

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 830

(Senator Elfreth)

Education, Health, and Environmental Affairs

Environment and Transportation

Natural Resources - Fishery Management Plans - Oysters

This bill reestablishes the Oyster Advisory Commission with new membership and requires the Department of Natural Resources (DNR) and the commission, in coordination with the University of Maryland Center for Environmental Science (UMCES), to develop a package of consensus recommendations for enhancing and implementing the fishery management plan for oysters. DNR must implement the 2019 Fishery Management Plan for Oysters and must not reduce or alter boundaries of existing oyster sanctuaries until a fisheries management plan has been developed based on the consensus recommendations. Public listening sessions must be held to identify possible management actions for use in the public oyster fishery. DNR must periodically review and assess the oyster stock and, with stakeholder input, implement management actions that increase oyster habitat, maintain harvest, and grow the oyster stock. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$872,000 in FY 2020. The FY 2020 budget restricts \$500,000 in general funds for this (and other) legislation, as discussed below. Future year expenditures reflect ongoing costs that decrease over time. Revenues are not affected. It is assumed that there is no impact in FY 2019, despite the bill's June 1, 2019 effective date.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	872,000	900,000	514,000	169,000	175,000
Net Effect	(\$872,000)	(\$900,000)	(\$514,000)	(\$169,000)	(\$175,000)

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Oyster Advisory Commission

The bill reestablishes the Oyster Advisory Commission, with new membership that includes various representatives of the oyster industry and conservation and research organizations. DNR, in coordination with UMCES, must convene the members of the commission by June 1, 2019. The bill also designates, as persons who must provide information to the commission at the request of the commission but who may not participate as voting members, (1) State and federal agencies tasked with oyster management and restoration responsibilities, including DNR, the National Oceanographic and Atmospheric Administration, and the U.S. Army Corps of Engineers; (2) two members of the Senate, one from each political party, appointed by the President of the Senate; and (3) two members of the House of Delegates, one from each political party, appointed by the Speaker of the House.

DNR may not use funds allocated to a county oyster committee for the commission. The terms of the members serving on the commission before the effective date of the bill terminate when the bill takes effect and the terms of the new members convened under the bill begin when the bill takes effect.

Consensus Recommendations

DNR, in coordination with UMCES and the commission, must develop a package of consensus recommendations for enhancing and implementing the fishery management plan for oysters. The recommendations must be informed by a collaboratively developed, science-based modeling tool to quantify the long-term impacts of identified management actions and possible combinations of management actions on (1) oyster abundance; (2) oyster habitat; (3) oyster harvest; (4) oyster harvest revenue; and (5) nitrogen removal.

DNR must hold public listening sessions throughout the State to identify possible management actions for use in the public oyster fishery.

The commission, in coordination with DNR and with the assistance of external conflict resolution and facilitation specialists, must (1) develop a package of consensus recommendations through a facilitated consensus solutions process, based on a 75% majority agreement level for each recommendation; (2) recommend management actions or combinations of management actions to achieve the targets identified in the oyster stock assessment with the goal of increasing oyster abundance; and (3) review model

results for each management action or combination of management actions to inform its recommendations.

Notwithstanding specified provisions of the Open Meetings Act, and with the consent of a 75% majority of its members, the commission may meet and deliberate in closed session to develop the package of consensus recommendations for enhancing and implementing the fishery management plan for oysters.

Alteration of Chapter 27 of 2017 Prohibition – and – Oyster Management Plan

The bill alters the existing prohibition under Chapter 27 of 2017 against DNR reducing or altering the boundaries of existing oyster sanctuaries until the department has developed a fisheries management plan for the scientific management of the oyster stock following completion of specified reports. Instead, under the bill, DNR may not reduce or alter the boundaries of existing oyster sanctuaries until the department has developed a fisheries management plan for the scientific management of the oyster stock based on management strategies and measurements recommended by the Oyster Advisory Commission through the consensus recommendations process and determined by the department in consultation with UMCES.

The bill also requires that the fishery management plan developed in accordance with the bill's consensus recommendations provisions (1) end the overfishing of oysters in all areas and regions of the Chesapeake Bay and its tributaries where overfishing has occurred according to biological reference points established by the most recent oyster stock assessment, while maintaining a harvest in the fishery; (2) achieve fishing mortality rates at target levels; (3) increase oyster abundance; (4) increase oyster habitat; and (5) facilitate the long-term sustainable harvest of oysters, including the public fishery.

The bill requires DNR to implement the 2019 Fishery Management Plan for Oysters pending the development of consensus recommendations in accordance with the bill.

Reporting

DNR must (1) submit interim reports on the development of the package of consensus recommendations by December 1, 2019; August 1, 2020; and December 1, 2020, to the Governor and the General Assembly and (2) provide a final report by July 1, 2021, which includes an implementation schedule for the consensus recommendations.

Periodic Review and Assessment

In order to be responsive to changes in the oyster resource due to environmental conditions, DNR must (1) review the status of the stock relative to reference points every two years

and conduct a benchmark stock assessment every six years with consideration of new methods and with external peer review and (2) with the input of interested stakeholders, implement management actions that increase oyster habitat, maintain harvest, and grow the oyster stock.

Current Law/Background:

Recent Oyster Management/Restoration and Related Legislative Action

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 assigned 76% of the bay's remaining quality oyster habitat to the public oyster fishery.

Chapter 703 of 2016 required DNR, as part of its fishery management plan for oysters, to conduct a specified study, in consultation with UMCES, on the oyster stock (including a stock assessment and development of biological reference points) and management strategies to address the maintenance of a sustainable oyster population and fishery.

DNR completed, in 2016, a review of the effectiveness of the location of the oyster sanctuaries, public shellfish fishery areas, and aquaculture areas, finding justification to consider adjustments to the boundaries of the management 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" was 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.

Chapter 27 of 2017, however, subsequently prohibited DNR from reducing or altering the boundaries of oyster sanctuaries until the department had developed a fisheries management plan for the scientific management of the oyster stock after the completion of reports required under Chapter 703 of 2016.

DNR submitted, on December 1, 2018, a report on the study conducted under Chapter 703 and recently also presented a draft 2019 oyster fishery management plan to the Oyster Advisory Commission. The commission advises DNR on matters related to oysters in the Chesapeake Bay and strategies for rebuilding and managing the oyster population.

OysterFutures

Following a two-year research and consensus building process, the OysterFutures Stakeholder Workgroup, funded by the National Science Foundation and supported by UMCES, submitted [recommendations](#) for oyster management and restoration in the Choptank and Little Choptank rivers to DNR in May 2018. The goal of the workgroup was to “develop a package of consensus recommendations for oyster policies and management that meet the needs of industry, citizen, and government stakeholders in the Choptank and Little Choptank rivers.” Nine workgroup meetings were held, convened by professional independent facilitators, with a representative group of stakeholders from interest groups that affect and are affected by the oyster fishery. The process included the development of a computer model, with the help of a research team, to forecast the effects of oyster management and restoration options 25 years into the future.

Additional Information

For additional information on oyster management and restoration in Maryland, see [Issue Papers, 2019 Legislative Session](#), Department of Legislative Services, pgs. 203-205 (“Oyster Restoration”) (November 2018).

State Expenditures: General fund expenditures increase by \$872,000 in fiscal 2020 to meet the requirements of the bill. The estimate reflects the cost of:

- UMCES faculty support (\$452,000) – a portion of UMCES faculty salaries are supported by UMCES operating funds, and the operating funds are supplemented by grants and contracts for the work the faculty perform (in this case, general funds would supplement the salaries of a team of faculty/scientists for their support of the Oyster Advisory Commission’s consensus recommendations process);
- other expenses of the consensus recommendations process (\$291,000) – including professional facilitators, additional experts, travel expenses, communications, and supplies; and
- DNR personnel (\$118,000) and associated operating costs (\$11,000) – a natural resources planner and natural resources biologist to conduct an ongoing biennial review of the oyster stock relative to reference points.

The estimate is based on the following information and assumptions:

- UMCES’ experience with the OysterFutures workgroup and assumptions about the resources needed for a similar process with an expanded scope;
- an expectation that the environmental modeling work done for the OysterFutures workgroup can be modified to apply to the work of the commission;

- an assumption that the commission convenes for two-day meetings 10 times throughout the two-year consensus recommendations process; and
- an assumption that general funds are needed to support the expenditures of the bill if no other funding sources are later identified.

DNR Positions	2
Salaries and Fringe Benefits	\$118,000
UMCES Faculty Support	452,000
Consensus Recommendations Process Expenses	291,000
Other Operating Expenses	<u>11,000</u>
Total FY 2020 State Expenditures	\$872,000

Future year expenditures reflect (1) full salaries with annual increases and employee turnover and ongoing operating expenses; (2) the end of UMCES faculty support and consensus recommendations process expenses after fiscal 2021; and (3) costs totaling \$350,000 to conduct a benchmark stock assessment in fiscal 2022 (required under the bill to be conducted every six years), just after the conclusion of the consensus recommendations process. It is assumed, for the purposes of this fiscal and policy note, that the first benchmark stock assessment is conducted in fiscal 2022; however, the bill does not explicitly specify when the first benchmark stock assessment must be conducted. The \$350,000 in estimated costs for the benchmark stock assessment covers contractual services, survey work, and other costs.

The fiscal 2020 budget, contingent on the enactment of either this bill or House Bill 720 *and* either Senate Bill 448 or House Bill 298, restricts \$500,000 in general funds, otherwise budgeted for general operating expenses in DNR’s Fishing and Boating Services, to be used to fund the purposes of those bills.

Small Business Effect: Implementation of the consensus recommendations developed under the bill could have a meaningful impact on small businesses, depending on what measures are implemented and their effect on small businesses in the oyster industry. The bill also effectively extends the prohibition under Chapter 27 of 2017 against reduction or alteration of existing oyster sanctuaries until the completion of the consensus recommendations process and development of a fisheries management plan based on those recommendations. Small businesses in the oyster industry could be affected by that extension if, in the absence of the bill, sanctuary boundaries would have been altered in a way that would benefit the public oyster fishery.

Additional Information

Prior Introductions: None.

Cross File: HB 720 (Delegate Barve, *et al.*) - Environment and Transportation.

Information Source(s): Department of Natural Resources; University of Maryland Center for Environmental Science; Department of Legislative Services

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