

MINUTES

COMMISSION MEETING

July 27, 2021

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
John Tankard III John Zydron Sr. Ken Neill, III James E. Minor III Heather Lusk Christina Everett	Associate Members
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Pat Geer Adam Kenyon Shanna Madsen Andrew Button Stephanie Iverson Alicia Nelson Chris Davis Jill Ramsey Somers Smott Olivia Siegal Lewis Gillingham	Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Head, Conservation and Replenishment Fisheries Mgmt. Manager, Sr. Coordinator, RFAB/CFAB Fisheries Biologist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Director, SWFT
Matt Rogers Jamie Green	Chief, Law Enforcement Deputy Chief, Law Enforcement
Randy Owen Justin Worrell Mike Johnson Mark Eversole	Chief, Habitat Management Environmental Engineer, Sr. Environmental Engineer, Sr. Environmental Engineer, Sr.

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Jeff Madden
Ben Nettleton
Tiffany Birge
Ben Stagg

Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing
and Mapping

Virginia Institute of Marine Science (VIMS):

Lyle Varnell Emily Hein

Others present:

Kathy O’Keefe	Susan Hedeem	Earl Stanley Murphy
Joel Monestyuly	Sandra Williams	Stan Simmerman
Lucas Hedeem	Jim Welch	Don Smith
Karen Smith	Steve Atherton	Eric Harris
Michael Oesterling	Tom Fletcher	Vickie Fletcher
Matt Roth	Jim Schrote	Carolyn Schrote
Monty Deihl	Chris Moore	Philip Park
Emil Kleeman	Daniel Carr	Gerald Biebel
Mark Sanford	Keith Nuttall	Tom Powers
George Trice	and others.	

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Commissioner Bowman called the meeting to order at approximately 9:36 a.m.

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

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Col. Rogers introduced Jamie Green as the new Deputy Chief of Virginia Marine Resources, Law Enforcement Division.

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

Randy Owen, Chief, Habitat Management updated the Commission that Agenda Item #10 has been resolved and requested that it be removed from the agenda.

Associate Member Zydron moved to approve the agenda as amended. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the June 22, 2021 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Neill seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Minor 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).

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

2A. TOWN OF FRONT ROYAL, #20-1991, requests authorization to cross the Shenandoah River using the micro-tunnel method, and Leach Run using the conventional trench method associated with the Parallel Water Line Route 522 Project in Warren County. Staff recommends approval with the inclusion of our standard in-stream conditions for the Leach Run crossing and the following special permit conditions:

1. Instream work time-of-year restriction from April 1 - September 30 to protect the State Threatened Wood Turtle, unless specifically waived in writing by the Department of Wildlife Resources (DWR);
2. Permittee is required to adhere to DWR’s December 8, 2020, comments related to the protection of the Federally Threatened Madison Cave Isopod (*Antrolana lira*) on site;
3. Permittee agrees to coordinate with the Department of Conservation and Recreation (DCR) if karst features are encountered during the project, unless specifically waived in writing by DCR.

Fees:	\$ 600.00
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2B. WEANACK LAND, LLC., #21-0826, requests authorization to maintenance dredge approximately 250,000 cubic yards of bottom material, as needed, of which 4,700 cubic yards will be new material during the initial cycle to maintain maximum project depths of -22 feet at mean low water between Stations 11+00 and 20+00 and at -20 feet for the balance of the Weanack access channel to Port Tobacco in Shirley Cove, situated along the James River in Charles City County. Staff recommends the inclusion of our standard dredge permit conditions, a royalty of \$2,115.00 for the new dredging and the following additional special condition:

1. No dredging shall occur between February 15 and June 30 and August 1 through November 15 to protect anadromous fishes, including Atlantic Sturgeon.

Royalties (Dredge 4,700 CY. @ \$.045 CY.)	\$ 2,115.00
Fees:	\$ 600.00
Total Fees:	\$ 2,715.00

2C. GRANITE/PARSONS/CORMAN, A JOINT VENTURE, #18-0425, requests authorization to revise a previously issued permit for the construction of two (2)

additional lanes on the High Rise Bridge over the Southern Branch Elizabeth River in the City of Chesapeake, by increasing the area of riprap outfall protection by 85 square feet.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Minor moved to approve the page 2 Items A through C as presented. Associate Member Tankard seconded the motion. The motion carried 7-0. Chair voted yes.

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3. CONSENT AGENDA ITEMS.

3A. DOMINION TERMINAL ASSOCIATES, #20-0320, requests after-the-fact authorization to mechanically maintenance dredge 70,433 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. Recommend approval with triple permit fees and a civil charge of \$2,000.00 for both the applicant and contractor, which both have agreed to pay.

Randy Owen, Chief, Habitat Management, reviewed the Consent Item 3A for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

John Kleemann, applicant was sworn in and his comments are a part of the verbatim record. He stated that it was an oversight on his part and takes responsibility for it. He agreed to pay the triple permit fee and civil charge associated with this project.

Triple Permit Fee:	\$ 200.00
Civil Charge:	\$ 2,000.00
Total Fees:	\$ 2,200.00

Jim Welch, Corman for Dominion Associate, was sworn in and his comments are a part

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of the verbatim record. He agreed to pay the triple permit fee and civil charge associated with this project.

Triple Permit Fee:	\$ 200.00
Civil Charge:	\$ 2,000.00
Total Fees:	\$ 2,200.00

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associated Member Tankard moved to approve the after the fact application as presented. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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

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5. PRESENTATION: “An Update on Omega Protein’s Fishing Activities” Monty Diehl, Omega Protein, Vice President, Ocean Fleet Services

Monty Diehl, Omega Protein, Vice President, Ocean Fleet Services provided an update on Omega Protein’s Fishing Activities, with PowerPoint slides. His comments are a part of the verbatim record.

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6. DON and KAREN SMITH, #21-0643, request authorization to construct a 5-foot wide by 32 linear foot private open-pile pier with a 12-foot by 14-foot, two level T-head and 7-foot by 8-foot stairway extension to access upper deck at property (7348 Prettyman Circle) along Nassawadox Creek in Northampton County. The project is protested by an adjacent property owner.

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

Mr. Nettleton explained that the Smiths' property is located in a small, sparsely developed, residential cove where few other property owners have built piers. The water frontage on their property is approximately 70 feet wide with shallow offshore bathymetry and currently only a small dock exists. In fact the entire unnamed cove has limited navigability due to a small inlet at its confluence with Nassawadox Creek. The pier they are proposing to install meets the exemption requirements defined in §28.2-1203(A)(5) of the Code of Virginia. The second level platform of the T-head is a roof structure and thus requires notification to adjacent property owners.

Section §28.2-1203(A)(5) of the Code of Virginia provides statutory authorization for private piers meeting certain design criteria. This section also authorizes the construction of open-sided shelter roofs or gazebo structures under 400 square feet, provided that they are not objected to by the adjoining property owners and are allowed by local ordinances. In this instance, since Ms. O'Keefe is protesting the roof structure, a VMRC subaqueous permit is required.

Staff considered the protestant's concerns regarding the roof structure and the impact it may have to their property. At the currently proposed location, the main stem of the proposed pier and platform would be approximately 170 feet from the Ms. O'Keefe's home, through wooded vegetation. It appears to staff that the applicant has made a reasonable attempt to place the pier in front of their property. Ms. O'Keefe noted they would only be able to see the top corner of the platform, including any people who may be standing on it, due to the density of vegetation between the two properties. The platform does not block or obstruct Ms. O'Keefe's view of the water in any way.

Staff notes that the aggregate size of the two-level platform, including the stairway, is 392 square feet in size, which is under the 400 square foot exemption, and is proposed to be open-sided in design, which will limit the impacts to Ms. O'Keefe's view shed. Therefore, staff believes the second level structure is acceptable.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the pier and two-level platform, as proposed.

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Don and Karen Smith, applicants, were sworn in. Their comments are a part of the verbatim record.

Kathy O’Keefe was sworn in and spoke in opposition of the application request. Her comments are a part of the verbatim record.

Ms. O’Keefe spoke with concerns that the proposed structure would interfere with her view shed.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve the application as a single level structure. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes.

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- 7. **PHILIP and KELLY PARK, #21-0407**, request authorization to install a 12-foot by 30-foot open sided boathouse on a statutorily authorized private pier along Oakland Creek at Tax Map Parcel #24-15-1 on North River Road in Mathews County. The project is protested by an adjacent property owner.

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

Mr. Johnson explained that the Park’s property is located on a small tributary of the North River with approximately eight (8) properties having existing piers, of which at least one has a boathouse. The property is unimproved with a convex shoreline measuring 500 feet in length. The proposed pier and boathouse will encroach approximately 80 feet from the shoreline, is centered on the applicant’s property, and meets the exemption requirements defined in §28.2-1203(A)(5) of the Code of Virginia. The proposed boathouse would be 360 square feet in size and would be statutorily authorized if one of the adjacent property owners was not objecting to the project.

Section §28.2-1203(A)(5) of the Code of Virginia provides statutory authorization for private piers meeting certain design criteria. This section also authorizes the construction of open-sided boathouses measuring 700 square feet or less which are designed to cover

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a boat at private piers, provided that they are not objected to by the adjoining property owners and are allowed by local ordinances. In this instance, since Mr. Mangrum is protesting the boathouse, a VMRC subaqueous permit is required.

VMRC staff understands the protestant’s concerns regarding his riparian rights. At the currently proposed location, the main stem of the proposed pier and boathouse would be approximately 250 feet from the shared extended property line with the protestant. It appears to staff that the applicant has made a reasonable attempt to place the pier opposite their property. It should be noted, the VMRC does not have the legal authority to delineate riparian areas and that if the protestant wishes to contest this issue, then this is a civil matter that should be addressed in the appropriate court of law.

Mr. Mangrum also cited concerns that the roof structure would impact his view downstream of his property and pier. When looking at aerial photography, it appears to staff, the shape of the shoreline and a large number of trees would obscure a large portion of the pier and boathouse. Also, the size of the boathouse is 360 square feet in size, which is well under the 700 square foot exemption, and the boathouse is proposed to be open-sided in design which will limit the impacts to Mr. Mangrum’s view shed.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the boathouse as proposed.

Joel Monestyuly, agent for the applicant spoke. His 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 Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

Fees:	\$ 300.00
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- 8. ORRIE LEE SMITH, JR., CYNTHIA KESLER SMITH and CURTIS H. SMITH, Oyster Planting Ground Transfer Application #2020-586**, request authorization to transfer an oyster ground lease containing 2.24 acres within Slough Creek in Northumberland County. The transfer application is protested by an adjacent highland property owner. This project was deferred from the June 2021 meeting.

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 transfer request from the Smith family seeking to transfer lease #16492, containing 2.24 acres in Slough Creek, to B. Thomas Fletcher and Vickie L. Wilkinson-Fletcher in October of 2020. 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 effect on adjacent and nearby properties and public benefits and impacts of shellfish aquaculture as part of the transfer review process. Therefore, staff notified all adjacent leaseholders and any nearby property owner within 200 feet of the leased area.

Staff considers each transfer request on a case-by-case basis, considering the requirements of the Code of Virginia, as recently amended. While the use of intensive aquaculture methods (use of bottom enclosures, as allowed by VMRC regulations on oyster planting ground leases) has resulted in increased concerns by nearby property owners, staff is not aware that such activity has occurred on this lease in the past. It also appears the prospective leaseholders will use more traditional bottom planting and harvest techniques going forward. Additionally, should the use change to more intensive activity, current regulations provide protection for adjacent landowners regarding navigation and access to both private piers and the shoreline.

After careful review and consideration of the objections raised by the adjacent 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 transfer #2020-586 for the entire lease #16492 (2.24 acres), from Orrie Lee Smith, Jr., Cynthia Kesler Smith, and Curtis H. Smith to B. Thomas Fletcher and Vickie L. Wilkinson-Fletcher.

Mr. Fletcher, applicant was sworn in. His comments are a part of the verbatim record.

Earl Stanley Murphy, representative for Susan Elizabeth Hedeem, spoke in opposition of the application. His comments are a part of the verbatim record.

No one spoke in support of the lease transfer.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Lusk seconded the motion. The motion carried, 7-0. Chair voted yes

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9. **LEONARD F. STURGIS (DECEASED) to LEONARD R. STURGIS, Oyster Planting Ground Transfer Application #2021-523**, requests authorization to transfer an oyster ground lease containing 8.32 acres within Occohannock Creek in Accomack County. The transfer application is protested by an adjacent highland 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 transfer request from Leonard R. Sturgis seeking to transfer lease #7525, containing 8.32 acres in Occohannock Creek, from his father, Leonard F. Sturgis, in April of 2021. Mr. Leonard F. Sturgis passed away on November 6, 2019, and the transfer request was received within the 18-month time frame for such transfers to occur. 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 effect on adjacent and nearby properties and public benefits and impacts of shellfish aquaculture as part of the transfer review process. Therefore, staff notified all adjacent leaseholders and any nearby property owner within 200 feet of the leased area.

Staff considers each transfer request on a case-by-case basis, considering the requirements of the Code of Virginia, as recently amended. While the use of intensive aquaculture methods (use of bottom enclosures, as allowed by VMRC regulations on oyster planting ground leases) has resulted in increased concerns by nearby property

owners, staff is not aware that such activity has occurred on this lease in the past. It also appears the prospective leaseholder will use traditional bottom planting and harvest techniques going forward. Additionally, should the use change to more intensive activity, current regulations provide protection for adjacent landowners regarding both navigation and access to both private piers and the shoreline.

After careful review and consideration of the objections raised by the adjacent property owner, and after considering all of the factors in §28.2.625 and §28.2-1205A of the Code of Virginia, staff recommends approval of transfer #2021-523 for the entire lease #7525 (8.32 acres), from Leonard F. Sturgis to Leonard R. Sturgis.

No one was present to speak in support or opposition of the transfer.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Lusk seconded the motion. The motion carried, 7-0. Chair voted yes

Item #10 was removed from the agenda by the request of Randy Owen, Deputy Chief, Habitat Management.

10. MATHESON OYSTER COMPANY, LLC, #21-1069, requests authorization to place up to 37,440 SEAPA floating oyster baskets, secured with up to 9,828 pilings, over a total of 89,856 square feet; place up to 600 bottom cages, with marking buoys, over 7,920 square feet, and place 1,260, one foot by one foot Oyster Reef Tile structures in two adjoining rows for a width of two (2) feet over 730 linear feet of State-owned subaqueous bottomlands (within the footprint of oyster planting ground lease #22773, Sarah Matheson) at the confluence of the Severn River and Mobjack Bay, near Caucus Bay in Gloucester County. The proposed SEAPA Baskets, if approved, would be installed in two (2) phases, approximately one (1) year apart. The application is protested by a nearby oyster planting ground leaseholder (Mr. Ben Rhodes, Lease #22183).

11. PUBLIC COMMENT

Daniel Carr

Requested to have his Commercial Card and Oyster User Fee reinstated. Mr. Carr stated that he missed the deadline to renew his Commercial Card and Oyster User Fee due to being incarcerated. He was sworn in and his comments are a part of the verbatim record.

Associate Member Tankard made a motion maintain the current regulations as they are written and deny the request. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes

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12. PUBLIC HEARING: Proposal to establish Chapter 4 VAC 20-1390-10 et seq., "Pertaining to Shrimp", to create a new commercial shrimp fishery, trawl license and lottery, gear and season restrictions, and commercial and recreational shrimp possession limits; to amend Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees" to establish a shrimp trawl license fee, and, to repeal Chapter 4 VAC 20-420-10 et seq., "Pertaining to the Use of Trawls in the Territorial Sea."

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

Mr. Geer explained that Penaeid shrimp have always been a common occurrence in Chesapeake Bay and its tributaries, albeit in low numbers. It is speculated that warming ocean water temperatures are creating favorable conditions for shrimp larvae spawned off North Carolina to recruit to the Bay and develop. In recent years, the abundance of white shrimp has steadily increased in the Bay and coastal waters of Virginia, so much so that the Commission issued an experimental gear permit in 2017 to explore the efficacy of a commercial shrimp fishery in Virginia's coastal waters. The experimental fishery expanded slowly each year, reaching 12 permits in 2020, 8 of which were successfully used off Virginia Beach, harvesting over 418,000 pounds of shrimp from mid-October to mid-January. After four years of collecting information from the experimental fishery, the agency and industry believe this emerging fishery can be managed sustainably by developing and adopting regulations in 2021.

With an increasing amount of shrimp being reported in the Bay and the success of the experimental fishery off Virginia Beach, staff are proceeding with the development of regulations that will create a limited entry commercial shrimp trawl fishery, lottery, gear, area and season restrictions, along with recreational and commercial possession limits for all commercial gears except cast nets and legal shrimp trawls nets. The Eastern Shore area will remain an experimental fishery to allow for further data collection.

Staff is proposing the establishment of a Virginia Beach Shrimp Trawl Harvest Area that will include the Commonwealth's coastal waters from Cape Henry out to the three nautical mile line south to the Virginia-North Carolina border. This area is identical to Blue Crab Sanctuary Area 4. This represents a 35 square miles northward expansion (+49%) of the Virginia Beach area permitted under the experimental fishery from 2017 through 2020. The 2020 permit holders requested this expansion during a March 2021 workshop to help reduce crowding.

Definitions of both "heads-on" and "tails" shrimp are included given both are used as units for landing and sales. "Heads-on" mean the shrimp body is intact. "Tails" mean the head, or carapace, of a shrimp is removed, leaving just the consumable portion of the shrimp (abdomen). The tail is roughly 2/3rd of the total weight. Although consumer preference varies between the two units, tails are often more convenience and have a better shelf life.

Staff is recommending a recreational daily possession limit for lawfully licensed recreational gears of 20 quarts (heads-on) (15 quarts of tails) per person or vessel, whichever is more restrictive. There will be a similar commercial daily possession limit to allow commercial licensees to land small amounts of shrimp caught incidentally with non-target gears (anything but legal shrimp trawls and cast nets). The low commercial possession limit for these gears will prevent targeting of shrimp in the Bay and tributaries, especially with dragging gears such as crab scrapes and oyster dredges. Law enforcement has stated they can enforce these limits given they are already equipped with standard measuring devices in quarts. Twenty quarts is equivalent to roughly 30 pounds of shrimp (heads-on) and 20 pounds of tails.

Cast nets and the experimental shrimp beam trawl used from 2018 to 2020 will be developed as targeted gears for shrimp harvest. The commercial shrimp trawl fishery will be limited entry with a maximum of 12 licenses in the Virginia Beach Shrimp Trawl Harvest Area. Shrimp trawl license eligibility will require individuals to possess a valid Commercial Fisherman Registration License (CFRL) and submittal of a Commercial Shrimp Trawl License Application annually. Those who possessed a VMRC

Experimental Shrimp Trawl Permit for the Virginia Beach area between 2017 and 2020 and have at least 500 pounds of reported shrimp harvest in any one of those years with the experimental shrimp trawl gear would qualify for a license. The Commission's Mandatory Harvest Reporting Program indicates that all eight 2020 Virginia Beach area permittees qualify under section 50B-3i of the regulation.

In future years, to remain eligible for a shrimp trawl license, individuals must previously possess a shrimp trawl license and have reported harvest of at least 500 pounds of shrimp with the approved shrimp trawl gear in at least one of the previous two fishing years. This requirement will prevent individuals from obtaining the license and not actively participating in the fishery.

A lottery will be conducted in any given year if less than 12 individuals qualify for a shrimp trawl license based upon: 1) previous qualified experimental shrimp trawl permittees; or 2) previous shrimp trawl licensees with the minimum harvest requirements. The minimum requirements to enter the lottery for a commercial shrimp trawl license are: 1) a valid Commercial Fisherman Registration License; 2) submittal of a Commercial Shrimp Trawl Application; and 3) a minimum of at least 1,000 total pounds of harvest (all species) per year in at least three of the previous five calendar years. It is projected that at least four licenses will be issued through the lottery for the 2021 fishing year. All those that meet these minimum qualifications will enter the lottery. Interest in this fishery during its four years under experimental permits was immense – with up to 100 individuals interested annually in a very limited number of permits. Staff believe the success of this emerging fishery to date is due in part to the selection process that encourages experience, compliance with fishing laws and regulations, and good stewardship of the resource.

Once an individual is selected for a Commercial Shrimp Trawl License, they will need to meet two requirements prior to fishing: They must complete and submit a Commercial Shrimp Trawl License Acceptance Form within 14 days or forfeit license eligibility to another individual from the lottery. Additionally, staff must inspect and approve fishing gear prior to fishing. This is to insure all license holders meet the gear requirements as specified in section 60 of the regulation.

The commercial shrimp trawl will be restricted to a beam or fixed frame opening no taller than 4 feet in height and a width not to exceed 16 feet, attached to a net with stretch mesh from 1.5 to 2 inches. Each trawl must have at least one properly installed National Marine Fisheries Service (NMFS) or North Carolina Division of Marine Fisheries

(NCDMF) bycatch reduction device (BRD), and tow duration cannot exceed 30 minutes. The small size of the net, BRDs, and short tow times have been shown to limit bycatch and limit interactions with protected species. Larger gear would increase bycatch and require the addition of a turtle excluder device (TED) to comply with NMFS trawl requirements.

The commercial shrimp trawl season will be from October 1 to January 31 of the next calendar year. Observations and harvest data from the 4 years of the experimental fishery off Virginia Beach indicate shrimp begin to show up in marketable numbers in mid-October and remain at high levels though at least mid-January. All commercial shrimp trawl license holders will be restricted to the Virginia Beach Shrimp Trawl Harvest Area and can only have nets in the water from 30 minutes before sunrise until 30 minutes after sunset. Licensees will also be required to allow MRC observers onboard to collect data on shrimp, fishing behavior, and bycatch.

Code of Virginia § 28.2-314 (1992) prohibits trawls and drag nets in waters of the Commonwealth with exceptions included in § 28.2-315 (1992), which allows the Commission to issue licenses to trawl in the state's territorial seas (out to 3 nautical miles) with some spatial and temporal restrictions. The experimental fishery conducted from 2017 through 2020 and proposed regulation comply with this requirement. However, in 1995 the Commission elected not to exercise the authority given in § 28.2-315, and instead adopted Chapter 4 VAC 20-420-10 "Pertaining to the use of Trawls in the Territorial Sea". This regulation made it unlawful to operate any trawl net or to take or catch fish, crabs or shellfish by use of trawl net within the coastal waters seaward to the Three Nautical Mile Line. The purpose of this trawl prohibition was to "*provide for the conservation of Virginia's summer flounder stocks and stocks of other species utilizing the Territorial Sea as a migratory pathway to spawning grounds and nursery areas.*" Staff believes the observer data collected during the past four years of the experimental shrimp fishery, the mandates on the experimental permits, and this proposed shrimp regulation, minimize the impacts on other species (bycatch) while responsibly developing this high value fishery. As such, staff are recommending Chapter 4 VAC 20-420-10 be repealed given the Code of Virginia (§ 28.2-314 and 315) still provides similar protection of migrating fishes.

Chapter 4 VAC 20-1090-10, "Pertaining to Licensing Requirements and License Fee" will need to be amended if Chapter 4 VAC 20-1390-10 is approved and implemented to include a commercial shrimp trawl license fee.

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Staff recommends: 1) establish Chapter 4 VAC 20-1390-10 et seq., “Pertaining to Shrimp”, to create a new commercial shrimp fishery, trawl license and lottery, gear, season, and area restrictions, and commercial and recreational shrimp possession limits; 2) amend Chapter 4 VAC 20-1090 et seq., “Pertaining to Licensing Requirements and License Fees” to establish a shrimp trawl license fee; and 3) repeal Chapter 4 VAC 20-420-10 et seq., “Pertaining to the Use of Trawls in the Territorial Sea”.

Chris Moore, Chesapeake Bay Foundation spoke in support of the proposed changes. His comments are a part of the verbatim record.

No one spoke in opposition of the amended regulation.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes

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13. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout” to establish a daily commercial incidental catch limit when the directed commercial landings quota is met and to clarify existing language, and, establish Chapter 4 VAC 20-1400-10 et seq., “Pertaining to Red Drum.”

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

Ms. Seigal explained in 2019 and 2020 the commercial speckled trout fishery was closed on October 16 and 13, respectively. Speckled trout continue to be abundant following commercial fishery closures, and are still encountered in haul seine and gill net gear. As such, speckled trout are caught incidentally following a closure, and must be returned to the water. However, this often leads to dead discards of speckled trout. Staff met with stakeholders and FMAC to develop management measures to reduce dead discards and increase the sustainability of the speckled trout resource. On average, commercial harvesters incidentally encounter about 50 pounds of speckled trout per day following

the close of the season. As such, a daily incidental catch limit of 50 pounds per licensee aboard the vessel, not to exceed 150 pounds per vessel, should reduce dead discards of speckled trout following the close of the commercial season within a given fishing year.

Regulations for speckled trout and red drum were originally established in one regulation. The regulatory language pertaining to red drum should be removed from Chapter 4 VAC 20-280-10 et seq., "Pertaining to Speckled Trout" and established in Chapter 4 VAC 20-1400-10 et seq., "Pertaining to Red Drum" to increase clarity and efficiency of regulations pertaining to red drum and speckled trout.

Staff recommends the Commission amend Chapter 4 VAC 20-280-10 et seq., "Pertaining to Speckled Trout" to establish a daily commercial incidental catch limit when the directed commercial landings quota is met and to clarify existing language, and establish Chapter 4 VAC-20-1400-10 et seq., "Pertaining to Red Drum".

Robert Hollowell spoke in support of the proposed regulation change. His comments are a part of the verbatim record. He stated that there is no shortage of Speckled Trout.

George Trice spoke in support of the 50 lb. daily limit. His comments are a part of the verbatim record.

Mark Sanford spoke in support of the proposed regulation change.

Keith Nuttall spoke in opposition of the proposed regulation change. His comments are a part of the verbatim record.

Mr. Nuttall stated that most recreational anglers fishing for Speckled Trout are releasing fish the majority of the time. If the proposed regulation is approved, it will open up the fishery for the entire year. There is no stipulation for Commercial Fisherman for the daily limit.

Tom Powers was opposed to some of the wording of the proposed regulation change. His comments are a part of the verbatim record.

Stan Zimmerman spoke in opposition of the proposed regulation change. His comments are a part of the verbatim record.

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Mr. Zimmerman stated that the haul seiners are catching the majority of the quota before the gill netters have a chance. He also feels as though discards are not going back into the water, they are going back to the dock.

The matter was before the Commission for discussion and action.

Proposal to amend Chapter 4 VAC 20-280-10 et seq., "Pertaining to Speckled Trout"

Associate Member Neill made a motion to approve staff recommendation with an amended 50 lb. per person/100 lb. per vessel quota. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes

Clarify existing language, and, establish Chapter 4 VAC 20-1400-10 et seq., "Pertaining to Red Drum."

Associate Member Minor made a motion to approve staff recommendation. Associate Member seconded the motion. The motion carried, 7-0. Chair voted yes

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There being no further business, the meeting was adjourned at approximately 3:02 p.m. The next Commission meeting will be Tuesday, August 24, 2021.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary