

REPORT OF THE VIRGINIA MARINE RESOURCES COMMISSION



REPORT AND RECOMMENDATIONS OF A STUDY PANEL ON:

**CURRENT STATUS AND MODERNIZATION OF REVENUE COLLECTIONS
FOR THE PUBLIC OYSTER ROCKS REPLENISHMENT FUND**



COMMONWEALTH of VIRGINIA

*Marine Resources Commission
2600 Washington Avenue
Third Floor
Newport News, Virginia 23607*

Douglas W. Domenech
Secretary of Natural Resources

Jack G. Travelstead
Commissioner

August 27, 2012

MEMORANDUM

TO: Delegate Margaret B. Ransone

FROM: Jack G. Travelstead

RE: Report and Recommendations of the Panel on the Current Status and Modernization of Revenue Collections for the Public Oyster Rocks Replenishment Fund.

We are pleased to provide you with this report of the Panel on the Current Status and Modernization of Revenue Collections for the Public Oyster Rocks Replenishment Fund (Panel). This report was prepared in response to your and other legislators' (noted below) request that the Virginia Marine Resources Commission establish a study panel to investigate the possibilities for revamping and improving the existing oyster replenishment tax system. The Virginia Marine Resources Commission prepared this report after convening with the Panel and conducting deliberative forthright discussions of modification to the current system that would establish equitable user fees across the industry and promote more accurate reporting of oyster harvests.

We extend our sincere appreciation to all of the Panel members, including the growers, harvesters, leaseholders, packers, shippers, and shuckers. We hope you find this report adequately describes the Panel's proposed revisions to the current tax collection systems, such that it will provide for increased and more representative funding for oyster replenishment.

Please do not hesitate to contact us, if we may be of further assistance.

Cc: The Honorable Keith Hodges, Virginia House of Delegates, District 9
The Honorable Lynwood W. Lewis, Jr., Virginia House of Delegates, District 100
The Honorable Ryan T. McDougle, Virginia Senate, District 4
The Honorable Ralph S. Northam, Virginia Senate District 6
The Honorable Richard H. Stuart, Virginia Senate, District 28

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PREFACE

On January 20, 2012, Delegate Margaret B. Ransone submitted a letter to the Virginia Marine Resources Commission (VMRC) requesting the establishment of a panel to study the current oyster Inspection and Replenishment Tax system. Delegate Ransone sought a thorough investigation as to how the current system might be better designed, implemented, and enforced to provide a more comprehensive source of financial support by the oyster industry to the Public Oyster Rocks Replenishment Fund.

On June 20, 2012 the Panel convened to examine ways the Public Oyster Rocks Replenishment Fund could better assist in supporting future planting of shell and seed on public oyster grounds through enhanced use of industry resources. Consisting of eleven members, the Panel represented commercial harvesters, state certified commercial shellfish packers and repackers, certified commercial shellfish shippers, oyster aquaculturists, the Virginia Seafood Council and the Virginia Shellfish Growers. Panel members and resource staff from VMRC are listed below.

Study Panel Members

Ernest Bowden, working harvester, private leaseholder
Dan Dise, working harvester
A. J. Erskine, Virginia Seafood Council, President
Glen W. France, working harvester
James Headley, shucker, packer, certified shipper, aquaculturist, private leaseholder
Charles R. Johnson, working harvester, private leaseholder
Thomas E. Kellum, shucker, packer, certified shipper, aquaculture, private leaseholder
Tommy Leggett, aquaculturist, certified shipper, private leaseholder
John Meekins, aquaculturist, certified shipper, private leaseholder
Mike Oesterling, Shellfish Growers of Virginia, Executive Director
Rufus Ruark, Jr., shucker, packer, certified shipper, aquaculturist, private leaseholder

Marine Resources Commission Staff

Jack G. Travelstead	Stephanie R. Iverson
Robert L. O'Reilly	Reneé R. Hoover
Joseph D. Grist	Allison V. Watts
James A. Wesson	

The unanimous, key findings of the Panel are: (i) the current oyster Inspection Tax (§28.2-539) and Replenishment Tax (§28.2-541) do not generate sufficient revenue to sustain more than a marginal oyster replenishment program, and fail to provide an accurate means of monitoring harvest amounts; (ii) an Oyster Resource User Fee is recommended by the oyster industry, as a means of providing an increase in funding to better contribute to future oyster replenishment needs; and (iii) the current status of the oyster replenishment tax program is inconsistent with the funding recommendation of the 2007 Blue Ribbon Oyster Panel and must be revised to better contribute to long-term, large-scale restoration goals. The following report provides the Panel's unanimous recommendations for achieving these goals.

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EXECUTIVE SUMMARY

Delegate Margaret B. Ransone requested that VMRC establish a panel to study how the current oyster replenishment tax system might be better designed, implemented and enforced to (i) support the continued planting of oyster shell and seed, (ii) promote the public oyster fishery, and (iii) enhance utilization of industry resources. The resulting Panel was composed of commercial harvesters, packers, re-packers, shippers, aquaculturists, private leaseholders, and representatives of the Virginia Seafood Council and Virginia Shellfish Growers.

The Panel reviewed all available data from the Commonwealth, identified preferred options for making adjustments to the designation of the Public Oyster Rocks Replenishment Fund, and made recommendations for legislative and regulatory actions required to implement a new management approach towards the oyster replenishment resources.

The principal finding of the Panel is that the current oyster replenishment tax program, consisting of the Oyster Inspection Tax (§28.2-539) and the Replenishment Tax (§28.2-541), does not generate sufficient revenue to sustain more than a marginal oyster replenishment program and fails to provide an accurate means of monitoring harvest amounts. The Panel, as diverse representatives of the oyster industry, voiced their willingness to recommend that the General Assembly establish an Oyster Resource User Fee, in order to improve funding for future oyster replenishment needs.

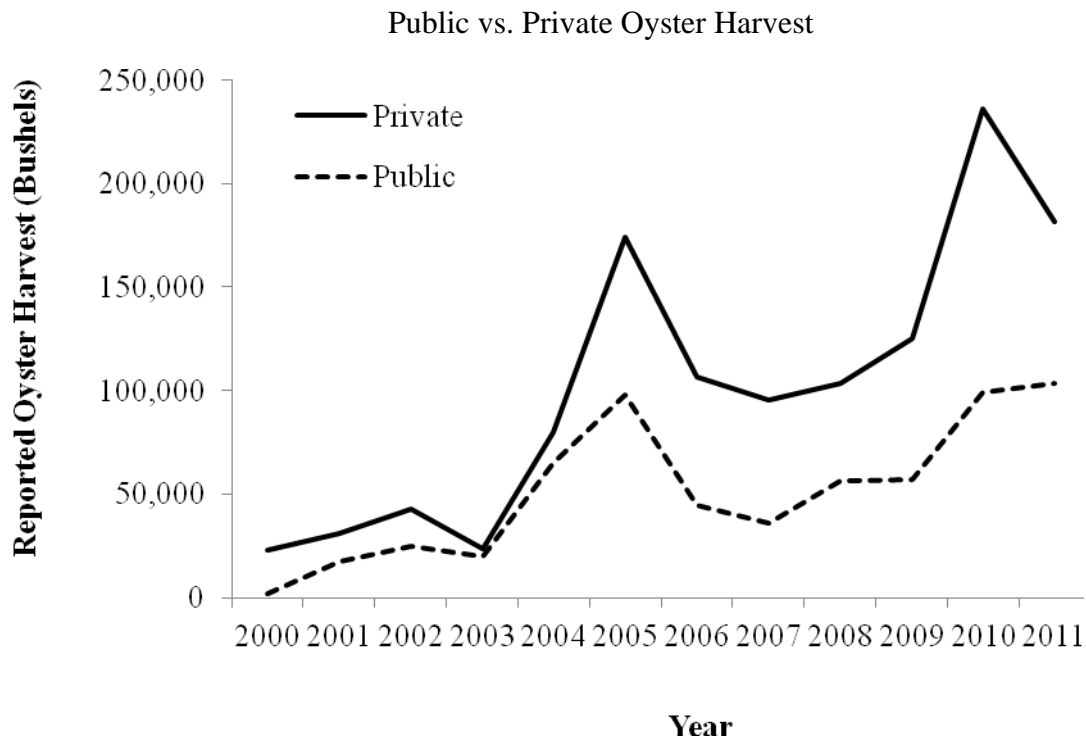
The following report finds that the current status of the oyster replenishment tax program is inconsistent with the recommendations of the Blue Ribbon Oyster Panel. The study panel has provided recommendations that, upon implementation, will provide additional funding for oyster replenishment in the Commonwealth and lend to more accurate reporting of oyster harvests to VMRC. At the same time, the expected increase in funding of the Public Oyster Rocks Replenishment Fund, via an Oyster Resource User Fee, will not provide nearly enough funds for future oyster replenishment needs. The 2007 Blue Ribbon Oyster Panel determined that a Commonwealth replenishment budget of \$1.2 million would not be sufficient to attain long-term, large-scale oyster restoration goals. The Oyster Resource User Fee would initially provide nearly \$300,000, but that annual amount will not increase substantially over time. This means other sources of funding for oyster replenishment will still be needed to provide marginal short-term improvements in shell planting needs.

The following report provides the Panel's unanimous recommendations for achieving these goals.

Background

The native oyster, *Crassostrea virginica*, is a keystone species in the Chesapeake Bay system and the seaside lagoons of the Eastern Shore of Virginia. Substantial economic, ecological, and cultural value continue to be derived from the native oyster population, as it has helped to improve the local economy and the ecology of the natural ecosystem for centuries. Oysters have declined dramatically since the 1800's. With this decline, there have been losses in the critical filtering function, fish and crab habitat, and fishery value that were once provided by this resource. In May 2007, the Blue Ribbon Oyster Panel completed a year-long review of the ecological and economic status of the native oyster fishery. The final report from the Panel identified "the need for a long-term, dedicated source of funding," stating that "the existing budget of approximately \$1.2 million is not sufficient to attain long-term, large scale restoration goals."

Many of the specific recommendations of the Blue Ribbon Oyster Panel have been implemented, including development and expansion of oyster aquaculture, design of new management strategies for oyster harvest and restoration, better enforcement of fishery regulations, and the study of management options to control cownose ray (*Rhinoptera bonasus*) interactions with the oyster resource. Reported oyster harvest has significantly improved since 2007 (see figure below), a sign that oyster management strategies and restoration efforts may be reversing the long-term decline in oyster stocks.



The Blue Ribbon Oyster Panel's first recommendation was that the oyster replenishment program requires both maintenance funding and an increase in state general funding for the oyster restoration efforts of the Virginia Marine Resources Commission (VMRC). Despite this recommendation, state funding has been reduced. Considering recent improved harvest results, the lack of a stable source of funding could lead to rapid loss of the progress gained in recent years.

Consistent Oyster Restoration Funding

The majority of funds for oyster restoration are used to purchase and plant oyster shell to create favorable reef habitat for successful oyster recruitment. The reef shell structure provides habitat necessary for oyster recruitment success. The VMRC oyster replenishment program strategically plants shell cultch, the material laid down to furnish oyster spat attachment, to provide critical habitat. Although oyster diseases have been the primary cause for the overall decline in oyster populations through recent decades, the availability and quality of shell habitat controls the year-to-year variability in oyster populations. The quantity and quality of shell on any given oyster bar have been the subject of focused research by oyster scientists at the Virginia Institute of Marine Science and VMRC. Shells degrade naturally from water chemistry and natural biological processes. These researchers find that the most economical way to maintain productivity and provide dependable economic return on these restoration efforts is to routinely replace planted shell guided by an annual biological assessment of area-specific oyster standing stock.

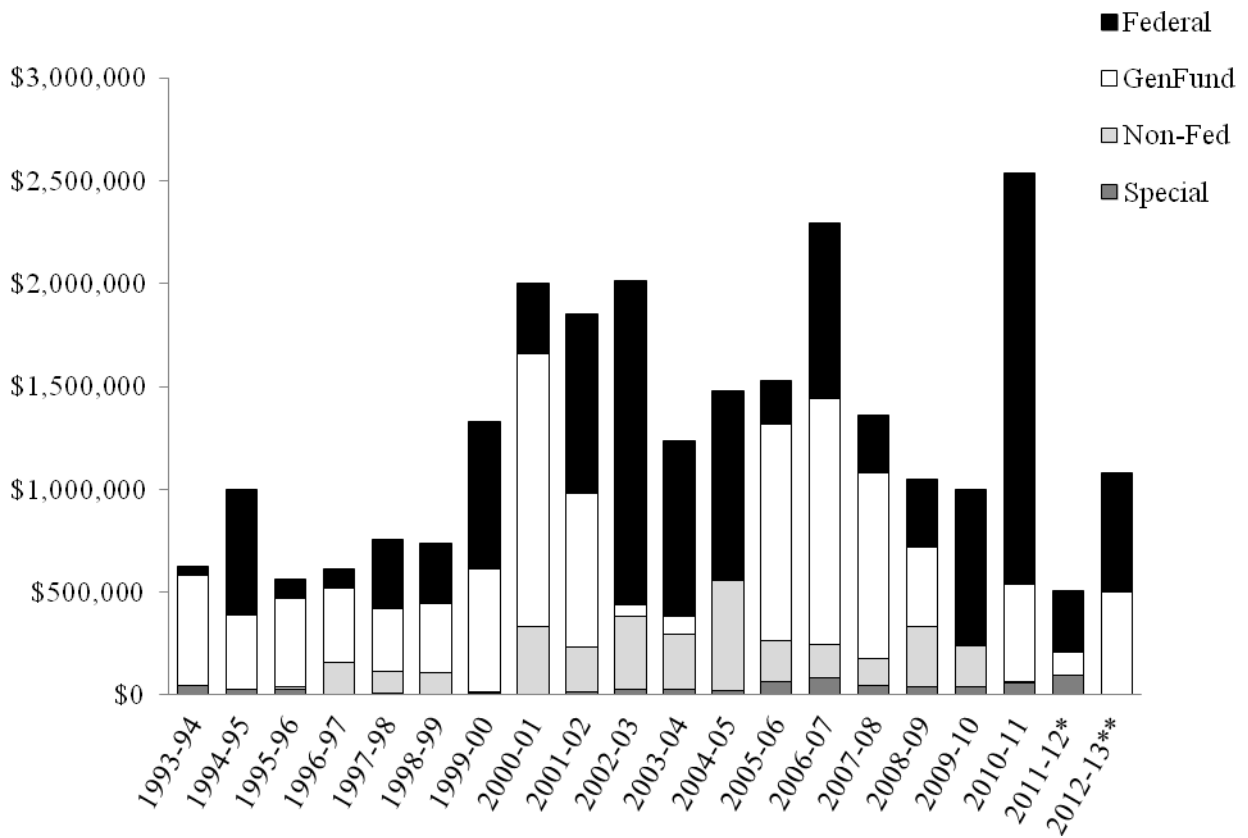
Unfortunately, because of the significant decline in oyster restoration funding over the past few years, the quantity of shell planted has declined each year. As a result, degradation of the oyster beds will soon be manifested in significantly lower oyster harvest levels. Oyster beds cannot maintain productivity without consistent annual additions of shell. Again, the most economical way to maintain the productivity and to provide a dependable economic return is to replace shell before the beds have entirely degraded. It is much more expensive to rebuild oyster beds after they have degraded than to maintain them in productive condition.

