

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

Senate Bill 443 (Senator Colburn)
 Education, Health, and Environmental Affairs

Natural Resources - Public Shellfish Fishery Area - Standards

This bill requires the Department of Natural Resources (DNR) to establish as part of the public shellfish fishery area (PSFA) any area where a biological survey shows that the density of oysters is at least one oyster that measures one inch or more (from hinge to bill) per acre.

Fiscal Summary

State Effect: DNR general fund expenditures increase by \$1.0 million annually in FY 2013 through 2017 to conduct a sonar survey of oyster density throughout the Chesapeake Bay. DNR special fund lease revenue decreases to the extent the bill prevents aquaculture leasing from occurring.

(\$ in millions)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$1.0	\$1.0	\$1.0	\$1.0	\$1.0
Net Effect	(\$1.0)	(\$1.0)	(\$1.0)	(\$1.0)	(\$1.0)

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Since 1994, the Chesapeake Bay’s oyster population has languished at 1% of historic levels; suitable oyster habitat has decreased 80%, and the number of harvesters has dwindled from 2,000 in the mid-1980s to approximately

550 annually since 2002. To help reverse this trend, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for a public oyster fishery. Since the 2010 implementation of the plan, 28 new oyster aquaculture leases have been approved for more than 20 individuals on approximately 650 acres. An additional 52 lease applications covering 620 acres are currently being processed.

Public Shellfish Fishery Areas

A "public shellfish fishery area" is an area in which shellfish is harvested for commercial purposes. PSFAs are designated in *Public Shellfish Areas of the Chesapeake Bay and Its Tidal Tributaries (August 2011)* which is incorporated by reference into State regulations. In consultation with the Oyster Advisory Commission, DNR must identify PSFAs in the bay based on commercial harvesting activity during the three years preceding June 1, 2009, any surveys conducted by DNR, and other quantitative data known or made available to DNR. Currently, DNR does not designate PSFAs based on specified oyster density criteria. Aquaculture leasing may not occur in PSFAs.

A person may petition DNR to declassify a portion of a PSFA by submitting a specified aquaculture lease application. DNR's standard for declassification is an average density of equal to or below the maximum threshold of one oyster that is one inch or greater per square meter. To date, DNR has processed two lease applications that declassified 35.5 acres of PSFA.

According to DNR, there are 176,664 acres of PSFAs in Maryland. DNR advises that some of this acreage has a density of oyster too low to support a commercial livelihood but is compatible for aquaculture. For watermen harvesting oysters to break even financially, DNR estimates that an average density of one market sized oyster (three inches) per square meter is necessary.

Shellfish Aquaculture

In an effort to encourage the expansion of the aquaculture industry in the State, Chapters 173 and 174 of 2009 require DNR to establish Aquaculture Enterprise Zones (AEZs) in the Chesapeake Bay by regulation. AEZs are areas of the bay approved for the leasing of submerged land or the water column. Aquaculture leases are leases of any submerged land and the water column in an AEZ for cultivating oysters or other shellfish for commercial purposes. DNR is also authorized to issue submerged land leases in the Atlantic Coastal Bays and in nonAEZ areas of the Chesapeake Bay, subject to specified

requirements. A submerged land lease is any land lying beneath the waters of the State leased by the State to any person for cultivating oysters and other shellfish for commercial purposes.

Chapter 411 of 2011 establishes DNR as the lead State agency for (1) coordinating and streamlining the process of applying for a State aquaculture permit; (2) promoting, coordinating, and marketing aquaculture and aquaculture products; and (3) enforcing laws, regulations, and rules.

State Fiscal Effect: Under the bill, an area would become a PSFA if a survey shows that the density of oysters is at least one oyster measuring at least one inch per acre. DNR estimates that using this criterion to identify a PSFA would effectively increase the current PSFA acreage significantly. This expanded PSFA acreage would no longer be available for aquaculture leasing, unless a person petitions successfully otherwise. However, DNR advises that it is not likely that it will be able to declassify a PSFA that has suitable conditions for aquaculture under the bill.

In accordance with current regulations, DNR aquaculture revenues are generated by a \$150 to \$300 lease application fee, a \$3.50 per acre annual rental rate for a submerged land lease, and a \$40 per acre annual rental rate for a water column/off-bottom lease. Therefore, to the extent the bill prevents aquaculture leasing from occurring, DNR special fund revenues from lease fees decrease in fiscal 2013 and future years.

The bill also has a significant impact on DNR's expenditures. To implement the bill, DNR must determine what areas of the bay have a density of oysters that is at least one oyster per acre. Therefore, DNR must conduct a biological survey using sonar technology to determine oyster densities. DNR general fund expenditures increase by \$1.0 million annually for five years for contractual services associated with completing a sonar survey to establish oyster densities throughout the bay. Subsequent and/or concurrent general fund expenditures may be required in fiscal 2013 through 2017 to conduct patent tong surveys to attain spatially accurate densities. If so, DNR advises the total cost would double.

Finally, the proposed oyster density criterion for PSFAs significantly impacts existing oyster sanctuaries and other protected areas. There are 239,701 acres of oyster sanctuaries established through regulation and closed to commercial harvest. Restoration efforts in these areas would be compromised as the sanctuaries that meet the one oyster per acre density would be reclassified.

Small Business Effect: To the extent the bill makes additional area available for harvesting oysters, small fishing businesses benefit potentially significantly. However, small fishing businesses are negatively impacted to the extent the bill limits the area

available for aquaculture leasing. Based on the current planting requirements for an active lease and an estimated 30% survivability of the planted oysters, DNR estimates an aquaculture survival rate of 1,000 bushels or 300,000 oysters per acre. The market for oysters ranges from approximately \$30 per bushel for the basket trade to 35 cents per oyster for restaurant raw bar consumption. Therefore, *for illustrative purposes*, harvesting an acre of aquaculture-grown oysters could generate \$30,000 to \$105,000 in revenue.

Additional Information

Prior Introductions: None.

Cross File: HB 593 (Delegates Haddaway-Riccio and Eckardt) - Environmental Matters.

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

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