

## MINUTES

## Commission Meeting

May 22, 2018

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:

Steven G. Bowman	Commissioner
Chad Ballard	
Christina Everett	
Wayne France	
Heather Lusk	
James E. Minor III	Associate Members
Ken Neill, III	
John Tankard III	
John Zydron Sr.	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Todd Sperling	Bs. Systems Manager
Linda Hancock	Dir., Human Resources
Robert O'Reilly	Chief, Fisheries Mgmt.
Pat Geer	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Jill Ramsey	Fisheries Mgmt. Specialist
Chris Davis	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Nancy McElligott	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Sydney Alhale	Fisheries Mgmt. Specialist
Sara Blachman	Fisheries Mgmt. Specialist
Anna-Mia Christmas	Fisheries Mgmt. Specialist
John Cadena	Fisheries Mgmt. Specialist

**Commission Meeting**

Rick Lauderman  
Warner Rhodes  
Robert Berryman  
Jeff Copperthite  
Stephan Bennis  
Robert Griffin  
Brian Elliott  
William Thompson  
Steven York

Chief, Law Enforcement  
Deputy Chief, Law Enforcement  
Captain, Marine Police Officer  
First Sergeant, Marine Police Officer  
Lieutenant, Marine Police Officer  
First Sergeant, Marine Police Officer  
Marine Police Officer  
Marine Police Officer  
Marine Police Officer

Tony Watkinson  
Randy Owen  
Jeff Madden  
Justin Worrell  
Jay Woodward  
Mark Eversole  
Mike Johnson  
Hank Badger  
Ben Stagg

Chief, Habitat Management  
Deputy Chief, Habitat Management  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Dir., Shellfish Aquaculture, Leasing  
and Mapping

Daniel Faggert

Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell  
Bob Orth

Emily Hein

Mark Luckenbach

Others present:

Jerry Dutton  
Joe Fears  
Johnny Brown  
Elizabeth Mays  
John Tunstall  
Carlton Boissell  
Stanley Marshall  
Cynthia McGee  
Eugene Williams  
Linda Morgan  
Robert Crump  
Jerry Horner  
Robert Adams  
Benard Williams  
Lynn Justice

Paula Dutton  
Lisa Wright  
Nancy Waldrop  
Nancy Gore  
Sarah McDun  
Thomas Polland  
L. K. Vass  
William Walker  
Wilbert Hobson  
Verline Moody  
Ryan Croxton  
Walter Lawson  
J. Clay Barkus  
Gay Banks  
Susan Grabb

Scott Kauffman  
Catherine Brown  
Betty Kennon  
Johnie Gore  
James David  
Russ Perkinson  
Forest McGee  
Earlyne Thompson  
Otha Morgan  
Jay Crofton  
Robert Cox  
Rob Perkinson  
Mark Lania  
Derrick Banks  
Gary Grabb

**Commission Meeting**

Jack Hellems	Lauren Brig	Theodore Kenyear
Emily Davies	Carl Smith	Refe Mansfield
Jousha Hill	Will Vondhlen	Margaret Perkinson
Matt Will	Travis Croxton	David Bonnet
Jim Wesson	Kim Huskey	Becky Flibotte
Larry Flibotte	Mike Desterling	Kim Williams
Steve Corneliussen	Marsha Owen	Laura Morgan
Patrick Oliver	Heywood Thompson	David Judson
Diane Bennett	Jonathan Bennett	Derek Owens
Andrew Pomeroy	Charles Flynn	Carey Freeman
Charles Southall	Andy Wheeler	Joe Atherton
Danny Lowder	Jean Holman	Ann Rex
Robert Holman	Janice Brown	Chris Brown
Iru Spurlock	Doug McMin	Andy Lalatell
Tom Poweri	Harry Bowen Jr.	Kate Queen
Mary Kay Weston	Bob Weston	Chris Moon
Julian Cox		

And others.

\* \* \* \* \*

Commissioner Bowman called the meeting to order at approximately 9:35 a.m.

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At the request of Commissioner Bowman, Associate Member France led the pledge and Associate Member Tankard said the invocation.

Commissioner Bowman announced that Associate Member Chad Ballard and Associate Member John Zydron have been reappointed by Governor Northam. Commissioner Bowman also stated that the next Commission Meeting would be held on June 19, 2018.

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

**Associate Member Zydron moved to approve the agenda. Associate Member Neill seconded the motion. Associate Member France abstained. The motion carried, 8-0-1. Chair voted yes. The record reflects that the meeting is a quorum.**

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the April 24, 2018 Commission meeting minutes. There were no changes.

**Associate Member Zydron moved to approve the agenda as amended. Associate Member Tankard seconded the motion. Associate Member Minor abstained. The motion carried, 8-0-1. Chair voted yes.**

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Commissioner Bowman 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 \$500,000.00 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, reviewed the two (2) page 2 items, A and B for the Board Members. Mr. Watkinson’s comments are a part of the verbatim record.

**Associate Member France moved to approve the page two items as presented. Associate member Minor seconded the motions. The motion carries 9-0. Chair voted yes.**

**2A. DOMINION ENERGY, #18-0142,** requests authorization to install a submarine telecommunication cable under 19,540 linear feet at the entrance to Hampton Roads east of the Hampton Roads Bridge Tunnel using jet-assisted plow methodology, and horizontal directional drilling from upland areas in the City of Hampton near the intersection of Downes Street and South Willard Drive extending approximately 225 feet channelward of mean high water, and in the City of Norfolk at the Dominion Power Substation located near Chela Avenue, extending 140 feet channelward of mean high water. Staff recommends approval of the project with a royalty of \$58,620.00 for the encroachment under 19,540 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot, and a special permit condition for the adherence to the Frac-out Contingency Plan submitted by the applicant.

Royalties (Encroachment of 19,540 lf @ 3.00/lf)	\$58,620.00
Fees	\$ 100.00
Total Fees	\$58,720.00

- 2B. **VIRGINIA BEACH DEPARTMENT OF PUBLIC WORKS, #17-1803**, requests authorization to install and backfill 2,080 linear feet of steel sheet bulkhead a maximum of one-foot channelward of the failing structure; and to install 105 linear feet of riprap, the toe of which may be installed a maximum of five feet channelward of the new bulkhead adjacent to the southern side of Buccaneer Road, situated along Long Creek in Virginia Beach.

Fees	\$ 100.00
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**3. CONSENT AGENDA ITEMS.**

- 3A. **MATT CURRY, #12-1231**, requests after-the-fact authorization to retain an additional 224 square foot of roof encroachment associated with a previously permitted 700 square foot, open-sided, dual-slip boathouse adjacent to his property situated along Aquia Creek at 111 Woodrow Drive in Stafford County. The applicant has agreed to a \$1,000.00 civil charge and triple permit fees of \$75.00 in lieu of further enforcement action.

Tony Watkinson, Chief, Habitat Management, reviewed the consent item for the Board members. Mr. Watkinson's stated that Matt Curry, the permittee, has agreed to the civil charge. Mr. Watkinson's comments are a part of the verbatim record.

There were no public comments.

**Associate Member Tankard moved to approve the after the fact application as presented. Associate Member Ballard seconded the motions. The motion carries 9-0. Chair voted yes.**

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

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

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**Commission Meeting**

5. **SIMS METAL MANAGEMENT, #18-0218**, requests authorization to install 360 linear feet of quarry stone riprap along a man-made waterway off the Southern Branch Elizabeth River at the Sims Metal Management Facility at 4300 Buell Street, in Chesapeake. The project requires a wetlands permit.

Jay Woodward, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Woodward's comments are a part of the verbatim record.

Commission is acting as Wetlands board.

Mr. Woodward explained that the application includes two parts: (1) 810 linear feet of steel sheet-pile replacement bulkhead in the western man-made slip that will encroach only on subtidal lands with no tidal wetland or State-owned subaqueous bottom impacts; and (2) 360 linear feet of riprap at the head of the eastern haul-out slip which will impact approximately 1,400 square feet of non-vegetated, highly disturbed wetlands that will be converted into intertidal riprap so retired vessels can be hauled out to the uplands and the metal can be salvaged and recycled. This second part of the project requires a VMRC wetlands permit because the City of Chesapeake no longer administers the Wetlands Zoning Ordinance.

The applicant has been working with DEQ to improve the overall environmental impacts of the heavy industrial activity that occurs at the site. While staff generally recommends a "living shoreline" approach to shoreline stabilization, the use of the area does not lend itself to such a soft, vegetated approach, as the intertidal zone will be periodically impacted as vessels are brought ashore. The placement of the stone should provide a more stable transition area from the canal to the upland, and the revetment as designed meets standard criteria, including a buried toe, filter cloth and properly sized stone.

Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) in the Code of Virginia, staff recommends approval of the project as proposed.

**Associate Member Zydron made a motion to accept the staff recommendation. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.**

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6. **DEREK OWENS, #17-1586**, requests authorization to replace an existing boathouse and appurtenant decking and finger piers, on a 5-foot wide open pile private pier with a 12-foot by 10-foot L-head, with a 37-foot by 62-foot enclosed boathouse, 94 linear feet of 5-foot wide finger pier, 57 linear feet of 4-foot wide finger pier, and a 10-foot by 37-foot exterior deck along Free School Creek at 4442 School House Road in Gloucester County. The project is protested by an adjacent property owner.

Mike Johnson, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Johnson's comments are a part of the verbatim record.

Mr. Johnson explained that the adjacent property owner objects to the project. In a letter of protest submitted to VMRC, she cites concerns with increased boat traffic and associated shoreline erosion, noise pollution, potential commercial usage of the structure, and impacts to the value of her property.

No State agencies were contacted for comments and the local wetlands board has determined that the structure is exempt from their permitting authority.

Derek Owens, the applicant, was sworn and his comments are a part of the verbatim record. Mr. Owens explained that his intentions for the boathouse was to replace the pilings and repair the boathouse 'as is' to restore to the original state.

There was no one present in support of the project.

Ann Rex, an adjacent property owner, was sworn and spoke in opposition of the project. Ms. Rex's comments are a part of the verbatim record. Ms. Rex also presented pictures of other boathouses in the area.

Ms. Rex expressed concerns of erosion of her property and noise from boat traffic that will disturb wildlife. She also had concerns that the potential siding materials used for the exterior of the boathouse will cause the it to have an appearance of a commercial building if vinyl siding is used, which she is opposed to, as well as, the potential of the boathouse being moved further out to obstruct her view.

Public hearing was closed and the matter was before the Commission for discussion and action.

**Associate Member Minor moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

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7. **RAPPAHANNOCK OYSTER CO., #17-1881**, requests authorization to place up to 34,560 SEAPA aquaculture baskets suspended between 8,928 composite poles, with 84,521 linear feet of monofilament line over their existing oyster planting ground lease within the Rappahannock River near Locklies Creek in Middlesex County. The applicant is also requesting authorization for two (2) alternative methods, the first using rebar racks with SEAPA baskets, with up to 69,120 storm breaker clips, 4,320 #5 rebar racks, and 10 perimeter/corner marker buoys. The second alternative method would use floating cages, referred to as Oyster Gro Systems consisting of 28,000 feet of (X-lene) ¾ inch rope, 2,160 Oyster Gro floats, 288 anchors, 288 end line marker buoys and ten (10) perimeter/corner marker buoys. The application is protested by numerous local property owners.

Before the project was presented, Associate Member Ballard recused himself from the case. Mr. Ballard's comments are a part of the verbatim record.

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

Mr. Stagg explained during the public interest review, staff received a number of objections from nearby highland property owners. The applicant proposes to place the baskets in three phases. The first phase would encompass approximately 0.83 acres and consist of 2,880 baskets and 744 poles and associated line, anchors and clips. Phase 2 would encompass approximately 7.42 acres and Phase 3 would encompass 3.87 acres. Each SEAPA basket is 8" x 6" x 24" and would be fastened to a taut and perfectly straight line of monofilament. The poles that are proposed consist of black 2-inch recycled composite material and 11mm monofilament line. Each structure will have four composite 5-inch strainer posts to help support the lines. The baskets are proposed to be suspended approximately two (2) feet off the bottom.

Mr. Stagg also explained that the applicant proposes to mark the area in accordance with VMRC marking regulations (for active work areas within leases). The application indicates a total area request of 9.96 acres, however Engineering/Surveying staff, after mapping the coordinates provided by the applicant found the area to be 12.12 acres. Phase 2 will be within 4 feet of the common lease line of the applicant and a lease held by Gerald Abbott. Phase 3 will be within 2.5 feet of the same common lease line. The applicant notes the choice of using black poles to minimize view-shed disruption.

