

MINUTES

COMMISSION MEETING

August 27, 2019

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

Steven G. Bowman	Commissioner
Wayne France	
John Tankard III	
John Zydron Sr.	
Ken Neill, III	Associate Members
Heather Lusk	
James E. Minor III	
Chad Ballard	
Christina Everett	
Kelci Block	Assistant Attorney General
Ellen Bolen	Deputy Commissioner
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Pat Geer	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Alicia Nelson	Coordinator, RFAB/CFAB
Adam Kenyon	Fisheries Programs Manager
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Jonathan Depaz	Fisheries Mgmt. Data Specialist
Ethan Simpson	Biological Sampling Program Manager
Alexa Kretsch	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Hank Liao	Lab Manager
Jessica Gilmore	Lab Specialist

Commission Meeting

Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Patrick Turpin	Marine Police Officer
Clayton Dameron	Marine Police Officer
Marshall Thielem	Marine Police Officer
Brian Elliott	Marine Police Officer
Terri McKellips	Marine Police Officer
Tony Watkinson	Chief, Habitat Management
Randy Owen	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
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
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Others present:

Jeff Deem	John Green	John Belle
David Henley	Robert Summers	George Shelton
Ronald Smith	Robert McBride	James McBride
Grayson Jennings	James Vick	Ann Zahn
Heather Richards	Justin Holbook	Mark McElroy
Jack Pettigrew	Rich Calvert	Clint Cross
Mike Oesterling	Eli Wright	Jay Crofton
Charles DeMarino	Kelly Place	Andy Lacatill
Kim Huskey	David O'Brien	Philippe Carter
and others.		

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Commissioner Bowman called the meeting to order at approximately 9:37 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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Commissioner Bowman announced the recent re-appointment of Associate Members Tankard and France by Governor Northam.

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APPROVAL OF AGENDA.

Tony Watkinson, Chief, Habitat Management, requested that Item #13 - **LOU COCKS** be removed from the Agenda.

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

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Commissioner Bowman gave recognition to Robert O'Reilly, Chief, Fisheries Mgmt., on his upcoming retirement after 32 years with VMRC. Commissioner Bowman read a recognition from the Commonwealth of Virginia and presented Mr. O'Reilly with a plaque. Commissioner Bowman also announced that the Deputy Chief, Fisheries Mgmt. Pat Geer has been promoted to Chief, Fisheries Mgmt. beginning September 15, 2019.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the July 23, 2019 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Tankard seconded the motion. The motion carried, 6-0-3. Chair voted yes. Associate Members Ballard, Lusk & Minor abstained.

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

- 2A. **LOUDOUN COUNTY DEPARTMENT OF TRANSPORTATION AND CAPITAL INFRASTRUCTURE, #19-0884**, requests authorization to construct a four-lane, divided, clear-span, roadway bridge, with associated temporary fill for construction access and a temporary cofferdam, and install a suspended, 22.3kV power line over Tuscorora Creek associated with the proposed Crosstrail Boulevard (Segment B) extension project in Loudoun County. Recommend approval with the requirement that all instream construction activities shall be accomplished during low flow periods, erosion and sediment control measures shall be in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction, all excess excavated materials shall be removed to an upland site and contained in such a manner to prevent its re-entry into State waters, all areas of State-owned bottom and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work and a time-of-year restriction for instream construction activities from April 15 through June 15 and August 15 through September 30 of any year to ensure protection of the State-threatened green floater mussel.

Permit Fee:	\$ 100.00
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2B. BREEDEN INVESTMENT PROPERTIES, LLC, #19-0989, requests authorization to construct approximately 1,280 linear feet of riprap revetment that will extend a maximum of 40-feet channelward of mean low water, and install a community floating dock with a gangway and an observation platform along the Elizabeth River at 533 Front Street in the City of Norfolk.

Royalties: (664 S/F @ \$1.00 S/F)	\$ \$664.00
Permit Fee:	\$ \$100.00
Total Fees:	\$ \$764.00

2C. COUNTY OF HENRICO, #19-1005, requests authorization to restore approximately 2,937 linear feet of Roundabout Creek utilizing natural stream channel design to facilitate stream bank stabilization adjacent to an existing municipal water reclamation facility, reduce non-point source pollution, and achieve compliance with the Commonwealth’s TMDL standards. The design would implement grade control measures including log vanes, log sills, rock sills, rock cross vane, and log j-hooks. Additionally, streambank and erosion control measures will include the installation of reinforced soil lifts, clay plugs, brush toes, bank grading, bio-degradable E&S matting, live stakes, planting, and backfill near 1000 WRVA Road in Henrico County. Staff recommends approval with adherence to our standard instream permit conditions and a February 15th through June 30th and August 1st through November 15th instream work time-of-year restrictions to protect anadromous fishes and endangered species unless waived in writing by the Department of Game and Inland Fisheries.

Permit 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 France moved to approve the page two items A through C as presented. Associate Member Minor seconded the motion. The motion carried 9-0. Chair voted yes.

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3. CONSENT AGENDA ITEMS.

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

3A. NORTHPOINT PROPERTIES, LLC, #18-0748, requests after-the-fact authorization to retain a 395 square foot, timber, commercial seafood off-loading pier with loading davits and associated mooring piles, adjacent to property situated along Branson Cove in Westmoreland County. The applicant has agreed to pay a \$1,000.00 civil charge, triple royalties of \$690.00 and triple permit fees of \$75.00. The contractor has also agreed to a \$1,000.00 civil charge, in lieu of further enforcement action.

Triple Royalties: (Encroachment of 115 S/F @ \$2.00 S/F)	\$ 690.00
Triple Permit Fee:	\$ 75.00
Civil Charge:	\$ 1,000.00
Total Fees:	\$ 1,765.00

Civil Charge (Contractor):	\$ 1,000.00
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The applicant or representative was not present.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associated Member Tankard moved to approve the after – the - fact application as presented. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

3B. DOMINION ENERGY, #18-0142, requests after-the-fact authorization to modify an existing VMRC subaqueous permit to reflect the as-built location of a submarine telecommunication cable, at distances up to 700 feet from its

permitted location, under Hampton Roads between the Cities of Hampton and Norfolk. The applicant and contractor, Crofton Diving, have agreed to pay a civil charge of \$2,000 each in lieu of further enforcement action for the deviation of the as-built telecommunication line from the permitted location under State-owned subaqueous bottom.

Civil Charge (Applicant):	\$ 2,000.00
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Civil Charge (Contractor):	\$ 2,000.00
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No one spoke in support or opposition of the project.

Associated Member France moved to approve the after – the - fact application as presented. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

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

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5. LICENSE STATUS REVIEW.

(5-1) Thomas P. Crosswell Sr. (MRC #3511): Mr. Crosswell Sr. was not present.

Terri McKellips, Marine Police Officer, was sworn in. Her comments are a part of the verbatim record.

December 10, 2018, Harvest oysters from closed area: 4 VAC 20-720-40

Disposition:

June 25, 2019, Northumberland County General District Court
Fine: \$200.00

GUIDELINE SUGGESTION: 3 YEAR REVOCATION OF ALL LICENSES (§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. Thomas P. Croswell Sr., a commercial fisherman registration licensee, was convicted on June 25, 2019 for one count of harvesting oysters from a closed area (4 VAC 20-720-40).

Mr. Croswell first appeared before the Commission as a natural resource offender during the September 2017 Commission meeting. The Commission decided to place Mr. Croswell on probation for a period of five years from September 26, 2017 through September 25, 2022, owing to a conviction of two oyster violations and one crabbing violation.

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed public season, while on probation, within a two-year period, should result in at least a three-year revocation of all Commission-issued licenses. In accordance with §28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Croswell's Commission-issued licenses for a period of three years from the date of this Commission meeting, August 27, 2019 through August 26, 2022. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Croswell's licenses during this revocation period.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation for a 3 year revocation as presented. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

(5-2) Thomas P. Croswell Jr. (MRC #008841): Mr. Croswell Jr. was not present.

Terri McKellips, Marine Police Officer, was sworn in. Her comments are a part of the verbatim record.

December 10, 2018, Harvest oysters from closed area: 4 VAC 20-720-40

Disposition:

June 25, 2019, Northumberland County General District Court
Fine: \$200.00

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

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

Mr. Thomas P. Croswell Jr., a commercial fisherman registration licensee, was convicted on June 25, 2019 for one count of harvesting oysters from closed area (4 VAC 20-720-50).

The Commission's guidelines for sanctions specify that one conviction of one conviction of harvesting oysters or clams during a closed public season, within a two-year period, should result in at least a three-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission place Mr. Croswell on probation for a period of three years from the date of this Commission meeting, August 27, 2019 through August 26, 2022. Any failure on Mr. Croswell's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the three-year probation would result in Mr. Croswell appearing before the Commission for a hearing on a license revocation.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation for 3 year probation as presented. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

(5-3) Eric Ferguson Sr. (MRC #3855): Mr. Ferguson Sr. was present and sworn in. His comments are a part of the verbatim record.

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

Commission Meeting

18370
August 27, 2019

February 2, 2019, Commercially take oysters on Saturday: 4 VAC 20-720-60

Disposition:

March 25, 2019, York County General District Court
Fine: \$50.00

February 2, 2019, Patent tong w/o gear license: 4 VAC 20-720-75

Disposition:

March 25, 2019, York County General District Court
Fine: \$50.00

February 2, 2019, Oyster during closed season: 4 VAC 20-720-40

Disposition:

March 25, 2019, York County General District Court
Fine: \$50.00

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

January 26, 2018, Possession of uncultured oysters (7 quarts): 4 VAC 20-260-40

Disposition:

March 23, 2018, Newport News General District Court
Fine: \$150.00

GUIDELINE SUGGESTION: 2 YEAR REVOCATION OF ALL SHELLFISH LICENSES (§ 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.

Commission Meeting

18371
August 27, 2019

Mr. Eric Ferguson Sr., a commercial fisherman registration licensee, was convicted on March 25, 2019 for one count of Commercially take oysters on Saturday (4 VAC 20-720-60), one count of patent tonging without a gear license (4 VAC 20-720-75), and one count of oysters during a closed season (4 VAC 20-720-40), and on March 23, 2018 for one count of possession of uncultured oysters (7 quarts) (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed public season, one conviction of possessing at least 50% over the tolerance of undersized shellfish, one conviction of patent tonging without a gear license, and one conviction of commercially taking oysters on Saturday, within a two-year period, should result in at least a two-year revocation of all shellfish licenses. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Ferguson's Commission-issued shellfish licenses for a period of two years from the date of this Commission meeting, August 27, 2019 through August 26, 2021. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Ferguson's licenses during this revocation period.

Mr. Ferguson Sr. was sworn in and his comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation for a 2 year revocation of all shellfish licenses as presented. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

(5-4) Eric Ferguson Jr. (MRC #NONE): Mr. Ferguson Jr. was present and sworn in. His comments are a part of the verbatim record.

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

February 2, 2019, Commercially take oysters on Saturday: 4 VAC 20-720-60

Disposition:

March 25, 2019, York County General District Court
Fine: \$50.00

Commission Meeting

18372
August 27, 2019

February 2, 2019, Patent tong w/o gear license: 4 VAC 20-720-75

Disposition:

March 25, 2019, York County General District Court
Fine: \$50.00

February 2, 2019, Oyster during closed season: 4 VAC 20-720-40

Disposition:

March 25, 2019, York County General District Court
Fine: \$50.00

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

January 26, 2018, Possession of unculled oysters (7 quarts): 4 VAC 20-260-40

Disposition:

March 23, 2018, Newport News General District Court
Fine: \$150.00

GUIDELINE SUGGESTION: 2 YEAR REVOCATION OF ALL SHELLFISH LICENSES (§ 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. Eric Ferguson Jr., was convicted on March 25, 2019 for one count of commercially taking oysters on Saturday (4 VAC 20-720-60), one count of patent tonging without a gear license (4 VAC 20-720-75), and one count of oystering during a closed season (4 VAC 20-720-40), and on March 23, 2018 for one count of possession of unculled oysters (7 quarts) (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed public season, one conviction of possessing at least 50%

over the tolerance of undersized shellfish, one conviction of patent tonging without a gear license, and one conviction of commercially taking oysters on Saturday, within a two-year period, should result in at least a two-year revocation of all shellfish licenses. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that the Commission revoke all of Mr. Ferguson's Commission-issued shellfish licenses for a period of two years from the date of this Commission meeting, August 27, 2019 through August 26, 2021. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Ferguson's licenses during this revocation period.

Mr. Ferguson Jr. was sworn in but chose not to testify.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation for a 2 year revocation of all shellfish licenses as presented. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

(5-5) John C. Green (MRC #009059): Mr. Green was present and sworn in. His comments are a part of the verbatim record.

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

January 16, 2019, Possession of unculled oysters (7 quarts): 4 VAC 20-260-40

Disposition:

February 25, 2019, Newport News General District Court
Fine: \$100.00

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

December 3, 2017, Taking of oysters off public ground before sunrise: § 28.2-530 A

Disposition:

January 15, 2018, Newport News General District Court
Fine: \$150.00

GUIDELINE SUGGESTION: 6 MONTH REVOCATION OF ALL SHELLFISH LICENSES (§ 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. John Green, a commercial fisherman registration licensee, was convicted on February 25, 2019 for one count of possession of unculled oysters (7 quarts) (4 VAC 20-260-40) and on January 16, 2018 for one count of taking oysters off public ground before sunrise (§ 28.2-530 A of the Code of Virginia).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of shellfish and one conviction of taking oysters off public ground before sunrise, within a two-year period, should result in at least a six-month revocation of all shellfish licenses. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Green's Commission-issued shellfish licenses for a period of six months from the date of this Commission meeting, August 27, 2019, through February 26, 2020.

Mr. Green was sworn in and testified. 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 for a 6 month revocation of all shellfish licenses as presented. Associate Member Neill seconded the motion. The motion carried, 9-0. Chair voted yes.

(5-6): Peter Masiak (MRC #008407): Mr. Masiak was not present.

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

January 16, 2019, Possession of unculled oysters (7 quarts): 4 VAC 20-260-40

Disposition:

February 25, 2019, Newport News General District Court
Fine: \$100.00

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

January 24, 2018, Possession of uncultured oysters (6 quarts): 4 VAC 20-260-40

Disposition:

February 21, 2018, Newport News General District Court
Fine: \$200.00

GUIDELINE SUGGESTION: 6 MONTH REVOCATION OF ALL SHELLFISH LICENSES (§ 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. Peter Masiak, a commercial fisherman registration licensee, was convicted on February 25, 2019 for one count of possession of uncultured oysters (7 quarts) (4 VAC 20-260-40) and on February 21, 2018 for one count of possession of uncultured oysters (6 quarts) (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that two convictions of possessing at least 50% over the tolerance of shellfish, within a two-year period, should result in at least a six-month revocation of all Commission-issued shellfish licenses. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that the Commission revoke all of Mr. Masiak's Commission-issued shellfish licenses for a period of six months from the date of this Commission meeting, August 27, 2019, through February 26, 2020. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Masiak's Commission-issued shellfish licenses during this revocation period.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to increase the penalty to a 3 year revocation of all shellfish licenses. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

(5-7): Nicholas Green (MRC #008259): Mr. Green was present and sworn in. His comments are a part of the verbatim record.

