

REPORT OF RECOMMENDATIONS FROM THE LYNNHAVEN RIVER SHELLFISH WORK GROUP

(8-15-2016)

During the January 26, 2016 Commission Meeting, the Associate Commissioners discussed legislation pending before the General Assembly to institute a moratorium on the issuance of new leases within the Lynnhaven River system for a set period of time. Following that discussion, Associate Member Erskine made a motion to implement a temporary suspension on the issuance of any new leases of oyster ground within the Lynnhaven River system for seven months; and, during this time a study group involving stakeholders would be formed to meet and review this matter in order to make recommendations to address user conflicts associated with the commercial use of leased oyster ground and the concerns of highland property owners and other users of the waterway. Associate Member Zydron seconded the motion. The motion carried, 7-0-1. Commissioner Bull abstained.

Thirteen stakeholders were selected to serve on the work group and Associate Commissioner Neal was asked to chair the workgroup. The group began meeting in April and met at various locations within Virginia Beach and at the VMRC main office in Newport News. One meeting was conducted as a field river trip on a VMRC vessel to allow the members to observe and review the areas where leasing and aquaculture activity is occurring in the watershed area.

The group identified at least fifteen specific action items for discussion and possible recommendations. Those items in no particular order were identified as:

1. Lease application notification process
2. Lease marking and marking of aquaculture structures
3. Liability for leaseholder and boaters
4. Visual impacts of markers and cages
5. Property value (highland) impacts
6. Safety issues
7. Navigation issues
8. Prohibition of dredging through leased areas
9. General user conflicts (Commercial/recreational)
10. Lease term limits
11. Lease use plan requirements
12. Designation of areas not to be leased
13. Abandoned gear
14. Riparian rights and riparian shellfish leases

15. Leasing areas as a “land grab”

These action items were discussed during the course of subsequent meetings, some at great length and others to a much lesser degree. The information that follows provides a brief discussion on each topic and a final recommendation (if one was offered) for action by either VMRC staff, the Commission, or the legislature. The items have been reoriented from the original list of action items based on the amount of discussion and/or whether the action item actually was voted upon by the full work group.

Action items: General User Conflicts, Visual Impact of Markers and Cages, Safety Issues, and Navigation Issues. To address many of these overlapping issues the group had extensive discussions at multiple meetings.

Group Status: The group proposed a number of suggestions to modify the existing VMRC regulation that allows structures up to 12-inches in height above the bottom to be placed on existing oyster ground leases. Those suggestions included that the Commission modify the current on bottom structure regulation (4 VAC 20-335-10 ET SEQ) to require all leaseholders obtain either a Fisheries Management Division General Permit #4 or a Subaqueous permit (under the Joint Permit Application process) for new deployed structures within Virginia Beach, and to require leaseholders to obtain such authorization for all currently deployed aquaculture structures within an 18-month time frame. In the event the Commission chooses not to implement the regulatory change recommended above, the group offered an alternate recommendation to require some type of buffer distance between the aquaculture structures and adjacent properties through either a distance from shore, or a minimum depth of water. The specific recommendations for each are listed below with the vote for each recommendation provided.

Vote to revise current regulation as presented by staff (new item J) for the on bottom 12-inch regulation and would read as follows:

*J. This regulation does not authorize any person to deploy commercial aquaculture structures within the City of Virginia Beach. Any commercial aquaculture structures currently deployed in the City of Virginia Beach pursuant to previous versions of this regulation shall either be removed or properly authorized by permit under Title 28.2 of the Code of Virginia or by other regulation within 18 months of the amended effective date of this regulation. **Vote 7-4-1.***

*Vote to revise the current on bottom regulation adding new item J with additional new language that defines hardened structure and with waived encroachment fees or royalties under the Subaqueous Permit or the Fisheries General Permit # 4. This regulatory change would apply to leases within the City of Virginia Beach only. **Vote 8-3-1.***

*Vote to modify the current on bottom regulation to require a 210' buffer from mean low water for any cages in residential areas in the City of Virginia Beach only. **Vote 5-6-1.***

*Vote to modify the current on bottom regulation to require that no cages be set within 150 feet from the mean low water line for cages, if no objection by adjacent landowner in Virginia Beach only. **Vote 9-3.***

*Vote to modify the current on bottom regulation to require that no cages be set on a lease within a distance of 150 feet from mean low water line in residential areas in Virginia Beach only. **Vote 6-6.***

*There was discussion to modify the current on bottom regulation to require a minimum depth of 5 feet at mean low water for the placement of structures. **There was no vote on this.***

Action Item: Leasing Marking

The group agreed that better boater education about aquaculture activities is needed.

Group Status: The group voted to recommend that VMRC staff work to get better boater education concerning aquaculture activities inserted into boater safety courses and for dockside boater safety courses.

The vote was unanimous.

Action Item: Designation of areas as not to be leased

Group status: The group discussed and voted to recommend a specific area within Virginia Beach be set aside as not to be leased.

*Vote to recommend the Commission set aside an area (Little Neck Creek area upstream of the Cavalier Yacht Club) as not be leased for regular leases. **Vote 7-4-1.***

Action Item: Abandoned gear:

There was discussion about structures that may now be out of compliance or abandoned. Commission staff did check for such issues and discovered non-compliance issues. During the course of the group meetings VMRC Law Enforcement hand delivered letters to most know cage aquaculture leaseholders indicating the types of non-compliance to include apparent abandoned gear.

Group Status: No action or votes were taken on this topic.

Action Item: Notification

The group spend quite a bit of time discussing this issue and the necessity to make notification more transparent and robust, it was noted that the notification process really doesn't apply much to Lynnhaven River for new leases since most of the area is already leased. However, the group did recognize that this issue remains one of the most important to upland land owners who never realized a lease application had been pending. Consensus is that a better notification process than the one that exists in the Code of Virginia is highly desirable. This would require a change to the Code of Virginia and it is not a Virginia Beach area specific issue.

Group status: Group consensus that the current notification process is outdated and ineffective. This issue is not specific to the Virginia Beach area. Any change to the notification process will require changes to the Code of Virginia.

*Vote that an improved notification process is needed. **Unanimous support.***

Action Item: Lease use plan requirements

VMRC staff briefed the work group on past efforts to address the use plan issue, the group discussed its implications and whether this is something that this group needs to address specifically for Virginia Beach. The general consensus was that the issue warrants further consideration on a statewide basis but it is beyond the scope of the workgroup. Any such requirement would likely need a number of changes to the Code of Virginia.

Group status: Group consensus that a use plan requirement for new applications, transfers, and renewal of leases would provide VMRC with better tools to manage leases and provide the public with better information on the use of the leased area.

*Vote to recommend that the power to require a use plan be granted to the Commission by the General Assembly (statewide). **Vote 8-3-1.***

Action Item: Riparian rights and riparian shellfish leases

There was considerable discussion about riparian rights and riparian oyster ground leases. There appeared to be a majority consensus to allow riparian land owners who own less

water frontage than the current requirement of 205 feet to obtain a riparian lease. No firm new frontage amount was specified. Any such change would require modification to the Code of Virginia.

Group Status: General consensus that the amount of frontage required to qualify for a riparian lease should be reduced from the current 205 feet minimum, to some lesser frontage amount.

There was no specific recommendation voted on by the group.

Action Item: Prohibiting dredging through existing leases

This issue is associated with the fact that under current law leaseholders can essentially “veto” a municipal dredge project if they do not agree to allow channel dredging across their lease. While this applies statewide the problem seems to be more prevalent in Virginia Beach where such projects have occurred and are more likely to occur into the future.

Group status: Discussion by group and consensus that some modification of the Code may be required to allow such projects to proceed while still allowing for just compensation to the leaseholder for the impact to their lease. This issue is important to the City of Virginia Beach and the group should consider whether to support a recommendation that the General Assembly consider Code modification to address municipal channels that impact leases within the City of Virginia Beach (or statewide).

*Vote to support Code revision to address this issue to allow such projects to proceed while still allowing the leaseholder to be properly compensated through negotiation or through arbitration. **Vote 9-0-3.***

Action Item: Lease term limits

Some discussion about this topic (along with a use plan requirement) but no real consensus on this issue other than perhaps the length of the lease term (reduction) could be included in the granting of authority for the Commission to require a use plan for new leases, transferred leases, and renewed leases. This would require a change to the Code of Virginia.

Group status: No specific work group consensus.

There was no specific recommendation voted on by the group.

Action Item: Liability (leaseholder and/or boaters):

The group asked for direction on this issue and VMRC staff requested advice from the Office of Attorney General. Based on that response, the group was told that liability issues are a legal matter but if the leaseholder follows all rules and regulations their liability would be greatly reduced. It was also noted that there is some responsibility by the boating public to be aware of dangers in the water and there is some liability responsibility for them as well.

Group status: No action, this is a legal issue.

No recommendation or vote on this item.

Action Item: Property value impacts

This issue was also discussed to some degree and public comment indicated at the least a fear that leasing and aquaculture activities may have an adverse impact on property values. Members of the group involved with the aquaculture industry noted that there does not appear to be any concrete evidence that aquaculture activity adversely affects property values.

Group status: No action, this issue may be indirectly addressed through specific regulatory restrictions within residential areas.

No recommendation or vote on this item.

Action Item: Leasing of areas as a “land grab”:

While this issue was explained to the group by VMRC staff, this matter is probably best addressed through either legislation to reduce the size of current allowed applications, or through the implementation of a use plan, which would also require legislative action. This issue is more prevalent in other parts of the state. This issue is beyond the scope of the charge of this work group.

Group status: No action.

No recommendation or vote on this item.