

## MINUTES

## COMMISSION MEETING

August 23, 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	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.
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
John Poch	Marine Police Officer
Ken Davenport	Marine Police Officer
Brian Elliott	Marine Police Officer
Cory Brinkley	Marine Police Officer
Wayne Freeman	Marine Police Officer
James Vollmer	Marine Police Officer
Trevor Wessells	Marine Police Officer

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Justin Worrell	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
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	Mark Luchenbach
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Others present:

Bill DeSteph	Kim Huskey	Bruce McLaughlin
Linda McLaughlin	Sean Gavin	Jacob Kitchen
Bert Reese	Katherine Freeman	Jim Vollmer
Deb Vollmer	Taylor Deihl	Monty Deihl
Suzanne Cooper	Ros Willis	Bay McLaughlin
John Salm	Craig McLaughlin	Kaitlyn Ray
Kristi Elliott	Fred Ward	Will Ward
Anne Brinkley	Tricia Bryan	Linda Morgan
Shannon Wessels	Todd Wessels	Stephanie Davenport
Steve Gick	Debi Gick	Betsy Card
Grace Pho	Rona Marsh	Rick Bayles
Carly Charmack	Joey Charmack	Matt Redford
Ashley West	Andrew Reid	Blair Durham
Patrick Hylton	Ann Carr	Donna Magoon
Bob Magoon	Beverly Ludford	Chris Ludford
Ken Davenport	Jerry Hughes	Lexy McCarty
John Aspinwall	Brent James	Mark Smith
Jon Malbon	Anne Ferrell Tata	George Kotaridies
Charles Phillips	Larry Torrence	David Anderson
John Korte	George Korte	Sydney Crafton
Gwynn Trinder	Erin Hawkins	Gina Lane
Josh Lane	Nevin Carr	Ben Speckhart

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Joseph Scott	Pam Shrake	John Andrews
Kathy Owens	Robert Crockett	Ronald Smith
Skip Webb	Millie Jones	Gregory Puzey
Ed Szilagyi	Kathy Szilagyi	Sarah Borsetti
Stephen Ballard	Chris Murphy	David O'Brien
Mike Cox	Denise Apple	Susie Gatling
David Gatling	Marie Old	Russ Perkinson
Debbie Campbell	Christi Medice	Jill Mayo
Louann Harr	J. C. Hudgins	Cory Rice
Annie Pelphrey	Kevin Pelphrey	Chris Taylor
and others.		

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

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

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

**Associate Member Tankard moved to approve the agenda as presented. Associate Member seconded Headley the motion. The motion carried, 6-0.**

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**MINUTES:** Commissioner Green asked if there were any changes or corrections to be made to the July 26, 2022 Commission Meeting minutes.

Associate Member Erskine noted that his abstention at the July 26, 2022 Commission Meeting was intended for the Commission's July 26, 2022 minutes instead of the abstention of the agenda.

**Associate Member Tankard moved to approve the minutes as amended. Associate Member Bransom seconded the motion. The motion carried, 6-0.**

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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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Col. Rogers presented Marine Police Officers Poch, Davenport, Elliott, Brinkley, Freeman & Vollmer with the Life Saving Award. MPO Trevor Wessells was presented with a Medal of Valor. Col. Rogers' comments are a part of the verbatim record.

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

Justin Worrell, Deputy Chief, Habitat Management, reviewed the Page 2 Items 2A and 2B for the Associate Members. Mr. Worrell's comments are a part of the verbatim record.

- 2A. **CITY OF LYNCHBURG, #22-0683**, requests authorization to remove the College Lake Dam and to remediate Blackwater Creek by modifying approximately 8,000 linear feet of its channel using natural stream restoration techniques to include relocation of the channel bed, constructing 30 boulder cross vanes, 993 linear feet of toe wood structures, 8,319 square yards of brush mattress, 4,104 square yards of BioD Block, install 12,487 cubic yards of constructed riffle bed material, and 1,960 cubic yards of reinforced riffle cascade bed near Lakeside Drive in the City of Lynchburg. Staff recommends approval of the project with our standard instream permit conditions.

Fees:	\$ 600.00
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- 2B. **GLEBE HARBOR-CABIN POINT SANITARY DISTRICT, #21-2212**, requests authorization to install nine (9) stone breakwaters to create approximately 1,904 linear feet of a gapped breakwater backfilled with 10,520

cubic yards of clean sand fill. The breakwaters will have a maximum crest height of four (4) feet above mean high water and a maximum base width of 33 feet aligned at the terminus of the existing timber groins. Additional work includes the placement of 66 linear feet of riprap and a 91-foot long riprap jetty extension at their property situated along Lower Machodoc Creek in Westmoreland County. Staff recommends approval of the project with a permit condition requiring that the beach nourishment be comprised of at least 90% clean sand.

Fees:	\$ 300.00
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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 Tankard moved to approve the page 2 Items 2A and 2B as presented. Associate Member Erskine seconded the motion. The motion carried 6-0.**

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

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

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**5. DAVID SULLIVAN and WANDA WACHTER, #22-0653, request authorization to install two (2) 48-foot low profile tapered armor stone replacement groins with a maximum base width of 14 feet, extending 48 feet from mean high water adjacent to property situated along the Potomac River at 493 and 503 Judith Sound Road in Northumberland County. The project is protested by an adjacent property owner.**

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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.

Joseph Scott, applicant, was sworn in and spoke on behalf of the application. 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 made a motion to approve staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 6-0.**

Fees:	\$ 300.00
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- 6. **LYNNHAVEN OYSTER COMPANY, LLC, #20-1974**, requests authorization to install up to 2,100 floating cage aquaculture modules within the boundaries of oyster planting ground lease #19155 within Broad Bay, near Seashore State Park in the City of Virginia Beach. The request is protested by a number of local residents and property owners.

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

Mr. Stagg explained that staff received a Joint Permit Application from Lynnhaven Oyster Co, LLC, on November 1, 2020.

The request was subjected to our normal public interest review to include a newspaper public notice and notification of nearby leaseholders and highland property owners. Staff did not immediately receive any objections. The City of Virginia Beach has a waterfront improvement authorization process for certain requests along or within the nearshore area. Staff contacted the city to determine the status of this request under that program review. VMRC does not normally move forward with permit approval until such time as the applicant has received such local approvals, if required. The City of Virginia

Beach indicated initially that they were reviewing the request. After staff again requested the status of the application in 2021, staff received a response from the Director of the Department of Planning & Community Development for the city in a letter dated July 16, 2021. In that letter, it was recommended that additional public outreach be conducted given the size and location of the proposed project. VMRC staff responded that the legal requirements of the Code of Virginia and VMRC notification policies had been followed. Staff further noted that the city could certainly notify more parties through their own authorization process if deemed necessary. The city did then send out such a notification to an expanded number of parties. This resulted in a number of protests to VMRC in the fall of 2021. The objections received included concerns about impacts to navigation, recreational uses of the area, viewshed, property values, and the concerns about the placement of a commercial operation within a residential area of Broad Bay. Eventually, in the spring of 2022 staff received information that the city would not be exerting any jurisdiction for the request, and noted their position regarding the request had been previously stated in the letter dated July 16, 2022 (received by VMRC on July 21, 2021). The request received some renewed public exposure when media reports concerning oyster reef construction within the Lynnhaven River system occurred. Such reporting resulted in the City's Bayfront Advisory Commission requesting VMRC staff to attend their July 21, 2022 meeting to brief the Commission on both the oyster reef issues and explain VMRC leasing and permitting regarding aquaculture, to include the pending float application. Since that meeting staff has received a number of additional protests, as well as, a number of letters of support for the request.

Staff provided the following recommendation: Therefore, after careful review and consideration of the objections raised by local residents, and other interests, comments concerning support of the request, consideration of the public trust doctrine, and after considering all of the factors of §28.2-1205A of the Code of Virginia, staff recommends approval of the request with the following recommendations and permit conditions.

1. A permit condition that any approved area be properly marked with signage to warn the boating public of the aquaculture activity and the enclosures. Additionally, the use of reflective tape marking on float area boundary markers and/or signs is encouraged.
2. A permit condition that 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 and that such bond must remain active for the entire life of any issued permit. For the 2,100 requested floating modules the

bond amount will be \$31,500 (2,100 modules X \$15 = \$31,500).

3. That a 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 995,000 square feet (21.69 acres), the proposed annual royalty will be \$4,725.00.
4. Staff recommends deleting cell # 1 and cell # 14 entirely and if approved that the applicant provide a revised drawing of the new alignment, with coordinates of the revised footprint and a revised square footage of impact.
5. If approved, and before final permit issuance, that the permittee shall provide, and receive staff approval of, a bird congregation mitigation plan regarding the floating gear.

David McLaughlin, applicant was present and sworn in. His comments are part of the verbatim record.

John Salm, agent for the applicant was present and sworn in. His comments are a part of the verbatim record

There were two (2) people that spoke in support of the project. Their comments are a part of the verbatim record. There were a number of additional persons present who were recognized as being in favor of the request.

There were 33 people present that spoke in opposition of the project with Senator William DeSteph speaking on behalf of the public trust. Their comments are a part of the verbatim record. There were some additional persons recognized in opposition that did not provide oral testimony.

The matter was before the Commission for discussion and action.

**Associate Member Erskine made a motion to modify the application to approve 600 floating cages and only approve modules #'s 5, 6, 7, & 8. Lusk seconded the motion. Associate Members Kellum, Bransom, Tankard and Headley voted no. Motion failed 2-4.**

**Associate Member Tankard made a motion to deny approval of the application. Associate Member Bransom seconded the motion. The motion carried, 4-2. Associate Members Lusk and Erskine voted no.**

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**7. PUBLIC COMMENTS:**

Several members of the public requested the Commission hold a public hearing and vote to ban menhaden reduction fishing inside Chesapeake Bay. Several members of the public spoke in opposition to menhaden reduction fishing. Mr. Monty Diehl of Omega Protein responded to public concerns about menhaden spills in Chesapeake Bay. Mr. Chris Ludford requested the return of the striped bass trophy fishery and said he would bring the issue up with the Finfish Management Advisory Committee.

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**8. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" to establish the 2022-2023 areas of public harvest, public oyster harvest seasons, and oyster resource conservation measures.

Andrew Button, Deputy Chief, Shellfish Management Division, presented the information provided in the staff's evaluation, with PowerPoint slides. Mr. Button's comments are a part of the verbatim record.

Mr. Button explained that there are a limited number of options to minimize any negative impact of the current level of harvest effort while maintaining the fishery at its current size. These options include: adjusting the start and duration of the harvest season; decreasing vessel or individual harvest bushel limits; changing to less efficient gear types such as patent and hand tongs; and subdividing the current harvest areas into additional rotation areas.

After consultation with SMAC the following are staff recommended changes for the 2022-2023 public oyster harvest season that also have the support of the Committee:

- A shortened harvest day ending at 11am for all gear types for the month of October.
- A harvest day that ends at 12 noon for all gear types except hand and hand tong for all months other than October.
- Extending the patent tong harvest season in some areas to be concurrent with other gear types and other harvest areas.

- The opening of additional areas to harvest by hand tong.

SMAC further advised that they were supportive of an additional month of harvest in areas open to hand scraping in the Lower James River. Staff has some concerns about extending seasons, but agrees with SMAC that an extension in the James River would spread fishing effort over additional areas for the proposed harvest season. The alternative is to shorten the harvest season in multiple areas and this is not likely to be supported by the Advisory Committee or many oyster harvesters and buyers.

Staff and SMAC agree that the changes made in recent years should continue this season as these measures have had the primary intended effect of preventing high levels of fishing effort from being focused on single harvest areas. These measures helped to mitigate both a safety concern about “overcrowding” expressed by many watermen, as well as negative impacts to the oyster resource. Staff and SMAC support the continuation of these changes for the 2022-2023 public harvest season as follows;

- A vessel limit of 28 bushels for vessels harvesting by hand or hand tong.
- Increase in the individual harvest limit for harvest by hand or hand tong from 12 to 14 bushels.
- Changing the gear type permitted for harvest in one area in the lower Rappahannock (Rappahannock River Rotation Area 1) from hand scrape to patent tong for the entirety of the season and removal from the current rotation cycle.
- Changing the gear type permitted in the York River from hand scrape to hand tong in the upper portion of the river.
- A shortened harvest day ending at 12 noon in hand scrape areas for the entire season, previously 2pm.
- A delay in the start of the hand scrape and patent tong season until the middle of October from October 1<sup>st</sup>.

The intent of these changes, along with the coordinated opening of harvest areas is to allow for the continued long-term expansion of the oyster resource and oyster fishery while providing short-term resource and fishery stability.

**The Proposed DRAFT 2022 – 2023 Public Oyster Harvest Season:**

**James River**

**Clean Cull:**

Oct. – HT\* (harvest ending at 11 am)

Nov., Dec., Jan., Feb., Mar., Apr. – HT

**Area 2, 3:**

Oct. – \*\*HS\* (2<sup>nd</sup>. half of the month with harvest ending at 11 am)

Nov., Dec. & Jan. – HS\* (harvest ending at noon)

Feb. - \*HS\*\* (1<sup>st</sup>. half of the month with harvest ending at noon)

**Area 1:**

Oct. – \*\*HS\* (2<sup>nd</sup>. half of the month with harvest ending at 11 am)

Nov., Dec. & Jan. – HS\* (harvest ending at noon)

Feb. - \*HS\*\* (1<sup>st</sup>. half of the month with harvest ending at noon)

**Seed Oysters:**

Oct., Nov., Dec., Jan., Feb., Mar., Apr. & May – HT

**York River**

**York HTA**

Oct., - HT (harvest ending at 11 am)

Nov., Dec., Jan., Feb. & March - HT

**York 2:**

Jan. & Feb. – HS\* (harvest ending at noon)

**York 1:**

Nov., Dec., Jan., Feb. & March - HT

**Milford Haven**

**Milford Haven:**

Nov., Dec., Jan., Feb. & March - HT

**Deep Rock:**

Nov., Dec., Jan., & Feb. – PT\* (harvest ends at noon)

March – \*PT\*\* (1<sup>st</sup>. half of the month with harvest ending at noon)

**Rappahannock River**

**Area 1:**

Oct. - \*\*PT\* (2<sup>nd</sup>. half of the month with harvest ending at 11 am)

Nov., Dec., Jan., & Feb. – PT\* (harvest ends at noon)

**Area 2:**

Dec. & Jan. – HS\* (harvest ends at noon)

**Area 4:**

Oct. - \*\*HS\* (2<sup>nd</sup>. half of the month with harvest ending at 11 am)

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Nov. & Feb. – HS (harvest ends at noon)

**Area 7:**

Dec. – HS\* (harvest ends at noon)

**Area 8:**

Jan. – HS\* (harvest ends at noon)

**Area 9:**

Oct. – HT\* (harvest ending at 11 am)

Nov., Dec., Jan., Feb. & March – HT

**Corrotoman HTA:**

Oct. – HT\* (harvest ending at 11 am)

Nov., Dec., Jan., Feb., & March – HT

**Great Wicomico****Great Wicomico 2:**

Dec. & Jan. – HS\* (harvest ends at noon)

**Blackberry Hangs**

Feb. – HS\* (harvest ends at noon)

**Little Wicomico****Little Wicomico:**

Oct. – HT\* (harvest ending at 11 am)

Nov. & Dec. – HT

**Nomini****Nomini:**

Oct. – HT\* (harvest ending at 11 am)

Nov., Dec. & Jan. – HT

**Potomac Tribs****Yeocomico & Coan:**

Oct. – HT\* (harvest ending at 11 am)

Nov. & Dec. – HT

**Tangier-Pocomoke****Poco Area 2 & Tangier Area 2:**

Dec., Jan. & Feb. – DR\* (harvest ending at noon)

**Poco. Sound 10:**

Nov. – HT (1<sup>st</sup> half of the month), HS\* (2<sup>nd</sup> half of the month with harvest ending at noon)

Feb. – HS\* (harvest ending at noon)

**Poco. Sound 9:**

Nov., Dec. & Jan. – HT

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Feb. – HS\* (harvest ending at noon)

**Seaside ES:**

Nov., Dec., Jan., Feb., & Mar. – HT/By Hand

The matter was before the Commission for discussion and action.

**Associate Member Headley made a motion to approve staff recommendation.  
Associate Member Lusk seconded the motion. The motion carried, 6-0.**

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There being no further business, the meeting was adjourned at approximately 3:14 p.m.  
The next Commission meeting will be Tuesday, September 27, 2022.

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Jamie L. Green, Commissioner

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Jamie Hogge, Recording Secretary