

MINUTES

COMMISSION MEETING

July 28, 2020

****In consideration of Governor Northam's Executive Order 55 and public safety, the July 28, 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 was 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 7/28/2020 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 7/23/2020. Comments could have also have been emailed to fisheries@mrc.virginia.gov and were accepted until NOON on 7/27/2020.
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 7/27/2020.

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 in room

John Tankard III

John Zydron Sr.

Ken Neill, III

Heather Lusk

Christina Everett

Associate Members

Present via conference call

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James E. Minor III Wayne France	Associate Members Present via conference call
Kelci Block	Assistant Attorney General, Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Erik Barth	Bs. Systems Manager, Present via conference call
Todd Sperling	Bs. Systems Manager 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, in room
Andrew Button	Head, Conservation and Replenishment Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present, in room
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Alexa Kretsch	Fisheries Mgmt. Specialist Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call
Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call

Commission Meeting

Tony Watkinson	Chief, Habitat Management Present via conference call
Mark Eversole	Environmental Engineer, Sr. Present via conference call
Mike Johnson	Environmental Engineer, Sr. Present via conference call
Rachael Peabody	Environmental Engineer, Sr. Present via conference call
Jay Woodward	Environmental Engineer, Sr. Present via conference call
Justin Worrell	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

Ben Duman	Oscar Harrell	Travis Green
Trevor Green	Catherine Galway	Danette Green
Jane Pawelski	Matt Rogers	Mike Hansen
Rebecca Francese	Ronald Owens	Rusty Sprouse
Ulrike Hollingsworth	Brian Fletcher	Joshua Pratt
Mark Hiltke	Megan Wood	David Pence
Jim Calabrese	Jimmy Parker	Robert Pruhs
Robert Rowe	John Mrazik	Bill Emory
Will Simpson	Chris Moore	Nick Warden
Kim Huskey	Virginia Santos	Thomas Berkley
Chuck VanAllman	Mark Sanford	Duke Hollison
Yeskia Kain	Dorothy Libassi	and others.

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Commission Meeting

**18579
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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.

Associate Member Zydron moved to approve the agenda as presented. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the June 23, 2020 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member France abstained.

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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).

Tony Watkinson, Chief, Habitat Management, reviewed the five (5) page 2 Items A through E for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

- 2A. **RRHOLDCO, LLC, #20-0385**, requests authorization to replace an existing 5-foot wide by 70-foot long tending pier and replace existing floating piers consisting of 60 wet slips at Rivers Rest Marina (9100 Wilcox Neck Road) along the Chickahominy River in Charles City County. Staff recommends approval with an encroachment royalty in the amount of \$200.00 for the encroachment of the tending pier over 200 square feet of subaqueous bottom at a rate of \$1.00 per square foot.

Royalties:	\$ 200.00
Fee:	\$ 100.00
Total Fees:	\$ 300.00

- 2B. **JOINT BASE LANGLEY-EUSTIS, #20-0522**, requests authorization to construct approximately 590 linear feet of steel sheet pile bulkhead no more than two (2) feet channelward of an existing, failing bulkhead, and replace existing finger pier piles as necessary at the Third Port Facility on Fort Eustis adjacent to Skiffes Creek in the City of Newport News.

Fee:	\$ 100.00
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- 2C. **ARMY CORPS OF ENGINEERS, #20-0525**, requests authorization to place approximately 110,000 cubic yards of sandy dredge material per dredge cycle, from the maintenance dredging of the Chincoteague Inlet Federal Navigation Channel, within the previously used overboard placement site located in the Atlantic Ocean, southwest of Chincoteague Inlet in Accomack County. The placement site is centered at N37° 50.6514', W75° 27.2058'.

Fee:	\$ 100.00
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- 2D. **HUNTINGTON INGALLS INC - NEWPORT NEWS SHIPBUILDING, #20-0557**, requests authorization to add a 336-foot by 84-foot open-pile mooring standoff platform and a new mooring dolphin system to Pier 3 at Newport News Shipbuilding along the James River in the City of Newport News.

Fee:	\$ 100.00
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2E. CITY OF HAMPTON, #20-0790, requests authorization to construct 261 linear feet of replacement bulkhead, 230 linear feet of 10-foot wide wharf, and 74 linear feet of 4-foot wide wharf at the end of South King Street along the Hampton River in the City of Hampton.

Fee:	\$ 100.00
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No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the five (5) page 2 Items A through E as presented. Associate Member Minor seconded the motion. The motion carried 8-0. 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. TREVOR A. GREEN, #20-0363. Review of the Gloucester County Wetland Board’s June 10, 2020, decision to approve the filling of 500 square feet of vegetated wetlands and 25 square feet of non-vegetated wetlands 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 creek was dredged sometime around the 1960's with portions of the creek channel upstream being dredged from wetlands.

In 2016, an application was approved by the Gloucester Local Wetlands Board at this address, with a different property owner, for a similar project to install a new bulkhead with the filling of vegetated and non-vegetated wetlands. That project was never initiated and the local wetlands board permit has expired. The new property owner is now requesting a similar permit.

At its June 10, 2020, electronic public hearing the Board heard a presentation by county staff, including photographs of the work site and copies of the application drawings. County staff also made a verbal recommendation to deny the project as the project did not meet the Wetlands Guidelines for approval of the project. A motion was made to approve the project as submitted with payment of an in-lieu mitigation fee being paid to the County for the loss of 500 square feet of vegetated wetlands. The motion was approved on a vote of four in favor to one against, with two members absent.

By correspondence on behalf of Commissioner Bowman, dated June 16, 2020, and in conformance with §28.2-1311 A 2 of the Code of Virginia, the Gloucester Local Wetlands Board was advised that the full Commission would be reviewing the Board's decision to approve Mr. Green's application.

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 erred in its approval of the project as submitted, and did not give full consideration to the criteria for approval of an application as specified in the wetlands zoning ordinance.

It is staff's opinion that the Board's rationale for the approval of the project has deviated from established guidance by saying that the filling of vegetated wetlands is appropriate for erosion control where the wetlands would be lost due to erosion. This is essentially creating more upland land for the private property owner by filling wetlands and paying a fee, which is not the intent of the wetlands zoning ordinance.

Section §28.2-1302.10.B of the wetlands zoning ordinance states that the Board shall

grant the permit if all of the following criteria are met: (1) the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment; (2) the proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia; and (3) the proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title §28.2 of the Code of Virginia. Section §28.2-1302.10.C further states that if the Board finds that any of the criteria listed in subsection B of this section are not met, the Board shall deny the permit application but allow the applicant to resubmit the application in modified form. Staff is of the opinion that the Board's decision on this matter fails to meet all three criteria in subsection B.

Additionally, staff thinks the Board did not consider all of the alternatives that would avoid the filling of the wetlands. There is at least one option that staff discussed with the agent where a new bulkhead could be installed, but at a lower elevation with no backfill, that would continue to support the wetlands, maintain continuity with the creek, and protect them and the uplands from erosion. This would essentially create a living shoreline, which is currently the policy of the Commonwealth as the preferred alternative for addressing shoreline erosion pursuant to §28.2-104.1 of the Code of Virginia.

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. As such, staff recommends that the June 10, 2020, decision of the Gloucester Wetlands Board be reversed and the application to fill 500 square feet of vegetated wetlands and 25 square feet of non-vegetated wetlands be denied. This is based upon the aforementioned staff findings and the faulty rationale for filling the marsh when there were other methods to address shoreline erosion without converting tidal wetlands to uplands. As stated, this denial does not prevent the applicant from reapplying in modified form to address his erosion control needs.

Rusty Sprouse, representative for Gloucester County Wetlands Board, spoke and was sworn in before testifying. His comments are a part of the verbatim record.

Mr. Sprouse requested that this matter be remanded back to the Gloucester County Wetlands Boards for further review and discussion.

Carla Havens, agent for the applicant, spoke and was sworn in before testifying. Her comments are a part of the verbatim record.

Ms. Havens stated that the previous permit was approved, but the individual that sold Mr. Green the property did not start project and the application expired. Wetlands Board originally approved the project in 2016 and nothing has changed since the original permit was approved.

The matter was before the Commission for discussion and action.

Associate Member Neill made a motion to remand the matter back to Gloucester Wetlands Board for further review. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.

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- 6. CITY OF SALEM, #19-1802**, requests authorization to install two (2) stages of a temporary riprap construction causeway within the Roanoke River to provide access for maintenance activities of the Mill Lane Roadway Bridge in the City of Salem. The project is protested by adjacent property owners.

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

Ms. Peabody explained that the City of Salem has requested authorization to construct temporary access cofferdams within the Roanoke River, adjacent to the Mill Lane Bridge in Salem. The cofferdams will be installed and dewatered to allow construction access to an aging bridge that requires concrete repairs within the bridge span and the abutments. The cofferdams will be deployed in two stages to maintain flow of the river during construction. Construction is estimated to take about 3 months.

Staff understands the protestant's concern related to potential seasonal flooding of their waterfront properties and the need for a higher bridge. The City engineer has reviewed the protestant's concerns and disagrees that the cofferdams will exacerbate any seasonal flooding on the upland properties. In addition, a time of year restriction, as proposed by the adjacent property owner, would limit construction only to the months of December through February, when coupled with the recommended State and federal fisheries

restrictions. The City has evaluated alternative construction options, but must be able to dewater the abutments to install the concrete repairs. They have also evaluated a full replacement of the bridge and have determined it is outside of the current budget of the City and would result in larger environmental impacts. As such, staff does not see a reasonable solution to accommodate the concerns of the protestants while allowing the necessary repairs to the aging bridge.

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(A) of the Code of Virginia, staff recommends approval of the project as proposed with a time of year restriction from March 15 through June 30 of any year and the standard in-stream conditions outlined by DWR.

Will Simpson, representative for the City of Salem, was sworn in and 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 Neill made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Fee:	\$ 100.00
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- 7. **BRG LITTLE CREEK, LLC, #20-0226**, requests authorization to retain and improve a previously constructed 33-foot by 30-foot enclosed open-pile platform to be used for restaurant activities, and to install a 16-foot by 30-foot oyster reef below the platform along Little Creek at 4707 Pretty Lake Avenue in the City of Norfolk.

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

Ms. Peabody explained that the project is located on an existing marina property that has been approved to be redeveloped for the construction of a condominium facility with marina amenities. The majority of the existing upland structures are currently being demolished, except for an existing restaurant formerly known as Cutty Sark. During the City site plan review the City of Norfolk, VMRC, and the new property owner became aware of an unpermitted addition of the restaurant over submerged lands. Aerial photography shows the addition was constructed in 2011. This addition would have required a public hearing and Commission approval. The existing structure over the water is a fully enclosed building with permanent restaurant equipment and bar.

The applicant has requested to retain the piles and decking of the extension, but to remove the sides and any permanent restaurant equipment. They have also proposed to construct a new shingled roof structure so that the covered deck can be used as a multifunctional outdoor seating or lounging area. In addition, the request includes the installation of a concrete shellfish reef below the deck as part of the water quality improvements needed for the site plan approval.

Staff consistently questions the need to provide additional out-door dining or seating over State-owned subaqueous lands in cases of restaurant expansions. This use of the proposed facility is viewed as non-water dependent with no inherent need to be sited over water. As such, staff would not have recommended approval of the project when it was constructed.

Accordingly, staff recommends denial of the request to retain the unauthorized structure and recommends that the entire deck structure be removed. Staff supports the requested shellfish reef. If the Commission feels that the after-the-fact request is appropriate to authorize, staff would recommend any approval be conditioned upon the payment of triple permit fees of \$300.00 and triple royalties of \$4,455.00. The current owner did not construct the unauthorized addition to the restaurant. As such, staff did not feel that the assessment of civil charges was appropriate in this case.

Rebecca Francese, agent for the project, was sworn in and her comments are a part of the verbatim record.

Jimmy Parker spoke in support of the project and was previously sworn in. His comments are a part of the verbatim record.

Mr. Parker stated that he was unaware that the pier was not permitted when he purchased the property. The purpose is to maintain the pier for further enjoyment and benefit of the public.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve the project as proposed with a triple permit fee of \$300.00 and a triple encroachment royalty of \$4,455.00 as recommended by staff. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Royalties:	\$ 4,455.00
Fee:	\$ 300.00
Total Fees:	\$ 4,755.00

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- 8. **OSCAR HARRELL, #19-0182**, requests authorization to construct a private open-pile pier with a 36-foot by 18-foot open-sided boathouse and a 20-foot by 20-foot open-sided gazebo roof, at property (5232 Ivey Lane) situated along the York River in James City County. The project is protested by two (2) adjacent property owners.

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 in James City County along the York River, just North of York River State Park. The site consists of a steep cliff that leads to a sandy shoreline along the York River. The applicant is requesting authorization to construct a private open-pile pier with an open-sided boathouse and open-sided gazebo roof. The pier is statutorily authorized by §28.2-1203(A)5 of the Code of Virginia. Since the boathouse and gazebo are protested by the adjacent property owners, they do not meet the statutory authorization in the Code and will require a permit. The pier also extends into an oyster ground lease, but the leaseholder was notified of the project and is not protesting.

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 designed to cover a boat and gazebos measuring 400 square feet or less 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 both adjacent property owners are protesting the boathouse and gazebo, a VMRC subaqueous permit is required.

Staff understands the protestants' concerns regarding the proposed roof structures and the impact they may have to them and their property. However, there are several boathouses and gazebos constructed within the area upriver from the applicant's property.

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 and gazebo roof as proposed.

Oscar Harrell, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Harrell explained the project in further detail.

One person spoke in opposition of the project. His comments are a part of the verbatim record.

He expressed concerns concerned about the potential environmental impact of the pier and walkway down the cliff, heavy construction vehicles using the private road, construction noises affecting eagles and osprey in the area, the potential use of the pier for duck hunting, and that the pier will be too close to their property and cause a loss of privacy for them.

The matter was before the Commission for discussion and action.

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

Fee:	\$ 100.00
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- 9. JANE PAWELSKI, Oyster Planting Ground Application #2016-244,** requests authorization to lease one (1) acre of oyster planting ground in Chincoteague Bay, Town of Chincoteague in Accomack County. The project is protested by an adjacent 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 the proposed lease is located adjacent to the applicant's property at 4397 Salt Marsh Lane, which is near the north end of Main Street and is approximately one (1) mile northeast of Chincoteague High School.

The water depths encompassed in the proposed lease vary from approximately mean low water (MLW) to minus three (-3) feet offshore. The bottom is mostly a mix of sand and mud. There is a small amount of clam and oyster aquaculture in the area.

Mrs. Pawelski has no oyster ground leases and intends to use the ground for traditional oyster and clam cultivation. No structures will be installed. The applicant's highland property is approximately 75 feet wide at the MLW line. Mrs. Pawelski has a pier on the north side of her property and there is an adjacent joint use pier to the south. In addition, there is submerged aquatic vegetation (SAV) offshore of the piers.

The original application was for one (1) acre of oyster ground, however, since there is SAV offshore, staff could not support leasing the SAV area. The applicant agreed to remove the SAV portion from the application and a survey was made for 0.16 acres. The surveyed area is approximately 30 feet north of the Hollingsworth's permitted joint use pier and should not affect their pier access.

Had the applicant and the protestors been able to agree on the southern lease line, this application would have been handled administratively. The applicant, however, was not willing to move the lease line north to the highland property line between the two parties (approximately 20 to 30 feet) as requested by the Hollingsworth's. Had Mrs. Pawelski agreed to the request, the proposed lease would have been even smaller (approximately 0.10 acre).

Based on Mrs. Pawelski's statement that she intends to use the proposed lease to grow traditional oysters and clam cultivation, that no structures are proposed on the lease, and our belief that the Hollingsworth's access to their joint use pier will not be affected, staff has no objection to the application as amended to avoid SAV. Accordingly, after considering all of the factors in §28.2-607 and §28.2-1205A of the Code of Virginia, and the concerns raised by the protestors, staff recommends approval of Mrs. Pawelski's application for 0.16 acres of oyster planting ground in Chincoteague Bay as surveyed and mapped.

Jane Pawelski, applicant, was sworn in and her comments are a part of the verbatim record. She request approval of the application as previously surveyed.

Victoria Boyles, daughter of applicant, was sworn in and her comments are a part of the verbatim record.

Ulrike Hollingsworth was sworn in and spoke in opposition of the application. Her comments are a part of the verbatim record.

She stated that part of Mrs. Pawelski's oyster-planting ground application is in front of their property and may impede access to and from their joint use pier. Mr. and Mrs. Hollingsworth would prefer that the proposed lease stop at the adjoining property line, which is approximately 20 feet to the north of the surveyed lease application line.

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, 7-1. Chair voted no.

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- 10. ROBERT ROWE, Oyster Planting Ground Application #2018-002**, requests authorization to lease approximately six (6) acres of oyster planting ground in the East River in Mathews County. The project is protested by an adjacent 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 an application from Robert Rowe requesting to lease approximately six (6) acres of oyster planting ground, within the East River in Mathews County, was received by the Engineering/Surveying Department on December 18, 2017. The application was subjected to the normal public interest review process.

Mr. Rowe has four leases in the York River and one lease in the East River (further downstream) with a history of commercial harvest on all five of the leases during multiple recent years.

After careful review and consideration of the objections raised by the nearby upland property owner, reviewing her complaint concerning the termination of the previous lease at this location, and the potential impacts of leasing this area for shellfish propagation, staff concludes that leasing this area appears appropriate. Accordingly, after considering all of the factors in §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends approval of the leasing of 4.79 acres of State-owned subaqueous bottomlands within the East River in Mathews County to Mr. Rowe.

Robert Rowe, applicant, was sworn in and his comments are a part of the verbatim record.

Dorothy Libassi, was sworn in and spoke in opposition. Her 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 France seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.

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11. PUBLIC COMMENTS. There were no public comments

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- 12. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum” to modify seafood buyer reporting requirements for purchases of speckled trout during the period of August 1 through November 30 of each year.

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 for the 2019 commercial speckled trout fishing season (September 1, 2019 through August 31, 2020), a quota overage occurred. During the week of October 9, 2019, the commercial speckled trout harvest occurred so rapidly that the mandatory weekly buyer phone call reports were not sufficient in notifying staff of the accurate harvest and therefore the bycatch provision was surpassed and the fishery was closed on October 16, 2019. Currently, speckled trout buyers are required to call in to the Commission’s interactive voice recording system to report their purchases weekly. Staff is requesting a requirement for buyers to call in daily to report all speckled trout purchases during the period of August 1 through November 30 to avoid future quota overages.

Staff recommends the Commission amend Chapter 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum” to modify seafood buyer reporting requirements, for purchases of speckled trout, during the period of August 1 through November 30 of each year.

No one spoke in support or opposition of the proposed changes.

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, 8-0. Chair voted yes.

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- 13. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass” to require the use of non-offset, non-stainless steel circle hooks when fishing for striped bass recreationally with bait,

to clarify that the captain or operator of any recreational boat or vessel shall be responsible for any minimum or maximum size limits, and to repeal section 4VAC 20-252-115 Exemptions from size limits and closed fishing seasons for recreational striped bass fishing tournaments.

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

Ms. Phillips explained that on October 30, 2019 the Atlantic States Marine Fisheries Commission Atlantic Striped Bass Management Board approved Addendum VI of the Fisheries Management Plan for striped bass. Addendum VI includes a circle hook provision to be implemented by January 1, 2021, which requires anglers use non-offset, non-stainless steel circle hooks when fishing for striped bass recreationally with live or chunk bait. Implementation plans for this provision are due to ASMFC by August 15, 2020.

Law enforcement requested regulatory language that holds the captain or operator of the recreational vessel responsible for the minimum and/or maximum size limits.

In 2006, a special "catch and release" striped bass tournament was proposed to take place in Virginia Beach over three days in December. Because size and/or season restrictions for the recreational striped bass fishery in December would not allow for such a tournament to take place, the Commission approved and implemented section 4 VAC 20-252-115. Recently, VMRC law enforcement expressed concern about the enforceability of section 4 VAC 20-252-115, citing that, during the three-day tournament in December 2006, it was difficult to determine which anglers were fishing legally as participants of the special tournament and which anglers took advantage of the special circumstance to fish illegally. Additionally, 4 VAC 20-252-115 has not been applied or used since the special tournament that occurred in December 2006, and thus VMRC Staff have deemed section 4 VAC 20-252-115 outdated. Further, the current stock status of striped bass is that the stock is overfished and overfishing is occurring. Considering that enforceability is difficult, the section is outdated, and the stock status is poor, VMRC staff propose that the section be repealed.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to require the use of non-offset, non-stainless steel circle hooks when fishing for striped bass recreationally with bait, to

clarify that the captain or operator of any recreational boat or vessel shall be responsible for any minimum or maximum size limits, and to repeal section 4VAC 20-252-115 Exemptions from size limits and closed fishing seasons for recreational striped bass fishing tournaments.

Chris Moore, Chesapeake Bay Foundation, spoke in support of the use of non-offset circle hooks.

No one spoke in opposition of the proposed changes.

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, 8-0. Chair voted yes.

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14. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees" to establish a license fee for the new Commercial Electrofishing License.

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

Ms. Kretsch explained that on December 17, 2019, the Virginia Marine Resources Commission (VMRC) established Chapter 4 VAC 10-1360-10 et seq., "Pertaining to Commercial Electrofishing" to create a Commercial Electrofishing License. Staff proposes a \$100 license fee for the Commercial Electrofishing License in 2021.

Staff recommends the Commission amend Chapter 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees" to establish a license fee for the new Commercial Electrofishing License.

No one spoke in support or opposition of the proposed changes.

The matter was before the Commission for discussion and action.

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

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15. REQUEST FOR AN EMERGENCY AMENDMENT Proposal to amend Chapter 4VAC 20-540-10 et seq., "Pertaining to Spanish Mackerel and King Mackerel," to establish a 500 pound daily per vessel bycatch provision in state waters for the Spanish mackerel commercial fishery to coincide with federal waters closures as announced by the National Marine Fisheries Service.

Pat Geer, Chief, Fisheries Mgmt., presented 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 the South Atlantic Fisheries Management Council announced on Friday, July 17 that they would be closing the season for commercial harvest of Atlantic Migratory Group Spanish mackerel Northern Zone (NC to NY) in federal waters effective Wednesday, July 22, 2020. It is projected that the commercial quota has been met in the northern zone.

The closure will remain in effect until the fishery reopens on March 1, 2021. Staff requests to amend Chapter 4VAC20-540-10 et seq. to allow for a bycatch allowance of 500 pounds per vessel per day in state waters once federal waters close, as outlined in the Atlantic States Marine Fisheries Commission's Omnibus Amendment to the Interstate Fishery Management Plans for Spanish mackerel, spot, and spotted seatrout.

Staff recommends the Commission amend Chapter 4 VAC 20-540-10 et seq., "Pertaining to Spanish Mackerel and King Mackerel," to establish a 500 pound daily per vessel bycatch provision in state waters for the Spanish mackerel commercial fishery to coincide with federal waters closures as announced by the National Marine Fisheries Service. Staff also recommends advertising for a public hearing for the August Commission meeting to make these amendments permanent part of regulation.

No one spoke in support or opposition of the proposed emergency amendment.

The matter was before the Commission for discussion and action.

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

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Commission Bowman made a motion that this meeting be adjourned in honor of the retirement of Hank Badger, Chief Engineer for the Engineering/Surveying Division. Commissioner Bowman read an email by Ben Stagg, Dir., Shellfish Aquaculture, Leasing and Mapping, explaining Hank Badger's family history serving Virginia Marine Resources Commission.

Hank's grandfather was associated with the Commission of Fisheries (precursor to VMRC) beginning in 1907. He eventually became the Chief Engineer for the Engineering/Surveying Division before his eventual retirement. Hank's father also worked for the Commission starting in the 1940's and he also became Chief Engineer in 1950 and served until his death at age 51 in 1968. Hank started with the agency in the 1978 and he too eventually became Chief Engineer. Except for a brief period from 1968 to 1978, there has been a Badger working for the agency since 1907. Hank's retirement marks the end of an era that will likely not be seen again with the agency.

Associate Member Zydron made a motion to approve recommendation to adjourn the Commission Meeting in honor of Hank Badger. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 1:17 p.m.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary