

## MINUTES

## COMMISSION MEETING

May 25, 2021

**\*\*In consideration of Governor Northam's Executive Order 55 and public safety, the May 25, 2021 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 05/25/2021 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 05/19/2021. Comments could have also have been emailed to [fisheries@mrc.virginia.gov](mailto:fisheries@mrc.virginia.gov) and were accepted until NOON on 05/24/2021.
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](mailto:fisheries@mrc.virginia.gov) by 5PM on 05/24/2021.

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

John Zydron Sr.

Wayne France

Heather Lusk

Chad Ballard

Christina Everett

James E. Minor III

Associate Members  
Present via conference call

**Commission Meeting**

**18753  
May 25, 2021**

Kelci Block	Assistant Attorney General Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Erik Barth	Bs. Systems Manager Present via conference call
Todd Sperling	Bs. Systems Manager Present via conference call
Gloria Hatcher	Deputy Chief, Acct. Manager Admin. & Finance Management 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
Andrew Button	Head, Conservation & Replenishment 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
Alexa Galvan	Fisheries Mgmt. Specialist Present via conference call

**Commission Meeting**

Randy Owen	Chief, Habitat Management Present via conference call
Mike Johnson	Environmental Engineer, Sr. Present via conference call
Jay Woodward	Environmental Engineer, Sr. Present via conference call
Jeff Madden	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
--------------	------------	-----------------

Others present via conference line:

Daniel Adams	Joanie Beatley	Myles Cockrell
Patrick Oliver	Ryan Croxton	Charlie Thompson
Ellen Grimes	Richard Calvert	Peggy Sanner
Rachael Peabody	Jay Ford	James White
Travis Croxton	Michael Oesterling	Deborah Murray
Mark Hiltke	Robert Potter	Brian Joyner
Bruce Julian	Chris Brown	Daniel Redgate
Kim Huskey	Gerald Songy	Henry Pollara
Daniel Hickey	Daniel Brunkow	Katherine Herman
K. C. Filippino	Mary Carson Stiff	Rick Holzshu
Max Slish	Olivia Siegal	Patrick Fanning
Sam Jasinski	Brent Hinsinger	and others.

\* \* \* \* \*

**Commission Meeting**

**18755  
May 25, 2021**

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

\* \* \* \* \*

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

\* \* \* \* \*

Commissioner Bowman announced that the June 22, 2021 Commission Meeting will be an in person meeting and held at the Main Office, located at Fort Monroe. Commissioner Bowman announced that Randy Owen has been promoted to Chief, Habitat Management. Commissioner Bowman also announced that the main office, located at Fort Monroe, will re-open to the public on July 6, 2021.

\* \* \* \* \*

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

**Associate Member Zydron moved to approve the agenda as presented. Associate Member Tankard seconded the motion. The motion carried, 9-0. Chair voted yes.**

\* \* \* \* \*

**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the April 27, 2021 Commission meeting minutes.

**Associate Member Zydron moved to approve the minutes as presented. Associate Member Neill seconded the motion. The motion carried, 7-0-2. Chair voted yes. Associate Members France and Minor abstained.**

\* \* \* \* \*

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.

\* \* \* \* \*

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

Randy Owen, Chief, Habitat Management, reviewed the page 2 Items A through E for the Associate Members. Mr. Owens’s comments are a part of the verbatim record.

- 2A. **CITY OF VIRGINIA BEACH, #20-2310**, requests authorization to nourish Cape Henry Beach with beach-quality sand dredged from the Thimble Shoals Federal Navigation Channel. Approximately 331,300 cubic yards of sand will be hydraulically pumped onto the existing shoreline to widen the beach located between the Lesner Bridge and First Landing State Park, situated along the Chesapeake Bay in the City of Virginia Beach. Staff recommends approval with a time-of-year restriction precluding nourishment activities from May 1 through November 15 to prevent impacts to possible sea turtle nesting sites, however, the City would be allowed to nourish during this time frame provided they coordinate with the Department of Wildlife Resources and follow sea turtle nest protection measures including having qualified inspectors monitor the beach daily in the area of ongoing nourishment. Furthermore, staff recommends approval with a time-of-year restriction precluding nourishment activities from September 1 through October 31 to avoid conflicts with annual beach haul seine fishing operations.

Fees:	\$ 300.00
-------	-----------

- 2B. **CITY OF ROANOKE, #21-0205**, requests authorization to replace the Main Street / US Route 221 Bridge and install a temporary work causeway adjacent to the proposed new bridge over the Roanoke River in the City of Roanoke. Staff recommends approval of the project with the standard instream conditions with a special permit condition for a time-of-year restriction for instream work from March 15 through June 30 of any year to protect endangered finfish species, unless specifically waived in writing by the Department of Wildlife Resources.

Fees:	\$ 600.00
-------	-----------

- 2C. **CITY OF NORFOLK, #20-2232**, requests authorization to hydraulically pump 393,000 cubic yards of sand from Thimble Shoals Channel to four (4) reaches of Ocean View Beach totaling 14,400 linear feet along the Chesapeake Bay in the

City of Norfolk. Staff recommends approval of the project with a time-of-year restriction from May 1 through November 15 to prevent impacts to possible sea turtle nesting sites, however, the City would be allowed to nourish during this time frame provided they coordinate with the Department of Wildlife Resources and follow sea turtle nest protection measures including having qualified inspectors monitor the beach daily in the area of ongoing nourishment.

Fees:	\$ 600.00
-------	-----------

- 2D. BRG LITTLE CREEK, LLC, #21-0060**, requests authorization to construct 465 linear feet of bulkhead no more than two (2) feet channelward of existing, failing bulkhead adjacent to Cutty Sark Marina (4707 Pretty Lake Avenue) along Little Creek in the City of Norfolk. Staff recommends approval of the project with a royalty of \$2,874.00 for the fill of 958 square feet of State-owned submerged land at a rate of \$3.00 per square foot.

Royalties: (Fill 958 SF @ \$3.00 / SF)	\$ 2,874.00
Fees:	\$ 600.00
Total Fees:	\$ 3,474.00

- 2E. HUNTINGTON INGALLS INC. – NEWPORT NEWS SHIPBUILDING, #21-0461**, requests authorization to construct a 225 linear-foot steel, double-walled cofferdam in front of existing concrete apron, seal abandoned flood tunnels and extend storm drain outfalls. Additionally, they request authorization to install a fender and mooring system to support waterfront operations at Newport News Shipbuilding, Dry Dock #3, along the James River in the City of Newport News.

Fees:	\$ 600.00
-------	-----------

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member Ballard moved to approve the page 2 Items A through E as presented. Associate Member Neill seconded the motion. The motion carried 9-0. Chair voted yes.**

\*\*\*\*\*

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

\*\*\*\*\*

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

\*\*\*\*\*

**5. PUBLIC HEARING:** Update of the Commission's Wetlands Guidelines developed pursuant to requirements of the 2011 and 2020 living shorelines legislation and §28.2-104.1 of the Code of Virginia.

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

Mr. Owen explained that originally adopted in 1974, the Tidal Wetlands Guidelines were last updated in 2005. The need to incorporate additional standards, necessary for the protection and coastal resilience of Virginia's tidal wetland acreages, was addressed by the General Assembly with the passage of living shorelines legislation in 2011 and 2020. Senate Bill 964 (2011) and the resulting legislation established living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. More recently, Senate Bill 776 and the resulting 2020 legislation requires the Virginia Marine Resources Commission to promulgate and periodically update minimum standards within the Guidelines for the protection and conservation of wetlands and to approve only living shoreline approaches to shoreline stabilization, unless the best available science shows that such approaches are not suitable.

To initiate the update, staff initially contacted the Virginia Institute of Marine Science (VIMS) for assistance and guidance. An interdisciplinary team of scientists was convened to collectively advise Commission staff on the matter. In addition to the input

provided by VIMS, last fall a series of public workshops were held concerning the proposed update of the Guidelines. Following the workshops, staff began preparing the initial draft.

The totality of the comments received, pro and con, were taken into consideration by staff. It is staff's opinion that the resulting draft Tidal Wetlands Guidelines May 2021 Update, before you today, meets the provisions as directed in §28.2-104.1 of the Code of Virginia. Specifically, four additional minimum standards were developed and incorporated by VMRC and VIMS staff to ensure the protection and conservation of tidal wetlands.

The four additional minimum standards recommended for adoption include requirements that:

- Any application for a project including erosion control projects, removal of vegetation, construction access or land disturbance, that will impact the Resource Protection Area must also be independently approved by the local government as consistent with the Chesapeake Bay Preservation Act (CBPA), § 62.1-44.15:72.
- Project review of any proposed uses or development of tidal wetlands shall include data derived from an onsite analysis and provided on scaled drawings that includes consideration of shoreline variables such as fetch exposure, fastland bank condition, bank height, bank composition, etc.
- Proposed uses or development of tidal wetlands must allow, to the maximum extent possible the landward migration of existing vegetation over the useful life of the project, using the 2017 NOAA Intermediate-High scenario projection curve or, in the future, any updated projection based on the best available science and selected through the Coastal Master Plan process.
- Proposed uses of tidal wetlands shall only be approved if the development proposed meets the criteria of the updated Guidelines and that VMRC and local wetlands boards approve only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable pursuant to § 28.2-104.1

Consideration was also given to the daily stressors associated with the use or development of tidal wetlands coupled with the added risks associated with sea level rise and climate change. As the Commission knows, tidal wetlands provide critical habitat in support of the Commonwealth's recreational and commercial fisheries and vital



ecological services required for a healthy Chesapeake Bay.

The proposed update also communicates to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for shoreline stabilization. This document will aid citizens and local decision makers in making on-site jurisdictional determinations, explain the risks and benefits provided by various shoreline treatments, and identify preferred shoreline management options.

In summary, the local wetlands boards' consideration of VMRC's Tidal Wetlands Guidelines are a key tool in performing the citizen-based administration of the program, which aims to effectively balance tidal wetlands preservation with protection and use of private property. Accordingly, in keeping with the authority of §28.2-103 of the Code of Virginia, staff recommends adoption of the Tidal Wetlands Guidelines May 2021 Update as presented for consideration by the full Commission on this date.

There were eleven (11) people that spoke with comments and concerns. 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 approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.**

\* \* \* \* \*

- 6. TERRY WINDSOR, #20-2052**, requests authorization to construct 185 linear feet of riprap revetment, 334 linear feet of sill, 26 linear feet of marsh toe sill, and place sand fill with native vegetation adjacent to 14255 Barn Woods Road along Pungoteague Creek in Accomack County. This application was continued from the March 2021 Commission meeting and requires a dune and beach 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 at the confluence of Pungoteague and Underhill Creeks in Accomack County. The shoreline is exposed to a large fetch and has a sandy beach with an eroded upland bank and numerous fallen trees. The nearshore area is fairly shallow and there is a bed of submerged aquatic vegetation (SAV) about 100 feet channelward of the beach. The applicant has proposed to construct a marsh toe sill adjacent to an existing vegetated marsh, three sills with beach nourishment and native plantings, and three riprap revetments along the scarped upland bank. The proposed project will result in impacts to a jurisdictional beach and State-owned submerged lands.

The applicant has submitted revisions that take into account the comments received from VIMS. They have now incorporated a living shoreline aspect to this project that has sand fill with native vegetation being planted. This will help to stabilize the existing sandy beach area while also protecting the upland riparian forest. Staff’s original concerns about the riprap revetment causing the beach to narrow have been addressed, and we feel that the most recently proposed project is suitable for this shoreline.

Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1403(10)(B), §28.2-1205(A), and §28.2-104.1 of the Code of Virginia, staff recommends approval of the project as proposed.

Ellen Grimes, agent for the applicant, was present. Her comments are a part of the verbatim record.

No one spoke in opposition of the project.

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, 9-0. Chair voted yes.**

Fees:	\$ 300.00
-------	-----------

\* \* \* \* \*

- LITTLE WICOMICO OYSTER COMPANY, LLC, #20-1040**, requests authorization to place up to 511 3-foot by 5-foot floating shellfish aquaculture cages, consisting of lines of various lengths, anchored every 100 feet with

concrete anchors, over the applicant's oyster planting ground lease #20423, impacting approximately 164,000 square feet of State-owned subaqueous bottomlands, within a the Little Wicomico River, near the northern shoreline, immediately upstream of the Sunny Bank ferry land in Northumberland County. The request is protested by a number of nearby property owners. The Virginia Department of Transportation (VDOT) has also expressed concerns about the close proximity of the proposal to the small car ferry operated by VDOT at this location. requests authorization to install two (2) modules containing 150 floating oyster cages, each module within a 315-foot by 145-foot moored installation area, both modules covering up to 91,350 square feet of State-owned subaqueous bottomlands, within the boundaries of the applicant's oyster planting ground lease #22490, in the Rappahannock River northeast of Parrott Island in Middlesex County. The request is protested by a nearby property owner.

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 staff received a Joint Permit Application from Little Wicomico Oyster Company, LLC, on June 15, 2020, requesting to place up to 511 three-foot by five-foot floating shellfish aquaculture cages, secured with lines of various lengths every 100 feet with concrete anchors, within the boundaries of the applicant's oyster planting ground lease #20423. The structures will encroach over approximately 164,000 square feet of State-owned subaqueous bottomlands, within the Little Wicomico River, near the northern shoreline and immediately upstream of the VDOT Sunny Bank ferry in Northumberland County. The downstream lease line is approximately 20-30 feet from the ferry crossing. The ferry runs along two cables from shore to shore keeping the vessel within a uniform alleyway as it crosses the river.

The request has been subjected to our normal public interest review to include a newspaper public notice and notification of nearby leaseholders and highland property owners. Beginning in October of 2020, staff began to receive objections to the proposal from highland property owners in the vicinity of the application request. Those in opposition provided concerns about impacts to navigation, the close proximity to the ferry operation, other uses of the waterway for recreational and fishing purposes, view shed concerns, and possible adverse impacts to property values. Additionally, one nearby highland property owner expressed concerns about potential future pier

construction plans and possible interference with access to any such pier when constructed.

Staff considers each Joint Permit Application request on a case-by-case basis, considering the requirements of the Code of Virginia. The use of cages, floats and nets, for shellfish propagation, has resulted in increased public awareness of such activity and highlighted the necessity for a more comprehensive review of these methods of shellfish aquaculture propagation. Such requests in populated areas raise issues regarding public trust lands to include user conflicts, property values, aesthetics, navigation impacts, and suitable bottom types. Stewardship of public trust lands, while weighing the public and private benefits versus detriments, requires a balanced approach to the review of such permit requests.

While the applicant would prefer to use the entire footprint of the existing lease, staff believes providing a buffer of 170 feet to any float anchors and 200 feet to any floats from the ferry crossing is a reasonable compromise. Leaving such a buffer will also provide navigation access to any future pier that may be constructed by the property owner upstream of the ferry landing on the north side of the river. Therefore, after careful review and consideration of the objections raised by nearby and adjacent property owners, and after considering all of the factors of §28.2-1205A of the Code of Virginia, staff recommends approval for the placement of floating aquaculture gear with floats no closer than 200 feet from the ferry crossing. Any approved float area shall be marked with either warning signs or buoys at corner areas and at least one such marker along both the offshore and inshore lease line. The applicant shall provide both a surety bond no less than \$15 per enclosure deployed and revised drawings of the exact approved area before any permit shall be issued. The royalty for any approved area shall be based on the revised drawings assessed at the rate of \$0.005 per square foot of the permitted area.

Myles Cockrell, applicant, spoke on behalf of the lease application. His comments are a part of the verbatim record.

Jim Wesson spoke in support of the application. His comments are a part of the verbatim record.

There were four (4) people that spoke in opposition of the application. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

\* \* \* \* \*

**8. RAPPAHANNOCK RIVER OYSTERS, LLC, #20-1239,** requests authorization to install two (2) modules containing 150 floating oyster cages, each module within a 315-foot by 145-foot moored installation area, both modules covering up to 91,350 square feet of State-owned subaqueous bottomlands, within the boundaries of the applicant’s oyster planting ground lease #22490, in the Rappahannock River northeast of Parrott Island in Middlesex County. The request is protested by a nearby property owner.

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 staff received a Joint Permit Application from Rappahannock River Oysters, LLC, on July 14, 2020, requesting authorization to install two (2) modules, each containing 150 *OysterGro* floating aquaculture cages, within a 315 foot by 145 foot moored installation area (91,350 square feet). The requested area is within the applicant’s lease #22490, northeast of Parrot Island in the Rappahannock River in Middlesex County.

The applicant’s drawings depict water depths for the project area ranging from 5.2 to 6.7 feet at mean low water. The floats are proposed to be anchored with augur anchors, with each module having four buoy markers at the module corners.

The Commission, at its May 2018 meeting, previously denied the applicants request for a floating gear proposal at a location inshore of Parrott Island. The site was much closer to shore where visibility from nearby residents was more likely, and in shallower water where SAV beds were present. The current site is in deeper water and away from nearly all residential areas, other than the (non-permanently occupied) single structure on Parrott Island. The requested floats are located approximately 760 feet offshore of the island, and approximately 2,600 feet from the aforementioned structure, the distance to any other residential lands is over 1 mile, and to the bridge is approximately 7,000 feet away.

SAV beds have not been present at the requested project location in decades and, along with projected sea level rise rates, appears unlikely such vegetation will return in this area. As such, staff does not believe placement of floats at this site will impact current or future SAV beds.

In addition, it does not appear simply relocating such floating gear in deeper water would have any benefit related to potential loss of gear in storm events, and may actually increase the risk of such failure due to greater wave height and gear interaction. Staff does recommend and the applicant proposes to mark each module area with warning signage (signs or buoys). Staff also recommends (and the applicant has indicated their willingness to provide) an appropriate bond before permit issuance if the proposal is approved.

Therefore, after careful review and consideration of the objections raised by local and adjacent property owners, and after considering all of the factors of §28.2-1205A of the Code of Virginia, staff recommends approval as requested by the applicant. Staff recommends a bond equivalent to \$15 per float (300 X \$15 = \$4,500) be provided before permit issuance and that the applicant pay an annual royalty of \$456.75, assessed at the rate of \$ 0.005 per square foot for encroachment over 91,350 square feet of State-owned subaqueous bottomlands. The applicant shall mark each module area with signage or buoys.

Two (2) people spoke in support of the application. Their comments are a part of the verbatim record.

Three (3) people spoke in opposition of the application. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Ballard made a motion to approve staff recommendation and require that the gear be marked with reflective tape. Associate Member Lusk seconded the motion. The motion carried, 9-0. Chair voted yes.**

Royalties: (Structures: 91,350 SF @ \$0.005 / SF)	\$ 456.75
Fees:	\$ 300.00
Total Fees:	\$ 756.75

\* \* \* \* \*

- 9. JOANNIE BEATLEY, Oyster Planting Ground Application #2017-005,** requests authorization to lease approximately 13 acres of State-owned subaqueous bottomlands within the Severn River, Northwest Branch in Gloucester County. The application is protested by a nearby property owner.

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 staff received an Application for Oyster Planting Ground from Joanie R. Beatley on January 3, 2017. The request was subjected to our normal public interest review to include a newspaper public notice and posting of the application at prominent locations near the requested site. The area requested includes both a recently vacated area offshore, adjacent to Public Grounds and other leases, and a narrow area between mean low water and the applicant’s existing leases (#19759 and #19760). The applicant was seeking to add any new areas that could be authorized to her existing adjacent leases.

Staff is sympathetic to and understands the concerns of highland properties when lease requests include areas up to, or near the mean low water line. Due to the existence of SAV in this area, however, staff excluded all the nearshore portion of the request from the surveyed area. While this exclusion would seem to address the nearby adjacent property owner’s concern, he continues to object. Staff believes approval of the offshore area is appropriate and consistent with current lease requirements.

After careful review and consideration of the objection initially raised by the protestant, and in consideration of all of the factors of Chapter 6, Article 2, 28.2-603 et.seq. and §28.2-1205A of the Code of Virginia, as well as the public benefits and impacts of shellfish aquaculture, staff recommends the Commission approve leasing of an

**Commission Meeting**

additional 6.98 acres of oyster planting grounds to the applicant. This new area is to be combined with Ms. Beatley's existing adjacent leases, for a total lease area of 38.29 acres.

Joannie Beatley, applicant, was present and provided comment. Her comments are a part of the verbatim record.

No one spoke in 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 Neill seconded the motion. The motion carried, 9-0. Chair voted yes.**

\* \* \* \* \*

10. **JOHN M. DeMARIA, JR., Oyster Planting Ground Transfer Applications #2020-617 and #2020-623**, requests authorization to transfer oyster ground leases containing 167.90 and 177.14 acres respectively within the Warwick River and the James River in the City of Newport News and Isle of Wight County. Both transfer applications are protested by nearby highland property owners.

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 a number of oyster planting ground lease transfer applications from John M. DeMaria, Jr., were received on December 15, 2020, requesting to transfer such leases, by adding additional family members to the existing leases. Recent changes to the Code of Virginia pertaining to the transfer of oyster planting ground leases (§28.2-625) added that the Commission consider factors contained within §28.2-1205, subsection A, and to consider the public benefits and impacts of shellfish aquaculture as part of the transfer review process. Another requirement included the need to consider the effect on adjacent and nearby properties. Therefore, staff notified all adjacent leaseholders and any nearby property owner within 200 feet of the leased area. Most of the requested transfers were processed, were not objected to and the leases were then transferred administratively. However, after notification of nearby highland property



owners, staff received a number of objections to a lease transfer within the Warwick River (2020-617, lease #22628) and one objection to a lease transfer within the James River (2020-623, lease #22625).

After careful review and consideration of the objections raised by the nearby property owners, and after considering all of the factors in §28.2.625 and §28.2-1205A of the Code of Virginia, staff recommends approval of lease transfer number 2020-617 (lease #22628) and 2020-623 (lease #22625) from John. M. DeMaria, Jr. to John M. DeMaria, Jr., John M. DeMaria, III, and Lindsay R. DeMaria, as requested.

No one spoke support or opposition of the request for public hearing.

The matter was before the Commission for discussion and action.

**JOHN M. DeMARIA, JR., Oyster Planting Ground Transfer Application 10 A  
#2020-617**

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

**JOHN M. DeMARIA, JR., Oyster Planting Ground Transfer Application 10 B  
#2020-623**

**Associate Member Minor made a motion to approve staff recommendation as presented. Associate Member Tankard seconded the motion. The motion carried, 9-0. Chair voted yes.**

\* \* \* \* \*

**11. PUBLIC COMMENT: No one spoke during public comment.**

\* \* \* \* \*

**12. PUBLIC HEARING:** Proposal 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.

**Commission Meeting**

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

Ms. Ramsey explained that VMRC works with industry every year to establish management measures for the commercial offshore summer flounder fishery. The 2021 coastwide quota, as announced by NOAA, is 12.49 million pounds. Virginia receives 21.3168% of the summer flounder coastwide quota. The 2021 Virginia summer flounder quota is 2,399,576 pounds. The total Virginia landings to date and remaining 2021 quota amount will allow for a summer directed fishery opening of June 15 through August 15 with a landing limit of 12,500 pounds.

Staff recommends the Commission 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.

No one spoke support or opposition of the public hearing.

The matter was before the Commission for discussion and action.

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

\* \* \* \* \*

**13. DISCUSSION** Presentation of 2020-2021 Blue Crab Winter Dredge Survey results and information pertaining to Virginia's blue crab fisheries.

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

Ms. Galvan explained that the Bay-wide Winter Dredge Survey is the primary survey used to assess the Chesapeake Bay's blue crab population. Since 1990, the survey has been conducted annually from mid-December through mid-March at 1,500 randomly chosen sites by the Virginia Institute of Marine Science (VIMS) and Maryland

Department of Natural Resources (MD DNR). During winter's cold temperatures, blue crabs bury into the muddy bottom and remain sedentary until spring. Sampling during this time allows scientists to more efficiently capture crabs and to reduce bias of crabs moving throughout the bay to develop estimates of the number of crabs. The survey objectives are to describe the size and sex composition of the Bay wide population, develop accurate estimates of Bay-wide blue crab abundance and harvest exploitation, and to evaluate the status of the stock on a yearly basis.

Management of blue crabs is updated on an annual basis, where bushel limits are effective from July 5 of one year to July 4 of the next and an evaluation of the winter dredge season is conducted annually. This allows managers to respond, if necessary, to the most recent dredge survey results, which are usually released in May.

On May 11<sup>th</sup>, staff held a conference call with representatives from Potomac River Fisheries Commission (PRFC) and MD DNR to discuss the latest results, develop press releases (see attached), and discuss potential management actions. The consensus was to wait and see how the Chesapeake Bay Stock Assessment Committee (CBSAC), a subcommittee of the Sustainable Fisheries Goal Implementation Team, would advise managers based on these results. CBSAC reviewed the new survey results on May 18<sup>th</sup> and will release their full analysis in their 2021 Blue Crab Advisory Report this summer.

Abundance estimates by age 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 greater than 2.4 inches in carapace width are classified as spawning age or 'age-1+' crabs. Juvenile abundance was estimated at 85 million crabs, a decrease of 54% from 2020. This juvenile abundance ranked lowest out of the 32 years of the survey and is the main driver for the low total crab abundance. However, CBSAC agrees that in light of robust female spawning stock, this low recruitment is likely a result of natural fluctuations and not yet a cause for concern. These juvenile crabs will become exploitable to fisheries in late summer or fall and represent the 2022 spawning potential. Of spawning age crabs, the survey estimated an abundance of 196 million crabs for 2021. These adult crabs are likely to spawn between May and August 2021, releasing their eggs near the mouth of the Bay.

The survey further estimates the adult population by sex, as the fishery is managed by sex-specific reference points. The current estimate of spawning age (age-1+) female abundance (158 million) is 12% higher than the 2019 estimate and 36% higher than the long-term average of 116 million crabs, ranking 10<sup>th</sup> highest across the time series. It

falls below the healthy target of 215 million but is still well above the minimum threshold of 70 million crabs. These adult females represent the bulk of Virginia's blue crab harvest throughout the spring and summer. Management measures imposed in 2008 to reduce Bay-wide female crab harvest by 34% have promoted stock growth since that time with generally higher annual adult female crab abundance observed in the winter dredge survey with normal annual variability due to environmental conditions. Adult male crabs were estimated at 39 million, which is below the long-term average of 65 million and about half the 2020 abundance.

Preliminary Bay-wide (excluding seaside areas) commercial harvest for 2020 was 37 million pounds, a 33% decrease from 2019's Bay-wide harvest. Virginia's harvest, including the seaside areas, is estimated at 21 million pounds, a decrease from 2019's 29 million pounds. Both the Bay-wide and Virginia harvests in 2020 were above the ten year averages (2011-2020) (49 and 24 million lbs., respectively).

Virginia harvested 21.3 million pounds of blue crab commercially in 2020, which is 26% lower than 2019's harvest. The dockside value of all blue crabs harvested commercially was \$29.7 million, a \$6 million decrease from 2019, as adjusted by the Consumer Price Index. The 10-year average pattern of monthly harvest peaks in April and again in late summer. In 2020, the April peak was lower than the summer peak, while in 2019 the opposite was true.

Of the over 21 million pounds of blue crabs harvested commercially, 97.4% was caught with hard crab pots, 2.4% came from peeler pots, and all other gears, including trotline, pound net, and crab trap, accounted for 0.2% of harvest. Crab pot harvest was below average and the lowest since 2014, but was within the normal variation of the last 5 years. Peeler pot harvest and effort were the lowest values in 25 years.

These data are all preliminary at this time, pending late harvester reporting. There will still be some uncertainty with harvest data due to a lack of data on dead discards. No data are collected on recreational crab harvest rates.

Staff recommends this information be used as guidance for any regulatory changes to Virginia's blue crab fishery that may be considered by the Commission for its June public hearing.

\* \* \* \* \*

**Commission Meeting**

**18772  
May 25, 2021**

There being no further business, the meeting was adjourned at approximately 1:27 p.m.

---

Steven G. Bowman, Commissioner

---

Jamie Hogge, Recording Secretary