

MINUTES

COMMISSION MEETING

October 22, 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:

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|-------------------|------------------------------|
| Steven G. Bowman | Commissioner |
| Wayne France | |
| John Tankard III | |
| John Zydron Sr. | |
| Ken Neill, III | Associate Members |
| Heather Lusk | |
| Chad Ballard | |
| Christina Everett | |
| Kelci Block | Assistant Attorney General |
| 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 |
| Zachary Widgeon | Marine Police Officer |
| Patrick West | Marine Police Officer |
| James Vollmer | Marine Police Officer |

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Andrew Miller

Marine Police Officer

Tony Watkinson

Chief, Habitat Management

Randy Owen

Deputy Chief, Habitat Management

Justin Worrell

Environmental Engineer, Sr.

Jay Woodward

Environmental Engineer, Sr.

Mark Eversole

Environmental Engineer, Sr.

Mike Johnson

Environmental Engineer, Sr.

Rachael Peabody

Environmental Engineer, Sr.

Hank Badger

Environmental Engineer, Sr.

Allison Lay

Environmental Engineer, Sr.

Bradley Reams

Environmental Engineer, Sr.

Ben Stagg

Dir., Shellfish Aquaculture, Leasing
and Mapping

Daniel Faggert

Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Troy Tuckey

Others present:

Mike Oesterling

Corey Gray

Darryl Cook

Jerry Bays

Jennifer Bonnaville

James White

Kim Huskey

Cathy Rothman

Linda Wens

Paul Weiss

Brian McCue

Bob Simon

Louis Burris

Ron Sopko

Joe Hinson

Rhiannon Bezure

Bob Fisher

Chris Ludford

and others.

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Commissioner Bowman called the meeting to order at approximately 9:43 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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APPROVAL OF AGENDA.

Tony Watkinson, Chief, Habitat Management, requested that Item 8 **BENJAMIN W. MEARS III, Oyster Planting Ground Application #2018-039** be removed from the Agenda by the request of the applicant.

Associate Member France moved to approve the agenda as amended. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Zydron was not present during vote.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the September 24, 2019 Commission meeting minutes.

Associate Member Tankard moved to approve the minutes as presented. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Zydron was not present during vote.

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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 two (2) page 2 Items A and B for the Associate Members. Mr. Watkinson's comments are a part of the verbatim record.

- 2A. **VIRGINIA ELECTRIC AND POWER COMPANY, #19-1173**, requests authorization to remove and replace (2) two overhead electric circuit transmission lines above two (2) sections of the Jackson River, and one section

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each of Harmon Run and Karnes Creek, and to install a temporary construction access bridge across the Jackson River, approximately 700 feet downriver of the I-64 crossing, in Alleghany County. Staff recommends approval with a royalty in the amount of \$2,520.00 for encroachment over 840 linear feet of State-owned submerged lands at a rate of \$3.00 per linear foot.

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| Royalties: (Encroachment of 840 L/F @ \$3.00 L/F) | \$ 2,520.00 |
| Fees: | \$ 100.00 |
| Total Fees: | \$ 2,620.00 |

2B. CITY OF VIRGINIA BEACH, #19-1405, requests authorization to hydraulically dredge approximately 350,000 cubic yards of beach-quality sand from State-owned submerged bottomlands to a maximum depth of -20 feet mean low water from an area designated as the "Chesapeake Beach Shoal Borrow Area," directly adjacent to the eastern side of the Chesapeake Bay Bridge Tunnel within the Chesapeake Bay that was previously approved for the existing Chesapeake Beach nourishment project. The dredged material will be hydraulically pumped to Ocean Park Beach in Virginia Beach and used to nourish approximately 6,000 linear feet of the existing shoreline between Rookery Way to the west and the Lynnhaven Inlet to the east.

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| Fees: | \$ \$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 France moved to approve the two (2) page 2 Items A and B as presented. Associate Member Tankard seconded the motion. The motion carried 8-0. Chair voted yes.

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3. CONSENT AGENDA ITEMS – There were no consent agenda items to be heard.

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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) Jerry Bays (009142): Mr. Bays was present. Mr. Bays was not sworn in as he declined to testify when asked by Commissioner Bowman. Mr. Bays was later sworn in before answering questions from Associate Members. His comments are a part of the verbatim record.

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

February 22, 2019, Have in possession unculled oysters (24 quarts): **4 VAC 20-260-40**

Disposition:

April 10, 2019, Gloucester County General District Court

Fine: \$ 250.00

Court Cost: \$ 96.00

GUIDELINE SUGGESTION: 1 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. Jerry Bays, a commercial fisherman registration licensee, was convicted on April 10, 2019 for one count of possession of unculled oysters (24 quarts) (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that Mr. Bays be placed on probation for a period of one year from the date of this Commission meeting, October 22, 2019, through October 21, 2020. Any failure on Mr. Bays' part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Mr. Bays appearing before the Commission for a hearing on license revocation.

The matter was before the Commission for discussion and action.

Associate Member France made a motion for a 2 year probation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.

(5-2) Jennifer Bonnaville (008609): Ms. Bonnaville was present and not sworn in. She declined to testify when Commission Bowman asked her to raise her right hand.

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

February 8, 2019, Have in possession unculled oysters undersized (6 quarts): **4 VAC 20-260-40**

Disposition:

April 10, 2019, Gloucester County General District Court

Fine: \$ 250.00

Court Cost: \$ 121.00

GUIDELINE SUGGESTION: 1 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.

Ms. Jennifer Bonnville, a commercial fisherman registration licensee, was convicted on April 10, 2019 for one count of possessing unculled oysters undersized (6 quarts) (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of shellfish, within a two-year period, should result in at least a one-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that Ms. Bonnville be placed on probation for a period of one year from the date of this Commission meeting, October 22, 2019, through October 21, 2020. Any failure on Ms. Bonnville's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the one-year probation would result in Ms. Bonnville appearing before the Commission for a hearing on license revocation.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion for a 1 year probation. Associate Member Neill seconded the motion. The motion carried, 5-1-2. Chair voted yes. Associate Member France voted no. Associate Members Ballard and Lusk abstained.

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- 6. 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. The applicant has not agreed to the recommended time-of-year restriction for the protection of anadromous fish.

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 at Chickahominy Riverfront Park off Route 5 in James City County. The park is bordered by the Chickahominy River and Gordon Creek, and is a popular place for camping and recreating. The existing shoreline has signs of erosion and currently has no shoreline protection structures. The proposed

project consists of several erosion control features including sills with sand fill and native marsh plantings, coir logs, riprap, and bank grading. The project will not only protect the eroding shoreline, but will also create and enhance an upland riparian buffer to reduce nutrient and sediment run-off. This aspect of the project will act as out-of-kind mitigation for impacts to submerged aquatic vegetation beds.

During the scientific review process of this permit, the Virginia Institute of Marine Science (VIMS) recommended adherence to an instream work time-of-year restriction from February 15 through June 30 to protect anadromous fishes. The applicant wishes to have this time-of-year restriction removed. A meeting to discuss the proposed restriction and possible mitigation strategies was held on October 9, 2019, with the applicant, agent, and VIMS. At the meeting, VIMS continued to recommend adherence to the time-of-year restriction due to the use of the shoreline by juvenile striped bass and other anadromous fishes. VIMS notes that seine surveys conducted in this area have found some of the highest numbers of juvenile striped bass out of all surveyed locations in the Commonwealth. The juvenile striped bass use the shallow waters near the shoreline as refuge during these months, and construction will restrict their use of this important habitat.

The 2018 benchmark stock assessment indicates that the striped bass population is experiencing overfishing. Any disturbance to juvenile striped bass could further decrease the adult population. Access to shallow water habitat will allow juvenile striped bass to better evade predators, and grow to be reproductive adults.

Staff understands the applicant's desire to construct their project in a timely manner so as to not disturb recreation at the park during the summer season. While the project will improve the shallow water habitat surrounding the park, construction activities could still have a negative impact on anadromous fishes. The Virginia Institute of Marine Science is the Commission's mandated scientific advisor for fisheries related matters and they continue to recommend adherence to the time-of-year restriction to prevent potential impacts to anadromous fish stocks that have experienced severe declines in recent decades. Accordingly, staff is unable to support the request to remove the time-of-year restriction.

Dr. Troy Tuckey, VIMS representative, explained the importance of time of year restriction. The time of year restriction will provide a nursery habitat for those small fish and give them a chance to survive and grow big enough to make it into the pre-productive phase then into the fishery. He explained the proposed time-of-year restriction was a

compromise and more effective time-of-year restriction would extend until September.

Cory Gray and Daryl Cook, representatives of James City County, were present and sworn in. Their comments are a part of the verbatim record.

Mr. Gray explained the project in detail and requested that the time of year restricted be lifted at the Chickahominy site.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation with a time of year restriction as recommended by staff. Associate Member Everett seconded the motion.

Associate Member Tankard made a substitute motion to approve the project with an allowable instream construction window of September 15 through February 15 of any given year. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes.

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| Fees: | \$ \$100.00 |
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- CATHERINE ROTHMAN, ET AL, #16-0937**, requests authorization to mechanically dredge approximately 1,216 cubic yards of material for the development of 11 private boat basins adjacent to a City-dredged channel, and subsequent maintenance dredging, to achieve a maximum depth of -3.5 feet at mean low water, along a tributary to the Lafayette River, parallel with Regent Road in Norfolk. The project is protested by a nearby neighbor.

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 proposed project is a request by 11 riparian property owners to dredge private basins within a tributary creek of the Lafayette River, to access a previously approved City of Norfolk Channel that runs parallel with Regent Road in the City of Norfolk. The need for this project was established several years ago when

this group of homeowners began working with the City of Norfolk to begin a joint project to improve the navigation in their tributary. As a result, the City agreed to permit, construct and fund a 20-foot wide and 5-foot-deep channel that reduces down to 15-foot wide by -4 feet deep, parallel with Regent Road, which was approved under permit #16-0042. The homeowners are responsible for permitting and funding their own access to the approved channels. As a result, the homeowners have jointly prepared a single application to dredge a total of 11 separate “drive way” connection basins to -3.5 feet at low tide. The dredged material will be barged to Craney Island.

The proposed private basins will impact 14,675 square feet of submerged lands and 5,726 square feet of non-vegetated wetland (mudflats). Of the 14,675 square feet of submerged lands 7,634 are State-owned, within VMRC’s jurisdiction, and 7,311 are considered non-jurisdictional because a portion of the creek was originally dredged from upland. The project was approved by the Norfolk Wetlands Board at their February 2018 meeting and a revised plan was approved at the August 2019 meeting, conditioned upon mitigation for all non-vegetated wetland impacts. The mitigation money for both projects, and for a similar project along West Belvedere Road, was utilized by the City to construct a large living shoreline at the entrance to the Regent Road tributary. The new living shoreline has been constructed and includes over 10,000 square feet of shellfish reef and rock sill, and 15,985 square feet of vegetated wetland plantings.

The portion of dredging proposed over State-owned submerged lands within the Commission’s purview appears to be appropriately planned and designed and is consistent with the dredging operation guidelines outlined in VMRC’s subaqueous guidelines. The project is clearly water dependent in nature and is intended to provide additional public access to the waterway. The applicants have agreed to a time-of-year restriction from June 1 through September 30 for the protection of oysters. None of the proposed basins will directly impact the oyster reef at the mouth of the creek. The Army Corps of Engineers has reviewed a contamination analysis of sediment in this basin and has determined there is no reason to believe the sediment is contaminated. As such, the dredged material may be placed at Craney Island.

