

SHELLFISH MANAGEMENT DIVISION EVALUATION, 08/27/2024

PUBLIC HEARING: Proposal to amend Chapter 4VAC20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest” to establish the 2024-2025 areas of public harvest, public oyster harvest seasons, and oyster resource conservation measures.

ISSUES: Prior to October 1st of each year, the Commission can establish, by regulation, Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest”, the areas of public oyster harvest, public oyster harvest seasons and oyster resource conservation measures if they choose these to be different from those which are established by §28.2-506 of The Code of Virginia. The Commission has no requirement to change the oyster season established by code, but may do so, per section §28.2-507 of the Code of Virginia, “in order to protect or promote the growth of oysters”. The Commission may establish methods and seasons of harvest in those areas described in §28.2-524 of the Code of Virginia that “promote the oyster or clam fishery”.

BACKGROUND: The reported oyster harvest from Virginia waters, on both public and private oyster ground, over the last 20 years has generally tracked upward from record low harvest in the 1990s and early 2000s. Seasonal harvest amounts are directly affected by the length of harvest season, the number of active harvesters, daily bushel limit, and market condition. Annual total harvest numbers are primarily influenced by market condition and not the health of the resource. Preliminary harvest numbers for the 2023-2024 season indicated a modest decrease from the previous year to ~256,000 bushels which is still well above the 20-year average (143,000 bushels) (Graph 1). Information gathered during the annual stock assessment surveys of the public oyster grounds is used in conjunction with the advice and recommendations of the Shellfish Management Advisory Committee (SMAC) and the Virginia Institute of Marine Science (VIMS) to develop the proposed public oyster harvest season and recommended management measures each year (Chart 1).

Staff and SMAC agree that many of the changes made in recent years should continue this season as these measures have had the primary intended effect of preventing high levels of fishing effort from being focused on single harvest areas. These measures help to mitigate both a safety concern about “overcrowding” expressed by many watermen, as well as negative impacts to the oyster resource. Staff and SMAC support the continuation of these measures for the

to high supply in the Gulf states and that, most likely, the market will limit harvest across the bay. The recommendations by SMAC may have an adverse impact on the long-term management and sustainability of the oyster resource if demand for product was high, but short-term impacts may be able to be mitigated with current replenishment efforts:

- *Opening areas in the Upper Great Wicomico and Piankatank Rivers to public oyster harvest (Chart 2)*

The four harvest areas in the Piankatank River that were proposed to be opened have been closed for more than 20 years to commercial harvest but have seen harvest as part of a seed harvest program. The annual oyster survey shows these areas have more than enough resources to support harvest with any gear type. These areas are currently counted towards longstanding oyster restoration goals as part of the 2014 Chesapeake Bay Agreement (Literature 1,2,3). SMAC debated on spreading the harvest across all 4 deeper areas or to open hand scrape to only Burtons Bay to allow for better monitoring and simplified replenishment. Staff received public comments from NOAA and the USACE that expressed concern on whether harvest in this area would allow them to continually meet the restoration goals. They also had concerns of the proximity of the recommended areas to newly constructed restoration reefs and asked that any harvest areas be well marked and enforced. If the Commission adopts any open harvest in these areas, staff would propose mitigating replenishment efforts be supported by both SMAC and the Commission in the agency's annual Oyster Replenishment Plan.

- *Opening multiple areas (York River and Great Wicomico) out of the current 2 or 3-year rotation cycle to hand scrape*

SMAC has recommended open harvest to spread effort across rocks rather than concentrate fishing effort in these areas. However, if harvest effort is not stunted by the market as expected, this may not allow these areas time to recover and grow for longer-term sustainability. If the Commission chooses to remove these areas from the 2-year rotational management structure current regulation allows the agency to adaptively manage these areas by closing them to protect the resource.

- *Extending the season in certain geographic locations, such as the Rappahannock River and Great Wicomico areas, by not overlapping the opening and closing dates of individual river harvest areas*

SMAC has recommended to shorten the number of open days in an area rather than having open areas that overlap.

2024-2025 public harvest season as follows:

- A vessel limit of 28 bushels for vessels harvesting by hand or hand tong.
- An individual harvest limit for harvest by hand or hand tong of 14 bushels.
- Maintaining a harvest day ending at 11am for all gear types for the month of October.
- Maintaining a harvest day that ends at 12 noon for all gear types except hand and hand tong for all months other than October.
- Maintaining the patent tong harvest season in some areas to be concurrent with other gear types and other harvest areas.
- Extending the season length in the James River Areas 1,2, and 3 from 13 weeks (2020-2021 season) to 22 weeks.
- Maintaining hand tong as the gear type permitted in the upper portion of the York River.
- Maintaining 3-year rotational areas in the main-stem of the Rappahannock River.

The intent of maintaining this recent management structure, along with the coordinated opening of harvest areas is to allow for the incremental long-term expansion of the oyster resource and oyster fishery while providing resource and fishery stability.

The SMAC also made the following recommendations for the 2024-2025 that are fully supported by staff:

- Transitioning a portion of the upper Pocomoke area from a hand scrape area to a hand tong area
- Developing a rotational management strategy in portions of the upper Pocomoke/Saxis area to provide more consistent open harvest areas each year
- Creating an online system for the daily reporting of James River seed harvest rather than a call-in line. Proposed changes for this season will only require that harvest be reported online daily. This removes redundant reporting requirements, reduces regulatory burden, and increases real time quota monitoring accuracy.

At the August SMAC meeting the committee also put forward several recommendations that are different than the recent management structure. These recommendations by SMAC were made to balance long-term sustainability of the resource with short term flexibility to adjust to market needs. The industry has indicated that this season's market will be higher on supply than demand due

This may allow for more concentrated effort in these individual river areas. These recommendations were made to reduce costs to the industry and were a reduction in the number harvest days in a specific area. If the Commission chooses to remove these areas from the 2-year rotational management structure current regulation allows the agency to adaptively manage these areas by closing them to protect the resource

When considered in totality, many of SMAC's recommendations align with recent management practices and help prevent excessive fishing effort from being concentrated in specific river harvest areas. These measures address safety concerns about "overcrowding" raised by many watermen and minimize negative impacts on the oyster resource. However, the long-term effects of reducing the overlap of concurrent harvest areas or expanding gear types may necessitate additional replenishment efforts and could extend the recovery time for reefs. Anticipated reduced market demand in 2024 may alleviate these concerns and supports a flexible approach, given the Agency's ability to manage through seasonal closures as needed adaptively. Staff encourages an incremental strategy that encourages oyster resource management that is focused on the long-term trend of an increasing or stable oyster resource.

STAFF

RECOMMENDATION: Staff recommends adopting amendments to Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest, as to establish the 2024-2025 areas of public harvest, public oyster harvest seasons and oyster resource conservation measures.

Attachments:

1. Chart 1 SMAC Season Recommendation
2. Chart 2 SMAC Season Recommendation on Piankatank and Great Wicomico Areas
3. Graph 1
4. Public Comments
5. Public Notice
6. Draft Regulation

Other Literature:

1. [2014 Chesapeake Bay Agreement](#)
2. [Piankatank River Oyster Restoration Tributary Plan](#)
3. [Great Wicomico River Oyster Restoration Tributary Plan](#)

Associate Member Edwards seconded the motion. The motion failed, 3-5. Associate Members Hand, Kellum, Erskine, Bransom and White voted no.

Associate Member Bransom made a motion to revoke all licenses and privileges for 3 years from the date of conviction followed by 2-year probation. Associate Member Erskine seconded the motion. The motion carried, 6-2. Associate Members Hand and White voted no.

Dean Rhea

Dean Rhea was not present, and this was presented to the Commission in his absence.

Associate Member Bransom made a motion to revoke all licenses and privileges for 3 years from the date of conviction followed by 2-year probation. Associate Member Preston seconded the motion. The motion carried, 6-2. Associate Members Hand and White voted no.

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PUBLIC HEARING Proposal to amend Chapter 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" to establish the 2024-2025 areas of public harvest, public oyster harvest seasons, and oyster resource conservation measures.

Adam Kenyon, Chief, Shellfish Mgmt., gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Kenyon's comments are a part of the verbatim record.

Roger Mann, VIMS representative, was sworn in and spoke in support of the proposed public oyster harvest seasons. His comments are a part of the verbatim record.

J. C. Hudgins was sworn in and spoke in support of the proposed public oyster harvest seasons. His comments are a part of the verbatim record.

Jackie Shannon was sworn in and spoke in support of the proposed public oyster harvest seasons. Her comments are a part of the verbatim record.

Andrew Larkin, NOAA / Chesapeake Bay office, was sworn in and spoke in support of the proposed public oyster harvest seasons. His comments are a part of the verbatim record.

Tommy Kellum was sworn in and spoke in support of the proposed public oyster harvest seasons. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Bransom made a motion to adopt the 2024-2025 public oyster harvest seasons, areas, and gears as recommended by the Shellfish Management Advisory Committee with the exception of only opening Burtons Point for HS and Palaces Bar for HT in the Piankatank River as well as adopting an online reporting system for oyster seed harvest and the ability to harvest both clean cull and seed oysters within the same day. Associate Member White seconded the motion. The motion carried, 8-0.

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7. PUBLIC COMMENT:

Tommy Kellum recognized the retirement of Debra Jenkins. His comments are a part of the verbatim record.

William Pruitt recognized the retirement of Debra Jenkins. His comments are a part of the verbatim record.

Darryl Hurley was sworn in and spoke. His statement was part of the verbatim record.

Mr. Hurley spoke on behalf of obtaining his private ground leases back after not receiving the payment notices nor VMRC not receiving the payment.

According to Counsel Block, the Commission did not have authority to override the Code of Virginia which states the guidelines for the lease payment schedule Based on this authority, the Commission did not make a motion on the request to re-instate the lease. Their comments are a part of the verbatim record.

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