

MINUTES

COMMISSION MEETING

August 28, 2018

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 2600 Washington Avenue, Newport News, Virginia with the following present:

Steven G. Bowman	Commissioner
Chad Ballard	
Wayne France	
Ken Neill, III	Associate Members
John Tankard III	
John Zydron Sr.	
Kelci Block	Assistant Attorney General
Lou Atkins	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
Alicia Nelson	Coordinator, RFAB/CFAB
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Adam Kenyon	Biological Sampling Program Manager
Jill Ramsey	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Nancy McElligott	Fisheries Mgmt. Specialist
Sydney Alhale	Fisheries Mgmt. Specialist
Sara Blachman	Fisheries Mgmt. Specialist
Anna-Mai Christmas	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator

Commission Meeting

Rick Lauderman
Warner Rhodes
Timothy Casares
Thomas Straughan
Steve York

Chief, Law Enforcement
Deputy Chief, Law Enforcement
Marine Police Officer
Marine Police Officer
Marine Police Officer

Tony Watkinson
Randy Owen
Jeff Madden
Justin Worrell
Jay Woodward
Rachael Peabody
Mark Eversole
Mike Johnson
Hank Badger
Allison Norris
Bradley Reams
Ben Stagg

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing
and Mapping
Surveyor, Engineering/Surveying

Daniel Faggert

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

William Broughton
Ian Frost
George Asfari
Bob Buckanin
Helmut Walter
David O'Brien
Rodney Withrow
Maya Dizewich
Don West
Stan Sutliff
William Greene

Kim Huskey
David Lyle
Joe Beck
Rick Hyatt
Peyton Mason
Malcolm Burgess
Marian Hackey
James Greene
Kevin Hayman
Jackie Shannon
Wes Blow

Reid Cook
Curtis Hickman
Rebecca Francese
Jeff Wilson
Mike Vestaling
Jennifer Withrow
Chris Moore
Samantha West
Ernie George
Susanna Musik
and others.

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m. Associate Members Minor, Everett and Lusk were absent.

Commissioner Bowman led the pledge and by request of Commissioner Bowman, Associate Member Tankard said the invocation.

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

Rob O'Reilly, Chief, Fisheries Mgmt., requested to add a Public Hearing to the agenda: "Pertaining to Amberjack & Cobia", Emergency Chapter 4VAC 20-510-10 Et Seq. for a closure to the commercial cobia fishery.

Associate Member Zydron moved to approve the agenda as amended to include the consideration of an emergency amendment for the closure of the commercial cobia fishery. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the July 24, 2018 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes presented. Associate Member France seconded the motion. The motion carried, 5-0-1. Chair voted yes. Associate Member Ballard abstained.

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

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, B, C, D & E for the Board Members. Mr. Watkinson's comments are a part of the verbatim record.

There were no public comments.

Associate Member Tankard moved to approve the page two items as presented. Associate member Ballard seconded the motion. The motion carried 6-0. Chair voted yes.

- 2A. **WAGMAN HEAVY CIVIL, INC., #18-0669**, requests authorization to conduct geotechnical borings, install a temporary bridge and causeway and construct three (3) new traffic lanes, parallel and adjacent to the I-95 southbound bridge across the Rappahannock River, to provide additional capacity and facilitate construction of the I-95 Southbound Collector Distributor Lanes Project in Spotsylvania and Stafford Counties. Recommend approval contingent on our standard instream permit conditions, a mussel survey and relocation prior to construction and an instream work time-of-year restriction of February 15 to June 30, and August 15 to September 30 of any given year, to protect anadromous fishes and freshwater mussels, unless specifically waived in writing by the Department of Game and Inland Fisheries. Permittee shall execute a transfer of this permit to the Virginia Department of Transportation upon their acceptance of the permitted structures.

Fees:	\$ 100.00
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- 2B. **HAMPTON DEPARTMENT OF PUBLIC WORKS, #18-0910**, requests authorization to replace the existing southern salt ponds jetty with a 420-foot long stone jetty with associate warning sign, install a 115-foot long stone jetty spur on the northern jetty, sand tightening along 300 feet of the north side of the north jetty by adding filter fabric and an additional layer of rock, dredge an additional 600 cubic yards from the entrance channel to the salt ponds to increase its width by up to an additional 50 feet at a depth of minus nine (-9) feet mean low water, replace and realign the navigational day beacons for the entrance channel as needed, and maintenance dredge 25,000 cubic yards of State-owned subaqueous material from the Salt Ponds entrance channel and sandtrap for three (3) dredge cycles over the next ten (10) years, along the Chesapeake Bay shoreline in the City of Hampton.

Fees:	\$ 100.00
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- 2C. **ZP NO. 332, LLC, #18-1091**, requests authorization to construct 685 linear feet of new bulkhead two (2) feet channelward of an existing deteriorating bulkhead, 410 linear feet of replacement riprap revetment and a 55 linear foot marsh toe sill at 4621 Pretty Lake Avenue, along Little Creek in the City of Norfolk. Staff recommends approval with a royalty in the amount of \$2,460.00 for the filling of 820 square feet of State-owned subaqueous bottom at a rate of \$3.00 per square foot.

Royalties: (820 sq. ft. @ \$3.00 per foot)	\$ 2,460.00
Permit Fee:	\$ 100.00
Total Fees:	\$ 2,560.00

- 2D. GRANITE PARSONS/CORMAN, A JOINT VENTURE, #18-0425**, requests authorization to install an additional two (2) lanes to the Interstate 64 High Rise Bridge that crosses Deep Creek and the Southern Branch Elizabeth River by constructing a new fixed-span bridge; and to construct two (2) temporary work trestles, three (3) temporary mooring dolphins, and a new fender pile system within State-owned submerged lands, in Chesapeake. Staff recommends approval with sound attenuation conditions for driving hollow steel piles that include ramp-up procedures, cushion blocks and confined bubble curtain. Additionally, construction activities shall be constructed in accordance with the time-of-year restriction (TOYR) for the Peregrine Falcon (*Falco peregrinus*). No construction activities shall occur within 600 feet of any active nests from February 15 through July 15 of any year, unless authorized by the Department of Game and Inland Fisheries. Permittee shall also execute a transfer of this permit to the Virginia Department of Transportation upon their acceptance of the structure(s) authorized herein.

Permit Fees:	\$ 100.00
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- 2E. CHESTERFIELD COUNTY ENVIRONMENTAL ENGINEERING, #18-0635**, requests authorization to remove approximately 29,600 cubic yards of accumulated sediments from the Falling Creek stream channel within the Falling Creek Reservoir and to install a temporary cofferdam and a permanent forebay weir as part of the Falling Creek Reservoir Restoration Project in Chesterfield County.

Fees:	\$ 100.00
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- 3. CONSENT AGENDA ITEMS.** There were no cases to be heard.

- 4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** No closed meeting was necessary.

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5. **COLUMBIA GAS OF VIRGINIA, INC., #18-0886**, requests authorization to temporarily impact 1,624 square feet of non-vegetated tidal wetland to expose and perform repair work on an existing 24 inch diameter natural gas transmission line, to temporarily impact vegetated tidal wetlands with the installation of timber matting for access, and to install, by directional bore method, a 2-inch diameter conduit containing one fiber optic line parallel to the existing gas transmission line and a minimum five (5) feet beneath approximately 110 linear feet of Proctors Creek in Chesterfield County. The project requires a subaqueous and wetlands 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 temporary impacts to both vegetated and non-vegetated wetlands require a VMRC wetlands permit because Chesterfield County has not adopted the Wetlands Zoning Ordinance. The directional bore beneath Proctor's Creek requires a VMRC subaqueous permit for encroachment beneath State-owned submerged lands.

The applicant has minimized wetland impacts to the furthest extent possible but is limited in construction access points and must traverse tidal wetlands to perform the work. The proposed placement of timber mats is intended to add protection to both the vegetation and the substrate as equipment travels through the jurisdictional wetlands. The applicant has proposed to restore all temporary impacts to tidal wetlands following the maintenance activities.

The Virginia Institute of Marine Science has reviewed the application and recommends a time-of-year restriction (TOYR) from February 15 through June 30 to protect anadromous fish species. However, should the temporary cofferdam be installed prior to February 15, then work can proceed in the dry during the TOYR.

Staff recommends the following permit conditions to minimize impacts to existing natural resources and 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. VMRC staff shall be notified within 30 days of project completion to schedule a post construction site visit to determine if wetland planting will be required during the following growing season;
4. The applicant agrees to follow the *Inadvertent Release Contingency Plan*, received June 4, 2018, for the installation of the fiber optic line beneath Proctors Creek and the adjacent tidal wetlands to address potential frac-outs or related spills associated with the directional drilling.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) and §28.2-1302 of the Code of Virginia, staff recommends approval of the project with the above-referenced conditions and time-of-year restriction for any instream work not contained within cofferdams from February 15 through June 30. Staff feels that no compensation is necessary for the temporary wetlands impacts and recommends a one-time royalty assessment in the amount of \$330.00 for the encroachment of a fiber optics cable beneath 110 linear feet of State-owned submerged land assessed at the rate of \$3.00 per linear foot.

Reid Cook, an agent for the applicant, was present and sworn in. His comments are a part of the verbatim record.

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

The matter was before the Commission for discussion and action.

Wetlands permit vote:

Associate Member Tankard made a motion to move to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

Subaqueous permit vote:

Associate Member Tankard made a motion to move to approve staff recommendation with the conditions as presented. Associate Member France seconded the motion. The motion carried, 6-0. Chair voted yes.

Royalties: (110 l/ft. @ \$3.00 l/foot)	\$ 330.00
Permit Fee:	\$ 100.00
Total Fees:	\$ 430.00

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- 6. **ASFARI HOMES INC., #18-0998**, requests authorization to impact 40 square feet of a coastal primary sand dune to construct an 8-foot wide riprap stormwater outfall at 831 Little Bay Avenue in the City of Norfolk. The project requires a beach permit and is protested by an adjoining property owner.

Racheal 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 within a jurisdictional dune on an undeveloped lot that runs adjacent to Willoughby Bay, in Norfolk. The project’s lot is scheduled to be developed into two, two-family dwellings. As part of the development process the City of Norfolk has required the applicant to design a stormwater plan that uses the Department of Environmental Quality’s best management practices for stormwater treatment. As a result, the applicant has designed a stormwater treatment basin that requires two six-inch outlet pipes that will drain stormwater from the development to Willoughby Bay during abnormally high storm water events. The twin pipes will be installed by conventional bore underneath the jurisdictional dune and daylight on the beach. A 40 square-foot riprap splash protection will be constructed around the pipes to protect the dune and beach from erosion around the outfall.

Ms. Peabody explained that the protestants concerns regarding flooding in her neighborhood are understandable as the Willoughby Bay community experiences both tidal flooding and stormwater flooding during rain and storm events. However, the City of Norfolk’s stormwater department has reviewed the applicant’s plans to mitigate and reduce additional flooding as a result of the proposed development. The outfall pipes are designed specifically to prevent stormwater from flooding the neighboring property by draining any overflow of the retention pond directly to Willoughby Bay.

The pipes are calculated to discharge very small amounts of discharge and the proposed riprap splash protection is designed to reduce erosion around the outlets. Although the project will result in 40 square feet of riprap on a jurisdictional dune and beach, the entire stormwater plan was designed specifically to reduce impacts to these features to the greatest extent possible. Staff understands Ms. Farris’ concerns regarding flooding. However, the VMRC does not have jurisdiction over the development of the upland property, only over the riprap on the dune and beach. It is staff’s opinion that the proposed rip rap will provide erosion protection and is a significant design feature in a stormwater design that avoids major impacts to the jurisdictional dune and beach.

Ms. Peabody concluded that after evaluating the merits of the project and considering all of the factors contained in §28.2-1403 of the Code of Virginia and the Coastal Primary Sande Dunes/Beaches Guideline Supplemental Guidelines, staff recommends approval of the project as proposed

No one was present to speak in support of the project.

William Broughton was present and spoke in opposition of the project. He was sworn and his comments are a part of the verbatim record.

Mr. Broughton voiced his concerns about the pond potentially being a hazard for the children in the area, flooding and mosquitoes.

Joe Beck, Engineer with Asfari Homes was present and sworn in. His comments are a part of the verbatim record.

Mr. Beck stated that he had no knowledge of flooding although it is more likely tidal flooding. The stormwater basin will slow the outflow of water. The outlets will divert water to the bay.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to move to approve staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.

Fees: Dune board	\$ 300.00
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- 7. ROBERT BUCKANIN, Oyster Planting Ground Application #2015-174,** requests authorization to lease approximately 20 acres within The Thorofare, in York County. The application is protested by a local yacht club.

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 staff accepted an application on August 6, 2014 from Robert Buckanin, requesting authorization to lease approximately 20 acres of subaqueous bottomlands within The Thorofare in York County. The application was subjected to our normal public interest review.

Staff received a protest from the Seaford Yacht Club with concerns that leasing the requested area may have an adverse impact on sailing activities of the Club in the area. Staff also recently received information that the U.S. Army Corps of Engineers (ACOE) requested that the Commission not lease the channel area, as some shoaling is occurring and may need dredging in the future.

A small portion of the Buckanin application lies within a marked channel area. This channel is not a Federal Project Dredge Channel but the area is marked by U. S. Coast Guard daymarkers. Larger vessels traverse this area to the docks of Seaford Scallop Company, at the mouth of Back Creek. There is also a public boat ramp and the Seaford Yacht Club (protestant), both within Back Creek, which create considerable boat traffic through the channel area. As noted previously, the ACOE has requested that the channel itself not be leased.

While staff understands the concerns raised by the Yacht Club, the area requested is similar in nature and depth as the existing leases to the south and east. Placement of on-bottom cages in this area will require adherence to the VMRC on bottom regulation and any such placement that creates more than a minimal impact to navigation will require relocation and/or removal. Staff recommends approval of a modified area containing 18.14 acres.

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

Mr. Buckanin stated that he intends to grow his oysters in bottom cages. He also indicated that he has several thousand oysters that he has been growing on other peoples' leases ready to be placed in cages. He also stated that there is plenty of room for sailing in this area even if he placed cages on the bottom.

No one was present to speak in support of the project.

There were three (3) people present that spoke in opposition of the application. All present to speak were sworn in. Their comments are a part of the verbatim record.

Two people that spoke in opposition of the application spoke on behalf of Seaford Yacht Club and the public. Both individuals read comments and concerns of the Yacht Club and the public. All in opposition requested a more efficient process when notifying the public of the Commission Meetings.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to move to deny staff recommendation to approve the modified lease application. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted no.

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8. RODERICK D. HYATT, Oyster Planting Ground Application #2017-090, requests authorization to lease approximately 83 acres within The Thorofare in York County. The application is protested by a local yacht club and a nearby property owner.

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

Mr. Stagg explained that staff accepted an application on May 23, 2017 from Roderick D. Hyatt, requesting to lease approximately 83 acres of subaqueous bottomlands within The Thorofare in York County. The application was subjected to our normal public interest review.

Staff received a protest from the Seaford Yacht Club and one local resident with concerns that leasing the requested area may have an adverse impact on sailing activities of the Club and general navigation in the area. Staff also recently received information that the U.S. Army Corps of Engineers (ACOE) requested that the Commission not lease the channel area, as some shoaling is occurring and may need dredging in the future.

Staff understands the concerns raised about potential impacts to general navigation, however, the area as surveyed by staff does not encroach into the marked channel area. That said, there are sailing activities related to the Yacht Club that occur in this entire area, at times by relatively inexperienced operators within relatively shallow water areas. This creates the possibility for conflict if on-bottom cage aquaculture methods are used here. The applicant noted on the use plan questionnaire that he does not intend to place such apparatus in this area. Any future use of bottom cages in this area would be considered in

compliance with current laws and regulations, provided the applicant properly marks the area and adheres to current regulations. Certain user conflicts would remain. Although not proposed, staff can require relocation or removal of such gear if its placement creates a legitimate navigation issue. Staff, therefore, recommends approval of the application as modified and containing 54.29 acres.

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

Mr. Hyatt stated that the application was modified several time. He stated that he intends to use the lease for natural spat on shell in this area.

No one was present to speak in support of the project.

There were three (3) people present that spoke in opposition of the application. Two of the three that spoke in opposition spoke on behave of Seaford Yacht Club. . All present to speak were sworn in. Their comments are a part of the verbatim record.

Those that spoke in opposition expressed concerns regarding oyster cages on the bottom of leased ground and the fear of anchoring and hitting a cage outside of the channel. They also spoke about the boat amount of boat traffic in the area, to include Jr. sailing classes and cages would interfere with sailing outside of the channel.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to move to approve staff recommendation to approve the modified lease application. Associate Member Ballard seconded the motion. The motion carried, 5-1-0. Chair voted yes. Associate Member France voted no.

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9. PUBLIC COMMENT:

Jennifer Withrow

Ms. Withrow addressed the Commission requesting the reinstatement of her Commercial Fisherman Registration License. Ms. Withrow addressed the Commission in October 2017 with the same request and was denied. Ms. Withrow’s comments are a part of the verbatim record.

Robert O’Reilly, Chief, Fisheries Mgmt., presented further information that explained the medical exemption and the deadline for applying for the Commercial Fisherman

Registration License for the Board Members. Mr. O’Reilly’s comments are a part of the verbatim record. No action was taken by the Commission.

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10. LICENSE STATUS REVIEW:

(10-1) – Richard T. Hayslett Sr. (MRC ID#:4247) – was present and sworn in. His comments are a part of the verbatim record.

Steve York, 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.

February 12, 2018 Possession of Unculled Oysters (11 Quarts) 4VAC 20-260-40 A

Disposition:

03/19/18, Newport News General District Court

Fine: \$150.00

Mr. Hayslett Sr. stated that he could not watch everyone on his boat.

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. Richard T. Hayslett Sr., a commercial fisherman registration licensee, was convicted on March 19, 2018 for one count of possessing unculled oysters (11 quarts) (4VAC 20-260-40 A).

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 that Mr. Hayslett Sr. be placed on probation for a period of one year from the date of this Commission meeting, August 28, 2018, through August 27, 2019. Any failure on Mr. Hayslett Sr.’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. Hayslett Sr. appearing before the Commission for a hearing on license revocation.

Associate Member Tankard made a motion to approve the staff guideline recommendation for 1 year probation. Associate Member France seconded the motion. The motion carried, 6-0. Chair voted yes.

(10-2) – Richard T. Hayslett Jr. (MRC ID# 4862): – was not present.

Steve York, 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.

February 12, 2018 Possession of Unculled Oysters (11 Quarts) 4VAC 20-260-40 A

Disposition:

03/19/18, Newport News General District Court

Fine: \$150.00

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. Richard T. Hayslett Jr., a commercial fisherman registration licensee, was convicted on March 19, 2018 for one count of possessing uncultured oysters (11 quarts) (4VAC 20-260-40 A).

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 that Mr. Hayslett Jr. be placed on probation for a period of one year from the date of this Commission meeting, August 28, 2018, through August 27, 2019. Any failure on Mr. Hayslett Jr.'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. Hayslett Jr. appearing before the Commission for a hearing on license revocation.

Associate Member France made a motion to approve the staff guideline recommendation for 1 year probation. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.

(10-3) – Don W. West (MRC ID# 5520): - was present and sworn in. His comments are a part of the verbatim record.

Steve York, 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.

November 29, 2017 Possession of Unculled Oysters (10 Quarts) 4VAC 20-260-40 A

Disposition:

03/22/18, Newport News General District Court

Fine: \$150.00

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. Don W. West, a commercial fisherman registration licensee, was convicted on March 22, 2018 for one count of possessing uncultured oysters (10 quarts) (4VAC 20-260-40 A).

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 that Mr. West be placed on probation for a period of one year from the date of this Commission meeting, August 28, 2018, through August 27, 2019. Any failure on Mr. West'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. West appearing before the Commission for a hearing on license revocation.

Associate Member Tankard made a motion to approve the staff guideline recommendation for 1 year probation. Associate Member Ballard seconded the motion. The motion carried, 6-0. Chair voted yes.

(10-4) – Robert Rowe (MRC ID# 5302): - was present and sworn in. His comments are a part of the verbatim record.

Steve York, 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.

November 29, 2017 Possession of Unculled Oysters (10 Quarts) 4VAC 20-260-40 A

Disposition:

03/22/18, Newport News General District Court

Fine: \$150.00

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. Robert Rowe, a commercial fisherman registration licensee, was convicted on March 22, 2018 for one count of possessing uncultured oysters (10 quarts) (4VAC 20-260-40 A).

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 that Mr. Rowe be placed on probation for a period of one year from the date of this Commission meeting, August 28, 2018, through August 27, 2019. Any failure on Mr. Rowe'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. Rowe appearing before the Commission for a hearing on license revocation.

Associate Member Ballard made a motion to approve the staff guideline recommendation for 1 year probation. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.

(10-5) – William G. Greene (MRC ID# 008752): - was present and sworn in. His comments are a part of the verbatim record.

Steve York, 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.

November 29, 2017 Possession of Uncultured Oysters (10 Quarts) 4VAC 20-260-40 A

Disposition:

03/22/18, Newport News General District Court

Fine: \$150.00

Mr. Greene explained that he sold his license before any of the violations happened and his probation was over 3 years prior.

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. William G. Greene, a commercial fisherman registration licensee, was convicted on March 22, 2018 for one count of possessing unculled oysters (10 quarts) (4VAC 20-260-40 A).

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 that Mr. Greene be placed on probation for a period of one year from the date of this Commission meeting, August 28, 2018, through August 27, 2019. Any failure on Mr. Greene'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. Greene appearing before the Commission for a hearing on license revocation.

Associate Member Tankard made a motion to approve the staff guideline recommendation for 1 year probation. Associate Member Ballard seconded the motion. The motion carried, 6-0. Chair voted yes.

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11. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2018-2019 areas of public harvest, public oyster harvest seasons, and management measures. Compared to the prior season, management measure for the 2018-2019 season may include: 1) adjusting the start and duration of the harvest season on an area basis; 2) changing vessel and individual harvest bushel limits; 3) implementing less efficient gear types, such as patent and hand tongs in certain harvest areas; 4) subdividing the current harvest areas into additional rotation areas; and, 5) in the James River Seed Area, changing seed quota amounts, seed transport permits, and areas open to seed harvest.

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 in detail, that the Shellfish Management Advisory Committee (SMAC) has met twice to discuss these issues as well as the 2018-2019 public oyster harvest season. The primary discussion at the first meeting was regarding the James River seed quota. SMAC members shared their concern that a large portion of seed oysters being harvested were being transported out of state and asked that staff examine ways of addressing the additional impact this increased demand could have. Roger Mann of VIMS was present and advised the Committee that this level of harvest effort, if focused too heavily on one area, could potentially be detrimental to the oyster resource. He also highlighted some concerns based on the economic value that is lost when oysters are harvested as seed versus at market-size.

In addition to discussion of the James River seed quota SMAC began preliminary discussions on 2018-2019 public oyster harvest season. The members in attendance were presented with three “options” of harvest season to help facilitate discussion at the next SMAC meeting.

On August 15th, SMAC convened again to continue discussion on both the James River seed quota and the public harvest season. Staff informed the Committee that the sale of James River seed out of state could not be stopped only because we would like more of it to stay in Virginia. Staff presented a proposed change to 4 VAC 20-720-91 that would permit the Commissioner to cease granting out of state seed transfer permits as described in §28.2-546 of the Code of Virginia if he determined that the continued issuance of permits could have an impact to the resource. This regulatory change would read as follows:

B. The Commissioner of Marine Resources may cease granting permits required by §28.2-546 of the Code of Virginia , when he determines that the seed areas currently open to harvest are becoming depleted and the additional granting of such permits could seriously injure the seed areas.

The Committee was unanimously in favor of this addition to regulation. Staff also proposed to the Committee that it may also be prudent to lower the James River seed quota from 120,000 bushels to 100,000 bushels. The Committee members present were not in favor of this regulatory change.

The Committee then began discussion on the public oyster harvest season. Staff presented a proposed season that combined several aspects of the 3 “options” that were presented at the first SMAC meeting (see attached). The Committee members present as well many members of the public present were not in favor of some aspects of this proposed season. The primary concern expressed was the lack of an area opening to harvest by hand scrape on October 1, 2018. The Committee was in favor of a modified version of one of the “options that was presented at the early SMAC meeting, and the Committee approved this season. This version also included some changes to individual bushel limits. The changes

are an increased bushel limit in areas open to patent tongs from 8 to 10 bushels and a uniform bushel limit of 12 bushels per person in areas open to harvest by hand or hand tong. Staff is not opposed to the changes in bushel limits. Staff informed SMAC that both seasons would be presented to the Commission. The meeting was adjourned after considerable discussion to work towards a compromise, but prior to a consensus being reached.

Staff has since reached out to all members of SMAC with a proposed season that addresses staffs concern regarding the impact to the oyster resource, as well as the issues raised during the meeting by members of the Committee. To date staff has heard back from several SMAC members that are in favor of this consensus season and has not received comments from anyone who is opposed.

Prior to the almost complete collapse and closure of a large portion of the fishery in the early 1990s the majority of the public ground harvest was done using hand and patent tongs. At the time, dredging was limited to mainly deep-water areas in the Pocomoke and Tangier Sounds and private oyster ground. The hand scrape, which is responsible for the largest portion of public ground harvest today, was not widely used. Without the current regulations promulgated by VMRC, the hand scrape would most likely have been considered an oyster dredge and would not have been permitted on public oyster grounds.

The current language in several sections of The Code of Virginia groups the scrape and dredge together. Both gears are fished in an identical manor. The major difference is that a Hand Scrape is defined by 4 VAC 20-720-10. as follows:

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

A dredge is defined in 4 VAC 20-720-10 as:

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

Other than the width of the catching bar, the gears are nearly identical. The term "hand scrape" and the 22-inch size limit are a carryover from when this gear was only aloud to be retrieved by hand. Requiring the gear to be pulled by hand limited the weight and size of the scrape. This is no longer required and todays hand scrapes are pulled on board using the same hydraulic winders that are used for the larger Oyster Dredges. Both the Hand Scrape and the Oyster Dredge are extremely efficient methods of oyster harvest.

There are undoubtedly a multitude of factors that have contributed to the recent growth in oyster harvest numbers in recent decades. The Commission has continued large-scale replenishment on the public grounds, implemented fisheries management strategies such

as harvest area rotations, established and adjusted harvest quotas, individual bushel limits, restricted gear types in certain areas, adjusted the season length and dates to meet the needs of the oyster resource and the participants in the fishery.

In addition to the effort put into the public oyster fishery, aquaculture and private ground production has been largely encouraged and the private oyster fishery has seen similar increases in productivity and oyster harvest.

The oyster population has increased substantially over the same period that we have seen harvest amounts increase. This overall population increase is reflected in many of the areas are surveyed annually. This increase has been correlated with the efforts described previously and has undoubtable contributed to the increased harvest from public grounds. The increase in harvest numbers can also be correlated with the transition to a more efficient gear types such as the hand scrape and this should not be entirely discounted.

The productivity of the public oyster grounds open to harvest are maintained by a combination of three factors: The first being consistent and continuous replenishment efforts in the form of shell planting directly on the areas that are opened to harvest; the second is a relatively consistent spat set.; the third is restricting the harvest gear used in certain areas. The public ground can remain productive as long as these three factors are considered aptly.

Areas that do not consistently receive good spat sets or shell replenishment and are opened to scraping or dredging will see their productivity begin to decline. This has happened in some areas, including portions of the Pocomoke Sound. Depending on the existing oyster density and the amount of harvest activity, this decline can be rapid.

An area that has a high density of market oysters, or has reached this point, can remain productive for a longer period of time with minimal replenishment effort when worked with less efficient gear types. This has been seen in areas such as Deep Rock, which is open to patent tongs, and areas that are open to hand tongs only in other areas such as the upper James River.

Staff recommends adopting Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2018-2019 areas of public harvest, public oyster harvest seasons, and management measures. The proposed amendments to the harvest season, areas of public harvest, and management measures are those that were distributed to SMAC members following the August 15th meeting and have received support from the members that have responded.

There were two (2) people present that expressed their recommendation about quantitative measures for the seed quota and limiting the amount seed oysters that go out of state.

Associate Member Neill made a motion to move to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 6-0. Chair voted yes.

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- 12. PUBLIC HEARING:** Proposal to amend Chapters 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass;" 4 VAC 20-280-10 et seq., "Pertaining to Speckled Trout and Red Drum;" 4 VAC 20-320-10 et seq., "Pertaining to the Taking of Black Drum;" Chapter 4 VAC 20-380-10 et seq., "Pertaining to Grey Trout (Weakfish);" Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks;" 4 VAC 20-500-10 et seq., "Pertaining to the Catching of Eels;" 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia;" 4 VAC 20-540-10 et seq., "Pertaining to Spanish and King Mackerel;" 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder;" 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy);" 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass;" and, 4 VAC 20-960-10 et seq., "Pertaining to Tautog," and to establish Chapter 4 VAC 20-1340-10 et seq., "Pertaining to the Measuring of Finfish," to establish a definition of and uniform measurement process for the total length of fish species.

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

Mr. Kenyan explained that Mike Avery of the Virginia Saltwater Sportfishing Association (VSSA) requested that the agency develop an alternate description for measuring the total length of striped bass. The current regulation for striped bass describes the total length measurement as follows: 'Total length measurement of striped bass shall be in a straight line from tip of nose to tip of tail'. Mr. Avery expressed concern that most agencies in other states 'pinch' the tail of the fish to a center point, but our Marine Police officers take total length measurements without pinching the tail of the striped bass.

Fishery management staff met with Law Enforcement to discuss this change in measurement of total length. Law Enforcement recommended there should be a uniform standard of measurement of total length for all finfish species, not just striped bass. Currently, VMRC regulations define the total length of a finfish with different methods depending on which species is measured. This variability can make it difficult for both recreational and commercial fishermen to adhere to established regulations. This also makes it difficult for VMRC law enforcement to enforce these regulations.

This issue was originally proposed to the agency by the VSSA to eliminate confusion and develop a clear understanding among fishermen and law enforcement. Agency law enforcement supports the proposed change in measurement of total length and believe a

more biologically explicit definition and methodology for the measuring of finfish would enable better enforcement of regulations.

Total length will be defined as the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body. Many neighboring states use the nomenclature of both the “snout” and the “pinched or compressed tail” to describe the measurement of finfish.

Staff recommends the Commission approve amendments to Chapters:

- 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass”;
- 4 VAC 20-280-10 et seq., “Pertaining to Speckled Trout and Red Drum”;
- 4 VAC 20-320-10 et seq., “Pertaining to the Taking of Black Drum”;
- 4 VAC 20-380-10 et seq., “Pertaining to Grey Trout (Weakfish)”;
- 4 VAC 20-490-10 et seq., “Pertaining to Sharks”;
- 4 VAC 20-500-10 et seq., “Pertaining to Eels”;
- 4 VAC 20-510-10 et seq., “Pertaining to Amberjack and Cobia”;
- 4 VAC 20-540-10 et seq., “Pertaining to Spanish and King Mackerel”;
- 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder”;
- 4 VAC 20-910-10 et seq., “Pertaining to Scup (Porgy)”;
- 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass”; and
- 4 VAC 20-960-10 et seq., “Pertaining to Tautog”.

This will create conformity in total length measurements and descriptions in all regulations and establish a uniform definition and process for measuring finfish.

Associate Member France made a motion to move to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

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- 13. REQUEST FOR A PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to establish fall 2018 commercial offshore summer flounder fishery management measures.

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

Ms. Ramsey explained that every year, staff works with industry to establish management measures for the commercial offshore summer flounder fishery. Staff is currently reviewing

landings and contacting industry to discuss the best possible situation for the 2018 second period opening dates and landing limits for this fishery.

The Virginia offshore directed commercial fishery for summer flounder is currently open for two seasons each year. Period one is open from March 1 through April 30 with a 7,500 pound landing limit. Period two is open October 16 through December 31 with a 7,000 pound landing limit. Each year staff modifies the dates and landing limits based on industry need and available quota.

Staff and the Commission have been very responsive to industry requests for the offshore summer flounder harvest in recent years. With rising fuel and maintenance costs having an effect on profitability, it is important that our regulations reflect the best management decisions for the harvester and the buyer. The offshore summer flounder fishery is a very important part of Virginia’s fisheries and local economies.

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 2018 commercial offshore summer flounder management measures.

Associate Member Zydron made a motion to move to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 6-0. Chair voted yes.

14. REQUEST FOR AN EMERGENCY AMENDMENT: Chapter 4 VAC 20-510-10 et seq., “Pertaining to Amberjack and Cobia” to establish a closure of the commercial cobia season.

Pat Geer, Deputy Chief, Fisheries Mgmt., explained to the Commission the details for the emergency amendment, with PowerPoint slides. Mr. Geer’s comments are a part of the verbatim record.

Mr. Geer explained the background of the NOAA Federal Fisheries quota and also stated that the requested proposed emergency will take effect on September 30, 2018.

Associate Member Ballard made a motion to move to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.

Commission Meeting

**18154
August 28, 2018**

Commissioner Bowman announced that the October Commission Meeting will be moved to October 30, 2018. The December Commission Meeting will be the combined November/December meeting which will be held on December 11, 2018.

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There being no further business, the meeting was adjourned at approximately 2:08 p.m. The next Commission meeting will be Tuesday, September 25, 2018.

Steven G. Bowman, Commissioner

Lou Atkins, Recording Secretary