

HOUSE BILL 90

Unofficial Copy
M1

2004 Regular Session
(41r0013)

ENROLLED BILL

-- *Environmental Matters/Education, Health, and Environmental Affairs* --

Introduced by **Chairman, Environmental Matters Committee (By Request -
Departmental - Natural Resources)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 492

1 AN ACT concerning

2 **Natural Resources - ~~Harvest Reserve Areas - Oysters~~ Oysters - Public Notice**
3 **Notice - Natural Oyster Bars and Harvest Reserve Areas**

4 FOR the purpose of authorizing the Department of Natural Resources to designate by
5 regulation an area as a harvest reserve area for oysters; authorizing the
6 Department to establish certain requirements for *natural oyster bars and*
7 harvest reserve areas by public notice; providing for a certain notice and
8 effective date of certain actions relating to *natural oyster bars and* harvest
9 reserve areas; providing for the use of certain biological criteria in determining
10 the opening and closing of harvest reserve areas; altering certain publication
11 requirements relating to natural oyster bars; *requiring certain notice to the Joint*
12 *Committee on Administrative, Executive, and Legislative Review under certain*
13 *circumstances*; defining certain terms; and generally relating to harvest reserve
14 areas for oysters and the conservation and harvest of oysters.

15 BY repealing and reenacting, with amendments,

1 Article - Natural Resources
2 Section 4-1001, 4-1009, and 4-1103
3 Annotated Code of Maryland
4 (2000 Replacement Volume and 2003 Supplement)

5 BY adding to
6 Article - Natural Resources
7 Section 4-1009.1
8 Annotated Code of Maryland
9 (2000 Replacement Volume and 2003 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Natural Resources**

13 4-1001.

14 (a) In this subtitle the following words have the meanings indicated.

15 (b) "Buy boat" means any boat engaged or used in buying, selling, or
16 transporting oysters caught by other boats.

17 (c) "Chesapeake Bay" means the waters, commonly known as the Chesapeake
18 Bay as defined by the charts of the Oyster Survey of 1906 to 1912, and its
19 amendments.

20 (d) "County waters" means the waters lying within the territorial limits of any
21 county in the State as defined by the charts of the Oyster Survey of 1906 to 1912, and
22 its amendments.

23 (e) "Diving apparatus" means any diving equipment that is supplied with air
24 from the surface through a hose, or diving equipment generally referred to as scuba,
25 the use of which allows a person to catch oysters by hand beneath the water.

26 (f) "Dredge" includes any dredge, scoop, scrape, or similar device used in
27 catching oysters or clams by dragging.

28 (g) "Dredge boat" means any sailboat which does not have a screw, propeller,
29 engine, turbine, or other device for self-propulsion, used in catching oysters or clams
30 by dredge.

31 (h) "Dunnaged boat" means any boat having a false bottom, partition, ceiling,
32 or deck, designed to diminish or having the effect of diminishing visible cargo space.

33 (i) "Handscrape" means any dredge cast and hauled by hand and without any
34 winch, winder, or spool.

35 (j) "Hard-shell clams" mean mollusks of the species *Mercenaria mercenaria*.

1 (K) "HARVEST" MEANS TO TAKE, KILL, TRAP, GATHER, CATCH OR IN ANY
2 MANNER REDUCE ANY HARD-SHELL CLAM, SOFT-SHELL CLAM, OR OYSTER TO
3 PERSONAL POSSESSION OR TO ATTEMPT TO ENGAGE IN THIS CONDUCT.

4 (L) "HARVEST RESERVE AREA" MEANS AN AREA DESIGNATED BY THE
5 DEPARTMENT FOR THE RESTORATION AND HARVESTING OF OYSTERS ON A
6 ROTATIONAL BASIS.

7 [(k)] (M) "Hydraulic clam dredge" means any device used for dredging clams
8 which consists of a manifold through which water is forced under pressure for the
9 purpose of digging clams and working them into the mouth of the dredge where the
10 clams then are brought up to boat level by means of an escalator. "Hydraulic clam
11 dredge" includes the vessel on which the dredge is carried.

12 [(l)] (N) "Marketable oyster" means any oyster measuring 3 inches or more
13 from hinge to mouth.

14 [(m)] (O) "Natural oyster bar" means any submerged oyster bar, reef, rock, or
15 area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912,
16 and its amendments, or any area declared by any circuit court to be a natural oyster
17 bar, or any area on which the Department plants oysters or shells. A natural oyster
18 bar also means any bar beneath the waters of the State where the natural growth of
19 oysters abounds to the extent that the public has resorted to the bar for a livelihood,
20 whether continuously or at intervals, during any oyster season within five years prior
21 to the filing of any application for a lease of the area in question, or within five years
22 prior to the making of a resurvey under the provisions of Subtitle 11. The actual
23 conditions of the area in question at any time within the five-year period shall be
24 considered in determining whether or not the area is a natural oyster bar.

25 [(n)] (P) "Packer" means any person having a fixed place of business and
26 buying, selling, packing, shucking, or preparing oysters for sale, trade, barter, or
27 shipment to any dealer, merchant, or retailer.

28 [(o)] (Q) "Patent tongs" means any pincers, nippers, tongs, or similar device
29 used to catch oysters and clams raised with rope, cable, or other hoisting gear.

30 [(p)] (R) "Shinnecock rake" means a hand tool used to catch hard-shell clams
31 or oysters. It usually consists of a tooth bar with projecting long, outwardly, and
32 upwardly curving teeth which are progressively smaller towards the ends, form a
33 basket, and are set transversely at the end of a long, usually wooden handle.

34 [(q)] (S) "Soft-shell clams" means mollusks of the species *Mya arenaria* and
35 of the species Genus *Tagelus*.

36 [(r)] (T) (1) "Tong" means any pincers, nippers, tongs, or similar device
37 used in catching oysters and clams and consisting of 2 shafts or handles and a metal
38 body composed of 2 opposable and complementary baskets that:

39 (i) Are opened, closed, and emptied entirely by hand; and

- 1 (ii) 1. Are lifted by hand; or
 2 2. May use power to assist lifting the tongs with a single
 3 lifting cable or rope attached at only a single point on 1 shaft of the tongs.

4 (2) "Tong" includes:

- 5 (i) Shaft tongs; and
 6 (ii) Hand tongs.

7 (3) "Tong" does not include a patent tong.

8 [(s)] (U) "Tong boat" means any boat on or from which tongs or patent tongs
 9 are used in catching oysters.

10 4-1009.

11 (a) During the closed season for taking oysters, a person may take seed
 12 oysters from the natural bars of the State marked by the Department for a period not
 13 exceeding one month in any one year, at times designated by the Department. The
 14 seed oysters shall be taken only in accordance with rules and regulations the
 15 Department prescribes, sold only to lessees of private oyster grounds, delivered only
 16 on leased oyster bottoms and subject to the provisions of § 4-1103(e) of this article.

17 (b) The Secretary may establish by rule or regulation daily catch limits on the
 18 quantities of oysters which may be caught from the natural oyster bars of the State,
 19 and may amend the daily catch limits to conserve the public oyster resource. Notice of
 20 the establishment or amendment of these catch limits, INCLUDING ALL APPLICABLE
 21 REASONS FOR THE DEPARTMENT'S ACTION, shall be given BEFORE PUBLICATION, TO
 22 THE JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE
 23 REVIEW AND by publication of THE notice in at least one newspaper [in each county]
 24 OF GENERAL CIRCULATION IN THE STATE, IN AT LEAST ONE NEWSPAPER OF
 25 GENERAL CIRCULATION IN EACH COUNTY IN WHICH THE AFFECTED WATERS ARE
 26 LOCATED, AND ON THE WEBSITE OF THE DEPARTMENT not less than one week prior
 27 to the effective date.

28 (c) A person may not land, sell, or attempt to land or sell on any day oysters
 29 from the waters of the State exceeding the daily catch limit established by the
 30 Secretary by more than 10 percent. However, in emergencies, the Department may
 31 authorize unloading up to two daily catch limits in 1 day. A licensed oyster buyer or
 32 dealer may sell or attempt to sell oysters which he shows were purchased from
 33 another catcher.

34 (d) All oysters landed or offered for sale on any day by any person licensed to
 35 catch oysters which are in excess of the daily catch limit shall become the property of
 36 the State, and payment shall be made directly to the State by the buyer or receiver of
 37 the oysters at the same price paid the catcher for the balance of his catch. All funds
 38 received under this subsection shall be deposited to the credit of the Fisheries

1 Research and Development Fund and shall be used for repletion of the natural oyster
2 bars of the State.

3 4-1009.1.

4 (A) THE DEPARTMENT MAY ADOPT REGULATIONS WHICH DESIGNATE AN
5 AREA AS A HARVEST RESERVE AREA FOR OYSTERS.

6 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, BY PUBLISHING
7 PUBLIC NOTICE, THE DEPARTMENT MAY ESTABLISH FOR A HARVEST RESERVE AREA:

8 (1) THE OPENING OR CLOSURE OF AN AREA FOR THE HARVESTING OR
9 CONSERVATION OF OYSTERS;

10 (2) THE HARVEST LIMIT;

11 (3) THE SEASONS, DAYS, AND TIMES WHEN OYSTERS MAY BE
12 HARVESTED;

13 (4) A MINIMUM SIZE LIMIT OF NOT LESS THAN 3 INCHES; AND

14 (5) A MAXIMUM SIZE LIMIT.

15 (C) (1) AN ACTION OF THE DEPARTMENT UNDER SUBSECTION (B) OF THIS
16 SECTION MAY NOT BECOME EFFECTIVE UNTIL:

17 (I) A COPY OF THE NOTICE TO BE PUBLISHED UNDER ITEM (II) OF
18 THIS PARAGRAPH HAS BEEN DELIVERED TO THE JOINT COMMITTEE ON
19 ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW; AND

20 (II) 48 HOURS AFTER NOTICE HAS BEEN PUBLISHED:

21 ~~(1)~~ 1. IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN
22 THE STATE;

23 ~~(2)~~ 2. IN AT LEAST ONE NEWSPAPER CIRCULATED OF GENERAL
24 CIRCULATION IN EACH COUNTY IN WHICH THE AFFECTED WATERS ARE LOCATED;
25 AND

26 ~~(2)~~ ~~(3)~~ 3. ON THE WEBSITE OF THE DEPARTMENT.

27 (2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS
28 SUBSECTION SHALL STATE ALL APPLICABLE REASONS FOR THE DEPARTMENT'S
29 ACTION.

30 (D) THE DEPARTMENT SHALL USE THE FOLLOWING BIOLOGICAL CRITERIA
31 FOR THE OPENING AND CLOSING OF A HARVEST RESERVE AREA:

32 (1) GROWTH RATES;

33 (2) DISEASE PREVALENCE AND INTENSITY;

1 (3) MORTALITY THRESHOLDS; AND

2 (4) BIOMASS THRESHOLDS.

3 4-1103.

4 (a) The Department shall take measures which in its judgment seem best
5 calculated to increase the productivity or utility of any part of the natural oyster bars
6 of the State.

7 (b) The Department may close in any year no more than 30 percent of the
8 natural oyster bars in the waters of the State. The Department may prohibit or
9 restrict the catching of oysters on natural oyster bars whenever in its judgment these
10 measures will increase the productivity or utility of these areas. The Department may
11 plant oysters, shells, or other cultch or take any other restorative measures, which it
12 deems advisable, on natural oyster bars. The Department shall, BEFORE
13 PUBLICATION, DELIVER TO THE JOINT COMMITTEE ON ADMINISTRATIVE,
14 EXECUTIVE, AND LEGISLATIVE REVIEW A NOTICE OF INTENT TO CLOSE AN AREA OF
15 A NATURAL OYSTER BAR, INCLUDING ALL APPLICABLE REASONS FOR THE
16 DEPARTMENT'S ACT, AND publish a ~~THE~~ notice of intent to close any area of a natural
17 oyster bar not less than 30 days prior to the proposed closing date in one or more
18 newspapers of general circulation in [each county of the State] THE STATE, IN ONE
19 OR MORE NEWSPAPERS OF GENERAL CIRCULATION IN EACH COUNTY IN WHICH THE
20 AFFECTED WATERS ARE LOCATED, AND ON THE WEBSITE OF THE DEPARTMENT. The
21 Department shall schedule a public hearing on the proposal not less than 15 days
22 before the proposed closing date. The hearing shall be held at the county seat of the
23 county in which the affected waters are located. If the affected waters are located in
24 more than one county then the hearing shall be held in that county seat closest to the
25 affected waters. If the area affected is totally within State waters, then the hearing
26 shall be held in Annapolis.

27 (c) The Department may reopen an area if it determines reopening is
28 advisable. An area shall be reopened by notice of reopening published in the same
29 newspapers that published any closing notices. However, an area may not be
30 reopened until a lapse of 48 hours from the publication of the notice of reopening.

31 (d) The Department may select and reserve for its own use areas, to be known
32 as seed areas, within the waters of the State for the propagation of seed oysters. The
33 number, size, and location of these areas shall be determined from time to time by the
34 Department. However, no more than 5 percent of the natural oyster bars of the State
35 shall be designated as seed areas. The first million bushels of seed oysters produced
36 in seed areas shall be planted on the natural oyster bars of the State. The Department
37 shall, BEFORE PUBLICATION, DELIVER A NOTICE OF RESERVATION, INCLUDING ALL
38 APPLICABLE REASONS FOR THE DEPARTMENT'S ACT, TO THE JOINT COMMITTEE ON
39 ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW AND publish a THE notice
40 ~~of reservation~~ not less than 30 days before the closing date of any seed area in one
41 newspaper of general circulation in the State and at least one newspaper of general
42 circulation in each county ~~of the State~~ IN WHICH THE AFFECTED WATERS ARE
43 LOCATED, AND ON THE WEBSITE OF THE DEPARTMENT. The Department shall

1 schedule a public hearing on the proposal not less than 15 days before the proposed
2 closing date. The hearing shall be held at the county seat of the county in which the
3 affected waters are located. If the affected waters are located in more than one county,
4 the hearing shall be held in that county seat closest to the affected waters, but if the
5 area affected is totally within State waters, the hearing shall be held in Annapolis.

6 (e) Except as provided in subsection (f) of this section, the State may sell no
7 more than 50 percent of seed oysters in excess of one million bushels produced
8 annually in seed areas to citizens who hold valid leases under the provisions of this
9 subtitle for no less than the prevailing price of seed oysters of similar quality in
10 nearby states. Conditions of sale may be prescribed by rule or regulation of the
11 Department. The proceeds from these sales shall be credited by the Comptroller to
12 the Fisheries Research and Development Fund.

13 (f) (1) In addition to the provisions of subsections (d) and (e) of this section
14 concerning the establishment of oyster seed areas and the sale of seed oysters to a
15 leaseholder, the Department may:

16 (i) Establish aquaculture seed areas not exceeding a total
17 aggregate of 90 acres in the State;

18 (ii) Designate the seed oysters produced in those aquaculture seed
19 areas for sale to a resident of the State who holds a valid lease or an aquaculture
20 permit to cultivate shellfish; and

21 (iii) Adopt regulations necessary to implement the provisions of this
22 subsection.

23 (2) The Department shall credit the proceeds of any sale of seed oysters
24 under this subsection to the Fisheries Research and Development Fund in the
25 Department for the benefit of the public oyster fishery.

26 (3) The Department shall:

27 (i) Sell, at prevailing market prices, seed oysters produced in an
28 aquaculture oyster seed area to a resident of the State who holds a valid lease or an
29 aquaculture permit to cultivate shellfish;

30 (ii) Use any revenue derived from the sale of seed oysters to
31 reimburse the Fisheries Research and Development Fund for any expenditure needed
32 to create the aquaculture oyster seed areas under this subsection;

33 (iii) Credit any net proceeds from the sale of seed oysters remaining,
34 after reimbursement is made under subparagraph (ii) of this paragraph, to the
35 exclusive use of the public oyster fishery;

36 (iv) Maintain for each aquaculture seed area a record detailing all
37 expenditures required to create and maintain the seed area and all proceeds of the
38 sale of seed oysters produced in the seed area;

1 (v) In establishing and maintaining the aquaculture seed areas,
2 limit expenditures to \$200,000 annually, and after the first year, any expenditure
3 required to maintain the seed areas shall be funded only from revenues derived from
4 the sale of seed oysters produced in the seed areas; and

5 (vi) Consult with the County Oyster Propagation Committee in
6 establishing an aquaculture seed area in that county.

7 (4) The Department may not create aquaculture seed areas within the
8 jurisdictional boundaries of Dorchester, Kent, Queen Anne's, Somerset, or Talbot
9 counties, or in the tidewater tributaries of Charles County, except the Patuxent River.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect June 1, 2004.