

Minutes for the July 29, 2016 Lynnhaven River Workgroup meeting.

Chairman Ken Neil brought the meeting to order at 9:15 AM at the Tidewater Community College, Virginia Beach campus site in the Student Center building meeting room.

Chairman Neil discussed his hope that, at this meeting, the group could finalize and vote on recommendations to be presented to the VMRC Commission, and/or General Assembly members for agency, regulatory, or Code of Virginia changes to address the issues that had been identified and discussed at all previous meetings. The action items that had been previously identified are listed below with a group status and any proposals that the group voted upon.

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”

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 previous 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 to require all leaseholders

obtain either a Fisheries Management Division permit #4 or a Habitat permit (through the Joint Permit Application process) for new deployed structures, and that for existing aquaculture structures that leaseholders must obtain, within an 18-month time frame, a similar permit for continued use of structures on leases, in Virginia Beach only. As an alternate recommendation, if such a permit requirement is not approved then the group suggested the regulation be modified to provide some type of buffer distance from shore, 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 revise current on bottom regulation adding new item J with additional new language that defines hardened structure and with waived encroachment fees under the JPA or the Fisheries 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 within 150 feet from mean low water banned in residential areas in Virginia Beach only. Vote 6-6.

There was discussion to suggest modification of the current on bottom regulation to require for 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 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 did discover 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 spent 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 to 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. 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

The issue is that under current law leaseholders can “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 multiple such projects have occurred and more are likely 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. Industry commented 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.

Group status: No action.

No recommendation or vote on this 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

State Senator Bill DeSteph spoke during the meeting to note that he had been following and attending the meetings and that he would be reviewing the work groups recommendations for any appropriate legislative actions that the General Assembly may wish to review at the upcoming 2017 session. A few public comments were taken at the end of the meeting, however, the group had already discussed and/or voted on the action items.

Chairman Neil thanked the work group members for their time and service and also thanked the public for their comments, noting that many of the work group members and

the public had strong opinions about a variety of issues, but that the discussions were both civil and productive. Chairman Neil also noted and thanked Commissioner Bull for attending all the work group meetings. Commissioner Bull also thanked the work group for their efforts. He noted that work group had thoroughly discussed and addressed many issues and their work would be of significant value for the Commission. As a result, he acknowledged there did not appear to be a need for any additional meetings of the work group. The meeting was adjourned at 1:45 PM.