

Committee on Resources

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TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE, AND OCEANS
COMMITTEE ON RESOURCES

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Annapolis, Maryland

Good morning and thank you Mr. Chairman; my name is Rebecca Hanmer. I am the Director of the Environmental Protection Agency's (EPA's) Chesapeake Bay Program Office. I appreciate the opportunity to be here to day to discuss efforts to introduce non-native oyster species to the Chesapeake Bay and the National Research Council's (NRC's) report titled "Non-native Oysters in the Chesapeake Bay."

In the Chesapeake 2000 agreement, the Chesapeake Executive Council made the following commitment: "By 2010, achieve, at a minimum, a tenfold increase in native oysters in the Chesapeake Bay, based upon a 1994 baseline." This commitment is focused on native oysters. While our collective effort to develop and implement a Chesapeake Bay Program comprehensive bay-wide oyster management plan is behind schedule, we have a draft plan, the principal guidelines of which are being implemented by Federal and State agencies engaged in native oyster restoration. Our oyster restoration initiative is now emerging from a phase of experimentation and pilot project, and is entering a phase of accelerated implementation with an adaptive management approach. Thanks to increasing funding from the Congress, the Army Corps of Engineers, in collaboration with Maryland and Virginia, is now engaging in the implementation of restoration projects that are orders of magnitude larger than the earlier pilot projects. We have a long way to go, but we believe we should stay the course.

In the Chesapeake Bay Program, our framework for the consideration of the introduction of non-native oysters is another document signed by the Chesapeake Executive Council, the 1993: "Chesapeake Bay Policy for the Introduction of Non-Indigenous Aquatic Species". The Chesapeake Bay Program's policy is simply stated as follows:

"It shall be the policy of the Jurisdictions in the Chesapeake Bay basin to oppose the first-time introduction of any non-indigenous aquatic species into the unconfined waters of the Chesapeake Bay and its tributaries for any reason unless environmental and economic evaluations are conducted and reviewed in order to ensure that risks associated with the first-time introduction are acceptably low."

The establishment of this policy was motivated by our experience with other intentionally introduced species, including nutria and mute swans, which are among the six most harmful aquatic species in the region for which we are very near completion of basin-wide control plans.

EPA also has obligations under Executive Order 13112 regarding Invasive Species (February 3, 1999). Specifically, we may not authorize, fund, or carry out actions that we believe are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless we have determined, and made public our determination, that the benefits of such actions clearly outweigh the potential harm

caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with these actions.

As you know, Mr. Chairman, in the interest of obtaining an independent, objective, and expert assessment of the risks and potential benefits of the introduction of non-native oysters, EPA joined with others to support a study by the National Research Council. We received an excellent report and I submit it for the record as part of my written testimony.

The NRC report identifies five commonly held "unrealistic expectations and common misconceptions" also called "myths", which I believe we should keep in mind. I would summarize the useful messages derived from those myths as follows: There is no quick fix, no silver bullet, no shortcut, not for the oyster industry and not for water quality restoration. And native oyster restoration is not an exercise in futility, we should continue our aggressive pursuit of new technologies, good stock, and new methods, always remembering that this will be a long-term project.

The report also provides conclusions with respect to the three options the study committee was asked to evaluate.

Option 1. Status quo, no introduction of non-native oysters. The report emphasizes the risk that a prohibition on any activity with non-native oysters could lead to a harmful illegal release. I suggest that it may be important to proactively educate members of the oyster industry that oyster restoration is going to be a long-term project with any species, while developing economic alternatives for watermen and others in the industry (e.g., engagement in restoration).

Option 2. Open water aquaculture of triploid oysters. The report concludes that "contained aquaculture of triploid *C. ariakensis* provides an opportunity to research the potential effects of extensive triploid-based aquaculture or introduction of reproductive non-native oysters on the ecology of the Bay and offers some additional economic opportunities for the oyster industry and the watermen." The report supports the track we are currently following, although it may be necessary to define acceptable project size limits and continually improve the nature of the strict control protocols as we proceed.

Option 3. Introduction of reproductive diploid oysters. The report concludes that "it is not possible to predict if a controlled introduction of reproductive *C. ariakensis* will improve, further degrade, or have no impact on either the oyster fishery or the ecology of Chesapeake Bay." And says: "In sum, the irreversibility of introducing a reproductive non-native oyster and the high level of uncertainty with regard to potential ecological hazards make Option 3 an imprudent course of action." I agree with that conclusion.

The Chesapeake Bay Program partners are vitally engaged on this issue. Under the terms of a joint agreement, the partners agreed to undertake an Environmental Impact Statement (EIS) prior to any decision to go ahead with Option 3. That process has now begun.

The Bay Program prides itself on its reliance on sound science to guide all our activities. That is why we called for and helped underwrite the cost of the National Research Council's study. Similarly we have asked our Scientific and Technical Advisory Committee to establish a panel of experts to develop the research plan. A strong scientific analysis is a necessary pre-condition for sound decision making and will be vital to a strong EIS.

The adequacy of existing regulatory frameworks to address non-native oyster introduction also was addressed at length in Chapter 8 of the NRC report. With respect to federal authority, the applicability of Clean Water Act Sections 404 and 402 are subject to the purview of the EPA. The critical issue with respect to Section 404 jurisdiction is whether an introduction would involve the discharge of dredged or fill material. Appropriately, the Army Corps of Engineers, asserted 404 jurisdiction over the Virginia Seafood Council proposal because the proposal clearly involved the in-water discharge of dead shell material (i.e., fill) to establish a hard substrate on which to place some of the experimental oysters. What is less clear is whether introduction of oysters without the discharge of dead shell material would involve a discharge of fill material at all. Similar to the Army Corps of Engineers, EPA would need to see the details of a specific proposal before the applicability of Section 404 could be determined. For purposes of interagency consistency, we have asked the Corps to consult with EPA before they make any project-specific determination in this regard.

In closing, Mr. Chairman, I want to comment on the importance of the Chesapeake Bay Program as an

institution with important potential in the consideration of this issue. The NRC report also suggested that Chesapeake Bay Program's 1993 policy, and the ad hoc advisory panel review process under that policy, could serve as a model for elsewhere in the country. "The 1993 policy", the report says, "is consistent with a precautionary approach to non-native introductions, e.g., in its requirement that environmental and economic evaluations be conducted in order to ensure that risks associated with first-time introductions are acceptably low." "Also" the report continues, "the 1993 policy illustrates a 'clean list' approach to introductions, an approach which the committee generally recommends for all levels of decision-making about non-native introductions as contrasted with the 'dirty list' approach. Under the 1993 policy, and many State laws, introductions of non-native species are prohibited unless specifically approved. Utilizing a clean list is a key step in implementing a precautionary approach."

Mr. Chairman, we will continue to pursue a precautionary approach with our partners in the Chesapeake Bay Program as we move forward with careful oversight and study of contained aquaculture, as supported by the NRC report. Based on the numerous findings and policy and research recommendations of the NRC report, it is clear that we still have work to do to fulfill the evaluation, review, and risk minimization requirements of the 1993 Chesapeake Bay Program policy. Therefore, in keeping with the 1993 policy, we conclude that until those requirements are met, Chesapeake Bay Program partners should oppose the introduction of non-native oysters in Chesapeake Bay beyond what is currently being done on an experimental basis. Meanwhile, in order to meet the evaluation and review requirements, we look forward to collaborating with our partners on an Environmental Impact Statement to continue the evaluation of the benefits, risks and consequences of - and alternatives to - non-native introduction. We are all committed to working together, which will serve the partnership of the Chesapeake Bay Program well in the EIS process.

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