

MINUTES

COMMISSION MEETING

December 8, 2020

****In consideration of Governor Northam's Executive Order 55 and public safety, the December 8, 2020 Commission meeting of the Marine Resources Commission was held electronically at 9:30 AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting as follows:**

1. Any interested party was invited to visit the agency web calendar at <https://mrc.virginia.gov/calendar.shtm> and look for the 12/08/2020 meeting date to see web links to the draft proposed regulation, instructions for meeting participation, public call-in information, and the meeting Webex livestream web link. Participants was instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting will begin at 9:30AM.
2. All persons interested in commenting were highly encouraged to submit written comments prior to the meeting. Comments sent by mail were to be sent to 380 Fenwick Rd, Ft. Monroe, VA 23561 and should be received by 12/02/2020. Comments could have also have been emailed to fisheries@mrc.virginia.gov and were accepted until NOON on 12/07/2020.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to fisheries@mrc.virginia.gov by 5PM on 12/07/2020.

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

Steven G. Bowman	Commissioner Present via conference call
John Tankard III	
Ken Neill, III	Associate Members
John Zydron Sr.	Present via conference call
Heather Lusk	
Christina Everett	
Wayne France	Associate Members
James E. Minor III	Present via conference call

Commission Meeting

Kelci Block	Assistant Attorney General, Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present via conference call
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call
Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call
Alexa Kretsch	Fisheries Mgmt. Specialist Present via conference call
Tony Watkinson	Chief, Habitat Management Present via conference call
Randy Owen	Deputy Chief, Habitat Management Present via conference call
Justin Worrell	Environmental Engineer, Sr. Present via conference call
Mike Johnson	Environmental Engineer, Sr. Present via conference call

Commission Meeting

Jay Woodward	Environmental Engineer, Sr. Present via conference call
Mark Eversole	Environmental Engineer, Sr. Present via conference call
Allison Lay	Environmental Engineer, Sr. Present via conference call
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping Present via conference call

Virginia Institute of Marine Science (VIMS): Present via conference call

Lyle Varnell	Emily Hein	Mark Luckenbach
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Others present via conference line

A. J. Erskine	Bill Gorham	Caleb Parks
Trevor Green	Cathy Poling	John Sprouse
Matt Rogers	Mike Wills	Phil Zalesak
Ronald Owens	Sonya Shahnaj	Bill Dunn
Kim Huskey	Michael Oesterling	Ben Landry
Ben Nettleton	Bill Emory	John Bello
Brett Arnheiter	Chris Moore	Gloria Hatcher
Jonathan French	Laura Hoey	Mark VanZandt
Monty Deihl	Nick DeSantis	Richard Murray
Tiffany Birge	Andy Lacatell	David Balsley
and others.		

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Commissioner Bowman called the meeting to order at approximately 9:30 a.m.

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Associate Member Tankard said the invocation by the request of Commissioner Bowman.

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

Commissioner Bowman announced that due to the multiple calls from industry prior to the meeting concerning Agenda Item #5, Pubic Hearing for adoption of a Guideline Document Concerning Oyster Planting Grounds Lease Renewal Approval, Lease Renewal Denial, and Commission Hearings for Lease Renewal Denials pursuant to the Code of Virginia Chapter 6, Article 2, General Oyster-Planting Grounds, Section 28.2-613 be removed from the agenda and heard at a later Commission Meeting.

Associate Member Tankard moved to approve the agenda as amended. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Zydron was not present during the vote.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the October 27, 2020 Commission meeting minutes.

Associate Member Neill moved to approve the minutes as presented. Associate Member France seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Members Ballard abstained. Associate Member Zydron was not present during the vote.

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Commissioner Bowman swore in the VMRC staff, VIMS staff and others that would be speaking or presenting testimony during the meeting prior to each item.

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

Commission Meeting

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

- 2A. FORT MONROE AUTHORITY, #20-1533**, requests authorization to install a 20-inch HDPE water main by horizontal directional drill method approximately 30 feet below 1,490 linear feet of Mill Creek adjacent to Mellen Street in the City of Hampton.

Fee:	\$ 600.00
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- 2B. GENERAL DYNAMICS NASSCO, #20-1584**, requests authorization to mechanically maintenance dredge approximately 30,000 cubic yards of State-owned submerged land to a depth of minus fifty-nine (-59) feet mean low water at the Speede Drydock at General Dynamic NASSCO Norfolk facility (200 Ligon Street) along the Elizabeth River in the City of Norfolk.

Fee:	\$ 600.00
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- 2C. DOMINION TERMINAL ASSOCIATES, #20-0320**, requests authorization to hydraulically or mechanically maintenance dredge up to 80,000 cubic yards of state-owned submerged bottom on an as needed basis to maintain depths of -57 feet at mean low water adjacent to Dominion Terminal Associates Pier 11 (600 Harbor Road) along the James River in Newport News.

Fee:	\$ 300.00
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No one spoke in support or opposition of the project.

Associate Member France moved to approve the page 2 Items A through C as presented. Associate Member Minor seconded the motion. The motion carried 8-0. Chair voted yes. Associate Member Zydron was not present during the vote.

- 3. CONSENT AGENDA ITEMS. No consent agenda items.**

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

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AGENDA #5 WAS REMOVED FROM THE AGENDA AND WILL BE PRESENTED AT A LATER COMMISSION MEETING.

- 5. PUBLIC HEARING:** Commission consideration for adoption of a Guideline Document Concerning Oyster Planting Grounds Lease Renewal Approval, Lease Renewal Denial, and Commission Hearings for Lease Renewal Denials pursuant to the Code of Virginia Chapter 6, Article 2, General Oyster-Planting Grounds, Section 28.2-613.

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- 6. TREVOR GREEN, #20-0363.** Commission review, on appeal by the applicant, of the Gloucester County Wetlands Board's October 14, 2020, decision to approve the filling of 500 square feet of vegetated wetlands and 25 square feet of non-vegetated wetlands with off-site mitigation, as part of a bulkhead replacement project along Sarah's Creek at Tax Map #51CC(1)-11.

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

Mr. Johnson explained that the applicant's property, a vacant lot, is located on a branch of Sarah's Creek, which is a tributary to the York River. The shoreline at this location is hardened with a failing bulkhead. The downstream neighbor's shoreline is armored with a bulkhead that was installed in 2014 and the upstream neighbor has a revetment. The channel of this section of the creek was dredged sometime in the 1960's with portions of the channel upstream being dredged from wetlands.

At its June 10, 2020, electronic public hearing, the Gloucester County Local Wetlands Board approved Mr. Green's application to fill 500 square feet of vegetated wetlands and 25 square feet of non-vegetated wetlands with mitigation in the form of a payment

Commission Meeting

into the localities in-lieu fee fund. The Commissioner ordered a review of the project as it did not appear that the Board's decision met the Wetlands Guidelines for approval, given staff's position that the Board failed to consider all of the alternatives to avoid and minimize the wetland impacts. At the July 28, 2020, Commission review hearing, after careful consideration of the record and the testimony provided by staff and the Board Chairman, the Commission remanded the matter back to the Board for further consideration.

The Board reheard the issue at its October 14, 2020, meeting and approved the project as proposed contingent on the applicant creating 500 square feet of vegetated wetlands at a site within the same Hydrologic Unit Code (HUC) in Gloucester County.

By correspondence from Mr. Green dated October 14, 2020, the VMRC was notified of his intent to appeal the decision of the Local Wetlands Board. This notice was considered timely per §28.2-1311 of the Code of Virginia. The applicant and Local Wetlands Board were advised that the Commission would be hearing the appeal.

Section 28.2-1313 of the Code of Virginia specifies when the Commission should modify, remand, or reverse a wetlands board's decision. Based upon our attendance at the hearing and our review of the record, staff believes that the Gloucester Wetlands Board met its obligation in its approval of the project as submitted as specified under §28.2-1302.10.B of the Wetlands Zoning Ordinance. Specifically, it considered all of the alternatives to avoid and minimize impacts to wetlands under its jurisdiction, discussed and determined that a living shoreline was not appropriate in this situation, and required compensation, in the form of marsh creation at a location within the HUC code of the project, which is the preferred mitigation method under the Commission's mitigation and compensation policy.

Even though Mr. Green accepted the permit condition to create 500 square feet of vegetated wetlands at the Wetland Board hearing, he has decided to appeal this decision based upon the premise that he cannot find a suitable area for the mitigation. Accordingly, he would like to be able to pay the required amount of money into the County's in-lieu fee fund to offset the loss of vegetated wetlands.

If the Commission feels the Board's requirement to create 500 square feet of vegetated wetlands is not feasible, then there are alternatives that still meet the State's No Net Loss Policy. The first, and preferred alternative, would be to buy credits at Heartquake Creek Mitigation Bank in King and Queen County. While not in the same HUC code and

Commission Meeting

18664
December 8, 2020

located in another county, this would be permissible under the current mitigation policy and because this is a banking instrument the wetlands are maintained in perpetuity. The second, and generally considered to be the last alternative if no other forms of mitigation are possible, would be to allow the applicant to pay into the County in-lieu fee fund which the County maintains to create vegetated wetlands at a later date.

Section 28.2-1313 of the Code instructs the Commission to modify, remand, or reverse the decision of the wetlands board if the Board, in reaching its decision failed to fulfill its responsibilities, under the wetlands zoning ordinance. Staff believes the Board has fulfilled all of these responsibilities, including the requirement to create vegetated wetlands as compensation, and therefore recommends that the Commission uphold the October 14, 2020, decision of Gloucester County Local Wetlands Board.

Trevor Green, applicant, was sworn in and present on the phone. His comments are a part of the verbatim record.

Mr. Green stated that he purchased the property with the understanding that the mitigation was already completed before the purchase of the property. Mr. Green wished to present a PowerPoint presentation to explain to the Commission his appeal.

The matter was before the Commission to open the record to accept the additional information that the applicant requested to present to further describe his appeal.

Associate Member Everett made a motion to open the record to view further information on the appeal. Associate Member Tankard seconded the motion. The motion failed, 2-7. Chair voted no. Associate Members France, Zydron, Neill, Ballard, Minor and Lusk voted no.

Karla Havens, agent for the applicant was present on the phone. Her comments are a part of the verbatim record.

Walter Priest, Gloucester Local Wetlands Board was present on the phone and explained the Wetlands Board's decision. His comments are a part of the verbatim record.

Ron Owens, LWB Planner, was present on the phone and answered question from the Associate Members. His comments are a part of the verbatim record.

Commission Meeting

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve the applicants request to modify the Gloucester County Wetlands Board’s October 14, 2020 decision, to permit the filling of 500 square feet of vegetated wetlands, but only require payment into the County’s in lieu fee fund for the loss of 100 sq. ft. of tidal vegetated wetlands, recognizing 400 square feet of wetlands had been previously created for the project after it was previously permitted. Associate Member France seconded the motion. The motion carried, 8-1. Chair voted yes. Associate Member Neill voted no.

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- 7. **CASHMAN EQUIPMENT CORPORATION, #20-1394,** requests authorization to construct a 70-foot long by 120-foot wide commercial boat ramp to impact 2,025 square feet of tidal wetlands at property (1500 Steel Street) along the Elizabeth River in the City of Chesapeake. This project requires a tidal wetlands permit.

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

Ms. Lay explained that the project is located along Deep Creek, a tributary to the Southern Branch of the Elizabeth River in the City of Chesapeake. The site has upland industrial facilities and has a steep bank with a fringe marsh. The applicant has proposed to construct a gravel boat ramp with riprap sides to pull barges out of the water so that they can be cleaned and repaired. The boat ramp will impact tidal wetlands along the shoreline.

The proposed boat ramp will result in the conversion of 1,061 square feet of non-vegetated wetlands to gravel boat ramp, 105 square feet of vegetated wetland to intertidal riprap, and 895 square feet of vegetated wetland loss.

The proposed commercial boat ramp will impact tidal vegetated wetlands, but has been minimized to the greatest extent possible while still allowing the applicant to perform their business operations. Although tidal vegetated wetlands will be lost, the project is a water-dependent activity and will aid the business operations of the applicant.

Commission Meeting

Accordingly, 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 wetland credits at the New Mill Creek Tidal Mitigation Bank necessary to replace the loss of 895 square feet of tidal vegetated wetlands.

David Balsley, agent for the applicant, was present by phone if the Associate Members had any questions. His comments are a part of the verbatim record.

Brett Arnheiter was present by phone if the Associate Members had any questions. His 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 France made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during vote.

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8. FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION, #19-2156, requests authorization to construct a 16-foot wide pedestrian bridge spanning approximately 125 linear feet of Dogue Creek, immediately upstream of the Route 235 (Mount Vernon Memorial Highway) bridge crossing of Dogue Creek, in Fairfax County. The project is protested by an adjacent property owner.

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

Mr. Eversole explained that the bridge crossing is part of a larger municipal project to construct a 10-foot-wide shared-use path adjacent to and north of Route 235 (Mount Vernon Memorial Highway) for approximately 1.2 miles between Grist Mill Woods Way and Southwood Drive in Fairfax County. The Mount Vernon Memorial Highway Trail Project is proposed to complete missing segments of the Potomac Heritage

Commission Meeting

National Scenic Trail (PHNST). Once complete, the PHNST would provide a continuous facility, separated from the roadway, for pedestrians and cyclists along Mount Vernon Memorial Highway from Route 1 (Richmond Highway) to the George Washington's Mount Vernon Estates.

A tidal wetlands permit was not required from the Fairfax County Wetlands Board, as the project met the exemption for work in tidal wetlands performed by a locality, as provided in the Wetlands Zoning Ordinance. Commission staff conducted our standard public interest review and received no objections from any State or Federal environmental agencies. Had we not received opposition from an adjacent property owner, a permit for the bridge crossing could have been issued administratively.

While staff understands and appreciates the concerns raised by the protestant, we also recognize the County's desire to construct a safe pedestrian and bike pathway connecting and providing access between the various historic sites that were part of the historic Mount Vernon property. We also understand the constraints of widening and improving existing roadways that have been in use for years and have become surrounded by suburban growth.

Staff has discussed the issues raised by the protestant with the Fairfax County Department of Transportation Project Manager for this pedestrian bridge. The County has confirmed that they will continue to talk with Ms. Poling about her concerns, and address them when appropriate.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of project with the following special conditions:

1. The instream construction activities shall be accomplished within turbidity curtains and cofferdams constructed of non-erodible materials, as detailed in the plans provided, in such a manner that no more than half the width of the waterway is obstructed at any point in time;
2. All concrete shall be allowed to harden in dry conditions;
3. 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

Commission Meeting

materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters;

- 4. 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;
- 5. A time-of year restriction, protective of anadromous fish species, shall be observed. No instream work shall occur between February 15 and June 30 of any year.

Sonya Shahnaj, Fairfax County Project Manager, spoke in support of the project. Her comments are a part of the verbatim record.

Caleb Parks, agent for the applicant was present and spoke on behalf of the project. His comments are a part of the verbatim record.

Cathy Poling, adjacent property owner, spoke in opposition of the project. Her comments are a part of the verbatim record.

Ms. Poling spoke about concerns of potential flooding on her property.

Jonathan Poling spoke in opposition of the project. His comments are a part of the verbatim record.

Mr. Poling spoke to emphasize further concerns with accountability for maintenance to prevent potential flooding and damage to their property

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

Fee:	\$ 300.00
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9. PUBLIC COMMENTS:

Commission Meeting

Michael Davis:

Michael Davis was sworn in and present on the phone. His comments are a part of the verbatim record.

Mr. Davis explained that he was unaware that he did not know that the Oyster User Fee needed to be purchased every year.

After explanation of the regulation and further discussion from the Associate Members, Associate Member France made a motion to reinstate Mr. Davis's Oyster User Fee due to the hardship of COVID-19. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Laura Hoey: Representing William Haynie

Laura Hoey, on behalf of William Haynie, is requesting the reinstatement of Marie Haynie's commercial card to allow transfer of her Striped Bass tags. Her comments are a part of the verbatim record.

Pat Geer, Chief, Fisheries Mgmt., explained in detail, the license history and the reason why the request was previously denied.

Associate Member Tankard made a motion to reinstate the Commercial Card and the transfer of Striped Bass tags. Associate Member Everett seconded the motion. The motion carried, 8-1. Chair voted yes. Associate Member Zydron voted no.

Arnold Evans: Not present but submitted written comment

Mr. Evans was not present but Andrew Button paraphrased his written comment. Mr. Evans was requesting to transfer his Oyster User Fee although he did not meet the required previous days of harvest the previous year.

Commissioner Bowman requested that Mr. Evans be present during the meeting in case staff or Associate Members had questions that needed to be answered to determine a decision.

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Commission Meeting

10. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a new recreational season and vessel limit to comply with required reductions per Amendment 1 of the Interstate Fisheries Management Plan for Atlantic Migratory Group Cobia, as well as establish a prohibition on gaffing.

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

Ms Smott explained that on August 2019, the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 of the Interstate Fisheries Management Plan (FMP) for Atlantic Migratory Group Cobia. A portion of Amendment 1 details a harvest specification process, a 3- year evaluation of the recreational fishery using the estimates from the Marine Recreational Information Program (MRIP) and a comparison to a "soft target" set by the ASMFC Board. State specific management measures can be adjusted based on the resulting comparison over the evaluation years. The MRIP estimated recreational cobia harvest in Virginia in 2017-2019 averaged 50,354 fish. The new soft target set by the ASMFC Board for the 2021-2023 recreational cobia season is 30,302 fish. As a result, Virginia must meet at least a 40% reduction in recreational cobia harvest.

In 2017, ASMFC adopted the FMP for Atlantic Migratory Group Cobia as a cooperative management plan with the South Atlantic and Gulf of Mexico Fishery Management Councils. The FMP set the coastwide Recreational Harvest Limit (RHL) at 620,000 pounds. Virginia receives 39.4% of the coastwide RHL, which resulted in a soft target of 244,280 pounds OR 8,724 fish during 2017 to 2019. At the March 27, 2018 Virginia Marine Resources Commission (VMRC) meeting, the Commission chose to lengthen the season and remove the gaffing prohibition because analyses based on the carcass donation program indicated the predicted landings were projected to be much lower than the Virginia-specific RHL.

Among other changes, Amendment 1 to the FMP (established in 2019), transitioned management of cobia from the South Atlantic and Gulf Atlantic Fishery Management Councils to ASMFC. Following a stock assessment update in 2018, ASMFC approved a revised coastwide quota to be distributed in numbers of fish instead of pounds. The overall quota was set at 80,112 fish at the February 2020 ASMFC meeting. At the October 2020 ASMFC meeting, Addendum I was approved and adjusted the sector

Commission Meeting

allocations, such that 96% of the coastwide quota was allocated to the recreational sector and 4% was allocated to the commercial sector. In Virginia, the new quota established in Amendment 1 in addition to the new 1 sector allocations established in Addendum I result in a recreational soft target of 30,302 fish. The Cobia Technical Committee (TC) met on September 30, 2020 to discuss VMRC staff's proposed reduction options for Virginia's recreational cobia fishery. As this was before the October ASMFC meeting, staff presented reduction options based on the previous sector allocations (92% recreational and 8% commercial) to estimate the most conservative reduction options. As such, prior to the approval of Addendum I, the resulting reduction to Virginia's recreational cobia fishery required by the FMP was 42%. Note, the FMP specifies that only vessel limit changes and/or season adjustments can contribute to the overall change in management measures, so changes to minimum size restrictions were not considered. The reduction analysis and the remaining reduction options, including the prohibition on gaffing, were approved by the TC. On October 14, 2020, the Finfish Management Advisory Committee (FMAC) had a meeting to discuss the recreational cobia options for 2021-2023. The FMAC voted unanimously in favor of the staff recommended amendments (Table 1), including the prohibition on gaffing, for the 2021-2023 seasons. In addition to providing their recommendation, FMAC requested that staff survey a greater number of anglers to have more input on the proposed options. The FMAC chose the five most reasonable proposed options to be included in the survey. Staff made the online survey available to the public from October 19 to October 30, 2020 to solicit public input about the proposed management measures. There were 591 responses. The majority of respondents (49%) supported the staff recommended season (June 15 to September 15) and vessel limit (2 fish). The second, most supported (26%) management option was to reduce the vessel limit to 1 fish but maintain the current 2018-2019 season (June 1 to September 30). The issue of gaffing was split almost evenly, such that 48% of respondents supported a gaffing prohibition, while 52% opposed it. Based on the new sector allocations (Addendum I), staff estimated Virginia must take a 40% reduction to meet the 2021-2023 soft target. Staff recommends proposed management options based on the original 42% reduction to exercise an abundance of caution. To further ensure a sustainable recreational cobia fishery in Virginia, staff also recommends a prohibition on gaffing to reduce harvest of undersized fish. In the years that gaffing was prohibited, 4% of MRIP-intercepted catches contained undersized fish. During the years in which gaffing was allowed, 15% of MRIP-intercepted catches contained undersized fish. Anecdotally, several anglers have indicated that as the cobia fishery grows, more and

Commission Meeting

more inexperienced anglers who participate are gaffing undersized fish. When VMRC originally removed the gaffing prohibition, it was also believed that recreational landings in Virginia would be well below the quota, which was cited as a buffer to allow gaffing. We now know that Virginia exceeded the quota in those years. Although there is not enough data to show the direct relationship between gaffing and harvest of undersized fish, the correlation observed by staff and the anecdotal information provided by anglers indicates that stricter management measures may benefit Virginia's recreational cobia fishery over the long term.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a new recreational season and vessel limit to comply with required reductions per Amendment 1 of the Interstate Fisheries Management Plan for Atlantic Migratory Group Cobia, as well as establishing a prohibition on gaffing.

Mike Wills spoke in opposition to the proposed seasons and prohibition on gaffing. His comments are a part of the verbatim record.

Bill Gorham spoke in opposition to the proposed change in seasons and prohibition on gaffing. His comments are a part of the verbatim record. He is requesting a June 1 start date for Cobia season.

Jonathan French spoke in opposition to the proposed management measures. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Neill made a motion to approve staff recommendation. Associate Member Everett seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 11. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden," to establish the 2021 Total Allowable Catch per Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden and the Ecological Reference Point Benchmark Assessment and to establish all associated fishery sector allocations in response.

Commission Meeting

Shanna Madsen, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff's evaluation, with PowerPoint slides. Ms. Madsen's comments are a part of the verbatim record.

Ms. Madsen explained that the Atlantic States Marine Fisheries Commission (ASMFC) approved a decrease in the coastwide total allowable catch or landings (TAC) of menhaden at the October 2020 annual meeting. The 2018- 2020 coastwide TAC was 216,000 metric tons; the 2021-2022 coastwide TAC is 194,400 metric tons. This represents a decrease of 10% from the coastwide TAC that was implemented by the ASMFC in 2017. For Virginia, the total allowable commercial landings decreased to 335,206,390 pounds for 2021. This amount represents 78.66% of the coastwide total allowable catch (TAC) after 1% of the TAC is set aside for episodic events. All sector-based percentages remain the same. The purse seine menhaden reduction sector share is 90.04%; the purse seine menhaden bait sector share is 8.38%; and, the non-purse seine menhaden bait sector share is 1.58% of the total allowable commercial landings. The Chesapeake Bay Cap is established at 51,000 mt for 2021 per Amendment 3 of the Fishery Management Plan, an increase from 36,196 mt in 2020. The Cap was reduced in 2020 per Amendment 3, as a response to the 2019 Bay Cap overage.

Staff recommends the Commission adopts these amendments to Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden" to establish the 2021 Total Allowable Catch per Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden and the Ecological Reference Point Benchmark Assessment and to establish all associated fishery sector allocations in response.

Tom Lilly, Phil Zalesak, and Tim Wills spoke in opposition to staff recommendations. A.J. Erksine spoke on behalf of the purse-seine bait fishery. Chris Moore and Ben Landry spoke in favor of staff recommendations. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

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Commission Meeting

- 12. **RECOMMENDATION:** From the Recreational Fishing Advisory Board on funding projects from the VSRFDF and MFIF.

Alicia Nelson, Coordinator, RFAB/CFAB, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Nelson’s comments are a part of the verbatim record.

No one spoke in support or opposition.

The matter was before the Commission for discussion and action.

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

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There being no further business, the meeting was adjourned at approximately 2:46 p.m.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary