

MINUTES

COMMISSION MEETING

August 25, 2020

****In consideration of Governor Northam's Executive Order 55 and public safety, the August 25, 2020 Commission meeting of the Marine Resources Commission was held electronically at 9:30 AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting as follows:**

1. Any interested party was invited to visit the agency web calendar at <https://mrc.virginia.gov/calendar.shtm> and look for the 8/25/2020 meeting date to see web links to the draft proposed regulation, instructions for meeting participation, public call-in information, and the meeting Webex livestream web link. Participants was instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting will begin at 9:30AM.
2. All persons interested in commenting were highly encouraged to submit written comments prior to the meeting. Comments sent by mail were to be sent to 380 Fenwick Rd, Ft. Monroe, VA 23561 and should be received by 8/20/2020. Comments could have also have been emailed to fisheries@mrc.virginia.gov and were accepted until NOON on 8/24/2020.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to fisheries@mrc.virginia.gov by 5PM on 8/24/2020.

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

Steven G. Bowman

Commissioner, present in room

John Tankard III

John Zydron Sr.

Ken Neill, III

Heather Lusk

Christina Everett

Associate Members

Present via conference call

Commission Meeting

**18598
August 25, 2020**

Chad Ballard	Associate Members
James E. Minor III	Present via conference call
Wayne France	
Kelci Block	Assistant Attorney General, Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Erik Barth	Bs. Systems Manager, Present via conference call
Todd Sperling	Bs. Systems Manager Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present, in room
Andrew Button	Head, Conservation and Replenishment Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present, in room
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Alexa Kretsch	Fisheries Mgmt. Specialist Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call
Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call

Commission Meeting

**18599
August 25, 2020**

Tony Watkinson	Chief, Habitat Management Present via conference call
Randy Owen	Deputy Chief , Habitat Management Present in room
Mark Eversole	Environmental Engineer, Sr. Present via conference call
Rachael Peabody	Environmental Engineer, Sr. Present via conference call
Jay Woodward	Environmental Engineer, Sr. Present via conference call
Allison Lay	Environmental Engineer, Sr. Present via conference call
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping Present via conference call

Virginia Institute of Marine Science (VIMS): Present via conference call

Lyle Varnell	Emily Hein	Mark Luckenbach
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Others present via conference line

Shane Overvay	Cecila Lewy	Dave Koubsky
Lawrence Hayden	Richard Hixson	Suzanne Richert
Bill McDowell	Ben Leatherland	Kim Huskey
Karalyn Springle	Mark Luxacher	Shari Miller
Chris Moore	Elizabeth Atherton	David O'Brien
Christie Van Cleave	Malcolm Burgess	Stephen Fachner
John Bryant		
and others.		

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Commissioner Bowman called the meeting to order at approximately 9:30 a.m.

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Associate Member Tankard said the invocation by the request of Commissioner Bowman.

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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 Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were any changes or corrections to be made to the July 28, 2020 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member France seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Member Ballard abstained.

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Commissioner Bowman swore in the VMRC staff, VIMS staff and others that would be speaking or presenting testimony during the meeting prior to each item.

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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 and B for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

- 2A. PULASKI COUNTY PUBLIC SERVICE AUTHORITY, #20-0292,** requests authorization to hydraulically dredge approximately 3,500 cubic yards of State-owned submerged lands within a 103-foot by 48-foot basin to achieve

a depth of -12 feet, in the vicinity of the water intake in Cherry Tree Creek, a tributary to Claytor Lake in Pulaski County.

Fee:	\$ 100.00
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2B. THE LIVING RIVER RESTORATION TRUST, #19-2017, requests authorization to conduct a sediment contaminant remediation project for the reduction of Polychlorinated biphenyls (PCBs) within Paradise Creek by mechanically dredging approximately 7,100 cubic yards of material and replacing it with clean sand and granulated activate carbon, and to amend existing subaqueous bottoms by placing granulated activated carbon on the surface within an 11.58-acre area in the City of Portsmouth.

Fee:	\$ 100.00
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Dave Koubsky provided further detail on the activated carbon that was proposed for project 2B. 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 moved to approve the two (2) page 2 Items A and B as presented. Associate Member Ballard seconded the motion. The motion carried 9-0. Chair voted yes.

3. CONSENT AGENDA ITEMS. No consent agenda items.

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

- 5. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, #20-0649**, requests authorization to vibratory trench two (2) 1.5-inch conduits under 4,310 linear feet of State-owned marsh in the Walker Marsh area of Accomack County. This is a portion of a proposed cable project that will run from Wallops Flight Facility to the Wallops Island drone runway. A wetlands permit is required for use of a State-owned marsh.

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

Ms. Lay explained that the project is located in the Walker Marsh area of Accomack County. This project will impact State-owned marsh. As such, the Commission is acting as the Wetlands Board for this project.

The applicant is proposing to run a fiber optic cable from the Wallops Flight Facility to Wallops Island drone runway. The cable will start in the uplands at Wallops Flight Facility and will then be directionally drilled under Watts Bay. The cable will then resurface in the State-owned marsh area of Walker Marsh. From there, the cable will then be installed by vibratory trenching method through the marsh, and will be directionally drilled under three small guts in Walker Marsh. Lastly, the cable will be directionally drilled under Ballast Narrows from an upland site at Wallops Island drone runway.

Since the federal project does not include the placement of any fill on subaqueous bottom and will not impact Baylor grounds, a permit from VMRC will not be required for the subaqueous portion of the project. A VMRC wetlands permit will be required for impacts to State-owned marsh.

The fiber optic cable will provide a necessary redundant communication system in between the Wallops Flight Facility and Wallops Island drone runway. Many alternatives were analyzed for this project, and this was determined to have the least environmental impact.

Accordingly, 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 special conditions added to the permit:

1. This permit gives no ownership interest in the underlying State land;
2. The Permittee agrees to follow the contingency / clean-up plan, attached to this permit document, to address potential frac-outs or related spills associated with any directional drilling activities;
3. All areas of State-owned marsh and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters;
4. The Permittee agrees to purchase wetland credits from the Accomack County in-lieu fee account necessary to replace the loss of 64 square feet of tidal vegetated wetlands.
5. The Permittee agrees not to conduct any of the authorized work between March 15 and August 31 of any year to minimize adverse impacts to shorebirds.

Shari Miller, applicant, was sworn in. Her comments are a 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 Tankard made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.

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6. **SUFFOLK DEPARTMENT OF PUBLIC WORKS, #19-2094**, requests authorization to modify an existing bridge permit to include replacing an 8-inch gas line raised on timber piles, adjacent to the proposed bridge that will cross Burnett's Mill Creek, along Wilroy Road in the City Suffolk.

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 in March of 2020 the City of Suffolk received a VMRC permit to remove an existing failing pipe and concrete slab road system and replace it

by installing a single span bridge structure that will cross over Burnett's Mill Creek, along Wilroy Road, in Suffolk. Several utility mains currently run parallel with the bridge including a 30-inch sanitary force main west of the bridge, as well as a large water main and an 8-inch gas line to the east. The 8-inch gas line must be relocated to accommodate the new design of the bridge, but was not requested in the original application. As such, the applicant has requested a revision of the permit to relocate the existing 8-inch gas line from the east side of the bridge to be relocated to the west side of the new bridge, on piles as it crosses the water.

VNG and the City of Suffolk have stated that the replacement of the natural gas line is required to maintain reliable service to residential, commercial, and industrial customers located in the service territory to the north of the bridge replacement project. The existing earthen bridge currently allows for the existing line to be buried. However, the replacement bridge will be a clear span bridge and the earthen dam that contains the gas line will be removed. The size of the easements and the design of the new bridge give VNG very little options for other crossing types.

Staff understands the protestant's concern related to the safety of a gas line adjacent to their property. However, VNG is responsible under federal law for proper maintenance and inspections of the line. They have also proposed additional valves on either side of the creek for added safety. Staff feels that the applicant and VNG have reviewed all other construction options and finalized a plan that is consistent with the site constraints, reduces impacts to the creek, and maintains service to the public.

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(A) of the Code of Virginia, staff recommends approval of the requested permit modification.

Elizabeth Atherton, representative for the applicant was present and sworn in. Her comments are a part of the verbatim record.

Ms. Atherton explained that the right of way easement would not allow pipeline to be buried.

No one spoke in 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 Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

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7. **LAWRENCE HAYDEN, #19-1189**, requests authorization to construct a 12-foot by 12-foot floating dock, 4-foot wide gangway, a 9-foot pier extension, an additional 72 square feet of decking, 58 linear feet of 4-foot wide catwalk, 9 linear feet of 5-foot wide catwalk, and a 36-foot by 16-foot open-sided boathouse to an existing private open-pile pier at property (135 Linda Drive) along the Warwick River in the City of Newport News. The project is protested by two (2) adjacent property owners.

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

Ms. Lay explained that the project is located in Newport News along the Warwick River. The site consists of an area of vegetated wetlands that leads to a wide mudflat before quickly deepening into the Warwick River. The applicant is requesting authorization to construct additions to his existing pier including a floating dock, finger piers, and an open-sided boathouse. The existing pier received statutory authority pursuant to §28.2-1203(A)5 of the Code of Virginia after an application was submitted in 1993. The proposed additions to the existing pier are protested by two adjacent property owners and will also extend into the channel, causing navigation concerns.

Based on the soundings provided in the application and the protests from the adjacent property owners, it is clear that the boathouse as proposed will be constructed in the deepest part of the channel. Staff believes this will be an obstruction to navigation in this area of the Warwick River. Although the river is more shallow further downstream, the river could be dredged, or naturally change depths in the future. The applicant currently has the depths necessary for his boat with the pier's existing length and orientation.

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 denial of the project as proposed. Should the Commission agree, staff recommends that the applicant be given the option

of submitting revised drawings for the proposed boathouse, with the same dimensions, provided its channelward alignment does not exceed that of his existing offshore mooring pilings. This alignment would not further obstruct navigation beyond that of the applicant's current pier configuration.

Lawrence Hayden, applicant, was sworn in. His comments are a 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 Neill made a motion to approve staff recommendation to deny project as proposed but to allow the applicant to submit revised project drawings for the proposed boathouse, with the same dimensions, provided the channelward alignment does not exceed that of the existing offshore mooring pilings. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.

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8. LHOIST NORTH AMERICA OF VIRGINIA, INC., #19-1647, requests after-the-fact authorization to fill two (2) sink holes within Stony Creek adjacent to Big Stoney Creek Road in Giles County.

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 in September of 2019 staff received an incomplete application from LHoist North America of Virginia, Inc. requesting temporary impacts to State-owned submerged lands for the stabilization of two (2) sinkholes within Stony Creek. The growing sinkholes were draining approximately 12 million gallons of water per day into two (2) underground limestone mines owned by the applicant.

After our initial review, staff requested drawings of the project in order to move forward. In the months between September and March the applicant worked with the Department of Wildlife Resources (DWR) and the US Fish and Wildlife Services (USFWS) to

determine the appropriate construction methods for the protection of aquatic species and the endangered Roanoke logperch. The working group kept VMRC informed throughout the process.

During that time a third sinkhole emerged and the drainage became an emergency situation for the safety of the mines. Staff received final construction plans in the middle of February, with written plan approvals by USFWS and DWR, and initiated the public interest review for administrative approval. Due to COVID-19 closures in March, it was difficult to complete the adjacent property owner approvals in a timely manner. The project was also nearing a time of year restriction of March 15 through June 30 and the sinkholes were growing from spring rains.

VMRC confirmed with USFWS and DWR that they approved of the final design. Both agencies expressed preference for dewatering the sites as soon as possible. LHOIST pumps were also unable to keep up with the increasing amount of the water into the mines. For these reasons, staff agreed to allow the construction to begin, with the acknowledgement that the project would need to go to the Commission for after-the-fact approval. The adjacent property owners have been notified and the project has been placed in the local newspaper. Staff have not received any comments on the project to date.

The applicant and agent kept VMRC staff informed throughout the months of September and March as they finalized plans for stabilizing the growing sinkholes and excluding fish from the work site. Unfortunately, the applicant found themselves within the time of year restriction imposed by DWR and the USFWS and unable to complete the public review process as the VMRC was experiencing closures from COVID-19. USFWS expressed the need to finalize the work as soon as possible. Staff, agreed that the situation was an emergency and verbally agreed to move forward with an after-the-fact authorization when the agency had transitioned to digital Commission meetings. The project has been completed and the sinkholes have been stabilized.

Accordingly, after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommends approval of the project with no civil charges or additional permit fees in light of the emergency and public safety issues presented by the expanding sinkholes.

Ben Leatherland, agent for the applicant spoke. His comments are a 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 Tankard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.

Fee:	\$ 100.00
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- 9. D & S OYSTERS, LLC, Oyster Planting Ground Application #2019-013,** requests authorization to lease approximately 20 acres of oyster planting ground in the Thorofare in York County. The project is protested by a resident who previously applied for the same area and was denied approval from the Commission.

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 an application from D & S Oysters, LLC requesting to lease approximately twenty (20) acres of oyster planting ground, within the Thorofare in York County, was received by the Engineering/Surveying Department on February 8, 2019. The application was subjected to the normal public interest review process. The area of this application is essentially the same area as a previous application submitted by Mr. Robert Buckanin (2015-174) that was the subject of a Commission hearing in August of 2018.

After careful review and in consideration of the objections raised by Mr. Buchanin, the fact that D & S Oysters, LLC already has a lease, the fact that the Commission previously denied this same area to an applicant who proposed the same uses as the current applicant, and after considering all of the factors in §28.2.607 and §28.2-1205A of the Code of Virginia, staff recommends denial of the request. If the application is denied, should the Commission deem it appropriate, it may wish to designate this as an area not to be leased in the future, thereby precluding acceptance of yet another application for this same area.

John Bryant, applicant, spoke in support of the application. His comments are a part of the verbatim record.

Two others spoke in support of the application. Their comments are a 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 Zydron made a motion to accept staff recommendation to deny granting the lease and to designate this as an area not to be leased in the future, thereby precluding acceptance of yet another application for this same area. Associate Member Tankard seconded the motion. The motion failed, 3-4-2. Chair voted yes. Associate Members Neill and Everett recused themselves from the vote.

A substitute motion was made by Associate Member Ballard to deny application with no other conditions. Associate Member Lusk seconded the motion. The motion to deny the lease application carried, 7-0-2. Chair voted yes. Associate Members Neill and Everett recused themselves from the vote.

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10. PUBLIC COMMENT.

Chris Moore, Chesapeake Bay Foundation, extended his congratulations to Associate Members Lusk and Minor for re-appointment to the Commission. He also commended VMRC’s conservation-minded decision to not implement the striped bass bonus tag program at this time.

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11. PUBLIC HEARING: Staff requests to incorporate the emergency amendments that establishes a 500 pound daily per vessel bycatch provision in state waters for the Spanish mackerel commercial fishery to coincide with any federal waters closure announced by the National Marine Fisheries Service as a permanent part of Chapter 4 VAC 20-540-10 et seq., “Pertaining to Spanish and King Mackerel”.

Pat Geer, 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 the South Atlantic Fisheries Management Council announced on Friday July 17th that they will be closing the season for commercial harvest of Atlantic Migratory Group Spanish mackerel Northern Zone (NC to NY) in federal waters effective Wednesday July 22, 2020. It is projected that the commercial quota has been met in the northern zone. The closure will remain in effect until the fishery reopens on March 1, 2021

In July, the Commission passed an emergency regulation to amend Chapter 4 VAC 20-540-10 et seq. to allow for a bycatch allowance of 500 pounds per vessel per day in state waters once federal waters close, as outlined in the Atlantic States Marine Fisheries Commission's Omnibus Amendment to the Interstate Fishery Management Plans for Spanish mackerel, spot, and spotted seatrout.

Staff recommends the Commission amend Chapter 4 VAC 20-540-10 et seq., "Pertaining to Spanish Mackerel and King Mackerel," to establish a 500 pound daily per vessel bycatch provision in state waters for the Spanish mackerel commercial fishery to coincide with federal waters closures as announced by the National Marine Fisheries Service.

No one spoke in support or opposition of the emergency amendments.

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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12. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-920-10 et seq., "Pertaining to Landing Licenses," and Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder". This proposal is to repeal sections 40 and 45 of Chapter 4 VAC 20-920-10 et seq., "Pertaining to Landing Licenses," and incorporate those sections into Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder". This amendment would also remove the tonnage

requirement as it relates to baseline vessels for transfers per the NOAA final rule on the Omnibus Amendment to the Fishery Management Plans of the Northeastern United States. Secondly, to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to establish the fall 2020 commercial offshore summer flounder fishery management measures.

Jill Ramsey, Fisheries Mgmt. Specialist, gave the briefing of 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 National Marine Fisheries Service has removed net and gross tonnage requirements when considering a vessel’s baseline for replacement purposes. VMRC used these specifications to qualify vessels for transferring Summer Flounder Endorsement Licenses. Considering the changes in the summer flounder fishery from when the transfer criteria for the Endorsement license was created in 2004, the tonnage requirement can now be removed from transfer qualifications.

Secondly, VMRC works with industry every year to establish management measures for the commercial offshore summer flounder fishery. Virginia receives 21.3168% of the summer flounder coast-wide quota. The 2020 Virginia summer flounder quota is 2,457,822 pounds. Due to COVID-19 and the decrease in the seafood market in spring 2020, the remaining fall Virginia quota will allow for two open periods with a larger landing limit. Period one will be September 8 through October 31 with a 12,000 pound landing limit, and period two will be November 1 through December 31 with a 12,000 pound landing limit.

Staff recommends the Commission amend Chapter 4 VAC 20-920-10 et seq., “Pertaining to Landing Licenses,” and Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder”. This proposal is to repeal sections 40 and 45 of Chapter 4 VAC 20-920-10 et seq., “Pertaining to Landing Licenses,” and incorporate those sections into Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder”. This amendment would also remove the tonnage requirement as it relates to baseline vessels for transfers per the NOAA final rule on the Omnibus Amendment to the Fishery Management Plans of the North Eastern United States. Secondly to amend Chapter 4 VAC 20-620-10 et seq., “Pertaining to Summer Flounder,” to establish the fall 2020 commercial offshore summer flounder fishery management measures.

No one spoke in support or opposition of the proposed amendments to the regulations.

The matter was before the Commission for discussion and action.

Associate Member Ballard made a motion to approve staff recommendation. Associate Member Everett seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Zydron was not present during final vote.

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- 13. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" and Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" to establish the 2020-2021 areas of public harvest, public oyster harvest seasons, oyster resource conservation measures, and mandatory harvest reporting procedures for oysters.

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 reported oyster harvest from Virginia waters over the last 20 years has generally tracked upward and continues to remain relatively stable at 500,000 to 600,000 bushels of market oysters for the last five years. This includes harvest reported from both public and private oyster ground. Information gathered during the annual stock assessment surveys of the public oyster grounds is used in conjunction with the advice and recommendations of the Shellfish Management Advisory Committee (SMAC) and the Virginia Institute of Marine Science (VIMS) to develop the proposed public oyster harvest season and recommended management measures each year.

The Shellfish Management Advisory Committee (SMAC) has met several times to provide recommendations regarding the 2020-2021 public oyster harvest season. Staff has worked with SMAC to develop more resource-conservative public oyster harvest seasons. The proposed changes to Chapter 4 VAC 20-720-10 et seq. are intended to conserve the oyster resource while minimizing negative impacts to the oyster fishery.

The Proposed DRAFT 2020 – 2021:

James River

Clean Cull:

Oct., Nov., Dec., Jan., Feb., Mar., Apr. – HT

Area 1, 3:

Oct. – HT

Nov. – HS* (harvest ending at noon)

Dec. & Jan. – HS (harvest ends at 2 pm)

Feb. - HT

Area 2:

Oct. – HT

Nov. – HS* (harvest ending at noon)

Dec. & Jan. – HS (harvest ends at 2 pm)

Feb. - HT

Seed Oysters:

***Oct. (Originally proposed as CLOSED in Oct. – Request to remain to open Oct.)

Nov., Dec., Jan., Feb., Mar., Apr. & May – HT

York River

York HTA

Dec., Jan., Feb. - HT

Area 1:

Oct., Nov. – HT

Feb. – HS* (harvest ending at noon)

Milford Haven

Milford Haven:

Dec., Jan., & Feb. – HT

Deep Rock:

Dec., Jan., & Feb. – PT

Rappahannock River

Area 1:

Nov., Feb. & ***March (first 2 weeks) – PT

Area 6:

Nov. – HS* (harvest ending at noon) & Jan. - HS

Area 7:

Dec. & Feb.* (harvest ending at noon). – HS

Commission Meeting**Area 9:**

Oct., Nov. & Dec. – HT

Corrotoman HTA:

Oct., Nov. & Dec. – HT

Great Wicomico**Great Wicomico 2:**

Dec. & Jan. – HS

Blackberry Hangs

Oct. – PT

Feb. – HS.* (harvest ending at noon)

Little Wicomico and Coan**Little Wicomico & Coan:**

Oct., Nov. & Dec. – HT

Yeocomico**PG 8, 100, 107, 112:**

Oct., Nov., & Dec. – HT

Tangier-Pocomoke**Poco Area 2 & Tangier Area 2:**

Dec. & Jan. – DR, Feb. – DR* (harvest ending at noon)

Poco. Sound 9, 10:

Dec., Jan. – HT

Feb. - HS.* (harvest ending at noon)

Seaside ES:

Nov., Dec., Jan., Feb., & Mar. – HT/By Hand

The bushel limits for HS, DR & PT is proposed for an eight (8) bushel limit. A fourteen (14) bushel limit with a 28 bushel vessel limit is proposed for HT and By Hand harvest.

The agency has an established online system to allow commercial harvesters to report their daily harvest of seafood to VMRC. This system was developed to allow harvest information to be collected in a more cost-efficient, accurate, and timely manner. The proposed regulatory changes to Chapter 4 VAC 20-610-10 et seq. would require that oyster harvest be reported online only. This will help provide up to date harvest and market conditions that allow managers to improve their response time to changing conditions in the fishery. Accurate and timely harvest information is also critical to Virginia remaining in compliance with National Shellfish Sanitation Program standards and is used by the Virginia Department of Health and the US-FDA to conduct risk assessments associated with oysters and food-borne illness. Inaccurate or under-reported

harvest that results in an artificially inflated food-borne illness risk could require federally mandated restrictions to Virginia’s harvest regulations. Requiring that oyster harvest be reported online only will help to deliver this critical information.

Staff recommends adopting Amendments to Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" and Chapter 4 VAC 20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting” to establish the 2020-2021 areas of public harvest, public oyster harvest seasons, oyster resource conservation measures, and mandatory harvest reporting procedures for oysters.

No one spoke in support or opposition of the proposed changes.

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, 8-0. Chair voted yes. Associate Member Zydron was not present during final vote.

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14. RECOMMENDATION: Funding request from the Marine Fishing Improvement Fund.

Alicia Nelson, Coordinator, RFAB/CFAB, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Nelson’s comments are a part of the verbatim record.

Ms. Nelson explained that the estimate of funds available from the Marine Fishing Improvement Fund (MFIF) as of July 1, 2020 is \$843,668. The VMRC’s Marine Police have requested funds for Law Enforcement equipment. This equipment includes much-needed replacement motors and repairs for vessels, vehicles, and a side scan sonar. The project requires Commission approval for expenditures from the MFIF.

Proposed Project:

Upgrading of VA Marine Police’s marine patrol equipment. \$311,240.83

The VMRC’s Marine Police officers enforce fisheries laws and regulations; state health

laws (NSSP); the small boating act; and general public safety as it relates to state criminal laws and the motor vehicle code and Virginia Laws (regulations) promulgated by the Virginia Marine Resources Commission. Funding is being requested to replace dated, failing outboard motors and law enforcement patrol vehicles. It would also provide funds to facilitate needed repairs that arise from the normal use of current patrol vessels and vehicles.

To support the health of the Chesapeake Bay and the safety of the citizens and commercial waterman using Virginia's waterways, reliable patrol vessels and equipment are required by the Virginia Marine Police. The requested funding will ensure the continued patrols of shellfish condemnations areas, oyster sanctuary and spawning grounds, routine creel limit checks of the commercial harvest of oysters, crabs and various regulated finfish caught by gillnets and pound nets. In addition, maintaining a fleet of vessels for responding to Search and Rescue at a moment's notice is critical.

Staff recommends funding this project totaling \$311,240.83 from the Marine Fishing Improvement Fund (MFIF).

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Everett seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Zydron was not present during final vote.

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There being no further business, the meeting was adjourned at approximately 1:02 p.m.

Steven G. Bowman, Commissioner

Jamie Hogge, Recording Secretary