

MINUTES

COMMISSION MEETING

February 25, 2020

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	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Sheri Crocker	Chief, Admin. & Finance Management
Pat Geer	Chief, Fisheries Mgmt.
Adam Kenyon	Deputy Chief, Fisheries Mgmt.
Shanna Madsen	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Ethan Simpson	Biological Sampling Program Manager
Chris Davis	Fisheries Biologist
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Olivia Phillips	Fisheries Mgmt. Specialist
Hank Liao	Lab Manager

Commission Meeting

**18504
February 25, 2020**

Warner Rhodes
Alexander Tucker
Marshall Reedy

Acting Chief, Law Enforcement
Marine Police Officer
Marine Police Officer

Tony Watkinson
Randy Owen
Justin Worrell
Jay Woodward
Mark Eversole
Jeff Madden
Mike Johnson
Rachael Peabody
Hank Badger
Allison Lay
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.
Dir., Shellfish Aquaculture, Leasing
and Mapping
Surveyor, Engineering/Surveying

Daniel Faggert

Virginia Institute of Marine Science (VIMS):

Lyle Varnell Emily Hein

Others present:

Tanner France	A. Scott Wilson	Neville Reynolds
Clyde Tysor	James Pittman	Rebecca Napier
John Evans	Tom Grala	Kermit Ashby
William Zazynski	Danny Vestel	Tyler Parks
Rommel Tamayo	Karla Havens	James Kelly
Rebecca Frances	Robert McDaniel	Justin Doyle
Chris Moore	Grace Saunders	and others.

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m.

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Associate Member Tankard said the invocation. Associate Member France led the pledge 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 France moved to approve the agenda as presented. Associate Member Zydron 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 January 28, 2020 Commission meeting minutes.

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

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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 three (3) page 2 Items A through C for the Associate Members. Mr. Watkinson's comments are a part of the verbatim record.

- 2A. **FAIRFAX COUNTY DEPARTMENT OF WASTEWATER DESIGN AND CONSTRUCTION, #19-0202**, requests authorization to install, by the open cut/trench method, a 12-inch diameter ductile iron gravity sanitary sewer transmission line, an average of six (6) feet beneath Little Hunting Creek between the Stratford Landing and Woodland Park subdivisions in Fairfax County. The sewer line will also be supported by a series of submerged pilings vibrated into the trench, once opened. Approximately 20 linear feet of the line will be encased in 24-inch diameter galvanized steel casing and will rest on the creek bottom, to maintain positive grade, as it crosses the creek channel. All

instream work will be conducted within cofferdams and no instream work will be conducted from February 15 through June 30 of any year to protect anadromous fish species.

Fee:	\$ 100.00
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2B. CITY OF VIRGINIA BEACH, #15-0549, requests authorization to modify an existing Commission dredging permit to include an additional 16,000 cubic yards of State-owned submerged bottom in an attempt to expand the Crab Creek Municipal Channel adjacent to the existing wharf bulkhead serving the Lynnhaven Beach and Boat Ramp Facility in Virginia Beach. The expanded channel will be mechanically or hydraulically dredged down to maximum depths of minus eight (-8) feet mean low water, and the dredge spoils will be offloaded at the existing facility and utilized for City beach nourishment. Dredging of this additional area will include a one-time time-of-year restriction precluding dredging from May – September to protect juvenile flounder.

2C. CITY OF PORTSMOUTH, #2020-0055, requests authorization to repair and replace approximately 1,800 linear feet of bulkhead and boardwalk, a maximum 3.8 feet channelward of the existing bulkhead, with eight (8) mooring dolphins, along the Southern Branch of the Elizabeth River, paralleling Water Street, from King Street to Tidewater Yachts property in the City of Portsmouth.

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

The matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the three (3) page 2 Items A through C as presented. Associate Member Ballard seconded the motion. The motion carried 8-0. Chair voted yes.

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3. CONSENT AGENDA ITEMS

Tony Watkinson, Chief, Habitat Management, reviewed the two (2) page 3 Items A and B for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

3A. PINE POINT COMMUNITY ASSOCIATION, INC., #19-0834, requests after-the-fact authorization to retain a 78-foot long (mhw) by 6-foot wide timber replacement community pier, extending 60 feet channelward of mean low water, adjacent to property situated along Cod Creek in Northumberland County. The applicant has agreed to pay a civil charge in the amount of \$1,000.00, triple royalty of \$324.00 and a triple permit fee of \$75.00 in lieu of further enforcement action.

Triple Permit Fee:	\$ 75.00
Triple Royalty:	\$ 324.00
Civil Charge :	\$ 1,000.00
Total Fees:	\$ 1,399.00

The contractor was unable to attend the meeting but submitted a written statement agreeing to the civil charge and submitted his payment for the full amount.

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

Mr. McDaniel agreed to pay the \$1,000 civil charge.

Associated Member Tankard moved to approve the after the fact application with the civil charges as presented. Associate Member France seconded the motion. The motion carried, 8- 0. Chair voted yes.

3B. J. SCOTT FINNEY, #19-2008, requests authorization to retain a 6-foot wide by 185-foot long open-pile private pier with 601 square feet of deck space and to install two (2) 5-foot by 32-foot finger piers and a boatlift along the Ware River at 7040 Ware Neck in Gloucester County. The applicant has agreed to pay a civil charge in the amount of \$1,000.00 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

Carla Havens, representative for the applicant, was present and sworn in. Her comments are a part of the verbatim record.

Ms. Havens stated that she was hired to complete an application for the two (2) proposed finger piers and that’s when the violation came to light.

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, 8-0. 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. JAMES RIVER ASSOCIATION, #19-1896, requests authorization to construct a 40-foot by 16-foot geogrid canoe launch at their property situated at 5501 New Market Road, adjacent to Turkey Island Creek in Henrico County. The project requires a tidal wetlands permit.

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

Ms. Lay explained that the project is located in Henrico County along Turkey Island Creek, a tributary of the James River. The site consists of a forested area that leads to a freshwater tidal wetland along the banks of Turkey Island Creek. The proposed geogrid canoe launch will be constructed within the jurisdictional wetland area. There will be no impacts channelward of mean low water.

The canoe launch will be constructed by excavating the wetland area to facilitate installation of the geogrid material to the proper grade and slope. This will result in impacts to 116 square feet of vegetated wetlands and 228 square feet of non-vegetated wetlands.

The applicant is requesting authorization to install a geogrid canoe launch at their Henrico County property to increase public access to Turkey Island Creek and the James River. The project will additionally reduce localized bank erosion resulting from canoes and kayaks currently launching from an unimproved bank.

The existing tidal wetland area will be excavated to facilitate construction of the geogrid structure, resulting in a loss of 116 square feet of tidal vegetated wetlands. The vegetated wetlands will be compensated for at the New Mill Creek tidal wetlands mitigation bank in the City of Chesapeake.

Staff commends the applicant's desire to improve public access and reduce sediment loads to the subject waterway. Staff believes that the applicant has minimized wetland impacts to the greatest extent possible and find that the proposed compensation, through the purchase of credits at a tidal wetlands mitigation bank, fulfills the Commission's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines (Regulation 4 VAC 20-390-10 ET SEQ).

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 conditioned upon the purchase of wetland credits at the New Mill Creek Tidal Mitigation Bank necessary to replace the loss of 116 square feet of tidal vegetated wetlands.

Rebecca Napier, representative for the applicant, was present and sworn in. Her comments are a part of the verbatim record.

Ms. Napier did not know the material that would be used for the project because she was not involved in the engineering of the project.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

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

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6. **YMCA OF SOUTH HAMPTON ROADS, #19-1496**, requests authorization to install two (2) offshore stone breakwaters totaling approximately 760 linear feet, extend an existing breakwater approximately 40 linear feet, install a 100-foot long by 24-inch diameter stormwater outfall pipe, and nourish the area landward of the breakwaters with beach quality sand. The project is situated along the Chesapeake Bay adjacent to the YMCA Camp in the Silver Beach area of Northampton County. The project is protested by adjacent and nearby property owners.

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 project is located approximately 7.5 miles southwest of the Town of Exmore and 0.5 miles north of the beachfront community of Silver Beach. The project is also south of and adjacent to four permitted breakwaters. Camp Silver Beach is located on 151 acres of property that provide activities for 8-16 year old campers. The Camp has approximately 1,100 feet of shoreline along the Chesapeake Bay.

There is severe erosion along the upland and beach interface, with a substantial scarp running along most of the property. The erosion rate since 2002 has been 3.6 feet per year. However, since the installation of the adjacent northern breakwaters in 2010 or 2011, the YMCA property has averaged over five feet of erosion per year. The adjacent property south of the Camp property has seen very little erosion since 2002.

The applicant proposes to stabilize the shoreline and protect the property by utilizing living shoreline techniques that include the construction of two new breakwaters and extension of a third existing structure, combined with minor bank grading of the higher escarpment and beach nourishment. A total of 23,686 square feet of non-vegetated shoreline and 60,145 square feet of subaqueous bottom will be impacted by the construction of the living shoreline. Upon completion, the project will result in 6,624 square feet of subaqueous and intertidal rock habitat, and approximately 40,000 square feet of vegetated and non-vegetated beach and backshore habitat. There also is 4,175 square feet of submerged aquatic vegetation (SAV) within the project area that will be lost.

Section 28.2-104.1 of the Code of Virginia encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. The applicant's breakwater system is consistent with this legislation that was passed in 2011.

Based on the concerns of the protestants' the applicant redesigned their living shoreline and breakwater system. The southern breakwater and nourishment now appear to be north of the protestants property and now in front of the Camp's property.

While we are sensitive to the protestants' concerns, it appears that the project has been designed to minimize the potential for adverse effect along the adjoining southern beach while providing protection for the applicants' eroding shoreline. As suggested by our Shoreline Development BMP's, the breakwater project appears to have been designed to address the specific site conditions such as the wave climate and the material composition, and has been designed with an appropriate spacing and distance offshore.

However, as stated in our standard permit language, Condition #2 indicates that "a permit grants no authority to the permittee to encroach upon the property rights, including riparian rights, of others." Since the southern breakwater and sand nourishment now appears to be in front of the applicant's property, staff can now support the project.

Therefore, after evaluating the merits of the entire project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia and the concerns of the protestants, staff recommends approval of the applicant's redesigned breakwater system. In addition, staff recommends compensatory mitigation for 4,175 square feet of direct impacts to SAV and that a plan for SAV compensation shall be submitted to Commission staff for review and acceptance. It is staff's understanding that the applicant and VIMS

have worked out an agreement to compensate for the loss of SAV, through support to fund additional VIMS seeding activity for SAV restoration

Staff further recommended that, based on the redesign, a one-time royalty in the amount of \$1,987.40 be assessed for the subaqueous beach nourishment fill over 39,748 square feet be included at a rate of \$0.05 per square foot. Staff also recommends a one-time royalty assessment of \$111.00 for the outfall pipe encroachment under 37 feet of State-owned subaqueous bottom at a rate of \$3.00 per square foot.

Bill Zazynski, Chief Property Facilities Officer for the applicant, was present and sworn in. His comments are a part of the verbatim record.

Mr. Zazynski explained the programs that Camp Silver Beach offer, the importance of protecting the eroding shoreline and explained the project in more detail.

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

Mr. Reynold explained the project in more detail and answered questions and concern from the Associate Members.

No one else spoke in support of the project.

Kermit Bernard Ashby was present, sworn in and spoke in opposition of the project on behalf of the property owners of Downing Beach. His comments are a part of the verbatim record.

He explained concerns about the YMCA not being forthcoming with details regarding the project and not responding to the concerns of the property owners. He stated that he was not opposed to the project but would like to meet with the applicants to further discuss the project and a reasonable compromise to mitigate the cost associated with hiring an independent contractor to assess the potential erosion that may occur to their property. Mr. Ashby requested that the project be delayed in attempt to receive grants, apply for the appropriate permits required to maintain and protect their shoreline and reach a compromise with the applicant.

The matter was before the Commission for discussion and action.

Associate Member Zyrdon made a motion to continue the matter until the September 2020 Commission meeting and directed staff to work with Virginia Institute of Marine Science (VIMS) regarding measures to further protect SAV. Associate Member Minor seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member Ballard opposed.

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- 7. BENNETT’S CREEK LANDING HOMEOWNERS ASSOCIATION, #2018-1986,** requests authorization to remove the Commission-imposed boat lift height restriction in order to protect marina boats during high water events at the Bennett's Creek Landing Homeowners Association community marina, situated along Bennett's Creek at 106 Club Road in the City of Suffolk.

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 Bennett’s Creek Landing (BCL) Marina is a 19-slip community marina located approximately 3,000 feet downstream of the Bennett’s Creek/Route 17 Bridge along Bennett’s Creek, a tributary to the Nansemond River. The marina was originally authorized by permit in 1993 and was constructed in 1994. Since construction, the BCL Homeowners Association (HOA) received additional VMRC permit authorization for uncovered boatlifts within certain existing slips in 1994, 1999, and 2000.

The Commission heard the 2000 boatlift request because of view-shed and navigation concerns raised by the upstream and downstream neighbors, Mr. John Evans and Mr. Paul Scott, when the boats are lifted. During deliberations, the Commission offered a compromise in an effort to appease both parties. The permit was authorized with a Commission crafted condition that stated “The bottom cross beam of each lift may be raised no higher than the elevation of the main pier.” In 2018, the HOA applied to add lifts to the remainder of slips where they had not yet been authorized and to remove the height restriction condition.

Section 28.2-1205 of the Code of Virginia states that the Commission shall consider, in addition to other facts, the public and private benefits of the proposed project and its effect on other reasonable and permissible uses of State water and State-owned

bottomlands and its effects on adjacent or nearby properties. The community marina is located along a relatively narrow waterway and the existing boatlifts do impact visibility when attempting to access the channel from the adjacent properties. While staff is sensitive to the concerns of the neighbors, it does not appear that lifting the boats an additional four to six-feet will actually have a greater impact on navigation. However, giving the slip-owners additional ability to prepare for storms or to store their vessels at a higher elevation will significantly increase safety for the marina. Therefore, after considering all of the factors contained in §28.2-1205 of the Code of Virginia and the concerns raised by the protestants, staff recommends removing the height restriction condition for all lifts at the Bennett’s Creek Landing Marina.

Joe Pittman, representative of Bennett’s Creek Landing Home Owners Association, was present and sworn in. His comments are a part of the verbatim record.

Mr. Pittman explained the role of Bennett’s Creek Landing Home Owners Association, the qualifications of being part of the Association and the marina. He disagrees with the imposed boat lift height restriction.

John Evans was present, sworn in and spoke in opposition. His comments are a part of the verbatim record.

Mr. Evan expressed concerns with the safety and lack of visibility when navigating to and from his private pier with his personal boat if the boats at the marina are raised too high. He also stated that he had no objection to the boats being raised during extreme high water.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation to remove the Commission – Imposed boatlift height restriction from the existing permit. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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- 8. BROADWATER SEAFOOD, L.C., Oyster Planting Ground Application #2017-111**, requests authorization to lease 0.98 acres of Oyster Planting Ground in the Chesapeake Bay near the Sea Breeze Apartments in the Town of Cape Charles. The application is protested by the 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 Cape Charles town beach and includes the area of the old ferry dock that was originally built in 1930 to take cars and passengers from Cape Charles to Little Creek. The ferry terminal moved into Cape Charles harbor in 1933, abandoning the facility. The water depths encompassed in the proposed lease vary from approximately mean low water to minus three (-3) feet offshore. The bottom is mostly sand inshore and a mix of sand and mud offshore. Cherrystone Creek has a large amount of clam and oyster aquaculture. There are active aquaculture clam beds 1,400 feet to the northeast.

Broadwater Seafood currently has 20 leases for a total of 462.27 acres, with three (3) on the bayside and 17 on the seaside of the Eastern Shore. The applicant intends to use the ground to grow aquaculture oysters in cages or aquaculture clams under nets.

VMRC did not consider the remains of the old ferry dock a leasable area and did not include it in the oyster ground lease applied for by the adjacent owners; the Sohlegels. Believing VMRC would not lease the area, the Sohlegels' agreed to the revised survey and lease, which deleted the subject area.

Staff believes the leasing of this area would create a conflict between the applicant and the riparian property owner, who had accepted staff's word that the ferry dock area would not be leased. The leasing of this area would also limit the riparian property owner's ability to nourish their beach or install erosion control structures.

Commission staff does not have the authority to deny administratively an application for oyster planting ground. If an applicant is not willing to take staff's recommendation or advice, staff can only recommend to the Commission a course of action. Accordingly, after considering all of the factors in §28.2-607 and §28.2-1205 of the Code of Virginia, and the concerns raised by the protestants, staff recommends denial of Broadwater Seafood L.C.'s application for 0.98 of oyster planting ground as surveyed and mapped.

James Arthur Kelly IV, applicant, was present and sworn in. His comments are a part of the verbatim record.

No one else spoke in support or opposition of the application.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation to deny the requested lease and remove the subject area as a leasable ground for all future applications. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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9. PUBLIC COMMENT – No one spoke during public comment.

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10. PUBLIC HEARING: Staff requests to incorporate the emergency amendments to Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” that 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 every year, VMRC works with industry to establish management measures for the commercial offshore summer flounder fishery. The 2020 coast-wide quota will remain the same as the final quota for 2019. Virginia receives 21.3168% of the summer flounder coast-wide quota. The 2020 Virginia summer flounder quota is 2,457,822 pounds. This quota amount, will allow for an increase in the spring season landing limit in Virginia. On January 28, 2020, the Commission voted unanimously to adopt emergency amendments to establish a spring open season from February 24 through March 31, with a landing limit of 12,500 pounds.

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

No one spoke in support or opposition to staff recommendation.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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11. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-995-10 et seq., "Pertaining to Commercial Hook-and-Line," to modify existing language concerning time of day restrictions

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 modifications approved October 30, 2018, left unclear when commercial hook-and-line fishing could occur relative to any bridge, bridge-tunnel, jetty or pier. As presently written, it could be interpreted that it is unlawful to use commercial hook-and-line gear in these areas during any open recreational striped bass season. The original intent was to restrict commercial hook-and-line gear only during the weekends (Friday at 6am through Sunday midnight) to avoid conflicts with recreational anglers.

Staff recommends the Commission approve to amend Chapter 4 VAC 20-995-10 et seq., to modify language in Section 30, subsection B to prohibit the use of commercial hook-and-line gear within 300ft of any bridge, bridge-tunnel, jetty, or pier on weekends (Friday through Sunday) during opened striped bass seasons.

No one spoke in support or opposition to staff recommendation.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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12. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters” to establish minimum size of escape vents in lobster traps to comply with Addenda II and IV to the Interstate Fishery Management Plan for American Lobster.

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

Ms. Smott explained that the Atlantic States Marine Fisheries Commission (ASMFC) established Amendment III to the Interstate Fishery Management Plan (FMP) for American lobster effective December 1997. Addendum II of the FMP was established in February 2001 and Addendum IV was established in January 2004. Both Addenda addressed the requirement for a minimum size of escape vents in lobster traps. All lobster traps in Area 5 (which encompasses Virginia waters), whether fished commercially or recreationally, must contain at least one rectangular vent with minimum measurements of 2 inches (5.08 cm) by 5-3/4 inches (14.61 cm) or two circular escape vents at 2-5/8 inches (7.20 cm). Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters” had regulatory language that needed to be modified for clarity, but not intent.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters”, to establish minimum size of escape vents in lobster traps and to modify regulatory language for clarity.

No one spoke in support or opposition of staff recommendations.

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 Ballard was not present during final vote.

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13. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1310-10 et seq., "Pertaining to Jonah Crab" to establish a 2.75-inch minimum claw size for claw-specific harvest greater than 5 gallons, to establish a definition of Jonah crab bycatch, and to modify non-lobster trap possession limits to comply with Addendum I and II of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Jonah Crab.

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

Ms. Smott explained that the Atlantic States Marine Fisheries Commission (ASMFC) established an Interstate Fishery Management Plan (FMP) for Jonah Crab effective August of 2015. Addendum I of the FMP was established in May of 2016 to address the bycatch allowance of Jonah crab in non-lobster traps. Addendum II of the FMP was established in January 2017 to address regulation inequities in the claw harvest between the states, and to define bycatch. Non-trap bycatch must be 1,000 crabs for any trip length. Claw harvest must be a 2.75-inch (6.99cm) minimum claw size for any harvest greater than 5 gallons. Bycatch was defined to limit the amount of Jonah crab harvested relative to target species. The bycatch allowance in non-lobster traps, the minimum claw size, and the bycatch definition must be addressed to remain in compliance with the fishery management plan. Chapter 4 VAC 20-1310-10 et seq., "Pertaining to Jonah Crab" had regulatory language that needed to be modified for clarity, but not intent.

Staff requests the Commission approve amendments in Chapter 4 VAC 20-1310-10 et seq., "Pertaining to Jonah Crab", to establish a 2.75-inch minimum claw size for claw-specific harvest greater than 5 gallons, to establish a definition of Jonah crab bycatch, to modify non-lobster trap possession limits, and to modify language for clarity.

No one spoke in support or opposition of staff recommendations.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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- 14. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-450-10 et seq. “Pertaining to the Taking of Bluefish,” to revise the recreational possession limits for bluefish.

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.

On December 10, 2019 the Mid-Atlantic Fishery Management Council (Council) recommended and the Atlantic States Marine Fisheries Commission (ASMFC) approved a bluefish recreational 3-fish bag limit for the shore/private sector and a 5-fish bag limit for the for-hire sector. Note, that the current recreational bag limit (i.e., possession limit) for bluefish is 10 fish in Virginia.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-450-10 et seq., “Pertaining to the Taking of Bluefish,” to revise the recreational harvest and possession limit of bluefish such that, the harvest and possession limit is three fish for the shore/rental/private sector and five fish for the for-hire sector.

No one spoke in support or opposition of staff recommendations.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Lusk seconded the motion. The motion carried, 6-1. Chair voted yes. Associate Member Neill opposed. Associate Member Ballard was not present during final vote.

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- 15. **DISCUSSION:** Oyster Replenishment Plan

Andrew Button, Head, Conservation/Replenishment, presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Button’s comments are a part of the verbatim record.

Mr. Button explained that the Marine Resources Commission has worked with many of the federal partners involved in oyster restoration, primarily the National Oceanic and Atmospheric Administration (NOAA) and the United States Army Corps of Engineers (USACE), on past restoration efforts. All restoration projects undertaken directly by VMRC will seek to maximize the benefits to the oyster resource, in its entirety, while seeking to meet the restoration goals outlined in the Bay Agreement. To assist the Commonwealth with meeting the “Oyster Outcome” described in the Bay Agreement the Governor has included a \$10,000,000 Capital Fund request in the FY 2021 budget.

In addition to the general funds and capital funds VMRC has pursued a number of other funding opportunities. This additional funding will have the added benefit of decreasing the per-unit cost of all activities including replenishment, as a substantial portion of the cost of both replenishment and restoration work is the cost to mobilize the equipment and personnel needed. The mobilization costs could be shared across both restoration and replenishment work decreasing the per-unit costs of both.

FUNDING SOURCES:	AMOUNT:
Non-Federal	
General Funds Replenishment (GF)	\$2,500,000
General Funds Restoration (GF)	\$1,500,000
Capital Funds (CF)	\$10,000,000
Department of Environmental Quality (DEQ)	\$1,500,000
The Nature Conservancy (TNC)	\$ 221,000
Non-General Funds (NGF) Various Sources	\$ 150,000

FUNDING SOURCES:	AMOUNT:
Federal	
NOAA Grants	\$500,000-1,600,000

Seed Transfer:

James River

The benefits (\$) to cost (\$) ratio for moving seed oysters with State funds for grow out on public grounds is generally less than one. The Conservation and Replenishment Department (CRD) has moved a small amount of seed from the James River Hand Tong areas to the Potomac tributaries for many years. In addition, seed has been moved from areas when a very high spat set has occurred on a recent shell plant to areas that have had poor or often get poor sets. Staff has recently been developing a plan to increase the benefits and lower the cost of moving wild seed. A rotational harvest strategy has been implemented in the Potomac River tributaries. The tributaries in the rotation are the Coan, Nomini, and the Yecomico. One tributary will be planted annually. The first (Coan) was planted in 2018, and the second (Yecomico) was planted in 2019. When initially developed, the intent was to transport seed from the James River seed areas. However, the CRD received no responses to the notice to transport and plant seed at the price that has been offered in recent years. Fortunately, seed of equal quality was able to be moved for a significantly lower price from an area that received a very good spat set in the lower James River. This area was re-shelled and expanded in 2018 and again in 2019 and has continued to receive extremely high spat sets. As a result of the lower cost, and as a way of increases productivity in low recruitment areas beyond the Potomac tributaries, staff was able to move this seed to three different areas in 2019. As most areas had an extremely low spat set in 2018 the seed movement may offset this slightly when these areas are open to harvest in the future. Staff again intends to transport seed taken from this area of the lower James River to three areas that have not benefited from the increased spat sets in 2019. The Nomini, area 8 and 7 in the Rappahannock, and portion of the Pocomoke Sound several miles from the Maryland Virginia state line. The areas planted with seed would not be opened for immediate harvest. Staff would evaluate the seed plant areas prior to opening them to harvest. The cost for each bushel of seed to be harvested, transported, and planted in these areas will be at least \$6.00/bushel. Funds from Oyster Resource User Fees will be used for this project.

20,000 bushels of seed oysters @ \$6.00/bu.

\$120,000 (NGF)

Piankatank River and Great Wicomico River

In the Piankatank River and Great Wicomico River, VMRC has managed a program to allow private industry a modest harvest of seed oysters each year. In this program,

private leaseholders sign up for the amount of seed oysters that they would like to harvest from the public seed grounds, and they were required to replace two bushels of shell for each bushel of seed oysters taken. The total standing stocks of oysters in the Piankatank River and Great Wicomico had been relatively consistent for the past few years. However, in 2018, the spat set and count per bushel in the area was low with only modest improvement seen in the fall of 2019. Staff recommends that no seed oysters be offered to the private industry in 2020. The seed areas will be lightly replenished to encourage spat recruitment in 2020.

One area in the Great Wicomico, Shell Bar, could support the removal of some seed. Staff recommends transporting approximately 5,000 bushels of seed from this area to the harvest areas in the lower portion of the Great Wicomico. The area will then be replanted with shell.

5,000 bushels of seed oysters at \$2.00/bu

\$10,000 (NGF)

Shell Planting:

Bay and Tributaries:

Shells on public beds naturally degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most of the mid-salinity areas in Virginia, the half-life of shells appears to be 3 to 4 years. Additional shell is lost and degradation intensified by the harvest and removal of market oysters. The density of living oysters and shell volume are determined from the results of the VIMS-VMRC annual hydraulic patent tong survey and this information is used to determine what areas are in the most need of shell. If the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained.

Most of the harvest areas in the Chesapeake Bay and tributaries received an average spat set in 2017 poor spat sets in 2018, and good or above average spat sets in 2019. Salinity levels, after being significantly lower than average from the summer of 2018 through the spring of 2019, returned to normal in the late summer and fall of 2019. Wide spread replenishment efforts were increased as a result of the additional funding allocated for this work in 2018 and 2019. Replenishment should continue in areas that are determined to be in need of additional substrate. This will prevent further degradation of the public ground. In addition, should a good spat set occur, substrate will be available for spat to settle on and the areas will be able to rebound relatively quickly. This is likely what

occurred in 2019 with the record bay wide spat set documented during the fall surveys.

The majority of the replenishment specific general funds appropriation for 2021 will be used for adding new shell to those areas in most need of shell and/or those that have been recently opened to public oyster harvest. Funds for oyster replenishment are not likely to be enough to maintain the public beds at maximum productivity, but will be used to maintain a minimum volume of shell, as observed in the fall survey, above 5 liters per square meter where possible and practical. In total, more than 1,000 acres of oyster beds need shell. The CRD will seek to plant the largest quantity of comparable shells for the lowest area dependent per-unit price. This will likely be a combination of house, reef and dredged shells.

600 – 800 acres of oyster shell restoration
@ 1,000 bushels/acre @ \$2.50 - \$4.50/bushel = \$2,500,000 (GF Replenishment)
\$0-\$500,000 (GF Restoration)
\$0-500,000 (DEQ)
\$0-30,000 (NGF)

Seaside of Eastern Shore:

The CRD Program and The Nature Conservancy (TNC) have consistently collaborated on Seaside replenishment and restoration efforts. Last year (TNC) funds were used on areas both closed and open to harvest. The CRD will contract for shell planting for a Nature Conservancy project, assist with the site selection, and shell planting monitoring. If funding allows additional locations will be planted using General Funds.

Approximately 11 acres will be planted with shells harvested from local shell deposits or purchased from local sources.

11 acres @ 10,000 bushels of shells/acre @ ~\$2.50/bushel
\$186,000 (NGF-TNC)
\$100,000 (GF Restoration)

Pocomoke Sound- VA MD line:

The Pocomoke Sound has seen decreased spat sets in recent years. This has resulted in declining harvests and a shift in effort to more productive areas. The VMRC has invested substantial effort in re-shelling portions of the lower Pocomoke. The 2018 and 2019 ORP included a proposal for a project intended to improve the long-term viability of this area. The areas in the upper Pocomoke, closest to the Maryland line, had no recent replenishment effort until 2018. One reason for this was concern over cross border poaching. It was thought by some that replenishment efforts would be wasted in areas that are prone to illegal harvest. As a result, these areas were in need of shell for several years and were not planted. It is generally recommended that areas in need of replenishment be either replenished or left closed to harvest. In part, the concern that any oyster resource present would be poached, and at the request of local watermen, portions of the upper Pocomoke were opened to harvest. Although, the cause is not completely clear, spat sets have been down in the years following the decision to open these areas to harvest. In 2018 an approximate 100 to 200 foot area along the border was cleaned, with ordinary oyster dredges, and shells and live oysters were moved further into Virginia. Areas further from the borderline were also replenished and a small area was open to harvest for the 2018-2019 season. The plan called for replanting the area that had been cleaned with large stones in a thin line to prevent cross border dredging and primarily to create a permanent poaching resistant sanctuary. Funding and permitting delays did not allow for this portion of the work to be completed in 2018 and limited staff resources and contractor availability delayed implementation in 2019. Permits for this work have since been issued and it appears that there will be funding to begin a portion of this project in 2020. There may also be an opportunity to complete some of the work with other restoration partners.

7,500 tons of stone @ ~\$50.00/ton \$300,000-\$500,000 (GF Restoration) (NGF)

Alternative Cultch Projects:

The supply of shell for restoration, replenishment, and aquaculture will always be limited. The demand for shells in most years tends to be higher than the supply leading to increasing prices. Over the last several years, the CRD and other restoration partners have begun using alternative substrate in certain areas. Non-harvest locations have been planted with larger sized substrate. In the Rappahannock, two small harvest areas were planted with a smaller sized material. The first planting used crushed concrete that was slightly larger than ideal. Some oysters were crushed during harvesting. The second area

that was planted used a slightly smaller size. This area was open to harvest recently, and it appears that the size of the alternative substrate is no longer an issue. Not all areas are suitable for planting with stone or concrete. The bottom needs to be firmer than areas that can be planted with shell.

The CRD has identified a number of locations that could have suitable bottom for alternative cultch plantings. These areas tend to have sandier bottoms and low oyster densities. Staff has existing permits (JPAs) for several locations. The locations would be near the Deep Rock Area, two locations in the Lower Rappahannock, the Lower James River near Nansemond Ridge, and the lower Pocomoke Sound adjacent to Onancock Rock. Only a small portion of the permitted areas would be planted at any given time.

In addition to these harvest areas, a variety of funds are available for alternative cultch projects that will primarily focus on the restoration of non-harvest areas. The Piankatank, and Elizabeth River Eastern Branch will see “large scale oyster restoration” as part of the 2014 Chesapeake Bay Agreement. VMRC-CRD has carefully selected locations in these areas for alternative substrate planting that will minimize potential user conflict. The intent is to create “new oyster reefs” that will have multiple benefits to adjacent areas, through improved water quality, increased fish habitat, and oyster larval transport to both public and private ground. Some spat on shell (SOS), or hatchery produced oysters, may be used to seed low recruitment areas if needed.

10-50 acres @ 250 tons/acre @ \$50.00/ton \$125,000-\$627,000 (GF Replenishment)

Up to 150 acres @ 250-1000 tons/acre @ ~\$50.00/ton

Up 20 acres of SOS @ 500bu/acre @ ~\$18.00/bu. \$1,875,000-\$7,500,000

(GF Restoration) (NOAA) (CF) (DEQ)(NGF)

Staff recommends approval of the 2020 Oyster Replenishment and Restoration Plan as well as the associated Procurement Procedures.

No one spoke in support or opposition of staff recommendations.

The matter was before the Commission for discussion and action.

Motion for the 2020 Oyster Replenishment and Restoration Plan:

Associate Member Tankard made a motion to approve staff recommendation for the 2020 Oyster Replenishment and Restoration Plan as presented. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

Motion for the 2020 Oyster Replenishment Procurement Plan:

Associate Member Tankard made a motion to approve staff recommendation for the 2020 Oyster Replenishment and Restoration Procurement Plan pursuant to the laws of the Commonwealth of Virginia. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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Items 16 – 18 were presented and voted on together.

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Adam Kenyon, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation for Items 16 through 18, with PowerPoint slides. Mr. Kenyon’s comments are a part of the verbatim record.

Mr. Kenyon explained that staff requests the Commission approve advertising for public hearings to the following:

- 16. **REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-510-10 et seq. “Pertaining to Amberjack and Cobia”, and Chapter 4 VAC 20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting” to establish weekly harvest reporting and commercial fishery closure procedures for cobia, to comply with Amendment I of the Interstate Fisheries Management Plan for Atlantic Migratory Group Cobia.
- 17. **REQUEST FOR 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.

18. **REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass" to establish the commercial black sea bass fishery quota for 2020.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation for 16, 17 & 18. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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There being no further business, the meeting was adjourned at approximately 2:31 p.m. The next Commission meeting will be Tuesday, March 24, 2020.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary