

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 931 (Senator Eckardt)
Education, Health, and Environmental Affairs

Oysters - Oyster Committees and Harvest Reserve Areas

This bill establishes “county commercial oyster committees” and a “State oyster committee.” Each county commercial oyster committee must establish a five-year sustainable oyster harvest plan. The State oyster committee must coordinate with the county commercial oyster committees to identify specified issues and make recommendations to the Department of Natural Resources (DNR). DNR must coordinate with the committees to implement the committees’ recommendations. The bill repeals provisions authorizing DNR to designate and manage harvest reserve areas.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures may increase significantly beginning in FY 2016 due to personnel, equipment, and operating costs to mark harvest sites and to fulfill any liability to the U.S. Army Corps of Engineers (USACE) associated with opening oyster sanctuaries to harvesting. Federal fund revenues may decrease significantly to the extent oyster sanctuaries are opened to harvesting.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

County Commercial Oyster Committees

The bill repeals existing provisions governing the establishment and membership of oyster committees and establishes new provisions for five-member “county commercial oyster committees” made up of licensed oyster harvesters elected by the licensed oyster harvesters of each tidewater county. Each gear type that exists in the county and that harvested during the harvest season preceding an election of the committee must be represented by a member on the committee. The members of a committee are elected by a majority vote of the licensed oyster harvesters residing within the county, taken at a public meeting for that purpose. The members select the chair of the committee.

State Oyster Committee

The chair of each county commercial oyster committee or the chair’s designee serves as a member of a State oyster committee established by the bill.

Five-year Sustainable Oyster Harvest Plan

A county commercial oyster committee must establish a five-year sustainable oyster harvest plan that:

- provides an overview of the seeding and planting areas in the county;
- provides an overview of the harvesting areas in the county;
- identifies sources that have available oyster shell;
- establishes a harvest rotation for oyster bars in the county; and
- if determined appropriate by the county commercial oyster committee, opens sanctuaries in the county for harvesting within five years from the fourth year spat set survey.

Committee Coordination and Recommendations

The State oyster committee must coordinate with the county commercial oyster committees to:

- identify issues associated with harvest site boundaries;
- identify harvest rotation sites with boundaries in multiple counties; and

- make recommendations to DNR for actions that the State oyster committee and the county commercial oyster committees consider necessary for DNR to take to address identified issues.

DNR must coordinate with the county commercial oyster committees and the State oyster committee to implement any actions recommended by the committees regarding issues associated with harvest site boundaries.

Current Law/Background:

County Oyster Committees

DNR must have licensed oystermen in each tidewater county of the State select a county committee of five representative licensed tongers, who earn their livelihood catching oysters, to confer with DNR concerning oyster propagation conducted by the department in each county. A similar committee that includes licensed dredgers must be selected to confer with DNR concerning the propagation of oysters in the dredging areas. DNR must also appoint a five-member committee of licensed oystermen who earn their livelihood catching oysters by using diving apparatus and a five-member committee of license oystermen who earn their livelihood catching oysters by using patent tongs. Each committee must select a chairman to serve on a statewide committee of oystermen to advise DNR on statewide issues concerning oyster propagation. The term of membership of each committee is four years, and DNR must prescribe by rule and regulation the time, place, and manner of selection of the oyster committees.

DNR indicates that county oyster committees currently serve as advisory bodies that advise the department on oyster-related issues. Oyster surcharge and tax revenue collected from licensed oyster harvesters and used for oyster repletion activities is used by DNR based on recommendations of the county oyster committees, but subject to DNR's approval.

Oyster Restoration and Oyster Fishery Management

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.

Restoration

DNR's oyster restoration activities include the construction of restored oyster reefs, oyster production, and the promotion of oyster aquaculture. The restoration activities are funded largely with capital general obligation bond funding (\$7.6 million annually), federal funding from the National Oceanic and Atmospheric Administration (NOAA) (approximately \$1.1 million annually), and smaller amounts of general and reimbursable funds. There are 51 sanctuaries in the Maryland sanctuary network, with varying quality of oyster habitat. DNR's restoration efforts are currently focused on the Harris Creek and Little Choptank River sanctuaries, chosen based on oyster population assessment, water quality, substrate conditions, and other factors. Pursuant to a project cooperation agreement with DNR, USACE has contributed to oyster restoration efforts in the Harris Creek sanctuary and is undertaking restoration efforts in the Tred Avon River sanctuary. The Tred Avon River sanctuary restoration efforts are conducted in partnership with DNR, but substrate construction is being undertaken by USACE.

Fishery Management/Harvest Reserve Areas

DNR manages the public oyster fishery through various means, including zoning of public shellfish fishery areas to allow for specific oyster harvest gear to be used in specific areas based on the ability of areas to withstand harvest pressure.

DNR is authorized to establish harvest reserve areas intended to allow for both ecological oyster restoration and periodic harvesting. DNR indicates, however, that there is currently limited activity with regard to the harvest reserve areas, which are opened to harvest for short periods of time to the extent there are oysters available.

State Expenditures:

Buoy Costs

General fund expenditures may increase significantly for DNR to mark harvest sites in accordance with oyster committee recommendations.

For illustrative purposes only, if DNR marks 20% of the natural oyster bars once each year, general fund expenditures increase by \$631,644 in fiscal 2016, with ongoing costs in future years of approximately \$300,000 annually. This illustrative example reflects the costs of hiring two hydrographic engineers and a painter and costs to purchase 813 buoys and a boat, truck, and trailer. An increase of 813 buoys represents a 40% increase in the existing number of buoys, requiring additional personnel and equipment to handle the workload.

It is uncertain what actions the county commercial oyster committees seek to have undertaken by DNR under the bill. Thus, costs associated with the placement and maintenance of buoys may vary considerably from the illustrative example.

Potential Liability to U.S. Army Corps of Engineers

To the extent the bill results in the opening to harvesting of oyster sanctuaries on which USACE has spent funding (Harris Creek and Tred Avon River), DNR indicates that it may be exposed to liability for the funding spent by USACE if the opening of those sanctuaries is determined to be a breach of the project cooperation agreement. General fund expenditures, therefore, may increase significantly to reimburse USACE for some or all of the funding spent by USACE. DNR indicates that the total amount of funding spent through fiscal 2015 is \$12.4 million.

It is unclear, however, whether the bill results in the Harris Creek or Tred Avon River sanctuaries being opened for harvesting. The bill requires DNR to coordinate with the oyster committees to implement actions recommended by the committees regarding issues associated with harvest site boundaries. DNR is not explicitly required to implement the oyster committees' five-year sustainable oyster harvest plans that may include opening of sanctuaries. It is also uncertain whether the applicable county commercial oyster committee would seek to open those sanctuaries for harvesting.

State Revenues: To the extent the bill results in oyster sanctuaries being opened to harvest, or creates the possibility of that occurring, federal fund revenues for oyster restoration efforts may decrease significantly. Federal fund revenues from NOAA have averaged approximately \$1.1 million annually in recent years, the majority of which has been used to fund the University of Maryland Center for Environmental Science Horn Point Oyster Hatchery, which produces oyster spat on shell for restoration efforts.

Small Business Effect: Licensed oyster harvesters may be meaningfully impacted by the bill's changes to the management of the oyster fishery under the bill. The impact depends on the changes DNR makes pursuant to recommendations of the oyster committees. It is unclear whether any such impact is positive or negative.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, University System of Maryland, Maryland Watermen's Association, Department of Legislative Services

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md/lgc

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