

MINUTES

COMMISSION MEETING

January 24, 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
Lynn Kellum	
William Bransom	
Wayne France	
John Tankard III	Associate Members
James Minor	
Jeremy Headley	
A.J. Erskine	
Kelci Block	Assistant Attorney General Via Conference Call
Jamie Hogge	Recording Secretary
Todd Sperling	Bs. Systems Manager
Pat Geer	Chief, Fisheries Mgmt.
Adam Kenyon	Deputy Chief, Fisheries Mgmt.
Somers Smott	Fisheries Mgmt. Specialist
Alexa Galvan	Fisheries Mgmt. Specialist
Jill Ramsey	Fisheries Mgmt. Specialist
Jennifer Farmer	Fisheries Mgmt. Specialist
Brooke Lowman	Fisheries Mgmt. Specialist
Lewis Gillingham	Director, SWFT
Alicia Nelson	Coordinator, RFAB/CFAB
Rob Berryman	Captain, Law Enforcement
Brian Elliott	Marine Police Officer
Justin Worrell	Deputy Chief, Habitat Management
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Lauren Chartrand	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.

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Mike Johnson	Environmental Engineer, Sr.
Tiffany Birge	Environmental Engineer, Sr.
Claire Gorman	Environmental Engineer, Sr.
Ben Nettleton	Environmental Engineer, Sr.
Andrew Button	Deputy Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
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Others present:

Sam Flore	Jon Simon	Joseph Scott
Nathan Everett	Kara Everett	Austin Robbins
Bruce Julian	Jason Franti	Nancy Davis
Emory Rice	Bryan Peoples	David O'Brian
Lee Deihl	Kim Huskey	Marc Brown
And others.		

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

Justin Worrell, Deputy Chief, Habitat Management, requested Item # 5 to be read into the record as a Consent Agenda Item. The project has been resolved and is no longer protested. Mr. Worrell’s comments are a part of the verbatim record.

Associate Member Erskine moved to approve the agenda as amended. Associate Member Headley seconded the motion. The motion carried, 7-0.

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MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the December 6, 2022, Commission Meeting minutes.

Associate Member France moved to approve the minutes as presented. Associate Member Erskine seconded the motion. The motion carried, 7-0.

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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).

Justin Worrell, Deputy Chief, Habitat Management, reviewed the Item # 5 then continued with the Page 2 items 2A through 2E for the Associate Members. Mr. Worrell’s comments are a part of the verbatim record.

- 2A. **CITY OF VIRGINIA BEACH, #22-0818**, requests authorization to maintenance dredge (mechanically or hydraulically) approximately 48,000 cubic yards of State-owned bottom on an annual as-needed basis to maintain maximum navigable depths of minus eight (-8) feet mean low water in the Long Creek municipal channel in Virginia Beach. All dredged spoils will be offloaded at either the Maple Street Placement Site or the Lynnhaven Inlet Placement Site and used for future beach nourishment. Staff recommends approval with the standard dredge conditions.

Fees:	\$ 600.00
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- 2B. **GP BIG ISLAND LLC, #22-2695**, requests authorization to install a new bridge abutment on the Amherst County side of the James River to include 13 cubic yards of new concrete placed below ordinary high water, excavation of river sediments to expose the underlying bedrock in the construction area, the installation of a temporary stone working platform, and a temporary coffer dam around the riverine construction area. Staff recommends approval of the project with our standard western instream permit conditions and a time-of-year instream work restriction of April 15 through July 31 and August 15 through

September 30 of any given year to protect fresh-water endangered mussel species unless waived in writing by the Department of Wildlife Resources.

Royalties: (171 Sq. ft. @ \$3.00 Sq. ft.)	\$ 513.00
Fees:	\$ 600.00
Total:	\$ 1,113.00

- 2C. LOUDOUN COUNTY SANITATION AUTHORITY, #22-1820**, requests authorization to install three (3) 10-foot diameter, horizontal shafts below a 30-foot section of Goose Creek using the drill and blast method, one (1) 2-inch diameter sanitary force main using an existing casing, one (1) 8-inch diameter potable waterline using the open cut trench method, 32-linear feet of riprap for bank stabilization, one (1) temporary access bridge using three (3) 10-foot by 6-foot concrete culvert boxes, and to subsequently construct one (1) permanent 330-foot by 24-foot bridge across Sycolin Creek as part of the Potomac Water Supply Program water banking project adjacent to the Washington and Old Dominion Trail in Loudoun County.

Fees:	\$ 600.00
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- 2D. GARY SCHLUEB, #22-2128**, requests authorization to install 350 linear feet of riprap, the toe of which may be installed a maximum of five feet channelward of the existing bulkhead adjacent to 801 Seabrooke Point along Bells Mill Creek in the City of Chesapeake. This project requires a tidal wetlands and subaqueous permit.

Fees:	\$ 300.00
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- 2E. JSSY LLC, #22-1263**, requests authorization to construct 237 linear feet of steel bulkhead in front of an existing failing bulkhead, 103 linear feet of new steel bulkhead, and backfill a marine railway area at industrial property (3301 Shipwright Street) adjacent to the Western Branch of the Elizabeth River in the City of Portsmouth. Staff recommends approval of the project as proposed.

Fees:	\$ 600.00
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Bruce Julian, representing Lancaster County, spoke on behalf of Agenda Item #5, which was presented as a Page 2 Agenda Item. His comments are a part of the verbatim record.

No one spoke in opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member France moved to approve the page 2 items 2A through 2E as presented to include the royalties in Item 2B. Associate Member Minor seconded the motion. The motion carried 7-0.

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3. CONSENT AGENDA ITEMS

Justin Worrell, Deputy Chief, Habitat Management, reviewed the Page 3 Consent Agenda Items beginning with 3A for the Associate Members. Mr. Worrell’s comments are a part of the verbatim record.

3A. POSEIDON PROPERTIES LLC, #22-2175, requests after-the fact authorization to retain a 24-linear foot by 14-inch high timber retaining wall with a triangular corner planter at the landward edge of a coastal primary sand dune on private property (902 W. Ocean View) in the City of Norfolk. This application requires a dune and beach permit. Staff recommends approval with a civil charge of \$1,000.00.

Brian Peoples, representative for the applicant, spoke on behalf of his client. He stated that the applicant agreed to pay the civil charge. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Headley moved to approve 3A as presented. Associate Member Minor seconded the motion. The motion carried 7-0.

Civil Charge:	\$ 1,000.00
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4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. – No meeting needed

Agenda Item #5 was heard during Page 2 Agenda Items.

5. LANCASTER COUNTY BOARD OF SUPERVISORS, ET AL, #22-2229, requests authorization to construct five (5) stone breakwaters and two (2) stone spurs, with 122,000 square feet of associated clean sand beach nourishment and 42,000 square feet of dune and beach plantings to expand a public beach and create a living shoreline at three (3) adjacent properties at the end of State Route 695, Windmill Point Road in Lancaster County. The project is protested by the oyster planting ground leaseholder nearby.

Fee:	\$ 300.00
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6. STAY THE COURSE, LLC, #22-2499, requests authorization to construct a total of four (4) commercial piers and replace an existing concrete boat ramp at a proposed commercial fishing facility on property at the confluence of Antipoison Creek and Harpers Creek at 459 Harpers Creek Road in Lancaster County. The project is protested by an adjacent property owner.

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

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

Nathan Everett, applicant, was sworn in. His comments are a part of the verbatim record.

Bruce Julian, representing Lancaster County, spoke on behalf of Agenda Item #5, which was presented as a Page 2 Agenda Item. His comments are a part of the verbatim record.

No one spoke in opposition of the project.

The matter was before the Commission for discussion and action.

Associate Member Minor made a motion to amend staff recommendation. Associate Member Erskine seconded the motion. The motion carried, 7-0.

Fee:	\$ 300.00
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7. PUBLIC COMMENTS:

Emory Rice requested the extension of the following Public Oyster Harvest Areas. His comments are a part of the verbatim record.

Great Wicomico Area 2, Deep Rock, James River Hand Scrape Areas 1, 2, and 3 and Rappahannock Area 2 were the areas that requested for season extentions.

After discussion from the Staff, Commission Members and Kelci Block, Assistant Attorney General, it was decided to only discuss the areas that were set to close before the February Commission Meeting.

James River Areas 1, 2, and 3, and Rappahannock River Area 2 were requested to remain open for harvest until February 24, 2023 as an emergency regulation.

Associate Member Headley made a motion to extend the Public Oyster Harvest Season for James River Areas 1, 2, and 3 as well as Rappahannock River Area 2 until February 24, 2023. Associate Member France seconded the motion. The motion carried, 7-0.

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8. **EMERGENCY REGULATION:** Proposal to amend Chapter 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass,” to open a recreational black sea bass season in February 2023

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 each year between 2018 and 2021, Virginia has been approved by the Atlantic States Marine Fisheries Commission (ASMFC) to open a recreational black sea bass fishery in February. Virginia is applying for another February recreational black sea bass season for 2023 under the same permitting and reporting conditions as in previous years.

Since 2018, the National Marine Fisheries Service has opened federal waters for a recreational black sea bass fishery in February under the condition that any state participating must pay back their February landings during the regular May through December recreational season. States must request this special season and be approved by the ASMFC as well as have an approved payback plan. On December 13, 2022, ASMFC approved Virginia’s proposal for a February 2023 recreational season.

Virginia participated in this special recreational season from 2018 through 2021 with the understanding that any additional landings occurring in February each year would result in a deduction of fishing days from the open season. Permit holders (the captain or operator of the vessel) were required to report to the commission the number of trips they took, the number of anglers on board, and the number of black sea bass they landed and released. Permit holders were also required to call the Marine Police Operations Stations before each trip so VMRC staff could arrange to sample a subset of trips for fish lengths and weights.

Season adjustments to the regular season were based on average daily landings rates by

wave from the two most recent complete years of Marine Recreational Information Program (MRIP) landings. This generally resulted in a two to three week closure of the regular recreational black sea bass season in May or June. The Summer Flounder, Scup & Black Sea Bass Technical Committee reviewed and approved the VMRC's methods and results, and the dates of the closure were reviewed by the Finfish Management Advisory Committee (FMAC) and approved by the Commission.

The February black sea bass season is popular with Virginia anglers and has been supported by FMAC for several years. In 2020, ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) said they support continuing the February recreational season option for states and praised Virginia's monitoring program. Virginia's permitting and reporting system has been recommended as a model for any states also looking to participate in the February fishery. In October 2022, the Finfish Management Advisory Committee (FMAC) made a motion to pursue the February black sea bass season in 2023 in recognition of its popularity with recreational anglers and importance to the for-hire industry. This motion passed FMAC unanimously.

Language pertaining to the February recreational black sea bass fishery was removed in 2022 when the Commission decided against opening for the special season in light of uncertainty about 2022 regulations for the regular black sea bass season. These amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", restore the previous language opening the February season and describing the permitting and reporting requirements. The recreational black sea bass season will come before the commission again this spring to adjust the season length to account for February landings.

This item is an emergency regulation due to a missed deadline for the public notice. It is eligible for the emergency regulation based on §28.2-210 which states that the Commission may promulgate emergency regulations for protection of the seafood industry. The regulation will sunset thirty days from its effective date, which will be after the February season has already closed.

Staff recommends the Commission make an emergency amendment to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", to open a recreational black sea bass season in February 2023.

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The matter was before the Commission for discussion and action.

**Associate Member Erskine made a motion to amend staff recommendation.
Associate Member Minor seconded the motion. The motion carried, 7-0.**

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There being no further business, the meeting was adjourned at approximately 11:23 a.m. p.m. The next Commission meeting will be Tuesday, February 28, 2023.

Jamie L. Green, Commissioner

Jamie Hogge, Recording Secretary