

MINUTES

COMMISSION MEETING

July 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:

Jamie L. Green	Commissioner
Lynn Kellum	
William Bransom	
John Tankard III	
James E. Minor III	Associate Members
Heather Lusk	
Jeremy Headley	
A.J. Erskine	
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.
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Joshua McGilly	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Matt Rogers	Chief, Law Enforcement
Taylor Ovide	Marine Police Officer
Malcolm Custalow	Marine Police Officer
Randy Owen	Chief, Habitat Management
Justin Worrell	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.

Commission Meeting

Jay Woodward	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Ben Nettleton	Environmental Engineer, Sr.
Lauren Chartrand	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	Emily Hein
--------------	------------

Others present:

Myles Cockrell	John Shackelford	Wayne Corey
Susan Campagnola	Steve Anderson	Cameron Bruce
Bruce McLaughlin	Bay McLaughlin	Chris Frye
Hunter Wines	Tolar Nolley	Pete Terry
David O'Brien	William Karwatt Jr.	Andy Lacatell
Wayne Corey	Thomas James III	Mike Oesterling
Kenneth Terry	Kim Husky	Michael Trautman
Chris Moore	Doug Herghberger	John Bishop
Claudette Lajoie	and others.	

* * * * *

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

* * * * *

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

* * * * *

Commissioner Green introduced the new Commission Members AJ Erskine and Ms. Kellum with a brief background of each new member. His comments are a part of the verbatim record.

* * * * *

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

Associate Member Minor moved to approve the agenda as presented. Associate Member Bransom seconded the motion. The motion carried, 7-0.

* * * * *

MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the June 28, 2022 Commission Meeting minutes.

Associate Member Tankard moved to approve the minutes as presented. Associate Member Minor seconded the motion. The motion carried, 5-0-1. Member Erskine abstained.

* * * * *

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

* * * * *

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. DEPARTMENT OF CONSERVATION AND RECREATION, #22-0687, requests authorization to dredge approximately 2,600 cubic yards of bottom material, remove three existing wooden piers, piles, and wave screens, and construct two (2) 150-foot long wooden tending piers with wave screens and one (1) 6-foot wide by 30-foot long fixed pier with a 6-foot by 30-foot gangway and a 6-foot by 42-foot floating dock to facilitate the repair and replacement of a public boat ramp at York River State Park Croaker Landing Boat Ramp (1945 Croaker Landing Road) along the York River in James City County. Dredged

material will be placed in an approved upland site.

Fees:	\$ 600.00
-------	-----------

- 2B. LOUDOUN WATER, #22-0467,** requests authorization to install a 30-inch steel-cased sanitary sewer force main across a 50-foot section of Sycolin Creek a minimum of four (4) feet beneath the substrate using a cofferdam and the open-trench method, adjacent to Cochran Mill Road in Loudoun County.

Fees:	\$ 600.00
-------	-----------

- 2C. CHESTERFIELD COUNTY TRANSPORTATION DEPARTMENT, #21-2056,** requests authorization to install a temporary causeway for construction access and realign approximately 174 linear feet of Blackman Creek to facilitate the construction of a 143-foot long two-span bridge that will replace the existing clear-span bridge across a 24 linear foot section of Blackman Creek along Otterdale Road in Chesterfield County. Staff recommends approval with the standard in-stream conditions

Fees:	\$ 600.00
-------	-----------

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 through 2C as presented. Associate Member Headley seconded the motion. The motion carried 7-0.

* * * * *

3. CONSENT AGENDA ITEMS.

Randy Owen, Chief, Habitat Management, reviewed the Page 3 Item for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

Commission Meeting

3A. EASTERN BRANCH HOLDINGS, LLC, #22-0428, requests after-the-fact authorization to retain a 16-foot wide by 263 linear foot floating pier with a gangway ramp and an 18-foot by 42-foot concrete abutment on the shoreline at property (602 Ford Drive) adjacent to the Eastern Branch of the Elizabeth River in the City of Norfolk. The applicant has agreed to pay a \$3,000.00 civil charge and a tripled royalty of \$25,248.00 in lieu of further enforcement action.

Michael Trautman, applicant, was sworn in and spoke. 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 3 Item as presented. Associate Member Minor seconded the motion. The motion carried 7-0.

Royalties: (Encroach 4,208 S.F. @ \$2.00 S.F. tripled)	\$ 25,248.00
Fees:	\$ 1,800.00
Civil Charge:	\$ 3,000.00
Total Fees:	\$ 30,048.00

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

5. LITTLE WICOMICO OYSTER COMPANY, LLC, #21-2442, Requests authorization to install floating oyster bag enclosures at three (3) locations within the Little Wicomico River near Hansons Cove in Northumberland County, with the footprint of oyster planting ground lease #21701. Site one will encompass a 108,866 square foot area with 20 horizontal lines with 130 bags per line; site two will encompass a 132,396 square foot area with 30 horizontal lines with 200 floats per line; site three will encompass a 171,355 square foot area with 35

horizontal lines with 160 bags per line. The total area being requested is 412,637 square feet (9.47 acres). The request is protested by a number of nearby residents and property owners.

Ben Stagg, Chief, Shellfish Management Division, provided an update on the transfer application. His comments are a part of the verbatim record.

Mr. Stagg explained that staff received a Joint Permit Application from Little Wicomico Oyster Company, LLC, on November 27, 2021, requesting to install floating oyster bag enclosures at three (3) locations within the Little Wicomico River near Hansons Cove in Northumberland County, with the footprint of oyster planting ground lease #21701.

The request has been subjected to our normal public interest review to include a newspaper public notice and notification of nearby leaseholders and highland property owners. Staff has receive a number of objections to the proposal from highland property owners in the area. Those in opposition provided concerns about potential adverse impacts to navigation, potential limited water access to their highland properties, other uses of the waterway for recreational and fishing purposes, view shed concerns, and possible adverse impacts to property values. Additionally, a local resident provided additional information that upper portions of Hansons Cove appear to contain some dense beds of Horned Pondweed (*Z. palustris*). VMRC staff requested VIMS provide comments as the VIMS annual SAV mapping data does not indicate any SAV beds in this area. Those comments have been provided. It does not appear that any of the proposed requested areas will impact the current beds.

Staff considers each Joint Permit Application request on a case-by-case basis, considering the requirements of the Code of Virginia. The use of cages, floats 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 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 permit requests.

Review of aquaculture apparatus within the water column and/or on the water surface presents additional challenges beyond previous methods of shellfish cultivation within

the Commonwealth. With the increased interest in using both the water column and surface waters for shellfish propagation, in addition to bottom culture methods, new user conflicts have arisen.

After careful review and consideration of the objections raised by nearby and adjacent property owners, past actions by the applicant, the public trust doctrine, and after considering all of the factors of §28.2-1205A of the Code of Virginia, staff recommends denial of the entire request. If the Commission deems approval of any of the project is warranted, staff has a secondary recommendation of approval of site 2 as proposed and for sites 1 and 3 staff recommends a smaller footprint reducing the channelward encroachment to the dimensions provided in the staff powerpoint presentation. Staff further recommends a permit condition that should any adjoining highland property be developed or the owner wish to construct a pier from such lands, that the permittee agrees to remove any floating apparatus to fully accommodate such construction. Staff recommends a permit condition that only seed oysters be grown in any permitted area unless the water classification is changed to open, non-restricted classification and that no market sized oysters be relayed from any permitted area while the waters remain in restricted classification by the Department of Health. Finally, staff recommends a permit condition that each area be properly marked to warn the boating public of the enclosures and the applicant post an appropriate bond or letter of credit/surety as determined by the agency based on the final number of enclosures within any approved area. The royalty for any approved area shall be assessed at the rate of \$0.005 per square foot of the permitted area. Based on the application which requests a total area of 412,617 square feet (9.47 acres), the proposed annual royalty will be \$2,063.09. Based on staff's secondary recommended modified area, the total area will be 348,471 square feet (8.00 acres) and the annual royalty will be \$1742.36. Additionally, an appropriate bond is to be provided before any permit issuance is granted and such bond must remain active for the entire life of any issued permit.

Claudette Lajoie, agent for the applicant was present. Her comments are a part of the verbatim record.

Miles Cockrell, applicant, was present, sworn in and spoke on behalf of the request. His comments are a part of the verbatim record.

Mr. Cockrell requested that lease application be deferred until a later meeting.

The matter was before the Commission for discussion and action.

There was no motion by the Commission to defer the request.

Mr. Cockrell requested that the application be withdrawn. He was advised by staff and understood that he would have to resubmit a new application if he decides to apply for a similar permit in the future.

* * * * *

- 6. SUSAN KELLAM AND NEW INLET, INC., TO NEW INLET, INC., #2022-545**, requests authorization to transfer 161.34 acres of oyster planting grounds within the Gulf in Northampton County. The transfer is protested by a local waterman, Mr. Thomas H. James III.

Ben Stagg, Chief, Shellfish Management Division, provided an update on the transfer application. His comments are a part of the verbatim record.

Associate Member Lusk has recused herself from the transfer request.

Mr. Stagg explained that staff received an oyster ground lease transfer request from Susan Kellam and New Inlet, Inc. to New Inlet, Inc., on May 5, 2022. As required by the Code of Virginia notification of the request was sent to adjacent leaseholders and nearby highland property owners. Staff received a letter from Hungars Seafood, Inc. (signed by Mr. Thomas H. James, III) dated received May 26, 2022 in objection to the transfer.

Staff recommended, after careful review and consideration of the objections raised by Mr. James, and after considering all of the factors of §28.2-603, §28.2-625 and §28.2-1205A of the Code of Virginia, approval of the lease transfer request in its entirety, containing 161.34 acres.

Thomas James III was sworn in and spoke opposition of the lease transfer. His comments are a part of the verbatim record.

Kenneth Terry, owner of New Inlet, INC., was sworn in and spoke. 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 Headley seconded the motion. The motion carried, 6-0. Associate Member Lusk recused herself.

* * * * *

7. PUBLIC COMMENTS:

William Karwatt Jr.:

Mr. Karwatt expressed his concerns with the impact of Menhaden fishing in the Chesapeake Bay. He stated that the lack of fish is due to the menhaden boats. His comments are a part of the verbatim record.

* * * * *

8. RECOMMENDATION: Funding request from the Marine Fishing Improvement Fund.

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 the Marine Fishing Improvement Fund (MFIF) consists of fees collected from the sale of commercial fishing licenses, and may be administered by the Commission for several uses, including the management and improvement of marine fisheries and education of commercial fishermen. Virginia Commonwealth University has submitted an application to provide support for ocean-based commercial fisheries coordination, focusing especially on the planned Virginia offshore energy efforts. There are sufficient funds to support this project.

In the Atlantic, an increase in shipping vessel traffic, multiple renewable energy projects, proposed increases in mineral mining, and changes to fishing regulations will have an effect on available fishing areas. Additionally, as construction begins in 2024 on the Coastal Virginia Offshore Wind (CVOW) commercial lease, new BOEM Call Areas are being refined to identify additional Off Shore Wind (OSW) areas permitting that overlap with historic fisheries important to VA. These issues, in addition to the development, of Virginia’s Ocean Plan, have been creating a burden on existing agency staff capacity.

Commission Meeting

**18996
July 26, 2022**

Virginia Commonwealth University will provide an Environmental Scientist/Program Manager to serve as the Virginia Ocean-based Commercial Fisheries Coordinator (CF) for the VMRC to ensure that communication between the fishing and wind industries is clear and effective. The Commercial Fisheries Coordinator will support the VMRC and provide additional capacity to the Agency as it relates to offshore wind development and other changes in ocean use. This includes attending regional meetings with state fisheries managers, federal partners, and commercial sector fishing industry representatives, companies and small vessel operators. The intent is to ensure that the interests of the Commonwealth are informed by the commercial fishing industry and that they are actively involved in public processes associated with changes in ocean use.

Staff recommends funding this project totaling \$48,948 from the Marine Fishing Improvement Fund (MFIF).

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, 7-0.

* * * * *

There being no further business, the meeting was adjourned at approximately 11:18 a.m. The next Commission meeting will be Tuesday, August 23, 2022.

Jamie L. Green, Commissioner

Jamie Hogge, Recording Secretary