

MINUTES

COMMISSION MEETING

January 26, 2021

****In consideration of Governor Northam's Executive Order 55 and public safety, the January 26, 2021 Commission meeting of the Marine Resources Commission was held electronically at 9:30 AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting as follows:**

1. Any interested party was invited to visit the agency web calendar at <https://mrc.virginia.gov/calendar.shtm> and look for the 01/26/2021 meeting date to see web links to the draft proposed regulation, instructions for meeting participation, public call-in information, and the meeting Webex livestream web link. Participants was instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting will begin at 9:30AM.
2. All persons interested in commenting were highly encouraged to submit written comments prior to the meeting. Comments sent by mail were to be sent to 380 Fenwick Rd, Ft. Monroe, VA 23561 and should be received by 01/25/2021. Comments could have also have been emailed to fisheries@mrc.virginia.gov and were accepted until NOON on 01/25/2021.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to fisheries@mrc.virginia.gov by 5PM on 01/25/2021.

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

Steven G. Bowman

Commissioner
Present via conference call

John Tankard III

Ken Neill, III

John Zydron Sr.

Chad Ballard

Heather Lusk

Christina Everett

Wayne France

Associate Members
Present via conference call

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James E. Minor III	Associate Members Present via conference call
Kelci Block	Assistant Attorney General, Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Erik Barth	Bs. Systems Manager Present via conference call
Todd Sperling	Bs. Systems Manager Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present via conference call
Andrew Button	Head, Conservation & Replenishment Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present via conference call
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call
Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call
Alexa Galvan	Fisheries Mgmt. Specialist Present via conference call

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Tony Watkinson	Chief, Habitat Management Present via conference call
Randy Owen	Deputy Chief, Habitat Management Present via conference call
Justin Worrell	Environmental Engineer, Sr. Present via conference call
Mike Johnson	Environmental Engineer, Sr. Present via conference call
Jay Woodward	Environmental Engineer, Sr. Present via conference call
Mark Eversole	Environmental Engineer, Sr. Present via conference call
Allison Lay	Environmental Engineer, Sr. Present via conference call
Ben Nettleton	Environmental Engineer, Sr. Present via conference call
Tiffany Birge	Environmental Engineer, Sr. Present via conference call
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping Present via conference call

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

Lyle Varnell	Emily Hein	Mark Luckenbach
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Others present via conference line

A. J. Erskine	Kim Huskey	Michael Oesterling
Andy Lacatell	David DePippo	Lyn Kellum
Tommy Kellum	Jay Ford	Craig McLaughlin
David O'Brien	Ann Mickel	Bob Humphreys
Kevin Olsen	Monty Deihl	Jwala Sharma
William Simpson	Elizabeth Hester	Corey Gray
Justin Curtis	Cory Chalmers	Bruce McLaughlin
Andy Lacatell	Beverly Ludford	Nancy Davis
Rick Linker	Mark Allen	Lindsey Koren
Joshua Pratt	Brett Dietrich	Greg Mathe

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James Heyman Jason Ericson Jennie Geiger
Madeleine Ray Mike Hansen Ann Arseniu
Jackie Nunnery Cecilia Lewis Rick McLean

and others.

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

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

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

Tony Watkinson requested that Page 2B Item **CARTERS GROVE ASSOCIATES INC, #20-1934** be removed from the Agenda and be heard at a later meeting.

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 December 8, 2020 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Members Ballard 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).

Page 2B Item **CARTERS GROVE ASSOCIATES INC, #20-1934** was removed from the Agenda and not presented.

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. **DEPARTMENT OF WILDLIFE RESOURCES, #2018-1899**, requests authorization to install a total of 18 riprap breakwaters (25 feet by 132 feet each) with landward sand nourishment and vegetative plantings, establishing approximately 6,150 linear feet of living shoreline along the Hog Island Wildlife Management Area, situated along the James River in Surry County. Installation will occur in stages designated by work zones, with each work zone surrounded by floating turbidity barriers with weighted skirts extending to the bottom. In addition, all failed gabion structures along the eastern shoreline will be removed prior to construction.

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

Associate Member Ballard moved to approve the page 2 Item A as presented. Associate Member Everett seconded the motion. The motion carried 9-0. Chair voted yes.

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

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

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5. **MOUNTAIN VALLEY PIPELINE, LLC, #20-2125**, requests authorization to install turbidity monitors in multiple streams with drainage areas greater than five (5) square miles, which are considered to be state-owned subaqueous bottomlands of the Commonwealth, to monitor suspended sediment levels instream along the designated pipeline corridor in Giles, Montgomery, Franklin, Roanoke and Pittsylvania Counties.

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

Mr. Owen explained that the Commission, at its January 2018 monthly meeting, approved the applicant's request to install the pipeline beneath 18 VMRC jurisdictional streams along the Federal Energy Regulatory Commission's (FERC) approved designated pipeline corridor. Portions of the project have now been constructed or are continuing. Two (2) of the VMRC stream crossings have been installed.

To further protect water quality and existing threatened or endangered species present within the project area, on September 4, 2020, the U.S. Fish and Wildlife Service (USFWS) issued its revised Biological Opinion that now requires the applicant to conduct water quality monitoring at selected streams along the pipeline route. A total of 47 turbidity monitors are proposed, of which 29 are proposed in VMRC jurisdictional streams. The monitors will sit on a wooden platform on the adjacent upland bank, and a PVC conduit, up to one foot in diameter, will extend into the stream for approximately ten (10) linear feet on average.

Installation of the proposed water quality monitoring stations will minimally encroach on and impact the Commonwealth's State-owned submerged lands. The data obtained from the proposed monitors should reduce the potential for adverse project impacts to instream aquatic fauna. No long-term adverse impacts are anticipated with this portion of the pipeline project provided the turbidity monitors are removed upon project completion.

Accordingly, in light of the U.S. Fish and Wildlife Services' requirement for the monitors to protect water quality and the affected threatened and endangered species present in

the project vicinity, and after considering DWR’s comments as well as all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as submitted.

Corey Chalmers spoke in support of the project. 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 Tankard made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

Fee:	\$ 300.00
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- 6. **KEVIN OLSEN, #20-1276**, requests authorization to install a 14-foot by 28-foot open-sided boathouse along the Piankatank River on a statutorily exempt private pier along the Piankatank River at 6407 Holly Trail in Gloucester 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 Mr. Olsen’s property is located in a residential subdivision with numerous properties that have already constructed private piers. The water frontage on his property is approximately 70 feet wide with shallow offshore bathymetry. The statutorily exempt pier he is proposing to install is a 5-foot wide open-pile private pier extending 77 feet channelward of mean low water with a 16-foot by 11-foot deck, 48 linear feet of 5-foot wide finger pier, two (2) mooring pilings and a boat lift which meets the exemption requirements defined in §28.2-1203(A)(5) of the Code of Virginia. The existing pier is located in front of Mr. Olsen’s parcel, and at its channelward end will be approximately 9.5 feet from the property line shared with the protestant. The proposed

boathouse will be located on the side of the pier closest to the protestant.

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 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 Mr. Holley is protesting the boathouse, a VMRC subaqueous permit is required.

Staff understands the protestant's concerns regarding the roof structure and the impact it may have to his property. At the currently proposed location, the main stem of the proposed pier and boathouse would be approximately 9.5 feet from the shared extended property line with the protestant's. It appears to staff that the applicant has made a reasonable attempt to place the pier in front of his property. Also, Mr. Holley has recently constructed a pier that encroached close to the shared extended property line. 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. Holley also cited in his protest letter concerns with navigation between the two (2) piers. Due to shallow water depths, only small vessels or kayaks could operate in this area. With a 9.5-foot proposed gap between the two piers, this should be sufficient.. Additionally, Mr. Holley also owns an adjacent lot, which would afford him more space if required.

Mr. Holley's concerns with the size of the pier were addressed as staff evaluated the dimensions of the pier and determined that it does meet the exemption requirements provided for in § 28.2-1203A5 of the Code of Virginia. This includes that the pier does not extend beyond the established line of navigation, does not encroach into an oyster lease, and that it meets the requirements for pier dimensions.

Staff notes that the size of the boathouse is 392 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. Holley's view shed. Therefore, staff believes the boathouse is appropriately sized and designed for Mr. Olsen's needs.

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.

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

Fee:	\$ 300.00
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- 7. **CITY OF SALEM, #19-1802**, requests authorization to amend the permit issued to include the installation of a work platform, measuring 27 feet by 45 feet, suspended beneath the Mill Lane Roadway Bridge a minimum of 12 inches above the ordinary high water mark of the Roanoke River to allow access for bridge repair work. The project is protested by an adjacent property owner.

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

Mr. Eversole explained that the Commission, at their June 2020 meeting, approved an application from the City of Salem to construct two temporary access cofferdams, each extending a maximum 90 feet into the Roanoke River, adjacent to the Mill Lane Bridge in Salem. The cofferdams were to be installed and dewatered to allow construction access to an aging bridge that required concrete repairs within the bridge span and the abutments. Two adjacent property owners had objected to the project.

The bridge contractor mobilized in early December 2020 and began installing the first cofferdam. Due to unusually high water levels and large amounts of scour and boulders in the river channel, the contractor was unable to get the cofferdams installed and completely sealed to allow work to continue in dry conditions. The City revised their construction approach and contacted Commission staff, requesting a modification to

their permit to allow for two smaller cofferdams and a suspended work platform. By letter dated December 29, 2020, staff administratively approved the use of the two smaller cofferdams, as their use would minimize the permitted encroachment into the river. The City was notified that the suspended work platform constituted an additional temporary encroachment over State-owned submerged land and would require a public interest review. Adjacent property owners were once again notified and a public notice was placed in the Salem Times Register.

Staff understands the protestant’s concern related to potential seasonal flooding of their waterfront property and the need for a higher bridge. However, the Commission considered those concerns when they approved the bridge repairs in June 2020. This request merely seeks a change in the construction access methods required to perform the permitted maintenance. 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 use of the suspended work platform as proposed, with all special conditions contained in the original permit remaining in force.

Joshua Pratt, City of Salem, was sworn in. His comments are a part of the verbatim record. Mr. Pratt did not wish to add any comments to the presentation.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Zydron 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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- 8. VIRGINIA ELECTRIC AND POWER COMPANY, #18-0725 / #20-1666,** requests after-the-fact authorization to retain two (2) temporary construction platforms associated with an existing permit to cross the Rappahannock River

with a submarine cable adjacent to the Route 3 Robert O. Norris Bridge between Middlesex and Lancaster Counties that were constructed outside of their permitted locations. The northern platform was constructed 1,160 feet shoreward, and the southern platform was constructed 310 feet shoreward of the locations authorized by permit. Also requesting authorization to disturb up to 3.5 acres of subaqueous bottom by hydraulic jetting method, and installation of turbidity curtains and articulated concrete protective mattresses associated with the over-boarding of the cables at the temporary work platform locations where the cables were spliced together.

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

Mr. Woodward explained that on June 21, 2019, VMRC issued permit number 2018-0725 to Virginia Electric and Power Company (VEPCO) to "rebuild an existing 115kV transmission line across the Rappahannock River adjacent to and downstream (SE) of the Route 3 Norris Bridge between Middlesex and Lancaster Counties. The transmission line will be installed by horizontal directional drill (HDD) method approximately 100 feet below the riverbed except at two (2) splice points where the transmission lines will be installed by jet-plow a minimum of three (3) feet below the bottom. Two (2) 20,000 square foot, temporary work platforms will be used at the splice locations and removed upon completion of the installation. The existing overhead lines and support towers will be removed from the river and bridge structure upon completion of the new underground line." The permit includes five (5) special conditions, 15 pages of plans and permit drawings, and is due to expire on September 25, 2021. VEPCO contracted Mears Group, Inc. in December 2019 to construct the job, and work on the project has been ongoing since that time.

It should be noted that a prior permit (VMRC #15-0533) to replace the overhead line on new towers in the river was approved by the Commission on July 28, 2015. Subsequent court action, however, required VEPCO to install the line below the riverbed, thus requiring the submittal of a new application in 2018 for an underground crossing.

On September 9, 2020, staff received a request by VEPCO to additionally install pile-supported turbidity curtains and articulated concrete mattresses to minimize impacts associated with a deepening of the jetted area of river bottom where the spliced line would ultimately be installed, a process referred to as "overboarding" of the line. This

is a change from the prior authorized jet-plow method to achieve three feet of cover over the line. VEPCO hopes to get a minimum of 20 feet of natural cover and plans to use the concrete mattresses over top of the line where this depth can't be achieved by hydraulic jetting. Because this represented a significant change from the originally permitted impacts, a new application was required and assigned VMRC #20-1666.

Relocation of the platforms to their originally permitted locations will cause additional bottom disturbance and result in project delays. Such delays potentially push the project into the summer months, during peak oyster spawning. Conversely, the unauthorized locations of the current platforms may result in damage to Ferry Bar, as well as to nearby privately leased oyster grounds in the Rappahannock River.

Staff and VIMS also questioned the ability of the proposed turbidity curtains to reduce project impacts, given the area's strong currents and constraints on curtain placement by adjacent Baylor ground. Consequently staff recommended work be limited to ebb tide cycles, to which VEPCO has agreed to. This may additionally reduce sedimentation of natural and cultured oyster grounds. Since the articulated mattresses are likely to be covered over with natural sediments in time, and if not, will provide hard substrate for oyster strike, staff is not opposed to their use.

Staff doesn't know where the communication breakdown was between VEPCO obtaining the VMRC permit and contracting the job out, but the prime contractor for the project indicates they bid and built to the plans provided to them by VEPCO. VEPCO does not dispute this. Regardless, it is long standing policy to hold the applicant and contractor both responsible when violations of VMRC permits are discovered. Staff believes that the southern and northern relocated work areas and platforms constitute separate violations. Further, that the environmental impact and degree of deviation is significant in each case. Furthermore, staff believes VEPCO should compensate for the damage to nearly 3.5 acres of riverbed associated with the larger areas to be disturbed at each new splice location, over that originally proposed when the line was to be jetted to only three feet in depth. Such compensation should be in the form of oyster reef construction. As such, in lieu of constructing an oyster reef themselves, VEPCO has offered to contribute necessary funds for a comparable VMRC reef construction project.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the after-the-fact permit modification request (#18-0725) to allow the two (2) temporary construction platforms

to remain in their unauthorized locations until completion of the project with acceptance of a civil charge from both VEPCO (permittee) and Mears (contractor) in the amount of \$10,000.00 per platform, given the maximum degree of deviation and environmental impact, for a total of \$40,000.00 in lieu of pursuing further enforcement actions.

In addition, staff recommends approval of the pending application (#20-1666) to facilitate the overboarding of the cables and installation of the protective concrete mattresses at both existing splice point locations with the following permit conditions:

1. All jetting operations at the north platform shall occur only during ebb tide (outgoing) periods to reduce the likelihood of resuspended sediments covering the natural oyster rock upstream of the north platform work area, and that an independent monitor be present on the North platform to observe and report to ensure this condition is complied with;
2. A bubble curtain shall be deployed between the north platform work area and the natural oyster rock upstream during all jetting operations;
3. VEPCO shall pay a total of \$69,000.00 to compensate for impacts to 3.45 acres of natural river bottom (\$20,000.00 per acre) associated with the overboarding operation at both platform locations. Such payment shall be made to funds within the Oyster Replenishment Department for oyster reef construction.

Elizabeth Hester, representative of Dominion Power was sworn in. Her comments are a part of the verbatim record.

Ms. Hester apologized for the oversight in the original project where the platform was relocated outside of the permit guidelines unbeknownst to the permit department.

J. B. Brown and Jwala Sharma, Mears Group, was present and sworn in. Their comments are a part of the verbatim record.

Mr. Brown did not agree with the fines due to the fact that they placed the platforms as approved by Dominion. Mr. Brown respectfully request a reconsideration of the violation for Mears Group.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

#18-0725

Associate Member Zydron made a motion to approve staff recommendation as presented. Associate Member France seconded the motion. The motion carried, 7-2. Chair voted yes. Associate members Tankard and Ballard voted no.

#20-1666

Associate Member Zydron made a motion to approve staff recommendation as presented. Associate Member Everett seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during final vote.

Civil Charge: (\$20,000 Each – VEPCO & Mears):	\$ 40,000.00
Fee:	\$ 300.00
Compensatory mitigation to VEPCO:	\$ 69,000.00
Total Fees:	\$ 109,300.00

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- 9. **PUBLIC HEARING:** Commission consideration for adoption of a Guideline Document Concerning Oyster Planting Grounds Lease Renewal Approval, Lease Renewal Denial, and Commission Hearings for Lease Renewal Denials. This document is proposed for adoption to provide for better transparency for such renewal reviews, denials and hearings, pursuant to the Code of Virginia Chapter 6, Article 2, General Oyster-Planting Grounds, Section 28.2-613.

Ellen Bolen, Deputy Commissioner, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Bolen’s comments are a part of the verbatim record.

Ms. Bolen explained that the document is proposed for adoption to provide for better transparency for such renewal reviews, denials and hearings, pursuant to the Code of Virginia Chapter 6, Article 2, General Oyster-Planting Grounds, Section 28.2-613.

Commission Meeting

Prior to the start of Ms. Bolen’s presentation, Associate Members Ballard and Lusk read a Declaration of Conflict of Interest statement. Both Associate Member Ballard and Lusk stated that recusal on this matter was not required by law. Both Associate Members stated that their decision would be made fairly, objectively and in the public interest. Their comments are a part of the verbatim record.

There were seven (7) people that spoke in opposition of the adoption of a Guideline Document Concerning Oyster Planting Grounds Lease Renewal Approval, Lease Renewal Denial, and Commission Hearings for Lease Renewal Denials. Those that spoke in opposition requested a delay in implantation of the guideline because they felt that they did not have adequate time to properly review the final guideline document.

There were two people that spoke in support of the adoption of the guideline document. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Everett made a motion to approve staff recommendation. Associate Member Zydron seconded the motion. The motion failed, 4-5. Chair voted yes. Associate Members France, Tankard, Ballard, Minor and Lusk voted no.

Associate Member Everett made a substitute motion to continue the final vote for 60 days to allow industry and the public the opportunity to further review and the guidelines as presented. Associate Member Minor seconded the motion. The motion passed, 9-0. Chair voted yes.

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10. PUBLIC COMMENTS.

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11. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", to modify the reporting requirements for the February recreational season and to clarify the size of the degradable panel required on commercial fish pots.

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

Ms. Galvan explained that as in 2018 and 2019, the Commission approved in 2020 a February recreational black sea bass fishery with the understanding that any additional landings occurring in February of 2020 would result in a deduction of fishing days from the open season. The Virginia Marine Resources Commission was able to successfully monitor catch and collect biological data from the 2020 February black sea bass fishery. Permit holders (the captain or operator of the vessel) were required to report to the commission the number of trips they took, the number of anglers on board, and the number of black sea bass they landed and released. VMRC recorded a total of 14,236 pounds of black sea bass, or 7,428 fish, landed in Virginia during the 2020 February recreational season. Biological data (length and weight) was collected by VMRC MRIP staff to estimate an average weight.

Season adjustments to the 2020 season were based on average daily landings rates by wave from the most recent two years (2018-2019) of MRIP landings. A closure of 14 days in wave 3 (May-June) was estimated to result in savings of 14,583 pounds. The Summer Flounder, Scup & Black Sea Bass Technical Committee reviewed and approved the VMRC's methods and conclusion. Pursuant to the authority afforded to the Commissioner by the Governor of Virginia's Executive Order 51(C) and in agreement with the Virginia Secretary of Natural Resources, the VMRC amended the 2020 season to be open from May 29 through December 31 for a total closure of 14 days.

Due to COVID-19 disruption to MRIP sampling, VMRC is unable to ascertain the effect of the 14 day closure. However, when VMRC forfeited 21 days from wave 3 of the 2019 black sea bass season to account for 10,082 pounds landed in the 2019 February season, wave 3 harvest in 2019 was less than in 2017 and 2018 by 11,324 pounds and 18,178 pounds, respectively.

The February black sea bass season is popular with Virginia anglers and has been supported by FMAC for several years. In 2020, ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) said they support continuing the February recreational season option for states and praised Virginia's rigorous monitoring program. Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass" describes the reporting requirements, but says reports may be made to the commission or to the Standard Atlantic Fisheries Information System (SAFIS), which is the data center for Vessel Trip

Reports required of for-hire vessels fishing in federal waters. VMRC cannot access VTR data, but needs reporting from all trips in order to account for February landings during the main recreational season. Therefore, staff recommends removing the SAFIS reporting option from the regulation. For-hire vessels must report February black sea bass to the commission and are still required by NOAA to make their Vessel Trip Reports separately. Staff also recommends removing the seven-day reporting requirement for February trips where black sea bass were caught since the season itself is only 28 days and to encourage reporting even after that 7 day period. All reports—whether of no activity, no black sea bass caught, black sea bass caught and released, or black sea bass caught and landed—must be submitted by March 15 of that year. The recreational black sea bass season will come before the commission again after February to adjust the season length to account for February landings.

All states in the black sea bass fishery are required to comply with the Interstate Fishery Management Plan (FMP). One provision in the FMP is that black sea bass pots are required to have a hinged opening fastened with certain degradable materials to avoid ghost fishing in lost pots. The rectangular opening fastened must measure at least three inches by six inches. Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass" specifies there must be degradable fasteners on a door or side panel, but did not regulate the size of such door or side panel. By adding in the required measurements, Virginia will be brought into compliance with the FMP.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", to modify the reporting requirements for the February recreational season and to clarify the size of the degradable panel required on commercial fish pots

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

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, 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 modify the landing dates, possession limits and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

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

Ms. Ramsey explained that each year, staff works with industry and neighboring states to determine the best use of Virginia's allowable landings for the offshore summer flounder fishery. The goal for this fishery is to harvest 60% of Virginia's allowable landings during the spring season and 40% during the fall season. In 2020, Virginia landings for summer flounder fell below predicted amounts due to COVID-19 and a decrease in demand for seafood. In order to allow stakeholders and industry to fully maximize Virginia's allowable landings, a six week directed season with a 15,000 pound landing limit is recommended to begin the spring season. Once this season closes, staff will review the landings and determine if enough quota remains to have a second spring opening. Spring period one will be February 25 through April 7 with a 15,000 pound landing limit. Landings will be closely monitored by staff and if it is predicted that 60% of the landings goal has not been met then a second spring opening will be proposed at the April 2021 Commission meeting.

This proposal has been advertised in accordance with §28.2-209 of the Code of Virginia for a public hearing on January 26, 2021. No public comments have been received since the initial request from industry.

Staff recommends the Commission amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

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

The matter was before the Commission for discussion and action.

Commission Meeting

**18693
January 26, 2021**

Associate Member Neill made a motion to adopt staff recommendation. Associate Member Everett seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during final vote.

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There being no further business, the meeting was adjourned at approximately 2:01 p.m..

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary