

MINUTES

COMMISSION MEETING

May 26, 2020

****In consideration of Governor Northam's Executive Order 55 and public safety, the May 26, 2020 Commission meeting of the Marine Resources Commission was held electronically at 9:36AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia with the minimum people present in the Commission Room. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting, prior to the 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 5/26/2020 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 were instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting began 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 5/21/2020. Comments could have also have been emailed to fisheries@mrc.virginia.gov and were accepted until 5PM on 5/25/2020.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to fisheries@mrc.virginia.gov by 5PM on 5/25/2020.

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

Steven G. Bowman

Commissioner, present in room

Wayne France

John Tankard III

John Zydron Sr.

Ken Neill, III

Heather Lusk

Christina Everett

Associate Members present
via conference call

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James E. Minor III Chad Ballard	Associate Members present via conference call
Kelci Block	Assistant Attorney General, Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Erik Barth	Bs. Systems Manager, Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present, in room
Somers Smott	Fisheries Mgmt. Specialist, Present, in room
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Alexa Kretsch	Fisheries Mgmt. Specialist Present via conference call
Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call
Tony Watkinson	Chief, Habitat Management Present via conference call
Randy Owen	Deputy Chief, Habitat Management Present, in room
Mark Eversole	Environmental Engineer, Sr. Present via conference call
Rachael Peabody	Environmental Engineer, Sr. Present via conference call
Allison Lay	Environmental Engineer, Sr. Present via conference call

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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
Troy Tuckey

Others present via conference line

Cecilla Lewis Isabel Steilberg Jane Rowan
Scott Smizek Shane Overbay Tina Pico
Chris Moore Carissa Agness April Deem
Angella Stoul Kimberly Larkin Sean Murray
John Duschang Justin Weisner Eric Prunchak
Douglas Gaffney Larissa Ambrose Jeff Hannah
Rebecca Wilk Chris Frye Taylor Sword
Louis Belvin A. J. Erskine Doug Chapin
Adrienne Kotula and others.

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Commissioner Bowman called the meeting to order at approximately 9:36 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, 8-0. Chair voted yes. Associate Member France 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 February 25, 2020 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Ballard seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member Everett abstained. Associate Member France was not present during vote.

MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the April 28, 2020 Commission meeting minutes.

Associate Member Everett requested the minutes reflect her attendance on April 28, 2020 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as amended. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member France was not present during vote.

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Commissioner Bowman swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting prior to their presentation.

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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 five (5) page 2 Items A through E for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

- 2A. **GLOBALINX DATA CENTER LLC, #19-2048**, requests authorization to horizontally drill four (4), five-inch steel submarine fiber optic conduits under Sandbridge Beach and adjacent State-owned submerged bottomlands to a distance of approximately 4,000 linear feet offshore, directly adjacent to City

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property located at 209 Sandbridge Road, situated along the Atlantic Ocean within the City of Virginia Beach. The conduits will remain vacant with the intent of accommodating future submarine fiber optic cable projects. Staff recommends approval with a royalty of \$48,000.00 for the total encroachment of 16,000 linear feet of State-owned submerged bottomlands at a rate of \$3.00 per linear-foot.

Royalties: (Encroachment of 16,000 LF @ \$3.00 /LF):	\$ 48,000.00
Fee:	\$ 100.00
Total Fees:	\$ 48,100.00

- 2B. GLOBALINX DATA CENTER LLC, #20-0381**, requests authorization to horizontally drill four (4) five-inch steel submarine fiber optic conduits under State-owned submerged bottomlands in the Atlantic Ocean to a distance of approximately 4,000 linear feet offshore, directly adjacent to City property located at the terminus of S. Atlantic Avenue on the southern side of Rudee Inlet in Virginia Beach. The conduits will remain vacant with the intent of accommodating future submarine fiber optic cable projects. Staff recommends approval with a royalty of \$48,000.00 for the total encroachment of 16,000 linear feet of State-owned submerged bottomlands at a rate of \$3.00 per linear-foot.

Royalties: (Encroachment of 16,000 LF @ \$3.00 /LF):	\$ 48,000.00
Fee:	\$ 100.00
Total Fees:	\$ 48,100.00

- 2C. FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, #19-2062**, requests authorization to restore and stabilize approximately 2800 linear feet of Accotink Creek and its tributaries, using Natural Stream Channel Design techniques, including stone streambank stabilization, root wad/log installation, rock vanes and drop structures, as part of the Accotink Creek at Wakefield Park Restoration Project, in Fairfax County.