Staff understands the concerns outlined by the protestant, but feels the applicant has addressed potential impacts to marine resources by adhering to the time-of-year restriction, complying with the local wetlands board mitigation requirements, and reducing basin sizes to the smallest reasonable size. Navigation may be increased within the tributary as a result of the project, however, the size and depth of the main channel greatly limits the size of the vessels. In addition, staff has consistently communicated

with the protestant throughout the review of this project.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205 of the Code of Virginia and the Subaqueous Guidelines, staff recommends approval of the project as proposed with a royalty of \$263.60 for dredging 659 cubic yards of material at \$0.40 per cubic yard and the following conditions:

- In order to minimize impacts to oysters, the permittee agrees to adhere to a time of year restriction from June 1 through September 30 of any year;
- The Permittee shall provide a post-dredging bathymetric survey of the dredged area within 30 days of the completion of the dredging. The survey shall be signed and dated as being accurate and true, by a state-certified engineer or surveyor. The survey shall be referenced to mean low water and shall include evenly spaced transects across the width of the dredged channel;
- The post-dredge survey depths shall vary uniformly around the permitted dredge depths, with the average depth approximating the maximum permitted depth. Any areas dredged deeper than the maximum permitted depth will be considered a violation of the permit and subject to enforcement action;
- A pre-dredging conference shall be held on site prior to the commencement of the dredging. The meeting shall be attended by the Permittee, the dredging contractor and a member of VMRC staff. The meeting shall be held within seven (7) days prior to the commencement of dredging and shall include an inspection of the previously staked dredge area, and a discussion of the terms and conditions of the permit;
- Maintenance dredging may be conducted through October 22, 2024, provided the Permittee notifies the Commission at least 15 days prior to the commencement of each dredging operation. The maintenance dredging notification shall include a description of the disposal site;
- The dredged material will be transported by barge to Craney Island Dredged Material Management Area and the Craney Island Rehandling Basin. If this location becomes unavailable for use as a dredged material placement area, permittee will be responsible for finding an alternate placement areas and having it approved by VMRC.

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

Mr. Simon explained the project and answered questions from Associate Member Tankard.

Catherine Rothman, applicant, was sworn in. Her comments are a part of the verbatim record.

Ms. Rothman agreed with everything except the maintenance dredging that is only valid until 2024. She stated that the area didn't fill up that fast and it seemed as though the project would require a new contract or a new application.

Tony Watkinson, Chief, Habitat Management, explained the 5 year maintenance dredging permit and process in further detail. Mr. Watkinson's comments are a part of the verbatim record.

Castle Craddock spoke in opposition. She was sworn in and her comments are a part of the verbatim record.

Ms. Craddock expressed the following concerns: flooding, noise and emissions from jet skis, the possible effect on water quality and property depreciation.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-1. Chair voted yes. Associate Member Everett opposed.

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| Royalties: (Dredging of 659 C/Y @ \$0.40 C/Y) | \$ 263.60 |
| Fees: | \$ 100.00 |
| Total Fees: | \$ 363.60 |

Item #8 was removed from the agenda at the beginning of the meeting as requested by the applicant.

8. **BENJAMIN W. MEARS III, Oyster Planting Ground Application #2018-039**, requests authorization to lease 19.90 acres of oyster planting ground in Mattawoman Creek in Northampton County. The project is protested by nearby property owners.

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9. **CHARLES A. DEMARINO, Oyster Planting Ground Application #2017-086**, requests authorization to lease 149.29 acres of oyster planting ground in South Bay in Northampton County. The project is protested by two watermen.

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 south of and adjacent to Wreck Island, approximately six and a half miles southeast of Oyster Harbor and near New Inlet in Northampton County. The mean low water (MLW) depths vary from MLW on the flats to greater than minus three (-3) feet along some of the small unmarked channels. The bottom is mostly sand, with the eastern portion of the application having shifting sand from the inlet.

There are oyster rocks adjacent to Wreck Island, which were planted by VMRC's Conservation and Replenishment Department in the 1990's. The South Bay area in general has both clam aquaculture, which requires placing nets over the planted clams as well as traditional wild oyster harvest. There is no submerged aquatic vegetation (SAV) within the surveyed area, however, there is SAV adjacent to the proposed lease on the north side.

Mr. Demarino has two leases for a total of 87.10 acres and two additional applications in Cobb Bay totaling 400 acres. Those two applications are also protested. According to his "Lease Use Plan," he intends to use the lease for traditional shelling of the bottom, to cultivate existing shell resources, or to plant seed oysters or clams under nets or cages. The structures will not exceed 12 inches above the substrate.

The applicant's original application included SAV and an area of unassigned vacant bottom that the state had built oyster rocks on and the public has been working for years. Staff could not support leasing those areas. The applicant agreed with staff and those areas were eliminated from the proposed lease before the survey was made.

Staff, however questions the leasing of the triangle shaped area east of the State shell plants. The area is close to New Inlet in an area of shifting bottom, any structure placed in this area could be lost or abandon. Based on the above information, staff recommends approval of the applicant's application, minus the 30.13 acres within the triangle area resulting in a new total of 119.16 acres.

Mr. Demarino believes he can use the triangle area for clam seed bags during certain times of the year.

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

No one spoke in support or opposition of the application.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve the applicants request to lease 149.29 acres of oyster planting ground in South Bay. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.

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10. JULIE ANN SEAFOOD COMPANY, Oyster Planting Ground Application #2016-134, requests authorization to lease approximately 12 acres within Stoakes Creek in Mathews County. The application is protested by an adjacent leaseholder.

Ben Stagg, Dir., Shellfish Aquaculture, Leasing and Mapping gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Stagg's comments are a part of the verbatim record.

Mr. Stagg explained that an application from Julie Ann Seafood Company by Mr. Charles Duke, was received by the Engineering/Surveying Department on May 3, 2016, requesting to lease approximately 12 acres of oyster planting ground within Stoakes Creek in Mathews County.

The application was subjected to our normal public interest review. Staff received a protest from an adjacent leaseholder, Mr. Ronald Sopko (Lease #19442), on August 8, 2016. Mr. Sopko indicated a concern that leasing of this area could result in damage to oyster seed he has planted upon the shallow portions of his lease. Upon completion of the surveying of the application earlier this year, we also received an objection from an adjacent highland property owner, Mr. Louis Burris. His concerns included potential conflicts with accessing his private pier and safety concerns of the use of the area by his family.

Upon further review of the surveyed area, staff determined that portions of the proposed lease may conflict with §28.2-629 of the Code of Virginia. This Code section stipulates that within Mathews County where any creek, cove, or inlet (with the exception of Horn Harbor, Winter Harbor, and Milford Haven) that becomes 100 yards or less in width, the property owners along such waterbody shall have the exclusive right to use such creek, cove, or inlet for the planting of oysters. Two areas within the originally surveyed area are subject to this Code section. Staff has modified the survey and removed the field markers within the two specific areas. The original surveyed area contained 11.10 acres. With the modification, the area now proposed to be leased is 5.65 acres.

With this reduction to the surveyed area, it is staff's opinion that removing the proposed lease area near Mr. Burris' pier should address his expressed concerns. Additionally, the revised area appears to have enough water depth that allows navigable access without damaging the existing resources on the Sopko lease. There are dozens of adjacent leases within shallow water areas of the state with minimal conflicts.

With the deletion of the application area within the two coves, as required by §28.2-629 of the Code of Virginia, staff believes the stated conflicts of the adjacent landowner, Mr. Burris, should be adequately addressed. Additionally, staff believes the modified surveyed area can be accessed in a manner that will not adversely impact shellfish resources on the adjoining lease of Mr. Sopko. Therefore, after considering all the factors of §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends approval of leasing 5.65 acres of grounds to Julie Ann Seafood as shown on the revised survey plat.

The applicant was not present.

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

Those that spoke in opposition had concerns about not having access to their property if cages are placed on lease and a comment was made that the lease was not good for anything.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to deny the entire application area. Associate Member Ballard seconded the motion. The motion to deny carried, 8-0. Chair voted yes.

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11. ANTHONY W. MARTIN, JR., Oyster Planting Ground Application #2016-161, requests authorization to lease approximately 95 acres within Back River in the City of Hampton. The application is protested by the U.S. Army Corps of Engineers and a nearby property owner.

Ben Stagg, Dir., Shellfish Aquaculture, Leasing and Mapping gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Stagg's comments are a part of the verbatim record.

Mr. Stagg explained that an application from Mr. Anthony Martin, Sr., requesting to lease approximately 95 acres of oyster planting ground within Back River in the City of Hampton, was received by the Engineering/Surveying Department on June 9, 2016.

The application was subjected to our normal public interest review. Staff received objections from the Army Corps of Engineers (ACOE) and Mr. Martin Bell, a nearby marina owner.

The ACOE concerns relate to the proximity of the application area to the channel area exiting Back River. When the application was surveyed, a buffer area was added that staff believes should alleviate the concerns of the Corps.

Mr. Bell indicated it was his belief that the application area contains submerged aquatic vegetation (SAV) and that he opposes leasing of such areas. VMRC has a policy and guidance document adopted by the Commission concerning lease and permitting in areas containing SAV. The requested area does contain considerable SAV beds and the surveyed area excludes those bed areas. The surveyed area contains 16.41 acres out of the originally requested approximately 95 acres.

Staff believes the area, as surveyed, adequately addresses both the concerns of the protestants and adheres to the Commission adopted SAV policy. Therefore, after reviewing the protestant's objections, assessing and adjusting the area being requested, and considering all factors in Sections 28.2.607 and 28.2-1205 subsection A of the Code of Virginia, staff recommends approval of leasing 16.41 acres of grounds to Mr. Martin as shown on the survey plat.

The applicant was not present.

There was no one that spoke in support or opposition of the application.

The matter was before the Commission for discussion and action.

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

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12. PUBLIC COMMENT. There was no one present to speak during public comment.

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13. PUBLIC HEARING: Proposal to establish the emergency amendment as a permanent part of regulation to 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 12:01 am 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 permanently adopt emergency amendments to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," that establishes a closure of the commercial cobia fishery on October 1, 2019.

The matter was before the Commission for discussion and action.

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

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- 14. EMERGENCY REQUEST FOR AMENDMENT:** Emergency request to amend Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)", to decrease the trip limit from 28,500 pounds to 27,000 pounds for the commercial Winter II period fishery of October 1 through December 31.

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 on Friday, September 27, 2019, the National Marine Fisheries Service (NMFS) announced an in season adjustment to the Winter II commercial scup quota and per trip federal landing limit.

The Winter I and Winter II period quotas are managed through vessel possession limits, and landings are monitored by NMFS. Addendum X to the FMP allows unused quota to rollover from the Winter I period into the Winter II period. Vessel possession limits for the Winter II period are increased by 1,500 pounds per trip for each 500,000 pounds of scup that are rolled over.

For 2019, the Winter I period quota was established as 10,820,000 pounds and the Winter II period quota was established as 3,822,816 pounds. Based on the best available landings information from NMFS, 5,267,671 pounds from the Winter I period coast wide quota remained unharvested. This remaining quota has rolled over to the Winter II period quota, resulting in a revised coast wide quota of 9,090,487 pounds. The increase in quota translates to a federal landing limit of 27,000 pounds per trip.

Staff recommends the Commission adopt these emergency amendments described in Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)," to decrease the trip limit from 28,500 pounds per trip to 27,000 pounds per trip for the commercial Winter II period fishery of October 1 through December 31. Staff also recommends the Commission advertise these emergency amendments as part of a November 2019 public hearing to incorporate the amendments as part of permanent regulation.

The matter was before the Commission for discussion and action.

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

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

Commission Meeting

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 the proposal to amend Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to revise the minimum recreational size limit for shortfin mako sharks. The current recreational minimum size limit for both male and female shortfin mako sharks in state waters is 54 inches.

In May 2019 the Atlantic States Marine Fisheries Commission's (ASMFC) Coastal Sharks Management Board adopted new size limits for shortfin mako sharks in state waters. These new limits provide consistency with federal measures as part of ongoing efforts to rebuild the shortfin mako shark resource. These changes would apply to 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 shortfin mako sharks. Atlantic coastal states are required to implement the changes to the recreational minimum size limit for shortfin mako by January 1, 2020.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to amend the recreational minimum size limits for shortfin mako sharks to an 83-inch straight line fork length for females and a 71-inch straight line fork length for males.

