

MINUTES

COMMISSION MEETING

March 26, 2019

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

Steven G. Bowman	Commissioner
Wayne France	
John Tankard III	
John Zydron Sr.	
Ken Neill, III	Associate Members
Chad Ballard	
James E. Minor III	
Heather Lusk	
Christina Everett	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Adam Kenyon	Fisheries Program Manager
Alicia Nelson	Coordinator, RFAB/CFAB
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Anna-Mai Christmas	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Ethan Simpson	Fisheries Mgmt. Specialist

Commission Meeting

Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Steve Bennis	Lieutenant, Marine Police Officer
Wayne Freeman	Marine Police Officer
Jim Volmer	Marine Police Officer
Brian Elliott	Marine Police Officer
Austin Brown	Marine Police Officer
Brandon Price	Marine Police Officer
David Drummond	Marine Police Officer
Marshall Reedy	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Randy Owen	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Peabody	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Allison Norris	Environmental Engineer, Sr.
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping
Daniel Faggert	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Mike Oesterling	Joe Atherton	David Judson
Bryan Peoples	James Williams	Ben Woodward
Kim Huskey	Claire Neubert	Chris Moore
Todd Jameson	Steven Ayers	A. W. Wilber
Kyle Sawyer	Todd Janeski	
and others		

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Commissioner Bowman called the meeting to order at approximately 9:31 a.m.

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

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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 France seconded the motion. The motion carried, 9 -0. Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the February 26, 2019 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Members Ballard abstained.

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

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2. PERMITS (Projects over \$500,000.00 with no objections and with staff recommendation for approval). There were no Page 2 Items to be heard.

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3. CONSENT AGENDA ITEMS. There were no Consent Agenda Items to be heard.

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

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5. **SUSAN WADE, #19-0201**, requests authorization to install eight (8) 70-inch by 136-inch oyster upwellers and six (6) water pumps, three (3) submersible and three (3) placed upon the decking of an existing commercial pier, along Milford Haven at 407 Risby Town Road in Mathews County. The project is protested.

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

Mr. Johnson explained that the project area is located along a mixed-use shoreline with the Oyster Seed Holdings LLC hatchery, a restaurant, public boat ramp, single-family residential properties, and a condominium complex located along the shoreline. There is a marked navigation channel located offshore of the existing pier. Additionally, Ms. Wade's seafood business owns oyster leases in the area and has a pending Joint Permit Application for a floating oyster cage operation nearby.

The oyster upwellers and pumps are proposed on an existing commercial pier that has existed since at least 1963, according to historical aerial photography, and probably predates VMRC regulatory authority, which was established in 1962. The pier has been used for commercial harvest, propagation and processing since its installation.

Several residents in Mathews County protest the project. Their concerns with the project include noise from the water pumps, effects of the effluent passing through the oyster upwellers on water quality and ecology of Milford Haven, and local zoning regulations.

Noise from the electric pumps has been the major issue identified by the resident protesters who state that the noise will negatively affect their quality of life. Staff requested that the applicant provide specifications for the proposed pumps. Unfortunately, those specifications provided by the manufacturer did not include any information on how loud the pumps are. Staff would note that the proposed pumps are electric motors, not combustion engines. Additionally, the pumps will be located in wooden housing structures to protect them from the elements and should mitigate noise levels.

The issue of water quality impact and on the ecology of Milford Haven from pumping water through the oyster upwellers has been raised by some of the protestants. They are concerned that pumping hundreds of gallons of water through these tanks would degrade water quality. Considering that the amount of water that would run through these upwellers represents a small fraction of the volume of water in Milford Haven, and with tidal flushing, the affect should be insignificant.

One of the protesters also raised the issue of noise impacts on the ecology of the area. While VMRC does take into consideration noise impacts for piling driving activities affecting anadromous fish migrations in the spring, the noise from the pumps should not pose any issues due to the large size of the waterway, anticipated noise levels of electric pumps

versus pile driving acoustics, and the area not being identified as requiring protection for anadromous fish.

Staff understands the protestants concerns regarding the installation of oyster upwellers and water pumps and their effect on the ambient sound conditions of this area. The installation of these tanks and pumps will increase noise levels in the immediate area and add structures to the pier. However, staff feels that the use of electric pumps and the enclosure of these pumps in housing will mitigate noise levels. If issues of noise do impact quality of life in the area there are Mathews County zoning laws that can address the issue.

In addition, staff feels that the ecological effects of pumping of water for the upwellers will be negligible due to the size of the waterway. It should also be noted that Oyster Seed Holding LLC operates an oyster hatchery approximately 1,100 feet upstream of this location and has continuous-use pumps providing water for their operation.

The commercial pier has existed at this site for over 56 years. Since the pier, in its original form, predates VMRC regulatory authority it is considered to be authorized. However, staff can find no permit records for any royalties paid for the encroachment of the pier subsequent to its initial construction. As such, the installation of the upwellers will require a royalty of \$1.50 per square for their encroachment over State-owned subaqueous bottom.

Since the proposed pumps to be installed on the pier are electrical and will be enclosed in a wooden structure to mitigate noise, and that the commercial pier has been in existence since the early 1960's, staff feels the project is an appropriate use of State-owned subaqueous lands.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the upwellers and pumps as proposed with a payment of \$793.50 for their encroachment over 529 square feet of State-owned subaqueous bottom at a rate of \$1.50 per square foot.

Ben Woodward, agent for the applicant was present and sworn in. Mr. Woodward explained the project, answered questions and addressed concerns from the Commission Members. His comments are a part of the verbatim record.

Todd Janeski was sworn in and spoke in support of the project. His comments are a part of the verbatim record.

There were three (3) people that were sworn in and spoke in opposition of the project. Those that spoke in opposition expressed concerns about the added noise from the pumps and water flow outfall, time restriction on when the pumps are running, mounting of the pumps and the uncertainty of the project plans. Their comments are a part of the verbatim record.

Commission Meeting

Mr. Woodward provided further explanation for the use of three (3) submersible pumps and three (3) non-submersible pumps, explained his intentions of insulating the inside of the pump box without causing overheating to decrease pump noise and placing the waterflow outfall pipe at mean high tide to reduce waterflow noise.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation with additional conditions that included that the pumps are enclosed in an insulated structure and the extension of the return outfall to mean high water reduce the noise. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Royalties: (Encroachment of 529 sq.ft. @ \$1.50/sq. ft.)	\$ 793.50
Fee:	\$ 100.00
Total Fees:	\$ 893.50

6. PUBLIC COMMENT: There was no public comment.

Items 13 – 16 and Item # 8 were heard before Item #7 – License Status Review.

7. LICENSE STATUS REVIEW

(7-1) Adron Williams (MRC # 3092): was present and sworn in. His comments are a part of the verbatim record.

Brandon Price, 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.

October 22, 2018, Oyster on polluted oyster ground (public rock): § 28.2-810

Disposition:

January 14, 2019, Newport News General District Court

Fine: \$250.00

Marshall Reedy, 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.

January 24, 2018, Unculled oysters 1 1/2 4qt can full: 4 VAC 20-260-40A

Disposition:

April 11, 2018, Accomack County General District Court

Fine: \$100.00

GUIDELINE SUGGESTION: 1 YEAR REVOCATION OF GEAR LICENSE & CONCURRENT 5 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. Adron Williams, a commercial fisherman registration licensee, was convicted on January 14, 2019 for one count of oyster on polluted oyster ground (public rock) (§28.2-810 of the Code of Virginia) and on April 11, 2018 for one count of uncultured oysters 1 1/2 4qt. can full (4 VAC 20-260-40A).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams from a condemned area, within a two-year period, should result in at least a one year revocation of the gear license and a concurrent five year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke Mr. Williams' gear license for a period of one year from the date of this Commission meeting, March 26, 2019 through March 25, 2020 and place him on a concurrent probation for a period of five years from the date of this Commission meeting, March 26, 2019, through March 25, 2024. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of Mr. Williams' gear license during this revocation period.

Associate Member France made a motion to impose a 6 months revocation of his gear license, effective at the beginning of the upcoming oyster season and place him on a 5 year probation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

(7-2) William Sawyer (MRC #008623): was present and sworn in. His comments are a part of the verbatim record.

David Drummond, 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.

June 30, 2018, Possession of unculled crabs (23) in 1 US standard bushel: 28.2-708

Disposition:

September, 5, 2018, Accomack County General District Court

Fine: \$100.00

MATRIX GUIDELINE SUGGESTION: 1 YEAR REVOCATION OF ALL CRABBING LICENSES (§28.2-232 of the Code of Virginia)

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

Mr. William K. Sawyer, a commercial fisherman registration licensee, was convicted on September 5, 2018 for one count of possession of unculled crabs (23) in 1 US standard bushel (§28.2-708 of the Code of Virginia).

Mr. Sawyer first appeared before the Commission as a natural resource offender during the September 2017 Commission meeting. The Commission decided to place Mr. Sawyer on probation for a period of two years from September 26, 2017 through September 25, 2019, owing to two convictions of possessing more than 20 undersized crabs per bushel.

The Commission's guidelines for sanctions specify that one conviction of possessing more than 20 undersized crabs per bushel (70 per barrel), while on probation, within a two-year period, should result in at least a one year revocation of all Commission-issued crabbing licenses. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Sawyer's Commission-issued crabbing licenses for a period of one year from the date of this Commission meeting, March 26, 2019, through March 25, 2020. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Sawyer's Commission-issued crabbing licenses during this revocation period.

Associate Member France made a motion to impose a 6 months revocation of his gear license and place him on a 5 year probation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

(7-3) Jimmy D. Pruitt (MRC #009373): was present and sworn in. His comments are a part of the verbatim record.

David Drummond, 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.

August 24, 2018, Possess undersize peeler crabs (58) in (1) bushel: § 28.2-201 and 4 VAC 20-270-55

Disposition:

November 14, 2018, Accomack County General District Court

Fine: \$75.00

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

December 29, 2017, Possession of uncultured oysters: 4 VAC 20-260-40

Disposition:

January 25, 2018, Isle of Wight General District Court

Fine: \$150.00

GUIDELINE SUGGESTION: 2 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. Jimmy Pruitt, a commercial fisherman registration licensee, was convicted on November 14, 2018 for one count of possessing undersized peeler crabs (58) in (1) bushel (§28.2-201 of the Code of Virginia and 4 VAC 20-270-55), and on January 25, 2018 for one count of possessing uncultured oysters (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that one conviction of possessing unculled oysters and one conviction of possessing more than 20 undersized crabs per bushel, within a two-year period, should result in at least a two year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that Mr. Pruitt be placed on probation for a period of two years from the date of this Commission meeting, March 26, 2019 through March 25, 2021. Any failure on Mr. Pruitt's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the two-year probation would result in Mr. Pruitt appearing before the Commission for a hearing on license revocation.

Associate Member Tankard made a motion to approve staff recommendation for 2 year probation of licenses. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.

(7-4) James M. Deal (MRC #2212): was present and sworn in. His comments are a part of the verbatim record.

Austin Brown, 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.

October 23, 2018, Possession of unculled oysters: 4 VAC 20-260-40

Disposition:

November 26, 2018, 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. James Deal, a commercial fisherman registration licensee, was convicted on November 26, 2018 for one count of possessing unculled oysters (4 VAC 20-260-40).

The Commission's guidelines for sanctions specify that one conviction of possessing at least 50% over the tolerance of shellfish, within a two-year period, should result in at least a one year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that Mr. Deal be placed on probation for a period of one year from the date of this

Commission meeting, March 26, 2019, through March 25, 2020. Any failure on Mr. Deal’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. Deal appearing before the Commission for a hearing on license revocation.

Associate Member Tankard made a motion to approve staff recommendation for 1 year probation of licenses. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

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8. EMERGENCY REQUEST: Proposed amendment to Chapter 4 VAC-20-754-10 et seq., “Pertaining to Importation of Fish, Shellfish or Crustacea” into Virginia waters, to prohibit the importation of the European green crab (green crab).

Rob O’Reilly, Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation for the Board members. Mr. O’ Reilly’s comments are a part of the verbatim record.

Mr. O’Reilly explained that intermittently over the course of several years, there has been an issue involving the sale of the non-native green crab by bait and tackle shops. These shops sell live green crab for bait used by recreational anglers for such species as tautog.

The Code of Virginia (§ 28.2-825. Importing fish, shellfish or crustacea for introduction into waters of the Commonwealth; penalty) establishes the following:

A. It shall be unlawful for any person to import any fish, shellfish or crustacea into the Commonwealth with the intent of placing such fish, shellfish or crustacea into the waters of the Commonwealth unless one of the following conditions exists:

1. The fish, shellfish or crustacea are coming from within the continental United States from a state or waters which are on the Marine Resources Commission's list of approved states and waters, and are species which are on the Marine Resources Commission's list of approved species; or
2. The person has notified the Commissioner of Marine Resources of such intent and has received written permission from the Commissioner of Marine Resources.

Similarly, 4 VAC 20-754-30. APPROVED SPECIES AND CRITERIA FOR IMPORTATION of Chapter 4 VAC 20-754-10 et seq. establishes the following:

Pursuant to the provisions of §28.2-825 of the Code of Virginia and under the following conditions, it shall be lawful to import into the Commonwealth, with the intent of placing

such animals into the waters of the Commonwealth, any species listed below, and those species represent hard clam and oyster importations to Virginia waters.

The Law Enforcement Division is concerned that certain courts will not uphold violations that concern the importation of the European green crab (green crab) because there is not a specific reference to the unlawful importation of green crab. The language concerning oysters and clam importations is permissive (it shall be lawful), but there is not prohibitive language in Chapter 4 VAC 20-754-10 et seq. concerning green crab. Yes, section 28.2-825 of the Code of Virginia and the ‘list’ that identifies legal importations (4 VAC 20-754-10 et seq.) that authorizes legal importations should be sufficient, but staff understands that certain courts have or may find difficulty in upholding violations of the regulation, unless language specific to importation of the green crab is part of Chapter 4 VAC 20-754-10 et seq. For that reason, staff has drafted an emergency amendment to address this issue.

4VAC20-754-35. PROHIBITED SPECIES.

It shall be unlawful for any person to import any species, including the European green crab *Carcinus maenas* (green crab), that is not on the list of approved species in 4VAC20-754-30(A) with the intent of placing such animals into the waters of the Commonwealth.

Another benefit of the amendment is it will eliminate any notion that it is acceptable to use dead green crabs for bait.

Staff recommends the Commission adopt the emergency amendment described in section 35 of Chapter 4 VAC 20-754-10 et seq. Staff also recommends this emergency amendment be part of an April public hearing to incorporate the amendment as part of the permanent regulation (4 VAC 20-754-10 et seq.).

After discussion by Commission Members and staff, the Commission voted to unanimously postpone the discussion on the emergency amendment until the April Commission Meeting to investigate the ability of the VMRC to prohibit possession of non-native species. The motion carried, 9-0. Chair voted yes.

- 9. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-890-10 et seq., “Pertaining to the Channeled Whelk,” to remove the use of a culling ring in the measurement of channeled whelk and maintain only a length measure; to redefine the container used by Law Enforcement to better enforce the sublegal-size tolerance allowed in the harvest and landing of channeled whelk; and, to allow harvest and landings of any whelk species by channeled whelk pots.

Commission Meeting

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

Ms. Kretsch explained that VMRC Law Enforcement and members of the channeled whelk industry have expressed concern with the lack of a standard procedure for culling of channeled whelk, including the use of a culling ring. The current culling ring has been found inadequate for adhering to the 5 ½ inch minimum shell length as specified in a 2017 paper by Bob Fisher (VIMS), where the current ring was found to select for whelk of sublegal length. Based on these issues, staff recommends removing the requirement for a culling ring until a satisfactory alternative is found.

Staff recommends the Commission amend Chapter 4 VAC 20-890-10 et seq., "Pertaining to the Channeled Whelk," to remove the use of a culling ring in the measurement of channeled whelk and maintain only a length measure; to redefine the container used by Law Enforcement to better enforce the sublegal size tolerance allowed in the harvest and landing of channeled whelk; and to allow harvest and landings of any whelk species by channeled whelk pots.

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 France seconded the motion. The motion carried, 9-0. Chair voted yes.

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- 10. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-740-10 et seq., "Pertaining to the Snagging of Fish," to include a prohibition on the towing of any finfish species regulated by a possession limit.

Lewis Gillingham, Director, SWFT, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Gillingham's comments are a part of the verbatim record.

Mr. Gillingham explained that the towing of fish, particularly large striped bass, received high profile media attention last December, as the late fall striped bass fishery peaked and the majority of large cash payout striped bass tournaments were scheduled. Reasons for attaching a large striped bass to a rope and towing it behind the boat are varied. This practice allows anglers; 1) to continue fishing and maintain the quality of the catch; 2) keep the fish alive for substitution of a larger fish (high grading); 3) and keep the fish alive and forces water into its stomach to add weight and value at the scale. While fish towed behind the boat may remain alive, but if released (or substituted for a bigger fish), they surely

suffer a higher mortality rate than a fish released immediately when landed. At least some of December's contentions of the prevalence of striped bass being towed behind the boat can be attributed to anglers seeking to add weight to their catch. Trips resulting in a boat limit of large striped bass (one fish per angler) are rare. Additionally, Fisheries staff did receive reports during the cobia season that anglers practicing sight casting were seen towing their one fish allowed of 50 inches or greater. The assumption--the towed fish could be more ethically released when substituted for a larger cobia.

The Regulatory Review Committee met February 8, following the Commission's January decision to advertise a public hearing to prohibit towing of striped bass and cobia. The committee requested a postponement of the scheduled February public hearing on this matter until the March Commission meeting. This allowed re-advertisement of Chapter 4 VAC 20-740-10 et seq., with a broader scope so the Commission could prohibit towing of any finfish with a possession limit. The committee's rationale was inclusion of any finfish with a possession limit would serve as a deterrent to high grading of any fish already in the angler's possession. There are nineteen different species (not including sharks) regulated with a possession limit. The definition of towing used in the draft regulation does not differentiate between towing and trolling. Several of the nineteen species are routinely used live and often trolled as bait in state waters. American eel, bluefish and Spanish mackerel are trolled for species such as cobia, king mackerel and striped bass. Especially in the case of live eels, which are in strong demand during cobia season (June-September) and the late fall striped bass season, this prohibition may prompt complaints from the angling public as well as the many bait shops that enjoy a lucrative business in the sale of live eels.

Staff recommends the Commission amend Chapter 4 VAC 20-740-10 et seq., "Pertaining to the snagging of fish," to include a prohibition of towing of finfish to include one of the three following options:

- 1) any finfish species regulated by a possession limit;
- 2) any finfish with a possession limit less than 10;
- 3) striped bass and cobia

Steven Ayers spoke in response to the public hearing pertaining to the misunderstanding of the purpose of towing a fish. Mr. Ayers explained that towing the fish improves the quality of the meat of the fish.

The matter was before the Commission for discussion and action.

Associate Member France made a motion to approve staff recommendation to include a restriction on towing of Striped Bass and Cobia. Associate Member Tankard seconded the motion. The motion carried, 9-0. Chair voted yes.

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Commission Meeting

- 11. PUBLIC HEARING:** Proposal to amend Chapter 4VAC 20-510-10 et seq., “Pertaining to Amberjack and Cobia,” and Chapter 4VAC 20-252-10 et seq., “Pertaining to the taking of Striped Bass,” to adjust the mandatory reporting deadline from 15 days to 21 days after the season closure and to add compliance language which includes the failure to report any one year will result in the loss of eligibility for that permit the following year.

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

Mr. Simpson explained that VMRC currently requires reporting of trip data for the cobia fishery and spring trophy striped bass fishery. This includes any harvest, discards, and effort. If no fish are caught and a permitted angler did not participate in the fishery for the given season, that permittee is required to report. Throughout the history of these programs, there have been questions concerning ways to improve angler reporting rates. The Commission approved new mandatory reporting requirements for these recreational fisheries beginning in 2017, but elected not to revoke subsequent eligibility for non-compliant permittees in any year.

Although mandatory recreational reporting for striped bass has existed since 1995, it was not until 2015 that the current system was established. The reporting for cobia has only existed since 2016, with the first year being voluntary and subsequent years being mandatory. Since then reporting for these species has shown mixed results. Cobia and striped bass reporting rates have ranged from 41 to 56% over the past two years, with notable improvements following the 2017 updates. Staff is recommending that non-compliance in any one year shall result in a loss of permit eligibility in the following year.

Staff recommends the Commission approve the request to amend Chapter 4 VAC 20-252-10 et seq., “Pertaining to Striped Bass,” and Chapter 4 VAC 20-510-10 et seq., “Pertaining to Amberjack and Cobia,” to modify mandatory recreational reporting requirements to increase the reporting deadline to 21 days after the close of a season and to include language that clearly indicates that a permittee shall be ineligible for the permit for only the following year if they fail to report within the deadline.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

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Commission Meeting

- 12. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1120-10 et seq. "Pertaining to Tilefish and Grouper," to remove the permitting and mandatory reporting requirements.

Ethan Simpson, Fisheries Mgmt. Specialist gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Simpson's comments are a part of the verbatim record.

Mr. Simpson explained that VMRC currently requires reporting for all recreational anglers of tilefish and grouper as part of a permit system. This includes any harvest or effort, even if no fish are caught, and a no-effort report if an angler did not participate in the fishery. Throughout the history of this program, there have been discussions on how to improve angler reporting rates for these species. Most recently, the Commission approved new mandatory reporting requirements for this recreational fishery in 2017, which included the requirement for reporting no-effort. Not complying with the requirements could make an angler ineligible for the permit the following year.

Although mandatory recreational reporting for the tilefish and grouper species complex has been ongoing in some form since 2009, reporting rates have been consistently low and the data generated by these reports have not been used by staff for any stock assessment or management purposes. For-hire captains are now required to report recreational grouper and tilefish catch to federal authorities through NOAA Fisheries' VTR (Vessel Trip Report) program and electronic VTR program. Given this sector accounts for a large portion of catch in Virginia, it has become unnecessary for the Commission to continue mandatory reporting to its own system.

Staff recommends the Commission approve the request to amend Chapter 4 VAC 20-1120-10 et seq., "Pertaining to Tilefish and Grouper," to repeal Chapter 4 VAC 20-1120-31 to eliminate the permitting and mandatory reporting requirements.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

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- 13. REQUEST FOR PUBLIC HEARING:** A request for an April public hearing to consider amending Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to establish the May 1, 2019 through April 30, 2020 commercial spiny dogfish harvest quota as 2,215,484 pounds. The current season quota is 4,123,239 pounds.

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

Ms. Ramsey explained that on October 25, 2018, the Atlantic States Marine Fisheries Commission (ASMFC) released a memo that established the 2019 fishery specifications for spiny dogfish. The ASMFC Spiny Dogfish Management Board approved a coast-wide commercial quota of 20,522,832 pounds for the 2019 fishing season (May 1, 2019 through April 30, 2020), of which, Virginia receives 10.795%. For the 2019 fishing season Virginia receives 2,215,484 pounds, a 54% decrease from the May 1 through April 30, 2019 season quota.

Staff recommends the Commission approve advertising for an April 2019 public hearing to establish the May 1, 2019 through April 30, 2020 commercial spiny dogfish harvest quota at 2,215,484 pounds.

No one spoke in support or opposition of the project.

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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- 14. REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," to establish the 2019 Virginia commercial bluefish quota as 915,857 pounds. The 2018 Virginia commercial bluefish quota was 860,518 pounds.

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

Ms. Ramsey explained that the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC) have established the 2019 coast wide bluefish commercial quota as 7.71 million pounds. Virginia receives 11.8795% of the coast wide quota and the 2019 Virginia bluefish commercial quota is 915,857 pounds.

Staff recommends the Commission approves advertising for an April public hearing to amend Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish", to establish the 2019 Virginia commercial bluefish quota as 915,857 pounds.

The matter was before the Commission for discussion and action.

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

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15. RECOMMENDATION: Funding Recommendation for a river herring sampling project from the Virginia Marine Fishing Improvement Fund.

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

Ms. Nelson explained the proposal (titled Biological Monitoring of River Herring in Virginia) requests \$40,000 from the Marine Fishing Improvement Fund to increase monitoring activity of the current study. The additional funding allows for staff time to increase sampling efforts allows the VMRC and VIMS to better meet the ASMFC mandates and enhance the exiting monitoring program. After accounting for recent expenditures from the Marine Fishing Improvement Fund (MFIF) the preliminary estimate for funds available for MFIF projects is approximately \$450,000.

Staff recommends funding the river herring sampling project from the Marine Fishing Improvement Fund, for expenditures totaling \$40,000.00.

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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16. REQUEST FOR PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2019 recreational fishery management measures, in accordance with the results from the 2019 February recreational season. The 2018 recreational black sea bass fishery was managed by a 12 ½-inch minimum size limit, total length, a 15-fish possession and an open season from May 15 through December 31.

Alex Aspinwall gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Aspinwall’s comments are a part of the verbatim record.

Mr. Aspinwall explained that in January 2019, the Commission approved a February recreational black sea bass fishery with the understanding that any additional landings occurring in February of 2019 would result in a deduction of fishing days from the open

season. Following approval by the Commission, the Virginia Marine Resources Commission was able to successfully monitor catch and collect biological data from the 2019 February black sea bass fishery. A total of 4,398 fish or 10,082 pounds of black sea bass were reported by private and head boats. The total landings in February 2019 (10,082 pounds) were nearly double the landings in February 2018 (6,459 pounds). As approved by the Commission in January, the total landings in February 2019 will need to be deducted from the open season in wave 3 (May-June) or wave 5 (September-October). Using a daily landings rate analysis, 25 days will need to be deducted from wave 3 or wave 5 to account for landings that occurred in February 2019. Staff will estimate the total landings prior to the April public hearing but do not expect those total landings to change.

Staff requests the Commission approve an advertisement to consider amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2019 recreational fishery management measures, in accordance with the results from the 2019 February recreational season.

The matter was before the Commission for discussion and action.

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

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There being no further business, the meeting was adjourned at approximately 1:33 p.m. The next Commission meeting will be Tuesday, April 23, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary