

Virginia Marine Resources Commission

COMMISSION ACTIONS October 27, 2015

** APPROVAL OF AGENDA. **UNANIMOUSLY APPROVED.** [\[audio\]](#)

1. MINUTES of previous meeting. **UNANIMOUSLY APPROVED.** [\[audio\]](#)

2. [PERMITS \(Projects over \\$500,000.00 with no objections and with staff recommendation for approval\).](#)
UNANIMOUSLY APPROVED. [\[audio\]](#)

3. CONSENT AGENDA ITEMS. **NONE** [\[audio\]](#)

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. **FOLLOWING THE CLOSED MEETING, THE COMMISSION VOTED UNANIMOUSLY TO CERTIFY THAT THE CLOSED MEETING WAS CONSISTENT WITH APPLICABLE LAWS.** [\[audio\]](#)

5. **CITY OF NEWPORT NEWS, #15-0019** Requests authorization to mechanically dredge up to 1,510 cubic yards of State-owned subaqueous land, and maintenance dredge up to 1,510 cubic yards of subaqueous material per annual dredge cycle, to maintain depths of minus seven (-7) feet MLW, at the Newport News Menchville Marina along Deep Creek at 520 Menchville Road South in the City of Newport News. The project is protested. **UNANIMOUSLY APPROVED 8-0 CONDITIONED ON THE USE OF A TURBIDITY CURTAIN AND WITH THE INCLUSION OF STANDARD DREDGE CONDITIONS THAT INCLUDE THE SUBMISSION OF A POST-DREDGE BATHYMETRIC SURVEY WITHIN 30 DAYS OF THE COMPLETION OF THE DREDGING AND A REQUIREMENT FOR PRE-DREDGE CONFERENCE PRIOR TO THE COMMENCEMENT OF THE DREDGING AND A PROVISION TO ALLOW MAINTENANCE DREDGING FOLLOWING A 15-DAY NOTIFICATION TO VMRC.** [\[audio\]](#)

6. **RIVER REACH ASSOCIATION, #15-0867** Requests authorization to install one (1) uncovered boatlift at an existing community pier on Sturgeon Creek at the end of Bluebird Lane in Middlesex County. The project is protested by an adjacent property owner. **APPROVED AS PROPOSED 6-0 WITH ASSOCIATE COMMISSIONERS TANKARD AND FRANCE VOTING AGAINST THE MOTION.** [\[audio\]](#)

7. MILL CREEK SHELLFISH, #15-0898 Requests authorization to construct a 168-foot long by 4-foot wide commercial pier which includes a 10-foot long by 4-foot wide L-head to accommodate intake pipes, pumps and the mooring of a boat situated at the mouth of Mill Creek, a tributary to Cherrystone Creek, in Northampton County. The project is protested by a nearby property owner. **VOTED 7-0 WITH ASSOCIATE COMMISSIONER BALLARD ABSTAINING TO APPROVE THE PROJECT AS PROPOSED, WITH A ROYALTY IN THE AMOUNT OF \$600.00 FOR THE ENCROACHMENT OF THE STRUCTURES OVER 400 SQUARE FEET OF STATE-OWNED SUBAQUEOUS LAND AT A RATE OF \$1.50 PER SQUARE FOOT.** [\[audio\]](#)

8. ROUTE 28 CORRIDOR IMPROVEMENTS, LLC, #15-0529 Requests authorization to construct a four-lane, clear-span, roadway bridge, with associated temporary fill for construction access, over Broad Run as part of the final segment of the Pacific Boulevard Extension Project in Loudoun County. The project is protested by an adjacent property owner. **UNANIMOUSLY APPROVED 8-0 WITH THE INCLUSION OF THE FOLLOWING STANDARD IN-STREAM WORK CONDITIONS: A) THE INSTREAM CONSTRUCTION ACTIVITIES AUTHORIZED SHALL BE ACCOMPLISHED WITHIN COFFERDAMS CONSTRUCTED OF NON-ERODIBLE MATERIALS IN SUCH A MANNER THAT NO MORE THAN HALF THE FLOW OF THE WATERWAY SHALL BE OBSTRUCTED AT ANY POINT IN TIME. (B) THE COFFERDAMS AND ANY EXCESS MATERIAL WILL BE REMOVED TO APPROVED UPLAND AREAS UPON COMPLETION OF CONSTRUCTION, AND THAT THE STREAMBED SHALL BE RESTORED TO ITS PRE-EXISTING CONTOURS AND CONDITIONS. (C) THE CONSTRUCTION SHOULD BE PERFORMED DURING LOW-FLOW CONDITIONS TO THE GREATEST EXTENT POSSIBLE. (D) THE VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK (3RD EDITION, 1992) WILL BE FOLLOWED THROUGHOUT CONSTRUCTION. ADDITIONALLY, THE APPROVAL WAS CONDITIONED UPON THE PERMITTEE TRANSFERRING THE PERMIT TO VDOT UPON COMPLETION OF THE PROJECT.** [\[audio\]](#)

9. PUBLIC HEARING Proposed amendments to REGULATION 4 VAC 20-290-10 ET SEQ. "PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND" and REGULATION 4 VAC 20-335-10 ET SEQ. "AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES." The amendments are proposed to address the marking requirements for leases and areas within leases containing aquaculture structures based on a review by the Shellfish Management Task Force and input from both the Shellfish Management Advisory Committee and the agency Regulatory Review Committee. **THE PROPOSED AMENDMENTS FOR REGULATIONS 4 VAC 20-290-10 ET SEQ. AND 4 VAC 20-335-10 ET SEQ. WERE BOTH UNANIMOUSLY APPROVED 8-0 WITH ADDITIONAL CHANGES RECOMMENDED BY STAFF TO CHANGE THE DEFINITION FOR AQUACULTURE STRUCTURES IN 4 VAC 20-335-10 ET SEQ. TO MATCH THE DEFINITION IN 4 VAC 20-290-10 ET SEQ. AND TO REDUCE THE MINIMUM SIZE OF WARNING PLACARDS TO 12-INCH BY 12-INCH AND ALSO TO REQUIRE BOUNDARY LINE MARKERS TO BE PLACED AT INTERVALS NOT EXCEEDING 600 FEET.** [\[audio\]](#)

10. PUBLIC COMMENTS THE COMMISSION ASKED THE FISHERIES STAFF TO WORK WITH MR. SHACKELFORD ON HIS REQUEST FOR ELIGIBILITY FOR A PERMIT IN THE SPINY DOGFISH FISHERY AND

ASKED STAFF TO PUT THIS MATTER ON THE COMMISSION AGENDA FOR THE JANUARY MEETING. [\[audio\]](#)

11. OFFENDERS: THE COMMISSION HEARD 8 CASES OF OFFENDERS WITH NATURAL RESOURCE VIOLATIONS. [\[audio\]](#)

12. FAILURE TO REPORT Cases involving failure to report commercial harvests, in accordance with Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting." **THE COMMISSION HEARD 2 CASES FOR THE FAILURE TO REPORT COMMERCIAL HARVEST TO THE COMMISSION'S MANDATORY HARVEST REPORTING PROGRAM. [\[audio\]](#)**

13. POUND NET REVIEW Case involving protests of an application to the Commission to license a pound net at a new location, in accordance with Chapter 4 VAC 20-25-10 et seq., "Pertaining to Pound Net Siting Public Interest Review." **THE COMMISSION VOTED FOR THE STAFF RECOMMENDATION TO DENY MR. BENDER'S NEW POUND NET LOCATION 1700 FEET SOUTHWEST OF TANKARD'S BEACH. STAFF WILL ALLOW MR. BENDER TO FIND AND APPLY FOR ANOTHER LOCATION FOR HIS POUND NET. THIS WAS A PUBLIC INTEREST REVIEW THAT MUST BE HELD FOR LICENSING ANY PROPOSED NEW OR RE-LOCATED POUND NET LOCATIONS. [\[audio\]](#)**

14. PUBLIC HEARING Request to codify the emergency amendment of Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" established at the September meeting, that rescinded all effort control provisions adopted August 25, 2015 clarified requirements associated with possession and harvest of oysters for commercial purposes of the recently adopted limited entry oyster fishery requirements for 2016, as part of this chapter. **THE COMMISSION MADE PERMANENT EMERGENCY AMENDMENTS TO CHAPTER 4VAC 20-720-10 ET SEQ., "PERTAINING TO RESTRICTIONS ON OYSTER HARVEST," TO RESCIND ALL EFFORT CONTROL PROVISIONS ADOPTED AUGUST 25, 2015 AND TO CLARIFY REQUIREMENTS ASSOCIATED WITH POSSESSION AND HARVEST OF OYSTERS FOR COMMERCIAL PURPOSES. [\[audio\]](#)**

15. PUBLIC HEARING Request to amend Chapter 4 VAC 20-1140-10 et seq., "Prohibition of Crab Dredging in Virginia Waters" to consider whether to close the commercial winter crab dredge fishing season, under Chapter 4 VAC 20-1140-10 et seq. **THE COMMISSION VOTED 7:1 TO APPROVE STAFF RECOMMENDATION TO AMEND CHAPTER 4 VAC 20-1140 ET SEQ., "PROHIBITION OF CRAB DREDGING IN VIRGINIA WATERS". THE COMMISSION VOTED TO KEEP THE CRAB DREDGE FISHERY CLOSED FOR 2015/2016 SEASON. [\[audio\]](#)**

16. PUBLIC HEARING Request to amend Chapter 4 VAC 20-1090-10 et seq., "Pertaining to License Requirements and License Fees," to establish an eel pot license. At this time eel pots and fish pots can be purchased under a single license. **THE COMMISSION VOTED UNANIMOUSLY TO APPROVE STAFF RECOMMENDATION TO AMEND 4 VAC 20-1090-10 ET SEQ., "PERTAINING TO LICENSES REQUIREMENTS AND LICENSE FEES". THIS ACTION WILL SEPARATE THE CURRENT FISH POT/EEL POT LICENSE SO THERE WILL BE A SEPARATE EEL POT**

LICENSE IN ORDER TO HELP STAFF TRACK AN EXPECTED 2016 ASMFC COMMERCIAL QUOTA FOR THIS SPECIES. [\[audio\]](#)

17. PUBLIC HEARING Request to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to consider changes to current commercial summer flounder vessel possession and landing limitations, as well as seasonal time periods associated with the landing of summer flounder harvests from federal waters. **THE COMMISSION VOTED UNANIMOUSLY TO APPROVE STAFF RECOMMENDATIONS TO ADOPT AMENDMENTS TO CHAPTER 4 VAC 20-620-10 ET SEQ "PERTAINING TO SUMMER FLOUNDER". THIS WAS AN INDUSTRY REQUEST TO STAFF AND THE COMMISSION TO ESTABLISH A NOVEMBER 1 THROUGH NOVEMBER 30 LANDING PERIOD WITH A VIRGINIA LANDING LIMIT OF 10,000 POUNDS AND A DECEMBER 1 THROUGH DECEMBER 30 LANDING LIMIT OF 5,000 POUNDS. [\[audio\]](#)**

18. REQUEST FOR PUBLIC HEARING Marking requirements, for eel pot, as part of Chapter 4 VAC 20-140-10 et seq., "Pertaining to identification of crab pots, peeler pots, and fish pots." **THE COMMISSION VOTED UNANIMOUSLY TO APPROVE STAFF REQUEST FOR A PUBLIC HEARING AT THE DECEMBER 2015 COMMISSION MEETING. [\[audio\]](#)**

19. RECONSIDERATION OF PUBLIC HEARING Modifications to the 2015-2016 public oyster harvest season for two areas, Public Ground Number 9 and Public Ground Number 10, in the Pocomoke Sound west of Saxis, Virginia. **THE COMMISSION OPENED FOR HARVEST, POCOMOKE AREA PUBLIC GROUND NUMBER 9, FOR A HANDSCRAPE SEASON FROM NOVEMBER 16 THROUGH NOVEMBER 27, 2015. THE COMMISSION ALSO APPROVED ADVERTISING FOR A PUBLIC HEARING AT THE DECEMBER 8, 2015 MEETING TO RESCIND THE OPENING OF PULTZ BAR IN MOBJACK BAY (MATHEWS COUNTY) BECAUSE OF AN UNUSUALLY LARGE SPATSET ON THIS OYSTER BAR BUT VERY FEW MARKET OYSTERS. THE COMMISSION STRATEGY IS TO PREVENT HARVESTING THESE FEW MARKET OYSTERS SO THAT THE SPATSET WILL NOT BE DISTURBED AND BE ALLOWED TO GROW TO MARKET SIZE IN TWO TO THREE YEARS. THE COMMISSION ALSO WILL ADVERTISE AN ALLOWANCE OF HAND TONG GEAR ON THE SEASIDE OF EASTERN SHORE WHICH TYPICALLY HAS BEEN AN AREA FOR HAND HARVEST OF OYSTERS. [\[audio\]](#)**

20. DISCUSSION Report on potential description of fish pot gear. **THE COMMISSION UNANIMOUSLY DECIDED TO MOVE THIS DISCUSSION ITEM TO THE JANUARY 2016 COMMISSION MEETING. [\[audio\]](#)**

21. DISCUSSION The Virginia Institute of Marine Science will give a presentation on the results of an investigation of the potential impact on Gwynnâ€™s Island bridge rehabilitation work on mortality in a nearby oyster hatchery. **THE COMMISSION UNANIMOUSLY DECIDED TO MOVE THIS DISCUSSION ITEM TO THE DECEMBER 2015 COMMISSION MEETING. [\[audio\]](#)**

22. REQUEST FOR PUBLIC HEARING Request for a December public hearing: Establishment of the 2016

commercial black sea bass quota. **THE COMMISSION UNANIMOUSLY APPROVED THE REQUEST FOR A DECEMBER 2015 PUBLIC HEARING. IT IS PROJECTED TO BE A TWENTY-ONE PERCENT INCREASE IN QUOTA FOR BOTH THE RECREATIONAL AND COMMERCIAL FISHERIES IN 2016, AS TO COMPARED TO 2015.** [\[audio\]](#)

PAGE 2 ITEMS [\[audio\]](#)

2A. LANE/CORMAN JOINT VENTURE, #15-1268 requests authorization to construct a 710-foot long, two-lane clearspan bridge across the South Fork Rivanna River to improve safety and operational deficiencies along the U S Route 29 corridor, between Hilton Heights Road and Towncenter Drive, in Albemarle County. This project is a design build project for VDOT and all permits will be transferred to VDOT upon completion of the project. **UNANIMOUSLY APPROVED 6-0 CONDITIONED UPON THE TRANSFER OF THE PERMIT TO VDOT UPON COMPLETION OF THE PERMIT.**

2B. SHIRLEY CONTRACTING COMPANY, LLC, #15-1243 requests authorization to widen the I-64 crossing of the original stream bed of the Warwick River, within Lee Hall Reservoir, with the installation of additional bridge structure over 3,275 square feet of State-owned subaqueous bottom, the installation of eight 2-foot by 2-foot support pilings, a turbidity curtain, and the excavation of 111 cubic yards of subaqueous bottom and the placement of 315 cubic yards of fill to construct a temporary construction access pad in the City of Newport News. This project is a design build project for VDOT and all permits will be transferred to VDOT upon completion of the project. **UNANIMOUSLY APPROVED 6-0 CONDITIONED UPON THE TRANSFER OF THE PERMIT TO VDOT UPON COMPLETION OF THE PERMIT.**

2C. CITY OF VIRGINIA BEACH and ARMY CORPS OF ENGINEERS, #09-1686 request authorization to modify and extend their permit, which authorized the one-time placement of approximately two million cubic yards of beach quality sand along the five- mile stretch of Sandbridge Beach, situated along the Atlantic Ocean in Virginia Beach. The modification will include up to three additional nourishment cycles of the beach area between the Navy's Dam Neck Fleet Training Center to the north and the Back Bay National Wildlife Refuge to the south. As previously authorized, sand will be hydraulically pumped from the Sandbridge Shoals borrow area, located approximately three nautical miles offshore. The new permit expiration date will be July 31, 2020, and all previous permit conditions shall apply. **UNANIMOUSLY APPROVED 6-0 WITH A NEW EXPIRATION DATE OF JULY 31, 2020. ALL PREVIOUS PERMIT CONDITIONS ARE STILL APPLICABLE.**

