

## MINUTES

## COMMISSION MEETING

September 28, 2021

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:

Steven G. Bowman	Commissioner
John Tankard III	
John Zydron Sr.	
Wayne France	
James E. Minor III	Associate Members
Chad Ballard	
Heather Lusk	
Christina Everett	
Chris Newsome	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Erik Barth	Bs. Systems Manager
Todd Sperling	Bs. Systems Manager
Pat Geer	Chief, Fisheries Mgmt.
Adam Kenyon	Deputy Chief, Fisheries Mgmt.
Shanna Madsen	Deputy Chief, Fisheries Mgmt.
Andrew Button	Head, Conservation and Replenishment
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Nancy McElligott	Fisheries Mgmt. Specialist
Jonathan Depaz	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Matt Rogers	Chief, Law Enforcement
Jamie Green	Deputy Chief, Law Enforcement
Chris Miller	Captain, Law Enforcement
Herbert Bell	Captain, Law Enforcement

**Commission Meeting**

**18846  
September 28, 2021**

Brandon Sterling  
Stephan Bennis  
Bill Hall  
Mark Hill

Captain, Law Enforcement  
Lt., Law Enforcement  
Marine Police Officer  
Marine Police Officer

Randy Owen  
Justin Worrell  
Mike Johnson  
Mark Eversole  
Jeff Madden  
Ben Nettleton  
Tiffany Birge  
Daniel Faggert  
Ben Stagg

Chief, Habitat Management  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Surveyor, Engineering/Surveying  
Dir., Shellfish Aquaculture, Leasing  
and Mapping

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Emily Hein

Mark Luckenbach

Others present:

Tom Lilly  
Walter Priest  
Jim Schrote  
Terry O'Neill  
Warner Rhodes  
Marty Gary  
Hannah Sabo  
Elliott Curzon  
Ian Taliaferro

Loleta Bass  
Gary Vine  
Maurice Etienne  
Angela King  
Deborah Rhodes  
Hank Ayes  
Hannigan Garek  
Pamela D'Angelo  
and others.

Earl Bass  
Bryan Peeples  
Carole Garrison  
Ida Hall  
Rachel Rhodes  
Myles Cockrell  
Kim Huskey  
Daniel Lakersha

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Commissioner Bowman called the meeting to order at approximately 9:37 a.m.

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Associate member Zydron led the pledge by the request of Commissioner Bowman. Associate Member Tankard said the invocation.

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

Randy Owen, Chief, Habitat Management, requested that Agenda Item 7 & 8 be removed from the agenda 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, 8-0-1. Chair voted yes. Associate Member France abstained.**

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**MINUTES:** Commissioner Bowman asked if there were any changes or corrections to be made to the August 24, 2021 Commission meeting minutes.

**Associate Member Zydron moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 6-0-3. Chair voted yes. Associate Members France, Ballard and Lusk abstained.**

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Col. Matt Rogers was asked to come forward to recognize retired Lt. Col. Rhodes. His comments are a part of the verbatim record.

Commissioner Bowman acknowledged and congratulated Captain Chris Miller for his recent promotion as Captain of the Middle Area.

Commissioner Bowman asked Martin Gary, Executive Secretary of the Potomac River Fisheries Commission, to come forward to recognize the dedication to the Commonwealth of Virginia to Mr. Ken Neill for his service and dedication. His comments are a part of the verbatim record.

Commissioner Bowman requested that Pat Geer, Chief, Fisheries Department, to come forward to present Mr. Ken Neil with a Certificate of Distinguished Service to the Commonwealth of Virginia.

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Commissioner Bowman 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).

There were no **PAGE 2 AGENDA ITEMS.**

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- 3. **CONSENT AGENDA ITEMS.**

There were no **PAGE 3 CONSENT AGENDA ITEMS.**

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Randy Owen, Chief, Habitat Division requested to introduce two (2) new members of the Habitat staff, Lauren Pudvah and Claire Gorman. His comments are a part of the verbatim record.

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

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- 5. **CARL F. WESTPHAL and MARY SWIFT, #21-1396.** Commission review on appeal by the applicants of the Hampton Wetlands Board's August 24, 2021,

decision to deny an after-the-fact request to retain a riprap revetment and gravel kayak launch along 112 linear feet of shoreline at 12 Curle Road along a cove of the Hampton River.

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.

Mr. Nettleton explained that on August 24, 2021, the City of Hampton Wetlands Board voted 4-3 to deny a request by Carl F. Westphal and Mary Swift to retain 112 linear feet of rock riprap that was added overtop of existing concrete rubble, and retain a newly constructed gravel kayak ramp that also extended into non-vegetated wetlands. City staff concluded that the unauthorized riprap covered an additional 125 square feet of non-vegetated wetlands, and the kayak ramp encroached an additional two feet, covering an additional 16 square feet of non-vegetated wetlands, totaling 141 square feet of wetlands impacts for the project. All work occurred landward of mean low water and within the Board's jurisdiction. It is believed the unauthorized work was completed in early May 2021. At the July 27, 2021 Wetlands Board show cause hearing the Board assessed civil charges against the applicants and contractor, Mr. Keith Kanaday, in the amount of \$100.00 and \$2,000.00, respectively. The Board then decided to allow the applicant to submit an after-the-fact application to be heard at their August 24, 2021, scheduled meeting.

At the August 24, 2021 hearing, the Board received a staff briefing, including photographic slides of the property, aerial imagery, copies of the application drawings and a summary of current VMRC tidal wetlands guidelines. In addition, staff presented the results of the Virginia Institute of Marine Science (VIMS) Center for Coastal Resources Management's (CCRM) shoreline management model for the project location, which suggested that removing the existing revetment and installing a natural shoreline would be appropriate. Additionally, the Board received and read into the record written comments from VIMS' Office of Advisory Services, who previously visited the site with VMRC and City staff. VIMS commented that a living shoreline could achieve the project goals at the site, specifically by constructing a sill close to mean low water and transitioning it to the neighboring riprap on both adjacent properties. VIMS advised this would involve grading less than 35 feet into the upland yard. This report considered the site conditions of short fetch, shallow nearshore bathymetry, a large distance to upland structures, minimal boat wakes and small storm waves.

During the public hearing, the Board heard comments from the applicant's attorney, Mr. Bryan Peeples, and the applicant's agent, Walter Priest, that a living shoreline would not be appropriate for the site and be prohibitively expensive to the homeowners. The applicant's attorney provided a cost estimate, prepared by Jim Cahoon of Bay Environmental, Inc., which stated a living shoreline approach would cost approximately \$70,000.00. The Board also heard from an adjacent property owner, Mr. Peter McHugh at 16 Curle Road. Mr. McHugh stated that regardless of permitting, the project is aesthetically better and if the rip rap was removed he felt that his revetment would be vulnerable to loss and cause a problem for his property.

Section 28.2-1313 of the Code of Virginia states that the Commission shall modify, remand or reverse the Board's decision if the Board in reaching its decision failed to fulfill its responsibilities under the wetlands zoning ordinance; or the substantial rights of the applicant have been prejudiced because the findings, conclusions, or decisions of the Board are in violation of constitutional provisions, in excess of statutory authority or jurisdiction of the Board, made upon unlawful procedure, affected by other error of law, unsupported by the evidence on the record considered as a whole, or arbitrary, capricious, or an abuse of discretion.

Based on our attendance at the hearing and our review of the record, staff cannot find that the Board erred procedurally in their review of this matter, nor that the substantial rights of the appellants have been prejudiced by their decision. The Board conducted a thorough review of the project and carefully considered all testimony during the public hearing, the recommendations by the CCRM model, and comments by the VIMS Office of Advisory Services in making their decision.

As such, staff recommends that the August 24, 2021, decision of the Hampton Wetlands Board be upheld.

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

Mr. Peeples stated that the applicants relied on the contractor to obtain the proper permit for the project.

Walter Priest was present and sworn in. His comments are a part of the verbatim record.

Mary Swift, applicant, was sworn in previously. Her comments are a part of the verbatim record.

Angela King, Hampton Wetlands Board was present. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Everett made a motion to approve staff recommendation to uphold the Hampton Wetlands Board and deny the after-the-fact permit. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.**

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- 6. NANSEMOND INDIAN TRIBAL ASSOCIATION, #21-0947,** requests authorization to install an 8-foot by 20-foot floating dock with an access ramp at Mattanock Town (1001 Pembroke Lane), situated along Cedar Creek in the City of Suffolk. The proposal is protested by an adjoining property owner.

Justin Worrell, Deputy Chief, Habitat Division, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Worrell's comments are a part of the verbatim record.

Mr. Worrell explained that the Nansemond Indian Tribal Association submitted an application to install a floating dock, which will be constructed and installed as an Eagle Scout project associated with a local Scouting Troop. The proposal is located directly adjacent to the Tribal Association's riparian property, situated along Cedar Creek, a tidal tributary to the Nansemond River. The creek is approximately 70 feet wide and three to four feet deep (mean low water) at the proposed dock's location.

The property is gated, and the public does not have direct access without the Tribal Association's permission. The Tribal Association allows scouting events on the site at various times of the year. The proposed dock would serve the Tribal Association and scouting troops when allowed access to the property during the year. Recently scouts helped to remove several derelict timber piles along the shoreline in the vicinity of the proposal.

Given that the proposal is not a private residential project and in accordance with §28.2-

1204 of the Code of Virginia, a Commission subaqueous permit is required.

The proposed floating dock appears to be a reasonable request as it is located directly adjacent to the applicant’s riparian property and offers a minimum footprint within Cedar Creek. Staff does not share the concerns of the protestant, and expects that the Nansemond Indian Tribal Association and the Boy Scouts will use the dock appropriately and be good stewards of the immediate creek and shoreline. Had the dock proposal not been protested by the neighboring property, staff would have administratively issued a permit to the applicant. Furthermore, if the applicant was a private residential property owner, and given the minimum size of the proposed dock, the proposal would have been deemed statutorily authorized and no Commission permit would have been necessary. Therefore, after evaluating the merits of 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 submitted.

Chief Earl Bass, Chief of Nansemond Indian Tribal Association was present and spoke. His comments are a part of the verbatim record.

Maurice Etiemble, Assistant Scout Master for the Boy Scouts, was present and sworn in. His comments are a part of the verbatim record.

No one was present to speak in opposition of the application.

The matter was before the Commission for discussion and action.

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

Fees:	\$ 100.00
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**Item #7 was removed from the agenda by the request of Randy Owen, Chief, Habitat Management.**

- 7. ANDREW MYLES COCKRELL and ANDREW DANDRIDGE COCKRELL, Oyster Planting Ground Application #2014-282, request**



authorization to lease approximately two (2) acres within the Little Wicomico River in Northumberland County. The request is protested a number of local residents and nearby property owners.

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**Item #8 was removed from the agenda by the request of Randy Owen, Chief, Habitat Management.**

**8. ANDREW MYLES COCKRELL and ANDREW DANDRIDGE COCKRELL, Oyster Planting Ground Application #2014-287,** request authorization to lease approximately 0.50 acre within the Little Wicomico River in Northumberland County. The request is protested an adjacent leaseholder.

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**9. ANDREW MYLES COCKRELL and ANDREW DANDRIDGE COCKRELL, Oyster Planting Ground Application #2016-044,** request authorization to lease approximately one (1) acre within the Little Wicomico River in Northumberland County. The request is protested a local resident, a former adjacent leaseholder, and two adjacent leaseholders.

Ben Stagg, Dir., Shellfish Aquaculture, Leasing and Mapping, 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 the application on February 22, 2016, from Andrew Myles Cockrell and Andrew Dandridge Cockrell, seeking to lease approximately one (1) acre within the Little Wicomico River in Northumberland County. The request was subjected to our normal public interest review, and the area was surveyed on February 19, 2019. The request surrounds Bamboo Island, ownership of which is claimed by a local resident. The island has been eroding away in recent years due to wind and water action and sea level rise; however, a small area remains above mean low water. Previous lease applications in this area were surveyed using staff’s normal practice of establishing the lease line slightly channelward of the mean low water line to ensure that all such leases were subtidal and on State-owned bottomlands. However, over time erosion can change shorelines, and upland property

ownership always ends at mean low water as such erosion occurs. In this instance, such erosion resulted in a small area between the existing leases near the island and the mean low water line. The applicants are requesting to lease this small area.

In light of the opposition from nearby residents, concerns from the owner of Bamboo Island, and the possible adverse impacts to existing leased bottoms, staff cannot recommend approval of the application.

Therefore, after careful review and consideration all of the objections received, and after considering all of the factors in §28.2.625 and §28.2-1205A of the Code of Virginia, staff recommends denial of application #2016-044 to Andrew Myles Cockrell and Andrew Dandridge Cockrell within the Little Wicomico River in Northumberland County.

Andrew Myles Cockrell and Richard Harding both were present and sworn in. Their comments are a part of the verbatim record. Mr. Harding was amenable to the modified lease.

Jim Schrote was sworn in and spoke in opposition of the application. His 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 Minor seconded the motion. The motion carried, 8-0. Chair voted yes. Associate Member Everett was not present during the final vote.**

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**10. PUBLIC COMMENTS.**

**Ida Hall** spoke with concerns of the online mandatory reporting regulations. Her comments are a part of the verbatim record. She was concerned about the ability to report on line without reliable internet. Not opposed to online reporting but it's a time issue. Staff offered assistance from members of staff to assist Ms. Hall to complete her required online reporting.

Pat Geer, Chief, Fisheries Management and Adam Kenyon, Deputy Chief, Fisheries

Management was asked to speak about other ways to accommodate those that do not have internet access.

**Tom Lily** spoke with concerns about menhaden.

**Jim Schrote** spoke with concerns about not being notified about new applications for private piers, oyster grounds, etc. Randy Owen and Ben Staggs provided further information on the notification process.

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- 11. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass" to modify the Virginia percent allocation of the coast-wide commercial black sea bass quota.

Shana Madsen, Deputy Chief, Fisheries Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Madsen's comments are a part of the verbatim record.

Ms. Madsen explained that the Mid-Atlantic Fishery Management Council (MAFMC) and Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board met jointly on August 9, 2021, to specify the coastwide commercial quotas for summer flounder, scup and black sea bass. Fishery specifications were established for 2022 through 2023 by the MAFMC but NOAA's final rule has not yet been published to the Federal Register. The coastwide commercial black sea bass quota for 2022 increased from 2021 by 6% to 6.47 million pounds. Under a new coastwide black sea bass quota allocation scheme going into effect January 1, 2022, Virginia will receive 15.88% of the coastwide quota.

Staff recommends the Commission amend Chapter 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass," to modify the Virginia percent allocation of the coastwide commercial black sea bass quota.

The matter was before the Commission for discussion and action.

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

**Commission Meeting**

**18856  
September 28, 2021**

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There being no further business, the meeting was adjourned at approximately 12:45 p.m.  
The next Commission meeting will be Tuesday, October 26, 2021.

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Steven G. Bowman, Commissioner

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Jamie Hogge, Recording Secretary