



Oyster Restoration & Aquaculture Development Proposed Regulations

July 2010

"Our native oyster is part of the public trust, and we have a clear and urgent responsibility to restore this iconic species to the Chesapeake Bay."

Governor Martin O'Malley - December 3, 2009

What will the regulations do?

The proposed regulations implement Governor O'Malley's Oyster Restoration & Aquaculture Development Plan and the 2009 Aquaculture Lease Law by:

- ✓ Expanding Maryland's oyster sanctuary network;
- ✓ Identifying and preserving Maryland's public shellfish fishery areas (wild oyster harvest areas); and
- ✓ Establishing the processes and requirements for leasing areas in State waters for aquaculture.

The regulations **support a healthy and competitive oyster industry**, by maintaining a significant public fishery while simultaneously building investment and opportunity in aquaculture.

The regulations **create opportunities to increase private investments in Maryland** by opening 600,000 new acres to aquaculture — in support of General Assembly's 2009 actions.

The regulations protect an additional 16% of existing quality habitat for oyster sanctuary areas (increase from 9% to 25%) and maintain 75% of existing habitat for wild oyster harvest by watermen. **Protecting at least 25% of quality oyster habitat is essential to both the future health and prosperity of the Bay's oyster population and to sustainable harvest.**

Sanctuaries

Sanctuaries are areas where wild oyster harvesting is prohibited. The sanctuary network will:

- Protect some of the Bay's most productive oyster bars — allowing them to increase in size and quality over time;
- Facilitate build up of natural disease resistance – a critical long-term strategy for restoring oysters;
- Provide essential ecological functions such as filtering water and fish habitat;
- Serve as a reservoir of reproductive capacity, generating larvae to populate sanctuaries, adjacent public shellfish areas and leased areas;

- Include additional non-oyster bottom that surrounds the large areas of interconnected natural oyster bars, therefore increasing our ability to protect these ecologically important oyster bars from poaching; and
- Provide a science-based geographic distribution across all salinity zones.

DNR made numerous changes to the initial sanctuary proposal based upon public comments received, including changes in each affected county to mitigate industry concerns. Under the proposed regulations:

- ✓ Fishing, crabbing, and clamming are allowed within sanctuaries.
- ✓ Existing aquaculture leases within proposed sanctuaries will be allowed to continue under certain use criteria.
- ✓ Half of the scientifically identified "best bars" are protected within sanctuaries.

Public Shellfish Fishery Areas (PSFA)

PSFAs are historic natural oyster bars where wild oyster harvesting currently occurs. Aquaculture leasing may not occur in PSFAs. Under the proposed regulations half of the scientifically identified "best bars" are maintained for the industry's use within PSFAs. Portions of PSFAs may be declassified and made available for aquaculture leasing by petition under a public review process.

Aquaculture Leasing

Aquaculture areas may be leased to waterman, individuals, organizations, or businesses for the purpose of growing and harvesting oysters or clams for commercial purposes. The proposed regulations significantly expand aquaculture leasing opportunities in the Chesapeake Bay. The proposed regulations:

- ✓ Establish lease application requirements, including rental fees and reporting requirements.
- ✓ Allow for the transfer and surrender of a lease.
- ✓ Establish requirements for marking a lease, allowed gear placed on a lease, and liability for gear.
- ✓ Require oysters harvested for human consumption to be at least 3 inches and sold

- to an oyster buy station.
- ✓ Allow fishing and crabbing within leased areas.
- ✓ Establishes pre-approved leasing areas in the Coastal Bays.
- ✓ Establishes penalties for lease violations.

Tidal wetlands license applications for aquaculture activities in the water column must be submitted to the Maryland Department of the Environment (MDE). MDE will submit a companion regulatory change to prohibit water column aquaculture in all PSFAs, and on Natural Oyster Bars in the main stem of the Chesapeake Bay that are not classified as PSFAs in order to mitigate potential user conflicts with sports fishermen. In addition, the Department has agreed to establish an interested parties list for individuals who want to be notified of bottom aquaculture permit applications.

Aquaculture is now the predominant means of shellfish harvesting around the world; next door in Virginia it is already a multi-million business. University of Maryland economists estimate our **aquaculture plan could create 225 full-time equivalent jobs and generate \$25 million in economic impact** over the next several years.

Why is this plan needed?

The Chesapeake Bay's oyster population stands **at 1% of historic levels**.

The **current management approach is not sustainable** and is not yielding the results we need — for our ecosystem or our watermen.

Over the past 25 years **Maryland has lost** 80% of its oyster bars, 80% of its oyster processing companies and 75% of its oyster harvesters. In 2009, just 489 commercial fisherman harvested oysters.

It is the goal of the O'Malley-Brown Administration to develop an abundant, self-sustaining native oyster population to the Chesapeake Bay and its tributaries — one that will be an ecological, economic and cultural resource for the Bay and for Maryland citizens.

How was the plan developed?

The plan and proposed regulations are the culmination of **6 years of scientific evaluation and public participation**. Both the Programmatic **Environmental Impact Statement** (2004-09) and **Oyster Advisory Commission** (2008-09) recommended an expanded sanctuary program, increased aquaculture, and a more targeted and scientifically based managed public oyster fishery. The Aquaculture Coordinating Council has lead efforts to advance aquaculture within the Chesapeake and Coastal Bays for over a decade.

What has been the public process?

DNR staff and other state officials have held over a hundred meetings with legislators, advisory commissions, local officials, watermen, recreational fisherman, environmental organizations, aquaculturists, scientists and other citizens to gain additional input in advance of this formal regulatory proposal submittal. Since December, **DNR received formal comments from nearly 1,000 citizens — more than 90% of whom support the plan**. Public comment will continue through the formal regulatory process throughout the summer including four advertised public hearings.

What is the State doing to address the economic impact to watermen?

Nearly 168,000 acres of natural oyster bars — and 75% of the existing oyster habitat — will be maintained for wild oyster harvesting.

\$21 million in federal and state funding is being used to mitigate economic impacts to watermen including \$4 million to contract watermen for restoration work and to help them invest in aquaculture business. Over the past two years the Department has contracted 500-800 watermen each year to perform restoration work for an annual payout of \$2-2.5 million.

Federal funds were made available through a Federal Blue Crab Fisheries Disaster Declaration due to the leadership of Senator Mikulski and Maryland's Congressional Delegation.

The sanctuary proposal is expected to reduce oyster harvests in 2010/2011 by approximately 7%. If oyster prices and effort levels are similar in 2010/2011, this would reduce the dockside harvest value- and income to watermen- by approximately \$210,000. Initial estimates suggested a 10-15% impact, but with additional harvest data that has been entered and sanctuary modifications the percentage is reduced. This is still subject to change, as additional data from the 2009/2010 season continues to be entered.

The current wild oyster fishery has an estimated total dockside economic value of \$3 million.

How will the plan be enforced?

DNR is stepping up enforcement to protect sanctuaries, aquaculture ventures, and the interests of law-abiding watermen by:

- Requiring monthly oyster reports of watermen;
- Implementing radar and camera vessel monitoring technology through the Maryland Law Enforcement Information Network (MLEIN);
- Increased outreach to the judicial system, with a pilot program first in Anne Arundel County involving specialized training in natural resource law and grouping natural resource violations hearings; and
- Updating the penalty system for violations of fisheries laws.

For More Information:

<http://www.dnr.state.md.us/fisheries/>