After careful consideration all of the factors in 28.2-1205 of the Code of Virginia and carefully reviewing the revised proposal of the applicant, the potential for considerable impact to existing SAV beds in the application area, and considering the concerns of the protestors, staff cannot support the proposal as submitted. Should the Commission consider approval, staff strongly recommends only approval of Phase 1 and that the footprint of Phase 1 be moved to the northeastern-most portion of the applicant's existing lease # 19260.



For such an approval staff recommends the permit contain the following special conditions:

1. A surety bond for Phase one (1) in the amount of \$5,400.00 to cover the cost of removal of all 2,880 baskets, posts, lines, augers, etc. in the event of failure;
2. An annual royalty for Phase one in the amount of \$180.77 based on the bold outline of the entire aquaculture structures in Phase one (36,155 square feet over State owned submerged land) at a rate of \$0.005 per square foot. If any additional phases are approved the permittee will be charged at a rate of \$0.005 per square foot for additional areas;
3. The permit shall not be issued until proof of issuance of the surety bond;
4. The permit and authorization to retain the structures shall be valid for a period of five years. After five years, the Permittee may request the Commission re-evaluate the project and seek authorization to continue the activity for an additional period of time;
5. The public shall not be excluded from any areas not physically occupied by the authorized structures;
6. The Permittee shall properly maintain all structures and shall remove all structures within five (5) days upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures;

Ryan Croxton and Travis Croxton, applicants, were sworn and their comments are a part of the verbatim record.

The Croxton's explained the reasoning for project in detail to include that the baskets would be used during the last three (3) months to strengthen the oysters before they go to market and they also stated that the baskets would not be used for seed oysters. They also explained the weather plan in case of ice or a hard freeze in the winter.

Both Ryan and Travis answered several questions from Associate Members in regards to the willingness to relocate in an area further from shore that has less submerged aquatic vegetation (SAV), the installation process of the poles for the structures and the concerns with debris if the apparatus dislodges.

There were two (2) present that spoke in favor of the project. They were sworn and their comments are a part of the verbatim record.

Doug McMin, owner of Chesapeake Bay Oyster Company spoke about the effort that was put forth for the selection of the location and that the system will create a better

environment. Mr. McMin also stated that shellfish aquaculture promotes grass, which does not interfere with the equipment and the equipment does not affect the grass.

Matt Will, V. P. of SEAPA USA explained the basket system in detail to include the history of the product and how the product withstood various weather conditions.

There were 17 people present that spoke in opposition. All those who spoke were sworn and their comments are a part of the verbatim record. Many of the concerns were: negative impact on landowners riparian rights, the view of the structures from the property owners, the affect it may have on property values, the structures' exposure to weather (ice, debris, storms – hurricanes and Nor'Easters), the impact on submerged aquatic vegetation (SAV), navigational concerns for boaters unfamiliar with the area, navigational concerns due to water depth, the potential for debris from structure if damaged due to weather and the restriction of water access for public use.

Public hearing was closed and the matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to accept the staff recommendation to deny the permit request. Associate Member Zydron seconded the motion. The motion carried, 5-2-2. Associate Members Tankard and Lusk did not support the motion to oppose the project. Associate Members Ballard and Everett abstained. Chair voted yes.**

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**ITEMS 8, 9 & 10 were combined.**

- 8. HARRY L. BOWEN, JR., Oyster Planting Ground Application #2016-038,** requests authorization to lease 30 acres of oyster planting ground in Occohannock Creek in Northampton County. The project area has submerged aquatic vegetation (SAV).
- 9. HARRY L. BOWEN, JR., Oyster Planting Ground Application #2016-276,** requests authorization to lease 20 acres of oyster planting ground in Occohannock Creek in Northampton County. The project area has submerged aquatic vegetation (SAV).
- 10. HARRY L. BOWEN, JR., Oyster Planting Ground Application #2017-063,** requests authorization to lease ten (10) acres of oyster planting ground in Occohannock Creek in Northampton County. The project area has submerged aquatic vegetation (SAV).

**Commission Meeting**

Hank Badger, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Badger's comments are a part of the verbatim record.

Mr. Badger stated that the Virginia Institute of Marine Science's SAV maps show the proposed lease area mostly covered with SAV (widgeon grass and eelgrass) in 2017, with a density level of 40% to 70%. The density levels in the past five (5) 5 years have varied from more than 10% to above 70% coverage. For only two of the past 10 years, 2011 and 2012, have the density levels fallen to less than 10% or no SAV at all.

Mr. Bowen was aware of the SAV before he made his application and that staff would not be able to support his request. He believes there are small areas within the VIMS mapped SAV areas that have not supported SAV within the last five years and should be leasable.

The Virginia Institute of Marine Science's SAV maps indicate that there has been submerged aquatic vegetation in the area that Mr. Bowen has applied for in the last ten years and that the area is recovering from a low point in 2012. Given the SAV coverage in 2017, and the likelihood for adverse impacts to these grasses, staff is unable to support the applicant's request to lease 30 acres of Oyster Planting Ground in this area and recommends denial.

Harry Bowen Jr., the applicant, was present and sworn in. Mr. Bowen's comments are a part of the verbatim record.

Mr. Bowen stated that he was mainly interested in the areas closer to shore that have less SAV. Mr. Bowen's intentions for the lease is for Clam Aquaculture.

There was no one was present to speak in opposition of the applications.

Public hearing was closed and the matter was before the Commission for discussion and action.

**Associate Member Ballard made a motion to accept the staff recommendation with a modification for staff to work with VIMS to identify and survey one or more areas void of dense submerged aquatic vegetation (SAV) coverage but may contain areas of light SAV coverage. Associate Member Minor seconded the motion. The motion carried, 5-4. Associate Members Tankard, France, Zydron and Neill voted no. Chair voted yes.**

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11. **PUBLIC HEARING:** Petition Proposal to the Marine Resources Commission to Designate an Area as Public Clam Grounds within the Poquoson River in the City of Poquoson.

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

Mr. Stagg explained in 2016, the Commission received a number of petitions requesting that an area of approximately 425 acres at the mouth of the Poquoson River and Bennetts Creek be designated as Public Clamming Grounds pursuant to §28.2-632 of the Code of Virginia. This Code section specifically states:

*Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes may be, on application of twenty or more citizens to the officer assigned to the district in which the land lies, laid off and designated as public clamming grounds; or the Commissioner may do so without such petition, provided in his opinion no oyster interests will suffer thereby and the clams are of sufficient quantity for a person to realize at least 225 clams or \$1.50 per day catching and taking clams from such ground. If the ground is laid off, the Commissioner shall designate by stakes the metes and bounds of such ground and also have a plat made, to be recorded in the clerk's office of the county where the ground lies. All costs of surveying, platting, and recording shall be paid by the applicant. Such ground shall be set apart and remain a public clamming ground for the common use of the citizens of Virginia for so long as the Commissioner determines, and shall not be assigned to anyone during such period.*

At the April 24, 2018, Commission meeting, the Commission approved staff's request to hold a public hearing on this matter. The meeting was public noticed and the affected pending oyster planting ground application parties were notified of the hearing.

This same area was the subject of previous oyster planting ground applications in 2006 that received protests from many local residents. The nature of the protests included concerns about SAV in the area, the fear that cage or float aquaculture could result in loss of such gear during storm events in light of the nearly unlimited fetch in this area, and conflicts with other recreational uses of the area to include clamming, boating, swimming, and fishing. Also, nearby property owners expressed concerns that use of the area for commercial aquaculture activities could result in adverse impacts to highland property values. The applications were presented to the Commission and they were denied. There was some discussion during that hearing that perhaps this area should be set aside as either public clam ground or designated as an area not to be leased. However, no such designation occurred at that hearing and the area remained open for application. Subsequently a portion of this area along the western part of the vacant area was applied for, was not protested, and the lease was granted in 2011. In 2012 an application was submitted for a small lease in this area which was protested and was heard at the July Commission meeting in 2016.

At that meeting, the initial motion was to grant the lease and then set the remaining area aside. It was noted at that time that since setting aside such an area would require additional review by Commission staff, thereafter the motion was amended to just approve the lease area.

Staff has received at least three applications within the same area as described in the petition. Since the petition pre-dates these applications, Commission action on the petition request is required before any further processing of these applications can occur. If the entire area is set aside no area will be available for the three pending applications.

In light of the considerable support provided through both the petition submissions and other comments of support, as well as the endorsement by the City of Poquoson, staff recommends, after reviewing the petition request, that all currently unleased area east of existing lease #20196, from mean low water (to the south) and extending north to existing public grounds, and bordered on the east by lease #'s 20633, 16513, and 16650 and excluding leases 19378 (riparian), 19691, and 3991 (riparian), be designated as public clamming grounds pursuant to §28.2-632 of the Code of Virginia. If such an area is approved up to the mean low water line, the Commission may want to consider whether any waterfront property owner will still be allowed to obtain a riparian lease within the designated area.

There were 7 people present that spoke in support of the petition. All those who spoke were sworn and their comments are a part of the verbatim record.

Those in support described of the uniqueness of the waterway, explained the access to open water, navigational concerns if the area becomes available for private leased due to the potential danger of underwater cages, property value decrease and the dangers of cages becoming dislodged and becoming a hazard.

There was no one was present to speak in opposition of the petition proposal.

Public hearing was closed and the matter was before the Commission for discussion and action.

**Associate Member Zydron moved to approve the staff recommendation. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**12. PUBLIC COMMENT:**

**Harry Bowen**

Mr. Bowen addressed the Commission on the issue of aquaculture leases. He expressed his concern about getting unused leases back and that lease holders should have their leases taken away if they do not do mandatory reporting. His comments are a part of the verbatim record.

**Steve Corneliussen**

Mr. Corneliussen addressed the Commission to make a brief comment about how aquaculture in Virginia is operating with 19<sup>th</sup> century processes for the 21<sup>st</sup>. century fishery. His comments are a part of the verbatim record.

**Arthur Elliott (Written request addressed in absentia)**

There was a written request made by Mr. Arthur Elliott requesting his Commercial Fishing Registration License (CFRL) through the exception to the two-year delay process.

Robert O'Reilly, Chief, Fisheries Mgmt., presented further information with a Powerpoint Presentation for the Board Members. Mr. O'Reilly's comments are a part of the verbatim record.

Mr. O'Reilly explained Mr. Elliott's VMRC history to the Commission, as he was seeking an exemption from the licensing requirements for commercial fishers for the third time this year. No action was taken by the Commission.

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**13. LICENSE STATUS REVIEW:**

**(13-1) – Robert N. Hogge Jr. (MRC ID#: 5043)** – was not present due to being incarcerated and declined the opportunity to appear before the Commission.

Robert Griffin, First Sergeant, Marine Police Officer, was sworn in and he gave the briefing of the information provided in the staff's evaluation and presented video footage as evidence. His comments are a part of the verbatim record.

**July 10, 2017, Commercial fishing without a license. §28.2-225**

**Disposition:**

03/28/18, Isle of Wight Circuit Court  
Fine: \$0.00  
2 years' probation

**July 10, 2017**, Fishing while provoked. **4VAC20-1280-30**

**Disposition:**

03/28/18, Isle of Wight Circuit Court  
Fine: \$500.00  
2 years' probation

**September 18, 2015**, Taking oysters with hand scrape out of season. **§28.2-523**

**Disposition:**

04/06/2018, Newport News Circuit Court  
Fine: \$0.00  
5 year in jail with 4 years suspended

**GUIDELINE SUGGESTION: 2 YEAR REVOCATION AND DISCRETIONARY ACTION BY THE COMMISSION CONCERNING A CIVIL PENALTY (§28.2-225 of the Code of Virginia)**

Jennifer Farmer, Regulatory Coordinator, explained to the Commission the matrix guidelines, with PowerPoint slides. Ms. Farmer's comments are a part of the verbatim record.

Mr. Robert N. Hogge Jr., a commercial fisherman registration licensee, was convicted on March 28, 2018 for one count of commercially fishing without a license (§28.2-225 of the Code of Virginia) and one count of fishing while revoked (4VAC20-1280-30), and on April 6, 2018 for one count of taking oysters with hand scrape out of season (§28.2-523 of the Code of Virginia).

Mr. Hogge first appeared before the Commission as a natural resource offender during the November 1, 2016 Commission meeting. The Commission decided to revoke all of Mr. Hogge's Commission-issued licenses for a period of one year from November 1, 2016 through October 31, 2017 followed by a two-year probation from November 1, 2017 through October 31, 2019, owing to a conviction of two oyster violations.

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters without an oyster resource user fee and gear license, while revoked, within a two-year period, should result in at least a two year revocation of all Commission-issued licenses. In accordance with §28.2-232 of the Code of Virginia, the guidelines suggest to the Commission to revoke all of Mr. Hogge's Commission-issued licenses for a period of two years from the date of this Commission meeting, May 22, 2018 through May 21, 2020. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance,

and renewal of any of Mr. Hogge’s licenses during this revocation period, and to take discretionary action concerning the potential of a civil penalty.

**Associate Member France made a motion for a 5 year revocation of all Commission-issued licenses. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

**Associate Member Zydron made a motion for the maximum civil penalty of a \$10,000 fine. Associate Member Neill seconded the motion. The motion carried 9-0. Chair voted yes.**

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- 14. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2018 recreational fishery management measures. The 2017 recreational black sea bass fishery was managed by a 12 ½-inch minimum size limit, total length, a 15-fish possession and open season from May 15 - September 21 and through October 22 - December 31.

Sydney Alhale, Fisheries Mgmt. Specialist, presented the information provided in the staff’s evaluation, with PowerPoint slides for the Board members. Ms. Alhale’s comments are a part of the verbatim record.

Public hearing was closed and the matter was before the Commission for discussion and action.

**Associate Member Tankard moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 15. RECOMMENDATION:** Recommendations from the Commercial Fishing Advisory Board.

Rob O’Reilly, Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation. Mr. O’ Reilly’s comments are a part of the verbatim record.

Mr. O’Reilly explained that the predation impacts of invasive blue catfish on blue crabs in estuarine environments: **\$45,970:**

Mr. O’Reilly explained the proposed project from VIMS which includes collaborative work with a commercial waterman to estimate and quantify predatory impacts of blue catfish on blue crabs in the lower James River. Seasonal diets of blue catfish will be observed from the mouth of the Chickahominy River to the James River Bridge, where blue catfish and



blue crab habitats overlap. Researchers will also examine if there is a relationship between salinity and blue catfish predation on blue crabs. The study would begin during July 2018 and be completed by October 2019.

Blue catfish stomachs will be collected by a commercial waterman who will deploy anchored gill nets monthly in the lower James River. The study is designed to ensure broad spatial coverage of the James River subestuary and to estimate predation impacts in two salinity zones. Temperature sensors will also be deployed during randomly selected 24 hour sets twice monthly. The survey design is estimated to yield 144 net sets.

The total cost for the proposed work is budgeted at \$74,751. The VIMS is proposing match funding of 38.5% or \$28,781 (at least a 25% match is required of all research grants) provided by a Fishery Resource Grant through VIMS Marine Advisory Service. The remaining balance of \$45,970 is requested from the commercial license fund (MFIF).

Staff recommends funding both projects totaling \$45,970 from the Marine Fishing Improvement Fund (MFIF).

**Associate Member Tankard moved to approve the staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**16. DISCUSSION:** Results from the December 2017 through March 2018 Bay-wide Winter Dredge Study for blue crab.

Pat Geer, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff's evaluation. Mr. Geer's comments are a part of the verbatim record.

On April 25<sup>th</sup> staff held a conference call with representatives from PRFC, MD DNR and scientists from VIMS and CBL to discuss the latest results, develop press releases (see attached Virginia press release), and discuss potential management actions. On May 14<sup>th</sup> the Chesapeake Bay Stock Assessment Committee, a subcommittee of the Sustainable Fisheries Goal Implementation Team, reviewed the new survey results and will release their full analysis in their 2018 Blue Crab Advisory Report this summer.

Abundance estimates are based on a size cutoff, whereby crabs 2.4 inches (60 mm) or less in carapace width (tip of spine to tip of spine) are denoted as 'age-0' or juvenile crabs, and those > 2.4 inches in carapace width are classified as spawning-age or 'age-1+' crabs. Spawning age crabs are ones that will spawn in May or July to August, 2018. Juvenile crabs become exploitable to fisheries in late summer or fall and represent the 2019 class of spawners.

Spawning-age crabs release their eggs at the mouth of the Bay between late May and August, although only a portion of the population will successfully spawn. Juvenile crabs become exploitable to Bay fisheries in late summer or fall and represent the 2019 spawning potential.

The current estimate of spawning-age (age-1+) female abundance (147 million) is the 9<sup>th</sup> highest abundance in the 29 seasons of the Bay-wide winter dredge survey. It falls below the healthy threshold of 215 million but is well above the minimum target of 70 million crabs. This abundance of crabs will provide for harvest throughout the spring and much of the summer, but the magnitude of the harvest will be tempered by market conditions and a general shortage of picking houses. Abundance of juvenile crabs increased 33.8% over the very poor year class of 2017, but still ranks in the lower third of all years of the survey. As noted above, these juvenile crabs will recruit to harvestable size by late summer and fall of 2018 and represent a potentially lower abundance of spawning-age crabs for 2019.

Staff recommends this information be used for any changes to blue crab regulations that may be considered for advertisement by the Commission for its June public hearing. The CBSAC workgroup recommends no changes at this time.

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- 17. DISCUSSION:** Proposal to amend Chapters 4 VAC 20-240-10 et seq., “Pertaining to Tangier Island Crab Scrape Sanctuary;” 4 VAC 20-270-10 et seq., and “Pertaining to Crabbing;” Chapter 4 VAC 20-752-10 et seq., “Pertaining to Blue Crab Sanctuary;” and Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters.”

Rob O’Reilly, Chief, Fisheries Mgmt., provided a brief background about the Crab Management Advisory Meeting which after about five (5) meeting, they had a quorum. At the request of Mr. O’Reilly, Associate Member Tankard provided a brief summary of the meeting. Their comments are a part of the verbatim record.

Sara Blachman, Fisheries Mgmt. Specialist, presented the information provided in the staff’s evaluation with a PowerPoint presentation for the Board members. Ms. Blachman’s comments are a part of the verbatim record.

Staff recommends the Commission approve advertising amendments to the following regulations:

- 1) Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters,” Staff recommends the Commission advertise a closure of the winter crab the amendments will establish a prohibition of a crab dredge season during the December 1, 2018 through March 31, 2019 period.

- 2) Chapter 4 VAC 20-752-10 et seq., "Pertaining to the Blue Crab Sanctuary," Staff recommends the Commission approve advertising a public hearing to review proposals that would allow a portion of Area 4 of the Blue Crab Sanctuary to remain open to commercial fishing during May 16 through September 15.
- 3) Chapter 4 VAC 20-270-10 et seq., "Pertaining to Crabbing," Staff recommends the Commission approve advertising the needed changes in dates, as shown above. In addition, staff requests the Commission approve advertising a crab harvest measure as a standard U.S. bushel.
- 4) 4 VAC 20-240-10 et seq., "Pertaining to Tangier Island Crab Scrape Sanctuary," Staff recommends the Commission approve advertising a seasonal by-catch allowance of female hard crabs not to exceed 3 bushels for crab scrape licensees during the months of August through October.

Chris Moore, Chesapeake Bay Foundation and a member of the Crab Management Advisory Committee (CMAC), spoke and requested clarification on a proposal to advertise a year round closure for Crab Sanctuary Area 5 from the latest CMAC meeting.

Rob O'Reilly, Chief, Fisheries Mgmt., provided a brief background and clarification on the latest CMAC meeting pertaining to the Crab Sanctuary ruling.

**Associate Member Neill moved to approve the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. Chair voted yes.**

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18. **DISCUSSION:** Proposal to amend Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," to establish the 2018 Virginia commercial bluefish quota.

Jill Ramsey, Fisheries Mgmt. Specialist, presented the information provided in the staff's evaluation, with PowerPoint slides. Ms. Ramsey's comments are a part of the verbatim record.

The Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC) have established the 2018 coast wide bluefish commercial quota as 7.24 million pounds. This is a 15% decrease from the 2017 quota. Virginia receives 11.8795% of the coast wide quota, which results in a 2018 Virginia bluefish commercial quota of 860,518 pounds.

For the 2018 fishing season, the ASMFC and the MAFMC approved an annual catch limit of 21.81 million pounds, an approximate 5% increase from 2017 levels. Amendment I (October 1998) established a transfer allowance that moves recreational quota to the commercial fishery. In recent years, the transfer has added a sizable increase to the commercial quota. Unlike 2017, for 2018 there will not be a quota transfer from the recreational sector to the commercial sector. The 2018 commercial quota will remain the same as previously announced by ASMFC on August 15, 2016. For the 2018 fishing season, the Virginia commercial bluefish quota will be 860,518 pounds.

Staff recommends the Commission approve advertising the 2018 commercial bluefish quota for a June public hearing.

**Associate Member Tankard moved to approve the staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.**

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There being no further business, the meeting was adjourned at approximately 5:17 p.m. The next Commission meeting will be Tuesday, June 19, 2018.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary