

## MINUTES

## COMMISSION MEETING

April 27, 2021

**\*\*In consideration of Governor Northam's Executive Order 55 and public safety, the April 27, 2021 Commission meeting of the Marine Resources Commission was held electronically at 9:30 AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting as follows:**

1. Any interested party was invited to visit the agency web calendar at <https://mrc.virginia.gov/calendar.shtm> and look for the 04/27/2021 meeting date to see web links to the draft proposed regulation, instructions for meeting participation, public call-in information, and the meeting Webex livestream web link. Participants was instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting will begin at 9:30AM.
2. All persons interested in commenting were highly encouraged to submit written comments prior to the meeting. Comments sent by mail were to be sent to 380 Fenwick Rd, Ft. Monroe, VA 23561 and should be received by 04/21/2021. Comments could have also have been emailed to [fisheries@mrc.virginia.gov](mailto:fisheries@mrc.virginia.gov) and were accepted until NOON on 04/26/2021.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to [fisheries@mrc.virginia.gov](mailto:fisheries@mrc.virginia.gov) by 5PM on 04/26/2021.

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

Steven G. Bowman

Commissioner

Present via conference call

John Tankard III

Ken Neill, III

John Zydron Sr.

Chad Ballard

Heather Lusk

Christina Everett

Associate Members

Present via conference call

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Kelci Block	Assistant Attorney General Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Erik Barth	Bs. Systems Manager Present via conference call
Todd Sperling	Bs. Systems Manager Present via conference call
Gloria Hatcher	Deputy Chief, Acct. Manager Admin. & Finance Management Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present via conference call
Andrew Button	Head, Conservation & Replenishment Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Christopher Davis	Fisheries Biologist Present via conference call
Ethan Simpson	Biological Sampling Supervisor Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present via conference call
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call

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Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call	
Alexa Galvan	Fisheries Mgmt. Specialist Present via conference call	
Brian Elliott	Marine Police Officer Present via conference call	
Steve Holliday	Marine Police Officer Present via conference call	
Stephen Ovide	Marine Police Officer Present via conference call	
Austin Brown	Marine Police Officer Present via conference call	
Randy Owen	Deputy Chief, Habitat Management Present via conference call	
Justin Worrell	Environmental Engineer, Sr. Present via conference call	
Mike Johnson	Environmental Engineer, Sr. Present via conference call	
Jay Woodward	Environmental Engineer, Sr. Present via conference call	
Mark Eversole	Environmental Engineer, Sr. Present via conference call	
Allison Lay	Environmental Engineer, Sr. Present via conference call	
Ben Nettleton	Environmental Engineer, Sr. Present via conference call	
Tiffany Birge	Environmental Engineer, Sr. Present via conference call	
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping Present via conference call	
Virginia Institute of Marine Science (VIMS): Present via conference call		
Lyle Varnell	Emily Hein	Mark Luckenbach

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Others present via conference line:

Alexander Wazlak	Ben Leatherland	Billy Wharton
Chris Gee	Chris Moore	David Cole
David Henderson	David O'Brien	Kevin Rose
Kim Huskey	Lindsay Webb	Monty Deihl
Oula Shehab-Dandan	Rebecca Francese	Taylor Ailtmar
Thomas James	Todd Elder	Tommy Clark
William Stevens	and others.	

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

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

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

**Associate Member Zydron moved to approve the agenda as presented. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor 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 March 23, 2021 Commission meeting minutes.

Associate Member Ballard advised that his name was not listed as present for the March 23, 2021 Commission Meeting Minutes. Corrections have been made to the March 23, 2021 to reflect that Mr. Ballard was present during the Commission Meeting.

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

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Commissioner Bowman swore in the VMRC staff, VIMS staff and others that would be speaking or presenting testimony during the meeting prior to each item.

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

Randy Owen, Deputy Chief, Habitat Management, reviewed the page 2 Items A through C for the Associate Members. Mr. Owens’s comments are a part of the verbatim record.

