

## MINUTES

## COMMISSION MEETING

October 27, 2020

**\*\*In consideration of Governor Northam's Executive Order 55 and public safety, the October 27, 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 10/27/2020 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 10/22/2020. Comments could have also have been emailed to [fisheries@mrc.virginia.gov](mailto:fisheries@mrc.virginia.gov) and were accepted until NOON on 10/26/2020.
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](mailto:fisheries@mrc.virginia.gov) by 5PM on 10/26/2020.

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 via conference call

John Tankard III

Ken Neill, III

John Zydron Sr.

Heather Lusk

Christina Everett

Associate Members

Present via conference call

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Wayne France James E. Minor III	Associate Members Present via conference call
Kelci Block	Assistant Attorney General, Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Ellen Bolen	Deputy Commissioner 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 via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present via conference call
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call
Alexa Kretsch	Fisheries Mgmt. Specialist Present via conference call
Tony Watkinson	Chief, Habitat Management Present via conference call
Justin Worrell	Environmental Engineer, Sr. Present via conference call
Mike Johnson	Environmental Engineer, Sr. Present via conference call
Jay Woodward	Environmental Engineer, Sr. Present via conference call

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Mark Eversole

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

Others present via conference line

Ann Rex

Bryan Peeples

Bryan Plumlee

Caleb Parks

Carter Teague

Danny Vastal

Kathryn Davis

Kermit Ashby

Kris Mancuso

Scott Vining

Robert Morazes

Tammie Clary

William Zazynski

Corey Gray

Adam Kahrl

Neville Reynolds

R. A. Parks

Robert Marazes

William McCahill

Mark Sanford

Michael Oesterling

Patricia Rodriguez

Reed Mayo

Tim Rapine

Kim Huskey

Joseph Scott

James DeGraffenreidt

Billy Allen

Catherine Fulton

Cecilia Lewis

Chris Flora

Chris Moore

Joylette Hylick

Kristen Mancuso

Marsha Owens

Tiffany Birge

Conway Downing

Sharon Shutler

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.

Tony Watkinson requested that Page 2A Item COLONNA SHIPYARD, #19-1957 be removed from the Agenda.

**Associate Member Zydron moved to approve the agenda as amended. Associate Member Tankard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the September 29, 2020 Commission meeting minutes.

**Associate Member Tankard moved to approve the minutes as presented. Associate Member Neill seconded the motion. The motion carried, 6-0. Chair voted yes. Associate Members Zydron abstained. Associate Member Minor was not present during vote.**

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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 page 2 Item B for the Associate Members. Mr. Watkinson’s comments are a part of the verbatim record.

Page 2A Item COLONNA SHIPYARD, #19-1957 was not presented. Page 2A Item COLONNA SHIPYARD, #19-1957 was removed from the Agenda.

**2B. WAGMAN HEAVY CIVIL, INC., #20-1415** Requests authorization to install temporary bridges, reconfigure the existing I-95 Southbound construction causeway, construct three (3) new traffic lanes parallel and adjacent to the I-95 northbound bridge across the Rappahannock River and construct improvements over Falls Run to provide additional capacity and facilitate construction of the I-95 Northbound Rappahannock River Crossing Project in the City of Fredericksburg and Stafford County. Recommend approval contingent on our standard instream permit conditions, a mussel survey and relocation prior to construction and an instream work time-of-year restriction of February 15 to June 30, and August 15 to September 30 of any given year, to protect anadromous fishes and freshwater mussels, unless specifically waived in writing by the Department of Wildlife Resources. Permittee shall execute a transfer of this permit to the Virginia Department of Transportation upon their acceptance of the permitted structures.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member Neill moved to approve the page 2 Item B as presented. Associate Member Zydron seconded the motion. The motion carried 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

Fee:	\$ 600.00
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**3. CONSENT AGENDA ITEMS. No consent agenda items.**

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

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5. **VIRGINIA ELECTRIC AND POWER COMPANY, #19-1217**, requests authorization to remove two (2) 230kV overhead electric transmission circuits and associated support structures and to install, by micro-tunneling technology, two (2) 60-inch diameter steel conduits housing for two (2) 230kV electric transmission circuits a minimum 16-foot beneath 344-foot and 379-foot wide sections of Four Mile Run, including temporary impacts to tidal wetlands and State-owned subaqueous bottom from the installation of timber mat access roads, floating work platforms, and sheet pile cofferdams immediately upstream of the Route 1 bridge crossing in Arlington County and the City of Alexandria. This project requires a tidal wetlands and subaqueous permit.

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 advised prior to presenting the project that the Commission is acting as the Wetlands Board for Arlington County.

Mr. Eversole explained that the project is located in Four Mile Run, a tributary to the Potomac River near the Route 1 Bridge. Four Mile Run, in this location, is the boundary between Arlington County and the City of Alexandria. The applicant is proposing to install, by micro-tunneling technology, two conduits containing two new 230 kV electric transmission lines. Once these new lines are installed and operational, the existing overhead lines will be removed, along with the support towers and concrete bases which currently sit in tidal wetlands and Four Mile Run.

The project will temporarily impact a jurisdictional tidal wetland. The project requires a VMRC wetlands permit because Arlington County has not adopted the Wetlands Zoning Ordinance. All areas temporarily disturbed by the installation of access matting, and the removal of the support structure will be restored to pre-construction conditions once construction is complete.

Temporary impact to State-owned submerged lands will also occur due to placement of floating mats to support construction equipment, as well as cofferdams to allow work to proceed in dry conditions. The access mats will cross a section of Four Mile Run, where submerged aquatic vegetation (SAV) has been present in past years. VIMS mapping shows that during the current five-year period (2014 to 2018) very dense SAV, likely a mix of freshwater species, was mapped in 2017. Stantec Consulting performed a field

survey in June 2020, followed by a site visit conducted by VMRC, VIMS and Stantec in July. At neither time was any SAV observed. The VIMS report notes that the portion of the project impacting the SAV beds will occur near the end of the project timeline and SAV may recolonize the area prior to that time. In order to minimize impacts to the area, VIMS recommends that the construction activities in the area of SAV be conducted during winter months when SAV is dormant. They recommend that instream construction occur from early November through February 15 to be most protective of aquatic resources. They also recommend a Time of Year Restriction, from February 15 through June 30, protective of anadromous fish species.

Staff recognizes and appreciates the comments provided by VIMS concerning potential SAV impacts. We also understand the constraints placed on the permittee by limiting instream work to approximately three (3) months in winter conditions. Placement of mats and cranes, the deconstruction and removal of overhead lines, metal tower and support structure, followed by removal of cranes and access mats in winter conditions could be a lengthy process. The ability to begin this work prior to early November, would improve the odds of all work in SAV beds be completed before the February 15<sup>th</sup> start of the time-of-year restriction.

Accordingly, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) and §28.2-1205 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. A time-of-year restriction shall be imposed, protective of anadromous fish species. No instream work is allowed between February 15 and June 30 of any year;
2. If there is no SAV present, instream work can begin July 1 of that year. However, should SAV be present, then instream work in areas of SAV shall not commence until September 1. All temporary access matting shall be removed by February 14 to allow for recolonization of SAV during the time-of-year restriction;
3. All areas of State-owned submerged land 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.

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- 4. A royalty in the amount of \$2,169.00 shall be charged for the encroachment of the two (2) 60-inch diameter steel conduits beneath 723 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot;
- 5. The Horizontal Directional Drill (HDD) Inadvertent Return Plan developed for this project, dated June 28, 2019, shall be attached to and become a part of this permit.

Cory Gray, representative of Stantac, was present and sworn in. His comments are a part of the verbatim record.

William McCahill, applicant for Dominion Power was present but did not have any further comments to add to the presentation that was presented. 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 Neill made a motion to approve staff recommendation. Associate Member Zydron seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during the vote.**

Royalties: (Encroachment of 723 LF @ \$3.00 /LF):	\$ 2,169.00
Permit Fee:	\$ 600.00
Total Fees:	\$ 2,769.00

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- 6. **PORTABAGO BAY HOMEOWNERS ASSOCIATION, INC., #20-1526**, requests authorization to install 194 linear feet of stone-filled gabion basket breakwater, with clean sand fill and wetland planting to create a living shoreline on the Rappahannock River at 29481 Goose Point Court in Caroline County. This project requires a tidal wetlands and subaqueous permit.



Jay Woodward, Environmental Engineer, Sr., 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.

Mr. Woodward explained that the project is located in Caroline County, approximately four miles downriver of the Route 301 bridge crossing. There is an existing community boat ramp and pier, with a sandy beach to the north of the pier and wetland fringe to the south of the pier and ramp. The proposed stone-filled gabion baskets will function as a marsh sill structure to protect the existing marsh. They will be backfilled with sandy sediment periodically removed from the ramp, to an elevation no higher than mean high water, to perpetuate the vegetated wetland substrate. The baskets will be three (3) feet wide by three (3) tall, and filled with small stone. The baskets and some fill will be located on submerged land, while the remainder of the fill will be placed on the landward side of the sill on intertidal wetlands. All of the fill area behind the baskets will be planted with wetland vegetation (Spartina alterniflora and S. patens) as outlined in the application's "Living Shoreline Maintenance and Monitoring Plan."

The project is designed to protect, enhance and expand an existing tidal marsh fringe adjacent to a community use pier. The gabion basket structure will act to retain course-grained sediments that will periodically be removed from the boat ramp, allowing the ramp's continued safe and effective use by the community for access to the river, while protecting and preserving the adjacent vegetated wetland area. None of the existing vegetation will be disturbed by the baskets as the structure will be installed channelward of the mean low water line and all vegetation. There will be no loss of vegetated wetlands, but rather a net gain of approximately 1,351 square feet of vegetated wetland habitat. In addition, the stone-filled gabion basket structure itself will act as subtidal and intertidal habitat, providing substrate for encrusting organisms and interstitial space for other small and juvenile estuarine fauna.

The Virginia Institute of Marine Science (VIMS) indicates there is no concern with periodically using the accumulated sediments on the ramp as nourishment for the marsh, but recommends a more gentle (20:1 to 10:1) slope behind the sill structure to facilitate proper function of the wetland area over time. In addition, VIMS recommends care be taken during initial placement of the material, as well as during periodic cleaning of the ramp, so as to minimize disturbance to the existing and newly planted vegetation.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302(10)(B) of the Code of Virginia and the Wetlands Mitigation-

Compensation Policy and Supplemental Guidelines, staff recommends approval of both the wetland and subaqueous bed permits in the matter. Staff believes this is a wetland creation/enhancement proposal and does not recommend any further compensation as the project appears to be self-mitigating. Furthermore, we do not recommend a royalty for the placement of the sill structure or nourishment on State-bottom, since this will be a living shoreline project that will result in the conversion of sand bottom habitat to vegetated wetlands.

Chris Flora, representative of Portabago Bay Homeowners Association was present via phone. 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 Everett seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during vote.**

Fee:	\$ 300.00
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- 7. **YMCA OF SOUTH HAMPTON ROADS, #19-1496**, requests authorization to install two (2) offshore stone breakwaters totaling approximately 676 linear feet, extend an existing breakwater approximately 30 linear feet, install a 100-foot long by 24-inch diameter stormwater outfall pipe, and nourish the area landward of the breakwaters with beach quality sand. This projects is situated along the Chesapeake Bay adjacent to the YMCA Camp in the Silver Beach area of Northampton County. The project is protested by adjacent and nearby property owners. Continued from the February 25, 2020, Commission meeting.

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 proposed project is located approximately 7.5 miles southwest of the Town of Exmore and 0.5 miles north of the beachfront community of

Silver Beach. The project is also south of and adjacent to four permitted breakwaters. Camp Silver Beach is located on 151 acres of property that provide activities for 8-16 year old campers. The Camp has approximately 1,100 feet of shoreline along the Chesapeake Bay.

There is severe erosion along the upland and beach interface, with a substantial scarp running along most of the property. The erosion rate since 2002 has been 3.6 feet per year. However, since the installation of the adjacent northern breakwaters in 2010 or 2011, the YMCA property has averaged over five feet of erosion per year. The adjacent property south of the Camp property has very little erosion since 2002.

The applicant proposes to stabilize the shoreline and protect the property by utilizing living shoreline techniques that include the construction of two new breakwaters and extension of a third breakwater, combined with minor bank grading of the higher escarpment and beach nourishment. Upon completion, the project will result in a conversion of 297 square feet of beach to intertidal riprap, 20,397 square feet of submerged land to intertidal riprap, and 39,748 square feet of submerged land to beach. There also is 4,175 square feet of submerged aquatic vegetation (SAV) within the project area that will be lost.

The applicant and the protesters have met several times since the February Commission meeting to try to come to a resolution that is agreeable to both parties for this project, but have not been able to come to an agreement. The applicant would like to move forward with the project so they can complete construction before the time-of-year restriction for the northeastern beach tiger beetles starts on April 15.

While we are sensitive to the protesters' concerns, it appears that the project has been designed to minimize the potential for adverse effects along the adjoining southern beach while providing protection for the applicants' eroding shoreline. As suggested by our Shoreline Development BMP's, the breakwater project appears to have been designed to address the specific site conditions such as the wave climate and the material composition, and has been designed with an appropriate spacing and distance offshore.

Therefore, 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 and the concerns of the protesters, staff recommends approval of the applicant's breakwater system. In addition, we recommend compensatory mitigation for 4,175 square feet of direct impacts to SAV in conformance with the submitted plan to fund VIMS seeding activity in the Poquoson

Flats area. We further recommend a one-time royalty in the amount of \$1,987.40 be assessed for the subaqueous beach nourishment fill over 39,748 square feet at a rate of \$0.05 per square foot, and a one-time royalty of \$111.00 for the outfall pipe encroachment under 37 feet of State-owned subaqueous bottom at a rate of \$3.00 per liner foot.

Bryan Plumlee, Poole Brook Plumlee, PC, presenting on behalf of the YMCA was present. His comments are a part of the verbatim record.

Kermit Ashby spoke in opposition of the project. His statements are a part of the verbatim record

James DeGraffenreidt spoke in opposition of the project. His comments are a part of the verbatim record.

Neville Reynolds, agent for the applicant, provided further clarity about the discussion with the project engineer. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

Royalties: (Beach nourishment of 39,748 SF @ \$.05 /SF):	\$ 1,987.40
Royalties: (Outfall pipe encroachment of 37 Ft. @ \$3.00 /LF):	\$ 111.00
Fees:	\$ 100.00
Total Fees:	\$ 2,198.40

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8. **RAPPAHANNOCK WHARF, LLC, #20-0920**, requests authorization to re-develop a deteriorated commercial wharf to include removal of a failed timber bulkhead and concrete slab, installation of a 70-foot long quarry stone and rubble breakwater with associated clean sand fill and wetland plants to create a living

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shoreline, 452 linear feet of timber replacement bulkhead, a 16-foot wide gravel boat ramp with flanking timber jetties, a 32-foot long timber wave screen, repair of one 12-foot wide pier, replacement of two (2) other piers at 8-feet wide, and installation of 205 linear feet of quarry stone riprap revetment to create a commercial marine construction facility base of operation on Town Creek at the end of Callis Road in Lancaster County. The project is protested by an adjoining property owner and another individual in the area.

Jay Woodward, Environmental Engineer, Sr., 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.

Mr. Woodward explained that on May 30, 2020, staff received an application from Mr. Frankie Davis, owner of Northern Neck Marine Construction (NNMC), proposing a renovation of a commercial seafood wharf facility at the end of Callis Lane in Lancaster County. The wharf was built around 1959 by Lewis Callis, a local waterman, and is known as Callis Wharf. The site was operated and maintained for decades thereafter for landing, processing and shipping seafood products. The facility fell into disuse and disrepair and Mr. Davis recently purchased it from the local bank who had taken over the property. Mr. Davis runs a commercial waterfront construction company and he plans to use it as a base of operation, as well as allowing the continued use as a seafood offloading and shipping facility for local watermen.

The original facility had a bulkhead around the perimeter, portions of which have severely deteriorated beyond the point of repair. The current proposal is to redo portions of the bulkhead to allow continued commercial wharf usage, while removing other portions of the bulkhead and failed upland concrete pad to incorporate aspects of a "living shoreline" design. Staff had met with both Mr. Davis and his agent, Mr. Joey Scott, to discuss options for the site prior to submittal of the Joint Permit Application.

In light of the numerous comments raised during the public interest review by both the neighbors and the agencies, the agent revised the plans and submitted them on August 7, 2020. While some of the original details were in dispute, staff is comfortable that this project represents a reasonable and permissible use of State-owned bottomlands, especially in light of the site's long history as a waterfront commercial property. The applicant indicates he will allow its controlled use as a seafood offload, processing and shipping facility for local watermen, many of whom are being displaced as commercial

shorelines are turned into private residential lots and other non-water dependent developments.

The project is proposed to impact 1,095 square feet vegetated wetlands, much of which is growing in areas that were once upland, among concrete rubble, oyster shell fill and other debris. The proposal will result in a net gain of 1,370 square feet of new vegetated wetlands and 1,325 square feet of beach habitat landward of the proposed breakwater. This is in keeping with the Commonwealth's recent mandate to incorporate elements of living shoreline design into shoreline stabilization projects where possible. These wetland impacts were considered and approved by the local wetlands board at their August hearing.

Since the site will continue to be a working waterfront, some impact to wetlands and State bottom is to be expected. Staff believes the proposed improvements to the deteriorated commercial wharf will result will in a cleaner, safer, and more usable shoreline for water-dependent activities that incorporates a living shoreline design where appropriate.

We recommend, however, that the failed bulkhead structure, where the revetment and breakwater are proposed, as well as all unclean material, metal, paint-coated block, etc., be removed from the site and disposed of in a lawful manner and location. Staff does not object to breaking up the clean concrete slabs for use as a base material under granite quarry stone armor in both the breakwater and revetment portions of the design. We further recommend only clean sand fill, greater than 90% "sand" be used for the beach and wetland planting areas on the eastern side of the project. While relocating the ramp and the wave screen was discussed, it appears that the applicant has justifiable reasons for their need and proposed locations. Many of the remaining concerns raised related to security and site access fall outside the purview of the Commission.

Accordingly, staff recommends approval of the project as modified and represented in the plans dated received August 7, 2020, with the following conditions:

- (1) All fill used for beach nourishment behind the proposed breakwater shall consist of 90% coarse grain sand;
- (2) All construction debris removed from the site (metal, creosote timbers, etc.) shall be disposed of upland in a lawful manner. Any concrete on site that is to be used as core material in the breakwater structure shall be free of exposed metal, any contaminants such as paint, tar, etc., and broken into smaller

pieces in conformance with our best management practices concerning the use of such materials.

In this case , staff believes that the proposal should not require a royalty since it would qualify for the royalty exemption provided in Section 28.2-1206 (B)(ii) of the Code, for “commercial facilities providing services relating to the shipping of domestic or foreign cargo”, considering the applicants’ recent written, signed statement that “the site will be used for the loading and unloading of cargo and seafood,” their prior description of their plans for the site, and a recent opinion by the Office of the Attorney General related to this exemption.

Joey Scott, agent for the applicant spoke in support of the project. His comments are a part of the verbatim record.

Robert Morazes spoke in opposition of the project. His comments are a part of the verbatim record.

Bill Emory spoke in opposition of the project. His comments are a part of the verbatim record.

Bryan Peeples, attorney for adjacent property owners, spoke in opposition of the project. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

Fee:	\$ 100.00
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- DEREK OWENS, #20-1009**, requests authorization to install a 5-foot wide by 148-foot long open-pile private pier with a 10-foot by 12-foot deck, attached to an existing permitted boathouse structure, along Free School Creek at 4442 School House Road in Gloucester County. The project is protested by an adjacent property owner.

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

Mr. Johnson explained that in 2017, Mr. Owens applied to replace an existing double-slip enclosed boathouse and appurtenant decking on an existing private pier, which was approved by the Commission at its May 2, 2018 meeting. At that time, he did not ask to replace the existing mainstem pier or deck header. When construction began for the permitted boathouse, the contractor removed the aforementioned mainstem pier and "L-head" deck. The applicant is now asking for approval to replace the pier and deck.

Mr. Owen's property is located at the mouth of Free School Creek behind a marsh spit that is protected by a previously permitted rock sill. The proposed pier will extend offshore of the permitted boathouse to the approximate minus six (-6) foot MLW contour, where he intends to moor a sailboat. The pier and "L-head" deck is proposed to match what previously existed with no additional encroachment over State-owned bottom.

Due to presence of the enclosed boathouse and area of the proposed deck space of the pier being over 400 square feet, Mr. Owens' pier does not qualify for the exemption as described in §28.2-1203 A 5 of the Code of Virginia and a subaqueous permit is required. Mr. Owens has provided a justification of the pier replacement by documenting ownership of a 27-foot Catalina sailing vessel, which draws approximately 6 feet of water and would not fit in the approved boathouse.

Staff is sensitive to Ms. Rex's concerns about the pier and her wishes to have a quiescent water view from her property. However, staff notes the pier, before it was removed, had existed at this location and in the configuration proposed since 1962. Therefore, the replacement of the pier will not increase the impact to her viewshed from previous conditions.

Ms. Rex also cites concern with commercial use of the pier. The pier and boathouse are being permitted for private use only. Any sale or rental of mooring space by the owner would be a violation and subject to Commission enforcement action. The issue raised by Ms. Rex of shoreline erosion is a concern of all waterfront owners, and boat traffic does contribute to it. However, this creek already has a number of piers and associated vessels, and free navigation along the waterways of Virginia is a right enjoyed by all of



the citizens of Virginia. Therefore, this is a known hazard of purchasing waterfront property.

Accordingly, after evaluating 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.

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

Ann Rex spoke in opposition of the application. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to approve staff recommendation. Associate Member Neill seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member France was not present during the vote.**

Fee:	\$ 300.00
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**10. BALLARD BROTHERS FISH AND OYSTER COMPANY INC., #20-0141**, requests authorization to place up to 750 floating oyster cages, in a 1,138-foot by 355-foot area, over existing lease #13637 within Cherrystone Creek in Northampton County. The project is protested by a nearby property owner.

Ben Stagg, Dir., Shellfish Aquaculture, Leasing and Mapping, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Stagg’s comments are a part of the verbatim record.

Mr. Stagg explained that the application from Ballard Brothers Fish and Oyster Company Incorporated requesting authorization to place up to 750 floating oyster cages over existing lease # 13637 within Cherrystone Creek in Northampton County was received on January 28, 2020. The application was subjected to the normal public

interest review process. Adjoining and nearby property owners were notified of the project.

After careful review and consideration of the objections raised by the nearby upland property owner, and the potential impacts of permitting this area for floating shellfish aquaculture, staff concludes authorization of the most recently modified area appears appropriate. Accordingly, after considering all of the factors §28.2-1205A of the Code of Virginia, staff recommends approval for the placement of up to 750 floating aquaculture enclosures over the State-owned subaqueous bottomlands as depicted in the revised location as received on March 24, 2020, and within the boundaries of Oyster Planting Ground Lease # 13637 in Cherrystone Creek in Northampton County. Staff further recommended an annual royalty of \$1,592.50 for the encroachment over 318,500 square feet of subaqueous bottomlands at a rate of \$0.005 per square foot.

Kim Huskey, representative for the applicant, spoke in support of the application. Her comments are a part of the verbatim record. She asked that the area of authorization be enlarged by 150 feet.

Reed Mayo, attorney, spoke representing the protestants Dr. Catherine Fulton and Judith Swystun and indicated no opposition to staff's recommendation. His comments are a part of the verbatim record.

After some Commission discussion, Commissioner Bowman requested clarification related to the request by the applicant to add an additional 150 feet to the requested area. Specifically, he requested staff to provide a revised recommendation concerning the additional area being requested. Staff indicated support for the additional area, provided the protestant did not object. Staff further noted that the revised area would result in a recommended royalty of \$2,275.00 for the encroachment over 455,000 square feet of subaqueous bottomlands at a rate of \$0.005 per square foot. Mr. Mayo indicated his clients had no objection to the expanded area.

The matter was before the Commission for discussion and action.

**Associate Member Zydron made a motion to approve staff's amended recommendation to increase the lease application by 150 ft. Associate Member Everett seconded the motion. The motion carried, 6-0. Chair voted yes. Associate Members France and Minor were not present during final vote.**

Royalties: (Float encroachment of 455,000 Sq.Ft. @ \$0.005 /Sq.Ft.):	\$ 2,275.00
Fee:	\$ 100.00
Total Fees:	\$ 2,375.00

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**11. PUBLIC COMMENT:**

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**12. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery" to extend the season for the hard crab pot fishery through December 19, 2020.

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

Ms. Kretsch explained the COVID-19 pandemic caused restaurants across Virginia and throughout the country to close this spring and in many areas, restaurants are still not seating full capacity. Most consumers are choosing to eat at home. This lead to a drop in demand of some seafood products. Some crabbers have reported not being able to sell their harvest. At their May 21, 2020 meeting, the Crab Management Advisory Committee (CMAC) voted to support the staff recommendation of status quo for the 2020-2021 blue crab season, but requested being able to revisit that recommendation in the fall. At the October 5, 2020 CMAC meeting, the committee voted unanimously to request a season extension for crab pots until December 19, 2020 to help crabbers recoup lost revenue. If extended, bushel limits in December would be the same as in April through October. The season for peeler pots and all other crab gears would remain the same.

Staff recommends amending Chapter 4 VAC 20-270-10 et seq., "Pertaining to Crabbing" to extend the season for the hard crab pot fishery through December 19, 2020.

No one spoke in support or opposition.

The matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to approve staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member France was not present during final vote.**

\* \* \* \* \*

- 13. DISCUSSION:** Upcoming Fisheries Management Division public hearings and information for the December 2020 commission meeting.

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 provided a brief presentation on the upcoming Fisheries Public Hearings for Cobia and Menhaden that will be presented at the December 8, 2020 Commission Meeting. His comments are a part of the verbatim record.

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There being no further business, the meeting was adjourned at approximately 3:45 p.m.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary