

SENATE BILL 168

M2

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2009

CHAPTER _____

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~~ requiring the
11 Department to hold certain hearings in certain locations under certain
12 circumstances; and generally relating to the regulatory authority of the
13 Department of Natural Resources.

14 BY repealing and reenacting, with amendments,
15 Article – Natural Resources
16 Section 4-803, ~~4-1102, 4-1103, and 4-1106~~
17 Annotated Code of Maryland
18 (2005 Replacement Volume and 2008 Supplement)

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

21 **Article – Natural Resources**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 4-803.

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

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

5 (2) The methods by which crabs are taken;

6 (3) To close or open any specified area to catch crabs;

7 (4) To prohibit or restrict devices used to catch crabs;

8 (5) To establish seasons to catch crabs; and

9 (6) To establish minimum size limits for hard, soft, and peeler crabs.
10 However, this section does not permit the Department to change existing license fees
11 for catching, picking, canning, packing, or shipping cooked hard or soft crabs or crab
12 meat; or for selling, or shipping live hard or soft crabs by barrel or crate. The
13 Department may set license fees on types of gear or equipment if not otherwise set by
14 law.

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

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

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

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

23 (c) **(1)** The [Department's regulations may not become effective]
24 **DEPARTMENT MAY NOT ADOPT A FINAL REGULATION** under this section until the
25 Department first holds **A PUBLIC [public hearings] HEARING;**

26 **(I) IN SOUTHERN MARYLAND; AND**

27 **(II) ON THE EASTERN SHORE.**

28 **(2)** The Department shall advertise the time, place, and purpose of the
29 ~~[hearings] HEARING~~ in one newspaper of general daily circulation in the State~~],~~ and
30 at least in one newspaper circulated in the affected region of each county whose waters
31 may be directly affected by the proposed regulations~~],~~ **ONCE A WEEK** for 2 successive
32 weeks in advance of the ~~[hearings] HEARING.~~

1 ~~4-1102.~~

2 ~~(a) (1) The Department may resurvey any submerged area of the State to~~
3 ~~determine the position and extent of any natural oyster or clam bar and barren~~
4 ~~bottom. If the Department finds, upon resurvey, that any natural oyster or clam bar is~~
5 ~~located incorrectly on existing charts, or that the existing charts do not reflect the~~
6 ~~actual condition of submerged lands, the Department shall amend the existing charts~~
7 ~~or prepare new charts. In addition, the Department shall mark as accurately as~~
8 ~~possible the correct location and bounds of each natural oyster or clam bar, then~~
9 ~~existing in the area being surveyed, on any amended or new chart.~~

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

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

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

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

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

5 ~~(2) Proceedings on appeal shall be pursuant to those procedures set~~
 6 ~~forth in § 4-11A-06(e) of this title with the same rights of appeal from the decision of~~
 7 ~~the Department.~~

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

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

14 ~~4-1103.~~

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

18 ~~(1) Identifying and using effective methods of cleaning diseased oyster~~
 19 ~~bars;~~

20 ~~(2) Providing clean shell for the bars;~~

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

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

23 ~~(b) (1) The Department may [close];~~

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

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

29 ~~(III) PLANT oysters, shells, or other cultch or take any other~~
 30 ~~restorative measures, which it deems advisable, on natural oyster bars. [The~~
 31 ~~Department shall, before publication, deliver to the Joint Committee on~~
 32 ~~Administrative, Executive, and Legislative Review a notice of intent to close an area of~~
 33 ~~a natural oyster bar, including all applicable reasons for the Department's act, and~~

~~publish the notice not less than 30 days prior to the proposed closing date in one or more newspapers of general circulation in the State, in one or more newspapers of general circulation in each county in which the affected waters are located, and on the website of the Department. The Department shall schedule a public hearing on the proposal not less than 15 days before the proposed closing date. The hearing shall be held at the county seat of the county in which the affected waters are located. If the affected waters are located in more than one county then the hearing shall be held in that county seat closest to the affected waters. If the area affected is totally within State waters, then the hearing shall be held in Annapolis.]~~

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

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

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

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

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

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

~~2. 48 HOURS AFTER NOTICE HAS BEEN PUBLISHED:~~

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

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

~~C. ON THE WEBSITE OF THE DEPARTMENT.~~

1 ~~(v) THE NOTICE REQUIRED UNDER SUBPARAGRAPH (III) OF~~
2 ~~THIS PARAGRAPH SHALL STATE ALL APPLICABLE REASONS FOR THE~~
3 ~~DEPARTMENT'S ACTION.~~

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

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

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

36 ~~(i) Establish aquaculture seed areas not exceeding a total~~
37 ~~aggregate of 90 acres in the State;~~

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

1 ~~(iii) Adopt regulations necessary to implement the provisions of~~
2 ~~this subsection.~~

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

6 ~~(3) The Department shall:~~

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

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

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

16 ~~(iv) Maintain for each aquaculture seed area a record detailing~~
17 ~~all expenditures required to create and maintain the seed area and all proceeds of the~~
18 ~~sale of seed oysters produced in the seed area;~~

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

23 ~~(vi) Consult with the County Oyster Propagation Committee in~~
24 ~~establishing an aquaculture seed area in that county.~~

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

28 ~~4-1106.~~

29 ~~(a) The Department may transplant oysters, shells, or other cultch from one~~
30 ~~closed area to another, transplant or otherwise utilize within the State seed oysters~~
31 ~~produced on shells or other cultch planted by the Department, or transplant or utilize~~
32 ~~any other seed oyster which may accumulate on areas where seed oysters are not~~
33 ~~likely to develop into desirable marketable oysters.~~

34 ~~(b) (1) The Department shall have licensed oystermen in each tidewater~~
35 ~~county of this State select a county committee of five representative licensed tongers,~~
36 ~~who earn their livelihood by catching oysters, to confer with the Department~~

~~1 concerning oyster propagation conducted by the Department in that county. Each
2 county committee shall elect a chairman to serve on a statewide committee of
3 oystermen to advise the Department on statewide issues concerning oyster
4 propagation.~~

~~5 (2) A similar advisory committee that includes licensed dredgers shall
6 be selected to confer with the Department concerning the propagation of oysters in the
7 dredging areas. The committee shall elect a chairman to serve on a statewide
8 committee of oystermen to advise the Department on statewide issues concerning
9 oyster propagation.~~

~~10 (3) The Department shall appoint 5 representative, licensed
11 oystermen of this State who earn their livelihood catching oysters by using diving
12 apparatus as a committee to confer with the Department concerning oyster
13 propagation conducted by the Department in the areas of the State where the catching
14 of oysters by using diving apparatus is permitted. The committee shall select a
15 chairman to serve on a statewide committee of oystermen to advise the Department on
16 statewide issues concerning oyster propagation.~~

~~17 (4) The Department shall appoint 5 representative, licensed
18 oystermen of this State who earn their livelihood catching oysters by using patent
19 tongs as a committee to confer with the Department concerning oyster propagation
20 conducted by the Department in the areas of the State where the catching of oysters
21 by using patent tongs is permitted. The committee shall select a chairman to serve on
22 a statewide committee of oystermen to advise the Department on statewide issues
23 concerning oyster propagation.~~

~~24 (5) The term of membership for each committee is four years, except
25 that of the original committeemen, three are to serve a four year term and two are to
26 serve a two year term. Each term begins on March 1.~~

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

~~37 (7) The Department shall prescribe by rule and regulation the time,
38 place, and manner of selection of the oyster committees.~~

~~39 (8) The Fisheries Administration shall submit an annual summary of
40 the Fisheries Research and Development Fund to the committee of oystermen for each
41 county. The summary shall include an accounting of receipts and expenditures.~~

1 ~~(e) The Department shall expend any fund appropriated in the budget for~~
2 ~~oyster propagation for the planting of oyster shells, other cultch, or seed oysters on~~
3 ~~natural oyster bars or seed areas, or for the purchase of necessary equipment.~~

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.