**2A ROANOKE COUNTY PARKS & RECREATION, #21-0278**, requests authorization to install two (2) clear-span pedestrian bridge crossings, a temporary work causeway and bridge pier, three (3) stormwater outfall rock aprons, temporary cofferdams, rock revetments and gabion basket walls along the Roanoke River as part of the West Roanoke River Greenway Project, near West Riverside Drive, in Roanoke County. Staff recommends approval of the project with the standard instream conditions and a special permit condition for a time-of-year restriction for instream work from March 15 through June 30 of any year to protect endangered finfish species, unless specifically waived in writing by the Department of Wildlife Resources.

Fees:	\$ 600.00
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**2B. RIVER PORT, LLC, #20-1822**, requests authorization to mechanically maintenance dredge 300,000 cubic yards of sediment in the first dredge cycle and 80,000 cubic yards in subsequent dredge cycles, with disposal at Craney Island, to restore and maintain previously permitted depths of -44 feet and -38 feet mean low water around Piers 14 and 15 at their commercial mooring facility along the James River at 1201 Terminal Avenue in the City of Newport News. Staff recommends standard dredge conditions.

Royalties: (Dredge/fill)	\$ 380,000.00
Fees:	\$ 600.00
Total Fees:	\$ 380,600.00

- 2C. **RIVER PORT, LLC, #21-0285**, requests authorization to conduct deck repairs and reinforcement on an existing 988 foot long pier by placing sixty four (64) 18-inch square steel support piles, new decking, and a new mooring system to include 16 dolphins with bollards and fenders at Pier 15 at their commercial facility at 1201 Terminal Boulevard along the James River in the City of Newport News.

Fees:	\$ 600.00
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No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member Neill moved to approve the page 2 Items A through C as presented. Associate Member Ballard seconded the motion. The motion carried 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

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

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

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5. **LICENSE STATUS REVIEW.**

**(5-1) Bi Chao Chen (008246):** Mr. Chen was present via conference call and sworn in. His comments are a part of the verbatim record.

Steven Holliday, Marine Police Officer, was sworn in and he gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

06/17/2020 Fish after license has been revoked: **4 VAC 20-1280-30**

**Disposition:**

July 24, 2021, Isle of Wight, MPO Steve Holliday  
Fine:

***GUIDELINE SUGGESTION: 3 YEAR REVOCATION OF ALL LICENSES AND PRIVILEGES (§ 28.2-232 of the Code of Virginia)***

Col. Matthew Rogers, explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger's comments are a part of the verbatim record.

Mr. Chen was convicted on July 24, 2020 for one count of fishing after his license has been revoked (4VAC 20-1280-30).

Mr. Chen first appeared before the Commission as a natural resource offender during the January 2016 Commission meeting. The Commission decided to revoke all of Mr. Chen's licenses and tidal fishing privileges from January 26, 2016 through January 25, 2018, owing to a conviction of seven finfish and gear convictions. Mr. Chen appeared for a second time during the July 2016 Commission meeting. The Commission decided to revoke all of Mr. Chen's licenses and fishing privileges for a period of five years from July 26, 2016 through July 25, 2020, owing to two crabbing convictions and one conviction of fishing while revoked.

The Commission's guidelines for sanctions specify that one conviction of failing to possess a commercial license (without eligibility), while revoked, 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 to the Commission to revoke all of Mr. Chen's Commission-issued licenses for a period

of three years from the date of this Commission meeting, April 27, 2021 through April 26, 2024. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Chen's licenses during this revocation period and may take discretionary action concerning the potential of a civil penalty.

The matter was before the Commission for discussion and action.

**Associate Member Zydron made a motion to approve staff recommendation as presented and include a civil penalty of \$1,500. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote**

**(5-2) Kyle Green (008573):** Mr. Green was not present during the meeting.

Brian Elliott and Stephen Ovide, Marine Police Officers, were sworn in and they gave the briefing of the information provided in the staff's evaluation. Their comments are a part of the verbatim record.

