

## MINUTES

## COMMISSION MEETING

December 11, 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
Wayne France	
Chad Ballard	
John Tankard III	
John Zydron Sr.	
Christina Everett	Associate Members
Heather Lusk	
James E. Minor III	
Ken Neill, III	
Jamie Hogge	Recording Secretary
Ellen Bolen	Deputy Commissioner
Dave Lego	Bs. Systems Specialist
Linda Hancock	Dir., Human Resources
Pat Geer	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Alicia Nelson	Coordinator, RFAB/CFAB
Jill Ramsey	Fisheries Mgmt. Specialist
Alexa Kretsch	Fisheries Mgmt. Specialist
Alex Aspinwall	Fisheries Mgmt. Specialist
Adam Kenyon	Fisheries Program Manager
Chris Davis	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Nancy McElligott	Fisheries Mgmt. Specialist
Sara Blachman	Fisheries Mgmt. Specialist
Anna-Mai Christmas	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Vernon Rowe	Conservation & Replenishment
Vas Dunston	Conservation & Replenishment

**Commission Meeting**

**18200  
December 11, 2018**

Rick Lauderman	Chief, Law Enforcement
Kyle Jones	Marine Police Officer
Jim Vollmer	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.
Allison Norris	Environmental Engineer, Sr.
Wallace Cooper	Environmental Engineer, Sr.
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

Others present:

Juan Davila	Oala Shehab	Jim Cahoon
Nathan Potter	Bob Belcher	Katherine Stitay
Charles Morrison Sr.	Randy Darron	Larry Dame
Kris Knepper	Freddie Fletcher	Kim Huskey
Mylas Pecta	Warren Deal	Jim Lang
and others.		

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Commissioner Bowman called the meeting to order at approximately 9:34 a.m. Kelci Block, Assistant Attorney General, 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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Rick Lauderman, Chief, Law Enforcement, gave special recognition to Vernon Rowe and Vas Dunston. Their quick, lifesaving actions saved a man’s life this summer while on shift after the man was involved in a boat accident. Chief Lauderman presented Rowe and Dunston each with a plaque.

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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes from the Board members or staff.

**Associate Member Zydron moved to approve the agenda as presented. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present.**

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the October 30, 2018 Commission meeting minutes.

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

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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 4 page 2 items A, B, C and D 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 item as presented. Associate member France seconded the motion. The motion carried 8-0. Chair voted yes. Associate Member Minor was not present.**

**2A. NEW KENT COUNTY, #16-0763**, requests authorization to install an 8 MGD raw water intake, with one-millimeter screen slots and a maximum through-slot velocity of 0.25 feet per second (fps), in the Pamunkey River near Old Church Road (SR 606) on the Northbury Farm in New Kent County. The project includes a jurisdictional submerged waterline beneath approximately eight (8) linear feet of Black Creek and is intended to provide a reliable public water supply for New Kent County and satisfy projected water demands for the next 50 years. Staff recommends approval with the following special conditions:

1. Permittee agrees to a time-of-year restriction on all instream construction work from February 15 through June 30 to protect anadromous fish species and August 1 through November 15 to protect the Federally endangered Atlantic sturgeon, unless waived in writing based on the concurrence of the Department of Game and Inland Fisheries and the Virginia Institute of Marine Science;
2. Permittee agrees to provide \$75,000.00 in funding for an alewife and blueback herring hatchery propagation and age validation study received July 6, 2018. Captured returns of adult herring will be evaluated for oxytetracycline marked otoliths for age validation of Virginia river herring stocks and evaluation of hatchery propagation as a conservation tool for river herring in Virginia. Annual reports shall be provided to VMRC and the Atlantic States Marine Fisheries Commission, for a five-year period, following study initiation. Data from the age validation study and any resultant otoliths shall be provided to and retained by the Marine Resources Commission for use as a training set to aid Atlantic Coast States fisheries managers with age validation and management of river herring stocks.

Fees:	\$ 100.00
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**2B. APPALACHIAN POWER COMPANY, #18-1305**, requests authorization to construct 21 individual aerial crossings of sections of the McClure River and its tributaries, totaling 2,043 feet. The utility intends to install a new non-electric, telecom cable, installed below the existing electrical conductors and attached to existing distribution poles, in Russell and Dickenson Counties. Staff recommends a royalty of \$6,129.00 for the encroachment over 2,043 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalties: (Encroachment of 2,043 lf. @ 3.00 lf.)	\$ 6,129.00
Fee:	\$ 100.00
<b>Total Fees:</b>	<b>\$ 6,229.00</b>

**2C. TOWN OF CAPE CHARLES, #18-1520**, requests authorization to install a 735-foot long offshore stone breakwater north of three (3) existing breakwaters and a 425-foot long offshore stone breakwater south of the three (3) existing breakwaters. The project is situated in the Chesapeake Bay, approximately 2,500 feet west of Cape Charles Harbor in the Town of Cape Charles. This is a renewal of the previously issued permit for the five (5) breakwaters. All previous conditions shall apply.

Fees:	\$ 100.00
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**2D. WAGMAN HEAVY CIVIL, INC., #18-0669**, requests a modification to their previously issued permit to allow for the installation of an additional 2,500 square feet of temporary stone causeway to facilitate construction of the I-95 Southbound Collector Distributor Lanes Project across the Rappahannock River in Spotsylvania and Stafford Counties. Recommend approval with all previous permit conditions to remain in effect, including complete removal of the temporary causeway upon project completion.

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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.

The applicant was no present.

There were no public comments.

**Associate Member Tankard made a motion to move to approve the after the fact application as presented. Associate member Ballard seconded the motion. The motion carried 8-0. Chair voted yes. Associate Member Minor was not present.**

**3A. BARRY SPENCE, #18-1263**, requests authorization to retain 100 linear feet of oyster shell bag marsh sill and to install 186 linear feet of quarry stone riprap sill channelward of the shell bag sill, extending a maximum of six (6) feet channelward of mean low water along the shoreline of property on Sturgeon Creek at 115 Sturgeon Point Loop in Middlesex County. The applicant has agreed to pay a civil charge of \$1,000.00 in lieu of further enforcement action for the portion of the shell bag sill previously installed without prior authorization over State-owned submerged bottom in the creek. Recommend triple permits fees of \$300.00.

Civil penalty: (After the fact marsh sill)	\$ 1,000.00
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Triple Permit Fee:	\$ 300.00
Total Fees:	\$ 1,300.00

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

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- 5. **HELEN KIDWELL, #18-0623**, requests authorization to remove a failing bulkhead and to install 75 linear feet of Class 3 riprap on a section of beach along Hampton Roads, at 1562 Chela Avenue 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 advised that the Commission was acting as the Dunes Board.

Ms. Peabody explained that the Kidwell property includes a multifamily building, along Hampton Roads, on the north side of the Hampton Roads Bridge Tunnel, in Norfolk. The current shoreline is currently protected by a riprap revetment to the north but the bulkhead to the south has deteriorated. Following the construction of the large revetment at the terminus of Willoughby Spit, the Kidwell property has lost a considerable amount of beach landward of her building and has not seen natural sand accumulation to make up for the loss. Ms. Kidwell has requested to remove the bulkhead on the beach and install a riprap revetment landward around the building to prevent the loss of sand from underneath the structure, and ensure the building remains stabilized.

The alteration of the beach at this site within private property requires a permit from VMRC because the City of Norfolk has chosen to no longer administer the Coastal Primary Sand Dunes and Beaches Zoning Ordinance. The project includes impacts to non-vegetated wetland along the shoreline in addition to the beach area, and the Norfolk Wetlands Board has approved those portions of the project within their jurisdiction.

Although the project will result in 300 square feet of impacts to a beach, the applicant has minimized the impacts to the most practical extent. The homeowner is experiencing sediment loss beneath her building and has proposed a project that allows stabilization of the building while maintaining most of the existing beach. Any construction access area will be regraded to preexisting elevations.

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 Sand Dunes/Beaches Guidelines, staff recommends approval of the project as proposed.

Nathan Potter, contractor for the applicant, was present but did not speak.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present.**

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- 6. VIRGINIA ELECTRIC AND POWER COMPANY, #18-1438**, requests authorization to construct 365 linear feet of riprap revetment that includes an oil collection system, and install a temporary cofferdam at the Dominion Chesapeake Energy Center situated along the Southern Branch Elizabeth River at 2701 VEPCO Street in the City of Chesapeake. This project requires a wetlands and subaqueous 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 applicant is proposing to install 365 linear feet of rip rap revetment as the 4<sup>th</sup> and 5<sup>th</sup> phase of shoreline stabilization work along the Chesapeake Energy Center, in Chesapeake. The proposed design will encroach an average of 25 feet channelward of mean low water, into State-owned submerged lands of the Southern Branch Elizabeth River. The design includes a petroleum collection and cap system (LNAPL Trapping-Cap Design) to be constructed within the revetment. This system consists of three layers of differing sediment types designed to accumulate and contain oil or other light non-aqueous phase liquids (LNAPL) as they permeate through ground soil or submerged lands. Accumulated contaminants will be removed through a collection sump within the system. The LNAPL Trapping Cap has been proposed to permanently treat pockets of observed oil sheens within the surface water along this portion of the shoreline. The source of the contaminant is unknown and has been difficult to find in previous exploratory efforts. This project is designed to permanently cap and remove any LNAPL within this shoreline.

The proposed revetment will impact approximately 17,691 square feet (0.41 acres) of vegetated wetlands and 8,544 square feet (0.20 acres) of submerged lands. A VMRC wetlands permit is required for work within tidal wetlands because the City of Chesapeake

has chosen to no longer administer the Wetlands Zoning Ordinance. A VMRC subaqueous permit is required for all work channelward of mean low water.

The applicant evaluated many design options with the intent to minimize impacts to wetlands while providing shoreline stabilization and contamination clean-up. However, due to the steep elevation of the shoreline, the ideal slope of the revetment and oil collection system, and the capped coal ash landward of the shoreline, the final design was not able to avoid impacts to tidal wetlands and submerged lands. The applicant has provided documentation of the availability of 17,691 square feet of tidal wetland credits at the New Mill Creek Tidal Mitigation Bank, in Chesapeake to offset the loss of vegetated wetlands in this project.

The channelward encroachment of the revetment will require a temporary cofferdam to construct the channelward portion of the project “in the dry.” The proposed temporary cofferdam serves to dewater the work area and maintain dry conditions in 100 foot sections.

The impacts to vegetated wetlands in this project are larger than generally accepted for shoreline projects. However, the applicant has reviewed several options to achieve contamination clean-up and shoreline stabilization and found this design to have the least cumulative environmental impacts. Excavating uplands within this project is not recommended due to the nature of the site.

Staff does feel, however, that the larger than usual encroachment into submerged lands warrants a royalty assessment of \$5.00 per square foot, as recommended in the Commission’s rent and royalty schedule. Compensation for loss of vegetated wetlands is also deemed necessary. The applicant’s proposal to purchase 17,691 square feet of tidal wetlands mitigation is consistent with 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) and §28.2-1205 in the Code of Virginia, staff recommends approval of the project with the below condition and the assessment of \$42,720.00 for the fill of 8,544 square feet of submerged lands at \$5.00 per square foot.

1. The applicant will provide verification of the purchase of 17,691 square feet of tidal credits to offset impacts to vegetated wetlands.

There were three (3) Virginia Power representatives present. All three representatives were sworn in and explained the proposed project. Their comments are a part of the verbatim record. The applicant accepted the fees that were presented.

There was no one that spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.



Associate Member Zydron made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present.

Royalties: (Fill of 8,544 SF @ \$5.00 per SF)	\$ 42,720.00
Permit Fee:	\$ 100.00
Total Fees:	\$ 42,820.00

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- 7. **THE RETREAT AT HARBOR POINTE, LP, #18-0798**, requests authorization to install those portions of a 5-foot wide by 1,441-foot long open-pile marginal walkway near the mean low waterline that extends over submerged land and 112 total linear feet of concrete oyster castles along the Eastern Branch Elizabeth River, at 350 Campostella Road in the City of Norfolk. The project is protested by adjacent property owners.

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 project takes place on an undeveloped property directly east of the Campostella Bridge on the Eastern Branch Elizabeth River, in Norfolk. The property has been approved by the City of Norfolk to be developed as a waterfront apartment complex to be constructed and managed by the applicant. As a condition of the City’s approval, City Council required the applicant to construct a walkway that allows the public to access and view the Elizabeth River. As a result, the developer has designed 1,441 linear feet of open-pile public walkway, to run parallel with the shoreline, to meet the City’s requirements. The walkway has been designed to follow the mean low water line and encroaches over approximately 7,205 square feet of State-owned submerged lands. The applicant also proposes to place 112 linear feet of concrete oyster castles below the walkway to enhance oyster populations.

The upland portions of the project site is contaminated with lead and has the Department of Environmental Quality’s (DEQ) approval to be capped and treated during development to prevent future contamination of the waterway. The extensive shoreline work included in the project, 1,115 linear feet of riprap revetment, has been reviewed and approved by the City of Norfolk’s wetlands board.

The majority of the proposed walkway is proposed over State-owned submerged lands and is substantially larger than a generally accepted community pier. The applicant considered several other options to avoid the use of submerged lands including construction over the

riprap shoreline or directly behind the riprap revetment. Construction over the shoreline was not possible because existing rubble and debris would need to be removed for pile driving causing an increase in contaminants. Additionally, the applicant was unable to construct the walkway between the apartments and the shoreline because of the extensive buffer landscape plan required and approved through the Chesapeake Bay Protection Act process (CBPA).

VMRC staff has had extensive conversations with the City and the developer to develop a plan that ensures that the walkway conforms to the public trust doctrine and provides access to the waterway for public use. As a result, the applicant and the City have signed an Agreement for Public Access that grants to the City, a perpetual non-exclusive public access easement and right-of-way for the purpose of access for pedestrians and bicycle riders. In addition, they have developed a 15-year maintenance agreement that spells out the maintenance responsibility of each partner. Following 15 years from construction the agreement allows the developer to dismantle the pier or develop a new maintenance agreement with the City.

The only portion of this project that falls within VMRC jurisdiction is the proposed public walkway and oyster castles. The environmental impacts of the walkway are minimal and most likely consist of shading and localized temporary turbidity during pile driving. The oyster castles are intended to add an ecological lift to the shoreline to promote oyster growth.

The Commission generally does not look favorably on large marginal walkways such as these if they are intended for private use. The extensive encroachment of these structures is not consistent with the public trust doctrine. However, the applicant and the City have worked with VMRC staff to guarantee that the walkway will be built and maintained for the use of the public to enjoy the waterway, in perpetuity. In addition, the walkway was recommended by the Norfolk City Council to conform to their goals of increasing public access to the water within the Elizabeth River system.

Accordingly, after an evaluation of the merits of the project against the concerns expressed by the protestant and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the permit required for this project with the following permit conditions to ensure the pier will be maintained and managed for public use:

1. The applicant agrees to maintain and manage the proposed marginal walkway for the use and benefit of the public;
2. At 15 years from the issuance of this permit the applicant will notify the Commission of their intent to retain the marginal walkway, dismantle the pier, or transfer its ownership to the City of Norfolk;
3. The applicant must notify the Commission of any transfer of ownership of the marginal walkway.

At that time, the Commission may reevaluate the conditions within this permit, revoke this permit, or reissue a new permit.

Lastly, staff recommends a one-time royalty assessment in the amount of \$2,161.50 for the encroachment of the public walkway over 7,205 square feet of State-owned submerged lands at a rate of \$0.30 per square foot.

There were three (3) agents present from Lawson Corporation that were sworn in. The agents explained the project in detail. Their comments are a part of the verbatim record.

There was one person that spoke in opposition of the project. He was sworn in and his comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to accept staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present.**

Royalties: (Encroachment of 7,205 SF @ \$0.30 per SF)	\$ 2,161.50
Permit Fee:	\$ 100.00
Total Fees:	\$ 2,261.50

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**8. GARY W. HOWARD, Oyster Planting Ground Application #2016-268,** requests authorization to lease 6.64 acres of Oyster Planting Ground in Simoneaston Bay, Accomack County. The project is protested by local watermen.

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 Simoneaston Bay is a small 243 acre seaside bay with five oyster ground leases totaling 85 acres and Public Ground #15 that has 82.7 acres. The proposed lease area is located on the southeast side of the Bay, approximately one mile southeast of the Wallops Flight Facility (NASA) and four miles west of the Town of Chincoteague. The application is adjacent to State-owned marsh.

The area is mostly a mud mix was a small amount of oysters within the survey. Most of the oysters in the bay are either along the marsh edges, within Public Ground #15 or on existing

oyster leases. The controlling depth is less than one foot at mean low water (MLW). There is no submerged aquatic vegetation in the area.

Mr. Howard owns Gary Howard Seafood on Chincoteague Island and has 11 oyster ground leases totaling 119.39 acres. All of his leases are in the Chincoteague area. The applicant intends to use the lease to grow oysters on the bottom, cultivate existing shell resources, plant spat or seed oysters and/or place structures on the bottom for oyster production. The structures will not exceed 12-inches above the substrate.

In response to our public interest review, there was one verbal protest received in our Belle Haven office on May 4, 2017. The protestant stated that the application was near Public Ground and that he works the area.

On October 31, 2018, a survey was made by VMRC surveyors for 6.64 acres. Mr. Andrew Button, VMRC's Conservation and Replenishment, Department Head was with the surveyors and confirmed that the surveyed area had a very limited amount of oysters and that most of the oysters were outside of the survey near the marsh in the intertidal zone.

Since the survey does not include the area adjacent to the vegetated marsh, where there is an oyster resource, which was confirmed by our Conservation and Replenishment Department, staff recommends approval of Mr. Howard's application for 6.64 acres as surveyed.

No one was present in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member France made a motion to approve staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present.**

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- 9. KATHERINE NOEL STITELY and CHARLES N. MORRISON, SR., Oyster Planting Ground Application #2017-019**, request authorization to lease 8.83 acres of Oyster Planting Ground in Simoneaston Bay, Accomack County. The project is protested by local watermen.

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 Simoneaston Bay is a small 243 acre seaside bay with five oyster ground leases totaling 85 acres and Public Ground #15 that has 82.7 acres. The proposed

lease area is located on the northeast side of the Bay, approximately one mile southeast of the Wallops Flight Facility (NASA) and four miles west of the Town of Chincoteague. The application is adjacent to State-owned marsh.

The area is mostly a mud mix with a small amount of oysters within the survey. Most of the oysters in the bay are either along the marsh edges, within Public Ground #15 or on existing oyster leases. The controlling depth is less than one foot at mean low water (MLW). There is no submerged aquatic vegetation in the area.

The applicants have one oyster ground lease in Queens Sound for 1.84 acres. They intend to use the lease to grow oysters on the bottom, cultivate existing shell resources, plant spat or seed oysters and/or place structures on the bottom for shellfish production. The structures will not exceed 12-inches above the substrate.

In response to our public interest review, a protest petition with seven signatures stating opposition to the application due to its close proximity to public grounds that have been worked for the past 50 years by local watermen. We also received a verbal protest from Mr. Raymond D. Savage. Mr. Savage stated that the application is near Public Ground and that he works the area.

On October 26, 2018, a survey was made by VMRC surveyors for 8.83 acres. Mr. Andrew Button, VMRC's Conservation and Replenishment, Department Head was on site with the surveyors and confirmed that the surveyed area had a very limited amount of oysters and that most of the oysters were outside of the survey, near the marsh in the intertidal zone; in Public Ground #15 or in VMRC shell plants that are just outside of Public Ground #15. Mr. Button also stated that some of the public rocks inside Public Ground #15 are within approximately 25 feet of the applicants' survey.

Therefore, since the survey does not include the area of unassigned vacant bottom that the public has been working on the area adjacent to the vegetated marsh where there is an oyster resource, which was confirmed by our Conservation and Replenishment Department, staff recommends approval of the applicant's application for 8.83 acres as surveyed.

Katherine Stitely, applicant, was present and sworn in. Ms. Stitely's comments are a part of the verbatim record.

No one was present in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member Zydron made a motion to approve staff recommendation as presented. Associate Member Tankard seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Minor was not present.**

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

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11. **PUBLIC HEARING:** Proposal to permanently adopt emergency amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to adjust the opening dates of Rappahannock Area 3 from January 1, 2019 through February 28, 2019 to November 12, 2018 through January 10, 2019, and to lower the bushel limit in the patent tong areas from ten bushels to eight bushels per licensed harvester.

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 that the rotational area of the Rappahannock River that was open to harvest on October 1, 2018 (Area 5) has not yielded the harvest that was anticipated by many Virginia public oyster harvesters and buyers.

The lower than anticipated harvest coming from Area 5 of the Rappahannock resulted in the majority of the hand scrape fishery leaving the Rappahannock for the James River.

The Shellfish Management Advisory Committee (SMAC) convened on October 18th 2018 to discuss possible adjustments to the 2018-2019 Public Oyster Harvest Season. The recommendation from SMAC was to condense the oyster season in the Rappahannock hand scrape areas. The SMAC recommendation was to change the Area 3 opening dates from January 1st, 2018 through February 28th, 2019 to November 12th, 2018 through January 12th, 2019. The Commission adopted this recommendation as an emergency amendment to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," at the October Commission meeting.

These changes to the public oyster harvest season, as well as the scheduled opening of additional harvest areas have spread the effort that had been focused in a single area of the James River. However, the majority of harvester in the hand scrape areas in the James have been catching their eight-bushel limit relatively early. This has resulted in many of the boats that left the Rappahannock in October staying in the James.

In addition to the adjustment to the area openings in the Rappahannock, The Commission reduced the patent tong bushels limits in the Deep Rock area from ten bushels per licensed harvester to eight. When the 2018-2019 public oyster season was first established the bushel limit was increased in patent tong areas for the first time in recent years. This was done in part to encourage some harvesters to exclusively utilize this gear type as a means

of alleviating some of the fishing pressure in the hand scrape areas.

Staff has concerns that the changes to the season in the Rappahannock, in combination with less than expected productivity in some hand scrape areas, may result in more effort than initially anticipated shifting to this gear type and area.

Staff has received one written public comment and two phone calls from individuals who are opposed to this change. Staff has also spoken with current participants in the patent tong fishery who are in favor of the bushel reduction as a conservation measure.

In addition to the market oyster harvest, seed oyster harvest has continued at its recently elevated pace. The fall quota (October 1 through December 31) of 40,000 bushels of seed has been reached and the harvest of seed oysters will be prohibited until January 1, 2019. At this point seed areas will reopen to the harvest of seed until either the total 120,000 bushel quota has been reached or May 31, 2019 when the season is set to close.

The hand scrape areas in the James River have received consistent replenishment inputs in recent years and preliminary results from the fall survey, as well as many anecdotal reports from harvesters; indicate a very high spat set in many of the harvest areas. The impact that the current level of harvest effort will have on the oyster resource is difficult to predict exactly until a post-harvest survey is conducted. However, previous post-harvest surveys in the James and other areas have shown that all size classes (market, small, and spat), and the substrate that is needed for an area to remain productive decrease significantly as a result of harvest by hand scrape and dredge.

Based on VIMS shell string monitoring, as well as initial fall survey results, many harvest areas (outside of the lower James) have had lower than normal spat sets and some increased mortality. This is most likely a result of the record rainfall experienced in much of the watershed. All of the data from the fall survey has not yet been analyzed, but it does appear that impacts from the increases in rainfall and associated decrease in salinity have had a wide spread impact. This may result in the continued shift in harvest effort to “better areas” and will need to be carefully considered when developing future public oyster harvest season and management measures.

The Commission can choose to adopt additional conservation measures to protect the oyster resource and the future productivity of public oyster grounds now and will likely need to do so when establishing future public oyster seasons. However, at this time staff does not have a recommendation beyond what is proposed in the current amendments to Chapter 4 VAC 20-720-10 et seq.

Staff recommends the Commission permanently adopt emergency amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to adjust the opening dates of Rappahannock Area 3 from January 1, 2019 through February 28, 2019 to November 12, 2018 through January 10, 2019, and to lower the bushel limit in the patent

tong areas from ten bushels to eight bushels per licensed harvester.

There were no public comments.

The matter was before the Commission for discussion and action.

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

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- 12. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1180-10 et seq., “Pertaining to Fishing Guides,” to establish the exact number of Class A fishing guide licenses available for purchase from the Commission each year.

Sara Blachman, Fisheries Mgmt. Specialist, presented the information provided in the staff’s evaluation with a PowerPoint presentation for the Board members. Ms. Blachman’s comments are a part of the verbatim record.

Ms Blachman explained that the Commission established two categories of fishing guide licenses in 2009: a limited-sale Class A license that enables Virginia licensees to obtain reciprocity in Maryland waters and a Class B license that is open access, but that does not confer reciprocity to Virginia license holders. This arrangement arose from a compromise between the Maryland Department of Natural Resources, that was unwilling to grant Virginia fishing guides reciprocity unless the number of licensees were limited, and the Virginia Charter Boat Association, that was concerned with the consequences of limiting the growth of its industry.

Section 40 of 4 VAC 20-1180-10 et seq. defines the number of Class A fishing guide licenses available for purchase each year as not exceeding the number of persons who met one of the three following qualifications:

1. “purchased, as the licensee, a 2008 Virginia charter boat or head boat license before June 25, 2008”
2. “purchased, as the licensee, Virginia charter boat or head boat licenses in 2006 and 2007”
3. “or can document that he has served as captain of a vessel for at least 30 days from January 1, 2006, through June 24, 2008, operating in Virginia waters that was licensed as a Virginia charter boat or head boat and provides a certificate of insurance listing him as the captain of a Virginia charter boat or head boat or federal tax form W-2 or 1099, listing his income as the captain of a Virginia charter boat or head boat during the period January 1, 2006, through June 24, 2008. An additional form of documentation of the 30-day service as captain may include evidence that the applicant was enrolled during the qualifying



period in a U. S. Coast Guard required random drug testing program for the business owning the qualifying vessel.”

There is no indication in our records that anyone provided the agency with the documentation necessary to have met the third qualification. According to the data currently in our Commercial Fishing License System (CFLS), 241 individuals purchased a 2008 Virginia charter boat or head boat license before June 25, 2008, thereby meeting the first qualification. That data also indicates that 201 individuals met the second qualification of having purchased charter boat or head both licenses in both 2006 and 2007. After combining the lists of prior licensees who met the aforementioned criteria and removing duplicates, there were 240 Virginia residents and 38 non-residents who had met the first and/or second qualifications. These figures match the tabulations of previous staff. However, the number of Class A resident and non-resident guide licenses available for purchase were originally capped at 218 and 28, respectively, following their creation in 2009. There is no documentation concerning how those figures were determined; although, they match the number of resident and nonresident Class A licenses sold that first year. Because there has not been overlap between former and present staff members serving as the point of contact for the charter industry, there has not been an opportunity to discuss the discrepancy or to reach a consensus.

Staff thinks that making the maximum numbers of Class A guide licenses available for purchase (240 for residents and 38 for non-residents) explicit in regulatory language would make the licensing process more transparent and ensure a consistent number of Class A guide licenses are available for sale each year. Furthermore, this amendment would not result in a substantive change in the number of Class A guide licenses sold annually or the process to obtain that license.

Staff recommends the Commission amend Chapter 4 VAC 20-1180-10 et seq., “Pertaining to Fishing Guides,” to establish the exact number of Class A fishing guide licenses (240 for residents and 38 for non-residents) available for purchase from the VMRC each year.

There were no public comments.

The matter was before the Commission for discussion and action.

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

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- 13. REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass," to improve the characterization of directed and bycatch fishery permits for the black sea bass fishery.

Pat Geer, Deputy Chief, Fisheries Mgmt., presented the information provided in the staff's evaluation. Mr. Geer's comments are a part of the verbatim record.

Mr. Geer explained that staff received concerns from two Virginia commercial black sea bass directed fishery permittees, relative to the requirements to maintain that permit. Both individuals stated that the regulatory requirements described by 1.), below, applied to all aspects of this ITQ (Individual Transferable quota) fishery. Staff contends that the requirements described as 1.), below, were intended to apply to the initial development, in 2003, of this limited-access, ITQ fishery.

Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," established the initial permitting requirement for individuals to gain a commercial black sea bass directed fishery permit, as follows:

1. That person should hold either a commercial fisherman registration license or a seafood landing license in addition to a federal black sea bass moratorium permit; and,
2. That person shall have landed and sold in Virginia at least 10,000 pounds of black sea bass from July 1, 1997 through December 31, 2001.

The two individuals who contacted staff indicated there was one individual who no longer met the above eligibility requirements because that individual no longer had the federal black sea bass moratorium permit.

Staff recognizes that it is unlawful for any commercial black sea bass directed fishery permittee who relinquishes his federal black sea bass moratorium permit to harvest black sea bass from federal waters, and federal waters contribute nearly all of the Virginia commercial landings of black sea bass.

However, since 2003, this commercial black sea bass fishery has been a limited-entry, ITQ (individual transferable quota) fishery. With the striped bass ITQ fishery (since 1998), permitted ITQ fishermen are able to harvest their quota or simply transfer quota to other eligible fishermen, on either a temporary or permanent basis, without actively fishing for striped bass.

Staff contends that once an individual met the eligibility requirements listed above, in 2003, that person remains a commercial black sea bass directed fishery permittee, unless that person relinquishes the entirety of his individual fishery quota shares of black sea bass.

The current regulation allows transfer of shares of the directed fishery from a permitted directed fishery permittee to another person. The current regulation allows transfers of all or a portion of a permitted commercial black sea bass directed permittee.

In order to better describe the intent of the regulation that originally established the VMRC commercial black sea bass directed fishery permit in 2003, and its associated ITQ system, staff is recommending the following amendments to the regulation:

**4VAC20-950-46. Directed fishery and bycatch fishery permits.**

A. It shall be unlawful for any person to participate in the commercial black sea bass fishery or to possess, harvest, or sell black sea bass, except as described in 4VAC20-950-60 and 4VAC20-950-70, without first qualifying for and obtaining either a directed fishery permit or a bycatch fishery permit from the commission, as described, respectively, in subsections B and C of this section, unless that person meets the requirements described in 4VAC20-950-48.2.

~~B. A person shall be considered eligible for a directed commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:~~

B. Any person who qualified for a directed commercial black sea bass fishery permit, as of January 1, 2003, by satisfying all the eligibility criteria listed below, shall remain eligible for that permit, unless that person permanently transferred all of his shares of the directed fishery quota.

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License in addition to a federal Black Sea Bass Moratorium Permit; and
2. That person shall have landed and sold in Virginia at least 10,000 pounds of black sea bass from July 1, 1997, through December 31, 2001.

This amendment will satisfy the intent of an ITQ system. At this time, 37 individuals qualified for the directed fishery ITQ at the start of 2003. Staff suggests that an ITQ system, whether the one established by the Commission for the limited-access commercial striped bass or black sea bass fishery does provide an ability for individuals to fish for that species or transfer some or all of their shares. Seven individuals are only able to transfer their shares

of quota on a temporary or permanent basis. Thirty directed fishery permittees can either fish for and land black sea bass from federal waters or transfer shares of their quota.

Staff recommends the Commission approve advertising this the amendment to Chapter 4 VAC 20-950-10 et seq., for a January 2019 public hearing.

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

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- 14. REQUEST FOR PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to consider the establishment of a February 2019 recreational black sea bass fishery and to modify the recreational black sea bass permitting requirements.

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

Mr. Aspinwall explained that the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fisheries Management Council approved a motion in 2018 to open a recreational fishing season in Federal waters for February 2018. Virginia and North Carolina opted into the 2018 recreational black sea bass fishery. As part of the monitoring requirements of the motion, Virginia agreed to quantify participation, effort, and landings. In 2018, a total of 414 recreational black sea bass permits were issued to recreational anglers. There was a total of 64 trips reported by 39 individual vessels. A total of 2,715 fish were harvested during the February fishery which is approximately 4.5% of Virginia's total black sea bass harvest in 2018. The Virginia Marine Resources Commission sampled 312 black sea bass for biological data. The Mid-Atlantic Fisheries Management Council estimated that 6,000 pounds of black sea bass were harvested by Virginia in February 2018. Unlike this year, there was a regional (Delaware through North Carolina) allocation of 301,000 pounds, and that amount 'covered' the February harvest. The Finfish Management Advisory Committee will meet the second week in January to provide a recommendation to the Commission on this issue.

Staff requests the Commission approval of an advertisement to establish a February 2019 recreational black sea bass fishery and to modify the recreational black sea bass permitting requirements in Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass".

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

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**15. DISCUSSION:** Presentation on results from the 2018 experimental shrimp fishery.

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

Mr. Geer explained that Penaeid shrimp are not uncommon to Chesapeake Bay, and in some years, are quite abundant. Three species are typically found in Virginia's waters, white shrimp (*Litopenaeus setiferus*) is the most common, followed by brown (*Farfantepenaeus aztecus*) with Northern pink shrimp (*Farfantepenaeus duorarum*) typically rare. It is believed the shrimp in the Bay originate from the North Carolina coastal spawning grounds with larval recruitment via wind and currents. White shrimp spawn in coastal waters between April and June with 11 larval stages occurring over a two week period before postlarva are recruited to tidal creeks of the estuary. Growth is rapid at 1.5 to 3 mm per day with favorable environmental conditions (warmer waters) increasing survival to maturity in six to eight months.

The VIMS trawls surveys have been recording shrimp catches since 1991, with both their juvenile trawl survey and NEAMAP indicating increases in catch in recent years. Fall white shrimp estimates from NEAMAP have increased 8 fold over the past four years (2015-2018) compared to first eight years of the survey (2007-2014). The Juvenile Trawl Survey has a longer time series (since 1991) with periodic peaks in abundance. However, those peaks appear to be getting larger with the last six years at or above the long term average.

The two special experimental permits issued in 2018 had identical requirements. The gear was a 16 foot beam trawl equipped with a National Marine Fisheries approved bycatch reduction device (BRD). Tow duration was limited to 30 minutes to reduce impacts on protected resources (sea turtles). Each permittee was required to contact the Commission's Operations Center prior to each trip, report daily shrimp harvest and estimated bycatch to staff, and report shrimp harvest on mandatory reporting forms on a monthly basis. Only shrimp could be landed with all finfish and other bycatch released as soon as possible. Permittees were also required to take Commission staff onboard to collect data on shrimp and bycatch composition.

Trawling has been prohibited in Chesapeake Bay since July 1989 (§ 28.2-314 of the Code of Virginia). However, the Commission may issue licenses to trawl in state coastal waters (out to 3 nm) of the Atlantic Ocean under several spatial and temporal restrictions (§ 28.2-315 of the Code of Virginia):

Cape Charles to Maryland Border: November to August;  
Cape Charles to Cape Henry (Bay mouth): Prohibited;  
Cape Henry to Latitude N 36°40': Oct 1 to May 1;  
Latitude N 36°40' to North Carolina Border: All year.

The area permitted for this experimental fishery was defined as the terminus of Dam Neck Road in Virginia Beach, south to the North Carolina border, and east to the state's jurisdictional 3 nm line.

Staff will continue to monitor this fishery until the permits ends December 31<sup>st</sup>. One permittee has already stopped fishing but the other has stated he will continue as long as shrimp are available. A thorough review of the commercial harvest, value and bycatch data will be completed in the upcoming months. Staff are recommending the experimental status of this fishery be maintained for 2019 with very limited increase in participation (up to 2 additional participants), with the same season (September 1 to December 31). Observers will continue to assess the impact on regulated species. Staff will provide the Commission recommendations for 2019 permits by August.

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There being no further business, the meeting was adjourned at approximately 12:18 p.m. The next Commission meeting will be Tuesday, January 22, 2019.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary