

(PRE-FILED)

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

Requested: November 17, 2003

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Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 10, 2004

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources - ~~Harvest Reserve Areas - Oysters~~ Oysters - Public Notice**
3 **and Harvest Reserve Areas**

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

13 BY repealing and reenacting, with amendments,
14 Article - Natural Resources
15 Section 4-1001, 4-1009, and 4-1103
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2003 Supplement)

18 BY adding to
19 Article - Natural Resources
20 Section 4-1009.1
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2003 Supplement)

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

3 **Article - Natural Resources**

4 4-1001.

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

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

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

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

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

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

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

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

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

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

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

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

33 [(k)] (M) "Hydraulic clam dredge" means any device used for dredging clams
34 which consists of a manifold through which water is forced under pressure for the
35 purpose of digging clams and working them into the mouth of the dredge where the

1 clams then are brought up to boat level by means of an escalator. "Hydraulic clam
2 dredge" includes the vessel on which the dredge is carried.

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

5 [(m)] (O) "Natural oyster bar" means any submerged oyster bar, reef, rock, or
6 area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912,
7 and its amendments, or any area declared by any circuit court to be a natural oyster
8 bar, or any area on which the Department plants oysters or shells. A natural oyster
9 bar also means any bar beneath the waters of the State where the natural growth of
10 oysters abounds to the extent that the public has resorted to the bar for a livelihood,
11 whether continuously or at intervals, during any oyster season within five years prior
12 to the filing of any application for a lease of the area in question, or within five years
13 prior to the making of a resurvey under the provisions of Subtitle 11. The actual
14 conditions of the area in question at any time within the five-year period shall be
15 considered in determining whether or not the area is a natural oyster bar.

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

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

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

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

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

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

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

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

34 (2) "Tong" includes:

35 (i) Shaft tongs; and

36 (ii) Hand tongs.

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

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

4 4-1009.

5 (a) During the closed season for taking oysters, a person may take seed
6 oysters from the natural bars of the State marked by the Department for a period not
7 exceeding one month in any one year, at times designated by the Department. The
8 seed oysters shall be taken only in accordance with rules and regulations the
9 Department prescribes, sold only to lessees of private oyster grounds, delivered only
10 on leased oyster bottoms and subject to the provisions of § 4-1103(e) of this article.

11 (b) The Secretary may establish by rule or regulation daily catch limits on the
12 quantities of oysters which may be caught from the natural oyster bars of the State,
13 and may amend the daily catch limits to conserve the public oyster resource. Notice of
14 the establishment or amendment of these catch limits shall be given by publication of
15 notice in at least one newspaper [in each county] OF GENERAL CIRCULATION IN THE
16 STATE, IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN EACH COUNTY
17 IN WHICH THE AFFECTED WATERS ARE LOCATED, AND ON THE WEBSITE OF THE
18 DEPARTMENT not less than one week prior to the effective date.

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

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

32 4-1009.1.

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

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

37 (1) THE OPENING OR CLOSURE OF AN AREA FOR THE HARVESTING OR
38 CONSERVATION OF OYSTERS;

39 (2) THE HARVEST LIMIT;

1 (3) THE SEASONS, DAYS, AND TIMES WHEN OYSTERS MAY BE
2 HARVESTED;

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

4 (5) A MAXIMUM SIZE LIMIT.

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

8 (1) IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE
9 STATE;

10 (2) IN AT LEAST ONE NEWSPAPER ~~CIRCULATED~~ OF GENERAL
11 CIRCULATION IN EACH COUNTY IN WHICH THE AFFECTED WATERS ARE LOCATED;
12 AND

13 ~~(2)~~ (3) ON THE WEBSITE OF THE DEPARTMENT.

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

16 (1) GROWTH RATES;

17 (2) DISEASE PREVALENCE AND INTENSITY;

18 (3) MORTALITY THRESHOLDS; AND

19 (4) BIOMASS THRESHOLDS.

20 4-1103.

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

24 (b) The Department may close in any year no more than 30 percent of the
25 natural oyster bars in the waters of the State. The Department may prohibit or
26 restrict the catching of oysters on natural oyster bars whenever in its judgment these
27 measures will increase the productivity or utility of these areas. The Department may
28 plant oysters, shells, or other cultch or take any other restorative measures, which it
29 deems advisable, on natural oyster bars. The Department shall publish a notice of
30 intent to close any area of a natural oyster bar not less than 30 days prior to the
31 proposed closing date in one or more newspapers of general circulation in [each
32 county of the State] THE STATE, IN ONE OR MORE NEWSPAPERS OF GENERAL
33 CIRCULATION IN EACH COUNTY IN WHICH THE AFFECTED WATERS ARE LOCATED,
34 AND ON THE WEBSITE OF THE DEPARTMENT. The Department shall schedule a public
35 hearing on the proposal not less than 15 days before the proposed closing date. The
36 hearing shall be held at the county seat of the county in which the affected waters are

1 located. If the affected waters are located in more than one county then the hearing
2 shall be held in that county seat closest to the affected waters. If the area affected is
3 totally within State waters, then the hearing shall be held in Annapolis.

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

8 (d) The Department may select and reserve for its own use areas, to be known
9 as seed areas, within the waters of the State for the propagation of seed oysters. The
10 number, size, and location of these areas shall be determined from time to time by the
11 Department. However, no more than 5 percent of the natural oyster bars of the State
12 shall be designated as seed areas. The first million bushels of seed oysters produced
13 in seed areas shall be planted on the natural oyster bars of the State. The Department
14 shall publish a notice of reservation not less than 30 days before the closing date of
15 any seed area in one newspaper of general circulation in the State and at least one
16 newspaper of general circulation in each county of the State. The Department shall
17 schedule a public hearing on the proposal not less than 15 days before the proposed
18 closing date. The hearing shall be held at the county seat of the county in which the
19 affected waters are located. If the affected waters are located in more than one county,
20 the hearing shall be held in that county seat closest to the affected waters, but if the
21 area affected is totally within State waters, the hearing shall be held in Annapolis.

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

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

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

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

37 (iii) Adopt regulations necessary to implement the provisions of this
38 subsection.

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

1 (3) The Department shall:

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

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

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

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

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

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

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

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