Current Sources of Oyster Funding

Over the past twenty years significant investments in oyster restoration, from a variety of sources, have been made (see figure below). State general fund expenditures on oyster restoration have varied annually from zero (FY 2009-10) to \$1.3 million (FY 2000-01). State general funds have been used for all facets of oyster restoration but have been recently concentrated on strategies recommended by the Blue Ribbon Oyster Panel to rebuild an oyster industry. Federal funding has also varied widely in amount, per year, ranging from \$43,000 (FY 1993-94) to \$2.0 million (FY 2010-11). Much of the federal funding in recent years has been earmarked for ecological restoration only, requiring the restored areas be set aside as sanctuaries

with harvest severely limited or prohibited entirely. In some years, non-federal funds for oyster restoration were used that also had specific expenditure requirements limiting the restoration to sanctuaries.

Oyster Restoration Funding Sources



The smallest financial contribution over the past twenty years has come from the Inspection and Replenishment Taxes that are collected on oyster harvest. These funds are deposited into the Public Oyster Rocks Replenishment Fund and varied from less than \$3,000 (FY 1997-98) to approximately \$75,000 (FY 2010-11). To accomplish significant and continued success in oyster restoration there must be consistent annual funding from reliable sources. The Panel recognizes that there must be a greater contribution from the oyster industry toward the Public Oyster Rocks Replenishment Fund.

Costs of Oyster Restoration

The primary costs for oyster restoration are from the purchase and deployment of shell cultch. The value of shells and the costs for all types of marine construction activity have increased substantially in recent years (see table below). Oyster shells have become more valuable because of renewed interest in private oyster ground production. This interest resulted from improvements in oyster aquaculture techniques and selective oyster breeding for disease tolerance. Competition among Chesapeake Bay oyster restoration programs for the diminishing quantities of shell has also increased shell value.

Costs for Oyster Restoration

Year	Seed (\$/Bu)	Bushels Planted	House Shells		Dredge Shells		Shells (Planted/Bu)
			Bayside (\$/Bu)	Seaside (\$/Bu)	Bayside (\$/Bu)	Seaside (\$/Bu)	
1993	\$1.60	12,398	\$0.65	\$1.00			506,343
1994	\$1.80	72,520	\$0.65	\$1.11			739,718
1995	\$1.60	42,782	\$0.96	\$1.50			618,755
1996			\$0.74	\$1.39			540,215
1997	\$3.60	39,846	\$0.95	\$1.05			683,756
1998	\$2.00	20,286	\$0.97			\$1.00	500,314
1999	\$3.12	24,551	\$1.09	\$1.50		\$1.00	684,238
2000	\$2.00	88,360	\$1.25		\$0.89	\$1.00	1,599,042
2001			\$1.11		\$0.89	\$1.00	2,121,721
2002			\$1.11	\$2.20	\$1.05	\$1.00	4,619,220
2003	\$2.50/\$12	46,578	\$1.18	\$2.25	\$0.95	\$1.00	728,024
2004	\$5.90	5,488	\$1.24	\$1.50	\$1.25	\$1.00	744,451
2005			\$1.46			\$1.20	713,294
2006	\$6.75	22,708	\$1.37	\$1.50	\$1.26	\$1.50	1,145,260
2007	\$12/\$25	23,305	\$1.44	\$1.76		\$1.60	607,304
2008	\$25.00	20,554	\$1.42	\$2.29		\$1.75	514,251
2009	\$25.00	4,540	\$1.47	\$2.82		\$1.75	526,365
2010			\$1.45	\$2.48	\$1.54	\$1.75/\$4.43	1,450,691
2011	\$8.00	8,568	\$1.73	\$2.48			217,248
2012			\$1.73	\$2.48	\$3.47	\$1.85	208,262

Common substrates for oyster restoration include oyster shell, as well as ground concrete or granite. Shell is the best type of oyster restoration material because it is easily handled by conventional industry harvesting methods and therefore should be used for projects that lead to oyster harvest. Oyster shells are available from shucking houses or from fossil shell deposits.

Low and inconsistent funding levels have not kept pace with the escalating costs of oyster restoration. Small and inconsistent oyster projects have discouraged investment in the infrastructure and equipment needed by marine contractors for oyster restoration. Many shucking houses can no longer maintain the boats and shell handling equipment needed for oyster restoration projects.

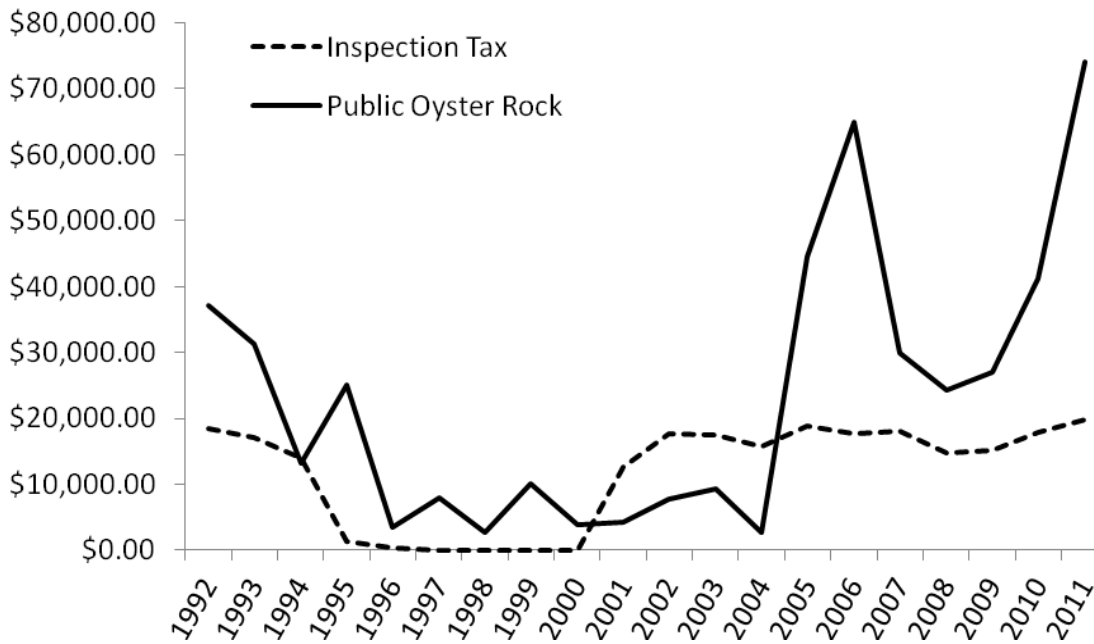
Public Oyster Rock Replenishment Fund

The Public Oyster Rocks Replenishment Fund is used by the Commission for the administration of the replenishment program and for the replenishment, planting, and replanting of public oyster rocks, beds, and shoals of the Commonwealth. Replenishment is accomplished with seed oysters, oyster shells, or other material that will catch, support, and grow oysters.

Relevant, current sections of the Code of Virginia pertaining to oyster records, taxes and licensing can be found in Appendix 1. All oyster taxes collected by VMRC are deposited into the State Treasury and are credited to this fund.

Two different taxes on oyster harvest are established in the Code of Virginia, collected by the Commission, and are credited to the Public Oyster Rocks Replenishment Fund. §28.2-539 and §28.2-540 of the Code of Virginia establish and set requirements for the payment of an Inspection Tax of three cents per bushel on all oysters harvested on public or private grounds, and all bushels imported into the Commonwealth. This tax is to be paid to the Commission semimonthly. When the Inspection Tax was established in 1960, more than 2,000,000 bushels of oysters were reported as harvested annually, and the Inspection Tax generated a significant source of income for the Public Oyster Rocks Replenishment Fund. Today, this tax rarely generates more than \$15,000 to \$20,000 per year (see figure below).

Revenue Collections



§28.2-541, §28.2-543, and §28.2-544 of the Code of Virginia establish and set the requirements for a Replenishment Tax imposed only on bushels of oysters harvested from the public beds of the Commonwealth. The tax is graduated relative to the dockside price of the oysters that are harvested. For oysters selling for less than \$1.50 per bushel, the tax begins at five cents per bushel, and is graduated up to a maximum tax of fifty cents per bushel, for oysters sold at a price greater than \$6.50 per bushel. These taxes must be paid semimonthly to the Commission, and monies collected are credited to the Public Oyster Rocks Replenishment Fund. Based on the reported public oyster harvest, for the 2010-2011 season, of approximately 100,000 bushels, the Replenishment Tax is estimated to have generated between \$50,000 and \$75,000. The pricing scale of the tax is outdated, as the value of the majority of harvested oysters is now well above the highest tax range.

Given the current wage rates for both the Commission staff and the private oyster industry personnel, the cost to tabulate, collect, account, and process the two oyster taxes exceeds the annual revenue generated. In many cases, the revenue collected from even moderately large-volume private-ground aquaculturists is less than ten dollars per month. Moreover, smaller volume oyster producers achieve a monthly harvest of oysters valued at \$4,000 to \$5,000 that results in a tax of less than one dollar per month.

Oyster Harvest Reporting

Prior to 2007, oyster harvests from both public and private grounds in the Commonwealth were reported through the Oyster Tax Harvest and Reporting System (OTHRS). Virginia's oyster harvest was tabulated from the reports provided by the oyster buyers in this system. Beginning in 2007, all oyster harvesters, whether harvesting on public oyster beds or on private oyster grounds, were required to report their monthly harvest to the VMRC Mandatory Harvest Reporting System. All other commercial fisheries began mandatory reporting as early as 1993, but oyster harvesters were not initially included, as they were using OTHRS. Yet, almost all public oyster harvesters were familiar with the Mandatory Harvest Reporting System, since many participated in other commercial fisheries in some capacity. Oyster aquaculturists and harvesters of private riparian and public (leased) oyster grounds were less familiar with Mandatory Reporting, but many are now filing accurate and timely reports. The Commission is striving to ensure full compliance with reporting requirements, from all harvesters of leased ground.

VMRC and the oyster industry are currently hampered by a duplicative reporting system for oyster harvests, causing significant confusion to harvesters and staff. This confusion is especially problematic for the growing aquaculture industry. For example, if aquaculturists market oysters directly to a retail establishment, they must fill out the Mandatory Harvest Reporting forms as the "primary harvester" and concurrently fill out the oyster tax forms as the "buyer" of the same harvest because of the OTHRS. The Mandatory Harvest Reporting System is much more complete than the OTHRS, and industry is very supportive of suspending the collection of the small amount of tax, as well as the redundant reporting system.

Alternative Revenue Sources

The Panel unanimously recommends continued contributions to the Public Oyster Rocks Replenishment Fund and an increase in the contribution to oyster replenishment in the Commonwealth. Rather than a tax system, the Panel would prefer an Oyster Resource User Fee, similar to that which is currently collected by the Potomac River Fisheries Commission. The Panel suggests a new system in which all commercial users of the oyster resource contribute to the Public Oyster Rocks Replenishment Fund. User fees would be collected prior to obtaining oyster licenses, making the new system administratively more efficient.

This system would match the requirements for all other commercial fisheries, whereby a harvester obtains an entrance license that authorizes the purchase of required gear licenses.

A **user fee** is a fee paid for the use of a public resource. Public parking facilities and entrance fees for state and national parks are examples. Unlike a tax which is imposed upon the general

population, the user fee is charged to an individual only when that individual uses the product, service, or commodity.

User fees would offer financial support for the Public Oyster Rocks Replenishment Fund, which will itself be a means of contributing replenishment money that would benefit the harvesters.

The Panel recommends the following Oyster Resource User Fees:

Harvester

Type	Number of Licensees	Resource User Fee	Revenue Subtotal†
Harvester (except by hand)	588	\$300 per harvester	\$176,400
Hand Harvesters	100	\$50 per hand harvester	\$5,000
Total Estimated Revenue			\$181,400

†Based on the number of 2011 oyster gear licenses

An Oyster Resource User Fee of \$300 will apply to any commercial harvester using any type of gear on public oyster grounds, except for those harvesters who only pick up oysters by hand. Hand harvesters are entirely on the seaside of the Eastern Shore. The Panel decided that the user fee of \$300 for commercial hand harvest gear licenses may be a burden and recommended a user fee of \$50 for them. This appears reasonable since hand harvesters represent approximately fifteen percent of all harvesters, but report less than five percent of Virginia’s oyster harvest. Note that the Oyster Resource User Fee of \$300 is the same amount charged in Maryland and by the Potomac River Fisheries Commission, for all oyster harvesters. Harvesters in Maryland have recently requested that their oyster user fee increase from \$300 to \$500.

Shucking Houses

Oysters Shucked (gallons)	Number of Shucking Houses	Resource User Fee	Revenue Subtotal†
<1,000	20	\$500	\$10,000
1,000 up to 10,000	9	\$1,000	\$9,000
10,000 up to 25,000	2	\$2,000	\$4,000
>25,000	5	\$4,000	\$20,000
Total number of shucking houses	36	Total Estimated Revenue	\$43,000

†Based on 2011 licenses.

Shucking houses purchase licenses based on gallons of oysters shucked. The Code of Virginia contains seven licenses according to volume of shucking; the suggested Oyster Resource User Fee would be limited to only four categories of product shucked. The major financial and

administrative burden from the Inspection and Replenishment Taxes has fallen on shucking houses. The Oyster Resource User Fee approach would relieve shucking houses of that tax system, and could actually lower their current costs significantly. Although there was a concern discussed by the Panel that the existence of a user fee for small shucking operations may be a burden, their operations are still commercial enterprises.

Oyster Buyers

Oyster Buyer’s License	Number of Licenses	Resource User Fee	Revenue Subtotal†
Single Truck or Location	50	\$100	\$5,000
Multiple Trucks or Locations	50	\$300	\$15,000
Total Estimated Revenue			\$20,000

†Based on 2011 licenses

Currently there is no Oyster Buyer’s license, but only a general Seafood Buyer’s license. Identification of oyster buyers will enhance current reporting and enforcement efforts. A new Oyster Buyer’s License is recommended to be added to the §28.2-228 of the Code of Virginia (Appendix 2).

Aquaculture

Resource User Fee	Number of Licensees	Resource User Fee	Revenue†
\$50 per aquaculturist	756	\$50	\$37,800

† Based on 2011 licenses

Permits are required for growing and harvesting oysters on privately leased ground. This is currently the fastest growing user group of the oyster industry. The aquaculture permits link the oyster grower to the Mandatory Reporting System. The oyster replenishment program at VMRC is devoted to assisting oyster aquaculturists. They have been supportive of a contribution to the Public Oyster Rocks Replenishment Fund, especially since this would relieve them of the small amounts of money and recordkeeping associated with the Inspection Tax currently in place.

Since licensing of an oyster grounds leaseholder, or a person employed by a leaseholder, is currently prohibited by §28.2-226 of the Code of Virginia, repealing subsection B of this section would provide VMRC greater flexibility in setting licensing standards for the aquaculture industry.

These Oyster Resource User Fees appear to provide balanced and predictable contributions to the Public Oyster Rocks Replenishment Fund by all the participants in the oyster industry. The total projected revenue for the Public Oyster Rocks Replenishment Fund is summarized in the table below.

Harvester	\$181,400
Shucking Houses	\$43,000
Oyster Buyer's	\$20,000
Aquaculturists	\$37,800
Total	\$282,200

The Oyster Resource User Fees will provide a larger contribution by the oyster industry to the oyster restoration program in the Commonwealth, with much lower administrative costs than the antiquated tax system that is currently in place. However, this improvement in the funding mechanism for the Public Oyster Rocks Replenishment Fund will provide only a portion of the funds needed, on an annual basis, for even maintenance replenishment efforts.

Comments from Committee:

1. Harvester User Fee of \$300 is a greater percentage increase than for the shucking houses, which are benefiting the most from the suspension of the tax system.

This was a general comment from several committee members. The \$300 harvester fee was chosen to be similar to the Maryland replenishment and Potomac River Fisheries Commission fees. If the Committee desires, the suggested User Fees for the shucking houses could be increased.

2. Harvester User Fee should be reduced for the hand harvesting gear license.

There are more than 100 watermen with only this license. Many of these harvesters have no reported harvest in the mandatory reporting system, so they may choose not to buy the license if there is not enough benefit to them. This would be the same for other gear types also, as there are a significant number of hand scrape license holders and hand tong license holders with little or no reported harvest. There are some hand harvesters reporting harvests greater than harvesters using other gear types. For this system to be equal among all users, it would seem that the fee should be the same among all users, and that a business decision will be made as to whether the benefit outweighs the cost of a license.

3. Harvester User Fee should be lower for watermen on seaside because there is less replenishment activity there with seed and shell.

These user fees will support the oyster replenishment program at VMRC. The program is involved with many aspects of oyster restoration besides just seed and shell. Staff time is expended in many areas throughout the state that do not get seed and shell, and it would again be hard to give discounts for watermen working or living in those areas that do not receive seed and shell. Many of the areas that do not regularly receive seed or shell have become very active with private ground oyster production and have benefited from the oyster replenishment program assistance.

4. Possibly there is a better title or name for the Public Oyster Rock Replenishment Fund in Code that better reflects the overall use of these contributions by many user groups.

If the Committee agrees, this could be recommended. "Oyster Replenishment Fund" may be more generic and acceptable to all contributors.

5. Increasing the cost per acre for the oyster ground leasing could add more funds.

Virginia has the most "pro-business" shellfish leasing system in the country. VMRC gets none of the revenue from this system. If Code Sections are opened regarding these fees, there could be unintended consequences that hurt the aquaculture industry. We do not believe that these Code sections should be involved with the current study.

6. A user fee is a one-time, set fee that may (or may not) raise enough replenishment money; however an oyster tax will oscillate according to production levels. The more production, the more replenishment money would be generated.

It is clear in the report that the User Fee system will increase the industry contribution to oyster replenishment, but that it will be far short of the funding needed for an adequate oyster replenishment program. The User fees are simpler with less administrative time and costs for both the industry and VMRC than the current tax system. Increasing the tax per bushel to an amount that would generate the same level of funding would be a deterrent to accurate reporting, and still result in the confusion of having duplicative reporting systems.

7. The study panel recommended that the shucking house fees should be increased, for those businesses that shuck a large volume of oysters. The panel also recommended that there should be four categories of shucking fees and categories.

As shown on page 8 of the document, the Panel's recommendations were incorporated regarding shucking house fees.

APPENDIX I: REFERENCED LAWS OF VIRGINIA RELATING TO THE MARINE
RESOURCES OF THE COMMONWEALTH

Title 28.2

Fisheries and Habitat of the Tidal Waters

SUBTITLE II. TIDAL FISHERIES.

CHAPTER 2. GENERAL PROVISIONS.

ARTICLE 5.

Licensing Generally.

§ 28.2-226. Exemptions from licensing requirements.

A. The following activities are exempt from the licensing requirements of this subtitle:

1. Except as otherwise provided by regulation, taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only.
2. Taking a maximum of one bushel of oysters in any one day for personal use, when taken by hand or with ordinary tongs.
3. Taking a maximum of 250 clams in any one day for personal use, when taken by hand or with ordinary tongs.
4. Using one tank or float no greater than four feet in width and eight feet in length for shedding crabs for personal use.

B. No license shall be required of an oyster grounds leaseholder, or other person authorized or employed by a leaseholder, to harvest oysters or clams from the leasehold. However, this exemption shall not apply to other requirements to obtain permits, including those permits for dredging or scraping on leaseholds provided in § 28.2-516, or for removal and transportation of shellfish from condemned areas as required by §§ 28.2-810 and 28.2-811.

(Code 1950, §§ 28-80, 28-137, 28-170, 28-177; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, §§ 28.1-78, 28.1-120, 28.1-165, 28.1-174; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180; 1988, c. 75; 1990, c. 154; 1991, c. 285; 1992, c. 836; 1993, c. 11; 2001, c. 51.)

§ 28.2-228. License for purchase of fish, shellfish, or marine organisms from the catcher; fee.

A. Any person, purchasing from the catcher, oysters or clams caught from the public grounds of the Commonwealth or the Potomac River, or crabs, fish, or other seafood caught from the waters of the Commonwealth or the Potomac River, shall pay a license fee of (i) fifty dollars for each place of business and (ii) twenty-five dollars for each boat or motor vehicle used for buying. The Commission may subsequently revise the cost of licenses pursuant to § 28.2-201.

B. No license shall be required of any person purchasing seafood for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58.1-3703 and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

(1970, c. 726, § 28.1-119.1; 1979, c. 274; 1980, c. 218; 1984, c. 316; 1988, c. 27; 1992, c. 836; 2009, c. 9.)

SUBTITLE II. TIDAL FISHERIES.

CHAPTER 5. OYSTERS AND CLAMS.

ARTICLE 3.

Oyster Records and Taxes.

§ 28.2-538. Record of oysters handled; penalty.

All licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall keep accurate and itemized records, on forms issued by the Commission, which contain (i) the number of bushels of oysters, before shucking, that come from public grounds, private grounds, or are imported; (ii) the name of the person from whom the oysters were purchased or obtained; (iii) the number of bushels and price paid per bushel for each seller; and (iv) if from public grounds, the grounds' general area. Any seller accepting cash payment for his oysters shall sign an acknowledgment of the transaction and receive a copy of the acknowledgment from the buyer. Such records shall be open for inspection by the Commissioner and a copy available to him or any employee designated by him to inspect or receive the same. A failure to keep such a record is a Class 1 misdemeanor.

(Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836.)

§ 28.2-539. Inspection tax.

All licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall pay to the Commissioner an inspection tax of three cents for each bushel of oysters taken, caught,

imported, or purchased. However, the tax shall not be imposed on those oysters which are to be replanted in the waters of the Commonwealth, and the tax shall not be imposed for the period from July 1, 1994, until July 1, 2000. The proceeds from this tax shall be paid into the Public Oyster Rocks Replenishment Fund established by § 28.2-542.

(Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836; 1994, c. 120; 1996, c. 483; 1998, c. 98; 2006, c. 33.)

§ 28.2-540. Who pays inspection tax; schedule for payment.

The inspection tax shall be paid to the Commissioner by the captain, or operator of any boat, vessel, or motor vehicle, or the purchaser, importer, or shipper, regardless of whether he is a packer, planter, or an individual working on public grounds.

The inspection tax shall be paid to the Commissioner semimonthly. For oysters harvested or imported during the first fifteen days of each month, payment shall be made on or before the twentieth day of each month. For oysters harvested or imported during the last half of each month, payment shall be made to the Commission on or before the fifth day of the following month.

(Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836; 1993, c. 218.)

§ 28.2-541. Replenishment tax.

A. There is imposed upon all oysters taken from the public rocks, beds, or shoals the following replenishment tax: (i) on all oysters taken from the seed area of the James River, or from any other area designated as a seed area by the Commission, selling for \$1.50 or less per bushel, five cents per bushel; selling for \$1.51 through \$2.50 per bushel, ten cents per bushel; selling for \$2.51 through \$3.50 per bushel, fifteen cents per bushel; selling for \$3.51 through \$4.50 per bushel, twenty cents per bushel; selling for \$4.51 through \$5.50 per bushel, twenty-five cents per bushel; selling for \$5.51 through \$6.50 per bushel, thirty cents per bushel; selling for \$6.51 or above per bushel, fifty cents per bushel; and (ii) on all oysters taken from any public rocks, beds, or shoals other than the James River seed area or any other area designated as a seed area by the Commission, fifty cents per bushel.

B. The Commission may revoke the permit or license of any person who fails to comply with this section.

(Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, § 28.1-93; 1964, c. 393; 1966, c. 173; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836.)

§ 28.2-542. Public Oyster Rocks Replenishment Fund.

All oyster replenishment taxes collected by the Commission shall be deposited in the state treasury and credited to a special Public Oyster Rocks Replenishment Fund, to be used only for

administration of the program and for replenishment, planting, and replanting the public oyster rocks, beds, and shoals of this Commonwealth, with seed oysters, oyster shells, or other material which will catch, support, and grow oysters. These funds shall be withdrawn and expended for such purpose on the order of the Commission. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by persons designated by the Commission.

(1962, cc. 406, 636, §§ 28.1-94, 28.1-94.1; 1992, c. 836.)

§ 28.2-543. Payment of replenishment tax; payment schedule.

A. The replenishment tax shall be paid to the Commission by all oyster buyers who purchase oysters taken from the public rocks, beds or shoals.

B. Such taxes shall be paid to the Commission by the oyster buyer in semimonthly payments. For oysters purchased during the first fifteen days of each month, payment shall be made to the Commission on or before the twentieth day of each month. For oysters purchased during the last half of each month, payment shall be made to the Commission on or before the fifth day of the following month.

C. The Commission may revoke the permit or license of any person who violates this section.

(Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, §§ 28.1-92, 28.1-93; 1964, c. 393; 1966, c. 173; 1970, c. 726; 1976, c. 255; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836.)

§ 28.2-544. Reports required of oyster buyers.

A. All oyster buyers shall send to the Commission a complete report and taxes due the Commission on all oysters purchased during such periods of time described in § 28.2-543, setting forth the total number of bushels of oysters taken from the public grounds, the general area from which taken, and the price paid, together with all taxes as required by § 28.2-541.

B. Any person taking or catching oysters from any public grounds which are planted or used by the taker or catcher and not sold to a buyer, shall file the same report as required of a buyer. This information shall be used only for the collection of replenishment taxes and for the Commission's information.

C. The Commission may revoke the permit or license of any person who violates this section.

(Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, §§ 28.1-92, 28.1-93, 28.1-94; 1964, c. 393; 1966, c. 173; 1970, c. 726; 1976, c. 255; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836.)

§ 28.2-546. Permit to carry oysters out of state.

A. It shall be unlawful for any person to carry, or attempt to carry, or to buy for the purpose of carrying out of this Commonwealth any size or kind of oysters taken from the public rocks, beds, or shoals until he has first obtained for each cargo a permit to do so from an officer and has paid to the Commission the required inspection and replenishment taxes with buyer's report. In place of a cargo permit, the Commissioner may grant a monthly permit at the beginning of each calendar month to a packing or shucking house located in the Commonwealth, provided that the packing or shucking house is in compliance with the provisions of this section.

B. The permit shall state the name of the boat or license number of the motor vehicle and the name and address of the owner or captain of the boat or owner or operator of the motor vehicle. The permit shall state the name and address of the person to whom the cargo of oysters is to be delivered. The permit shall specify the number of bushels and whether they are seed or shucking stock.

Before the permit shall be granted, the applicant shall certify, before an officer, that the cargo will not be delivered or discharged to any other person.

(Code 1950, § 28-110; 1960, c. 517; 1962, c. 406, §§ 28.1-89, 28.1-96; 1964, c. 393; 1966, cc. 252, 684; 1968, c. 747; 1976, c. 255; 1981, c. 52; 1992, c. 836; 2006, c. 33.)

§ 28.2-547. Authority to inspect oysters when loaded on conveyance.

Any officer is authorized to inspect as to the quality, size and measure of any of the oysters taken or purchased, loaded on any boat, vessel, motor vehicle, or other conveyance, or sold to any person.

(Code 1950, § 28-101; 1962, c. 406, § 28.1-88; 1992, c. 836.)

§ 28.2-548. Duty to inspect; collection of tax and receipt.

It shall be the duty of the officer in whose district a cargo of oysters is to be loaded to inspect the oysters as they are loaded and to ensure that all measurements are a full measure of oysters as defined in § 28.2-526 and that the oysters are properly culled. The oyster inspection tax shall be paid to the Commission and deposited in the Public Oyster Rocks Replenishment Fund established by § 28.2-542. The officer shall furnish the owner, captain, or operator of such boat, vessel, or motor vehicle a receipt showing the date, the destination, the number of bushels, and the amount of tax paid. This receipt shall be carried by the captain or operator of the boat, vessel, or motor vehicle and shall be exhibited when requested by any officer. A copy of the receipt shall be sent to the Commissioner.

(Code 1950, §§ 28-103, 28-105; 1954, c. 367; 1960, c. 517; 1962, c. 406, § 28.1-90; 1992, c. 836; 2006, c. 33.)

§ 28.2-549. Violations; recovery of taxes; penalty.

Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Any person willfully failing to pay such taxes to the Commission in the manner required by this article is guilty of a Class 1 misdemeanor. The Commission may maintain an action at law against any person required to pay taxes to the Commission for the amount of taxes due, plus interest, and a penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate.

(Code 1950, § 28-109; 1962, c. 406, § 28.1-95; 1988, c. 313; 1992, c. 836.)

APPENDIX II: POTENTIAL AMENDMENTS TO THE REFERENCED LAWS OF VIRGINIA TO MEET THE RECOMMENDATIONS OF THE PANEL

Title 28.2

Fisheries and Habitat of the Tidal Waters

SUBTITLE II. TIDAL FISHERIES.

CHAPTER 2. GENERAL PROVISIONS.

ARTICLE 5.

Licensing Generally.

§ 28.2-226. Exemptions from licensing requirements.

A. The following activities are exempt from the licensing requirements of this subtitle:

1. Except as otherwise provided by regulation, taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only.
2. Taking a maximum of one bushel of oysters in any one day for personal use, when taken by hand or with ordinary tongs.
3. Taking a maximum of 250 clams in any one day for personal use, when taken by hand or with ordinary tongs.
4. Using one tank or float no greater than four feet in width and eight feet in length for shedding crabs for personal use.

~~B. No license shall be required of an oyster grounds leaseholder, or other person authorized or employed by a leaseholder, to harvest oysters or clams from the leasehold. However, this exemption shall not apply to other requirements to obtain permits, including those permits for dredging or scraping on leaseholds provided in § 28.2-516, or for removal and transportation of shellfish from condemned areas as required by §§ 28.2-810 and 28.2-811.~~

(Code 1950, §§ 28-80, 28-137, 28-170, 28-177; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, §§ 28.1-78, 28.1-120, 28.1-165, 28.1-174; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180; 1988, c. 75; 1990, c. 154; 1991, c. 285; 1992, c. 836; 1993, c. 11; 2001, c. 51.)

§ 28.2-228. Licenses for purchase of fish, shellfish, or marine organisms from the catcher; fee.

A. Any person, purchasing from the catcher, ~~oysters or clams, caught from the public grounds of the Commonwealth or the Potomac River,~~ or crabs, fish, or other seafood, ~~except oysters,~~ caught from the waters of the Commonwealth or the Potomac River, shall pay a license fee of (i) fifty dollars for each place of business and (ii) twenty-five dollars for each boat or motor vehicle used for buying. The Commission may subsequently revise the cost of licenses pursuant to § [28.2-201](#).

B. Any person purchasing from the catcher, oysters caught from the public grounds of the Commonwealth or the Potomac River, shall pay a license fee of (i) fifty dollars for a single place of business with one boat or motor vehicle used for buying oysters and (ii) one hundred dollars for a single place of business with multiple boats or motor vehicles used for buying oysters. The Commission may subsequently revise the cost of licenses pursuant to § [28.2-201](#).

~~B.~~ C. No license shall be required of any person purchasing seafood for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58.1-3703 and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

(1970, c. 726, § 28.1-119.1; 1979, c. 274; 1980, c. 218; 1984, c. 316; 1988, c. 27; 1992, c. 836; 2009, c. 9.)

SUBTITLE II. TIDAL FISHERIES.

CHAPTER 5. OYSTERS AND CLAMS.

ARTICLE 3.

Oyster Records and ~~Taxes~~ Resource User Fees.

§ 28.2-511. Culling oysters; penalty.

A. In addition to any other penalty prescribed by law, any person charged with violating any regulation governing the culling of oysters shall be required, by the officer making the charge, to scatter the entire cargo of oysters on the public rocks under the supervision of the officer and at the expense of the person charged with the violation. In lieu of throwing the cargo overboard, the person charged with the violation may post cash bond with the officer in an amount

approximately equal to the value of the entire load as determined by the officer. The refusal to either dump the oysters overboard or post a cash bond is a distinct and separate offense from any other violation. A person who has posted a cash bond and is acquitted shall be refunded the cash bond. If the person is found guilty, the cash bond shall be forfeited and deposited to the credit of the ~~Special~~ Oyster Replenishment Fund.

Any person charged with such a violation who posts cash bond shall properly cull the entire cargo of oysters immediately after the officer has found them to be in violation of such regulation and before they can be sold, planted, or disposed of by him or by any other person.

B. The requirement to scatter the entire cargo of oysters on the public rocks shall only apply to a cargo of oysters taken by any catcher from the public oyster grounds and shall not apply to oysters which have been purchased by and are in the possession of a buyer.

A violation of any provision of this section is a Class 3 misdemeanor.

(Code 1950, § 28-141; 1960, c. 517; 1962, c. 406, § 28.1-124; 1964, c. 393; 1966, c. 684; 1968, c. 747; 1979, c. 606; 1981, c. 52; 1985, c. 125; 1992, c. 836.)

§ 28.2-538. Record of oysters handled; penalty.

~~All licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall keep accurate and itemized records, on forms issued by the Commission, which contain (i) the number of bushels of oysters, before shucking, that come from public grounds, private grounds, or are imported; (ii) the name of the person from whom the oysters were purchased or obtained; (iii) the number of bushels and price paid per bushel for each seller; and (iv) if from public grounds, the grounds' general area. Any seller accepting cash payment for his oysters shall sign an acknowledgment of the transaction and receive a copy of the acknowledgment from the buyer.~~

All licensed oyster harvesters, buyers, shucking houses and aquaculture operations shall record any fisheries data and information required by the Commission as provided in § 28.2-204. Such records shall be open for inspection by the Commissioner and a copy available to him or any employee designated by him to inspect or receive the same. A failure to keep such a record is a Class 1 misdemeanor.

(Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836.)

§ 28.2-539. Inspection tax.

All licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall pay to the Commissioner an inspection tax of three cents for each bushel of oysters taken, caught, imported, or purchased. However, the tax shall not be imposed on those oysters which are to be replanted in the waters of the Commonwealth, and the tax shall not be imposed for the period from July 1, 1994, until July 1, 2000. The proceeds from this tax shall be paid into the Public Oyster Rocks Replenishment Fund established by § 28.2-542.

(Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836; 1994, c. 120; 1996, c. 483; 1998, c. 98; 2006, c. 33.)

§ 28.2-540. Who pays inspection tax; schedule for payment.

The inspection tax shall be paid to the Commissioner by the captain, or operator of any boat, vessel, or motor vehicle, or the purchaser, importer, or shipper, regardless of whether he is a packer, planter, or an individual working on public grounds.

The inspection tax shall be paid to the Commissioner semimonthly. For oysters harvested or imported during the first fifteen days of each month, payment shall be made on or before the twentieth day of each month. For oysters harvested or imported during the last half of each month, payment shall be made to the Commission on or before the fifth day of the following month.

(Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836; 1993, c. 218.)

§ 28.2-541. Replenishment tax. Oyster Resource User Fee

A. There is are imposed upon all oysters taken from the public rocks, beds, or shoals the following replenishment tax oyster resource user fees, per year: (i) on all oysters taken from the seed area of the James River, or from any other area designated as a seed area by the Commission, selling for \$1.50 or less per bushel, five cents per bushel; selling for \$1.51 through \$2.50 per bushel, ten cents per bushel; selling for \$2.51 through \$3.50 per bushel, fifteen cents per bushel; selling for \$3.51 through \$4.50 per bushel, twenty cents per bushel; selling for \$4.51 through \$5.50 per bushel, twenty-five cents per bushel; selling for \$5.51 through \$6.50 per

~~bushel, thirty cents per bushel; selling for \$6.51 or above per bushel, fifty cents per bushel; and (ii) on all oysters taken from any public rocks, beds, or shoals other than the James River seed area or any other area designated as a seed area by the Commission, fifty cents per bushel. (i) on all licensed commercial fishermen harvesting oysters by hand a fee of \$50; (ii) using any type of gear to harvest oysters a fee of \$300; (iii) on all businesses shucking or packing less than 1,000 gallons of oysters, a fee of \$500; shucking or packing between 1,001 gallons and 10,000 gallons of oysters a fee of \$1,000; shucking or packing between 10,001 gallons of oysters and 25,000 gallons of oysters a fee of \$2,000; (iv) shucking or packing greater than 25,000 gallons of oysters a fee of \$4,000; (v) on all oyster buyers, using a single truck or location a fee of \$100; using multiple trucks or locations a fee of \$300. No harvester shall pay more than one oyster resource user fee per year.~~

B. There is imposed upon all commercial aquaculture operations taking oysters from any riparian assignment, pursuant to §28.2-603, or any general oyster planting ground, pursuant to §28.2-603, an oyster resource user fee of \$50.

~~B.~~ C. The Commission may revoke the permit or license of any person who fails to comply with this section.

(Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, § 28.1-93; 1964, c. 393; 1966, c. 173; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836.)

§ 28.2-542. ~~Public Oyster Rocks~~ Replenishment Fund.

All ~~oyster replenishment taxes~~ oyster resource user fees collected by the Commission shall be deposited in the state treasury and credited to the a special Public Oyster Rocks Replenishment Fund, to be used only for administration of the program and for replenishment, planting, and replanting the public oyster rocks, beds, and shoals of this Commonwealth, with seed oysters, oyster shells, or other material which will catch, support, and grow oysters. These funds shall be withdrawn and expended for such purpose on the order of the Commission. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by persons designated by the Commission.

(1962, cc. 406, 636, §§ 28.1-94, 28.1-94.1; 1992, c. 836.)

~~§ 28.2-543. Payment of replenishment tax; payment schedule.~~

~~A. The replenishment tax shall be paid to the Commission by all oyster buyers who purchase oysters taken from the public rocks, beds or shoals.~~

~~B. Such taxes shall be paid to the Commission by the oyster buyer in semimonthly payments. For oysters purchased during the first fifteen days of each month, payment shall be made to the Commission on or before the twentieth day of each month. For oysters purchased during the last half of each month, payment shall be made to the Commission on or before the fifth day of the following month.~~

~~C. The Commission may revoke the permit or license of any person who violates this section.~~

~~(Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, §§ 28.1-92, 28.1-93; 1964, c. 393; 1966, c. 173; 1970, c. 726; 1976, c. 255; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836.)~~

~~§ 28.2-544. Reports required of oyster buyers.~~

~~A. All oyster buyers shall send to the Commission a complete report and taxes due the Commission on all oysters purchased during such periods of time described in § 28.2-543, setting forth the total number of bushels of oysters taken from the public grounds, the general area from which taken, and the price paid, together with all taxes as required by § 28.2-541.~~

~~B. Any person taking or catching oysters from any public grounds which are planted or used by the taker or catcher and not sold to a buyer, shall file the same report as required of a buyer. This information shall be used only for the collection of replenishment taxes and for the Commission's information.~~

~~C. The Commission may revoke the permit or license of any person who violates this section.~~

~~(Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, §§ 28.1-92, 28.1-93, 28.1-94; 1964, c. 393; 1966, c. 173; 1970, c. 726; 1976, c. 255; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836.)~~

§ 28.2-546. Permit to carry oysters out of state.

A. It shall be unlawful for any person to carry, or attempt to carry, or to buy for the purpose of carrying out of this Commonwealth any ~~size or kind of seed~~ oysters taken from the public rocks, beds, or shoals until he has first obtained for each cargo a permit to do so from ~~an officer and has paid to the Commission, the required inspection and replenishment taxes with buyer's report.~~ In place of a cargo permit, the Commissioner may grant a monthly permit at the beginning of each calendar month to a packing or shucking house located in the Commonwealth, provided that the packing or shucking house is in compliance with the provisions of this section.

B. The permit shall state the name of the boat or license number of the motor vehicle and the name and address of the owner or captain of the boat or owner or operator of the motor vehicle. The permit shall state the name and address of the person to whom the cargo of seed oysters is to be delivered. The permit shall specify the number of bushels ~~and whether they are seed or shucking stock.~~

~~Before the permit shall be granted, the applicant shall certify, before an officer, that the cargo will not be delivered or discharged to any other person of the cargo.~~

(Code 1950, § 28-110; 1960, c. 517; 1962, c. 406, §§ 28.1-89, 28.1-96; 1964, c. 393; 1966, cc. 252, 684; 1968, c. 747; 1976, c. 255; 1981, c. 52; 1992, c. 836; 2006, c. [33](#).)

§ 28.2-547. Authority to inspect oysters when loaded on conveyance.

Any officer is authorized to inspect as to the quality, size and measure of any of the oysters taken or purchased, loaded on any boat, vessel, motor vehicle, or other conveyance, or sold to any person.

(Code 1950, § 28-101; 1962, c. 406, § 28.1-88; 1992, c. 836.)

§ 28.2-548. Duty to inspect; ~~collection of tax and receipt.~~

It shall be the duty of the officer in whose district a cargo of oysters is to be loaded to inspect the oysters as they are loaded and to ensure that all measurements are a full measure of oysters as defined in § 28.2-526 and that the oysters are properly culled. ~~The oyster inspection tax shall be paid to the Commission and deposited in the Public Oyster Rocks Replenishment Fund established by § 28.2-542. The officer shall furnish the owner, captain, or operator of such boat, vessel, or motor vehicle a receipt showing the date, the destination, the number of bushels, and the amount of tax paid. This receipt shall be carried by the captain or operator of the boat, vessel, or motor vehicle and shall be exhibited when requested by any officer. A copy of the receipt shall be sent to the Commissioner.~~

(Code 1950, §§ 28-103, 28-105; 1954, c. 367; 1960, c. 517; 1962, c. 406, § 28.1-90; 1992, c. 836; 2006, c. 33.)

§ 28.2-549. Violations; recovery of ~~taxes~~ oyster resource user fees; penalty.

Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Any person willfully failing to pay such ~~taxes~~ oyster resource user fees to the Commission in the manner required by this article is guilty of a Class 1 misdemeanor. The Commission may maintain an action at law against any person required to pay ~~taxes~~ oyster resource user fees to the Commission for the amount of ~~taxes~~ oyster resource user fees due, plus interest, and a penalty to be added to the ~~tax~~ oyster resource user fees in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate.

(Code 1950, § 28-109; 1962, c. 406, § 28.1-95; 1988, c. 313; 1992, c. 836.)

§ 28.2-550. Authority of Commissioner to make certain contracts; funds received to be paid into ~~Public~~-Oyster ~~Reek~~ Replenishment Fund.

A. The Commissioner with the approval of the Commission may contract with any person to take or dredge submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth.

B. The Commissioner, with the approval of the Commission, may contract with any commercial fisherman to engage in replenishment, research, and stock assessment activities in the Commonwealth. The Commission may promulgate regulations establishing criteria for awarding such contracts, including a preference for commercial fishermen actively engaged in the taking or catching of fish or shellfish who have suffered an adverse economic impact resulting from the implementation of regulations of the Commission regulating the seafood and marine resources of the Commonwealth. In determining whether a person is a commercial fisherman actively engaged in the taking or catching of fish or shellfish, the Commission shall consider, among other relevant evidence, (i) his possession of a license issued pursuant to Article 1 (§ [28.2-500](#) et seq.) of this chapter or (ii) his voluntary reporting of shellfish catches to the Commission.

C. The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, including contracts with commercial fishermen for replenishment, research, and stock assessment activities

as provided in subsection B, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

(1962, c. 636, § 28.1-94.1; 1989, c. 428; 1992, c. 836; 1994, c. [541](#).)