

## MINUTES

## COMMISSION MEETING

June 28, 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
John Tankard III	
John Zydron Sr.	
Wayne France	
James E. Minor III	Associate Members
Jeremy Headley	
Heather Lusk	
Chad Ballard	
William Bransom	
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
Nancy McElligott	Fisheries Mgmt. Specialist
Jonathan Depaz	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Joshua McGilly	Fisheries Mgmt. Specialist
Ethan Simpson	Biological Sampling Supervisor
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Matt Rogers	Chief, Law Enforcement

**Commission Meeting**

Randy Owen	Chief, Habitat Management
Mike Johnson	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Lauren Chartrand	Environmental Engineer, Sr.
Claire Gorman	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Daniel Faggert	Surveyor, Engineering/Surveying
Ben Stagg	Chief, Shellfish Management
Andrew Button	Deputy Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Helen Eggleston	Mike Eggleston	Ginger Phelps
Will Culbertson	George Haithcock	Abram Ketchum
Journie Ketchum	Jay Ford	Dan Halland
Steve Anderson	Scott Hardaway	Becky Kiss
Stacy Greenberg	Lukas Sorensen	Rob Bedman
Tim McHugh	Jen Rogers	Rebecca Francese
Stephen Faleski	Karen Duhring	Kim Huskey
Giabriella Francese	and others.	

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Commissioner Green called the meeting to order at approximately 9:34 a.m.

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

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Travis Voyles, Acting Secretary of Natural and Historical Resources, was present and

announced the appointment of Jamie L. Green as Commissioner of the Virginia Marine Resources. Mr. Voyles also expressed his sincere thanks and appreciation to Justin Worrell for his duty of service as Acting Commissioner the past few months. His comments are a part of the verbatim record.

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

Randy Owen, Chief, Habitat Management, requested that Agenda Items 5, 6, & 7 be heard during the Page 2 Agenda Items.

**Associate Member Zydron moved to approve the agenda as amended. Associate Member Minor seconded the motion. The motion carried, 9-0. Chair voted yes.**

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**MINUTES:** Commissioner Green asked if there were any changes or corrections to be made to the May 24, 2022 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 abstained. Associate Members Ballard and Lusk abstained.**

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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 5, 6, 7, 2A and 2B for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

- 5. **COLUMBIA GAS TRANSMISSION, LLC, #22-0942**, requests authorization to replace approximately 372 feet of existing exposed 12-inch pipeline located in tidal wetlands in the City of Chesapeake. This project requires a tidal wetlands permit.
- 6. **VIRGINIA ELECTRIC AND POWER COMPANY, #22-0910**, requests authorization to install approximately 754 linear feet of temporary turbidity curtain in the James River and 54 linear feet of riprap at an existing outfall adjacent to Farrar Gut at the Chesterfield Power Station in Chesterfield County. This project requires a tidal wetlands permit and a subaqueous permit.

Fees:	\$ 300.00
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- 7. **RUSS WILLIAMS, #22-0391**, requests authorization to construct a 166 linear foot riprap revetment along the Mattaponi River adjacent to Melrose Landing in King and Queen County. This project requires a tidal wetlands permit.
- 2A. **ZP No. 333, LLC, #21-2370**, requests authorization to replace existing pier with one (1) 10-foot wide by 567 linear foot floating pier with 23 finger piers, a 16-foot wide by 47-foot extension and a total of 50 boat slips. An additional 8-foot wide by 91 linear foot floating pier will be installed parallel to the peninsula and have two (2) finger piers and (four) 4 slips. 5,225 cubic yards of State-owned bottom will be mechanically dredged to a depth of -6.5 feet MLW and disposed of at a permitted upland facility. All work will take place at property (4521 Pretty Lake Avenue) adjacent to Little Creek in the City of Norfolk. Staff recommends a royalty of \$80,422.50 for the dredging and marina encroachment and a special condition for soft start on all impact-driven hollow steel piles.

Royalties: (Dredge 5,700 C.Y. @ \$0.60 / C.Y.; Encrouch 51,525 S.F. @ \$1.50)	\$ 80,707.50
Fees:	\$ 600.00
<b>Total Fees:</b>	<b>\$ 81,307.50</b>

- 2B. **NAVAL WEAPONS STATION YORKTOWN, #22-0565**, requests authorization to install shoreline stabilization structures and clean sand fill to rebuild Penniman Spit near Naval Weapons Station Yorktown and Cheatham

Annex along the York River in York County. Components include: one (1) 200-foot sill, one (1) 546-foot sill, one (1) 289-foot sill, one (1) 242-foot sill, one (1) 410-foot sill, one (1) 160-foot offshore breakwater, one (1) 74-foot rock spur, one (1) 65-foot rock spur, with 17,240 cubic yards of clean sand fill and plantings, to create 2,000 linear feet of living shoreline.

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 France moved to approve the page 2 Items 5, 6, 7, 2A and 2B as presented. Associate Member Minor seconded the motion. The motion carried 9-0. Chair voted yes.**

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**3. CONSENT AGENDA ITEMS. – 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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**Presented in the Page 2 Agenda Section**

**5. COLUMBIA GAS TRANSMISSION, LLC, #22-0942, requests authorization to replace approximately 372 feet of existing exposed 12-inch pipeline located in tidal wetlands in the City of Chesapeake. This project requires a tidal wetlands permit.**

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**Presented in the Page 2 Agenda Section**

6. **VIRGINIA ELECTRIC AND POWER COMPANY, #22-0910**, requests authorization to install approximately 754 linear feet of temporary turbidity curtain in the James River and 54 linear feet of riprap at an existing outfall adjacent to Farrar Gut at the Chesterfield Power Station in Chesterfield County. This project requires a tidal wetlands permit and a subaqueous permit.

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**Presented in the Page 2 Agenda Section**

7. **RUSS WILLIAMS, #22-0391**, requests authorization to construct a 166 linear foot riprap revetment along the Mattaponi River adjacent to Melrose Landing in King and Queen County. This project requires a tidal wetlands permit.

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8. **GEORGE HAITHCOCK, #21-1811**, requests authorization to construct a 21-foot by 33-foot open-sided boathouse adjacent to a previously authorized private pier serving 1221 Dare Road along the Poquoson River in York County. This project is protested by an adjacent property owner.

Tiffany Birge, Environmental Engineer, Sr., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Birge's comments are a part of the verbatim record.

Ms. Birge explained that a Joint Permit Application (JPA) was received on August 26, 2021, requesting authorization to construct a private, open-pile, timber pier extending 33 linear feet channelward of the mean low water mark, a 12-foot by 33-foot L-head, 44 linear feet of 5-foot wide finger pier, and a 693 square foot open-sided boathouse adjacent to Mr. Haithcock's upland property. A 'no permit necessary' letter was issued on May 2, 2022, for the proposed timber pier main stem, L-head and finger pier as those portions of the project qualified for the statutory authorization provided for a private pier pursuant to §28.2-1203(A)(5) of the Code of Virginia. Subsequent to sending out adjacent property owner notification letters regarding the proposed boathouse, a letter of objection was dated received by this agency on December 10, 2021, from Mr. and Mrs. O'Neill, the downstream adjacent riparian property owners. Had Mr. and Mrs. O'Neill not objected, the boathouse would too have qualified for the aforementioned statutory authority.

Following several phone conversations and a meeting at his property with Commission staff on December 20, 2021, Mr. Haithcock considered the changes requested by Mr. and Mrs. O'Neill, including the complete removal of the boathouse from the project proposal. Ultimately, Mr. Haithcock decided that the inclusion of the proposed boathouse to protect his vessel from potential weather and UV damage was preferred. The open-sided boathouse is the portion of the project that is before you today.

Staff is sympathetic to the protestant's concerns regarding their viewshed and riparian rights. The property is situated in a cove that does not currently have any roof structures. However, there are a few properties within the cove area that do have piers and many other properties in the general vicinity with piers and boathouses, including the direct downstream property adjacent to the O'Neills. The applicant chose the specific location of the pier and boathouse to maximize the ability for his family to use the structure as intended while minimizing the necessary encroachment into the cove. This in turn limits the impact to the protestants' viewshed to the maximum extent possible. Staff believes that there remains enough room for the O'Neills to construct a pier and/or boathouse of a similar size adjacent to their property should they choose to do so that would not be in direct navigational conflict with the applicant's structure.

The pier portion of the project is statutorily authorized by this agency. The proposed boathouse is centered behind the applicant's riparian property. As the Commission is well aware, only the local circuit court has the authority to apportion the riparian areas of waterfront parcels. Accordingly, after evaluating the applicant's mean low water survey, the merits of the project against the concerns expressed by those in opposition and after considering all of the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.

George Haithcock, applicant, was present, sworn in and spoke on behalf of his application. His comments are a part of the verbatim record.

Dennis Michael O'Neil was sworn in and spoke in opposition of the application. His comments are a part of the verbatim record.

Mr. O'Neil spoke about concerns that his property value will decrease and is against a 2-story structure.

The matter was before the Commission for discussion and action.

**Associate Member Tankard made a motion to approve staff recommendation. Associate Member Headley seconded the motion. The motion carried, 8-0-1. Chair voted yes. Associate Member Zydron abstained.**

Fees:	\$ 100.00
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- 9. **ALIGN RNG VIRGINIA – WAVERLY LLC, #21-2453**, requests authorization to construct a 65-mile biogas HDPE pipeline network crossing underneath Blackwater River, Seacock Swamp, and Assamoosick Swamp a minimum of 14 feet beneath the substrate at seven (7) locations using the horizontal directional drilling method in Surry, Southampton, Sussex, and Isle of Wight Counties. This project is protested.

Claire Gorman, Environmental Engineer, Sr., gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. Ms. Gorman’s comments are a part of the verbatim record.

Ms. Gorman explained that for this project, methane is proposed to be collected from farm waste digesters (hog waste lagoons) using low-pressure biogas gathering lines, after which it will be transferred to a center conditioning facility. ALIGN RNG Virginia - Waverly, LLC has applied for authorization to cross seven (7) jurisdictional locations using the horizontal directly drill method to construct the pipeline network. The use of directional drilling will result in no impacts on the stream beds or aquatic natural resources. Since the installation still results in an encroachment beneath the Commonwealth’s State-owned submerged lands, a VMRC subaqueous permit is required pursuant to §28.2-1203 of the Code of Virginia

The seven (7) steams crossings are: Assamoosick Swamp, Seacock Swamp, and five (5) crossings of Blackwater River Swamp.

The primary concern of the protestants relates to the potential for directional boring impacts on natural resources. Staff notes that this type of installation methodology results in no direct disturbance to the stream, or its natural resources, as compared to traditional open-cut installations which includes damming off part of the stream to cut a trench for the pipeline installation.

DWR agrees that the directional drilling methodology minimizes wetland and stream impacts. They requested that the applicant follow a frac-out monitoring and response plan in case there is a fracture of the rock around the bore which could allow drilling fluids to escape into the stream. The applicant has provided such a plan to VMRC and agreed to its use.

Accordingly, after reviewing all of the materials in the application, comments received from other State agencies, concerns expressed by those in opposition to 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 proposed with a royalty assessed in the amount of \$30,354.00 for the encroachment of seven (7) subaqueous crossings totaling 10,118 linear feet under State-owned submerged lands assessed at the rate of \$3.00 per linear foot and the following special permit conditions:

1. The Permittee agrees to abide by the Frac-out Monitoring and Response plan that is attached to and made a part of the permit;
2. Erosion and sediment control measures shall be in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction;
3. All areas of State-owned bottom and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters.

Timothy McHugh, agent for the applicant, was sworn in. His comments are a part of the verbatim record.

Mr. McHugh accepted the restrictions and cost associated with the project.

Abram Ketchum was sworn in and spoke in opposition of the project. His comments are a part of the verbatim record.

Helen Eggleston was sworn in and spoke in opposition of the project. Her comments are a part of the verbatim record.

Mike Eggleston was sworn in and spoke in opposition of the project. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

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

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**10. JASON L. DAMERON to LITTLE WICOMICO OYSTER COMPANY, LLC, Oyster Planting Ground Transfer Application #2021-556,** requests authorization to transfer 6.72 acres of oyster planting grounds (lease # 19247) in Mill Creek in Northumberland County. The transfer request is protested by a number of local nearby highland property owners. This request was heard at the May 23, 2022, Commission meeting. The Commission voted to defer final action to allow all interested parties to meet and attempt to reach a compromise on the final area to be transferred. Staff will provide a status update.

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 the request was heard at the May 23, 2022 Commission Meeting. The Commission voted to defer the final action to allow all interested parties to meet and attempt to reach a compromise on the final area to be transferred. No such meeting occurred and the leaseholder and prospective leaseholder requested the transfer request be withdrawn. The request to withdraw the transfer was honored and the file has been closed. The lease will remain in the name of Jason L. Dameron.

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**11. PUBLIC COMMENT. No one spoke during public comment.**

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**12. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1270-10 et seq., “Pertaining to Atlantic Menhaden”, to establish a temporary reciprocal quota

transfer system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector of the fishery during the 2022 fishing year.

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.

Mr. Geer 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 are recommending that transfers of quota between the purse seine reduction and purse seine bait sectors be permitted for 2022.

Staff requests the Commission approve amendments Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden", to establish a temporary reciprocal quota transfer system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector of the fishery during the 2022 fishing year.

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, 9-0. Chair voted yes.**

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- 13. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery" to establish management measures, including season and bushel limits, for the 2022-2023 commercial crab fishery and define legal commercial harvest gears.

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

Ms. Galvan explained that last month, staff briefed the Commission on results of the 2021-2022 Bay-wide Winter Dredge Survey. Results from that survey, as well as harvest results from the 2021 fisheries, indicate the Chesapeake Bay blue crab stock is currently not overfished and overfishing is not occurring, but total abundance and juvenile abundance are at very low levels. The Chesapeake Bay Stock Assessment Committee and managers from the Chesapeake Bay jurisdictions recommend conservative crabbing measures for the coming year.

Management of blue crabs is updated on an annual basis, where bushel limits are effective from July 5<sup>th</sup> of one year to July 4<sup>th</sup> of the next and an evaluation of the winter dredge season is conducted annually. This allows managers to respond, if necessary, to the most recent dredge survey results, which are usually released in May.

Because of the decrease in total blue crab abundance to a 33-year low of 227 million crabs and juvenile abundance in the last two years being the lowest on record, staff recommends reducing harvest by 5-10%. This reduction was agreed upon by representatives from VMRC, the Maryland Department of Natural Resources, and the Potomac River Fisheries Commission, who coordinate management measure changes across the bay each year.

Results of the winter dredge survey were presented to the Crab Management Advisory Committee (CMAC) at their May 23, 2022 meeting and the committee concluded that the low abundance results agree with their observations of the blue crab fishery. At the June 8, 2022 CMAC meeting, committee members and the public were presented with bushel limit and season options that would go into effect from July 5, 2022 to July 4, 2023.

Staff informed the committee that the agency's intention is to take some reductions from bushel limits and season closures right away but to pursue further savings from more long-term management actions. This includes management measures that could not be made ready for the June Commission meeting because they require further analysis and discussion and management measures that would cause hardship to the fishery if implemented mid-season. Therefore, any further long-term actions would be discussed

by CMAC over several meetings in the fall of 2022 and recommended to the Commission at a meeting in the winter of 2022-2023.

Options intended to increase abundance were presented to the committee that implemented lower bushel limits in the fall and spring to allow more female crabs to move down the bay in fall, and to allow more female crabs to release their eggs in the spring before being caught. The committee voted 7-3-1 to endorse an option that implemented lower bushel limits earlier in the fall and into late spring to allow for a late November fishery, when crabbers receive higher prices for their product. Staff agreed this proposal would achieve the reduction goals intended to be made at this time.

The option supported by both CMAC and staff implements lower bushel limits starting October 1 and to keep the fishery open through November 30. In the spring, the hard crab pot season would still open March 17 however the period of lower bushel limits would continue through May 15. Status quo for the last three years has had no lower bushel limits in the fall and the spring bushel limit ending March 31.

The bushel limits and seasons recommended by staff and CMAC depend upon further reductions being taken for the 2023 blue crab fishery in the form of the long-term management measures discussed above. If further reductions are not made, bushel limits and seasons may be re-evaluated to reduce harvest as a way to increase overall blue crab abundance in the bay.

Staff is also recommending an April 15 to October 15 season for all crabbing gears other than hard crab pot. This is also to protect female crabs in the fall and spring.

Additionally, staff recommends adding a new section to 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery," which will define the legal commercial harvest gears. These include the gears currently licensed for the blue crab fisheries: hard crab pot, peeler pot, dip net, ordinary or patent trotline, crab dredge, crab scrape, and crab trap or pound. This addition will provide clarity within the regulation and increase efficiency for the marine police to enforce violations for harvest of blue crabs by gears not licensed for the blue crab fisheries.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery," to establish management measures, including season and bushel limits, for the 2022-2023 commercial crab fisheries and define legal commercial harvest gears.

The matter was before the Commission for discussion and action.

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

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- 14. PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters” to close the December 1, 2022 through March 31, 2023 winter commercial crab dredge fishing season, in accordance with the provisions of Section 28.2-707 of the Code of Virginia.

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

Ms. Galvan explained that since 2008, when Virginia effected a large decrease in harvest to conserve a consistently low blue crab population, the winter crab dredge fishery season has remained closed. The winter crab dredge fishery season is from December 1 to the following March 31. During these months, most of the crabs available for harvest matured from the juvenile stage in the previous winter. The majority of the overwintering female crabs are pre-spawners, and studies have shown that the dredge fishery harvested mostly (95%) female crabs. Juvenile abundance in the 2022 winter dredge survey was estimated at 101 million crabs. This value is the second lowest out of the 33 years of the winter dredge survey, only higher than the 2021 abundance. Blue crab abundance, especially in juveniles, experiences strong inter-annual variability due to natural processes. A winter dredge fishery season, especially when juvenile abundance is low, could negatively affect subsequent spawning events and crab pot harvest. For these reasons, staff recommends closing the upcoming 2022/2023 winter crab dredge fishery season.

Staff recommends the Commission approve amendments to Chapter 4 VAC 20-1140-10 et seq., “Prohibition of Crab Dredging in Virginia Waters,” to close the December 1, 2022 through March 31, 2023 winter commercial crab dredge fishing season, in accordance with the provisions of Section 28.2-707 of the Code of Virginia.

**Commission Meeting**

**18986  
June 28, 2022**

The matter was before the Commission for discussion and action.

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

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Commissioner Green recognized Associate Members Zydron and Ballard for their years of service on the Commission.

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There being no further business, the meeting was adjourned at approximately 11:40 a.m. The next Commission meeting will be Tuesday, July 26, 2022.

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Jamie L. Green, Commissioner

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Jamie Hogge, Recording Secretary