

Oyster Advisory Commission Operating Guidelines (2020)

Background

The Oyster Advisory Commission (OAC) has the duty of advising the department on matters related to oysters in Maryland's portion of the Chesapeake and Coastal Bays. This will be accomplished by:

1. Providing the department with advice on matters related to oysters in the Chesapeake Bay;
2. Reviewing the best possible science and recommending changes to the framework and strategies for rebuilding and managing the oyster population in the Chesapeake Bay under the Chesapeake Bay Oyster Management Plan;
3. Reviewing the latest findings relevant to the Environmental Impact Statement evaluating oyster restoration alternatives for the Chesapeake Bay;
4. Reviewing any other scientific, economic, or cultural information relevant to oysters in the Chesapeake Bay; and
5. Developing a package of consensus recommendations, in coordination with the Department, for enhancing and implementing the fishery management plan for oysters as required per statute.

Per statute, OAC has been charged with additional duties starting in 2020 (Appendix A). With the assistance of external conflict resolution and facilitation specialists, the commission must develop a package of consensus recommendations through a facilitated consensus solutions process, based on a 75% majority agreement level for each recommendation. In coordination with the University of Maryland Center for Environmental Science and the Oyster Advisory Commission, the department must develop a package of consensus recommendations for enhancing and implementing the fishery management plan for oysters that will be informed by a collaboratively developed, science-based modeling tool to quantify the long-term impacts of identified management actions and possible combinations of management actions on:

- Oyster abundance;
- Oyster habitat;
- Oyster harvest;
- Oyster harvest revenue; and
- Nitrogen removal.

The fishery management plan must:

- End the overfishing of oysters in all areas and regions of the Chesapeake Bay and its tributaries where overfishing has occurred according to biological reference points established by the most recent oyster stock assessment while maintaining a harvest in the fishery;

- Achieve fishing mortality rates at target levels;
- Increase oyster abundance;
- Increase oyster habitat; and
- Facilitate the long-term sustainable harvest of oysters, including the public fishery.

The department may not reduce or alter the boundaries of the oyster sanctuaries established in “Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries (September 2010)” until the department has developed an updated fisheries management plan based on the management strategies and recommendations of the commission as referenced above.

Reporting

The department shall submit interim reports and a final report to the governor and the Maryland General Assembly by the following dates:

Interim Reports: August 1, 2020; December 1, 2020; and August 1, 2021

Final Report: December 1, 2021

Membership

Under the consensus building process defined in statute, 60% of the commission members must be oyster industry orientated (e.g. public fishery and aquaculture) and 40% non-industry orientated (e.g. environmental groups and academia). Members codified in statute include:

Voting Members

1. A representative from each of the 11 County Oyster Committees established, designated by each committee;
2. A representative from the Maryland Watermen’s Association, designated by the association;
3. A representative from the Maryland Oystermen’s Association, designated by the association;
4. A representative from the Blacks of the Chesapeake Foundation, designated by the foundation;
5. A representative from the aquaculture industry, designated by the Aquaculture Coordinating Council;
6. A representative from the commercial seafood buyer industry, designated by the secretary of the department;
7. A representative from the Coastal Conservation Association of Maryland, designated by the association;
8. A representative from the Chesapeake Bay Foundation, designated by the foundation;
9. A representative from The Nature Conservancy, designated by the conservancy;
10. A representative from the ShoreRivers Riverkeeper Association, designated by the association;
11. A representative from the Arundel Rivers Federation, designated by the federation;
12. A representative from the Oyster Recovery Partnership, designated by the partnership;
13. A representative from the Chesapeake Bay Commission, designated by the commission;
14. A representative from Blue Oyster Environmental, designated by Blue Oyster Environmental;

15. A representative from the Chesapeake BaySavers, designated by the Chesapeake BaySavers;
16. A representative from the National Aquarium, designated by the aquarium;
17. A representative from the University of Maryland Center for Environmental Science, designated by the center; and
18. A representative from the Patuxent Environmental and Aquatic Research Laboratory, Morgan State University, designated by the research laboratory.

Non-Voting Members

1. State and federal agencies tasked with oyster management and restoration responsibilities, including the department, the National Oceanic and Atmospheric Administration, and the U.S. Army Corps of Engineers;
2. Two members of the Senate, one from each political party, appointed by the President of the Senate; and
3. Two members of the House of Delegates, one from each political party, appointed by the Speaker of the House.

Roles of Voting Members and Proxy Voting

The voting members shall have the following roles:

Prepare for Meetings: Read distributed meeting information in advance of the meeting; discuss pertinent issues with the constituents you represent; identify and recommend items for the agenda; and prepare to communicate and discuss constituent's viewpoints at meetings.

Attend meetings: Members shall attend all meetings. The meetings will be in-person meetings unless under exigent circumstances, whereupon the meetings will be held virtually using an appropriate online meeting platform.

Proxy Voting: Proxy voting is when a member gives written authorization for a third party to vote on their behalf. This authorization needs to be written and signed by the member and the leadership of the member's organization or a corporate officer. If a member cannot make it to a meeting when a vote will take place, the person with the written proxy authorization will have full authority to vote on behalf of the organization.

Service Between Meetings: Maintain regular communication with the constituents you represent, informing them on the status of the commission and representing the commission accurately. Discuss issues with fellow members.

Work Meetings: Follow the process; follow agenda; suggest solutions or compromises; seek closure.

Participate: Use the capacities and resources you possess; promote the ideas, perspectives, and constituencies you represent while adhering to the purpose of the commission.

Roles of Non-Voting Members

While the non-voting members of the OAC are precluded from voting, they shall attend and participate in all meetings and discussions as duly appointed commissioners. They shall engage in the dialogue,

provide input, provide information at the request of the commission, assist with reviewing recommendations and provide advice.

Term of Tenure

There is no term of tenure stated in statute.

Facilitators

The Secretary of the department shall designate a facilitator(s) for the commission.

The facilitator(s) shall have the following roles:

Leader- Model leadership and governance behavior; design and facilitate the consensus building and decision-making process; preside in a neutral manner; synthesize concepts; forge relationships; develop commission consensus.

Meeting Facilitator - Ensure adherence to agenda and operating guidelines; assist members to stay focused and on task; provide procedural guidelines to commissioners; facilitate and clarify discussion; involve membership; explore diversity of opinions/inputs; resolve conflict.

Administrator – Shall prepare and distribute meeting agendas, meeting summaries and meeting support information; arrange for meeting space; and secure materials and/or resources to facilitate meetings; approve agenda items; set stage for meetings; ensure key discussion points from the meetings are accurately and fairly explained; and track tasks of and/or requested by the commission.

Agenda and Meeting Support Information

The agenda for meetings shall be established by the members in consultation with the department and University of Maryland Center for Environmental Science, and include any specific issues requested by the secretary of the department.

Unless there are exigent circumstances, the agenda and meeting support information shall be distributed at least five working days before each meeting. At the end of each meeting, the date of the next meeting will be confirmed.

If a topic on the agenda requires more time for discussion than originally allocated on the agenda, the commission will either remove another topic from the agenda or continue the discussion at a future meeting. This will allow the commission to stay within the total time allotted for the meeting.

If a discussion on a topic not on the agenda is brought up during a meeting, it may be put in the “parking lot” and be fully discussed at a future meeting.

Attendance

Members will attend each meeting. Proxy attendees will be allowed. Each organization can appoint one proxy from their organization that may attend in a member’s absence. Proxy members must try to attend all meetings so that they are current with the progress of the commission.

If a member and member's proxy is unable to attend a meeting, they must notify the facilitator within 24 hours of the meeting. The facilitator will work with them to obtain and provide their input to the commission. The facilitator will notify members if a meeting is to be canceled for lack of a quorum.

During the 2020 to 2021 consensus building process, if a member fails to attend 50% or more of the meetings during a calendar year, the department may request the member's organization to appoint another member to the commission.

Quorum

A quorum is a simple majority of appointed voting members. If there is no quorum, the meeting will be canceled.

Communication Guidelines

1. Only members or a member's proxy will sit at the meeting table.
2. Members will strive to focus on their values and interests, not their positions.
3. To the extent possible, members shall offer options to address other's concerns as well as their own.
4. Only one member will speak at a time, each member will have equal opportunity to participate.
5. Members will speak after being recognized by the facilitator.
6. Each member will focus on the agenda topics to keep the discussion moving forward.
7. Each member will respect all other members and individuals of the public that may attend meetings.
8. Each member will strive to listen actively, be open-minded and be respectful. There will be no personal attacks or threats.
9. Public observers will be allowed to address the commission at a designated time period on the agenda for each meeting.
10. If a member wants to discuss a non-agenda item, they will request this at the end of the meeting. Members will vote to determine if the issue should be discussed then or put on the agenda for a future meeting. If such an item is not discussed at the meeting or if it is not put on the agenda for a future meeting, it will be treated as a "motion without a second."
11. Members are expected to pay attention, be engaged in the meeting and the discussions. Members should refrain from using electronic devices for non-meeting related purposes.

Decision Making in the Consensus Building Process

Please see Appendix B for an explanation of the decision making guidelines for the Consensus Building Process.

Meeting Summaries

Meeting summaries shall be prepared as a record of any meeting wherein official business is conducted. Except for specific language of any motion or language a member requests to have on the record, meeting summaries shall reflect the general discussion or presentation as opposed to being verbatim.

Draft meeting summaries shall be distributed to members within fifteen (15) working days following the meeting to which the meeting summaries apply. Members will submit corrections before or at the start of the next meeting.

Draft meeting summaries, with or without amendments, shall be approved by a simple majority of the voting members present. After the meeting summaries are approved by the commission, they will be considered final and made available to the public.

The department shall maintain a master file of meeting agendas, meeting summaries, and meeting support information.

Public Comments

If asked to comment on a matter under consideration by the commission, a member shall differentiate between personal views, and any official position taken by the commission.

Members of the general public may express their views during the designated time on the agenda. Each speaker will be given 2 minutes to state their views but will also be afforded an opportunity to submit something in writing to the commission. Written public comments must be submitted by the Friday before the meeting in order to be included in member handouts and will be considered public information. Comments should include your name, and you must include the meeting date for the proceeding for the corresponding comment.

Commission Positions and Recommendations

Official positions or recommendations adopted by the commission which warrant the attention of the secretary of DNR shall be recorded in the meeting summary and transmitted to the secretary of DNR as official correspondence.

Official Correspondence

Official correspondence generated by the commission shall be reviewed and signed by at least 75% of the voting members.

Copies of any correspondence transmitted by the commission shall be provided to all members. The department shall maintain a master file of all correspondences transmitted by the commission.

Travel Reimbursement

Members can receive travel reimbursement for meetings in accordance with the State of Maryland's travel reimbursement guidelines and rates.

Members will receive expense account forms at each meeting and shall complete the requested information and provide it to the department.

Reimbursement may take 2-4 weeks.

Ethics and Financial Disclosure

Each member and proxy are subject to the Maryland Public Ethics Law. As such, members and proxies will need to provide information to the State Ethics Commission and complete the financial disclosure form.

Open Meetings Act

All meetings will be held in compliance with the Open Meetings Act which is a statute that requires many public bodies to hold their meetings in public, give the public adequate notice of those meetings, and allow the public to inspect meetings minutes or summaries. All meeting summaries and relevant documents will be made available on the department's website. In accordance with the Act, at least one employee, officer, or member of the commission will be trained on the requirements of the Act.

Contact Information for the Facilitators:

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APPENDIX A

Maryland Natural Resources Code Annotated 2020

§ 4-204. Department advisory commissions

(c) Oyster Advisory Commission. --

(1) There is an Oyster Advisory Commission in the Department.

(2)

(i) On or before June 1, 2019¹, and subject to subparagraph (ii) of this paragraph, the Department shall, in coordination with the University of Maryland Center for Environmental Science, convene the members of the Commission.

(ii) The Commission shall include only:

1. A representative from each county oyster committee established under § 4-1106(b) of this title designated by the committee;
2. A representative from the Maryland Watermen's Association, designated by the Association;
3. A representative from the Maryland Oystermen's Association, designated by the Association;
4. A representative from the Blacks of the Chesapeake Foundation, designated by the Foundation;
5. A representative from the aquaculture industry, designated by the Aquaculture Coordinating Council;
6. A representative from the commercial seafood buyer industry, designated by the Secretary;
7. A representative from the Coastal Conservation Association of Maryland, designated by the Association;
8. A representative from the Chesapeake Bay Foundation, designated by the Foundation;
9. A representative from the Nature Conservancy, designated by the Conservancy;
10. A representative from the ShoreRivers Riverkeeper Association, designated by the Association;
11. A representative from the ArundelRivers Federation, designated by the Federation;
12. A representative from the Oyster Recovery Partnership, designated by the Partnership;
13. A representative from the Chesapeake Bay Commission, designated by the Chesapeake Bay Commission;
14. A representative from Blue Oyster Environmental, designated by Blue Oyster Environmental;
15. A representative from the Chesapeake BaySavers, designated by the Chesapeake BaySavers;
16. A representative from the National Aquarium, designated by the National Aquarium;
17. A representative from the University of Maryland Center for Environmental Science, designated by the Center; and
18. A representative from the Patuxent Environmental and Aquatic Research Laboratory, Morgan State University, designated by the Research Laboratory.

(3) The following persons shall provide information to the Commission at the request of the Commission but may not participate as voting members:

- (i) State and federal agencies tasked with oyster management and restoration responsibilities, including the Department, the National Oceanic and Atmospheric Administration, and the U.S. Army Corps of Engineers;
- (ii) Two members of the Senate, one from each political party, appointed by the President of the Senate; and
- (iii) Two members of the House of Delegates, one from each political party, appointed by the Speaker of the House.

(4) The Commission shall:

- (i) Provide the Department with advice on matters related to oysters in the Chesapeake Bay;
- (ii) Review the best possible science and recommend changes to the framework and strategies for rebuilding and managing the oyster population in the Chesapeake Bay under the Chesapeake Bay Oyster Management Plan;
- (iii) Review the latest findings relevant to the Environmental Impact Statement evaluating oyster restoration alternatives for the Chesapeake Bay;
- (iv) Review any other scientific, economic, or cultural information relevant to oysters in the Chesapeake Bay;
- (v) Develop a package of consensus recommendations, in coordination with the Department, for enhancing and implementing the fishery management plan for oysters under § 4-215 of this subtitle; and
- (vi) By December 31, 2007 and to the extent reasonably appropriate, report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on:
 1. Strategies to minimize the impact of oyster disease, including the State repletion program and bar cleaning;

¹ Legislative introduced in during the 2020 session (HB0911/SB0808) changed this to April 1, 2020

2. The framework and effectiveness of the oyster sanctuary, harvest reserve, and repletion programs, and the overall management of natural oyster bars, after performing a cost-benefit analysis that considers biological, ecological, economic, and cultural issues;
 3. Strategies to maximize the ecological benefits of natural oyster bars; and
 4. Strategies to improve enforcement of closed oyster areas.
- (5) The Department may not use funds allocated to a county oyster committee for the Commission established under this subsection.

§ 4-215. Fishery management plans

(3)

(i) Subject to subparagraph (ii) of this paragraph, the Department may not take any action to reduce or alter the boundaries of the oyster sanctuaries established in "Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries (September 2010)" until the Department has developed a fisheries management plan for the scientific management of the oyster stock following the completion of its reports in accordance with paragraph (3) of this subsection.

(ii) This paragraph may not be construed to prevent the Department from:

1. Selecting the final two tributaries for tributary-scale oyster restoration sanctuary projects in accordance with the 2014 Chesapeake Bay Agreement; or
2. Establishing, in the discretion of the Department, any dimensions for a tributary-scale oyster restoration sanctuary project.

(4)

(i) Subject to subparagraph (ii) of this paragraph, the Department may not take any action to reduce or alter the boundaries of the oyster sanctuaries established in "Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries (September 2010)" until the Department has developed a fisheries management plan for the scientific management of the oyster stock based on management strategies and measurements recommended by the Oyster Advisory Commission under paragraph (5) of this subsection and determined by the Department in consultation with the University of Maryland Center for Environmental Science.

(ii) The fishery management plan developed in accordance with paragraph (5) of this subsection shall:

1. End the overfishing of oysters in all areas and regions of the Chesapeake Bay and its tributaries where overfishing has occurred according to biological reference points established by the most recent oyster stock assessment while maintaining a harvest in the fishery;
2. Achieve fishing mortality rates at target levels;
3. Increase oyster abundance;
4. Increase oyster habitat; and
5. Facilitate the long-term sustainable harvest of oysters, including the public fishery.

(iii) This paragraph may not be construed to prevent the Department from:

1. Selecting the final two tributaries for tributary-scale oyster restoration sanctuary projects in accordance with the 2014 Chesapeake Bay Agreement; or
2. Establishing, in the discretion of the Department, any dimensions for a tributary-scale oyster restoration sanctuary project.

(5) (i) The Department shall:

1. In coordination with the University of Maryland Center for Environmental Science and the Oyster Advisory Commission, develop a package of consensus recommendations for enhancing and implementing the fishery management plan for oysters that will be informed by a collaboratively developed, science-based modeling tool to quantify the long-term impacts of identified management actions and possible combinations of management actions on:

- A. Oyster abundance;
- B. Oyster habitat;
- C. Oyster harvest;
- D. Oyster harvest revenue; and
- E. Nitrogen removal; and

2. Hold public listening sessions throughout the State to identify possible management actions for use in the public oyster fishery.

(ii) The Oyster Advisory Commission, with the assistance of external conflict resolution and facilitation specialists, shall:

1. Develop a package of consensus recommendations through a facilitated consensus solutions process, based on a 75% majority agreement level for each recommendation;
2. Recommend management actions or combinations of management actions to achieve the targets identified in the oyster stock assessment with the goal of increasing oyster abundance; and
3. Review model results for each management action or combination of management actions to inform its recommendations.

(iii) Notwithstanding § 3-305 of the General Provisions Article, and with the consent of a 75% majority of its members, the Oyster Advisory Commission may meet and deliberate in closed session to develop the package of consensus recommendations for enhancing and implementing the fishery management plan for oysters under this paragraph.²

(iv)

1. The Department shall submit interim reports on the development of the package of consensus recommendations by December 1, 2019, August 1, 2020, and December 1, 2020³, to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.⁴

2. The Department shall provide a final report by July 1, 2021⁵, which will include an implementation schedule for the consensus recommendations, to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

(v) To be responsive to changes in the oyster resource due to environmental conditions, the Department shall:

1. Review the status of the stock relative to reference points every 2 years and conduct a benchmark stock assessment every 6 years with consideration of new methods and with external peer review; and

2. With the input of interested stakeholders, implement management actions that increase oyster habitat, maintain harvest, and grow the oyster stock. for Oysters pending the development of consensus recommendations in accordance with this Act.

² Legislative introduced in during the 2020 session (HB0911/SB0808) removed this text

³ Legislative introduced in during the 2020 session (HB0911/SB0808) changed these dates to 8/1/2020, 12/1/2020, and 8/1/2021

⁴ Legislative introduced in during the 2020 session (HB0911/SB0808) added the following text:

2. In addition to the requirements under subparagraph 1 of this subparagraph, the department shall include in the interim report submitted by August 1, 2021:

A. The status of the development of the science-based modeling tool used to quantify the long-term impacts of identified management actions; and

B. A summary of the model results of any actions identified by the Oyster Advisory Commission on or before the date of the interim report.

⁵ Legislative introduced in during the 2020 session (HB0911/SB0808) changed this date to 12/1/21

APPENDIX B

Decision-Making Using a Consensus Process Supported by Simulation Modeling

The commission should strive for common ground and actions in its decision making. The commission will strive to make its decisions regarding management actions using a consensus approach based on 75% agreement level by all voting members in accordance with the statute. If a member or a member's proxy is not in attendance, the facilitator(s) will reach out to that member to summarize the discussion and obtain their input.

Any voting and nonvoting OAC member can propose management options to be tested within the simulation model. All proposed management options will be recorded in writing so that all members can see the exact language of the option prior to rating it (see ratings scale below). Tallies of ratings will be recorded. Any member or organization that recused themselves from a vote or from representation on the commission will have an abstention vote recorded.

The following Acceptability Rating Scale will be utilized for acceptability rating exercises:			
4 = Acceptable, <i>I agree</i>	3 = Acceptable, <i>I agree</i> <i>with minor</i> reservations	2 = Not Acceptable, <i>I don't agree</i> <i>unless major reservations are</i> <i>addressed</i>	1 = Not Acceptable

Definitions:

This process and the following definitions and rating scale are based on the Consensus Solutions process which was developed at Florida State University by Jeff Blair and Robert Jones, and was the process which was tested in the OysterFutures research program.

According to Blair and Jones, "Consensus is a Process, an Attitude and an Outcome. Consensus processes have the potential of producing better quality, more informed and better-supported outcomes.

As a Process, consensus is a problem-solving approach in which all members:

- Jointly share, clarify and distinguish their concerns;
- Educate each other on substantive issues;
- Jointly develop alternatives to address concerns; and then
- Seek to adopt recommendations everyone can embrace or at least live with.

In a consensus process, members should be able to honestly say:

- I believe that other members understand my point of view;
- I believe I understand other members' points of view; and
- Whether or not I prefer this decision, I support it because it was arrived at openly and fairly and because it is the best solution we can achieve at this time.

Consensus as an Attitude means that each member commits to work toward agreements that meet their own and other members' needs and interests so that all can support the outcome.

Consensus as an Outcome means that agreement on decisions is reached by all members or by a significant majority of members after a process of active problem solving. In a consensus outcome, the level of enthusiasm for the agreement may not be the same among all members on any issue, but on balance all should be able to live with the overall package."

Levels of consensus on a commission outcome can include a mix of:

- Participants who strongly support the package of consensus recommendations;
- Participants who can "live with" the package of consensus recommendations; and
- Some participants who do not support some of the specific options within the package of consensus recommendations, but agree that the package of consensus recommendations should move forward as a whole.
- Some participants who do not support the package of consensus recommendations.

For OAC purposes, a consensus recommendation shall be defined as any option/recommendation achieving a 75% or greater number of 4s and 3s within the acceptability rating scale in proportion to 2s and 1s based on the results of all members present and rating. Please see the rating scale in the next section for more detail on this.

At the end of the process, each consensus recommendation will be assembled into a package of consensus recommendations. The OAC will then conduct one vote, the only vote of the process, which will be for, against, or abstain from accepting the package of consensus recommendations. The package will be considered approved if 75% or greater of the voting OAC members vote for it.

Acceptability Rating Scale for Options and Recommendations

During the evaluation of proposed options, members will be asked to develop and rate the acceptability of options or parts of the model. These ratings of options or parts of the model are preliminary until the final stage of the process. As part of the process, members will have the opportunity to discuss their reservations with other members of the Commission to better understand their position and reasoning. Following such discussions, members will have the opportunity to offer refinements or changes to address said reservations. In general, 4s and 3s are in favor of an option and 2s and 1s are opposed. Once rated for acceptability, options(s) with a 75% or greater number of 4s and 3s in proportion to 2s and 1s will be considered preliminary consensus recommendations for inclusion in the final package of recommendations.

OAC members who rate options as not acceptable (2s and 1s) will be asked what would need to be changed to make the option acceptable. This is an important part of the process which allows the group to bring up new ideas and converge on solutions.

At any point during the process, any option may be re-evaluated and rated at the request of any member. The status of a rated option will not be final until the last meeting, when a final vote will be taken on the entire package of consensus ranked recommendations.