

MINUTES

COMMISSION MEETING

March 23, 2021

**\*\*In consideration of Governor Northam’s Executive Order 55 and public safety, the March 23, 2021 Commission meeting of the Marine Resources Commission was held electronically at AM at the Marine Resources Commission main office at 380 Fenwick Road, Fort Monroe, Virginia. As required by law, all interested persons were provided an opportunity to be heard on this matter as part of the electronic meeting as follows:**

1. Any interested party was invited to visit the agency web calendar at <https://mrc.virginia.gov/calendar.shtm> and look for the 03/22/2021 meeting date to see web links to the draft proposed regulation, instructions for meeting participation, public call-in information, and the meeting Webex livestream web link. Participants was instructed to join the livestream and public conference call starting at approximately 9:00AM since the meeting will begin at 9:30AM.
2. All persons interested in commenting were highly encouraged to submit written comments prior to the meeting. Comments sent by mail were to be sent to 380 Fenwick Rd, Ft. Monroe, VA 23561 and should be received by 03/17/2021. Comments could have also have been emailed to [fisheries@mrc.virginia.gov](mailto:fisheries@mrc.virginia.gov) and were accepted until NOON on 03/22/2021.
3. Any individuals interested in providing spoken testimony via the public conference call-in line during the public hearing held on the day of the meeting were instructed to email their name, hometown, and for or against regulation to [fisheries@mrc.virginia.gov](mailto:fisheries@mrc.virginia.gov) by 5PM on 03/22/2021.

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

Steven G. Bowman	Commissioner Present via conference call
John Tankard III	
Ken Neill, III	
John Zydron Sr.	
Wayne France	Associate Members
Heather Lusk	Present via conference call
Chad Ballard	
Christina Everett	
James E. Minor III	

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Kelci Block	Assistant Attorney General Present via conference call
Ellen Bolen	Deputy Commissioner Present via conference call
Jamie Hogge	Recording Secretary, Present via conference call
Erik Barth	Bs. Systems Manager Present via conference call
Todd Sperling	Bs. Systems Manager Present via conference call
Gloria Hatcher	Deputy Chief, Acct. Manager Admin. & Finance Management Present via conference call
Pat Geer	Chief, Fisheries Mgmt.; Present via conference call
Adam Kenyon	Deputy Chief, Fisheries Mgmt., Present via conference call
Shanna Madsen	Deputy Chief, Fisheries Mgmt., Present via conference call
Andrew Button	Head, Conservation & Replenishment Present via conference call
Alicia Nelson	Coordinator, RFAB/CFAB Present via conference call
Christopher Davis	Fisheries Biologist Present via conference call
Ethan Simpson	Biological Sampling Supervisor Present via conference call
Somers Smott	Fisheries Mgmt. Specialist, Present via conference call
Jill Ramsey	Fisheries Mgmt. Specialist Present via conference call
Lewis Gillingham	Director, SWFT Present via conference call
Jennifer Farmer	Regulatory Coordinator Present via conference call

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Olivia Phillips	Fisheries Mgmt. Specialist Present via conference call
Alexa Galvan	Fisheries Mgmt. Specialist Present via conference call
Brian Elliott	Marine Police Officer Present via conference call
Kevin Richards	Marine Police Officer Present via conference call
Tony Watkinson	Chief, Habitat Management Present via conference call
Randy Owen	Deputy Chief, Habitat Management Present via conference call
Justin Worrell	Environmental Engineer, Sr. Present via conference call
Mike Johnson	Environmental Engineer, Sr. Present via conference call
Jay Woodward	Environmental Engineer, Sr. Present via conference call
Mark Eversole	Environmental Engineer, Sr. Present via conference call
Allison Lay	Environmental Engineer, Sr. Present via conference call
Ben Nettleton	Environmental Engineer, Sr. Present via conference call
Tiffany Birge	Environmental Engineer, Sr. Present via conference call
Ben Stagg	Dir., Shellfish Aquaculture, Leasing and Mapping Present via conference call

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

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present via conference line

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David Steele                      Mike Oesterling                      Heather Lockwood  
Kimberly Koelsch                  Ellen Grimes                          Rebecca Francese  
David O’ Brien                      Charles Kennedy                      Neville Reynolds  
Taylor Ailtmar                      and others.

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

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

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

Randy Owen requested that Item # 8 be removed for a later meeting by the request of the applicant.

**Associate Member Zydron moved to approve the agenda as amended. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member France was not present during vote.**

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the February 23, 2021 Commission meeting minutes.

**Associate Member Zydron moved to approve the minutes as presented. Associate Member Everett seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate Member Ballard abstained. Associate Member France was not present during vote.**

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

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

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

- 2A. **ARMY CORPS OF ENGINEERS, #21-0202**, requests authorization to expand an existing artificial oyster reef, to meet the Piankatank River oyster restoration goal per the 2025 Chesapeake Bay Watershed Agreement, by placing Class A1 riprap, with a thickness of 12 to 18 inches, on approximately 53 acres of State-owned subaqueous bottom in the Piankatank River approximately 4,000 feet south of Stove Point in Middlesex County and 3,400 feet north of the Mathews County shoreline.

Fees:	\$ 600.00
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- 2B. **CARTERS GROVE ASSOCIATES LLC, #20-1934**, requests authorization to install nine (9) 175-linear foot armor stone breakwaters, two (2) 206-linear foot armor stone breakwaters, and a 200-linear foot armor stone breakwater, to create a 4,300 linear foot, gapped breakwater system, which will be backfilled with 62,000 cubic yards of clean sand fill (90% sand) and ten (10) temporary mooring buoys to anchor construction barges. Additional work includes construction of a 588-foot long by 6-foot wide private, noncommercial pier and a 1,200 square foot, open-sided boathouse, adjacent to the James River at 8797 Pocahontas Trail in James City County. Staff recommends a royalty of \$7,942.20 for the sand fill encroachment over 158,844 square feet of State-owned submerged lands at a rate of \$0.05 per square foot, and that the Permittee adhere to the following special conditions:

Royalties: (Encroachment of 158,844 SF @ \$0.05 / SF)	\$ 7,942.20
Fees:	\$ 600.00
Total Fees:	\$ . 8,542.20

1. The Permittee will deploy a turbidity curtain around the work area from February 15 through June 30 and August 1 through November 15 of any year, to protect anadromous fish and the Atlantic Sturgeon. A vibratory hammer may be used to drive any pilings or, alternatively, an impact hammer, provided a 20-minute ramp-up procedure be employed before delivering full impact;
2. No breakwater structures may encroach into the buffer zone identified by the Department of Historic Resources around the historically significant pier alignment known as “Grove whf;”
3. The permit shall not be issued until written concurrence is provided from the affected leaseholders.

**2C. HAMPTON ROADS SANITATION DISTRICT (HRSD), #21-0289,** requests authorization to conduct 32 geotechnical borings below the James River bottom, via auger and push method, along a proposed sanitary pipeline crossing from a future pump station in the City of Newport News to the existing HRSD Nansemond treatment plant in the City of Suffolk. Borings will be to a depth of 25 feet (22 total) and to a depth of 105 (ten total) below the James River bottom. Staff recommends approval with the following special permit condition:

1. Upon completion and analysis of the borings, the applicant agrees to share the findings with the Commission for the purpose of identifying any existing shellfish beds, which will be considered during the project review of the sanitary pipeline.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Minor moved to approve the page 2 Items A through C as presented. Associate Member Tankard seconded the motion. The motion carried 8 -0. Chair voted yes. Associate Member France was not present during vote.

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**3. CONSENT AGENDA ITEMS. No consent agenda items.**

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

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**5. LICENSE STATUS REVIEW.**

**(5-1) Timothy Lindsay (008278):** was present via conference call and sworn in. His comments are a part of the verbatim record.

Marine Police Officers Brian Elliott and Kevin Richards were sworn in and they gave the briefing of the information provided in the staff’s evaluation. MPO Elliott also provided the briefing for MPO Brandon Price. Their comments are a part of the verbatim record.

- March 16, 2018, Possession of uncultured oysters (12 quarts): 4 VAC 20-260-40**
- January 2, 2019, Harvest oysters without paying oyster user fee: 4 VAC 20-720-80**
- January 2, 2019, Harvest oysters without hand scrape permit: 4 VAC 20-720-75**
- February 8, 2019, Have in possession uncultured oysters (10 quarts): 4 VAC 20-260-50 and 28.2-201**

**Disposition:**

April 19, 2018, Isle of Wight General District Court, MPO Brian Elliott  
Fine: \$100.00

August 21, 2019, Isle of Wight General District Court, MPO Brandon Price  
Fine: \$100.00

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August 21, 2019, Isle of Wight General District Court, MPO Brandon Price  
Fine: \$100.00

April 10, 2019, Gloucester County General District Court, MPO Kevin Richards  
Fine: \$86.00

***GUIDELINE SUGGESTION: 1 YEAR REVOCATION OF ALL LICENSES AND PRIVILEGES (§ 28.2-232 of the Code of Virginia)***

Jennifer Farmer, Regulatory Coordinator, explained to the Commission the sanction guidelines, with PowerPoint slides. Ms. Farmer’s comments are a part of the verbatim record.

Mr. Timothy Lindsay, was convicted on April 19, 2018 for one count of possession of unculled oysters (12 quarts) (4 VAC 20-260-40), on August 21, 2019 for one count of harvesting oysters without a hand scrape permit (4 VAC 20-720-75) and one count of harvesting oysters without an oyster user fee (4 VAC 20-720-80), and, on April 10, 2019 for one count of possession of unculled oysters (10 quarts) (4 VAC 20-260-50 and 28.2-201 of the Code of Virginia).

The Commission’s guidelines for sanctions specify that one conviction of harvesting oysters without an oyster resource user fee and gear license and two convictions of possession of at least 50% over the tolerance of undersized shellfish, within a two-year period, should result in at least a one-year revocation of all licenses and privileges. In accordance with § 28.2-232 of the Code of Virginia, the guidelines suggest that the Commission revoke all of Mr. Lindsay’s licenses and privileges for a period of one year from the date of this Commission meeting, March 23, 2021, through March 22, 2022. The Code of Virginia also allows that the Commission prohibit the issuance, reissuance, and renewal of any of Mr. Lindsay’s licenses during this revocation period.

The matter was before the Commission for discussion and action.

**Associate Member Ballard made a motion to approve staff recommendation and also include a 2 year probation after the 1 year revocation ends. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 6. **PUBLIC HEARING:** Commission reconsideration for adoption of a Guideline Document: Oyster Planting Grounds Lease Renewal Approval, Lease Renewal Denial, and Commission Hearing Procedure for Lease Renewal Denial. This document is proposed for adoption to provide for better transparency for such renewal reviews, denials and hearings, pursuant to the Code of Virginia Chapter 6, Article 2, General Oyster Planting Grounds, §28.2-613.

Ellen Bolen, Deputy Commissioner, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Bolen’s comments are a part of the verbatim record.

Ms. Bolen explained that the document is proposed for adoption to provide for better transparency for such renewal reviews, denials and hearings, pursuant to the Code of Virginia Chapter 6, Article 2, General Oyster-Planting Grounds, Section 28.2-613.

The matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to approve staff recommendation. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 7. **BCG ENTERPRISE, LLC, #20-2184**, requests authorization to armor an existing 280-foot timber jetty and to extend an existing timber jetty, approximately 145 feet with armor stone at the mouth of Fox Creek along the York River in Gloucester County. The project is protested by an adjacent property owner.

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

Mr. Johnson explained that the project location is at the mouth of a tributary to the York River which is used for egress and ingress to a commercial aquaculture operation and a marine construction company. Currently, two previously authorized timber jetties are starting to show signs of failure. Additionally, the channel that leads into Fox Creek has been permitted for maintenance dredging multiple times over the past several years due to shoaling. The most recent permit was issued in 2019. The applicant is requesting to

place armor stone on the southern timber jetty and elongate the northern jetty in an attempt to minimize future dredging efforts at this location. There are oyster leases in the area which could be impacted by future dredging operations.

Staff understands the protestant's concerns regarding the improvements to the existing timber jetties, specifically the elongation of the northern jetty which is located adjacent to her property. During staff's initial review of the project, aerial photography indicated that a sand beach existed on the protestant's side of the creek inlet. Staff felt that this beach was a result of nearshore sand transport in a north to south direction, and was building up sand on the northern side of the jetty. After receipt of Ms. Cindy Kennebeck's protest letter and subsequent phone conversations, staff contacted VIMS to ask for their comments on the project. In that report, VIMS stated they do not believe the project will harm her property. A subsequent report by SEAS corroborates the VIMS findings. Staff forwarded these comments to the protestant who stated she wished to continue her objection to the project.

Based upon a review of the project and the comments received from VIMS and SEAS, staff feels that the project will not result in increased erosion on Ms. Kennebeck's property and may increase the width of the beach. Additionally, the installation of the jetties will decrease the frequency of future dredging to the entrance to Fox Creek as more sand is trapped by the proposed elongated northern jetty, and the structural integrity of the southern jetty is maintained. This decrease in dredging would result in reduced impacts on the marine environment and oyster resources in the area. Therefore, staff feels the project is an appropriate use of State-owned subaqueous bottom.

Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.

Craig Palubinski, agent for applicant was available to answer any if needed. His comments are a part of the verbatim record.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 9-0. Chair voted yes.**

Fees:	\$ 300.00
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Item #8 was removed from the agenda by the request of Randy Owen, Deputy Chief, Habitat Management.

- 8. **TERRY WINDSOR, #20-2052**, requests authorization to construct 460 linear feet of riprap revetment adjacent to 14255 Barn Woods Road along Pungoteague Creek in Accomack County. This application requires a dune and beach permit.

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- 9. **PUBLIC COMMENTS: No one spoke during Public Comment**

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- 10. **PUBLIC HEARING:** Proposal to establish Chapters 4 VAC 20-1370-10 et seq., "Pertaining to Atlantic Croaker" and 4 VAC 20-1380-10 et seq., "Pertaining to Spot", to implement a commercial season, a 50-fish recreational bag limit, and an additional live bait allowance for charter/for-hire captains for both Atlantic croaker and spot.

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

Ms. Smott explained that in February 2020, the Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum III to the Interstate Fishery Management Plan for Atlantic Croaker (FMP) and Addendum III to the Omnibus Amendment to the Interstate Fishery Management Plans for Spanish Mackerel, Spot, and Spotted Seatrout. As a result, each non *de-minimis* state participating in the FMPs must put management measures in place for both the commercial and recreational fisheries. Virginia must

implement at minimum a 50-fish recreational bag limit for each species as well as quantifiable measures (e.g. season, trip limit, or size limit) to reduce commercial landings by 1% of the average commercial landings from the previous 10 years for each species. Recreationally, staff is proposing a 50-fish recreational bag limit for each species as well as an additional charter allowance for live bait, as allowed per the FMPs. Staff is also proposing a spot commercial season of April 15- December 8 and an Atlantic croaker commercial season opening date of January 15.

Staff recommends the Commission approve the establishment of two regulations, Chapter 4 VAC 20-1370-10 et seq., "Pertaining to Atlantic Croaker" and Chapter 4 VAC 20-1380-10 et seq., "Pertaining to Spot", to implement a commercial season, a 50-fish recreational bag limit, and an additional live bait allowance for charter/for-hire captains for both Atlantic croaker and spot.

Chris Ludford spoke in support of the recommendation as presented.

No one spoke in opposition of the proposed regulation change.

The matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to approve staff recommendation as presented. Associate Member Ballard seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 11. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-380-10 et seq., "Pertaining to Grey Trout (Weakfish)", to clarify existing language relevant to commercial and recreational fisheries.

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

Ms. Galvan explained that in the current regulation, each subsection of section 20-380-30 states the minimum size limit for weakfish caught by each gear without equivocation. For example, "For any person fishing with pound net or haul seine, there shall be no minimum size limit on grey trout". However, a later subsection of section 20-380-30 and

also section 20-380-50 state a different minimum size limit during closed seasons.

To improve the readability and comprehension of this regulation, staff recommends organizing the commercial section by gear. In the current regulation, commercial anglers must reference different sections for minimum size limit, minimum size limit exceptions, seasons, and possession limits, as well as any gear restrictions. The recommended language allows commercial fishermen to reference a section for their respective gear (pound net, gill net, trawl, haul seine, hook-and-line) and find all relevant commercial measures. Possession limits and minimum size limits are also clearly labeled by open or closed season. Staff believes this will reduce misinterpretation of commercial measures. Minor changes to recreational language are also recommended for increased clarity.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-380-10 et seq., "Pertaining to Grey Trout (Weakfish)", to clarify existing language relevant to commercial and recreational fisheries.

No one spoke in support or opposition of the proposed regulation change.

The matter was before the Commission for discussion and action.

**Associate Member France made a motion to approve staff recommendation as presented. Associate Member Zydron seconded the motion. The motion carried, 9-0. Chair voted yes.**

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There being no further business, the meeting was adjourned at approximately 11:10 a.m.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary