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**Written Comments
on
Maryland Tidal Wetlands Case No. 15-WL-0757
Man O'War Shoal Oyster Shell Dredging**

**Application by
Maryland Department of Natural Resources (DNR)
to
Board of Public Works**

The Clean Chesapeake Coalition¹ (CCC) supports the issuance of the permit requested DNR to dredge natural oyster shell from Man O'War Shoal in the upper Bay with the understanding that no dredging will occur in the vicinity of the portion of this natural oyster bar where the Baltimore County Watermen's Association has been engaged in oyster restoration efforts.

In raising awareness and advocating for the most cost-effective ways to improve water quality and to meet Bay TMDL goals, CCC counties share the common goal of increasing the Bay wide the population of oysters given their undisputed ecological value as natural filters and the positive economic impact on fishing communities and local economies resulting from a prudently managed fishery.

Oyster larva need a clean hard surface on which to strike after they have spawned.²

Indigenous Chesapeake Bay oyster shell is the absolute best surface upon which oyster larva can and will most successfully strike after spawning. This is an indisputable fact.³

¹ The Clean Chesapeake Coalition is an association of Maryland county governments – including Caroline, Carroll, Cecil, Dorchester, Kent, Queen Anne's – whose local elected officials have coalesced to pursue improvement to the water quality of the Chesapeake Bay in the most cost-effective and fiscally responsible manner – through research, coordination and advocacy.

² Chesapeake Bay Oyster Recovery: Native Oyster Restoration Master Plan (September 2012) by U.S. Army Corps of Engineers, in close partnership with the Maryland Department of Natural Resources and the Virginia Marine Resources Commission ("USACE Master Plan"), page 160.

³ USACE Master Plan, page 160.

If such shell is properly seeded and then distributed or re-distributed throughout the Bay and tributaries to natural oyster bars that have been cleaned (power dredged), it will serve as a catalyst for the restoration of such natural oyster bars and enhance oyster propagation.

DNR records evidence that the natural oyster bars in the Maryland portion of the Bay that were planted with seeded shell harvested from other natural oyster bars proved to be the most productive and healthy in the aftermath of Hurricane Agnes in 1972. A similarly successful seeded shell relocation program is again possible with natural shell harvested from Man O’War Shoal. In the meantime, look at the success Virginia is having dredging up natural shell (using the same dredge that used to operate in the Upper Bay) and relocating the shell to where natural spat sets and recruitment are most likely to occur.

Given the necessity of natural shell in restoration and for a sustainable fishery, in 2009 the Maryland General Assembly enacted House Bill 103 - as an emergency measure - mandating DNR to acquire the necessary approvals from MDE and USACE to dredge shells from the historic Man O’War Shoal that have been covered by sediments so that such native shells may be used to restore the oyster population throughout the Bay (see Chapter 212 of Acts of the General Assembly of 2009⁴). According the Fiscal & Policy Note for emergency HB 103, Man O’War Shoal is the single largest known shell deposit in the State. How, in the face of a direct legislative mandate, and why has there been so much foot-dragging by DNR to enable access to an enormous supply of buried oyster shells?

We hear all the time about the lack of oyster shell for restoration work, and yet there is plenty of shell that could be harvested, especially in the Upper Bay at Man O’War Shoal – it’s just buried under sediment.

The scarcity of natural oyster shell for use in large-scale oyster restoration and propagation is a self-imposed shortage created at the behest of certain environmental non-governmental organizations (E-NGOs) that “partner” with the Chesapeake Bay Program. In turn, these E-NGOs have obtained millions of taxpayer dollars to plant genetically modified sterile oysters in areas where rubble waste and construction demolition debris have been or will be dumped, in the name of constructing three-dimensional oyster sanctuaries. Artificial is not the best way forward for oysters in the Bay. DNR employees have observed that there is an abundance of indigenous oyster shell in areas declared sanctuaries but now buried in sediments because there has been no cultivation activity. Clam elevators and power dredging to cultivate natural oyster bars have been successfully employed in the southern portion of the Maryland Bay to restore the oyster population, improving annual harvests of legal-sized oysters. Natural oyster bars that are buried and smothered by sediments, if cultivated and then replenished with seeded shell harvested from the Man O’War Shoal, would significantly help jumpstart the restoration of natural oyster bars on which such harvested and then seeded shell was deposited. Such a program was successfully conducted by DNR in partnership with commercial watermen for decades before it was discontinued under pressure from E-NGOs for spurious reasons.

⁴ <http://mgaleg.maryland.gov/webmga/frmMain.aspx?tab=subject3&ys=2009rs/billfile/ch0212.htm>



Chesapeake Bay oyster shell is better than any of the other alternative substrate – just look at all the problems and high costs with what was used as “alternative substrate” in the Harris Creek, Little Choptank River and Tred Avon River oyster restoration projects. Preferring shell, we continue to oppose the importation and dumping of “stone” and rubble waste into the Bay to create hard bottom.

There would be much less controversy, fewer unanswered questions and significantly reduced costs if indigenous natural shell had been used in the Harris Creek, Little Choptank River and Tred Avon River oyster restoration projects.

Per USACE metrics, the lowest cost substrate for constructing oyster bars is shell.⁵

The availability of natural indigenous shell for use in oyster restoration will avoid a repeat of the damaging plumes of foreign sediments dispersed over some of the most naturally productive mid-Bay oyster bars when Florida slurry was permitted as an alternative substrate by USACE and MDE and then dumped unwashed and untested throughout the Choptank and Little Choptank River system.

No new pollution, pathogens or toxins will be introduced into the Bay by the permitted activity requested by DNR. No new sediments will be introduced into the Bay by the permitted activity requested by DNR.

Man O’War Shoal is a relatively isolated natural oyster bar located just to the north of the navigable channel in the Patapsco River in which ships travel to the Ports of Baltimore. The shoal comprises roughly 456 acres and the area to be impacted for the harvesting of shells is approximately 32 acres. The vast majority of sediments dislodged during the shell harvesting process will settle out in the navigable channel and be dredged by USACE and the Maryland Port Administration in the course of their channel maintenance program. Man O’War Shoal’s isolated and unique location adjacent to the navigable channel make it one of the ideal natural oyster bars in the Bay from which to harvest natural indigenous oyster shell.

The mud that will be stirred up during the dredging for shell will be a temporary condition and minor compared to other dredging activities by the USACE in the Upper Bay and the sediment discharged from above Conowingo Dam during storms.

The long-term benefits to the natural environment and overall Bay water quality from well-placed indigenous shell obtained from Man O’War Shoal will eclipse any temporary unsettling of the natural environment caused by the shell dredging process. The resulting increase of oysters in the Bay will have a positive economic impact in local jurisdictions and fishing communities – while a natural oyster bar left alone in the upper Bay will eventually, if not already, be smothered by sedimentation and be of little ecological or economic value.⁶

⁵ USACE Master Plan, pages 161, 174, 176.

⁶ USACE Master Plan, Sections 4.1.1 and 4.1.1.1.



Consistent with the spirit and intent of adaptive management, it is time to acknowledge that the expensive restoration projects in Harris Creek, Tred Avon and the Little Choptank River have been a debacle and should not be extended.⁷

DNR, MDE and the Administration should stop sanctioning the importation of non-indigenous, untested (for toxins and pathogens) shell and other materials from Florida, New Jersey and other regions for dumping into the Bay; when according to USACE’s own reports there is “an enormous amount of shell” in the Bay.⁸

Restore natural oyster bars with naturally seeded indigenous Chesapeake Bay shell harvested in orderly fashion using environmentally conscious techniques from Man O’War Shoal.

DNR, MDE and the Administration should reject projects and programs that involve crushing existing natural oyster bars with “alternative substrate” at exorbitant costs and, instead, return our collective efforts and resources to the indisputable fact that natural shell is the best substrate – as Mother Nature designed.

The CCC counties wholeheartedly support the issuance of the permit requested by DNR, with the condition that all dredging for shell will be a safe minimum distance from the area where the Baltimore County Watermen’s Association has been cultivating and seeding oysters on a portion of Man O’War Shoal.

MDE Report and Recommendation (“R&R”)

While we are pleased that MDE recommends granting the license, several aspects of the MDE R&R raise questions and deserve comment. The follow comments represent the CCC’s exceptions to the R&R:

1. Special Condition K prohibits dredging from June 1 through September 30. Special Condition L prohibits dredging from February 15 through June 15. Special Condition Q limits dredging to weekdays, excluding weekends, holidays and recreational fishing tournaments. Taken in total, in the permitted months of October, November, December, January and part of February, approximately 90-100 days are available for shell dredging. If such a small window of opportunity for shell dredging is justified, then other Upper Bay dredging activities in the vicinity (i.e., the dredging shipping channels by USACE) should be held to the same standard. Otherwise, the time limitations in the R&R are arbitrary and capricious.

⁷ USACE Master Plan, pages 161, 174, 176.

⁸ USACE Master Plan, page 160.



2. Use of Dredged Shell (pp. 5-6). In the BWP’s consideration of the dredge permit, little if any weight should be given to the allocation of harvested shell. It should be sufficient to say that all dredged shell will be used to restore oyster populations and oyster fisheries in the Maryland portion of the Chesapeake Bay.

Making the allocation of shell an issue at this stage in the permitting is a conscious effort to pit stakeholders against one another and to divide the ranks within the commercial fishery.

Regarding the use of dredged shell, the R&R says this (page 6):

“Ultimately, MDNR will utilize comments from the public and the Oyster Advisory Commission to develop an allocation plan. The plan will consider specific sites (bars), the bottom conditions and acres involved, and **will include the use of both shall and alternate materials, not just shell from Man O’War....**” [emphasis added]

Why the pre-determined outcome of a plan that is supposedly going to be based on input from the public and the OAC? What if the public overwhelmingly supports the use of natural shell instead of rubble and polluted materials from other states? Upon the granting of the requested permit, why is it not possible to emphasize the use of natural shell over other lesser quality and more expensive materials? This agency insistence on using “alternate materials” no matter what seems misplaced in the R&R.

3. Public Participation (pp.6-7). In this section of R&R we find curious the amount of attention and verbiage devoted to the feelings of a single special interest group (Coastal Conservation Association, or CCA) while in comparison all other commenters get a passing reference. By the R&R author’s admission, “Although not part of the record of written comments, representatives of the Coastal Conservation Association (CCA) of Maryland met with BPW and Department staff on June 15, 2017, to express their opposition to the project.” Were other stakeholder interest groups afforded the same opportunity to meet with BPW and Department staff in this regard?

This disproportionate consideration of certain special interest group agendas is a prime example of why, in spite of a General Assembly mandate to DNR in 2009, the State seems trapped in an endless cycle of over-analysis and handwringing related to Man O’War Shoal. If Man O’War Shoal is a good place to fish now (CCA’s chief concern), it will be a better place to fish after the shell dredging because of the cuts and new fisheries habitat that will be created.

As we continue to heavily invest in Bay restoration, we cannot afford a half-hearted DNR distracted by E-NGOs with agendas hostile to the commercial fishery and harmful to local economies.



4. Special Condition E. Why so long to get started? Given the amount of time and multi-agency review that it has taken to get to this point, is it necessary to devote the entire first year of a 5-year license to further study (“initial baseline assessment”)? Between DNR, MDE, USACE, NOAA and all the other agencies that have a hand in this permit, do we not already have “seasonal data on water quality, oyster populations, and fish and benthic communities at proposed dredging sites”? This is hardly the first time that the State has dredged natural oyster shall from the Upper Bay, and dredging shell from Man O’War Shoal was a familiar enough undertaking for the General Assembly to enact emergency legislation in 2009 mandating DNR to do so.

