

MINUTES

COMMISSION MEETING

January 28, 2020

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

Steven G. Bowman	Commissioner
Wayne France	
John Tankard III	
John Zydron Sr.	
Ken Neill, III	Associate Members
Heather Lusk	
James E. Minor III	
Chad Ballard	
Christina Everett	
Kelci Block	Assistant Attorney General
Lou Atkins	Recording Secretary
Erik Barth	Bs. Systems Manager
Dave Lego	Bs. Systems Specialist
Sheri Crocker	Chief, Admin. & Finance Management
Pat Geer	Chief, Fisheries Mgmt.
Adam Kenyon	Deputy Chief, Fisheries Mgmt.
Shanna Madsen	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Alicia Nelson	Coordinator, RFAB/CFAB
Ethan Simpson	Biological Sampling Program Manager
Chris Davis	Fisheries Biologist
Jill Ramsey	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Olivia Phillips	Fisheries Mgmt. Specialist
Hank Liao	Lab Manager
Jessica Gilmore	Lab Specialist

Commission Meeting

Rick Lauderman
Warner Rhodes
James Vanlandingham
Alan Squires
Barry Mizelle
Patrick West

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

Tony Watkinson
Randy Owen
Justin Worrell
Jay Woodward
Mark Eversole
Jeff Madden
Rachael Peabody
Hank Badger
Allison Lay
Ben Stagg

Chief, Habitat Management
Deputy Chief, Habitat Management
Environmental Engineer, Sr.
Dir., Shellfish Aquaculture, Leasing
and Mapping

Daniel Faggert

Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Justine Woodward
Ryan Parnell
Mike Liberati
Susan Layton
Linda Granger
Bo Lusk
Tyler Poage
Harry Doernte

Andria Allmond
Richard Green
Jamie Oliver
Alicia Logalbo
Doug Grauge
Nancy Baillio
David O' Brien
Kathy Dawson

Richard Klein
Brent James
James Rawland
Samuel Kulp
Russell Burke
Kathy Powell
Jim Dawson
and others.

* * * * *

Commissioner Bowman called the meeting to order at approximately 9:32 a.m.

* * * * *

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

* * * * *

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

* * * * *

MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the December 17, 2019 Commission meeting minutes.

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

* * * * *

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

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

2A. CORTEVA AGRISCIENCE, #19-1847, requests authorization to stabilize approximately 1,750 linear feet of riverbank on the South River, to include bank grading, capping and riprap stabilization, downstream of the former DuPont Waynesboro Plant in Augusta County. The project is part of a U.S. EPA Corrective Action Permit to reduce or eliminate the erosion of legacy, mercury-impaired bank soils, and improve the aquatic and ecological habitat within the

first two miles downstream of the former Plant. All in-stream work will be isolated within cofferdams and turbidity curtains to minimize downstream impacts, and vegetative and structural erosion and sediment control practices will be implemented in accordance with the Virginia Erosion and Sediment Control Handbook throughout construction.

Fees:	\$ 100.00
-------	-----------

- 2B. COLONNA SHIPYARD, #19-2091**, requests authorization to dredge a 250-foot by 105-foot dry dock basin to the maximum depth of -35 feet at mean low water by installing a 40-foot by 27-foot concrete pier extension, in order to accommodate the movement of Drydock #2 to its new location adjacent to Pier 8 along the Eastern Branch Elizabeth River, at Colonna Shipyard located at 400 E. Indian River Road in the City of Norfolk. Dredge material will be transported by barge to the Craney Island Dredge Material Management Area. Staff recommends approval with a royalty of \$11,340.00 for the dredging of 25,200 cubic yards of State-owned submerged lands at a rate of \$0.45 per cubic yard.

Royalties: (Dredge 25,200 CY @ \$0.45 CY)	\$ 11,340.00
Fees:	\$ 100.00
Total Fees:	\$ 11,440.00

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member France moved to approve the two (2) page 2 Items A and B as presented. Associate Member Tankard seconded the motion. The motion carried 8-0. Chair voted yes. Associate Member Minor was not present during vote.

3. CONSENT AGENDA ITEMS

- 3A. APPALACHIAN POWER COMPANY, #18-1305**, requests after-the-fact authorization to retain a 29-linear foot aerial telecom cable crossing of Chaney

Creek, and a 16-foot aerial crossing of Chaney Creek, along Route 616 in Dickenson County. The permittee has agreed to a civil charge of \$3,000.00, triple royalty of \$378.00, and a triple permit fee of \$300.00 in lieu of further enforcement action.

Tony Watkinson, Chief, Habitat Management, reviewed the page 3 Consent Agenda Item A for the Associate Members. Mr. Watkinson's comments are a part of the verbatim record.

Mr. Watkinson explained that on January 8, 2019, Appalachian Power received VMRC authorization to construct 21 individual aerial crossings of sections of the McClure River and its tributaries, totaling 2,043 linear feet. The purpose of the crossings was to install a new non-electric telecom cable, below the existing electrical conductors, and attached to the existing distribution poles. No instream work was required to install the line. The work was to be conducted as part of the Clinch River-Clintwood Telecom project in Russel and Dickenson Counties.

On October 11, 2019, the agent for the project, AEP Services Corp. informed Commission staff that, due to installation difficulties in the hilly terrain along the permitted alignment, a six (6) mile section of the telecom line was rerouted to follow VA-616 instead of going over the mountainous area. The new route resulted in the line crossing Chaney Creek, a tributary to the McClure River, at two locations, approximately 1.3 miles from the original permitted crossing. There was no instream work associated with the revised crossing location. Upon learning this, staff conducted the required public interest review. No individual or other State agencies have commented on the project.

While staff is concerned over the after-the-fact nature of the deviation from the permit, the Permittee continues to be forthcoming with information and has been cooperative. The Permittee has agreed to a civil charge of \$3,000.00, a triple royalty of \$378.00 and a triple permit fee of \$300.00 in lieu of any further enforcement action.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associated Member Ballard moved to approve the after the fact application as presented. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during vote.

Triple Royalty:	\$ 378.00
Triple Permit Fee:	\$ 300.00
Civil Charge:	\$ 3,000.00
Total Fees:	\$ 3,678.00

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

- 5. PRESENTATION** by the Coast Guard to present Valors Award to VMRC staff members.

Col. Rick Lauderman introduced Capt. Carroll, Capt. Stephens and William Burkette from the U. S. Coast Guard to the Commission. Their comments are a part of the verbatim record.

Capt. Carroll, Capt. Stephens and William Burkette presented a Certificate of Valors Award to Vernon Rowe and Vas Dunston for their quick, lifesaving actions that saved a man's life July, 14, 2018 while on shift after the man was involved in a boat accident.

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

6. LICENSE STATUS REVIEW.

(6-1) Ryan Parnell (009780): Mr. Parnell was present and was not sworn in. His comments are a part of the verbatim record.

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

December 15, 2017 Theft of oysters: **§28.2-527**

December 15, 2017 Obtain money by false pretense. Amended to fishing without commercial license per plea agreement: **§28.2-516**

Disposition:

March 11, 2019, Newport News Circuit Court

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

Adam Kenyon, Deputy Chief, Fisheries Mgmt., explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Kenyon's comments are a part of the verbatim record.

Mr. Ryan Parnell, a commercial fisherman registration licensee, was convicted on March 11, 2019 for one count of theft of oysters (§ 28.2-527 of the Code of Virginia) and one count of fishing without a commercial license (§ 28.2-225 of the Code of Virginia).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters without an oyster resource user fee and gear license, 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. Parnell be placed on probation for a period of one year from the date of this Commission meeting, January 28, 2020, through January 27, 2021. Any failure on Mr. Parnell'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. Parnell appearing before the Commission for a hearing on license revocation.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion for a 2 year probation. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during vote.

(6-2) Linwood Rowe (009737): Mr. Rowe was present and was sworn in. His comments are a part of the verbatim record.

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

July 30, 2018 Fishing the tidal waters of the commonwealth w/o a license: **§28.2-225**
July 30, 2018 Oyster dredging or oyster dredge equipment on boat: **§28.2-516**

Disposition:

April 29, 2019, Gloucester County General District Court

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

Adam Kenyon, Deputy Chief, Fisheries Mgmt., explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Kenyon's comments are a part of the verbatim record.

Mr. Linwood Rowe was convicted on April 29, 2019 for one count of fishing the tidal waters of the commonwealth without a license (§ 28.2-225 of the Code of Virginia) and one count of having oyster dredging or oyster dredge equipment on boat (§ 28.2-516 of the Code of Virginia).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters without an oyster resource user fee and gear license, 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, January 28, 2020, through January 27, 2021. 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.

The matter was before the Commission for discussion and action.

Associate Member France made a motion for a 1 year revocation of ALL licenses and privilege's. Associate Member Zydron seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during vote.

(6-3) Wesley Boothe (3377): Mr. Boothe was present and was sworn in. His comments are a part of the verbatim record.

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

September 12, 2019, Placed over the limit of crab pots in water. 25 pots over limit: **§28.2-708**

Disposition:

October 28, 2019, Northumberland General District Court

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

Adam Kenyon, Deputy Chief, Fisheries Mgmt., explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Kenyon's comments are a part of the verbatim record.

Mr. Wesley Boothe was convicted on October 28, 2019 for one count of placing over the limit of crab pots in the water, 25 pots over the limit (§28.2-201 of the Code of Virginia and 4 VAC 20-270-50 B).

The Commission's guidelines for sanctions specify that one conviction of place/set/fish crab pots exceeding license limit by 10% or more, 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. Boothe be placed on probation for a period of one year from the date of this Commission meeting, January 28, 2020, through January 27, 2021.

Any failure on Mr. Boothe'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. Boothe appearing before the Commission for a hearing on license revocation.

The matter was before the Commission for discussion and action.

Associate Member France made a motion to accept staff recommendation for a 1 year probation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present during vote.

(6-4) Payton Jones (1504): Mr. Jones was not present.

Barry Mizelle, Marine Police Officer, was present but did not testify.

Associate Member France made a motion to revoke all licenses until Mr. Jones comes before the Commission. Associate Member Ballard seconded the motion. The motion carried, 8 -0. Chair voted yes. Associate Member Minor was not present during vote.

* * * * *

7. **THE NATURE CONSERVANCY, #19-1322**, requests authorization to create oyster reefs by installing oyster castles and other similar or biodegradable structures along a 2,274 foot long section of intertidal State-owned marsh. The proposed project is located along the northwest marsh in Bradford Bay near Wachapreague Channel in Accomack County. The project requires a tidal wetlands permit.

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

Mr. Badger explained that the project is proposed along an eroding marsh island that protects the Town of Wachapreague from the open waters of Bradford Bay. Since 1994, this spit of state marsh has eroded over 75 feet and has become an island. There is now a 260-foot wide gap that lets tidal water and sediments flow between Bradford Bay and

Wachapreague Channel. The opening has created the shoaling of a section of the federal channel that the Coast Guard uses for access to and from their base in the Town of Wachapreague.

The Nature Conservancy (TNC), with the support of the Town of Wachapreague, has designed a living shoreline consisting of interlocking (12” by 12” by 8”) concrete oyster castle blocks and biodegradable hardscape elements (ropelike strands of fiber, fiber logs and bamboo). The intent of the design is to decrease wave energy on the eroding marsh, catch sediment and provide additional oyster reef habitat.

TNC’s willingness to construct a living shoreline and oyster reef habitat on State-owned marsh is commendable. Staff believes the public benefits from the creation of a living shoreline and oyster reef in this area will far exceed any anticipated public or private detriment.

Therefore, after evaluating the merits of the project and considering all the factors contained in § 28.2-1302(10)B of the Code of Virginia, staff recommends approval of the project as proposed with the understanding that the applicant has no ownership interest in the underlying state land once the project is completed. In addition, unless the Commission designates the area an Oyster Sanctuary, the area will be governed by § 28.2-507 of the Code of Virginia, “Opening and closing public rocks.”

Bo Lusk, representative of The Nature Conservancy (TNC) was sworn in. His comments are a part of the verbatim record.

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

* * * * *

- 8. VIRGINIA BEACH DEPARTMENT OF PUBLIC WORKS, #18-1472, requests authorization to install up to eight (8) acres of three-dimensional concrete reef structures on State-owned submerged lands within the Lynnhaven**

Commission Meeting

River near the mouth of Dix Creek, directly north of Five Hill Trail in the Sea Breeze Farm subdivision in the City of Virginia Beach. The reef field will consist of 1.5-foot wide by 1.0-foot high dome-shaped concrete structures, including marker piles, around the perimeter. The project is protested by numerous adjacent property owners.

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

Mr. Worrell explained that the City of Virginia Beach (City) has historically contracted with the Army Corps of Engineers (Corps) to help restore the Lynnhaven River watershed by incorporating various water quality improvement projects such as shellfish reefs, submerged aquatic vegetation planting, and tidal wetlands creations. The stated purpose of this specific project is to "restore historic reef habitat in the Lynnhaven River Basin." Commission staff accompanied representatives from the City and Corps on a boat trip to tour the area back in May of 2019. The bottom was probed and found to be hard sand, and depths were measured at various spots within the staked footprint.

This concrete reef proposal is located just north of the Dix Creek Inlet, south of the Lynnhaven Inlet marsh islands, and in between the existing Lynnhaven Western and Eastern Branch channels. No formal marked or permitted channel exists connecting Dix Creek and the Lynnhaven River, and the proposed reef location does not appear to adversely affect access to or from the creek. The proposal is approximately 1.25 miles south of the Lesner Bridge and the City's Lynnhaven Beach and Boat Ramp facility, and it is located entirely within an existing shellfish ground lease belonging to the City, surrounded on all sides by private leases.

As part of the Commission's permit review process, staff notified numerous adjacent riparian property owners living along the Lynnhaven River and private shellfish leaseholders adjacent to the proposal. According to the City, they also notified adjacent property owners, even including riparian property owners situated along Dix Creek. The City and the Corps also held two different public open house meetings in an attempt to review the project with neighborhood residents and answer any questions.

Commission staff received a total of 12 protests from adjacent property owners. Staff has met or discussed the project with all of the protestants. Per their correspondence and our discussions, the objections are: the project will affect property views and serve as

an eyesore; the proximity of the reef will adversely affect the nearby property values; the water is too shallow and the reef will pose a safety hazard leading to injuries, boat damage, and possible fatalities; the submitted application and drawing information is not correct; the proposed reef location is not compatible with ongoing waterway uses such as kayaking, windsurfing, sailing, paddle boarding, jet skiing, tubing, swimming, and boating; the reef should not be concrete and there's not enough water overtop; regardless of marking, people will continue attempting to access and utilize the waterway overtop of the reef; non-residential users frequently recreate in this area given the proximity to the City's boat ramp and nearby channels; once the reef is constructed no one will be able to access the area (or should access the area); and the reef marker piles will also become hazards to navigation.

Ultimately, the protestants did not feel that the City worked with the neighborhood to develop a better or safer solution. They repeatedly questioned why the reef was proposed in this specific location and in such shallow water. They stressed that their concerns were not just for themselves (and neighbors), but for all of the boaters and people whom visit seasonally and on weekends and holidays to recreate in a shallow tidal waterway in close proximity to a City boat ramp and City channels.

Staff also received a protest from a nearby leaseholder/waterman. His concerns are that the area is too shallow and the reef will become a navigational hazard; the reef will destroy existing oyster and clam habitat; and the reef will further decrease available crabbing area.

The Virginia Institute of Marine Science (VIMS) evaluated the proposal, commenting that it is "highly likely" that the reef structures will support the settlement and growth of oysters. VIMS also stated that the project will dampen boat wakes and wind-generated waves, and provide a small positive effect on water quality. They also recognize that "placing a large number of concrete structures in shallow water in a densely populated area like the Lynnhaven is likely to be controversial," and questioned if a more traditional approach of planting oyster shell would be more socially acceptable.

The Department of Environmental Quality determined that the proposal was exempt from permitting. The Coast Guard approved the locations of the proposed marking piles. Additionally, the Corps' Regulatory Division does not regulate/permit projects designed and authorized by the Corps' Planning Division.

The Director of the National Oceanic and Atmospheric Administration – Chesapeake Bay Office submitted a letter of support.

As the applicant, the City of Virginia Beach has stressed that the reef proposal is adequately designed and located and is in the best interest of the City, its citizens, and the Lynnhaven River ecosystem. Commission staff applauds the City and Corps for actively and aggressively seeking projects that enhance the viability and sustainability of shellfish reefs in the Lynnhaven and its tributaries. Specifically in the last 10-15 years, the Lynnhaven system has seen tremendous improvements in water quality and oyster growth, thanks in part to similar projects. In fact, numerous oyster restoration projects have previously been established in the Lynnhaven, including those constructed in partnership with our Oyster Replenishment Program that primarily utilized rock and shell.

As part of such aggressive projects, however, comes the responsibility to abide by the public trust doctrine and ensure that everyone continues to have the ability and opportunity to safely enjoy the waters of the Commonwealth. Staff is concerned about the safety of the reef structure and the public navigating around or through it, in addition to the concerns expressed by the protesting neighbors. The subject area contains minimal depths of one (1) to three (3) feet of water at low tide, and if approved, the construction will include eight (8) acres of concrete reef ball structures, the tops of which will be extremely close to the water's surface.

Section 28.2-1205 A of the Code of Virginia, pertaining to **Permits for the use of state-owned bottomlands**, specifically states that the Commission shall “consider the public and private benefits of the proposed project... in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia.” Even though the City cannot prohibit the public from navigating or recreating over State-owned submerged lands, if constructed as proposed, the concrete reef's existence in such shallow water will essentially prohibit public access and use.

In this case, based on the comments we have received from the public and other agencies, Commission staff concurs that the proposed reef will succeed at providing additional hard bottom habitat and promoting shellfish growth, however, we also believe that the safety questions and concerns are significant and should not be diminished. There are also concerns regarding the reef's impact on the public use of this area within the

waterway. This proposal ultimately requires a determination of whether the project benefits will outweigh the detriments, including the numerous public safety concerns and the removal of the area from the public's access and enjoyment.

Given all of the issues in this unique case, and especially considering the City, as the applicant, is representing the overall interest of its citizens, staff does not believe it is appropriate to provide a specific recommendation to the Commission. If the Commission favors the proposal, we do, however, believe it needs to find that the public and private benefits of the proposal exceed the public and private detriments, in accordance with all of the factors contained in Section 28.2-1205 of the Code of Virginia. In that scenario, the Commission would need to conclude that the project merits are in the overall best interest of all citizens of the Commonwealth versus the protests and concerns expressed. If the Commission is not in favor of the proposal, the request should be denied. If the City feels that such a concrete reef should be constructed in the Lynnhaven, it can then continue to work with the Corps and/or adjacent residents to redesign or relocate a proposal and resubmit for future permit consideration.

If the Commission ultimately approves the proposal, staff recommends that the approval include a permit condition requiring a post-construction survey that identifies the coordinates of all marker piles and reef corners.

Jeffrey Wallard, project manager for the Lynnhaven Ecosystem Habitat Restoration project for the City of Virginia Beach was present and sworn in. His comments are a part of the verbatim record.

Susan Layton, Chief of Planning and Policy for the U.S. Army Corp. of Engineers, Norfolk District, was sworn in and presented a PowerPoint presentation of the project. Her comments are a part of the verbatim record.

There were four (4) other people present that were sworn in and spoke in support of the project. Their comments are a part of the verbatim record.

There were three (3) people present that were sworn in and spoke in opposition of the project. Their comments are a part of the verbatim record.

Those that spoke in oppositions expressed the following concerns: Safety hazard for those that use the area for recreational use such as jet ski's, tubing, kayaking, paddle boarding and sailing.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve the project as proposed. Associate Member Neill seconded the motion. The motion carried, 7-2. Chair voted No. Associate Member France opposed.

Fee:	\$ 100.00
------	-----------

* * * * *

- 9. **DISCUSSION:** The U.S. Army Corps of Engineers, Norfolk District, requests acceptance of a Memorandum of Agreement (MOU) to protect subaqueous ecosystem restoration project sites on State-owned submerged lands within the Lynnhaven River Watershed.

Tony Watkinson, Chief, Habitat Management, gave the briefing for the request. Mr. Watkinson’s comments are a part of the verbatim record.

Mr. Watkinson explained that based on the Corps of Engineers’ requirements for property interest associated with their restoration projects, the objective of this MOU is to outline a conservation land use management approach that provides a suitable mechanism for protecting habitat restoration sites located on State-owned bottom land channelward of mean low water under the jurisdiction of the Virginia Marine Resources Commission that cannot be protected through traditional real property transactions. This MOU is specific to activities in the Lynnhaven River. The City of Virginia Beach will also be a signatory as the local sponsor for the Corps of Engineers restoration projects.

This MOU would cover an SAV restoration project that was not protested, and which has been permitted, along with and any reef project that may be authorized. All projects that may be covered under this MOU would require a VMRC permit following a public interest review. Any protested project would require a public hearing before the Commission.

Pursuant to Chapter 12 of Title 28.2 of the Code of Virginia, the beds of bays, rivers, creeks and streams are the property of the Commonwealth. Within tidal waterways, this includes all bottomlands channelward of the mean low water line. As specified by Code Section 28.2-1200.1, fee simple title to State-owned bottomlands cannot be conveyed. Since the Corps requires a property interest for restoration projects, which they

implement with a local sponsor, this MOU is considered to be an appropriate mechanism for such property interest for projects permitted by the Commission on State-owned bottom land. Essentially the purpose of the MOU is to prevent permitting other uses that would destroy or interfere with a restoration project.

Commissioner Bowman appointed Associate Members Ballard & Zydron to a committee to work further with the Corp of Engineers and VMRC staff on the draft MOA for future consideration by the full Commission.

* * * * *

- 10. ISLE OF WIGHT COUNTY, #14-1236**, requests authorization to reduce the time-of-year restriction for instream work by two (2) weeks for a pedestrian bridge crossing over Jones Creek in Isle of Wight County.

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

Commissioner Bowman recused himself from voting on this matter & turned the Chairmanship over to Associate Member Ballard.

Ms. Peabody explained that on January 27, 2015, Isle of Wight County received approval by the Commission to construct a 15-foot wide pedestrian/bicycle bridge that will span approximately 210 linear feet of Jones Creek, in Isle of Wight County. The crossing is part of a larger federally funded project to construct a shared trail from the Town of Smithfield to Carrollton Nike Park. Adjacent property owners originally protested the application because of navigation concerns, funding, and environmental concerns. Following two separate public hearings, the project was ultimately approved to include the DGIF recommended condition to adhere to a time of year restriction for anadromous fishes from February 15 through June 30 of any year. The recommended time of year restriction was not brought-up as an issue of concern by the applicant during the permitting process.

Staff understands the applicant's concerns to complete the project in a timely manner and the contractor's desire to avoid financial penalties outlined in the construction contract if the completion date is exceeded. While staff supports the merits of the community-focused project, the in-water activities may still have a negative impact on

anadromous fishes during their spawning and migratory season. We hope that perhaps financial agreements can be agreed upon between the County and the contractor to avoid steep fines, rather than potentially impairing the reproduction of a depleted stock. Isle of Wight County could negate the need for the waiver request by eliminating the fine to the contractor for being behind in the schedule and prevent impacts to a protected resource.

The Virginia Institute of Marine Science is the Commission's mandated scientific advisor for fisheries related matters and they continue to recommend adherence to the time-of-year restriction to prevent potential impacts to anadromous fish stocks that have experienced severe declines in recent decades. Accordingly, staff is unable to support the request to remove the time-of-year restriction for any in-water construction. If the proposed aqua dam can be installed and dewatered before February 15, 2020, work within the dewatered area would not need to adhere to the time-of-year restriction. As such, staff supports adherence to the time-of-year restriction for in-water construction with a revision to the project plans to place a temporary cofferdam around the most landward pile before February 15, 2020. Furthermore, staff does not support an in-lieu payment to the Marine Habitat Waterways Improvement Fund, as the fund is not currently structured for funding mitigation projects. Nor should a contribution to the fund be seen as justification for a time-of-year waiver. Only if a project is justified on its merits should compensation or an in-lieu fee for compensation be considered.

Jamie Oliver, representative for the applicant, was present and sworn in. Her comments are a part of the verbatim record.

Chuck Roadley, representative from Stantec, spoke in support of the project. His comments are a part of the verbatim record.

No one spoke in opposition of this project.

The matter was before the Commission for discussion and action.

Associate Member Everett made a motion to approve staff recommendation to deny the request for a time of year extension. Associate Member Minor seconded the motion. The motion carried, 8-0. Substitute Chair, Associate Member Ballard voted yes.

* * * * *

11. **VICTORIA ANN BEDROSIAN BRICE, Oyster Planting Ground Application #2015-288**, requests authorization to lease approximately 180 acres within the Rappahannock River in Lancaster County. The application is protested by a number of nearby property owners.

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

Mr. Stagg explained that an application from Victoria Ann Bedrosian Brice, requesting to lease approximately 180 acres of oyster planting ground within the Rappahannock River in Lancaster County was received by the Engineering/Surveying Department on November 9, 2015. The application was subject to the normal public interest review process. The applicant's use plan questionnaire indicates that she proposes to use the area, if leased, for on-bottom structures.

While staff understands that the use of on-bottom structures often creates concerns for nearby property owners, the location and modified configuration of this request should adequately address the issues raised by the protestants. Therefore, after reviewing the protestant's objections, and considering all factors in §§ 28.2.607 and 28.2-1205A of the Code of Virginia, staff recommends approval of leasing 28.58 acres of grounds to Victoria Ann Bedrosian Brice as shown on the survey plat dated October 23, 2019.

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

There was one person that spoke in opposition of the project. Her comments are a part of the verbatim record.

She raised concerns with navigation hazards, SAV, potential danger of those using the waterway recreationally, underwater hazards, noise pollution and requested that the Commission deny the application.

The matter was before the Commission for discussion and action.

Associate Member Lusk made a motion to approve staff recommendation for the reduced lease application for 28.58 acres. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

* * * * *

12. PUBLIC COMMENT – No one spoke during public comment.

* * * * *

13. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to consider the establishment of a February 2020 recreational black sea bass fishery. The proposed 2020 season extends from May 15 through December 31, but any harvest from a February fishery would lessen the number of fishing days during the May 15 through December 31 period.

Pat Geer, Chief Fisheries Mgmt., presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Geer’s comments are a part of the verbatim record.

Mr. Geer explained the proposal to amend Chapter 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass,” to consider the establishment of a February 2020 recreational black sea bass fishery. The proposed 2020 season extends from May 15 through December 31, but any harvest from a February fishery would lessen the number of fishing days during the May 15 through December 31 period.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", to establish a February 2020 recreational black sea bass fishery.

No one spoke in support of this proposal.

There were two (2) people present that spoke in opposition of the proposal. Their comments are a part of the verbatim record.

Those that spoke in opposition expressed concerns of the lack of enforcement and disagreed with opening the fishery in February.

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.

* * * * *

14. REQUEST FOR EMERGENCY AMENDMENT: Proposal to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder”, to modify the landing dates, possession limits and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

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 the proposal to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to modify the landing dates, possession limits and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

The Virginia offshore directed commercial fishery for summer flounder is currently open for two seasons each year. Currently in regulation, the spring season is open from March 1 through April 19 with a 10,000 pound landing limit. The fall season is open for two landing periods. Period one is October 1 through November 15, with a 10,000 pound landing limit. Period two is a 10,000 pound landing limit with the dates of November 16 through December 31, or until the quota has been met.

Each year the Commission works with industry members to establish the best landing dates and trip limits in order to maximize the profitability for the 2020 fishing year and efficiently harvest Virginia’s quota. . The 2019 increase in coastwide quota will allow Virginia to increase the landings limits for the spring 2020 landing period. At this time, members of industry are requesting one open landing period from February 24th through March 31st with a landing limit of at least 12,000 pounds.

Staff recommends the Commission adopt the emergency amendments to Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia. Staff also recommends this emergency

amendment be part of a February public hearing to incorporate the amendments as part of the permanent regulation.

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.

* * * * *

15. DISCUSSION: Presentation on results from the 2019 experimental shrimp fishery.

Christopher Davis, Fisheries Biologist, presented the information provided in the staff's evaluation, with PowerPoint slides. Mr. Davis's comments are a part of the verbatim record.

Mr. Davis explained that beginning in 2017, the Commissioner granted special experimental gear permits to explore the viability of shrimp harvest in Virginia including looking at the efficiency of modified trawl gear, and the marketability of the product. These special experimental gear permits were issued again in both 2018 and 2019.

The Commissioner granted six experimental permits in 2019, four on the ocean side of Virginia Beach and two on the ocean side of the Eastern Shore. In 2019, 87 trips (83 off Virginia Beach and 4 off Eastern Shore) were taken, landing approximately 62,010 pounds of shrimp and 26,576 pounds of fish that was categorized as bycatch.

The average amount of shrimp harvested on a per trip basis was also higher in 2019 versus 2018 despite the additional amount of issued permits. Nine of these trips were taken with VMRC observers' onboard, recording shrimp and bycatch data from 61 trawl hauls. Commercial and recreational species of interest comprised 24% of the bycatch. From the nine observer trips, shrimp comprised 65.7% of the total catch with scrap fishes (commercial and recreational species on non-interest) making up 10.6% of the catch. Spot (16.6%), kingfishes (3.6%), weakfish (2.2%), Atlantic croaker (1%), black drum (0.2%), and summer flounder (0.1%) were the top commercial and recreational species of interest caught, constituting 23.7% of the total catch.

Commission Meeting

The percent of bycatch from observer trips was greater when fishing first began in October and again towards the end of November when shrimp abundances were low. One fisherman in Virginia Beach continued fishing into December and noted an increase in shrimp abundances coupled with low bycatch. Overall, for the nine observer trips, the ratio of the weight of bycatch compared to the weight of shrimp was 1:2 and nearly 1:3 for regulated species. These ratios appear reasonable given bycatch studies in the southeast shrimp trawl fishery. The amount of bycatch varies by month in the coastal waters of North Carolina to Georgia - inversely related to shrimp abundance. In the spring, when shrimp abundance and effort is lowest bycatch is highest, but the opposite is true during the fall – shrimp abundance is highest and bycatch is lowest. The ratio of bycatch to shrimp in the southeast has been observed to be as much as 5:1 in the spring, but on an annual basis ranges from 1.3-2 pounds of bycatch for every pound of shrimp.

Staff are recommending the special experimental gear permits for the shrimp fishery in Virginia be issued for 2020 to continue to assess the long-term viability of this new fishery within Virginia coastal waters, notably on the ocean side of the Eastern Shore. Staff recommends continuing a slow and methodical approach with a limited increase in participation, with the same season (October 1 to December 31).

* * * * *

- 16. REQUEST FOR PUBLIC HEARING:** Proposal to establish Chapter 4 VAC 20-1370-10 et seq., “Pertaining to the Restricted Area at Joint Expeditionary Base Little Creek-Fort Story” to afford the Virginia Marine Police the authority to enforce Virginia law that prohibits entrance into the restricted areas that is already established in federal regulation.

Adam Kenyon, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Kenyon’s comments are a part of the verbatim record.

Mr. Kenyon explained that on January 10, 2020 the Commander of the Joint Expeditionary Base Little Creek-Fort Story (JEBLCFS) requested the Virginia Marine Police to support the patrol and enforcement of the federal safety zones and restricted areas adjacent to JEBLCFS. The naval danger zones and restricted areas extend northward from the vicinity of Little Creek to the edge of Thimble Shoal Channel. The regulation, if established, will delineate the identical areas already restricted by federal

regulation and prohibit the use of commercial or recreational fishing gear within this area.

Staff requests the Commission approve advertising for a public hearing to establish Chapter 4 VAC 20-1370-10 et seq., “Pertaining to the Restricted Area at Joint Expeditionary Base Little Creek-Fort Story” to afford the Virginia Marine Police the authority to enforce Virginia law that prohibits entrance into the restricted areas that is already established in federal regulation.

The matter was before the Commission for discussion and action.

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

* * * * *

17. REQUEST FOR PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-995-10 et seq., "Pertaining to Commercial Hook-and-Line," to modify existing language concerning time of day restrictions.

Adam Kenyon, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Kenyon’s comments are a part of the verbatim record.

Mr. Kenyon explained the modifications approved October 30, 2018, left unclear when commercial hook-and-line fishing could occur relative to any bridge, bridge-tunnel, jetty or pier. As presently written, it would be unlawful to use commercial hook-and-line gear in these areas during any open recreational striped bass season. The original intent was to restrict commercial hook-and-line gear only during the weekends (Friday at 6am through Sunday midnight) to avoid conflicts with recreational anglers.

Staff recommends the Commission approve advertising for a February public hearing to amend Chapter 4 VAC 20-995-10 et seq., to modify language in section 30, subsection B to prohibit the use of commercial hook-and-line gear within 300ft of any bridge, bridge-tunnel, jetty, or pier on weekends (Friday through Sunday) during opened striped bass seasons.

The matter was before the Commission for discussion and action.

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

* * * * *

18. REQUEST FOR PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters”, to establish at least one rectangular escape vent trap with a minimum size of 1-15/16 inches by 5-3/4 inches to comply with Amendment III to the Interstate Fishery Management Plan for Lobster.

Adam Kenyon, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Kenyon’s comments are a part of the verbatim record.

Mr. Kenyon explained that the Atlantic States Marine Fisheries Commission (ASMFC) established Amendment III to the Interstate Fishery Management Plan (FMP) for American lobster effective December 1997. Addendum II of the FMP was established in February 2001 and Addendum IV was established in January 2004. Both Addenda addressed the requirement for a minimum size of escape vents in lobster traps. All lobster traps in Area 5 (which encompasses Virginia waters), whether fished commercially or recreationally, must contain at least one rectangular escape vent per trap or at least two circular escape vents according to the following schedule: one rectangular vent 2 inches by 5-3/4 inches or two circular vents 2-5/8 inches diameter.

Staff requests the Commission approve advertising for a February public hearing to amend Chapter 4 VAC 20-110-10 et seq., “Pertaining to Lobsters”, to establish minimum size of escape vents in lobster traps.

The matter was before the Commission for discussion and action.

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

* * * * *

- 19. **REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1310-10 et seq., "Pertaining to Jonah Crab" to establish a 2.75 inch minimum claw size for claw specific harvest greater than 5 gallons to comply with the Addendum II of the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan for Jonah Crab.

Adam Kenyon, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Kenyon’s comments are a part of the verbatim record.

Mr. Kenyon explained that the Atlantic States Marine Fisheries Commission (ASMFC) established an Interstate Fishery Management Plan (FMP) for Jonah Crab effective June 1, 2016. Addendum II of the FMP was established in January 2017 to address regulation inequities in the claw harvest between the states, and to define bycatch. Claw harvest must be established at a 2.75-inch minimum claw size for any harvest greater than 5 gallons. A bycatch allowance was established to limit the amount of Jonah crab harvested relative to target species. Both the minimum claw size and the bycatch catch allowance must be addressed to remain in compliance with the fishery management plan.

Staff requests the Commission approve advertising for a February public hearing to amend Chapter 4 VAC 20-1310-10 et seq., “Pertaining to Jonah Crab”, to establish a 2.75 inch minimum claw size for claw-specific harvest greater than 5 gallons and to establish a definition of Jonah crab bycatch.

The matter was before the Commission for discussion and action.

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

* * * * *

- 20. **REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-450-10 et seq. “Pertaining to the Taking of Bluefish”, to revise the recreational possession limit for bluefish.

Commission Meeting

**18502
January 28, 2020**

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

Mr. Kenyon explained that on December 10, 2019 the Mid-Atlantic Fishery Management Council (Council) recommended and the Atlantic States Marine Fisheries Commission (ASMFC) approved a bluefish recreational 3-fish bag limit for the shore/private sector and a 5-fish bag limit for the for-hire sector. Note, that the current recreational bag limit (i.e., possession limit) for bluefish is 10 fish in Virginia.

Staff requests the Commission approve advertising for a February 2020 public hearing to Chapter 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," to revise the recreational possession limit for bluefish.

The matter was before the Commission for discussion and action.

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

* * * * *

There being no further business, the meeting was adjourned at approximately 3:39 p.m. The next Commission meeting will be Tuesday, February 25, 2020.

Steven G. Bowman, Commissioner

Louise Atkins, Recording Secretary