

Department of Legislative Services
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FISCAL AND POLICY NOTE
 First Reader

Senate Bill 629 (Senator Kagan, *et al.*)
 Education, Health, and Environmental Affairs

Natural Resources - SAV Protection Zones and Hydraulic Clam Dredges
 (Aquatic Habitat Protection Act)

This bill increases the frequency with which the Department of Natural Resources (DNR) must update the delineations of SAV (submerged aquatic vegetation) protection zones and modifies specified criteria for the delineation of the zones. The bill also (1) gives DNR specified authority to regulate the use of hydraulic clam dredges; (2) modifies requirements relating to identification of SAV protection zones; (3) expands the area corresponding with SAV protection zones in which use of hydraulic clam dredges and specified other gear is prohibited; and (4) requires DNR to conduct a specified study regarding hydraulic clam dredging and report on the results by December 1, 2021. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$30,300 in FY 2021; future years reflect annualization and ongoing costs. This increase, however, may be at least partially offset by an indeterminate decrease in general/special fund expenditures related to marking SAV protection zones with buoys. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	30,300	23,400	24,100	24,800	25,600
GF/SF Exp.	(-)	(-)	(-)	(-)	(-)
Net Effect	-/(-)	-/(-)	-/(-)	-/(-)	-/(-)

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:

Regulation of Hydraulic Clam Dredges

The bill authorizes the Secretary of Natural Resources, after consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, to adopt regulations to define and govern the use of hydraulic clam dredges as commercial fishing gear, taking into consideration relevant biological, ecological, and socioeconomic factors.

Updating of SAV Protection Zones

The bill requires DNR to update the delineations of “SAV protection zones” (areas delineated by the department for the protection from uprooting and the restoration of submerged aquatic vegetation) each year instead of every three years. The bill also modifies a standard for the updated delineations, requiring the updated delineations to include areas where submerged aquatic vegetation has been mapped by aerial surveys during at least one of the previous *five* years instead of at least one of the previous *three* years. Correspondingly, the bill, with specified exceptions, modifies one of the criteria for opening a previously delineated SAV protection zone to the use of gear prohibited in an SAV protection zone, by allowing a previously delineated SAV protection zone to be opened if aerial surveys have not shown any submerged aquatic vegetation in the area during the past five years instead of during the past three years.

Identification of SAV Protection Zones

The bill changes a *requirement* that DNR utilize buoys or other visible landmarks as appropriate to mark SAV protection zones to an *authorization*. The bill also requires the department to provide current maps of the locations of SAV protection zones on the department’s website.

Expansion of Area in Which Specified Gear Is Prohibited

The bill modifies a prohibition against using a hydraulic clam dredge, a traditional bottom dredge, or a shinnecock rake in an SAV protection zone so that the use of those gear is prohibited within 150 feet of an SAV protection zone. The bill also prohibits a person from catching or attempting to catch soft-shell clams with a hydraulic clam dredge or any other gear except hand-held tools, such as shovels and hoes, within 150 feet of an SAV protection zone.

Hydraulic Clam Dredging Study

The bill requires DNR to conduct a study to (1) determine the ecological effects of hydraulic clam dredging, including the direct and indirect effects on submerged aquatic vegetation and aquatic habitat and (2) identify strategies and make recommendations for reducing the negative ecological effects of hydraulic clam dredging. DNR must submit a final report on the results of the study, by December 1, 2021, to the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee.

Current Law:

SAV Protection Zones, in General

“SAV protection zone” is defined as an area delineated by DNR for the protection from uprooting and the restoration of submerged aquatic vegetation. In an SAV protection zone, a person is prohibited from using a hydraulic clam dredge, a traditional bottom dredge, and a shinnecock rake.

Updates and Reopening

In 2004 and every three years thereafter, DNR must update the delineations of SAV protection zones that were completed in 2001. The updated delineations must include areas where submerged aquatic vegetation has been mapped by aerial surveys during at least one of the previous three years. “Aerial survey” is defined as the annual aerial survey compiled by the Virginia Institute of Marine Sciences (VIMS) for the annual Bay-wide Submerged Aquatic Vegetation Mapping Program.

A previously delineated SAV protection zone may be opened to the use of the above-specified gear during an update if (1) aerial surveys have not shown any submerged aquatic vegetation in the area during the past three years or (2) aerial surveys have shown the density of submerged aquatic vegetation in that area to be less than 10% during each of the past six years. However, areas in the vicinity of Smith Island, South Marsh Island, and Bloodsworth Island that were closed to hydraulic clam dredging in the 1999 delineation may not be reopened.

Adjustment of Zones

To the extent possible, DNR must adjust SAV protection zones so that delineations are geographically manageable, utilizing straight lines and existing points of reference. However, to the extent possible, an adjustment must result in no net loss or gain of protected area (if needed, excluding small areas of vegetated bottom or including small

areas of unvegetated bottom to prevent net loss or gain of protected areas resulting from an adjustment).

Other Provisions

DNR must utilize buoys or other visible landmarks as appropriate to mark SAV protection zones and may make revisions to the delineations of SAV protection zones at any time if determined to be necessary. DNR also must publish, by public notice, delineations of SAV protection zones and revisions to SAV protection zones.

SAV Protection Zone Definition for Aquaculture

Under separate provisions of statute, aquaculture leases may not be located in “SAV protection zones.” Under those provisions, the definition of “SAV protection zone” (unchanged by the bill) is an area of submerged aquatic vegetation as mapped in aerial surveys by VIMS in one or more of the five years preceding an aquaculture lease application. An aquaculture leaseholder also may not place shellfish, bags, nets, or structures on submerged aquatic vegetation without prior written approval from DNR.

Background: DNR indicates that the abundance of submerged aquatic vegetation in the Chesapeake Bay, which benefits the health of the bay in various ways (*e.g.*, providing food and habitat, nutrient absorption, and oxygen production) has fluctuated greatly since VIMS began mapping the resource in 1984. DNR provides a [historical timeline](#) of submerged aquatic vegetation on its website, which indicates significant increases in acreage of submerged aquatic vegetation in recent years.

DNR is currently in the process of updating the delineations of SAV protection zones by regulation, based on 2016 and 2019 VIMS data. The proposed regulations were published in the January 31, 2020 issue of the *Maryland Register*.

State Expenditures:

General Fund Expenditure Increase

General fund expenditures increase by at least \$30,323 in fiscal 2021, which accounts for the bill’s July 1, 2020 effective date. This estimate reflects the cost of hiring a part-time contractual geographic information systems (GIS) analyst to perform the mapping and publishing of designations of, and updates to, the SAV protection zones. The increase in the frequency of updates and the requirement to produce and publish maps of the SAV protection zones requires the additional part-time contractual position. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	0.5
Salaries and Fringe Benefits	\$24,115
Operating Expenses	<u>6,208</u>
Minimum FY 2021 State Expenditures	\$30,323

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The estimate above does not account for costs DNR expects to incur for use of vessels for the hydraulic clam dredging study. DNR expects to need two vessels, one at a cost of \$150 per day and the other at a cost of \$500 per day (outfitted with a clam rig to conduct clam surveys in the bay); however, DNR is unable to estimate how many days the vessels are needed for.

General/Special Fund Expenditure Decrease

General/special fund expenditures may decrease by an indeterminate amount due to reduced costs for buoys and buoy maintenance as a result of the bill’s replacement of the *requirement* that DNR utilize buoys or other visible landmarks as appropriate to mark SAV protection zones with an *authorization* to do so. It is unclear, however, to what extent DNR will reduce the use of buoys as a result of the bill and to what extent that results in cost savings. DNR’s Hydrographic Operations division, which is responsible for placing regulatory markers and navigation aids, is funded with special funds from the Waterway Improvement Fund, but DNR has also indicated a potential need to use general funds in the future for buoy activities related to SAV protection zones. It is unclear to what extent the average annual decrease in buoy-related costs may offset or possibly exceed the annual costs associated with the part-time contractual GIS analyst discussed above.

Small Business Effect: Shellfish harvesters may be meaningfully affected to the extent the bill results in a reduction in areas in which a hydraulic clam dredge, a traditional bottom dredge, and a shinnecock rake can otherwise be used, in a given year, in the absence of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1306 (Delegate Terrasa, *et al.*) - Environment and Transportation.

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

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