

AGENDA ITEM 13. – April 27, 2021

Subject: Establishment of the Virginia Oyster Ground Closures Fund Agreement

Recommended Action: Approve the general terms of an agreement between the Virginia Marine Resources Commission and HRSD to settle claims validated by VMRC related to the extended closure of shell fishing grounds due to the discharge of untreated wastewater into the James River in January 2021.

Background: HRSD was created in response to a public health crisis that resulted in the condemnation of a significant portion of the local shell fishing grounds due to contamination by untreated sewage discharged to the local waterways throughout Hampton Roads in 1925. Since that time HRSD has successfully intercepted the direct pipe discharges and re-directed all sewage to regional wastewater treatment plants that have eliminated the chronic problem of untreated sewage polluting our local waterways.

While the chronic pollution problem due to the regular discharge of untreated wastewater has been eliminated, other chronic sources of pollution (primarily stormwater runoff or legacy pollutants in the waterbody) continue to limit access to some waterways for shellfish harvest. Occasionally, other issues create acute, short term impact to waterways throughout the region. These include runoff from yards, fields, farms, streets, and undeveloped lands after heavy rainfall, overflows from sewers due to extreme storms, and can also include failure of sanitary sewer infrastructure. These acute impacts typically create temporary impacts to the harvesting of shellfish as ordered by the Virginia Department of Health.

In recent history, there have been a few extended prohibitions (due to various causes) on the harvesting of shellfish as ordered by VDH. Extended prohibitions can create economic hardship on Virginia's watermen. Virginia's oyster fishery is a critical industry for Virginia and ideally will remain viable for generations to come.

Given the role Virginia's shellfish industry has played in HRSD's history and the potential for future infrastructure failures to contribute to economic challenges of keeping the Virginia oyster fishery viable, HRSD is proposing to create the Virginia Oyster Ground Closures Fund. HRSD will propose new legislation in the 2022 General Assembly to create such a fund under the administration of the VMRC. Additionally, staff recommends developing a grant agreement with VMRC to provide initial funding for such a fund, should the fund be created for the purposes so described.

As creating a new fund will take more than one-year, staff is further recommending HRSD enter into a memorandum of agreement with VMRC immediately to provide economic assistance to watermen damaged during the extended closure in January 2021. The proposed terms and conditions would include the following:

- VMRC will review shellfish harvest records from similar periods and notify potential damaged waterman to submit a claim of damages.
- VMRC will review the claims to ensure they represent an accurate claim based on historical harvest records and 2021 prices.
- VMRC will forward approved claims to HRSD for payment upon receipt of a release from the waterman claiming damages.

- The release (to be drafted by HRSD legal counsel) will admit no fault as HRSD cannot prevent infrastructure failures and that these payments are only made in recognition of the importance of maintaining a viable oyster fishery in Virginia.
- The payment of damages will be an income producing event for the receiving waterman as it is replacing income that would have been earned had the closure not been in place and as such HRSD will issue an IRS Form 1099 to each recipient.
- HRSD will pay VMRC a reasonable administrative fee to cover the direct cost of administering this claim process (to be negotiated).

Staff is requesting Commission approval to move forward with an MOA with VMRC immediately as well as approval to pursue legislation creating a permanent Virginia Oyster Ground Closures Fund and the associated grant agreement with VMRC to provide initial funding of \$100,000 per year for the first five years after the fund is created.