

**REQUEST FOR PROPOSALS**

**ISSUE DATE:** March 12, 2018 RFP CRD #18-01

**TITLE:** Shell dredging and shell planting for Virginia's portion of the Chesapeake Bay and its tributaries.

**COMMODITY CODE:** 96834/95900

**ISSUING AGENCY:** Commonwealth of Virginia  
Marine Resources Commission  
2600 Washington Avenue  
Newport News, Virginia 23607-0756

**WORK LOCATION:** James River, City of Newport News, Rappahannock River, Lancaster and Middlesex Counties, York River, York and Gloucester Counties, Piankatank River, Mobjack Bay, Mathews County, Great Wicomico River, Lancaster County, and Tangier Sound, Pocomoke Sound, Accomack County.

**PERIOD OF CONTRACT:** From date of award to September 30, 2018.

**SEALED PROPOSALS WILL BE RECEIVED UNTIL April 6, 2018, AT 2:00 P.M. FOR FURNISHING THE SERVICES DESCRIBED HEREIN. LATE PROPOSALS WILL NOT BE CONSIDERED.**

**ALL INQUIRIES FOR INFORMATION SHOULD BE DIRECTED TO:**

Andrew Button  
Telephone (757) 247-2121

**SEND PROPOSALS DIRECTLY TO:**

Brandy L. Battle  
Marine Resources Commission  
2600 Washington Ave., 3<sup>rd</sup> Floor  
Newport News, Virginia 23607  
(757) 247-2260

**OR HAND DELIVER TO:**

Brandy L. Battle  
Marine Resources Commission  
2600 Washington Avenue, 3<sup>rd</sup> Floor  
Newport News, Virginia 23607

IN COMPLIANCE WITH THIS REQUEST FOR PROPOSALS (RFP) AND ALL THE CONDITIONS IMPOSED IN THIS RFP, THE UNDERSIGNED FIRM HEREBY OFFERS AND AGREES TO FURNISH, IF SELECTED, THE SERVICES DESCRIBED AT THE PRICE INDICATED IN SECTION XI, PRICING SCHEDULE IN ACCORDANCE WITH THE ATTACHED SIGNED PROPOSED OR AS MUTUALLY AGREED UPON BY SUBSEQUENT NEGOTIATION, AND THE UNDERSIGNED FIRM HEREBY CERTIFIES THAT ALL INFORMATION PROVIDED BELOW AND IN ANY SCHEDULE ATTACHED HERETO IS TRUE, CORRECT, AND COMPLETE.

State Corporation Commission ID Number: \_\_\_\_\_ (See Special Terms and Conditions)

**NAME AND ADDRESS OF FIRM:**

\_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
(Signature in ink)

\_\_\_\_\_

NAME: \_\_\_\_\_  
(Please print)

\_\_\_\_\_ Zip Code: \_\_\_\_\_

TITLE: \_\_\_\_\_

EVA Vendor ID or DUNS #: \_\_\_\_\_

PHONE: (\_\_\_\_) \_\_\_\_\_

EMAIL: \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

**RETURN ENTIRE CONTRACT PROPOSAL TO VMRC. SIGN CERTIFICATION ABOVE.**

**COMPLETE SECTIONS:**

- XI – PRICING SCHEDULE**
- ATTACHMENT A**
- ATTACHMENT B (if applicable)**
- ANNEX 7-G**
- ANNEX 7-I**

**Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.**

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I. **PURPOSE:** The intent and purpose of this Request for Proposals (RFP) is to solicit sealed proposals from qualified sources to dredge, grade, and wash approximately 25,000 to 60,000 cubic yards of fossil oyster shells from the James River, and then transport and deploy the same oyster shells on sites in the James River, York River, Rappahannock River, Mobjack Bay, Piankatank River, Great Wicomico River, Tangier Sound, and Pocomoke Sound area in the Chesapeake Bay of Virginia.

II. **BACKGROUND:** The VMRC Conservation and Replenishment Department (CRD) has the responsibility for managing and restoring the oyster resource in the State. Millions of bushels of oyster shells have been placed overboard by the CRD to serve as cultch for oyster larvae to attach (strike). In recent years, oyster reef restoration has primarily used oyster shell from local shucking houses. However, there are not sufficient quantities of oyster shell to complete all of the current projects, nor the anticipated increase in oyster restoration projects over the next few years.

The current project shall require fossil shells to be dredged from subaqueous deposits near Newport News in the James River. These shells shall be washed and sorted into two size categories. These dredged shells will then be transported and washed overboard (referred to as "planting shells") with a high-pressure stream of water in areas in the James River, York River, Rappahannock River, Mobjack Bay, Piankatank River, Great Wicomico River, Tangier Sound, and Pocomoke Sound area in the Chesapeake Bay of Virginia. All dredging, washing, transportation, and planting will be conducted according to the terms of this contract and according to existing shell dredging permits. The Marine Resources Commission is responsible for obtaining the necessary permits.

The shell dredging site is on the north side of the James River, between Route 17, James River Bridge and the Interstate 664, Monitor-Merrimac Bridge Tunnel (Map (shelldredge.jpg) on VMRC website [http://www.mrc.virginia.gov/mrc\\_procurement\\_info.shtm](http://www.mrc.virginia.gov/mrc_procurement_info.shtm)).

The shell planting sites are specified and buoyed by the VMRC Conservation and Replenishment Department. The shells shall be planted on areas that are generally 5 to 25 acres in size. Plantings are made by washing shell overboard with high pressure water as the shell barge moves around the area to give a uniform coverage.

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

III. **SCOPE OF WORK:**

a) The contractor shall dredge, wash, and sort 25,000 to 60,000 cubic yards of fossil shell in

accordance with permits issued by the U. S. Army Corps of Engineers.

- b) Shell dredging requires permits issued by the U. S. Army Corps of Engineers. Obtaining the necessary permits is the responsibility of the VMRC – CRD. The Contractor shall dredge, wash, transport, and plant shells in accordance with the terms of the permits.

Typical conditions in the permits address topics such as: dredging equipment, dredge cut dimensions, discharge of waste sediment and shell grit, appropriate uses of shell, dredging areas and dredging times. The permits along with the contract contain the complete conditions and should be consulted.

The time period for shell dredging as specified in the permits is June 16 to December 31. The dredging sites are located in the James River and are labeled on the attached permit map (Map (shelldredge.jpg) on VMRC website - [http://www.mrc.virginia.gov/mrc\\_procurement\\_info.shtm](http://www.mrc.virginia.gov/mrc_procurement_info.shtm)).

VMRC is responsible for acquiring shell dredging permits and conducting environmental studies required by the permits.

The most recent dredging permit (2017), from the Army Corps of Engineers is attached as Attachment C. The agency's Replenishment Department Head believes that this permit will be extended/renewed by June 1, 2018. However, should this permit not be renewed, the VMRC will not be able to enter into a contract for the work described in RFP CRD 18-01. The contractor is responsible for full compliance with and all notifications identified in the dredging permit (2017); except for completing the compliance certification form (page 3, 4<sup>th</sup> paragraph).

- c) Dredge cuts are to a maximum of 50 feet mlw with spoil returned to the dredge cut after washing by means of bow and stern elephant trunk discharge pipes. The elephant trunk discharge pipes shall extend under the dredge barge.
- d) Shells shall be washed and sorted into two sizes. "Fines" are those shell pieces from 3/16" to 1" in size, and shells are those shell pieces 1 inch in size and greater ( $\geq 1$ ").
- e) The contractor may request approval to purchase all or a portion of the shell pieces or "fines", and this value of such shell pieces shall be included as a credit against the contractor price.
- f) **Shellplanting:** James River, York River, Rappahannock River, Mobjack Bay, Piankatank River, Great Wicomico River, Tangier Sound, and Pocomoke Sound area in the Chesapeake Bay of Virginia.

(Maps on VMRC website)[http://www.mrc.virginia.gov/mrc\\_procurement\\_info.shtm](http://www.mrc.virginia.gov/mrc_procurement_info.shtm).

Shells shall be transported by barge and tug to the planting locations and washed overboard from a moving barge that should be making a minimum of 1.5 knots SOG, at MRC designated sites at an approximate rate of 60 to 600 yards per acre. The contractor shall make every reasonable effort to insure shells are planted as uniformly as possible. Water depths at

planting sites are greater than 5' mlw. Planting locations are generally 5 to 25 acres and will be marked by VMRC-CRD personnel

The dredging and planting of shells shall be conducted under supervision of VMRC – CRD personnel during the period of June 16 – August 15, 2018.

Planting Areas:

Water Body	Bar	Lat	Long	Acreage	Cultch/per meter <sup>2</sup>	Total Bu	Total Cu yds
Tangier							
	5-H-1	37 54.285	75 56.362	6.3	4.1	6,300	406
	7-H-1	37 52.406	75 55.804	14.1	3.6	14,100	910
	7-H-2	37 52.182	75 55.572	14.9	5.4	14,900	961
	7-H-4	37 51.680	75 55.460	4.0	4.0	4,000	258
	Hurleys	37 55.259	75 58.409	7.0	3.4	7,000	452
	7-H-3	37 51.918	75 55.602	26.0	2.9	26,000	1,677
	7-H-5	37 51.560	75 55.684	9.0	2.9	9,000	581
Subtotals				81.3		81,300	5,245
Pocomoke							
	Onancock	37 44.930	75 51.634	10.4	4.1	10,400	671
	10-H-1	37 56.195	75 44.980	69.7	0.9	69,700	4,497
	10-H-2	37 56.640	75 44.495	20.9	0.9	20,900	1,348
	9-H-1	37 56.800	75 43.010	21.3	2.1	21,300	1,374
	9-H-2	37 56.990	75 42.650	32.6	3.2	32,600	2,103
	11-H-1	37 55.415	75 44.765	37.3	2.2	37,300	2,406
Subtotals				192.2		192,200	12,400
Great Wicomico							
	Fleeton	37 48.663	76 19.265	14.6	0.8	14,600	942

	Ingram S	37 47.620	76 17.220	8.6	1.9	8,600	555
	Mill Creek	37 47.610	76 18.455	2.3	0.3	2,300	148
	Subtotals			25.5		25,500	1,645
Rappahannock	Lower						
	Spike B, Offshore	37 34.695	76 16.884	5.92	6.9	5,920	382
	Spike A	37 34.536	76 17.136	2.22	2.9	2,200	142
	Spike	37 34.650	76 17.589	7.10	4.6	7,100	458
	Lower Edge, East	37 34.573	76 17.950	17.49	3.7	17,490	1,128
	Lower Edge, Middle	37 34.607	76 18.122	13.32	5.4	13,320	859
	Lower Edge, West	37 34. 622	76 18.298	21.65	5.6	21,650	1,397
	Broad Creek	37 34.599	76 18.977	15.73	6.3	15,730	1,015
	Mosquito Island 26	37 36.593	76 20.580	2.03	0.6	2,000	129
	Butlers Hole 27.1	37 36.498	76 18.324	6.70	6.7	6,700	432
	Butlers Hole 27.2	37 36.498	76 18.225	6.10	4.3	6,100	394
	Broad Cr., Inshore	37 34.479	76 18.663	7.90	6.3	7,900	510
	Butlers Hole, Gravel	37 36.885	76 18.700	4.59	4.3	4,590	296
	Hogge House Inshore	37 38.104	76 32.503	3.70	11.2	3,700	239
	Hogge House Offshore	37 38.353	76 32.599	5.6	6.4	10,100	652
	Corrotoman 22 C3	37 40.037	76 28.663	8.5	3.1	8,300	535
	Whiting Creek	37 37.123	76 30.802	12.76	7.4	12,700	819
	Subtotals			141.31		145,500	9,387
Rappahannock	Upper						
	Little Wicks 34	37 41.428	76 34.322	5.6	5.7	5,600	361
	Little Wicks 35	37 41.473	76 34.385	7.2	2.1	7,200	465
	Big Wicks 36.3	37 42.090	76 34.720	24.0	4.4	24,000	1,548

	Big Wicks 36.2	37 41.965	76 34.610	24.2	3.3	24,200	1,561
	Stove Point 37	37 42.770	76 34.900	29.5	5.9	29,500	1,903
	Smokey Point 38	37 43.200	76 34.940	26.1	5.3	26,100	1,684
	Waterview 39.2	37 43.520	76 35.278	19.8	6.1	19,800	1,277
Subtotals				136.4		136,400	8,799
Piankatank							
	Hills Bay 12	37 30.473	79 19.125	9.4	1.8	9,400	606
	Island Bar 13	37 32.015	76 23.055	5.3	3.9	5,300	342
	Cobbs Creek 14	37 31.725	76 23.678	4.3	4.1	4,300	277
	Thompson 16	37 31.140	76 24.496	0.8	3.6	1,000	65
	Doc's View 17	37 30.690	76 25.129	1.1	1.3	1,100	71
Subtotals				20.9		21,100	1,361
Mobjack							
	Pultz	37 21.155	76 21.150	14.1	4.7	14,100	910
Subtotals				14.1		14,100	910
York							
	Aberdeen 1	37 19.900	76 35.860	14.9	3.6	14,900	961
	Timberneck 1	37 20.175	76 35.990	14.7	4.7	14,700	948
	Timberneck 3	37 16.418	76 31.880	15.4	3.6	15,400	994
Subtotals				45.0		45,000	2,903
Lower James							
	Lower Thomas	37 01.235	76 29.282	60.2	3.4	60,200	3,884
	Nansemond Ridge	36 56.045	76 27.070	19.0	5.4	19,000	1,226
	Lower Browns Shoal	37 00.694	76 27.871	83	7.4	83,000	5,355
	Ballards Marsh	36 59.452	76 31.105	78.0	8.9	78,000	5,032



Subtotals				240.2		240,200	15,497
Grand Total				882.81		887,200	57,237

g) Shell Quantity

The contractor shall dredge, wash, transport, and plant oyster shell as directed by VMRC. The quantity for this contract shall be 25,000 - 60,000 cubic yards and the contractor's capabilities should provide for a daily completion rate of 3,000 to 6,000 cubic yards. The conversion factor for cubic yards to Virginia bushels is 15.5 (C.Y. X 15.5 = VA Bushels).

h) Shell Quality

Shell material is categorized as "shells" (equal to or greater than 1 inch in size) and "fines" (3/16" to 1 inch).

Shells and fines for oyster restoration projects shall be washed clean of mud and sediment by the contractor at the dredging site and be suitable for attracting spat, according to VMRC - CRD. The contractor shall sort shells from fines at the dredging site and provide either material as specified by VMRC.

i) Shell Volume Measurements

A team consisting of at least one representative of VMRC and one representation of the contractor shall measure each barge load of shells or fines. The measurement for shells to be planted may be estimated prior to transport; the official measurements shall be made when the barge arrives at the planting location. One representative of VMRC and one representative of the contractor shall agree upon the measurement of shells prior to commencement of shell planting. The measurement technique shall be according to the Standard method below or in a few cases, the Alternative Method:

STANDARD VOLUME DETERMINATION OF DREDGED SHELL/FINES ON BARGE

The shell or fine pile is to be of nearly uniform height along length of a barge, with sides of the piles as straight and consistent a slope along length as is practicable.

Measurements (feet and decimal fractions of feet) are to be made for height and width at a minimum of four (4) intervals along the length of the shell pile. The first and last measurements are made at the point where the pile begins sloping from its uniform height downward to the ends of the barge. Measurements between these two points should be made at nearly equal distances, avoiding extreme low points or high points of the pile.

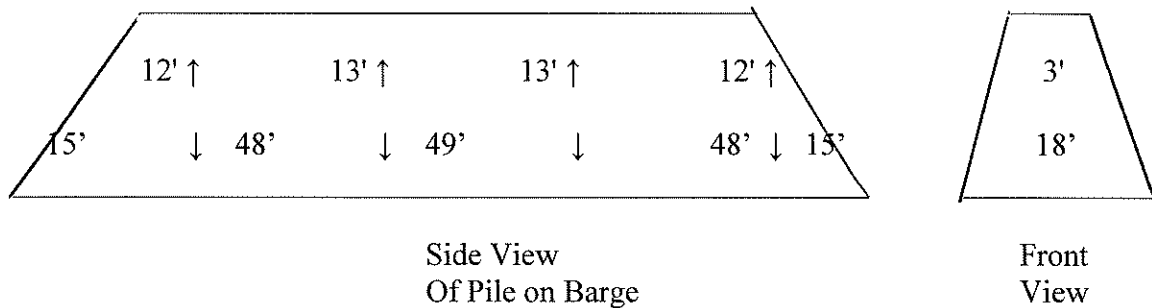
At each interval, measurements are to be made as follows:

\* length of interval;

\* height of pile; and

\* width of pile at the base and at the peak

An example of measurements to be made is shown below:



For each interval (length), an average height and width are determined to arrive at an average volume (cubic feet) for that interval. Each sectional volume is then added to get an overall volume. The volume is converted to cubic yards and shall be the volume used when billing VMRC.

#### ALTERNATE VOLUME DETERMINATION OF DREDGED SHELL/FINES ON BARGE

The volume of shells or fines may be determined by measuring the draft of a loaded barge, but only after discussion and agreement between the Contractor and VMRC to decide upon the actual method. Suitable conversion factors will be needed for the weight to volume ratio for both shells and fines under dry and wet conditions, and measuring draft will need to be done under calm conditions when wave action has negligible effect on reading the draft of a barge.

#### j) Equipment and Experience of Contractor:

The Contractor shall provide all equipment and personnel necessary to carry out the terms of this contract, including but not limited to dredges, washing, and sorting equipment, tugboats, barges, crane and bucket, pumps, crew, crew boats and measuring equipment. The equipment and their use must comply with the specifications of the shell dredging permit (Attachment C). The dredge must be a hydraulic dredge equipped with an elephant trunk discharge pipe which directs waste water and sediment into the cut being made. The offeror is required to provide a dredge equipped with a shell washing/sorting apparatus that can sort clean shells from clean fines and load each, simultaneously, onto barges at the dredge.

#### k) Dredging Site Management by the Contractor

The Contractor is responsible for damage it causes to commercial fishing gear near the dredging operation, for marking dredging sites if buoys are needed, for using discrete traffic lanes for tug and barge traffic in the immediate vicinity of the dredge and for coordinating with local watermen the removal of crab pots, eel pots, or other gear from these traffic lanes.

#### l) Environmental Conditions and Restrictions

The contractor shall conduct all dredging, washing, transporting and planting of shells in a manner which will attempt to minimize any environmental harm. All conditions and specifications in the dredging permit shall be followed, such as the use of a trunk discharge pipe to direct all dredging waste to the cut being made. Environmental studies, if required, will be conducted by VMRC.

m) Right of Inspection

The Contractor agrees that VMRC may station MRC-CRD personnel at its dredge or dredges all operative hours to check the quality and quantity of shells and fines, and any environmental impacts regarding fish or water quality.

n) Maintenance and Records

The Contractor agrees to keep accurate books and records showing the quantity of shells and fines dredged, the location dredged, the locations planted and the volume of each planting. All books and records shall be open to inspection and audit by VMRC, or its duly authorized representatives, at all reasonable intervals during business hours.

o) Maps of the James River, York River, Rappahannock River, Mobjack Bay, Piankatank River, Great Wicomico River, Tangier Sound, and Pocomoke Sound area in the Chesapeake Bay of Virginia.

(Maps on VMRC website [http://www.mrc.virginia.gov/mrc\\_procurement\\_info.shtm](http://www.mrc.virginia.gov/mrc_procurement_info.shtm)) show the generalized shell planting areas. MRC Staff shall mark planting sites with buoys and the Contractor will plant shells only within the specified boundaries. If the planting barge moves outside of the marked area or the SOG falls below 1.5 knots, the Contractor shall stop planting until the barge is back within the area, making way at the required speed or water cannons are being manipulated as to insure even planting of shells. Planting specifications will vary and MRC will direct each planting.

**IV. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:**

A. General Requirements

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal must be submitted to the VMRC. No other distribution of the proposal shall be made by the offeror.

2. Proposal Preparation:

a. Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete

or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of RFP. Emphasis should be on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.
- e. Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.
- f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke

the protections of § 2.2-4342 of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or propriety information. The classification of an entire proposal document, line item prices and/or total proposal prices as propriety or trade secrets is not acceptable and will result in rejection of the proposal. If, after being given reasonable time the offeror refuses to withdraw an entire classification designation, the proposal will be rejected.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the VMRC. This provides an opportunity for the offeror to clarify or to elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. The VMRC will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

B. Specific Requirements

1. Proposals should be as thorough and detailed as possible so that the Virginia Marine Resources Commission may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:
  - a. The return of this complete RFP and all addenda acknowledgements, signed, and filled out as required.
  - b. Complete Contractor Data Sheet (Attachment A), and if applicable, Subcontractor Data Sheet (Attachment B).
  - c. A written narrative statement to include:
    - (1) What, when, and how the service will be performed,
    - (2) Description of the equipment that will be used to dredge, sort, and clean fossil shell and methods to minimize environmental impacts of the dredging operation,
    - (3) Description of barges and tugboats that will be used to plant the shells in James River, York River, Rappahannock River, Mobjack Bay, Piankatank River, Great Wicomico River, Tangier Sound, and Pocomoke Sound area in the Chesapeake Bay of Virginia.

- (4) Description of any stationary barge that will be used,
- (5) Description of the anticipated number of trips necessary to complete the project,
- (6) Complete description of any subcontractor arrangements to be used, and completion of Subcontractor Data Sheet, Attachment B.
- (7) Estimated time schedule for completion of the project,
- (8) Cost as described in Section XI, Pricing Schedule, and
- (9) Experience of company and personnel in marine contracting projects similar to oyster restoration.
- (10) Small Business Subcontracting Plan – Summarize the planned utilization of DSBSD-certified small businesses under the contract to be awarded as a result of this solicitation. Complete Annex 7-G. Describe all subcontracting arrangements.
- (11) State Corporation Commission Form: Required of all offerors pursuant to Title 13.1 or Title 50. Complete Annex 7-I, SCC Form.

V. **EVALUATION AND AWARD CRITERIA:** Proposals shall be evaluated by the Marine Resources Commission using the following criteria:

<b>A. <u>Evaluation Criteria</u></b>	<b><u>Percentage Value</u></b>
Contractor's Project Completion Capabilities	35%
Approach to completing the project	
Equipment – Size, Condition, Type	
Likelihood of Completing Project within Time Specified	
Contractor's Experience	20%
Experience with similar marine construction projects	
Experience of Staff	
Cost	25%
Small Business Subcontracting Plan	<u>20%</u>
	100%

- B. **Award Criteria:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall

be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to the offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

VI. **REPORTING AND DELIVERY INSTRUCTIONS:** Omitted

VII. **MANDATORY PREPROPOSAL CONFERENCE:** Omitted

VIII. **GENERAL TERMS AND CONDITIONS:**

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under "Vendors Manual" on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public

funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1 and 2 below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
  - e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.



E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A

contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
  4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  
2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice; in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
  - a. By mutual agreement between the parties in writing; or
  - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
  - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence

of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the solicitation.

S. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

T. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the

time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
5. Automobile Liability - \$1,000,000 combined single limit.
6. Watercraft policy with a combined single limit of \$2,000,000 for protection and indemnity coverage.

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below;

Vendor transactions fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
  - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition “Eva Orders and Contracts” to identify the number of purchase orders that will be issued as a results of this solicitation/contract with the Eva transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eva.virginia.gov](http://www.eva.virginia.gov).

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state offer prices in US dollars.
- AA. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**IX. SPECIAL TERMS AND CONDITIONS:**

- A. **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. **AWARD OF CONTRACT:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as



negotiated.

- C. **PROPOSAL ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- D. **PROPOSAL PRICES:** Proposal prices shall be as requested in Section XI, Pricing Schedule.
- E. **INSPECTION OF CONSTRUCTION:**
- 1) The Contracting Officer for the CRD shall be Andrew Button or his designee.
  - 2) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to the contract requirements.
  - 3) CRD inspections and tests are the sole benefit of the CRD and do not:
    - a. Relieve the Contractor of responsibility for providing adequate quality control measures;
    - b. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
    - c. Constitute or imply acceptance; or
    - d. Affect the continuing rights of the CRD after acceptance of the completed work.
  - 4) The presence or absence of a CRD inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
  - 5) The Contractor shall promptly furnish, without additional charges, all facilities, labor and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The CRD may charge to the Contractor any additional cost for inspection or tests when work is not ready at time specified by the Contractor for inspection or tests, or when prior rejection makes reinspection or retest necessary. The CRD shall perform all inspections and tests in a manner that will not unnecessarily delay the work.
  - 6) The Contractor shall, without charge, replace or correct work found by the CRD not to conform to contract requirements, unless in the public interest the CRD consents to accept work with an appropriate adjustment in contract price.

- 7) If the Contractor does not promptly, as advised by the Contracting Officer, replace or correct rejected work, the CRD may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor and (2) terminate for default the Contractor's right to proceed.
- 8) Unless otherwise specified in the contract, the CRD shall accept, as promptly as practical after the completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately.

F. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 15 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

G. **CONTRACT EXTENSION:** Contract end date may be extended by mutual agreement between the Marine Resources commission and the Contractor. No other terms of the contract shall change.

H. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

I. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____	<u>April 6, 2018</u>	<u>2:00 p.m.</u>
Name of Offeror	Due Date	Time

_____	<u>RFP# CRD 18-01</u>
Street of Box Number	RFP No.

Shell dredging and shell planting for  
Virginia's portion of the  
Chesapeake Bay and its tributaries.

_____	_____
City, State, Zip Code	RFP Title

Name of Contract/Purchase Officer or Buyer	<u>Brandy Battle</u>
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The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified.

Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other Proposals should be placed in the envelope.

J. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

K. **SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING:**

A. Submission of Small Business Subcontracting Plan: It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. The contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the offeror shall note such on the Small Business Subcontracting Plan. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.

B. Evidence of Compliance with Small Business Subcontracting Plan: Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

C. **Prime Contractor Subcontractor Reporting:**

1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are DSBSD-certified businesses or ESOs. The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (Businesses that are DSBSD-certified small, women-owned, minority-owned, Service Disabled Veteran, or Employment Services Organization) and type of product/service provided, at the frequency required.
2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are **not** DSBSD-certified businesses. The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided, at the frequency required.

- L. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- M. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications, and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- N. **WORK SITE DAMAGES:** Any damage to the reef structure which has been completed or adjacent oyster beds resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.
- O. **COMPLETION OF ATTACHMENTS:** Attachment A – Contractor data sheet, and if applicable. Attachment B – One page for each subcontractor to be utilized. Annex 7-G-Small Business Subcontracting Plan and Annex 7-I-SCC Form must be completed in full and returned with the proposal package.
- P. **APPLICABLE U. S. COAST GUARD LICENSES AND REGULATIONS:** Operators of all vessels used for deployment shall present, upon request, applicable U. S. Coast Guard licenses and shall obey all applicable U. S. Coast Guard regulations at all times during operations under this contract.

Q. **HAZARD TO NAVIGATION:** Contractor shall not create a hazard to navigation while performing under this contract. Any such hazard to navigation created by the Contractor while performing under this contract shall be removed or eliminated at his expense.

R. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in one purchase order with the applicable eVA transaction fee assessed for each order.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eVA.virginia.gov](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov).

S. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

T. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

X. **METHOD OF PAYMENT:** The contractor will be paid on the basis of invoices submitted after satisfactory completion of each of the areas listed in XI. Pricing Schedule. All copies of the invoices shall be forwarded directly to the using agency or wherever otherwise designated.

Payments will be made directly to the contractor, who will be responsible for payments to all subcontractors. Payments will be made in accordance with the Virginia Prompt Payment Act, once each of the areas listed in XI. Pricing Schedule are completed and verified by Oyster Replenishment Department Staff. The final payment may be withheld, based on General Terms and Conditions, J. Payment, 3., until VMRC receives evidence and certification of compliance with the SWAM procurement plan.

XI. **PRICING SCHEDULE:**

- A. \_\_\_\_\_ Cost per cubic yard to dredge, wash, sort, and load approximately 57,250 cubic yards of shell in the James River, Chesapeake Bay.
- B. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 15,500 cubic yards of shell in the James River, Chesapeake Bay.
- C. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 2,900 cubic yards of shell in the York River, Chesapeake Bay.
- D. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 900 cubic yards of shell in the Mobjack Bay, Chesapeake Bay.
- E. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 1,360 cubic yards of shell in the Piankatank River, Chesapeake Bay.
- F. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 9,380 cubic yards of shell in the Rappahannock River Lower, Chesapeake Bay.
- G. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 8,800 cubic yards of shell in the Rappahannock River Upper, Chesapeake Bay.
- H. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 1,640 cubic yards of shell in the Great Wicomico River, Chesapeake Bay.
- I. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 5,240 cubic yards of shell in the Tangier Sound, Chesapeake Bay.
- J. \_\_\_\_\_ Cost per cubic yard to transport and deploy by water cannon approximately 12,400 cubic yards of shell in the Pocomoke Sound, Chesapeake Bay.
- K. \_\_\_\_\_ credit per cubic yard for “fine” shells for \_\_\_\_\_ cubic yards retained by the contractor.

XII. **DELIVERY:** The agency expects delivery and complete deployment from June 16 – August 15, 2018.

XIII. **LIQUIDATED DAMAGES:** All equipment must be mobilized, and work must commence, no later than June 16, 2018. It is understood and agreed by the offeror that time is of the

essence in the performance of the contract. In the event the equipment is not mobilized and work does not commence by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$2000 per day for each and every calendar day of delay beyond the time specified; except that if the performance be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

**ATTACHMENT A TO RFP #CRD18-01  
CONTRACTOR DATA SHEET  
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF OFFEROR:** Offerors must have the capability and capacity in all respects to fully satisfy all the contractual agreements.
  
2. **YEARS IN BUSINESS:** Indicates the length of time you have been in business providing this type of service.

\_\_\_\_\_ Years      \_\_\_\_\_ Months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<b><u>CLIENT</u></b>	<b><u>ADDRESS</u></b>	<b><u>DATE OF SERVICE</u></b>	<b><u>CONTACT &amp; PHONE No.</u></b>



**ATTACHMENT B TO RFP #CRD18-01  
SUBCONTRACTOR DATA SHEET  
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF OFFEROR:** Subcontractor must have the capability and capacity in all respects to fully satisfy all the contractual agreements.
  
2. **YEARS IN BUSINESS:** Indicates the length of time you have been in business providing this type of service.

\_\_\_\_\_ Years      \_\_\_\_\_ Months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<b><u>CLIENT</u></b>	<b><u>ADDRESS</u></b>	<b><u>DATE OF SERVICE</u></b>	<b><u>CONTACT &amp; PHONE No.</u></b>

**Annex 7-G**

**Small Business Subcontracting Plan**

It is the goal of the Commonwealth that more than 42% of its purchases be made from small businesses. All potential bidders are required to submit a Small Business Subcontracting Plan.

**Small Business:** "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified women- and minority-owned businesses when they also hold a DSBSD certification as a small business on the proposal due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at [www.DSBSD.virginia.gov](http://www.DSBSD.virginia.gov) (Customer Service).

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Instructions**

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes but is not limited to DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in Section B..

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with DSBSD-certified small businesses for the initial contract period in relation to the offeror's total price for the initial contract period.

Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD-certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

**Section A**

If your firm is certified by the Department of Small Business and Supplier Diversity (DSBSD), provide your certification number and the date of certification):

Certification number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

**Section B**

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation percentages may result in breach of the contract.

**B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement**

Micro/Small Business Name & Address  DSBSD Certificate #	Status if Micro/Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract (\$ or %)
<b>Totals \$</b>					

Annex 7-I

State Corporation Commission Form

**Virginia State Corporation Commission (SCC) registration information. The offeror:**

is a corporation or other business entity with the following SCC identification number: \_\_\_\_\_ -OR-

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust -OR-

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror's out-of-state location) -OR-

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):



**DEPARTMENT OF THE ARMY**  
NORFOLK DISTRICT, CORPS OF ENGINEERS  
FORT NORFOLK, 803 FRONT STREET  
NORFOLK, VIRGINIA 23510-1096

JANUARY 13, 2017

REPLY TO  
ATTENTION OF:

Western Virginia Regulatory Section  
NAO 2000-3926 (Shell Planting)  
NAO-2016-0122 (Shell Dredging)

Virginia Marine Resources Commission  
Chief Fisheries Management Division  
2600 Washington Avenue  
Newport News, VA 23607

Dear Mr. O'Reilly:

This is in reference to the Department of the Army application submitted by VMRC for 2017 Lower James River oyster shell dredging and shell planting at locations as specified in the permit application. VMRC will perform all dredging and plants in the areas as specifically identified in the permit application received December 28, 2016. The proposed project as described above and depicted on attached project drawings, stamped as received by our office on December 28, 2016 satisfies the terms and conditions of Norfolk District's Regional Permit 20 (12-RP-20). Provided that VMRC follows the general and special terms and conditions of the 12-RP-20, as well as all other special conditions included below, no further authorization will be required from the Corps.

To clarify the extent of authorized work, the permit application included a range of impacts, based in part on funding, and in part on needed shell planting. Therefore, this verification is to hydraulic dredge about 60,000 cubic yards of fossil shell sediments, wash, and discharge about 30,000 cubic yards of wash sediments to the dredge site. For 2017 VMRC will plant about 447 acres of existing oyster reef.

In addition, please note that the included §408 permission (33 USC 408) is granted, based on additional §408 specific conditions. VMRC must comply with those §408 conditions in order for this 12-RP-20 verification to be valid.

Please take note of the special and general conditions incorporated in the 12-RP-20. In addition, authorization of this permit is contingent on the following special conditions:

1. Dredge and discharge activity shall not take place within 200-feet of the toe of any federal navigational channel.
2. As stipulated by VMRC, the dredge barge shall have 4 elephant trunk discharge pipes -- 2 forward and 2 aft on the barge. The trunks shall extend under the barge, and return the sediments and fine bits of shell back into the excavated trench. The pipes feeding the trunks shall have doors over them that open and close, to allow regulation of the flow through each pipe. At the beginning of the shell dredging process, the operator shall normally discharge the majority of return sediments through the bow pipes, allowing the material to be evenly discharged back into the excavated area. The return sediments shall not be discharged over the stern in a manner that causes a "wind row" of return sediments at a depth less than adjacent undisturbed river bottom. After the dredge has advanced in the cut and has excavated to the permitted depth, the stern pipes shall be opened somewhat to create a less uniform profile to the excavated bottom, and the opening of four discharge pipes will reduce the velocity of the discharge and lessen turbidity. The use of the stern discharge should create a more natural and functional bottom in the final dredge cut.
3. You are required to notify Fifth District USCG of the fossil shell dredging, for publication in the Local Notice to Mariners (LNTM). Two weeks before dredging, submit the notice to [matthew.e.kearney@uscg.mil](mailto:matthew.e.kearney@uscg.mil) at (757) 398-6552 and [CGD5Waterways@uscg.mil](mailto:CGD5Waterways@uscg.mil) of the dredge location and duration, and discussion of expected barge and tug traffic needed to support the fossil shell recovery and transport. See <http://www.uscg.mil/d5/waterways/> for the most recent LNTM and contact information. A Plan of Action (POA) for historical and archaeological finds is required. The contractor will implement measures to add additional awareness for the dredge operation to prevent damage in the event that there is an encounter with unidentified archaeological or cultural resources while dredging fossil oyster shell.
4. The contractor will:
  - 1) Monitor the cutter head hydraulic pressure for spikes in pressure and set the hydraulic pressure relief value to stall the cutter head if it encounters debris.
  - 2) Alert the oiler on the top deck to watch where materials enter the shell shorting area for potential archeological debris.
  - 3) Alert the barge handlers to watch the conveyor deposits of shell on the barge for potential archeological debris.

- 4) Should chain, metal, or wood be observed at any location, the shell dredging will be stopped at that location and the Virginia Marine Resources Commission, Conservation and Replenishment Department will be contacted immediately (757-247-2121), and the Corps project manager at [john.d.evans@usace.army.mil](mailto:john.d.evans@usace.army.mil) or call him at (757) 201-7794..
5. In accordance with federal regulations, should unexpected archaeological resources be encountered during project implementation, all work in the immediate area should cease and DHR contacted to provide guidance on the treatment of the discovery. The contractor should record the location of the finds, and the archaeological debris must be retained for evaluation. The federal agency that approved the undertaking should contact our office within 48 hours of the discovery. DHR's Review and Compliance Division can be contacted at (804) 367-2323.
6. The dredge location shall be recorded by sub-meter GPS and GPS data submitted electronically to the Corps (email [john.d.evans@usace.army.mil](mailto:john.d.evans@usace.army.mil)) every day, not later than 09:00 AM. Trackline data, as submitted in 2012, is sufficient to meet this reporting condition, but does not meet the §408 condition.

VMRC must sign and return the attached "compliance certification" form within 30 days of completion of the project. The signature on this form certifies that VMRC has completed the work in accordance with the regional permit terms and conditions.

This verification is valid only until December 31, 2017 for the 2017 oyster shell dredging and subsequent shell planting. In that endangered species are likely to be present in both dredge and shell planting areas, and in that those areas change every year, and given the time of year restriction of dredging only between June 15<sup>th</sup> and December 31<sup>st</sup> of any year; each annual shell dredging action is a single and complete project and must be re-verified on an annual basis. The Norfolk District will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs.

The State Water Control Board provided §401 Water Quality Certification for the 12-RP-20. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of 12-RP-20.

Furthermore, this authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You should contact your local government before you begin work to find out how the CBPA applies to your project.

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

If you have any questions concerning this matter or would like further assistance, please email me at [john.d.evans@usace.army.mil](mailto:john.d.evans@usace.army.mil) or call me at (757) 201-7794.

Sincerely,

**EVANS.JOHN.  
DAVID.10745  
13561**

Digitally signed by  
EVANS.JOHN.DAVID.1074513561  
DN: c=US, o=U.S. Government,  
ou=DoD, ou=PKI, ou=USA,  
cn=EVANS.JOHN.DAVID.1074513  
561  
Date: 2017.01.13 10:12:34 -05'00'

John Evans  
Special Projects Regulatory Section

Attachments: 12-RP-20  
Certificate of Compliance





U.S. Army Corps  
Of Engineers  
Norfolk District

**CERTIFICATE OF COMPLIANCE  
WITH  
ARMY CORPS OF ENGINEERS PERMIT**

Permit Number: NAO-2016-0122, NAO-2000-3926 (Evans)

Name of Permittee: VMRC – Lower James River Oyster Shell Dredge 2017  
and plantings

Date of Issuance: 01/13/2017

Permit Type: RP-20 for VMRC Shell dredge and plant 2017.

Within 30 days of completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

Norfolk District Corps of Engineers  
Regulatory Branch Attn: John Evans  
803 Front Street  
Norfolk, Va. 23510-1096

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation has been completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

## **PLAN OF ACTION FOR HISTORICAL AND ARCHAEOLOGICAL FINDS**

The contractor will implement measures to add additional awareness for the dredge operation to prevent damage in the event that there is an encounter with unidentified archaeological or cultural resources while dredging fossil oyster shell.

The contractor will:

- 1) Monitor the cutter head hydraulic pressure for spikes in pressure and set the hydraulic pressure relief value to stall the cutter head if it encounters debris.
- 2) Alert the oiler on the top deck to watch where materials enter the shell shorting area for potential archeological debris.
- 3) Alert the barge handlers to watch the conveyor deposits of shell on the barge for potential archeological debris.
- 4) Should chain, metal, or wood be observed at any location, the shell dredging will be stopped at that location and the Virginia Marine Resources Commission, Conservation and Replenishment Department will be contacted immediately (757-247-2121) .



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS  
NORFOLK DISTRICT  
FORT NORFOLK  
803 FRONT STREET  
NORFOLK VA 23510-1011

FEB 25 2015

Executive Office

Mr. James A. Wesson  
Virginia Marine Resources Commission  
2600 Washington Avenue, 3<sup>rd</sup> Floor  
Newport News, Virginia 23607

Dear Mr. Wesson:

In accordance with Engineering Circular (EC) 1165-2-216, the U.S. Army Corps of Engineers (USACE), Norfolk District performed an evaluation of your request to perform annual Oyster Shell dredging in the James River near Tribell Shoal, Rappahannock Rivers, Pocomoke and Tangier Sounds. Based on this evaluation, I have determined the requested dredging of these areas effectively alters a portion of the James River Federal Navigation Project operated and maintained by the USACE. Therefore, pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 (Section 408), you must obtain USACE permission to alter the project.

I have determined that the proposed dredging does not impair the usefulness of the Federal project nor harm the public interest. Therefore, based on this evaluation, the request is hereby granted to alter the James River project, provided you adhere to the following conditions:

- a. VMRC dredge and discharge activity shall not take place within 200-feet of the toe of the Tribell Shoal Federal Navigational Channel.
- b. The dredge locations shall be recorded by sub-meter Global Positioning System (GPS), and GPS data and submitted electronically to USACE.
- c. VMRC shall ensure that the washed sediment material is returned and contained to the river area that they have dredged and not transported to the Federal Navigational Channel.

For any questions regarding this evaluation, please contact Mr. Michael R. Darrow, Chief, Water Resources Division and Section 408 Coordinator, at (757) 201-7112.

Sincerely,

Paul B. Olsen, P.E.  
Colonel, U.S. Army  
Commanding



**U.S. Army Corps  
Of Engineers**  
Norfolk District

Fort Norfolk, 803 Front Street  
Norfolk, Virginia 23510-1096

**CENAO-WRR  
17-RP-20**

### **REGIONAL PERMIT**

**Effective Date: October 16, 2017**

**Expiration Date: October 15, 2022**

#### **I. AUTHORITIES:**

17-RP-20, Regional Permit 20 ("RP"); authorizes the creation of artificial reefs (oyster and fish haven) and dredging of old shellfish reefs, when the material, dredge shell or structural, will be used to create new or enhance existing natural or artificial reefs owned, operated or managed by the Commonwealth of Virginia.

The intent of this Regional Permit is to provide a streamlined permitting process for those activities listed in this paragraph that do not adversely affect general navigation and the aquatic environment.

This permit is authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to create artificial reefs or enhance existing natural or artificial reefs owned, operated or managed by the Commonwealth of Virginia; and to dredge historical shellfish reefs (including the in-situ discharge of washed sediments) and as directed by the Commission 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, provided the project complies with the provisions and conditions set forth below.

The placement of this structure material within designated off shore fish havens is excluded from regulation by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended (33 U.S.C. 1401) at 40 CFR 220.1(c)(2), within the definition of dumping at 40 CFR 220.2(e) where the material is deposited for developing, maintaining, or harvesting fisheries resources.

**NOT AUTHORIZED:** This permit does not authorize the construction of reefs that will be used for the introduction of non-native species (shell or fin-fish).

Activities receiving written authorization under this RP do not require further authorization unless the District Commander determines that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR

325) for a particular project that might generally qualify for this RP. This RP covers only those activities that strictly comply with all of the descriptions, general and special conditions set out below. Any work that does not comply with the following terms, conditions, standards and limitations does not qualify for this RP and will require separate Department of the Army authorization.

## **II. PROCEDURES:**

Prospective permittees ("permittees" or "applicants") must notify the Corps' District Commander, via the submission of a Joint Permit Application ("JPA"), and must receive written notification from the Corps acknowledging that the project satisfies the criteria of this RP (the "permit verification"). No work is authorized unless and until the Corps issues a permit verification. A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by downloading a copy at the following link:

<http://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>

## **III. STATE AND LOCAL APPROVALS:**

1. The State Water Control Board provided §401 Water Quality Certification for the 17-RP-20. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit (VWPP) Regulation, provided that the permittee abides by the conditions of 17-RP-20.
2. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia Department of Environmental Quality Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP and provided concurrence that this RP is consistent with the VCP.
3. Permittees should ensure that projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*).
4. Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act or to any State or local law or regulation.

## **IV. SPECIAL CONDITIONS:**

1. No portion of the reef will be constructed in areas of known submerged aquatic vegetation (SAV) beds.

2. Any proposed new artificial reef (oyster or fish haven), shall be coordinated with, and have no objection from USCG Sector Hampton Roads, Waterways Management Chief, and USCG District Five Waterways Management Branch. In addition, there must be a Corps verification, in writing, regarding any need of permission, pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 (Section 408).
3. If the 17-RP-20 activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the activity that requires section 408 permission is not authorized until the Norfolk District Corps grants the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written 17-RP-20 verification.
4. Prior to authorization of artificial reefing for fish havens (*i.e.* ocean sinking) of any ships, vessels, or mechanized vehicles and to ensure the project is conducted in an environmentally sound manner, such ships, vessels and mechanized vehicles shall be prepared for reefing consistent with EPA guidance entitled *Best Management Practice for Preparing Vessels Intended to Create Artificial Reefs*, EPA842-B-06-002 (May 2006). The permittee must notify the United States Environmental Protection Agency (EPA) Region III Coastal Science Team Leader, 1650 Arch Street, Philadelphia, PA 19103, 215-814-2137 at least 60 days prior to the proposed reefing activity and allow EPA reasonable opportunity upon request to inspect the ship, vessel, or mechanized vessel prior to reefing. This provision does not supersede any of EPA's existing statutory authorities to inspect the ship, vessel or mechanized vessel.
  - a. Failure to comply with the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.* (TSCA) is a violation of this permit.
  - b. All material used in the construction of the reefs shall be of clean suitable material and free of petroleum and other hydrocarbons (oil, grease, asphalt and creosote), toxic residues (including but not limited to mercury, cadmium and lead), and loose, free floating material and other deleterious substances. Reefing preparations for all vessels and mechanized vehicles shall include the removal of: all liquid fuels, oils and greases; all asbestos that is loose or may become loose during vessel sinking; all manufactured products containing greater than or equal to ( $\geq$ ) 50 parts per million (ppm) of solid PCBs, all liquid PCBs regardless of concentration and all materials contaminated by PCB spills where the concentration of the original PCB source is  $\geq$ 50ppm; all harmful exterior hull anti-fouling systems that are determined to be active; all exfoliating (peeling) and exfoliated paint; all loose debris, including materials or equipment that are not permanently attached to the vessel that could be transported into the water column during a sinking event; and all other materials that may negatively impact

the biological, physical, or chemical characteristics of the marine environment. Such preparation also shall include the removal, or sealing, of all accessible friable asbestos. Vessel owners must also document that no PCBs at concentrations greater than 50ppm remain on board the vessel. This may require representative PCB sampling by those intending to use this RP.

5. Vessels or mechanized vehicles shall be inspected by the United States Coast Guard to ensure hazardous material will not enter the watershed.
6. If the work involves hydraulic dredging of old shellfish reefs an automatic time of year restriction will apply for between February 15 and June 15 of any year unless consultation with the NOAA Fisheries (NOAA) confirms there will be no impact for protection of anadromous fish migration and spawning.
7. The Corps will coordinate all activities with NOAA Fisheries Service, Protected Species Division and Habitat Conservation Division; and/or the U.S. Fish and Wildlife, Virginia Field Office for the purpose of Endangered Species consultation and Essential Fish Habitat assessment.
8. A proponent ("permittee" or "applicant") of work proposed in portions of the following waterways may require an easement to be obtained from the Corps Real Estate Division to cross government property before any construction can take place:
  - a. James River
  - b. Lynnhaven Inlet and Connecting Waters
  - c. All Local Cooperation Agreement areas
  - d. Dismal Swamp Canal
  - e. Albemarle and Chesapeake Canal
  - f. Appomattox River
9. For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Office at the address on the first page of this Regional Permit or telephone (757) 201-7736.
10. If the display of lights and signals on the structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained at the expense of the permittee. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal

Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.

11. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Commander unless the permittee is transferring his or her interest to a third party. See general condition number 39.
12. The Secretary of the Army or his/her authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his/her representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
13. No activity is authorized pursuant to this RP if it causes more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters, or causes more than a minimal adverse effect on navigation, both commercially and recreationally. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).
14. Any structure authorized shall be properly maintained, including maintenance to ensure public safety.

#### **V. GENERAL CONDITIONS:**

The following conditions apply to all activities authorized under Regional Permits (RP).

1. **Geographic jurisdiction.** This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the Norfolk District.
2. **Compliance Certification.** A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project.



3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.
5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
6. **Single and complete projects.** This RP shall only be applied to single and complete projects. For purposes of this RP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility.
7. **Independent Utility.** A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.
8. **Multiple general permit authorizations.** This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RP)) for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RPs does not exceed the acreage limit of the NWP/RP with the highest specified acreage limit.
9. **Permit on-site.** The permittee shall ensure that a copy of the RP and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

**General Conditions Related to National Concerns:**

10. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal

permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address Section 106 compliance for the RP activity, or whether additional Section 106 consultation is necessary. (c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources (VDHR) at:

<http://www.dhr.virginia.gov/>

or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties.

**11. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent

practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**12. Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**13. Federal Lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.

**14. Endangered species.**

- a) No activity is authorized under any RP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any RP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed;
- b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
- c) Non-federal permittees shall notify the district engineer if any proposed or listed species or proposed or designated critical habitat may be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the U.S. Fish and Wildlife (USFWS) online project review process at:

<https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

and from the NMFS at: <http://www.nmfs.noaa.gov/pr/species/>.

The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to proposed or listed species or proposed or designated critical habitat and will notify the non-Federal applicant of the

Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified proposed or listed species or proposed or designated critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on proposed or listed species or proposed or designated critical habitat, or until Section 7 consultation has been completed.

- d) As a result of formal or informal consultation with the USFWS or NOAA PRD the district engineer may add species-specific regional endangered species conditions to the RP.
- e) Authorization of an activity by a RP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or NOAA PRD, both lethal and non-lethal "take" of protected species are in violation of the ESA.

**15. Essential Fish Habitat.** The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996), requires all Federal agencies to consult with the NOAA Fisheries Service Habitat Conservation Division (NOAA HCD) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The EFH Designations within the Northeast Region (Maine to Virginia), dated March 1, 1999, has identified EFH for a number of species and their life stages within Virginia waters. If EFH consultation is required with NOAA HCD, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.

**16. Migratory Birds and Bald and Golden Eagle Protection Act.** The bald eagle (*Haliaeetus leucocephalus*) is no longer a federally listed threatened or endangered species; therefore, the Endangered Species Act provisions are not applicable to this species. The Bald and Golden Eagle Protection Act (BGEPA) does not require that a federal agency involved in permitting the proposed action conduct coordination. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the BGEPA. The applicant should either obtain "take" permit or a letter of concurrence from USFWS indicating that a permit is not necessary prior to initiating construction activities. You should contact USFWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, ATTN: Kim Smith, 6669 Short Lane, Gloucester, VA 23061. Information on active bald eagle nests and concentration areas can be obtained in Step 6 of the U.S. Fish and Wildlife Service's online project review system available at:

- 17. Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a "study river" by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
- 18. Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
- 19. Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Norfolk District, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- 20. Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
- 21. Real estate.** Activities authorized under this RP do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.
- 22. Environmental Justice.** Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

**23. Federal liability.** In issuing this RP, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

**General Conditions Related to Minimizing Environmental Impacts:**

**24. Avoidance and minimization.** Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. (40 CFR Part 230.10(a) Section 404 (b)(1) Guidelines).

**25. Mitigation.** Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) may be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site)."

**26. Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

**27. Temporary fills.** All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.

**28. Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.

**29. Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Norfolk District has determined that fish and wildlife are

most often present in any stream being crossed, in the absence of evidence to the contrary.

- 30. Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
- 31. Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
- 32. Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
- 33. Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the DGIF and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.
- 34. Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

**General Procedural Conditions:**

- 35. Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RP, as deemed necessary on a case-by-case basis.
- 36. Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.

- 37. Property rights.** This RP does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
- 38. Modification, suspension, and revocation.** This RP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
- 39. Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
- 40. Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this RP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
- 41. False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
- 42. Abandonment.** If the permittee decides to abandon the activity authorized under this RP, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.
- 43. Transfer of authorization.** In order to transfer authorization under this RP, the transferee or permittee must supply the Norfolk District with a written request. Such transfer is effective upon written approval by the Norfolk District of a transfer document signed by both parties evidencing that the transferee commits to assuming all responsibilities of the original permittee under the permit.
- 44. Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.



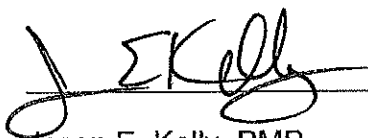
**General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:**

**45. Duration of Activity's Authorization.** Activities authorized under 17-RP-20 must be completed by October 15, 2022. If this RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Norfolk District will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration (i.e. October 15, 2022), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by October 15, 2023, you must reapply for separate permit authorization in order to meet current permit criteria.

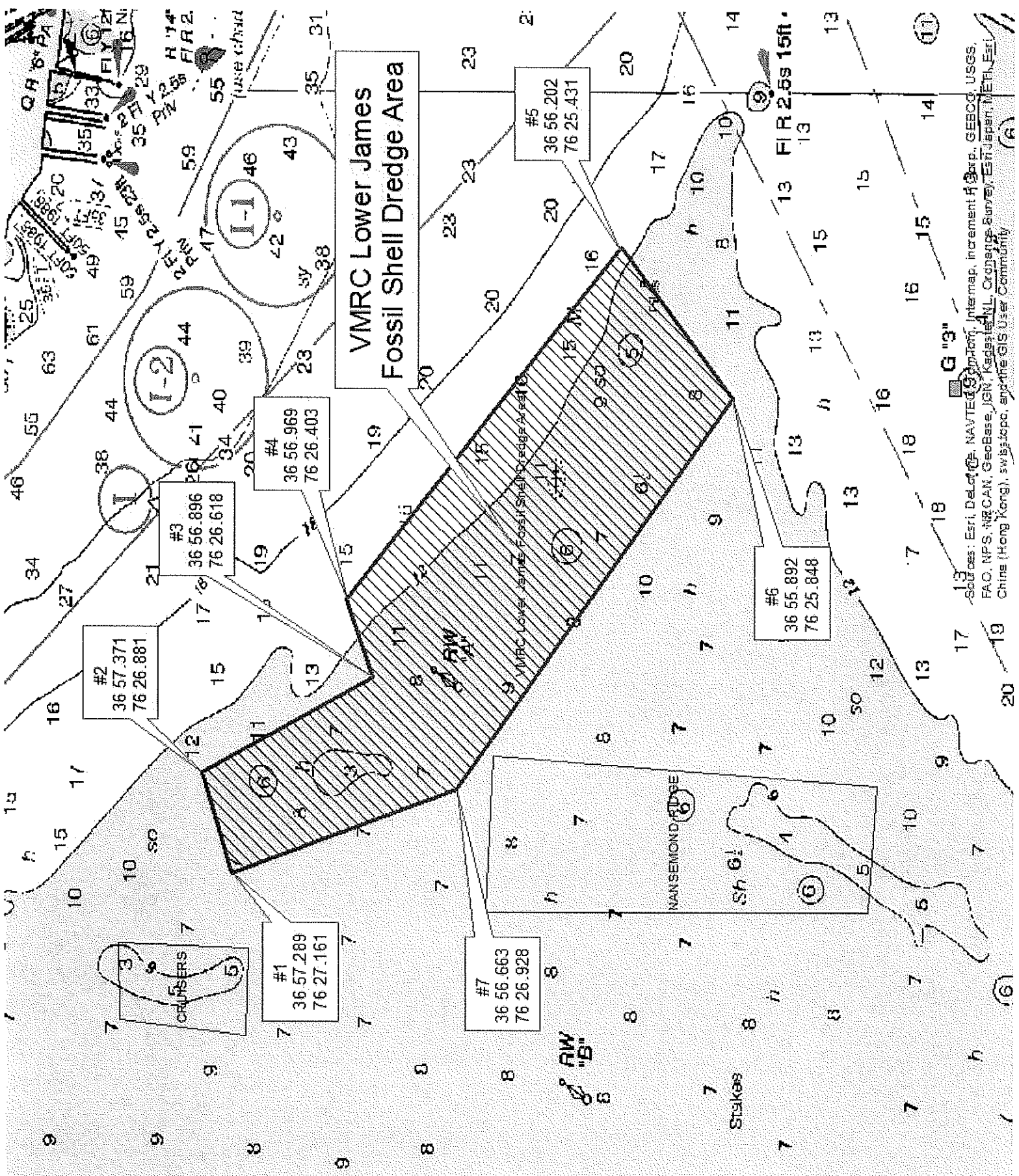
**46. Expiration of 17-RP-20.** Unless further modified, suspended, or revoked, this RP will be in effect until October 15, 2022. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.

17 October 2017

Date

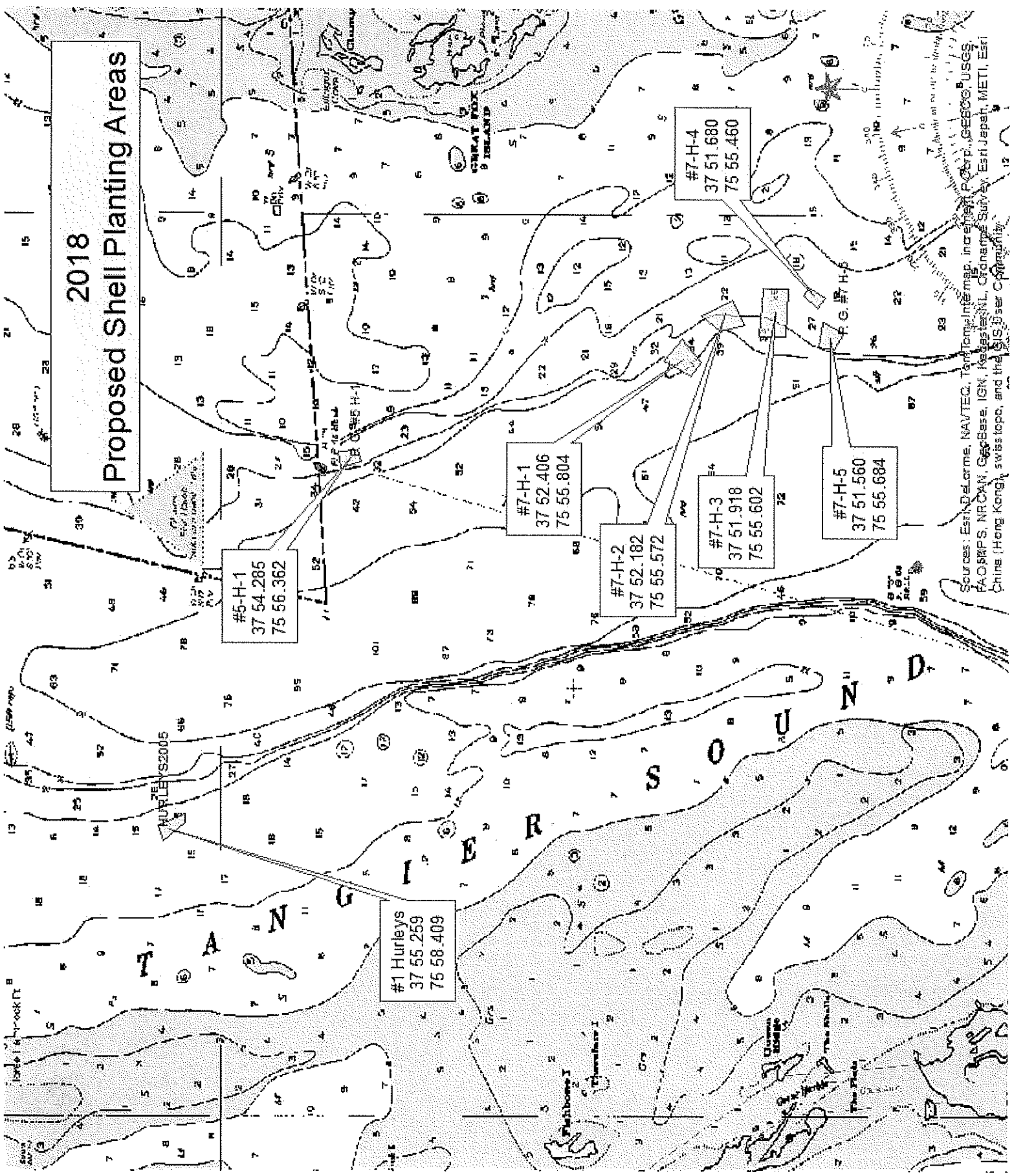


Jason E. Kelly, PMP  
Colonel, U.S. Army  
Commanding



Sources: Esri, DeLorme, NAVTEQ, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRC, CAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri, China (Hong Kong), Swisstopo, and the GIS User Community

# 2018 Proposed Shell Planting Areas



Sources: Esri, DeLorme, NAVTEC, TopoIntelligence, AeroGlobe, GEBCO, USGS, FAO, NPS, NRCAN, GeBCO, IGN, Kartegastat, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), Swisstopo, and the GIS User Community.

10-H-1  
37 56.195  
75 44.980

9-H-2  
37 56.990  
75 42.650

9-H-1  
37 56.800  
75 43.010

10-H-2  
37 56.640  
75 44.495

11-H-1  
37 55.415  
75 44.765

Onancock Rock  
37 44.930  
75 51.634

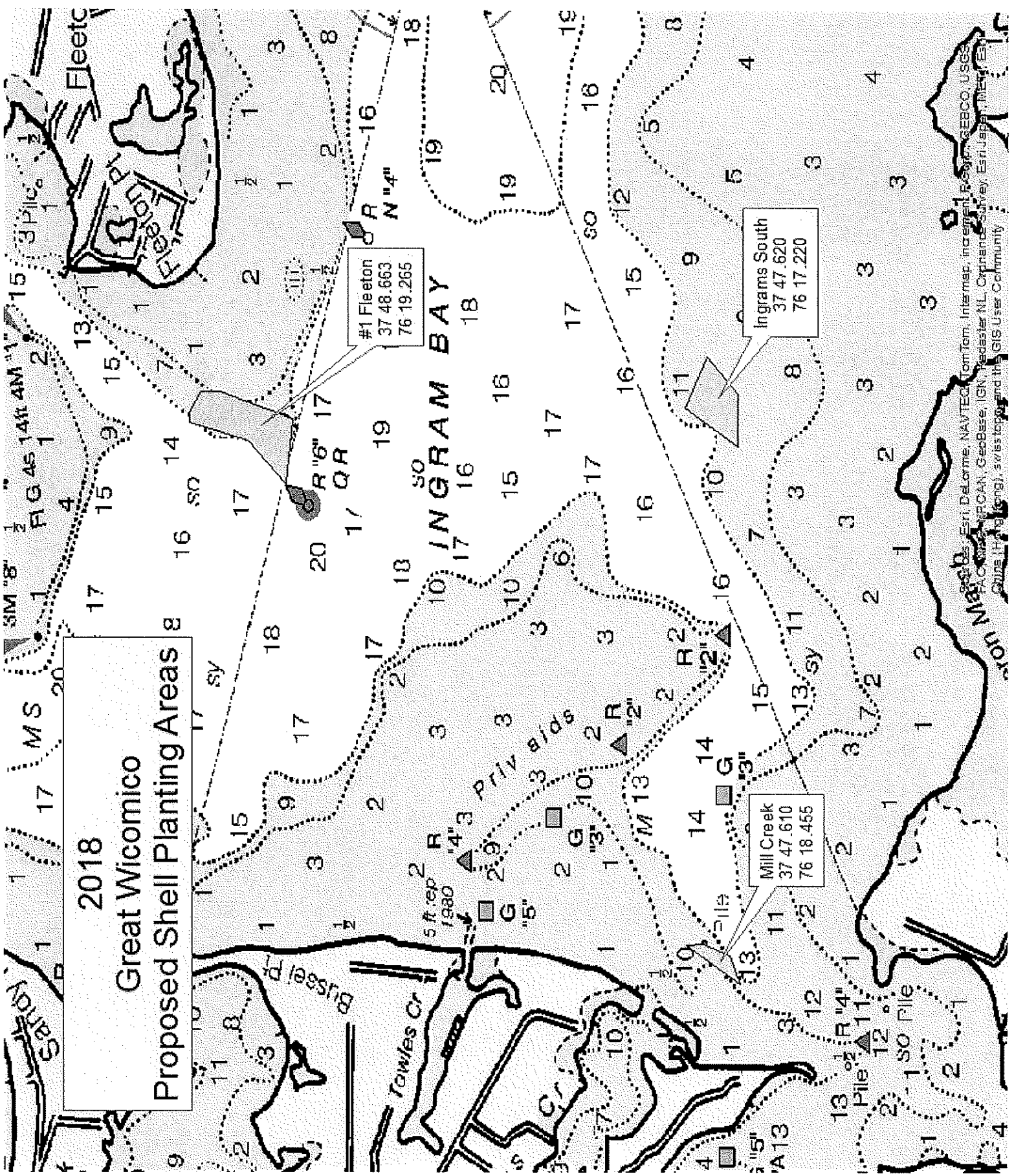
2018  
Pocomoke  
Proposed Shell Planting Areas

Source: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, Aero, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri, Japan, METI, Esri, China, Hong Kong, Korea, Swisstopo, the GIS User Community

2018

# Great Wicomico

## Proposed Shell Planting Areas



© 2018 Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment, PACE, GEBCO, USGS, FAO, DigitalGlobe, GeoEye, Earthstar (USA), Inroads (USA), Swire, NGA, Swire, NGA, Esri Japan, METI, Esri China (Hong Kong), Swire, NGA, Esri User Community

**2018  
Lower Rapp.  
Proposed Shell Planting Areas**

#22 Corrotoman  
37 40.037  
76 28.663

Hog House (Offshore)  
37 38.353  
76 32.599

Hog House (Inshore)  
37 38.104  
76 32.503

Whiting Creek  
37 37.123  
76 30.802

#53 Butlers Hole (Gravel)  
37 36.885  
76 18.700

#26 Mosquito Island  
37 36.593  
76 20.580

Broad Creek (Inshore)  
37 34.479  
76 18.663

Broad Creek  
37 34.599  
76 18.977

Lower Edge (W)  
37 34.622  
76 18.298

Lower Edge (M)  
37 34.607  
76 18.122

Lower Edge (E)  
37 34.573  
76 17.950

#27-1 Butlers Hole  
37 36.498  
76 18.324

Spike A  
37 34.536  
76 17.136

#27-2 Butlers Hole  
37 36.498  
76 18.225

Spike  
37 34.650  
76 17.589

Spike B (Offshore)  
37 34.695  
76 16.884

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, Inc., Swisstopo, GEBCO, USGS, FAO, NPS, NRCAN, GEBCO, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), Swisstopo, and the GIS User Community

# 2018 Upper Rapp. Proposed Shell Planting Areas

#39-2 Waterview  
37 43.520  
76 35.278

#38 Smokey Point  
37 43.200  
76 34.940

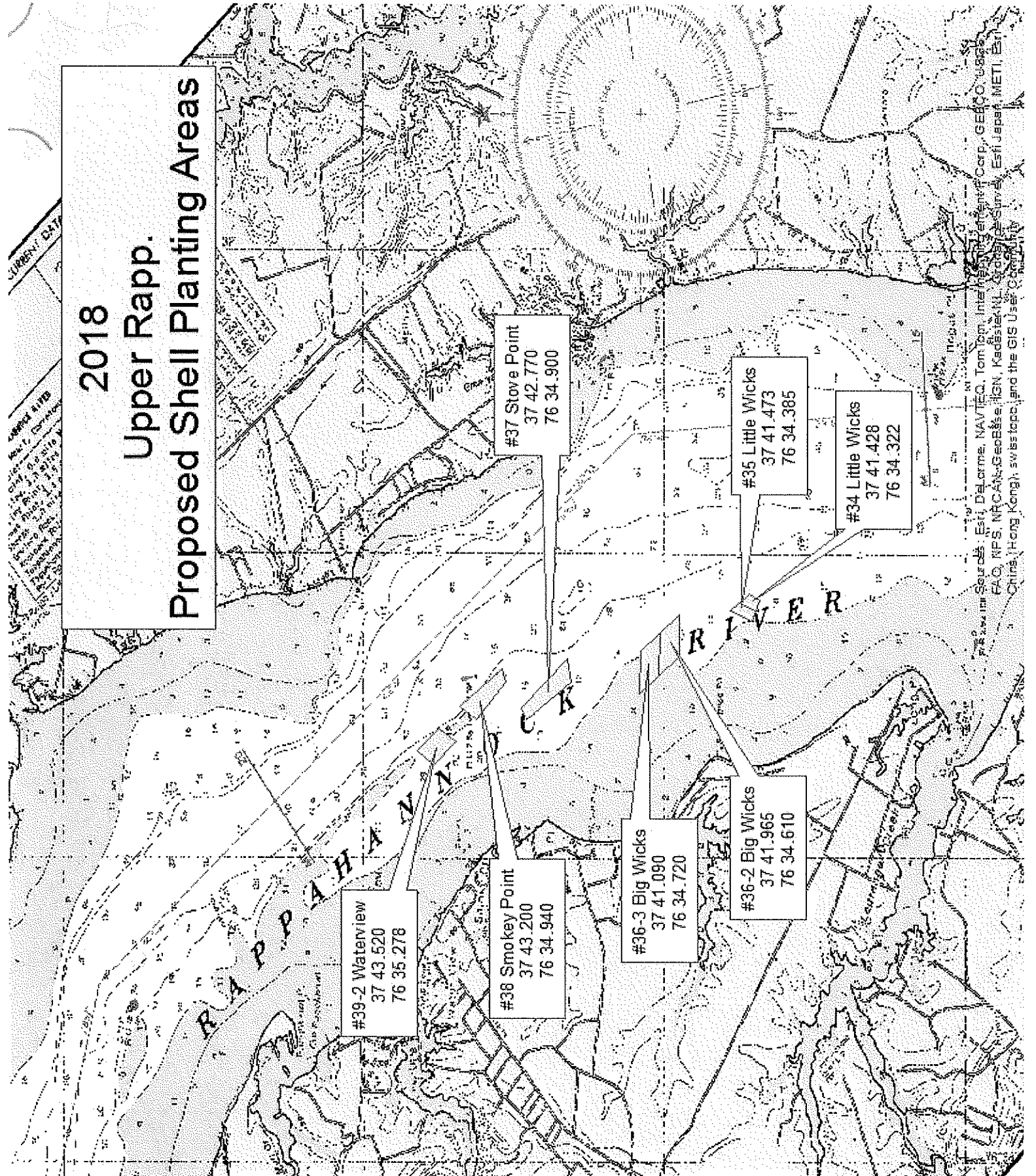
#36-3 Big Wicks  
37 41.090  
76 34.720

#36-2 Big Wicks  
37 41.965  
76 34.610

#37 Stove Point  
37 42.770  
76 34.900

#35 Little Wicks  
37 41.473  
76 34.385

#34 Little Wicks  
37 41.428  
76 34.322

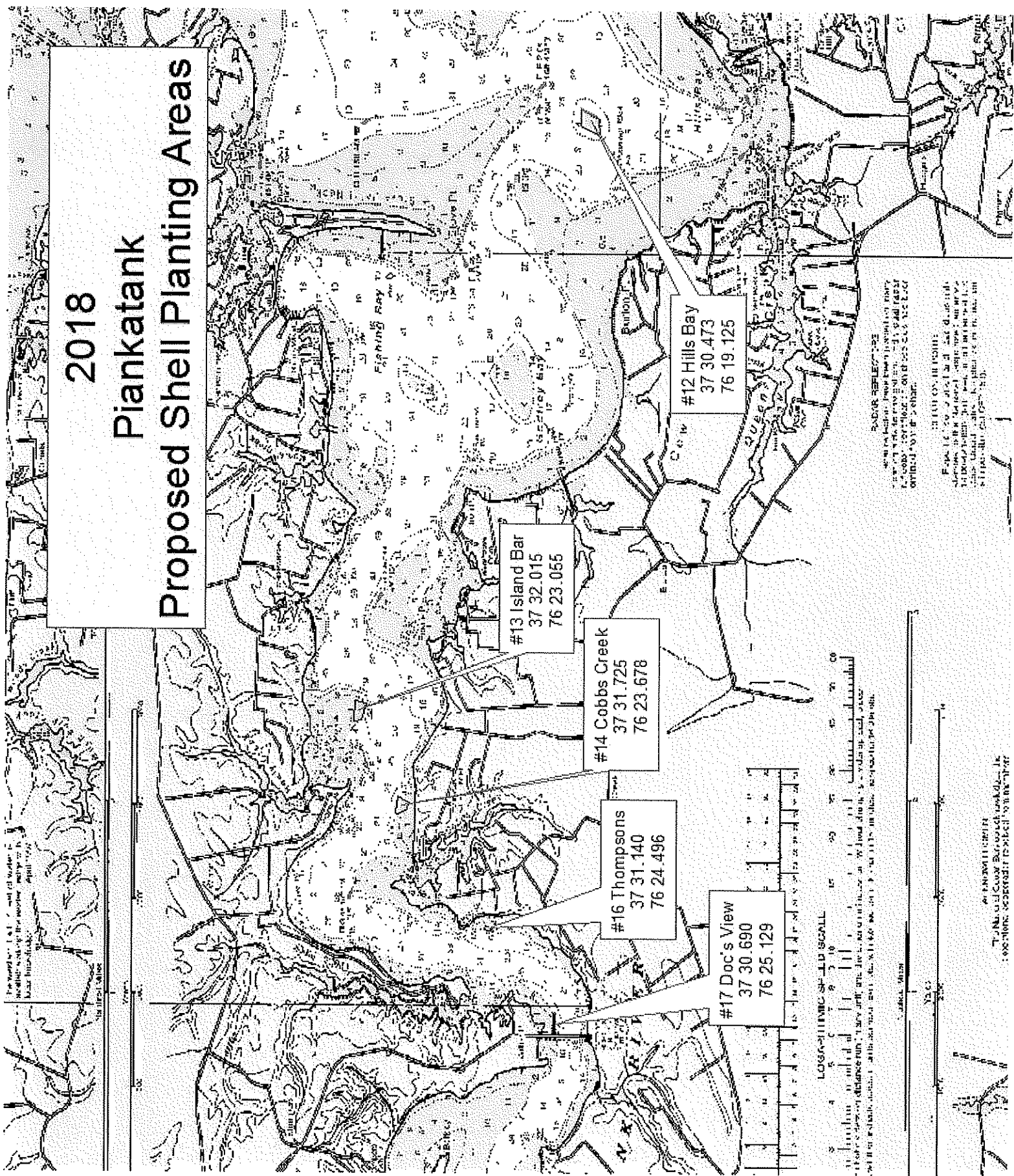


Esri, DeLorme, NAVTEQ, TomTom, Intermap, iPlanet, Corp., GEBCO, U.S. Navy, Esri, DigitalGlobe, GeoEye, Earthstar (United States), CNES/Airbus DS, USDA, AeroGRID, IGN, Esri, Japan (METI), Esri, China (Hong Kong), swisstopo, and the GIS User Community

2018

# Piankatank

## Proposed Shell Planting Areas



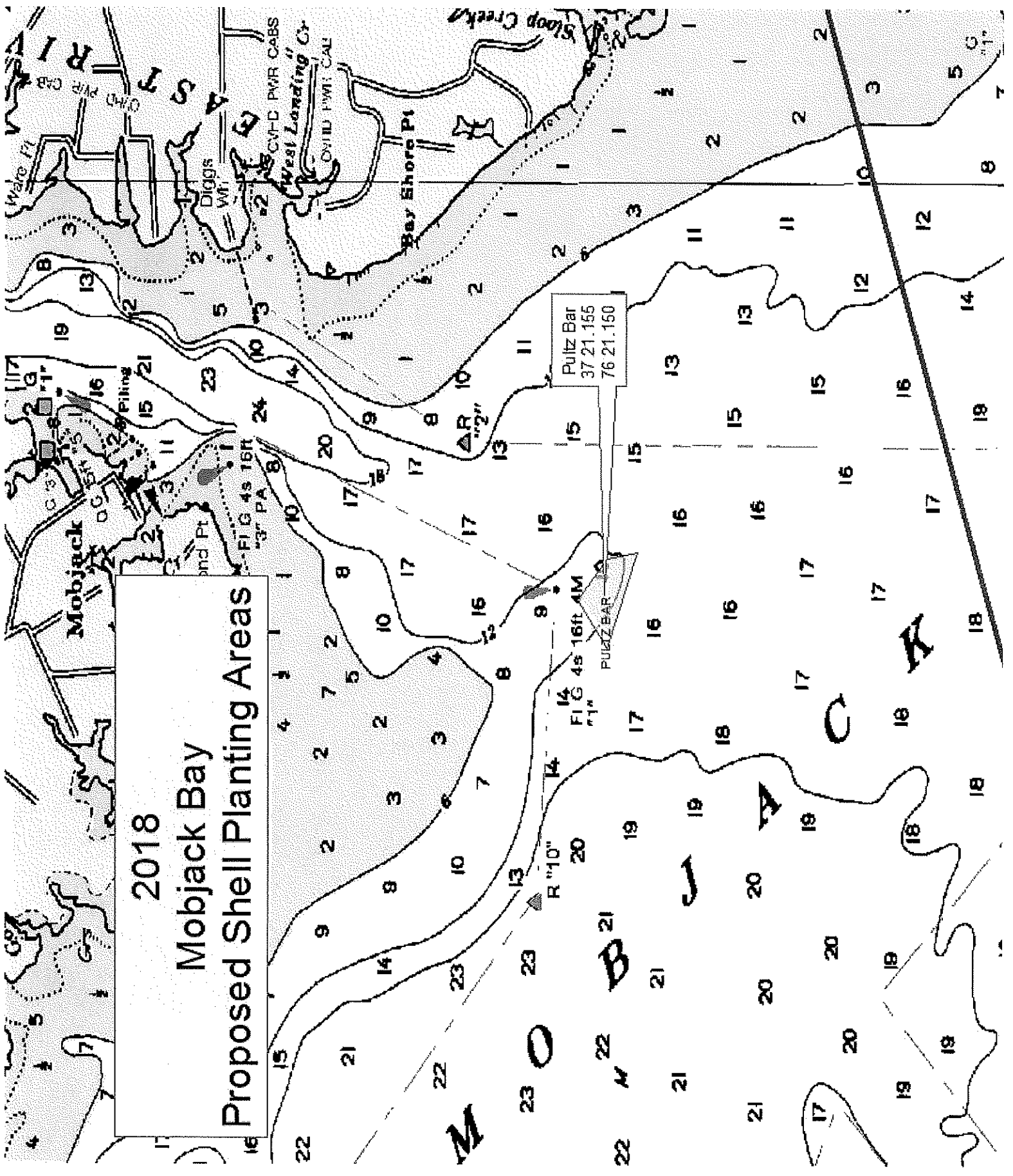
**SHEAR REFLECTOR**  
This marker has been located on the  
ground surface at the intersection of  
the center line of the road and the  
center line of the creek. It is  
located at the intersection of  
the center line of the road and the  
center line of the creek.

**LOGGING SPILL SCALL**  
This marker has been located on the  
ground surface at the intersection of  
the center line of the road and the  
center line of the creek. It is  
located at the intersection of  
the center line of the road and the  
center line of the creek.

PIANKATANK  
72 N. and 600 S. Roads  
P.O. Box 1000, Piankatank, VA 23047



# 2018 Mobjack Bay Proposed Shell Planting Areas

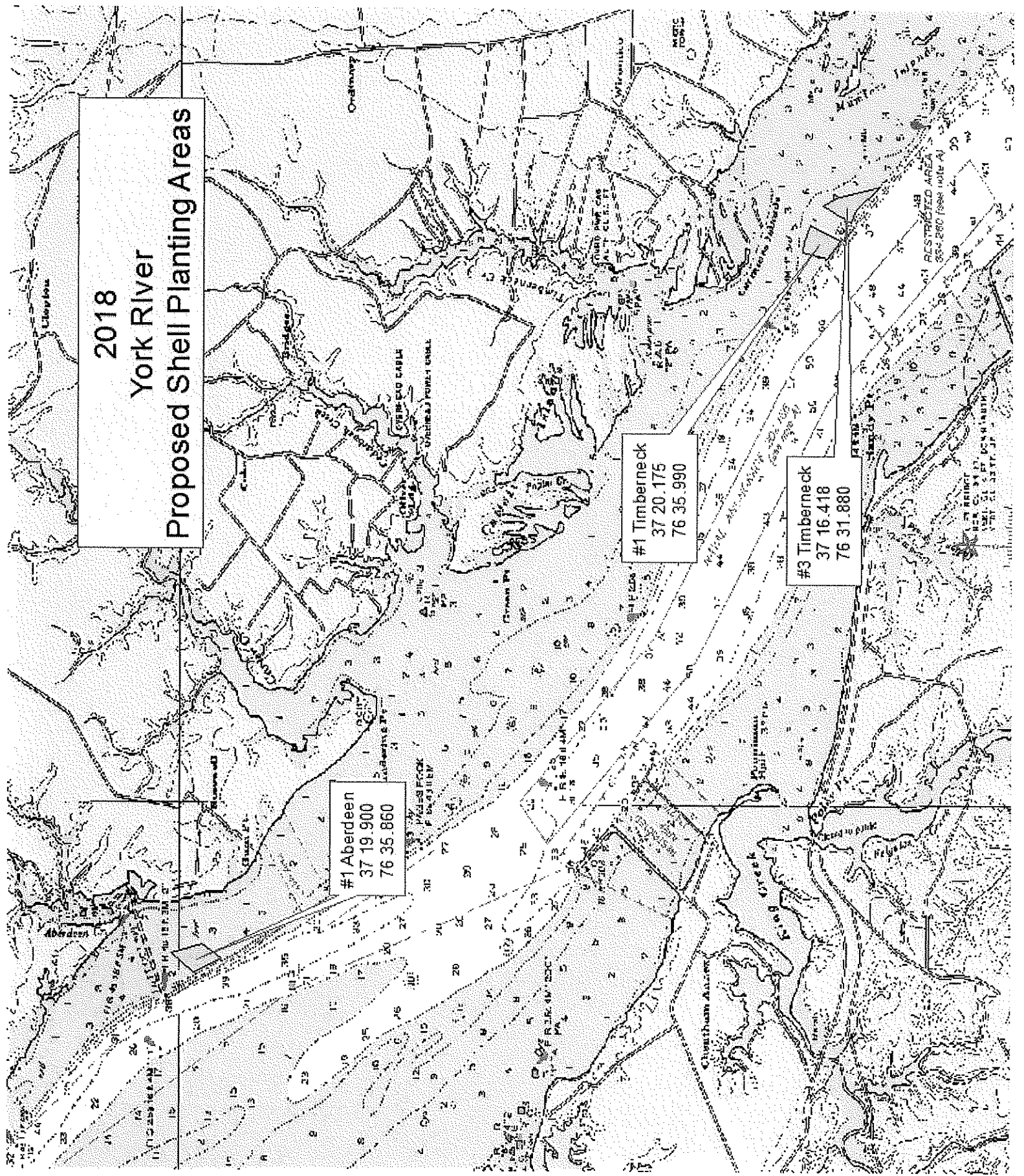


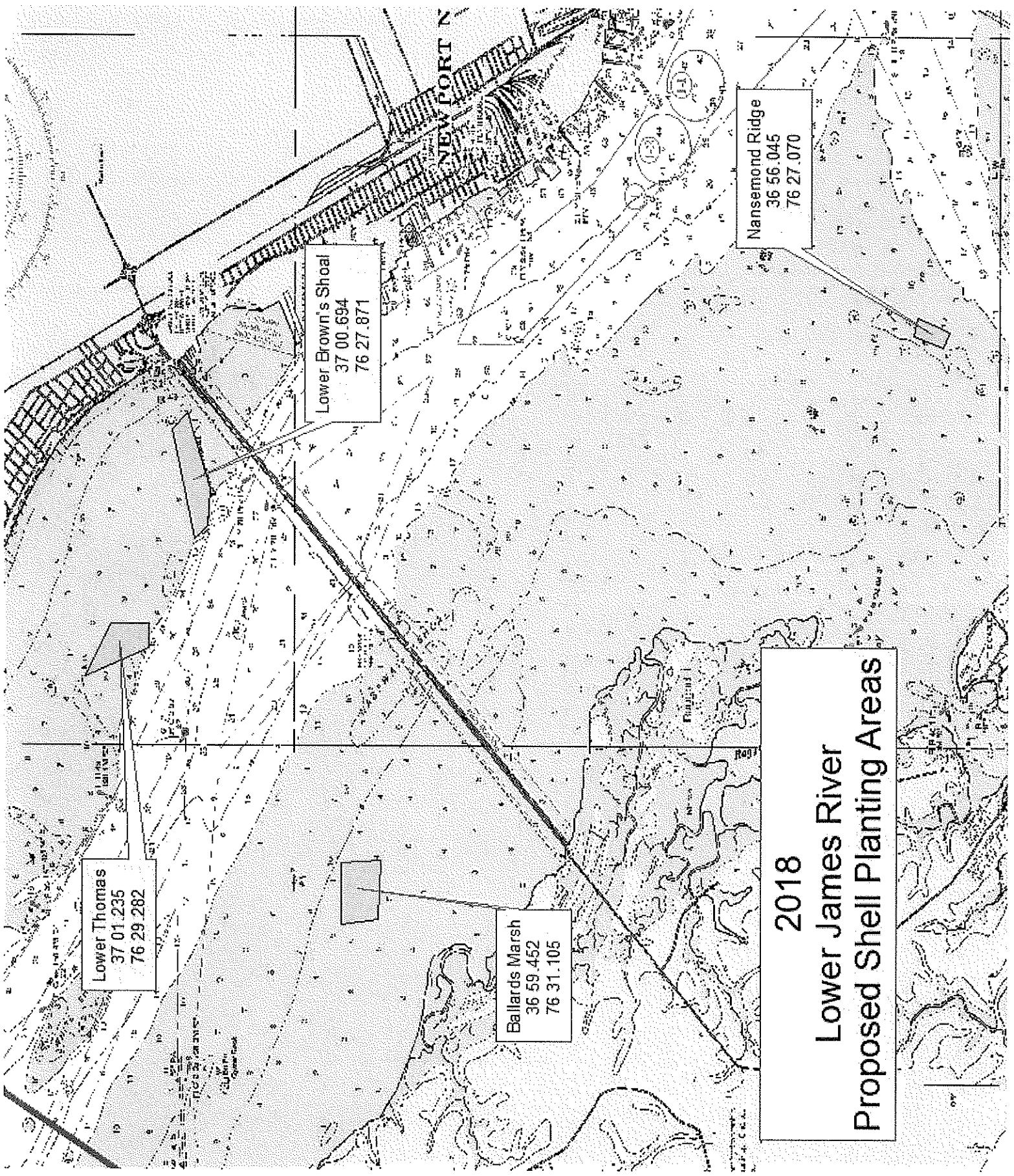
# 2018 York River Proposed Shell Planting Areas

#1 Aberdeen  
37 19.900  
76 35.860

#1 Timberneck  
37 20.175  
76 35.990

#3 Timberneck  
37 16.418  
76 31.880





Lower Thomas  
37 01.235  
76 29.282

Lower Brown's Shoal  
37 00.694  
76 27.871

Ballards Marsh  
36 59.452  
76 31.105

Nansemond Ridge  
36 56.045  
76 27.070

2018  
Lower James River  
Proposed Shell Planting Areas