

Rebuilding Our Shellfish Industry: *Maryland's New Leasing Program*



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A History of Oyster Harvests and Laws in Maryland

MARYLAND BUSHELS (MILLIONS)

16
14
12
10
8
6
4
2
0

1840 1860 1880 1900 1920 1940 1960 1980 2000

• BALTIMORE & OHIO R.R. REACHES OHIO RIVER

• GENERAL LICENSE SYSTEM; 5-ACRE LAW

• "OYSTER POLICE" ESTABLISHED

• CULL LAW

• WINSLOW OYSTER SURVEY

• OYSTER COMMISSION

• YATES SURVEY NATURAL OYSTER BARS

• HAMAN OYSTER CULTURE LAW; SHELLFISH COMMISSION

• MARYLAND CONSERVATION COMMISSION

• SHELL-PLANTING LEGISLATION

• TEN-PERCENT SHELL TAX

• TWENTY-PERCENT SHELL TAX

• FIFTY-PERCENT SHELL TAX

• SHELL-DREDGING PROGRAM

• SHELL TAX REDUCED TO TWENTY-FIVE PERCENT

• MORATORIUM ON LEASING OF NEW OYSTER GROUNDS

• OYSTER ROUND-TABLE ACTION PLAN

c. 1852: Baltimore & Ohio Railroad Reaches Ohio River: Expanded the oyster market to western communities; northern oyster packers opened plants in Baltimore.

1865: General License System; Five-Acre Law: State-wide license system regulated oystermen; leasing law allowed oyster planting on five-acre plots.

1868: "Oyster Police" Collected license fees, enforced fishing restrictions, and protected private grounds.

1877-79: Winslow Oyster Survey: Documented expansion of oyster beds and decline in number of oysters in Pocomoke and Tangier Sounds.

1882: Oyster Commission: Surveyed Maryland oyster beds; recommended conservation measures and oyster farming.

1890: Cull Law: Set minimum legal size for market oysters; required return of shells with spat and young oysters to natural oyster bars.

1906: Haman Oyster Culture Law; Shellfish Commission: Increased leasing allowance, a proposal rendered ineffectual by later legislation; commissioned Maryland Oyster Survey (Yates Survey).

1906-12: Yates Survey of Natural Oyster Bars: Conducted extensive biological and environmental surveys of Maryland's oyster bars.

1916: Maryland Conservation Commission: Consolidated Shell Fish Commission, Fish Commissioners, State Game Warden, and State Fishery Force (Oyster Police) into one agency.

1922: Shell-Planting Legislation: Initiated annual placement of shell as cultch for depleted oyster bars.

1927: Ten-Percent Shell Tax: Required oyster processors to make 10 percent of their shucked shell available for state use in planting.

1947: Twenty-Percent Shell Tax: Increased shell tax on processors.

1953: Fifty-Percent Shell Tax: Increased shell tax again, but the supply still proved insufficient.

1961: Shell-Dredging Program: Initiated new oyster repletion program using old shells dredged from non-producing areas.

1965: Twenty-Five Percent Shell Tax: Reduced shell tax; allowed processors the option of cash payment, in place of shell.

1972: Moratorium on New Leases: Suspended awards of new leases of oyster grounds pending completion of new survey of state oyster grounds.

1993: Oyster Roundtable Action Plan: An agreement by major stakeholders in the oyster fishery, including watermen and scientists to develop a science-based plan for sustainable restoration.

Changing Laws

- 1830 “One Acre Law”: first aquaculture
- 1865 “Five Acre Law”: licensing system and expanded minor aquaculture potential
- 1884 Oyster Commission: survey of grounds; recommendations on conservation and expanding aquaculture
- 1906 Haman Oyster Law: Shellfish Commission; renovated leasing; Yates Survey

Onward Into the Century

- **1912 Price-Campbell Bill: improved Haman; increased acreage; dredges allowed**
- **1914 Shepherd Bill: protests allowed to block leases; effectively stopped leasing**
- **1916 Maryland Conservation Commission: consolidated several advisory groups and police operations**

More commissions...

- **1932 Baltimore Association of Commerce**
- **1936 State Planning Commission**
- **1938 Committee on the Structure of the Maryland State Government**
- **1943 Tidewater Fisheries Department Oyster Management Plan**
- **1948 Commission on the Conservation of Natural Resources**

Still more commissions...

- **1966 Seafood Advisory Committee of Wye Institute**
- **1978 Maryland Oyster Resource Expansion (M.O.R.E.) Task Force**
 - **Chaired by DECD Asst Secty William Pate**
 - **Continued disputes between watermen, growers, processors and scientists**
 - **Resulted in minority report**

1992 Oyster Roundtable

- Formed by DNR Secretary Torrey Brown
- Professionally facilitated
- Membership of widely diverse interests
- Total consensus or no agreement
- “No one gets all; all get some”
- Led to action plan that developed Oyster Recovery Partnership, tributary zones, managed reserves and other concepts

2003 Task Force on Seafood and Aquaculture

- **Created by General Assembly**
- **Two sections with 40 members**
 - **Seafood**
 - **Aquaculture**
- **Wide membership base**
- **18 month investigation**
- **Supported by the Maryland Aquaculture Development Conference**
- **Legislation submitted for 2005 legislature**

Analysis of Problems

- Lack of coordination between agencies
- Untimely delays in off bottom permits
- Historic disregard for private culture
- Lack of input to highest levels of state government on regular basis
- Constrained by archaic laws and regulations accumulated over years
- Previous legislation only defined roles and responsibilities of MDA, DNR, and UMD

2005 Legislation

- **Sen. Kathy Klausmeier and Del. Tony O'Donnell**
- **Changed Advisory Committee to Aquaculture Coordinating Council with broad range of charges including BMPs**
- **Created Review Board chaired by Aquaculture Coordinator for permit tracking and review**

Legislation 2007

- Submitted by CBF to allow leases to be used for ecological purposes
- Industry objected; not commercial purpose
- Changed to two 30 acre plots for CBF
- Charged DNR Secretary to appoint an Oyster Advisory Commission
- Increased penalties for oyster theft on sanctuaries, leases and public reefs

Oyster Advisory Commission

- Enhanced sanctuary program
- Move industry to private aquaculture
- Closely regulated public harvest
- Assess EIS for *Crassostrea ariakensis*
- Recommendations for statewide Oyster Management Plan
- Called for expansion of public funding with an end date of 2020

Governor O'Malley and aquaculture

- **Aug 2008 -Governor O'Malley visits shellfish aquaculture businesses on the coastal bays**
 - **Noted increase in Virginia industry in both hard clams and oysters**
 - **Recognized aquaculture benefits to economy and environment**
 - **Called for plan to spur development to him within 60 days**

Legislation Development

- **Aquaculture Coordinating Council provided recommendations for legislation, Sep 08**
- **Interagency group developed legislation**
- **Passed 2009 General Assembly with unanimous votes in both houses**
- **Signed by Governor on 07 May 09**

Lease Law Provisions

- Changed from legislative to regulatory framework for management
- Deleted county prohibitions on leasing
- Allowed corporations to hold leases
- Allowed nonresident leasing
- Deleted acreage limitations
- Replaced with “use or lose” program with oversight monitoring and production requirements

Lease Law Provisions

- **Natural Oyster Bars became Public Shellfish Fishery Areas able to be leased**
- **Planting requirements**
 - 1 million seed / acre on 1/4 annually
 - waiver if unavailable or other factors
 - Requires production plan with application
 - Requires annual reporting of activity & harvest
- **Clearance zones**
 - 150' from channels, pound nets, marinas, launching ramps and PSFAs
 - 50' from shoreline except by agreement of riparian owner

Key Provisions: Aquaculture Enterprise Zones

- Designated areas for bottom and off-bottom culture
- State gets permits (USACE / MDE) and subleases to growers
- 25% initial set aside for licensed watermen
- Two initial sites in Patuxent River ~176 acres
- More to be designated in other areas

What are the goals of oyster management in Maryland's Chesapeake Bay?

- Return oysters to a level of former abundance
- Enhance disease resistance in natural stocks
- Rebuild reef structures and expand their footprint through larger sanctuaries
- Create more effective harvest scenarios
- Expand economic opportunity through increased aquaculture

Principal issues

- How to restore natural populations that are at extremely depleted levels due to disease and other factors?
- How to rebuild our oyster industry by moving to private culture, attracting investment capital and offering traditional harvesters the opportunity to transition?
- **Both have ecological benefits**

Current Activities of the “Oyster Team”

- Develop a low interest loan program for shellfish aquaculture (MARBIDCO)
- Investigate other funding sources to spur development (NRCS; MDA; others)
- Develop application procedures
- Get existing leases back to production
- Determine review and reporting procedures and PSFA rezoning criteria

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