

## MINUTES

## COMMISSION MEETING

June 22, 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 Tankard III John Zydron Sr. Ken Neill, III Heather Lusk Christina Everett	Associate Members
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Pat Geer Adam Kenyon Shanna Madsen Andrew Button Alexa Galvan	Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Deputy Chief, Fisheries Mgmt. Head, Conservation and Replenishment Fisheries Mgmt. Specialist
Matt Rogers Brandon Sterling Gary Fox David Drummond Brian Elliott Allen Marshall Marshall Reedy Richard Pruitt Hunter Taylor Alexander Tucker	Chief, Law Enforcement Captain, Law Enforcement 1 <sup>st</sup> . Sgt., Marine Police Officer 1 <sup>st</sup> . Sgt., Marine Police Officer Marine Police Officer Marine Police Officer Marine Police Officer Marine Police Officer Marine Police Officer Marine Police Officer
Randy Owen Justin Worrell Jay Woodward	Chief, Habitat Management Environmental Engineer, Sr. Environmental Engineer, Sr.

**Commission Meeting**

Mike Johnson	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Allison Lay	Environmental Engineer, Sr.
Ben Nettleton	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Charles Cavelier	Brent Steury	E. Stanley Murphy
E. Moyano	Carl Bundick	Bernard Fletcher
Sid Camden	Joshua Webb	Brandon Beach
Jack Blake	Thomas Waller Jr.	Carol Crockett
Mike Pegg	John Holland	Sid Camden
Eileen Terry	Ellen Camden	Susan Camden
Tom Maclosky	Bob Simon	Tammie Martin
Pauli Hagan	and others.	

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Commissioner Bowman called the meeting to order at approximately 9:34 a.m.

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

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Commission Bowman introduced Matthew Rogers as the new Colonel of the Law Enforcement Division and Randy Owen as the newly promoted Chief of Habitat Management. Randy Owen introduced Tiffany Birge and Ben Nettleton as new employees to the Habitat Division.

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

Randy Owen, Chief, Habitat Management requested that Agenda Item #9 be removed from the agenda by the request of the applicant.

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

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the May 25, 2021 Commission meeting minutes.

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

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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 Item A for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

2A. **NORFOLK DEPARTMENT OF PUBLIC WORKS, #21-0598**, requests authorization to extend existing storm water outfall pipe by 108 linear feet at Ocean View Beach adjacent to Chesapeake Boulevard and construct a warning sign adjacent to an existing outfall pipe at 11th View Street along the Chesapeake Bay in the City of Norfolk.

Fees:	\$ 600.00
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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 page 2 Item A as presented. Associate Member Neill seconded the motion. The motion carried 6-0. Chair voted yes.**

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**3. CONSENT AGENDA ITEMS.**

Randy Owen, Chief, Habitat Management, reviewed the Consent Item 3A for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

**3A. SLOOP POINT COMMUNITY ASSOCIATION, #20-1409,** requests authorization to retain five (5) unauthorized, uncovered boatlifts, and two (2) unauthorized Personal Water Craft (PWC) lifts, and install seven (7) new uncovered boatlifts and two (2) new PWC lifts at an existing community marina facility at the Sloop Pointe condo development on Mulberry Creek in Lancaster County. Recommend approval with triple permit fees and a civil charge of \$1,000.00 which the applicants have agreed to pay.

Civil Charge:	\$ 1,000.00
Fees:	\$ 900.00
Total Fees:	\$ 1,900.00

President of the HOA (Home Owners Association) was sworn in. His comments are a part of the verbatim record. He also agreed to the fees.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

**Associated Member Tankard moved to approve the after the fact application as presented. Associate Member Everett seconded the motion. The motion carried, 6-0. Chair voted yes.**

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

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**5. REQUEST FOR PUBLIC HEARING:** Proposal to establish Chapter 4 VAC 20-1390-10 et seq., "Pertaining to Shrimp", to create a commercial shrimp trawl license and fishery, and develop commercial and recreational shrimp possession limits.

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.

**Associated Member Neill moved to approve staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 6-0. Chair voted yes.**

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**6. LICENSE STATUS REVIEW.**

**(6-1) Keith Martin (3051):** Mr. Martin was present and was sworn in. His comments are a part of the verbatim record. Mr. Martin was represented by Carl Bundy. His comments are a part of the verbatim record.

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

- January 19, 2019      Theft of oysters: **§28.2-527**
- January 19, 2019      Oyster dredging equipment on vessel: **§28.2-516**
- January 19, 2019      Take oysters at night: **§28.2-530**

**Disposition:**

January 9, 2020, Accomack General District Court

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

**Commission Meeting**

February 1, 2019 Oyster dredge on vessel when prohibited to do so: **§28.2-516**  
February 1, 2019 Theft of oysters: **§28.2-527**  
February 1, 2019 Take oysters at night: **§28.2-530**

**Disposition:**

January 9, 2020, Accomack General District Court

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

March 2, 2019 No license on gill nets (3 gills): **4 VAC 20-430-15**

**Disposition:**

May 20, 2019, Accomack General District Court

***GUIDELINE SUGGESTION: 2 YEAR REVOCATION OF ALL SHELLFISH LICENSES AND PRIVILEGES (§ 28.2-232 of the Code of Virginia)***

Col. Matthew Rogers explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger's comments are a part of the verbatim record.

Mr. Keith Martin, a commercial fisherman registration licensee, was convicted on January 9, 2020 for two counts of theft of oysters (§28.2-527 of the Code of Virginia), two counts of taking oysters at night (§28.2-530 of the Code of Virginia), two counts of oyster dredge equipment on vessel when prohibited (§28.2-516 of the Code of Virginia), and, on May 20, 2019 for one count of no license on gill nets (3 gills) (4 VAC 20-430-15).

The Commission's guidelines for sanctions specify that two or more convictions of harvesting oysters or clams during a closed public season, within a two-year period, should result in at least a two-year revocation of all shellfish licenses and privileges. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that the Commission revoke all of Mr. Martin's shellfish licenses and privileges for a period of two years from the date of this Commission meeting, June 22, 2021, through June 21, 2023. The Code of Virginia also allows that the Commission prohibit the issuance,

reissuance, and renewal of any of Mr. Martin's shellfish licenses during this revocation period.

Tammy Martin, Ms. Martin's wife, was sworn in. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion for a 2 year revocation of all Shellfish Licenses and privileges. Associate Member Neill seconded the motion. The motion carried, 5-1. Chair voted no.**

**(6-2) Wesley Hodge (008993):** Mr. Hodge was not present.

MPO Brandon Price, Marine Police Officer, was sworn in. His comments are a part of the verbatim record.

October 18, 2018      Possession unculled oysters and shell: **4 VAC 20-260-40**

**Disposition:**

**January 10, 2019, Isle of Wight General District Court**

MPO Marshall Reedy, Marine Police Officer, was sworn in. His comments are a part of the verbatim record.

01/19/2019    Theft of oysters less than \$500.00: **§28.2-527**  
01/19/2019    Taking oysters between sunset to sunrise: **§28.2-530**  
01/19/2019    Exceed the daily harvest limit: **4 VAC 20-720-80**  
01/19/2019    Harvest oysters after 2pm and before sunrise: **4 VAC 20-720-60 B**  
01/19/2019    Improper shellfish harvester tag: **4 VAC 20-1250-30**

**Disposition:**

**October 10, 2019, Accomack General District Court**

***GUIDELINE SUGGESTION: 2 YEAR REVOCATION OF ALL SHELLFISH LICENSES AND PRIVILEGES (§ 28.2-232 of the Code of Virginia)***

Col. Matthew Rogers explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger's comments are a part of the verbatim record.

Mr. Wesley Hodge, was convicted on January 1, 2019 for one count of possessing unculled oysters and shell (4 VAC 20-260-40) and on October 10, 2019 for one count of theft of oysters less than \$500.00 (§28.2-527 of the Code of Virginia), one count of taking oysters between sunset and sunrise (§28.2-530 of the Code of Virginia), one count of exceeding the daily harvest limit (4 VAC 20-720-80), one count of harvesting oysters after 2 pm and before sunrise (4 VAC 20-720-60B), and, one count of an improper shellfish harvester tag (4 VAC 20-1250-30).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed public season and one conviction of possession of unculled oysters and shell within a two-year period should result in at least a two-year revocation of all shellfish licenses and privileges. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest the Commission revoke all of Mr. Hodge's shellfish licenses and privileges for a period of two years from the date of this Commission meeting, June 22, 2021, through June 21, 2023. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Hodge's shellfish licenses during this revocation period.

The matter was before the Commission for discussion and action.

**Associate Member Everett made a motion for a 2 year revocation of all Shellfish Licenses and privileges. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.**

**(6-3) Gary Fleig (008969)**: Mr. Fleig was present and was sworn in. His comments are a part of the verbatim record.

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

05/22/2018 Possession of 2 striped bass less than 20": **4 VAC 20-252-30 C**

**Disposition:**

June 16, 2018, Accomack County General District Court



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07/12/2018 Possession of unculled crabs: **§28.2-708**

**Disposition:**

November 14, 2018, Accomack County General District Court

David Drummond, 1<sup>st</sup>. Sgt., Marine Police Officer, was sworn in. His comments are a part of the verbatim record.

05/22/2018 Unculled crabs (44) in 1 bushel: **§28.2-708**

**Disposition:**

July 11, 2018, Accomack County General District Court

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

11/23/2018 Possession of unculled oysters (7 quarts): **4 VAC 20-260-40**

**Disposition:**

January 10, 2019, Isle of Wight General District Court

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

12/03/2018 Dredge public ground without oyster dredge license: **4 VAC 20-720-75**

**Disposition:**

January 9, 2019, Accomack County General District Court

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

02/01/2019 Over the limit oysters: **4 VAC 20-720-80**

02/01/2019 Oyster dredge in a closed area/out of season: **4 VAC 20-720-40**

02/01/2019 Fail to properly tag oysters: **4 VAC 20-1250-30**

02/01/2019 Theft of oysters over \$500 from state of Virginia: **§28.2-527**

**Disposition:**

January 9, 2019, Accomack County General District Court

***GUIDELINE SUGGESTION: 2 YEAR REVOCATION OF ALL SHELLFISH LICENSES AND PRIVILEGES (§ 28.2-232 of the Code of Virginia)***

Col. Matthew Rogers, explained to the Commission the sanction guidelines, with PowerPoint slides. Mr. Roger's comments are a part of the verbatim record.

Mr. Gary Fleig, was convicted on June 13, 2018 for one count of possession of two striped bass less than 20" (4 VAC 20-252-30 C), on July 11, 2018 for one count of uncultured crabs (44) in one bushel (28.2-708 of the Code of Virginia), on November 14, 2018 for one count of uncultured crabs (28.2-708 of the Code of Virginia), on January 10, 2019 for one count of possession of uncultured oysters (7 quarts) (4 VAC 20-260-40), on January 9, 2019 for one count of dredging public ground without and oyster dredge license (4 VAC 20-720-75), and on January 9, 2020 for one count of over the limit oysters (4 VAC 20-720-80), one count of oyster dredge in a closed area/out of season (4 VAC 20-720-40), one count of failing to properly tag oysters (4 VAC 20-1250-30), and one count of theft of oysters over \$500 from the state of Virginia (28.2-527 of the Code of Virginia).

The Commission's guidelines for sanctions specify that one conviction of harvesting oysters or clams during a closed season and one conviction of possessing at least 50% over the tolerance of undersized shellfish within a two-year period should result in at least a two-year revocation of all shellfish licenses and privileges. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that the Commission revoke all of Mr. Fleig's shellfish licenses and privileges for a period of two years from the date of this Commission meeting, June 22, 2021, through June 21, 2023. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Fleig's shellfish licenses during this revocation period.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion for a 5 year revocation of all VMRC issued licenses and privileges. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes.**

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7. **NATIONAL PARK SERVICE, #20-2059**, requests authorization to construct 1,720 linear feet of rock sill with no backfill aligned along the minus -3 foot contour and situated at the northern end of the Dyke Marsh Wildlife Preserve in the Potomac River adjacent to the George Washington Memorial Highway in Fairfax County. This work constitutes Phase 2 of the Dyke Marsh Wildlife Restoration Project. The project is protested by a nearby property owner.

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

Mr. Eversole explained that a Joint Permit Application (17-0921) was submitted to VMRC in May of 2017 for Phase 1 of the project. Following a thorough public interest review, the Commission approved the project at their February 2018 meeting. The permit was modified by the Commission in May 2019 to include 1,600 linear feet of stone sill with no backfill. An application (20-2059) for Phase 2 was received in November 2020, which mirrors the approach and construction techniques approved for Phase 1.

While staff appreciates the comments and observations provided by the protestant, we also understand the applicants desire to move forward with the second phase of this restoration project. The applicant has provided a construction approach for Phase 2 which mirrors that approved by the Commission for Phase 1. Compensation for SAV losses are proposed to be conducted in the same manner as that approved for the first phase and at a comparable monetary rate of compensation.

Accordingly, after evaluating the merits of the project, recognizing that this is a continuation of a federally sponsored 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 as proposed, with the following special conditions:

1. Proof of compensation payments for impacts to Submerged Aquatic Vegetation (SAV) shall be submitted to VMRC staff for review and approval, prior to any instream work. This compensation will be in the form of continued funding for an SAV replanting program in the Potomac and Anacostia Rivers in the District of Columbia sponsored by both the University of Maryland Center for Environmental Services and the Washington Department of Energy and the Environment, in the amount of

\$120,000.00 for impacts to 60,000 square feet of SAV;

- 2. All area of State-owned bottom and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within 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;
- 3. Erosion and sediment control measures shall be in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction;
- 4. All construction work associated with the permit shall be accomplished from barges as no tidal wetland impacts were approved for this project;
- 5. A time-of-year restriction shall be in effect, protective of anadromous fish species. No instream work is allowed between February 15 and June 30 of any year, without written approval from the Department of Wildlife Resources.

Charles Cavelier, applicants' representative, Superintendent for the National Park Service spoke in support of the project. His comments are a part of a verbatim record.

No one spoke opposition of the project.

The matter was before the Commission for discussion and action.

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

Fees:	\$ 600.00
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- 8. **SEA MIST LLC, #20-2134**, requests authorization to place approximately 18,200 square feet of sand fill with plantings on the restored seaward-most sand dune and grade down 5,845 square feet of the existing second seaward-most dune

to construct three (3) single-family homes at 1086 West Ocean View Avenue along the Chesapeake Bay in the City of Norfolk. This application requires a dune and beach permit.

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 Norfolk on Willoughby Spit along Ocean View Beach facing the Chesapeake Bay. The property is located next to the 11<sup>th</sup> View Street public beach access along Ocean View Avenue and is surrounded by several houses. This lot is now vacant and has been since a building was demolished in 2003. In 2016, the City of Norfolk implemented a dune restoration project that moved sand from the beach to rebuild the eroded dunes. The applicant is requesting authorization to place sand fill and plantings on the seaward-most dune as well as grade down the existing second seaward-most dune so they can construct three single family homes.

Staff understands the applicant's desire to develop this property. While the construction of the proposed dwellings will not meet VMRC's adopted guidelines for beaches and dunes, this area of Ocean View Beach was developed prior to the Coastal Primary Sand Dunes and Beaches legislation, with residential dwellings previously encroaching upon the jurisdictional dunes. The Commission has previously approved permits for the construction of single family dwellings in jurisdictional beach and dune areas so long as they are aligned such that they do not encroach any further channelward than those of adjacent properties. The applicant's proposal will not be further channelward than the adjacent existing structures, and will also include restoring the seaward-most dune for further protection.

Accordingly, after evaluating the merits of the project and after considering all of the factors contained in §28.2-1408 of the Code of Virginia, staff recommends approval of the project as proposed.

Robert Simon, agent for the applicant, was sworn in. His comments are a part of the verbatim record.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

Fees:	\$ 300.00
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Item #9 was removed from the agenda by the request of Randy Owen, Deputy Chief, Habitat Management.

- 9. **ROBERT GEORGE, #20-2013**, requests authorization to remove existing pier and construct a private open-pile pier with a 15-foot by 40-foot open-sided boathouse adjacent to 108 Olde Cottage Lane along the Poquoson River in York County. This project is protested by nearby property owners.

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- 10. **ORRIE LEE SMITH, JR., CYNTHIA KESLER SMITH and CURTIS H. SMITH, Oyster Planting Ground Transfer Application, #2020-586**, requests authorization to transfer an oyster ground lease containing 2.24 acres within Slough Creek in Northumberland County. The transfer application is protested by an adjacent highland property owner.

Ben Stagg, Environmental Engineer, Sr., 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 the Smith family seeking to transfer lease #16492, containing 2.24 acres in Slough Creek, to B. Thomas Fletcher and Vickie L. Wilkinson-Fletcher in October of 2020. Recent 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, and to consider the effect on adjacent and nearby properties and public benefits and impacts of shellfish aquaculture as part of the transfer review process. Therefore, staff notified all adjacent leaseholders and any nearby property owner within 200 feet of the leased area.

Staff considers each transfer request on a case-by-case basis, 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. It also appears the prospective leaseholders will use more traditional bottom planting and harvest techniques going forward. Additionally, 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.

After careful review and consideration of the objections raised by the adjacent property owners, 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 #2020-586 for the entire lease # 16492 (2.24 acres), from Orrie Lee Smith, Jr., Cynthia Kesler Smith, and Curtis H. Smith to B. Thomas Fletcher and Vickie L. Wilkinson-Fletcher.

Stan Murphy, agent for the applicant, spoke in opposition of the transfer application. His comments are a part of the verbatim record. He advised that the applicant is currently in the hospital. Commissioner Bowman granted Mr. Murphy a continuance on the transfer application the applicant is able to attend the meeting.

The matter was before the Commission for discussion and action.

**Commissioner Bowman granted a continuance in the application transfer to accommodate the protestant's inability to attend due to an illness.**

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**11. BRANDON F. BEACH, Oyster Planting Ground Application, #2017-043,** requests authorization request to lease approximately ten (10) acres within Johnson Cove of Occohannock Creek, in Northampton County. The application is protested by a number of nearby highland property owners.

Ben Stagg, Environmental Engineer, Sr., 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 the application on March 6, 2017, from Brandon F. Beach seeking to lease approximately ten acres within Johnson Cove, a tributary to

Occohannock Creek in Northampton County. The request was subjected to our normal public interest review beginning in June of 2017, and the area was surveyed in July of 2020. The surveyed area contains 15.08 acres.

The applicant indicated on the use plan questionnaire that they would use bottom structures in addition to proposed bottom planting of spat and seed oysters. Staff considered existing SAV beds in the area, and they were avoided. The area, as surveyed, does not include any lease corners that should interfere with private pier access within the cove. However, due to the shallow nature of the depths in this cove placement of such bottom cages may be problematic.

Should the lease be granted, the deployment of bottom cages must adhere to current VMRC regulatory requirements which require that the impacts to navigation be minimal. Additionally, any such area of intensive aquaculture activity must be properly marked and have appropriate signage to warn the boating public of the activity. If the lease is granted and if such structures are placed and properly marked and in doing so that creates more than minimal adverse impact to navigation, the leaseholder will be required to remove or move such structures to a more appropriate area of the lease.

In summary, given the shallow nature of the cove, staff is reluctant to support the project. Therefore, after careful review and consideration of the objections raised by the adjacent property owners, and after considering all of the factors in §28.2.625 and §28.2-1205A of the Code of Virginia, staff recommends denial of the application to lease the surveyed 15.08 acres as depicted on the plat dated July 16, 2020, within Johnson Cove, in Northampton County, to Brandon F. Beach.

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

No one spoke in support of the application.

Two people spoke in opposition of the application with concerns of the water depth in the proposed lease application. Their 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 approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes. Associate Member Lusk recused herself from the Oyster Ground application.**

**Associate Member Zydron made a motion to make the requested area not leasable. Associate Member Neill seconded the motion. The motion carried, 5-0. Chair voted yes. Associate Member Lusk recused herself from the Oyster Ground application.**

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12. **KIRK and JOSHUA WEBB.** Commission review of staff denial of acceptance of a previously submitted oyster planting ground application within Hungars Creek in Northampton County. The area has a history of considerable SAV beds. The applicants have provided a written appeal of the staff denial.

Ben Stagg, Environmental Engineer, Sr., 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 an oyster planting ground application on January 13, 2021, from Kirk Webb and Joshua Webb seeking to lease approximately 1.25 acres Hungars Creek in Northampton County. The project area supports shellfish aquaculture on adjacent leases and supports submerged aquatic vegetation (SAV) beds.

Staff continues to maintain that leasing the requested area will adversely impact SAV growth and would be contrary to the current agency guidance document: Virginia Marine Resources Commission, Submerged Aquatic Vegetation (SAV) Guidance Criteria, Defining SAV Beds, and Delineating Areas Where There is Potential for SAV Restoration. Therefore, after careful review of the previously submitted application from Kirk Webb and Joshua Webb, requesting to lease 1.25 acres of State-owned subaqueous bottomlands in Hungars Creek in Northampton County, staff recommends that the Commission uphold staff's decision to deny acceptance of the application for shellfish leasing in this area.

Joshua Webb, applicant, was sworn in. His comments are a part of the verbatim record.

Lyle Varnell, VIMS, spoke in more detail to further explain the monitoring of SAV.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

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

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**13. PUBLIC COMMENTS: There were no public comments.**

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**14. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-270-10 et seq., “Pertaining to Blue Crab Fishery” to establish management measures, including season and bushel limits, for the 2021-2022 commercial crab fishery.

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

Ms. Galvan explained that the management of blue crabs is updated on an annual basis, where bushel limits are effective from July 5<sup>th</sup> of one year to July 4<sup>th</sup> of the next and an evaluation of the winter dredge season is conducted annually. This allows managers to respond, if necessary, to the most recent dredge survey results, which are usually released in May.

Last month, staff briefed the Commission on results of the 2020-2021 Bay-wide Winter Dredge Survey. Results from that survey, as well as harvest results from the 2020 fisheries, indicate the Chesapeake Bay blue crab stock is currently not overfished and overfishing is not occurring. The 2021 survey results showed decreases of 30% in total abundance and 54% in juvenile abundance from 2020 estimates. However, the abundance of the adult female spawning stock increased 12% from 2020 and is safely between the abundance threshold (below which the population is overfished) and the abundance target.

In light of these results, managers and stock assessment scientists from Virginia, Maryland, and the Potomac River Fisheries Commission do not recommend any liberalization or additional restrictions in management measures for the upcoming fishing season. Staff therefore recommends status quo for Virginia’s crab fisheries which includes a November 30 enddate for the hard crab pot fishery. The hard crab pot fishery was granted an extension to December 19 in 2020 only to help offset effects of COVID-19 on the blue crab economy.

At their June 2, 2021 meeting, the Crab Management Advisory Committee voted unanimously to recommend status quo management, including November bushel limits equivalent to those in April through October and a November 30 season end date. The Committee did request a fall meeting to discuss if the low juvenile abundances are supported by the VIMS summer trawl survey. No public comments have been received at this time.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-270-10 et seq., “Pertaining to Blue Crab Fishery,” to establish management provisions for the July 5, 2020 through July 4, 2021 blue crab fisheries.

No one spoke in support or opposition of the amended regulation.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to approve staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 5-0. Chair voted yes**

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- 15. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters” to close the December 1, 2021 through March 31, 2022 winter commercial crab dredge fishing season, in accordance with the provisions of Section 28.2-707 of the Code of Virginia.

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

Ms. Galvan explained that light of the 2020-2021 winter dredge survey results, managers and stock assessment scientists from Virginia, Maryland, and the Potomac River Fisheries Commission do not recommend any liberalization or additional restrictions in management measures for the upcoming fishing season. Staff therefore recommends status quo for Virginia’s crab fisheries. This includes keeping the winter crab dredge fishery season closed for winter 2021/2022. A winter dredge fishery season, especially when juvenile abundance is low, could negatively affect subsequent spawning events and crab pot harvest.

At their June 2, 2021 meeting, the Crab Management Advisory Committee voted unanimously to recommend status quo management. No public comments have been received at this time.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters,” to close the 2021-2022 winter commercial crab dredge fishing season.

No one spoke in support or opposition of the amended regulation.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to approve staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 5-0. Chair voted yes.**

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- 16. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-700-10 et seq., “Pertaining to Crab Pots” and Chapter 4 VAC 20-1090-10 et seq., “Pertaining to Licensing Requirements and License Fees” to require terrapin excluder devices (TEDs) in all recreational crab pots.

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

Ms. Galvan explained that a common threat to diamondback terrapin (*Malaclemys terrapin*) populations along the coast is drowning in crab pots, which they may enter for food or shelter. The terrapin's habitat is shallow saltmarsh, which unfortunately overlaps with the location of many of Virginia's crab pots, especially recreational crab pots cast off docks. The diamondback terrapin is listed as "Vulnerable" on the IUCN Red List of Threatened Species and is listed under Appendix II by CITES. The Virginia Department of Wildlife Resources (DWR) lists them in their Virginia Wildlife Action Plan as a Tier II "Very High Conservation Need".

Terrapins are a species of concern in most states on the East Coast, but management measures vary. In 2019, Monterey Bay Aquarium's Seafood Watch downgraded Virginia (as well as North and South Carolina) blue crabs from "Good Alternative" to "Avoid" based on gear interactions with terrapins and management effectiveness in protecting terrapins. This may affect the marketability of Virginia blue crabs to stores and consumers who use Seafood Watch to shop sustainably; one Virginia processor has already reported that some retailers have stopped buying crab from him. Pot-harvested blue crabs from Maryland, Delaware, and New Jersey (states with TED requirements) remain "Good Alternatives".

A terrapin excluder device (TED), otherwise known as a bycatch reduction device (BRD), is a device, often made of plastic or wire, that is installed in the funnel of a crab pot to restrict the size of the entrance. Domed terrapin shells will mostly be too tall to allow entrance into the crab pot, while blue crabs will still be able to swim in. TEDs are shown to reduce terrapin bycatch by around 82%. The effect of TEDs on crab catch is more variable—some studies conducted in Chesapeake Bay showed no effect on crab catch, while others conducted in Virginia, Maryland, and North Carolina did report losses from 27-50%.

Every state from New York to North Carolina, with the exception of Virginia, now has some form of TED requirement. New York requires TEDs in all crab pots in certain named bodies of water; New Jersey requires TEDs in all crab pots in bodies of water narrower than 150 feet at mean low water; Delaware and Maryland both require TEDs in all recreational crab pots; and, as of 2021, North Carolina requires TEDs in all crab pots in two newly formed Diamondback Terrapin Management Areas.

Virginia does not currently require the use of TEDs. In 2016, the General Assembly of Virginia voted to incentivize the use of TEDs by making the recreational 5-pot crab

license two licenses: a 5-pot with turtle excluder license for \$36 and a 5-pot without turtle excluder license for \$46. In 2019, almost 60% of the 839 recreational 5-pot licenses sold were without the turtle excluder requirement. The Code of Virginia also allows for any individual to use two crab pots without having to purchase a license. It is unknown how large this user group is; however, it is believed to represent a large number of recreational pots in Virginia.

Staff recommends requiring TEDs in all recreational crab pots in Virginia, both for 5-pot licensees and for everyone fishing two pots with no license. The proposed changes to Chapter 4 VAC 20-700-10 et seq., "Pertaining to Crab Pots," include a definition of TED as "a rigid frame made of plastic or wire with a maximum internal height of 1-3/4 inches". The TED commercially available and required in New York, Delaware, and Maryland is 1 3/4" by 4 3/4". The internal height of the TED is the factor limiting entrance of terrapins into the crab pot, so to allow flexibility in the shape and construction of TEDs (some designs include a domed top) staff has defined only the minimum internal height.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-700-10 et seq., "Pertaining to Crab Pots," and 4 VAC 20-1090-10 et seq., "Pertaining to Licensing Requirements and License Fees," to require terrapin excluder devices in all recreational crab pots.

No one spoke in support or opposition of the amended regulation.

The matter was before the Commission for discussion and action.

**Associate Member Neill made a motion to send the terrapin excluder device back to CMAC for further discussion. Associate Member Zydron seconded the motion. The motion carried, 5-0. Chair voted yes**

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- 17. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" to require mandatory online harvest reporting for blue crabs.

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

Mr. Kenyon explained that the agency established an online reporting system in 2009 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 timelier manner. Since 2009, only a small amount of commercial harvesters have voluntarily utilized this system on an annual basis. Of the 1,791 individuals who are eligible for crab pot licenses, only 232 individuals are using the online system in 2021 (13%). The user group that is not using the online system accounts for approximately 92% of the total blue crab harvest in 2020. Harvest records that are submitted on paper reporting forms require 97 days to be recorded in the agency's reporting database, while online reports only take 21 days (78% faster).

Agency staff has prepared industry for this reporting transition over the last year and a half. Staff has provided presentations and requested feedback during four different Crab Management Advisory Committee meetings beginning in February 2020. Staff will provide each blue crab licensee a FAQ and newsheet through the mail, as well as provided the same information in office and through licensing renewal letters. The agency has received zero public comments to date in opposition to the transition. Staff believes the best approach to the transition is to set the implementation date for January 1<sup>st</sup>, 2022. This date will allow individuals ample time to sign up for an online account as well as allow staff time to continue to educate and help online users.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," to establish mandatory online harvest reporting for blue crabs.

No one spoke in support or opposition of the amended regulation.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to approve staff recommendation. Associate Member Everett seconded the motion. The motion carried, 5-0. Chair voted yes**

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**Commission Meeting**

**18796  
June 22, 2021**

There being no further business, the meeting was adjourned at approximately 2:25 p.m.  
The next Commission meeting will be Tuesday, July 27, 2021.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary