

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 298

(Delegate Busch, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Oysters - Tributary-Scale Sanctuaries - Protection and Restoration

This bill establishes in statute a network of five oyster sanctuaries (in Harris Creek, the Little Choptank River, the Tred Avon River, the St. Mary's River, and the Manokin River). With the exception of aquaculture activities under a valid lease, the bill prohibits catching oysters in or removing oyster seed from the five sanctuaries or sanctuaries established by the Department of Natural Resources (DNR) in regulation. The bill establishes requirements and deadlines relating to restoration plans for the five identified sanctuaries. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: The bill is not expected to affect State finances, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Network of Sanctuaries Established

The bill establishes in statute a network of oyster sanctuaries in the five tributaries identified by DNR for large-scale restoration in accordance with the 2014 Chesapeake Bay Watershed Agreement. The network consists of specified oyster sanctuaries in

Harris Creek, the Little Choptank River, the Tred Avon River, the St. Mary's River, and the Manokin River (all shown in **Exhibit 1**).

Prohibited Activities in Sanctuaries

With the exception of a person who engages in aquaculture activities within an oyster sanctuary in accordance with a valid lease, a person may not catch oysters or remove oyster seed from an oyster sanctuary identified in the bill or established by DNR in regulation.

Sanctuary Restoration Plans

DNR, in coordination with the Oyster Advisory Commission, the Oyster Interagency Workgroup, and interested stakeholders, must develop and implement restoration plans for each of the oyster sanctuaries identified in the bill. Each restoration plan must:

- establish acreage targets that exceed 50% of the currently restorable oyster habitat in the sanctuary, as defined by the Oyster Interagency Workgroup;
- for reef construction, require the use of substrate that has been demonstrated in previous tributary-scale oyster restoration projects to maximize oyster density;
- establish a project implementation timeline that demonstrates how restoration targets will be achieved by 2025, in accordance with the 2014 Chesapeake Bay Watershed Agreement; and
- include plans for continued monitoring of the sanctuary and corrective actions to be taken by DNR if future monitoring indicates that a sanctuary is no longer meeting specified minimum requirements.

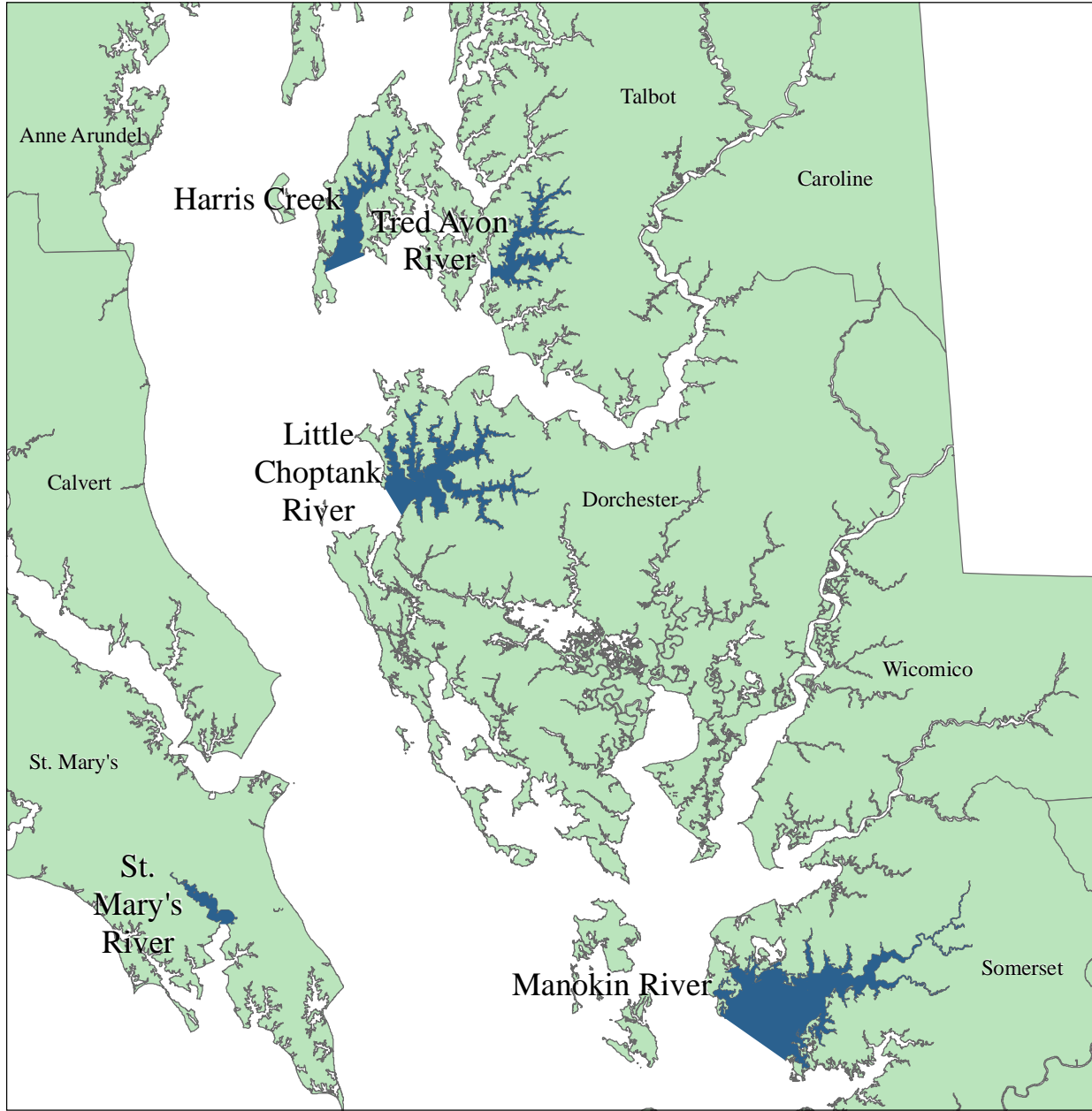
By December 1, 2019, DNR must report to the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee on the development and implementation of restoration plans for the five oyster sanctuaries identified in the bill.

By July 1, 2020, DNR, in consultation with the Oyster Advisory Commission, the Oyster Interagency Workgroup, and interested stakeholders, must finalize restoration plans for the St. Mary's River and Manokin River oyster sanctuaries.

By December 1, 2021, DNR must fully implement existing restoration plans for the Tred Avon River and Little Choptank River oyster sanctuaries.

By July 1, 2029, DNR must review the results of the continued monitoring (mentioned above) of the five oyster sanctuaries and provide a report on the success of large-scale restoration projects in the five sanctuaries to specified legislative committees.

Exhibit 1
Oyster Sanctuaries Identified in the Bill



 Sanctuaries Identified in the Bill

Note: The sanctuary boundaries shown are interpretations of the bill's text and are not exact boundaries.

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

Current Law: DNR regulations designate oyster sanctuaries in the Chesapeake Bay and its tidal tributaries by incorporating by reference the document *Oyster Sanctuaries of the Chesapeake Bay and Its Tidal Tributaries (September 2010)*, which includes the five oyster sanctuaries identified in the bill. The regulations prohibit a person from harvesting wild oysters from a designated oyster sanctuary.

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 the University of Maryland Center for Environmental Science, 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.

Tributary-scale Oyster Restoration Sanctuary Projects

The 2014 Chesapeake Bay Watershed Agreement, which establishes goals and outcomes for the restoration of the entire Chesapeake Bay, its tributaries, and the lands that surround them, includes a goal of restoring large connected native oyster habitat and populations in sanctuaries in 10 bay tributaries (five sanctuaries each in Maryland and Virginia) by 2025. The five Maryland sanctuaries will be located in Harris Creek, the Tred Avon River, the Little Choptank River, the Upper St. Mary's River, and the Manokin River. The reef construction and oyster seeding for the 351-acre Harris Creek Sanctuary was completed in 2015, and the sanctuary is currently undergoing monitoring and evaluation. In the Tred Avon River, reef construction and oyster seeding has been completed on 84 acres, with 45 acres remaining, and in the Little Choptank River, reef construction and oyster seeding has been completed on 343 acres, with 9 acres remaining. A restoration plan is being developed for the St. Mary's River and evaluation of restorable oyster habitat is being completed in the Manokin River prior to the development of a restoration plan.

The Oyster Interagency Workgroup (identified in the bill), which includes DNR, the National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (USACE), and the Oyster Recovery Partnership, coordinates restoration efforts in the tributaries.

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 Fiscal Effect: DNR indicates that the requirements and deadlines established in the bill for the restoration plans of the five tributaries are consistent with current and planned restoration efforts in the tributaries and should not affect State finances associated with those efforts. Making certain assumptions about the level of restoration needed in the Manokin River (the tributary most recently identified for restoration), between \$25.7 million and \$28.5 million in State funding may be needed between now and 2025 for the restoration efforts overall.

Certain aspects of the restoration are being paid for by, or are the responsibility of, the State's federal partners (NOAA and USACE), including (1) monitoring of the sanctuaries to determine progress (currently approximately \$150,000 per year) and (2) reef construction in the Tred Avon River (approximately \$5 million total). General funds or general obligation bond funding may be needed to replace that funding if it becomes unavailable; however, presumably, that replacement funding (or a reallocation of State resources to meet those funding needs, to the extent possible) may be needed even in the

absence of the bill, in order to meet the State's commitments under the 2014 Chesapeake Bay Watershed Agreement.

Small Business Effect: The bill may meaningfully impact small businesses if, in the absence of the bill, future management decisions would otherwise allow any harvesting activity in the sanctuaries.

Additional Information

Prior Introductions: None.

Cross File: SB 448 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; MD iMAP; State Highway Administration; Department of Legislative Services

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