

MINUTES

COMMISSION MEETING

June 25, 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
John Zydron Sr. Chad Ballard Christina Everett Heather Lusk James E. Minor III Ken Neill, III	Associate Members
Kelci Block	Assistant Attorney General
Ellen Bolen Jamie Hogge	Deputy Commissioner Recording Secretary
Todd Sperling	Bs. Systems Manager
Robert O'Reilly Pat Geer Stephanie Iverson Adam Kenyon Jill Ramsey Jennifer Farmer Lewis Gillingham Alexa Kretsch Ethan Simpson Somers Smott	Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Fisheries Mgmt. Manager, Sr. Fisheries Program Manager Fisheries Mgmt. Specialist Regulatory Coordinator Director, SWFT Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist
Rick Lauderman Allen Marshall Trevor Wessells	Chief, Law Enforcement Marine Police Officer Marine Police Officer
Tony Watkinson Randy Owen Jeff Madden	Chief, Habitat Management Deputy Chief, Habitat Management Environmental Engineer, Sr.

Commission Meeting

Jay Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Hank Badger	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	Mark Luckenbach
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Others present:

Wayne Galbraith	Mike Oesterling	Jeff Wilson
Kelley Parks	Anne Mephram	Barbara Little
Chris Moore	and others	

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Commissioner Bowman called the meeting to order at approximately 9:31 a.m. Associate Members France and Tankard were absent.

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

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APPROVAL OF AGENDA.

Tony Watkinson, Chief, Habitat Management, requested that Item #5 - **HUNTER WEBB, Oyster Planting Ground Application #2016-255** be removed from the Agenda due to the withdrawal of the application by the applicant.

Associate Member Zydron moved to approve the agenda as amended Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the May 28, 2019 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member 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).

Tony Watkinson, Chief, Habitat Management, reviewed the page 2 item A for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

- 2A. **WASHINGTON GAS, #19-0133**, requests authorization to cross Opequon Creek and Hot Run with a new, 20-inch natural gas pipeline, installed using Horizontal Directional Drill (HDD) method a minimum of four (4) feet below the natural stream beds, as part of the Washington Gas 20 Mile Loop Offset H project in Frederick and Clarke Counties. Recommend approval with inclusion of the applicant’s Frac-Out Contingency Plan, and implementation of erosion and sediment control measures in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook. Also recommend a royalty in the amount of \$345.00 for the encroachment under a total of 115 linear feet of State-owned submerged land at the standard rate of \$3.00 per linear foot.

Associate Member Ballard moved to approve the page two item A as presented. Associate Member Neill seconded the motion. The motion carried 7-0. Chair voted yes.

Royalties: (Encroachment of 115 L.F. @ \$3.00/L.F.)	\$ 345.00
Fee:	\$ 100.00
Total Fees:	\$ 445.00

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3. CONSENT AGENDA ITEMS.

3A. ANNE MEPHAM, #19-0518, requests authorization to retain and repair a 5-foot by 13-foot pier and an unauthorized 8-foot by 13-foot pier, remove existing unauthorized boathouse and 3-foot by 10-foot pier, and construct a new 5-foot wide by 35-foot long private open-pile pier with a 24-foot by 29-foot dual slip open-sided boathouse, and a 12-foot by 32-foot floating dock at 275 Neck-O-Land Road, situated along Powhatan Creek in James City County. The applicant has agreed to pay a civil charge of \$1,000.00 in lieu of further enforcement action for the piers constructed without prior authorization over State-owned submerged land.

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.

Anne Mepham, applicant, was present and sworn in. She agreed to the civil charges.

No one was present in support or opposition of the consent item.

Associated Member Neill moved to approve the after the fact application as presented. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

Civil Charge:	\$ 1,000.00
Fee:	\$ 100.00
Total Fees:	\$ 1,100.00

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4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. YES

Associate Member Ballard made a motion of certification to recess for legal advice from Kelci Block. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Meeting was closed at 9:41 a.m.

Meeting reconvened at 9:49 a.m.

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5. HUNTER WEBB, Oyster Planting Ground Application #2016-255, requests authorization to lease 2.61 acres of Oyster Planting Ground in Hungars Creek in Northampton County. The project is protested by three (3) nearby property owners.

Item #5 was removed from the agenda due to the withdrawal of the application by the applicant.

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- 6. KELLEY L. PARKS and JERRY L. LEWIS, II, Oyster Planting Ground Application #2018-014**, request authorization to lease 57.74 acres of oyster planting ground in Hungars Creek in Northampton County. The project is protested by nearby property owners.

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 proposed lease area is located in Hungars Creek and Jacobus Creek, and is five (5) miles northwest of the town of Eastville. The majority of the application has controlling depths of between minus two (-2) and minus four (-4) feet at mean low water (MLW). The application is in an open (unmarked) area that the public uses to navigate to and from the headwaters of both creeks. The bottom is mostly a mud mix with no submerged aquatic vegetation (SAV). Hungars Creek has a large amount of clam and oyster aquaculture activity.

Mr. Lewis has one riparian oyster ground lease in Hungars Creek for 1.81 acres. His father has one lease in Occohannock Creek and another lease on the seaside in his name for a total of 33.43 acres. In addition, Mrs. Parks has one application in The Gulf for 14 acres. The applicants intend to use the ground to plant spat or seed oysters, grow aquaculture oysters in bags and/or aquaculture clams, which requires placing nets over the planted clams. No structure will exceed 12-inches above the substrate.

The area was leased in the past and existing leases surround the application. The area had three different leases that reverted to the Commonwealth in the 1980s and 1990s. The application area has not been leased since 1999.

We received their application for oyster planting ground on January 22, 2018, for 80 acres.

In response to our public interest review, we received protests from eight riparian property owners. Their concerns include their opposition to a commercial operation in a residential area, adverse impacts to navigation and safety issues.

Mrs. Parks and Mr. Lewis intend to use the proposed lease to plant spat or seed oysters, grow aquaculture oysters in bags and/or aquaculture clams. No structure will exceed 12-inches above the substrate.

Commission Meeting

They do not intend to install cages or nets in areas where boaters use the waterway for navigational access. However, Regulation 4 VAC 20-335-30 does authorize certain shellfish aquaculture structures on leased ground (including nets and cages) provided the structures do not exceed 12 inches above the bottom substrate. In addition, under the same regulation, the Commission can direct removal of any structure that causes more than a minimal adverse effect on navigation.

Accordingly, after considering all of the factors in §28.2-609 and §28.2-618 of the Code of Virginia, Regulation 4 VAC 20-335-30 and the concerns raised by the protestant, staff recommends approval of Mrs. Parks’ and Mr. Lewis’s application for 57.74 acres of oyster planting ground in Hungars Creek as surveyed and mapped.

Mrs. Parks spoke in support of spoke in support of her application. Her comments are part of the verbatim record

No one spoke in support of the project.

One person spoke in opposition of the project with the concerns with the impacts to navigation and safety concerns. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Members Minor and Lusk seconded the motion. The motion carried, 7-0. Chair voted yes.

7. PUBLIC COMMENT: There were no public comments.

8. REQUEST FOR PUBLIC HEARING: Request for a July 23, 2019, Public Hearing for adoption of Chapter 4 VAC 20-1350-10 et seq., to establish a fee for the review for oyster planting ground lease renewals. The regulation is required pursuant to Acts of Assembly 2019, Chapter 164.

Ellen Bolen, Deputy Commissioner, gave the briefing of the information provided in the staff’s evaluation for the Associated Members. Ms. Bolen’s comments are a part of the verbatim record.

Ms. Bolen explained the request for a July 23, 2019, Public Hearing for adoption of Chapter 4 VAC 20-1350-10 et seq., to establish a fee for the review for oyster planting ground lease renewals. The regulation is required pursuant to Acts of Assembly 2019, Chapter 164.

Commission Meeting

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve the request for Public Hearing. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

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9. **PUBLIC HEARING:** Staff proposes to amend Chapters 4 VAC 20-270-10 et seq., “Pertaining to Crabbing,” 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters,” 4 VAC 20-1040-10 et seq., “Pertaining to Crabbing Licenses,” and, 4 VAC 20-670-10 et seq., “Pertaining to Recreational Gear Licenses,” to establish management provisions for the July 5, 2019 through July 4, 2020 blue crab fisheries.

Robert O’ Reilly, Chief, Fisheries Mgmt., gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. O’Reilly’s comments are a part of the verbatim record.

Each proposed amendment was voted on separately.

Mr. O’Reilly explained that last month, staff briefed the Commission on several proposals to amend the various regulations associated with the blue crab commercial and recreational fishery. This briefing followed a presentation by staff of the recent 2018-2019 Bay-wide Winter Dredge Survey. Results from that survey, as well as results from the 2018 fisheries indicate the Chesapeake Bay blue crab stock is currently not overfished, and overfishing is not occurring.

Below, please find a description of requested regulatory amendments, by regulation, which are proposed for this month’s Commission public hearing.

1). Chapter 4 VAC 20-270-10 et seq., “Pertaining to Crabbing”

The proposed, substantive amendments include a change to section 40 that establishes the seasonal dates for 2019 and 2020 that pertain to blue crab commercial harvest dates and crab pot removal dates.

Proposed amendment of season dates:

- A. In ~~2018~~ 2019 the lawful season for the commercial harvest of crabs by crab pot shall be March 17 through November 30. In ~~2019~~ 2020, the lawful season for the commercial harvest of crabs by crab pot shall be March 17 through November 30.

For all other lawful commercial gear used to harvest crabs, as described in 4 VAC 20-1040, the lawful seasons for the harvest of crabs shall be April 1 through October 31.

Proposed amendment of season dates:

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot in any tidal waters of Virginia from December 1, ~~2018~~ 2019 through March 16, ~~2019~~ 2020. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in 4 VAC 20-460-25, in any tidal waters of Virginia from November 1, ~~2018~~ 2019 through March 31, ~~2019~~ 2020.

The Crab Management Advisory Committee requests the Commission increase the November allowable crab-pot bushel limits to equal those limits in place for October. Current bushel limits, by crab-pot license category for November are:

8 bushels, or 2 barrels and 2 bushels, of crabs, if licensed for up to 85 crab pots.
10 bushels, or 3 barrels and 1 bushel, of crabs, if licensed for up to 127 crab pots.
13 bushels, or 4 barrels and 1 bushel, of crabs, if licensed for up to 170 crab pots.
21 bushels, or 7 barrels of crabs, if licensed for up to 255 crab pots.
27 bushels, or 9 barrels of crabs, if licensed for up to 425 crab pots.

These lower bushel limits in November are the same as in March (March 17 through March 31); whereas during all other months of the season, including October, the bushel limits are as shown below:

10 bushels, or 3 barrels and 1 bushel, of crabs, if licensed for up to 85 crab pots.
14 bushels, or 4 barrels and 2 bushels, of crabs, if licensed for up to 127 crab pots.
18 bushels, or 6 barrels, of crabs, if licensed for up to 170 crab pots.
29 bushels, or 9 barrels and 2 bushels of crabs, if licensed for up to 255 crab pots.
47 bushels, or 15 barrels and 2 bushels of crabs, if licensed for up to 425 crab pots.

Staff recommends the increase in November bushel limits to match bushel limits in all other months except March. Staff has projected a very modest (0.5%) increase in the seasonal blue crab harvest. This projection is only based on 2018 harvest data, and there should be an overall increase in harvest, based on the promising blue crab stock conditions in 2019.

Chris Moore, Chesapeake Bay Foundation was present and spoke of his appreciation for the management of the fishery. His comments are a part of the verbatim record.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes.

2). Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters”

The crab dredge fishery season has remained closed since the 2008-2009 season. A decision needs to be rendered each year by the Commission on whether to continue to close this fishery or to allow it to open. The Commission will need to decide whether to close the winter crab dredge season for 2019/2020.

At the 2016 - 2018 Commission meetings, there was no public comment on the staff recommendation to close the winter dredge fishery seasons, and the Commission unanimously endorsed these recommendations.

The winter crab dredge fishery season was from December 1 to the following March 31. During these months, most of the crabs available for harvest are crabs that matured from the juvenile stage in the previous winter. The majority of the overwintering female crabs are pre-spawn crabs, and studies have shown that the dredge fishery harvested mostly (95%) female crabs.

The 2018-2019 estimated abundance of juveniles was 323.7 million, and that estimate is the 8th highest in the 30 years of the Bay-wide Winter Dredge Survey has been conducted. Importantly, the two previous estimates of the winter abundance of juvenile crabs were very low. An estimate of 167 million juvenile crabs in 2018 and 125 million juvenile crabs in 2017 were well below average for this survey. The average estimated juvenile abundance was 257 million crabs, from 1990 through 2017 and 254 million juvenile crabs from 1990-2018. Such pronounced inter-annual variability, especially when juvenile crab abundance is low, means a winter dredge fishery season that mainly harvested female crabs in the past could negatively affect the subsequent crab pot harvest or contribute to a negative impact on subsequent spawning events.

Staff recommends the Commission continue the closure of the 2019-2020 winter crab dredge fishery season.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes.

3) Chapter 4 VAC 20-1040-10 et seq., “Pertaining to Crabbing Licenses”

The amendments to this regulation concern the transferability of commercial crab fishery licenses. At present, any transfer of commercial crab license requires the transferor to purchase the commercial crab license prior to transferring that license to another commercial fisherman registration licensee (transferee). Yet, since 2004, any person

eligible to purchase a commercial crab fishery license has not needed to purchase the license to remain eligible, in subsequent years, to purchase that license.

Staff recommends that it should be the eligibility to purchase a commercial fishery crab license that should be transferable. At this time, that is the transfer provision for the oyster resource user fee, in that any person eligible to pay the oyster resource user fee may transfer that eligibility to pay such user fee to another. It is evident that the original transferability provisions for commercial crab licenses established in 1999 that required a license to be transferred could have been modified in 2004, when an eligible licensee did not have to purchase a license to remain eligible for that license.

Staff recommends the Commission approve amending this regulation to modify the transferability provision to include the transfer of eligibility or a crab license.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

4). Chapter 4 VAC 20-670-10 et seq., “Pertaining to Recreational Gear Licenses”

An amendment to this regulation is requested. Through a series of previous amendments to this regulation, a 2009 amendment erroneously indicated that the daily time limits for commercial crab potting were established in a section of this regulation (4 VAC 20-670-10 et seq.), but those daily time limits are in a different section of a different regulation (4 VAC 20-270-30). An amendment will correct this error.

Staff recommends the Commission approve these two amendments.

Staff has received no public comment on these issues, at this time.

Staff recommends the Commission approve these amendments to the four regulations, as described in this evaluation.

Chris Moore, Chesapeake Bay Foundation was present and spoke of his appreciation for managing the fishery. 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 Neill made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.

Commission Meeting

**18342
June 25, 2019**

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There being no further business, the meeting was adjourned at approximately 10:55 a.m.
The next Commission meeting will be Tuesday, July 23, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary