

OYSTERS IN THE CHESAPEAKE BAY: THE ECONOMIC, POLICY, AND LEGAL LANDSCAPES

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PUBLIC POLICY

Goal:

**Increase the number of oysters in the
Chesapeake Bay**

PROJECT DEVELOPMENT

- Economic Landscape
 - Relative valuation of costs and benefits of increasing the number of oysters in the Bay
- Policy Landscape
 - State and Federal players
- Legal Landscape
 - Court Adjudication
 - State and Federal Laws

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The Policy Landscape

Who is taking leadership in regulations governing oyster fisheries and how has that been decided?

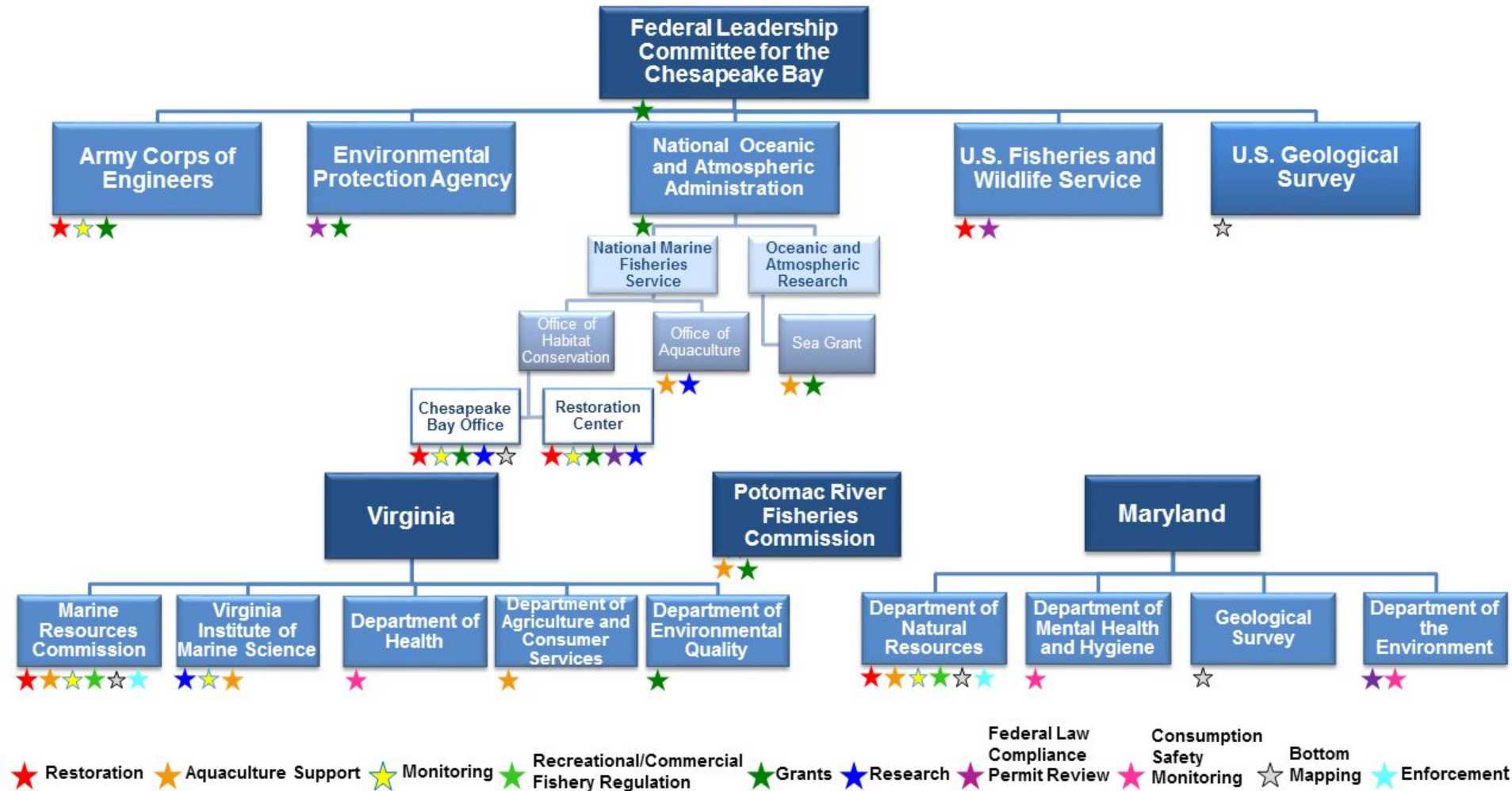


THE POLICY LANDSCAPE

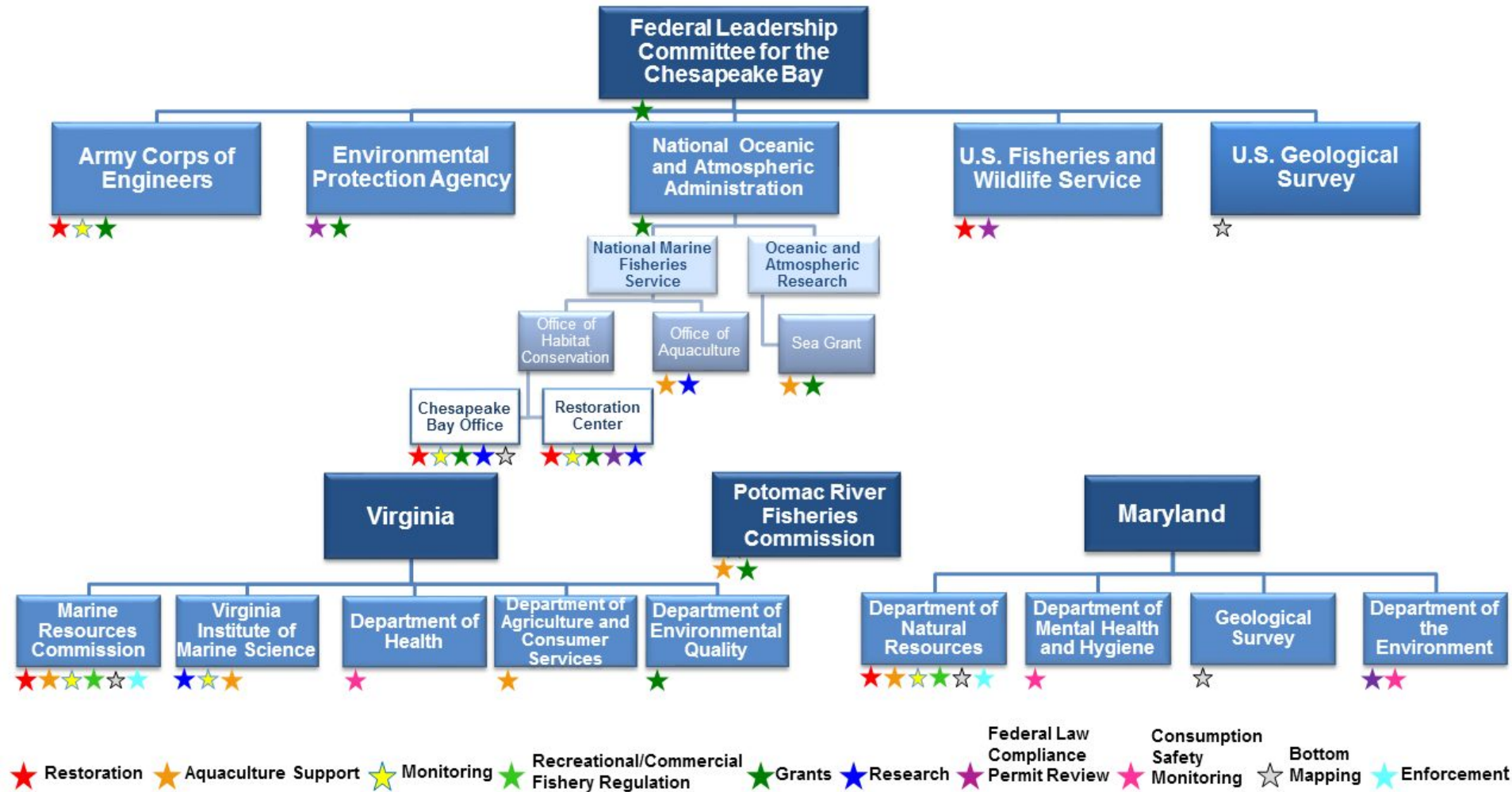
Goals:

- Identify state and federal agencies that are involved in oyster-related activities in the Chesapeake Bay
 - Determine what activities each agency is engaged in
 - Are there areas of jurisdictional overlap?
 - Do certain agencies directly or indirectly promote oyster reef restoration, aquaculture, or both?
 - Are there conflicting agency roles?
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Overview of Agencies Involved in Maryland and Virginia Oyster Activities

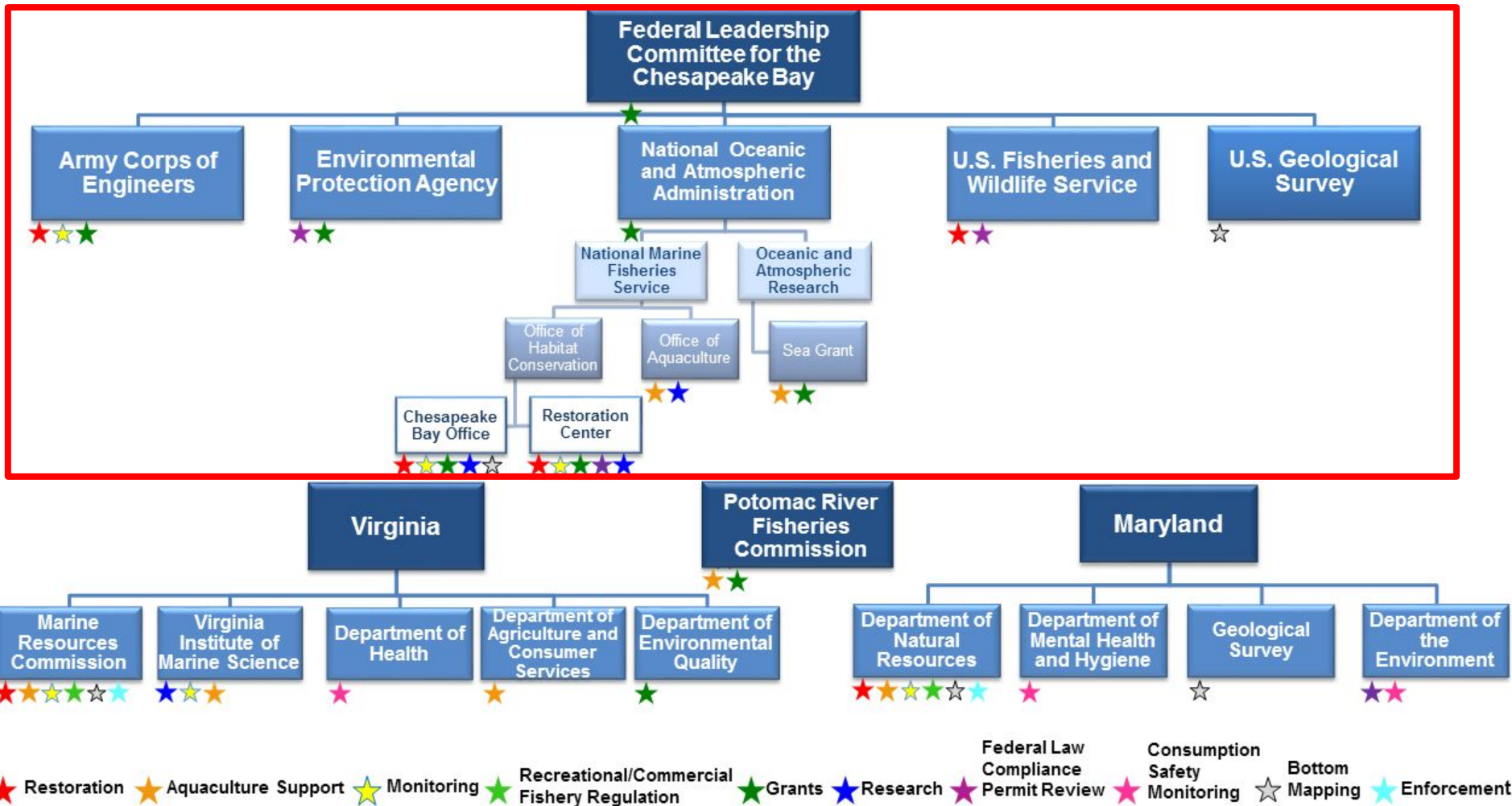


Overview of Agencies Involved in Maryland and Virginia Oyster Activities



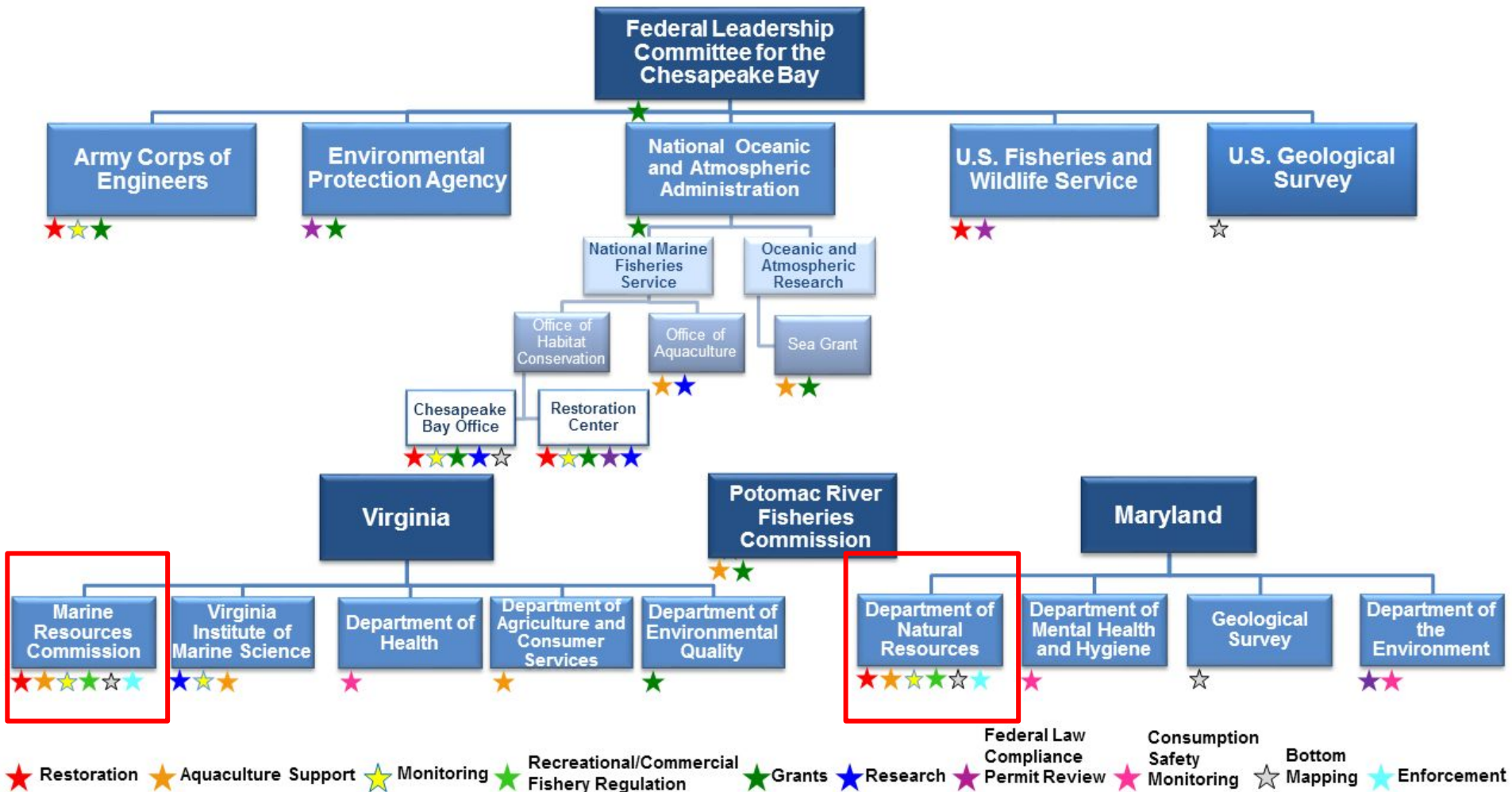
- Numerous agencies involved
 - 5 federal and 9 state
- 2 states and 1 independent bi-state commission
- 10 major categories of activities

Overview of Agencies Involved in Maryland and Virginia Oyster Activities



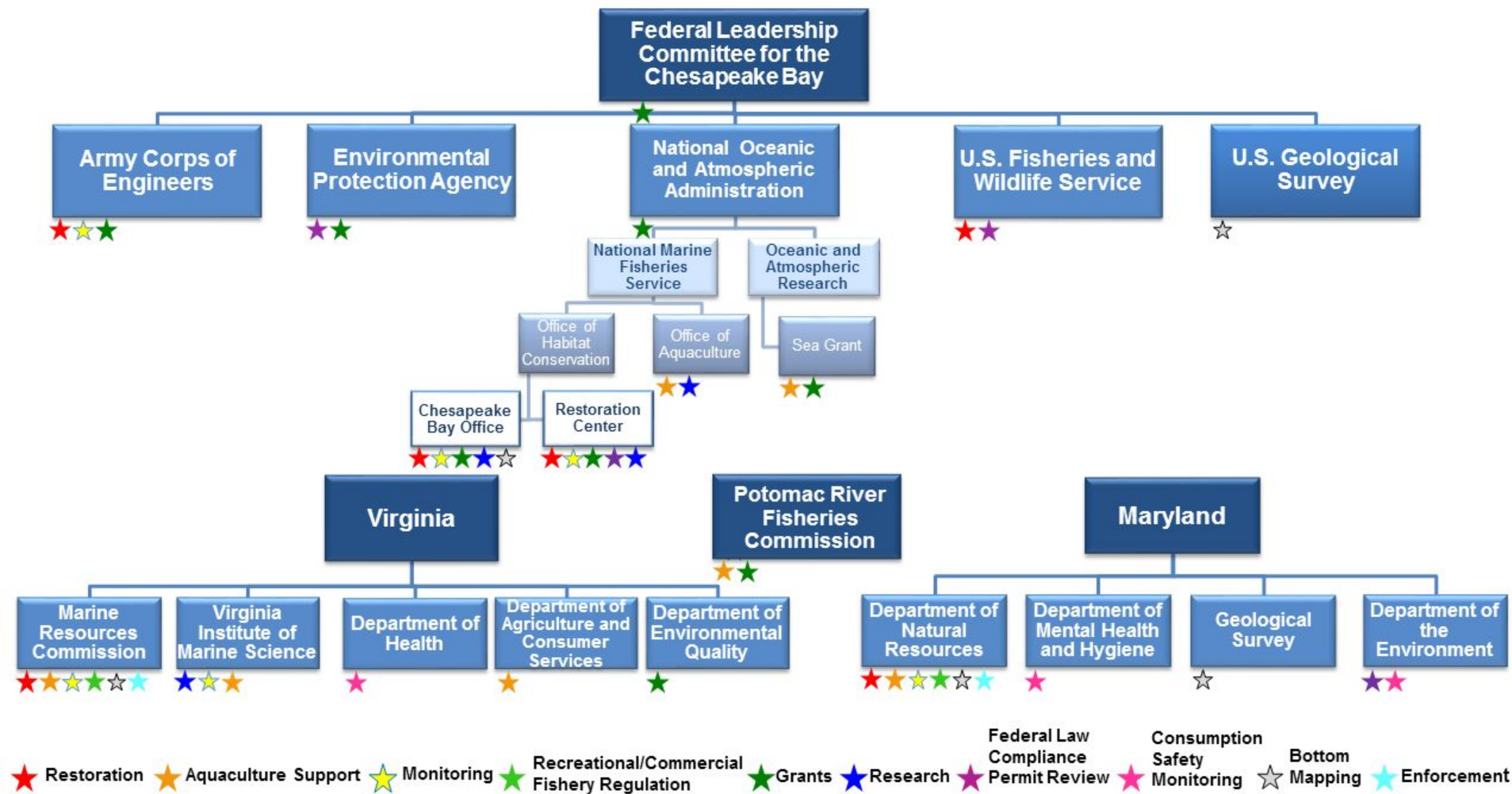
- Federal agencies-grants for other groups to carry out restoration, aquaculture, and research and monitoring
- Amy Corps, FWS, NOAA conducting work themselves

Overview of Agencies Involved in Maryland and Virginia Oyster Activities



- **VMRC and MDDNR main state players**
 - involved in multiple activities
- Other agencies generally focused on single missions
- PRFC put and take fishery
- State deference to Army Corps in navigable waters


Overview of Agencies Involved in Maryland and Virginia Oyster Activities



Are certain agencies promoting aquaculture or restoration?


- Army Corps and FWS focused on restoration, NOAA both
- Army Corps- no restoration of harvest areas
- VMRC and MDDNR both

Conclusions

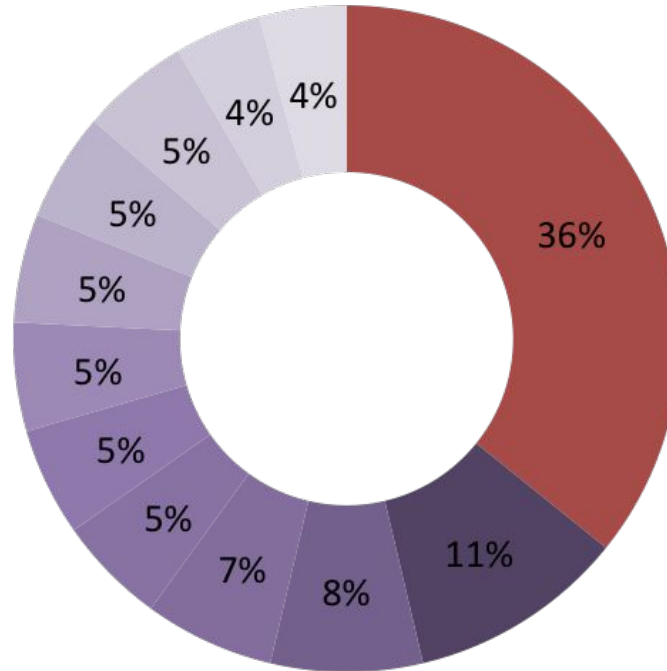
- Despite numerous agencies involved in regulation, officially maintain relatively separate spheres of influence
 - Several structures in place that promote, and even mandate, interagency communication and collaboration
 - Federal and state agencies are also working with local communities and nonprofit organizations on various projects throughout the Bay
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THE LEGAL LANDSCAPE

Goals:

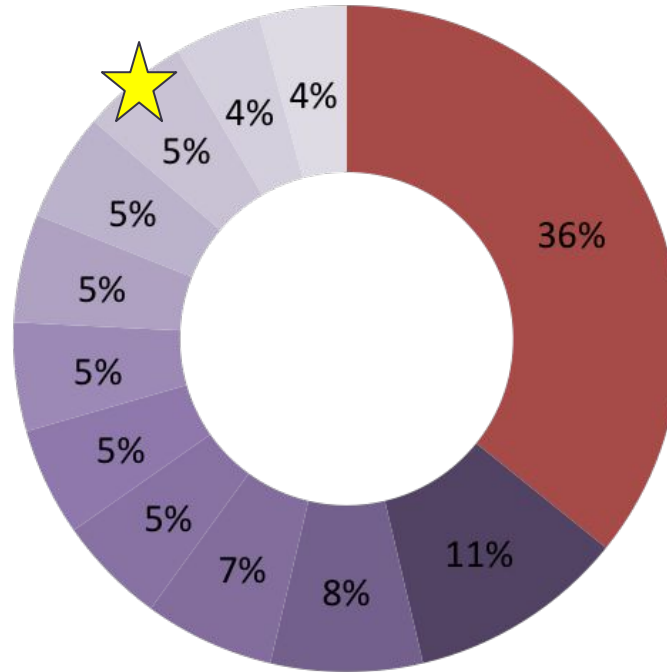
- Understand the interplay between the levels of regulation and law—federal, state, and local—governing oyster aquaculture and the harvest of wild populations
 - Examine jurisdictional disagreements while focusing on key areas of the law that, if changed, would promote cooperation
 - Systematize the law for Virginia Sea Grant to aid in answering stakeholder questions
 - Capture the types of disputes surrounding oysters via court adjudication
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COURT ADJUDICATION



- Property Rights
- Agency Authority
- Remedies
- Negligence
- Taking & Compensation
- Law Interpretation
- Criminal Charges
- Jurisdiction
- Standing
- Tax

COURT ADJUDICATION

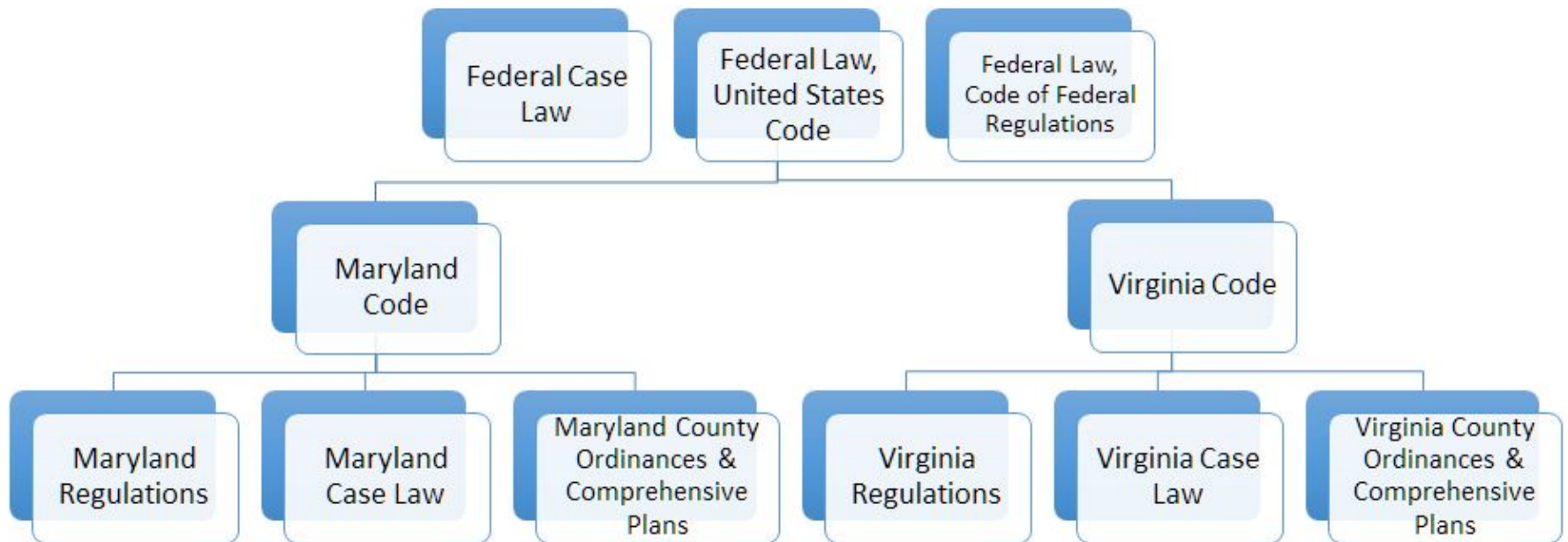


- Property Rights
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STANDING

- Need three things
 - Injury in fact
 - Concrete and particularized
 - Actual or imminent
 - Causation
 - Causal connection, fairly traceable
 - Redressability – likely that the court decision will address the injury
 - Massachusetts v. EPA (2007)
- In the environmental context, selection of plaintiffs is key
 - Sierra Club v. Morton (1972)
- Mootness

SOURCES OF LAW



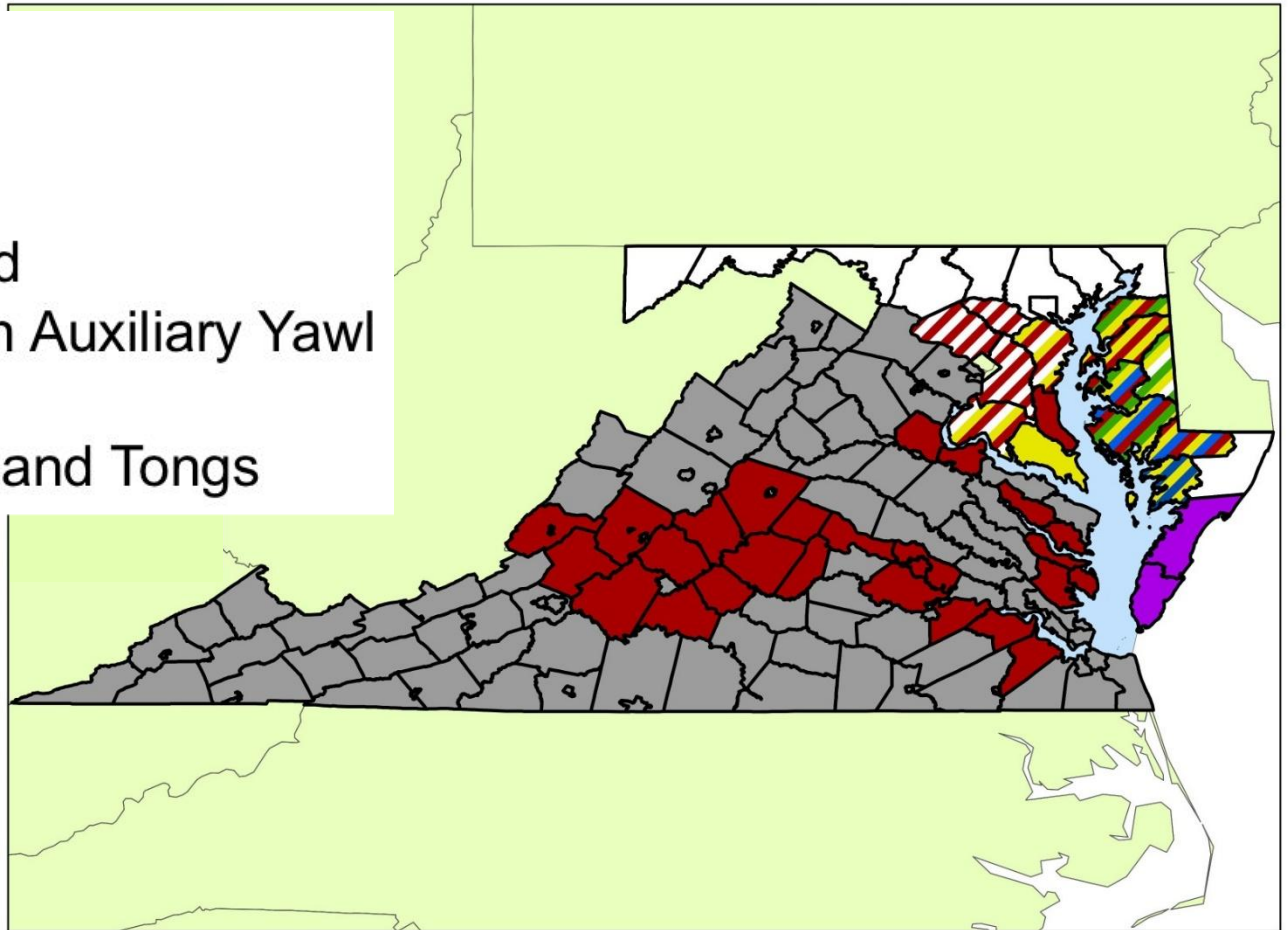
MAJOR DIFFERENCES BETWEEN MARYLAND AND VIRGINIA

- Lease terms and processes
 - Federal requirements
 - Water column
 - Action requirements
- Introduction of oyster species
- Administrative law processes and appeals
- Strength of criminal statutes and protections

TARGET AREAS

Oyster Removal Method Prohibitions By County

- No Prohibitions
- Patent Tongs
- Dredge Boat
- Hydraulic Method
- Dredge Boat with Auxiliary Yawl
- Power Dredge
- Everything but Hand Tongs



TARGET AREAS

- Leases
 - Improve clarity on lease process and availability, length and selection
 - Requirements for action on leases
- Exceptions to state standards for different counties
- Preferential treatment for state citizens and business entities
- Lack of cohesive property right distinctions
- Market price restrictions
- Increase personal and business grant programs

Summary

- Numerous players involved in oyster regulation, but maintain relatively separate spheres of influence
- Structures in place to promote interagency collaboration and therefore not a significant barrier to increasing oysters in the Bay
- The harvest/restoration option determines the specific legal lever that can be pulled to decrease inhibitions.
 - Aquaculture: Improve lease attainment (MD) , water column leases (VA)
 - Harvest: streamline prohibitions, strengthen criminal law (MD), lease activity requirements (VA)

QUESTIONS?

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PRECEDENTIAL VALUE

- No marker: no subsequent case or law discussing holdings
- Neutral: citing case
- Positive: reinforcing holding
- Questioned: casting doubt without overruling holding
- Caution: distinguishing case from precedent
- Warning: overruled-in whole or in part-by subsequent case or statute

