

MINUTES

COMMISSION MEETING

July 23, 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.	Associate Members
Ken Neill, III	
Christina Everett	
Kelci Block	Assistant Attorney General
Ellen Bolen	Deputy Commissioner
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Robert O'Reilly	Chief, Fisheries Mgmt.
Pat Geer	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Alicia Nelson	Coordinator, RFAB/CFAB
Adam Kenyon	Fisheries Program Manager
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Nancy McElligott	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Jonathan Depaz	Fisheries Mgmt. Data Specialist
Ethan Simpson	Biological Sampling Program Manager
Alexa Kretsch	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Patrick West	Marine Police Officer
Jim Vollmer	Marine Police Officer

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Kyle Jones	Marine Police Officer
Brian Elliott	Marine Police Officer
Tony Watkinson	Chief, Habitat Management
Randy Owen	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Peabody	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Allison Lay	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

Others present:

Ben Woodard	Barry Miller	Susan Wade
Carolyn Schmalaly	Danny Lowder	James Jones
Joshua Webb	Leonard Powell	Troy Hainley
Brandon Eares	Brennen Miller	Justin Cannon
Joseph Hillman	Brian Peeples	Jim Lang
Jessica Hayes	Mike Oesterling	Charles Harvey
Ken Tortiea	Jean Nelson	Sherry Ashe
Mary Benouameur	Beverly Childress	Steve Meale
Rick Lowder	Derek Dequain	Tony Wheatley
Amanda Jones	Ryan Pierce	Chris Turner
Clay Armstrong	V.M. Moss	Dave Bugg
Matthew Smith	James Williams	James Brooks
David Armstrong	Norman Thomas	Roger Martin
Joe Atherton	Howard Hudgins	LaDonna Crain
Frances Atherton	Linda Martin	David Judson
Madelyn Judson	Sam Forrest	Adam Wood

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Tom Robinson
and others

Chris Moore

Mary Hill

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Commissioner Bowman called the meeting to order at approximately 9:41 a.m. Associate Members Ballard, Minor and Lusk were absent.

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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.

Associate Member Zydron moved to approve the agenda as presented. Associate Member France seconded the motion. The motion carried, 6-0. Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the June 25, 2019 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member Neill seconded the motion. The motion carried, 5-0-1. Chair voted yes. Associate Member France 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 four (4) page 2 items A through D for the Associate Members. Mr. Watkinson's comments are a part of the verbatim record.

- 2A. **RIVER PORT LLC, #19-0711**, requests authorization to construct 1,255 linear feet of steel sheetpile bulkhead with a concrete cap two feet channelward of an existing, failing bulkhead and construct 833 linear feet of replacement fender system along the bulkhead and Pier 14, adjacent to property at 1201 Terminal Avenue along the James River in the City of Newport News. Recommend approval with a royalty in the amount of \$8,166.00 for the filling of 2,722 square feet of State-owned subaqueous bottom at a rate of \$3.00 per square foot, as well as an encroachment royalty in the amount of \$8,740.00 for the encroachment over 4,370 square feet at a rate of \$2.00 per square foot.

Royalties:	\$ 16,906.00
Fees:	\$ 100.00
Total Fees:	\$ 17,006.00

- 2B. **ARMY CORPS OF ENGINEERS, #19-0900**, requests re-authorization to place overboard, in an unconfined manner, up to 125,000 cubic yards of dredged material per dredge cycle, from the hydraulic maintenance dredging of the Finney Creek/Wachapreague Channel and Bradford Bay Federal Project Channels near the Town of Wachapreague in Accomack County. The overboard placement site is located in Bradford Bay, southwest of the Federal Channel and centered at N37°35.0513', W75°40.8733'.

Fees:	\$ 100.00
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- 2C. **ARGO US, #19-0959**, requests authorization to mechanically maintenance dredge approximately 18,600 cubic yards of State-owned submerged lands to achieve a maximum depth of -37 feet at mean low water within the vessel berthing on the channelward side of the Argos US pier, in the Southern Branch Elizabeth River, at 100 Pratt Street in the City of Chesapeake. Recommend approval with a royalty of \$4,306.05 for dredging 9,569 cubic yards of State-owned submerged lands at \$0.45 per cubic yard.

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Royalties: (Dredge fill 10,500 CY @ \$0.45/CY)	\$ 4,725.00
Permit Fees:	\$ 100.00
Total Fees:	\$ 4,875.00

2D. IMTT-VIRGINIA LLC, #19-0878, requests authorization to conduct improvements to an existing industrial pier in the Southern Branch Elizabeth River, to include replacement of a loading arm with support system, and 129 linear feet of new pipe support system at 2801 S Military Highway in the City of Chesapeake. Recommend approval with a royalty of \$387.00 for the additional encroachment over 129 linear feet of State-owned submerged lands at the standard rate of \$3.00 per linear foot. Staff also recommends special permit conditions for noise attenuation for driving hollow steel piles to include the use of a pile-cap cushion for impact hammers, ramp-up procedures, and the use of a confined bubble curtain.

Royalties: (Fill of 129 L.F. @ \$3.00/L.F.)	\$ 387.00
Permit Fee:	\$ 100.00
Total Fees:	\$ 487.00

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the page two items A through D as presented. Associate Member Neill seconded the motion. The motion carried 6-0. Chair voted yes.

3. CONSENT AGENDA ITEMS. There were no consent items to be heard.

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

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5. LICENSE STATUS REVIEW.

(5-1) Matthew S. Smith (MRC #7077): Mr. Smith was present and sworn in. His comments are a part of the verbatim record.

Mr. David Bugg, attorney, represented Mr. Smith. Mr. Bugg spoke to Mr. Smith's record, that Mr. Smith was cooperative and he paid fine. Mr. Bugg's comments are a part of the verbatim record.

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

March 13, 2019, Possession of untagged striped bass x15: 4 VAC 20-252-160

Disposition:

April 29, 2019, Northumberland County General District Court

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. Matthew S. Smith, a commercial fisherman registration licensee, was convicted on April 29, 2019 for one count of possession of untagged striped bass x15 (4 VAC 20-252-160).

The Commission's guidelines for sanctions specify that one conviction of possession of untagged striped bass, 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 the Commission place Mr. Smith on probation for a period of two years from the date of this Commission meeting, July 23, 2019 through July 22, 2021. Any failure on Mr. Smith'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. Smith appearing before the Commission for a hearing on a license revocation.

Associate Member Zydron made a motion to amend staff recommendation and impose 6 month revocation for the upcoming striped bass season beginning January 16, 2020 through July 15, 2020 and a 2 year probation thereafter beginning July 16, 2020 through July 15, 2022. Associate Member Tankard seconded the motion. The motion carried, 6-0. Chair voted yes.

(5-2) Joshua Webb (MRC #009757): Mr. Webb was present and sworn in. His comments are a part of the verbatim record.

Mr. Webb stated that he was unaware that his help did not have a valid commercial license.

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

November 22, 2018, Possession of over the limit oysters (8 bushels): 4 VAC 20-720-80 (A)

Disposition:

January 14, 2019, Newport News General District Court

GUIDELINE SUGGESTION: 3 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. Joshua Webb, a commercial fisherman registration licensee, was convicted on January 14, 2019 for one count of over the limit oysters (8 bushels) (4 VAC 20-720-80 (A)).

The Commission's guidelines for sanctions specify that one conviction of catching at least 50% over the limit of shellfish, within a two-year period, should result in at least a three-year probation. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that Mr. Webb be placed on probation for a period of three years from the date of this Commission meeting, July 23, 2019, through July 22, 2022. Any failure

on Mr. Webb's part to obey any of the laws or regulations relating to the Marine Resources of the Commonwealth during the three-year probation would result in Mr. Webb appearing before the Commission for a hearing on license revocation.

Associate Member France made a motion to amend staff recommendation for a 3 year probation and give him a warning. Associate Member Tankard seconded the motion. The motion carried, 5-1. Chair voted no.

(5-3) Tony Wheatley (MRC #009166): Mr. Wheatley was present and sworn in. His comments are a part of the verbatim record.

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

November 23, 2018, Possession unculled oysters (7 quarts): 4 VAC 20-260-40

Disposition:

January 10, 2019, Isle of Wight General District Court

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. Tony Wheatley, a commercial fisherman registration licensee, was convicted on January 10, 2019 for one count of possession of unculled oysters (7 quarts) (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. Wheatley be placed on probation for a period of one year from the date of this Commission meeting, July 23, 2019, through July 22, 2020. Any failure on Mr. Wheatley'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. Wheatley appearing before the Commission for a hearing on license revocation.

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

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6. **CLAY ARMSTRONG, #19-0528**, requests authorization to install two (2) 5-foot wide by 39-foot long main stem piers extending from a bulkhead on either side of an existing boathouse and to install 22 linear feet of 5-foot wide finger pier and a 16-foot by 21-foot deck along a tributary to Stutts Creek, at 528 Bluewater Drive in Mathews County. The project is protested by an adjacent property owner.

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

Mr. Johnson explained that the project area is located at the mouth of a small tributary to Stutts Creek with a width of approximately 60 feet between an existing dual slip boathouse and the opposite shoreline.

Mr. Armstrong's shoreline is hardened with an existing bulkhead that terminates at a small marsh spit upstream of the project location, also owned by the applicant. A boat ramp is located adjacent to the boathouse on its downstream side.

Mr. Armstrong is proposing a tending pier to be located between the boathouse and the boat ramp. Another pier structure proposed on the upstream side of the boathouse will moor a 42-foot vessel, to be purchased later, on its channelward side. The applicant will berth a 21-foot vessel he currently owns in the boathouse. The proposed piers will not encroach any further channelward than the existing boathouse, and the location of the proposed boat mooring will be located to the south of the boathouse where the creek width increases.

The project is protested by an adjacent property owner, Mr. William A. Hudgins, who owns the property upstream of the applicant. In his protest letters to VMRC, he cites concerns with the size of the structures, impacts to riparian rights, navigational impacts, natural resource impacts, and aesthetic impacts. Staff has carefully considered all of these concerns that Mr. Hudgins has cited as part of the public interest review process.

As to the size of the structures, staff notes that the boathouse has existed in its current configurations for decades and the proposed boat ramp tending pier will not encroach any further channelward than the existing boathouse. The pier to the south would have qualified for the pier exemption as cited in §28.2-1203 of the Code of Virginia had it not been for the existence of the other pier associated with the dual-slip boathouse.

Staff reviewed land records for the applicant's and protestant's property and determined that since the applicant owns the marsh spit to the south, the pier is located in front of his property. However, the VMRC does not have the authority to define riparian rights. If the protestant wishes to argue this issue, a civil suit in the appropriate court of law would appear to be the proper course of action.

Impacts to navigation are an important factor in the approval of any pier and there are 15 riparian lots in the stream watershed. The applicant, as part of their application, submitted depth soundings across the waterway where the upstream pier would be installed. These soundings indicated the channel is in excess of 50 feet wide at this location. The addition of a 42 foot vessel, with an average beam of 13 feet would leave at least 35 feet of navigable channel for other boat operators. In addition, staff has been in communication with the Army Corp of Engineers who indicated that they will be issuing a permit for the project. They have determined that a vessel moored alongside the upstream pier will not impede navigation.

Natural resource impacts from the project will be minimal in nature as the pier will be open pile by design which will not impede water flow.

Aesthetic impacts from the proposed structures are also considered to be minimal. This is due to the fact that the piers, if they were standalone structures, would have qualified for the statutory authorization provided for in State code and no other roof structures are proposed.

Staff has carefully considered all of the concerns raised by the protestant for this project. The size and scope of the project are appropriate for both the boat ramp tending pier and the pier which will moor the proposed vessel. Staff is satisfied that the piers are located in front of the applicant's property and will not constitute an impediment to navigation. Impacts to natural resources and aesthetics will be minimal as the piers are open pile by design and no other roof structures are proposed.

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

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§28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.

Steven Meade, Attorney for Mr. William Hudgins, spoke in opposition of the project and spoke on Mr. Hudgin’s behalf. His comments are a part of the verbatim record.

Mr. Meade requested that the project be redesigned to move the boathouse closer to the shore or remove boathouse completely.

The matter was before the Commission for discussion and action.

Associate Member Neill made a motion to approve staff recommendation with an amendment by Associate Member Tankard that no vessel shall be moored at the northern pier which extends beyond its channelward terminus. Associate Members Zydron seconded the motion. The motion carried, 6-0. Chair voted yes.

Fees:	\$ 100.00
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- DAMFINO, LLC, #19-0365**, requests authorization to place up to 700 floating aquaculture cages within a 600’ by 400’ area (approximately 5.5 acres) within the footprint of oyster planting ground lease #17804 in the waters of Milford Haven in Mathews County. The request is protested by numerous local residents.

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

Mr. Stagg explained that on March 07, 2019, a Joint Permit Application was received from Damfino, LLC, requesting authorization to place up to 700 floating shellfish cages in Milford Haven in Mathews County. The application was subjected to our normal public interest review.

The area requested is over an existing lease owned by Susan Wade, a principal of Damfino, LLC, and is offshore of an area of submerged aquatic vegetation closer to the shoreline. Most of the Milford Haven area is leased for shellfish propagation and other

shellfish aquaculture activity is prevalent in the area. There is Public Ground to the south of the proposal.

VMRC previously received an application from Mr. Kevin Wade in March of 2018 to deploy shellfish cages in this same location. That application was heavily protested, but was eventually approved by Commission action in September of 2018, by a vote of 4-2, with 2 abstentions, and the permit was issued in November of 2018. Mr. Wade died suddenly in January 2019, before the deployment of any aquaculture apparatus occurred. Since the permit was issued to Mr. Wade, it was then considered void and not available to be transferred. Subsequently, Susan Wade and Mr. Wade's previous business partner submitted the current application (Damfino, LLC) seeking authorization to deploy floating shellfish cages in the same location as the prior Wade permit. The U. S. Army Corps of Engineers did transfer the previous permit and, therefore, their authorization remains valid.

The use of cages, floats, and nets, for shellfish propagation, has resulted in increased public awareness of the leasing of bottomlands and highlighted the necessity for a more comprehensive review of both lease application and permit requests for both cage and float aquaculture activity. Such requests in populated areas raise new issues regarding public trust lands to include user conflicts, property values, aesthetics, navigation impacts, and suitable bottom types. Stewardship of public trust lands, while weighing the public and private benefits versus detriments, requires a multifaceted review of both shellfish lease application and permit requests.

Staff evaluates such protested applications on a case by case basis considering all comments received concerning the area being requested. This request has generated over 60 letters of objections and also a smaller number of letters of support. The nature of the protests are varied, but include concerns about impacts to navigation, possible impacts to historic resources, submerged aquatic vegetation impacts, viewshed issues, property value impacts, noise and smell impacts, potential impacts to marine mammals, and other non-jurisdictional issues concerning increased traffic and issues related to the use of the adjoining upland property of the applicant.

Letters of support note that the Milford Haven area, and much of the shoreline to include the applicant's adjacent highland property, has historically supported maritime activities related to fishing, crabbing and shellfish harvest and production.

There do not appear to be any existing submerged aquatic vegetation beds in the area of the request. The proposed location is not within any designated channel area and was

modified during the previous permit request to address the proposed location of a private pier by an adjacent landowner. The Virginia Department of Historic Resources has indicated that project is not within an area of concern. The floats, while visible above the waterline, are colored black which tend to blend into water color from a distance. Some husbandry activity will occur if the request is approved, and oysters could be dredged from the underlying lease at any time by the applicant. While navigation directly over the float area will be restricted, navigation around the floats should not be more than minimally affected. As noted previously, the Army Corps of Engineers (ACOE) reviewed and approved the previous application and transferred the permit. Concerns about both navigation and potential impacts to marine mammals were considered during the ACOE review.

The applicant proposes to use concrete bottom anchors to secure each line of floating cages. The applicant also proposes, and staff recommends, the marking of the float area with warning buoys around all sides. The close proximity of the proposed floats to the applicant's processing facility will facilitate and be beneficial to timely temperature controls when harvest of the shellfish occur, thereby potentially reducing the risk of *Vibrio* growth.

While staff acknowledges the concerns raised by the protestants, the use of both cage and floating apparatus represent an efficient and manageable method to grow shellfish for the ever increasing shellfish market in Virginia and beyond. Conflicts will continue to occur when such methods are requested in areas similar to Milford Haven that have a history of use for maritime and commercial fishing, recreational uses of the waterway, and residential development of adjoining lands. For this application, staff believes the placement of 700 floats in an area measuring 400 feet by 600 feet, at the proposed location, constitutes a reasonable use of public trust lands. The Commission previously reviewed an application proposing use of the same area using the same methods, and approved the request. Staff, therefore, recommends approval of the request to place up to 700 floats within Milford Haven as requested by the applicant. For such an approval staff recommends the permit contain the following special conditions:

1. A surety bond in the amount of \$10,500.00 to cover the cost of removal of all 700 floats in the event of failure;
2. The permit shall not be issued until proof of issuance of the surety bond;
3. An annual royalty in the amount of \$1,200.00 based on the bold outline of the entire aquaculture structures (240,000 square feet over State owned submerged

- land) at a rate of \$0.005 per square foot;
4. The permit and authorization to retain the structures shall be valid for a period of five years. After five years, the Permittee may request the Commission re-evaluate the project and seek authorization to continue the activity for an additional period of time;
 5. The public shall not be excluded from any areas not physically occupied by the authorized structures;
 6. The Permittee shall properly maintain all structures and shall remove all structures within five (5) days upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures;
 7. The structures must be marked and located in accordance with 28.2-607 of the Code of Virginia and VMRC Regulation 4VAC20-290-30;
 8. Should unforeseen conflicts arise, the Commission may elect to hold an additional public hearing, at which time they may elect to revoke the permit and direct removal of any or all of the authorized floats;
 9. All commercial aquaculture activities conducted in association with the structures authorized herein shall be conducted in compliance with all relevant VMRC and Department of Health regulations;
 10. The Permittee shall be required to remove or relocate any of the structures which are determined to be in the way of any approved shoreline projects requested by the adjacent upland property owner within their riparian area.

Leonard Powell, friend of the Wade's, was sworn in and introduced the applicants. His comments are a part of the verbatim record.

Susan Wade, applicant, was present and sworn in. Mrs. Wade's comments are a part of the verbatim record.

Mr. David Bugg, attorney, represented the applicant, Damfino, LLC due to the cross examination from opposition.

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

Jim Lang, Attorney, was present and represented David & Triston Judson in opposition. Mr. Lang's comments are a part of the verbatim record. Mr. Lang questioned staff and the representative for the applicant. The testimony is part of the verbatim record.

There were twenty (20) people that were present, sworn in and spoke in opposition of the project. Their comments were a part of the verbatim record. Mr. Bugg questioned several representatives in opposition to the application. The testimony is part of the verbatim record.

Those that spoke in opposition expressed concerns about the potential for a decrease in property value, navigation, noise concerns, view shed and the liability of risk to the public.

The matter was before the Commission for discussion and action.

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

Annual Royalty: (240,000 FT. @ \$0.005/FT.)	\$ 1,200.00
Permit Fee:	\$ 100.00
Total Fees:	\$ 1,300.00

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- 8. PUBLIC HEARING:** The Commission proposes to adopt Chapter 4 VAC 20-1350-10 et seq., "Pertaining to General Oyster Planting Ground Lease Renewal Fee." The purpose of this regulation is to establish the application procedures and fee for the renewal of general oyster planting ground leases and time limits to request a formal hearing concerning any denial renewal.

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.

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Ms. Bolen explained that the request for the adoption of Chapter 4 VAC 20-1350-10 et seq. is to establish the application procedures, establish a fee for the review for oyster planting ground lease renewals and time limits to request a formal hearing concerning any denial of such renewal. The regulation is required pursuant to Acts of Assembly 2019, Chapter 164.

Kim Huskey, representing Ballard Fish and Oyster Company and Chris Wood of the Chesapeake Bay Foundation spoke in favor of the regulation. No one spoke in opposition to the regulation.

The matter was before the Commission for discussion and action.

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

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9. PUBLIC COMMENT. Heard before Item #8.

Mary Hill

Ms. Hill asked the Commission for redress related to how a Marine Police Officer approached the alleged theft of oysters from her oyster lease. Associate Member Zydron expressed that accusation of theft against a waterman who has not been charged for the offense should not be discussed in a public forum and the matter should be brought to a Commonwealth Attorney. Her comments are a part of the verbatim record.

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10. REQUEST FOR PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2019-2020 areas of public harvest, public oyster harvest seasons, and management measures.

Andrew Button, Head, Conservation/Replenishment, presented the information provided in the staff's evaluation, with PowerPoint slides. Mr. Button's comments are a part of the verbatim record.

Mr. Button explained in detail that the preliminary reported oyster harvest for the 2018-2019 oyster harvest season (July 2018-June 2019) has decreased compared to the reported harvest for the 2017-2018 season. Harvest from public grounds is lower than the previous five-year average, but is substantially higher than the previous ten-year average. There is approximately a two to three month lag from harvest date to when the data shows in our mandatory reporting database. This means the harvest data for private ground is not fully updated through June of 2019. Based on the reporting from the fall of 2018 and early spring of 2019, it appears that private ground harvest may be following a similar trend to the public ground harvest and has decreased when compared to the last five years.

The decrease in public and private ground production was anticipated. This decrease was most likely due to the highest level of annual precipitation on record in large portions of the Chesapeake Bay Water Shed in 2018. The influx of freshwater caused increased oyster mortality related to extended periods of low salinity. The growth rate of oysters to market size likely slowed in many of the areas affected by lower salinities. Recently implemented harvest effort controls, primarily lowering vessel limits in hand scrape and dredge areas from 24 bushels to 16 bushels per vessel, may also have contributed modestly to the decrease in public ground harvest numbers. The increased water flow and low salinity likely contributed to a spat set in 2018 that was not as consistent and wide spread as it has been in previous years.

The effects from last year's heavy precipitation: increased mortality; low spat set; and depressed growth rates, will likely be reflected in the 2019-2020 season and may be seen in future seasons for some time. The long-term stability of the public fishery will remain dependent on continuous replenishment efforts, natural spat sets, and forward-looking fisheries management plans. A single year of favorable spat sets, followed by two years of normal salinity levels should allow the fishery to recover to previous levels.

The reported amount of harvest is still very high, relative to the last 25 years. The amount of effort in this fishery has been stabilized through a limited entry system and other management measures. Although effort is not increasing, the evidence is clear that the two most popular gear types, the dredge and hand scrape, are doing significant damage to all sizes of oysters during the harvesting process.

The efficiency of these gear types will allow harvest numbers to increase relatively quickly when there is a modest increase in the densities of oyster populations in areas open to harvest. Conversely, a modest decrease in oyster density will create an equally

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sharp drop in harvest numbers. This was the case in portions of the Rappahannock in the 2018-19 season. When an area reaches an oyster density high enough to support fishing effort with less efficient gears types, transitioning the area to the less efficient gear type may allow for a more stable long-term harvest that is less dependent on annual fluctuations in population density. A transition to less efficient gear types would allow the resource to recover with less replenishment effort. If implemented gradually, this could allow both the oyster resource and harvest amounts to increase together as replenishment effort is shifted to or focused in other areas.

There are a limited number of options to minimize the impact of the current level of harvest effort while maintaining the fishery at its current size. These options may include: adjusting the start and duration of the harvest season, decreasing vessel or individual harvest bushel limits, changing to less efficient gear types such as patent and hand tongs, and subdividing the current harvest areas into additional rotation areas.

Staff requests advertising for an August public hearing to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to establish the 2019-2020 areas of public harvest, public oyster harvest seasons, and management measures.

No one spoke in support or opposition of the request for public hearing.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff's request for a public hearing. Associate Member France seconded the motion. The motion carried, 6-0. Chair voted yes.

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There being no further business, the meeting was adjourned at approximately 3:58 p.m. The next Commission meeting will be Tuesday, August 27, 2019.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary