

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 927

(Delegate Weir, *et al.*)

Environmental Matters

Natural Resources - Prohibition on Dredging Buried Oyster Shells on Man-O-War Shoals

This bill prohibits the Department of Natural Resources (DNR) from dredging buried oyster shells on Man-O-War Shoals.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances, as DNR has not yet sought or been granted the authority to dredge buried oyster shells. However, if DNR is authorized to dredge, to the extent the bill limits dredging efforts, DNR expenditures may increase as alternative materials are two to three times more expensive than oyster shell.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: DNR is required to take measures which, in its judgment, seem best calculated to increase the productivity or utility of any part of the natural oyster bars of the State, including identifying and using effective methods of cleaning diseased oyster bars; providing clean shell for the bars; and using hatchery produced oysters to replant sites.

DNR is also authorized to close natural oyster bars; prohibit or restrict the catching of oysters on natural oyster bars in the waters of the State; plant oysters, shells, or other

cultch or take any other restorative measures deemed advisable on natural oyster bars; and select and reserve areas for the propagation of seed oysters.

Chapter 325 of 2008 requires DNR to apply to the Maryland Department of the Environment (MDE) and U.S. Army Corps of Engineers for permits to dredge buried oyster shells by December 1, 2008, if the Maryland Oyster Advisory Commission (OAC) recommends the application. Before making such a recommendation, OAC has to review the findings of the draft Environmental Impact Statement (EIS) concerning evaluation of oyster restoration alternatives for the Chesapeake Bay.

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 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 as well as other alternative approaches to increasing oysters in the bay. In October 2008, a draft Programmatic Environmental Impact Statement (PEIS) 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.

OAC, formed pursuant to Chapters 113/114 of 2007, included in the findings of its 2007 interim report that implementation of a large-scale oyster bar habitat rehabilitation program, dependent on the availability of large quantities of oyster shell and alternate substrate materials, is necessary for oyster restoration in the bay. A scientific peer review panel for EIS has similarly indicated that oyster restoration will depend on a large-scale oyster bar rehabilitation program.

DNR's permit from the U.S. Army Corps of Engineers and MDE authorizing dredging in the upper bay expired in September 2006 and was not renewed due to stakeholder conflict. In response to Chapter 325 of 2008, in August 2008 OAC adopted a statement encouraging DNR to seek a permit to dredge fossil shell at Man-O-War Shoals, which is located at the mouth of the Patapsco River. Man-O-War Shoals is an historic oyster reef and popular sport fishing destination estimated to contain between 86 million and 103 million bushels of shell, the single largest known shell deposit in the State. DNR has developed a draft permit application that proposes dredging a total of 30 million bushels of oyster shell at Man-O-War Shoals.

Bills have been introduced at the 2009 session (Senate Bill 175 and House Bill 103) that extend the deadline by which DNR must apply for an oyster shell dredging permit from December 1, 2008, to July 1, 2009.

Additional Information

Prior Introductions: None.

Cross File: SB 125 (Senator Brochin, *et al.*) - Education, Health, and Environmental Affairs.

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

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