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March 19, 2019

Department of Natural Resources  
Fishing & Boating Services  
580 Taylor Avenue  
Annapolis, Maryland 21401  
[fisheriespubliccomment.dnr@maryland.gov](mailto:fisheriespubliccomment.dnr@maryland.gov)

*Re: Draft Maryland Oyster Management Plan*

Dear Sir or Madam:

The Delmarva Fisheries Association (DFA) is a 501(c)(6) trade association established to protect, defend and enhance the commercial fishing industry in the DelMarVa region for present participants as well as future generations through all legal means while maintaining healthy and sustainable stocks of fish. With that mission in mind, we want to commend you for your recent Draft Maryland Oyster Management Plan and its stated goal to “protect the [oyster] resource while allowing optimal harvest.”

Regardless of whether the Maryland General Assembly succeeds in its goal to support legislation intended to thwart the ability of DNR to adaptively manage an iconic Bay resource, you have done a service to the commercial seafood industry by spotlighting the competing interests for the use and enjoyment of the Chesapeake Bay and its tributaries; and providing a forum for public discourse in this regard.

It is our hope that the attached comments will be evaluated in the spirit with which they are intended and incorporated, as appropriate, into the final Oyster Management Plan. We look forward to working with DNR to ensure a thriving oyster population is once again a reality in the Chesapeake Bay.

Sincerely,

Capt. Robert Newberry, *Chairman*  
[rnewberry56@gmail.com](mailto:rnewberry56@gmail.com)

cc: Jeannie Haddaway-Riccio, Secretary, Maryland Department of Natural Resources  
Clean Chesapeake Coalition



19 March 2019

Comments re: 2019 Draft Maryland  
Oyster Management Plan

**Point 1:**

During the 2019 Session of the Maryland General Assembly, certain special interest groups became more overt<sup>1</sup> in their long-desired goal<sup>2</sup> of replacing the wild (commercial) oyster fishery with private aquaculture. As an organization, the Delmarva Fisheries Association represents an industry with an approximate value of \$270 million, **\$8.6 million of which is the oyster fishery**, with cultural ties that pre-date the founding of our great State. Given that the preceding figure (from p. 49 of this draft FMP) only represents the dockside value, not any of the additional economic value represented by the secondary seafood industries, local tourism and positive environmental returns, it is hard to overstate the importance of the public fishery generally and the wild oyster fishery specifically. To that end, we advocate for an equally overt acknowledgement on the part of the Maryland Department of Natural Resources (DNR) regarding the deep socio-economic impact the wild fishery has on our State's heritage, economy and local fishing communities. To wit:

- Preface, Page 1: Add the word “wild” to the fourth (4<sup>th</sup>) sentence so it reads, “The goal of an FMP is to protect the resource while allowing optimal wild harvest.”
- Goal 2.1, Page 8: Add the word “wild” or “public” to the goal so it reads, “The goal of the 2019 Oyster Management Plan is *to conserve, protect and where possible, rebuild the oyster resource to fulfill its important ecological role and support the culturally significant public oyster fishery and industry throughout the Maryland portion of the Chesapeake Bay.*”
- Oyster Management Objectives 2.2, Sanctuary Objectives, Page 9: In item #5 add the words “and replenishment” – so it reads: “Support, enhance, and increase restoration and replenishment activities in other tributaries throughout the Chesapeake Bay.”

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<sup>1</sup> Oral testimony of Ms. Allison Colden, Chesapeake Bay Foundation, to the House Committee on Environment and Transportation, 29 January 2019, approximately 1:34:23 of the hearing (<http://mgahouse.maryland.gov/mga/play/427f638a-7b0e-4c69-9983-9b203b967797/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=5136000>). “In 2009 the Oyster Advisory Commission, on which CBF [sic] was represented, put forth a recommendation for a permit to dredge Man O’War Shoals. However, it included several important caveats including...secondly, that no more than 10% of the shell would go to the oyster fishery *during the limited time during which the transition from wild fishery to aquaculture was taking place*” (emphasis added).

<sup>2</sup> *Amendment I to the 2004 Chesapeake Bay Oyster Management Plan*, Maryland Department of Natural Resources, 6 September 2010, p. 1-2. “The main objectives of this plan are to...shift commercial oyster production to aquaculture...”



**Point 2:**

While there have been some efforts to demonstrate that the sanctuaries are doing better than other areas, it is often over-looked that gear choices heavily influence stock assessment outcomes. It is therefore misleading and dangerous to compare stock that was measured using different gear as it establishes a false equivalency upon which data may be skewed to favor certain results over other, more accurate metrics. To facilitate accurate implementation, monitoring and evaluation:

- Section 4, Stock Status Strategy 4.0, Page 17: Include language that specifically requires equivalent gear be used when establishing biomass on oyster bars, whether they are within sanctuaries or not.
- Section 8.0, Action 8.1, page 48: add stronger language than simply “coordinate sampling methodology” to control for gear bias in data.

**Point 3:**

At the behest of certain special interest groups, aquaculture leasing is permitted in sanctuaries. We find this troubling for several reasons.

- One main purported “benefit” is that aquaculture in sanctuaries may enhance natural recruitment. However, given that most aquaculture lease holders use sterile triploid oysters because they grow more quickly and are not affected by reproduction, we both challenge this assertion and contend that the other environmental benefits are limited given that these unnatural genetically altered oysters are pulled from the water more quickly since they grow to the legal market size more quickly; therefore, there is less overall ecological value (i.e., less time in the water filtering).
- Additionally, we question the constitutionality of a State law permitting a small group of private individuals to benefit (profit) from the investment of millions of taxpayer dollars while excluding the general public. This carve out for an elite subset of stakeholders is an affront to the Public Trust Doctrine.
- In Oyster Management Objectives 2.2, Aquaculture Objectives, Page 9: add a #3 objective as follows: *3. Consider and incorporate, where appropriate, the findings and recommendations of the Aquaculture Workgroup (of stakeholders) convened in 2018 by DNR.*

**Point 4:**

Section 5.2, Partner Strategy 5.2, Page 28: We applaud DNR’s recognition that coordination between various stakeholders is paramount and would posit that DNR’s careful attention to this legally mandated effort should reassure the General Assembly so that they can control their incessant impulse to legislate the oyster restoration efforts in the Bay, rather than leaving DNR and its scientists and partners to develop, implement and measure the success of this FMP that has been carefully crafted after years of delay and dissembling by various political and special interest groups.



- Section 5.0, Action 5.5, Page 25, add #5: Include all stakeholders, including impacted county governments and members of the public oyster fishery, in the process of adding new, or expanding, sanctuaries in the Bay.

**Point 5:**

Section 6.1, page 32. The 2009 analysis estimated that there are approximately 36,000 acres of “productive oyster bottom” in the Maryland portion of the Bay. What % of this 36,000-acres is in sanctuaries?

**Point 6:**

Section 6.3, Page 35. We are pleased to see that the success of Virginia’s rotational harvest system will be replicated in the Maryland portion of the Bay moving forward. In addition to other benefits, this will allow for accurate comparison of various restoration efforts that include, rather than exclude, the public fishery.

**Point 7:**

Section 6.6, Page 38. We appreciate the prohibition on the use of alternative substrate that adversely impacts navigation, other fisheries, the ecosystem or harvest gear. We recommend adding language that requires rigorous scientific study of the long-term impact of construction rubble and other “alternative substrate” being dumped into the Bay. Certain testing and, if necessary, remediation should be required, as part of this FMP, prior to non-indigenous material being dumped into the Bay for use in oyster restoration efforts. This testing and remediation, as well as other environmental factors, should be calculated in any cost comparisons between natural and alternative substrate (i.e., the carbon footprint of making new concrete balls, the carbon footprint of extracting and transporting stone or construction rubble from long distances, etc.).

- There should be a guideline stating a universal preference for natural indigenous oyster shell as the substrate of choice for any future work in Bay Agreement restoration sanctuaries (Harris Creek, Tred Avon River, Little Choptank River, Manokin, St. Mary’s). Implementation of any updated oyster management plan should be conditioned on the availability of natural shell. The Administration, DNR and OAC should continue pressing the U.S. Army Corps of Engineers for approval of the Man O’War Shoal shell dredge permit and other permits for shell dredging in the upper Bay. Maryland has waited long enough for this critical element (shell) of our oyster restoration efforts; while Virginia’s oyster fishery continues to outperform Maryland using our proven past practices (and dredge).
- Alternative substrate materials such as construction debris and non-indigenous mixed shell pose a threat to Maryland’s waters and aquatic ecosystem. For decades the U.S. EPA has reported the issue of PCB contamination in building material debris and bricks caused by the application of PCB caulk. (<https://www.epa.gov/pcbs/polychlorinated-biphenyls-pcbs-building-materials>) Given the unknowns and questionable testing protocols for alternative substrate, natural indigenous oyster shell is the most cost-effective and protective.



**Point 8: Federal Funding Caution:** We recommend vigilance on the part of DNR and the State in accepting and utilizing certain Federal funding that will limit the discretion and flexibility of DNR in future management decisions. Avoid Federal programs and funding that conflicts with the policy of adaptive management (Section 2.4) as circumstances change.

**Point 9: Investment Protection:** There should be a guideline to ensure that in areas where county oyster committees and/or local governments in cooperation with local oyster committees invest funding and effort in cultivating bottom, planting and relocating shell and/or planting seed as part of an approved rotational harvest program, they are guaranteed the opportunity to legally harvest those areas (3-4 years after the investment). Without such assurance, the investments made by commercial watermen consistent with DNR's oyster management plan are subject to taking by subsequent statutory, regulatory or agency changes. This was indeed the case in 2010 with the designation of certain sanctuaries in locations where the industry had previously invested its own money and effort only to be denied (without compensation) the opportunity to realize a return on that investment (by way of being permitted to harvest legal sized oysters and/or relocating the smalls). Contrast this with the spending of federal dollars halting harvest in perpetuity.