01/31/2020 Possession of uncultured oysters (10 quarts): **4VAC20-260-40**  
10/01/2019 Fail to fish gill net: **4VAC20-170-30 and §28.2-201**  
10/01/2019 Improperly marked gill net: **4VAC20-430-20 and §28.2-201**

**Disposition:**

September 28, 2020, Newport News General District Court, MPO Brian Elliott  
December 11, 2019, Gloucester County General District Court, MPO Stephen Ovide

***GUIDELINE SUGGESTION: SIX-MONTH REVOCATION OF ALL SHELLFISH LICENSES AND PRIVILEGES (§28.2-232 of the Code of Virginia)***

Col. Matthew Rogers, explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger's comments are a part of the verbatim record.

Mr. Kyle Green, a commercial fisherman registration licensee, was convicted on September 28, 2020 for one count of possessing uncultured oysters (10 quarts) (4VAC20-260-40) and on December 11, 2019 for one count of failing to fish a gill net (4VAC20-170-30 and §28.2-201 of the Code of Virginia) and one count of an improperly marked gill net (4VAC20-430-20 and §28.2-201 of the Code of Virginia).



The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized shellfish and two convictions of gear violations within a two-year period should result in at least a six-month revocation of all shellfish licenses and privileges. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Green's shellfish licenses and privileges for a period of six months from the date of this Commission meeting, April 27, 2021, through October 26, 2021. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Green's shellfish licenses during this revocation period.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion for revocation of all fishing licenses and privileges for 1 year from the date of the Commission Meeting. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

**(5-3) Samuel Coates (5210):** Mr. Samuel Coates was present during the meeting and his comments are a part of the verbatim record.

Brian Elliott and Austin Brown, Marine Police Officers, were sworn in and they gave the briefing of the information provided in the staff's evaluation. Their comments are a part of the verbatim record.

01/21/2020 Over the limit oysters: **4VAC20-720-80**; MPO Austin Brown

01/21/2020 Theft of oysters: **§28.2-527**; MPO Austin Brown

01/30/2020 Possession of unculled oysters (19 quarts): **4VAC20-260-40**; Brian Elliott

**Disposition:**

March, 22, 2021, Isle of Wight General District Court, MPO Austin Brown

July 9, 2020, Isle of Wight General District Court, MPO Brian Elliott

***GUIDELINE SUGGESTION: 1 YEAR REVOCATION OF ALL SHELLFISH LICENSES AND PRIVILEGES (§28.2-232 of the Code of Virginia)***

Col. Matthew Rogers, explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger's comments are a part of the verbatim record.

Mr. Samuel Coates, a commercial fisherman registration licensee, was convicted on March 22, 2021 for one count of theft of oysters (§ 28.2-527 of the Code of Virginia) and one count of over the limit oysters (4VAC20-720-80), and, on July 9, 2020 for one count of possession of unculled oysters (19 quarts) (4VAC20-260-40).

The Commission's guidelines for sanctions specify that one conviction of catching at least 50% over the limit of shellfish and one conviction of possessing at least 50% over the tolerance of undersized shellfish within a two-year period should result in at least a one-year revocation of all shellfish licenses and privileges. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Coates' shellfish licenses and privileges for a period of one year from the date of this Commission meeting, April 27, 2021, through April 26, 2022. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Coates' 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 revoke all of Mr. Coates' shellfish licenses and privileges for 3 years from the date of this Commission Meeting. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

**(5-4) James Marshall (4057):** Mr. James Marshall was present during the meeting and his comments are a part of the verbatim record.

Brian Elliott, Marine Police Officer, was sworn in and he gave the briefing of the information provided in the staff's evaluation. His comments are a part of the verbatim record.

01/30/2020 Possession of unculled oysters (19 quarts): **4VAC20-260-40**

**Disposition:**

July 9, 2020, Isle of Wight General District Court, MPO Brian Elliott

***GUIDELINE SUGGESTION: 1 YEAR PROBATION (§ 28.2-232 of the Code of Virginia)***

Col. Matthew Rogers, explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger’s comments are a part of the verbatim record.

Mr. James Marshall, a commercial fisherman registration licensee, was convicted on July 9, 2020 for one count of possession of unculled oysters (19 quarts) (4VAC20-260-40).

The Commission’s guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of undersized 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 the Commission place Mr. Marshall on probation for a period of one year from the date of this Commission meeting, April 27, 2021, through April 26, 2022. Any failure on Mr. Marshall’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. Marshall appearing before the Commission for a hearing on a license revocation.

