

February 25, 2017

MEMORANDUM

TO: Scott Eglseder and Kelley Cox, OAC Co-Chairs, Secretary Mark Belton

FROM: Donald F. Boesch 

SUBJECT: Three requests for information related to the Strawman Proposal

You will recall that at the February 13 meeting of the Oyster Advisory Commission (OAC) I raised three issues concerning the Consolidated Strawman Management Plan Proposal for which I, at least, would like more information. I am writing to clarify my request for this information.

1. **Recommendation of two restoration sanctuaries.** In his July 11, 2016 charge to the OAC, Secretary Belton specified three priority tasks: (1) a recommendation on continuation of restoration work in the Tred Avon River sanctuary (since completed); (2) review the five year status report and make a recommendation as to which tributaries are best suited as the fourth and fifth restoration sanctuaries; and (3) recommend changes, based on available data and options identified in DNR's *Oyster Management Review 2010-2015* (aka "the five-year report"), to oyster sanctuaries and public fishery areas. Secretary Belton laid out a general timeline that had the Commission completing the second task last fall and then moving to the third task. The Strawman Plan presented last week presents numerous very specific proposals on changes to oyster sanctuaries and public fishery areas (task 3), but lacks similarly specific proposals for the fourth and fifth sanctuaries (task 2). Instead, the Strawman lists eight potential restoration sanctuaries along with subjective votes resulting from the "homework" exercise last fall. The Strawman Plan proposes declassification for only one of these, Hooper Strait, and more modest state-funded investments for two of the remaining candidates, Breton Bay and Severn River. This leaves five candidate restoration partnership sanctuaries for which neither declassification nor alternative state investment are proposed.
 - 1.1. *Given the apparent lack of controversy regarding declassification for the remaining five sanctuaries (Manokin River, St. Mary's River, Nanticoke River, Magothy River, and South River), can the OAC complete task 2 and recommend two sanctuaries for restoration partnership restoration without further delay and then move onto the potentially more contentious issues involving declassification and rotational harvest areas?*
 - 1.2. *Before the next OAC meeting could DNR provide the OAC, in one table, characterizations of these sanctuaries based on the five-year study that are germane to the informed recommendation for the two restoration partnership sanctuaries? These characterizations should be relevant to the six objectives for sanctuaries specified in the five-year report¹ as well as to the additional practical factor requested by Secretary Belton: potential for success with little financial investment. None of the candidates is proximity to the Choptank Complex.*
2. **Declassification of Tier 1 sanctuaries.** DNR's *Oyster Management Review: 2010-2015* (the five year report) was based on technical data and analyses, with oversight and review provided by three external scientists. The draft report was issued in July 2016 and is now considered final.

The report classifies designated oyster sanctuaries and Public Shellfish Fishery Areas (PSFAs) into tiers based on their effectiveness in achieving their management objectives and the extent of data available for them. Tier 1 Sanctuaries “are generally responding well in the absence of harvest, which supports the conclusion that these areas should be maintained as sanctuaries.” Only two possible management alternatives² are listed in DNR’s Management Review for Tier 1 Sanctuaries: (1) Maintain current strategy – Remain in sanctuary without additional investment such as habitat construction and/or planting seed oysters. (2) Remain as a sanctuary, but with additional investment (reef construction and/or oyster seeding) until restoration criteria are met. The Strawman Plan proposes the declassification of all or parts of three Tier 1 sanctuaries (Wye River, Hooper Straits and Somerset). Except for the special case of the Somerset Sanctuary, this is at variance with the alternatives listed in the Management Review.

2.1. *I request that DNR provide a scientific rationale for declassifying Tier 1 sanctuaries sufficient to justify deviation from the alternatives stated in the Management Review.*

2.2. *The reason given for recommending declassification of the Somerset Sanctuary is that a harvest area surrounds this small sanctuary; hence enforcement of the sanctuary is difficult. Yet, the Strawman Proposal indicates that declassification to a PSFA is also be an enforcement concern because the surrounding area would be open to power dredging while only hand tongs, diving and patent tongs would be allowed there. To what degree is the enforcement concern actually alleviated by the proposed declassification of the sanctuary?*

3. **Net reduction of the area of productive bottom areas in sanctuaries.** Maryland’s existing regulations called for expansion of the network of sanctuaries to protect 25% of remaining oyster bar habitat.³ Furthermore the Management Review states: “To achieve ecological restoration, the scale of sanctuaries remains important and should be maintained within the range of 20-30% of the remaining productive bottom.” The Review further indicated that, by trading sanctuary and PSFAs within equivalent tiers, “conservation equivalency” would be maintained. DNR has estimated that 23.7% of productive bottom⁴ is currently protected by oyster sanctuaries and that under the Strawman Proposal this would be reduced to 21.0% due the net declassification of 976 acres from sanctuaries to PSFAs—a 11.4% reduction in the amount of productive bottom in sanctuaries. This net reduction would result in widening the disparity with the 25% stated in the regulations and would move the area of productive bottom that would be protected by sanctuaries to the low end of the presumed 20-30% guard rails.

3.1. *Would DNR please provide for the Strawman Proposal evidence and analyses that examines the degree to which “conservation equivalency” is maintained, the bottom line goal of “more oysters in the water” is achieved, and the risk of falling below 20% of the actual productive bottom in sanctuaries.*

3.2. *I also request that DNR develop for the Commission’s consideration an alternative proposal (or proposals) that both achieves the 25% sanctuary goal indicated in the regulations and allows a roughly equivalent expansion as provided by the Strawman Proposal in the area of specially managed PSFAs suitable for rotational harvest.*

Endnotes

¹ The six sanctuary objectives indicated in the five-year report are: (1) protect half of the Bay’s most productive oyster grounds that remain and allow investigations of the reasons why these remain most productive, (2) facilitate development of natural disease resistance, (3) provide essential natural ecological functions that cannot be obtained on a harvest bar, (4) serve as a reservoir of reproductive capacity, (5) provide broad geographic distribution across all salinity zones, and (6) increase ability to protect from poaching.

² The small Somerset Sanctuary is the one Tier 1 Sanctuary for which different management alternatives are proposed.

³ COMAR 08.02.04.15 Oysters.

⁴ Productive bottom is specified in the Programmatic Environmental Impact Statement for Chesapeake Bay oyster restoration. The actual extent of productive bottom is likely less now.