

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 551

An Act to amend the Code of Virginia by adding in Article 2 of Chapter 8 of Title 28.2 a section numbered 28.2-826, relating to nonnative oysters.

[H 2452]

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 8 of Title 28.2 a section numbered 28.2-826 as follows:

§ 28.2-826. Crassostrea ariakensis.

A. The Commissioner, after consultation with the Director of the Virginia Institute of Marine Science and the Fisheries Management Division of the Commission, and subject to the provisions of this section, may authorize, in writing, the placement of oysters of the species Crassostrea ariakensis on state-owned bottomlands as described in § 28.2-600 or 28.2-603.

B. The Commissioner's authorization for placement of C. ariakensis on state-owned bottomlands pursuant to this section shall be conditioned upon, and subject to, compliance with the following requirements:

1. All nonnative oysters placed on state-owned bottomlands pursuant to this section shall be placed within the bounds of sites established by survey and specifically designated and approved by the Commissioner for the placement of C. ariakensis. Before approving any site for the placement of C. ariakensis, the Commissioner shall determine that such use of the site shall not conflict with Virginia's native oyster restoration program. The Commissioner shall not approve any submerged aquatic vegetation site designated pursuant to § 28.2-1204.1 for the placement of C. ariakensis. Sites designated and approved for the placement of C. ariakensis shall be marked as provided in § 28.2-517 or as otherwise specified by the Commissioner in granting the authorization.

2. C. ariakensis oysters placed on state-owned bottomlands pursuant to this section shall not be relayed or transferred to other state-owned bottomlands except in compliance with this section.

3. C. ariakensis oysters placed on state-owned bottomlands pursuant to this section shall originate at a hatchery located in the Chesapeake Bay region and be certified by the Virginia Institute of Marine Science to be currently in compliance with applicable protocols established by the International Council for the Exploration of the Sea. Documentation of compliance with this requirement shall be submitted to the Commissioner prior to the placement of such oysters on state-owned bottomlands pursuant to this section.

4. C. ariakensis oysters placed in state-owned bottomlands pursuant to this section prior to July 1, 2007, or the completion of the Environmental Impact Statement under preparation by the U.S. Army Corps of Engineers and sponsored by Maryland and Virginia concerning the introduction of nonnative oysters, whichever is sooner, shall be rendered incapable of reproduction by a method that has been determined by the Virginia Institute of Marine Science as reliably producing not more than one diploid oyster per 1,000 of triploid oysters produced, and shall be deployed in a manner determined by the Virginia Institute of Marine Science to protect against inadvertent fertilization. On and after July 1, 2007, or the completion of the Environmental Impact Statement under preparation by the U.S. Army Corps of Engineers and sponsored by Maryland and Virginia concerning the introduction of nonnative oysters, whichever is sooner, the Commissioner, with the concurrence of the Director of the Virginia Institute of Marine Science, may authorize the placement of diploid or fertile C. ariakensis oysters on state-owned bottomlands.

C. At the request of any person authorized by the Commissioner to place C. ariakensis oysters on state-owned bottomlands, the Commissioner may direct that placement of the oysters be undertaken by or under the direction of the Commission provided that the requestor agrees to reimburse the Commission for all direct costs of such placement and provides a bond, escrow, or other financial assurance for payment of such costs in a form and amount satisfactory to the Commissioner.

D. Requests for approval and accompanying certifications required by this section shall be submitted in such form as prescribed by the Commissioner. The Commissioner may, by regulation, establish a reasonable fee sufficient to defray the costs of processing requests for approval. Approvals granted pursuant to this section shall not be transferred without the written authorization of the Commissioner.

E. C. ariakensis oysters that are placed on state-owned bottomlands in violation of this section shall, upon written order of the Commissioner, be removed immediately by the person responsible for their placement. Should such person be unwilling or unable to remove them, the Commissioner shall have the oysters removed and may recover the costs thereof from the person responsible for their placement.

F. The provisions of Title 28.2 shall apply to C. ariakensis oysters grown on state-owned

bottomlands except as otherwise provided in this section.

G. Not more than 60 and not less than 30 days before the Commissioner commences the exercise of his authority to allow placement of C. ariakensis on state-owned bottomland, the Commission shall hold at least one public hearing for the purpose of receiving data, views and argument concerning the placement of C. ariakensis in state waters. Not more than 60 and not less than 30 days before the Commissioner commences the exercise of his authority to allow placement of diploid or fertile C. ariakensis on state-owned bottomland, the Commission shall hold at least one public hearing for the purpose of receiving data, views and argument concerning the placement of diploid or fertile C. ariakensis in state waters.