

## MINUTES

## COMMISSION MEETING

December 6, 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
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.
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Herbert Bell	Deputy Chief, Law Enforcement
Chris Miller	Captain, Law Enforcement
Rob Berryman	Captain, Law Enforcement
Brandon Sterling	Captain, Law Enforcement
Ron Cagle	Captain, Law Enforcement
Matt Dize	Lt, Law Enforcement
Jeff Copperthite	Sgt, Law Enforcement
Randy Owen	Chief, Habitat Management
Justin Worrell	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.

**Commission Meeting**

**19038  
December 6, 2022**

Mark Eversole  
Mike Johnson  
Ben Nettleton  
Ben Stagg  
Andrew Button

Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Chief, Shellfish Management  
Deputy Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell

Mark Luchenbach

Others present:

Chrisi Medice  
Alexander Po  
Glenn Lewis  
Dave Bardel  
Jeff Hall  
Travis Rice  
Jim Rogers  
Taylor Deihl  
Chad Dameron  
Keith Smith  
Omar Aleman  
Craig Freeman  
Phillip Haynie  
Russ Ferguson  
Bryce Packett  
Nick Sterrett  
Joel Deihl  
Dwayne Corsy  
James Baker  
James Crandall  
Bob Mandigo  
Allen Hudson  
Dan Knott  
Tim Powell  
Aaron Taylor  
Darawn Kenner

James Chirico  
James Jones  
David Hornbeck  
Dave Griffith  
Jacob Hiles  
Steve Horton  
Patty Zalesak  
Alan Hinson  
Edward Lee  
Terry Ramsey  
Allen Davis  
Susan Gaston  
Kirk Brown  
Carl Rice  
Julio Silva  
Ross Kellum  
Wynesha Tate  
Forrest Brann  
Lewis Harrison  
Tim Crandall  
Louis Hocker  
Ronnie Bray  
Laverne Wrenn  
Austin Robbins  
Garrett Fisher  
Irvin Sanford

Paul Ludwig  
Roger O'Bier  
Phil Zalesak  
R. D. Hudnall  
William Blackwell  
Shawn Fary  
John McDaniel  
Monty Deihl  
Leo Robbins  
Trevor Deihl  
Mike Bray  
Kayla Mock  
Brian Collins  
Charles Williams  
Timothy Pittman  
Hannah Long  
Brandon Tate  
William Bingham  
Jimmy Kellum  
Keenan Samuel  
Robert Oder  
Zach Kues  
James Eisenhowe  
Kim Huskey  
John Deihl  
Keith Mason

## Commission Meeting

19039  
December 6, 2022

Chris Malgee	Kadeem Jones	Carroll Noel
Rob Latoock	Grant Hasty	J. C. Hudgins
Guy Keller	Ryan Fisher	Nick Cockrell
Joe Durvin	Troy Durvin	Colin Hunt
Jeff Sandford	John Matson	Paul Ewing
Timothy Barbery	Jason Long	Curtis Haynes
Jay Ford	Sara Gaskins	Robert McLaughlin
Ed Capobianco	Kelsey English	Andrew Reid
Thomas Powell	Joanne Maynard	Melissa Thrift
Thomas Moore	Johnny Gaskins	Donald Edwards
Jerry Hughes	Robert Wells	Andy Hall
Forrest Dameron	Jerry Morris Sr.	Jerry Morris Jr.
Mike Muller	Gary Kelley	Michael Thomas
Clyde Coins	Bill McKeen	Bonnie Sanders
Kelly Moose	Charles Forhes	Al Leckel
Charles Paullin	Everett Eaton	David Bromley
Fredrick Rogers	Clyde Randolph	Tom Lilly
Don Sanford	Ray Foster	Patrick Link
Robert Noel	Jonathan Somers	Paris Jackson
Lacie Gaskins	Jake Hayes	Christi Medice
Thomas Ward	Matthew Lee	David Haynie
John Horstman	Stefanie Wainwright	Zachary Creech
Patrice Noel	Danny Balderson	Xavier Hudnall
Steve Anderson	Mary Hood	Lori Durso
Richard Keatley	Kendall Osborne	Chris Siess
Mike Waine	LaVern Phillips	Jaclyn Higgins
Kim Humphries	Tyler Jones	Sam Sellard
Jean Sellard	Robert Meyers	Dan Bell
Gordon Buchanan	Mark Dickinson	Mike Oesterling
William Pappas	Chris Penik	Jason Jones
Robert Gardner	Michael Crockett	Frank Joyce
Samual Somers	Roger O'Bier	Nicole Sullivan
John Satterly	Pete McClintock	Tyler Rowe
Tony Owens	Sam Ashbee	George Felton
Kadeem Jones	Shaquille Towles	Robert Davis
Charles Carter	Boston Underwood	Monica Schenemann
Rob Hudnall	Deshaun Brown	Reid William
Chris Dollar	Warren Stewart	David Walden

**Commission Meeting**

**19040  
December 6, 2022**

Clay Dameron            Emma Dameron            Gracey Dameron  
Brandan Cockrell       Christopher Powell       Jeffery Vanlandingham  
J. M. Sammon           Larry Landers            Devin Brunt  
Al Leckel                and others.

\* \* \* \* \*

Commissioner Green called the meeting to order at approximately 9:29 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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**APPROVAL OF AGENDA.** – Commissioner Jamie Green asked if there were any changes from the Board members or staff.

Pat Geer asked to amend the current agenda to present Agenda Item #5 before the Page 2 Agenda Items.

**Associate Member France moved to approve the agenda as amended. Associate Member Bransom 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 October 25, 2022, Commission Meeting minutes.

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

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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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Travis Voyles, Acting Secretary of Natural Resources, commented on the importance of the Atlantic Menhaden by the Governors administration. His 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).

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. **SHIRLEY CRUMLEY, #22-1597**, requests authorization to impact 900 square feet of non-vegetated tidal wetlands for the construction of a 150 linear foot riprap revetment adjacent to 598 Grass Creek Trail along the Mattaponi River in King and Queen County. This project requires a tidal wetlands permit.
- 2B. **TAZEWELL COUNTY PUBLIC SERVICE AUTHORITY, #22-1458**, requests authorization to install water and sewer lines beneath Indian Creek at one (1) location and the Little River at three (3) locations, to provide utilities to customers adjacent to US Route 19 in Tazewell County. Staff recommends approval with our standard instream permit conditions, an instream work time-of-year restriction from March 15 through July 31 and August 15 through September 30 of any year, and a freshwater mussel survey and relocation effort, unless waived in writing by the Department of Wildlife Resources.

Fees:	\$ 600.00
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- 2C. **COLONIAL NATIONAL HISTORIC PARK, #22-2010**, requests authorization to install shoreline stabilization structures and clean sand fill and plantings adjacent to the Colonial Parkway near Felgates Creek Bridge situated along the York River in York County. Components include: two (2) riprap revetments, five (5) stone sills, three (3) stone spurs, one (1) stone breakwater, with clean sand fill and plantings. The project will also install 16 temporary moorings and two (2) temporary barge ports for construction access. A temporary turbidity curtain will be installed, as necessary.

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

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**3. CONSENT AGENDA ITEMS**

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

**3A. BALLARD BROTHERS FISH AND OYSTER COMPANY, #20-0132**  
Requests authorization for after-the-fact approval for the installation of up to 1,224 floating oyster cages within existing oyster planting ground lease boundaries of the Applicant in Cherrystone Creek in Northampton County. The request represents a relocation of existing operations that were placed outside of a previous authorization but in the same general area. The applicant has agreed to pay a \$2,000.00 civil charge and triple permit fees in lieu of further enforcement action.

Kim Huskey spoke on behalf of Ballard Fish & Oyster Company. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Erskine moved to approve 3A as presented. Associate Member Minor seconded the motion. The motion carried 8-0.**

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

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5. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden", to modify purse seine area and time prohibitions to include: (i) any waters of the Commonwealth's Chesapeake Bay and the City of Virginia Beach within one nautical mile from the mean low water line; (ii) one-half nautical mile on either side of the Chesapeake Bay Bridge Tunnel; and (iii) the Commonwealth's waters of the Chesapeake Bay the Thursday prior to, and through Memorial Day; July 1 through July 7; and the Thursday prior to, and through Labor Day.

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

There were approximately 43 people that spoke, both in support and in opposition of the proposed amendment. Those that spoke ranged from the public, bait shop owners, Omega employees, Captains of the Menhaden fleet and residents of Silver Beach. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Headley made a substitute motion to create a memorandum of understanding of the following: The fishery agrees to not fish in the state territorial waters inside of the Chesapeake Bay on Saturday – Monday of Memorial Day and Labor Day. The fishery agrees to not fish in the state territorial waters inside of the Chesapeake Bay on July 4<sup>th</sup>. and the Federally recognized holiday of the week. The Fishery agrees to not fish in the state territorial waters inside of the Chesapeake Bay on all Saturdays and Sundays between Memorial Day and Labor Day. The Fishery agrees not to fish within ½ mile of the Chesapeake Bay Bridge Tunnel as a measure of cooperation to minimize user conflicts with the recreational angling community. The fishery agrees to work collaboratively with the Governor's office and General Assembly Members to address Geographic buffer along the densely populated areas of the Eastern Shore of Virginia, in the Chesapeake Bay and the Virginia Beach Region. Associate Member Kellum seconded the motion. The motion carried, 5-4. Associate Members Bransom, France, Tankard and Lusk voted no.**

\* \* \* \* \*

- 6. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden", to establish a reciprocal quota transfer system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector of the fishery.

Shana Madsen, Deputy Chief, Fisheries Mgmt., 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 Atlantic States Marine Fisheries Commission (ASMFC) approved a 10% decrease in the coastwide total allowable catch or landings (TAC) of menhaden at the October 2020 Board meeting. The 2021-2022 coastwide TAC is 194,400 metric tons.

As a result, in 2021, the purse seine bait sector reached their quota early and was unable to fish the rest of the season due to this 10% reduction. At a Menhaden Management Advisory Committee (MMAC) meeting in November of 2021, the bait sector representative asked for the committee to consider potential paths forward in acquiring additional quota for the purse seine bait sector. A subcommittee was formed to explore potential solutions. The subcommittee and full MMAC committee recommended that transfers of quota between the purse seine reduction and purse seine bait sectors be permitted for the 2022 fishing year and into the future.

Staff requests the Commission approve amendments Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden", to establish a reciprocal quota transfer system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector of the fishery.

The matter was before the Commission for discussion and action.

**Associate Member Headley made a motion to approve staff recommendation. Associate Member Minor seconded the motion. The motion carried, 8-0.**

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- 7. **BLUE MARINA VA LLC, #22-2293** Commission review of the Accomack

County Wetland Board's November 17, 2022, decision to approve Blue Marina VA LLC's proposal to fill tidal wetlands as part of a new bulkhead and revetment proposal at property (TM #(s) 30A1-1-42, 44, 46, 48, 50, 52, 54; 30A1-A-28 and 45-A-7) adjacent to the Chincoteague Channel in the Town of Chincoteague.

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 the project is located on vacant lots (formerly Captain Bob's Marina) on the southern end of Chincoteague Island and within the Town of Chincoteague in Accomack County. The site was developed as a marina with a harbor cut out of wetlands, bulkheads built, and wetlands filled in the early 1960's. It was later abandoned, and all shoreline erosion structures fell into a state of disrepair. Based on current and past observations by VMRC, VIMS and Accomack County staff, the existing bulkheads on site have now failed, and mean high water (MHW) is located landward of the failed structure. Additional vegetated wetlands have developed inside the former marina harbor, where bulkheading once existed.

The properties in question have recently been sold and are proposed for redevelopment into a commercial marina with houseboats and additional vacation rentals and cottages in the uplands. As part of this redevelopment, all shoreline erosion control structures are proposed to be repaired or replaced. In the Wetlands Board's jurisdiction, this includes placement and backfill of a riprap revetment along the channel-facing portion of the property, placement, and backfill of a new bulkhead inside the marina harbor and capping and maintenance of an existing riprap revetment inside the marina harbor and a portion of two stone jetties.

The proposed riprap and backfill along the Chincoteague Channel shoreline will impact an *unquantified* amount of non-vegetated wetlands. In total, the project will result in the loss of minimally 697 square feet of non-vegetated wetlands and 863 square feet of vegetated wetlands.

The Board voted unanimously to approve the application as submitted with the following special conditions:

1. Pay into the County's mitigation/compensation fund for 1,560 total square feet of wetlands, 863 square feet of losses of vegetated wetlands, and 697

- square feet of non-vegetated wetlands, which has to be verified by staff, and if the impacts are greater, more mitigation will be paid;
2. Existing shellfish are to be relocated.

By correspondence on behalf of Commissioner Green, dated November 23, 2022, and in conformance with §28.2-1311(A)2 of the Code of Virginia, the Accomack Wetland Board and the applicant/agent were advised that the full Commission would be reviewing the Board's decision to approve the subject application

Section §28.2-1302.10.B of the wetlands zoning ordinance states that the Board shall grant the permit if all of the following criteria are met:

- (1) the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment;
- (2) the proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia; and
- (3) the proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

Section 28.2-1302.10.C further states that if the Board finds that any of the criteria listed in subsection B of this section are not met, the Board shall deny the permit application but allow the applicant to resubmit the application in modified form. Staff is of the opinion that the Board's decision on this matter fails to meet all three criteria in subsection B. *The Board determined that the filling of wetlands was acceptable for the creation of upland, in support of rental cottages, and did not fully consider other alternatives that would minimize wetland losses.*

Additionally, staff feels that the Board acted on an incomplete application since the proposed wetlands impacts were not calculated and provided in the application and drawings. This lack of final project details and impacts created confusion for the Board and staff and ultimately ended in a final motion that approved the filling of an unverified quantity wetlands that are avoidable.

Section §28.2-1313 of the Code of Virginia specifies when the Commission should

modify, remand, or reverse a wetlands board’s decision. Based upon our attendance at the hearing and our review of the record, staff feels that the Accomack Wetland Board erred in its decision to grant a permit by failing to give full consideration to the criteria for approval of an application as specified in the wetlands zoning ordinance.

As such, staff recommends that the Commission remand the November 17, 2022, decision of the Accomack Wetlands Board for further consideration of alternatives and minimization of tidal wetlands fill losses. Staff further recommends that the Board not re-hear the application until the Accomack County staff agree to the quantity and location of proposed wetlands impacts and losses as part of a complete application. To accomplish this, we further recommend that the County seek and obtain written guidance from the Virginia Institute of Marine Sciences’ Office of Advisory Services before rescheduling the public hearing.

The matter was before the Commission for discussion and action.

**Associate Member Minor made a motion to approve staff recommendation to remand the case back to the Accomack County Wetlands Board. Associate Member France seconded the motion. The motion carried, 8-0.**

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**8. PUBLIC COMMENT: No one in the public wished to speak during Public Comment.**

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**9. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest” to modify the transfer of eligibility to pay the oyster resource user fee as described in clause (ii) of subsection A of §28.2-541 of the Code of Virginia, regarding transfers to non-relatives and regarding requests of documented medical hardships or active military leave.

Andrew Button, Deputy Chief, Shellfish Management, gave the briefing of 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 some participants in the oyster fishery and holders of oyster resource user fees that allow participation in the fishery are not able to transfer their eligibility to pay this user fee under current regulation to non-family members. Additionally, some individuals who have passed away or have become ill have not been able to meet current regulatory requirements for the transfer of this eligibility.

More recently, staff and the Commission have been approached by several persons who have wanted to transfer their user fee eligibility to persons other than direct family members and, for a variety of reasons, have not met the current regulatory requirement of 40 days of harvest history in the previous calendar year needed to do so. The Commission directed staff to work with SMAC to develop recommendations on Amendments to regulation that could allow the transfer of the oyster all gear user fee in some of the circumstances that have been presented to staff and the Commission. After discussions at several meetings, working with VMRC staff, SMAC provided the following recommendations:

**Military obligation:**

Eligible to transfer to non-family member without the 40 days or more of harvest in the previous years.

**Medical:**

Must have 40 days or more of harvest, previous 2 years.

**Family:**

Transfer to a direct family member as stated in regulation **4 VAC 20-720-15-D (1)**

**Death:**

Eligible to transfer to a non-family member, with 40 days or more of reported harvest the previous 2 years and paid the Oyster User Fee each year.

**Over 70 years old or older:**

Eligible to transfer to a non-family member **IF** the Oyster User Fee has been paid for 5 consecutive years or more and a cap of no more than 50 Oyster User Fee transfers per calendar year.

These recommendations were unanimously approved by the 8 members of SMAC who attended the September 28<sup>th</sup> meeting.

After internal deliberations between staff and senior management, it was determined that the intent to ease the regulatory restrictions in most of the cases that come to staff and the Commission, and that were addressed by the SMAC recommendation, could be accomplished by allowing any person who has paid the oyster resource user fee to transfer eligibility to a non-family member if they have paid the fee for five consecutive calendar years. In addition, it was determined that clarification on the approval of medical and military exceptions was needed. Both changes are reflected in the language of the draft regulation.

These proposed changes will likely lead to an increase in harvest effort as many of those eligible to pay the oyster resource user fee, more than 50% in recent years, do not actively participate in the fishery, but have paid the user fee for five or more years. It is probable that any transfer to a non-family member would likely be to a person who intends to actively participate in the fishery. Additionally, some SMAC members and oyster harvesters feel that this change will “devalue” a user fee held by a person who actively participates in the fishery or who is truly a “full time” waterman and has 40 days or more of harvest history.

Staff recommends adopting Amendments to Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest to modify the transfer of eligibility to pay the oyster resource user fee as described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia, regarding transfers to non-relatives and regarding requests of documented medical hardships or active military leave.

The matter was before the Commission for discussion and action.

After further discussion, Commission Members agreed on the following amendments:

- A motion to amend staff recommendation as follows: 40 days is no longer required, in order to transfer, a person must have paid the user fee for the previous 5 calendar years and have a minimum of 3 years of harvest reported within that 5 year period.
- Transfers can be granted if a person has paid the user fee for 5 consecutive years and is deceased or has a medical exception.

**Associate Member France made a motion to amend staff recommendation. Associate Member Headley seconded the motion. The motion carried, 8-0.**

**Commission Meeting**

**19050  
December 6, 2022**

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There being no further business, the meeting was adjourned at approximately 3:26 p.m.  
The next Commission meeting will be Tuesday, January 24, 2023.

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Jamie L. Green, Commissioner

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Jamie Hogge, Recording Secretary