

SB0876_HB1201_Favorable.pdf

Uploaded by: Rachel Dean

Position: FAV

SB0876/HB1202 Water Pollution- Civil Penalty Surcharge_Oyster Repletion Fund

FAVORABLE

I support this bill. My business has been negatively impacted by the multiple sewage spills in Maryland waters. If there is a spill in the waters where we are harvesting oysters, the area is closed for harvest.

More impactful are the long-term implications these spills are having on the public's trust in our seafood. After the most recent spill, the price of oysters dropped 5\$ a bushel and customers repeatedly asked us if our oysters were safe to eat. Our overall sales also declined.

I hope this bill will do two things:

- mitigate the immediate financial impacts of sewer spills on the seafood industry when areas are closed to harvest
- encourage those persons liable for the penalties to be more vigilant and proactive in protecting our waterways from pollution spills

Rachel Dean

Calvert County

Patuxent River Seafood

SB 580 CBF_SWA.pdf

Uploaded by: Allison Colden

Position: FWA



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.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 300,000 members and e-subscribers, including over 109,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.

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.

SB580 Written Testimony.pdf

Uploaded by: Brian Russell

Position: FWA

Brian Russell, Member
Shore Thing Shellfish LLC
PO Box 74
Tall Timbers, MD 20690

February 27, 2022

To: Members of the Senate Environment and Transportation Committee

Re: SB580 Sewer Systems and Wastewater Treatment Plants – Water Pollution – Shellfish Harvester Restitution

Position: Support SB580 with amendments

Dear Chairman Pinsky, Vice Chair Kagan, and members of the committee,

My name is Brian Russell, one of the three owners and operators of Shore Thing Shellfish LLC, a small oyster farm in Piney Point Maryland. We support SB580 Sewer Systems and Wastewater Treatment Plants – Water Pollution – Shellfish Harvester Restitution with amendments.

In 2021 our farm was directly impacted by waste water spills from the St. Mary's County Metropolitan Commission (METCOM) on two separate occasions. Because we are an aquaculture business tied to a lease in St. George Creek, there is nowhere else we could go to harvest. The first occurrence happened December 31st 2020 when a sewer line ruptured under the St. George Island bridge. On January 2nd, within hours of the Maryland Departments of the Environment (MDE), Natural Resources (DNR), and Health (MDH) being notified of the leak, we received communication from all three departments that a 21-day closure was being put on St. George creek and that we had to recall any oysters that had been sold since December 30th. That meant we lost all our sales for the month of January 2021.

The second occurrence happened October 28th 2021 when abnormally high tides caused a METCOM sewage pumpstation on St. George Island to overflow. This time we had not been notified by any department and we were unaware that the overflow had happened. We harvested oysters the beginning of the following week and sold to our biggest customer who took those oysters to Northern Virginia where they were served at three separate venues. As a result, more than two dozen people got sick. It was on November 12th 2021, when our customer reported the complaints of sicknesses to us that we reached out to MDH and subsequently found out that the overflow at the pumpstation had occurred and that the proper people at MDE, DNR, and MDH had not been notified due to a lapse in communication within MDE. We then had to once again recall any oysters sold and the St. Georges Creek was once again closed to shellfish harvest. Since this incident, even though the creek has been reopened to harvest, our sales have not recovered. Our largest customer is still reluctant to resume

buying our oysters because they want assurance that they are safe and that an incident like this won't happen again. This has resulted in a loss of tens of thousands of dollars from our business income so far and we are not sure when or if we will be able to recoup any of our losses. We hate for something like this to happen to any oyster farmer and so we ask that you give SB 580 a favorable report with amendments.

Sincerely,



Brian Russell

SB0580-313620-01.pdf

Uploaded by: Jack Bailey

Position: FWA



SB0580/313620/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

25 FEB 22
12:02:36

BY: Senator Bailey
(To be offered in the Education, Health, and Environmental
Affairs Committee)

AMENDMENTS TO SENATE BILL 580

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Sewer” and substitute “Areas Closed to Shellfish Harvesting – Sewer”; in the same line, strike “and” and substitute a comma; in the same line, strike “– Water” and substitute “, and Water”; in the same line, after “Pollution –” insert “Damages for”; in line 3, strike “Harvester Restitution” and substitute “Harvesters and Notice”; in line 6, strike “restitution” and substitute “damages”; in line 7, after “harvesters;” insert “requiring the Department of the Environment, in coordination with the Department of Natural Resources, to notify shellfish harvesters of an area being closed to harvest due to pollution; requiring the Department of the Environment to provide certain information and statements to the public;”; and in line 13, strike “without” and substitute “with”.

AMENDMENT NO. 2

On page 1, in line 22, after “(A)” insert “IN THIS SECTION, “SHELLFISH HARVESTER” MEANS AN INDIVIDUAL WHO HOLDS:

(1) A SUBMERGED LAND LEASE UNDER § 4-11A-06 OR § 4-11A-07 OF THE NATURAL RESOURCES ARTICLE;

(2) A WATER COLUMN LEASE UNDER § 4-11A-08 OF THE NATURAL RESOURCES ARTICLE;

(3) AN AQUACULTURE OR SUBMERGED LAND LEASE UNDER § 4-11A-09 OF THE NATURAL RESOURCES ARTICLE; OR

(4) THE APPROPRIATE AUTHORIZATIONS TO COMMERCIALY HARVEST OYSTERS OR CLAMS UNDER A TIDAL FISH LICENSE ISSUED UNDER § 4-701 OF THE NATURAL RESOURCES ARTICLE.

(B)".

On page 2, in lines 3, 8, and 17, strike "**(B)**", "**(C)**", and "**(D)**", respectively, and substitute "**(C)**", "**(D)**", and "**(E)**", respectively; in lines 6, 8, and 17, in each instance, strike "RESTITUTION" and substitute "**DAMAGES**"; in line 10, after "**(1)**" insert "**(I)**"; in line 13, strike "**(2)**" and substitute "**(II)**"; in line 16, after "SEASONS" insert "**; OR**

(2) HAS AN EXECUTED LEASE AGREEMENT FOR AQUACULTURE, A WATER COLUMN, OR SUBMERGED LAND IN THE AREA AFFECTED BY THE CLOSURE";

in line 28, after "(i)" insert "**IF THE DEPARTMENT OF THE ENVIRONMENT CLOSES ANY AREA TO THE CATCHING OF OYSTERS OR CLAMS UNDER THIS SUBSECTION, THE DEPARTMENT OF THE ENVIRONMENT SHALL:**

1. IN COORDINATION WITH THE DEPARTMENT, NOTIFY SHELLFISH HARVESTERS OF THE CLOSURE;

2. MAKE THE FOLLOWING INFORMATION AVAILABLE TO THE PUBLIC:

A. THE LOCATION OF THE CLOSED AREA; AND

B. THE DURATION OF THE CLOSURE; AND

3. MAKE THE FOLLOWING OR SIMILAR STATEMENTS AVAILABLE TO THE PUBLIC:

A. THE CLOSURE IS NECESSARY TO PROTECT PUBLIC HEALTH;

B. SHELLFISH HARVESTERS HAVE BEEN NOTIFIED OF THE CLOSURE;

C. THE AREA WILL REOPEN WHEN OYSTERS AND CLAMS CAN BE HARVESTED SAFELY;

D. OYSTERS AND CLAMS HARVESTED OUTSIDE THE AREA REMAIN SAFE FOR PUBLIC CONSUMPTION; AND

E. TO PROTECT THE PUBLIC, ALL OYSTERS AND CLAMS HARVESTED IN MARYLAND ARE REQUIRED TO BE PLACED IN CONTAINERS THAT ARE TAGGED WITH THE HARVEST DATE AND LOCATION.

(II)”;

and in lines 30 and 32, in each instance, strike “(ii)” and substitute “**(III)**”.

SenatorBailey_FWA_SB580.pdf

Uploaded by: Jack Bailey

Position: FWA

JACK BAILEY
Legislative District 29
Calvert and St. Mary's Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 402
Annapolis, Maryland 21401
410-841-3673 · 301-858-3673
800-492-7122 Ext. 3673
Jack.Bailey@senate.state.md.us

District Office
Dorsey Professional Park
23680 Three Notch Road, Unit 101
Hollywood, Maryland 20636
240-309-4238

March 1, 2022

Senate Bill 580 – Sewer Systems and Wastewater Treatment Plants – Water Pollution – Shellfish Harvester Restitution

Dear Chairman Pinsky and Members of the Committee,

I am writing to introduce Senate Bill 580 – Sewer Systems and Wastewater Treatment Plants – Water Pollution – Shellfish Harvester Restitution. This bill would require an entity that is responsible for a sewer overflow, treatment plant bypass, or unlawful discharge from a wastewater treatment plant that results in an area being closed to shellfish harvesting to pay restitution to affected shellfish harvesters.

The idea for this bill came after conversations with local watermen following an incident that occurred in my district earlier this year, when a sewage leak resulted in the closure of a portion of the Potomac River in St. Mary's County. This incident not only caused major inconvenience and loss of economic opportunity for the shellfish harvesters who normally operate in that portion of the Potomac, it also resulted in people becoming ill. This led to an understandable hesitancy to purchase and eat Maryland oysters, regardless of whether they were harvested in the affected area, which resulted in further losses for our State's watermen.

Senate Bill 580 aims to hold those entities who are responsible for these sewage leaks accountable while providing relief to directly affected shellfish harvesters. This bill would require the payment of three times the economic damages to a harvester who is able to demonstrate that they had caught oysters or clams in the closed areas within the last two years. According to the fiscal note, the Department of the Environment reports that closure orders are rarely required and that there have been only seven in the past 15 years. However, it is also notable that five of those seven occurred in 2021 and 2022.

I am proposing three amendments to go with this bill. The first is to clarify that the bill is intended to provide damages and not restitution. The second is to add provisions that will ensure that the Department provides the public with information about the procedures that are associated with closure orders to make sure that they have confidence that Maryland oysters are safe to eat. The third was introduced at the request of the Chesapeake Bay Foundation to ensure that the bill covers aquaculture lease holders along with shellfish harvesters.

I respectfully request a favorable report with amendments on Senate Bill 580. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bailey".

Senator Jack Bailey

SB580_ShoreRivers_Fav w. Amend.pdf

Uploaded by: Matt Pluta

Position: FWA



**Testimony in SUPPORT of SB580- Sewer Systems and
Wastewater Treatment Plants - Water Pollution - Shellfish Harvester Restitution**

March 1, 2022

Dear Chairman Pinsky and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT** of **SB580** on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland's Eastern Shore with 3,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

This bill will hold wastewater treatment plant operators more accountable for the environmental and health impacts caused by their illegal spills and overflows. Specifically, this bill will provide restitution in the amount of three times the economic impact endured by a shellfish harvester in an area affected by a closure resulting from a wastewater spill or overflow.

ShoreRivers supports this bill because oyster leases on the Eastern Shore are becoming more plentiful as watermen and others are recognizing oyster farming as an economic and sustainable alternative to commercial harvesting of wild oysters. Meanwhile, sewer overflows in areas like Cambridge and St. Michaels are still prevalent, and when combined overflows are happening on average over ten times a year. This number is expected to increase as intensity and frequency of rainfall increases with climate change, causing a greater threat in the future to the individuals, families, and businesses seeking an alternative and sustainable path to oyster harvesting. Requiring restitution will add a much-needed level of accountability for these wastewater treatment plants to ensure they're operating in compliance with the law and addressing any significant noncompliance as it occurs.

Because the economic and environmental impacts from wastewater spills and overflows are not subject to oyster lease holders only, ShoreRivers suggests the committee consider an amendment that also allows individuals, specifically those of lower income who are fishing for subsistence, to claim restitution when an area they commonly fish in is impacted by a wastewater spill.

For these reasons stated above, ShoreRivers urges the Committee to adopt a **FAVORABLE** report on **SB580 with amendment**.

Sincerely,

Matt Pluta
Choptank Riverkeeper, on behalf of:

ShoreRivers

Isabel Hardesty, Executive Director
Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper
Elle Bassett, Miles-Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

Main Office
114 S. Washington St.
Suite 301
Easton, MD 21601
443.385.0511

Regional Office
111A North Main St.
Galena, MD 21635
410.810.7556

shorerivers.org

Regional Office
207 S. Water St.
Unit B
Chestertown, MD 21620
410.810.7556

SB0580-EHE_MACo_OPP.pdf

Uploaded by: Dominic Butchko

Position: UNF



Senate Bill 580

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

MACo Position: **OPPOSE**

To: Education, Health, and Environmental
Affairs Committee

Date: March 1, 2022

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** SB 580. This bill would establish mechanisms requiring municipal solid waste treatment plants to pay extraordinary damages to shellfish harvesters due to sewage overflows.

Maryland's seafood industry is a core part of the state's economy and a central piece to the state's collective identity. Ensuring that seafood is harvested out of the Chesapeake Bay watershed is not only a matter of public health and economic necessity, but it also speaks to the heart of what it means to be a Marylander. Maryland and her counties have been fighting for years to clean up the Bay and preserve its natural resources.

If enacted, SB 580 would empower costly litigation and an overly burdensome restitution structure that would place significant pressure on municipal solid waste treatment plants. There is a multitude of scenarios where it may not be entirely clear who is responsible for pollution in a specific area or where the cause of an overflow is due to circumstances entirely out of plant operators' control, i.e. natural disasters. While counties recognize that it is vital to maintain the health of the Bay, policy aimed at keeping actors responsible needs to be sensible. Targeting municipal solid waste treatment plants wrongly or when they are in the most critical need of resources is a recipe for ever-degrading policy outcomes.

The intent of SB 580 is noble, but the effect would be costly and take away the resources meant to solve the problem. Accordingly, MACo urges the Committee to issue an **UNFAVORABLE** report for SB 580.