



Joint Comments and Recommendations

DNR Draft “Consolidated Strawman Management Plan Proposal”

March 13, 2017

In response to the draft “Consolidated Strawman Management Plan Proposal” released by the Maryland Department of Natural Resources (DNR) on February 13, the Clean Chesapeake Coalition (CCC) and Delmarva Fisheries Association (DFA) co-hosted a public meeting for members and other stakeholders to discuss DNR’s proposed changes to current oyster management areas and evidence a willingness to work with the Administration and DNR in fashioning a fair and workable oyster management plan – which is long overdue. We applaud DNR for seeking common ground among stakeholders and for recognizing the critical role of watermen and the commercial fishery in the recovery of the Chesapeake Bay oyster.

The joint CCC and DFA open meeting was held on Saturday, February 25, at the Queen Anne’s County Chesapeake Heritage & Visitor Center. Notes from the meeting are attached. Following below are joint comments and recommendations concerning the DNR Strawman Proposal (which are not intended to replace the specific comments and recommendations of any county oyster committee):

1. We support the broad goals of the consolidated plan outlined on page 2.
2. Guidelines for Proposed Changes (page 3)

Shell: There should be a guideline stating a universal preference for natural indigenous oyster shell as the substrate of choice for any future work in Bay Agreement sanctuaries (Harris Creek, Tred Avon River, Little Choptank River). Implementation of any updated oyster management plan should be conditioned on the availability of natural shell. The Administration, DNR and OAC should continue pressing the U.S. Army Corps of Engineers for approval of the Man O’War Shoal shell dredge permit. Maryland has waited long enough for this critical element (shell) of our oyster restoration efforts; while Virginia’s oyster fishery outperforms Maryland using our proven past practices.

Alternative substrate materials such as construction debris and non-indigenous shell pose a threat to Maryland’s waters and aquatic ecosystem. For decades the EPA has addressed the issue of PCB contamination in building material debris and bricks caused by the application of PCB caulk. (<https://www.epa.gov/pcbs/polychlorinated-biphenyls-pcbs-building-materials>) Given the unknowns and questionable testing protocols for alternative substrate, natural indigenous oyster shell is the most cost-effective and protective.



Investment Protection: There should be a guideline to ensure that in areas where county oyster committees invest funding and effort in cultivating bottom, planting and relocating shell and/or planting seed as part of an approved rotational harvest program, they are guaranteed the opportunity to legally harvest those areas (3-4 years after the investment). Without such assurance, the investments made by commercial watermen consistent with DNR's oyster management plan are subject to taking by subsequent statutory, regulatory or agency changes. This was the case in 2010 with the designation of certain sanctuaries in locations where the industry had previously invested money and effort only to be denied (without compensation) the opportunity to realize a return on that investment.

Management of Non-Harvest Zones: There should be a guideline clarifying that in a rotational harvest area watermen are permitted to manage the non-harvest zones as they deem appropriate to maximize propagation and growth (e.g., bag-less dredging, shell planting, seeding).

Gear Types: Changes to harvest gear types should not be foreclosed. In the spirit of adaptive management, DNR should have all fishery management tools at its disposal, including the possibility of power dredging in proximity to Bay Agreement sanctuaries to provide clean natural bottom for sanctuary produced larvae to set and throughout the upper Bay to free natural oyster bars from smothering sedimentation.

3. Types of Proposed Changes (page 4)

In item #6 regarding designation of the 4th and 5th sanctuaries in furtherance of the 2014 Bay Agreement, "restoration partnership sanctuary" should be defined (i.e., the partners; the costs; the funding; the accountability framework). We also suggest that there is no rush to pursue the 4th and 5th Bay Agreement sanctuaries when (i) the efficacy of sanctuaries 1, 2 and 3 where work has been performed is still in question, (ii) navigational hazards remain, (iii) the work in 2 of the 3 current Bay Agreement sanctuaries is incomplete and (iv) the return on the investment of significant tax dollars already spent in Bay Agreement sanctuaries is negligible, at best.

4. Consensus Recommendations

Bay Agreement Sanctuaries 4 and 5

There should be no rush to pursue the 4th and 5th Bay Agreement sanctuaries when (i) the efficacy of sanctuaries 1, 2 and 3 where work has been performed is still in question, (ii) navigational hazards resulting from sanctuary work remain, (iii) the work in 2 of the 3 Bay Agreement sanctuaries is incomplete and (iv) the return on the investment of significant tax dollars already spent in Bay Agreement sanctuaries is negligible, at best.



OAC Member Dissent

The CCC and DFA equally agree that members of the OAC who actively supported [House Bill 924](#) during the 2017 General Assembly should be asked to resign for sabotaging the work of the OAC and acting in bad faith. For a member of the OAC to proactively lobby in support of legislation intended to thwart the ability of DNR to adaptively manage existing sanctuary areas while DNR releases a proposed management plan inclusive of OAC membership input is an affront to the hardworking OAC members and undermines the OAC's statutory role and efforts. The same 'stakeholder' NGOs who support HB924 and like legislation have had a grip on the management of the Maryland oyster fishery for the past decade – at the expense of the commercial fishery – and with little to show but the expenditure of tens of millions of taxpayer dollars and considerable harm to Maryland's seafood industry and local waterside economies.

MDOT Funding Audit

In the spirit of accountability, a comprehensive audit of the MDOT funding designated for "oyster recovery" should be conducted. Over the years, the apportionment of those public funds and the role of various State agencies, NGOs and vendors in the administration and spending of those funds has become more bureaucratic and less transparent. This is an important source of funding for the public oyster fishery that has a hard time of finding its way to the county oyster committees without spurious conditions on when, where and how much may be spent. The use of these funds has been trending towards administrative and handling costs instead of in-water oyster recovery activities and, in some cases, is doled out without competitive bidding. The use of the MDOT funding and related procurements should be independently scrutinized in terms of cost-effectiveness.

Oyster Fishery Management as a BMP

Just as proven land-based agricultural activities are designated best management practices (BMPs) for purposes of water quality improvement, eligibility for nutrient trading and for meeting TMDL goals, so too should in-water oyster restoration efforts – including proven oyster cultivation and propagation activities of the commercial fishery – be considered BMPs and given due consideration in the pending recalibration of the Chesapeake Bay TMDL. The oyster BMP recently approved by the Chesapeake Bay Program under the coordination of the Oyster Recovery Partnership (ORP) is limited to harvested oyster tissue by private oyster aquaculture practices. This approach led by ORP favoring private aquaculture over all other oyster recovery efforts is self-serving for ORP (follow the money) and too myopic to move the Bay TMDL needle.



In their 2012 *Native Oyster Restoration Master Plan for the Chesapeake Bay* the U.S. Army Corps of Engineers estimated that if the oyster density in the Choptank River was increased to 10 oysters per square meter over approximately 5,000 acres, 50% of the summer input of nitrates and 350% of the summer inputs of phosphates entering the Choptank River from stormwater runoff would be removed from the river. In the 2010 Bay TMDL, the EPA advised Maryland and Virginia to address oyster management in their WIPs because a tenfold increase in the oyster population could remove 10 million pounds of nitrogen annually. Note that USACE and EPA are referring to the ecological filtering value of oysters in the water.

Commercial watermen, at no cost to the State or any taxpayers, already have increased the State's oyster population to perhaps over 5% of its historic levels through oyster cultivation – in those portions of the Bay where allowed to do so. For an expenditure of no more than several million dollars (not billions), commercial watermen in collaboration with DNR through the county oyster committee framework could easily restore more and maintain more than 10% of the historic oyster bars. Such prudently managed natural bars would remove not only nitrogen, but also phosphorus, sediments and carbon required to meet TMDL goals.

For the betterment of the Bay and its tributaries, large scale oyster propagation and fishery management should be a priority best management practice element of the State's WIP and in county plans to meet TMDL water quality improvement goals.

The CCC and DFA support a policy of promoting restoration of historic natural oyster bars and Bay wide oyster cultivation (dredging, shell replenishment, seeded shell relocation, and rotational harvest) to increase the population of oysters throughout the Chesapeake Bay and its tributaries as much as possible for their undisputed ecological value as natural filters and the positive economic impact of a prudently managed fishery on local economies.

Attachment – 2/25/17 Joint CCC / DFA Meeting Notes

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JOINT FORUM RE DNR OYSTER PLAN STRAWMAN

Meeting Notes

February 25, 2017

10:00 A.M.

Queen Anne's County, Chesapeake Heritage Visitor Center
Meeting Room Facility

Present: Chuckie White (Kent County); Jim Reihl (Kent County); Cody Paul (Dorchester County); Hon. Alan McCarthy (County Executive, Cecil County); Tom Bradshaw (Councilman, Dorchester County); Bill Kilinski (Charles County); Ian Hornes (Queen Anne's County); Troy Wilkins (Queen Anne's County); Kelley Cox (Talbot County; OAC Co-Chair); Greg Kemp, Sr. (Talbot County); Jeff Harrison (Talbot County); Bunky Chance (Talbot County); George O'Donnell (DNR); Robert Newberry (DFA); Chip MacLeod (MacLeod Law Group) and Michael Forlini (MacLeod Law Group).

Opening Comments and Observations

Mr. MacLeod thanked local elected officials Tom Bradshaw (Dorchester) and Alan McCarthy (Cecil) for attending. Kent County Commissioner and CCC Chair Ron Fithian sent his regards as he was out of town.

Mr. MacLeod reviewed the organizational missions of the CCC and DFA, and how oyster restoration is central to the CCC's efforts to raise awareness and pursue improvement to the water quality of the Chesapeake Bay in the most cost-effective manner possible, while boosting local economies. At the same time, DFA is advocating to protect, defend and enhance the commercial fishing industry in the region for present and future participants through all legal means while maintaining healthy and sustainable fish stocks.

Mr. O'Donnell expressed his appreciation on behalf of DNR for the forum to coordinate industry comments and commended the Oyster Advisory Commission (OAC) and DNR for bringing forth an initial proposal to foster stakeholder discussion. Mr. O'Donnell stressed the importance of recognizing the "strawman" proposal as just a starting point, and a collection of OAC member comments.

It was observed how some OAC members such as the Chesapeake Bay Foundation and Midshore Riverkeeper Conservancy publicly proclaimed their wholesale opposition to the DNR Strawman Plan Proposal at the same time (if not before) it was released to the general public, offering no alternatives but the status quo. Those in attendance were committed to working with DNR and open-minded OAC members to find the common ground to advance the proposed oyster management plan.

Regarding the lack of available natural shell, all agreed that we must continue pushing for the permit to dredge shell from Man O' War Shoal because without shell we are wasting everybody's time talking about real oyster recovery. The ready availability of natural shell, it was noted, would benefit all oyster restoration strategies – aquaculture, seed hatcheries, sanctuary projects and a prudently managed oyster fishery.

All agreed that we are not discussing opening up Harris Creek, Tred Avon River or Little Choptank River. It was noted that much work remains to be done in the Little Choptank.

Mr. O'Donnell reviewed the history of shell dredging in the upper Bay and the Langenfelder Marine shell processing operation formally at Love Point on northern Kent Island, which is now property owned by the State. He mentioned that the one-of-its-kind Langenfelder dredge is now based in Norfolk, VA because there is shell harvesting going on in Maryland.

Capt. Newberry reported on recent meetings with Virginia watermen and that a new organization called Watermen All About Virginia Engaged (“WAAVE”) (organized by Lisa Rose) will be affiliated with DFA.

Strawman Plan Proposal (Draft Version 1) Review

Using a projector and handouts, attendees reviewed and discussed the draft proposal, and the following comments were noted (in no order of priority or emphasis; and without attribution):

Guidelines (Page 3)

- Success of any such plan requires access to shell – not “alternative” substrates.
- Zones that you are not harvesting should not stay/go idle. For example, you may seed zones 1, 2, 3 and harvest 4; you will always have a zone you can go into and work the bottom and manage your investment.
- In rotational harvest areas, what if you go back to one zone that you previously seeded and everything died; how would that be handled? It was suggested that some type of monitoring be in place.
- Realistically it would take until 2020-2025 to have this proposal in place.
- In the last month of the oyster season (March), watermen should be permitted to power dredge in more areas – including around sanctuary areas to free natural bars and buried shell from sedimentation and improve the chances for a good spat set.
- Clarification about rotational harvest areas is needed. The DNR Secretary stated that you could seed a zone, and let it sit for 3-years; however, it is not clear whether you can get into a zone before seeding to harvest legal sized oysters and/or work the bottom.
- In Virginia they have a maximum of 3 years during which a sanctuary can sit dormant. Maryland should have a similar time limit on designated sanctuary areas being entirely off-limits; otherwise any oysters in those untouched sanctuary areas will die.

- What happens if you spend your seed or shell money and your time and labor in a rotational harvest and then the next administration turns it into a sanctuary? How do we protect the investments made by county oyster committees and individual watermen pursuant to a State oyster management plan?
- County oyster committees should have management plans that DNR approves and incorporates into the State plan. With sound management plans the county committees can advocate for assurances that once money and effort are spent to implement a plan no changes will be allowed that deny the ability to reap the benefits of those investments. Such assurances must be legally enforceable to protect industry investments.
- County oyster committees need certainty that if they're going to put money into an area there will be an opportunity to harvest when the time is right. Such a guaranty has been talked about before but has never been made by the State. This is a critical issue for the success of DNR's management plan.
- It is frustrating when we try working with DNR and pushing for these concerns of the watermen and at the same time there are other groups like MWA supposedly representing the watermen saying that we are entirely against the proposed plan or against the Man O'War permit. This is used against us to divide us. We all need to be on the same common ground.
- Some committees do not care as much about opening up designated sanctuary areas as they are concerned with how much money and effort the State will invest in managing the sanctuary areas.
- The water quality of the Chester River has gotten worse not better since its designation as a sanctuary.
- In terms of nutrient credits and best management practices to meet pollution reduction goals, all the focus is on private aquaculture, at the expense of the commercial fishery. Local governments might be more willing to invest in oyster restoration if the contributions of the commercial fishery resulting in more oysters in the water were properly accounted for.
- ORP does not represent the interests of the commercial watermen. ORP's books should be open to the public and their use of taxpayer money should be audited.
- How will DNR's plan be funded? The Administration does not support an increase in the bushel tax.
- It is premature to focus on how the management plan will be fully funded. Some aspects are less dependent on taxpayer dollars than others. With less regulation and access to shell the industry would make significant contribution. Focus now is providing comments to positively influence the plan under consideration.

- Where is all the MDOT money (\$2 million) for oyster recovery going? What percentage is going in people's pockets for handling and administration instead of in the water and on the bottom, or to support the public fishery?
- As part of the State's water quality certification negotiations with Exelon for the relicensing of Conowingo Dam, funding for the oyster management plan could be pursued.
- County oyster committees should have plans ready for implementation as soon as funding is available.
- Notes from the meeting will be summarized and a joint report of consensus comments and recommendations will be submitted to DNR and the OAC in time for the next OAC meeting.

Adjournment: 12:30 p.m.

Respectfully submitted;



Colleen Sweeney
Administrative Assistant