

# Oyster Ground Leasing Public Information Session



## Hampton Community Development Department & Virginia Marine Resources Commission



November 20, 2014

### **What is an oyster ground lease?**

*Pursuant to the Code of Virginia, legal applicants (residents of Virginia and companies that are at least 60% Virginia owned) can apply for oyster ground leases of up to 250 acres per application. The leases are for the sole purpose of propagating shellfish and these leases do not preclude most other activities previously allowed of State-owned subaqueous bottomlands. (Code of Virginia, 28.2-600 et. Seq.)*

### **Where are the existing and proposed leases in Hampton? Is this new to Hampton?**

*VMRC is currently processing lease applications within the City of Hampton in both Mill Creek and Hampton River. There have historically been leases in Mill Creek for many years. While only a few leases remain in Hampton River, historically there were quite a few active leases in Hampton River many years ago. A map showing existing leases and applications is available to citizens on VMRC's "Chesapeake Bay Online Map" found here: <http://www.mrc.virginia.gov/links.shtm>.*

### **Where are the boundaries of the lease areas that VMRC is currently reviewing?**

*VMRC is currently processing applications within Mill Creek in the large bay area adjacent to Fort Monroe and in the area between the two highway bridges leading to the Fort. In Hampton River, VMRC has received multiple and competing applications from just outside the mouth of the river all the way up to the Elizabeth Lakes and Phillips Lake area.*

### **How does the oyster ground leasing application and review process work?**

*Applicants for oyster leases must submit a lease application along with a non-refundable \$25.00 application fee. The applicant is requested to also submit an Oyster Lease Use Plan Questionnaire form on what types of shellfish activity is proposed on the lease. The application is then public noticed once a week for four consecutive weeks in a local newspaper, also posted in two prominent publicly accessible locations in the area of the application and posted at the local courthouse of the locality where the application is submitted. If no protest is received within 60 days of these notices being posted, the application is assigned to a VMRC surveyor for a field survey. The application area is then marked in the field with either sapling stakes or, usually pvc pipes and/or buoys. Once the survey is completed, a plat is made of the area and the plat is approved by the Chief Engineer of the Engineering/Surveying Department at VMRC. After approval, the Code of Virginia requires another 30-day waiting period before the application can be assigned. If no protest is received the application can be assigned once the applicant pays all the required fees. If a protest is received the applicant is informed of the objection and VMRC attempts to assist with resolving such objections. If the objections cannot be resolved the matter is then scheduled for a full hearing at a monthly Commission meeting for final action by the Commission. If such a hearing is required, staff briefs the Commission with a recommended action, the applicant, any supporters, and anyone in opposition is afforded the opportunity to speak. The Commission then takes action on the request. Commission action is appealable to the local Circuit Court by either the applicant or the opposition.*

**What's the status of the current lease applications?**

VMRC is currently processing two applications within the large bay area of Mill Creek adjacent to Fort Monroe, one application between the Mercury Blvd and Mellon Street bridges and an application along the shoreline to the west and south of Mellon Street. The agency is also processing five applications within Hampton River. The application within Mill Creek in the large bay area has been surveyed and will be scheduled for a hearing at a future Commission meeting sometime in early 2015 due to the application being protested. The other pending application in Mill Creek has not been surveyed and may be taken to the Commission with a recommendation not to lease this area due to conflicts with ownership of the islands that are owned by the federal government in this area. Any such hearing will also be in 2015. All the applications within Hampton River have yet to be surveyed and the Commission has serious concerns about leasing large portions of these applications as well. They are also protested by the City of Hampton.

**Are there others already assigned?**

VMRC assigned two leases within Mill Creek in 2014, one being in the large bay area of Mill Creek immediately east of the Mercury Blvd. bridge and one being north of the islands near the northern end of Fort Monroe. There are other older leases and riparian leases in Mill Creek that have existed for many years.

**What agencies are involved and do the agencies coordinate on applications?**

Typically VMRC does not involve other agencies related to oyster ground leases. In certain cases where specific objections warrant, VMRC may request information from relevant sister agencies and/or the Virginia Institute of Marine Science (VIMS).

**What are the notification and advertising requirements?**

All regular oyster ground applications are public noticed pursuant to the Code of Virginia (except Riparian applications which the agency does not public notice). The notice process was previously addressed earlier.

**Will there be public hearings and if so when and where and how does the public find out about such hearings?**

Public hearings are only held for oyster ground lease applications when a protest is received or if VMRC staff deems the leasing of a specific area to not be in the public interest. If a hearing is deemed necessary as previously noted, the matter is scheduled at one of the Commissions monthly meetings (usually on the fourth Tuesday of each month). Any such hearing is posted on the agency web site and all affected parties (protestants, and the applicant and/or supporters) are notified in advance of the hearing.

**How are these types of applications monitored by City staff?**

Hampton and VMRC work closely on wetlands applications and will be working together to improve notification and monitoring of oyster ground lease applications.

**Isn't Mill Creek contaminated?**

Mill Creek is restricted for the harvest of shellfish for direct market consumption.

**May oysters be harvested from polluted/condemned areas?**

Yes, with certain restrictions and with specific permits and oversight by VMRC and the Health Department.

**How does that work?**

*With a proper relay permit issued in conjunction with the Virginia Department of Health shellfish can be relayed from the creek to another lease in non-restricted waters for a minimum two week depuration time and then reharvested for market consumption.*

**What is the scope and scale of activities authorized when leases are assigned and what does this activity look like?**

*Leaseholders may plant and harvest shellfish directly on bottom (traditional method), they may also place cages up to 12-inches above the substrate, provided such cages do not constitute a navigation hazard. On bottom shellfish activities are usually unseen from the surface. Methods of harvest for on bottom activity can be by hand, hand tongs or dredging. Cage aquaculture activities often require the use of a small hoist to raise the cages for cleaning, husbandry activities and harvest. The boundaries of the lease and if cages are used the internal boundaries of such cage areas are usually marked by the leaseholder (and are required to be marked in certain circumstances).*

**Are there going to be oyster cages or floating devices?**

*Leaseholders are allowed to place cages up to 12-inches above the substrate on a lease if they do not constitute a navigation hazard. Cages at heights greater than 12-inches above the substrate require an additional permit issue through the Fisheries Division at VMRC. Placement of cages is controlled through a VMRC regulation for such activity. The use of floats (often called Taylor floats) requires a separate type of permit from VMRC and such floats are not defacto allowed over a lease.*

**Are other permits necessary?**

*Leaseholders must have an oyster product owner's permit and/or harvester permit. As noted above harvest from restricted areas requires additional permits. Also, permits/licenses are required for the harvest gear type as well.*

**Will lease boundary markers, oyster cages, or oyster mound pose potential hazards to navigation?**

*VMRC attempts to mark oyster ground leases in a way that minimizes navigation issues. By regulation, cages placed in a lease cannot constitute a navigation hazard, and if deemed to be such a hazard the leaseholder can be required to remove and/or relocate such cages. Typically, on bottom shelling of leases has not presented navigation issues.*

**How will Mill Creek be accessed to conduct harvesting (and other) activities?**

*While this is not certain, VMRC believes the current and proposed leases within both Mill Creek and Hampton River will be or would be accessed by boat or by foot. Any shellfish harvested will require relaying to clean waters for the minimum two week time as allowed by the Health Department before harvest for direct market consumption is allowed. It is possible harvested shellfish could be offloaded from boats at local access points in the area for transport to replanting at open harvest water locations. Any such transport (by boat or land transportation) requires a relay permit from VMRC with monitoring of the harvest, transport and replanting activities.*

**Address potential conflicts with the Hampton Cup Regatta and other regattas.**

*VMRC believes the configuration of the already assigned lease in the area of the regatta and the pending applications also in this area have been staked in a manner that will not interfere with the regatta. Any marking by the leaseholder at the time of the race that could conflict with the race can be addressed and temporary relocation or removal of any such boundary marker will be required.*

**Will the leases impact the future Sailing Center at Fort Monroe or “dingy dock” in Phoebus?**

VMRC contacted the Fort Monroe Authority concerning the future Sailing Center and we believe we have adjusted the currently pending application in way that it should not interfere with the proposed pier and activities of the Sailing Center. The City of Hampton has expressed concern about potential conflicts with a future dingy dock in Phoebus and VMRC will work with the applicant to accommodate these concerns.

**What future activities would be limited or precluded within lease areas?**

Boating, fishing, crabbing, etc., activities are all allowed over oyster ground leases. The only activity prohibited once an oyster lease is assigned is the taking of shellfish from the lease area and the installation of a fixed fishing device would not be allowed unless the leaseholder specifically granted his permission. Private piers are allowed over leases, however some additional Code requirements do apply if a proposed pier will encroach into an oyster ground lease. Other encroachments for structures of any type that could impact the lease would require permission of the leaseholder.

**Would future activities by others need to be negotiated with the leaseholder or VMRC and how?**

Any application to construct a structure that would encroach into an oyster ground lease would require notification to the leaseholder for comment. If the leaseholder objects, VMRC would attempt to assist in addressing the objection for resolution

**Will crab pots no longer be permitted in these areas?**

Crab pots are allowed over leased oyster grounds.

**May eminent domain be used to encroach into leased areas?**

The Code of Virginia (28.2-628) does allow the Department of Transportation and any locality the right to acquire, by eminent domain, any oyster bottom lease, but only for the specific purpose of a water-dependent linear wasterwater project where there is no practical alternative and the project is the subject to permitting under the State Water Control Board.

**Aren’t oysters good for improving water quality and the economy?**

Yes, oysters are natural filters and do improve water quality. Oysters (and clams) provide a significant revenue source for Virginia and provide employment opportunities through the leasing, harvesting, marketing transporting, and consumption of such shellfish.

**How does one protest or support the lease application?**

Anyone can provide written comments to VMRC on any pending oyster ground application either pro or con up to and until the lease is assigned.

**Contacts?**

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