

Briefing Materials for Crab Management Advisory Committee Meeting

November 13, 2025

Terrapin Excluder Devices in Recreational Pots

In February 2025, the Virginia Marine Resources Commission received a “Petition to Protect Diamondback Terrapins (*Malaclemys terrapin*) from Mortality in Blue Crab Pots by Requiring Bycatch Reduction Devices in Near-Shore Waters”. This petition asked the VMRC to amend regulations to require Bycatch Reduction Devices (BRDs) in “licensed commercial and recreational blue crab pots in waters less than 150 yards from shore (at mean low water mark/tide) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors” to protect diamondback terrapins from being caught in crab pots and drowning. This request followed the official process for a formal petition and was presented to the Commission at their June 24, 2024, meeting for approval or denial of the petition.

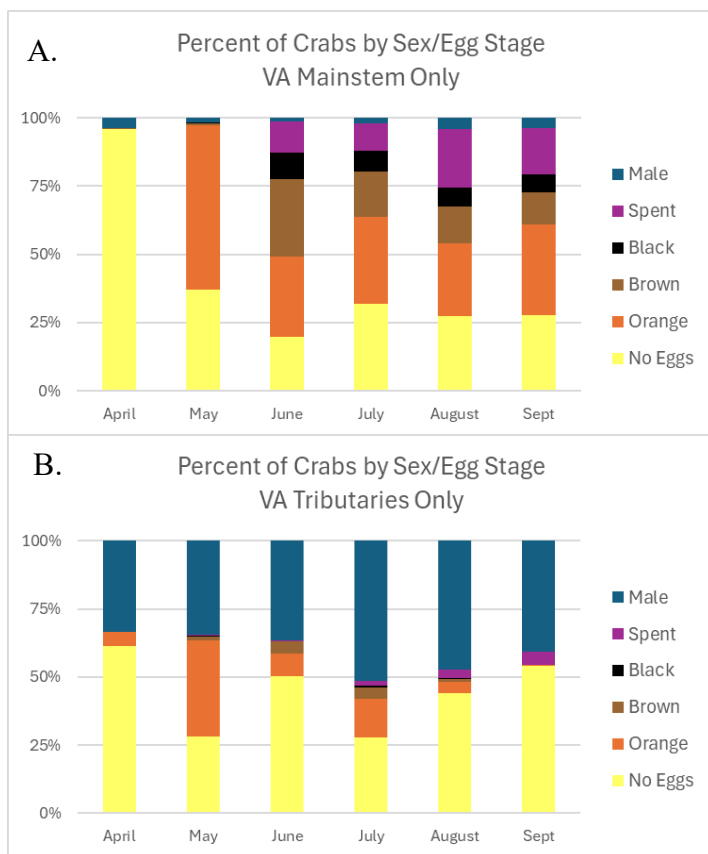
The Commission voted unanimously to deny the petition as presented. The Commission also voted unanimously to task VMRC staff with reviewing recreational crab pot fisheries for the use of terrapin excluder devices (TEDs). As part of that request, staff is seeking input from Crab Management Advisory Committee (CMAC) on the use and requirement of TEDs in recreational crab pots.

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Dark Sponge Law

In 1996, the Commission established in 4VAC20-370, “Pertaining to the Culling of Crabs”, that it would be unlawful to possess more than ten dark sponge crabs per bushel, with all other dark sponge crabs returned to the water alive and unaltered as soon as they are determined to have a dark egg mass. By definition, a “dark sponge crab” means “the adult female hard crab which has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.” The darker the sponge mass, the more developed the eggs and the closer the female crab is to releasing them. In 2007, the dark sponge prohibition was narrowed from the whole season to the period from March 17 through July 15. In 2010, this prohibition narrowed further to the period from March 17 through June 30, where it remains today.



Graphs A and B show the distribution of blue crabs caught in the VIMS Juvenile Trawl Survey by sex and (for females) egg stage by month from April through September for (A) the Virginia mainstem and (B) Virginia tributaries. Black and brown boxes represent crabs that would be protected by the dark sponge law.

One of the reasons for the black sponge law season is that above a certain water temperature (25°C/77°F), survivability of crabs caught and discarded declines, so returning sponge crabs to the water is not likely to preserve them for the breeding stock. In a VIMS field study, 98% of crabs discarded survived in May but June and July had a 30-40% mortality. While few dark sponge crabs are present in May, they're very likely to survive and spawn.

At the May 2025 CMAC meeting, staff brought up a request from a crabber for the dark sponge law dates to end once the sanctuaries close. See the attached draft minutes of May 29, 2025, CMAC meeting for a summary of discussion. No motion was made, but staff said they could revisit the topic at a future meeting with more information available.

Crab License Waiting List

When the Blue Crab Fishery Disaster was declared for Chesapeake Bay in 2008, one of the measures Virginia took to reduce effort was to place on a waiting list any crab pot or peeler pot licensee who reported no blue crab harvest from 2004-2007. Regulation 4VAC20-1040 states that individuals on the waitlist will be eligible to purchase their crab licenses again once the Bay-wide Blue Crab Winter Dredge Survey indicates an abundance of 215 million adult female crabs in three consecutive years. At this time, the adult female abundance has only exceeded 215 million crabs in 2010 and 2017. The threshold of 215 million adult female crabs used to be the target abundance calculated by the 2011 stock assessment. That target was revised to 196 million crabs by the 2020 stock assessment update (which has been exceeded only in 2010 and 2017), but the ongoing blue crab stock assessment may revise biological reference points. Results of this stock assessment are expected in 2026.

When the waitlist was first established, 867 licenses were put on hold (524 hard crab pots and 343 peeler pots). That doesn't indicate 867 watermen were on the list, as many people had both hard crab pot and peeler pot licenses. As of 2025, there are now 88 licenses on the waitlist (63 hard crab pots and 25 peeler pots) for 71 individuals. The waitlist reduction can be attributed to many things – crab dredgers during 2004-2007 were exempted, some licenses were turned in during the buy-backs funded by the fishery disaster, watermen may no longer have a commercial card or have passed away, and anyone on the waitlist could transfer into the fishery by receiving someone else's license.

Latent Effort of Current Wait List			
	License	# of Licenses	# of Pots
Hard Crab Pots	85 pot	25	2,125
	127 pot	4	508
	170 pot	2	340
	255 pot	30	7,650
	425 pot	2	850
	Total	63	11,473
Peeler Pots	210 pots	25	5,250

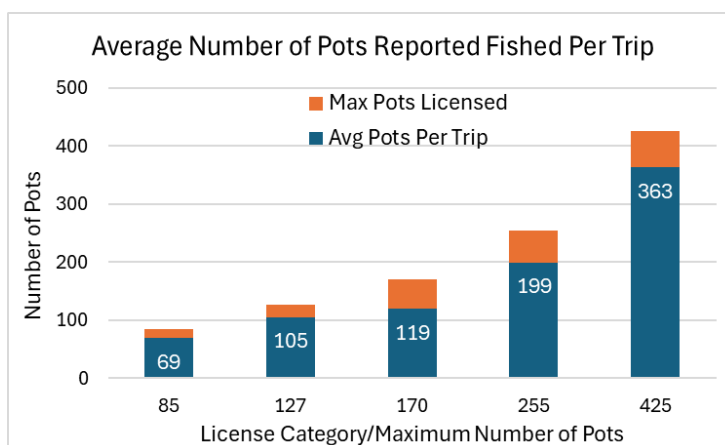
Two watermen asked the VMRC for their crab licenses to be restored during Public Comment of the March 25, 2025, Commission meeting. The matter was referred to CMAC, who discussed the waitlist at their May 2025 meeting. The committee noted that there are avenues for people on the wait list to rejoin the blue crab fishery, as there are crabbing licenses currently for sale. Committee members also stated they didn't approve of opening the fishery to more effort while the stock is low and suggested revisiting the topic after the results of the stock assessment are released. The committee voted unanimously to table discussing the waitlist until after the stock assessment. Another waterman asked for his crab license to be restored at the August 26, 2025, Commission meeting and the Commission again referred the item to CMAC, with specific interest in limiting transferability to potentially restored licenses to immediate family members.

Crab Pot Limit Restoration

At the May 2025 CMAC meeting, members of the committee said in lieu of opening up the waiting list, they would prefer to have the old crab pot limits restored.

In 2008, as part of the 34% reduction in crabbing effort, all crab pot limits were reduced. All hard crab pot licensees could set 15% fewer pots and peeler pot licensees could set 30% fewer pots (see table). While staff doesn't have data on how many pots licensees have set at a given time, the daily mandatory harvest reports do include gear amount. The graph on the right shows the average number of pots reported worked per trip by each license category. Depending on the license category, this ranges from 70-85% of the maximum allowed.

License	Pre-2008 Pots	Post-2008 Pots	Decrease
211	100	85	15%
222	150	127	15%
223	200	170	15%
212	300	255	15%
213	500	425	15%
217	300	210	30%



Four years later, the Commission implemented bushel limits for hard crab pot licensees, which operate as an additional way to constrain harvest. The current bushel limits were calculated based on an estimated range from a “good” to “exceptional” day of crabbing, or 1 bushel for every 5-10 pots. When the higher summer bushel limits are in effect, only 10% of trips report harvest within 25% of the bushel limit. When the low bushel limits are in effect in spring or fall, 37% of trips are within 25% of the bushel limit, suggesting that the lower bushel limits do act as a constraint on harvest. Overall, the majority of trips harvest less than 75% of the allowed bushel limit.

**VIRGINIA MARINE RESOURCES COMMISSION
CRAB MANAGEMENT ADVISORY COMMITTEE
380 FENWICK ROAD, FORT MONROE, VIRGINIA
VMRC COMMISSION ROOM**

May 29, 2025 -- 5:00 PM

Members Present

Tye Burns
Marshall Cox
Kenneth Diggs
Spencer Headley
J.C. Hudgins
Chris Moore
Bernard “Wayne” Morris
Pete Nixon
Nathan Reynolds
Cory Rice
Mark Sanford
John “Ed” Tankard III (chair)

Members Absent

Tom Powers

VMRC Staff

Jill Ramsey
Alexa Galvan
Catherine Wilhelm
Brooke Lowman
Shakira Goffe
Pat Geer
Lisa Pyle
Danielle Recco
Joe Grist

Public

Rom Lipcius (VIMS)
Richard Costin
Tim Wivell
George Mapp
Gabrielle Saluta (VIMS)
Bren Miles
Gina Ralph
Ty Ferrington
Michael Seebo (VIMS)
Lynnee Morris

2 other members of the public

Meeting minutes were prepared by Catherine Wilhelm.

Opening Remarks and Announcements

5:05 PM

The meeting was called to order at 5:05 PM and minutes from the August 20, 2024, meeting were approved by unanimous consent.

I. New Committee Meeting Policy

Alexa Galván (VMRC Fisheries Management Specialist) informed the committee of changes to the Virginia Freedom of Information Act policy for virtual participation and all-virtual meetings, which the committee bylaws would be amended to include. Motion to amend the by-laws was passed unanimously.

II. Winter Dredge Survey and Preliminary Commercial Harvest Presentation

5:14 PM

Mrs. Galván presented the 2024-25 winter dredge survey results to the committee. The adult female abundance estimate (108 million lbs) decreased 19% while remaining above the abundance threshold but below the abundance target. The adult male

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abundance estimate (26 million lbs) decreased 43% and the juvenile abundance estimate (103 million lbs) decreased 23%, with the overall abundance estimate (238 million lbs) decreasing 25% from 2024. The total Bay-wide commercial harvest was 42.5 million pounds, an increase of 9% mostly driven by a 15% increase in Virginia's harvest. Female blue crabs are not overfished and overfishing is not occurring.

Committee members voiced concerns about the methodology employed by the winter dredge survey and the difference between what they are observing in their pots and the abundances calculated by the survey. There were also some concerns regarding the efficiency of the dredge. These concerns were addressed by Dr. Rom Lipcius and Michael Seebo from the Virginia Institute of Marine Science (VIMS), who stated that the uncertainties and efficiency rates of the dredge are accounted for when calculating the abundances and biological reference points, which continue to show that the stock is not overfished, and overfishing is not occurring. Mr. JC Hudgins inquired about the observed shift in the range and behavior of the female crabs in the Bay, and how this might affect the survey results. Dr. Lipcius responded that in the last two years they have seen a shift of females into the lower part of the Bay, but the random stratified survey design needs to remain consistent and clarified that the survey team also takes water temperature while at each station. Mr. Mark Sanford, on the subject of changing water temperatures, stated that he caught five live Florida Stone crabs.

Mr. Marshall Cox stated he doesn't believe temperature caused the abundance to decrease this year, citing historic ranges in weather. Mr. Pete Nixon asked if water currents and wind could be affecting the abundance of larvae going in and out of the bay. Dr. Lipcius stated they are working with physical oceanographers to incorporate that data into the stock assessment. A few committee members had questions about calculations in the winter dredge survey. Several committee members expressed concern that the ongoing regulations have not been able to return the population to previous abundance, with several citing increased predation as a possible cause. Mr. Cox predicted that in 2026 the entities involved in the stock assessment are going to say the catfish, drum, spot, croaker, and other predator populations, as well as anthropogenic effects, are the reason the crabs aren't doing well.

Mrs. Galván then presented Virginia's preliminary 2024 commercial harvest data. In 2024, 745 harvesters reported 15,415,122 pounds of blue crabs. This represents a reduction in harvest and effort from 2023.

Discussion of Management Responses

Mrs. Galván said the staff recommendation is status quo for 2025-26, to avoid preempting the stock assessment results coming in spring of 2026. Members stated concerns over continued usage of negative headlines about the crab population by the press, which affects the market. Mr. Tankard asked for motions. Mr. Spencer Headley made a motion recommending status quo, seconded by Mr. Hudgins. Mr. Sanford asked to amend, for the crab pot season to close on December 20, 2025. Mr. Headley agreed to amend motion. Motion passed unanimously.

III. Terrapin petition

6:30 PM

Chief of Fisheries Pat Geer presented a petition on bycatch reduction devices (BRDs) to protect diamondback terrapins, which will be heard by the VMRC at their June 24, 2025 Commission meeting. The petition would require BRDs in all licensed crab pots in water less than 150 yards from shore. Chief Geer summarized public comments received during the public comment period, which was open from March 10-31, 2025. VIMS sent a statement in support of the petition, with an additional suggestion for regulations to apply to just the recreational fishery. Chief Geer said staff could present the committee's opinion to the Commission or someone could come and speak on behalf of committee. Numerous committee members were unhappy with the distance from shoreline requirement and asserted the shoreline type was more important than the distance. Mr. Cox moved for CMAC to support BRDs in recreational pots but not commercial. The motion did not receive a second. Mr. Headley made a motion to recommend denying the petition, Mr. Sanford seconded. Motion was passed unanimously, with one abstention by Mr. Chris Moore.

IV. License Waitlist

6:51 PM

Mrs. Galván presented a history of the crab pot license waitlist established in 2008 to reduce the number of crab licenses available annually in response to the population disaster. The original waitlist had 867 harvesters on it in 2008, which has since decreased to 88 licenses. This reduction is due to harvesters selling the license during the 2008 license buyback, passing away, no longer holding the commercial card (CFRL), or transferring back into the crab fishery. Mrs. Galván said two watermen on the waiting list asked the Commission for their licenses to be reinstated, and the issue was recommended to be discussed by CMAC. Mr. Ken Diggs stated that people who want to fish aren't waiting for the waitlist to open, as there are licenses available for sale. Some potential options given were to reinstate licenses but make them untransferable, or to reinstate those who purchased their licenses from 2004-2007 but didn't fish (still untransferable). Some committee members did not approve of opening the waitlist while the crab fishery is in a decline. Mr. Headley commented that he felt for some of the people on the waiting list, but it should be revisited after the stock assessment comes out. Mr. Diggs wanted the current crabbers to be able to have their full pot allotments reinstated before opening the waiting list. Mr. Wayne Morris asked for confirmation that those on the waitlist can buy someone else's license or be an agent. Mr. Diggs confirmed this. Mr. Headley motioned to table the issue until after the stock assessment, Mr. Diggs seconded, and the motion passed unanimously.

V. Dark Sponge Law

7:03 PM

Mrs. Galván presented the rules of the dark sponge law, which requires crabs with brown or black egg masses to be returned to the water March 17 through June 15. Mr. Headley asked if 90% of the black sponge crabs die when thrown back. Dr. Lipcius stated this mortality occurs only above a certain water temperature. He stated that during May – June most will survive (up to 90%), but in late June – August a lot more will die due to higher temperatures. Mr. Nixon asked if the number of crabs in a pot effects the condition of

the crabs when pulled out, as they have a hard time keeping crabs alive by the time they get to shore. Dr. Lipcius replied they did not detect a difference in death between black sponge crabs and other crabs. Mr. Headley asked if the dark sponge law was removed would it be detrimental to fishery. Dr. Lipcius stated the field studies from 2007 and 2010 showed high mortality from June 15 through September 15. Dr. Lipcius said that moving the end date in the dark sponge law to June 1 would be supported by VIMS as high mortality does not usually start until late June. Mrs. Galván suggested continuing this discussion at a future meeting, with the committee asking now for data they would like presented at that time. Mr. Headley asked if they make this decision before the season opens next year, to which Mrs. Galván replied yes. Mr. Tankard said they would save this topic for a later discussion. Mrs. Galván asked the committee members to reach out to her with what information they would like to see.

VI. Public Comment

7:22 PM

Mr. Sanford requested consistency in the buffer zones of the sanctuaries. He wanted Sanctuaries 3 and 4 to remain open in waters less than 35 ft along the coastline to relieve congestion around Lynnhaven Bay and allow for more fishing opportunities when the sanctuaries close. Mrs. Galván stated that some of this requested zone is within a Naval restricted area. Mr. Sanford said that many other gears were working there already and there wouldn't be any conflict. Mrs. Galván replied that the federal law prohibits fishing, dredging, and crabbing in the naval area. Deputy Commissioner Joe Grist proposed the staff would look into the code and bring it back up at a future meeting. Mrs. Galván said opening the waters up to crab pots further down Virginia Beach might be possible. Dr. Lipcius stated VIMS wouldn't oppose an open strip on the ocean side.

VII. Adjournment

The meeting was adjourned at 7:32 PM.



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road
Building 96
Fort Monroe, VA 23651

Stefanie K. Taillon
Secretary of Natural
and Historic Resources

Jamie L. Green
Commissioner

June 13, 2025

TO: VMRC Commissioners

FROM: Patrick Geer, Chief of Fisheries Management Division

SUBJ: Petition for Rulemaking #427 Petition to protect Diamondback Terrapins from mortality in blue crab pots by requiring bycatch reduction devices in near-shore waters

Given the length and detail of this petition for rulemaking, staff wanted to give the commissioners some extra time to review the materials ahead of your normal monthly packets. Attached are documents and information relevant to the petition that may help with your deliberations at the July 24, 2025, VMRC Commission meeting. These materials will also be included in your complete packet for the meeting you will receive on June 20th.

- 1) Petition #427: *Petition to protect Diamondback Terrapins from mortality in blue crab pots by requiring bycatch reduction devices in near-shore waters*. Submitted by the Center for Biological Diversity, Virginia Herpetological Society, Wild Virginia, and Dr. Willem M. Roosenburg. Submitted February 12, 2025.
- 2) Letter from Dr. Mark Luckenbach (VIMS) (dated 5/6/25) regarding petition #427.
- 3) A link to the individual comments received on Virginia's Regulatory Town Hall during the public comment period of March 10 through March 31, 2025.
<https://townhall.virginia.gov/L/comments.cfm?petitionid=427>
 - a. There were 35 comments in support of the petition, 19 of those comments representing 18,541 signatories
 - b. There were 424 comments in opposition of the petition, 20 of those comments representing 20,288 signatories.

An Agency of the Natural and Historic Resources Secretariat

www.mrc.virginia.gov

Telephone (757) 247-2200 Information and Emergency Hotline 1-800-541-4646

May 6, 2025

Pat Geer
Chief, Fisheries Management
Virginia Marine Resources Commission
380 Fenwick Rd. Bldg. 96
Fort Monroe, VA 23651

Dear Mr. Geer,

In response to your request for comments on the February 12, 2025, Petition for Rulemaking by the Center for Biological Diversity, the Virginia Herpetological Society, and Wild Virginia we provide brief comments on each of the specific regulatory changes raised in the petition. Personnel from the Office of Research & Advisory Services, Dr. Randy Chambers (wetlands ecologist with expertise on diamondback terrapin conservation from William & Mary's Biology Department.), Dr. Rom Lipcius (marine ecologist with expertise on blue crab fisheries and conservation from VIMS, Natural Resources section.), Drs. Donna Bilkovic and Robert Isdell (marine ecologists with expertise in marine debris and spatial ecology, respectively, from VIMS, Ecosystem Health section) and Dr. Andrew Scheld (resource economist from VIMS, Natural Resources section) contributed to this review.

We commend the petitioners for their thorough review of the issue and their well-constructed petition. The studies they cite have clearly demonstrated that the diamondback terrapin populations in Virginia waters are well below historical levels and that additional efforts are required to conserve this species. Further, it is well established by research that both actively fished and derelict pots cause terrapin mortality, predominately in shallow waters bounded by marshes. Bycatch Reduction Devices (BRDs) have been shown to reduce terrapin mortality in crab pots, especially among males and juveniles. Further, the existing data clearly show that the presence of BRDs have little or no effect on crab capture rates, except for one study that showed higher capture rates in pots with BRDs than those without¹.

The specific regulatory changes to Virginia Code [§28.2-226; 4VAC20-670-20; 4VAC20-270-25] recommended in the petition are listed below along with our comments.

1. Definition: *“Bycatch reduction device” or “BRD” means a rigid rectangular device constructed of wire or plastic that has an opening no larger than 4.5 cm by 12 cm, which is attached to the end of each entrance funnel of a crab trap to minimize bycatch of diamondback terrapins. This definition also includes any device or gear modification that results in a ≥70% reduction in terrapin captures compared with unmodified traps, as demonstrated by at least one peer-reviewed study.*

We concur with this definition but note the inconsistency in this section which specifies BRD a rectangular structure and in item #2 below where it is described as an oval design. This type of BRD installed in crab pots has been shown by several scientific studies to reduce mortality of diamondback terrapins, specifically males and juveniles, compared to pots without similar BDRs. Furthermore,

¹ Lipcius, R. and D. McCulloch (2023) Blue crab disaster relief project Final Report. Submitted to VMRC. 33 pp.

several studies have shown that the use of these BRDs does not reduce the blue crab catch in these pots and one study has shown an increase in blue crab catch.

2. Beginning [three years from date of amendment], all traps, whether commercial or recreational, in state waters less than 150 yards from shore (at mean low water mark) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors must have a 4.5x12cm (1.75-in) oval design bycatch reduction device (BRD) meeting the specifications defined attached to each entrance or funnel.

The proposed requirement for installing a BRDs in all crab pots within 150 yards of the shoreline and other shallow-water habitats is intended to provide this protection in habitats where diamondback terrapins are commonly found. It is clear from available studies that terrapins utilize nearshore, shallow-water habitats, especially those with adjacent marshes, and such a requirement would reduce terrapin mortality in crab pots. We strongly recommend that the Commission approve this petition and initiate the rulemaking process.

We are not clear whether the designation of *rivers, tributaries, and inlets* in the petition as areas where BRDs would be required is a significant expansion beyond shallow-water habitats or a lack of clarity in the sentence. If rulemaking proceeds, we recommend some discussion around refining the definition of terrapin habitat more thoroughly (e.g., seagrass bed, bathymetry, and proximity to specific upland habitats²). An alternative to the requirement for BRDs in all pots, both recreational and commercial, would be to require them only in recreational pots that are almost always deployed in nearshore, shallow-water habitats. Focusing on the recreational fishery could provide the most “bang for the buck” in protection of diamondback terrapins. If the rulemaking request is approved, we recommend that this alternative be considered. Additionally, we would recommend that any educational material distributed related to a modified regulation explicitly discuss alternatives to plastic BRDs.

Please feel free to contact me (luck@vims.edu) or Lyle Varnell (varnell@vims.edu) if you need any additional information.

Sincerely,



Mark W. Luckenbach
Associate Dean of Research & Advisory Service
Professor of Marine Science

² Isdell, R. E., R. M. Chambers, D. M. Bilkovic and M. Leu (2015) Effects of terrestrial–aquatic connectivity on an estuarine turtle. *Diversity Distr.* 21. 643-653.

BEFORE THE VIRGINIA MARINE RESOURCES COMMISSION

**PETITION TO PROTECT DIAMONDBACK TERRAPINS
(*MALACLEMYS TERRAPIN*) FROM MORTALITY IN BLUE CRAB
POTS BY REQUIRING BYCATCH REDUCTION DEVICES IN
NEAR-SHORE WATERS**



Credit: Diane Tulipani, Virginia Institute of Marine Science

CENTER FOR BIOLOGICAL DIVERSITY

VIRGINIA HERPETOLOGICAL SOCIETY

WILD VIRGINIA

Dr. Willem M. Roosenburg

February 12, 2025

Notice of Petition

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Submitted this February 12, 2025

Pursuant to Section 2.2-4000 et seq., Virginia statutes/Administrative Process Act, the Center for Biological Diversity, Virginia Herpetological Society, Wild Virginia, Dr. Willem M. Roosenburg hereby petition the Virginia Marine Resources Commission to formally adopt a rule requiring bycatch reduction devices in all licensed blue crab pots deployed in near-shore waters to protect the diamondback terrapin. Crab pots indiscriminately drown diamondback terrapins, contributing to terrapin declines and intensifying negative effects from additional pressures, such as habitat loss, poaching, road mortality, and sea level rise, which already threaten populations range-wide.

The Center for Biological Diversity (Center) authored this petition. The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center is supported by more than 1.7 million members and online activists throughout the United States, including almost 30,000 members and supporters in Virginia. The Center and its members are deeply concerned about the conservation of imperiled wildlife—including diamondback terrapins—and their essential habitats.

Additional petitioners and supporters include:

Virginia Herpetological Society (VHS): Organized in 1958, the Virginia Herpetological Society brings together people interested in advancing their knowledge of Virginia's reptiles and amphibians. The VHS encourages scientific study of Virginia herpetofauna and its conservation. Education continues to be an important society function.

Wild Virginia holds the state's government and regulators accountable for improving habitat connectivity and protecting water quality to counter climate change, prevent species extinction, and defend the health of our communities and ecosystems. Through advocating for environmental protections, convening stakeholder groups to amplify impact, and empowering

diverse communities to become active in the decision-making process, we connect people with a safer, more inclusive outdoors.

Dr. Willem M. Roosenburg is Professor & Vice Chair of Biological Sciences at the Ohio Center for Ecology and Evolutionary Studies at Ohio University. In his research, he investigates the evolution of life history traits (e.g. survivorship, reproductive rates, age of first reproduction etc.) and the conservation biology (extinction and loss of biodiversity due to anthropomorphic causes) of long-lived organisms. He combines demographic and experimental techniques to observe variation within populations and to predict the outcome of environmental perturbations on survivorship and reproductive rates.

I. EXECUTIVE SUMMARY

The diamondback terrapin (*Malaclemys terrapin*) is the only turtle species in the world that lives exclusively in brackish coastal habitats (Wood 1995). It occurs in the United States along the coasts of the Atlantic Ocean and Gulf of Mexico, and in Bermuda. The species is currently in decline (Roosenburg et al., 2019).

Wild turtle populations are characterized by a suite of life history characteristics that predispose them to rapid declines when subjected to unnatural levels of adult mortality (Colteaux and Johnson, 2017 at 17; Heppell, 1998; Galbraith et al., 1997; Congdon et al., 1993, 1994). Among these characteristics are delayed maturity, low fecundity, high annual survivorship of adults, and high natural levels of nest mortality (Reed and Gibbons, 2003). Similarly, terrapins' life history traits prevent them from withstanding chronic sub-adult and adult mortality (Hoyle and Gibbons, 2000 at 736). Removing even a few diamondback terrapins from a population can have detrimental effects on the population as a whole (Hoyle and Gibbons, 2000). For this reason, experts rank crab pot mortality as the greatest threat to the diamondback terrapin (Butler et. al., 2006 at 332) and have emphasized that modifying pots to reduce terrapin mortality is of utmost importance (Baker et al., 2013 at 676).

A fleet of active blue crab pots is capable of steadily removing individual terrapins from a population until it can no longer sustain itself (Roosenburg et al., 1997; Butler and Heinrich, 2007), while just one or two inactive or “ghost” pots are capable of killing large numbers of individuals in a population over a single crabbing season (<1 year) (Grosse et al., 2009). Because the terrapin's life history traits prevent it from absorbing chronic increases in adult mortality, crab pots can rapidly cause reduction in population size (Roosenburg, 1991 at 231–232; Hoyle and Gibbons 2000 at 736). Roosenburg et al. (1997) estimated that mortality rates caused by the recreational use of crab pots in Maryland alone could increase annual terrapin mortality rates between 15-78%, which can cause decline and rapid extirpation of local populations. Similarly, Hart (1999) modeled the impacts of terrapin bycatch and mortality in crab pots in Massachusetts, finding that even a low harvest rate (15%) could reduce a population by 49% after 15 years. Moderate (30%) and intense (75%) harvest rates produced 77% and 92% population reductions, respectively, over the same time period (Hart 1999 at 46).

Bycatch reduction devices (also known as BRDs or terrapin excluder devices) can prevent most terrapins from drowning in crab pots, while having little to no effect on the number or size of crabs captured (reviewed in Chambers and Maerz 2018; Roosenburg 2004; Butler and Heinrich 2007). Recognizing the significant threat crab pot mortality poses to terrapins, several states require blue crab pots to have BRDs, and even more states are now considering similar measures. However, the Virginia Marine Resources Commission has failed to adopt or even consider similar conservation action, despite clear evidence that crab pot mortality is a threat (Butler and Heinrich 2007; Chambers and Maerz 2018).

Virginia law provides the Virginia Marine Resources Commission with jurisdiction over commercial fishing and all marine shellfish, marine organisms and habitat that extends to the fall line of all tidal rivers and streams of the Commonwealth. The Commission also exercises proprietary responsibility for the Commonwealth's submerged lands statewide. It has the power to promulgate regulations and guidelines necessary to carry out the provisions of Title 28.2: Fisheries and Habitat of the Tidal Waters. Law-Enforcement of the Commission is the Virginia Marine Police. 4VAC20.

To that end, the Virginia Marine Resources Commission has implemented many regulations in the interest of conserving and protecting imperiled wildlife, such as reviewing and updating guidelines for wetland protection and promoting living shoreline approaches for shoreline stabilization, which serve as critical habitats for many species of wildlife, fish, and aquatic organisms in Virginia. The Commission also promulgates regulations surrounding the seafood industry, including Chesapeake Bay blue crab fisheries, and monitors endangered and threatened species in Virginia waterways as part of the Protected Species Observer Program.

Virginia's Administrative Procedure Act provides that any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. Va. Stat. § 2.2-4007. The petition shall state (i) the substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections, and (ii) reference to the legal authority of the agency to take the action requested. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request, and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations, in accordance with the provisions of subsection B of § 2.2-4031. Under this authority and for the reasons explained below, Petitioners respectfully request that the Virginia Marine Resources Commission grant this petition and initiate rulemaking proceedings to amend its current regulations to require BRDs on licensed commercial and recreational blue crab pots in waters less than 150 yards from shore (at mean low water mark/tide) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors to protect diamondback terrapins. Petitioners acknowledge that Virginia State Code, §28.2-226 Exemptions from licensing requirements does exempt taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only. However, this does not preempt the Virginia Marine Resources Commission from requiring BRDs on licensed commercial and recreational crab pots.

II. BACKGROUND

a. The Diamondback Terrapin

Named for the concentric, diamond-shaped rings on their shells, diamondback terrapins are among the most beautiful and charismatic turtles in the United States. Though their colors may vary between light gray, dark gray, brown, and nearly black, diamondback terrapins are easily identifiable by their diamond-patterned shells and flecked or spotted heads and legs.

Diamondback terrapins are the only turtles that live exclusively in coastal brackish water ecosystems, where freshwater meets the sea. There are seven traditionally recognized subspecies of diamondback terrapin: the Carolina diamondback terrapin (*M. t. centrata*), eastern Florida diamondback terrapin (*M. t. tequesta*), mangrove diamondback terrapin (*M. t. rhizophorarum*), ornate diamondback terrapin (*M. t. macrospilota*), and Mississippi diamondback terrapin (*M. t. pileata*). Experts now recommend recognizing four discrete populations or management units: Northeast Atlantic, Coastal mid-Atlantic, Florida, and Texas/Louisiana (Hart et al. 2014; Lovich and Hart 2018). The Northern diamondback terrapin is North America's only species of brackish water turtle and the only subspecies that occurs in Virginia (VA DWR, 2024). They are found in the tidal portions of the Chesapeake Bay and its rivers, including brackish marshes, beaches, mud flats, and islands (Chesapeake Bay Program, 2024).

Diamondback terrapins are keystone species in the salt marshes they inhabit, which means they help maintain the ecological health of their associated ecosystems. Among the prey of diamondback terrapins are salt marsh snails (*Littorina spp.*) (Tucker et al., 1985), which in high numbers contribute to loss and erosion of salt marshes by grazing on the epiphytes that live on stems of grasses and thereby killing the grasses (Silliman and Bertness, 2002). Because terrapins feed on the snails, they likely reduce salt marsh erosion and loss. (See Brennessel, 2007). Terrapins also move substantial quantities of nutrients and calories from the water to land in the form of eggs, which are then eaten by a variety of terrestrial and avian predators (Seigel, 1980a; Clark, 1982; Cecala et al., 2008).

i. Life Cycle and Natural History

Diamondback terrapins spend most of their lives in nearshore habitat (Roosenburg et al. 1999). Their diets include snails, clams, mussels, small crabs, fish, and annelid worms (Tucker et al. 1985; Butler et al. 2012). Male terrapins mature around 2 to 7 years of age, while female terrapins become reproductively mature between 4 and 8 years of age (Seigel 1984; Lovich et al. 2018 at 65–66). In Florida, one study found female terrapins mature at 4 to 5 years, while male terrapins mature at 2 to 3 years (Seigel 1984; Lovich et al. 2018 at 66).

In the spring, terrapins form courtship and mating aggregations for several days to weeks; and beginning in late spring and continuing into the summer, female terrapins come to land to dig nests and lay their eggs (Butler et al., 2018). Wild female terrapins produce one or two clutches of eggs per year, though triple clutches have been reported in Florida (Lovich et al., 2018 at 66–

67; Heinrich, pers. comm., 2019). Clutch sizes range from 1 to 23 eggs, though clutch sizes tend to be smaller in Florida based on studies of the Florida east coast diamondback terrapin (6.7 eggs) and the Carolina diamondback terrapin (6.7 eggs) (Seigel 1980b; Butler 2000; Lovich et al. 2018 at 66–67).

ii. Status and Threats

The International Union for the Conservation of Nature (IUCN) Red List ranks the diamondback terrapin's global status as Vulnerable and describes its population trend as decreasing (Roosenburg et al. 2019). Of 54 researchers surveyed across the terrapin's range in 2006, 29.6% said the diamondback terrapin was declining in their state, 14.8% said populations were stable, and 55.6% said the status was unknown (Butler et al. 2006). No one considered populations to be increasing (Butler et al. 2006). The Northern diamond-backed terrapin is considered to be a Species of Greatest Conservation Need-Tier 2 on the Virginia Wildlife Action Plan (Virginia DWR, 2025).

Anthropogenic threats to terrapins remain, making the species' future survival tenuous in some locales (Butler and Roosenburg, 2018). Threats to the diamondback terrapin include habitat destruction and degradation (Butler et al., 2006; Hart and Lee, 2007 at 211); road mortality (Wood and Herlands, 1997; Butler et al. 2006; Szerlag and McRobert, 2006; Maerz et al., 2018); sea-level rise caused by global climate change (Hunter et al., 2015; Woodland et al., 2017); pollution (Butler et al., 2006; Blanvillain et al., 2007; Drabeck et al., 2014 at 132–133; Roosenburg et al. 2019); boat strikes (Lester et al., 2013); predation (Butler et al., 2004; Draud et al., 2004; Butler et al., 2006); collection for personal and commercial purposes, including the effects of large-scale historic commercial harvesting and current poaching (Hart and Lee, 2007 at 207), and inadequate regulatory measures to address these threats (Roosenburg et al., 2019). Terrapin mortality in crab pots has been and continues to be one of the major threats to terrapins, and it has been studied in nearly every state in the species' range (Butler and Roosenburg, 2018), as reviewed in the following section. When surveyed, experts ranked crab pot mortality as the greatest threat to terrapins (DTWG, 2024).

b. Crab Pot Mortality

Commercial and recreational crab pots pose a serious threat to diamondback terrapins at the individual, population, and species level (Roosenburg et al., 1997; Crowder et al., 2000 at 1; Roosenburg, 2004; Chamber and Maerz, 2018). Terrapins enter submerged crab pots and die when they cannot escape to breathe at the water's surface. This can occur in a short period of time—less than five hours (Crowder et al., 2000 at 1). The problem is often compounded when these gregarious turtles follow one another into pots (Bishop, 1983 at 428; Butler and Heinrich, 2007). Experts posit that terrapins have an innate curiosity to investigate things and that the presence of a terrapin in a crab pot may attract additional turtles, thus increasing the likelihood of large kills in crab pots (Roosenburg, 1991 at 231). They also find that crab pots attract terrapins whether or not they are baited (Chambers and Maerz, 2018).

Blue crab pots are present throughout the terrapin's range, as commercial and recreational crab fisheries are active to varying degrees in nearly every coastal state along the Atlantic and Gulf coasts (Chambers and Maerz, 2018). Even when crabbing potential may be small in a state, it can have a severe effect on a local scale (Roosenburg et al., 1997; Tucker et al., 2001; Grosse et al., 2009; Chambers and Maerz, 2018). While commercial crabbing is generally distributed broadly across open water, in many states, including Virginia, it also is allowed in tidal creeks associated with large river systems that intersect with coastal salt marsh habitat (with the exception of December 1 through March 16, when it is prohibited) (Chambers and Maerz, 2018; VMRC, 2023). Commercial harvest of peeler crabs occurs seasonally in small tidal creeks when crabs are molting, which places crab pots in critical terrapin habitat (Chambers and Maerz, 2018). Furthermore, a large percentage of recreational crabbing occurs in shallow creeks and other areas that intersect with terrapin habitat (*Id.*). Both commercial and recreational crab pots can end up as derelict or "ghost" pots in terrapin habitat (*Id.*). Crab pots fished in deeper waters may be lost and carried into terrapin habitat by tides or storms, thereby affecting terrapins in shallow water (*Id.*).

Crab pot mortality affects terrapin populations by removing mature males and subadult and adult females and hindering the population's reproductive capabilities. While in some places female terrapins may grow too large to enter pots, male terrapins never grow larger than the opening of a crab pot entrance and are susceptible to crab pot mortality throughout their lives (Roosenburg et al., 1997; Chambers and Maerz, 2018). In the southeast, female terrapins do not grow as large as more northern populations and therefore do not grow large enough to avoid crab pot mortality (Chambers and Maerz, 2018). For example, in one Alabama population, 85% of female terrapins sampled were susceptible to crab pot mortality (Coleman et al., 2014; Chambers and Maerz, 2018).



These 4 diamondback terrapins drowned after being trapped in a crab pot.
(Source: Virginia Institute of Marine Science/Diane Tulipani)

Crab pot mortality is a long-documented threat to diamondback terrapins across their range, with dozens of studies published over the last 75⁺ years (Davis, 1942; Bishop, 1983; Marion, 1986; Burger, 1989; Mazzarella, 1994; Mann, 1995; Wood and Herlands, 1996; Roosenburg et al.,

1997; Wood, 1997; Guillory and Prejean, 1998; Hoyle and Gibbons, 2000; Roosenburg and Green, 2000; Cole and Helser, 2001; Butler, 2002, 2000; Roosenburg, 2004; Butler and Heinrich, 2007; Grosse et al., 2009).

Experts agree that the capture and drowning of terrapins in crab pots is a major threat to terrapin populations throughout their range (Burger, 1989; Siegel and Gibbons, 1995; Wood, 1997; Roosenburg, 2004; Butler et al., 2006; Butler and Heinrich, 2007). This is because crab pots can eliminate local terrapin populations (Roosenburg et al., 1997 at 1171). Population-level impacts also include rapid, large-scale declines (Roosenburg et al., 1997 at 1170; Cole and Helser, 2001; Roosenburg, 2004 at 24; Grosse et al., 2009 at 99); skewed sex ratios (Bishop, 1983 at 427; Roosenburg, 1991 at 231; Roosenburg et al., 1997 at 1170; Hoyle and Gibbons, 2000 at 735; Dorcas et al., 2007 at 336–337; Butler and Heinrich, 2007 at 183; Grosse et al., 2009 at 99; Grosse et al., 2011 at 765); skewed age distribution (Dorcas et al., 2007 at 338–339); and skewed size distribution (Dorcas et al., 2007 at 3336–337; Grosse et al., 2011 at 763, 766; Lovich et al., 2018 at 71). Because terrapins’ life history traits prevent them from absorbing chronic adult mortality, crab pots can cause localized extirpation of populations (Roosenburg, 1991 at 231–232; Hoyle and Gibbons, 2000 at 736).

Crab pots essentially cause two “levels” of terrapin mortality: (1) a “constant background mortality” from many crab pots that are regularly fished over a long period of time; and (2) acute mortality events from individual crab pots that have been lost or abandoned (“ghost” or “derelict” pots) (Roosenburg et al., 1997 at 1167; Roosenburg, 2004). In other words, regularly fished crab pots have the potential to consistently capture smaller numbers of terrapins over time, while ghost pots can capture more terrapins in one pot over a relatively shorter time (Roosenburg, et al., 1997 at 1167).

i. Active Pots

As early as the 1940s, scientists observed the harmful effects of crab fishing gear on terrapins. Through studies in Virginia, scientists have found that the same risk exists in Virginia’s waters (VIMS, 2024). The following is a survey of published studies documenting terrapin mortality in active crab pots.

Davis (1942) studied crab pot bycatch in Maryland waters and “definitely established that pots will capture terrapin” (Davis, 1942 at 16). Although the results were limited, Davis found that three large diamondback terrapins were taken, and two drowned (Davis, 1942 at 16–17). The third would have drowned, had the pot not been partially protruding from the water so the turtle could obtain air (Davis, 1942 at 17).

Bishop (1983) studied crab pot mortality from two South Carolina estuaries over three years and recorded 281 diamondback terrapins (195 male and 86 female) captured in baited and unbaited crab pots.¹ Based on 1982 records that there were 458 licensed crabbers fishing from 50–100

¹ Because the traps were checked daily during the study, less than 10% of captured terrapins died (Bishop, 1983 at 427–428).

crab pots, and assuming an average number of 60 pots per crabber, with 40% of those pots being fished in near-shore shallow waters where terrapins live, Bishop estimated that 2,853 terrapins were captured daily during April and May, with mortality estimated at 285 terrapins (Bishop, 1983 at 428). This estimate fails to account for mortalities resulting from ghost pots.

Wood (1997) investigated the effect of crabbing on terrapins in New Jersey, including the extent of terrapin bycatch in commercial crab pots and the mortality levels of terrapins caught in those pots. He found that 19 terrapins (8 male, 11 female) were caught at a capture rate of 15 terrapins per 100 trap-days (Wood, 1997 at 23). Although Wood checked pots twice daily to minimize drowning of terrapins, four were drowned, causing a slightly greater than 20% mortality rate (Wood, 1997 at 23). Wood observed that commercial crabbers check pots no more than once per day, and that the terrapin mortality may have approached 100% (Wood, 1997 at 23).

Roosenburg et al. (1997) studied the rate of capture, size, sex, and age of terrapins captured in crab pots and determined the potential effect of crab pot mortality on local populations in the shallow water areas of Chesapeake Bay, Maryland. They estimated terrapin capture rates of 0.17 terrapins per pot per day (Roosenburg et al., 1997 at 1168). Based on these numbers, the scientists estimated that 15–78% of a local population may be captured in a single year (Roosenburg et al., 1997 at 1169). Based on these results, they estimated that local terrapin populations could be extirpated in 3 to 4 years (Roosenburg et al., 1997 at 1170).

Hoyle and Gibbons (2000) studied twenty recreational crab pots in South Carolina (Hoyle and Gibbons, 2000 at 735). During the 760 days the crab pots were deployed, 21 captures were made of 19 individual terrapins (Hoyle and Gibbons, 2000 at 735). Based on an estimated population size of 168 to 299 terrapins, and an estimated annual recruitment of 12 to 17 terrapins, the scientists estimated that 6–11% of the population would potentially be removed from the local population² (Hoyle and Gibbons, 2000 at 735–736). Because terrapins' life history traits prevent them from absorbing chronic adult mortality, the scientists concluded that crab pots could cause “significant localized consequences” for local populations (Hoyle and Gibbons, 2000 at 736). Hoyle and Gibbons also found that recreational pots could be a greater threat to terrapins than commercial pots because local crabbers are able to access smaller creeks than commercial crabbers, where terrapins are more populated (Hoyle and Gibbons, 2000 at 736). Recreational crabbers are also more likely to leave their pots in the water for a longer period of time without checking them, and even unintentionally abandon them (Hoyle and Gibbons, 2000 at 736).

Dorcas et al. (2007) studied 21 years of mark-recapture data (more than 2,800 captures of 1,399 individuals) from a declining diamondback terrapin population in Kiawah Island, South Carolina, to determine whether a population decline there was the result of mortality in crab pots. They found that, since the 1980s, the modal size of both male and female terrapins had increased substantially and that the proportion of females was higher than earlier samples (Dorcas et al., 2007 at 336–337). They also noted that the studied population contained more old and fewer young terrapins than before (Dorcas et al., 2007 at 336). This change in the age of the population is also reflected in the size of individual terrapins (*Id.*). Based on their observations of changes in

² The two recaptures were excluded from the study (Hoyle and Gibbons, 2000 at 735).

demography and sex ratio, the scientists suggested that the terrapin population declined as a result of selective mortality of smaller terrapins in crab pots (*Id.* at 338–339). Another later study in South Carolina showed that in a creek where bycatch mortality was high, terrapins rarely survived to reproduce (Tucker et al., 2001).

Grosse et al. (2011) contemporaneously studied two of the primary conservation concerns for diamondback terrapins: road mortality from coastal traffic and bycatch mortality in crab pots. They captured 1,547 individual terrapins among 29 tidal creeks in Georgia and used mark-recapture estimates of terrapin density and sex ratio to identify crab pot effects (Grosse et al., 2011 at 764–765). They observed that 153 terrapins—approximately 10% of all live terrapins they observed in the study creeks—drowned in 5 crab pots within study creeks, 83% of which were males (Grosse et al., 2011 at 765). Among all sites, terrapin density declined with increasing crabbing activity within the creek, whereas population density was not related to proximity of roads (Grosse et al., 2001 at 765–766). The scientists also found that there was a significantly larger proportion of smaller-sized terrapins in creeks with no crabbing activity (Grosse et al., 2011 at 763, 766). Thus, they concluded that crabbing activities are linked to terrapin population declines in Georgia and recommended that states focus on reducing bycatch risk by regulating fishing times, requiring the use of BRDs, and removing lost or abandoned crab pots from coastal habitats (Grosse et al., 2011 at 766–769).

Hart and Crowder (2011) estimated that if each of the approximately 7,500 crab fishers in North Carolina catches a number of terrapins similar to those observed in their study, and roughly 50% of that catch is removed from terrapin populations due to mortality (consistent with their study), then tens of thousands of terrapins could be removed from populations each year (Hart and Crowder, 2011 at 269). Thus, terrapin capture and mortality in actively fished commercial crab pots may represent an extremely large collective effect on local terrapin populations (*Id.*).

Coleman et al. (2014) found that although it is generally accepted that male and juvenile female terrapins are more vulnerable to crab pot mortality than adult females, fully mature females in some parts of the terrapin's range may be smaller and equally capable of entering crab pots (Coleman et al., 2014 at 142). Because loss of female terrapins means the loss of greater long-term reproductive potential, crab pot mortality could be more devastating to terrapin populations in some areas than previously considered (Coleman et al., 2014 at 143–144).

Two important conclusions can be drawn from these many studies that document terrapin capture and mortality rates in crab pots. First, the high rates of removal of terrapins by crabs will rapidly result in the local terrapin decline and, within 15-20 years, complete extirpation of the population. Second, given that crab pots have been used since the 1940s, many terrapin populations are now extirpated, leading to the false interpretation that the current lack of terrapin captures in crab pots in a particular area suggests that they do not occur there. They may well have occurred there in the past, but their population has already been wiped out, suggesting to the modern day crabber that terrapins do not occur there.

ii. Ghost and Derelict Pots

For the purposes of this petition, the term “ghost pot” includes crab pots that are accidentally lost or intentionally abandoned, as well as derelict crab pots that are irresponsibly left in the water for long periods of time without regular supervision. Ghost pots may result from permanent abandonment of fishable pots by crabbers who leave the fishery seasonally or permanently when it is logistically difficult to transport the pots for either temporary storage or permanent disposal, temporary storage sites are not available, or it is difficult or expensive to dispose of them (Guillory et al., 2001 at 2). Crab pots may also be inadvertently lost due to uncontrollable weather or hydrological factors, such as tides, currents, and storm surges; deterioration of buoys, lines, or knots; negligent assembly or maintenance of buoys and lines; unintentional clipping of lines by boat propellers; or intentional cutting of buoy lines by vandals (Guillory et al., 2001 at 2). Because commercial crabbers use large numbers of durable pots, ghost pots can persist for long periods of time (Guillory et al., 2001 at 1).

Ghost pots are considered to be even more detrimental to terrapin populations than actively fished pots³ (Bishop, 1983 at 428; Guillory et al., 2001 at 4; Rook et al., 2010 at 172). This is because ghost pots are ongoing threats and have the capacity to capture great numbers of terrapins if they remain abandoned or lost (Rook et al., 2010 at 172). For example, Bishop (1983) found one ghost pot with 28 dead, decomposing terrapins in South Carolina (Bishop, 1983 at 429), and Roosenburg (1991) found a ghost pot with 49 terrapin shells, and remains of even more terrapins in Maryland (Roosenburg, 1991 at 231). The number of dead terrapins in that single crab pot represented an estimated 1.6–2.8% of the local population (Roosenburg, 1991 at 231).

Grosse et al. (2009) reported finding 133 diamondback terrapin carcasses among two abandoned crab pots in one tidal marsh in Georgia, consisting of more than double the remaining estimated population. One abandoned pot contained 94 dead terrapins, and another pot located approximately 100 meters from the first contained 23 dead and one live terrapin (Grosse et al., 2009 at 98). Because the scientists were prohibited by law from removing the pots, they continued to observe it during their 2-month sampling period and observed additional dead terrapins in the derelict crab pots (Grosse et al., 2009 at 98). They estimated that 91% of the total terrapin biomass in the tidal creek was lost as a result of neglected crab pots (Grosse et al., 2009 at 99).

³ Ghost pots are also known to capture other vertebrates such as river otters (*Lontra canadensis*) and raccoons (*Procyon lotor*) (Guillory et al. 2001 at 4).



Terrapin carcasses found in abandoned crab pot in Georgia
(Source: Grosse et al. 2009)

During Hoyle and Gibbons' (2000) study in South Carolina, the scientists inadvertently created a ghost pot scenario when two of their test pots became entangled during a high spring tide when they were not being monitored (Hoyle and Gibbons, 2000 at 735). Four terrapins entered those pots and died (*Id.*). The scientists estimated that those two lost pots could account for more terrapin captures than all 20 pots set during the study year (*Id.* at 736).

The number of terrapins lost to ghost pots is exponentially amplified by the number of ghost pots present in terrapin habitat. The commercial fishery generates many ghost pots each year (Chambers and Maerz, 2018). These abandoned pots are abundant, and every year more become marine debris in shallow estuaries, sometimes directly in terrapin habitat (Chambers and Maerz, 2018; Bishop, 1983 at 429). Though the numbers and location of ghost pots are unknown, scientists believe they are frequently abandoned or lost (Roosenburg, 1991 at 231). Guillory et al. (2001) estimated that approximately 250,000 derelict crab pots are added to the Gulf of Mexico annually (Guillory et al., 2001 at 2–3).

iii. Crab pot mortality in Virginia

Scientists agree that the greatest threat to diamondback terrapins, throughout their range, is drowning in crab pots. Male and young female terrapins can enter and then drown in them.

Randy Chambers, director of the Keck Environmental Field Laboratory at the College of William & Mary, and his team collected information about crab pot mortality as a longstanding and ongoing threat to terrapins in Virginia (Chambers & Bilkovic, 2012). Three regions in the pilot survey area were considered areas of special concern due to high crab fishing pressure within

essential terrapin habitat: Lower York River (Perrin Creek, Cuba Island, Guinea Marshes), Severn River, and Gwynn Island (*Id.*). Further, terrapin occupancy was verified during field surveys. Key takeaways from this study include the following:

- Within the pilot study area during a two year retrieval program, 2,872 derelict pots were removed. Of these, 22% were within shallow waters (< 2 m) where terrapins typically reside.
- The amount of derelict pots generally corresponded to the number of active pots in a given area and represents an inherent mortality risk as derelict pots can continue to capture and kill terrapin.
- Approximately 15% of the study area was considered to be potential resource conflict areas for terrapin and crabbing.
- Of the suitable terrapin habitat (70km²), 21% (15 km²) was considered vulnerable to crab fishing pressures (10% highly and 11% moderately vulnerable).

Other studies have found similar results, i.e. that, in Virginia waters of Chesapeake Bay, the most abundant form of derelict gear recovered was blue crab pots, with almost 32,000 recovered in the course of one study (Bilkovic, Havens, Stanhope, & Angstadt, 2014 at 1). The most abundant form of derelict gear recovered was blue crab pots, with almost 32,000 recovered. Derelict pots were widely distributed, but with notable hotspot areas, capturing 40 species and over 31,000 marine organisms (*Id.*). Derelict pots were also responsible for blue crab mortality; in fact, blue crabs experienced the highest mortality from lost pots, with an estimated 900,000 animals killed each year and a potential annual economic loss to the fishery of \$300,000 (*Id.*). Individual derelict pots contained between 0 and 7 terrapin. Terrapin were predominantly captured in pots on the seashore of Virginia (60%), with the highest captures in 2008 and 2009. The vast majority of terrapins (83%, n=39) were captured in pots in shallow waters (62m depth). There was no association with water temperatures; terrapin were reported in derelict pots retrieved when waters were 2.5–12.4 °C. All terrapin were dead in the pots except for one captured on January 7, 2009, on the seashore in 6.8 °C water (*Id.* at 4-5).

In Virginia waters, the blue crab fishery has exerted sufficient selection pressure on the terrapin bycatch to affect the growth rate and average size of female terrapins (Wolak et al., 2010). The outcome of both chronic and acute mortality events from crab pots on terrapin populations has been dramatic, with observed declines in population size to outright local extinction of terrapins (Roosenburg, 2004).

c. Bycatch Reduction Devices

Bycatch Reduction Devices (also called “BRDs” or “terrapin excluder devices”) prevent terrapins of a certain size from entering the pot (Roosenburg, 2004 at 23). They are designed specifically to prevent terrapin bycatch. Designed in the early 1990s (Wood, 1997 at 23), experts now recognize the BRD as the “best and most feasible solution to reducing terrapin mortality in crab pots” (Roosenburg, 2004 at 27).



An example of a plastic terrapin excluder device
(Source: [South Carolina Department of Natural Resources](#))

The effectiveness of BRDs at preventing terrapin death with little to no impact on blue crab capture has been well-studied (Roosenburg, 2004 at 26). There is a general consensus that 4.5 x 12-centimeter (cm) BRDs are effective at reducing terrapin entrapment (Roosenburg, 2004 at 26). Likewise, studies have found that both the 4.5 x 12 cm and the 5 x 10 cm BRD have a minimal effect on crab catch (Roosenburg, 2004 at 26). These findings have been tested in Virginia, with similar results (VMRC, 2023).

i. Effect on Terrapin Mortality

Experts have studied BRDs of various sizes in several geographic regions within the terrapin's range. All studies found that crab pots with BRDs successfully limited terrapin bycatch to some degree, ranging from 12-100% effectiveness, with smaller BRDs generally being more effective than larger BRDs. The studies widely found that BRDs measuring 4.5 x 12 cm are sufficiently effective at reducing crab pot mortality without significantly affecting the size or number of crabs caught.⁴ Table 1 summarizes the findings from studies that evaluated the ability of BRDs to reduce terrapin bycatch in blue crab pots. More detailed summaries of the studies are provided in Appendix A.

Table 1: Survey of Publications Evaluating the Ability of BRDs to Reduce Diamondback Terrapin Mortality in Blue Crab Pots			
Article	State	BRD size (cm)	% terrapins excluded
Butler and Heinrich (2007)	FL	4.5 x 12	73.2%
Cole and Helser (2001)	DE	3.8 x 12	100%
		4.5 x 12	*67%
		5 x 10	59%
		5 x 12	12%

⁴ See Sectio(ii), *Effect on Crab Haul*.

Crowder et al. (2000)	NC	4 x 16	100%
		4.5 x 16	100%
		5 x 16	100%
Hart and Crowder (2011)	NC	4.5 x 16	77%
		5 x 16	28%
Mazzarella (1994)	NJ	5 x 10	**90.5%
Morris et al. (2011)	VA	4.5 x 12	100%
Rook et al. (2010)	VA	4.5 x 12	95.7%
Roosenburg and Green (2000)	MD	4 x 10	100%
		4.5 x 12	82%
		5 x 10	47%
Wnek (2019)	NJ	4.5 x 12	100%
		5 x 15	100%
		5.1–6.4 × 7.3 (curved)	100%
*averaged percentages for male terrapins and female terrapins			
**averaged numbers from two separate seasons			

Notably, BRDs have successfully reduced terrapin mortality in crab pots in Virginia waters. Reinsel, Gibson, Klesch, and Chambers tested four replicates of each of the five trap treatments (1.75-inch oval BRD, 2-inch oval BRD, 1.75-inch rectangular BRD, 2-inch rectangular BRD, and a control trap without a BRD) in each tidal creek, for a total of 20 traps per creek and 40 traps total. They fitted traps with wire chimneys that extended above the high low water line to allow trapped terrapins to surface for air. For eight weeks during summer 2021, they baited traps with Atlantic Menhaden *Brevoortia tyrannus* each day, beginning on Monday. Tuesday–Friday, they emptied traps of any animals inside, and recorded terrapin sex, terrapin carapace length, terrapin carapace width, and terrapin shell height, as well as blue crab carapace length. They found that all four BRD designs were highly effective at excluding terrapins and maintaining crab catch, when compared to control traps. They also found a significant difference ($p = 0.003$) in catch per unit effort (CPUE) of diamondback terrapins among treatments, with the control group (those without BRDs) having the highest CPUE (0.97 ± 0.18). All traps fitted with BRDs decreased terrapin capture significantly compared to the control group. Oval BRDs excluded more terrapins than their rectangular counterparts, with the same height dimension, although these differences were not significant. They also found no significant difference in CPUE of blue crabs among treatments ($p = 0.392$), or in the size of legal crabs caught in each treatment ($p = 0.216$). Accordingly, they pointed out that the study provides evidence of the effectiveness of both rectangular and oval-shaped BRDs to exclude terrapins and maintain crab catch in Virginia waters, where BRDs are not currently required.

ii. *Effect on Crab Haul*

Many studies also assess the effect of BRDs on the size and number of crabs captured, with the goal of identifying a BRD design that successfully minimizes terrapin captures, while having

minimal effect on crab haul. Nearly every study found at least one BRD size that had little to no effect on crab haul, and they generally agree that a 4.5 x 12 cm BRD can successfully prevent terrapin deaths while having insignificant impacts on crab haul (See Table 2, Appendix B).

Table 2: Survey of Publications Evaluating the Effect of BRDs on Crab Haul			
Article	State	BRD size (cm)	Finding
Butler and Heinrich (2007)	FL	4.5 x 12	no significant effect on sex, size, or number of crabs captured
Cole and Helser (2001)	DE	3.8 x 12	substantial loss of legal-size blue crabs (26% decrease with BRDs)
		4.5 x 12	nominal loss of legal-size blue crabs (12% total decrease, with 6% of most desirable crabs with BRDs)
		5 x 10	no statistical difference in blue crab catches (2.4% increase with BRDs)
		5 x 12	no substantial change in total blue crab catch rates (0.2% increase with BRDs)
Cuevas et al. (2000)	MS	5 x 10	similar daily catch rates (mean 19.5 for traps with BRDs and without) and crab size frequency
Guillory and Prejean (1998)	LA	5 x 10	overall catch per trap day of sublegal, legal, and total crabs was 14.5%, 37.9%, and 25.7% greater, respectively, than in standard pots
Hart and Crowder (2011)	NC	4.5 x 16	BRD did not have a significant effect on catch of either large male blue crabs or peelers
		5 x 16	
Lukacovic et al. (2005)	MD	4.5 x 12	all categories of crab catch were significantly lower in crab pots fitted with BRDs; in traps without BRDs, overall crab catch was 35% greater and catch of legal crabs was 28.5% greater
Mazzarella (1994)	NJ	5 x 10	no significant difference in number of crabs or size of crabs captured
Morris et al. (2011)	VA	4.5 x 12	no statistical difference between either the number or size of legal-size crabs in crab pots with and without BRDs on the first day after baiting; significant difference in total catch per unit effort and size across all other days after; more legal-size crabs were caught in pots without terrapin bycatch, but the difference was not significant

Rook et al. (2010)	VA	4.5 x 12	crab catch equivalent between crab pots with and without BRDs; slight increase (marginal) in number, size, and biomass of both legal-size and sublegal-size crabs in pots with BRDs
Roosenburg and Green (2000)	MD	4 x 10	reduced the size and number of large and mature female crabs
		4.5 x 12	no effect on size or number of crabs caught
		5 x 10	no effect on size or number of crabs caught
Wnek (2019)	NJ	4.5 x 12	no significant difference in number of crabs caught; similar mean length, width, height
		5 x 15	no significant difference in number of crabs caught; similar mean length; smaller mean width and height
		5.1–6.4 × 7.3 (curved)	no significant difference in number of crabs caught; similar mean length, width, height

Butler and Heinrich (2007) tested whether bycatch mortality of diamondback terrapins in commercial crab pots is reduced by using 4.5 x 12 cm galvanized steel BRDs and whether those devices limit blue crab catch. They captured 2,753 legal-sized crabs and found no significant difference between the sex, measurements, or number of crabs captured in standard crab pots versus crab pots with BRDs (Butler and Heinrich, 2007 at 182).

Although BRDs have not been studied in large-scale commercial operations that fish more than 100 pots, anecdotal reports from crabbers who use BRDs in large-scale operations claim that they see no effect—or maybe an improvement—in their crab catch (Roosenburg, 2004 at 27).

BRDs may offer additional benefits to crabbers as well. For instance, BRDs reduce the rate of entry of many large vertebrate bycatch including fish, turtles, and otters (Guillory and Prejean, 1998 at 39). This frees up additional space in pots, which would otherwise be occupied by nontarget species, to capture more crabs. The presence of terrapins in crab pots may cause crabs to avoid crab pots. Morris et al. (2011) found that crab pots with terrapin bycatch in them had, on average, fewer crabs per unit effort (Morris et al., 2011 at 388). Likewise, more legal-size crabs were caught in pots without terrapin bycatch (*Id.*). Thus, keeping terrapins out of crab pots may lead to the capture of more and larger crabs. Guillory and Prejean (1998) have also suggested that increased crab catch in traps with BRDs could be due to increased ingress and/or decreased egress through the entrance funnels (Guillory and Prejean, 1998 at 39).

Finally, keeping terrapins out of crab pots may help keep crabs in marketable condition. Davenport et al. (1992) studied terrapin feeding behavior on crabs by providing hungry male terrapins crabs of different size classes and observing the terrapins' behavior (Davenport et al., 1992 at 837–846). The size classes for crabs were small (10–25 mm carapace width), medium (30–50 mm), and large (52–75 mm) (*Id.* at 837). They observed that although terrapins are not specialized anatomically for a diet of hard-shelled animals, they will still exploit such food

sources if they are hungry and do not have other options. Specifically, they will eat crabs (*Id.* at 846). Small crabs were eaten whole, while medium and large crabs were “cropped”—that is, their walking legs were eaten without killing the crab (*Id.* at 847). Applying their findings to diamondback terrapins in the field, the scientists predicted that terrapins might eat blue crabs through a “cropping” technique (*Id.*). Generally, terrapins will attack smaller crabs before medium crabs, and medium crabs before larger crabs (*Id.*). Because terrapins captured in crab pots are in closed conditions without access to their preferred prey, it is possible that they will shear crabs, thus making them less marketable.

III. JUSTIFICATION FOR THE REQUESTED RULEMAKING

a. The Diamondback Terrapin is Imperiled and Cannot Sustain Effects from Crab Pot Mortality

Wild turtle populations are characterized by a suite of life history characteristics that predispose them to rapid declines when subjected to unnatural levels of adult mortality (Colteaux and Johnson, 2017 at 17; Heppell, 1998; Galbraith et al., 1997; Congdon et al., 1993, 1994). Among these characteristics are delayed maturity, low fecundity, high annual survivorship of adults, and high natural levels of nest mortality (Reed and Gibbons, 2003). Similarly, terrapins’ life history traits prevent them from absorbing chronic adult mortality (Hoyle and Gibbons, 2000 at 736). Removing even a few diamondback terrapins from a population can have detrimental effects on the population as a whole (Hoyle and Gibbons, 2000). For this reason, experts rank crab pot mortality as the greatest threat to the diamondback terrapin (Butler et. al., 2006 at 332) and have emphasized that modifying pots to reduce terrapin mortality is of utmost importance (Baker et al., 2013 at 676).

Studies and anecdotal evidence demonstrate that blue crab pots can have devastating population-level impacts on diamondback terrapins (Davis, 1942; Bishop, 1983; Marion, 1986; Burger, 1989; Mazzarella, 1994; Mann, 1995; Wood and Herlands, 1996; Roosenburg et al., 1997; Wood, 1997; Guillory and Prejean, 1998; Crowder et al., 2000; Hoyle and Gibbons, 2000; Roosenburg and Green, 2000; Cole and Helser, 2001; Butler, 2002, 2000; Roosenburg, 2004; Butler and Heinrich, 2007; Dorcas et al., 2007; Coleman et al., 2014; Chambers and Maerz, 2018). A fleet of active crab pots can significantly reduce a terrapin population over time by periodically removing a few terrapins at a time (Hart and Crowder 2011 at 269). A single ghost pot—which can capture dozens of terrapins at once—can wipe out an entire population in a relatively shorter period of time (Grosse et al., 2009 at 99).

Reports of terrapin deaths in crab pots are so common that they have been documented in numerous recent news stories and social media posts from across the species’ range, including

hundreds of terrapins in Virginia,⁵ 20 terrapins in Maryland,⁶ 91 terrapins in New Jersey,⁷ 95 terrapins in Louisiana (Butcher et al., 2018 at 30), and 42 terrapins in New York.⁸ Most recently in 2019, a Facebook post from Georgia reported more than 20 dead terrapins in a single pot,⁹ and a Virginia report documented 30 dead terrapins in a pot.¹⁰

Although the Virginia Marine Resources Commission does not require crabbers to report terrapin mortality in their pots, evidence indicates that it is occurring. The problem is most pressing among the pots set by recreational crabbers, which typically sit in shallow waters along creeks, seagrass beds, and marshes. This is prime territory for males and juvenile female terrapins (VIMS, 2010). Because of their smaller size, these terrapins are particularly vulnerable to capture and drowning. Adult males are only half as large as adult females, growing to about 6 inches long. Adult females are typically too large to enter a pot's funnel-like openings. Although recreational crabbers arguably pose the greatest threat because they can access more shallow waters and are more likely to leave pots unchecked, commercial crabbers set hundreds of pots, they could cause “significant detrimental effects on local populations” (Butler and Heinrich, 2007 at 183). Because Virginia contains a significant percentage of the terrapin's range, the effect of crab pot mortality in the state has great significance to the conservation of the entire species.

Because the Chesapeake Bay is one of the top areas for recreational crabbing, and is located (in part) in Virginia, the potential for crab pot mortality for terrapins is high. Derelict crab pots from commercial and recreational pot fisheries are also a problem in Virginia waters, with almost 32,000 recovered in the course of one study (Bilkovic, Havens, Stanhope, & Angstadt, 2014 at 1).

When added to the suite of additional stressors across the species' range, including habitat destruction and degradation, road mortality, nest predation, boat strikes, poaching, climate change, sea-level rise, and subsidized predation (Maerz et al. 2018), diamondback terrapins cannot sustain the harmful impacts of crab pot mortality.

⁵ Karl Blankenship, *Derelict pots killing 3.3 million crabs annually in the Bay*, BAY JOURNAL (Dec. 27, 2016), https://www.bayjournal.com/article/derelict_pots_killing_3.3_million_crabs_annually_in_the_bay; Carol Vaughn, *Virginia bill aimed at protecting turtles passes Senate*, DELMARVA NOW (Feb 10, 2016, 10:48 AM), <https://www.delmarvanow.com/story/news/local/virginia/2016/02/09/turtle-bill-passes-senate-house-subcommittee-agenda/80070128/>.

⁶ *Save the terrapins*, BALTIMORE SUN (Aug. 17, 2016, 12:15 PM), <https://www.baltimoresun.com/opinion/editorial/bs-ed-terrapin-20160817-story.html>.

⁷ Dan Radel, *Ghost pots: Abandoned crab traps are sea killers*, ASHBURY PARK PRESS (May 6, 2017, 8:39 AM), <https://www.app.com/story/news/local/land-environment/enviroguy/2017/05/05/1379-ghost-crab-pots-marine-killer-water/101246090/>; Maxwell Reil, *About 80 turtles found dead on Sea Isle City beach*, PRESS OF ATLANTIC CITY (Jun. 4, 2018), https://www.pressofatlanticcity.com/news/about-turtles-found-dead-on-sea-isle-city-beach/article_fbe05c8e-0c9e-508d-94ec-765c21d6cc5e.html.

⁸ Matthew Miller, *Saving Terrapins from Drowning in Crab Traps*, COOL GREEN SCIENCE (Mar. 27, 2018), <https://blog.nature.org/science/2018/03/27/saving-terrapins-from-drowning-in-crab-traps/>.

⁹ Edwin Longwater, FACEBOOK (Apr. 18, 2019), <https://www.facebook.com/photo.php?fbid=601987793616969&set=pb.100014172614332.-2207520000.1561385354.&type=3&theater>.

¹⁰ SaraRose Martin, *Along marshy edge of York River, you'll find dead turtles, drowned in the lost traps of crabbers*, THE VIRGINIA GAZETTE (Jun. 7, 2019, 7:45 AM), <https://www.vagazette.com/news/va-vg-commercial-crabbing-traps-0513-story.html>.

b. BRDs Protect Diamondback Terrapins While Boosting Marketability of Crabs from Virginia's Waters

BRDs provide a simple and inexpensive method to reduce terrapin deaths in crab pots and increase marketability of crabs caught in Virginia's waters. A rule requiring BRDs is justified because BRDs protect most mature diamondback terrapins from drowning in pots, BRDs have little to no effect on crab haul, BRDs are inexpensive, and using BRDs increases the marketability of crabs fished from Virginia's waters.

Neither the commercial nor recreational blue crab fisheries have adopted these important measures, and research shows that rules simply requiring crabbers to check pots once per day—even if stringently followed—are not enough to combat terrapin mortality (Wood, 1997).

i. BRDs Protect Terrapins from Needless Drowning Deaths

Extensive studies show that BRDs effectively prevent most large, mature terrapins from entering crab pots by restricting the pot entrances to a size that precludes a terrapin's carapace from fitting through (Reviewed in Roosenburg, 2004; Chambers and Maerz, 2018). Studies demonstrate that on average, 70% of terrapins are unable to enter pots equipped with BRDs while blue crabs can still enter easily (Mazzarella, 1994; Crowder, 2000; Roosenburg and Green, 2000; Cole and Helser, 2001; Rook et al., 2010; Hart and Crowder, 2011; Morris et al., 2011).

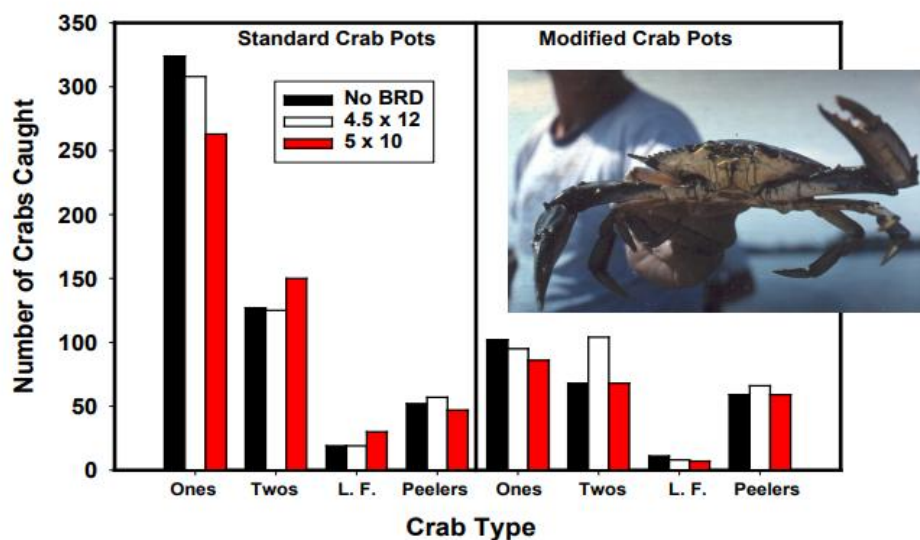
Studies in Virginia have shown that while BRDs are effective at preventing terrapins and other animals from entering pots, they have little impact on the size and number of blue crabs found in crab pots. Specifically, a 2021 study tested the effectiveness of oval BRDs, and preliminary results show a large reduction in terrapin mortality while maintaining crab catch (Reinsel, Gibson, Klesch, and Chambers, 2021). Most BRDs used in Virginia studies have been either 5x15cm or 4.5x12cm, and all have been plastic. Some BRD sizes showed small or no change in crab catch. Studies using 4.5x12cm BRDs often showed large decreases in crab catch, but some of these studies did not use bait. This significant reduction in terrapin mortality achieved by BRDs will slow terrapin declines attributed to crab pot mortality and provide Virginia's terrapins with a level of resiliency against myriad other threats it currently faces and will face as climate change and sea-level rise continue and accelerate.

ii. BRDs Have Little to No Effect on Crab Haul

Extensive scientific study also demonstrates that BRDs have little to no effect on the number and size of marketable crabs harvested (Mazzarella, 1994; Guillory and Prejean, 1998; Cuevas et al., 2000; Roosenburg and Green, 2000; Cole and Helser, 2001; Butler and Heinrich, 2007; Rook et al., 2010; Hart and Crowder, 2011; Morris et al., 2011). Some studies have even suggested that BRD use can result in an increase in catch of marketable crabs (Rook et al., 2010; Roosenburg and Green, 2000; Guillory and Prejean, 1998).

The following chart reflecting a survey of all BRD studies demonstrates that crab haul is relatively the same in crab pots with no BRDs and crab pots with 4.5 x 12 cm BRDs (Roosenburg, 2017).

Number of Crabs Caught in Pots with and without BRDs
no effect of BRD on number of crabs caught



(Source: modified from Roosenburg and Green 2000)

iii. *BRDs Are Inexpensive*

BRDs are small and inexpensive. Some companies in states like Maine sell BRDs for as little as \$0.45 each,¹¹ while some programs in Virginia will distribute BRDs for free or demonstrate how crabbers can make them themselves. There are also free resources that teach fishermen how to build and install their own BRDs.¹²

BRDs will likely become even less expensive over time as they are integrated into the crab pot fishery. As more states adopt rules and regulations requiring the use of BRDs, manufacturers will embrace the opportunity to design pots that already include BRDs. For instance, in Virginia, crab pots with built-in BRDs are already available for sale.¹³ As these pot designs become more common, the cost of making them will also decrease.

¹¹ *Purchase Pre-Made BRDs*, VIRGINIA INSTITUTE OF MARINE SCIENCE, https://www.vims.edu/research/units/projects/terrapin_brds/pre-made.php (last visited Jul. 11, 2019).

¹² [Five Crab Pot license with terrapin excluder](#); see also [VIMS asks volunteers to help keep terrapins from crab pots](#) | Virginia Institute of Marine Science & [Make Your Own BRDs](#) | Virginia Institute of Marine Science.

¹³ Many bait and tackle shops, or other stores that carry crab pots, carry terrapin excluder devices or sell crab pots with TEDs included or already installed, [Five Crab Pot license with terrapin excluder](#).

iv. BRDs Make Virginia's Crabs More Marketable in an Increasingly Environmentally Conscious Market

Sustainability is a driving force across markets, and seafood markets are no exception. BRDs would make crabs from Virginia's waters more marketable in an increasingly eco-conscious economy. A 2018 global survey by Nielson found that 81% of participants felt strongly that companies should help improve the environment. This sentiment was shared across generations, with Millennials, Generation Z, and Generation X being most supportive, and older generations not far behind.¹⁴ Americans in particular are concerned about environmental issues and recognize that their finances can be used to influence change.¹⁵ They are becoming better informed about of the environmental impact of products they purchase.¹⁶

These environmental values are driving consumer purchases. A 2017 survey of demographically representative Americans found a steady increase in consumers purchasing products with social benefit, with participants indicating they purposefully use their wallets to drive change by buying products with environmental benefit (Cone Comms., 2017). A majority (79%) indicated they seek out environmentally responsible products (*Id.*). Eighty-seven percent of participants said that given the opportunity, they would buy a product with social or environmental benefit (Cone Comms., 2017). These attitudes and actions reflect a growing trend, rising from 83% in 2015.

In a 2015 Global Corporate Sustainability Report by Nielson, 66% of consumers indicated they are willing to spend more on a product if it comes from a sustainable brand.¹⁷ Millennials indicated a similar preference, with 73% willing to pay extra for sustainable products.¹⁸

This trend toward more sustainable markets is clear in the seafood industry, with several independent organizations recommending consumers purchase only sustainably sourced seafood. For instance, the Monterey Bay Aquarium's Seafood Watch program helps consumers and businesses choose seafood that supports a healthy ocean by recommending which seafood items are "Best Choices" and "Good Alternatives," and which ones to avoid. Currently the Seafood Watch program recommends that consumers only purchase blue crabs from states that have effective regulations to protect diamondback terrapins from drowning in crab pots. Because of

¹⁴ Nielsen, Global Consumers Seek Companies that Care about Environmental Issues (Sept. 11, 2018), <https://www.nielsen.com/eu/en/insights/article/2018/global-consumers-seek-companies-that-care-about-environmental-issues/>.

¹⁵ Adam Butler, Do Customers Really Care About Your Environmental Impact? Forbes.com (Nov. 21, 2018), <https://www.forbes.com/sites/forbesnycouncil/2018/11/21/do-customers-really-care-about-your-environmental-impact/#3d6974ee240d>.

¹⁶ Adam Butler, Do Customers Really Care About Your Environmental Impact? Forbes.com (Nov. 21, 2018), <https://www.forbes.com/sites/forbesnycouncil/2018/11/21/do-customers-really-care-about-your-environmental-impact/#3d6974ee240d>.

¹⁷ New Release, Consumer-Goods' Brands That Demonstrate Commitment to Sustainability Outperform Those That Don't (Dec. 10, 2015), <https://www.nielsen.com/eu/en/press-releases/2015/consumer-goods-brands-that-demonstrate-commitment-to-sustainability-outperform/>.

¹⁸ New Release, Consumer-Goods' Brands That Demonstrate Commitment to Sustainability Outperform Those That Don't (Dec. 10, 2015), <https://www.nielsen.com/eu/en/press-releases/2015/consumer-goods-brands-that-demonstrate-commitment-to-sustainability-outperform/>.

Virginia's lax regulations to protect terrapins, Seafood Watch instead recommends that conscientious consumers purchase crabs from states like New Jersey precisely because it requires the commercial fishery to use terrapin bycatch reduction devices.¹⁹

As more states adopt laws requiring commercial crabbers to use BRDs, Virginia will fall behind in the blue crab markets as consumers seek out more sustainable alternatives. For Virginia to keep up, it needs to adopt BRD regulations to prevent harming terrapin populations. By being an early adopter of BRD rules, Virginia can establish itself as a conservation leader and gain an advantage over crab fisheries in surrounding states that have yet to take this important step.

c. Other States in the Diamondback Terrapin's Range Require Bycatch Reduction Devices

Several states already require or incentivize crabbers to use BRDs on their pots. New Jersey requires crabbers to use BRDs in waters of less than 150 feet across at mean low water mark,²⁰ and New York recently implemented regulations requiring crabbers to use BRDs on pots set in creeks, coves, rivers, tributaries, and near-shore harbors of the Marine and Coastal District.²¹ In Maryland and Delaware, all recreational crab pots must have BRDs.²² Currently, Virginia only encourages crabbers to use BRDs on crab pots by offering a lower cost licensing rate for modified pots.²³

Table 3: Survey of State Laws Governing Bycatch		
State	Terrapin Conservation Status	BRD required on crab pots?
MA	Threatened	no
RI	Endangered	no
CT	Species of Special Concern	no
NY	None	yes
NJ	Nongame Indigenous Species	yes
DE	Species of Conservation Concern	yes (recreational only)
MD	None	yes (recreational only)
VA	Species of Greatest Conservation Need	no
NC	Special Concern Species	yes, in designated Diamondback Terrapin Management Areas
SC	High Priority species for conservation	no
GA	Protected species ("unusual")	no
FL	Species of Greatest Conservation Need	yes (recreational only)
AL	Highest Conservation Concern/ Nongame species	no

¹⁹ *Crab Recommendations*, MONTEREY BAY AQUARIUM SEAFOOD WATCH, <https://www.seafoodwatch.org/seafood-recommendations/groups/crab?q=blue%20crab&type=blue&o=371> (last visited July 11, 2019).

²⁰ N.J. Admin. Code § 7:25-14.6(c) (Lexis Advance through the New Jersey Register, Vol. 51 No. 13, July 1, 2019)

²¹ N.Y. Comp. Codes R. & Regs. tit. 6, § 44.2(d) (Lexis Advance through June 28, 2019).

²² Md. Code Regs. 08.02.03.07(B)(5); 7-3000-3700 Del. Code Regs. § 1.0.

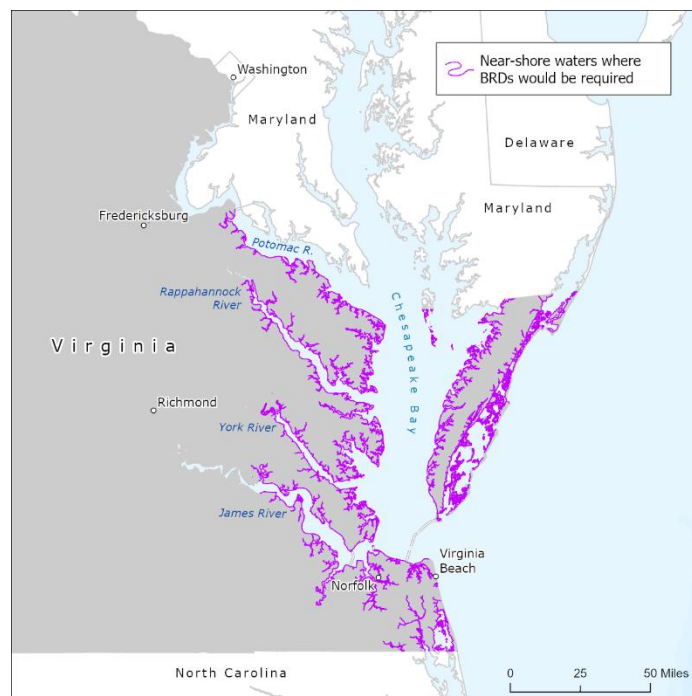
²³ Va. Code Ann. § 28.2-226.2(B)(1)–(2) (Lexis Advance through the 2019 Regular Session of the General Assembly).

MS	Species of Greatest Conservation Need	no
LA	Species of Special Concern	no
TX	Nongame/ Species of Greatest Conservation Need	no

While Virginia has a program that offers information about BRDs and a lower cost licensing rate for recreational crabbers with modified pots, this program has not generated widespread participation. Without full participation by the crabbing community, the voluntary BRD program has little to no conservation effect for the diamondback terrapin. For this reason, it is imperative that Virginia adopt mandatory BRD rules. Virginia is poised to take the lead in the Chesapeake Bay and adopt regulations requiring the use of BRDs on crab pots.

IV. PROPOSED RULE AMENDMENT

Virginia's fishing regulations currently do not require the use of BRDs in licensed blue crab pots. To protect diamondback terrapins from incidental mortality in active and inactive blue crab pots, Petitioners request that the Virginia Marine Resources Commission adopt or amend regulations require BRDs on licensed commercial and recreational blue crab pots in waters less than 150 yards from shore (at mean low water mark), including manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors. To provide the fishery reasonable time to retrofit crab pots, Petitioners suggest a three-year grace period from the date of adoption or amendment of the regulation. The proposal also includes a provision to allow the use of other gear modifications that demonstrate through peer-reviewed study similar efficacy to 4.5 cm by 12 cm BRDs, as set forth in Butler and Heinrich, 2007 and Roosenburg and Green, 2000.



While Petitioners generally request that the Virginia Marine Resources Commission adopt a rule or amendment to require BRDs in licensed blue crab pots, in the interest of specificity and completeness, we suggest the following specific amendments to Chapter 270 of the Virginia Administrative Code, Pertaining to Blue Crab Fishery and Code 28.2, 4VAC20, Recreational Crabbing Rules. Petitioners also request the opportunity to participate as stakeholders in any rulemaking process.

Specifically, for both the recreational and commercial regulations pertaining to definitions and regulation and prohibition of certain harvesting gear [Virginia Code 28.2-226; 4VAC20-670-20; 4VAC20-270-25], the following should be added:

“Bycatch reduction device” or “BRD” means a rigid rectangular device constructed of wire or plastic that has an opening no larger than 4.5 cm by 12 cm, which is attached to the end of each entrance funnel of a crab trap to minimize bycatch of diamondback terrapins. This definition also includes any device or gear modification that results in a $\geq 70\%$ reduction in terrapin captures compared with unmodified traps, as demonstrated by at least one peer-reviewed study.

Beginning [three years from date of amendment], all traps, whether commercial or recreational, in state waters less than 150 yards from shore (at mean low water mark) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors must have a 4.5x12cm (1.75-in) oval design bycatch reduction device (BRD) meeting the specifications defined attached to each entrance or funnel.

V. CONCLUSION

Petitioners have summarized the harm crab pots inflict on diamondback terrapin populations and the greater estuarine ecosystems in Virginia and across their range. Specifically, Petitioners have demonstrated that terrapins cannot withstand continued mortality in crab pots. Petitioners have also demonstrated that BRDs can significantly reduce terrapin mortality in crab pots, while having negligible effects on crab haul. For these reasons, several states across the terrapin’s range have adopted or are considering rules to require terrapin excluder devices on crab pots. Virginia is poised to take the same imperative conservation action for its terrapins, making it a conservation leader in the Chesapeake Bay.

Diamondback terrapins are an essential part of Virginia’s unique natural heritage, and citizens and visitors alike depend on the Commission to protect them for generations to come. Moreover, they are an important part of healthy estuarine ecosystems. Petitioners therefore request that the Virginia Marine Resources Commission adopt the proposed rule amendment and require BRDs on licensed commercial and recreational crab pots in Virginia’s in state waters less than 150 yards from shore (at mean low water mark) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors.

If the Commission or staff has any questions, please contact Tara Zuardo at tzuardo@biologicaldiversity.org or 415-419-4210. The Center can provide copies of the literature cited in this petition upon request.

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Appendix A

Survey of Scientific Literature Evaluating the Effect of BRDs on Terrapin Mortality

Butler and Heinrich (2007) tested whether bycatch mortality of diamondback terrapins in Florida in commercial crab pots is reduced by using 4.5 x 12 cm galvanized steel BRDs. They fished 15 pots without BRDs and 15 outfitted with BRDs at eight sites along the Atlantic and Gulf coasts (including the Florida panhandle) during the summers of 2002-2005. Thirty-seven terrapins were caught in standard pots and four in those with BRDs. They found that 73.2% of trapped terrapins would have been excluded from pots with BRDs (Butler and Heinrich 2007 at 183–184). These researchers recommended that the Florida Fish and Wildlife Conservation Commission devise and adopt regulations that require the use of 4.5 x 12 cm BRDs on all commercial and recreational crab pots used in Florida waters.

Cole and Helser (2001) conducted a 4-year study between 1997 and 2000 in the Delaware Bay estuary to investigate four sizes of wire, rectangular BRDs measuring 5 x 10 cm, 5 x 12 cm, 4.5 x 12 cm, and 3.8 x 12 cm to determine their impacts on terrapin bycatch mortality. During the study, 372 diamondback terrapins were captured (Cole and Helser 2001 at 828–831). Crab pots fitted with 5 x 10 cm BRDs demonstrated statistically significant reduction in terrapin captures (59%) (Cole and Helser 2001 at 828), as did crab pots fitted with 4.5 cm x 12 cm BRDs (38% male and 96% female) (Cole and Helser 2001 at 831). Crab pots fitted with the smallest BRD, 3.8 x 12 cm, prevented all diamondback terrapins from entering the pot (Cole and Helser 2001 at 831). They found that the 5 x 12 cm BRD was the only treatment for which the reduction in overall diamondback terrapin catches was not statistically significant (12%) (Cole and Helser 2001 at 832). Based on the study, Cole and Helser recommended using 4.5 x 12 cm BRDs (Cole and Helser 2001 at 831).

Crowder et al. (2000) studied the extent of terrapin mortality in actively fished crab pots in Jarrett Bay, North Carolina, to evaluate the effect of several different BRDs on both terrapin and crab catch rates (Crowder et al. 2000 at 1). They studied BRD-equipped crab pots for three seasons, testing a 5 x 16 cm BRD the first season (Spring 2000), a 4 x 16 cm BRD the second season (Fall 2000), and a 4.5 x 16 cm BRD the third season (Spring 2001) (Crowder et al. 2000 at 1). All BRDs were made from galvanized fencing (Crowder et al. 2000 at 1). During the course of the three-season study, they captured 12 diamondback terrapins, none of which were captured in pots fitted with excluder devices. (Crowder et al. 2000 at 3).

Hart and Crowder (2011) tested BRDs in North Carolina's year-round blue crab fishery from 2000 to 2004 and found that BRDs successfully prevent terrapin capture and mortality (Hart and Crowder 268–269). The smaller the BRD was, the fewer terrapins were captured (Hart and Crowder 2011 at 268–269). Specifically, they found that a 4.5 cm tall BRD excluded approximately 77% of terrapins captured, while a 5 cm tall BRD excluded approximately 28% of terrapins (Hart and Crowder 2011 at 269). They also found that longer soak times and closer distances to shore increased the risk of terrapin captures (Hart and Crowder 2011 at 268–269). As a result of the study, Hart and Crowder suggested three complementary and economically feasible tools to prevent terrapin mortality in the blue crab fishery: 1) gear modifications such as

BRDs; 2) distance-to-shore restrictions; and 3) time-of-year regulations (Hart and Crowder 2011 at 270–271). They estimated that by using all three measures combined, a reduction in terrapin bycatch of up to 95% could be achieved without significant reduction in target crab catch (Hart and Crowder 2011 at 264).

Mazzarella (1994) studied crab pots with 5 x 10 cm rectangular wire BRDs and crab pots without BRDs in New Jersey's Great Bay estuary for 116 days from July 6 to August 31, 1993, and from May 1 to June 30, 1994 (Mazzarella 1994 at 1, 3–4). In 1993, crab pots with BRDs captured no terrapins, and crab pots without BRDs captured 3 terrapins; and in 1994, crab pots with BRDs captured 3 terrapins, and crab pots without BRDs captured 37 terrapins (Mazzarella 1994 at 1, 3–4).

Morris et al. (2011) studied the effectiveness of BRDs measuring 4.5 x 12 cm on commercial blue-crab pots in the York River, Virginia, by fishing 10 pots with BRDs and 10 pots without BRDs from June 4 to July 31, 2009 (Morris et al. 2011 at 387). All 51 terrapins captured during the study were captured in crab pots without BRDs; no terrapins were captured in crab pots with BRDs (Morris et al. 2011 at 388, 389). Based on local population estimates, Morris and co-workers concluded that the total number of terrapins caught in non-BRD pots during the 46-day study (51 terrapins) represented a potential reduction in population size from 27–50% (Morris et al. 2011 at 389). Given that the crab pots were in the water only 46 days, the terrapin population in the study creek would have experienced significant mortality of juvenile and adult male terrapins over a full, 8-month season of commercial crabbing, likely resulting in skewed population dynamics (Morris et al. 2011 at 389). Thus, the terrapin mortality prevented by the BRDs was significant.

Roosenburg and Green (2000) tested three sizes of wire BRDs in the Chesapeake Bay in Maryland: 4 x 10 cm, 4.5 x 12 cm, and 5 x 10 cm (Roosenburg and Green 2000 at 883–884). They caught no terrapins in crab pots with 4 x 10 cm BRDs, 19 terrapins in crab pots with 4.5 x 12 cm BRD, and 56 terrapins in crab pots with 5 x 10 cm BRDs (Roosenburg and Green 2000 at 884). They caught 126 terrapins in the crab pots without BRDs (Roosenburg and Green 2000 at 884). Thus, the 5 x 10 cm BRDs reduced terrapin bycatch by 47%, the 4.5 x 12 cm BRDs reduced bycatch by 82%, and the 4 x 10 cm BRDs reduced bycatch by 100% (Roosenburg and Green 2000 at 884). This study resulted in the requirement of a 4.5 x 12 cm BRD in the Maryland recreational crab pot fishery.²⁴

Rook et al. (2010) tested a 4.5 x 12 cm plastic BRD in the lower Chesapeake Bay during summer 2008. They tested 10 sets of unbaited crab pots, one pot in each set with BRDs and one without (Rook et al. 2010 at 173–174). In a separate experiment they did the same with baited crab pots (Rook et al. 2010 at 173–174). Of 48 terrapin captures in crab pots, only 2 were from pots with BRDs (Rook et al. 2010 at 175). The BRDs diminished terrapin bycatch in crab pots by 95.7% (Rook et al. 2010 at 177). Thus, Rook et al. “recommend[ed] the use of BRDs on all crab traps

²⁴ See Md. Code Regs. 08.02.03.07(B)(5); Maryland Department of Natural Resources, Attention Maryland Crabbers: you can help save our state reptile! Publication #03-1282009-430, available at <https://dnr.maryland.gov/wildlife/Documents/TerrapinBrochure.pdf>.

placed in diamondback terrapin habitat of the North American coastline, particularly for crab traps in the shallow waters fringing coastal marshes, estuaries, and lagoons” (Rook et al. 2010 at 178).

Wnek (2019) studied the effectiveness of various BRD designs in reducing terrapin bycatch and compared the amounts and sizes of blue crabs captured in crab pots fitted with BRDs in Barnegat Bay, New Jersey. He studied four sizes of BRD (5 x 15 cm, 4.5 x 12 cm, South Carolina prototype in red, South Carolina prototype in white) against control pots without BRDs (Wnek 2019 at 2). No terrapins were trapped in crab pots with BRDs, and two terrapins were captured in control pots without BRDs (Wnek 2019 at 10).

Appendix B

Survey of Scientific Literature Evaluating the Effect of BRDs on Crab Haul

Butler and Heinrich (2007) tested whether bycatch mortality of diamondback terrapins in commercial crab pots is reduced by using 4.5 x 12 cm galvanized steel BRDs and whether those devices limit blue crab catch. They captured 2,753 legal-sized crabs and found no significant difference between the sex, measurements, or number of crabs captured in standard crab pots versus crab pots with BRDs (Butler and Heinrich 2007 at 182).

Cole and Helser (2001) found that crab pots fitted with 5 x 10 cm BRDs demonstrated statistically significant reduction in terrapin captures (59%) with no statistical difference in blue crab catches (Cole and Helser 2001 at 828). Crab pots fitted with 4.5 x 12 cm BRDs demonstrated statistically significant reduction in terrapin captures (38% male and 96% female) with only a nominal loss of legal-size blue crabs (12% total, 6% of most desirable crabs) (Cole and Helser 2001 at 831). Crab pots fitted with the smallest BRD, 3.8 x 12 cm, prevented all diamondback terrapins from entering the trap, but incurred substantial loss of legal-size blue crabs (-26%) (Cole and Helser 2001 at 831). Based on the study, Cole and Helser recommended using 4.5 x 12 cm BRDs, which effectively protect subadult and reproductively mature female terrapins with minimal loss of legal blue crabs (Cole and Helser 2001 at 831).

Cuevas et al. (2000) studied and compared the catch rate and sizes of blue crab and terrapin bycatch taken in Mississippi Sound with crab pots equipped with and without BRDs. The BRDs were made of welding rods shaped into a 5 x 10 cm rectangle and fitted into the funnel entrances of crab pots (Cuevas et al. 2000 at 223). A total of 740 blue crabs were captured, 370 in pots without BRDs and 370 in pots with BRDs (Cuevas et al. 2000 at 224). Pots with BRDs captured 160 female crabs and 210 male crabs, while control pots caught 125 females and 245 males (Cuevas et al. 2000 at 224). Daily catch rates and crab size frequency were similar for crab pots with and without BRDs (Cuevas et al. 2000 at 224, 225). However, the scientists noted that there was a detectable difference in size distribution, resulting in a slight decrease in numbers of larger crabs observed in pots with BRDs (Cuevas et al. 2000 at 225). This difference could have been attributable to the small sample size in the study (Cuevas et al. 2000 at 225).

Guillory and Prejean (1998) studied the effects of BRDs on blue crab catches in estuarine Louisiana waters. To do this, they fished five standard crab pots and five crab pots with BRDs constructed of stainless-steel wire and measuring 5 x 10 cm (Guillory and Prejean 1998 at 38). They found that overall catch per trap day of sublegal, legal, and total crabs was 14.5%, 37.9%, and 25.7% greater, respectively, than in standard pots (Guillory and Prejean 1998 at 39). The scientists attributed the increased crab catch in pots with BRDs to increased ingress or decreased egress through the entrance funnels (Guillory and Prejean 1998 at 39).

Hart and Crowder (2011) studied various sizes of galvanized steel BRDs in North Carolina. Although they found a positive correlation between the size of the BRD and effect on crab haul (compared with non-BRD crab pots), they concluded that a 5 cm tall BRD did not have a significant effect on catch of either large male blue crabs or peelers (Hart and Crowder 2011 at 269).

Lukacovic et al. (2005) investigated the effect of BRDs on crab catch and terrapin bycatch in crab pots in Maryland's Assawoman Bay. They studied 16 crab pots, 8 with BRDs and 8 without BRDs, which were fished for 24 and 48 hours twice each month from mid-May through October 2004. The BRDs were rectangular and met Maryland's regulatory requirement that they not exceed 1.75 x 4.75 inches (approximately 4.5 x 12 cm) in length (Lukacovic et al. 2005 at *3). The crab pots were set for a total of 1029 pot-days in water depths ranging from 0.6–2.8 meters (2–8 feet), and 3,412 blue crabs and 1 diamondback terrapin were captured (Lukacovic et al. 2005 at *4). The terrapin was captured in a pot without a BRD, making the rate of terrapin bycatch in non-BRD crab pots 0.002 crabs/pot per day (Lukacovic et al. 2005 at *4). They also found that crab catch for unmodified pots was greater than pots modified with BRDs (Lukacovic et al. 2005 at 4). The overall crab catch was 35% greater, the catch of legal crabs was 28.5% greater, the catch of legal male crabs was 25.6% greater, the catch of mature females was 23.7% greater, and the catch of peelers was 104.2% greater (Lukacovic et al. 2005 at *4). Following inferential analyses, Lukacovic et al. concluded that all categories of crab catch were significantly lower in crab pots fitted with BRDs (Lukacovic et al. 2005 at *5).

Mazzarella (1994) observed no significant difference between crabs caught in crab pots with 5 x 10 cm rectangular BRDs and crab pots without BRDs. In the first study year, crab pots with BRDs caught 6,139 crabs (mean size 13.2), while crab pots without BRDs caught 5,288 crabs (mean size 13.3) (Mazzarella 1994 at 1, 3–4). In the second study year, crab pots with BRDs caught 5,703 crabs (mean size 12.3), and crab pots without BRDs caught 5,851 (mean size 12.2) (Mazzarella 1994 at 1, 3–4).

Morris et al. (2011) studied the effectiveness of BRDs on commercial blue-crab pots in the York River, Virginia, by fishing 10 pots with BRDs and 10 pots without BRDs (Morris et al. 2011 at 387). More than 25% of total crabs were caught on the first day after baiting, and on the first day after baiting they found no statistical difference between either the number or size of legal-size crabs in crab pots with and without BRDs (Morris et al. 2011 at 388). Across all other days after baiting, there was a significant difference in total catch per unit effort of legal-size crabs; however, there was no significant difference in size of legal-sized crabs in BRD pots and non-BRD pots (Morris et al. 2011 at 388). These results indicate that in the absence of fresh bait, crabs do not enter crab pots with BRDs as frequently as non-BRD pots (Morris et al. 2011 at 389). Morris et al. also found that crab pots with terrapin bycatch in them had, on average, fewer crabs per unit effort (Morris et al. 2011 at 388). Likewise, more legal-size crabs were caught in pots without terrapin bycatch, but the difference was not significant (Morris et al. 2011 at 388).

Rook et al. (2010) tested a 4.5 x 12 cm BRD in the lower Chesapeake Bay and found that the BRDs had little effect on crab catch (Rook et al. 2010 at 173–178). Crab catch was equivalent between crab pots with and without BRDs (Rook et al. 2010 at 178). In fact, crab pots with BRDs had slight increases in number, size, and biomass of both legal-size and sublegal-size crabs, though the difference was considered marginal (Rook et al. 2010 at 178).

Roosenburg and Green (2000) tested three sizes of wire BRDs in a tributary to the Chesapeake Bay in Maryland: 4 x 10 cm, 4.5 x 12 cm, and 5 x 10 cm (Roosenburg and Green 2000 at 883–

884). Neither the 5 x 10 cm BRD nor the 4.5 x 12 cm BRD affected crab size or the number of crabs caught in the crab pots (Roosenburg and Green 2000 at 885). In fact, crab pots with 4.5 x 12 cm BRDs had the highest catch per unit effort (2.69 crabs per pot per day), followed by crab pots without BRDs (2.55 crabs per pot per day), and then crab pots with 5 x 10 cm BRDs (2.39 crabs per pot per day) (Roosenburg and Green 2000 at 885). In the second year of study, the largest crab was caught in a crab pot with a 4.5 x 12 cm BRD (Roosenburg and Green 2000 at 885, 886). The 4 x 10 cm BRD reduced the size and number of large and mature female crabs (Roosenburg and Green 2000 at 884–885). Catch rate for standard crab pots with 4 x 10 cm BRDs was 2 crabs per pot per day lower than standard crab pots fished without BRDs (Roosenburg and Green 2000 at 885). The 4 x 10 cm BRD also had a significant effect on the width and height of crabs caught, excluding larger Number Ones and large females (Roosenburg and Green 2000 at 885). The scientists found that height of the BRD was the limiting factor rather than width (Roosenburg and Green 2000 at 885). Based on their study, Roosenburg and Green stressed the importance of using 4.5 x 12 cm BRDs on commercial and recreational crab pots because they do not affect crab haul but significantly reduce terrapin capture (82% reduction) (Roosenburg and Green 2000 at 886).²⁵

Wnek (2019) studied the effectiveness of various BRD designs in reducing terrapin bycatch and compared the amounts and sizes of blue crabs captured in crab pots fitted with BRDs in Barnegat Bay, New Jersey. He studied three sizes of BRD (5 x 15 cm, 4.5 x 12 cm, South Carolina prototype (half white, half red) against control pots without BRDs (Wnek 2019 at 2). There was no significant difference in the number of blue crabs captured in traps with BRDs and traps without BRDs (Wnek 2019 at 4). In terms of measurement, there was no difference in the total mean length of blue crab captures (Wnek 2019 at 4). The control pots had significantly wider blue crabs than the pots with 5 x 15 cm and South Carolina style BRDs; however, the control pots were similar to those fitted with 4.5 x 12 cm BRDs (Wnek 2019 at 4). While mean blue crab height was significantly lower in pots with 5 x 15 cm BRDs, there was no difference in mean blue crab height between control pots and those with 4.5 x 12 cm and South Carolina style BRDs (Wnek 2019 at 4).

²⁵ Roosenburg and Green (2000) found that the 4 x 10 cm BRDs were not a suitable solution for commercial fisheries because they reduced the number of crabs caught by nearly half (Roosenburg and Green 2000 at 887). However, they could be considered for recreational crabbers, who often place their traps in areas with more terrapins, because the 4 x 10 cm BRDs excluded 100% of terrapins (Roosenburg and Green 2000 at 887).

Petition for Rulemaking

June 24, 2025



Petitions for Rulemaking

Within 14 days of receiving a petition, VMRC sends notice for publication in the Virginia Register of Regulations and the petition is posted on Virginia Regulatory Town Hall.

Public Comment Period

- A 21-day public comment period is provided after publication in the Register.
- During this time VMRC will conduct an interagency and university request for comments to be considered by the Commission for decision and action.

Agency Decision

- Within 90 days after the close of the comment period, the Commission issues a written decision to grant or deny the petitioner's request, including reasons for decision.

Initiating Rulemaking

- If the Commission agrees to initiate a rule change process, it is placed in Town Hall and advertised following normal regulatory procedure for a public hearing.

Petition Order of Proceedings – June 24, 2025

1. Staff introduction to petitions and petition timeline
2. Petitioner presentation – 10 minutes
3. Staff presentations concerning the petition
4. Public comment period, with a time limit determined by the Chair
5. Response from the petitioner – five minutes allocated
6. Commission questions and deliberation
7. Commission decision

Petition Decision Making Process

- Commission issues a written decision to grant or deny the petitioner's submitted request, in its entirety, as advertised for public comment, and with reason.

If granted:

- Written decision is published in Virginia Register and rulemaking is initiated and advertised per § 28.2-209 and placed in the Virginia Regulatory Town Hall for review by the Office of Regulatory Management

If denied:

- Written decision is published in Virginia Register
- If denied, it does not preclude the Commission from then, after final decision rendered with reason, request that the staff explore an element presented in the petition or through public comment

Petition for Rulemaking #427

**Petition to protect Diamondback
Terrapins from mortality in blue crab
pots by requiring bycatch reduction
devices in near-shore waters**



Petition #427

- Petition to protect Diamondback Terrapins from mortality in blue crab pots by requiring bycatch reduction devices in near-shore waters
- Submitted by the Center for Biological Diversity, Virginia Herpetological Society, Wild Virginia, and Dr. Willem M. Roosenburg on February 12, 2025

Petition Request

- Petitioners request that the VMRC adopt or amend regulations to require Bycatch Reduction Devices (BRD) on licensed commercial and recreational blue crab pots in waters less than 150 yards from shore (at mean low water mark), including manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors.
- To provide the fishery reasonable time to retrofit crab pots, Petitioners suggest a three-year grace period.
- Allow the use of other gear modifications that demonstrate through peer-reviewed study similar efficacy to 4.5 by 12 cm BRDs, as set forth in Butler and Heinrich, 2007 and Roosenburg and Green, 2000.

Petition Regulatory Language

- Specifically, for both the recreational and commercial regulations pertaining to definitions and regulation and prohibition of certain harvesting gear [Virginia Code 28.2-226*; 4VAC20-670-20; 4VAC20-270-25], the following should be added:
- “Bycatch reduction device” or “BRD” means a rigid rectangular device constructed of wire or plastic that has an opening no larger than 4.5 cm by 12 cm, which is attached to the end of each entrance funnel of a crab trap to minimize bycatch of diamondback terrapins. This definition also includes any device or gear modification that results in a $\geq 70\%$ reduction in terrapin captures compared with unmodified traps, as demonstrated by at least one peer-reviewed study.
- Beginning [three years from date of amendment], all traps, whether commercial or recreational, in state waters less than 150 yards from shore (at mean low water mark) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors must have a 4.5x12cm (1.75-in) oval design bycatch reduction device (BRD) meeting the specifications defined attached to each entrance or funnel.

Terrapin Excluder Devices PETITIONER'S PRESENTATION 10 MINUTES



Terrapin Excluder Devices STAFF PRESENTATION



Diamondback Terrapins



- The only turtle in the US to live in brackish waters
 - Heavily harvested from the 1880s to early 1900s
 - Currently affected by encroachment of human development and activities on their habitat and nesting areas
-
- Population status
 - “Vulnerable” on the IUCN Red List of Threatened Species
 - Appendix II by CITES
 - Tier II “Very High Conservation Need” in the Virginia Department of Wildlife Resources (DWR) Virginia Wildlife Action Plan

Terrapins and the Blue Crab Fishery

- Terrapins can be caught and killed in crab pots set in their ideal habitat (shallow saltmarsh)
- 15-78% of a local population may be captured in a single year (Roosenburg et al 1997)
- Long soak times and derelict pots can increase mortality
- Strong site fidelity means local mortality could risk reduced population growth and local extinction
- Males are more at risk of capture and death, skewing the sex ratio of the population towards females. (Levy et al, 2001)



Seafood Watch

- In 2019, Monterey Bay Aquarium Seafood Watch guide for consumers downgraded Virginia's crab pot-caught blue crabs from Good Alternative to Avoid based on lack of terrapin protections.
- This limits markets available to Virginia crab industry.



Species	Location	Method	Previous Rating	Updated Rating	Justification
Crab, Blue	U.S. - Virginia, Western Central Atlantic Ocean: Chesapeake Bay	Pots	GOOD ALTERNATIVE	AVOID	Blue crab caught in Virginia's Chesapeake Bay waters with pots has been downgraded to an Avoid due to red Other Species and Management scores. The stock is healthy, and overfishing is a low concern. However, there are serious concerns about the catch of diamondback terrapins, which are considered endangered or a species of concern in every state where blue crabs are caught. While the conservation measures for blue crab are rated moderately effective, management is rated ineffective overall because regulations to protect terrapins haven't been implemented. There are no major concerns about seafloor impacts, but ecosystem-based management measures haven't been implemented.

Terrapin Excluder Devices

- Terrapin Excluder Device (TED)
- Bycatch Reduction Device (BRD)



To make your own set of 4 BRDs (1 ¼" x 4 ¾"), you will need for each crab pot:

- 11-gauge galvanized wire - 4 pieces x 14 ¾" length
- 24 hog rings [(2 to form each BRD + 4 to attach BRD to pot) x4]
- Marker
- Needle nose pliers
- Wire cutters (optional)

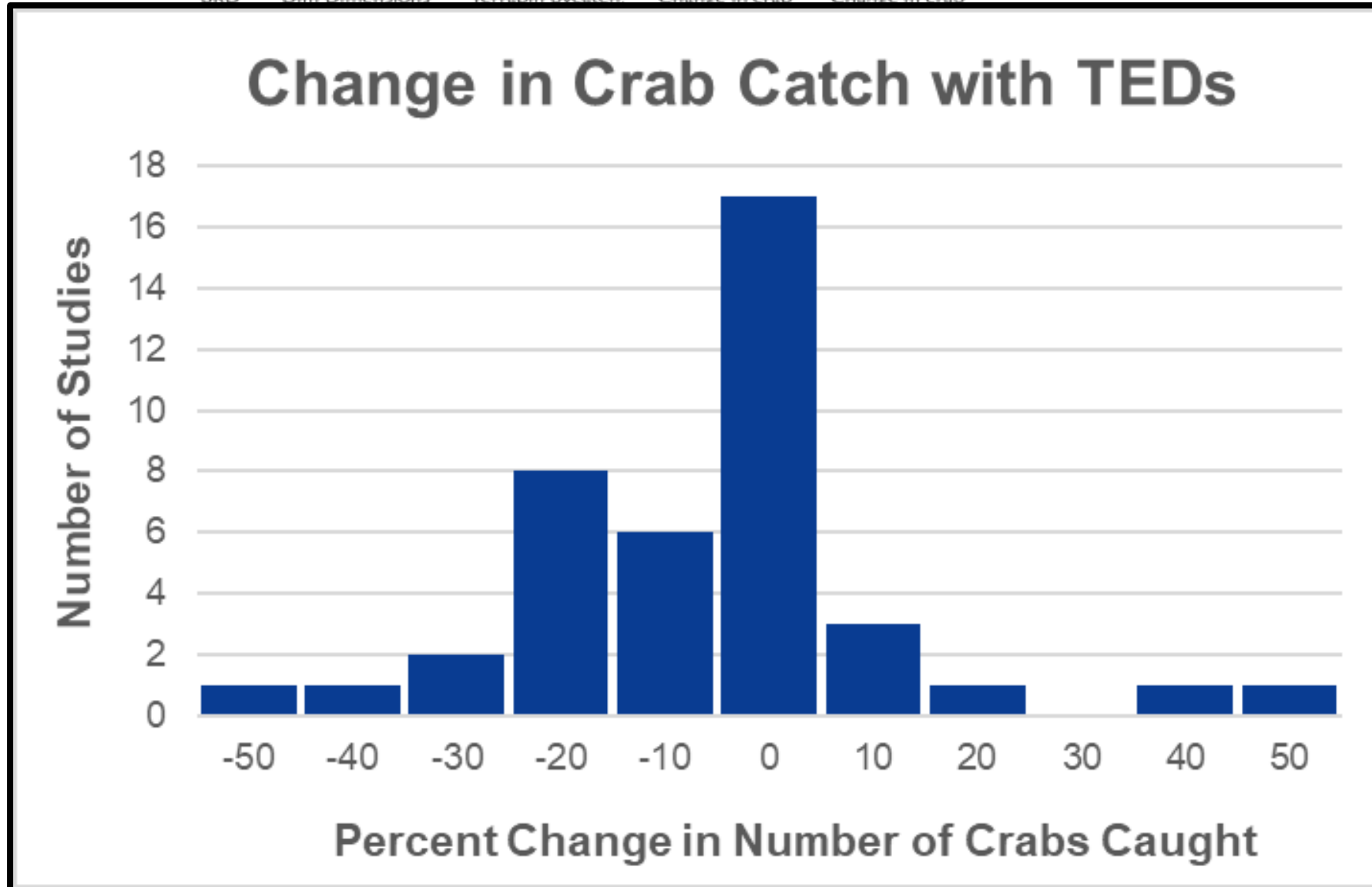


Source: VIMS



Table 16.1. Summary of studies comparing diamond-backed terrapin bycatch and blue crab catch in control pots (standard hardshell or peeler pots) and BRD pots (pots fitted with bycatch reduction devices)

BRD Dim Dimensions Terrapin bycatch Change in crab Change in crab



*Based on total crab catch data.

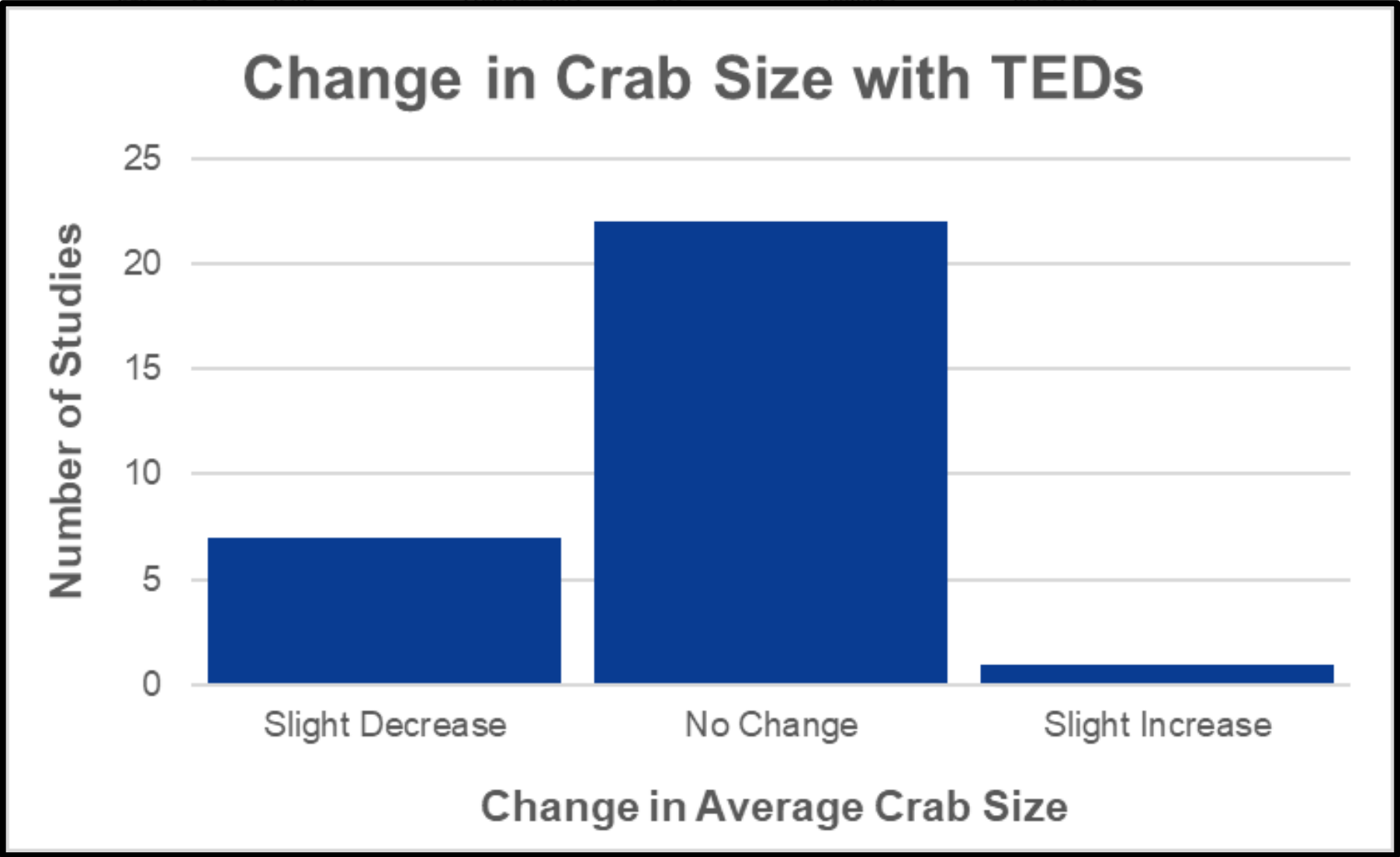
†Legal male captures in hard crab pots only.

‡Unbaited pots.

Chambers & Maerz (2018)

Table 16.1. Summary of studies comparing diamond-backed terrapin bycatch and blue crab catch in control pots (standard hardshell or peeler pots) and BRD pots (pots fitted with bycatch reduction devices)

State	BRD type	Dim Dimensions (cm)	Terrapin bycatch, control : BRD	Change in crab size	Change in crab number	Reference
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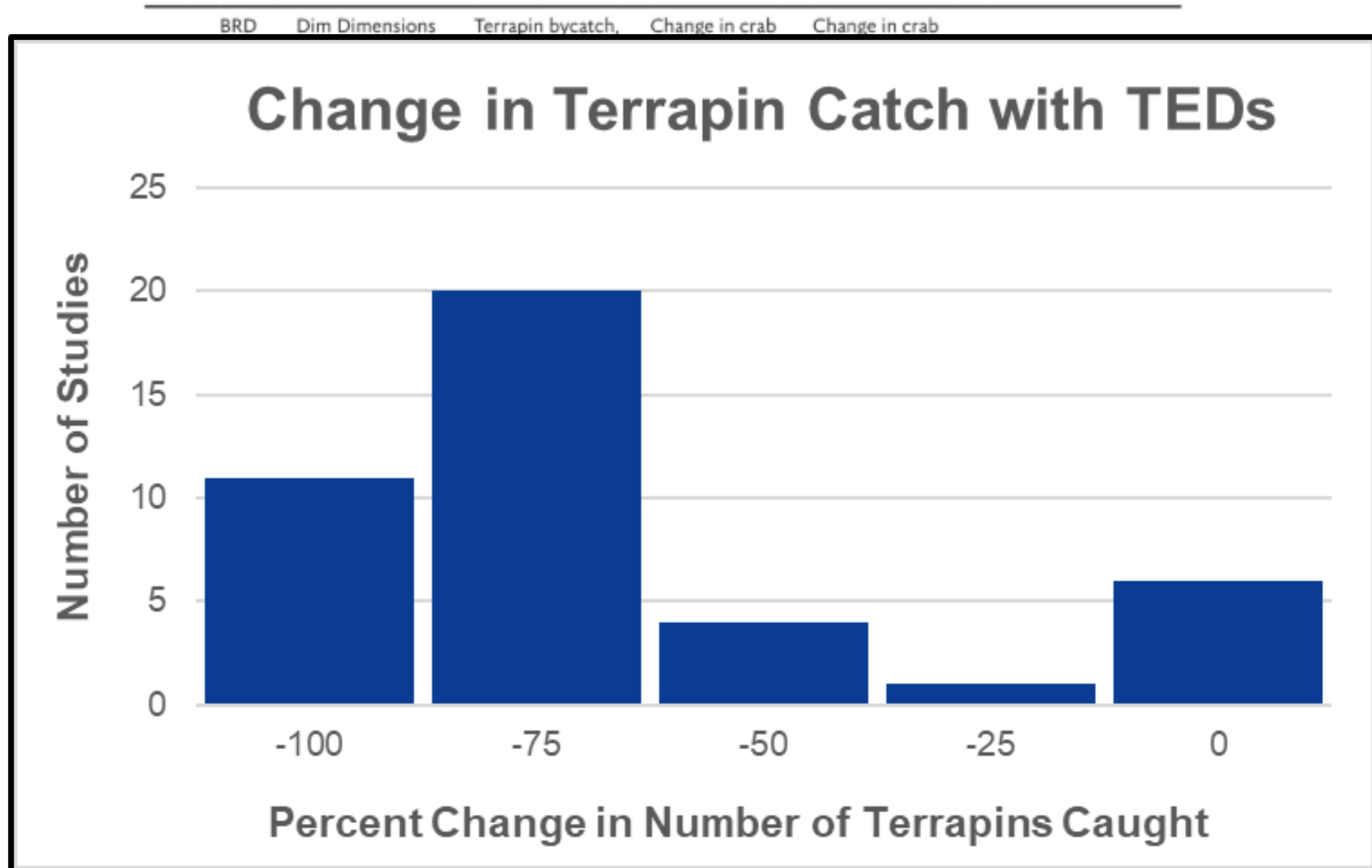


*Based on total crab catch data.

†Legal male captures in hard crab pots only.

‡Unbaited pots.

Table 16.1. Summary of studies comparing diamond-backed terrapin bycatch and blue crab catch in control pots (standard hardshell or peeler pots) and BRD pots (pots fitted with bycatch reduction devices)



*Based on total crab catch data.

†Legal male captures in hard crab pots only.

‡Unbaited pots.

Chambers & Maerz (2018)

TED Regulations by state

State	Avg Commercial Harvest (lbs)	Regulations
New York	316,988	TEDs required in all crab pots in creeks, coves, rivers, tributaries, and near-shore harbors of the Marine and Coastal District
New Jersey	5,323,577	TEDs required in all pots in narrow bodies of water (<150 ft wide)
Delaware	3,873,339	TEDs required in all recreational pots
Maryland	24,182,831	TEDs required in all recreational pots
Virginia	20,383,317	TEDs incentivized for recreational 5-pot licenses
North Carolina	18,718,704	SC style TEDs or narrow funnel required in all pots within terrapin management areas
Florida	2,134,275	TEDs or narrow funnels required in all recreational pots

TEDs in Virginia

- In 2016, the General Assembly of Virginia voted to incentivize the use of TEDs for the recreational 5-pot crab license:
 - 5-pot with turtle excluder license (\$36)
 - 5-pot without turtle excluder license (\$46)
- The Code of Virginia also allows for any individual to use two crab pots without having to purchase a license.
- In 2021, staff recommendation to Commission to require TEDs in recreational crab pots was denied

Recreational Crabbing

- In 2001, up to 43,000 people used crab pot for crabbing
 - Up to 86,000 recreational crab pots (2 per person)
 - 57% crabbed from shoreline
- 2024: 1,070 5-pot licenses sold (~5,000 pots)
 - ~60% of recreational sales are for license without TEDs
- **As written, petition excludes unlicensed crab pots from TED requirement**

Commercial Crabbing

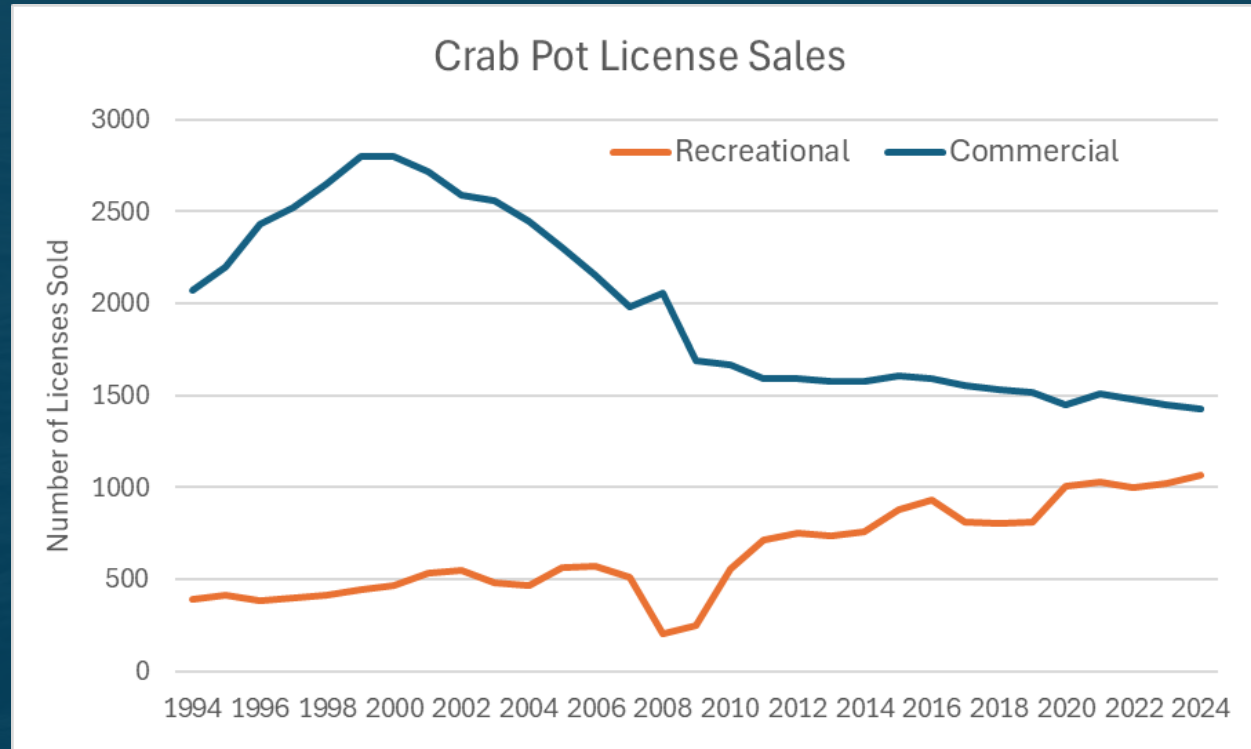
2024	License	Sold	Active
Hard Crab Pot	85 pot	263	150
	127 pot	60	32
	170 pot	23	14
	255 pot	540	376
	425 pot	110	92
	Total Pots	218,335	154,174
Peeler Pot	210 pot	431	157
	Total Pots	90,510	32,970

Recreational

- Fewer pots in bay
- More likely to have pots set in terrapin habitat
- May check pots less frequently
- Difficult to educate
- Economic cost: \$8-20

Commercial

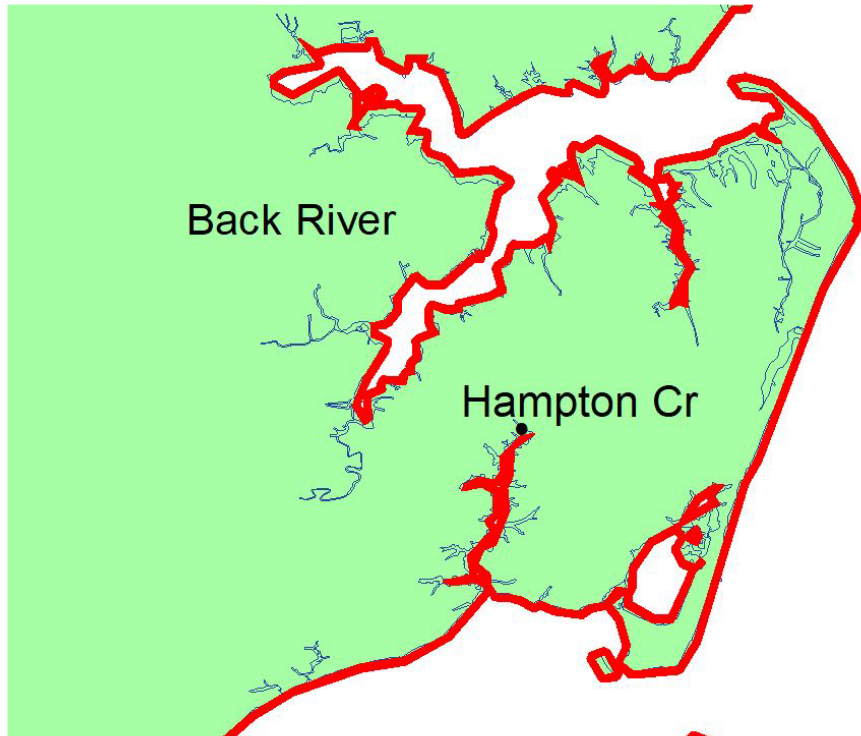
- More pots in bay
- Often relocate pots during the year
- Check crab pots more frequently
- Economic cost: \$340-\$1,700 plus potential lost revenue



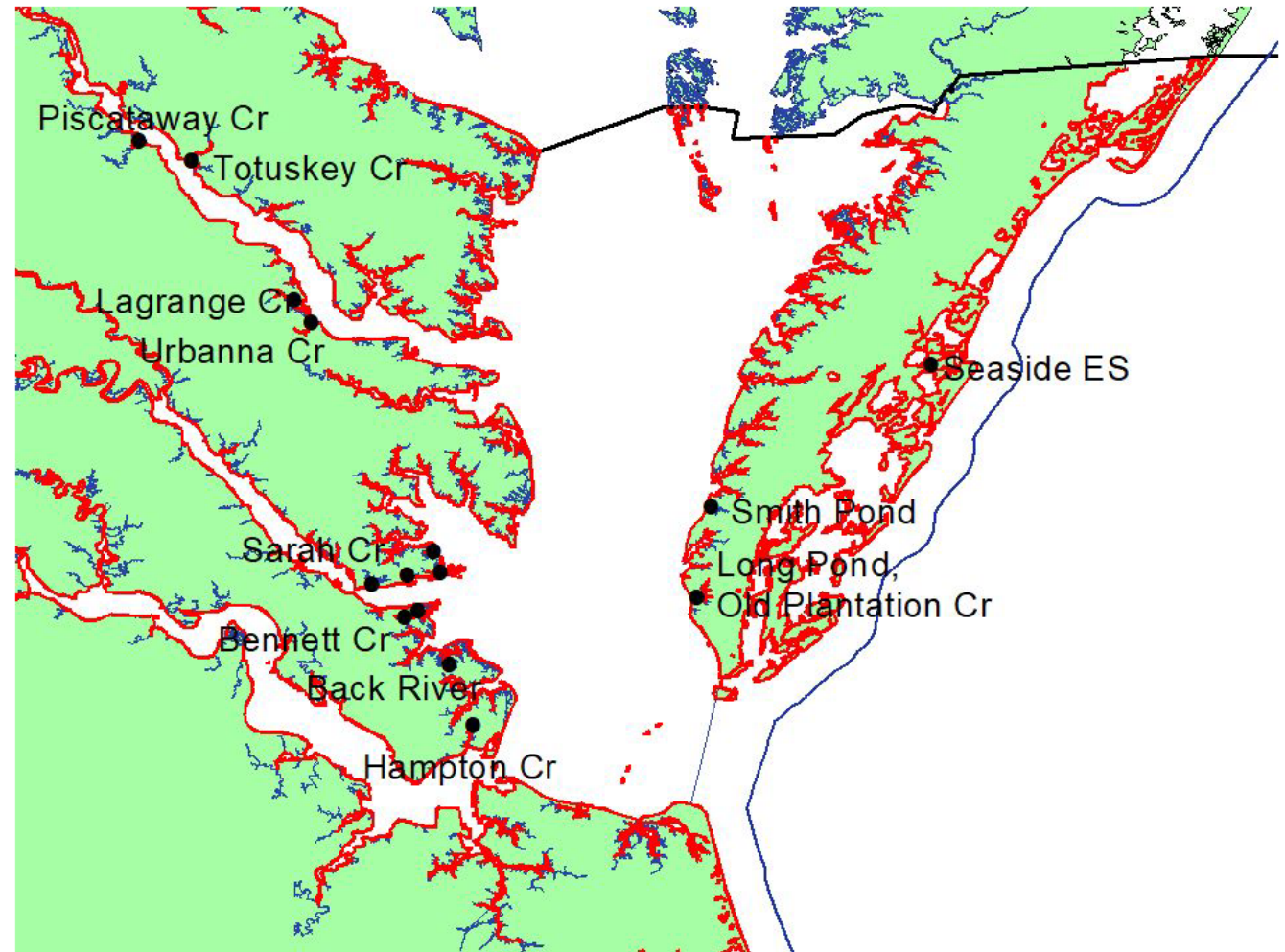
“Overall, for commercial crabbing, a smaller percentage of a very large total number of pots intersects with terrapin habitat. For recreational crabbing, a larger percentage of a smaller total number of pots intersects with terrapin habitat.” (Chambers & Maerz 2018)

Proposed Terrapin Buffer

- 150 yds from mean low water
 - Creeks less than 300 yds across could require TEDs throughout



150 yd Terrapin Buffer



Public Comments

- Public comment period: March 10 – March 31, 2025
- Comments in support: 35
 - 19 represent 18,541 signatories
- Comment in opposition: 424
 - 20 represent 20,288 signatories

CMAC

- October 2020: Some support for TEDs in recreational pots, no support for TEDs in commercial pots
 - Concerns about effect on commercial harvest
 - Commercial crabbers check pots more often
 - Recreational crabbers more likely to set pots in terrapin habitat
 - Recreational TEDs will need education, enforcement
- June 2021: Committee chose not to make any more motions or recommendations to support or deny the proposed establishment of mandatory TEDs in recreational crab pots.

CMAC – May 29, 2025

- Staff presented the petition and explained the petition process.
- Motion for CMAC to support TEDs only in recreational crab pots failed for lack of second.
- Motion for CMAC to recommend denying the petition passed unanimously, with one abstention.

VIMS

- Official response received May 6, 2025.
- “We strongly recommend that the Commission approve this petition and initiate the rulemaking process.”
- Recommendations:
 - Refine terrapin habitat definition
 - Consideration of only requiring TEDs in recreational pots
 - Educational materials discuss alternatives to plastic TEDs

Questions?



Petition Order of Proceedings – June 24, 2025

1. Staff introduction to petitions and petition timeline
2. Petitioner presentation – 10 minutes
3. Staff presentations concerning the petition
- 4. Public comment period, with a time limit determined by the Chair**
5. Response from the petitioner – five minutes allocated
6. Commission questions and deliberation
7. Commission decision

PUBLIC COMMENT



Petition Request

- Petitioners request that the VMRC adopt or amend regulations to require BRDs on licensed commercial and recreational blue crab pots in waters less than 150 yards from shore (at mean low water mark), including manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors.
- To provide the fishery reasonable time to retrofit crab pots, Petitioners suggest a three-year grace period.
- Allow the use of other gear modifications that demonstrate through peer-reviewed study similar efficacy to 4.5 by 12 cm BRDs, as set forth in Butler and Heinrich, 2007 and Roosenburg and Green, 2000.

Petition Regulatory Language

- “Bycatch reduction device” or “BRD” means a rigid rectangular device constructed of wire or plastic that has an opening no larger than 4.5 cm by 12 cm, which is attached to the end of each entrance funnel of a crab trap to minimize bycatch of diamondback terrapins. This definition also includes any device or gear modification that results in a $\geq 70\%$ reduction in terrapin captures compared with unmodified traps, as demonstrated by at least one peer-reviewed study.
- Beginning [three years from date of amendment], all traps, whether commercial or recreational, in state waters less than 150 yards from shore (at mean low water mark) and manmade lagoons, creeks, coves, rivers, tributaries, shallow bays, inlets, and near-shore harbors must have a 4.5x12cm (1.75-in) oval design bycatch reduction device (BRD) meeting the specifications defined attached to each entrance or funnel.

Petition Decision Making Process

- Commission issues a written decision to grant or deny the petitioner's submitted request, in its entirety, as advertised for public comment, and with reason.

If granted:

- Written decision is published in Virginia Register and rulemaking is initiated and advertised per § 28.2-209 and placed in the Virginia Regulatory Town Hall for review by the Office of Regulatory Management

If denied:

- Written decision is published in Virginia Register
- If denied, it does not preclude the Commission from then, after final decision rendered with reason, request that the staff explore an element presented in the petition or through public comment

Excerpts from Final Minutes of the June 24, 2025, meeting of the Virginia Marine Resources Commission.

Full minutes: https://mrc.virginia.gov/Commission_minutes/VMRC_FINAL_minutes_06-24-2025.pdf

19320

MINUTES

COMMISSION MEETING

June 24, 2025

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:

- | | |
|--|-----------------------------|
| Jamie L. Green | Commissioner |
| Patrick Hand | |
| Lynn Kellum | |
| A.J. Erskine | Associate Members |
| Jeremy Headley | |
| Jeanette Edwards | |
| Thomas Preston | |
| Preston White | |
| Kelci Block | Assistant Attorney General |
| Joseph Grist | Deputy Commissioner |
| Randy Owen | Chief, Habitat Management |
| Adam Kenyon | Chief, Shellfish Management |
| Pat Geer | Chief, Fisheries Management |
| Virginia Institute of Marine Science (VIMS): | |
| Alex Sabo | Mark Luckenbach |

Commission Meeting

19321
June 24, 2025

Others present:	Kim Husky	J. C. Hudgins
Willem Roosenburg	Emory Rice	Daniel Knott
Monica Schenemann	Nathan Everette	Mark Sanford
Douglas Jenkins	Sydney Gustafson	Mark Johnson
Rachael Mathews	John Dameron	Dana Noone
Randy Chambers	George Verlander	Dylan Mason
Brett Noone	Ron Collins	Sherry Ashe
Elizabeth Collins	William Lan	Camille Fisher
Marion Sutton Jordan	Margaret Kelly	Joan Thompson
Krevonick Naomi	Cole Henderson	*Greg Henrion
Sutton	Mike Lewis	Katy Damico
Elsie Woodward	Robert Pruhs	Sarah Spota
Justine Woodward	Grayson Shulz	Callie Knight
Jackson Mullen Dave	James McCready	Andrew Stith
Carter		
and others.		

* * * * *

5. PETITION

Petition to protect Diamondback Terrapins from mortality in blue crab pots by requiring bycatch reduction devices in near-shore waters.

Deputy Commissioner Grist provided background information for the petition and rulemaking process prior to hearing the petition.

Willem Roosenburg was sworn in and provided information about the petition with PowerPoint slides. His comments are a part of the verbatim record.

Pat Geer, Chief, Fisheries Management, gave a briefing of the information provided in the staff's evaluation, with PowerPoint slides. for the Associate Members. Mr. Geer's comments are a part of the verbatim record.

Randy Chambers, director of environmental lab for William and Mary was sworn in and spoke in support of the petition. His comments are a part of the verbatim record.

There were 7 speakers that were opposed to the petition. Their comments are a part of the verbatim record.

Rachael Mathews was sworn in and provided a rebuttal. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Preston moved to deny the petition as presented. Associate Member Headley seconded the motion. The motion carried, 7-0.

Associate Member White made a motion for staff to review all recreational crab pot fisheries for turtle excluder devices. Associate Member Hand seconded the motion. The motion carried, 7-0.