The matter was before the Commission for discussion and action.

Associate Member Neill made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 5-2. Chair voted no. Associate Member Tankard opposed. Associate Member Zydron was not present during final vote.

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16. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-960-10 et seq., "Pertaining to Tautog", to establish a commercial tautog permit 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.

Ms. 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 amending Chapter 4VAC20-960-10 et seq., "Pertaining to Tautog," to establish a tautog commercial permit and ASMFC mandated tagging system.

Chris Ludford, Commercial Hook & Line fisherman, asked if Tautog are landed in VA but caught in Federal waters, are they required to be tagged?

Ms. Kretsch stated that all tautog that are landed in VA are required to be tagged with a VA tag.

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, 7-0. Chair voted yes. Associate Member Zydron was not present during final vote.

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17. RECOMMENDATION: From the Recreational Fishing Advisory Board on funding projects from the VSRFDF.

Alicia Nelson, Coordinator, RFAB/CFAB, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Nelson's comments are a part of the verbatim record.

Ms. Nelson explained that on September 12, 2019, the RFAB met to review and recommend projects for the 2019 funding cycle. The estimate of funds available for projects from the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF) as of July 31, 2019 is \$1,207,407.

The RFAB reviewed and recommended funding all 13 project requests for the 2019 cycle. All of the projects with the exception of project M are reoccurring projects.

Project M is a funding request for dredging at the Currioman Landing boat ramp. The boat ramp at Currioman Landing in Westmoreland County was originally funded by the VSRFDF in 1996. Since that time, erosion of a protective adjacent spit has caused much of the area in front of the ramp to fill in, making the ramp completely unusable during 2019. Westmoreland County has applied for additional funding to support a new project to repair the spit and dredge the turning basin and channel behind it. This project has received multiple letters of support from the public, as well as a letter of support from Senator Richard H. Stuart. After thorough review of the project, letters of recommendation, and peer reviews, the RFAB voted to recommend funding project M.

All of the projects from the 2019 cycle are listed below. Recommended project expenditures total \$489,426 from the VSRFDF.

2020 Fishing Events:

- A. 2020 Knights of Columbus Annual Kids Fishing Day. Jim McCaddin, **\$7,510.**
- B. 2020 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. Joseph Stephenson; George Reich, Great Bridge Fisherman's Association. **\$2,932.**
- C. 2020 Virginia Beach Anglers Club/Seton Youth Shelter Children's Fishing Trip. David Anderson, Virginia Beach Anglers Club. **\$2,500.**
- D. 2020 Children's Fishing Clinic. Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. **\$7,500.**
- E. 2020 Kiwanis Club Children's Fishing Clinic. Wesley Brown, Capital District Kiwanis Club. **\$7,500.**

- F. 2020 Saxis and Morley's Wharf Children's Fishing and Conservation Educational Outings. Steven Elliot, Eastern Shore of Virginia Anglers Club. **\$2,200.**
- G. 2020 Norfolk Youth Head Boat Fishing Trip. James "Ike" Eisenhower, Norfolk Anglers Club. **\$1,200.**
- H. 2020 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Anglers Club/Sunshine Program. **\$8,050.**

Research Projects

- I. Marine Sportfish Collection Project, Year 12. A. Kenyon, VMRC **\$12,000.**
- J. Virginia Game Fish Tagging 2020. S. Musick (VIMS), L. Gillingham (VMRC). **\$82,487.**
- K. *Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay. M. Fabrizio, T. Tuckey, VIMS. \$26,960. (**\$13,480 from VSRFDF, and \$13,480 from MFIF**)
- L. *Federal Assistance (Sportfish Restoration) Matching Funds, Federal FY 2020. R. O'Reilly, VMRC. **\$300,089 (\$225,067 from VSRFDF, 75,022 from MFIF).**

Access Projects

- M. Currioman Landing Dredge Project. N. Risavi, Westmoreland County **\$117,000.**

RFAB meeting expenses and advisory board travel are also funded by the VSRFDF. A preliminary budget of \$46,000 was set aside when the RFAB was initiated in 1994 for travel expenses. As of 2019, these funds have been used up. Staff is requesting an additional allotment of \$40,000 to replenish the fund to continue providing for these meeting-related expenses.

Funds are available in the commercial license fund (the Marine Fishing Improvement Fund or MFIF) at this time. Projects K (the young-of-year American eel survey) and

L (the sportfish restoration match) are traditionally split funded by the VSRFDF and the MFIF because these projects benefit both recreational and commercial fisheries. Funding recommendations from the MFIF total \$88,502.

Staff recommends funding projects A through M, and the additional travel allotment for the advisory board, for expenditures totaling \$529,426, from the recreational license fund (VSRFDF), and \$88,502 from the Marine Fishing Improvement Fund (MFIF).

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation to include the requested allotment of \$40,000 to replenish the travel fund. Associate Member Everett seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Zydron was not present during final vote.

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18. REQUEST FOR PUBLIC HEARING: Proposal to establish Chapter 4 VAC 20-1360-10 et seq., “Pertaining to Commercial Electrofishing”, to create a commercial electrofishing license and fishery.

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

Ms. Kretsch explained the proposal to establish Chapter 4 VAC 20-1360-10 et seq., “Pertaining to Commercial Electrofishing”, to create a commercial electrofishing license and fishery.

Blue catfish are a non-native species in Virginia, having been introduced to the James, York, and Rappahannock Rivers in the 1970s to create a new sport fishery. Since their introduction, the population has grown rapidly and they can now be found throughout the waters of Virginia in densities as high as 544 catfish per hectare. Surveys from the Department of Game and Inland Fisheries (DGIF) show that the population of small catfish continues to grow, which is slowing the growth of catfish up to the trophy sizes prized by anglers.

From 2014 to 2017, scientific collection permits were granted by VMRC to test the viability of commercial electrofishing for blue catfish. These experiments showed that electrofishing harvests a large amount of catfish per unit of effort, tested what electrical current and capture gears were most effective, and tested user conflicts between electrofishing and traditional hoop nets.

Staff recommends advertising a December public hearing to establish Chapter 4 VAC 20-1360-10 et seq., "Pertaining to Commercial Electrofishing", to create a commercial electrofishing license and fishery.

Bob Fisher, Virginia Institute of Marine Science (VIMS), provided further information on gear type, gear conflict and the time in which fish regain mobility. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

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19. REQUEST FOR PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass", to establish the 2020 striped bass commercial quota for the Chesapeake Bay and Coastal areas and implement a 28" commercial maximum size limit in the Chesapeake Bay area from March 15 through June 15.

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 the proposal to amend Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to establish the 2020 striped bass commercial quota for the Chesapeake Bay and Coastal areas and implement a 28" commercial maximum size limit in the Chesapeake Bay area from March 15 through June 15.

The Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Management Board will meet on October 30, 2019 to set recreational and commercial striped bass measures specified under Draft Addendum VI. Adjustments to the commercial quota are necessary to stay in compliance under ASMFC management.

The management board will choose from the following commercial options:

- 1.) A 1.8% reduction in commercial quota or;
- 2.) An 18% reduction in commercial quota.

The commercial maximum size limit for striped bass in the Chesapeake Bay area is presently 28" total length from March 26 through June 15. Historically, the 28" maximum size limit was in effect eleven days earlier from March 15 through June 15. In response to the overfished status of the striped bass stock, staff is requesting that the 28" commercial maximum size limit reflect the historical season (March 15 through June 15) to further protect the spawning stock from being overfished.

Staff recommends advertising for a November public hearing to amend Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to establish the 2020 striped bass commercial quota for the Chesapeake Bay and Coastal areas and implement a 28" commercial maximum size limit in the Chesapeake Bay area from March 15 through June 15.

The matter was before the Commission for discussion and action.

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

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There being no further business, the meeting was adjourned at approximately 2:08 p.m. The next Commission meeting will be Tuesday, November 26, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary