

## MINUTES

## COMMISSION MEETING

April 26, 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:

Justin Worrell	Acting Commissioner
John Tankard III	
John Zydron Sr.	
Wayne France	Associate Members
Chad Ballard	
James E. Minor III	
Jeremy Headley	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Pat Geer	Chief, Fisheries Mgmt.
Stephanie Iverson	Fisheries Mgmt. Manager, Sr.
Adam Kenyon	Deputy Chief, Fisheries Mgmt.
Shanna Madsen	Deputy Chief, Fisheries Mgmt.
Jill Ramsey	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Matt Rogers	Chief, Law Enforcement
Jamie Green	Deputy Chief, Law Enforcement
Randy Owen	Chief, Habitat Management
Mike Johnson	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.

**Commission Meeting**

Lauren Chartrand	Environmental Engineer, Sr.
Claire Gorman	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Daniel Faggert	Surveyor, Engineering/Surveying
Ben Stagg	Chief, Shellfish Management
Andrew Button	Deputy Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Mark Luckenbach
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Others present:

Richard Davis	Amy McKay	Michelle Maund
Russell Acree	David Harned	Richard Foley
Kim Huskey	Rachael King	Will Shoup
Chris Davis	Mike Steele	Elizabeth Buehler
Charles Metzgar	Hayley Becker	Mark Kukoski
Monica Scheneman	Jeff Scheneman	Gary Hochschild
Granville Hogg	Nancy Hochschild	Lauren Conner
Rebecca Francese	Chris Moore	William Bransom
and others.		

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Acting Commissioner Worrell called the meeting to order at approximately 9:39a.m.

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Associate Member France led the pledge by the request of Acting Commissioner Worrell. Associate Member Tankard said the invocation.

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Acting Commissioner Worrell introduced the new Associate Member Jeremy Spencer Headley to the Commission Members. His comments are a part of the verbatim record.

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

**Associate Member Zydron moved to approve the agenda as presented. Associate Member France seconded the motion. The motion carried, 7-0 Chair voted yes.**

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**MINUTES:** Acting Commissioner Worrell asked if there were any changes or corrections to be made to the March 22, 2022 Commission Meeting minutes.

**Associate Member Zydron moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member Headley abstained.**

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Acting Commissioner Worrell introduced the new Associate Member Jeremy Spencer Headley to the Commission Members. His comments are a part of the verbatim record.

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Acting Commissioner Worrell 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 Items A through D for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

- 2A. **CITY OF SALEM, #22-0365**, requests authorization to replace the Apperson Drive Bridge over the Roanoke River with a clear span bridge that includes five (5) travel lanes, a shared-use path, and associated temporary work causeways and cofferdams, in the City of Salem. Staff recommends approval of the project

with the standard instream permit conditions and a time-of-year restriction for instream work of March 15 through June 30 of any given year to protect the endangered Roanoke logperch.

Fees:	\$ 600.00
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- 2B. AMHERST COUNTY, #21-2456**, requests authorization to install a water intake structure with 1-mm mesh screens, 24-inch intake line, and 6-inch backwash line, on the James River near Trents Landing Road in Amherst County. Staff recommends approval of the project with the standard instream permit conditions, a requirement to conduct a freshwater mussel survey and relocation effort unless specifically waived in writing by the Virginia Department of Wildlife Resources and an instream time-of-year restriction of 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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- 2C. ISLE OF WIGHT COUNTY, #21-2579**, requests authorization to install a 12-inch water main across a 200-foot section of the Pagan River using the horizontal directional drilling method a minimum of ten (10) feet beneath the substrate adjacent to N. Church Street in Isle of Wight County. Staff recommends approval of the project with the standard condition that the Permittee agrees to abide by the frac-out monitoring and response plan submitted with the application.

Fees:	\$ 600.00
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- 2D. CITY OF CHESAPEAKE, #21-2580**, requests authorization to install fiber optic cable and multiple HDPE conduits using the horizontal directional drill method crossing Newton Creek, Mill Dam Creek, Northwest River, Bells Mill Creek, St. Julian Creek, Baily Creek, Goose Creek (2x), and the Southern Branch of the Elizabeth River (3x), a minimum of five (5) feet below the substrate for a total of 2,316 linear feet of subaqueous crossings in Chesapeake. Staff recommends approval of the project with the standard condition that the Permittee agrees to abide by the frac-out monitoring and response plan

submitted with the application.

Fees:	\$ 600.00
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Lauren Conner was sworn in and spoke on behalf of Item 2A City of Salem. Her 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 France moved to approve the page 2 Items A through D as presented. Associate Member Minor seconded the motion. The motion carried 7-0. Chair voted yes.**

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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 meeting needed**

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**5. NORFOLK NAVAL SHIPYARD, #21-2213, requests authorization to replace an existing footbridge and security fence over Blows Creek and refurbish old and install new riprap shoreline stabilization to create a living shoreline at the confluence of Blows Creek and the Elizabeth River at the St. Julien's Creek Annex property in the City of Chesapeake. Both tidal wetlands and subaqueous bed permits are required.**

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

Commission was acting as the wetlands board.

Mr. Woodward explained that the project site is on the Southern Branch of the Elizabeth River, near the Chesapeake and Portsmouth border. There is an existing footbridge and security fence across the mouth of Blow Creek on the naval installation property. Both structures are in disrepair, and past attempts to armor the shoreline from wake-induced erosion have led to an array of broken concrete, undersized riprap, timbers, and associated failed materials. The current proposal is to replace the bridge and fence, clean up the shoreline and install a living shoreline (sill) consisting of properly sized riprap, clean sand fill and plantings of saltmeadow hay (*Sporobolus pumilus*, formally *Spartina patens*).

Staff has completed the required public interest review of the project and no concerns have been raised. VIMS visited the site with staff and members of the Norfolk Naval Shipyard design team and commented that “the proposed project is designed to maximize opportunities for environmental improvement to this highly-altered area.”

Accordingly, after evaluating the merits of the project and after considering all of the factors contained in §28.2-1205(A) and §28.2-1302 of the Code of Virginia, staff finds the proposal to be a reasonable and permissible use of State-owned submerged lands and to be in conformance with the Commission’s Tidal Wetland Guidelines which require only living shoreline designs to address erosion concerns where suitable. Therefore, staff recommends approval of the project as proposed with a condition that only clean, coarse fill material (>90% sand) be used and the plantings be done in accordance with plans and specifications submitted in the application.

No one spoke in support or opposition of the proposed project.

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, 7 0-. Chair voted yes.**

Fees:	\$ 300.00
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- 6. FRED HODGES, #22-0383**, requests authorization to install a total of 147 linear feet of Flexamat at a 4:1 slope with sand fill and native wetland plantings at property situated along the York River at Old Farm Drive in King and Queen County. This project requires a VMRC tidal wetlands permit.

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

Ms. Gorman explained that the proposed project takes place along a residential lot with a house that sits just over 200 from the shoreline. The subject shoreline sits on the east side of the York River, about 5 miles south of the Town of West Point. The fetch exposures at the property are 1.5 miles west, 5.2 miles northwest, 2.1 miles southwest, and 3.2 miles due south. The existing shoreline along the property consists of a failed bulkhead, a deteriorated pier, and various flotsam and jetsam. Behind the failed bulkhead are two large scarps which now support non-vegetated tidal wetlands (sandflats). The neighboring property to the north is bulkheaded. The adjacent parcel to the south is an empty lot with a failed bulkhead.

The applicant has applied to construct a Flexamat stabilization system along the shoreline over the non-vegetated wetlands. Flexamat is a concrete grid mat system with cells that can be planted with vegetation providing 35-40% plantable surface area. The cells will be planted with native wetland and buffer vegetation.

A 20' x 147' section of Flexamat will be placed at a 4:1 slope and buried at the toe with filter cloth reaching half way up the structure. The buried toe of the Flexamat and sloped upland will be covered with sand. The existing return at the north end of the project area will have 26' of new bulkhead installed, with riprap scour protection landward from the current corner of the adjoining properties. The south end of the project area will tie into the proposed Flexamat stabilization system (VMRC #22-0384) with the adjacent neighbor.

The King and Queen County wetlands board previously considered a previous application (VMRC #21-0819) in October 2021 and approved the project with a requirement to purchase wetland compensation from a nearby tidal wetlands bank. The decision to require additional compensation was appealed by the applicant/agent, however, the County's Board of Supervisors rescinded the model wetlands ordinance during the 10-day appeal period.

Although staff has limited permit experience with Flexamat shoreline stabilization, we would not support a bulkhead replacement considering the failed state of the current wall. Given the proposed tidal vegetated wetland plantings resulting from the conversion of the sandflat escarpments and the upland lawn, staff believes that the project is self-mitigating. The Commission’s existing Wetlands Mitigation and Compensation Policy portion of its Tidal Wetlands Guidelines states that “on-site compensation at the project site is the preferred location alternative” for permissible uses or development of tidal wetlands. Staff does agree with the VIMS recommendation for a monitoring plan.

As proposed, the Flexamat installation will impact 904 square feet of non-vegetated wetlands (sandflat) and 1,750 square feet of upland lawn, which will be graded down and planted with tidal wetlands and fescue. Per the project drawings, 735 square feet of saltmarsh cordgrass and 882 square feet of saltmeadow hay will be planted on the plantable surface of the Flexamat structure, for a total of 1,617 square feet of new tidal wetlands vegetation on-site.

In light of the manufacturer’s recommendations for the use of Flexamat at this location, staff supports its use with monitoring. Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302 of the Code of Virginia, staff recommends approval of the project as proposed with the condition that the Permittee develop and submit a monitoring plan annually for a minimum of 3 years. The monitoring plan should include the percent of vegetative cover, with site photographs, an estimate of the benthic macrofauna (oysters, mussels, etc.) established on the exposed concrete surface, and an analysis of the structure’s stability and performance given the large fetch exposures.

Chris Davis, agent and contractor for the applicants was present and sworn in. His comments are a part of the verbatim record.

No one spoke in support or opposition of the proposed project.

The matter was before the Commission for discussion and action.

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

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7. **M. KEITH HODGES, #22-0384**, requests authorization to install a total of 75 linear feet of Flexamat at a 4:1 slope with sand fill and native wetland plantings at property situated along the York River at Old Farm Drive in King and Queen County. This project requires a VMRC tidal wetlands permit.

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

Ms. Gorman that the proposed project takes place along a vacant residential lot. The subject shoreline sits on the east side of the York River, about 5 miles south of the Town of West Point. The fetch exposures at the property are 1.5 miles west, 5.2 miles northwest, 2.1 miles southwest, and 3.2 miles due south. The existing shoreline along the property consists of a failed bulkhead and various flotsam and jetsam. Behind the failed structure is a single large scarp consisting of 536 square feet of non-vegetated wetlands (sandflat). The balance of the shoreline immediately behind the failing wall is upland lawn. The adjacent parcel to the north is a residential lot with a failed bulkhead (VMRC #22-0383). The neighboring property to the south is bulkheaded.

The applicant has applied to construct a Flexamat stabilization system along the heavily eroded shoreline. Flexamat is a concrete grid mat system with cells that can be planted with tidal wetlands vegetation providing 35-40% plantable surface area. The cells will be planted with native wetland and buffer vegetation.

The failed bulkhead will be removed and the yard will be graded landward to install a 20' x 75' section of Flexamat. Beginning at the existing deadman anchoring system, a 4:1 slope will be established to facilitate a buried toe with filter cloth reaching halfway up the structure. The buried toe of the Flexamat and sloped upland will be covered with sand. The existing return at the south end of the project area will have 26' of new bulkhead return wall, with 36 square feet of riprap scour protection, installed landward from the current corner of the adjoining properties. The north end of the project area will tie into a proposed Flexamat stabilization system with the adjacent neighbor (VMRC #22-0383).

The King and Queen County wetlands board previously considered a previous application (VMRC #21-0820) in October 2021 and approved the project with a requirement to purchase wetland compensation from a nearby tidal wetlands bank. The

decision to require additional compensation was appealed by the applicant/agent, however, the County's Board of Supervisors rescinded the model wetlands ordinance during the 10-day appeal period.

Although staff has limited permit experience with Flexamat shoreline stabilization, we would not support a bulkhead replacement considering the failed state of the current wall. Given the proposed tidal vegetated wetland plantings resulting from the conversion of the sandflat escarpment and the upland lawn, staff believes that the project is self-mitigating. The Commission's existing Wetlands Mitigation and Compensation Policy portion of its Tidal Wetlands Guidelines states that "on-site compensation at the project site is the preferred location alternative" for permissible uses or development of tidal wetlands. Staff does agree with the VIMS recommendation for a monitoring plan.

As proposed, the Flexamat installation will impact 536 square feet of non-vegetated wetlands (sandflat) and 787 square feet of upland lawn, which will be graded down and planted with tidal wetlands and fescue. Per the project drawings, 408 square feet of saltmarsh cordgrass and 366 square feet of saltmeadow hay will be planted on the plantable surface of the Flexamat structure, for a total of 774 square feet of new tidal wetlands vegetation on-site.

In light of the manufacturer's recommendations for the use of Flexamat at this location, staff supports its use with monitoring. Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1302 of the Code of Virginia, staff recommends approval of the project as proposed with the condition that the Permittee develop and submit a monitoring plan annually for a minimum of 3 years. The monitoring plan should include the percent of vegetative cover, with site photographs, an estimate of the benthic macrofauna (oysters, mussels, etc.) established on the exposed concrete surface, and an analysis of the structure's stability and performance given the large fetch exposures.

Chris Davis, agent and contractor for the applicants was present and sworn in. His comments are a part of the verbatim record.

No one spoke in support or opposition of the proposed project.

The matter was before the Commission for discussion and action.

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

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**8. NORTHAMPTON COUNTY and the TOWN OF CAPE CHARLES, #21-0145**, requests authorization to maintenance dredge approximately 21,825 cubic yards and dredge 7,200 cubic yards of new material from the Kings Creek Channel in Northampton County, with subsequent placement of approximately 35,000 cubic yards of sand on the public beach in the Town of Cape Charles. The project is protested by two nearby property owners.

Randy Owen, Chief, Habitat Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Owen's comments are a part of the verbatim record.

Associate Member Ballard has abstained from voting on the proposed project.

Mr. Owen explained that the project site is near and within the Town of Cape Charles, at the mouth of Kings Creek and the adjacent shoreline of the Chesapeake Bay. The purpose of the project is to improve navigable access to users of Kings Creek, notably the public's use of Kings Creek Marina and Resort. The channel was last dredged in 2005.

Ambient depths in the channel vicinity range from minus fifteen (-15) feet at mean low water, within the inlet of the Creek, to minus one (-1) foot in the nearshore area of the Bay, just outside the mouth of the Creek. The 80-foot wide channel will be dredged to a maximum depth of minus eight (-8) feet at mean lower low water, with two new areas of channel widening proposed where the channel makes turns and is subject to frequent shoaling. This widening is anticipated to increase the time between maintenance dredging cycles, by getting ahead of shoaling and shifting sandbars. Dredged material will be removed hydraulically and the material pumped to the public beach at Cape Charles. The dredge pipeline will be submerged and anchored to the bottom until it approaches the shoreline. A spreader will be placed at the outfall pipe on the beach to diffuse the slurry. A retaining dike will be constructed out of existing sand on the beach to contain the flow. The pumping will begin at the north end of the beach, where sand is most needed, and progress southward until the dredging is completed.

There are numerous leased oyster planting grounds within the project area. Staff has received consent from all leaseholders who will be directly impacted by the proposed dredging. This includes consent from a large aquaculture facility and hatchery, Ballard Fish and Oyster Company, which is an adjacent property owner with water intakes and clam beds in the vicinity of the project.

Staff has reviewed the project and considered the comments provided by the protestant and VIMS. It would appear that the opposition is most concerned with a responsible use of public funds. However, both the Northampton County Board of Supervisors, the Accomack-Northampton Planning District Commission, the Eastern Shore Navigable Waterways Committee, and the Virginia Port Authority (through their grant support) have been involved in the development and funding of this project. Following multiple public hearings, the aforementioned design team removed the protestant's lease area from the proposed dredging area. They note that the bottom in the vicinity of Mr. Hogg's lease did not need to be dredged at present time due to sufficient depths.

According to VIMS, the project is likely to have only minimal adverse environmental impacts given the lack of submerged aquatic vegetation in the immediate area and the sandy nature of the sediment, which will quickly settle out of the water column. The placement of sand on the beach is not protested and is considered a public beneficial use of dredged material, consistent with the requirement set out in §10.1-704 of the Code of Virginia. This section requires that *the beaches of the Commonwealth shall be given priority consideration as sites for the disposal of that portion of dredged material determined to be suitable for beach nourishment.*

Accordingly, after evaluating the concerns raised by Mr. Hogg, the information gained from the multiple public hearings undertaken by the design team, the merits of the project, and all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff finds the proposal to maintenance dredge the Kings Creek Channel to be a reasonable and permissible use of State-owned submerged lands. Therefore, we recommend approval of the project as proposed. Staff notes that the applicant, a political subdivision of the Commonwealth, is exempt from all rents and royalties per §28.2-1206(E) of the Code of Virginia.

Rebecca Francese, agent for the project, was present and sworn in. Her comments are a part of the verbatim record.

Kim Huskey, Ballard Fish & Oyster Company representative was sworn in and spoke in support of the project. Her comments are a part of the verbatim record.

Granville Hogg was sworn in 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 Minor made a motion to approve staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 6-0-1. Chair voted yes. Associate Member Ballard abstained.**

Fees:	\$ 600.00
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- 9. **GARY HOCHSCHILD, #21-1551**, requests authorization to construct a private, open-pile pier with a 10-foot by 50-foot L-head and a 10-foot by 20-foot floating kayak dock at property (23124 Grey Drive) adjacent to Onancock Creek in the County of Accomack. The project is protested by an upstream property owner.

Randy Owen, Chief, Habitat Management, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Mr. Owen’s comments are a part of the verbatim record.

Mr. Owen explained that the Hochschild property is located in a rural portion of Onancock Creek where most property owners have built private piers. The property faces to the mouth of Onancock Creek, with shallow offshore bathymetry. There is currently no pier on the property.

Staff worked with the applicant to eliminate a 300 square foot middle platform/rest area, which reduced the total proposed deck area from 940 square feet to 640 square feet. While this was not one of the noted concerns of the protestant, staff appreciates the applicant’s willingness to work with VMRC. Mr. Hochschild advised that he wished to seek Commission approval for the modified platform area, in excess of the statutory authority provided for in §28.2-1203(A)(5).

Staff considered the protestant's concerns regarding the length of the pier and the potential impacts to navigation. At the proposed location, the 450-foot long pier would end short of the navigable channel, which experiences heavy recreational and commercial aquaculture traffic, and occasional industrial traffic in the form of gravel barges. Soundings provided by the applicant position the proposed L head between the minus three (-3) foot and minus four (-4) foot contour at MLW. These depths are minimally needed to support the applicant's 60-foot boat, which draws four feet. The applicant's pier is proposed adjacent to his riparian property and appears to follow an alignment representative of the shortest reach to navigable waters.

Staff recognizes that this pier is larger than many piers currently on the creek and empathizes with the concern of the protestant. If constructed, it will likely change the route kayakers take along the shore as they explore the adjacent public lands (Parkers Marsh). However, the pier is proposed on private land with riparian rights to access navigable waters. The large width of the creek and additional space between the pier terminus and the channel will continue to allow for safe navigation of all traffic. Outside of kayaks, most marine traffic must stay within the channel or risk bottoming out on numerous sand bars and oyster reefs in the area. Staff also notes that were it not for the oversized platform area, this pier would have met the criteria for statutory authorization found in §28.2-1203(A)(5) of the Code of Virginia.

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.

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

No one spoke in support or opposition of the proposed project.

The matter was before the Commission for discussion and action.

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

Fees:	\$ 300.00
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10. **RICHARD DAVIS, Oyster Planting Ground Application # 2014-219**, request to lease up to 100 acres of oyster planting grounds in the Rappahannock River near Myrtle Swamp in Richmond County. The application is protested by a number of local residents.

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 Richard Davis submitted an oyster planting ground application on July 31, 2014 seeking to lease approximately 100 acres of oyster planting ground within the Rappahannock River near Myrtle Swamp in Richmond County. The application was subjected to our normal public interest review. This review resulted in numerous protests by local residents.

Staff reviews each oyster planting ground application relative to the specific circumstances associated with the location, suitable bottomland, proposed use by the applicant, and other uses of the area. Additionally, after full consideration of both the public **benefits and impacts** of shellfish aquaculture, consideration of the public trust doctrine, the factors of the Code of Virginia, 28.2-1205A, and the Constitution of Virginia, staff recommends granting of an area containing 49.26 acres. Should the Commission deem the currently surveyed area near the mouth of Myrtle Swamp may constitute a potential navigation issue, staff would also support an adjustment to remove a portion of the surveyed area containing an area of 3.75 acres leaving an area for assignment of 39.18 acres.

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

Russell Acree was present, sworn in and spoke in opposition. Mr. Acree had concerns with the proposed lease being in close proximity to a nearby condemned area. His comments are a part of the verbatim record.

Richard Foley, nearby landowner was present, sworn in and spoke in opposition of the application. His comments are a part of the verbatim record.

David Harned was present, sworn in and spoke in opposition of the application. His comments are a part of the verbatim record.

Mr. Davis agreed to reduce the size of the proposed lease by approximately 10 acres to accommodate the concerns of the protestants.

The matter was before the Commission for discussion and action.

**Associate Member Zydron made a motion to approve staff recommendation as modified. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

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**11. RICHARD DAVIS AND ANDREW DAVIS, Oyster Planting Ground Application # 2014-220**, request to lease up to 180 acres of oyster planting grounds in the Rappahannock River near Farnham Creek in Richmond County. The application is protested by a number of local residents.

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 Richard Davis and Andrew Davis submitted an oyster planting ground application on July 31, 2014 seeking to lease approximately 180 acres of oyster planting ground within the Rappahannock River near Farnham Creek in Richmond County. The application was subjected to our normal public interest review. This review resulted in numerous protests by local residents.

Staff reviews each oyster planting ground application relative to the specific circumstances associated with the location, suitable bottomland, proposed use by the applicant, and other uses of the area. Additionally, after full consideration of both the public **benefits and impacts** of shellfish aquaculture, consideration of the public trust doctrine, the factors of the Code of Virginia, 28.2-1205A, and the Constitution of Virginia, staff recommends granting of an area containing 53.57 acres.

Richard Davis, applicant was present and previously sworn. His comments are a part of the verbatim record.



Mike Steel was sworn in and spoke in opposition of the application. Mr. Steel expressed concerns about the cages becoming a navigational hazard, the proposed lease being in close proximity to a nearby condemned area and concerns for protective species. His comments are a part of the verbatim record.

Richard Foley, nearby landowner was present, sworn in and spoke in opposition of the application. His comments are a part of the verbatim record.

Mark Kukoski was sworn in and spoke in opposition of the proposed application. His comments are a part of the verbatim record.

David Harned was previously sworn in and spoke in opposition of the application. His comments are a part of the verbatim record.

Russell Acree was previously sworn in and spoke in opposition. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action. During such discussion, a suggestion was made to further reduce the proposed lease area, leaving approximately 30 acres to be leased.

**Associate Member Zydron made a motion to approve the reduction of lease acres to approximately 30 acres. Associate Member France seconded the motion. The motion carried, 7-0. Chair voted yes.**

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**12. PUBLIC COMMENTS.**

**Elizabeth Buehler**

Request the ability to transfer her deceased son's Oyster User Fee to a non-family member. She was present and sworn in. Her comments are a part of the verbatim record.

Andrew Button provided background information to the Commission about her son, Michael Buehler's, Oyster License harvest history.

**Associate Member France made a motion to grant the ability for the Oyster User Fee to be transferred outside of the family member. Associate Member Ballard seconded the motion. The motion carried, 7-0. Chair voted yes.**

**Michelle Maund**

Ms. Michelle Maund, on behalf of her husband Mr. Robert Miller, asked to have Mr. Miller's oyster user fee reinstated. Current regulations state that an oyster user fee must be purchased each year to maintain eligibility, but Mr. Miller did not purchase his oyster user fee in 2021 due to economic hardship. Mr. Button states that there are no exceptions in regulation for economic hardship. The Commission declined to make a motion to approve Ms. Maund's request.

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- 13. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-910-10 et seq., “Pertaining to Scup (Porgy)”, to establish the 2022 recreational management measures for this species.

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

Ms. Galvan explained that the scup recreational harvest limit (RHL) for 2022 is 6.08 million pounds, which is 56% lower than the 2022 harvest projected under current regulations. The Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board (the Board) and Mid-Atlantic Fishery Management Council (MAFMC) voted to require all states to increase their minimum size limits by one inch for a 33% decrease in harvest. Virginia therefore must increase the minimum size of scup from eight inches to nine inches to be in compliance with federal and interstate regulations.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-910-10 et seq., “Pertaining to Scup (Porgy)”, to establish the 2022 recreational management measures for this species.

The matter was before the Commission for discussion and action.

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

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**14. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder", to establish the 2022 recreational management measures for this species.

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

Ms. Galvan explained that the summer flounder recreational harvest limit (RHL) for 2022 is 10.36 million pounds, which is higher than the 2022 harvest projected under current regulations. The Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board (the Board) and Mid-Atlantic Fishery Management Council (the Council) voted to allow regions the ability to liberalize regulations up to 16.5%. Liberalization, as compared to a previous year's management measures, can involve a lower minimum size limit, a larger possession limit, a longer fishing season, or a combination of these measures.

As part of conservation equivalency approved by the Board and Council, the southern region consisting of Virginia, Maryland, and Delaware proposed reducing the minimum size for summer flounder from 16.5" to 16" and maintaining the current four fish bag limit and year round season.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-620-10 et. seq., "Pertaining to Summer Flounder," to establish the 2022 recreational management measures.

The matter was before the Commission for discussion and action.

**Associate Member France made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 7-0. Chair voted yes.**

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- 15. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass”, to establish the 2022 recreational management measures for this species.

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

Ms. Galvan explained that the black sea bass recreational harvest limit (RHL) for 2022 is 6.34 million pounds, which is lower than the 2022 harvest projected under current regulations. The Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board (the Board) and Mid-Atlantic Fishery Management Council (the Council) voted to require a 20.7% reduction in harvest coastwide. Reductions, as compared to a previous year’s management measures, can involve a higher minimum size limit, a smaller possession limit, a shorter fishing season, or a combination of these measures.

As part of conservation equivalency approved by the Board and Council, the southern region (consisting of Delaware, Maryland, Virginia, and North Carolina) proposed increasing the minimum size for recreational black sea bass from 12.5” to 13” and reducing the season to May 15 through December 11 to meet the required reductions.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass”, to establish the 2022 recreational management measures for this species.

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, 7-0. Chair voted yes.**

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**Commission Meeting**

**18953  
April 26, 2022**

There being no further business, the meeting was adjourned at approximately 2:15 p.m.  
The next Commission meeting will be Tuesday, May 24, 2022.

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Justin Worrell, Acting Commissioner

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Jamie Hogge, Recording Secretary