

MINUTES

COMMISSION MEETING

May 28, 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	
John Zydron Sr.	
Christina Everett	Associate Members
Heather Lusk	
James E. Minor III	
Ken Neill, III	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Erik Barth	Bs. Systems Manager
Robert O'Reilly	Chief, Fisheries Mgmt.
Pat Geer	Deputy Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Adam Kenyon	Fisheries Program Manager
Alicia Nelson	Coordinator, RFAB/CFAB
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Nancy McElligott	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Ethan Simpson	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Robert Berryman	Captain, Law Enforcement
Jeff Copperthite	First Sergeant, Law Enforcement
Nathan Clark	First Sergeant, Law Enforcement
Casey Springfield	Marine Police Officer
Brandon Price	Marine Police Officer
Brian Elliott	Marine Police Officer
Steve Holiday	Marine Police Officer

MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the April 23, 2019 Commission meeting minutes.

Commissioner Bowman advised the Associate Members and others that there was an amendment to the previous draft minutes that were sent to the Associate Members. The amendment reflected the final approval of Item 2 - Permits, “**Associate Member Ballard moved to approve the page two items A and B as presented. Associate Member Neill seconded the motion. The motion carried 7-0. Chair voted yes.**”

Associate Member Zyrdon moved to approve the minutes as amended. Associate Member Neill seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member Everette abstained.

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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 page 2 items A through H for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

- 2A. ADVANSIX RESINS & CHEMICALS, LLC, #19-0424**, requests authorization to install two (2) turning dolphins (25 and 12 feet in width) and a 3-foot wide by 36-foot long steel walkway, at the end of an existing pier in the James River adjacent to their property situated at 905 East Randolph Street in the City of Hopewell. Staff recommends approval contingent on time-of-year restriction from March 15 to June 30 of any year for protection of anadromous fish and the Atlantic Sturgeon, and a royalty of \$1,969.5 for the encroachment over 1,313 square feet of State-owned submerged land at a rate of \$1.50 per square foot.

Royalties: (Encroachment of 1,313 sq.ft. @ \$1.50/sq. ft.)	\$ 1,969.50
Fee:	\$ 100.00
Total Fees:	\$ 2,069.50

- 2B. U.S. ARMY CORPS OF ENGINEERS, #19-0282**, requests authorization to hydraulically place approximately 10,000 cubic yards of dredged material, per dredge cycle from the maintenance of the Chincoteague Inner Channel Federal Navigation Project, on the northeast half of a previously used 103 acre overboard site situated northwest of Lewis Creek in Chincoteague Bay or on a previously used 78-acre overboard site in the Atlantic Ocean of Wallops Island, Accomack County.

Fee:	\$ 100.00
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- 2C. KING GEORGE COUNTY, #18-2014**, requests authorization to install a 1,005 linear foot Class I riprap revetment aligned a maximum 46 feet channelward of mean low water, along an eroding bluff, adjacent to property situated along the Potomac River along Fairview Drive in King George County.

Fee:	\$ 100.00
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- 2D. U.S. ARMY CORPS OF ENGINEERS and CITY OF VIRGINIA BEACH, #19-0145**, request authorization to hydraulically nourish Cape Henry Beach, situated along the Chesapeake Bay in Virginia Beach, with approximately 250,000 cubic yards of sand (per cycle) dredged from the Lynnhaven Inlet Federal Channel. Nourishment is proposed along the beach between First Landing State Park (eastern limit) to the Lesner Bridge (western limit).

Fee:	\$ 100.00
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- 2E. NORFOLK SOUTHERN RAILWAY COMPANY, #15-1667**, requests authorization to modify the previously approved subaqueous impact mitigation plan associated with the authorization bulkhead project and fill over 10,807 square feet of State-owned submerged land. The revised condition will allow the option of constructing or funding an oyster reef restoration project, or the purchase of advanced sediment restoration mitigation credits from the Living River Restoration Trust for Elizabeth River restoration projects. The construction or funding, or purchase of credits shall be no less than \$54,034.00 as previously required for the fill at a rate of \$5.00 per square foot.

- 2F. NORFOLK DEPARTMENT OF PUBLIC WORKS, #19-0345**, requests authorization to install 510 linear feet of riprap breakwater structures as an addition to the existing breakwater field; and extend a 20-inch storm water pipe along Ocean View Beach, in the vicinity of 11th View Street and Toler Place in the City of Norfolk.

Permit Fee:	\$ 100.00
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- 2G. **NATIONAL PARK SERVICE, #17-0921**, requests a modification to their permit authorization for the Dyke Marsh Wildlife Preserve Marsh Restoration Project in Fairfax County. The modification includes the construction of approximately 1,600 linear feet of rock sill with no backfill, with a maximum channelward encroachment for the sill extending to the minus three (-3) foot contour and situated at the southern end of the Preserve near the confluence of Hog Island Gut and the Potomac River adjacent to the George Washington Parkway. All other conditions for the previous approved project shall apply.

- 2H. **McALLISTER TOWING, #19-0231** Requests authorization to install 30 linear feet of riprap revetment, construct a new 10-foot wide by 50-foot long gangway that leads to a 10-foot wide by 200-foot long floating dock, a separate 10-foot wide by 50-foot long marginal pier, 6 (six) new 5-pile timber mooring dolphins and a shallow-water warning buoy in the Elizabeth River adjacent to 902 Southampton Avenue in the City of Norfolk. Staff recommends approval of the project with a royalty of \$6,504.00 for the encroachment over 3,252 square feet of State-owned submerged lands at a rate of \$2.00 per square foot.

Royalties: (3,252 sq.ft. @ \$2.00/sq. ft.)	\$ 6,504.00
Fee:	\$ 100.00
Total Fees:	\$ 6,604.00

Associate Member France moved to approve the page two items A through H as presented. Associate Member Minor seconded the motion. The motion carried 8-0. Chair voted yes.

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

- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** There was no closed meeting required.

- 5. **LAW ENFORCEMENT AWARDS PRESENTATION:**

Rick Lauderman, Chief, Law Enforcement, recognized and presented awards to four (4) Marine Police Officers (MPO's) for outstanding performance. Chief Lauderman's comments are a part of a verbatim record.

Chief Lauderman recognized MPO Brandon Price and MPO Steve Holiday for saving 2 people from a sinking vehicle and providing First Aid for hypothermia on February 23, 2018.

Chief Lauderman then recognized MPO Casey Springfield and MPO Brandon Price for their quick response to a call on October 3, 2018, of a female that jumped from the James River Bridge. MPO Case Springfield and MPO Brandon Price located the female, removed her from the water and provided CPR on their patrol vessel while taking her to the dock where EMS was awaiting to further assist. She had a pulse and was breathing when the officers arrived at the dock.

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6. LICENSE STATUS REVIEW

(6-1) Barry Linton (MRC #0706): Mr. Linton was present and sworn in. His comments are a part of the verbatim record.

Alexander Tucker, Marine Police Officer, was sworn in and stated that Mr. Linton was cooperative. His comments are a part of the verbatim record.

November 1, 2018, Possession of uncultured oysters: 4 VAC 20-260-40 A

Disposition:

November 14, 2018, Accomack County General District Court

Fine: \$50.00

Matt Hull, attorney, represented Mr. Linton. Mr. Hull questioned MPO Tucker about the amount of shell and asked if his cull stick was calibrated. He requested that the Commission dismiss the charge. Mr. Hull's comments are a part of the verbatim record.

GUIDELINE SUGGESTION: 1 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)

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

Mr. Barry Linton, a commercial fisherman registration licensee, was convicted on November 14, 2018 for one count of possession of uncultured oysters (4 VAC 20-260-40 A).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission place Mr. Linton on probation for a period of one year from the date of this Commission meeting, May 28, 2019 through May 27, 2020. Any failure on Mr. Linton's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Mr. Linton appearing before the Commission for a hearing on a license revocation.

Associate Member Zydron made a motion to approve staff recommendation for a 1 year probation as presented. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

(6-2) Arnold Evans (MRC #1122): was not present.

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

November 30, 2018, Unculled oysters 2-4 quart cans of undersize and shell: 4 VAC 20-260-40 A

Disposition:

February 13, 2019, Accomack County General District Court

Fine: \$75.00

GUIDELINE SUGGESTION: 1 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)

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

Mr. Arnold Evans, a commercial fisherman registration licensee, was convicted on February 13, 2019 for one count of uncultured oysters 2-4 quart cans of undersize and shell. (4 VAC 20-260-40 A).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission place Mr. Evans on probation for a period of one year from the date of this Commission meeting, May 28, 2019 through May 27, 2020. Any

failure on Mr. Evans' part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Mr. Evans appearing before the Commission for a hearing on a license revocation.

Associate Member Minor made a motion to approve staff recommendation for a 1 year probation as presented. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

(6-3) Timothy Belvin (MRC #1388): was present and sworn in. His comments are a part of the verbatim record.

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

December 11, 2018, Possession of uncultured oysters (12 quarts): 4 VAC 20-720-80 A

Disposition:

January 28, 2019, Newport News General District Court

Fine: \$150.00

GUIDELINE SUGGESTION: 1 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)

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

Mr. Timothy Belvin, a commercial fisherman registration licensee, was convicted on January 28, 2019 for one count of possession of uncultured oysters (12 quarts) (4 VAC 20-720-80 A).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission place Mr. Belvin on probation for a period of one year from the date of this Commission meeting, May 28, 2019 through May 27, 2020. Any failure on Mr. Belvin's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Mr. Belvin appearing before the Commission for a hearing on a license revocation.

Associate Member Tankard made a motion to approve staff recommendation for a 1 year probation as presented. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

(6-4) Anthony Belvin (MRC #009027): was present and sworn in. His comments are a part of the verbatim record.

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

December 11, 2018, Possession of unculled oysters (12 quarts): 4 VAC 20-720-80 A

Disposition:

January 28, 2019, Newport News General District Court

Fine: \$150.00

GUIDELINE SUGGESTION: 1 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)

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

Mr. Anthony Belvin, a commercial fisherman registration licensee, was convicted on January 28, 2019 for one count of possession of unculled oysters (12 quarts) (4 VAC 20-720-80 A).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission place Mr. Belvin on probation for a period of one year from the date of this Commission meeting, May 28, 2019 through May 27, 2020. Any failure on Mr. Belvin's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Mr. Belvin appearing before the Commission for a hearing on a license revocation.

Associate Member France made a motion to approve staff recommendation for a 1 year probation as presented. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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(6-5) George Firman (MRC #4041): was present and sworn in. His comments are a part of the verbatim record.

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

December 11, 2018, Possession of unculled oysters (12 quarts): 4 VAC 20-720-80 A

Disposition:

January 28, 2019, Newport News General District Court

Fine: \$150.00

GUIDELINE SUGGESTION: 1 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)

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

Mr. George Firman, a commercial fisherman registration licensee, was convicted on January 28, 2019 for one count of possession of unculled oysters (12 quarts) (4 VAC 20-720-80 A).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission place Mr. Firman on probation for a period of one year from the date of this Commission meeting, May 28, 2019 through May 27, 2020. Any failure on Mr. Firman's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Mr. Firman appearing before the Commission for a hearing on a license revocation.

Associate Member Tankard made a motion to approve staff recommendation for a 1 year probation as presented. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 7. BAYLOR CORPORATION, #18-1446**, requests authorization to impact tidal wetlands by constructing an 11-foot by 18-foot riprap stormwater outfall at the terminus of Michael Drive, adjacent to St. Julians Creek in the City of Chesapeake. The project requires a tidal wetlands 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 stated that the Commission is acting as the Wetlands Board.

Ms. Peabody explained that the Baylor Corporation is developing three (3) commercial building sites at the terminus of Michael Drive in the City of Chesapeake. The proposed development includes multistaged storm water treatment ponds that will convey and treat stormwater on site. During abnormally high rain events, the ponds will drain through the proposed outfall to a tidal marsh along St. Julians Creek. The proposed tidal wetland impacts, as stated in the application, are deemed necessary for road access and stormwater infrastructure.

The terminus of the proposed outfall will impact 107 square feet of jurisdictional vegetated wetlands by the placement of an 11-foot by 18-foot riprap splash apron for erosion control. The impacts to tidal wetlands requires a VMRC wetlands permit because the City of Chesapeake has chosen to no longer administer the Wetlands Zoning Ordinance. The applicant has proposed to mitigate for vegetated wetland impacts at the New Mill Creek Tidal Mitigation Bank.

Habitat Management staff held a public hearing at our main office on May 21, 2019. The agent for the project, Mr. Ricky Harris of Bay Environmental, was the only attendant. No public comment was made.

Staff feels the applicant has minimized wetland impacts to the greatest extent possible and finds the proposed mitigation, through the purchase of credits at a tidal mitigation bank, fulfills the Commission's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed conditioned upon the purchase of 107 credits at the New Mill Creek Tidal Mitigation Bank.

Ricky Harris, agent for the applicant, was present but did not wish to comment. He did agree with Staff's recommendation.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

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8. CHESAPEAKE DEPARTMENT OF PUBLIC WORKS, #18-1573, requests authorization to impact tidal wetlands by filling a man-made tidal drainage ditch and converting it to an underground stormwater pipe, and planting 50 square feet of vegetated wetlands between 2000 and 2004 Christopher Drive in the City of Chesapeake. The project requires a tidal wetlands 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 stated that the Commission is acting as the Wetlands Board.

Ms. Peabody explained that the City of Chesapeake has proposed to modify an existing timber bulkhead lined tidal storm-water drainage ditch. The ditch runs between two single-family homes and drains to a vegetated fringe marsh along Baileys Creek. Review of aerial imagery of the location shows that the ditch was constructed in the late 1950s during the construction of the subdivision. The neighboring properties are experiencing elevation losses around the foundations of their homes as the bulkhead fails. To prevent further erosion through the ditch and to better convey stormwater through the subdivision, the City has proposed to fill the ditch and convey the stormwater through a buried 36-inch pipe that will lead to a riprap outfall, landward of the existing fringe marsh along the creek.

The fill of the man-made ditch will result in the loss of approximately 200 square feet of jurisdictional non-vegetated wetlands and 25 square feet of vegetated wetlands. The impacts to tidal wetlands requires a VMRC wetlands permit because the City of Chesapeake has chosen to no longer administer the Wetlands Zoning Ordinance. The applicant has proposed grading and planting 50 square feet of native wetland vegetation at the terminus of the fill. In addition, the applicant has proposed to purchase 25 credits at New Mill Creek mitigation bank to mitigate for the loss of vegetated wetlands.

Habitat Management staff held a public hearing at our main office on May 21, 2019. The agent for the project, Mr. Ricky Harris of Bay Environmental, was the only attendant. No public comment was made.

Staff feels the applicant has minimized wetland impacts to the greatest extent possible and finds the proposed mitigation, through the planting and purchase of credits at a tidal mitigation bank, fulfills the Commission's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

Ricky Harris, agent for the applicant, was present but did not wish to comment. He did agree with Staff's recommendation.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

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9. BRANDON F. BEACH, Oyster Planting Ground Application #2017-010, requests authorization to lease eight (8) acres of oyster planting ground in Hungars Creek, Northampton County. The project is protested by two nearby property owners.

Ms. Lusk recused herself because the applicant is employed by her company.

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 explained that the proposed lease area is located in Hungars Creek, 4.5 miles northwest of the town of Eastville and 0.3 miles east of the Vaucluse Shores subdivision. The majority of the application has controlling depths of between minus three (-3) and minus four (-4) feet at mean low water (MLW) and includes an unmarked channel. The bottom is mostly a sand and mud mix with no submerged aquatic vegetation. Hungars Creek has a large amount of clam and oyster aquaculture activity.

Mr. Beach has no oyster ground leases in his name, however, he does have one additional oyster ground application in Johnson Cove, which is a tributary to Occohannock Creek for ten (10) acres. The applicant intends to use the ground to grow aquaculture oysters in cages or possibly aquaculture clams, provided there is enough suitable bottom.

Existing leases surround Mr. Beach's application, however, staff has not been able to verify that this area had been leased in the past.

Mr. Beach intends to use the proposed lease to grow aquaculture oysters in on bottom cages that are less than 12 inches above the bottom and possibly aquaculture clams if there is enough suitable bottom.

He does not intend to install cages in the unmarked channel. However, Regulation

4 VAC 20-335-30, does authorizes certain shellfish aquaculture structures on leased ground (including nets and cages) provided the structures do not exceed 12 inches above the bottom substrate. In addition, under the same regulation the Commission can direct removal of any structure that causes more than a minimal adverse effect on navigation.

Also, under §28.2-618 of the Code of Virginia, fishing above leased bottom is guaranteed by the Commonwealth provided no person exercising the right of fishing uses any device which is fixed to the bottom, or interferes with the leaseholders' rights or damages the bottoms, or the oysters planted thereon. Crab pots and gill nets are not considered fixed fishing devices provided they are not staked to the bottom.

Accordingly, after considering all of the factors in §28.2-609 and §28.2-618 of the Code of Virginia, and Regulation 4 VAC 20-335-30 and the concerns raised by the protestant, staff recommends approval of Mr. Beach's application for 8.00 acres (6.44 acres and 1.56 acres) of oyster planting ground in Hungars Creek as surveyed and mapped.

No one spoke in support or opposition of the application.

The matter was before the Commission for discussion and action.

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

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- 10. PUBLIC HEARING:** Adoption of Chapter 4 VAC 20-1340-10 et seq., to establish and implement a fast-track permitting program and permit application requirements, in order to authorize the selection and use of appropriate sites for disposal of dredge material on State-owned submerged lands for projects in Tidewater Virginia. The regulation is required pursuant to Acts of Assembly 2018 Chapter 449.

Tony Watkinson, Chief, Habitat Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Watkinson's comments are a part of the verbatim record.

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Mr. Watkinson explained the background for adoption of Chapter 4 VAC 20-1340-10 et seq., to establish and implement a fast-track permitting program and permit application requirements, in order to authorize the selection and use of appropriate sites for disposal of dredge material on State-owned submerged lands for projects in Tidewater Virginia. The regulation is required pursuant to Acts of Assembly 2018 Chapter 449.

Pursuant to Acts of Assembly 2018 Chapter 449, VMRC is required to development a regulation (attached) to establish and implement a fast-track permitting program for dredge material disposal sites. The so-called “Section One” bill reads as follows:

§ 1. That the Marine Resources Commission (the Commission) shall adopt regulations to establish and implement a fast-track permitting program that authorizes the selection and use of appropriate sites in Tidewater Virginia, as defined in § [28.2-100](#) of the Code of Virginia, for the disposal of material dredged in such region, with such regulations to be effective no later than July 1, 2019. The Commission's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia), except that the Commission shall provide an opportunity for public comment on the regulations prior to adoption.

As described in the staff evaluation, because the U.S. Army Corps of Engineers (Corps) is no longer funded to dredge many federally authorized shallow draft channels important to Tidewater communities, local governments have identified the need to conduct the dredging themselves. The legislation for a fast-track permitting program, introduced by Delegate Keith Hodges, is intended to facilitate review of dredging and dredged material disposal siting for these dredging projects. To further support local governments, the Virginia General Assembly established the Virginia Waterway Maintenance Fund in 2018 for shallow draft dredging projects. The Virginia Port Authority, through the Virginia Waterway Maintenance Grant Program, administers this fund. Applications for funding are limited to political subdivisions and governing bodies of Virginia localities. The legislature has allocated \$1.35 million per year for the fund.

Since Commission authority for any proposed dredge project is limited to the use of State-owned submerged lands, the regulation establishes the necessary application requirements and review procedures for fast-track permitting of dredging and dredged material disposal sites involving State-owned submerged lands for local governments in Tidewater Virginia. The regulation stipulates review of an application in 90 days will be considered a fast-track decision by the VMRC.

In certain instances, dredge material may be suitable for placement along shorelines and over State-owned submerged lands if the material is composed of sand for beach nourishment, the material is suitable for creation of living shoreline features, creating wetlands, or developing oyster reef habitat in acceptable locations. Material suitable for living shoreline features may require retention structures such as sills or breakwaters designed as part of the disposal plan.

Pursuant to Subaqueous Guidelines promulgated by the Commission, overboard disposal of dredged material into tidal waters is generally not permitted unless the material is uncontaminated and granular (sand size). When overboard disposal is authorized, areas to be used for placement of the material will be located to minimize impacts on commercially important bottom dwelling organisms such as oysters and clams, submerged aquatic vegetation (SAV), wetlands and other productive shallow water habitats. Overboard disposal areas should be properly shaped and positioned to reduce scour and sedimentation.

The Subaqueous Guidelines recognize that quality dredged material is a valuable State resource and may be used for beach replenishment at public beaches. Sandy dredged materials of suitable quality may be placed on private beaches if a public beach placement site is not suitable or available. The Guidelines also indicate fill material may only be placed on submerged land for shoreline stabilization and/or wetland enhancement when the project can be shown to have positive aquatic resource benefits.

In addition to the Commission's Subaqueous Guidelines, §10.1-704 of the Code of Virginia directs that the beaches of the Commonwealth shall be given priority consideration as sites for the disposal of that portion of dredged material determined to be suitable for beach nourishment.

Currently §28.2-1205.2 of the Code of Virginia establishes a coordinated review process for beach replenishment projects using Chesapeake Bay sand. This section of code establishes time limits for review and necessary application information. As such, it provided a template for the application requirements and review procedures in the proposed regulation.

VMRC staff, at a public meeting in our main office on March 12, 2019, presented an initial draft of the proposed regulation. The meeting was attended by three representatives from local planning district commissions, two from the Chesapeake Bay Foundation, one from the seafood/aquaculture industry, one from the University of William & Mary Coastal Policy Center and a representative from VIMS. Background leading up to the legislation for a fast-track permit was discussed, which focused on the Corps no longer dredging shallow draft channels, and the desire for local governments to assume this role along with the fact that funding is now provided by the State through the Port Authority. Commission staff explained that fast-track permitting can only apply to the Commission's authority to issue permits for use of State-owned submerged land and the fast-track provisions should apply to local government projects only. There seemed to be general agreement the regulation should only apply to local government projects, and with the list of information needed for fast-track review as well as the situations where the fast-track review would not apply. The draft regulation was generally well received. Comments were provided and VMRC staff invited any additional comments the attendees wanted to make following the meeting.

The VMRC Regulatory Review committee has reviewed the regulation and the Secretary of Natural Resources and the Office of the Attorney General have provided additional comments and edits.

Staff recommends adoption of the proposed regulation contained in Chapter 4 VAC 20-1340-10 et seq. with an effective date of June 1, 2019.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

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11. PUBLIC COMMENTS: There were no public comments.

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12. DISCUSSION: Presentation of 2018-2019 Blue Crab Winter Dredge Study results and information and data summaries pertaining to Virginia blue crab fisheries.

Pat Geer, Deputy Chief, Fisheries Mgmt., gave the briefing of the information of the results provided in the staff’s evaluation of the Blue Crab Winter Dredge Survey, with PowerPoint slides. Mr. Geer’s comments are a part of the verbatim record.

Mr. Geer explained that the Bay-wide Winter Dredge Survey is the primary survey used to assess the Bay’s blue crab population. The survey is conducted annually since 1990 by VIMS and MD DNR at 1500 randomly chosen sites from mid-December through mid-March. Sampling during winter when blue crabs are usually buried in the mud and stationary, allows scientists to develop, with good precision, estimates of the number of crabs present in the Bay. The survey objectives continue to describe the size and sex composition of the Bay wide population, develop accurate estimates of Bay-wide blue crab abundance estimate exploitation and fishing mortality and evaluate the status of the stock annually.

On April 24th staff held a conference call with representatives from PRFC and MD DNR to discuss the latest results, develop press releases (see attached Virginia press release), and discuss potential management actions. The Chesapeake Bay Stock Assessment Committee, a subcommittee of the Sustainable Fisheries Goal Implementation Team, will review the new survey results and release their full analysis in their 2019 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 2019. Juvenile crabs become exploitable to fisheries in late summer or fall and represent the 2020 class of spawners.

Since the survey spans two calendar years (December through March), information presented for the 2018-2019 survey season are depicted as the terminal year 2019.

Alexa Kretsch, Fisheries Mgmt. Specialist, gave the briefing of the information provided in the staff’s evaluation on Virginia’s 2018 blue crab harvest with PowerPoint slides. Ms. Kretsch’s comments are a part of the verbatim record.

Ms. Kretsch explained that Virginia harvested 23.1 million pounds of blue crab commercially, which is 98% of 2017’s harvest. This harvest was worth \$24 million in dockside value, which is a 10% decrease since 2017, as adjusted by the Consumer Price Index. Likely due to the cold winter, effort and harvest were below average during the first half of the season, but were above average in the latter half of the season to make up the difference.

Of the over 23 million pounds of blue crabs harvested, 95.8% was caught with hard crab pots, 3.8% came from peeler pots, and all other gears, including trotline, pound net, and crab trap, accounted for 1.2% of harvest. Both crab pot and peeler pot harvest were below the 1994-2018 and 2008-2018 harvest averages but neither was much different from 2017.

Ms. Kretsch presented the results of a simulation to address the Crab Management Advisory Committee’s request for a November bushel increase. If the November bushel limit had been equal to the limit from April to October, 2018 annual harvest would have increased by 0.5%.

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.

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13. **REQUEST FOR PUBLIC HEARING:** Staff proposal to amend Chapters 4 VAC 20-270-10 et seq., “Pertaining to Crabbing,” 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters,” 4 VAC 20-1040-10 et seq., “Pertaining to Crabbing Licenses,” 4 VAC 20-670-10 et seq., “Pertaining to Recreational Gear Licenses,” to establish management provisions for the July 5, 2019 through July 4, 2020 blue crab fisheries.

Commission Meeting

Robert O' Reilly, Chief, Fisheries Mgmt., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. O'Reilly's comments are a part of the verbatim record.

The Chesapeake Bay blue crab stock is currently not overfished, and overfishing is not occurring.

Staff requests the Commission approve advertising these amendments.

Below, please find a description of requested regulatory amendments, by regulation.

1) Chapter 4 VAC 20-270-10 et seq., "Pertaining to Crabbing:

The proposed, substantive amendments include a change to section 40 that establishes the seasonal dates for 2019 and 2020 that pertain to blue crab commercial harvest dates and crab pot removal dates.

The Crab Management Advisory Committee requests the Commission increase the November allowable crab-pot bushel limits to equal those limits in place for October. Current bushel limits, by crab-pot license category for November are:

- 8 bushels, or 2 barrels and 2 bushels, of crabs, if licensed for up to 85 crab pots.
- 10 bushels, or 3 barrels and 1 bushel, of crabs, if licensed for up to 127 crab pots.
- 13 bushels, or 4 barrels and 1 bushel, of crabs, if licensed for up to 170 crab pots.
- 21 bushels, or 7 barrels of crabs, if licensed for up to 255 crab pots.
- 27 bushels, or 9 barrels of crabs, if licensed for up to 425 crab pots.

These lower bushel limits in November are the same as in March (March 17 through March 31); whereas during all other months of the season, including October, the bushel limits are as shown below:

- 10 bushels, or 3 barrels and 1 bushel, of crabs, if licensed for up to 85 crab pots.
- 14 bushels, or 4 barrels and 2 bushels, of crabs, if licensed for up to 127 crab pots.
- 18 bushels, or 6 barrels, of crabs, if licensed for up to 170 crab pots.
- 29 bushels, or 9 barrels and 2 bushels of crabs, if licensed for up to 255 crab pots.
- 47 bushels, or 15 barrels and 2 bushels of crabs, if licensed for up to 425 crab pots.

Staff recommends the Commission approve the advertising of this increase to the November bushel limit.

2). Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters

The crab dredge fishery season has remained closed since the 2008-2009 season. A decision needs to be rendered each year by the Commission on whether to continue to close this fishery or to allow it to open. The Commission will need to decide whether to close the winter crab dredge season for 2018/2019.

At the 2016 and 2017 Commission meetings, there was no public comment on the staff recommendation to close the 2016/17 and 2017/18 winter dredge fishery seasons, and the Commission unanimously endorsed these recommendations.

The winter crab dredge fishery season was from December 1 to the following March 31. During these months, most of the crabs available for harvest are crabs that matured from the juvenile stage in the previous winter. The 2018-2019 estimated abundance of juveniles was 323.7 million, and that estimate is the 8th highest in the 30 years of the Bay-wide Winter Dredge Survey has been conducted. Importantly, the two previous estimates of the winter abundance of juvenile crabs were very low. An estimate of 167 million juvenile crabs in 2018 and 125 million juvenile crabs in 2017 were well below average for this survey. The average estimated juvenile abundance was 257 million crabs, from 1990 through 2017 and 254 million juvenile crabs from 1990-2018. Such pronounced inter-annual variability, especially when juvenile crab abundance is low, means a winter dredge fishery season that mainly harvested female crabs in the past could negatively affect the subsequent crab pot harvest or contribute to a later season impact on the female crab spawning stock.

Staff recommends the Commission approve advertising a closed 2019-2020 winter crab dredge fishery season.

3) Chapter 4 VAC 20-1040-10 et seq., “Pertaining to Crabbing Licenses

The amendments to this regulation concern the transferability of commercial crab fishery licenses. At present, any transfer of commercial crab license requires the transferor to purchase the commercial crab license prior to transferring that license to another (transferee). Yet, since 2004, any person eligible to purchase a commercial crab fishery license has not needed to purchase the license to remain eligible in subsequent years to purchase that license.

Staff suggests that it should be the eligibility to purchase a commercial fishery crab license that should be transferable. At this time, that is the transfer provision for the oyster resource user fee, in that any person eligible to pay the oyster resource user fee may transfer that eligibility to pay such user fee to another. It is evident that the original transferability provisions for commercial crab licenses established in 1999 that required a license to be transferred could have been modified in 2004, when an eligible licensee did not have to purchase a license to remain eligible for that license.

Staff recommends the Commission approve advertising this change in transferability provisions, whereby the eligibility may be transferred.

4). Chapter 4 VAC 20-670-10 et seq., “Pertaining to Recreational Gear Licenses,”

Two amendments to this regulation are requested. Through a series of previous amendments to this regulation, a 2009 amendment erroneously indicated that the daily time limits for commercial crab potting were established in a section of this regulation (4 VAC 20-670-10 et seq.), but those daily time limits are in a different section of a different regulation (4 VAC 20-270-30). An amendment will correct this error.

Part of Chapter 4 VAC 20-670-10 et seq. describes that it shall be unlawful for any person licensed to use five crab pots to fish those pots on Sunday or to fish those pots from September 16 through May 31. Since areas 2 and 4 of the blue crab sanctuary (Chapter 4 VAC 20-752-10 et seq.) are not restricted from recreational crab fishery activities (see below), staff suggests an amendment that would specify that areas 2 and 4 of the blue crab sanctuary were excluded from these prohibitions concerning the 5-crab pot license, and that requires referencing section 30 of Chapter 4 VAC 20-752-10 et seq. in Chapter 4 VAC 20-670-10 et seq..

Staff recommends the Commission approve the advertising of these two amendments.

Staff requests the Commission approve advertising amendments to the four regulations, as described in this evaluation. Staff requests the Commission approve a June public hearing.

The matter was before the Commission for discussion and action.

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

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- 14. PUBLIC HEARING:** Staff request to incorporate the emergency amendments that eliminate the Bay, Coastal and Potomac River Tributaries Spring Trophy-size Striped Bass Recreational Fisheries.as a permanent part of Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass.”

Alex Aspinwall, Fisheries Mgmt. Specialist gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Aspinwall’s comments are a part of the verbatim record.

Mr. Aspinwall explained that in May, the Commission passed an emergency regulation to eliminate the spring striped bass trophy-size fisheries originally established in 1995.

On April 30, ASMFC prescribed a reduction in the harvest plan to lower the current fishing mortality rate, through the initiation of an addendum. The current management plan requires ASMFC to implement a rebuilding schedule that would reduce the fishing mortality rate to the target fishing mortality rate (or lower) within one year. The fishing mortality rate has been above target for several years, and the striped bass stocks were overfished from 2013 through 2017, according to the 2018 stock assessment.

At this time, there is preliminary information from the ASMFC that a 17% harvest reduction will be necessary for all states' fisheries.

From the summary of harvest savings shown below, it is apparent that the elimination of spring trophy-size fisheries will provide very modest savings of striped bass. However, staff does not have a reliable estimate of how many striped bass have been harvested from the recreational trophy-size fisheries. There has been a mandatory reporting requirement since 1995, but only partial reporting has occurred over the years.

2015 through 2018, harvest and release estimates were expanded based on reporting rates.

~70% of all kept fish are 40 inches or greater.

Eliminating the trophy season would save a minimum of 397 fish or 0.35% of the average harvest.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-252-10 et seq. "Pertaining to the Taking of Striped Bass," to eliminate the Bay, Coastal and Potomac River Tributaries Spring Trophy-size Striped Bass Recreational Fisheries.

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.

There being no further business, the meeting was adjourned at approximately 12:02 p.m. The next Commission meeting will be Tuesday, June 25, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary