

MINUTES

COMMISSION MEETING

January 25, 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:

Justin Worrell	Acting Commissioner
John Tankard III	
John Zydron Sr.	
Wayne France	
James E. Minor III	Associate Members
Heather Lusk	
Christina Everett	
Chris Newsome	
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.
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Alicia Nelson	Coordinator, RFAB/CFAB
Lewis Gillingham	Director, SWFT
Matt Rogers	Chief, Law Enforcement
Jamie Green	Deputy Chief, Law Enforcement
Randy Owen	Chief, Habitat Management
Mike Johnson	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.

Commission Meeting

**18894
January 25, 2022**

Jay Woodward	Environmental Engineer, Sr.
Ben Nettleton	Environmental Engineer, Sr.
Lauren Chartrand	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	Mark Luckenbach
--------------	------------	-----------------

Others present:

Carter Teague	Heather Kennedy	Chris Patrick
Bob Orth	Ben Johnson	Jennifer Johnson
Alexxa Bostic	Chris Sopko	Cody Metcalf
Tommy Kellum	Roger Mann	Melissa Southworth
and others.		

* * * * *

Acting Commissioner Worrell called the meeting to order at approximately 9:30 a.m.

* * * * *

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

* * * * *

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

Pat Geer requested to remove **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1180-10 et seq., “Pertaining to Fishing Guides”, to 1) define existent freshwater/saltwater delineation lines, 2) clarify language for license qualification

requirements, and 3) establish penalties. The Commission also proposes to repeal Chapter 4 VAC 20-1150-10 et seq., “Pertaining to Charter Boat and Head Boat Fisheries” from the agenda to be heard at a later meeting.

Ben Stagg requested to add to the agenda an emergency amendment to extend the public season for hand scrape activity in the James River harvest season through the end of February by the request of industry. Acting Commissioner Worrell stated that the agenda item would be heard before Public Comments.

Associate Member Minor moved to approve the agenda as amended. Associate Member Zydron seconded the motion. The motion carried, 8-0 Chair voted yes.

* * * * *

Acting Commissioner Worrell asked Ben Stagg, Chief, Shellfish Division, to come forward to explain to the Commission about the new Shellfish Division.

* * * * *

MINUTES: Acting Commissioner Worrell asked if there were any changes or corrections to be made to the December 7, 2021 Commission meeting minutes.

Associate Member Zydron moved to approve the minutes as presented. Associate Member France seconded the motion. The motion carried, 5-0-3. Chair abstained. Associate Members Tankard and Minor abstained.

* * * * *

Acting Commissioner Worrell 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 A through D for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

- 2A. CITY OF VIRGINIA BEACH, #21-1817,** requests authorization to maintenance dredge (by mechanical means) approximately 32,500 cubic yards of State-owned submerged bottomlands from within the Keeling Drain portion of the Eastern Branch of the Lynnhaven River City Channel. Dredging will attempt to achieve maximum depths of minus eight (-8) feet at mean low water. Sandy dredged material will be offloaded at the City's Lynnhaven Beach and Boat Ramp facility, located at 3576 Piedmont Circle along Crab Creek, and utilized for future beach nourishment projects. Offloaded dredged material that is not beach quality sand will be contained and transported to an approved upland disposal site.

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

- 2B. SHIRLEY CONTRACTING COMPANY, LLC, #21-1490,** requests authorization to install a clear span bridge over a 34-foot wide section of Broad Run as part of the Northstar Boulevard Extension from Route 50 to Shreveport Drive in Loudoun County. Staff recommends approval with our standard instream conditions and a condition requiring the permit be transferred to VDOT upon their acceptance of the completed project.

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

- 2C. FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, #21-1979,** requests authorization to install, by the horizontal directional drill method, a 36-inch diameter HDPE sanitary sewer force main, a minimum of 15 feet below an 815-foot wide section of Little Hunting Creek along an alignment from the LHC Pump Station near the intersection of Thomas J. Stockton Parkway and Londonberry Road to an existing discharge junction chamber near the intersection of Surrey Drive and Surrey Court in Fairfax County. Staff recommends approval of the permit to include our standard instream conditions and a condition requiring the permittee to adhere to the inadvertent return plan prepared for the project.

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

- 2D. CHESAPEAKE REAL ESTATE, LLC, #21-1415,** requests authorization to reconstruct an existing derelict marina to include installation of new floating

docks, 53 boat slips, new gangway ramps and 146 linear feet of bulkhead, no more than two (2) feet in front of existing failed bulkhead, at property (245 William R. Harvey Way) adjacent to the Hampton River in the City of Hampton. Staff recommends a total royalty of \$62,677.00 and the following special condition:

- 1. Royalty for the marina may be paid in two phases, with \$45,795.00 due immediately and \$16,590.00 due prior to the construction of Phase 2 of the marina.

Royalties: (\$62,677 - \$450.00 previously paid)	\$ 62,227.00
Fees:	\$ 600.00
Total Fees:	\$ 62,827.00

Acting Commissioner Worrell abstained from voting on the Page 2 Items.

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 A through D as presented. Associate Member Minor seconded the motion. The motion carried 7-0-1. Chair abstained.

- 3. CONSENT AGENDA ITEMS. – No Consent Agenda Items.**

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

5. **VIRGINIA ELECTRIC & POWER COMPANY #21-2304**, requests authorization to replace four (4) transmission line support structures located in tidal wetlands, and replace two (2) 115k kV aerial crossings over 243 linear feet of Proctors Creek in Chesterfield County. This project requires a tidal wetlands and subaqueous permit.

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

Ms. Chartrand explained that the applicant is proposing to replace two existing transmission lines (Line 53 and 72) and transmission line support structures. The lines share the same right-of-way, which extends approximately 3.7 miles from the Chesterfield Power Station, and will impact Proctors Creek and adjacent tidal wetlands.

The project will rebuild existing aerial crossings of Proctors Creek. The lines are currently co-located on the same structures and will be rebuilt into two independent crossings next to one another. Line 53 and Line 72 will cross a cumulative total of 243 linear feet of State-owned subaqueous bottom and maintain a minimum vertical clearance of approximately 50.5 feet above mean high water.

The replacement of four transmission line support structures will result in permanent impacts to 62 square feet of vegetated tidal wetlands. New structures will consist of steel H-frame and single pole structures. New structures will either feature a three-foot diameter pipe pile foundation or a drilled pier foundation of varying diameter. The structures will be accessed by installing temporary timber matting over approximately 32,670 square feet of vegetated tidal wetlands.

The applicant has proposed to purchase tidal wetland credits of 0.001 acre from The Nature Conservancy's Virginia Aquatic Resource Fund (mitigation ratio of 1:1), as provided for in §28.2-1308-D of the Code of Virginia, for the permanent vegetated wetlands impacts.

Staff recommends no mitigation for the temporary impacts to tidal wetlands, as these impacts are primarily due to the use of timber matting for access. The applicant will remove all timber matting once the project is completed and allow these areas to naturally revegetate.

Staff recommends the following permit conditions to ensure that appropriate wetlands restoration is achieved following the completion of the project:

1. 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;
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. The permittee shall provide proof of purchase of tidal wetland compensation credits from the Virginia Aquatic Resource Trust Fund, at a ratio of 1:1, prior to issuance of the final permit.

Therefore, after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) and §28.2-1302(10) in the Code of Virginia, staff recommends approval of the project with the above-referenced conditions. Staff additionally recommends a one-time royalty assessment in the amount of \$729.00 for the encroachment of two aerial transmission lines totaling 243 linear feet over State-owned submerged land assessed at the rate of \$3.00 per linear foot.

Heather Kennedy, applicant, was sworn in. Her comments are a part of the verbatim record.

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 Tankard seconded the motion. The motion carried, 7-0-1. Chair abstained.

Fees:	\$ 729.00
-------	-----------

* * * * *

6. REQUEST FOR AN EMERGENCY AMENDMENT – Industry request to extend the public season for Hand Scrape activity in the James River.

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 there were request from industry representatives to extend the hand scrape season, which is currently set to end on January 31, 2022. The numerous request range from 2 weeks to the entire month of February of 2022. Any such extension requires Commission approval as an emergency regulatory action ‘Pertaining to restrictions to oyster harvest’ Chapter 4 VAC 20-720-10 et seq.,

There were four (4) people from industry that spoke in support of an extension to the James River hand scrape season, which was currently set to end on January 31, 2022. Their comments are a part of the verbatim record.

Roger Mann spoke on behalf of VIMS and expressed considerable concerns about any season extension. His comments are a part of the verbatim record.

Associate Member Minor made a motion to extent the James River Hand Scrape Season as requested by industry. Associate Member Lusk seconded the motion. The motion failed, 2-5-1. Chair abstained. Associate Members Newsome, France, Tankard, Zydron and Everett voted no.

* * * * *

7. PUBLIC COMMENT:

Tommy Kellum thanked the VMRC oyster Conservation and Replenishment staff for their efforts for the oyster resource and fishery.

* * * * *

Agenda item #8 was removed from the agenda at the beginning of the meeting by the request of Pat Geer, Chief, Fisheries Management and not presented.

- 8. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1180-10 et seq., “Pertaining to Fishing Guides”, to 1) define existent freshwater/saltwater delineation lines, 2) clarify language for license qualification requirements, and 3) establish penalties. The Commission also proposes to repeal Chapter 4 VAC 20-1150-10 et seq., “Pertaining to Charter Boat and Head Boat Fisheries”.

* * * * *

- 9. **PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass” to close the February recreational black sea bass season.

Alexa Galvan 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 each year since 2018, the Atlantic States Marine Fisheries Commission (ASMFC) has approved Virginia to open a February recreational black sea bass fishery in federal waters. In December 2021, ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) voted on recreational specifications for black sea bass that would require a 28% reduction in recreational black sea bass harvest coastwide to avoid exceeding the recreational harvest limit (RHL). Management measures are expected to be finalized in late February or March of 2022, ahead of the May 15 regular season opening. Without final recreational management measures in place, staff recommends Virginia not hold a 2022 February recreational black sea bass fishery.

Staff requests the Commission approve amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", to close the February recreational black sea bass season.

No one spoke in opposition of the application.

The matter was before the Commission for discussion and action.

Associate Member Zydron made a motion to approve staff recommendation. Associate Member France seconded the motion. The motion carried, 6-1-1. Associate Member Everett opposed. Chair abstained.

* * * * *

10. **PRESENTATION:** Dr. Chris Patrick, Director of the VIMS SAV Monitoring and Restoration Program, will give a brief overview of recent work by the VIMS SAV Program. This will include a quick recap of our work, status and trends for SAV through 2020, updates on propeller scarring, and seagrass and bay scallop restoration activities in the VA Coastal Bays and lower Chesapeake Bay.

Associate Member France made a motion to further support funding, specifically for the propeller scar monitoring program. Associate Member Tankard seconded the motion. The motion carried, 7-0. Chair voted yes. Associate Member Minor was not present during the final vote.

* * * * *

There being no further business, the meeting was adjourned at approximately 12:10 p.m.. The next Commission meeting will be Tuesday, February 22, 2022.

Justin Worrell, Acting Commissioner

Jamie Hogge, Recording Secretary