

Mr. Kenyon said that staff recommended advertising for an October public hearing for the proposed amendments to Chapter 4VAC 20-500-10, et seq., “Pertaining to the Catching of Eels,” to establish gear-specific harvest seasons and amend the size and possession limits for the harvesting of American eel. These amendments would put the State in compliance with the requirements in the Interstate Fishery Management Plan for American Eel.

Commissioner Travelstead asked if there would be a problem with this issue being heard at the December 10, 2013 Commission meeting. He said this would help at the October meeting since there was such a large issue on blue crabs to be heard at that meeting. Rob O'Reilly, Chief, Fisheries Management, stated no problem as staff will have more information on the proposed Addendum IV.

Commissioner Travelstead announced that the request for a public hearing at December 10, 2013 meeting was approved.

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There being no further business, the meeting was adjourned at approximately 2:55 p.m. The next regular meeting will be held Tuesday, October 22, 2013.

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Jack G. Travelstead, Commissioner

Katherine Leonard, Recording Secretary