

## MINUTES

## COMMISSION MEETING

September 25, 2018

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

Steven G. Bowman	Commissioner
Chad Ballard	
Christina Everett	
Heather Lusk	
James E. Minor III	Associate Members
Ken Neill, III	
John Tankard III	
John Zydron Sr.	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Ellen Bolen	Deputy Commissioner
Sheri Crocker	Chief, Administration & Finance
Dave Lego	Bs. Systems Specialist
Todd Sperling	Bs. Systems Manager
Linda Hancock	Dir., Human Resources
Robert O'Reilly	Chief, Fisheries Mgmt.
Pat Geer	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Alex Aspinwall	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Nancy McElligott	Fisheries Mgmt. Specialist
Sydney Alhale	Fisheries Mgmt. Specialist
Sara Blachman	Fisheries Mgmt. Specialist
Anna-Mai Christmas	Fisheries Mgmt. Specialist

**Commission Meeting**

Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Robert Berryman	Captain, Marine Police Officer
Jeff Copperthite	First Sergeant, Marine Police Officer
Phil Koury	Marine Police Officer
Connor Bryant	Marine Police Officer

Tony Watkinson	Chief, Habitat Management
Randy Owen	Deputy Chief, Habitat Management
Justin Worrell	Environmental Engineer, Sr.
Allison Norris	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Rachael Peabody	Environmental Engineer, Sr.
Bradley Reams	Environmental Engineer, Sr.
Paul Rogers	Environmental Engineer, Sr.
Royce Bridger	Engineering Technician, VI
Hank Badger	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	Mark Luckenbach
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## Others present:

Roger Martin	Ken Torbett	Joe Atherton
David Judson	Tristan Judson	Beverly Childress
Howard Hudgins	David Dickinson	Kim Huskey
Kathy Carmichael	Pam Hogg	Woody Hogg
Ryan Marie	Russ Perkinson	Derrick Banks
Kevin Wade	Joseph Hillman	Mandy Zinsmister
Troy Hainsley	Brandon Eares	J. D. Blackwell
Ben Woodward	Austen Vanzant	Brian Heath
James Williams	Leonard Powell	Kim Williams
Charles Harvey	Eileen Koch	Morgan Moss
Trish Reed	Tom Reed	Jeff Wilson
Robert Hay	Mike Wals	Rich Lowder
Ray Clarke	Chuck Joyner	Rosalie Judson
Jean Nelson	Mara Lee Clark	Robert Clark
Bryan Peeples	Beverly Ludford	Mary Sherrill

**Commission Meeting**

**18157  
September 25, 2018**

Robert Sherrill	Glenda Ramey	Jan Finn Duffy
Marcy Benouameur	Andrew Kurfees	Wayne Fentress
Loyd White	Kyle Marshall	Donald Owens
Richard Hill	Tim Rowe	Corey Gray
Danny Lowder	Chip Neikirk	Fran Brooks
James Brooks	Bob Duffy	Tom Robinson
Brian Rechtenbaugh	and others.	

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Commissioner Bowman called the meeting to order at approximately 9:43 a.m. Associate Member France was 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:** Commissioner Bowman asked if there were any changes from the Board members or staff.

Pat Geer, Deputy Chief, Fisheries Mgmt., requested to add a Public Hearing to the agenda to amend 4 VAC 20-910-10 “Pertaining to Scup (Porgy)”.

**Associate Member Zydron made a motion to move to approve the agenda as amended. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.**

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the August 28, 2018 Commission meeting minutes.

**Associate Member Zydron moved to approve the minutes as presented. Associate Member Ballard seconded the motion. The motion carried, 5-0-3. Chair voted yes. Associate Members Minor, Lusk and Everett 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 two (2) page 2 items, A & B for the Board Members. Mr. Watkinson’s comments are a part of the verbatim record.

There were no public comments.

**Associate Member Tankard moved to approve the page two items as presented. Associate member Minor seconded the motion. The motion carried 8-0. Chair voted yes.**

- 2A. **VIRGINIA ELECTRIC AND POWER COMPANY, #18-0725**, requests authorization to rebuild an existing 115kV transmission line across the Rappahannock River adjacent to and downstream (SE) of the Route 3 Norris Bridge between Middlesex and Lancaster Counties. The transmission line will be installed by horizontal directional drill (HDD) method approximately 100 feet below the riverbed except at two (2) splice points where the transmission line will be installed by a jet-plow three (3) feet below the bottom . Two (2) 20,000 square foot, temporary work platforms will be required at the splice locations. The existing overhead lines and support towers will be removed from the river and bridge structure upon completion of the new underground line. Recommend approval with a time-of-year (TOY) restriction from February 15 to June 15 for the driving of hollow steel piles for the work platforms to protect anadromous fish species, and the use of additional mitigative measures outside of the TOY restriction to include “ramp-up” methods, pile cap cushion blocks, and isolation casings to further reduce the acoustic impacts associated with pile driving on other resident fish and crustacean species, as well as a permit condition to include the “Dominion Energy Inadvertent Contingency Plan” to address any accidental drilling fluid release during the transmission line installation. Recommend an annual royalty at a rate of \$0.20 per square foot for the temporary encroachment of the work platforms while in the river. This permit will replace the previous authorization for an overhead line. The royalty for the power line crossing itself was paid when the previous VMRC permit was issued.

Royalties (Annual encroachment: 20,000 sf @ \$ 0.20 / ft. <sup>2</sup> ):	\$ 8,000.00
Fees:	\$ 100.00
Total Fees:	\$ 8,100.00

**2B. TRANSCONTINENTAL GAS PIPE LINE COMPANY, #18-0853**, requests authorization to cross Owl Run, Cedar Run, and Walnut Branch in Fauquier County and South Run and Kettle Run in Prince William County with a new, 42-inch diameter natural gas pipeline as part of the Manassas Loop project. The new line will be installed in the dry using the dam and pump method a minimum of five (5) feet below the natural streambed. Recommend approval with the inclusion of our standard in-stream work and erosion and sediment control conditions and a royalty in the amount of \$360.00 for the crossing of 120 linear feet of State-owned subaqueous bottom at the standard rate of \$3.00 per linear foot.

Royalties: (120 ln. ft. @ \$3.00 per foot)	\$ 360.00
Fees:	\$ 100.00
Total Fees:	\$ 460.00

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**3. CONSENT AGENDA ITEMS.**

Tony Watkinson, Chief, Habitat Management reviewed the page 3 item for the Board Members. Mr. Watkinson’s comments are a part of the verbatim record.

There were no public comments.

**Associate Member Tankard made a motion to move to approve the after the fact application as presented. Associate member Neill seconded the motion. The motion carried 8-0. Chair voted yes.**

**3A. SHOOTING POINT SEAFOOD, LLC, #18-0973**, requests after-the-fact authorization to retain a 12-foot long by 4-foot wide section of an existing 47-foot long commercial wharf adjacent to their property along Nassawadox Creek in the Village of Bayford in Northampton County. The applicant also requests authorization to construct a 77-foot long open-pile loading pier, a 60-foot by 24-foot open-pile aquaculture platform, a 30-foot long by 4-foot wide addition to the above 47-foot long by 4-foot wide open-pile wharf with a 25-foot long by 6-foot wide connection ramp to the aquaculture platform, and install two (2) 10-foot by 20-foot aquaculture flupsy upweller floats. The applicant has agreed to pay a \$1,000.00 civil charge, triple permit fees of \$300.00 and royalties totaling \$1,731.50 in lieu of further enforcement action.

Royalties:	\$ 1,731.50
Civil charge:	\$ 1,000.00
Triple Permit Fee:	\$ 300.00
Total Fees:	\$ 3,031.50

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

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- 5. **KEVIN WADE, #18-0496**, requests authorization to place up to 700 floating shellfish cages within a 400' x 600' area over his existing oyster planting ground lease #17804 in Milford Haven, Mathews County. The application is protested by numerous nearby property owners.

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 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 well over 100 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 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 has been modified by the applicant to address the proposed location of a private pier by one of the adjacent landowners. 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 and tend to blend into water color from a distance. Some husbandry activity will occur, and the underlying lease could also be dredged at any time by the applicant. Some navigation directly over the float area will be restricted, however, navigation around (and through with non-motorized watercraft) the floats should not be more than minimally affected. The applicant proposes, and staff supports, the marking of the float area with warning buoys around all sides.

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 both a history of maritime activity uses and development of adjoining lands for residential use. 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. 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.

Associate Member Ballard read a declaration which stated that he would not be recusing himself from this Joint Permit Application request, which on this matter, is not required under law §2.2-3112 & §2.2-3114 (F) of the Code of Virginia. Associate Member Ballard also stated that he would participate in the discussion fairly, objectively and in the public interest. Associate Member Ballard's comments are a part of the verbatim record.

Associate Member Lusk read a declaration which stated that although her company does engage in sales transaction with applicant, she does not believe that she should be excluded in participating in discussion that is fair, objective and in the public interest. Associate Member Lusk did not recuse herself from this Joint Permit Application request. Associate Member Lusk's comments are a part of the verbatim record.

Kelci Block, Assistant Attorney General, explained that the applicant is required to obtain a Joint Permit Application Permit from VMRC and a permit from the Army Corp. of Engineers. The applicant can obtain the VMRC permit before the Army Corp. of Engineers permit is issued. Ms. Block's comments are a part of the verbatim record.

Mark Luckenbach, Virginia Institute of Marine Science (VIMS), answered questions concerning the direct impact the project will have on mammals such as porpoise that frequent the area. Mr. Luckenbach stated that the direct impact on porpoise would be if they became entangled in loose lines. Mr. Luckenbach also indicated that the mammals



would most likely not spend much time in the area due to the lack of food source. Mr. Luckenbach's comments are a part of the verbatim record.

Kevin Wade, applicant and owner of Island Seafood, was present and sworn in. His comments are a part of the verbatim record.

Mr. Wade explained the floating cages would serve as wet storage for premium quality oysters that would be ready for market. Mr. Wade also explained that he strives to assure quality over quantity. Food safety is priority which is an important factor in the location of the project because it is very close to his seafood facility.

J. D. Blackwell, project partner with applicant was previously sworn and answered several questions and explained the care and maintenance of the cages, cage support lines and the maintenance of the oysters. Mr. Blackwell's comments are a part of the verbatim record.

There were eight (8) people present that were sworn in and spoke in support of the project. Their comments are a part of the verbatim record.

Those that spoke in favor spoke of the applicants' character as a forward-looking individual that follows through with a plan while giving much thought and consideration to the project and to others. Others in favor stated that project would provide steady income, it is an important aspect of life in Mathews and the project was clear of the channel.

There were seventeen (17) people present that spoke in opposition of the project. All those in opposition of the project were sworn in. Their comments are a part of the verbatim record.

Those that spoke in opposition had the following concerns: cages breaking loose, cages becoming a hazard to navigation, the potential hazard to mammals, the waterfront property becoming commercial, the impact on recreational watersports and local sailing classes, nearby condo owners' views from above ground level and ease of access to private piers. There were also concerns that the project would take away from the Historical value that took place in the area with the Battle of Cricket Hill.

The matter was before the Commission for discussion and action.

**Associate Member Zydron made a motion to deny staff recommendation. The motion failed due to lack of second motion.**

**Associate Member Everett made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 4-2-2. Associated Members Zydron and Ballard voted no. Associate Members Minor and Lusk abstained. Chair voted yes.**

Annual Royalties: (240,000 sq./ft. @ \$0.005 sq./ft.)	\$ 1,200.00
Fees:	\$ 100.00
Total Fees:	\$ 1,300.00

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6. **CITY OF NORFOLK, #18-0920**, requests authorization to excavate 125 cubic yards of sand, regrade and plant native grasses on a jurisdictional dune on the private property of 9712 9<sup>th</sup> Bay Street in the City of Norfolk. The project requires a dune and beach permit.

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.

Ms. Peabody explained that although the project will result in temporary impacts to a primary dune and temporary loss of stabilized dune vegetation, the proposed project will ultimately restore and stabilize an eroding dune. Norfolk’s 9<sup>th</sup> Bay Beach Access Project will greatly reduce foot traffic through the dune and provide a dune friendly walkway for beach goers. Staff recommends the following conditions to ensure stability of the dune following construction:

1. Plant mortality will be addressed by replacing plants during the next available growing season;
2. Dune planting must achieve 85% coverage within two years to be considered successful;
3. Any construction access area will be regraded to preexisting elevations and replanted with native vegetation.

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

Chuck Joyner, representative from Norfolk City was present and sworn in. Mr. Joyner explained plans and intentions for the project. 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 move to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

Wetland Board Fee: (Paid)	\$ 300.00
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7. **DEPARTMENT OF THE ARMY, #18-1146**, requests authorization to construct 215 linear feet of riprap revetment within non-vegetated wetlands and install three (3) 600 square foot open-pile piers along the Appomattox River, at the Mechling Training Center In Fort Lee in Prince George County. The project requires a subaqueous and wetlands permit.

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.

Ms. Peabody explained that the proposed shoreline work will not impact any vegetated wetlands and improve the stability of the existing structure. The project location and the consistent use of the shoreline do not make the location suitable for living shoreline features. No compensation is deemed necessary for wetland impacts based on VMRC’s Wetlands Mitigation-Compensation Policy and Supplemental Guidelines.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) and §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed with the following conditions:

- Time-of-year restriction from February 15 through June 30 and August 1 through November 15 for work channelward of mean low water;
- Permittee agrees to apply and maintain reflective material at the channelward end of all proposed piers to aid in navigation.

The Commission was acting as the wetlands board.

Calvin Merficer, representative for the Army Corp. of Engineers was present and sworn in. His comments are a part of the verbatim record

Brian Heath, project manager, was present and sworn in. His comments are a part of the verbatim record.

No one spoke in opposition to the project.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.**

Wetlands Fee: (Paid)	\$ 300.00
Permit Fees:	\$ 100.00
Total Fees due:	\$ 100.00

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- 8. **PRESERVE ON ELIZABETH OWNERS ASSOC., #18-1189**, requests authorization to construct a total of 483 linear feet of marsh toe sill with sand backfill and planted native wetland vegetation, construct a 6-foot wide by 107-foot long community pier with a 24-foot by 36-foot platform, install a 3-foot by 12-foot kayak ramp and 3-foot by 12-foot kayak access stairs along the Intercoastal Waterway at 200 Conservation Reach in Chesapeake. The project requires a wetlands permit.

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.

Ms. Peabody explained the project in detail and that the applicants will not be impacting the existing vegetated wetlands but will be protecting and enhancing the natural shoreline by constructing the marsh toe sill. In fact, the project will result in 2,792 square feet of wetland enhancement and creation. In addition the construction of the community pier and access ramp will not impact existing vegetated wetlands. No compensation is deemed necessary based on VMRC’s Wetlands Mitigation-Compensation Policy and Supplemental Guidelines. Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-Compensation Policy and Supplemental Guidelines, staff recommends approval of the project as proposed with the following conditions:

- 1. Goose fencing will be installed according to the identified specifications and maintained for two growing seasons unless approved to be removed by Commission staff;
- 2. Plant mortality will be addressed by replacing plants during the next available growing season;
- 3. Wetland planting will achieve an 85% coverage within two full growing seasons to be considered successful;

- 4. Sand fill will meet the following standard: Using the Unified Soil Classification System, sand will be SM (silty sands), SP or SW with a medium grain size of around 0.25 mm with no more than 20 percent passing through a #100 sieve (0.149mm) and no more than 10 percent passing through a #200 sieve (0.074mm);
- 5. All *Phragmites* within the permitted area will be removed and treated on a yearly basis for up to a total of five (5) years from the issuance of this permit.

The Commission was acting as the wetlands board.

David Klesik, representative for the Preserve on Elizabeth Owners Association was present and sworn in. His comments are a part of the verbatim record.

No one spoke in support or opposition to the project.

The matter was before the Commission for discussion and action.

**Associate Member Zydron made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes.**

Wetland Board Fee: (Paid)	\$ 300.00
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- 9. ANDREW A. KURFEES, Oyster Planting Ground Application #2018-060,** requests authorization to lease up to 204 acres within the Rappahannock River in Lancaster County. The application is protested a nearby property owner and an adjacent leaseholder.

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 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 lease application requests. 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 shellfish lease application requests.

The application area was surveyed by Bay Design Group and the original survey contained less area than the applicant requested. He requested Bay Design Group to modify the survey

to better reflect the area of his initial requests. A modification to the first survey was conducted and a plat submitted to VMRC containing 203.74 acres. The surveyed area does not contain submerged aquatic vegetation.

Staff evaluates such protested applications on a case by case basis. In this case, should the applicant decide to deploy cages upon the area if granted, placement of any such gear must comply with current VMRC regulations regarding navigation impacts. While much of the surveyed area is relatively shallow, the application appears to remain far enough offshore to alleviate any navigation impacts to highland properties. The lease is more than 200 feet offshore of the closest pier and several hundred feet offshore of other piers along a majority of the application area.

It would appear that any future riparian private pier requests will not need to extend to the inshore line of the surveyed area. The adjacent leaseholder has three leases that adjoin the surveyed area. Water depths of the surveyed area appear to be similar as those of the adjoining leases of the protestor and it does not appear that granting this lease application will adversely impact any such nearby existing leases.

Staff has reviewed the concerns expressed by the protestants and based on the area, as surveyed, does not believe leasing this area will create any significant navigation issues or adverse impact to the adjoining oyster ground leases. Therefore, staff recommends approval of the area of 203.74 acres.

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

No one spoke in support or opposition to the project.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to accept staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.**

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- 10. BRIAN RECHTENBAUGH, #17-1334**, requests after-the-fact authorization to retain fill within vegetated tidal wetlands and 150 linear feet of riprap revetment to aid in flood mitigation along a tributary to the Southern Branch Elizabeth River at 700 Seagrass Reach in the City of Chesapeake. The project requires a wetlands permit.

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.

Ms. Peabody explained that when reviewing after-the-fact applications, staff considers whether the project would likely have been favorably reviewed had the application been considered prior to construction. In this case staff would have worked with the homeowner to move the fill and revetment landward of the wetlands to reduce wetland impacts to the greatest extent possible. Had the homeowner applied for a permit prior to construction, they would have most likely been able to increase the elevation of the land and mitigate flooding around their home without affecting the vegetated wetlands.

While staff would not have supported the design of the project as it was built, we understand that removal of the fill and the revetment would be financially burdensome for the homeowner. Additionally it is reasonable to believe that the filled marsh was a lower value marsh because it was most likely dominated by the invasive species *Phragmites*, was partially shaded, and was often mowed by the homeowner.

After-the-fact approval of the project requires compensatory mitigation through payment to an approved tidal wetlands mitigation bank or the creation of new tidal wetlands on site. Staff has reviewed the survey techniques used by Marine Engineering LLC that resulted in the 1,250 square foot filled tidal wetland estimate and supports the use of these techniques and the resulting square footage.

If the applicant receives approval from the USACE for construction of the mitigation site within the forested wetlands, then staff recommends approval of the project with a minimum of 1,250 square feet of new wetlands to be constructed on site. However, if the applicant does not receive authorization for on-site mitigation, then staff recommends approval of the project with the purchase of 1,250 credits at an approved tidal mitigation bank. Finally, if the applicant does not conduct on-site mitigation or purchase credits at the tidal bank then staff recommends removal of the fill and restoration of the tidal wetlands to preexisting conditions. This would require the preparation of a restoration plan for the tidal wetlands and a future restoration hearing pursuant to §28.2-13017D of the Code of Virginia.

Staff additionally recommends that the Commission assess a civil charge of \$6,000.00 for the unauthorized fill of tidal wetlands based upon a finding of a moderate degree of non-compliance and a moderate degree of impact. If the applicant does not agree to pay the civil charge amount that the Commission decides to assess, or fails to pay it within 30 days of the date of this meeting, then staff recommends referral of this matter to the Office of the Attorney General to seek civil penalties pursuant to §28.2-1213 of the Code of Virginia.

The Commission was acting as the wetlands board.

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

After a detailed discussion between the Commission Members, the applicant and Ms. Peabody, it was recommended that a decision be made on this after-the-fact application at the October 30, 2018 Commission Meeting. This would also allow time for the applicant to decide which option for restoring the property or compensation that he would be willing to accept.

**Associate Member Everett made a motion to continue the final decision until the October 30, 2018 meeting. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes.**

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**11. PUBLIC COMMENT:** There were no public comments.

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**12. PUBLIC HEARING** Proposal to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish the fall 2018 commercial offshore (federal waters) summer flounder fishery management measures.

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

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

The goal for our offshore fishery is to harvest 60% of Virginia's allowable landings during the first period and 40% during the second period. For the 2018 fishing year, Virginia's total allowable landings are on track to meet this goal. The 2018 landing totals during period one (March 1 through April 30) are at 58% of our total yearly quota. Staff has reviewed the number of vessels that have landed in Virginia over the last five years and predicted the number of vessels that may be landing from October through December. Because of our current quota and the number of active vessels, staff is comfortable with the dates and landing limits that are currently in regulation.

Staff also needs to request a non-substantive date change in Section 30, Subsection C, D, and E. This change, page 2 of the regulation, will allow for the correction of three dates to coincide with the two open allowable landing periods.

Staff recommends amending Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer



Flounder," to establish fall 2018 commercial offshore (federal waters) summer flounder management measures.

**Associate Member Minor made a motion to move to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.**

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**13. PUBLIC HEARING:** Proposal to establish the emergency amendment as a permanent part of regulation to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," that sets an October 1, 2018 closure date for the commercial cobia fishery.

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

Mr. Geer explained that the Atlantic Migratory Group of cobia is presently managed by the South Atlantic Fishery Management Council (SAFMC) and the Atlantic States Marine Fisheries Commission (ASMFC), under an ACL system. The entire cobia stock in the waters from Georgia through New York has an ACL of 670,000 pounds, with 620,000 pounds being allocated to the recreational sector and 50,000 pounds being allocated to the commercial sector. Each sector also has its own set of accountability measures (AM).

For the commercial sector, the current set of AMs comes from the Coastal Migratory Pelagics fishery management plan's Amendment 18, which states that NMFS shall close the season early if the ACL is met. It also gives NMFS the authority to close the season early if it is projected that any component of the ACL (50,000 pounds for the commercial sector) will be exceeded. Early closures of the federal-waters commercial cobia season have occurred in 2014, 2016 (both in December), and 2017(in September).

While the majority of cobia landings, both recreationally and commercially, occur during the summer months, Virginia does typically have documented commercial harvest in the months of October, November, and December. While it is usually a negligible amount, cobia is considered a pulse fishery in Virginia due to the migratory nature of the species. Migratory fish often exhibit variability in when they arrive at a location and for how long they stay. For this reason, it is difficult to assume what commercial harvest could look like in the final months of 2018.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-510-10 et seq., "Pertaining to Amberjack and Cobia," to establish a closure of the commercial cobia fishery on October 1, 2018.

Associate Member Tankard made a motion to move to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.

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14. **RECOMMENDATION:** Recommendations from the Recreational Fishing Advisory Board on proposed project expenditures from the Virginia Saltwater Recreational Fishing Development Fund.

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

On September 10, 2018, the RFAB met to review and recommend projects for the 2018 funding cycle. The estimate of funds available for projects, as from the Virginia Saltwater Recreational Fishing Development Fund (VSRFDF) is \$762,509 which was the balance in the fund as of June 2018. The current balance of the fund as of August 2018 is \$1.2 million. The revenue collected from July 2018 through June 2019 will be used for agency FY2020 obligations beginning July 2019. The balance on hand as of June 2019 less agency FY2020 obligations is what will be available for RFAB projects in the next cycle.

The RFAB reviewed 14 projects and voted to recommend the Commission fund all of the fishing events and research projects but did not recommend funding the access project in York County because of very shallow water at the pier location. Recommended expenditures total \$616,454 from the VSRFDF.

2019 Fishing Events

- A. 2019 Knights of Columbus Annual Kids Fishing Day (Year 31). Greg Brown, **\$7,510. The RFAB unanimously recommended funding**
- B. 2019 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. Joseph Stephenson; George Reich, Great Bridge Fisherman's Association. **\$3,825. The RFAB unanimously recommended funding**
- C. 2019 Virginia Beach Anglers Club/Seton Youth Shelter Children's Fishing Trip. Robert Burstein, Virginia Beach Anglers Club. **\$2,500. The RFAB unanimously recommended funding**
- D. 2019 Children's Fishing Clinic. Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. **\$7,500. The RFAB unanimously recommended funding**

- E. 2019 Kiwanis Club Children's Fishing Clinic. Wesley Brown, Capital District Kiwanis Club. **\$7,500. The RFAB unanimously recommended funding**
- F. 2019 Saxis and Morley's Wharf Children's Fishing and Conservation Educational Outings. Steven Elliot, Eastern Shore of Virginia Anglers Club. **\$2,200. The RFAB unanimously recommended funding**
- G. 2019 Norfolk Youth Head Boat Fishing Trip. James "Ike" Eisenhower, Norfolk Anglers Club. **\$1,200. The RFAB unanimously recommended funding**
- H. 2019 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Anglers Club/Sunshine Program. **\$9,550. The RFAB unanimously recommended funding**

Access Projects

- I. Wormley Creek Waterfront Improvements – Phase 2. Bonnie Fitz, York County. **\$58,115.22. Unanimously, the RFAB did not recommend funding this project due to minimal water depth at the location.**

Research Projects

- J. Virginia Game Fish Tagging 2019. S. Musick (VIMS), L. Gillingham (VMRC). **\$82,487. The RFAB unanimously recommended funding**
- K. \*Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 16). M. Fabrizio, T. Tuckey, VIMS. \$26,960. **(\$13,480 from VSRFDF, and \$13,480 from MFIF). The RFAB unanimously recommended funding**
- L. \*Federal Assistance (Sportfish Restoration) Matching Funds, Federal FY 2019. R. O'Reilly, VMRC. **\$205,723 (\$176,334 from VSRFDF, and \$29,389 from MFIF). The RFAB unanimously recommended funding**
- M. Restoration of Submerged Aquatic Vegetation (SAV) Habitat in Chesapeake Bay and the Virginia Coastal Bays. R. Orth, VIMS. **\$102,368. The RFAB unanimously recommended funding**
- N. Artificial Reef Program Funding. E. Rhodes and C. Southall. **\$200,000. The RFAB unanimously recommended funding**

During this cycle's review of both the budget and projects, there were major concerns about the budget and long-term sustainability of the funding for ongoing projects from the license

fund. Last cycle, a kayak launch and other improvements were partially funded at Wormley Creek in York County. The proposed second phase project included of pier renovations at the site. Because the water depth is very shallow at the site, the RFAB felt that it was not a good use of funds at this time and did not recommend funding the project.

The chair and co-chair of the RFAB also proposed to add item N (Artificial Reef Program Funding) at the September 11, 2018 RFAB meeting. Because license funds were available at this time, the board members recommended allocating a portion to the reef program to be used for additional materials and a survey of angler use of the reef locations.

Funds are available in the commercial license fund (the Marine Fishing Improvement Fund or MFIF) at this time. Projects K (the young-of-year American eel survey) and L (the sportfish restoration match) were requested for split funding between the recreational and commercial license funds because these projects benefit both recreational and commercial fisheries.

Staff recommends funding projects A through H and projects J through N, for expenditures totaling \$616,454, from the recreational license fund (VSRFDF), and \$42,869 from the Marine Fishing Improvement Fund (MFIF).

**Associate Member Neill made a motion to move to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes.**

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**15. REQUEST FOR A PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-995-10 et seq., “Pertaining to Commercial Hook-and-Line,” to modify and clarify existing language.

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

Mr. Geer explained that there is some ambiguity regarding requirements necessary to transfer a commercial hook-and-line fishing license. Clarifying language will resolve this issue and conform the regulation with recommendations of the 2000 Commercial Hook-and-Line Task Force, as approved by the Commission (10/24/2000).

Chapter 4 VAC 20-995-10 was first approved in December 1997, to establish a viable commercial hook-and-line fishery in Virginia while minimizing the potential for overharvesting of Virginia’s fishery stocks and conflicts with the recreational fishery. It has been modified four times since: May 1999, to prohibit fishing at specific locations and times during recreational striped bass season; October 2000, to incorporate

recommendations from the Commercial Hook-and Line Task Force; March 2001, to establish additional requirements for persons participating in the random drawing for a license; and, December 2010, to define a “year”, as a calendar year and to clarify participation and entry requirements.

Several inquiries have been addressed by staff in recent months concerning eligibility requirements for the license and transfers. Section 20, subsection F 2 (page 2 of regulation) pertains to license transfer eligibility. The intent of the Commercial Hook-and-Line Task Force (September 19, 2000) was to have **BOTH** the transferee **AND** the transferor be required to have reported sales of at least 1,000 pounds of seafood harvest during the course of the previous two years. This is inferred by the present regulation but not specified. The proposed change will require the transferor to also meet this 1,000 pound harvest requirement. This was first suggested by the Task Force to insure the intent of the license would indeed be available only for commercial waterman, and not allow charter captains or recreational anglers to obtain a commercial hook-and-line license to circumvent daily recreational catch limits. Unfortunately, eligibility requirements in Section 20, subsection A 1 (page 1 of regulation) creates some confusion by requiring a fisherman to possess a 1996 hook-and-line license or a like license in 1997 purchased prior to August 26, 1997. Modifying this section by removing the years 1996 and 1997 and instead state “to possess a commercial hook-and-line license in the previous year” will modernize the subsection relative to maintaining eligibility and eliminate transfer conflicts. The final modification is to amend Section 30, subsection A 2 (page 3 of regulation) to further clarify requirements of crew lists.

Staff recommends the Commission approve advertising amendments to Chapter 4 VAC 20-995-10 et seq., for the October 2018 public hearing to: 1) clarify transfer requirements as approved by the Commission in October 2000; 2) modernize language regarding maintaining eligibility; and, 3) provide clarifying language for crew list requirements.

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

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- 16. REQUEST FOR A PUBLIC HEARING:** Request to amend Chapter 4 VAC 20-910-10 et seq., “Pertaining to Scup (Porgy),” to increase the trip limit from 18,000 pounds to 28,500 pounds for the commercial Winter II period fishery of October 1 through December 31.

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

Staff recommends advertising for a October public hearing to amend Chapter 4 VAC 20-910-10 et seq., "Pertaining to Scup (Porgy)," to increase the trip limit from 18,000 pounds

to 28,500 pounds for the commercial Winter II period fishery of October 1 through December 31.

**Associate Member Neill made a motion to move to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes.**

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There being no further business, the meeting was adjourned at approximately 3:15 p.m. The next Commission meeting will be Tuesday, October 30, 2018.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary