

MINUTES

COMMISSION MEETING

September 24, 2019

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia with the following present:

Steven G. Bowman	Commissioner
Wayne France	
John Tankard III	
John Zydron Sr.	
Ken Neill, III	Associate Members
Heather Lusk	
James E. Minor III	
Chad Ballard	
Christina Everett	
Kelci Block	Assistant Attorney General
Ellen Bolen	Deputy Commissioner
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Pat Geer	Chief, Fisheries Mgmt.
Adam Kenyon	Fisheries Programs Manager
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Alex Aspinwall	Fisheries Mgmt. Data Analyst
Lewis Gillingham	Director, SWFT
Jonathan Depaz	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Olivia Phillips	Fisheries Mgmt. Specialist
Kaylea Guilford	Fisheries Mgmt. Specialist
Hank Liao	Lab Manager
Jessica Gilmore	Lab Specialist
Rick Lauderman	Chief, Law Enforcement
Brandon Price	Marine Police Officer
Patrick Turpin	Marine Police Officer

Commission Meeting

Brian Elliott
Barry Mizelle

Marine Police Officer
Marine Police Officer

Tony Watkinson
Randy Owen
Jeff Madden
Justin Worrell
Jay Woodward
Mark Eversole
Mike Johnson
Rachael Peabody
Hank Badger
Allison Lay
Bradley Reams
Ben Stagg

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing
and Mapping
Surveyor, Engineering/Surveying

Daniel Faggert

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Scott Schlick
Steve Kuntz
Bryan Campbell
Mike Ware
Tom Walter
Bryan Pluder
Adam Sterling
Benny Stokes
John Barr
Mark Snook
Woodrow Malone
Woodrow Gaskill
Ernest Bowden
Wes Blow
Mike Gurley

Matt Major
Spencer Davis
Billy R. Hill
Ann Gallivan
Tim Thompson
Bo Lusk
Maria Hacky
Laurie Stokes
Calvin Wadkins
Gordon Davis
Stan Simmerman
James Joseph
Jeff Crockett
Michael Mahier
Rex Cox

Jeff Austin
Kim Larkin
Mike Oesterling
Kelly Place
Bob Simon
Jill Bieri
Adrienne Ketila
Jerry Hughes
Chris Snook
John Satterly
Rick Gaskill
Mike Quinan
Kenny Mills
Chris Ludford
W. C. Tice

Faye Daniels Frank Daniels and others.

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Commissioner Bowman called the meeting to order at approximately 9:32 a.m.

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

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Pat Geer, Chief, Fisheries Mgmt., introduced Somers Smott, Olivia Phillips, Kaylea Guilford, Jessica Gilmore, Hank Liao as new members of the Fisheries staff. Mr. Geer also acknowledged Jonathan Depaz and Ethan Simpson on their recent promotions.

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APPROVAL OF AGENDA.

Tony Watkinson, Chief, Habitat Management, requested that Item 2B **JAMES CITY COUNTY STORMWATER DIVISION, #19-0799** be removed from the Agenda.

Pat Geer, Chief, Fisheries Mgmt., requested that Item #14 **“Pertaining to Spanish Mackerel and King Mackerel”**, be removed from the Agenda.

Commissioner Bowman announced that Items #10 & #13 will be heard after lunch.

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

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the August 27, 2019 Commission meeting minutes.

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

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Commissioner Bowman swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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

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

- 2A. **CHESTERFIELD COUNTY ENVIRONMENTAL ENGINEERING, #18-0635**, requests authorization to modify their existing permit to increase the encroachment in Falling Creek associated with the construction of a stone forebay weir to 3,368 square feet, and to increase the linear footage of the Falling Creek stream channel dredging by an additional 387 linear feet. This modification is part of the Falling Creek Reservoir Restoration Project, in Chesterfield County. All permit conditions shall remain the same.

Item 2B was removed from agenda at the beginning of the meeting by the request of Tony Watkinson, Chief, Habitat Management.

- 2B. **JAMES CITY COUNTY STORMWATER DIVISION, #19-0799**, requests authorization to construct a living shoreline consisting of 1,446 linear feet of rock sill, 1,488 cubic yards of sand fill, 16,117 square feet of marsh planting, 267 linear feet of coir log, and 162 linear feet of riprap revetment at Chickahominy Riverfront Park along the Chickahominy River and Gordon Creek in James City County. Staff recommends approval with a February 15 through June 30 instream work time-of-year restriction to protect anadromous fishes and endangered species, and the creation of an upland riparian buffer to reduce nutrient and sediment run-off as out-of-kind mitigation for impacts to submerged aquatic vegetation.

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 two item A as presented. Associate Member Tankard seconded the motion. The motion carried 9-0. Chair voted yes.

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3. CONSENT AGENDA ITEMS.

Tony Watkinson, Chief, Habitat Management, reviewed the three (3) Consent items A, B and C for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

3A. ROBERT TAYLOR, #19-1481, requests after-the-fact authorization to retain a 149-linear foot riprap revetment installed without a VMRC permit, adjacent to 908 Cavalier Drive, situated along Linkhorn Bay in Virginia Beach. The applicant has agreed to pay a \$1,000.00 civil charge and a triple permit fee of \$300.00 in lieu of further enforcement action.

Triple Permit Fee:	\$ 300.00
Civil Charge:	\$ 1,000.00
Total Fees:	\$ 1,300.00

Robert Simon, representative for the applicant, was present and sworn in. His comments are a part of the verbatim record.

Mr. Simon accepted civil penalty and permit fee on behalf of the applicant

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, 9-0. Chair voted yes.

3B. TAZEWELL COUNTY PUBLIC SERVICE AUTHORITY, #16-0142, requests after-the-fact authorization to retain an 8-inch sewer line installed using excavated open-trench methodology approximately five (5) feet below State-owned submerged lands that included a temporarily installed cofferdam for construction access in the North Fork Clinch River adjacent to the intersection of U.S Route 460 and State Route 651 in Tazewell County. The Agent for the Service Authority responsible for the permit and construction oversight has agreed to pay a \$2,000.00 civil charge in lieu of further enforcement action.

Permit Fee:	\$ 100.00
Civil Charge:	\$ 2,000.00
Total Fees:	\$ 2,100.00

The applicant or representative was not present.

No one spoke in support or opposition of the projects.

Rachael Peabody, Environmental Engineer, Sr., explained that Tazewell County’s Board of Supervisor accepted the civil charge.

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 Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

3C. MHC BETHPAGE, LLC, #19-0906, requests after-the-fact authorization to retain a 6-foot wide by 348-foot long commercial open-pile pier (B Dock) with 29 wet slips, an 8-foot by 10-foot open-sided covered fish cleaning station and two (2) timber access walkways situated along a cove of Robinson Creek at the Bethpage Camp-Resort facility in Middlesex County. The applicant has agreed to pay a \$2,000.00 civil charge, an encroachment royalty of \$11,720.00 and triple permit fees of \$300.00 in lieu of further enforcement action.

Royalties: (Encroachment of 10,520 S/F @ \$1.00 S/F)	\$ 10,520.00
Fee:	\$ 300.00
Civil Charge:	\$ 2,000.00
Total Fees:	\$ 12,820.00

Mathew Major, facilities manager for Bethpage Campground, was present and sworn in. His comments are a part of the verbatim record.

Mr. Major accepted the fines, penalties and all responsibilities associated with the project.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associated Member Minor moved to approve the after the fact application as presented. Associate Member Tankard seconded the motion. The motion carried, 9- 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. LICENSE STATUS REVIEW.

(5-1) Billy Hill (1358): Mr. Hill was present and represented by Mike Ware. Both Mr. Hill and Mr. Ware was sworn in. Their comments are a part of the verbatim record.

Kyle Jones, Marine Police Officer, was sworn in. His comments are a part of the verbatim record.

December 21, 2018, Harvest oysters from closed area: 4 VAC 20-720-40

Disposition:

February 15, 2019, Richmond County General District Court
Fine: \$100.00

GUIDELINE SUGGESTION: 3 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)

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

Mr. Billy Hill, a commercial fisherman registration licensee, was convicted on February 15, 2019 for one count of harvesting oysters from a closed area (4 VAC 20-720-40 A).

The Commission’s guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed public season, within a two-year period, should result in at least a three-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that Mr. Hill be placed on probation for a period of three years from the date of this Commission meeting, September 24, 2019, through September 23, 2022. Any failure on Mr. Hill’s part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the three-year probation would result in Mr. Hill appearing before the Commission for a hearing on license revocation.

Mr. Ware explained to the Commission that Mr. Hill was in the process of upgrading his GPS electronics on his vessel to fix the problem.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion for a 6 month probation. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

- 6. **TIDEWATER TANK TERMINAL, LLC, #19-0949**, requests authorization to install 75-linear feet of riprapp revetment, landward of a failing bulkhead along the Southern Branch Elizabeth River at 1324 McCloud Road in the City of Chesapeake. This project requires a VMRC wetlands permit.

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

Ms. Peabody explained that the project is proposed at an industrial facility located along the Southern Branch Elizabeth River that is used to pump landfill leachate from an upland storage facility to transport barges that are moored at the facility's piers. The existing shoreline along the property contains a steel bulkhead that has deteriorated along the mud line. As a result, the property is experiencing erosion between the upland and the wall as high tide can now pass through the eroded sections of the wall. The applicant has applied to top dress the escarpment on the landward side of the wall with filter fabric and rip rap to reduce the erosion of the upland. Approximately 180 square feet of non-vegetated wetlands pockets have established behind the failed wall.

The proposed riprap installation will impact approximately 180 square feet of non-vegetated wetlands. The project requires a VMRC wetlands permit because the City of Chesapeake has chosen to rescind the Wetlands Zoning Ordinance.

The applicant has minimized impacts to wetlands for this project by proposing only to stabilize the portions of the shoreline that are used by employees while attending to barge lines. Other portions of the bulkhead have failed and have established vegetated wetlands landward of the failed bulkhead. The applicant has avoided any impacts to these vegetated wetlands. The proposed project is a short term fix to a long term problem. Eventually the property owner will need to address the failed bulkhead. At that time VMRC staff will work with the applicant to incorporate nature based designs along the shoreline where possible in those areas where a bulkhead may not be needed for barge access.

The project will result in impacts to 180 square feet of non-vegetated wetlands. Compensation for these impacts is not deemed necessary based on VMRC's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed.

The applicant or representative was not present.

Commissioner Bowman requested that the applicants or representatives are present during meetings in the future and if they are unable to attend the meeting, the item should be pulled from the agenda.

The matter was before the Commission for discussion and action.

Associate Member France made a motion to approve staff recommendation based on the safety issue associated with the project. Associate Member Minor seconded the motion. The motion carried, 8-1. Chair voted yes. Associate Member Tankard voted no.

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7. **SHIRLEY CONTRACTING COMPANY, LLC, #19-0554**, requests authorization to impact Difficult Run and Colvin Run, in association with the Route 7 Improvements Project between Colvin Run Road and Jarret Valley Drive in Fairfax County. Protested by multiple nearby property owners.

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

Mr. Eversole explained that a Joint Permit Application was received on April 30, 2019, from Dewberry Engineers on behalf of Shirley Contracting Company, to widen and improve a portion of VDOT's Route 7 highway in Fairfax County. The widening of Route 7 from four (4) to six (6) lanes has been contemplated in Fairfax County's Comprehensive Plan since 1975 and some improvements have been constructed since that time. Route 7 has been, and remains, one of the major east/west transportation corridors connecting the Interstate 495 beltway areas of Arlington and Alexandria, with the rapidly growing Loudoun and western Fairfax Counties. The portion of Route 7 addressed in this application extends from Colvin Run Road, eastward to its intersection with Jarrett Valley Drive, near the beltway.

Impacts to State-owned submerged lands associated with this project include widening of the roadway along Colvin Run, reconstruction of the bridge crossing of Difficult Run, the installation by directional drill method of 28 conduits beneath Difficult Run, and most important to this public hearing, the relocation of approximately 1,500 linear feet of Colvin Run.

Commission staff conducted our standard public interest review and received no objections from any State or Federal environmental agencies. Both the Department of Environmental Quality and the Corps of Engineers are currently issuing their permits for the project. Had we not received opposition from the public, this project would likely have been on this month's agenda as a Page 2 item.

While staff understands and appreciates the concerns of those in opposition to the channelization of Colvin Run, we also recognize the constraints of widening and improving existing roadways that have been in use for years and have become surrounded by suburban growth. State agencies including VDOT, the Department of Game and Inland Fisheries and the Department of Environmental Quality, along with the Corps of Engineers, all typically recommend the use of Natural Channel Design techniques when relocating or improving streams in Virginia. In this case, however, all agree that the channelization and armoring of Colvin Run has the least environmentally damaging effect on the surrounding area.

All representatives for the applicant and project/construction personnel were sworn in. Their comments are a part of the verbatim record.

Kim Larkin, applicant agent was present but did not speak.

Jeff Austin from Shirley Contracting, explained that Shirley Contracting was the design builder for the project under contract with VDOT to construct the improvements to the project.

Steven Kuntz from Dewberry was part of the design build team working for Shirley. He was responsible for the final design of the project and the environmental coordination and permitting.

Brian Campbell, a representative from VDOT was present with knowledge of the coordination that VDOT did with Corp. of Engineer's, Federal Highway Administration and DEQ prior to the award of the design build contract to Shirley. Mr. Campbell provided an explanation of the project design.

No one was present to speak in support of the project.

There were two (2) people that were present and spoke in opposition of the project. Their comments are a part of the verbatim record.

Those that spoke in opposition of the project expressed the following concerns: map data that was used for the project was outdated, concerns of flooding and fast water flow, protecting the streams and waterways from pollution and safety issues.

The matter was before the Commission for discussion and action.

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

Royalties: (Encroachment of 1,400 L/F @ \$3.00 L/F)	\$ 4,200.00
Fee:	\$ 100.00
Total Fees:	\$ 4,300.00

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- 8. ADAM J. STERLING, Oyster Planting Ground Application #2018-160,** requests authorization to lease ten (10) acres of oyster planting ground in Revels Island Creek in Accomack County. The project is protested by an adjacent highland leaseholder.

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

Mr. Badger explained that the proposed lease area is located adjacent to Revels Island, approximately four and a half miles southeast of Quinby Harbor and one mile northwest of Quinby Inlet in Accomack County. The mean low water (MLW) depths vary from plus one (+1) foot on the riparian flat to greater than minus ten (-10) feet along Revels Island Creek. The bottom is mostly a mud and sand mix with the western area firmer than the eastern portion.

There are oyster rocks adjacent to and mostly above MLW on Revels Island, in addition to an intertidal fee-simple peninsula with a large amount of on-bottom clam aquaculture under nets. The Quinby area in general has a large amount of clam aquaculture, which requires placing nets over the planted clams.

Mr. Sterling has eight application on the seaside of Accomack County for a total of 398 acres. Two of his eight applications are protested. According to his "Lease Use Plan," he intends to use the lease for traditional shelling of the bottom or to cultivate existing shell resources.

There are two sections of the Code of Virginia that address the Commonwealth's ownership and the private ownership of property. Under §28.2-1200, all the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, shall remain the property of the Commonwealth. Pursuant to §28.2-1202, the rights and privileges of the owners of riparian lands shall extend to the mean low-water mark but no farther.

VMRC staff has been to the site on three different occasions to establish MLW. An intertidal peninsula was documented by staff that is within the requested lease and is part of Revels Island owned by TNC. The Commission may only lease State-owned submerged land and cannot, therefore, lease the fee-simple intertidal peninsula or other similar areas landward of MLW. Staff did find a 15 to 20-foot wide subtidal area between MLW and the drop-off to Revels Island Creek that could support shellfish. This, however, could block navigational access to J. C. Walker Brothers' riparian clam beds that they lease from TNC.

There is also a small area (1.5 +/- acres) east of the intertidal peninsula that is channelward of MLW. The bottom is soft mud and access to this area would be across either TNC property or J. C. Walker Brothers' leased oyster ground. Leasing this area could create access issues between leaseholders and destroy existing clam beds.

Therefore, based on the above-referenced concerns, staff cannot support leasing either the 20-foot wide strip west of the fee-simple peninsula or the small cove east of the peninsula. Staff, therefore, recommends denial of the application.

Adam Sterling, applicant, was present and sworn in. His comments are a part of the verbatim record.

No one was present to speak in support of the project.

There were two (2) people that were present and spoke in opposition of the application. Their comments are a part of the verbatim record.

Those that spoke in opposition had concerns about the encroachment on the working tidal flats across the grounds of The Nature Conservancy (TNC) which had been leased to J. C. Walker Bros. for several years.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Member Lusk abstained.

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Item #11 was heard before Item #9.

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9. PUBLIC COMMENT: There was no public comment.

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10. PUBLIC HEARING: Proposal to establish the emergency amendment as a permanent part of regulation to Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass,” to lower the recreational possession limit in the Chesapeake Bay area, establish a 36” total length recreational maximum size limit, and establish commercial gill net maximum mesh size requirements in the Chesapeake Bay and Coastal areas.

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

Mr. Aspinwall explained that in August, the Commission passed an emergency regulation to lower the recreational possession limit in the Chesapeake Bay area to 1-fish per angler, establish a 36” recreational maximum size limit, and establish a commercial gill net maximum mesh size requirement in the Chesapeake Bay and Coastal areas.

The Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Management Board will meet in October 2019 to take final action on Draft Addendum VI to establish

a reduction plan that lowers the 2017 fishing mortality estimate to the fishing target by 2020. Currently, Draft Addendum VI includes proposed recreational options for the Chesapeake Bay and Coastal areas as well as adjustments to commercial quotas that achieve reductions being required through ASMFC. The recreational sector will be required to make an 18% or a 20% reduction in removals (harvest and dead discards) and the commercial sector will be required to make a 1.8% or 18% reduction in quota, following ASMFC rule in October. Proposed recreational and commercial reductions are intended to be implemented by 2020. However, the addendum does not limit states from taking proactive measures, especially when the results from the latest stock assessment indicate the stock is overfished and overfishing is occurring.

Staff is recommending that action be taken immediately, ahead of the ASMFC process, to ensure the health of the striped bass stock in Virginia and to achieve reductions being required through ASMFC.

The Chesapeake Bay area fall recreational season will start on October 4, 2019. Lowering the recreational possession limit to 1-fish per angler during the Chesapeake Bay area spring and fall seasons would achieve reductions specified in Draft Addendum VI. In addition, establishing a 36-inch maximum size limit during the Chesapeake Bay area fall season would further protect the spawning stock, which has been below the spawning stock biomass threshold for five consecutive years.

During the last ASMFC meeting in August 2019, the ASMFC board postponed a motion to initiate an amendment to the Atlantic Striped Bass Fishery Management Plan until Spring 2020. The amendment will be aimed at addressing the overfished status. The amendment process is substantially longer than an addendum process. Therefore, to further protect the larger breeding fish that contribute to the spawning stock, staff is recommending a commercial maximum gillnet mesh size of 7" in the Chesapeake Bay area and 9" in the Coastal area beginning in fall 2019, in addition to commercial quota adjustments in 2020.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to lower the recreational possession limit in the Chesapeake Bay area, establish a 36" total length recreational maximum size limit, and establish commercial gill net maximum mesh size requirements in the Chesapeake Bay and Coastal areas.

There were fifteen (15) people from the public that spoke and provided their comments and concerns. Their comments are a part of the verbatim record.

Those that spoke had the following concerns: Gill net mesh size restriction, recreational versus commercial striped bass size and possession limits, hooking mortality from recreationally discarded fish, impact on Charter boats if there is a reduced possession and size limit, and a recommendation to close the harvesting season during spawning season.

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, 7-1. Chair voted yes. Associate Member Ballard opposed. Minor was not present during final vote.

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- 11. REQUEST FOR AN EMERGENCY AMENDMENT:** Proposal to amend Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a closure of the commercial cobia season effective October 1, 2019.

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 on August 28, 2019, the National Marine Fisheries Service (NMFS) announced that commercial harvest of the Atlantic Migratory Group of cobia (Georgia-New York) would close in federal waters on September 4, 2019. The justification is that landings reported to federal dealers—and thus already measured by NOAA fisheries—combined with the projections for landings reported to state dealers (not yet reported to NOAA fisheries) have likely exceeded the annual catch limit (ACL) of 50,000 pounds. The commercial cobia season will reopen in federal waters at 12:01am on January 1, 2020. By closing its own state waters to commercial harvest for the rest of the year, the VMRC will avoid the possibility of landing cobia during the federal closure.

Staff recommends the Commission adopt the emergency amendments described in sections of Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a closure of the commercial cobia fishery on October 1, 2019. Staff also recommends these emergency amendments be part of an October public hearing to incorporate the amendments as part of the permanent regulation.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff's request for an emergency amendment to the regulation and to advertise for an October public hearing. Associate Members Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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12. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish fall 2019 commercial offshore summer flounder fishery management measures.

Jill Ramsey, Fisheries Mgmt. Specialist, gave the briefing of 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 every year, staff works with industry to establish management measures for the commercial offshore summer flounder fishery. For 2019, a mid-year quota increase will allow for a longer fall season and increased landing limits. The coast-wide commercial quota was revised after the results of the 2018 benchmark stock assessment found that the stock was not overfished nor experiencing overfishing. The revised commercial quota is a 65% increase over the previously established 2019 quota. Staff and industry propose two fall open periods with a landing limit of 10,000 pounds for each period.

On May 17, 2019, the National Marine Fisheries Service published the revised specifications for the 2019 summer flounder fishery. Virginia receives 21.3168% of the summer flounder coast-wide quota. Virginia's 2019 summer flounder quota is 2,341,220 pounds, an increase of 71% from the 2018 quota of 1,371,972 pounds.

The Virginia offshore directed commercial fishery for summer flounder is currently open for two seasons each year. Currently in regulation, the spring season is open from March 1 through April 19 with a 10,000 pound landing limit. The fall season is open October 16 through December 31 with a 7,000 pound landing limit. Each year staff modifies the dates and landing limits based on industry need and available quota. For fall 2019, the increase in quota will allow for two fall opening periods and an increased trip limit. Members of industry have requested a fall season with two open periods. Period one will be October 1 through November 15, with a 10,000 pound landing limit. Period two

will also be a 10,000 pound landing limit from November 16 through December 31 or until the quota has been met.

Staff and the Commission have been very responsive to industry requests for the offshore summer flounder harvest in recent years. With rising fuel and maintenance costs having an effect on profitability, it is important that our regulations reflect the best management decisions for the harvester, buyer, and the resource. The offshore summer flounder fishery is a vital part of Virginia’s fisheries and local economies.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish fall 2019 commercial offshore (federal waters) summer flounder management measures.

No one spoke in support or opposition.

The matter was before the Commission for discussion and action.

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

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Item # 15 was heard before Item # 13.

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13. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to revise the minimum size limit for commercial hook-and-line gear.

Adam Kenyon, Fisheries Programs Manager, presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Kenyon’s comments are a part of the verbatim record.

Mr. Kenyon explained that the inequity between commercial and recreational hook-and-line minimum size limits in the summer flounder fishery has been a concern since the establishment of the Commercial Hook-and-Line (CHL) license in 1994. Both recreational and commercial harvests of summer flounder in Virginia inland waters have

decreased substantially over the last ten years. According to the April 2019 Summer Flounder Stock Assessment 50 percent of males are mature by 10 inches and 50 percent of females are mature at 12 inches (*66th Northeast Regional Stock Assessment Workshop Assessment Report, April 2019*). Increasing minimum size limits would allow mature fish to spawn multiple years before being removed from the population.

Recently, there has been an increased number of complaints from recreational anglers, fishing in close proximity to commercial watermen, about the inequities between the legal minimum size limits from similar gear.

The current minimum size limit for any summer flounder commercially harvested or landed in Virginia is 14 inches in total length (4 VAC 20-620-50). This minimum size limit is consistent for all commercially caught summer flounder regardless of the gear type used. The current minimum size limit for recreationally harvested summer flounder is 16.5 inches in total length. This minimum size limit pertains to all recreational fishing gear, including hook-and-line, rod and reel, spear, and gig.

This proposed amendment was presented to the Finfish Management Advisory Committee in August 2019. The Committee was adamantly opposed to the amendment believing the inequities in minimum size limits is problem with perception between user groups.

RECREATIONAL:

Recreational harvests of summer flounder in Virginia waters has decreased over the last ten years from a high in 2009 of 579,086 fish to a low in 2018 of 145,726 fish. The most recent stock assessment estimates discard mortality of summer flounder caught by hook-and-line gear to be 10 percent. This estimate would be the same for the CHL fishery. Comparably, the discard mortality of summer flounder from the commercial trawl fishery is 80 percent.

COMMERCIAL HOOK-AND-LINE:

Currently in Virginia, the CHL fishery is managed by a limited entry license system that caps the number of licensees in any given year at 200. Of those 200 licensees, only 102 were active with the gear in 2018, including 36 individuals that harvested summer flounder. Summer flounder is the third most harvested species on average from 2016 through 2018 by CHL gear, at 19.6 percent of the total. The CHL fishery for summer flounder averages 40 percent of total inshore harvest over the last ten years. Total inshore Virginia harvest over the last ten years has decreased from a high of 267,715 pounds in

2010 to a low of 26,282 pounds in 2018. Virginia is limited by a 100,000 pound quota for inshore harvest of summer flounder by all gears.

Staff recommends the Commission amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify minimum size limits for commercial hook-and-line gear.

There were twelve (12) people from the public that spoke and provided their comments and concerns. Their comments are a part of the verbatim record.

Some that spoke were opposed to Staff recommendation to modify the minimum size limit for Commercial Hook & Line. They felt that is was unfair to the hook-and-line fishery to have a different minimum size limit then other commercial gears.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Zydron seconded the motion. Associate Members Tankard, Zydron and Everett voted yes. Associate Members France, Neill, Ballard and Lusk voted no. Chair voted yes. The motion failed on a tie, 4-4. Associate Member Minor was not present during final vote.

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Item #14 was removed from agenda at the beginning of the meeting by the request of Pat Geer, Chief, Fisheries Mgmt.

14. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-540-10 et seq., "Pertaining to Spanish Mackerel and King Mackerel," to establish closure procedures in state waters for the Spanish mackerel commercial fishery to coincide with federal waters closures as announced by the South Atlantic Fishery Management Council.

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15. REQUEST FOR PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to revise the minimum recreational size limit for Atlantic shortfin mako sharks.

Lewis Gillingham, Director, SWFT, presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Gillingham’s comments are a part of the verbatim record.

Mr. Gillingham explained that on May 2019 the Atlantic States Marine Fisheries Commission’s (ASMFC) Coastal Sharks Management Board adopted new size limits for Atlantic shortfin mako sharks in state waters. These new limits provide consistency with federal measures as part of ongoing efforts to rebuild the mako shark resource. These changes would apply to Atlantic shortfin mako sharks caught in state waters or landed in a Virginia port by recreational anglers. The new minimum size limits specify a 71-inch straight line fork length (FL) for males and an 83-inch straight line FL for females. Virginia currently has a 54-inch straight line FL recreational minimum size limit for both male and female mako sharks. Atlantic coastal states are required to implement the changes to the recreational minimum size limit for Atlantic shortfin mako by January 1, 2020.

Atlantic shortfin mako sharks are rarely (if ever) caught in Virginia’s state waters but are most likely to be intercepted at their point of landing. Once a recreational vessel enters state waters in possession of a mako shark the burden of proof will fall to Law Enforcement to determine where the shark was caught and that will be problematic and time consuming.

Staff recommends the Commission advertise for an October public hearing to amend Chapter 4 VAC 20-490-10 et seq., “Pertaining to Sharks,” to modify the recreational minimum size limit for Atlantic shortfin mako sharks.

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, 9-0. Chair voted yes.

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- 16. REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-960-10 et seq., “Pertaining to Tautog,” to establish a commercial tautog license and ASMFC mandated tagging system.

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.

Alexa Kretsch explained that at the October 16, 2017 Atlantic States Marine Fisheries Commission (ASMFC) annual meeting, Amendment 1 was adopted to the Interstate Fishery Management Plan for Tautog. To combat the prevalence of illegal and undersize tautog being sold in markets, required that all states implement a commercial tagging program for tautog to be in place for January 1, 2019. In 2018, the starting date was revised to January 1, 2020. All legally sold tautog must be tagged by the harvester at the time of harvest or prior to offloading. A strap tag applied to the operculum will accommodate both live and dead market fish without compromising the health or quality of the fish.

Staff recommends advertising an October public hearing to amend Chapter 4VAC20-960-10 et seq., "Pertaining to Tautog," to establish a commercial tautog permit and ASMFC mandated tagging system.

The matter was before the Commission for discussion and action.

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

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There being no further business, the meeting was adjourned at approximately 2:44 p.m. The next Commission meeting will be Tuesday, October 22, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary