

MINUTES

COMMISSION MEETING

September 27, 2022

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
Lynn Kellum	
William Bransom	
Wayne France	
John Tankard III	Associate Members
Heather Lusk	
James Minor	
A.J. Erskine	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Pat Geer	Chief, Fisheries Mgmt.
Adam Kenyon	Deputy Chief, Fisheries Mgmt.
Shanna Madsen	Deputy Chief, Fisheries Mgmt.
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Joshua McGilly	Fisheries Mgmt. Specialist
Ethan Simpson	Biological Sampling Supervisor
Lewis Gillingham	Director, SWFT
Herbert Bell	Deputy Chief, Law Enforcement
Chris Miller	Captain, Law Enforcement
Rob Berryman	Captain, Law Enforcement
Bill Thompson	Marine Police Officer
Randy Owen	Chief, Habitat Management
Justin Worrell	Deputy Chief, Habitat Management

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Jeff Madden	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Ben Nettleton	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Ben Stagg	Chief, Shellfish Management
Andrew Button	Deputy Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Mark Luchenbach
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Others present:

John Paul Woodley Jr.	Chip Neikirk	Stephen Cole
Wenonah Patrick	Kathy Alexander	Steve Fornash
Martha Fornash	Matt Heartwell	James Georgo
Harry Dixon	John Dixon	Monty Deihl
John Tyson	Earnest McDonald	Rommel Tamayo
Garrett Braun	John Whelan	Ron Jakominico
Dennis Porter	Tom Lilly	Kim Huskey
Chris Moore	Beth Patrizzi	Kendall Osborne
Stan Simmerman	David Francis	David O'Brien
Bob Hopkins	Bob Mandigo	Kimberly Williams
David Arnold	Robert McBride	Debbie Campbell
Christi Medice	Charles Lewis	Lisa Kellogg
Mary Troutner	Henry Troutner	and others.

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Commissioner Green called the meeting to order at approximately 9:35 a.m.

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Associate Member France led the pledge and Member Tankard said the invocation by the request of Commissioner Green.

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

A request was made to separate Page 2 item 2C from the rest of the Page 2 items as Associate Member Kellum will recuse herself from that agenda item before it is heard.

Associate Member Tankard moved to approve the agenda as amended. Associate Member France seconded the motion. The motion carried, 7-0.

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MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the August 23, 2022 Commission Meeting minutes.

Associate Member Erskine moved to approve the minutes as presented. Associate Member Tankard seconded the motion. The motion carried, 5-0-2. Associate Members France & Minor abstained.

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Commissioner Green swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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

Randy Owen, Chief, Habitat Management, reviewed the Page 2 item 2C for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

2C. CITY OF NEWPORT NEWS, #20-2315, requests authorization to demolish an existing commercial marina and construct a new marina facility at Menchville Marina adjacent to Deep Creek in the City of Newport News. The new marina is comprised of the following: one (1) 6-foot by 182-foot floating pier with a 6-foot by 91-foot T-head and eight (8) 4-foot wide finger piers; one (1) 6-foot by 236-foot floating pier with a 6-foot by 76-foot L-head and twelve (12) 4-foot wide finger piers; one (1) 6-foot by 182-foot floating pier with a 6-foot by 106-foot T-

head and eight (8) 4-foot wide finger piers; and a total of 70 wet slips. The project received the U.S. Army Corps of Engineers’ approval for the encroachment into the federal channel in July 2022.

Fees:	\$ 600.00
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Associate Member France moved to approve the page 2 Item 2C as presented. Associate Member Minor seconded the motion. The motion carried 5-0-2. Associate Members Kellum and Erskine abstained.

Randy Owen, Chief, Habitat Management, reviewed the Page 2 items 2A, 2B and 2D through 2I for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

2A. THE LANE CONSTRUCTION CORPORATION, #22-0664, requests authorization to relocate portions of Scott’s Run, utilizing natural stream channel design techniques, and to construct a bridge crossing over Scott's Run, at the I-495/Old Dominion Drive intersection as part of the I-495 Express Lanes Northern Expansion Project in Fairfax County. Staff recommends approval with our standard instream comments and the additional following special conditions: The newly created stream channel bottom shall become state-owned submerged land. The abandoned natural stream channel shall be filled in accordance with the plans and become a part of the upland parcel in which it is contained. The permittee shall execute a transfer of this permit to the Virginia Department of Transportation upon their acceptance of the structures authorized herein. The permittee shall implement protective strategies, protective of the threatened Wood Turtle, as directed by the Department of Wildlife Resources.

Fees:	\$ 600.00
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2B. AMHERST COUNTY SERVICE AUTHORITY, #22-1710, requests authorization to install a 500-foot long rock revetment upon 5,000 square feet of state-owned subaqueous bottom along the northern bank of the James River near the James River Heritage Trail in Amherst County. Staff recommends approval of the project with our standard instream permit conditions and a time-of-year restriction for instream work from April 15 through June 15 and August 15

through September 30 of any year to protect endangered mussel species.

Fees:	\$ 600.00
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- 2D. KINDER MORGAN OPERATING L.P., #22-0848**, requests authorization to dredge up to 266,700 cubic yards of State-owned submerged lands, including future maintenance dredging cycles as necessary, to maintain depths of -55 feet at mean low water for Piers IX and X at their facility (1900 Harbor Access Road) along the James River in the City of Newport News. The dredge material will be offloaded at Craney Island. Staff is recommending approval with our standard dredging conditions and a dredging royalty of \$0.60/cubic yard for a total of \$160,020. This authorization will replace their previous permit #17-0648.

Royalties: 266,700 CU. Yds. @ \$0.60 / CU. Yd.	\$ 160,020.00
Fees:	\$ 600.00
Total:	\$ 160,620.00

- 2E. COLUMBIA GAS OF VIRGINIA, INC., #22-0845**, requests authorization to install an 8-inch underground natural gas pipeline via hydraulic directional drill beneath Paradise Creek and adjacent to Victory Blvd in the City of Portsmouth and Blows Creek and St. Julien's Creek, both within St. Julien's Annex, in the City of Chesapeake. Staff recommends an encroachment royalty of \$1,494.00 for a total of 498 linear feet of subaqueous crossings at \$3.00 / linear foot.

Royalties: 498 LF crossing @ \$3.00 / LF.	\$ 1,494.00
Fees:	\$ 600.00
Total:	\$ 2,094.00

- 2F. JOINT EXPEDITIONARY BASE LITTLE CREEK, #22-1295**, requests authorization to place 14,000 cubic yards of suitable sandy material, dredged from the Little Creek Channel, into existing scour holes at Piers 11, 12, and 13 and overlaid with 20,000 cubic yards of riprap armor stone filled to -27 feet mean

low lower water at Joint Expeditionary Base Little Creek in the City of Virginia Beach.

Fees:	\$ 600.00
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2G. CITY OF VIRGINIA BEACH, #22-1595, requests authorization to maintenance dredge the Rudee Inlet Federal Navigation Channel connecting Lake Rudee and Lake Wesley to the Atlantic Ocean in the City of Virginia Beach. Dredging will occur either by hydraulic or hopper-dredge methods on an as-necessary basis, with sidecast dredging utilized as an emergency measure. The entrance channel portion will be dredged to maximum depths of -14 feet mean lower low water and the sand trap portion dredged to maximum depths of -20 feet mean lower low water. Approximately 350,000 cubic yards of sandy spoils dredged annually from the federal navigational channel will be hydraulically pumped to the resort beach area, north of Rudee Inlet or released/placed in the near-shore beach area. Staff recommends approval with the standard dredge-conditions and the previous sidecast dredging special conditions.

Fees:	\$ 600.00
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2H. WILLIAM and MARIA LITTREAL, #22-1620, request authorization to impact 300 square feet of non-vegetated tidal wetlands for the installation of a 100-linear foot stone revetment adjacent to Courthouse Landing Terrance along the Mattaponi River in King and Queen County. This project requires a tidal wetlands permit.

2I. CHRISTOPHER and JENICE GORDON, #22-1723, request authorization to impact 600 square feet of non-vegetated tidal wetlands for the installation of a 200-linear foot stone revetment adjacent to Courthouse Landing Terrace along the Mattaponi River in King and Queen County. This project requires a tidal wetlands permit.

Robert Hopkins, Executive Director of Amherst County Service Authority was present

if the members had any questions on the James River project. His comments are a part of the verbatim record.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Tankard moved to approve the page 2 items 2A, 2B and 2D through 2I as presented. Associate Member Bransom seconded the motion. The motion carried 6-0-1. Associate Members Minor abstained.

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3. CONSENT AGENDA ITEMS – There were no consent agenda items.

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

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5. STEVEN COLE, #22-1117, requests authorization to install an 18-foot by 30-foot open-sided boathouse on a statutorily authorized private pier along the Ware River at 5384 Sherwood Lane 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.

Chip Neikirk, agent for the applicant, was sworn in and spoke on behalf of the application. His comments are a part of the verbatim record.

Mr. Johnson announced that he received an email from the protestant that he was unable to attend the meeting due to illness. No one spoke in support or opposition of the projects. The matter was before the Commission for discussion and action.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 7-0.

Fees:	\$ 300.00
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- 6. **PER PROPERTIES, #21-1370**, requests authorization to construct a new steel bulkhead, a commercial pier and to dredge approximately 67,775 cubic yards of state-owned submerged land to facilitate the construction of a commercial loading facility for ocean-going cargo vessels at property situated adjacent to the Southern Branch of the Elizabeth River in the City of Portsmouth. The project is protested by an adjacent property owner.

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

John Woodley, agent for the applicant, was sworn in and spoke on behalf of the application. His comments are a part of the verbatim record.

Harry Dickson, attorney for the family, was present and spoke in opposition of the project. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0.

Royalties: Dredge 51,991 CU. Yds. @ \$0.60 / CU. Yd.	\$ 31,194.60
Fees:	\$ 600.00
Total:	\$ 31,794.60

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- 7. **RANBEC II LLC, #22-0342**, requests authorization to dredge approximately 1,000 cubic yards of bottom material, install a new bulkhead, travel lift and an access pier to facilitate the construction of a replacement travel lift slip adjacent to an existing marina situated along the Great Wicomico River in Northumberland County. The project is protested by a nearby oyster hatchery operator.

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

The applicant was present but did not wish to speak. 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 Kellum seconded the motion. The motion carried, 7-0.

Royalties: Dredge 1,000 CU. Yds. @ \$0.60 / CU. Yd.	\$ 600.00
Fees:	\$ 300.00
Total:	\$ 900.00

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- 8. **VIRGINIA ELECTRIC AND POWER COMPANY, #22-1623**, requests authorization to install one (1) overhead fiber distribution line to existing poles within an existing right-of-way, a minimum 22 feet above a 69-foot wide section of Ivy Creek in Albemarle County. The project is protested by an adjacent property owner.

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

Matt Heartwell, agent for the applicant, was sworn in and spoke on behalf of the application, with PowerPoint slides. His comments are a part of the verbatim record.

No one spoke in opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Bransom seconded the motion. The motion carried, 7-0.

Royalties: Encroachment of 69 LF @ \$3.00 / LF.	\$ 207.00
Fees:	\$ 300.00
Total:	\$ 507.00

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9. JAMES G. MCBRIDE and JAMES E. MCBRIDE, Oyster Planting Ground Application #2017-161, request authorization to lease approximately 64 acres within the Rappahannock River in Middlesex County. The application is protested by two nearby highland property owners.

Ben Stagg, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Stagg’s comments are a part of the verbatim record.

Mr. Stagg explained that staff received an Oyster Planting Ground application from Mr. James G. McBride and Jamie E. McBride, on November 3, 2017, requesting to lease approximately 64 acres of grounds within the Rappahannock River near Mackeys Point and Harry George Creek in Middlesex County.

The request was subjected to our normal public interest review to include a newspaper public notice and notification of a nearby highland property owners. Staff received two

objections to the request, from Mr. Randy Revercomb and Mr. J. Harper Alexander, IV and Katherine Alexander. The protestants expressed concerns about any such lease rights being granted, suitability for shellfish propagation for some of the requested area, and concerns about potential navigation impacts.

Staff considers each lease application on a case-by-case basis, considering the requirements of the Code of Virginia and the Public Trust Doctrine. The use of cages and nets, for shellfish propagation, has resulted in increased public awareness of such activity and highlighted the necessity for a more comprehensive review of these methods of shellfish aquaculture propagation. Such lease requests in populated areas raise issues regarding public trust lands to include user conflicts, property values, aesthetics, navigation impacts, and suitable bottom types. Stewardship of public trust lands, while weighing the public and private benefits versus detriments, requires a balanced approach to the review of such lease requests.

The applicant did note on the use plan questionnaire that they would be using both traditional bottom planting and shellfish bottom enclosures.

After careful review of the objections raised by the nearby property owners, review of the public trust doctrine, modification of the surveyed area, and after considering all of the factors of §28.2-603 et. seq. and §28.2-1205A of the Code of Virginia, staff recommends approval of an area containing 48.08 acres.

James G. McBride, applicant, was sworn in and spoke on behalf of the application request. His comments are a part of the verbatim record.

Two people were present and spoke in opposition of the lease application. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Lusk made a motion to approve staff recommendation. Associate Member Bransom seconded the motion. The motion carried, 5-2. Associate Members Tankard and France voted no.

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- 10. ROBERT JAMES MCBRIDE, Oyster Planting Ground Application #2017-170**, requests authorization to lease approximately 9.36 acres within Harry George Creek in Middlesex County. The application is protested by two nearby highland property owners.

Ben Stagg, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Stagg's comments are a part of the verbatim record.

Mr. Stagg explained that staff received an Oyster Planting Ground application from Mr. Robert James McBride on November 30, 2017, requesting to lease approximately 21 acres of grounds within Harry George Creek in Middlesex County.

The request was subjected to our normal public interest review to include a newspaper public notice and notification of a nearby highland property owners. Staff received two objections to the request, from Mr. Randy Revercomb and Mr. J. Harper Alexander, IV and Katherine Alexander. The protestants expressed concerns about any such lease rights being granted, suitability for shellfish propagation for some of the requested area, and concerns about potential navigation impacts.

Staff considers each lease application on a case-by-case basis, considering the requirements of the Code of Virginia and the Public Trust Doctrine. The use of cages and nets, for shellfish propagation, has resulted in increased public awareness of such activity and highlighted the necessity for a more comprehensive review of these methods of shellfish aquaculture propagation. Such lease requests in populated areas raise issues regarding public trust lands to include user conflicts, property values, aesthetics, navigation impacts, and suitable bottom types. Stewardship of public trust lands, while weighing the public and private benefits versus detriments, requires a balanced approach to the review of such lease requests. The applicant did note on the use plan questionnaire that he would be using both traditional bottom planting and shellfish bottom enclosures.

After careful review of the objections raised by the nearby property owners, review of the public trust doctrine, modification of the surveyed area, and after considering all of the factors of §28.2-603 et.seq. and §28.2-1205A of the Code of Virginia, staff recommends approval of an area containing 9.36 acres

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to approve staff recommendation. Associate Member Kellum seconded the motion. The motion carried, 6-1. Associate Member France voted no.

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11. PUBLIC COMMENTS:

Kimberly Williams expressed concern over a conflict of interest with Associate Commissioner Minor and an upcoming permit application. Her comments are a part of the verbatim record.

Three (3) members of the public requested the Commission hold a public hearing on management alternatives for the menhaden purse seine reduction sector. Their comments are a part of the verbatim record.

Charles Lewis described an incident in which he felt intimidated by an Omega Protein vessel while fishing. Commissioner Green state that anyone who feels intimidated on the water should call the Marine Police. Their comments are a part of the verbatim record.

Steve Atkinson expressed concern about localized depletion of menhaden in the Chesapeake Bay. His comments are a part of the verbatim record.

David Francis and Rhett Townsend reported encountering a patch of trash and dead menhaden, birds and a sea turtle while fishing. Their comments are a part of the verbatim record.

Randy Whittaker expressed his concerns about fish kills from purse seine net tears. His comments are a part of the verbatim record.

Five (5) members from the public expressed concern about fish population declines in the Chesapeake Bay. Their comments are a part of the verbatim record.

Christie Medice asked the Commission to hold a vote on banning menhaden reduction fishing in the Chesapeake Bay at their October meeting. Her comments are a part of the verbatim record.

Stan Simmerman recommended the Commission put a moratorium on menhaden purse seine fishing by the reduction sector in Chesapeake Bay while effects of reduction fishing are studied. His comments are a part of the verbatim record.

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12. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks" to increase the spiny dogfish trip limit.

Jill Ramsey, Fisheries Mgmt. Specialist, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Ramsey's comments are a part of the verbatim record.

Ms. Ramsey explained that on April 7, 2022, National Marine Fisheries Service (NMFS) published a final rule increasing the spiny dogfish trip limit from 6,000 pounds to 7,500 pounds for federal waters. Staff has received request from the Virginia spiny dogfish industry to update the state trip limit to 7,500 pounds to mirror the federal limit. This change will maintain consistency with federal waters and help the industry meet market demands

Staff recommends the Commission amend Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to modify the spiny dogfish trip limit to 7,500 pounds.

The matter was before the Commission for discussion and action.

Associate Member France made a motion to approve staff recommendation. Associate Member Bransom seconded the motion. The motion carried, 7-0.

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Commission Meeting

**19024
September 27, 2022**

There being no further business, the meeting was adjourned at approximately 1:17 p.m.
The next Commission meeting will be Tuesday, October 25, 2022.

Jamie L. Green, Commissioner

Jamie Hogge, Recording Secretary