

MINUTES

COMMISSION MEETING

September 26, 2023

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
John Cosgrove	Deputy Commissioner
Lynn Kellum	
William Bransom	
James E. Minor III	Associate Members
Jeremy Headley	
A.J. Erskine	
Patrick Hand	
Jeanette Edwards	
Kelci Block	Assistant Attorney General
Lisa Pyle	Recording Secretary
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Sami Uddin	Lead Software Developer
Pat Geer	Chief, Fisheries Mgmt.
Shanna Madsen	Deputy Chief, Fisheries Mgmt.
Joe Grist	Deputy Chief, Fisheries Mgmt.
Jill Ramsey	Fisheries Mgmt. Specialist
Joshua McGilly	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Jennifer Farmer	Regulatory Coordinator
Alexa Galvan	Fisheries Mgmt. Specialist
Nancy McElligott	Natural Resource Specialist
Ethan Simpson	Biological Sampling Prog. Mgr.
Lewis Gillingham	Director, SWFT
Matthew Rogers	Chief, Law Enforcement
Herbert Bell	Deputy Chief, Law Enforcement
William Hawkins	Marine Police Officer

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Randy Owen	Chief, Habitat Management
Justin Worrell	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Mike Johnson	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Kirsten Travis	Environmental Engineer, Sr.
Khadijah Payne	Environmental Engineer, Sr.
Adam Kenyon	Chief, Shellfish Management
Andrew Button	Deputy Chief, Shellfish Management
Daniel Faggert	Surveyor, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Mark Luckenbach
Others present:		
David Butler	Scott Woolard	Pete Owen
Tim Wivell	Bruce McLaughlin	Paul Peterson
Kathy Louthan	Ben Stagg	David Obrien
Hanrich Walter	Chris Moore	Pam Scrima
and others.		

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Commissioner Green introduced new associate members Patrick Hand and Jeanette Edwards, as well as Deputy Commissioner John Cosgrove.

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

Randy Owen, Chief, Habitat Management requested removal of item 7 from the agenda to be revisited at a later date.

Associate Member Bransom moved to approve the agenda as presented. Associate Member Minor seconded 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 August 22, 2023, Commission Meeting minutes.

Associate Member Erskine moved to approve the agenda as presented. Associate Member Minor 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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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 2D for the Associate Members. Mr. Owen’s comments are part of the verbatim record.

- 2A. **CITY OF NORFOLK, VMRC #2022-1418** Requests authorization to conduct mechanical maintenance dredging of up to 10,000 cubic yards of submerged land within Haven Creek, to achieve depths of minus six (-6) feet mean low water from the Haven Creek public boat ramp to the Lafayette River Channel in the City of Norfolk.

Fees:	\$ 600.00
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- 2B. **LIVING RIVER RESTORATION TRUST, VMRC #2023-0937** Requests authorization to construct a mitigation oyster reef consisting of clean stone material up to 12-inches thick over approximately 3.2 acres (140,000 square feet) of subtidal, State-owned submerged land immediately offshore and south of the coal piers at Lamberts Point in the Elizabeth River in the City of Norfolk.

Fees:	\$ 600.00
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- 2C. **WESTROCK CP LLC, VMRC #2018-1790** Requests authorization to construct a 20 MGD replacement primary surface water intake, with one-millimeter screen slots and a maximum through-slot velocity of 0.25 feet per second, and to retrofit their existing auxiliary intake at their industrial facility on the James River in the City of Hopewell. The project will also include an offshore enclosure and walkway to house a new air burst system, six (6) 7-pile timber dolphins, and twenty-six (26) free-standing timber piles for protection from navigational strikes. Recommend approval contingent on the use of cushion blocks and "ramp-up" procedures during the installation of hollow steel pilings and restricting use of the auxiliary intake for routine maintenance of the primary intake from November to January of any year to maximize protection of smaller life stages of anadromous fishes and other estuarine organisms. Staff also recommends a royalty in the amount of \$18,534.00 for the encroachment over 9,267 square feet of subaqueous bottom at the industrial rate of \$2.00 per square foot.

Fees:	\$ 600.00
Royalties: Encroachment of 9,267 SF @ \$2.00 per SF	\$18,534.00
Total:	\$19,134.00

- 2D. **EDWARD WALTON, VMRC #2023-1756** Requests authorization to construct a 41-foot low profile groin with a 22-foot T-head situated along the Mattaponi River at 904 Brookshire Road in King and Queen County. The project requires a VMRC Wetlands Permit.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Headley moved to approve the Page 2 item 2A through 2D as presented. Associate Member Minor 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. **JEFF BANE, VMRC #2023-1170** Requests authorization to install 200 linear feet of quarry stone riprap revetment in front of an existing bulkhead at property on the Rappahannock River at 1142 Fort Lowry Lane in Essex County. The project is protested by both adjacent property owners.

Jay Woodward gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. His comments are part of the verbatim record. Staff recommends authorization with the stipulation that all failed groins and pier pilings be removed prior to installation of the riprap revetment.

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 Erskine seconded the motion. The motion carried, 6-0.

Fees:	\$ 300.00
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- 6. **TIAN FEI and DEQUING LI, #2022-1708** Request after-the-fact authorization to retain approximately 250 linear feet of riprap revetment and install 87 linear feet of riprap adjacent to 1052 Ducking Point Trail along the Western Branch Lynnhaven River in the City of Virginia Beach.

Tiffany Birge gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Her comments are part of the verbatim record. Staff recommends assessing a \$6000 civil charge to the contractor, Flint Marine Construction, given that this represents the third violation in less than a year. Staff finds that since the agent and contractor handled the entire permit application process, it would not be appropriate to assess the applicants a civil charge. The applicants have agreed to pay the standard assessment of triple permit fees.

Pete Owen, contractor for the project, was sworn in. His comments are part of the verbatim record. He remarked that English is not the first language of the applicants and admitted that the case fell through the cracks on his company’s end. He cited confusion and lack of adequate staffing to handle the permit process and asked the Commission for leniency. Mr. Bransom asked Mr. Owen how long he has been in business, where does he normally operate, and how many projects does he take on a year. Mr. Owen answered that he has been in business since 2017, and estimated he takes on ten projects a year. Mr. Bransom continued, stating that he did not understand how Mr. Owen has three violations in a year given the amount of time he’s been in operation.

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 Bransom seconded the motion. The motion carried, 6-0.

Commissioner Green asked Mr. Owen if he agreed to the \$6000 fee, Mr. Owen said yes.

Civil Charge:	\$ 6,000.00
Fees:	\$ 900.00
Total:	\$ 9,600.00

- FIRST LANDING SEAFOOD COMPANY LLC., OYSTER PLANTING GROUND APPLICATION #2021-062** Requests authorization to lease approximately 40 acres of oyster planting ground in Broad Bay in the City of Virginia Beach. The application is protested by nearby property owners.

Adam Kenyon, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. His comments are part of the verbatim record. Mr. Kenyon stated that he received public comments expressing concern about recreational use and navigation, and about retaining the natural beauty of the area. Staff has no objections to this project. Mr. Headley asked how much water is in the area, to which Mr. Kenyon answered there is about 6-10ft and remarked that there should be plenty of clearance for over boat travel. Mr. Bransom pointed out that the location is very busy with recreational activity and expressed concern about wooden or PVC markings being put too close to the navigation channel. He requested a condition requiring an alternative marking plan. Mr. Kenyon remarked that the applicant is agreeable to incorporating an alternate method of marking, and that VAC 20-290-50 lists an exception where a chief engineer may approve an alternative marking plan. Ms. Block stated that this is permissible.

Bruce McLauchlin, cofounder and CEO of First landing Seafood Company was sworn in and spoke on behalf of his company. His comments are part of the verbatim record. He stated that his company try to be good stewards, citing a state park cleanup project that they headed. Mr. Erskine asked about the bottom type in the area. Mr. McLauchlin remarked that the bottom type is sandy and muddy. Mr. Erskine asked if he anticipates using all 40 acres, to which Mr. McLauchlin answered that they would stick with the sandier area to begin with. Mr. Bransom asked about Mr. McLauchlin's thoughts on using alternate marking. Mr. McLauchlin stated he is completely agreeable and wishes to mitigate any safety issues.

Ben Stagg, executive director of Shellfish Growers of VA, spoke in support of the application. Her remarked on the benefits of shellfish propagation to water quality and to other organisms in the area.

No one spoke in opposition to the project.

The matter was before the Commission for discussion and action.

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

- 8. LYNNHAVEN OYSTER COMPANY LLC., OYSTER PLANTING GROUND APPLICATION #2021-041** Requests authorization to lease approximately 85 acres of oyster planting ground in Broad Bay in the City of Virginia Beach. The application is protested by nearby property owners.

Adam Kenyon, Chief, Shellfish Management Division, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. His comments are part of the verbatim record. Mr. Kenyon stated that there is public concern over navigation, jet skis, and other recreational activities being impacted by the leased ground, as well as concern for the impact on the natural beauty of the area. Staff has no objections to this project.

Given the familial relationship, Bruce McLauchlin spoke on behalf of the applicant. His comments are part of the verbatim record. Mr. McLauchlin stated that they intend to use buoys in lieu of PVC to mark the bottom cages. Ms. Lusk asked Mr. McLauchlin if he has found it difficult to find bottom to work with, to which Mr. McLauchlin answered that much of the area is muddy and that they prefer to work in sandy conditions.

No one spoke in support or opposition of the project.

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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9. PUBLIC COMMENT:

Ms. Catherine Louthan of Richmond, VA was sworn in. She is a member of the Richmond Audubon Society, the Richmond society of ornithology, as well as a sports fisherman. Her comments are part of the verbatim record. Ms. Louthan expressed concern for the menhaden population, its overharvesting, and its effects on the osprey population.

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10. PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery," to amend the season and bushel limits for the remainder of the 2023 commercial crab pot fishery and to remove discretionary time of year restrictions on fish pots.

Alexa Galvan, Fisheries Mgmt. Specialist, gave the briefing of the information provided in staff's evaluation, with PowerPoint slides. Her comments are part of the verbatim record.

Ms. Galvan explained that Winter Dredge Survey results show that most abundances the winter of 2022-2023 were higher than those of 2021-2022, but lower than abundances from 2015-2020. She stated that female crabs are not overfished, and overfishing is not occurring on them, but the 2021-2022 exploitation rates were slightly above target. This is something that staff will be keeping an eye on. Ms. Galvan remarked that at a meeting in May, the Chesapeake Bay jurisdictions of Virginia, Maryland, and Potomac River Fisheries Commission agreed to maintain status quo measures from 2022.

Ms. Galvan stated that staff is also recommending amending fish pot restrictions in the regulation. In 2000, fish pots were banned from certain upriver areas during the five days prior to the opening of crab pot season. The industry and MRC staff were concerned about crab pots being marked as fish pots in order to soak them ahead of the legal season. However, this is no longer an issue, as crab and fish pots now have distinguishing characteristics (i.e., cull rings). This amendment would in part help achieve a reduction in the regulatory burden as per the Office of Regulatory Mgmt and Executive Order 19. CMAC voted unanimously to support the fall bushel limit and season changes. No public comments have been received.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-270-40 et seq., "Pertaining to Blue Crab Fishery," to amend the season and bushel limits for the remainder of the 2023 commercial crab pot fishery, and to remove discretionary time of year restrictions on fish pots.

Ms. Kellum asked how watermen will be made aware of the changes. Ms. Galvan answered that staff has a list of everyone who holds a fish pot license. Commissioner Green commented that the notification process is the same on every regulation. Mr. Headley asked about progress on the dredge fishery economic study. Ms. Galvan stated that CMAC voted 6-3 to recommend that staff create a plan for an experimental winter crab dredge fishery, and that staff are actively working on it.

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 Kellum seconded the motion. The motion carried, 6-0.

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There being no further business, the meeting was adjourned at approximately 11:22 a.m.
The next Commission meeting will be Tuesday, October 24, 2023.

Jamie L. Green, Commissioner

Lisa Pyle, Recording Secretary