The matter was before the Commission for discussion and action.

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

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- 6. **VIRGINIA ELECTRIC AND POWER COMPANY, #20-2348**, requests authorization to install stormwater management pond outfall pipes and concrete outfall protection structures in four (4) locations, impacting both tidal freshwater wetlands and State-owned submerged lands of the James River, as part of the Chesterfield Power Station Coal Combustion Residuals (CCR) Closure by Removal Project, in Chesterfield County. The project requires a tidal wetlands and subaqueous permit.

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

Mr. Eversole explained that the Chesterfield Power Stations' Coal Combustion Residuals Closure by Removal Project includes the closure by removal of the Upper Ash Pond and the Lower Ash Pond by excavating all CCR material and transferring it to the existing permitted Fossil Fuel Combustion Projects Management Facility (on upland property near the Power Station). Alternatively, the material may be disposed of at an offsite permitted industrial waste landfill or re-used beneficially offsite. The purpose of the project is to comply with VA Senate Bill 1355 and VA House Bill 2786, which require the closure by removal of all CCR surface impoundments within the Chesapeake Bay watershed. The closure by removal will be conducted in accordance with the U.S. Environmental Protection Agency (USEPA) and the Virginia Department of Environmental Quality (DEQ) regulations.

Once the coal ash has been removed from both the upper and lower ash ponds, the two ponds will be converted into stabilized, grassy, stormwater management facilities with concrete outfall pipes discharging clean stormwater runoff into the James River. The installation of the outfall pipes and associated outfall protection structures will result in both temporary and permanent impacts to both vegetated freshwater tidal wetlands and State-owned submerged lands.

Staff recommends the following permit conditions to ensure that appropriate wetlands restoration is achieved following the completion of the project:

- 1) 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. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters;
- 2) 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;
- 3) The permittee shall provide proof of purchase of tidal wetland compensation credits from the Virginia Aquatic Resource Trust Fund, at a ratio of 1:1, prior to issuance of the final permit.

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Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) and §28.2-1302(10) in the Code of Virginia, and recognizing that this overall project has been required by Acts of the Virginia General Assembly, staff recommends approval of the project with the above-referenced conditions.

Ms. Oula Shehab-Dandan, Environmental Consultant for the applicant answered questions by members of the Commission. Her 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 Tankard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

Fees:	\$ 600.00
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- 7. **BILLY WHARTON, Oyster Planting Ground Application #2017-034**, requests authorization to lease approximately 40 acres of oyster planting ground in Horse Marsh in the Chincoteague area of Accomack County. The application is protested by principals of Tom’s Cove Park.

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 Billy Wharton requesting to lease approximately forty (40) acres of oyster planting ground, in Horse Marsh in the Chincoteague area of Accomack County, was received by the Engineering/Surveying Department on January 30, 2017. The area requested actually only contains approximately 15 acres of available area. The application has been subjected to our normal public interest review process.

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After careful review and consideration of the objections raised by the nearby upland property owners, the potential impacts of leasing this area for shellfish propagation, and after considering all of the factors in §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends approval of the leasing of 14.07 acres of State-owned subaqueous bottomlands within Horse Marsh in the Chincoteague area of Accomack County to the applicant, Billy Wharton.

Billy Wharton, applicant, was present during the meeting. His comments are a part of the verbatim record.

David Cole spoke in opposition of the application. 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 Ballard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

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**8. THOMAS H. JAMES, III, Oyster Planting Ground Application #2019-025,** requests authorization to lease approximately 0.30 acre of oyster planting ground in Nassawadox Creek in Accomack 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 Thomas H. James, III requesting to lease approximately 0.30 acres of oyster planting ground, in Nassawadox Creek in Northampton County, was received by the Engineering/Surveying Department on March 4, 2019. The application has been subjected to our normal public interest review process.

After careful review and consideration of the objections raised by the nearby leaseholders and watermen, considering the potential impacts of leasing this area for shellfish propagation, and after considering all of the factors in §28.2.607 and §28.2-

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1205A of the Code of Virginia, staff recommends approval of the leasing of 0.34 acres of State-owned subaqueous bottomlands within Nassawadox Creek in Northampton County to the applicant, Thomas H. James, III.

Thomas James, applicant, was present during the meeting. His comments are a part of the verbatim record.

Heather Lusk abstained from voting and any further discussion pertaining to the application request because she is affiliated with the adjoining lease.

No one spoke in 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 Tankard seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member Lusk abstained. Associate Member Minor was not present during vote.**

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9. **WILLIAM MALACHI STEVENS, Oyster Planting Ground Application #2017-152**, requests authorization to lease approximately 15 acres of oyster planting ground in Whitehouse Creek in Lancaster County. The application is protested by five (5) 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 an application from William Malachi Stevens requesting to lease approximately 15 acres of oyster planting ground, in in Ewells Prong of Whitehouse Creek in Lancaster County, was received by the Engineering/Surveying Department on October 18, 2017. The application has been subjected to our normal public interest review process.

After careful review and consideration of the objections raised by the nearby leaseholders and watermen, considering the potential impacts of leasing this area for

shellfish propagation, and after considering all of the factors in §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends approval of the leasing of 0.34 acre of State-owned subaqueous bottomlands within Nassawadox Creek in Lancaster County to the applicant, William Malachi Stevens.

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

Freddie McGhee spoke in opposition of the oyster ground application. 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 to approve staff recommendation. Associate Member Lusk seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

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**10. REQUEST FOR PUBLIC HEARING:** Proposed update of the Commission’s Wetlands Guidelines developed pursuant to requirements of the 2011 and 2020 living shorelines legislation and §28.2-104.1 of the Code of Virginia.

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

Mr. Owen explained that originally adopted in 1974, the Wetlands Guidelines were last updated in 2005. The need to incorporate additional standards within the Guidelines, necessary for the protection and coastal resilience of Virginia’s tidal wetland acreages, was addressed by the General Assembly with the passage of living shorelines legislation in 2011 and 2020. Senate Bill 964 (2011) and the resulting legislation established living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. More recently, Senate Bill 776 and the resulting 2020 legislation (§ 28.2-104.1 of the Code of Virginia) requires the Virginia Marine Resources Commission to promulgate and periodically update minimum standards within the Guidelines for the protection and conservation of wetlands and to approve only living shoreline approaches to shoreline stabilization, unless the best available science shows that such approaches



are not suitable.

To accomplish this and as directed by §28.2-1301 of the Code of Virginia, staff contacted the Virginia Institute of Marine Science (VIMS) for assistance and guidance for the proposed update. VIMS convened an interdisciplinary team of scientists to collectively advise Commission staff on the matter. In addition to the input provided by VIMS, last fall a series of public workshops were held concerning the proposed update of the Wetlands Guidelines. Following the workshops, staff began preparing its initial draft update. On March 1, 2021, the resulting draft guidelines were posted on the agency website for public comment. A mass email was additionally sent to the fall workshop participants and the staff of the local wetlands boards alerting them of the document's availability and opportunity for comment. At the public's request, the comment period was extended past the original 30-day comment period to April 16, 2021.

The response has been considerable, with approximately 131 comments received to date. Additional public comments, beyond the April 16, 2021, advertised deadline are expected. Staff is in the process of reviewing the comments and considering them as we work to prepare the final draft Wetlands Guidelines update for eventual consideration and adoption by the full Commission. Accordingly, in light of the aforementioned legislative mandate directed in §28.2-104.1 of the Code of Virginia, we recommend that the Commission authorize staff to advertise the proposed updated Wetlands Guidelines for public hearing at either the May 25, 2021, or June 22, 2021, Commission meeting.

No one spoke support or opposition of the request for public hearing.

The matter was before the Commission for discussion and action.

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

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**11. PUBLIC COMMENT.**

**Todd Elder**: request to legalize Commercial Spearfishing in Virginia.

Commissioner Bowman recommended that the information should be directed toward Fisheries Management Advisory Committee.

Alexander Wazlak also provided further information pertaining to requesting to legalize Commercial Spearfishing in Virginia.

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12. **PUBLIC HEARING:** Proposal to amend Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2021 recreational fishery management measures. The 2021 recreational black sea bass fishing season will extend from May 15 through May 31 and June 16 through December 31, 2021.

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

Ms. Galvan explained that through ASMFC, Virginia was approved to conduct a 2021 February recreational fishery on the condition that any additional landings occurring during that season would result in a deduction of fishing days from the regular open season, which runs May 15 -December 31. During the February 2021 recreational black sea bass season, Virginia anglers landed 15,326 pounds of black sea bass. Using a daily landings rate analysis from recreational catch data, Virginia will need to close the regular recreational black sea bass season for 15 days to account for February landings.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2021 recreational fishery management measures. The 2021 recreational black sea bass fishing season will extend from May 15 through May 31 and June 16 through December 31, 2021.

No one spoke support or opposition of the public hearing.

The matter was before the Commission for discussion and action.

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

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13. **PUBLIC HEARING:** Proposal to amend Chapter 4VAC20-252-10 et seq., “Pertaining to the Taking of Striped Bass” to establish a definition of bait as it pertains the use of non-offset, non-stainless steel circle hooks when fishing recreationally and to clarify existing language relevant to reporting and commercial fisheries.

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

Ms. Phillips explained that numerous studies involving marine and freshwater species of fish, in both commercial and recreational fisheries, have demonstrated fish caught and released while using circle hooks are more likely to survive than fish caught using standard J-hooks when using natural bait. The most effective circle hook design, with no offset and the point curved into the hook’s shank tends to slide over soft tissue until reaching the jaw bone ridge at the corner of the fish’s mouth. Circle hooks tend to wedge into the corner of the jaw rather than hook. Conversely, J-hooks are more prone to hook, often into soft tissue where the hook is taken into the throat when using natural bait. Studies have shown that fish hooked in the jaw are more likely to survive when released than fish hooked deeply in the throat or stomach (Special Report No. 77 of the ASMFC, Circle Hook Definition and Research Issues, July 2003).

For striped bass, in particular, discard mortality accounts for a substantial amount of total removals. The 2019 stock assessment assumed that 9% of all released striped bass experience mortality. Further, the Atlantic Striped Bass Management Board expressed concern that discard mortality would increase even further when stricter size and possession limits were implemented as a result of the other provisions of Addendum VI (implemented in Virginia in 2019). As a result, the circle hook provision in Addendum VI was approved with the goal of reduced discard mortality in the recreational striped bass fishery.

In February 2021, the Atlantic Striped Bass Management Board created an ad hoc committee to develop a definition of bait to increase clarity and consistency of regulatory language pertaining to the circle hook provision for state implementation.

The Marine Resources Commission approved the circle hook provision at the July 2020 meeting. Staff recommends the Commission adopt the bait definition for striped bass to clarify the circle hook provision.

The regulatory review committee tasked staff with adjusting regulatory language to increase clarity, readability, and enforceability. As such, staff propose adjusting the language in sections 130 and 135 of Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass”. Section 130 currently refers to Chapter 4 VAC 20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting” to provide a date by which harvesters are to submit receipts. To increase clarity within the regulation, staff recommends striking the reference to Chapter 4 VAC 20-610 and including language regarding the mandatory reporting requirements for receipts within Chapter 4 VAC 20-252. All subsections within section 135 currently state that any registered commercial fisherman who is permitted to harvest striped bass is limited to specified gill net mesh sizes. This limits any registered commercial fisherman who is permitted to harvest striped bass from using other gill net mesh sizes when harvesting other species, which is not the intent of the regulation. Therefore, staff recommends adjusting the regulation to clarify that registered commercial fisherman who are permitted to harvest striped bass are only limited to the specified gill net mesh sizes when they are harvesting striped bass.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass,” to establish a definition of bait as it pertains to the use of non-offset, non-stainless steel circle hooks when fishing recreationally and to clarify existing language relevant to reporting and commercial fisheries.

No one spoke support or opposition of the public hearing.

The matter was before the Commission for discussion and action.

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

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**Commission Meeting**

**18751  
April 27, 2021**

There being no further business, the meeting was adjourned at approximately 12:07 p.m.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary