

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 924

(Delegate Gilchrist, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Natural Resources - Oyster Management - Prohibited Actions

This bill prohibits the Department of Natural Resources (DNR) from taking any action to reduce or alter the boundaries of the oyster sanctuaries established in “Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries (September 2010)” until the department has developed a fisheries management plan for the scientific management of the oyster stock following the completion of its reports required under Chapter 703 of 2016 (for which the final report is due by December 1, 2018). The bill’s prohibition may not be construed to prevent DNR from (1) selecting the final two tributaries for tributary-scale oyster restoration sanctuary projects in accordance with the 2014 Chesapeake Bay Agreement or (2) establishing, in DNR’s discretion, any dimensions for a tributary-scale oyster restoration sanctuary project.

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: Special fund revenues generated from the oyster fishery may decrease in FY 2018 and/or FY 2019, to the extent changes to the oyster sanctuaries are made in the absence of the bill that increase the oyster harvest in those years. Expenditures are not directly affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Chapter 703 of 2016

Chapter 703 requires DNR, as part of its fishery management plan for oysters, to conduct a study, in consultation with the University of Maryland Center for Environmental Science, to:

- identify all available data that may be used to conduct a stock assessment;
- identify possible stock assessment techniques that may be applied based on available data and specified objectives for the resource and the fishery;
- conduct a stock assessment that provides guidance for the development of specified biological reference points; and
- identify objective and measurable means to determine if the public oyster fishery is operating within the biological reference points.

The study must be submitted to a peer review panel composed of stock assessment experts.

Based on a determination of whether the public oyster fishery is operating within the biological reference points and DNR's authority under provisions governing fishery management plans, the department, through a public process in collaboration with the commercial oyster industry, conservation organizations, and other concerned stakeholders, must identify management strategies to address the maintenance of a sustainable oyster population and fishery.

DNR is required to submit to the Governor, the Oyster Advisory Commission, and the General Assembly two interim progress reports, by December 1, 2016, and December 1, 2017, and a final report by December 1, 2018, on the study and any proposed or implemented oyster management strategies. DNR indicates, in its December 1, 2016 interim progress report that, while possible management approaches will be identified in the final 2018 report, the process for selecting, refining, and implementing specific management approaches will continue beyond December 2018.

Fishery Management Plans

DNR is required by statute to prepare fishery management plans for various listed species, including oysters, and has specified authority to prepare plans for additional species. The plans contain a systematic description of a given fishery and the objectives and conservation and management measures for the fishery. Various requirements apply to both the plans and the conservation and management measures in the plans. Once a fishery

management plan has been adopted by regulation, the fishery must be harvested in accordance with the conservation and management measures in the plan and any regulations implementing or amending that plan.

Oyster Sanctuaries

In response to the oyster population in the Chesapeake Bay languishing at 1% of historic levels, decreased suitable oyster habitat, and a dwindling number of harvesters, 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.

DNR recently completed a five-year review of the effectiveness of the locations of the oyster sanctuaries, public shellfish fishery areas (PSFAs), and aquaculture areas. DNR had committed in 2010, when it overhauled its oyster regulations, to undertake the review every five years and propose changes where needed. "Effectiveness" is measured against the objectives of the 2010 changes: to restore the ecological function of oysters and to enhance the commercial fishery for its economic and cultural benefits.

In the review, DNR found that there is justification to consider adjustments to the boundaries of the current management areas. DNR has placed the sanctuaries and PSFAs into "tiers," which reflect relative oyster productivity of the areas and are intended to allow for a fair distribution of the most productive oyster areas if areas are reclassified – allowing for trading of sanctuaries and PSFAs within equivalent tiers. **Appendix 1 – Existing Oyster Sanctuaries** shows the location of the oyster sanctuaries by tier, based on DNR geographic information system data. DNR indicates that it plans to move forward with potential changes based on the five-year review separate from the study required under Chapter 703 and any management changes resulting from the study. Some of the changes based on the five-year review are expected to be made with the intent of benefitting the commercial fishery.

"Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries (September 2010)," referenced in the bill, designates oyster sanctuaries in the Chesapeake Bay and its tidal tributaries and is incorporated by reference in DNR regulations.

Tributary-scale Oyster Restoration Sanctuary Projects

The 2014 Chesapeake Bay Agreement, which establishes goals and outcomes for the restoration of the Chesapeake Bay, its tributaries, and the lands that surround them, establishes a goal of restoring native oyster habitat and populations in 10 tributaries (in

Maryland and Virginia) by 2025 and ensuring their protection. The three Tier 0 sanctuaries (Harris Creek, Tred Avon River, and Little Choptank River), shown in Appendix 1, will contribute toward that goal, and DNR and the Oyster Advisory Commission are in the process of selecting the fourth and fifth tributaries in Maryland to be restored.

State Revenues: Special fund revenues generated from the oyster fishery may decrease in fiscal 2018 and/or fiscal 2019, depending on (1) the extent to which changes to the management areas based on the five-year review are undertaken in the 2017-2018 and 2018-2019 oyster seasons (October through March) in the absence of the bill and (2) the impact of those changes on the oyster harvest. This assumes that the bill's prohibition, in practice, only prohibits changes from being implemented in those two fiscal years/oyster seasons and not future years/seasons.

Included among the potentially affected revenues are revenues from oyster severance and export inspection taxes. The severance tax is \$1 per bushel of oysters, and the export inspection tax is 30 cents per bushel shipped outside the State, with revenues credited to DNR's Fisheries Research and Development Fund. In fiscal 2016, the department collected an estimated \$398,384 in severance tax revenues and an estimated \$18,232 in export inspection tax revenues.

Small Business Effect: Commercial licensees may be negatively impacted, depending on the extent to which changes to the management areas based on the five-year review are undertaken in the absence of the bill and the impact of those changes on the oyster harvest. During the 2015-2016 season, 383,534 bushels of oysters were harvested. For that season, the average dockside value was \$39 per bushel.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources; University System of Maryland; Chesapeake Bay Program; Department of Legislative Services

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Appendix 1 – Existing Oyster Sanctuaries

