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Aruna Miller, Lt. Governor
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March 4, 2026

BILL NUMBER: **HOUSE BILL 1388 - FIRST READER**

SHORT TITLE: **OYSTERS-ROTATIONAL HARVEST - PILOT PROGRAM**

DEPARTMENT'S POSITION: **OPPOSE**

EXPLANATION OF DEPARTMENT'S POSITION

The Department opposes House Bill 1388.

The bill requires the rotational opening of bars within the lower Choptank River, lower mainstem of the Bay, Herring Bay, and the lower Chester River. These areas are currently designated as oyster sanctuaries and closed to harvest.

General Considerations/Issues

Rotational harvest is a management strategy that allows for a sustainable fishery while maintaining the reef habitat. Generally, there is a three-year rotation following harvesting, which allows spat to reach market size.

There are certain criteria that must be met by a rotational harvest area. For a reef to generate a harvestable stock, there must be consistent recruitment to replace the oysters that have been harvested. Recruitment requires appropriate environmental conditions, particularly sufficient salinity. Adequate substrate (cultch) that is available for the oyster larvae to set on (i.e. clean, hard substrate) is a necessity, as is a concentration of broodstock as a source of larvae.

Virginia, for example, has a successful rotational harvest program. After the harvest season ends, the bar is replenished with shell, after which it remains closed for three years before being reopened. The key to the program is that it is conducted in higher salinity areas with consistent recruitment and plentiful cultch to plant on the harvested locations. On the other hand, spatsets in Maryland are generally inconsistent and unpredictable, due to the lower and more dynamic salinity regimes, especially in the upper regions of the bay. Lacking the above criteria, the proposed areas are generally in poor condition recruitment and habitat-wise and not suitable for a rotational harvest; there would be no benefit to the proposed program.

As written, each harvester is required to plant a bushel of oyster shell on the bar for each bushel of oysters harvested. It is unclear how this provision could be enforced without visual NRP presence for the planting. The department consults with the county oyster committees to determine areas to plant shell or spat on shell on public fishery bars. This work is implemented by the department with funds from the severance tax and bushel tax.

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One of the compelling arguments for creating larger, multi-bar sanctuaries was to make them easier for compliance and enforcement. Earlier sanctuaries were originally individual bars or parts of bars that were difficult to conserve. The proposal to allow harvesting on individual bars within larger sanctuaries creates holes within the sanctuary that compromises enforcement.

The Department already operates a rotational harvest program in consultation with the county oyster committees which includes planting shell, seed, and spat-on-shell on harvest areas and in some cases periodically closing and opening them to maximize harvest potential, in consultation with the appropriate county committee. It may be difficult to find good bottom in the sanctuaries identified to plant and sustainably harvest that has not already been part of the restoration program and there are certainly good areas already in the public fishery outside of sanctuaries that are being underutilized and would probably be more beneficial areas to consider. For example, planting shell in the Chester River or Chesapeake Bay Mainstem are not likely to result in a positive return on investment in most years and the ability to harvest what oysters may be present would not be replaced in the three year time frame proposed due to the rates of recruitment observed in most years.

The Oyster Advisory Commission (OAC) was created by the General Assembly in 2019 to advise DNR and the Governor on oyster fishery management, aquaculture, and restoration policy. This is to serve as a balanced forum for collaboration of varying interest groups aiming to reduce conflict, rely on science, and coordinate restoration and harvest decisions. The OAC is currently discussing recommendations for sanctuaries that are not performing well as they have not received restoration action and funding to date. This process began in January 2026 and includes rotational harvest for consideration in these specified areas. As the OAC was created for just this purpose- recommendations on issues such as oyster sanctuaries, fishery management plans, and restoration strategies, it is the Department's recommendation that we continue the work at the OAC and not circumvent the established advisory body.

Sanctuary-Specific Issues

Lower Chester River Sanctuary – Hickory Thicket and Huntingfield Bars

These bars are located in a low recruitment area and cannot maintain sustainable harvests. Nearby Swan Point bar, which is a Key Spat Index bar, has a 41-year recruitment average of 0.4 spat/bu. with a median count of 0.0 spat/bu. Over a span of 30 years, spat were observed in only two of those years; the counts ranged from 1 to 2 spat/bu. The 41-year average of Spat Indexes (which includes all 53 Key Spat Index bars) is 42.2 spat/bu.

A study on Swan Point conducted from 2010 to 2015 showed that when an area was opened to power dredging, the natural oyster population was rapidly depleted by the first season. Little harvest took place in season two and none in seasons three through five. Although the rationale for power dredging was to bring up shell out of the bottom, there was no evidence that this occurred, and there was no recruitment to sustain the population. Essentially, the area was abandoned once the oyster population dropped below economic viability for harvesting. The same can be expected for the proposed bars.

Replenishing shell would not be effective because of the lack of recruitment and would be a waste of an increasingly scarce and valuable resource that can be put to better use in higher spatset areas. A pilot project on Strong Bay bar to construct four large shell mounds planted with seed oysters never resulted in improved recruitment. This bar is in the lower Chester sanctuary immediately south of the proposed bars in this bill.

Note that the two Maryland oyster benchmark stock assessments from 2000 and 2005 found that the oyster population in this region was below the minimum abundance threshold reference point and is technically considered to be “overfished” although it is in a sanctuary.

Herring Bay Sanctuary – Holland Point bar

This bar is located in a low recruitment area and cannot maintain sustainable harvests. Holland Point bar, which is a Key Spat Index bar, has a 41-year recruitment average of 1.1 spat/bu. with a median count of 0.0 spat/bu. No spat were observed in 32 of those years. Replenishing shell would not be effective because of the lack of recruitment and would be a waste of an increasingly scarce and valuable resource that can be put to better use in higher spatset areas.

Based on previous surveys, the only areas on this bar with meaningful densities of oysters are those that have received spat-on-shell plantings using Capital Funds. This restricts them from any action for 17 years. Holland Point bar is also a Disease Index bar, which relies on these plantings as a source for obtaining samples for monitoring disease, since the natural population density outside of these plantings is extremely low.

In addition, the Department has prioritized Herring Bay sanctuary as one of the next three areas for large-scale restoration efforts. There already are multiple areas within the sanctuary that have been submitted for restoration construction by the Department.

Maintaining these relatively small plantings would be an enforcement problem that could compromise these restoration efforts and disease monitoring - this is the only such site on the Western Shore for miles.

Lower Choptank Sanctuary – Three bars (TBD)

Recruitment in this region is generally low and inconsistent, and is not sustainable on a rotational basis. Within the adjacent Sandy Hill sanctuary, the Sandy Hill Key Spat Index bar had a 41-year recruitment average of 15.9 spat/bu., with a median count of 2.0 spat/bu. Zero or single digit spat occurred in 80% of the years, which included an uninterrupted span of 23 years.

The proposal to allow harvesting on individual bars within this creates holes within the sanctuary that compromises enforcement. This problem is particularly acute in this sanctuary because of the closely spaced bars in the sanctuary and the adjacent Sandy Hill sanctuary.

Lower Mainstem Bay East Sanctuary – Three bars (TBD)

Located in a higher salinity regime, recruitment in this area can be good and fairly consistent. Recruitment at a site on Northwest Middleground where a shell planting was made in 2002 had a 23-year average of 148.4 spat/bu. with a median count of 92.0 spat/bu. Since 2015, only two years had spat counts under 100 spat/bu. According to a sanctuary-wide survey conducted in 2024, the supplemental disease monitoring site on Northwest Middleground is one of the few locations within this sanctuary where an appreciable were found. This is the only disease sentinel site in the lower bay mainstem east of the channel. As such, it should remain off limits to harvesting. Because it is a deeper site, it also serves as an indicator of low dissolved oxygen incursions from the pool of hypoxic waters that forms in the bay each summer. Although spatset has good potential in this area, the scarcity of harvestable oysters and cultch throughout much of the sanctuary make this area a poor choice for a rotational harvest program.

Located towards the middle of the bay, the remoteness of this sanctuary could be an enforcement issue if part of it was opened to rotational harvesting.

BACKGROUND INFORMATION

Natural Resources Article, Section 4-215 required a consensus process through the Oyster Advisory Commission to examine the Oyster Fishery Management Plan before changes to sanctuaries could be considered. An amendment to the Oyster Fishery Management Plan was adopted in December 2023, following the completion of that process. The agency is currently working through the Oyster Advisory Commission to review various oyster bottom use within the Chesapeake Bay. One goal of the discussions through this process would be to determine areas that would best be used as rotational harvest areas as rotational harvest areas are one of the goals in the plan.

BILL EXPLANATION

This bill charges the Department to establish a 5-year rotational oyster harvest pilot program in selected portions of four existing oyster sanctuary areas. The bill requires baseline and post-harvest monitoring requirements before/after openings of Bay areas for harvest. Harvesters would be required to replace one bushel of shell for every bushel of oysters taken.