

SENATE BILL 830

M2

9lr3106
CF HB 720

By: **Senator Elfreth**

Introduced and read first time: February 4, 2019

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 12, 2019

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Fishery Management Plans – Oysters**

3 FOR the purpose of requiring the Department of Natural Resources to convene the Oyster
4 Advisory Commission, in coordination with the University of Maryland Center for
5 Environmental Science, on or before a certain date; providing for the membership of
6 the Commission; requiring certain persons to provide information to the Commission
7 under certain circumstances but prohibiting certain persons from participating as
8 voting members; establishing certain requirements for the fishery management plan
9 for oysters; requiring the Department of Natural Resources, in coordination with the
10 University of Maryland Center for Environmental Science, to convene a certain
11 stakeholder workgroup Science and the Commission, to develop a certain package of
12 consensus recommendations for enhancing and implementing the fishery
13 management plan for oysters; providing for the membership of the stakeholder
14 workgroup; requiring the stakeholder workgroup Commission, with certain
15 assistance, to develop certain recommendations based on a certain process, review
16 certain oyster management actions and recommend certain oyster management
17 actions to achieve certain goals, and review certain results for certain oyster
18 management actions; prohibiting the Department from using certain funds for a
19 certain purpose; authorizing the Commission to meet and deliberate in closed session
20 for a certain purpose, notwithstanding a certain provision of law; requiring the
21 Department to submit certain interim reports and a final report by certain dates to
22 the Governor and General Assembly; requiring the Department to perform certain
23 reviews of the oyster stock and, with certain input, implement certain management
24 actions; providing for the termination of the terms of certain members of the
25 Commission; requiring the Secretary of Natural Resources to convene the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Commission in a certain manner; requiring the Department to implement a certain
 2 Fishery Management Plan for Oysters subject to certain requirements; and generally
 3 relating to a fishery management plan for oysters.

4 BY repealing and reenacting, with amendments,

5 Article – Natural Resources
 6 Section 4–204(c) and 4–215(e)(4)
 7 Annotated Code of Maryland
 8 (2018 Replacement Volume)

9 BY repealing and reenacting, without amendments,

10 Article – Natural Resources
 11 Section 4–215(b)(6)
 12 Annotated Code of Maryland
 13 (2018 Replacement Volume)

14 ~~BY repealing and reenacting, with amendments,~~

15 ~~Article – Natural Resources~~
 16 ~~Section 4–215(e)(4)~~
 17 ~~Annotated Code of Maryland~~
 18 ~~(2018 Replacement Volume)~~

19 BY adding to

20 Article – Natural Resources
 21 Section 4–215(e)(5)
 22 Annotated Code of Maryland
 23 (2018 Replacement Volume)

24 Preamble

25 WHEREAS, Large connected oyster populations provide a number of environmental
 26 benefits to the Chesapeake Bay ecosystem, including reef habitat for finfish, shellfish, and
 27 other marine life, improved water quality, reduced sedimentation, carbon storage, and
 28 increased shellfish propagation; and

29 WHEREAS, The oyster population in the Bay is languishing at ~~1% of historic~~
 30 ~~populations~~ a historic low; and

31 WHEREAS, The oyster resource is a valuable resource to Maryland; and

32 WHEREAS, Chapter 703 of the Acts of the General Assembly of 2016 required the
 33 Department of Natural Resources to conduct a stock assessment and, based on this
 34 assessment, identify management strategies to address the maintenance of a sustainable
 35 oyster population and fishery; and

1 WHEREAS, With the completion of the oyster stock assessment, new regulations
2 and policies for oyster management in Maryland are needed to sustain and grow the oyster
3 resource, industry, and ecosystem; and

4 WHEREAS, A consensus-based process, as demonstrated by the OysterFutures
5 model which utilizes a 60-40 balance of stakeholders, can be used to develop regulations
6 and policies for oyster management that have broad stakeholder support and are informed
7 by the oyster stock assessment, stakeholder knowledge, and scientific evidence; ~~now,~~
8 ~~therefore,~~ and

9 WHEREAS, It is the intent of the General Assembly that the recommendations of
10 this Commission be the fishery management plan for oysters; now, therefore.

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

13 **Article – Natural Resources**

14 4-204.

15 (c) (1) There is an Oyster Advisory Commission in the Department.

16 (2) (I) [The Commission consists of members appointed by the
17 Secretary] ON OR BEFORE JUNE 1, 2019, AND SUBJECT TO SUBPARAGRAPH (II) OF
18 THIS PARAGRAPH, THE DEPARTMENT SHALL, IN COORDINATION WITH THE
19 UNIVERSITY OF MARYLAND CENTER FOR ENVIRONMENTAL SCIENCE, CONVENE
20 THE MEMBERS OF THE COMMISSION.

21 (II) THE COMMISSION SHALL ONLY INCLUDE:

22 1. A REPRESENTATIVE FROM EACH COUNTY OYSTER
23 COMMITTEE ESTABLISHED UNDER § 4-1106(B) OF THIS TITLE DESIGNATED BY THE
24 COMMITTEE;

25 2. A REPRESENTATIVE FROM THE MARYLAND
26 WATERMEN'S ASSOCIATION DESIGNATED BY THE ASSOCIATION;

27 3. A REPRESENTATIVE FROM THE MARYLAND
28 OYSTERMEN'S ASSOCIATION DESIGNATED BY THE ASSOCIATION;

29 4. A REPRESENTATIVE FROM THE AQUACULTURE
30 INDUSTRY DESIGNATED BY THE AQUACULTURE COORDINATING COUNCIL;

31 5. A REPRESENTATIVE FROM THE COMMERCIAL
32 SEAFOOD BUYER INDUSTRY DESIGNATED BY THE SECRETARY;

1 **6. A REPRESENTATIVE FROM THE COASTAL**
2 **CONSERVATION ASSOCIATION OF MARYLAND DESIGNATED BY THE ASSOCIATION;**

3 **7. A REPRESENTATIVE FROM THE CHESAPEAKE BAY**
4 **FOUNDATION DESIGNATED BY THE FOUNDATION;**

5 **8. A REPRESENTATIVE FROM THE NATURE**
6 **CONSERVANCY DESIGNATED BY THE CONSERVANCY;**

7 **9. A REPRESENTATIVE FROM THE SHORERIVERS**
8 **RIVERKEEPER ASSOCIATION DESIGNATED BY THE ASSOCIATION;**

9 **10. A REPRESENTATIVE FROM THE ARUNDEL RIVERS**
10 **FEDERATION DESIGNATED BY THE FEDERATION;**

11 **11. A REPRESENTATIVE FROM THE OYSTER RECOVERY**
12 **PARTNERSHIP, DESIGNATED BY THE PARTNERSHIP;**

13 **12. A REPRESENTATIVE FROM THE CHESAPEAKE BAY**
14 **COMMISSION DESIGNATED BY THE CHESAPEAKE BAY COMMISSION;**

15 **13. A REPRESENTATIVE FROM BLUE OYSTER**
16 **ENVIRONMENTAL DESIGNATED BY BLUE OYSTER ENVIRONMENTAL;**

17 **14. A REPRESENTATIVE FROM THE NATIONAL**
18 **AQUARIUM DESIGNATED BY THE NATIONAL AQUARIUM; AND**

19 **15. A REPRESENTATIVE FROM THE UNIVERSITY OF**
20 **MARYLAND CENTER FOR ENVIRONMENTAL SCIENCE DESIGNATED BY THE CENTER.**

21 **(3) THE FOLLOWING PERSONS SHALL PROVIDE INFORMATION TO THE**
22 **COMMISSION AT THE REQUEST OF THE COMMISSION BUT MAY NOT PARTICIPATE AS**
23 **VOTING MEMBERS:**

24 **(i) STATE AND FEDERAL AGENCIES TASKED WITH OYSTER**
25 **MANAGEMENT AND RESTORATION RESPONSIBILITIES, INCLUDING THE**
26 **DEPARTMENT, THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,**
27 **AND THE U.S. ARMY CORPS OF ENGINEERS;**

28 **(ii) TWO MEMBERS OF THE SENATE, ONE FROM EACH**
29 **POLITICAL PARTY, APPOINTED BY THE PRESIDENT OF THE SENATE; AND**

30 **(iii) TWO MEMBERS OF THE HOUSE OF DELEGATES, ONE FROM**
31 **EACH POLITICAL PARTY, APPOINTED BY THE SPEAKER OF THE HOUSE.**

1 ~~[(3)]~~ (4) The Commission shall:

2 (i) Provide the Department with advice on matters related to
3 oysters in the Chesapeake Bay;

4 (ii) Review the best possible science and recommend changes to the
5 framework and strategies for rebuilding and managing the oyster population in the
6 Chesapeake Bay under the Chesapeake Bay Oyster Management Plan;

7 (iii) Review the latest findings relevant to the Environmental Impact
8 Statement evaluating oyster restoration alternatives for the Chesapeake Bay;

9 (iv) Review any other scientific, economic, or cultural information
10 relevant to oysters in the Chesapeake Bay; [and]

11 (V) **DEVELOP A PACKAGE OF CONSENSUS RECOMMENDATIONS,**
12 **IN COORDINATION WITH THE DEPARTMENT, FOR ENHANCING AND IMPLEMENTING**
13 **THE FISHERY MANAGEMENT PLAN FOR OYSTERS UNDER § 4-215 OF THIS SUBTITLE;**
14 **AND**

15 ~~[(v)]~~ (VI) By December 31, 2007 and to the extent reasonably
16 appropriate, report to the Governor and, in accordance with § 2-1246 of the State
17 Government Article, the General Assembly on:

18 1. Strategies to minimize the impact of oyster disease,
19 including the State repletion program and bar cleaning;

20 2. The framework and effectiveness of the oyster sanctuary,
21 harvest reserve, and repletion programs, and the overall management of natural oyster
22 bars, after performing a cost-benefit analysis that considers biological, ecological,
23 economic, and cultural issues;

24 3. Strategies to maximize the ecological benefits of natural
25 oyster bars; and

26 4. Strategies to improve enforcement of closed oyster areas.

27 (5) **THE DEPARTMENT MAY NOT USE FUNDS ALLOCATED TO A**
28 **COUNTY OYSTER COMMITTEE FOR THE COMMISSION ESTABLISHED UNDER THIS**
29 **SUBSECTION.**

30 4-215.

31 (b) The Department shall prepare fishery management plans for the following
32 species:

1 (6) Oysters;

2 (e) (4) (i) Subject to subparagraph (ii) of this paragraph, the Department
 3 may not take any action to reduce or alter the boundaries of the oyster sanctuaries
 4 established in “Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries
 5 (September 2010)” until the Department has developed a fisheries management plan for
 6 the scientific management of the oyster stock [following the completion of its reports in
 7 accordance with paragraph (3) of this subsection] **BASED ON MANAGEMENT STRATEGIES
 8 AND MEASUREMENTS RECOMMENDED BY THE OYSTER ADVISORY COMMISSION
 9 UNDER PARAGRAPH (5) OF THIS SUBSECTION AND DETERMINED BY THE
 10 DEPARTMENT IN CONSULTATION WITH THE UNIVERSITY OF MARYLAND CENTER
 11 FOR ENVIRONMENTAL SCIENCE.**

12 (ii) **THE FISHERY MANAGEMENT PLAN DEVELOPED IN
 13 ACCORDANCE WITH PARAGRAPH (5) OF THIS SUBSECTION SHALL:**

14 **1. END THE OVERFISHING OF OYSTERS IN ALL AREAS
 15 AND REGIONS OF THE CHESAPEAKE BAY AND ITS TRIBUTARIES WHERE
 16 OVERFISHING HAS OCCURRED ACCORDING TO BIOLOGICAL REFERENCE POINTS
 17 ESTABLISHED BY THE MOST RECENT OYSTER STOCK ASSESSMENT WHILE
 18 MAINTAINING A HARVEST IN THE FISHERY;**

19 **2. ACHIEVE FISHING MORTALITY RATES AT TARGET
 20 LEVELS;**

21 **3. INCREASE OYSTER ABUNDANCE;**

22 **4. INCREASE OYSTER HABITAT; AND**

23 **5. FACILITATE THE LONG-TERM SUSTAINABLE
 24 HARVEST OF OYSTERS.**

25 (iii) This paragraph may not be construed to prevent the Department
 26 from:

27 1. Selecting the final two tributaries for tributary-scale
 28 oyster restoration sanctuary projects in accordance with the 2014 Chesapeake Bay
 29 Agreement; or

30 2. Establishing, in the discretion of the Department, any
 31 dimensions for a tributary-scale oyster restoration sanctuary project.

32 (5) (I) **THE DEPARTMENT SHALL:**

1 1. IN COORDINATION WITH THE UNIVERSITY OF
 2 MARYLAND CENTER FOR ENVIRONMENTAL SCIENCE AND THE OYSTER ADVISORY
 3 COMMISSION, ~~CONVENE A STAKEHOLDER WORKGROUP TO~~ DEVELOP A PACKAGE OF
 4 CONSENSUS RECOMMENDATIONS FOR ENHANCING AND IMPLEMENTING THE
 5 FISHERY MANAGEMENT PLAN FOR OYSTERS THAT WILL BE INFORMED BY A
 6 COLLABORATIVELY DEVELOPED, SCIENCE-BASED MODELING TOOL TO QUANTIFY
 7 THE LONG-TERM IMPACTS OF IDENTIFIED MANAGEMENT ACTIONS AND POSSIBLE
 8 COMBINATIONS OF MANAGEMENT ACTIONS ON:

- 9 A. OYSTER ABUNDANCE;
- 10 B. OYSTER HABITAT;
- 11 C. OYSTER HARVEST;
- 12 D. OYSTER HARVEST REVENUE; AND
- 13 E. NITROGEN REMOVAL; AND

14 2. HOLD PUBLIC LISTENING SESSIONS THROUGHOUT
 15 THE STATE TO IDENTIFY POSSIBLE MANAGEMENT ACTIONS FOR USE IN THE PUBLIC
 16 OYSTER FISHERY.

17 (H) ~~THE STAKEHOLDER WORKGROUP SHALL INCLUDE:~~

- 18 1. ~~A REPRESENTATIVE FROM EACH COUNTY~~
 19 ~~WATERMAN'S ASSOCIATION;~~
- 20 2. ~~A REPRESENTATIVE FROM THE MARYLAND~~
 21 ~~WATERMAN'S ASSOCIATION;~~
- 22 3. ~~A REPRESENTATIVE FROM THE COASTAL~~
 23 ~~CONSERVATION ASSOCIATION OF MARYLAND;~~
- 24 4. ~~A REPRESENTATIVE FROM THE CHESAPEAKE BAY~~
 25 ~~FOUNDATION;~~
- 26 5. ~~A REPRESENTATIVE FROM THE NATURE~~
 27 ~~CONSERVANCY;~~
- 28 6. ~~A REPRESENTATIVE OF A COMMERCIAL SEAFOOD~~
 29 ~~ORGANIZATION;~~

1 7. ~~A REPRESENTATIVE FROM THE AQUACULTURE~~
2 ~~INDUSTRY; AND~~

3 8. ~~STATE AND FEDERAL AGENCIES TASKED WITH~~
4 ~~OYSTER MANAGEMENT AND RESTORATION RESPONSIBILITIES.~~

5 ~~(III)~~ (II) ~~THE STAKEHOLDER WORKGROUP~~ OYSTER ADVISORY
6 COMMISSION, WITH THE ASSISTANCE OF EXTERNAL CONFLICT RESOLUTION AND
7 FACILITATION SPECIALISTS, SHALL:

8 1. DEVELOP A PACKAGE OF CONSENSUS
9 RECOMMENDATIONS THROUGH A FACILITATED CONSENSUS SOLUTIONS PROCESS,
10 BASED ON A 75% MAJORITY AGREEMENT LEVEL FOR EACH RECOMMENDATION;

11 2. ~~REVIEW CURRENT AND PROPOSED MANAGEMENT~~
12 ~~ACTIONS FOR COMPLETENESS AND RECOMMEND ADDITIONAL~~ RECOMMEND
13 MANAGEMENT ACTIONS OR COMBINATIONS OF MANAGEMENT ACTIONS TO ACHIEVE
14 THE TARGETS IDENTIFIED IN THE OYSTER STOCK ASSESSMENT WITH THE GOAL OF
15 INCREASING OYSTER ABUNDANCE; AND

16 3. REVIEW MODEL RESULTS FOR EACH MANAGEMENT
17 ACTION OR COMBINATION OF MANAGEMENT ACTIONS TO INFORM ~~STAKEHOLDER~~
18 ~~WORKGROUP~~ ITS RECOMMENDATIONS.

19 (III) NOTWITHSTANDING § 3-305 OF THE GENERAL PROVISIONS
20 ARTICLE, THE OYSTER ADVISORY COMMISSION MAY MEET AND DELIBERATE IN
21 CLOSED SESSION TO DEVELOP THE PACKAGE OF CONSENSUS RECOMMENDATIONS
22 FOR ENHANCING AND IMPLEMENTING THE FISHERY MANAGEMENT PLAN FOR
23 OYSTERS UNDER THIS PARAGRAPH.

24 (IV) 1. THE DEPARTMENT SHALL SUBMIT INTERIM REPORTS
25 ON THE DEVELOPMENT OF THE PACKAGE OF CONSENSUS RECOMMENDATIONS BY
26 DECEMBER 1, 2019, AUGUST 1, 2020, AND DECEMBER 1, 2020, TO THE GOVERNOR
27 AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE
28 GENERAL ASSEMBLY.

29 2. THE DEPARTMENT SHALL PROVIDE A FINAL REPORT
30 BY JULY 1, 2021, WHICH WILL INCLUDE AN IMPLEMENTATION SCHEDULE FOR THE
31 CONSENSUS RECOMMENDATIONS, TO THE GOVERNOR AND, IN ACCORDANCE WITH §
32 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

33 (V) TO BE RESPONSIVE TO CHANGES IN THE OYSTER RESOURCE
34 DUE TO ENVIRONMENTAL CONDITIONS, THE DEPARTMENT SHALL:

1 **1. REVIEW THE STATUS OF THE STOCK RELATIVE TO**
2 **REFERENCE POINTS EVERY 2 YEARS AND CONDUCT A BENCHMARK STOCK**
3 **ASSESSMENT EVERY 6 YEARS WITH CONSIDERATION OF NEW METHODS AND WITH**
4 **EXTERNAL PEER REVIEW; AND**

5 **2. WITH THE INPUT OF INTERESTED STAKEHOLDERS,**
6 **IMPLEMENT MANAGEMENT ACTIONS THAT INCREASE OYSTER HABITAT, MAINTAIN**
7 **HARVEST, AND GROW THE OYSTER STOCK.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That:

9 (a) The terms of the members serving on the Oyster Advisory Commission
10 established under § 4-204(c) of the Natural Resources Article before the effective date of
11 this Act shall terminate on the effective date of this Act.

12 (b) The Secretary of Natural Resources shall convene the new members of the
13 Oyster Advisory Commission in accordance with the provisions of Section 1 of this Act.

14 (c) The terms of the new members convened under subsection (b) of this section
15 shall begin on the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That the Department shall
17 implement the 2019 Fishery Management Plan for Oysters pending the development of
18 consensus recommendations in accordance with this Act.

19 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 June 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.