

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1 (Delegate Lafferty)
Environment and Transportation

Natural Resources - Prohibition on Dredging Buried Oyster Shells on Man-O-War Shoals

This emergency bill prohibits the Department of Natural Resources (DNR) from dredging buried oyster shells on Man-O-War Shoals.

Fiscal Summary

State Effect: General obligation (GO) bond and special fund expenditures may be affected beginning in FY 2020, as discussed below. Revenues are not directly affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Statute requires DNR to take measures which in its judgment seem best calculated to increase the productivity or utility of oyster resources in the State, including (1) identifying and using effective methods of cleaning diseased oyster bars; (2) providing clean shell for the bars; (3) using hatchery produced oysters to replant sites; and (4) applying for a permit to dredge buried oyster shells.

Chapter 212 of 2009, in uncodified language, required DNR to apply to the Maryland Department of the Environment and the U.S. Army Corps of Engineers (USACE) for permits to dredge buried oyster shells by July 1, 2009, if the Oyster Advisory Commission recommended the application based on its work.

Background: 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.

DNR indicates that the availability of hard substrate material is critical for increasing the number of oysters in the Chesapeake Bay, but sedimentation and deterioration of oyster shell together are reducing suitable hard-bottom habitat. DNR has proposed to dredge buried oyster shell at Man-O-War shoal in the upper Chesapeake Bay (see **Exhibit 1**) – for which final approval is still pending – to be planted on sanctuary bars for ecological restoration, aquaculture sites for private oyster production, and harvest reserves and open harvest areas for public fishery production.

DNR first submitted an application to dredge Man-O-War shoal in July 2009, following the enactment of Chapter 212 of 2009 (mentioned above), but USACE responded at the time that there was not sufficient information to justify the purpose and need for the project. After exploring alternatives in subsequent years, the department resubmitted its application in 2015. USACE approved a provisional permit for the project in May 2018, but the provisional permit cannot become a valid permit (under which work may be performed) until certain State certifications, which are contingent on Board of Public Works approval of the project, are made. For more information on the proposed Man-O-War shoal dredging project, please see DNR's [webpage](#) on the proposed project.

Exhibit 1
Man-O-War Shoal Location



Source (geographic data): MD iMAP; State Highway Administration; Department of Natural Resources

State Expenditures: GO bond and special fund expenditures may be affected beginning in fiscal 2020, if the Man-O-War shoal project does not go forward *as a result of the bill*. If, in the absence of the bill, the project is not approved and does not go forward regardless, the bill does not materially affect State finances in the near future.

DNR estimates that the dredging is anticipated to cost approximately \$27 million (based on current prices to dredge shell in Virginia at \$5.50 per bushel) over the course of the five-year permit that has been applied for and that related environmental studies are expected to cost approximately \$7.5 million. It is not known what alternatives are pursued if the Man-O-War shoal project does not go forward, but State expenditures for substrate to support oyster restoration, the public oyster fishery, and oyster aquaculture are presumably affected, at least to some extent, depending on the alternatives pursued and the cost of those alternatives. The majority of the estimated costs associated with the Man-O-War shoal project are expected to be paid for through the oyster restoration

program and are included in the *Capital Improvement Program*, which contains \$23.4 million in GO bond expenditures for the oyster restoration program from fiscal 2020 through 2024. Smaller amounts of special funds from oyster industry taxes, license fees, and private funds – paying for shell used in harvest areas and aquaculture, respectively – are expected to also contribute toward the overall project cost. Based on the projected timing of the Man-O-War shoal project (if it is approved), any impact on expenditures resulting from this bill occurs in fiscal 2020 at the earliest.

Small Business Effect: To the extent the Man-O-War shoal project is otherwise approved and goes forward (in the absence of the bill), the bill’s prohibition on the dredging is expected to meaningfully impact small businesses in the public oyster fishery and in oyster aquaculture. DNR indicates that the dredged shell is preferable to both industries over alternative materials and less costly.

Additional Information

Prior Introductions: HB 1455 of 2018 received a hearing in the House Environment and Transportation Committee, but no further action was taken. HB 927 of 2009 received an unfavorable report from the House Environmental Matters Committee. Its cross file, SB 125, was referred to the Senate Education, Health, and Environmental Affairs Committee but was subsequently withdrawn.

Cross File: SB 145 (Senator Klausmeier, *et al.*) – Education, Health, and Environmental, Affairs.

Information Source(s): Department of Natural Resources; Maryland Department of the Environment; U.S. Army Corps of Engineers; MD iMAP (geographic data); State Highway Administration (geographic data); Department of Legislative Services

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