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

January 16, 2019, Possession of unculled oysters (7 quarts): 4 VAC 20-260-40

Disposition:

February 25, 2109, Newport News General District Court
Fine: \$100.00

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. Nicholas Green, a commercial fisherman registration licensee, was convicted on February 25, 2019 for one count of possession of unculled oysters (7 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. Green be placed on probation for a period of one year from the date of this Commission meeting, August 27, 2019, through August 26, 2020. Any failure on Mr. Green'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 Mr. Green appearing before the Commission for a hearing on license revocation.

Mr. Green was sworn in and his comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion for a 30 day probation. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 6. REQUEST FOR AN EMERGENCY AMENDMENT:** Proposal to amend Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to lower the recreational possession limit in the Chesapeake Bay area and establish commercial maximum mesh size requirements in the Chesapeake Bay and Coastal areas.

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

Mr. Aspinwall explained that the Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Management Board will meet in October 2019 to take final action on Draft Addendum VI to establish a reduction plan that lowers the 2017 fishing mortality estimate to the fishing target by 2020. Currently, Draft Addendum VI includes proposed recreational options for the Chesapeake Bay and Coastal areas as well as adjustments to commercial quotas that achieve reductions being required through ASMFC. The recreational sector will be required to make an 18% or a 20% reduction in removals (harvest and dead discards) and the commercial sector will be required to make a 1.8% reduction or an 18% reduction in quota, following ASMFC rule in October. Proposed recreational and commercial reductions are intended to be implemented by 2020 however, the addendum does not limit states from taking proactive measures, especially when the results from the latest stock assessment indicate the stock is overfished and overfishing is occurring.

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

An emergency action would allow changes to be effective immediately, providing the public 37 days notice prior to the start of the Chesapeake Bay area fall season. The Chesapeake Bay area fall recreational season will start on October 4, 2019. Lowering

the recreational possession limit to 1-fish per angler during the Chesapeake Bay area spring and fall seasons would achieve reductions specified in the Draft Addendum.

During the last ASMFC meeting in August 2019, the board postponed a motion to Spring 2020 to initiate an amendment to the Atlantic Striped Bass Fishery Management Plan. The amendment will be aimed at addressing the overfished status in 2017. The amendment process is substantially longer than an addendum process therefore staff is recommending a commercial maximum mesh size of 7” in the Chesapeake Bay area and 9” in the Coastal area beginning in fall 2019, in addition to quota adjustments in 2020, to further protect the larger breeding fish that contribute to the spawning stock.

Staff recommends the Commission adopt the emergency amendments described in sections of Chapter 4 VAC 20-252-10 et seq. "Pertaining to the Taking of Striped Bass," to lower the recreational possession limit in the Chesapeake Bay area and establish commercial maximum mesh size requirements in the Chesapeake Bay and Coastal areas. Staff also recommends this emergency amendment be part of a September public hearing to incorporate the amendments as part of the permanent regulation.

Jeff Dean, Chair of Finfish Management Advisory Committee suggested getting the public involved and recommended one of the options in amendment #VI that is tailored to our fisherman. His comments are a part of the verbatim record.

John Bellow, spoke on behalf of the Va. Saltwater Sport Fishing Association. Mr. Bellow was in support of the emergency action for recreational fisheries with a caveat that some consideration be given to the charter boats. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

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Commission Meeting

7. **JAMES RHODES, #19-0944**, requests authorization to install a 24-foot long by 72-foot long gabion basket wall with a gabion scour mat, within a jurisdictional beach along the James River adjacent to 228 James River Overview in Surry County. The project requires a dune and beach permit.

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

Ms. Peabody explained that the project is proposed along a jurisdictional beach, owned by the Guilford Heights Homeowners Association, along the James River in Surry County. The applicant's property is a single-family lot located atop an approximate 50-foot kudzu covered, eroding vertical cliff, that leads to the beach below. The cliff is experiencing consistent top-down erosion resulting in a landward migration of the cliff face toward the applicant's home that is currently located approximately 35-feet from the top of the cliff. The applicant has proposed to construct a 72-foot long gabion basket wall with two (2) 24-foot long gabion wing walls atop a gabion scour mat, channelward of the base of the cliff, along the jurisdictional beach.

The intent of the proposal is to protect the base of the cliff from wave energy during storm events and to capture falling sediment as it erodes from the face of the cliff. The proposed design concept is modeled from two neighboring properties that have installed similar structures along the beach and appear to be functioning to capture sediment and protect the base of the cliff.

Although a design with offshore breakwaters, beach replenishment, and a terraced slope would be preferable at this location, it is not practical for a single lot. This type of design would require all the property owners along the entire shoreline to participate. As such, staff believes that the proposed gabion basket design has merit. However, the impacts to the beach can be reduced by moving the alignment of the structure closer to the base of the cliff by five (5) to ten (10) feet. Comments from the Virginia Institute of Marine Science and from the Shoreline and Erosion Advisory Service indicate that the current design would retain its efficacy if it were moved to a more landward alignment. This would allow beach access during high tide and retain existing beach processes and environmental values.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1408 and §28.2-1205 of the Code of Virginia, staff recommends approval of the project with a 5-foot landward alignment.

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

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

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

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Agenda item #9 was heard before agenda item #8.

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8. CRESCENT COVE CONDOMINIUM UNIT OWNERS ASSOCIATION, #19-1160, requests authorization to regrade and install additional riprap to 141 linear feet of an existing riprap revetment along the Crescent Cove Condominiums along the Southern Branch Elizabeth River in the City of Chesapeake. The project requires a tidal wetlands permit.

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

Ms. Peabody explained that the project is proposed at a multifamily condominium complex located along the Southern Branch Elizabeth River in the City of Chesapeake. The existing shoreline along the property contains a riprap revetment that, according to aerial imagery, was installed in the late 1980s. Overtime the existing revetment has begun to slump seaward. As a result, the property is experiencing erosion between the upland and landward edge of the structure. The applicant has applied to regrade the riprap revetment and extend the ends to adequately tie-in the structure to the eroding highlands. Approximately 39 square feet of vegetated wetland pockets have established on the landward edge of the revetment.

The property experiences erosion during higher than normal tides and from boat wakes. The seaward slump of the existing revetment has resulted in an unprotected

land/revetment transition, which has led to required maintenance of their erosion control structure. Given that the proposed project consists of maintenance and repair work, requiring a living design does not seem appropriate at this time, because a living shoreline design would require full removal of an otherwise functioning structure. The project will result in a fill of 39 square feet of vegetated wetlands. Compensation for these impacts is deemed necessary based on VMRC's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines. The applicant has proposed to purchase 39 square feet of tidal wetland credits at New Mill Creek Mitigation Bank, in Chesapeake.

Richard Calvert, applicant representative, was present and sworn in. His comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

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

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9. **GAIL SMITH, #19-1161**, requests authorization to remove a 62-linear foot section of existing failing bulkhead and replace it in the same alignment, along the Eastern Branch Elizabeth River at 4038 Tanglewood Trail in the City of Chesapeake. The project requires a tidal wetlands permit.

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

Ms. Peabody explained that the project is proposed along the shoreline of a single family residential property located along the Eastern Branch Elizabeth River in the City of Chesapeake. The existing shoreline contains approximately 200 linear feet of bulkhead that, according to aerial imagery, was built in the mid-1980's. Approximately 62-linear feet of the existing wall has fully failed resulting in landward erosion. The applicant has applied to only rebuild the portion of the wall that has failed, in the same alignment.

The failure of the bulkhead requires maintenance action before additional erosion takes place. Given that the proposed project consists of maintenance and repair work, requiring a living design does not seem appropriate at this time, because a living shoreline design would require full removal of an otherwise functioning structure. The project will result in a fill of 140 square feet of non-vegetated wetlands. Compensation for these impacts is not deemed necessary based on VMRC's Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

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

Richard Calvert, Calvert Marine, was present and sworn in. His comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

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

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- 10. MICHAEL LINCOLN, #19-1228**, requests authorization to construct a single-family dwelling with an associated retaining wall along the Chesapeake Bay at 828 North First Street in the City of Hampton. The project requires a dune and beach 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 the Malo Beach area of the City of Hampton. The entire lot is considered to be a jurisdictional dune and beach. A vegetated coastal primary sand dune exists at the landward edge of the property. The lot for the

proposed dwelling is one of two remaining undeveloped parcels in this reach of Malo Beach. It is 60 feet wide and extends from North First Street channelward to the mean low water line.

The single-family house is proposed to be built in line with the channelward end of other dwellings in the area. It will be constructed upon pilings to minimize disruption of natural sand transportation processes. The proposed retaining wall will be landward of the adjacent property's retaining wall, thus minimizing its channelward encroachment as much as possible. The dwelling will be elevated according to FEMA standards for protection from flooding.

Staff understands the applicant's desire to construct a home on this property. While the construction of the proposed dwelling will not meet VMRC's adopted guidelines for beaches and dunes, this area of Malo Beach was developed prior to the Coastal Primary Sand Dunes and Beaches Legislation, with residential dwellings previously encroaching upon the jurisdictional beach. In keeping with the historical use of Malo Beach, the Commission has previously

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

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

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

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- 11. THE CONSERVATION FUND, #19-0144**, requests authorization to install a 6-foot wide by 120-foot long open-pile observation pier with a 12-foot by 12-foot fixed deck along Timberneck Creek at 3601 Timberneck Farm Road in Gloucester County. The project is protested by a nearby oyster planting ground leaseholder.

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

Mr. Johnson explained that the project area is located on an unimproved stretch of marshy shoreline of Timberneck Creek which is a tributary to the York River. The area around the proposed pier is shallow with water depths at the channelward terminus of the pier of less than one foot mean low water. The channelward terminus of the pier, at its closet point, will be approximately 10 feet outside of an oyster planting ground lease owned by Mr. George Marshall.

The proposed public observation pier, and the associated upland areas, will be turned over to the Virginia Department of Conservation and Recreation to become a state park after all improvements on the property have been made.

Staff has carefully considered all of the concerns raised by the protestant for this project regarding his existing oyster planting ground lease. Mr. Marshall has not provided any evidence the lease is productive and stated he plans to work the lease sometime in the future. Additionally, the observation pier, in its proposed configuration and the shallow water bathymetry surrounding it, will not be conducive to boat use. The existence of the multi-slip pier facility to the east would encourage boaters to utilize it instead. Therefore, staff believes the proposed observation pier will not affect Mr. Marshall's future ability to utilize his oyster planting ground lease.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed without a royalty for the encroachment of the pier over State-owned subaqueous bottom as the pier will be transferred to another Virginia State agency. As a condition of approval, staff further recommends that the Commission require the permit be transferred to the Virginia Department of Conservation and Recreation upon completion of the pier's construction.

The applicant and opposition was not present.

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, 9-0. Chair voted yes.

Fee :	\$ 100.00
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12. **ROBERT JAMES McBRIDE, Oyster Planting Ground Application #2017-171**, requests authorization to lease approximately 71 acres within Mulberry Creek in Lancaster County. The application is protested by a number of nearby property owners.

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 application was subjected to our normal public interest review. Staff received an objection in February of 2018 from Mr. Grayson Jennings with concerns about possible adverse impact to navigation within the creek. An additional letter of protest from Mr. Mark H. Eldert included a petition signed by 35 local residents and/or property owners. Mr. Eldert's letter, submitted with the petition, included the following concerns: Public Food Safety, noting that portions of the application fall within seasonally condemned classification waters for shellfish harvest; Safety Issues, noting that Belle Isle State Park has a ramp and dock that is used by canoers and kayakers and that shellfish beds in the shallow water areas near the park could create a hazard to inexperienced boaters who could be injured on oysters and/or shells if falling from their watercraft; Navigational Concerns, noting concerns include the possibility that marking of the lease may encourage shallow water craft into the deeper channel area creating a conflict with motorized vessels, and the existence of two shifting sandbars near the entrance to Mulberry Creek that could be exacerbated by placement of oyster beds in these areas.

The application area was surveyed by Commission Surveyor Christopher Meyers in July of 2019. The northern boundary of the proposed lease area is south of the privately marked channel area within the creek. The boat launch area for the park is on the opposite side (Rappahannock River) of the park from Mulberry Creek. The applicant did indicate a proposed use of the area for both traditional shell and seed bottom use, and the placement of cages no more than 12 inches in height. Placement of such structures is allowed by regulation by VMRC, and if placed, cannot create more than a minimal impact to navigation. If such placement occurs that does create more than a minimal impact to navigation VMRC can require removal or relocation to address this issue. Oysters grow naturally in shallow water areas, therefore, persons using these areas regardless of the existence of a lease, should take proper precautions when traversing

such areas by boat, or on foot. Staff is not aware of any permitted dredge channel in the immediate area of the surveyed application area. Water depths to the north of the application area appear to be 4-5 feet at mean low water and represent the deeper area within Mulberry Creek.

A small portion of the surveyed application area (13.83 acres) is within a condemnation area classified as seasonally condemned. This means that the area is closed for the direct market harvest of shellfish from April 1 through August 31. During this time restriction, shellfish could be moved to non-restricted areas of the proposed lease, provided the leaseholder obtains a relay permit as granted by VMRC to move the shellfish to open classified waters. During the time from September 1 through March 31 of each year this same area will be open for direct market harvest of shellfish. The additional non-restricted surveyed area of the application contains 56.18 acres, making the total surveyed area 70.01 acres.

Staff received comments on August 14, 2019, from the Department of Conservation and Recreation (DCR) as the requested area is immediately adjacent to Belle Isle State Park. In a letter from Craig Seaver, State Park Director for DCR, he noted one concern with the surveyed alignment along the northwest area of the park. Specifically, Brewer's Point Campground is located in this area and a landing area for small vessels (canoes, kayaks, etc.) is located near the campground area. Corner # 9 of the surveyed area is adjacent to this landing area. Mr. Seaver notes that if the leaseholder were to place on bottom structures in this location it could interfere with such river access. Staff proposes the elimination of corner # 9. The new alignment will go from corner # 8 to corner # 10. This will result in leaving this cove area outside the lease boundary and should help to alleviate this potential conflict. Also, per current agency regulation, placement of bottom structures that create more than a minimal impact to navigation is not allowed and if such structures are found to create such an issue the leaseholder will be required to move or remove the structures. This will reduce the non-restricted classification area of the proposed lease to 53.56 acres making the total revised area 67.39 acres.

Staff considered the comments provided by Mr. Jennings and by Mr. Eldert (such comments appear to be in association with a petition containing 35 signatures from local residents/landowners). The main boat landing area is on the opposite side of the park. While there are some residential properties upstream of the proposed lease within Mulberry Creek, staff believes the area, as surveyed, allows for safe navigation within the marked channel and/or within the deeper portions of the creek that are north of the surveyed area. Staff also proposes to eliminate one corner from the original survey to address the potential navigation issue noted by DCR. Again, if approved, should the

leaseholder place on bottom structures that create more than a minimal impact to navigation, current VMRC regulations would require the leaseholder to remove, or relocate such bottom structures to a more appropriate location. Current VMRC regulations allow for the leasing of areas that are classified by the Health Department as open or seasonally condemned for shellfish harvest activity. Additionally, VMRC routinely issues leases in nearshore shallow water habitats where oysters may already naturally occur.

Staff further noted that after sending a map of the surveyed area to those on record in opposition staff received a number of calls from a number of local residents with continued concerns about navigation within Mulberry Creek, specifically the area near corner numbers 14, 15 and 1. Staff provided to the Commission a revised drawing depicting modifying corner numbers 1, 14 and 15 to provide a wider area of navigation north of the proposed lease area. Staff then concluded by recommending leasing of the revised total area of 61 acres.

The applicant was not present.

There were four (4) people that spoke in opposition of the application. All those that were present and spoke were sworn in. Their comments are a part of the verbatim record.

Those that spoke in opposition had the following concerns: hazards to navigation, recreational boating activity in area, cage location placement, dangers of the poles that are used to mark leased ground being broken and causing a hazard and the shallow water in the area.

The matter was before the Commission for discussion and action.

Associate Members stated that they were unable to approve the application fairly without hearing the applicants' intentions for the lease.

Associate Member Zydron made a motion to deny staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-1. Chair voted yes. Associate Member Everett opposed.

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13. LOU COCKS: Removed from agenda

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14. PUBLIC COMMENT

Paul Croswell Sr.

Mr. Croswell Sr., whose licenses status review was conducted in his absence earlier in the day, asked that his case be re-heard. His comments are a part of the verbatim record.

There being no motion from the Commission, the request was denied. Commissioner Bowman advised Mr. Croswell that he could appeal to the Circuit Court.

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- 15. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2019-2020 areas of public harvest, public oyster harvest seasons, and oyster resource conservation measures.

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 preliminary reported oyster harvest for the 2018-2019 oyster harvest season (July 2018-June 2019) has decreased compared to the reported harvest for the 2017-2018 season. Harvest from public grounds is lower than the previous five-year average, but is substantially higher than the previous ten-year average. There is at least a three-month lag from harvest date to when any data shows in our mandatory reporting database. This lag has been somewhat worse this year due to mail delivery issues related to the Agency move to Fort Monroe. This means the harvest data for both private and public ground is likely not fully up to date at this time. Based on the reporting from fall 2018 and early spring 2019, it appears that private ground harvest may be following a similar trend to the public ground harvest and has decreased when compared to the last five years.

The decrease in public and private ground production was anticipated. This decrease was most likely from the highest level of annual precipitation on record in large portions of the Chesapeake Bay Water Shed in 2018. The influx of freshwater caused increased oyster mortality from extended periods of low salinity. The growth rate of oysters to

market size likely slowed in many of the areas affected by lower salinities. Recently implemented harvest effort controls, primarily lowering vessel limits in hand scrape and dredge areas from 24 bushels to 16 bushels per vessel, may also have contributed modestly to the decrease in public ground harvest numbers. The increased water flow and low salinity likely contributed to a spat set in 2018 that was not as consistent and wide spread as it has been in previous years.

The Shellfish Management Advisory Committee (SMAC) has met several times to discuss the continued impacts of low salinity in much of 2018 and the first half of 2019 and to provide recommendations regarding the 2019-2020 public oyster harvest season. Staff has worked with SMAC to develop a more resource-conservative public oyster harvest season. The proposed changes to Chapter 4 VAC 20-720-10 et seq., are intended to conserve the oyster resource while minimizing negative impacts to the oyster fishery.

The substantive changes compared to the prior season will include a shortened harvest day. Harvesting will end at 12 noon in hand scrape and dredge areas for the entirety of the season. A delay in the start of the hand scrape season until November 1 will also be a change. These changes, combined with overlapping area opening dates and adjustments in where and when certain gears can be used, are intended to prevent high levels of fishing effort from being focused on single harvest areas.

In the event that harvest effort shifts from one harvest area to another and becomes focused in such a way that lasting damage to the oyster resource is imminent, Chapter 4 VAC 20-720-10 et seq., allows the Commissioner to close any public or unassigned ground “when it is determined by the Oyster Replenishment Department that the standing stock of oysters has been depleted by 50% or more.” It is possible that this action will need to be taken.

The effects from last year’s heavy precipitation: increased mortality; low spat set; and depressed growth rates, will impact the 2019-2020 season and may be seen in future seasons for some time. The long-term stability of the public fishery will remain dependent on continuous replenishment efforts, natural spat sets, and adaptive fisheries management plans. A single year of favorable spat sets, followed by two years of normal salinity levels should allow the fishery to recover to previous levels.

The Proposed DRAFT 2019 – 2020:

James River

Commission Meeting

Clean Cull:

Oct., Nov., Dec., Jan., Feb., Mar., Apr. – HT

Area 1, 3:

Oct. – HT

Nov. – HS* (harvest ending at noon)

Dec. & Jan. – HS (harvest ends at 2 pm)

Area 2:

Oct. – HT

Nov. – HS* (harvest ending at noon)

Dec. & Jan. – HS (harvest ends at 2 pm)

Seed Oysters:

Oct., Nov., Dec., Jan., Feb., Mar., Apr. & May – HT

York River

Area 2:

Nov. – HT, Feb. – HS* (harvest ending at noon)

Milford Haven

Milford Haven:

Dec., Jan., & Feb. – HT

Deep Rock:

Dec., Jan., & Feb. – PT

Rappahannock River

Area 1:

Feb. – PT

Area 2:

Oct. – PT, Nov. – HS* (harvest ending at noon) & Feb. - HS* (harvest ending at noon)

Area 4:

Nov. – PT, Dec. & Jan. – HS

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Area 7:

Oct. – HT

Area 9:

Nov. & Dec. – HT

Great Wicomico

Great Wicomico 1:

Dec. – HS & Feb. – HS* (harvest ending at noon)

Little Wicomico and Coan

Little Wicomico & Coan:

Oct., Nov. & Dec. – HT

Yeocomico & Nomini

PG 8, 100, 107, 112 & Nomini:

Oct., Nov., & Dec. – HT

Tangier-Pocomoke

Poco Area 1 & Tangier Area 1:

Dec. & Jan. – DR, Feb. – DR* (harvest ending at noon)

Seaside ES

Seaside ES:

Nov., Dec., Jan., Feb., & Mar. – HT/By Hand

The bushel limits for HS, DR & PT is proposed for an eight (8) bushel limit. A twelve (12) bushel limit is proposed for HT and By Hand harvest.

Staff recommends adopting Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2019-2020 areas of public harvest, public oyster harvest seasons, and management measures.

There were three (3) people present that spoke and provided feedback about the lack of Hand Scrape areas open in the month of October. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

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16. RECOMMENDATION: On funding a project from the Marine Fishing Improvement Fund.

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 the estimate of funds available from the Marine Fishing Improvement Fund (MFIF) as of August 1, 2019 is \$693,964.50. This spring, investigators at the Virginia Institute of Marine Science (VIMS) proposed a study investigating blue catfish predation on blue crabs in the James River. The project requires Commission approval for expenditures from the MFIF.

Proposed Project:

Predation impacts of invasive blue catfish on blue crabs in estuarine environments: \$30,159:

This proposed project from the VIMS includes collaborative work with a commercial waterman to estimate and quantify predatory impacts of blue catfish on blue crabs in the lower James River. Seasonal diets of blue catfish will be observed from the mouth of the Chickahominy River to the James River Bridge, where blue catfish and blue crab habitats overlap. Researchers will also examine if there is a relationship between salinity and blue catfish predation on blue crabs. This would be a continuation of the research initiated in 2018. Year 2 (as proposed) would begin during summer 2019 and be completed by fall 2020.

Blue catfish stomachs will be collected by a commercial waterman who will deploy anchored gill nets monthly in the lower James River. The study is designed to ensure broad spatial coverage of the James River subestuary and to estimate predation impacts in two salinity zones. Temperature sensors will also be deployed during randomly selected 24-hour sets twice monthly. The survey design is estimated to yield 144 net sets.

The total cost for the proposed work is budgeted at \$66,415. The VIMS is proposing match funding of 38.5% or \$36,256 provided by a Fishery Resource Grant through VIMS Marine Advisory Service. All research grants are required to include at least a 25% match. The remaining balance of \$30,159 is proposed from the commercial license fund (MFIF).

Staff recommends funding this project totaling \$30,156 from the Marine Fishing Improvement Fund (MFIF).

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

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17. REQUEST FOR A PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to establish fall 2019 commercial offshore summer flounder fishery management measures.

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

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

Staff recommends advertising for a September Public Hearing to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish fall 2019 commercial offshore (federal waters) summer flounder management measures.

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, 8-0. Chair voted yes. Associate Member Ballard was not present during final vote.

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18. REQUEST FOR A PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to revise the minimum size limit for commercial hook-and-line gear.

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

Mr. Kenyon explained that the inequity between commercial and recreational hook-and-line minimum size limits in the summer flounder fishery has been a concern since the establishment of the Commercial Hook-and-Line license in 1994. Both recreational and commercial harvests of summer flounder in Virginia inland waters have decreased substantially over the last ten years. According to the April 2019 Summer Flounder Stock Assessment 50% of males are mature by 10 inches and 50% of females are mature at 12 inches (*66th Northeast Regional Stock Assessment Workshop Assessment Report, April 2019*). Increasing minimum size limits would allow mature fish to spawn multiple years before being removed from the population.

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

The current minimum size limit for any summer flounder commercially harvested or landed in Virginia is 14 inches in total length (4 VAC 20-620-50). This minimum size limit is consistent for all commercially caught summer flounder regardless of the gear type used. The current minimum size limit for recreationally harvested summer flounder

is 16.5 inches in total length. This minimum size limit pertains to all recreational fishing gear, including hook-and-line, rod and reel, spear, and gig.

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

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, 8-0. Chair voted yes. Associate Member Ballard not present during final vote.

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

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 August 19, 2019, the South Atlantic Fisheries Management Council announced the closure for commercial harvest of Atlantic migratory group Spanish mackerel (northern zone) in federal waters. This closure will go into effect on August 24, 2019, and the fishery will reopen on March 1, 2020. Staff would like to amend Chapter 4 VAC 20-540-10 et seq. to allow for a state waters closure to be consistent with the federal waters closure once the commercial quota is predicted to be met.

Staff recommends advertising for a September Public Hearing to amend Chapter 4 VAC 20-540-10 et seq., "Pertaining to Spanish Mackerel and King Mackerel," to establish closure procedures in state waters for the Spanish mackerel commercial fishery to coincide with federal waters closures as announced by the South Atlantic Fishery Management Council.

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The matter was before the Commission for discussion and action.

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

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There being no further business, the meeting was adjourned at approximately 2:18 p.m. The next Commission meeting will be Tuesday, September 24, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary