



Comments of the Advocates for Herring Bay¹
Regarding the Maryland Oyster Management Plan (May, 2019)
Maryland Department of Resources, Fishing and Boating Services
July 22, 2019

The Advocates for Herring Bay (AHB) commend the State of Maryland for its longstanding efforts to restore the Chesapeake's oyster population in a scientifically sound and transparent manner. We supported the designation of Herring Bay as an oyster sanctuary in 2010, and are pleased to report that we launched an oyster restoration project in the sanctuary in 2019, with seeding expected to occur upon final approval by the Department of Natural Resources (DNR).

Thanks to partnerships between the state and local groups like AHB and the Chesapeake Beach Oyster Cultivation Society, more resources are being invested in projects that will revitalize aquatic habitats in Herring Bay. That progress could be undermined, however, by some of the policies and practices outlined in the May, 2019 Oyster Management plan. Our three major concerns include:

- inadequate standards and procedures for changing the boundaries of existing sanctuaries,
- aquaculture policies that allow dredging operations, and
- enforcement of restrictions on clamming operations in sanctuaries.

Background. Our concerns reflect the features and conditions of Herring Bay. As a guiding principle, we believe that fisheries policies affecting Herring Bay must account for the diversity of its aquatic habitats and recreational resources. The federal Environmental Protection Agency and DNR recognized the importance of those assets in 2002 when they designated Herring Bay as one of two “No Discharge Zones” in state waters. In its profile, EPA noted that Herring Bay's beaches and waters serve as nesting habitat for horseshoe crabs and as a nursery for numerous fish and crabs (see Attachment 1). Submerged aquatic vegetation (SAV) grows along portions of the shoreline, and our water quality affects the value of the region's robust recreational fishing and boating communities.

Concerns about Changes to Sanctuary Boundaries (pages 29-30). Herring Bay is among the areas that could be affected by proposals to de-list or downsize existing oyster sanctuaries. In our view, the steps and standards outlined in Action 5.0.6 fail to address many of the key factors that should be considered when deciding whether to modify sanctuary boundaries. For example:

Under Action 5.0.6, DNR would only consider the benefits of *removing* sanctuary protections, ignoring the ecological and socioeconomic benefits of *retaining* the sanctuary status of an area. We believe it is imperative for DNR to correct this imbalance by adding a new subsection outlining factors that would justify keeping an area's sanctuary designation. As suggested by section 11 of the plan, reserving productive oyster habitats for ecological services in areas like Herring Bay could:

¹ The Advocates for Herring Bay, Inc. (AHB) is a community-based environmental group located in southern Anne Arundel County. Information about our organization can be found on our website www.herringbay.org.

- spur additional investments by nonprofits and other partners that would increase biologically sustainable oyster populations,
- improve habitat for locally important aquatic species, such as horseshoe crabs and SAV,
- improve local water clarity by minimizing sediment disturbance and capitalizing on the water filtering functions of intact oyster bars,
- reduce nitrogen and phosphorus loads,
- promote the abundance and economic value of local blue crab harvests,
- promote the economic value of local sport fishing and boating activities, and
- increase the growth of reefs that would help mitigate the adverse impacts of sea level rise on shorelines in the sanctuary area.

Similarly, sanctuaries should not be prejudged as unproductive simply because federal and state agencies haven't yet invested any money to restore their oyster reefs. It's premature to abandon opportunities for ecological restoration in areas like Herring Bay, which should respond well to future investments given its summer salinity levels (see page 77), above minimum abundance in 2017 (see page 79), and supportive estuarine habitats. Given the relative scarcity of oyster habitats within sanctuaries—estimated at less than 25 percent of the Bay-wide total—we believe that DNR should leave most boundaries intact.

Should DNR consider contour changes, the decision-making process also must account for the ecological diversity within large sanctuaries like Herring Bay. Our sanctuary spans nearly 17,000 acres from Parkers Creek near Deale to Hogs Point off Chesapeake Beach, with oyster habitat estimated to total thousands of acres. Actions under 5.0.6 cannot be justified until DNR:

- identifies productive oyster bars and habitats within each subarea in a sanctuary,
- ensures that the most promising habitats will continue to be protected by sanctuary status to maximize sustainable ecological services,
- adopts and enforces harvesting restrictions for any subarea removed from sanctuary status to ensure that harvesting will not occur until the oyster population in that subarea is biologically sustainable, and
- provides a process for re-instating an area's sanctuary status if the state determines that harvests are not biologically sustainable.

Finally, the framework for actions under 5.0.6 should expressly incorporate DNR's commitment to use "a consensus process to engage stakeholders, advisory groups and scientists on oyster resource policies that will result in decisions that have broad support among oyster groups" (see Action 9.0.2). Using a consensus process modeled on the approach developed by Florida State University should enhance the quality, transparency, and acceptance of DNR's decisions. Should DNR consider changes to the Herring Bay sanctuary, we think it would be essential for AHB and other local groups to be part of the consensus process.

Concerns about Aquaculture Dredging Operations (pages 47-49). Maryland's current aquaculture rules allow operators to harvest oysters throughout the year, including summer months. To our knowledge, those rules do not preclude the use of dredging equipment to harvest oysters on

submerged land leases. Dredging is an invasive practice that muddies the water, impeding the growth of SAV and harming larvae and hatchlings. We oppose oyster dredging operations within the No Discharge Zone in Herring Bay, and request that Maryland's aquaculture regulations be revised to preclude dredging activities there. Such restrictions would be consistent with Action 7.0.2, which calls for DNR to ensure that aquaculture leases "do not create adverse impacts on existing living resources."

Concerns about Clamming Operations in Sanctuaries (pages 26-27). Maryland's current regulations for clamming operations prohibit harvesting within 150 feet of historic oyster bars or areas covered by oyster leases. This summer, numerous boats were operating in waters near or on the historic Fairhaven, Long, and Holland Point bars in Herring Bay, which cover a concentrated area just beyond the "platform" noted on navigation maps (see attachments 2 and 3). While photos and neighbors' visual observations are not sufficient to determine whether dredging occurred in restricted waters, having a large number of clamming operations in that area raises the odds that Herring Bay's oyster habitats—including those being restored by AHB—will suffer from the increased sedimentation and potential physical damage that the sanctuary restrictions are meant to avoid. Unless and until enforcement can prevent such harm, we urge the state to preclude clamming operations in the No Discharge Zone in Herring Bay.

Thank you for considering our views. If you have any questions regarding our statement, please contact Kathy Gramp and Birgit Sharp at herringbay@gmail.com

Attachment 1

U.S. Environmental Protection Agency description of Herring Bay
<http://www.epa.gov/reg3wapd/nodischarge/maryland.htm>

extracted in 2009



Herring Bay

Herring Bay No Discharge Zone. [Larger version of graphic.](#) These maps should not be used as navigation aids.

The Herring Bay No Discharge Zone (NDZ) is a 3,145-acre area of water located along the western shore of the Chesapeake Bay in southern Anne Arundel County. The area includes Rockhold, Tracy, and Parker creeks on the north and Rose

Haven Harbor on the south. The NDZ includes tidal waters west of the following:

Beginning on Holland Point at or near 38°43'34.9"N/ 76°31'37.3"W (Latitude/Longitude), then running in a northerly direction to Crab Pile A at or near 38°46'33.0"N/ 76°32'10.1"W (Latitude/Longitude), then running to a point on the north shore of Parkers Creek at or near 38°46'39.1"N/ 76°32'10.8"W (Latitude/Longitude).

The Herring Bay watershed is approximately 25 square miles. Although traditionally a farming area, several residential communities are located within the watershed including some that are located along the shoreline. The town of Deale sits adjacent to Rockhold Creek. Herring Bay is also a very popular recreational boating area and is home to 16 marinas containing 2,090 slips.

There are four bathing beaches on Herring Bay: Mason's Beach, Town Point, Owings Cliffs, and Rose Haven. Other beaches are specifically designated as terrapin and horseshoe crab nesting and spawning areas. Herring Bay is also a general aquatic nursery and feeding area providing habitat for a rich mixture of blue crabs, Atlantic croaker (hardhead), spot, bluefish, gray sea trout (weakfish), Atlantic menhaden, bay anchovy, striped bass, summer flounder, and white perch. Herring Bay also contains natural oyster bars as well as bottom habitat for soft clams. Herring Bay is bounded by productive crab potting areas in the Chesapeake Bay. Wildlife includes great blue heron, American black duck, canvasback duck, and scaup, as well as nesting areas for osprey and bald eagle. Finally, the area along the shoreline contains submerged aquatic vegetation.

Attachment 2
Pictures of clamming operations in Herring Bay from two vantage points, June 27, 2019



Attachment 3

Map showing location of Fairhaven, Long, and Holland Point bars in Herring Bay Sanctuary

