

Chapter 703

(Senate Bill 937)

AN ACT concerning

Sustainable Oyster ~~Harvest~~ Population and Fishery Act of 2016

FOR the purpose of requiring the Department of Natural Resources, in consultation with the University of Maryland Center for Environmental Science, to conduct a certain study related to the public oyster fishery; requiring the Department to identify certain oyster management strategies in a certain manner; requiring the ~~Center~~ Department to ~~report~~ submit certain reports on the study and certain oyster management strategies to the Governor, ~~the Department of Natural Resources,~~ the Oyster Advisory Commission, and the General Assembly on or before ~~a certain date~~ certain dates; providing for the construction of this Act; providing for the termination of this Act; prohibiting the Department from taking certain actions until after the Center has made a certain report; and generally relating to the public oyster fishery.

BY repealing and reenacting, without amendments,

Article – Natural Resources

Section 4-215(d)

Annotated Code of Maryland

(2012 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 4-215(e)

Annotated Code of Maryland

(2012 Replacement Volume and 2015 Supplement)

Preamble

~~WHEREAS, Oysters are a keystone species that remove nutrients from the water and provide three-dimensional reef structure and marine habitat for the Chesapeake Bay's marine life, including striped bass and the iconic blue crab; and~~

~~WHEREAS, The scientific community recognizes that oyster sanctuaries are important nursery areas, which are necessary to rebuild the State's oyster population and improve the overall health of the Chesapeake Bay; and~~

~~WHEREAS, In 2007, the General Assembly established the Oyster Advisory Commission to advise the Department of Natural Resources on matters related to oysters in the Chesapeake and Atlantic Coastal Bays and strategies for rebuilding and managing the oyster population in these areas under the Chesapeake Bay Oyster Management Plan; and~~

~~WHEREAS, In 2009, the U.S. Army Corps of Engineers, the Department of Natural Resources, and the Virginia Marine Resources Commission completed a Programmatic Environmental Impact Statement (PEIS) evaluating oyster restoration alternatives for the Chesapeake Bay, which identified the expansion of oyster sanctuaries, more restrictive management of the public oyster fishery, and the expansion of oyster aquaculture as the best strategies for restoring the ecological role of oysters in the Chesapeake Bay and the commercial benefits of the commercial oyster industry; and~~

~~WHEREAS, In 2010, the Department of Natural Resources adopted regulations to expand oyster sanctuaries and facilitate aquaculture development based on a report from the Oyster Advisory Commission to the Governor and the General Assembly, which recommended, among other things, focusing on large-scale restoration projects, developing an interconnected network of sanctuaries, implementing a new oyster management plan based on maximum fishing mortality rates, and revising restrictive laws and regulations that were inhibiting the private cultivation of oysters; and~~

~~WHEREAS, Total oyster harvests, the number of oyster harvesters, and the number of oyster aquaculture leases have dramatically increased since the percentage of quality oyster habitat protected in sanctuaries was increased from 0% to 24% in 2010; and~~

~~WHEREAS, The Department of Natural Resources has not implemented more restrictive management measures for the public oyster fishery, as recommended by the 2009 PEIS and the recommendations of the Oyster Advisory Commission, despite the fact that the Chesapeake Bay's oyster population is currently at 1% of historic levels; and~~

~~WHEREAS, There is strong evidence that the State's public oyster fishery continues to experience overfishing; and~~

~~WHEREAS, Because oysters are a reef-building species, the overfishing of oysters results in a loss of the substrate available for future generations of oysters, so that even if the fishery were closed today it would take 50 to 100 years for the population to rebound on its own; and~~

~~WHEREAS, Although the public oyster fishery is currently second in economic value among the State's commercial fisheries, there is no science-based management plan in place to ensure the long-term sustainability of the fishery; and~~

~~WHEREAS, The Chesapeake Bay Oyster Management Plan and § 4-215(e) of the Natural Resources Article provide that the State shall prevent overfishing while attempting to achieve the best and most efficient use of the State's public oyster fishery through the development and use of the best available estimates of sustainable harvest rates and indicators that would trigger any tightening or loosening of harvest restrictions; and~~

~~WHEREAS, The State has not yet developed such estimates of sustainable harvest rates and indicators; now, therefore,~~

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

- ~~(a) (1) In this section the following words have the meanings indicated:~~
- ~~(2) "Center" means the University of Maryland Center for Environmental Science.~~
- ~~(3) "Department" means the Department of Natural Resources.~~
- ~~(b) The Center shall conduct a study to:~~
- ~~(1) determine sustainable harvest rates for the public oyster fishery;~~
- ~~(2) define appropriate indicators for the public oyster fishery based on the results of stock assessments and other relevant data;~~
- ~~(3) determine whether the public oyster fishery is experiencing overfishing;~~
~~and~~
- ~~(4) if the study determines that the public oyster fishery is experiencing overfishing, identify management strategies, including rotational harvesting, in collaboration with the Department, industry representatives, and concerned stakeholders to address overfishing consistent with State law.~~
- ~~(c) On or before October 1, 2017, the Center shall report to the Governor, the Department, the Oyster Advisory Commission, and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the results of the study described in subsection (b) of this section.~~

Article – Natural Resources

4-215.

- ~~(d) (1) Conservation and management measures adopted under a fishery management plan, to the extent possible:~~
- ~~(i) Shall prevent overfishing while attempting to achieve the best and most efficient utilization of the State's fishery resources;~~
- ~~(ii) Shall be based on the best information available;~~
- ~~(iii) May not discriminate unfairly among groups of fishermen or have economic allocation as its sole purpose;~~

(iv) Shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and

(v) Shall avoid duplication of regulatory efforts and unnecessary costs to the State and to any other person.

(2) If it becomes necessary to allocate or assign fishing privileges among various groups of individuals under paragraph (1)(iii) of this subsection, or under any fishery management plan, that allocation shall be:

(i) Fair and equitable to all individuals;

(ii) Reasonably calculated to promote conservation; and

(iii) Carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(e) (1) Except as provided in paragraph (2) of this subsection, a fishery management plan may apply separately or jointly to the waters of the Chesapeake Bay and its tidal tributaries, the coastal bays and their tributaries, and the Maryland waters of the Atlantic Ocean and shall include:

(i) The best available estimates of sustainable harvest rates;

(ii) Indicators that would trigger any tightening or loosening of harvest restrictions;

(iii) A description of the fishery, including:

1. The history of the fishery, and its current condition relative to historic populations;

2. The numbers of potential commercial and recreational fishermen projected to participate in the fishery;

3. The type and quantity of fishing gear used commercially;

4. Where practicable, the cost likely to be incurred in the management of the fishery; and

5. The actual and potential revenues from the recreational and commercial fishery;

(iv) If the Department determines that a fishery has been, or is currently, overfished:

- 1. A species-specific time period for:
 - A. Ending or appropriately addressing overfishing; and
 - B. Rebuilding the stock of the species to a sustainable level;
- and
- 2. A description of:
 - A. Management strategies that have a high probability of reducing fishing to a target level within a target time period, as determined by the Department; and
 - B. The appropriate assignment or allocation of fishing privileges in accordance with subsection (d)(2) of this section; and
- (v) Other pertinent data that will assist the Secretary in determining conservation and management measures reasonably necessary to ensure that the fishery resources will be sustained.

(2) The Department may waive the requirements in paragraph (1)(iv) of this subsection for a species of fish if the Department determines that meeting the requirements is not practicable or biologically appropriate based on:

- (i) The specific biology of the species;
- (ii) The management of the species under a federal or multi-state fishery management plan;
- (iii) The designation of the species as a nuisance;
- (iv) Environmental conditions; or
- (v) Other ecological factors.

(3) (1) THE DEPARTMENT, IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND CENTER FOR ENVIRONMENTAL SCIENCE, AS PART OF ITS FISHERY MANAGEMENT PLAN FOR OYSTERS, SHALL CONDUCT A STUDY TO:

1. IDENTIFY ALL AVAILABLE DATA THAT MAY BE USED TO CONDUCT A STOCK ASSESSMENT;

2. IDENTIFY POSSIBLE STOCK ASSESSMENT TECHNIQUES THAT MAY BE APPLIED BASED ON AVAILABLE DATA AND THE IDENTIFIED OBJECTIVES UNDER SUBSECTION (D) OF THIS SECTION FOR THE RESOURCE AND THE FISHERY;

3. CONDUCT A STOCK ASSESSMENT THAT PROVIDES GUIDANCE FOR THE DEVELOPMENT OF BIOLOGICAL REFERENCE POINTS THAT ARE BASED ON THE BIOLOGICAL CHARACTERISTICS OF THE OYSTER POPULATION AND OTHER APPROPRIATE FACTORS THAT AFFECT THE OYSTER POPULATION;

4. IDENTIFY OBJECTIVE AND MEASURABLE MEANS TO DETERMINE IF THE PUBLIC OYSTER FISHERY IS OPERATING WITHIN THE BIOLOGICAL REFERENCE POINTS DEVELOPED UNDER THIS PARAGRAPH; AND

5. SUBMIT THE STUDY TO A PEER REVIEW PANEL COMPOSED OF STOCK ASSESSMENT EXPERTS.

(II) BASED ON A DETERMINATION MADE UNDER ITEM (I)4 OF THIS PARAGRAPH AND THE AUTHORITY OF THE DEPARTMENT UNDER THIS SECTION, THE DEPARTMENT, THROUGH A PUBLIC PROCESS IN COLLABORATION WITH THE COMMERCIAL OYSTER INDUSTRY, CONSERVATION ORGANIZATIONS, AND OTHER CONCERNED STAKEHOLDERS, SHALL IDENTIFY MANAGEMENT STRATEGIES TO ADDRESS THE MAINTENANCE OF A SUSTAINABLE OYSTER POPULATION AND FISHERY.

(III) THE DEPARTMENT SHALL SUBMIT TO THE GOVERNOR, THE OYSTER ADVISORY COMMISSION, AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, WITH RESPECT TO THE STUDY REQUIRED UNDER THIS PARAGRAPH AND ANY PROPOSED OR IMPLEMENTED OYSTER MANAGEMENT STRATEGIES:

1. AN INTERIM PROGRESS REPORT ON OR BEFORE DECEMBER 1, 2016;

2. A SUBSEQUENT INTERIM PROGRESS REPORT ON OR BEFORE DECEMBER 1, 2017; AND

3. A FINAL REPORT ON OR BEFORE DECEMBER 1, 2018.

~~(d) The Department may not take any action to increase oyster harvest rates, lift restrictions on oyster harvesting, or expand the area open to oyster harvesting until after the Center has made its report in accordance with subsection (c) of this section.~~

SECTION 2. AND BE IT FURTHER ENACTED, That *this Act may not be construed to limit or affect the ability of the Department of Natural Resources to manage the oyster fishery under § 4-215 of the Natural Resources Article.*

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2016. It shall remain effective for a period of 3 years and, at the end of May 31, 2019, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 28, 2016.