

(PRE-FILED)

---

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

Requested: November 17, 2003

Introduced and read first time: January 14, 2004

Assigned to: Environmental Matters

---

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources - Harvest Reserve Areas - Oysters**

3 FOR the purpose of authorizing the Department of Natural Resources to designate by  
4 regulation an area as a harvest reserve area for oysters; authorizing the  
5 Department to establish certain requirements for harvest reserve areas by  
6 public notice; providing for a certain notice and effective date of certain actions  
7 relating to harvest reserve areas; providing for the use of certain biological  
8 criteria in determining the opening and closing of harvest reserve areas;  
9 altering certain publication requirements relating to natural oyster bars;  
10 defining certain terms; and generally relating to harvest reserve areas for  
11 oysters and the conservation and harvest of oysters.

12 BY repealing and reenacting, with amendments,  
13 Article - Natural Resources  
14 Section 4-1001, 4-1009, and 4-1103  
15 Annotated Code of Maryland  
16 (2000 Replacement Volume and 2003 Supplement)

17 BY adding to  
18 Article - Natural Resources  
19 Section 4-1009.1  
20 Annotated Code of Maryland  
21 (2000 Replacement Volume and 2003 Supplement)

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

24 **Article - Natural Resources**

25 4-1001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 [(m)] (O) "Natural oyster bar" means any submerged oyster bar, reef, rock, or  
36 area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912,  
37 and its amendments, or any area declared by any circuit court to be a natural oyster

1 bar, or any area on which the Department plants oysters or shells. A natural oyster  
2 bar also means any bar beneath the waters of the State where the natural growth of  
3 oysters abounds to the extent that the public has resorted to the bar for a livelihood,  
4 whether continuously or at intervals, during any oyster season within five years prior  
5 to the filing of any application for a lease of the area in question, or within five years  
6 prior to the making of a resurvey under the provisions of Subtitle 11. The actual  
7 conditions of the area in question at any time within the five-year period shall be  
8 considered in determining whether or not the area is a natural oyster bar.

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

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

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

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

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

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

24 (ii) 1. Are lifted by hand; or

25 2. May use power to assist lifting the tongs with a single  
26 lifting cable or rope attached at only a single point on 1 shaft of the tongs.

27 (2) "Tong" includes:

28 (i) Shaft tongs; and

29 (ii) Hand tongs.

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

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

33 4-1009.

34 (a) During the closed season for taking oysters, a person may take seed  
35 oysters from the natural bars of the State marked by the Department for a period not  
36 exceeding one month in any one year, at times designated by the Department. The

1 seed oysters shall be taken only in accordance with rules and regulations the  
2 Department prescribes, sold only to lessees of private oyster grounds, delivered only  
3 on leased oyster bottoms and subject to the provisions of § 4-1103(e) of this article.

4 (b) The Secretary may establish by rule or regulation daily catch limits on the  
5 quantities of oysters which may be caught from the natural oyster bars of the State,  
6 and may amend the daily catch limits to conserve the public oyster resource. Notice of  
7 the establishment or amendment of these catch limits shall be given by publication of  
8 notice in at least one newspaper [in each county] OF GENERAL CIRCULATION IN THE  
9 STATE AND ON THE WEBSITE OF THE DEPARTMENT not less than one week prior to  
10 the effective date.

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

17 (d) All oysters landed or offered for sale on any day by any person licensed to  
18 catch oysters which are in excess of the daily catch limit shall become the property of  
19 the State, and payment shall be made directly to the State by the buyer or receiver of  
20 the oysters at the same price paid the catcher for the balance of his catch. All funds  
21 received under this subsection shall be deposited to the credit of the Fisheries  
22 Research and Development Fund and shall be used for repletion of the natural oyster  
23 bars of the State.

24 4-1009.1.

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

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

29 (1) THE OPENING OR CLOSURE OF AN AREA FOR THE HARVESTING OR  
30 CONSERVATION OF OYSTERS;

31 (2) THE HARVEST LIMIT;

32 (3) THE SEASONS, DAYS, AND TIMES WHEN OYSTERS MAY BE  
33 HARVESTED;

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

35 (5) A MAXIMUM SIZE LIMIT.

36 (C) AN ACTION OF THE DEPARTMENT UNDER SUBSECTION (B) OF THIS  
37 SECTION MAY NOT BECOME EFFECTIVE UNTIL 48 HOURS AFTER NOTICE HAS BEEN  
38 PUBLISHED:

1 (1) IN AT LEAST ONE NEWSPAPER CIRCULATED IN EACH COUNTY IN  
2 WHICH THE AFFECTED WATERS ARE LOCATED; AND

3 (2) ON THE WEBSITE OF THE DEPARTMENT.

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

6 (1) GROWTH RATES;

7 (2) DISEASE PREVALENCE AND INTENSITY;

8 (3) MORTALITY THRESHOLDS; AND

9 (4) BIOMASS THRESHOLDS.

10 4-1103.

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

14 (b) The Department may close in any year no more than 30 percent of the  
15 natural oyster bars in the waters of the State. The Department may prohibit or  
16 restrict the catching of oysters on natural oyster bars whenever in its judgment these  
17 measures will increase the productivity or utility of these areas. The Department may  
18 plant oysters, shells, or other cultch or take any other restorative measures, which it  
19 deems advisable, on natural oyster bars. The Department shall publish a notice of  
20 intent to close any area of a natural oyster bar not less than 30 days prior to the  
21 proposed closing date in one or more newspapers of general circulation in [each  
22 county of the State] **THE COUNTY IN WHICH THE AFFECTED WATERS ARE LOCATED**  
23 **AND ON THE WEBSITE OF THE DEPARTMENT.** The Department shall schedule a public  
24 hearing on the proposal not less than 15 days before the proposed closing date. The  
25 hearing shall be held at the county seat of the county in which the affected waters are  
26 located. If the affected waters are located in more than one county then the hearing  
27 shall be held in that county seat closest to the affected waters. If the area affected is  
28 totally within State waters, then the hearing shall be held in Annapolis.

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

33 (d) The Department may select and reserve for its own use areas, to be known  
34 as seed areas, within the waters of the State for the propagation of seed oysters. The  
35 number, size, and location of these areas shall be determined from time to time by the  
36 Department. However, no more than 5 percent of the natural oyster bars of the State  
37 shall be designated as seed areas. The first million bushels of seed oysters produced  
38 in seed areas shall be planted on the natural oyster bars of the State. The Department  
39 shall publish a notice of reservation not less than 30 days before the closing date of

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

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

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

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

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

23 (iii) Adopt regulations necessary to implement the provisions of this  
24 subsection.

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

28 (3) The Department shall:

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

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

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

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

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

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

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

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