Permit Fee:	\$ 100.00
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2D. ALEXANDRIA RENEW ENTERPRISES, #19-1630, requests authorization install, by the open-cut method, a 6-foot diameter interceptor sewer line, a minimum 1.8 feet beneath a 40-foot wide section of Hooffs Run, approximately 320 square feet of rip rap outfall protection, and temporary impacts along approximately 1,700 linear feet of Hooffs Run for construction access, south of Jamieson Avenue, as part of the River Renew Tunnel System Project in the City of Alexandria.

Permit Fee:	\$ 100.00
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2E. PLAINS MARKETING, L.P., #20-0062, requests authorization to install 15 new 16-inch diameter steel hollow piles during repairs to the loading platform at Plains Marketing (2201 Goodwin Neck Road) along the York River in York County. Staff recommends approval with adherence to sound attenuation conditions for driving steel hollow piles that include ramp-up procedures, cushion blocks, and a confined bubble curtain, and a time-of-year restriction from January 1 through March 31 of any year to protect juvenile alewife, blueback herring, and American shad.

Permit Fee:	\$ 100.00
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The matter was before the Commission for discussion and action.

Associate Member Ballard moved to approve the five (5) page 2 Items A through E as presented. Associate Member Neill seconded the motion. The motion carried 8-0. Chair voted yes. Associate Member France 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. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass" to establish the commercial black sea bass fishery quota for 2020.

Shanna Madsen, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff's evaluation, with PowerPoint slides. Ms. Madsen's comments are a part of the verbatim record.

Ms. Madsen explained that the Mid-Atlantic Fishery Management Council (MAFMC) and Atlantic States Marine Fisheries Commission (ASMFC) met jointly on October 11, 2019 to specify the coast wide commercial quotas for summer flounder, scup and black sea bass. Fishery specifications were established for 2020 through 2021. The coast-wide commercial black sea bass quota in 2020 increased by 59%, as compared to the 2019 quota of 3.52 million pounds. On Friday, May 15, 2020, NOAA published the final rule announcing the 2020 commercial sea bass quota of 5.58 million pounds coast-wide. Virginia will receive 20% of the coast wide quota or 1,116,000 pounds.

Staff recommends the Commission amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass," to establish the commercial black sea bass fishery quota for 2020, using Virginia's percent allocation (20%) of the coast-wide commercial black sea bass quota.

There were no public comments.

The matter was before the Commission for discussion and action.

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

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- 6. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-510-10 et seq. "Pertaining to Amberjack and Cobia", and Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" to

establish weekly harvest reporting and commercial fishery closure procedures for cobia.

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

Ms. Phillips explained that in August 2019, the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 of the Interstate Fisheries Management Plan (FMP) for Atlantic Migratory Group Cobia (Atlantic cobia). Part of Amendment 1 transitions responsibilities of monitoring and closing of commercial harvest of cobia from the South Atlantic and Gulf of Mexico Fishery Management Councils to ASMFC. As a result, beginning in the 2020 fishing year, non *de minimis* states (< 1% of coastwide landings), are required to report weekly commercial cobia landings to ASFMC. A closure will occur at least 30 days after the landings trigger is reached, at which time, all states will be required to close their commercial fisheries for the remainder of the year. In the past, Virginia's regulatory process limited the ability of the Commission to close the commercial cobia fishery, such that it closed roughly one month after the quota had already been reached, and the federal waters had already closed.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," and Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" establish weekly harvest reporting and commercial fishery closure procedures for cobia, to comply with Amendment 1 of the Interstate Fisheries Management Plan for Atlantic Migratory Group Cobia.

No one spoke in support or opposition of the Public Hearing.

The matter was before the Commission for discussion and action.

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

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7. DISCUSSION: Presentation of 2019-2020 Blue Crab Winter Dredge Survey results and information pertaining to Virginia blue crab fisheries.

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

Ms. Kretsch explained that the Bay-wide Winter Dredge Survey is the primary survey used to assess the Chesapeake Bay's blue crab population. Since 1990, the survey has been conducted annually from mid-December through mid-March at 1,500 randomly chosen sites by the Virginia Institute of Marine Science (VIMS) and Maryland Department of Natural Resources (MD DNR). During winter's cold temperatures, blue crabs bury into the muddy bottom and remain sedentary until spring. Sampling during this time allows scientists to more efficiently capture crabs and to reduce bias of crabs moving throughout the bay to develop estimates of the number of crabs. The survey objectives are to describe the size and sex composition of the Bay wide population, develop accurate estimates of Bay-wide blue crab abundance and harvest exploitation, and to evaluate the status of the stock on a yearly basis.

Management of blue crabs is updated on an annual basis, where bushel limits are effective from July 5 of one year to July 4 of the next and an evaluation of the winter dredge season is conducted annually. This allows managers to respond, if necessary, to the most recent dredge survey results, which are usually released in May.

The 2020 total abundance estimate for blue crabs in Chesapeake Bay is 404.8 million crabs, which is the 8th highest value since 2008 and the 15th highest value since the survey's inception in 1990. It is also a decrease of 32% from 2019. Juvenile abundance was estimated at 185 million crabs, a decrease of 43% from 2019. This juvenile category ranked 19th in 2020 out of the 31 years of the survey, a steep decline from ranking 5th in 2019. These juvenile crabs will become exploitable to fisheries in late summer or fall and represent the 2021 spawning potential.

The survey further estimates the adult population by sex, as the fishery is managed by sex-specific reference points. The current estimate of spawning age (age-1+) female abundance (141 million) is below the 2019 estimate, but above the long-term average of 114 million crabs, ranking 12th across the time series. It falls below the healthy target of 215 million but is still well above the minimum threshold of 70 million crabs. These adult females represent the bulk of Virginia's blue crab harvest throughout the spring

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and summer. Management measures imposed in 2008 to reduce Bay-wide female crab harvest by 34% have promoted stock growth since that time with generally higher annual adult female crab abundance observed in the winter dredge survey with normal annual variability due to environmental conditions. Adult male crabs were estimated at 79 million, above the long-term average of 66 million and roughly equivalent to 2019's adult male abundance.

Preliminary Bay-wide (excluding seaside areas) commercial harvest for 2019 was 61 million pounds, an increase of 10% over 2018's Bay-wide harvest. . Virginia's preliminary commercial harvest in 2019 was 28.3 million pounds of blue crab, which is 22% higher than 2018's harvest. Both the Bay-wide and Virginia harvests in 2019 were above the ten year averages (2010-2019) (54 and 24 million lbs., respectively).

The dockside value of all blue crabs harvested commercially in Virginia was \$34 million, a \$10 million increase over 2018, as adjusted by the Consumer Price Index.

Of the over 28 million pounds of blue crabs harvested commercially, 96.2% was caught with hard crab pots, 3.2% came from peeler pots, and all other gears, including trotline, pound net, and crab trap, accounted for 0.6% of harvest. Crab pot harvest was above both the 1994-2019 and 2009-2019 harvest averages, but peeler pot harvest was below both averages, although it was a slight increase from the year before.

Staff recommends this information be used as guidance for any regulatory changes to Virginia's blue crab fishery that may be considered for advertisement by the Commission for its June public hearing.

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8. **BEVANS OYSTER COMPANY, INC. and COWART SEAFOOD COPORATION, Oyster Planting Ground Application #2017-136**, request authorization to lease approximately 1.00 acre within the Great Wicomico River in Northumberland County. The application is protested by a nearby property owner.

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

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Mr. Stagg explained that an application from Bevans Oyster Company Incorporated and Cowart Seafood Corporation, requesting to lease approximately 1 acre of oyster planting ground within Great Wicomico River in Northumberland County, was received by the Engineering/Surveying Department on August 17, 2017. The application was subject to the normal public interest review process.

The applicant indicates on the use plan questionnaire that the proposed use is traditional on bottom planting and harvest. The requested application area does contain a small area submerged aquatic vegetation (SAV). However, the area and density appear to be limited in the area that staff has delineated for leasing.

Staff received objections from the adjacent highland property owner, Ms. Isabel F. Steilberg. Her objections included concerns about a perceived significant increase in the number of commercial operators and scope of their beds in this very small area of the Great Wicomico River. She questioned if over-harvesting may have had an adverse impact on the bottom culture and if any studies had been conducted on the impact of “high volume gear” on blue crab populations. Finally, she stated that while having no scientific data, her anecdotal observations suggest that the onset of harvesting by motor-powered scrapes in the immediate area resulted in a massive increase in the volume of broken glass washing onto the adjacent shoreline and increased silting of the inlet to a nearby tidal pond.

The applicant’s agent, Mr. A. J. Erskine, wrote to Ms. Steilberg with a more detailed explanation of the proposed use of this (and the existing leased area nearby). He also attempted to address some of her concerns previously raised in December of 2017.

Staff reduced the requested lease area, during the surveying of the ground, since a portion of the area appears to be intertidal. After consulting with the applicant’s agent, staff further recommends deleting a smaller area that was included in the original field survey. The revised lease, including the proposed deletion, was provided to the protestant in March 2020 to ascertain if this modification resolved their objections. As of the date of this evaluation, staff has not received a response from the protestant.

Staff understands that the proposed leasing of areas immediately adjacent to upland properties often results in concerns raised by the landowner. Staff has attempted to address the protestant’s concerns to the greatest extent possible, by removing some of the area as originally requested. Additionally, staff is not aware of any scientific data that would support any suggestion that the propagation and harvest of shellfish have had

an adverse impact on localized crab or fish populations. Therefore, after reviewing the protestant's objections, and considering all factors in §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends approval of leasing 0.48 acres of grounds to Bevans Oyster Company, Inc. and Cowart Seafood Company.

A.J. Erskine, agent for the applicants, spoke in support of the application request. His comments are a part of the verbatim record.

Mr. Erskine expressed the concerns of others leasing in between their existing leases.

Ms. Isabel F. Steilberg spoke in opposition to the application request. Her comments are a part of the verbatim record.

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, 9-0. Chair voted yes.

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9. HAMPTON ROADS CONNECTOR PARTNERS JV, #19-1577, requests authorization to widen I-64 over approximately ten (10) miles from Settlers Landing Road in the City of Hampton to the I-64/I-564 interchange in the City of Norfolk, to include the expansion of existing roadways, construction of new bridge trestles, boring of two (2) new two-lane tunnels, and expansion of existing portal islands.

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 Hampton Roads Bridge Tunnel is a major transportation corridor and can exceed 100,000 vehicles travelling across it each day during peak season. Implementation of the Hampton Roads Bridge Tunnel Expansion Project will accommodate increasing traffic volumes, enhance emergency evacuation capability, increase access to port facilities, and improve military connectivity. Habitat Management staff has been involved in discussions about this project for many years.

Our involvement began with the consideration of several alternatives for a third crossing over Hampton Roads to accommodate increasing traffic volumes in the area. This project was an alternative that was considered and further developed during those discussions.

This project proposes to widen I-64 for approximately 10 miles from Settlers Landing Road in Hampton to the I-64/I-564 interchange in Norfolk. The expanded roadway will include four (4) general-purpose lanes, two new High Occupancy Toll (HOT) lanes, and two (2) new drivable shoulders to be used as HOT lanes during peak usage times. Impacts to State-owned submerged lands associated with this project include the replacement of the North and South Trestle-Bridges, expansion of the existing islands, boring of two (2) new tunnels, expansion of the Willoughby Bay Trestle-Bridges, expansion of the Mason Creek bridges, construction of piers and a replacement bulkhead at Willoughby Spit, and the placement of safe haven areas and mooring areas with mooring piles and mooring buoys in Phoebus, Hampton Flats, and Willoughby Bay.

Starting at the north side of the project, the first component within VMRC's jurisdiction are the North Trestle-Bridges. The existing North Trestle-Bridges will be removed, and two (2) new four-lane structures will be constructed. Construction will be conducted using temporary work trestles and barges. Approximately 20,800 square feet of a persistent submerged aquatic vegetation (SAV) bed will be temporarily shaded by the work trestles and 16 square feet will be permanently impacted by a piling.

The next aspect of the project is the North Island. The North Island will be expanded by 15.84 acres to the west of the existing island. This expansion is necessary to accommodate the boring of the new tunnels and associated roadway infrastructure. First, the island expansion area will be dredged to remove material that is unsuitable for fill to be placed on. Dredging will occur to a depth of approximately 32.5 feet below mean low water, and will result in the removal of 112,225 cubic yards of State-owned submerged land. An additional 2.08 acres and 20,101 cubic yards of material will be removed for placement of a shape array to determine settlement rates of the island expansion. Eighty temporary mooring pilings will also be placed along the perimeter of the island to assist with construction from barges.

The next portion of the project includes two (2) new 2-lane tunnels, bored to the west of the existing tunnels. They will have an internal diameter of 41.5 feet, will each be approximately 7,900 feet long and will be constructed deeper than the existing tunnels to accommodate future channel deepening. The new tunnels will be under 55 feet of water (mean lower low water) and 60 feet of sediment within the main channel. The

tunnel-boring machine (TBM) will start on the South Island, bore the first tunnel, make a U-turn at the North Island, and then bore the second tunnel before resurfacing at the South Island. The material that is bored will be amended with bentonite, and pumped to a separation and treatment plant located on the South Island. The solid waste material will be transported to barges or trucks to be disposed of at the approved facilities and the liquid waste will undergo further treatment before being discharged.

The next part of the project is the South Island. Several temporary work trestles will be constructed to accommodate construction activities. The first work trestle will be constructed on the north side of the island over the location that the tunnels will be bored. This work trestle will be used for ground improvement in the form of jet-grouting to prepare the sediment to receive the TBM. The next work trestle will be the conveyor to move material from the TBM onto barges to be transported to disposal sites. The third work trestle will receive the TBM and will provide an area for it to be constructed. The South Island will also be expanded by 4.04 acres to the south. This expansion area will have a combination of dredging and settlement reduction piles placed to prepare it to be filled. Settlement reduction piles will be driven up to 95 feet below grade, and dredging will range from 3 feet to 18 feet deep, depending on results from geotechnical borings that are currently being analyzed.

The next section of the project is the South Trestle-Bridges. The existing structures will be demolished and replaced with a single 8-lane structure. Temporary maintenance of traffic trestles and work trestles will be constructed to maintain traffic during construction and aid in construction of the new structure. Dredging will occur for access during construction. Approximately 19,550 cubic yards of submerged bottom will be dredged to a depth of -6 feet below mean low water for construction access. An additional 33,957 cubic yards of submerged land will need to be dredged to a depth of -6 feet below mean low water for access during demolition of the two existing bridge trestles.

The next portion of the project is the construction staging area on Willoughby Spit. The area will be developed to be a laydown area and a base for marine operations. The development of the area includes replacing the existing bulkhead and constructing new piers. Approximately 961 linear feet of bulkhead will be replaced 1.5 feet in front of the existing bulkhead. Three 10-foot wide by 102-foot long timber piers will be constructed to provide access for crew boats. An existing concrete pier will be used to access a spud barge that will be used for tug berthing. An additional temporary 60-foot wide by 320-foot long concrete pier will also be constructed to allow barge access.

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The next aspect of the project is the Willoughby Bay Trestle-Bridge. The existing structure will be widened to the outside in both directions. A combination of work trestles and the existing trestle will be used to widen the existing structure. The channel underneath the existing trestle-bridge will remain open throughout construction. Boat traffic will be directed around construction activities accordingly.

The last construction area within VMRC's jurisdiction are two (2) bridges constructed over Mason Creek in Norfolk. The existing bridges will be expanded to the outside in both structures. The construction process will be similar to the Willoughby Bay Trestle-Bridge construction, temporary work trestles will be used to construct the expanded roadway.

In addition to the roadway construction, there will be three (3) areas that will be used as mooring areas and as safe harbor areas. These areas will be located in Phoebus, Hampton Flats, and Willoughby Bay. Each area will be marked with buoys in accordance with U.S. Coast Guard specifications.

The Phoebus mooring site will be a safe harbor area only, and will only be used by construction vessels and barges during severe weather. The area will be marked at each corner with buoys and will be located outside of the Phoebus channel.

The Hampton Flats area will be used as a mooring area only. The area will be marked and will have six to eight mooring buoys located within it for barges to moor to when they are not being used for construction. The buoys will be anchored with a system that has a 280,000-pound minimum breaking strength. The applicant is prepared to respond if any barges or vessels should break away from their mooring.

The Willoughby Bay area will be used for mooring as well as a safe harbor area. Lighted buoys will be used to mark this area every 200 feet around the perimeter. There will also be a line of 26 pilings that will be lit according to Coast Guard standards. Willoughby Bay is a high boat traffic area. The applicant has a plan to make the public aware of areas that need to be avoided while maintaining access to piers throughout construction.

In addition to the mooring and safe harbor areas, the applicant is also requesting the relocation of the Hampton Creek Approach Channel. The channel in its existing location will restrict construction vessel access around the North Island. The proposed channel

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alteration will adjust the channel so that it will be parallel to the island expansion and allow for 287 feet between the island expansion and the channel. To accomplish this change, the channel markers will have to be moved, but no additional dredging will be required because the depth in the proposed channel area is still deep enough to allow for navigation throughout the channel. The applicant is coordinating with the Coast Guard to make these changes.

The project will generate materials requiring management, removal, and disposal. Material placement options include onsite re-use for suitable materials, or offsite disposal at approved locations. All concrete debris resulting from the demolition of old trestle bridges, deemed suitable for placement at artificial reefs by VMRC's Artificial Reef Program Manager, is proposed to be transported by barge to one or more of VMRC's nearby reefs (Newport News Middle Ground Reef Back River Reef, Bluefish Rock Reef and Cabbage Patch Reef). The applicant is also working with the City of Norfolk to place suitable sandy dredge material on public beaches. Any material that cannot be placed on an artificial reef or a public beach will be disposed of properly at designated upland areas. Two disposal sites have been proposed for this project, Port Tobacco at Shirley Plantation in Charles City and Dominion Recycling Center in Chesapeake.

Commission staff conducted our standard public interest review of the project and received comments from the Department of Conservation and Recreation, the Virginia Institute of Marine Science, and the National Oceanic and Atmospheric Association National Marine Fisheries Service (NOAA Fisheries). We also received a protest from an adjacent property owner, and two (2) public comments. Both the Department of Environmental Quality and the Corps of Engineers are currently reviewing the application for the project and anticipate issuing permits soon.

Tidal wetland impacts resulting from this project are statutorily authorized by §28.2-1302.3.10 of the Code of Virginia, which authorizes "governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision thereof." Based on past guidance from the Office of the Attorney General, all design-build project teams under contract to the Virginia Department of Transportation (VDOT) are to be considered as agents of the Commonwealth. As such, both the Hampton and Norfolk Wetlands Boards have advised that they would not be requiring permits for project impacts to tidal wetlands in their respective locality.

This project has many different aspects to it that required thorough review by several

agencies. In addition to agencies that will be issuing permits for the project, several other advisory agencies offered comments on the project to aid in regulatory decisions. Comments and concerns from the public and adjacent property owners were also taken into consideration.

The Virginia Institute of Marine Science (VIMS) provided comments related to several aspects of the project. Prior to the submittal of the application, VDOT contracted with VIMS to run a tidal hydrodynamic model to accurately assess the project's potential adverse impacts to local hydrology and aquatic resources. Specifically, the model examined potential impacts to existing circulation patterns that affect shellfish larvae settlement, sediment transport, water quality, dissolved oxygen, total suspended solid loads, re-suspension of contaminated sediments and salinity. The results of the hydrodynamic modeling study indicate that the proposed project will have no or only minimal effects on surface water velocity, bottom velocity, surface salinity, bottom salinity, and bottom shear stress, thus eliminating VIMS' preliminary concerns regarding hydrologic changes.

They also advised that the persistent bed of SAV located along the Hampton shoreline, which would be affected by the shading of temporary work trestles, should be restored by seeding upon project completion. Hard clam densities were found to be low, and the habitat quality poor, therefore they determined no mitigation was required for this species. In their opinion, project impacts to vegetated tidal wetlands were appropriately mitigated for with the purchase of credits from a tidal wetlands bank. VIMS recommended that riprap be used at Willoughby Spit instead of the proposed bulkheading.

VIMS further advised that numerous anadromous and resident fish species use the project area for transit, staging, nursery, forage, and/or their entire life cycle; including 22 managed species. They expressed considerable concerns about the potential for mortality and injury to finfish associated with noise from driving hollow steel pilings. They recommend ramp up procedures, cushion blocks, and bubble curtains with isolation casings be used for all impact driving of steel hollow pilings. They additionally recommended an instream work time-of- year restriction for the installation of steel hollow piles from February 15 through June 30 to be most protective, or from February 15 to April 30, if the larger window resulted in unacceptable project delays. Lastly, they recommended an acoustic study be done to provide information on noise impacts to fish and effectiveness of mitigation measures.

The Department of Conservation and Recreation (DCR) provided comments related to natural heritage resources. They note that the natural heritage resources of concern at the project site include the Gull-billed tern, Royal tern, Sandwich tern, Black skimmer, and Atlantic sturgeon. Due to the legal status of the Gull-billed tern and the Atlantic sturgeon, they recommended that there be continued coordination with NOAA Fisheries and the Virginia Department of Game and Inland Fisheries (DGIF) to ensure compliance with protected species legislation. VMRC staff requested comments from both agencies, but did not receive written comments from DGIF. However, DGIF has been included in meetings held by the applicant throughout the application process.

NOAA Fisheries made several comments on the project as well as a list of recommendations. Several of the recommendations included mitigation and best management practices (BMPs) that were proposed in the application, such as purchase of mitigation credits, internal jetting of concrete piles, BMPs for dredging, and sound attenuation. Additionally, recommendations were made to restore the SAV impacted during construction, restoration of the bulkhead at Willoughby Spit to a living shoreline post-construction, and an acoustic sampling and monitoring plan in lieu of the proposed bubble curtains in water 20 feet or deeper.

Staff considered all the comments we received from agencies and individuals. To address some of those concerns we requested further mitigation from the applicant. The applicant proposed a final mitigation package to include purchase of credits from mitigation banks, funding research studies, and restoring impacted resources. They have also proposed the use of enclosed bubble curtains on piles that will be driven by impact hammer in water depths that are 20 feet deep and greater. Bubble curtains will be used on up to 1,270 piles out of a total of 3,159 piles. These piles will mostly be the sediment reduction piles that will be placed in the footprint of the South Island expansion, and piles for the jet-grouting trestle that will extend from the South Island towards the tunnels and the main channel.

Mitigation credits will be purchased in accordance with Army Corps of Engineer requirements. 1.03 non-tidal wetland credits will be purchased from Lewis Farm Mitigation Bank, 2.7 tidal wetland credits will be purchased from New Mill Creek Mitigation Bank, and 0.49 oyster reef credits and 14.59 subaqueous credits will be purchased from the Elizabeth River Project's Living River Restoration Trust.

In addition to the mitigation credits that will be purchased, the applicant has also proposed to mitigate for SAV in response to comments from both VIMS and NOAA

Fisheries. The applicant will fund SAV restoration that will be conducted by VIMS. This will consist of seeding and monitoring the 20,816 square foot area that will be temporarily impacted from shading by work trestles next to the North Trestle Bridges. The applicant has agreed to pay \$25/square foot to restore the area of impact.

An acoustic study has also been proposed by the applicant to mitigate for impacts to both anadromous and resident fishes. This is in response to both VIMS and NOAA Fisheries comments, and to mitigate for not using bubble curtains on all steel hollow pilings and not adhering to the time of year restriction recommended by VIMS. The acoustic study will have two components, an anthropogenic noise monitoring study, and a fish response study. Both studies will be run simultaneously to provide data that can be used in making future regulatory decisions regarding impacts to fish from underwater noise generated during pile driving.

A fish passage study has also been proposed to further mitigate for impacts to anadromous fish. This study will use habitat and biological assessments at previously documented migration impediments in the lower James River basin to establish a prioritized list of high-value streams and locations for future fish passage projects. The applicant will additionally contribute \$100,000.00 towards these fish passage projects and may include fish stocking if it is determined to be useful in reestablishing the use of rivers for anadromous fishes.

To address concerns from adjacent property owners, the applicant has provided them with information on impacts from the project that are closest to their properties. It has been determined that the Willoughby Bay Bridge expansion will overlap at least two (2) existing piers. Our permit does not grant the authority to encroach upon the property rights, including riparian rights, of others. The applicant is currently working on a plan to legally obtain the area needed for the construction of the project.

To address concerns about the impact to colonial nesting birds on South Island, a bird plan has been developed by the applicant. The State-listed endangered Gull-billed tern is addressed in this plan. Additionally, in accordance with the Governor's initiative, a separate application submitted by DGIF has been permitted to allow the installation of barges to further address impacts to birds by creating suitable habitat to replace what will be lost during construction on South Island.

The Hampton Roads Bridge Tunnel is a major transportation corridor, and completion of this project will accommodate increasing transportation needs in the area. The project

will have many impacts to resources within VMRC's jurisdiction. Construction activities include construction of trestle bridges, expansion of islands, boring of tunnels, construction of piers, a replacement bulkhead, and the placement of mooring piles and mooring buoys. Resources impacted include SAV, resident and anadromous fishes, birds, and benthic communities. Staff has been highly involved in developing appropriate mitigation for all resources impacted, and is in agreement with the mitigation package offered by the applicant.

While staff understands and appreciates the concerns raised by the advisory agencies and citizens for the HRBT expansion project, we also recognize the overwhelming public need and benefit of expanding the existing roadway. Staff believes that the impacts to State-owned submerged lands have been minimized to the maximum extent possible, and that the proposed mitigation package is appropriate for the resources that will be impacted.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of project with the following special conditions added to the permit:

1. The Permittee shall provide a post-dredging bathymetric survey of the dredged areas that will not ultimately be filled within 60 days of the completion of the dredging. The survey shall be signed and dated as being accurate and true. The survey shall be referenced to mean low water;
2. The post-dredge survey depths shall vary uniformly around the permitted dredge depths. Any areas dredged deeper than the permitted depth will be considered a violation of the permit and subject to enforcement action;
3. A pre-dredging conference shall be held on site prior to the commencement of the dredging. The meeting shall be attended by the Permittee, the dredging contractor and a member of the VMRC staff. The meeting shall be held within seven (7) days prior to the commencement of dredging and shall include an inspection of the dredge material containment area, an inspection of the previously staked dredge area, and a discussion of the terms and conditions of the permit;
4. Maintenance dredging may be conducted through November 1, 2026, provided the Permittee notifies the Commission at least 15 days prior to the commencement of each dredging operation. The maintenance dredging

- notification shall include a description of the disposal site and verification of authorization to use the site if it is on property not owned by the Permittee;
5. The Permittee agrees to the use of a cushion block should impact hammers be needed for the installation of hollow steel pilings;
 6. The Permittee agrees to "ramp-up" procedures prior to initiating any pile driving. Ramp-up procedures will include an initial set of three strikes from the impact hammer at 40% energy, followed by a 30-second waiting period, then two subsequent three-strike sets. During the ramp-up the contractor will monitor the project area and if sturgeon, marine mammals, or fish kills are sighted within the project area, then a shutdown will be implemented. Consultation with and approval from VMRC and VIMS will be required before work is allowed to continue;
 7. The Permittee agrees to the use of a confined bubble curtain during impact driving of hollow steel piles in water depths 20 feet or greater. The confined bubble curtain will be constructed as specified within the attached permit drawings;
 8. The Permittee shall implement an acoustic monitoring study in accordance with a final study plan submitted to VMRC for review and approval by staff. This study shall consist of both a sound monitoring study, and a fish behavior monitoring study conducted simultaneously to determine the effects of underwater construction noise on resident and migratory fish species. Written annual reports shall be provided to VMRC for the duration of the study. *This permit condition shall be satisfied upon approval of the final study plan by VMRC;*
 9. The Permittee shall implement a fish passage study and impediment removal plan in accordance with a final plan submitted to VMRC for review and approval by staff. This study shall consist of habitat and biological assessments to establish a prioritized list of high-value streams and locations for future fish passage projects, and a contribution of \$100,000.00 for the implementation of these fish passage projects. A report of the findings of the study shall be submitted to VMRC along with a list of impediments to be removed. *This permit condition shall be considered satisfied upon approval of the final study plan by VMRC and contribution of \$100,000 into escrow or similar mechanism encumbering the funds to implement fish passage projects;*
 10. The Permittee shall provide a copy of an executed contract with VIMS to mitigate for the impact to 20,816 square feet of SAV that will result from the proposed work. The executed contract must be submitted prior to the SAV

impact being taken. *This permit condition shall be satisfied upon execution of the contract;*

11. A plan for the beneficial use of sandy dredge material on public beaches shall be submitted to VMRC before dredging commences. If it is determined by VMRC staff that the dredge material cannot be placed on public beaches, then it shall be disposed of at an approved upland disposal site;
12. Concrete and other appropriate materials from the demolition of the existing bridge trestles should be donated to the VMRC Artificial Reefs Program. The applicant should coordinate with the Artificial Reefs Program to create a plan for the placement of appropriate material onto artificial reefs. If the material cannot be placed on an artificial reef, it should be disposed of at an approved upland disposal site;
13. Any future modifications to this permit shall be submitted to VMRC staff and undergo the appropriate public interest review. So long as the modification is not protested, within the current project footprint, and is determined to be acceptable to VMRC staff, it can be approved administratively without being heard at a Commission meeting;
14. Permittee shall execute a transfer of this permit to the Virginia Department of Transportation upon their acceptance of the structure(s) authorized herein.

Troy Tuckey, VIMS, spoke about the how the steel piles driven into bay would impact fishes, migrating spawning fish and would recommended a time of year restriction. 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 recommendation. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Fee:	\$ 100.00
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Commission Meeting

**18556
May 26, 2020**

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There being no further business, the meeting was adjourned at approximately 11:42 a.m.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary