



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Senate Bill 580

Sewer Systems and Wastewater Treatment Plants – Water Pollution – Shellfish Harvester Restitution

Date: March 1, 2022

Position: Support with Amendments

To: Education, Health and Environmental Affairs Committee

From: Allison Colden, Sr. Fisheries Scientist

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB580 WITH AMENDMENTS. This bill would provide restitution to shellfish harvesters impacted by shellfish harvesting closures resulting from sewer overflows.

CBF recommends two amendments to SB580 (see *Attachment*) which would add aquaculture operators to the definition of shellfish harvester to clarify that oyster farmers who are impacted are eligible for restitution alongside public fishery participants. This is an important consideration as aquaculture operations are place-based; their operations are limited to specific areas of the river bottom leased from the State. Whereas harvesters in the public fishery can move to other harvest areas when a closure occurs, a closure that impacts an oyster lease represents a total harvest loss for the duration of the closure.

Sewage overflows introduce pollution into Chesapeake Bay that harms the environment and threatens public health.

With more than 18 million residents in the Chesapeake Bay watershed, pollution from human waste is a significant threat to the Bay ecosystem. Untreated sewage contains high levels of nutrients and bacteria that fuel algae blooms, low oxygen 'dead zones', and cause disease of both aquatic animals and humans who come in contact with contaminated water. Sewage discharge in areas of shellfish harvest is especially concerning as oysters and clams are filter feeders who filter out bacteria that can cause illness if consumed without being thoroughly cooked. Maryland's Shellfish Sanitation Program monitors sewer overflows and closes areas to shellfish harvest if an overflow event occurs to protect consumers from exposure to bacteria and other pathogens. During these closures, shellfish harvest is prohibited until pathogen levels have abated. Depending on the duration of the overflow, the volume discharged, and the local conditions in the area, these closures could last days to weeks during which no shellfish harvest can occur.

Pollution events from sewer overflows and discharges are a recurring issue.

In St. Mary's County alone, there were 8 sewer overflow events in 2021 resulting in multiple shellfish harvesting closures. Seven out of eight of these overflow incidents involved MetCom, the St. Mary's County Metropolitan Commission, indicating a serious recurring issue. Between 2011 and 2015, the Maryland Department of the Environment (MDE) collected penalties of \$8,500 for multiple violations at MetCom. While sewage overflow issues are not limited to St. Mary's County or to issues at MetCom, this example demonstrates that nominal penalties do little to curb ongoing issues.

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Shellfish harvesting closures due to pollution events negatively impact the seafood industry's bottom line and reputation.

Shellfish harvest closures result in direct and indirect costs to shellfish harvesters. When a pollution event occurs, the area is closed to harvest for days to weeks, during which marketable oysters in the area cannot be harvested and sold. A harvester can apply for a relay permit to move oysters from a polluted area to an open harvest area for 2 weeks to depurate any impurities before harvest, but this process has additional permits and labor involved that increase the cost of business. If oysters are sold from a polluted area before the overflow is discovered or reported, or if there is a delay in the harvest closure by MDE, shellfish harvesters must immediately contact the purchasers of the product and work to recall the product from the market. Again, significant time and labor costs are associated with pulling product back once it has been distributed. Finally, even if no illnesses occurred as a result of a shellfish harvesting closure, recurrent closures and concerns about contamination significantly undermine the public's confidence in purchasing Maryland seafood products and could result in long-lasting damage to the seafood industry.

CBF urges the Committee's FAVORABLE report WITH AMENDMENTS on SB 580.

For more information, please contact Dr. Allison Colden, Maryland Senior Fisheries Scientist at acolden@cbf.org and 443.482.2160.

ATTACHMENT

Suggested amendments in red:

9-342.3.

(A) THIS SECTION APPLIES TO ANY SEWER OVERFLOW, TREATMENT PLANT BYPASS, OR DISCHARGE FROM A WASTEWATER TREATMENT PLANT IN VIOLATION OF A PERMIT ISSUED UNDER § 9-323 OF THIS SUBTITLE THAT RESULTS IN AN AREA BEING CLOSED TO SHELLFISH HARVESTING UNDER § 4-1006(B) OF THE NATURAL RESOURCES ARTICLE.

(B) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "SHELLFISH HARVESTER" MEANS:

(I) AN INDIVIDUAL WHO HOLDS AN AQUACULTURE LEASE ISSUED UNDER §4-11A-09 OF THE NATURAL RESOURCES ARTICLE, OR;

(II) AN INDIVIDUAL WHO HOLDS THE APPROPRIATE AUTHORIZATIONS TO COMMERCIALY HARVEST OYSTERS OR CLAMS UNDER A LICENSE ISSUED UNDER §4-701 OF THE NATURAL RESOURCES ARTICLE.

~~(B)~~(C) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE DEPARTMENT SHALL ORDER THE PERSON RESPONSIBLE FOR A SEWER OVERFLOW, TREATMENT PLANT BYPASS, OR DISCHARGE DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION TO PAY RESTITUTION TO SHELLFISH HARVESTERS AFFECTED BY THE RESULTING CLOSURE.

~~(C)~~(D) A SHELLFISH HARVESTER IS ELIGIBLE FOR RESTITUTION UNDER THIS SECTION IF THE SHELLFISH HARVESTER:

(1) HOLDS THE APPROPRIATE AUTHORIZATIONS UNDER THE NATURAL RESOURCES ARTICLE TO HARVEST OYSTERS OR CLAMS IN THE AREA AFFECTED BY THE CLOSURE; AND

(2) IS ABLE TO DEMONSTRATE, BASED ON CATCH REPORTS SUBMITTED TO THE DEPARTMENT OF NATURAL RESOURCES, THAT THE SHELLFISH HARVESTER CAUGHT OYSTERS OR CLAMS IN THE AREA AFFECTED BY THE CLOSURE DURING AT LEAST ONE OF THE TWO MOST RECENT HARVEST SEASONS, OR;

(3) HAS AN EXECUTED LEASE AGREEMENT FOR A WATER COLUMN OR SUBMERGED LAND LEASE IN THE AREA AFFECTED BY THE CLOSURE.

~~(D)~~(E) FOR EACH ELIGIBLE SHELLFISH HARVESTER, RESTITUTION SHALL BE IN AN AMOUNT EQUAL TO THREE TIMES THE ECONOMIC DAMAGES TO THE SHELLFISH HARVESTER CAUSED BY THE CLOSURE, AS DETERMINED BY THE DEPARTMENT.