

## MINUTES

## COMMISSION MEETING

December 7, 2021

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

Steven G. Bowman	Commissioner
John Zydron Sr. Wayne France Chad Ballard Heather Lusk Christina Everett Chris Newsome	Associate Members
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Todd Sperling Dave Lego Sheri Crocker	Bs. Systems Manager Bs. Systems Specialist Chief, Admin. & Finance Management
Pat Geer Adam Kenyon Shanna Madsen Jill Ramsey Jennifer Farmer Somers Smott Brooke Lowman Andy Dong Alicia Nelson Lewis Gillingham	Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist Fisheries Mgmt. Specialist CRD, Fisheries Mgmt. Specialist Coordinator, RFAB/CFAB Director, SWFT
Matt Rogers Jamie Green Chris Miller Matt Dize Mark Hill Bill Hall	Chief, Law Enforcement Deputy Chief, Law Enforcement Captain, Law Enforcement Lt., Law Enforcement Sgt., Law Enforcement Marine Police Officer

**Commission Meeting**

**18875  
December 7, 2021**

David Townsend  
John Collamore  
Zach Widgeon  
Steve York

Marine Police Officer  
Marine Police Officer  
Marine Police Officer  
Marine Police Officer

Randy Owen  
Justin Worrell  
Mike Johnson  
Mark Eversole  
Jeff Madden  
Jay Woodward  
Ben Nettleton  
Lauren Chartrand  
Tiffany Birge  
Daniel Faggert  
Ben Stagg

Chief, Habitat Management  
Deputy Chief, Habitat Management  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Surveyor, Engineering/Surveying  
Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Sandra Dize  
Michael Oesterling  
Al Henderson  
Curtis Smith  
Michael Ashwander  
Paul Knopfle  
Alan Aquires

Carl Dize  
Robert Beasley  
Pat Henderson  
Kim Huskey  
Dylan Leggraad  
Taya Sanders  
Adam Wood

Bernard McGraw  
Karla Havens  
Philip Smith  
Tom Tant  
Susan Knopfle  
Lyle Britton

\* \* \* \* \*

Commissioner Bowman called the meeting to order at approximately 9:45 a.m.

\* \* \* \* \*

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

\* \* \* \* \*

**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, 7-0 Chair voted yes.**

\* \* \* \* \*

**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the October 26, 2021 Commission meeting minutes.

**Associate Member Zydron moved to approve the minutes as presented. Associate Member Everett seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

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

\* \* \* \* \*

Commissioner Bowman requested that Pat Geer, Chief, Fisheries Department, to come forward introduce new staff members Brooke Lowman, Fisheries Management Specialist, Fisheries Department and Andy Dong, Fisheries Management Specialist, Conservation and Replenishment Department.

Mr. Geer also provided an update on the COVID relief program with a PowerPoint presentation. His comments are a part of the verbatim record.

Col. Matt Rogers was asked to come forward to recognize the recent retirement of Lt. Steve Bennis. His comments are a part of the verbatim record.

Col. Rogers also acknowledged Matt Dize for his recent promotion to Lt. in charge of the LE training program.

Commissioner Bowman asked Sheri Crocker and Erik Barth to come forward. Commissioner Bowman acknowledged the recent retirement of Mr. Barth. Ms. Crocker presented Erik Barth with his certificate for his recent retirement from the agency.

\* \* \* \* \*

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

Randy Owen, Chief, Habitat Management, reviewed the Page 2 Items A through C for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

- 2A. **DEPARTMENT OF THE NAVY, #21-0584**, requests authorization to install shoreline stabilization structures channelward of mean low water along five (5) reaches of shoreline within the U.S. Navy Support Facility Dahlgren, situated along Upper Machodoc Creek and the Potomac River in King George County. Components at the various reaches include: (Reach 2) four (4) armor stone spurs with maximum dimensions of 86 feet long by 38 feet wide, three (3) individual gapped armor stone sills totaling 950 linear feet with a maximum 16-foot base width and 299 cubic yards of beach quality sand; (Reach 3) ten (10) 138-foot long gapped armor stone breakwaters with a maximum 35-foot base width, four (4) 106-foot long armor stone spurs with a maximum 40-foot base width, 2,090 cubic yards of beach quality sand, the topdressing of an existing 358-foot revetment with armor stone, and a 665-foot gapped armor stone sill with 684 cubic yards of beach quality sand; (Reach 4B/C) a 228-foot armor stone gapped sill with a maximum 14-foot base width; (Reach 5) three (3) 156-foot long gapped armor stone breakwaters with a maximum 40-foot base width and 826 cubic yards of beach quality sand; and (Reach 8) a 1,225-foot long gapped armor stone sill with a maximum 12-foot base width and 635 cubic yards of beach quality sand.

Fees:	\$ 600.00
-------	-----------

- 2B. **FAIRFAX COUNTY WATER AUTHORITY, #21-1290**, requests authorization to install two (2) parallel 43-inch diameter water transmission lines

a minimum 45 feet beneath a 173-foot wide section of the Occoquan River, within an 8-foot by 12-foot tunnel which will be filled with concrete upon completion. The project is located upriver of the Occoquan footbridge in Fairfax and Prince William Counties. Staff recommends approval with standard instream permit conditions.

Fees:	\$ 600.00
-------	-----------

- 2C. **MATHEWS COUNTY, #21-1533**, requests authorization to hydraulically dredge 40,000 cubic yards of State-owned subaqueous bottom along the Hole in the Wall Channel, from Milford Haven to the Chesapeake Bay, to attain depths of minus seven (-7) feet mean low water, place the sandy dredged material upon Haven Beach as beach nourishment, construct three (3) 230-foot long stone breakwaters, and elongate an existing breakwater by 50 feet along the Chesapeake Bay shoreline at the terminus of Haven Beach Road in Mathews County. Staff recommends approval of the project with a special permit condition requiring the use of turbidity curtains during dredging operations in areas adjacent to submerged aquatic vegetation beds in addition to our standard

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

**Associate Member France moved to approve the page 2 Items A through C as presented. Associate Member Ballard seconded the motion. The motion carried 7-0. Chair voted yes.**

\* \* \* \* \*

**3. CONSENT AGENDA ITEMS.**

- 3A. **MALCOLM BROWNING, JR., #21-1391**, requests authorization to retain a 9-foot wide by 83-foot long clear span bridge across Wolf Creek to access property adjacent to Hicksville Road (SR 642) in Bland County. The applicant has agreed to pay a \$1,000.00 civil charge in lieu of further enforcement actions, and a triple permit fee of \$300.00. No royalty is proposed for the private bridge.

Randy Owen, Chief, Habitat Management, reviewed the Page 2 Items A through C for

the Associate Members. Mr. Owen's comments are a part of the verbatim record.

Mr. Owen explained that an application was received on June 29, 2021, from Mr. Browning and his attorney, Mr. Alan McGraw, to retain a bridge that Mr. Browning had relocated without authorization from the Marine Resources Commission. Mr. Browning purchased the property in 2013 and relocated an existing, permitted bridge (VMRC #03-2064) from its permitted alignment to a new alignment approximately 50 feet to the west, attaching the bridge structure to existing concrete abutments. Mr. Browning hired a crane company, now out of business, to relocate the metal bridge span structure. Mr. Browning then performed the welding and assembly work himself.

In early 2021, Mr. Browning engaged Mr. McGraw's law firm to assist in the sale of his property. Mr. McGraw realized that a permit of some sort would have been required to relocate the bridge back in 2014. After consulting with the Army Corps of Engineers, Mr. McGraw, on behalf of Mr. Browning, promptly submitted a Joint Permit Application to VMRC to retain the bridge structure. In the application Mr. McGraw states that the applicant did not realize a permit was required and that he did not intentionally fail to obtain a permit from the VMRC.

A full public interest review was completed, including adjoining property owner notifications and a newspaper public notice, and no opposition was received. Bland County officials have informed staff that the County has no issues with the bridge. Both the Department of Environmental Quality and the Army Corps of Engineers have issued "No Permit Required" letters for the structure. Staff met with Mr. McGraw, the applicant's agent, at the site on October 27, 2021, and acknowledged that staff would have supported a bridge relocation request in 2014 had an application been received.

Given that the applicant has agreed to a triple permit fee of \$300.00 and a \$1,000.00 civil charge based on a minimal degree of environmental impact and a minor degree of non-compliance, staff recommends that the Commission grant after-the-fact approval for the bridge span relocation, contingent on receipt of the civil charge.

Bernard McGraw, representative for the applicant was present. His comments are a part of the verbatim record.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

**Associated Member Zydron moved to approve the after the fact application without the imposed permit fees and civil charges recommended by staff. Associate Member Newsome seconded the motion. The motion carried, 7-0. Chair voted yes.**

Fees:	\$ 300.00
-------	-----------

\*\*\*\*\*

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

\*\*\*\*\*

**5. VIRGINIA ELECTRIC AND POWER COMPANY**, request for adoption of a resolution to approve the execution of a permanent easement and right-of-way for 46.42 acres of submerged land in the Rappahannock River as authorized by Chapter 368 of the 2014 Acts of Assembly.

Jay Woodward, Environmental Engineer, Sr., Habitat Division, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Woodward’s 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 Everett made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.**

Easement Fee:	\$ 1,011,073.50
---------------	-----------------

\*\*\*\*\*

**6. HUNG VO, #21-1337**, requests authorization to construct a 16-foot by 18-foot open-sided gazebo roof and a 15-foot by 36-foot open-sided boathouse at the end

of a statutorily authorized private, open-pile pier at property (3904 Chesapeake Avenue) adjacent to the James River in the City of Hampton. This project is protested by a number of nearby property owners.

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

Mr. Nettleton explained that the Vo property is located in a developed residential neighborhood where few other property owners have built piers. The property faces to the James River and Hampton Roads Harbor, with shallow offshore bathymetry and currently only a small dock exists, which is proposed to be removed. The proposed pier meets the exemption requirements defined in §28.2-1203(A)(5) of the Code of Virginia. The proposed gazebo roof and open-sided boathouse required notification to the adjacent property owners.

Staff considered the protestants' concerns regarding the roof structure and the impact it may have on their properties. At the proposed location, the proposed roof structures would start approximately 90 feet past mean low water (MLW). The total pier would extend a total of 120 feet channelward of MLW. The James River at this location is greater than 3 miles wide.

Staff agrees that the offshore distance is necessary to support the applicant's 23-foot boat, as the provided depth soundings show one (1) foot of water or less at MLW until 80 feet channelward of MLW. From 100 to 120 feet channelward of MLW (the proposed terminus of the pier), the depth is only two (2) feet. The total square footage of the proposed open-sided gazebo and the open-sided boathouse are well below the 400 square-foot and 700 square-foot exemption criteria contained in §28.2-1203(A)5 of the Code. Had the gazebo proposal and boathouse proposal not been protested by the adjoining property owners, staff would have considered both statutorily authorized along with the private pier construction. In this case, we believe the open-sided design only minimally adds to the visual obstruction already presented by the pier and boatlift. While staff is sensitive to the protests of the neighbors, the City of Hampton does not prohibit open-sided boathouses and gazebos, and private piers with similar open-sided roof structures are very common along the waterways in Hampton.

Accordingly, after evaluating the merits of the project against the concerns expressed by



those in opposition to the project, and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.

Karla Havens, Mid-Atlantic Resource Consulting, was sworn in. Her comments are a part of the verbatim record.

There were two people that spoke in opposition of the application. Their comments are a part of the verbatim record.

After further discussion, it was agreed that the pier and gazebo would be relocated to begin the center of the property, straight out into the water, where the current pier is located, to lessen the impact to the view shed of nearby property owners.

The matter was before the Commission for discussion and action.

**Associate Member France made a motion to approve the application with the agreed modification to the pier/boathouse construction location. Associate Member Newsome seconded the motion. The motion carried, 7-0. Chair voted yes.**

\* \* \* \* \*

7. **MELANIE STALEY, #21-1900**, requests authorization to construct 50 linear feet of vinyl bulkhead, no more than one foot in front of existing failing bulkhead, at property (Tax Map #5A1-1-993) adjacent to Chincoteague Bay in the Captain's Cove subdivision of Accomack County. This project requires a dune and beach permit.

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

Mr. Nettleton explained that the Captain's Cove subdivision of Accomack County is located in the far northeastern portion of the County and consists of many residential properties located on man-made canals and the Chincoteague Bay. The property in this application is facing to the south, with an open fetch of five (5) to six (6) miles across Chincoteague Bay. The existing lot is developed with a private home and a timber bulkhead with a deck over the top of it. The existing timber piles are driven into the

intertidal beach in front of the existing timber wall. Mean high water (MHW) rises on the existing bulkhead and mean low water (MLW) is approximately five (5) feet channelward of the existing bulkhead.

The proposed replacement bulkhead sheets will be driven directly in front of the existing timber piles, resulting in a channelward encroachment of one foot or less. The bulkhead will be installed from the upland with no construction access on the channelward side. Approximately 50 square feet of intertidal beach will be filled as a result of the backfill behind the new bulkhead.

Staff understands the need to protect private property from erosion and significant wave action present on the Chincoteague Bay. Staff believes that the applicant has attempted to minimize the environmental impact by agreeing to staff's request to align the replacement bulkhead as close to the existing bulkhead as possible and reuse the existing pilings. After considering this and possible alternatives outlined above, staff believes that driving new sheet piles directly in front of the existing timber piles is an appropriate approach.

Accordingly, after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) of the Code of Virginia, staff recommends approval of the project as proposed.

Luke Britten, agent for the applicant was sworn in. His comments are part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

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

\* \* \* \* \*

- 8. BAYSHORE SHELLFISH, LLC, Oyster Planting Ground Application #2018-119, requests authorization to lease approximately 20 acres within Linkhorn Bay in the City of Virginia Beach.**

Ben Stagg, Chief, Shellfish Management Division, 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 application has been subjected to our normal public interest review. The agent for the request also submitted a plat of the proposed lease area. However, staff does not believe the proposed lease corners were ever actually set in the field for the request.

As the requested area abuts the shoreline along numerous parcels (to include under at least 20 private piers), staff expressed concerns about leasing under such piers without the landowner's consent. The agent was contacted about this issue and conceded that not all property owners were part of the application LLC. The agent indicated that he would attempt to have non-applicant parties sign off on the portion of the lease under their existing piers.

Eventually, staff suggested an alternative solution. Since it appears one of the main purposes of the application (in addition to propagating shellfish by the group) is to preclude a commercial lease along this reach of shoreline, staff offered the option of presenting this matter before the Commission for consideration of designating the area as "not to be leased." This possible designation would be based upon the narrow nature of the area available, and the presence of numerous piers, some of which belong to property owners that are not part of the application. Additionally, should highland properties change hands from current LLC members, a new owner may not wish to be encumbered by a shellfish lease under his/her private pier.

It should also be noted that the existing lease offshore of this reach of shoreline was initially surveyed farther channelward to avoid any conflicts with riparian uses of the area (to include construction of and access to private piers and the shoreline).

Many of the lots along this reach of shoreline do not have enough frontage to qualify for riparian leases. Should the Commission determine to set aside the area as unleaseable, any qualifying property owners have the right by Code to seek an individual riparian lease.

Staff cannot support leasing in this area due the narrow nature of the area being requested, potential conflicts with existing private piers in the area, and general access to the adjoining riparian lands in this area.

Therefore, after careful review of the request, staff recommends an area of approximately 20 acres be hereby designated as “not to be leased” by the Commission. Such action, if approved, will not preclude the granting of a future riparian lease to any property owner that qualifies. If the designation is granted, the applicant has agreed to withdraw their application and the associated file will be closed.

No one spoke in support or opposition of the application.

The matter was before the Commission for discussion and action.

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

\* \* \* \* \*

9. **ALFRED C. HENDERSON to RACHEL COVE OYSTER COMPANY, Oyster Planting Ground Transfer Application #2021-574**, requests authorization to transfer 32.43 acres of oyster planting grounds in Barrett Creek in Northumberland County. The transfer request is protested by a local highland property owner.

Ben Stagg, Chief, Shellfish Management Division, 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 staff received a transfer request from Mr. Henderson seeking to transfer lease #21679 to Rachel Cove Oyster Company in September of 2021. Changes to the Code of Virginia pertaining to the transfer of oyster planting ground leases (§28.2-625) added that the Commission consider factors contained within §28.2-1205, subsection A, including the effects on adjacent and nearby properties, and the public benefits and impacts of shellfish aquaculture. Therefore, staff notified all adjacent leaseholders and any nearby property owner within 200 feet of the leased area. We received an email objection to the transfer from Mr. Brian Cooley on October 4, 2021. Staff also received an email of inquiry about the transfer from Marie H. Bragg, also on October 4, 2021.

Staff considers each transfer request on a case-by-case basis, carefully considering the

requirements of the Code of Virginia, as recently amended. While the use of intensive aquaculture methods (use of bottom enclosures, as allowed by VMRC regulations on oyster planting ground leases) has resulted in increased concerns by nearby property owners, staff is not aware that such activity has occurred on this lease in the past. The leaseholder has indicated that he will use traditional bottom planting and harvest techniques going forward. However, should the use change to more intensive activity, current regulations provide protection for adjacent landowners regarding navigation and access to both private piers and the shoreline.

Therefore, after careful review and consideration of the objections raised by the adjacent property owner, and after considering all of the factors in §28.2.625 and §28.2-1205A of the Code of Virginia, staff recommends approval of transfer #2021-574 for lease #21679 (32.43acres), from Alfred C. Henderson to Rachel Cove Oyster Company.

Alfred Henderson, applicant, was sworn in. His comments are a part of the verbatim record.

No one spoke in opposition of the application.

The matter was before the Commission for discussion and action.

**Associate Member Lusk made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**10. PUBLIC COMMENTS. No one spoke during public comment**

\* \* \* \* \*

**11. PUBLIC NOTICE:** Proposal to amend Chapters 4 VAC 20-1230-10 et seq., “Pertaining to Restrictions on Shellfish” and 4 VAC 20-754-10 et seq., “Pertaining to Importation of Fish, Shellfish or Crustacea into Virginia’s Waters” to modify the list of approved states, waters and species, and criteria necessary for the importation of fish, shellfish and crustacean for introduction into Virginia waters and to extend the public health and warm water harvest restrictions for shellfish into the month of October.

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 Commonwealth of Virginia is a participating member in the National Shellfish Sanitation Program (NSSP). The NSSP is:

*“the federal/state cooperative program recognized by the U. S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. The purpose of the NSSP is to promote and improve the sanitation of shellfish (oysters, clams, mussels and scallops) moving in interstate commerce through federal/state cooperation and uniformity of State shellfish programs. Participants in the NSSP include agencies from shellfish producing and non-producing States, FDA, EPA, NOAA, and the shellfish industry. Under international agreements with FDA, foreign governments also participate in the NSSP. Other components of the NSSP include program guidelines, State growing area classification and dealer certification programs, and FDA evaluation of State program elements.”*

Participation in this program and compliance with the standards for safe shellfish handling established through a periodically updated biennially issued Model Ordinance (MO), which is the governing document produced and updated at each ISSC, is what helps ensure that Virginia Shellfish remain safe for consumption and can be shipped outside of the Commonwealth. A key aspect of maintaining compliance with the standards for safe handling of shellfish is to have a “Vibrio Control Plan” in place for the handling and harvest of shellfish in months when both the air temperature and water temperature are high enough for Vibrio bacteria to rapidly multiply. A failure to comply with NSSP standards or an increase in Vibrio infections, or both could result in federally mandated changes and restrictions on interstate shipping of Virginia shellfish.

Chapter 4 VAC 20-1230-10 et seq., currently establishes the time, temperature, handling and harvest restrictions that are part of the larger Vibrio Control Plan which is a combination of various VMRC and Virginia Department of Health (VDH) regulations and the ISSC MO. The procedures established include:

- Time restriction in the form of harvest curfews that ensure shellfish are quickly placed under temperature control after harvesting.

- That shellfish are shaded during the harvest.
- Alternative procedures to the harvest curfews such as icing requirements or GPS based vessel monitoring

All of which have the primary intent of quickly cooling shellfish to safe temperatures (below 45 degrees F or colder) that prevent the development of unsafe levels of *Vibrio* bacteria.

The Shellfish Management Advisory Committee (SMAC) and The Aquaculture Management Advisory Committee (AMAC) have met and discussed the proposed changes. Both were supportive of the amendments as proposed.

The vast majority of requests for importation that come to the Commission each year are for the introduction of hard clams, oysters, and occasionally bay scallops. The primary concern for most of the last 60 years has been preventing the spread and mitigating the impacts of the three most common shellfish diseases, *Perkinsus marinus* (Dermo) and *Haplosporidium nelson* (MSX) for oysters and QPX (*Quahog Parasite Unknown*) for clams.

Dermo has been present in Virginia Waters since at least as early as 1947 and MSX was first documented in the 1950s. In the past these diseases have been extremely detrimental to oyster populations and in some areas and some years caused mortality rates as high as 90%. This was devastating to the oyster industry at the time. Since the 1960s the oyster industry, the Commission, The Virginia Institute of Marine Science (VIMS), federally fisheries scientist, and many others have gone to great effort to overcome or mitigate the challenges posed by these diseases.

Part of this effort was requiring, through the current regulation, that any shellfish imported into Virginia be tested for these diseases prior to being placed into Virginia waters. A “zero tolerance policy” or “complete absence of any known shellfish pathogens” has been the current standard and no shellfish with any evidence of infection are currently permitted to be transported into Virginia with the intent of placing them in the water.

Today these diseases are still a concern, but are no longer causing the large scale devastation seen in the past. They are considered endemic in most of the higher salinity waters of Virginia. There is emerging evidence that many wild populations have been

developing resistance or tolerance to these diseases. In addition, the aquaculture industry and VIMS has spent decades selectively breeding strains of oysters for diseases resistant or tolerant traits.

At the same time, there is an increasing amount of interstate transport of primarily very small (less than 15mm) hatchery produced seed and brood stock shellfish, the larger shellfish are used to produce seed in hatcheries. Based on consultations with the shellfish pathology experts at VIMS, the vast majority of the shellfish that falls into this category has very low prevalence of both MSX and Dermo (light infections in less than 3% of the shellfish tested) that is lower than the back ground levels that are currently present in most of the populations in Virginia. As such, there is a very low risk of introducing MSX or Dermo to an area through importation. However, under current regulation disease testing for every importation request is required and if any of the sample tested shows signs of infection the request for importation is rejected.

Maintaining a zero tolerance policy for endemic shellfish pathogens may well be increasing the risk of introducing a novel and potentially detrimental disease into Bay waters in several ways while also unnecessarily restricting commerce. One consequence of the current approach is that many shellfish pathologists and laboratories are spending much of their time focusing on the search for diseases that are already prevalent in our waters. This means that there is less time to focus on testing or the search for new diseases, or pathogens that have not yet been introduced into the Commonwealth, such as the oyster herpes virus that has devastated oysters stocks in Australia and in western states.

There is also strong anecdotal evidence that maintaining the current regulatory approach is pushing some in the shellfish industry to forego disease testing entirely prior to importing seed, either to save time, cost, or if they have been rejected for low levels of disease in the past.

The intent of the proposed amendments is not to reward this bad behavior, but is primarily to address the need to focus resources on looking for the threats of the future as opposed to those of the past. The changes will relieve some regulatory requirements for all in the shellfish industry. The primary changes include:

- Allowing the importation of small hatchery produced seed without requiring individual “batch” testing if the hatchery is a participant in a VIMS approved hatchery certification program



**Commission Meeting**

- Replacing the zero tolerance for MSX, Dermo, and QPX with some tolerance (light infection and less than 5% prevalence)
- Strengthening restrictions on the importation of shellfish from areas of emerging concern (Pacific Coastal States) or lack of extensive information (Gulf States) while easing restriction in areas with similar disease prevalence and disease type (Atlantic coastal states).

Additionally, this may change the behavior of the “bad actors” who do not follow the current law, by removing some of the reasons that may have encouraged them to forego the required testing, and will certainly make the importation process smoother for the shellfish industry that does follow the current law. These changes will allow the regulators and shellfish pathologists involved in the process to increase the collective protection against new or emerging pathogens by shifting the focus in this direction and by removing the current disincentives of increased testing.

The Shellfish Management Advisory Committee (SMAC) and The Aquaculture Management Advisory Committee (AMAC) have met and discussed the proposed changes. Both were largely supportive of the amendments as proposed. There was some concern expressed by members of AMAC on the perception of being less restrictive, but the committee voted in favor of the proposed changes with only one member voting against.

Staff recommends adopting Amendments to Chapters 4 VAC 20-1230-10 et seq., “Pertaining to Restrictions on Shellfish” and 4 VAC 20-754-10 et seq., “Pertaining to Importation of Fish, Shellfish or Crustacea into Virginia’s Waters” to modify the list of approved states, waters and species, and criteria necessary for the importation of fish, shellfish and crustacean for introduction into Virginia waters and to extend the public health and warm water harvest restrictions for shellfish through the month of October.

Mark Luckenbach was requested to speak on behalf of VIMS. He stated that he, as well as VIMS, was in support of the regulation changes.

Mr. Mike Oesterling, spoke in support of the regulation changes. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Amend Chapter 4 VAC 20-1230-10 et seq., “Pertaining to Restrictions on Shellfish”**

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

**Amend Chapter 4 VAC 20-754-10 et seq., “Pertaining to Importation of Fish, Shellfish or Crustacea into Virginia’s Waters”**

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

\* \* \* \* \*

- 12. PUBLIC NOTICE:** Proposal to amend Chapter 4 VAC 20-620-10 et seq. "Pertaining to Summer Flounder" to allow the Commission to establish by public announcement landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia and to amend language relating to quota monitoring.

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 VMRC works with industry multiple times every year to establish management measures for the commercial offshore summer flounder fishery. The 2021 coastwide quota, as announced by NOAA, is 12.49 million pounds. Virginia receives 21.3168% of the summer flounder coastwide quota. The 2021 Virginia summer flounder quota is 2,399,576 pounds. The total Virginia landings to date and remaining 2021 quota amount will allow for a third fall period opening of December 8 through December 31 with a landing limit of 12,500 pounds.

In order to be more responsive to industry needs and market oscillations, as well as to increase regulatory efficiency and expediency, staff is requesting a change in procedure to allow landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore to be announced by the Commission, instead of through changes in regulatory language.

**Commission Meeting**

**18892  
December 7, 2021**

Staff recommends the Commission amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to allow the Commission to establish by public announcement landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia and to amend language relating to quota monitoring.

No one spoke in support or opposition of the regulatory change.

The matter was before the Commission for discussion and action.

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

\* \* \* \* \*

Associate Member Everett recognized Commissioner Bowman for serving many years on the Commission and as Commissioner during his last Commission Meeting.

\* \* \* \* \*

There being no further business, the meeting was adjourned at approximately 12:10 p.m. The next Commission meeting will be Tuesday, January 25, 2022.

---

Steven G. Bowman, Commissioner

---

Jamie Hogge, Recording Secretary