

MINUTES

COMMISSION MEETING

October 25, 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	
Jeremy Headley	
A.J. Erskine	
Kelci Block	Assistant Attorney General Via Conference phone
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
Alicia Nelson	Coordinator, RFAB/CFAB
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
Jeff Madden	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Ben Nettleton	Environmental Engineer, Sr.

Commission Meeting

**19026
October 25, 2022**

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	Emily Hein
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Others present:

Steven Zalesak	Philip Zalesak	Walter Bowen
Jim Rogers	Michael Academia	Molly Fuller
Stan Simmeemar	Steve Anderson	Dave Bugg
Jodyn Higgins	Bob Simon	Kim Huskey
David O'Brien	Megan Wood	Louis Miles
Chris Moore	Jennifer Young	Jim Young
Claudette Loyole	Monty Deihl	Jerica Abraham
Steve Atkinson	Peggy Bugg	Dave Bugg
Christi Medice	Zachary Cunningham	
and others.		

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Commissioner Green called the meeting to order at approximately 9:31 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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Pat Geer, Chief, Fisheries Mgmt., on behalf of staff, requested to hold a combined November/December Commission Meeting on December 6, 2022 due to the Thanksgiving holiday in November. His comments are a part of the verbatim record.

Mr. Geer explained that the Commission Meetings are usually held on the 4th. Tuesday

of the month, for the exception of the month of December due to the Christmas holiday.

However, the 4th. Tuesday in November is November 22nd., which is close to the Thanksgiving holiday.

Staff recommended that the next meeting be a combined November/December meeting to be held on December 6, 2022.

The matter is before the Commission for discussion and action.

Associate Member Tankard made a motion to approve the date for a combined November/December Commission Meeting for December 6, 2022. Associate Member Minor seconded the motion. The motion carried, 8-0.

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

Associate Member Tankard moved to approve the minutes as presented. Associate Member Erskine seconded the motion. The motion carried, 8-0.

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MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the September 27, 2022 Commission Meeting minutes.

Associate Member Tankard moved to approve the minutes as presented. Associate Member Erskine seconded the motion. The motion carried, 7-0-1. Associate Member Headley 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 items 2A through 2C for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

- 2A. **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.
- 2B. **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 Terrance along the Mattaponi River in King and Queen County. This project requires a tidal wetlands permit.
- 2C. **ARMY CORPS OF ENGINEERS, #22-0907**, requests authorization to place overboard, in an unconfined manner, up to 65,000 cubic yards of dredged material per dredge cycle from the maintenance dredging of the two Federal Project Channels near Tangier Island in Accomack County. The material will be deposited for beneficial use along the (1) western shore of the island, south of the airport seawall, (2) along the northwest shoreline of the Tangier Island Uppards, or (3) nearshore of the Northwest Uppards between the -5 and -8 foot mean low water (MLW) contours.

Fees:	\$ 600.00
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No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Minor moved to approve the page 2 items 2A through 2C as presented. Associate Member Headley seconded the motion. The motion carried 8-0.

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3. CONSENT AGENDA ITEMS

Randy Owen, Chief, Habitat Management, reviewed the Page 3 Consent Agenda Items beginning with 3A for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

3A. JEFFREY PAXTON, #18-1215, requests a modification to an existing permit for after-the-fact authorization to retain a 35.5-foot wide by 45-foot long open-side boathouse roof constructed adjacent to a private, open-pile pier serving 1472 Bridge Point Trail, situated along the Nansemond River in the City of Suffolk. The applicant has agreed to pay a \$2,000.00 civil charge and triple permit fees in lieu of further enforcement action.

A representative for the applicant, Mr. Paxton, spoke on behalf of item 3A. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member France moved to approve the 3A item as presented. Associate Member Bransom seconded the motion. The motion carried 8-0.

Civil Charge:	\$ 2,000.00
Fees:	\$ 200.00
Total:	\$ 2,200.00

3B. CROWNE POINTE MARINA, #22-2105, requests after-the-fact authorization to replace an existing dock with a 6-foot wide by 155-foot long floating dock, with an 8-foot by 70-foot T-head and 12 3-foot wide by 30-foot long finger piers, with a total of 14 boat slips on the new dock, on the Perrin River at 9737 Cooks Landing Lane in Gloucester County. Staff recommends approval of the project with triple permit fees of \$900.00 and a civil charge of \$2,000.00.

Randy Owen, Chief, Habitat Management, reviewed the Page 3 Consent Agenda Items beginning with 3B for the Associate Members. Mr. Owen’s 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 Erskine moved to approve the 3B item as presented. Associate Member France seconded the motion. The motion carried 8-0.

Civil Charge:	\$ 2,000.00
Fees:	\$ 900.00
Total:	\$ 2,900.00

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

5. PETITIONER: Menhaden Petition for the Governor's Consideration.

The Commission received the three petitions There were six (6) members of the public that spoke in support. Their comments are a part of the verbatim record.

6. CLARENCE BOWEN, ET AL, #22-1785, requests authorization to install a 260 linear foot gapped breakwater system with beach nourishment and vegetative plantings adjacent to 135 and 136 Smith Point View situated along the Chesapeake Bay in Northumberland County. The project is protested by an adjacent property owner.

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.

Walt Bowen, representative of the applicant, was present and sworn in. 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 Headley seconded the motion. The motion carried, 8-0.

Fees:	\$ 300.00
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7. LITTLE WICOMICO OYSTER COMPANY, LLC, #21-2608. Appeal of Notice to Comply #22-SMD-01. Requests to appeal specific conditions contained in a previously issued Notice to Comply regarding non-compliance with their permit for deployed floating shellfish enclosures within the Great Wicomico River in Northumberland County. The permittee is appealing:

1. The requirement for the removal of all unauthorized floating enclosures;
2. Commission denial to allow for the submission of an after-the-fact application to retain such deployed enclosures;
3. That submission of latitude and longitude values are not required within the Joint Permit Application;
4. That the permittee did not knowingly submit erroneous maps that were provided by his agent in the original permit application;
5. That the removal requirement will cause the death of four to five million baby oysters.

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.

Dave Bugg, attorney for the applicant, was present. His comments are a part of the verbatim record.

No one spoke in support or opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to uphold the previously issued notice to comply with a new deadline of November 15, 2022. Associate Member France seconded the motion. The motion carried, 6-1-1. Associate Member Lusk opposed. Associate Member Erskine abstained.

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8. MICHAEL E. McGEE to JENNIFER YOUNG, Oyster Planting Ground Application #2021-530, requests authorization to transfer 5.07 acres of oyster planting grounds within Chincoteague Bay in Accomack County. The transfer is protested by two nearby highland property owners on Marsh Island. Additionally, the subject lease has been resurveyed to remove an area where the most recent bridge access to Marsh Island was previously constructed and the new revised area is now 3.71 acres.

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.

Applicant was present but declined to comment.

No one spoke in support or opposition of the application.

The matter was before the Commission for discussion and action.

Associate Member Tankard made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 8-0.

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9. PUBLIC COMMENTS. No one from the public that wished to speak during public comment.

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10. Public Hearing: Proposal to amend Chapter 4 VAC 20-490-10 et seq., “Pertaining to Sharks” to establish a prohibition on the retention of shortfin mako shark within Virginia waters.

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

Mr. McGilly explained that on July 5th, 2022, the National Oceanic and Atmospheric Administration (NOAA) Fisheries published a final rule that no shortfin mako sharks may be landed or retained in any U.S. Atlantic highly migratory species (HMS) fishery until further notice. The proposed amendment will maintain consistency with federal waters and alleviate any issues of recreational and commercial fishermen that do not hold a federal permit from stating they caught a shortfin mako shark within state waters. Law enforcement primarily examine shortfin mako shark at the point of landing but shortfin mako shark are caught almost exclusively in federal waters.

Staff recommends the Commission amend Chapter 4 VAC 20-490-10 et seq., "Pertaining to Sharks," to prohibit the retention of shortfin mako shark within Virginia state waters.

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, 8-0.

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11. RECOMMENDATION: Recommendations on funding requests from the Recreational and Commercial Fisheries License Funds.

Alicia Nelson, Coordinator, RFAB/CFAB, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Nelson's comments are a part of the verbatim record.

Ms. Nelson explained that on September 12, 2022, the RFAB met in person to review and recommend projects for the 2022 funding cycle. This cycle included requests to continue to fund 11 reoccurring fishing event and research projects and one new fishing event project. Two of those projects requested split funding between the recreational and commercial license funds.

In addition, there are two requests for funds from the commercial license fund – the annual river herring addendum to the federal alosine program, and a one-year program from the Virginia Institute of Marine Science to develop a seed oyster management tool.

The RFAB reviewed and recommended funding all 12 project requests for the 2022 cycle. All of the projects in this cycle are reoccurring projects except for item H. Items proposed for split funded are marked with an asterisk.

2023 Fishing Events:

- A. 0422-01 2023 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. Joseph Stephenson; George Reich, Great Bridge Fisherman’s Association. **\$2,620.**
- B. 0422-02 2023 Virginia Beach Anglers Club/Seton Youth Shelter Children’s Fishing Trip. Lou Corigliano, Virginia Beach Anglers Club. **\$2,500.**
- C. 0422-03 2023 Children's Fishing Clinic. Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. **\$7,500.**
- D. 0422-04 2023 Kiwanis Club Children's Fishing Clinic. Wesley Brown, Capital District Kiwanis Club. **\$7,500.**
- E. 0422-05 2023 Saxis and Morley's Wharf Children’s Fishing and Conservation Educational Outings. Steven Elliot, Eastern Shore of Virginia Anglers Club. **\$2,420.**
- F. 0422-06 2023 Norfolk Youth Head Boat Fishing Trip. James “Ike” Eisenhower, Norfolk Anglers Club. **\$1,500.**
- G. 0422-07 2023 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Anglers Club/Sunshine Program. **\$9,900.**
- H. 0422-08 2023 Cub Scouts Fishing Clinic. David Singletary, Boy Scouts of America. **\$3,500.**

Research Projects:

- I. 0422-09 Virginia Game Fish Tagging 2023. S. Musick (VIMS), L. Gillingham (VMRC). **\$88,914.**
- J. 0422-10 *Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay. M. Fabrizio, T. Tuckey, VIMS. \$30,201. **(\$15,101 from VSRFDF, and \$15,100 from MFIF).**
- K. 0422-11 *Federal Assistance (Sportfish Restoration) Matching Funds, Federal FY 2023. P. Geer. \$283,835 **(243,287 from VSRFDF, 40,548 from MFIF).**
- L. 0422-12 Restoration of Submerged Aquatic Vegetation (SAV) Habitat in Chesapeake Bay and the Virginia Coastal Bays. C. Patrick and E. Hensel. VIMS. **\$99,898.**

Funds are available in both the recreational license fund (the Virginia Saltwater Fishing Development Fund) and the commercial license fund (the Marine Fishing Improvement Fund or MFIF) at this time. Projects J (the young-of-year American eel survey) and K (the sportfish restoration match) are traditionally split funded by the VSRFDF and the MFIF because these projects benefit both recreational and commercial fisheries.

Additional requests from the commercial license fund (MFIF):

Biological Monitoring of River Herring in Virginia:

River herring monitoring in Virginia is accomplished as part of a larger, federal-funded Sportfish Restoration project for American shad and river herring that has been conducted by VIMS since 1998. River herring monitoring was added to the program in 2014 with funding provided from the Marine Fishing Improvement Fund (MFIF) to account for additional staff time and increased sampling efforts. This additional support allows the VMRC and VIMS to better meet the ASMFC mandates and enhance the existing monitoring program for river herring. In some years, funding for this additional work was included in the larger federal program; however, because Sportfish Restoration funds have been drastically reduced, this portion of the program has not been funded through the Sportfish Restoration program since 2018. The proposal for the river

herring monitoring program is due every spring; however, staff is requesting to allocate the funds for this program now in order to align the VMRC obligations for the federally funded programs to the same Commission request date. This request totals \$40,000 from the MFIF for FY23.

The Virginia Seed Oyster Fishery: A Management Decision Tool

The Virginia Institute of Marine Science has submitted a request for funding to develop a management decision tool to assist annual considerations on shell planting, seed harvest relocation, and private seed quota. The principle investigators have consulted with the Shellfish Management Division and will continue to work with the agency as the tool is developed. The proposal has been peer reviewed, and the total funding request for is \$78,775 for a 1-year program.

Staff recommends funding projects A through L, for expenditures totaling \$464,640, from the recreational license fund (VSRFDF). Staff also recommends funding \$174,424 from the Marine Fishing Improvement Fund (MFIF) for split funded projects, the oyster management tool, and one segment of the annual river herring monitoring 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, 7-0-1. Associate Member Bransom abstained.

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There being no further business, the meeting was adjourned at approximately 12:13 p.m. The next Commission meeting will be Tuesday, December 6, 2022.

Jamie L. Green, Commissioner

Jamie Hogge, Recording Secretary