

MINUTES

COMMISSION MEETING

February 26, 2019

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia with the following present:

Steven G. Bowman	Commissioner
Wayne France	
John Tankard III	
Christina Everett	Associate Members
Heather Lusk	
James E. Minor III	
Ken Neill, III	
John Zydron Sr.	
Kelci Block	Assistant Attorney General
Ellen Bolen	Deputy Commissioner
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Todd Sperling	Bs. Systems Manager
Sheri Crocker	Chief, Admin. & Finance Management
Robert O'Reilly	Chief, Fisheries Mgmt.
Pat Geer	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Alicia Nelson	Coordinator, RFAB/CFAB
Adam Kenyon	Fisheries Program Manager
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Anna-Mai Christmas	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Ethan Simpson	Fisheries Mgmt. Specialist

Commission Meeting

**18246
February 26, 2019**

Rick Lauderman
Warner Rhodes
Alexander Tucker
Andrew Miller

Chief, Law Enforcement
Deputy Chief, Law Enforcement
Marine Police Officer
Marine Police Officer

Tony Watkinson
Randy Owen
Jeff Madden
Jay Woodward
Mark Eversole
Hank Badger
Bradley Reams
Rachael Peabody
Mike Johnson
Justin Worrell
Allison Norris
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.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing
and Mapping
Surveyor, Engineering/Surveying

Daniel Faggert

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
Bob Orth

Emily Hein

Mark Luckenbach

Others present:

Janice Vanty
Vasilios Roussis
J. W. Crowe
Chris Robertson
John Korte
Chris Moore
Steve Quisenberry
and others

Jim Cummings
Athena Roussis
Ethel Gershin
Jo Gregory
Jennifer Johnson
Beverly Ludford

Jim and Carol Walton
Philip Roussis
Jeff Wilson
Marshall Weisner
Mike Oesterling
David O'Brien

* * * * *

Commissioner Bowman called the meeting to order at approximately 9:46 a.m. Associate Member Ballard was absent. Associate Members France, Neill and Minor were not present.

* * * * *

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

* * * * *

APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes from the Board members or staff.

Deputy Commissioner Ellen Bolen requested to add an item to the Agenda to provide a briefing regarding actions taken by the General Assembly. Ms. Bolen’s comments are a part of the verbatim record.

Associate Member Zydron moved to approve the agenda as amended. Associate Member Tankard seconded the motion. The motion carried, 5-0. Chair voted yes. Associate Members France, Neill and Minor was not present during vote.

* * * * *

MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the January 22, 2019 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Everett seconded the motion. The motion carried, 5-0. Chair voted yes. Associate Members France, Neill and Minor was not present during vote.

* * * * *

Commissioner Bowman swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

* * * * *

Commission Meeting

- 2. **PERMITS** (Projects over \$500,000.00 with no objections and with staff recommendation for approval).

Tony Watkinson, Chief, Habitat Management, reviewed the page 2 item A for the Board Members. Mr. Watkinson’s comments are a part of the verbatim record.

There were no public comments.

Associate Member Tankard moved to approve the page two item A as presented. Associate Member France seconded the motion. The motion carried 8-0. Chair voted yes.

- 2A. **VIRGINIA ELECTRIC AND POWER COMPANY, #18-1727**, requests authorization to remove and replace two (lines 211 and 228) 230kV circuits over 1,011 linear feet of the Appomattox River immediately upriver of the I-295 bridge crossing, and over 18 linear feet of Cabin Creek, north of River Road. A temporary crane mat bridge will also be installed over Cabin Creek to provide access. The project is located in Chesterfield and Prince George Counties and the City of Hopewell. Staff recommends a royalty in the amount of \$6,174.00 for the encroachment over 2,058 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalties: (Encroachment of 2,058 lf. @ \$3.00/lf.)	\$ 6,174.00
Fee:	\$ 100.00
Total Fees:	\$ 6,274.00

- 3. **CONSENT AGENDA ITEMS.** There were no Consent Agenda Items to be heard.

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

- 5. **VIRGINIA ELECTRIC AND POWER COMPANY, #18-1845**, requests authorization to conduct repair work to four (4) foundation structures of an existing steel lattice transmission line support tower that will require increasing the footprint of the foundations, installing riprap within tidal wetlands and submerged lands, and to install a temporary cofferdam during construction along the Southern Branch

Elizabeth River at 2701 VEPCO Street, in the City of Chesapeake. This project requires a wetlands and subaqueous permit.

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

Ms. Peabody explained that the project is located on the southeast tip of Dominion's Chesapeake Energy Center, along the Southern Branch Elizabeth River. The site contains two (2) steel transmission towers. The applicant is proposing to repair four (4) concrete foundation legs on the southern-most existing steel lattice tower, which is experiencing degradation to its foundation because of tidal inundation. Each of the four foundation structures will be repaired and their concrete casing will be extended by approximately 3 feet. The seaward two legs will be wrapped in a rip rap revetment for erosion control. Repair of the structures will require the installation of a temporary cofferdam within tidal wetlands and submerged lands and temporary access matting of vegetated wetlands for construction access. The majority of construction access will be by barge from the seaward side of the tower.

The repair of the foundations will result in permanent impacts to 199 square feet of vegetated wetlands and 255 square feet of State-owned submerged lands. The impacts to vegetated wetlands requires a VMRC wetlands permit because the City of Chesapeake has chosen to no longer administer the Wetlands Zoning Ordinance. The permanent impact of the foundations and the temporary construction impacts require a VMRC subaqueous permit.

The applicant has minimized wetland impacts to the furthest extent possible by accessing the majority of project by barge but is limited in construction access points to the most landward portions of the project and must traverse wetlands using construction equipment. Timber mats will be used for all construction access to add protection to both the vegetation and the substrate as equipment travels through the jurisdictional wetlands. The applicant has proposed to restore any impacted wetlands by the planting of native vegetation and the restoration of wetland contours to preexisting conditions following construction.

The proposed impacts to tidal wetlands and State-owned submerged lands appear to be the minimum necessary to facilitate the repair of the existing steel lattice support tower. As such, staff believes that the project's design is consistent with the Commission's Wetlands and Subaqueous Guidelines. Should the Commission agree, staff would recommend the following permit conditions to ensure that appropriate wetlands restoration is achieved following the completion of the project:

- 1) All areas of State-owned bottom and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials

- shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters;
- 2) Erosion and sediment control measures shall be in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction;
- 3) VMRC staff will be notified within 30 days of project completion to schedule a post construction site visit to determine if wetland planting will be required during the following growing season.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) and §28.2-1302(10)(B) in the Code of Virginia, staff recommends approval of the project with the above-referenced permit conditions and the purchase of 199 tidal wetland credits at New Mill Creek mitigation bank for the permanent loss of 199 square feet of tidal vegetated wetlands.

Jennifer Johnson, agent for the applicant was present and sworn in. Ms. Johnson’s comments are a part of the verbatim record.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Permit Fee:	\$ 100.00
-------------	-----------

* * * * *

- 6. MEADOWRIDGE/GREEN HILL OYSTER GROUP, Oyster Planting Ground Application #2016-229**, requests authorization to lease approximately 16 acres of oyster planting grounds within Broad Bay, a tributary to the Lynnhaven River, in the City of Virginia Beach. The application is protested by a resident/leaseholder.

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 that an application from Meadowridge/Green Hill Oyster Group, requesting to lease approximately 16 acres of oyster planting ground, within Broad Bay, in

the City of Virginia Beach, was received by the Engineering/Surveying Department on September 9, 2016.

The application was subjected to our normal public interest review. The area was then surveyed on September 19, 2018.

The requested area was the subject of a previous application, submitted in 2015, by Beach Oyster Company, LLC, requesting to lease approximately 12 acres of grounds. Staff understands that Mr. Charlie Gregory and Mrs. Jo A. Gregory are principals of Beach Oyster Company, LLC. Mrs. Gregory submitted an email objection to the current application.

The Beach Oyster Company, LLC application was protested in 2015 by a number of residents that own property immediately adjacent to the requested area. The objections noting their concerns included the close proximity of the requested area to the upland and potential conflicts with navigation, recreational uses of the nearshore area, privacy concerns and potential adverse impacts to highland property values. The application was scheduled for a hearing at the June 23, 2016, Commission meeting. In light of staff's proposed recommendation not to lease the area due to the protests, the applicant, Beach Oyster Company, LLC requested to withdraw the application and no hearing occurred.

On September 25, 2018, staff received an email objection from Jo A. Gregory. In that email Mrs. Gregory stated that the previous application was objected to by residents of the adjoining subdivision for a number of reasons. Those objections, as stated by Mrs. Gregory, included invasion of privacy, edge of lease in path of boat lifts, impact on navigation and access to piers, impact on property values, a belief that the advantages of additional oyster growing activities in this area outweighed the potential negative impacts related to the use and enjoyment of the waterfront area, interference with any future private pier requests, intrusion on the privacy of resident's backyards and that there is a narrow channel nearby that is used by a large number of boats during the summer.

Mrs. Gregory further noted that while Beach Oyster Company, LLC, had requested an area excluding any existing piers, the current applicant has requested to lease an area to include all pier footprints along this reach of shoreline. Mrs. Gregory asked that her objections to the current application be considered the same as the objections previously expressed by the protestants to the Beach Oyster Company, LLC application. She also questioned whether the Meadowridge/Green Hill Oyster Group qualifies as a legal applicant pursuant to the Code of Virginia, §28.2-604 as a "resident, corporation, firm or municipality of the State of Virginia" and if the application had been made for the purpose of planting oysters as required by Virginia law.

The previous application from Beach Oyster Company, LLC was heavily objected to by nearby property owners, many of whom are parties of the current application. Staff reduced the area of the application of Beach Oyster Company, LLC, from 12 acres to a little over

eight (8) acres at the time the area was surveyed, removing an area within condemned classification waters and avoiding impacts to private piers to the greatest extent possible. However, that alignment was still objected to by 14 local residents. In light of those protests, staff, in its evaluation for a hearing scheduled for June of 2016, could not support a recommendation to lease the area.

After being informed of staff's recommendation, the applicant withdrew the application before the hearing date. The current applicant seeks to lease the same area as requested by Beach Oyster Company, LLC, to also include areas around and under all existing private piers along this reach of shoreline. The current applicant proposes to grow oysters in the same manner proposed by Beach Oyster Company, LLC, when they submitted their application.

In light of these facts, staff recommends the current pending lease request be denied. The residents along this reach of shoreline could still request to grow oysters by obtaining a General Permit #3, oyster gardening permit, for personal use or for conservation purposes. Staff further recommends that the Commission consider designating this area as an area not to be leased for a period of ten years. Such a time frame will coincide with the current proof of use lease term of ten years. If the Commission then does not renew the status after the ten-year period, the area will then again be open for application for leasing.

Jeff Wilson, applicant's attorney, was present and provided background information of the protestant. Mr. Wilson explained that the protestant is not a neighborhood resident, is not affected by privacy issues and the lease application is not close to the protestant's existing lease. Mr. Wilson's comments are a part of the verbatim record.

Steve Quisenberry spoke on behalf of the Green Hill Oyster Group. Mr. Quisenberry explained the property owners' intentions and answered questions from the members of the Commission. Mr. Quisenberry's comments are a part of the verbatim record.

There were two (2) others that spoke in support of the application. Their comments are a part of the verbatim record.

Joanne Gregory, protestant, was sworn in and spoke in opposition of the application. Ms. Gregory expressed concerns that the lease is unfair for commercial waterman. She requested the application be denied because she felt that property owner's shouldn't have priority over commercial waterman. Ms. Gregory's comments are a part of the verbatim record.

The Commission consulted Kelci Block, Assistant Attorney General, for further guidance pertaining to whether the lease should be available for consideration to be leased by a 'group'. Ms. Block stated that the 'group' is not a firm, corporation or business entity, therefore, the lease did not meet requirements to be considered for the lease. Ms. Block's comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation to deny the application and also designate the requested area as an area not to be leased for a period of ten years. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

* * * * *

- MARSHALL G. WEISNER, Oyster Planting Ground Application #2017-176**, requests authorization to lease approximately 20 acres of oyster planting grounds within a cove tributary of the James River at Joint Base Langley-Eustis, Fort Eustis location in the City of Newport News. The application is protested by both the Joint Base Langley-Eustis Civil Engineer Division and Security Forces unit.

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 that an application from Marshall G. Weisner, requesting to lease oyster planting ground, was received by the Engineering/Surveying Department on December 5, 2017. The applicant requests to lease approximately 20 acres within a cove feature of the James River at Joint Base Langley-Eustis at the Fort Eustis location within the City of Newport News.

The application was subjected to our normal public interest review. Staff received comments of concern from the Virginia Department of Health, Division of Shellfish Safety regarding the area. They indicated they did not normally test waters in this cove location due to the shallow nature and its proximity to the post base location. Subsequently, staff received emails from the Civil Engineer Division of the Fort noting their concerns and that of the Security Forces unit on the base.

The concerns raised by the Civil Engineer Division include their statement that they question if oysters will survive at this location, the narrow and shallow connection into the cove that may only be accessible at high tide, potential conflicts with military watercraft training in the area, use of the cove by a private duck blind permittee, interference with base personnel and their families fishing from the shoreline, and potential adverse impacts to waterfowl and bird wading and the resulting birdwatching this area provides for base personnel and their families. The Security Unit also noted concerns, to include that the applicant did not contact the appropriate base post agencies before submitting the application, the application was not received by any of these same base post agencies, the area being requested is currently under review to be classified as a Fort Eustis Restricted Area, the area is within close proximity of 3rd Port and will be in the near future a training area, and that, although the applicant is a Department of Defense employee who works on

the post, this particular area poses a AT/FP/Security concern because of the ease of access onto the post the area presents.

Based on the location of the proposed lease application area, concerns of the Virginia Department of Health, Division of Shellfish Safety, and the considerable concerns expressed by Fort Eustis post base authorities, staff cannot support the leasing of any of the requested area. Unless Mr. Weisner can obtain explicit approval from the proper authorities at the post base, staff believes leasing any of the requested area is definitively not in the public interest and that the application should, therefore, be denied.

Marshall Weisner, applicant, was present and sworn in. Mr. Weisner explained the reason for the lease application. His comments are a part of the verbatim record.

No one else spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to accept staff recommendation to deny the application. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes.

* * * * *

8. BRIEFING: Ellen Bolen, Deputy Commissioner, provided a briefing on the outcome of the Shellfish Working Group which was convened by the Governor this summer. She also explained the resulting taskers given to MRC and also the Legislation that has resulted. Ms. Bolen's comments are a part of the verbatim record.

Ms. Bolen explained that this past summer, the Governor and Secretary of Natural Resources convened a working group to address some of the user conflicts around Shellfish Aquaculture in the Tidewater of the Commonwealth. Members of the working group included: members of a Non Profit community, industry, senators, delegates, local land owners, a marine contractor and various staff from MRC.

The goal of the working group was to find items that were agreed on by consensus, not compromise. As a result, several items were tasked to MRC to conduct this summer.

Task for MRC includes:

- Developing a regulation to establish a beneficial use standard. Talking with industry about possible use lands.

Commission Meeting

- Developing rule making addressing lease renewal exemptions and providing additional clarification on what they are.
- Developing electronic means for accepting application materials for shellfish growers. MRC is currently working on this task.

Ms. Bolen also explained the key piece of Legislation which is Senate Bill 14.13 from Senator Monty Mason which has an Emergency Action Clause included. There are three (3) key pieces in the bill that affects the Commission.

- The Bill will give the Commissioner discretion with respect to setting precise locations of riparian ground. This will potentially decrease user conflicts both with existing leases as well as not setting riparian grounds in the channel.
- Clarification in permits, transfers, renewals: Commissioner will now consider factors set out in subsection (A) of §28.2-1205 of the Code of Virginia which governs the public trust doctrine that further clarifies the many things that the Commission reviews when assigning, renewing and transferring oyster planting grounds.
- Increase in fees for permitting, transfers, renewals and leasing: Permits were \$25. Fee increases are based on acres leased. The same scale applies to lease transfers

less the 5 acres	\$300
5 acres to 25 acres	\$500
25 acres and up	\$1000

Discretion was given to set lease renewal fees up to \$300. Staff will undertake a rule making to determine the renewal fee. Legislation has not been signed, however, if it is signed, it will go into effect immediately.

* * * * *

9. **PRESENTATION:** Dr. Bob Orth, Virginia Institute of Marine Science, annual review of the status of Submerged Aquatic Vegetation. Mr. Orth’s comments are a part of the verbatim record.

Mr. Orth provided an annual review of the status of Submerged Aquatic Vegetation (SAV) which included updates on baywide status and trends of SAV, Chincoteague Bay Sanctuary SAV, propeller scarring and updates on seagrass restoration in Seaside Bays. Mr. Orth requested the approval for the continuation of funding for propeller scar monitoring, continued support for SAV’s annual monitoring and continued support for the eelgrass and bay scallop restoration work, which is funded by The Virginia Saltwater Recreational Fishing Development Fund and the Marine Fishing Improvement Fund.

Staff recommendation is for the allocation of \$22,000 for the next segment of the ongoing boat scarring program, with funds split evenly, from The Virginia Saltwater Recreational Fishing Development Fund and the Marine Fishing Improvement Fund, for the continuation of monitoring of the areas of Submerged Aquatic Vegetation subject to continued propeller scarring.

The matter was before the Commission for discussion and action.

Associate Member Neill made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

* * * * *

10. PUBLIC COMMENTS: There were no public comments.

* * * * *

11. LICENSE STATUS REVIEW: There were no license status reviews to be heard.

* * * * *

12. PUBLIC HEARING: The Commission proposes to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the landing dates, possession limits and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

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

Mr. O'Reilly explained that every year, staff works with industry to establish management measures for the commercial offshore summer flounder fishery. For 2019, the Virginia summer flounder quota is 1,421,828 pounds, a 3.6% increase from 2018. This increase in quota will allow for an increase in the period one landing limit. Staff is also requesting a modification to the landing dates in order to maximize the profitability for industry. For 2019, industry is requesting an 8,500 pound landing limit for period one and a season change to March 1 through April 19, 2019.

The Virginia offshore directed commercial fishery for summer flounder is currently open for two seasons each year. Period one of 2018 was open from March 1 through April 30 with a 7,500 pound landing limit. Period two of 2018 was open October 16 through December 31 with a 7,000 pound landing limit. Each year staff modifies the dates and landing limits based on industry need and available quota.

The goal for our offshore fishery is to harvest 60% of Virginia’s allowable landings during the first period and 40% during the second period. Staff has reviewed the number of vessels that have landed in Virginia over the last five years and predicted the number of vessels that may be landing March through April of 2019. Because of our increase in quota and the number of active vessels, staff supports season dates of March 1 through April 19 and a landing limit of 8,500 pounds as requested by industry for period one of 2019.

Staff recommends amending Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the landing dates, possession limits and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

There were no public comments.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Lusk was not present during vote.

* * * * *

13. DISCUSSION: Request for a March public hearing to incorporate additional amendments to Chapter 4 VAC 20-890-10 et seq., for the channeled whelk pot fishery.

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

Ms. Kretsch explained that VMRC Law Enforcement and members of the channeled whelk industry have expressed concern with the lack of a standard procedure for culling of channeled whelk, including with the use of a culling ring. The current culling ring has been found inadequate for adhering to the 5 ½ inch minimum shell length in a 2017 paper by Bob Fisher (VIMS), who found that the current ring selects for whelk of sublegal length.

Since 1997, Virginia’s minimum shell length for channeled whelk has been 5 ½ inches with a tolerance of 10 undersize whelk per bushel or bag. In 1998, law enforcement requested a tolerance of 30 whelk per barrel to account for the harvesters who land in barrels. Despite the tolerance, industry had further concerns about size violations resulting from shell breakage. Legal whelk can appear undersized when the outer tip of the siphonal canal breaks off with handling. While collecting samples from 2009 to 2011, Fisher found that 6-9% of channeled whelks collected had broken siphonal canals, likely the result of having been previously caught and culled.

Staff has also heard industry and law enforcement concerns about the culling ring as a size gauge. Because of the asymmetrical morphology of the whelk shell, manipulating the orientation of a shell in relation to the ring can cause whelk that are equal to or greater than the minimum width at the widest part of the shell to pass through at an angle. After considering alternatives to the culling ring, including Massachusetts' chute gauge, staff recommends eliminating the cull ring measurement of minimum width and regulating shell length alone. While there are still concerns about shell breakage, the 10 undersize whelk per container tolerance is still in effect. Any further whelk with broken tips would still need to be at least 5 ½ inches after breakage, leading to more selective whelk harvest.

In the pursuit of consistent enforcement across the channeled whelk fishery, law enforcement also asked to change culling tolerance from bushels and barrels to baskets, such as those used for oysters. Currently, law enforcement shovels whelk into bushel tubs (which are bulky, costly, and thus not often carried on an officer's person) or, more frequently, cull directly from the harvester's barrels, bags, and other various containers. Commonly known as a shrimp basket, orange plastic baskets, which are lighter, cheaper, and easier to transport, are also used in the culling of oysters as defined in Chapter 4 VAC 20-260-10. Moving from the bushel to basket corresponds to a decrease in volume from 3003.9 cubic inches to 2566 cubic inches, as defined. This would increase the 10 sublegal whelk tolerance from around 6% of harvest to 7%. The increased likelihood that a law enforcement officer will have the basket accessible will allow for more standardized practice in culling channeled whelk. Since harvesters use a variety of containers to store and transport their whelk, law enforcement will be able to remove one or more baskets from a container of any size and ensure the tolerance is not exceeded.

Staff have also renamed the "conch pot license" for "conch pots" to the "channeled whelk pot license" for "channeled whelk pots" to consolidate the regulatory terminology. However, by doing so, Chapter 4 VAC 20-890-25 C 6 obscures whether it is lawful to land knobbed whelk in channeled whelk pots. More than 34,000 pounds of knobbed whelk have been harvested from channeled whelk pots since 2015. Therefore staff recommends specifying an exception to allow for any species of the Busyconidae family of whelks.

Currently, no federal conservation plan for channeled whelk is in effect. Maryland has a minimum shell length of 6 inches and a minimum width of 3 ¾ inches for channeled whelk with no tolerance. Delaware has a minimum shell length of 6 inches and a shell width of 3 ⅛ with a tolerance of 5 channeled whelk per 60 pounds. North Carolina has no whelk regulations at this time. There has been no stock assessment for channeled whelk.

Staff recommends advertising for a March public hearing on amending Chapter 4 VAC 20-890-10 et seq., "Pertaining to Channeled Whelk," to 1) amend or remove the minimum shell width as measured by culling ring, 2) define the undersize tolerance by basket, replacing the bushel and barrel, 3) define the procedure by which law enforcement can select channeled whelk to be culled, and 4) explicitly allow the possession of knobbed whelk and other whelk species in channeled whelk pots.

There were no public comments.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Lusk was not present during vote.

* * * * *

14. DISCUSSION: Request to postpone the February 2019 public hearing on towing fish until the March meeting of the Commission.

Lewis Gillingham, Director, SWFT, presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Gillingham’s comments are a part of the verbatim record.

Mr. Gillingham requested that the public hearing for Chapter 4 VAC 20-740-10 et seq., “Pertaining to the Snagging of Fish,” be postponed until the March 26, 2019 meeting on the advice of the Regulatory Review Committee. Members of the Regulatory Review Committee proposed to extend the scope of the prohibition of towing to any fish with an established possession limit. The rationale is the inclusion of all species regulated with a possession limit will assist in curtailing the practice of high grading, which is substituting a larger fish for a smaller fish that is already in the possession of the fisherman.

Staff recommends re-advertising Chapter 4 VAC 20-740-10 et seq., “Pertaining to the Snagging of Fish,” for a March public hearing such that: Towing of fish means securing to any harvested and possessed fish species regulated by a possession limit that has been placed in water when the engine of the vessel is running and in gear. It shall be unlawful for any person to tow any species of finfish regulated by a possession limit.

There were no public comments.

The matter was before the Commission for discussion and action.

Associate Member Neill made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Lusk was not present during vote.

* * * * *

- 15. DISCUSSION:** Request for approval of the 2019 oyster replenishment and restoration plan and associated procurement procedures.

Andrew Button, Head, Conservation/Replenishment, presented the information provided in the staff's evaluation, with PowerPoint slides. Mr. Button's comments are a part of the verbatim record.

Mr. Button explain that oyster harvests, after decreasing for two consecutive seasons, rebounded slightly during the 2017-2018 season. This modest increase was anticipated as the majority of the Bay and its tributaries saw relatively abundant and wide spread spat sets in 2015 and 2016. The implementation of harvest effort controls and a rotational management strategy has stabilized the level of effort in the public fishery. However, effort is still high and the gear types are efficient enough, so the majority of easily harvested market sized oysters are taken each year. Because of this, low spat sets will result in low harvest rates in subsequent years. Several consecutive years of poor spat sets would likely result in a substantial decrease in public ground production. Private ground production is still largely dependent on natural spat sets. Private ground oyster production could experience a decrease if there are consecutive years of poor recruitment.

In 2017, spat sets were average throughout most areas on the Western Shore and the Tangier Sound. Spat sets were again below average in much of the Pocomoke Sound. Spat sets in 2018 were lower than average in almost all areas of the Bay and its tributaries. This is likely correlated with 2018 being the wettest year the Chesapeake Bay region has ever recorded. In addition, many areas experienced substantial levels of oyster mortality. Portions of the Potomac, Rappahannock, and James Rivers experienced upwards of 90% mortality. There were two areas that received above average spat sets. Portions of the Tangier Sound and the James River that were replenished with fossil shell in 2018 saw substantially higher numbers of spat per square meter. The area in the James River that was planted with fossil shell saw spat numbers in excess of 1000 per square meter in some locations. This highlights the importance of a Virginia bay wide replenishment effort that can take advantage of a spat set even if it is not evenly distributed.

With the number of participants in the fishery relatively stable, the limiting factors will continue to be consistent spat sets, ongoing replenishment and restoration efforts, and an effective harvest management strategy. Many of the recommendations of the 2007 Blue Ribbon Oyster Panel (BROP) and the Shellfish Management Advisory Committee (SMAC) relating to harvest and management have been implemented and have contributed to the increase in public harvest.

In 2007, the BROP recommended that at least \$2.5 million in State General Funds be appropriated each year for oyster replenishment. Funding was inconsistent until FY 2013, when the Governor and the General Assembly appropriated \$2 million for oyster replenishment. Appropriations of \$2 million have been included in budgets for both the

2014-2016 and 2016-2018 biennia. Consistent funding for the oyster replenishment program is critical to maintaining productivity of the public oyster beds. However, the costs of oyster restoration have increased close to 400 percent since 2007. State General Funds were increased for FY 2019 by \$750,000 and \$1 million for FY 2020. However, the budget increase included a change in language in the budget bill. Previously, all the funds were for the “replenishment” of public oyster grounds. The new language makes a distinction between funding for “restoration” and funding for “replenishment”. Although in the past, replenishment has been conducted on both harvest and non-harvest areas, the administration has determined that, with the new budget language, restoration specific funds will be expended only on non-harvest areas. The Governor has included in his budget request for this coming fiscal year an additional \$1 million, of which, \$500,000 is for replenishment and \$500,000 is for restoration. This brings the potential available general funds for this year’s plan to \$4 million.

In addition to the general funds, VMRC has pursued a number of federal grant opportunities that will support restoration activities. This additional funding may have the added benefit of decreasing the per-unit cost of all activities including replenishment, as a substantial portion of the cost of both replenishment and restoration work is the cost to mobilize the equipment and personal needed. The mobilization costs could be shared across both restoration and replenishment work decreasing the per-unit costs of both.

**FUNDING SOURCES: AMOUNT:
Non-Federal**

General Funds Replenishment (GF)	\$2,500,000
General Funds Restoration (GF)	\$1,500,000
The Nature Conservancy (TNC)	\$ 400,000
Non-General Funds (NGF) Various Sources	\$ 150,000

FUNDING SOURCES: AMOUNT:

Federal

NOAA Grants	\$500,000-1,600,000
-------------	---------------------

Seed Transfer:

James River

The Benefits (\$) to Cost (\$) ratio for moving seed oysters with State funds for grow out on public grounds is generally less than one. The Conservation and Replenishment

Department (CRD) has moved a small amount of seed from the James River Hand Tong areas to the Potomac tributaries for many years. In addition, seed has been moved from areas when a very high spat set has occurred on a recent shell plant to areas that have had poor or often get poor sets. Staff has recently been developing a plan to increase the benefits and lower the cost of moving wild seed. A rotational harvest strategy has been implemented in the Potomac River tributaries. The tributaries in the rotation are the Coan, Nomini, and the Yeocomico. One tributary will be planted annually. The first (Coan) was planted last year. The CRD received no responses to the notice to transport and plant seed at the price that was offered last year. However, seed of equal quality was able to be moved for a significantly lower price from an area that received a very good spat set in the lower James River. This area was re-shelled and expanded in 2018, and again received an extremely high spat set. Staff proposes moving this seed to three different areas. As most areas had an extremely low spat set in 2018 the seed movement may offset this slightly when these areas are open to harvest in the future. The Yeocomico, a portion of area 8 of the Rappahannock known as Morattico Bar, and Shell Rock in the Pocomoke Sound would be planted with seed. The areas planted with seed would not be opened for immediate harvest. Staff would evaluate the seed plant areas prior to opening them to harvest. The cost for each bushel of seed to be harvested, transported, and planted in these areas will be at least \$6.00/bushel. Funds from Oyster Resource User Fees will be used for this project.

25,000 bushels of seed oysters @ \$6.00/bu

\$150,000 (NGF)

Piankatank River and Great Wicomico River

In the Piankatank River and Great Wicomico River, VMRC manages a successful program to allow private industry a modest harvest of seed oysters each year. In this program, private leaseholders sign up for the amount of seed oysters that they would like to harvest from the public seed grounds, and they must replace two bushels of shell for each bushel of seed oysters taken. The total standing stocks of oysters in the Piankatank River and Great Wicomico have been relatively consistent over the past few years. However, in 2018, the spat set and count per bushel in the area was very low. It is unlikely that any private lease holders would be interested in participating in the seed program. Staff recommends that no seed oysters be offered to the private industry in 2019. The seed areas will be lightly replenished to encourage spat recruitment in 2019 and maintain their productivity.

Shell Planting:

Bay and Tributaries:

Shells on public beds naturally degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most of the mid-salinity areas in Virginia, the half-life of shells appears to be 3 to 4 years. Shells must be replaced regularly, and the CRD staff determines the areas that are in need of new shell from the results of the VIMS-VMRC annual patent tong survey.

Most of the harvest areas in the Chesapeake Bay and tributaries received an average spat set in 2017 and a poor spat set in 2018. This will likely result in a decrease in market harvest for the 2018-2019 season. Salinity, owing to the continued above average rainfall, has been significantly lower than average. If these weather conditions continue through this year it is probable that spat sets will again be lower than average. With the current level of effort, and gear types utilized, this should lead to decreasing harvests for a number of years. The 2018-2019 season may see only a modest decrease in market harvest. The areas that were not open to harvest in the 2016-2017 or 2017-2018 season will still have market-size oysters because of the better spat sets in earlier years. If spat sets do not improve in the coming years or remain uneven, not only will overall harvest decrease, but fishing effort is likely to shift to areas of higher market oyster density. This will result in these areas becoming depleted at even higher rates. Wide spread replenishment efforts should continue in areas that are determined to be in need of additional substrate. This will prevent further degradation of the public ground. In addition, should a good spat set occur, substrate will be available for spat to settle on and the areas will be able to rebound relatively quickly.

The majority of the appropriation for 2019 will be used for adding new shell to those areas in most need of shell. Funds for oyster restoration are not likely to be enough to maintain the public beds at maximum productivity, but if the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained. In Table 1, there is a list of all of the areas and acreages of oyster beds that staff has determined to be in need of shell in 2019. In total, 600 acres of oyster beds need shell. The CRD will seek to plant the largest quantity of comparable shells for the lowest area dependent per-unit price. This will likely be a combination of house, fossil, and dredged shells.

400 – 600 acres of oyster shell restoration
@ 1,000 bushels/acre @ \$2.50 - \$4.50/bushel = \$2,000,000-\$2,500,000(GF Replenishment)
\$0-\$500,000 (GF Restoration)

Seaside of Eastern Shore:

The CRD Program and The Nature Conservancy (TNC) have consistently collaborated on Seaside replenishment and restoration efforts. Last year (TNC) funds were used on areas both closed and open to harvest. The CRD will contract for shell planting for a Nature Conservancy project, assist with the site selection, and shell planting monitoring. If funding allows additional areas open to harvest will be planted using General Funds.

Approximately 11 acres will be planted with shells harvested from local shell deposits.
11 acres @ 10,000 bushels of shells/acre @ ~\$2.50/bushel = \$200,000 (NGF-TNC)
\$100,000 (GF)

Pocomoke Sound- VA MD line:

The Pocomoke Sound has seen decreased spat sets in recent years. This has resulted in declining harvests and a shift in effort to more productive areas. The VMRC has invested substantial effort in re-shelling portions of the lower Pocomoke. The 2018 ORP included a proposal for a project intended to improve the long-term viability of this area. The areas in the upper Pocomoke closest to the Maryland line had no recent replenishment effort until 2018. One reason for this was concern over cross border poaching. It was thought by some that replenishment efforts would be wasted in areas that are prone to illegal harvest. As a result, these areas were in need of shell for several years and were not planted. It is generally recommended that areas in need of replenishment be either replenished or left closed to harvest. In part, the concern that any oyster resource present would be poached, and at the request of local watermen, portions of the upper Pocomoke were opened to harvest. Although, the cause is not completely clear, spat sets have been down in the years following the decision to open these areas to harvest. In 2018 an approximate 100 to 200 foot area along the border was cleaned, with ordinary oyster dredges, and shells and live oysters were moved further into Virginia. Areas further from the borderline were also replenished, and a small area was open to harvest for the 2018-2019 season. The plan called for replanting the area that had been cleaned with large stones in a thin line to prevent cross border dredging and create a permanent poaching resistant sanctuary. Funding and permitting delays did not allow for this portion of the work to be completed in 2018. Permits for this work have since been issued and it appears that there will be funding to begin a portion of this project in 2019. There may also be an opportunity to complete some of the work with other restoration partners.

7,500 tons of stone @ ~\$40.00/to \$300,000-\$500,000 (GF Restoration) (NGF)

Alternative Cultch Projects:

The supply of shell for restoration, replenishment, and aquaculture will always be limited. The demand for shells in most years tends to be higher than the supply leading to increasing prices. Over the last several years, the CRD and other restoration partners have begun using alternative substrate in certain areas. Non-harvest locations have been planted with larger sized substrate. In the Rappahannock, two small harvest areas were planted with a smaller sized material. The first planting used crushed concrete that was slightly larger than ideal. Some oysters were crushed during harvesting. The second area that was planted used a slightly smaller size. This area was open to harvest recently, and it appears that the size of the alternative substrate is no longer an issue. Not all areas are suitable for planting with stone or concrete. The bottom needs to be firmer than areas that can be planted with shell.

The CRD has identified a number of locations that could have suitable bottom for alternative cultch plantings. These areas tend to have sandier bottoms and low oyster densities. Staff has existing permits (JPAs) for several locations. The locations would be

near the Deep Rock Area, two locations in the Lower Rappahannock, the Lower James River near Nansemond Ridge, and the lower Pocomoke Sound adjacent to Onancock Rock. Only a small portion of the permitted areas would be planted at any given time.

In addition to these harvest areas, federal grant money may be made available for alternative cultch projects in two Virginia tributaries. The Piankatank, and Lynnhaven rivers have been selected for “large scale oyster restoration” as part of the 2014 Chesapeake Bay Agreement. VMRC-CRD has carefully selected locations in these areas for alternative substrate planting that will minimize potential user conflict. The intent is to create “new oyster reefs” that will have multiple benefits to adjacent areas, through improved water quality, increased fish habitat, and oyster larval transport to both public and private ground.

10-50 acres @250 tons/acre @ \$40.00/ton \$100,000-\$500,000
(GF Replenishment)

Up to 150 acres @ 250-500 tons/acre @40.00/ton \$1,500,000-3,100,000
(GF Restoration) (NOAA)

Staff recommends approval of the 2019 Oyster Replenishment and Restoration Plan as well as the associated Procurement Procedures.

There were no public comments.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation of the procurement procedures as presented. Associate Member Everett seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Lusk was not present during vote.

Associate Member Tankard made a motion to approve staff recommendation for the procurement of funds as presented. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Lusk was not present during vote.

* * * * *

- 16. REQUEST FOR PUBLIC HEARING:** Mandatory recreational reporting requirements and request to amend Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Grouper" to modify mandatory recreational reporting requirements.

Ethan Simpson, Fisheries Mgmt. Specialist, presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Simpson’s comments are a part of the verbatim record.

Mr. Simpson explained that the VMRC currently requires reporting of harvest for three recreational fisheries: the spring trophy striped bass fishery, the tilefish/grouper complex, and the cobia fishery. For 2018 and 2019 reporting has been required for the February black sea bass season. Throughout the history of these programs there have been questions about how to improve angler reporting rates. The Commission approved new mandatory reporting requirements for these recreational fisheries beginning in 2017. Not complying with the requirements of each permit could make an angler ineligible for that permit the following year.

Mandatory recreational reporting for these species has had mixed results, with annual rates ranging from 27 to 70%. Although mandatory recreational reporting for the tilefish and grouper species complex has been ongoing in some form since 2009, reporting rates have been consistently low and the data generated by these reports has not been used by staff for any stock assessment or management purposes. Given anglers are now required to report recreational tilefish and grouper catch to federal authorities through NOAA Fisheries' VTR (Vessel Trip Report) program, it has become unnecessary for the Commission to continue mandatory reporting to its own system.

Staff recommends the Commission approve the request for public hearing to amend Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Grouper," to remove the mandatory reporting requirements.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Lusk was not present during final vote.

* * * * *

There being no further business, the meeting was adjourned at approximately 2:05 p.m. The next Commission meeting will be Tuesday, March 26, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary