

SENATE BILL 168

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9lr0132

By: **Chair, Education, Health, and Environmental Affairs Committee (By Request – Departmental – Natural Resources)**

Introduced and read first time: January 21, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Natural Resources – Shellfish and Crabs – Public Process**

3 FOR the purpose of clarifying and altering the regulatory and public notification
4 requirements for the adoption of certain regulations relating to shellfish and
5 crabs by the Department of Natural Resources; prohibiting the reclassification
6 of clam bars to natural oyster bottom from being made unless a certain
7 environmental impact study is conducted and indicates a certain finding;
8 altering the authority of the Department to adopt regulations to name and close
9 areas to be designated as oyster sanctuaries; establishing certain notice and
10 hearing requirements for the adoption of certain regulations; and generally
11 relating to the regulatory authority of the Department of Natural Resources.

12 BY repealing and reenacting, with amendments,
13 Article – Natural Resources
14 Section 4–803, 4–1102, 4–1103, and 4–1106
15 Annotated Code of Maryland
16 (2005 Replacement Volume and 2008 Supplement)

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

19 **Article – Natural Resources**

20 4–803.

21 (a) The Department may adopt rules and regulations to effectuate the
22 following purposes:

23 (1) To restrict catching and possessing any blue crab;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (2) The methods by which crabs are taken;
- 2 (3) To close or open any specified area to catch crabs;
- 3 (4) To prohibit or restrict devices used to catch crabs;
- 4 (5) To establish seasons to catch crabs; and
- 5 (6) To establish minimum size limits for hard, soft, and peeler crabs.

6 However, this section does not permit the Department to change existing license fees
7 for catching, picking, canning, packing, or shipping cooked hard or soft crabs or crab
8 meat; or for selling, or shipping live hard or soft crabs by barrel or crate. The
9 Department may set license fees on types of gear or equipment if not otherwise set by
10 law.

11 (b) The Department may not adopt regulations to:

12 (1) Restrict a tidal fish licensee who catches crabs using trotline gear
13 to a workday of less than 8 hours per day, excluding time spent setting or taking up
14 gear;

15 (2) Establish time restrictions on a tidal fish licensee using trotline
16 gear for setting and taking up gear; or

17 (3) Prohibit a tidal fish licensee from obstructing the cull ring of a
18 hard crab pot at any time of the year in order to catch peeler crabs.

19 (c) The [Department's regulations may not become effective] **DEPARTMENT**
20 **MAY NOT ADOPT A FINAL REGULATION** under this section until the Department
21 first holds A [public hearings] **HEARING**. The Department shall advertise the time,
22 place, and purpose of the [hearings] **HEARING** in one newspaper of general daily
23 circulation in the State[, and at least in one newspaper circulated in the affected
24 region of each county whose waters may be directly affected by the proposed
25 regulations] **ONCE A WEEK** for 2 successive weeks in advance of the [hearings]
26 **HEARING**.

27 4-1102.

28 (a) (1) The Department may resurvey any submerged area of the State to
29 determine the position and extent of any natural oyster or clam bar and barren
30 bottom. If the Department finds, upon resurvey, that any natural oyster or clam bar is
31 located incorrectly on existing charts, or that the existing charts do not reflect the
32 actual condition of submerged lands, the Department shall amend the existing charts
33 or prepare new charts. In addition, the Department shall mark as accurately as
34 possible the correct location and bounds of each natural oyster or clam bar, then
35 existing in the area being surveyed, on any amended or new chart.

1 (2) A reclassification of submerged areas of the State to clam bars **OR**
2 **A RECLASSIFICATION OF CLAM BARS TO NATURAL OYSTER BOTTOM** may not be
3 made unless an environmental impact study indicates that a hydraulic clam dredge
4 will not impair the bottom or adversely affect other marine life. The Department shall
5 perform the environmental impact study based on survey data, public hearings, and
6 other available information. An initial environmental impact study shall be carried
7 out by the Department, in cooperation with qualified scientific organizations, for
8 reclassification actions at sites in the waters of Anne Arundel, Calvert, Kent, Queen
9 Anne's, and St. Mary's counties to evaluate the environmental impact of hydraulic
10 clam dredging.

11 (b) Within 90 days after the resurvey, a copy of the amended or new charts
12 shall be deposited with the Department and another copy sent to the clerk of the
13 circuit court where the resurveyed area is located or the county nearest this area. This
14 resurvey shall supersede the Oyster Survey of 1906 to 1912, and its amendments, and
15 any decision of any circuit court rendered prior to the completed resurvey.

16 A resurvey may not be effective until 30 days have lapsed after the filing date.
17 During this 30 day period, public notice of the filing of the amended chart shall be
18 given once a week for three successive weeks in a newspaper of general circulation in
19 every county.

20 (c) Before the Department reclassifies any submerged area of the State from
21 natural oyster bar, excluded from leasing, to barren bottom permitted to be leased
22 under the provisions of this subtitle, it shall advertise the time, place, and purpose for
23 reexamination, once a week for three successive weeks, in a newspaper of general
24 circulation in every county. The public may be present at the reexamination. If any
25 person present then offers to make further tests in the presence of employees
26 designated by the Department, the employees shall witness and make note of the
27 findings. If upon reexamination the Department proposes to reclassify the area from
28 natural bar to barren bottom, it first shall hold a public hearing, and the time, place,
29 and purpose shall be advertised pursuant to the provisions of this subsection. The
30 Department shall show any reclassification it determines to make on the amended or
31 new chart which the Department shall file in accordance with subsection (b) of this
32 section.

33 (d) (1) Within 30 days of the filing of the amended or new chart under
34 subsection (b) of this section, any person adversely affected by the decision of the
35 Department to reclassify any submerged area of the State from natural oyster bar to
36 barren bottom may file a petition with the Department protesting the reclassification.

37 (2) Proceedings on appeal shall be pursuant to those procedures set
38 forth in § 4-11A-06(c) of this title with the same rights of appeal from the decision of
39 the Department.

1 (3) A lease of the reclassified area, in whole or part, may not be
2 granted until the new or amended chart has been filed pursuant to subsection (b) of
3 this section and until 30 days have expired from date of filing.

4 (e) Notwithstanding any provisions of this section, a lease may not be
5 invalidated in any way by facts determined in any resurvey unless the lessee forfeits
6 his lease voluntarily or fails to pay rental or other fees.

7 4-1103.

8 (a) The Department shall take measures which in its judgment seem best
9 calculated to increase the productivity or utility of any part of the natural oyster bars
10 of the State, including:

11 (1) Identifying and using effective methods of cleaning diseased oyster
12 bars;

13 (2) Providing clean shell for the bars;

14 (3) Using hatchery produced oysters to replant sites; and

15 (4) Applying for a permit to dredge buried oyster shells.

16 (b) (1) The Department may [close]:

17 (I) **CLOSE** in any year no more than 30 percent of the natural
18 oyster bars in the waters of the State[. The Department may prohibit];

19 (II) **PROHIBIT** or restrict the catching of oysters on natural
20 oyster bars whenever in its judgment these measures will increase the productivity or
21 utility of these areas[. The Department may plant]; **AND**

22 (III) **PLANT** oysters, shells, or other cultch or take any other
23 restorative measures, which it deems advisable, on natural oyster bars. [The
24 Department shall, before publication, deliver to the Joint Committee on
25 Administrative, Executive, and Legislative Review a notice of intent to close an area of
26 a natural oyster bar, including all applicable reasons for the Department's act, and
27 publish the notice not less than 30 days prior to the proposed closing date in one or
28 more newspapers of general circulation in the State, in one or more newspapers of
29 general circulation in each county in which the affected waters are located, and on the
30 website of the Department. The Department shall schedule a public hearing on the
31 proposal not less than 15 days before the proposed closing date. The hearing shall be
32 held at the county seat of the county in which the affected waters are located. If the
33 affected waters are located in more than one county then the hearing shall be held in
34 that county seat closest to the affected waters. If the area affected is totally within
35 State waters, then the hearing shall be held in Annapolis.]

1 (2) (I) THE DEPARTMENT MAY ADOPT REGULATIONS TO NAME
2 AND CLOSE AREAS TO BE DESIGNATED AS OYSTER SANCTUARIES.

3 (II) 1. THE DEPARTMENT MAY NOT ADOPT A FINAL
4 REGULATION UNDER THIS SECTION UNTIL THE DEPARTMENT FIRST HOLDS A
5 PUBLIC HEARING.

6 2. THE DEPARTMENT SHALL ADVERTISE THE TIME,
7 PLACE, AND PURPOSE OF THE HEARING IN ONE NEWSPAPER OF GENERAL
8 CIRCULATION IN THE STATE, ONCE A WEEK FOR 2 SUCCESSIVE WEEKS IN
9 ADVANCE OF THE HEARING.

10 (III) THE DEPARTMENT MAY CLOSE BY PUBLIC NOTICE
11 WITHOUT HOLDING A PUBLIC HEARING ANY NATURAL OYSTER BAR IN THE
12 WATERS OF THE STATE, AFTER CONSULTATION WITH THE APPROPRIATE
13 COMMITTEE OF OYSTERMEN, AS DESCRIBED IN § 4-1106(B) OF THIS SUBTITLE.

14 (IV) AN ACTION TAKEN UNDER SUBPARAGRAPH (III) OF THIS
15 PARAGRAPH MAY NOT BECOME EFFECTIVE UNTIL:

16 1. A COPY OF THE NOTICE TO BE PUBLISHED HAS
17 BEEN DELIVERED TO THE JOINT COMMITTEE ON ADMINISTRATIVE,
18 EXECUTIVE, AND LEGISLATIVE REVIEW; AND

19 2. 48 HOURS AFTER NOTICE HAS BEEN PUBLISHED:

20 A. IN AT LEAST ONE NEWSPAPER OF GENERAL
21 CIRCULATION IN THE STATE;

22 B. IN AT LEAST ONE NEWSPAPER OF GENERAL
23 CIRCULATION IN EACH COUNTY IN WHICH THE AFFECTED WATERS ARE
24 LOCATED; AND

25 C. ON THE WEBSITE OF THE DEPARTMENT.

26 (V) THE NOTICE REQUIRED UNDER SUBPARAGRAPH (III) OF
27 THIS PARAGRAPH SHALL STATE ALL APPLICABLE REASONS FOR THE
28 DEPARTMENT'S ACTION.

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 reopened
32 until a lapse of 48 hours from the publication of the notice of reopening.

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

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

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

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

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

34 (iii) Adopt regulations necessary to implement the provisions of
35 this subsection.

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

39 (3) The Department shall:

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

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

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

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

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

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

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

22 4-1106.

23 (a) The Department may transplant oysters, shells, or other cultch from one
24 closed area to another, transplant or otherwise utilize within the State seed oysters
25 produced on shells or other cultch planted by the Department, or transplant or utilize
26 any other seed oyster which may accumulate on areas where seed oysters are not
27 likely to develop into desirable marketable oysters.

28 (b) (1) The Department shall have licensed oystermen in each tidewater
29 county of this State select a county committee of five representative licensed tongers,
30 who earn their livelihood by catching oysters, to confer with the Department
31 concerning oyster propagation conducted by the Department in that county. Each
32 county committee shall elect a chairman to serve on a statewide committee of
33 oystermen to advise the Department on statewide issues concerning oyster
34 propagation.

35 (2) A similar advisory committee that includes licensed dredgers shall
36 be selected to confer with the Department concerning the propagation of oysters in the
37 dredging areas. The committee shall elect a chairman to serve on a statewide

1 committee of oystermen to advise the Department on statewide issues concerning
2 oyster propagation.

3 (3) The Department shall appoint 5 representative, licensed
4 oystermen of this State who earn their livelihood catching oysters by using diving
5 apparatus as a committee to confer with the Department concerning oyster
6 propagation conducted by the Department in the areas of the State where the catching
7 of oysters by using diving apparatus is permitted. The committee shall select a
8 chairman to serve on a statewide committee of oystermen to advise the Department on
9 statewide issues concerning oyster propagation.

10 (4) The Department shall appoint 5 representative, licensed
11 oystermen of this State who earn their livelihood catching oysters by using patent
12 tongs as a committee to confer with the Department concerning oyster propagation
13 conducted by the Department in the areas of the State where the catching of oysters
14 by using patent tongs is permitted. The committee shall select a chairman to serve on
15 a statewide committee of oystermen to advise the Department on statewide issues
16 concerning oyster propagation.

17 (5) The term of membership for each committee is four years, except
18 that of the original committeemen, three are to serve a four-year term and two are to
19 serve a two-year term. Each term begins on March 1.

20 (6) If a vacancy occurs because a member is unable or unwilling to
21 serve, the Department immediately shall notify in writing each member of the
22 committee of the vacancy. The committee shall arrange for a new election to fill the
23 vacancy. If the vacancy is not filled within 60 days after the vacancy occurs, the
24 Department shall make the necessary appointments to fill each vacancy. When
25 committee members are selected or when any vacancy is filled, the Department shall
26 notify promptly the members of the General Assembly from the county of the names of
27 the committee members selected or appointed to fill a vacancy in that county. An
28 appointment to a vacancy in an unexpired term is limited to the remainder of the
29 term.

30 (7) The Department shall prescribe by rule and regulation the time,
31 place, and manner of selection of the oyster committees.

32 (8) The Fisheries Administration shall submit an annual summary of
33 the Fisheries Research and Development Fund to the committee of oystermen for each
34 county. The summary shall include an accounting of receipts and expenditures.

35 (c) The Department shall expend any fund appropriated in the budget for
36 oyster propagation for the planting of oyster shells, other cultch, or seed oysters on
37 natural oyster bars or seed areas, or for the purchase of necessary equipment.

1 [(d) The Department may close without holding a public hearing any natural
2 oyster bar in the waters of the State with the approval of the appropriate committee of
3 oystermen.]

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 2009.