

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 862 (Delegate Smigiel)  
Environmental Matters

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Natural Resources - Oyster Harvest - Closure of State Waters

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This bill requires the Department of Natural Resources (DNR) to keep tidal waters of the State open for oyster harvesting unless DNR determines an area must be closed for public safety, homeland security, or other reasons required by law. DNR is required to manage tidal water resources to support, promote, and enhance oyster harvest opportunities, and to prevent, to the greatest practical extent, any net loss of tidal waters available for oyster harvesting or of oyster harvest authorizations available to tidal fish licensees in the State. DNR must submit an annual report by October 1 of each year, beginning in 2010, describing the tidal waters closed to oyster harvest during the previous year and the reasons for the closures as well as the tidal waters opened to oyster harvest during the previous year to compensate for closures.

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Fiscal Summary

**State Effect:** No material effect on State operations or finances. DNR can comply with the reporting requirement with existing resources.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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Analysis

**Current Law:** DNR is required to prepare fishery management plans for a number of specified species, including oysters. A “fisheries management plan” is a document or report that contains a systematic description of a given fishery and the objectives and conservation and management measures for the fishery. Conservation and management

measures adopted under a fisheries management plan seek to prevent overfishing, while attempting to achieve the best and most efficient utilization of the State's fishery resources; are based on the best information available; may not discriminate unfairly among groups of fishermen or have economic allocation as its sole purpose; must account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and must avoid duplication of regulatory efforts and unnecessary costs to the State and to any other person.

The Secretary of Natural Resources adopts fisheries management plans and associated conservation and management measures by regulation. The State's fisheries resources must be harvested in accordance with the conservation and management measures in the fishery management plan and any regulations implementing or amending the plan.

DNR is required to present an annual fisheries management plan report to the Legislative Policy Committee; the Education, Health, and Environmental Affairs Committee; and the Environmental Matters Committee.

**Background:** At its peak, the bay's oyster population acted as a natural filter, removing 133 million pounds of nitrogen annually. Affected by diseases, habitat loss, and harvest pressures, the oyster stock has significantly declined. Today, the oyster population has dropped to less than 1% of its original population, and remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year.

An Environmental Impact Statement (EIS) is being prepared by Maryland, Virginia, and the U.S. Army Corps of Engineers evaluating the option of introducing a nonnative oyster as a means of establishing a self-sustaining oyster population, in addition to other alternative approaches to increasing oysters in the bay. In October 2008, a draft Programmatic Environmental Impact Statement for oyster restoration in the bay was released that proposed introducing the Asian oyster and continuing efforts to restore the native oyster. The final EIS is scheduled to be published in the Federal Register in April 2009, with the Record of Decision published approximately two months later.

The Maryland Department of Agriculture, in consultation with DNR, the Maryland Department of the Environment, the Department of Health and Mental Hygiene, the Maryland Aquaculture Coordinating Council, and the University of Maryland, developed the *Maryland Shellfish Aquaculture Plan: Enhancing the Environment through Private Sector Investment* report in September of 2008. This report lists nine recommendations on how to develop a sustainable fisheries industry while creating opportunity for prospective shellfish growers to establish their businesses in Maryland waters.

**Small Business Effect:** To the extent the bill results in additional oysters being harvested, small fishing businesses benefit. However, the bill may result in a significant

overall reduction in the oyster population and decrease small business opportunities for oyster harvesting. Furthermore, DNR advises areas open for harvest are not available for lease, limiting aquaculture business opportunities.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2009  
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