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Senate Education, Health & Environmental Affairs Committee

Testimony in OPPOSITION of Senate Bill 448

Oysters – Tributary-Scale Sanctuaries – Protections and Restoration

Wednesday, February 27, 2019

The Delmarva Fisheries Association (DFA) urges an unfavorable report on Senate Bill 448, which will place a permanent public fishery moratorium on viable oyster bars in the Chesapeake Bay. SB 448 is a direct and coordinated attack on the public fishery – at the expense of those whose livelihoods depend on the seafood industry, local economies and proponents of Bay wide oyster restoration using a strategy inclusive of the commercial fishery.

DNR records show that the natural oyster bars in the Maryland portion of the Bay that were planted with seeded shell harvested from other natural oyster bars in the upper Bay proved to be the most productive and healthy in the aftermath of Hurricane Agnes in 1972. Look at the success Virginia is having dredging up natural shell (using the same dredge that operated in the upper Bay for decades) and relocating the shell to where natural spat sets and recruitment are most likely to occur. A similarly successful seeded shell relocation program is again possible once the demonization of the commercial fishery is seen for what it is - an unnecessary distraction that allows environmental groups to jockey for more funds to sustain their payrolls.

To date, there is only questionable evidence that sanctuaries are performing better than the wild oyster bars. Not only are those “grading” the success of sanctuaries the same agencies and NGOs who receive public funds to design and build them, leading to a potential bias in the evaluation, but one of these groups (CBF) recently gave oysters an “F” in their Bay report card. Essentially, these groups are asking legislators to throw more public resources at programs and practices they’ve been championing for several years and that have resulted in a lower “grade” for oysters than in previous years; and their answer to that criticism is to blame it on the rain, and watermen.

Instead, Maryland should restore natural oyster bars with naturally seeded indigenous Chesapeake Bay shell harvested in an orderly fashion using environmentally conscious techniques that worked for nearly 50 years. The average life span of an oyster is 6-8 years. Chesapeake Bay oysters reach their prime spawning size by the time they are 3 years old, which is the same age at which they typically reach their legal Maryland harvest size of 3 inches. Continuing to keep sanctuary areas where no work has been performed since their designation in 2010 entirely off limits only serves to doom the oysters that may be living in those unworked and unmanaged sanctuary areas.

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A policy that leaves adult oysters unattended and unmanaged in sanctuary areas is wasteful because the oysters will die - be it from sedimentation, disease, predation or age - before realizing any commercial (dockside) value. Like most species, oysters weaken, reproduce less and are more prone to disease as they age. Therefore, the oyster's ecological benefits as a filter feeder diminish with age. With all the stressors on the Bay's flora and fauna, particularly sedimentation when it comes to oysters, the notion that it is best to continue leaving sanctuaries off limits in hopes that the oyster will thrive is unsupported by peer-reviewed science or common sense.

In light of the peer review of the recent Department of Natural Resources (DNR) and University of Maryland Center for Environmental Science (UMCES) oyster stock assessment (December 2018), the efficacy of sanctuaries as advertised is in question. Here's what the peer review panel said about sanctuaries:

“Sanctuary and habitat plantings, and aquaculture operations should not be considered a part of the standing stock of the fishery, nor part of the reproductive capacity of the fishery. Doing so will overestimate the spawning potential, and the contributions of sanctuaries, habitat plantings and aquaculture are as yet unclear and likely vary greatly by source.”

(see Page 17 of the Report of the Independent Peer Review of the Maryland Oyster Stock Assessment 2018)

We also question the constitutionality of a law that contradicts the **Public Trust Doctrine** (that the State owns the navigable waters and submerged land beneath those waters in trust for the benefit of all its citizens) and declares certain Bay tributaries off limits to one segment of citizens/taxpayers (i.e., watermen or the general public – see §(c)(2), page 4) while granting use and enjoyment to another segment (i.e., persons engaged in aquaculture – see §(c)(1)).

The members of DFA are committed to a prudently managed fishery and welcome the opportunity to be included in, rather than ostracized from, the coordination and management of this ecologically and economically valuable public resource.

For these reasons, DFA urges an UNFAVORABLE report on SB 448

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