



U.S. Army Corps
of Engineers
Baltimore District

Public Notice

In Reply to Application Number
CENAB-OP-RMN (MD DNR, FISHERIES SERVICE/OYSTER
SEED PLANTING)2008-00512-M24

PN08-10

Comment Period: 19 February 2008 to 19 March 2008

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC ABOUT THE WORK DESCRIBED BELOW. AT THIS TIME, NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED.

The Baltimore District has received an application for a Department of the Army Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344), as described below:

APPLICANT: Maryland Department of Natural Resources
Fisheries Service
580 Taylor Avenue, B-2
Annapolis, Maryland 21401

LOCATION: Chesapeake Bay and tributaries

WORK: This project will permit the planting of oyster seed in Maryland's Chesapeake Bay, its tributaries and Maryland's Coastal Bays. Seed oysters will be planted by a variety of groups: DNR, ORP, CBF, MWA and other organizations, all operating under this permit granted to the Department of Natural Resources. The plantings will predominantly take place on Natural Oyster Bars and Historic Oyster Bars (See Attachment). Seed will be planted in harvest, reserve and sanctuary areas. Seed plantings increase the oyster population, enhance the ecological benefits derived from oysters, provide an economic benefit and also work towards reestablishing an abundant and self sustaining oyster population in support of the Chesapeake Bay Program 2000 Agreement and the 2005 Oyster Management Plan.

Permit Time Period: A 10-year period from 2008 through 2018 is being requested.

Types of Seed: There are three types of seed which may be planted under this permit.

- 1) Hatchery Seed – Oyster seed produced in a hatchery, primarily by the University of Maryland's Horn Point Facility.
 - a. Spat on Shell – The majority of seed produced in Maryland is spat on shell. Oyster larvae are set onto oyster shells and have multiple oysters per shell.
 - b. Cultchless Oysters – Oyster larvae is set so each oyster is individual and not attached to others or a larger shell.

- 2) Natural Seed – This seed is produced by MD DNR. Shell or other materials may be planted in a high setting area to catch a natural spat set. The spring following the set, the oyster seed is harvested by dredge and moved to a lower salinity, higher survival area.

Amount of Seed to be Planted and Size of Planting Areas: Authorization is requested for the planting of 2 Billion oysters per year. The predominant type of seed planted will be spat on shell. Plantings are usually made at a density of 1 million spat per acre in harvest and reserve areas and 2 million spat per acre in sanctuary areas.

Planting areas can vary from a quarter acre in size up to approximately 20 acres. This gives a range of approximately 250,000 to 40 million spat per project site. Plantings occur mostly in the Upper Bay and Upper Tributaries to lower disease impacts by targeting lower salinity areas.

Methods for Seed Planting: Seed is planted in a wide variety of methods in the Chesapeake Bay. Small scale plantings can be done by hand off small boats or by Divers. Larger plantings are usually done with the use of boats that load the seed onboard with a crane and then wash it off at the planting site with water hoses. The Chesapeake Bay Foundation's vessel the Patricia Campbell uses a conveyor belt mechanism to scatter the seed from the front of the boat. Natural seed is harvested by shellfish dredge then transported to the planting site and washed off by hose as above.

Time of Year for Seed Planting: Hatchery production begins as the water temperatures start to rise in the spring. The seed can be ready for planting from early summer through late fall depending on the temperatures. Natural seed movement takes place in the early spring to help limit any disease the seed may pick up. To meet the requirements of the hatchery and natural seed program, approval is requested for an April through October time period for planting activities.

Stakeholder Coordination: Seed plantings are coordinated annually before the start of the hatchery season. The restoration partners meet to identify and prioritize the projects which will be getting seed that season. The partners include the MD DNR, the University of Maryland, The Oyster Recovery Partnership, The Chesapeake Bay Foundation, The US Army Corps of Engineers, NOAA and Maryland Watermen.

Project Justification:

The planting of seed is an essential component in attempts to reestablish an abundant and self-sustaining oyster population within the Chesapeake Bay. Due to low recruitment, the seed planted under this permit would be the only major influx of live oysters many of the project areas would see. The seed planted in harvest and reserve areas provide both ecological and economic benefits. The sanctuary plantings provide ecological benefits and allow for the building of broodstock.

All work is to be completed in accordance with the enclosed plan(s). If you have any questions concerning this matter, please contact Ms. Mary Frazier at 410-962-5679 or Mary.A.Frazier@usace.army.mil.

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect essential fish habitat (EFH).

The project site lies in or adjacent to EFH as described under MSFCMA for Scophthalmus aquosus (windowpane flounder) juvenile and adult; Pomatomus saltatrix (blue fish) juvenile and adult; Paralichthys dentatus (summer flounder) juvenile and adult; Peprilis triacanthos (Atlantic butterfish)

eggs, larvae, juvenile and adult ; Centropristus striata (black sea bass) juvenile and adult; eggs, larvae, juvenile, and adult stages of Sciaenops ocellatus (red drum), Scomberomorus cavalla (king mackerel), Scomberomorus maculatus (spanish mackerel), and Rachycentron canadum (cobia), all managed species under the MSFCMA

The project has the potential to adversely affect EFH or the species of concern by loss of nursery, forage and/or shelter habitat. The project may have an adverse effect on Essential Fish Habitat as described under the Magnuson-Stevens Fishery Conservation and Management Act for the species and life stages identified above. However, the District Engineer has made a preliminary determination that site-specific impacts would not be substantial and an abbreviated consultation will be conducted with NMFS. This determination may be modified if additional information indicates otherwise and would change the preliminary determination.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

The applicant is required to obtain a water quality certification in accordance with Section 401 of the Clean Water Act from the District of Columbia Department of the Environment. Any written comments concerning the work described above which relate to water quality certification must be received by the Water Quality Division, District of Columbia Department of the Environment, 51 N Street, NE, 5th Floor, Washington, DC 20002 within the comment period as specified above to receive consideration. Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the District Engineer, US Army Corps of Engineers, Baltimore District, PO Box 1715, Baltimore, Maryland 21230-1715, within the comment period as specified above to receive consideration. The 401 certifying agency has a statutory limit of one year to make its decision.

The applicant must obtain any State or local government permits which may be required.

A preliminary review of this application indicates that the proposed work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The Maryland Historical Trust is reviewing the project to assess its effects on historic properties pursuant to Section 106 of the National Historic Preservation Act of 1966. Currently unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the requested permit.

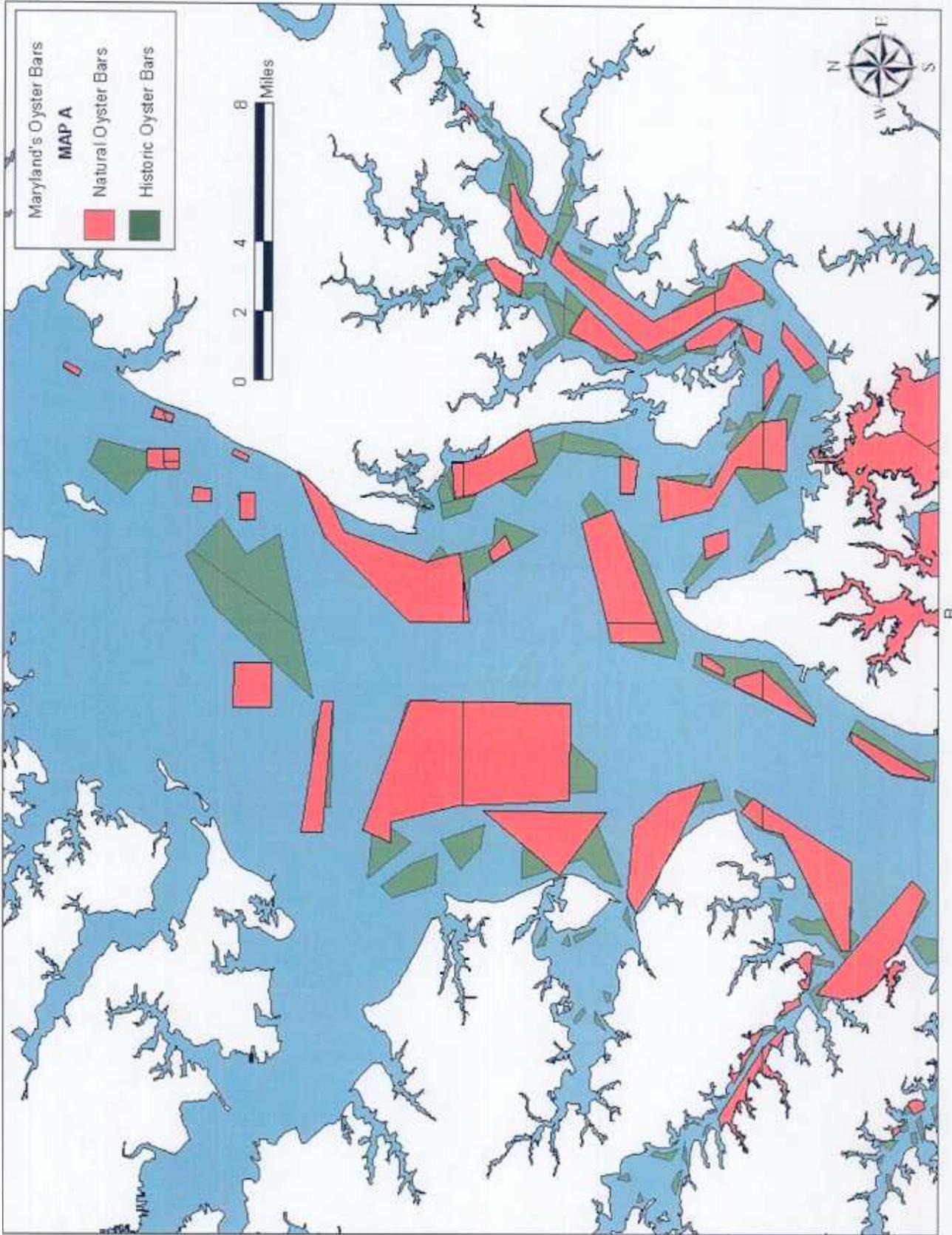
The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received by the District Engineer, US Army Corps of Engineers, Baltimore District, PO Box 1715, Baltimore, Maryland 21203-1715, within the comment period as specified as above to receive consideration. Also, it must clearly state forth the interest which may be adversely affected by this activity in the manner in which the interest may be adversely affected.

It is requested that you communicate the foregoing information concerning the proposed work to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.

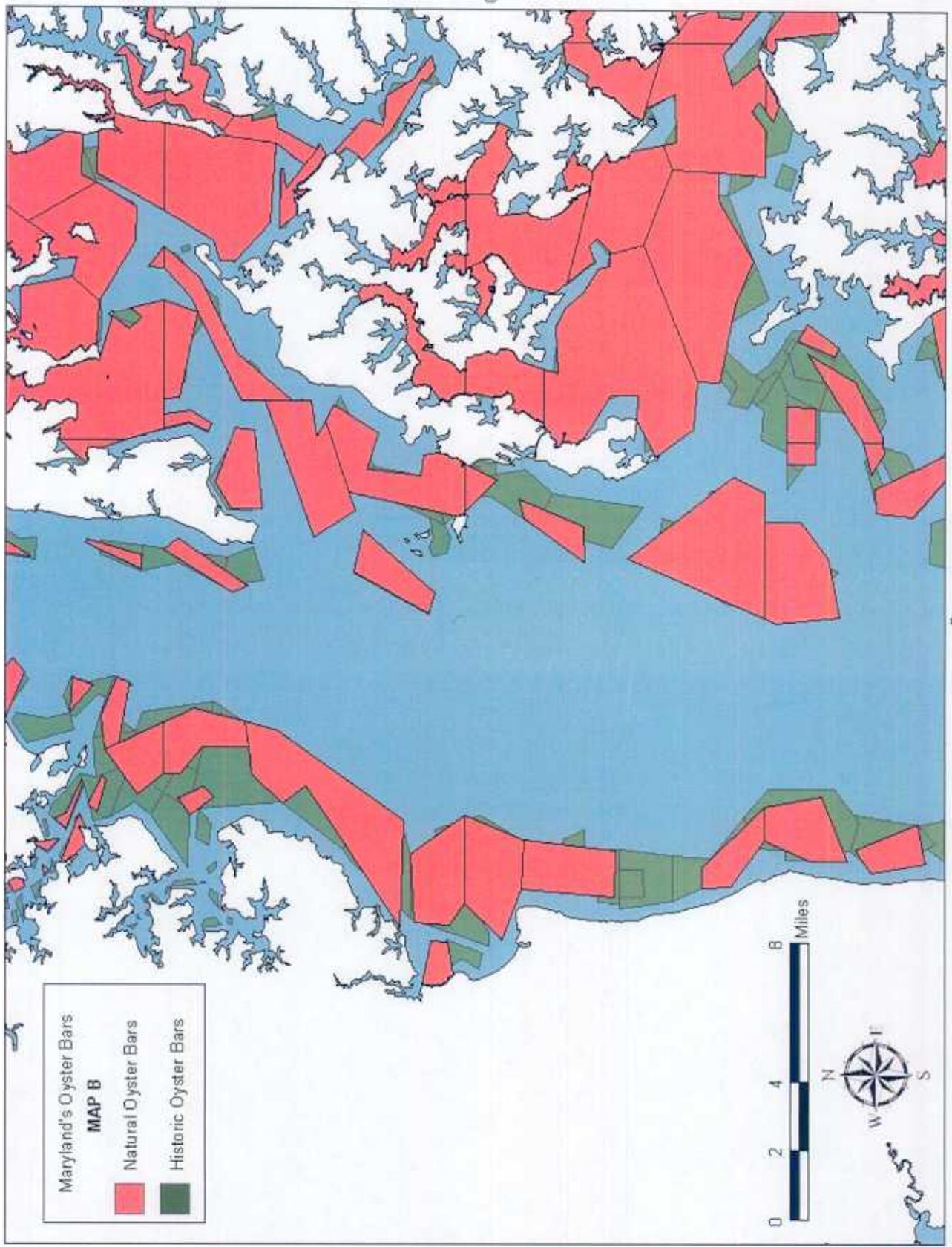
FOR THE DISTRICT ENGINEER:



VANCE G. HOBBS
Chief, Maryland Section Northern

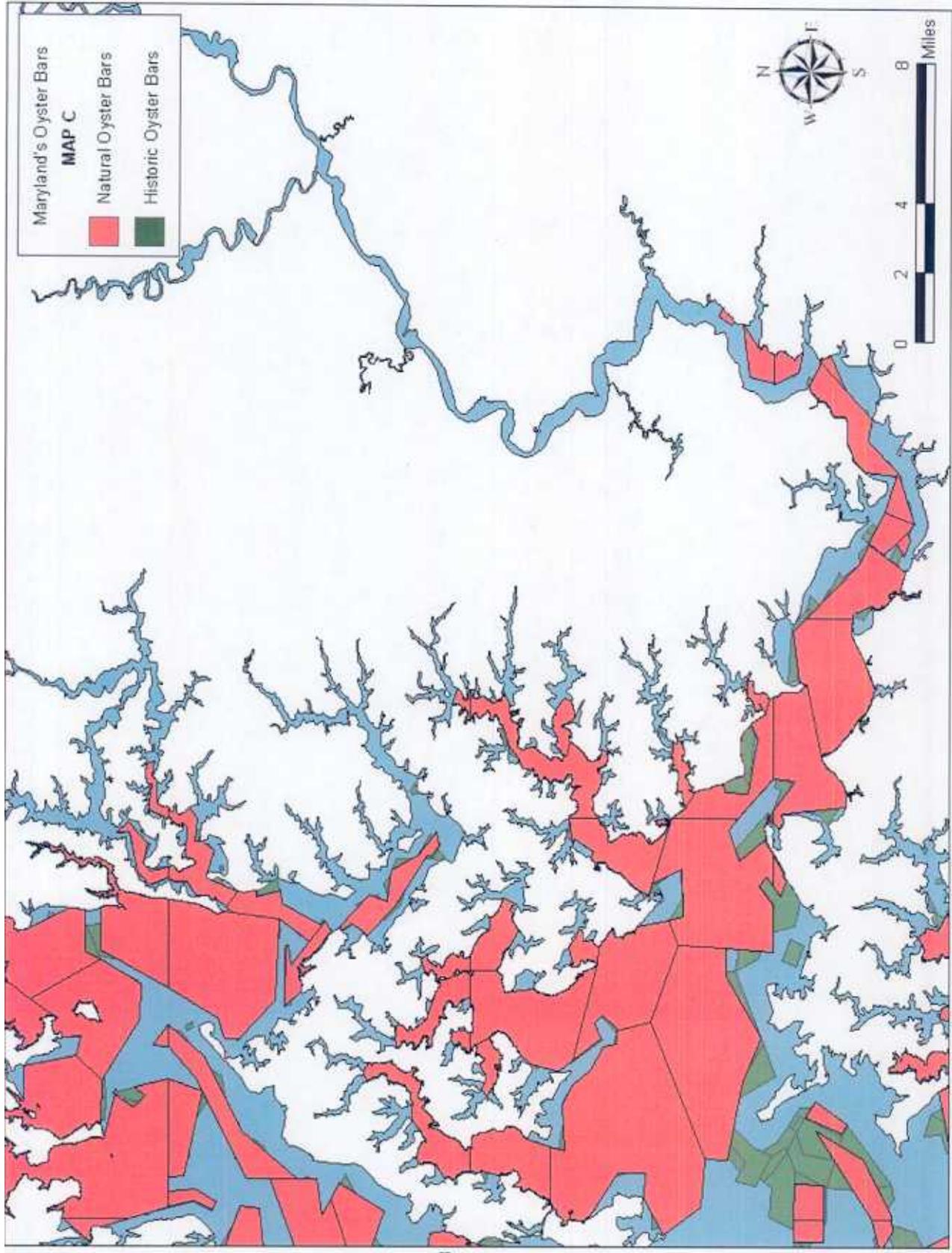


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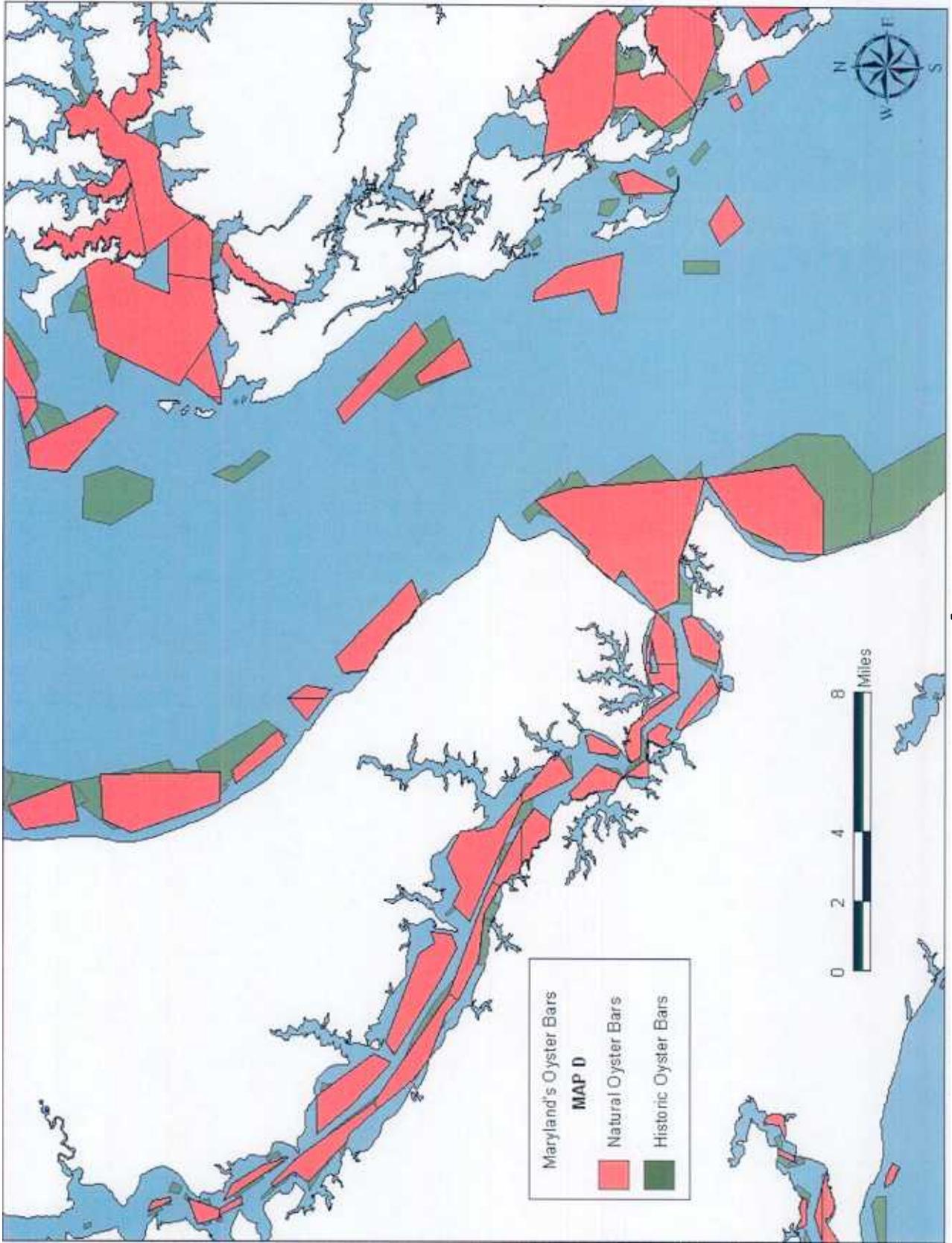


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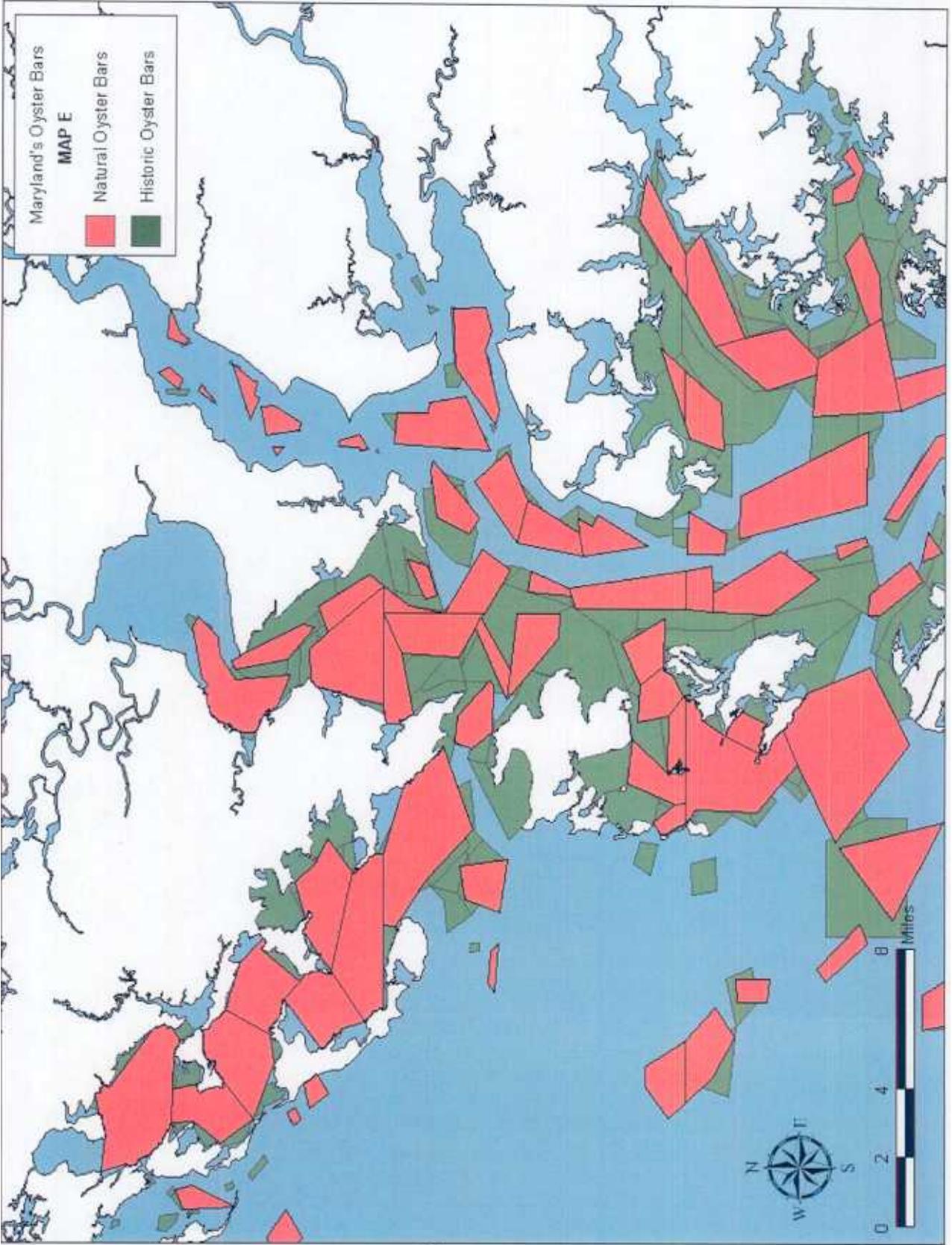


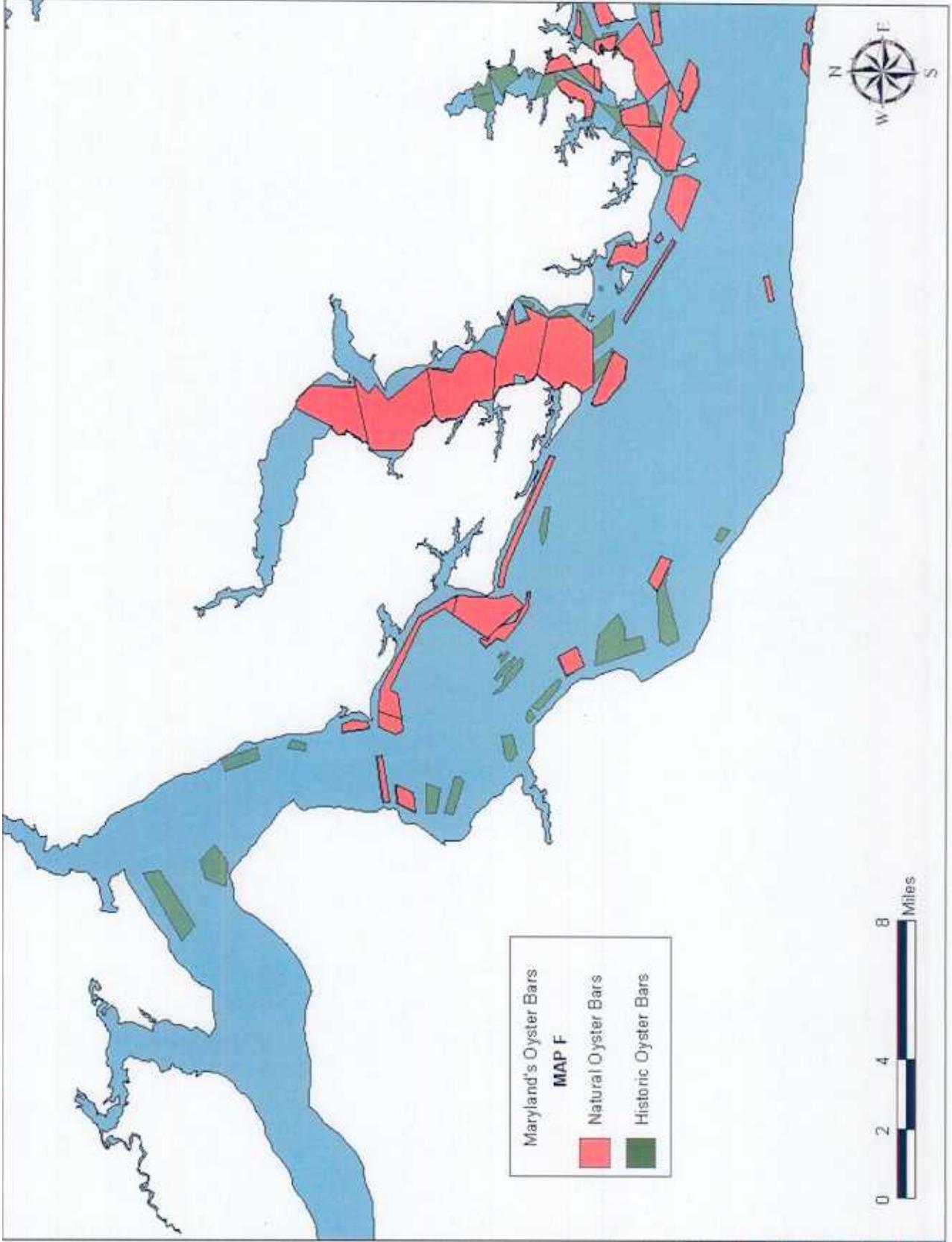
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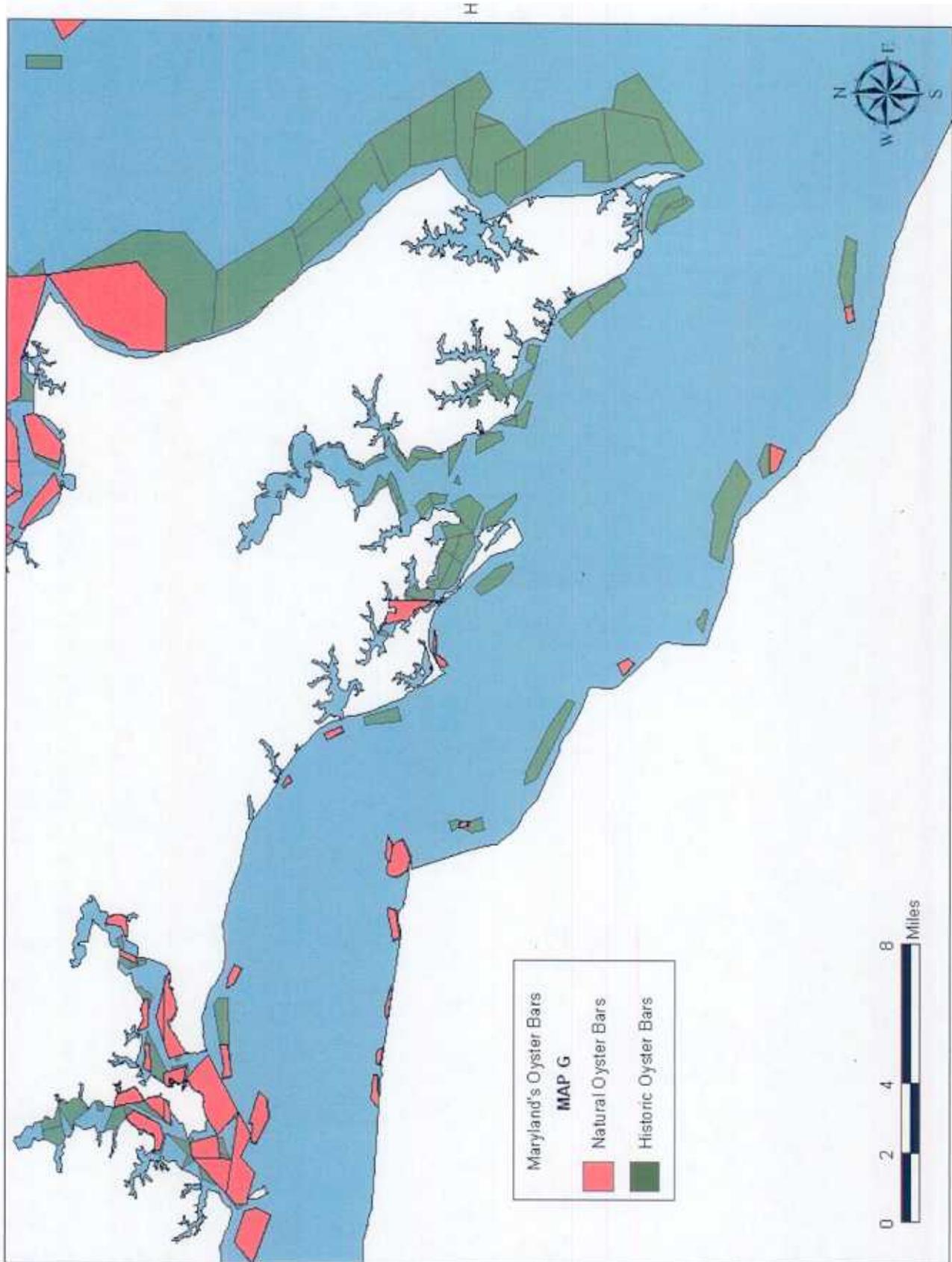
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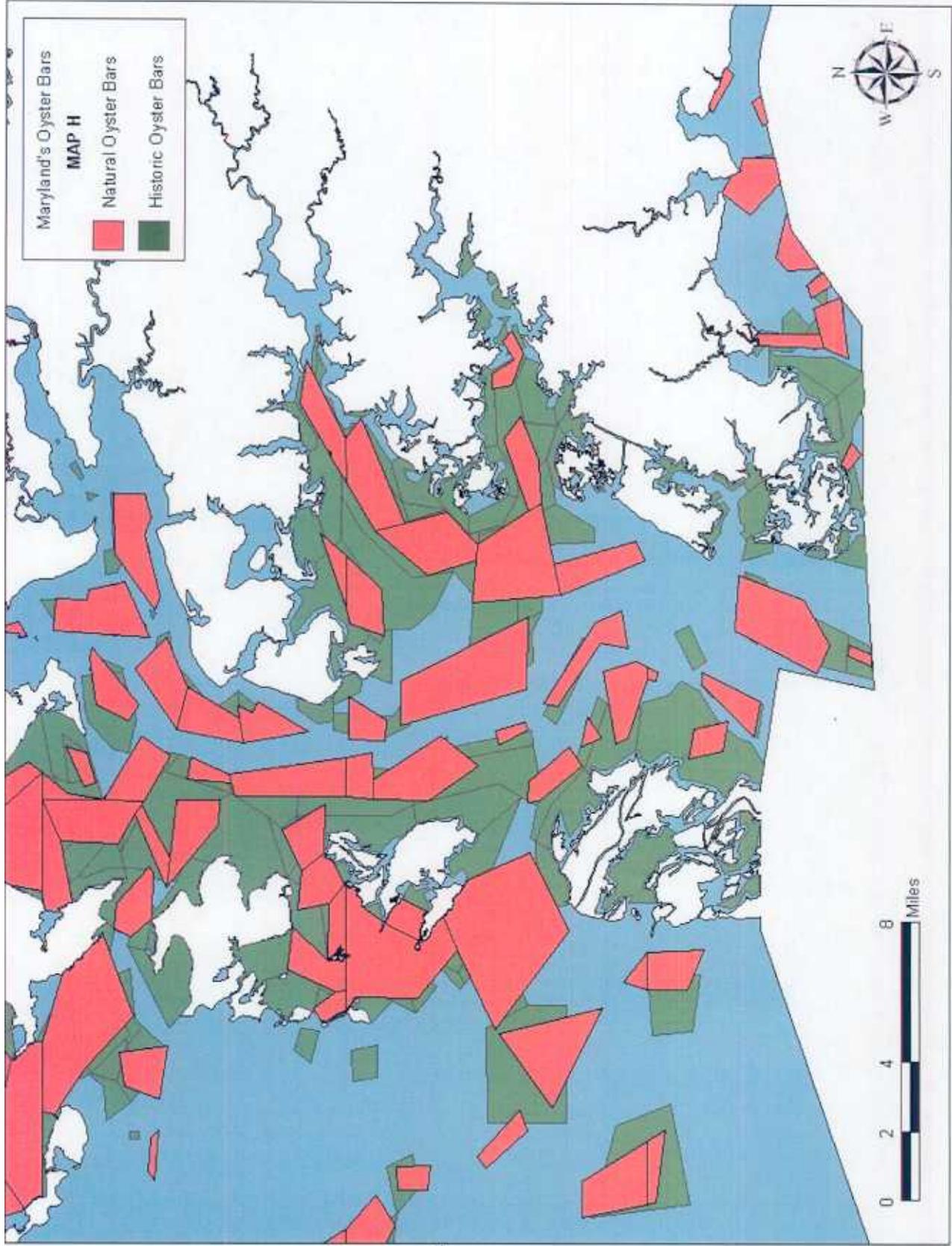


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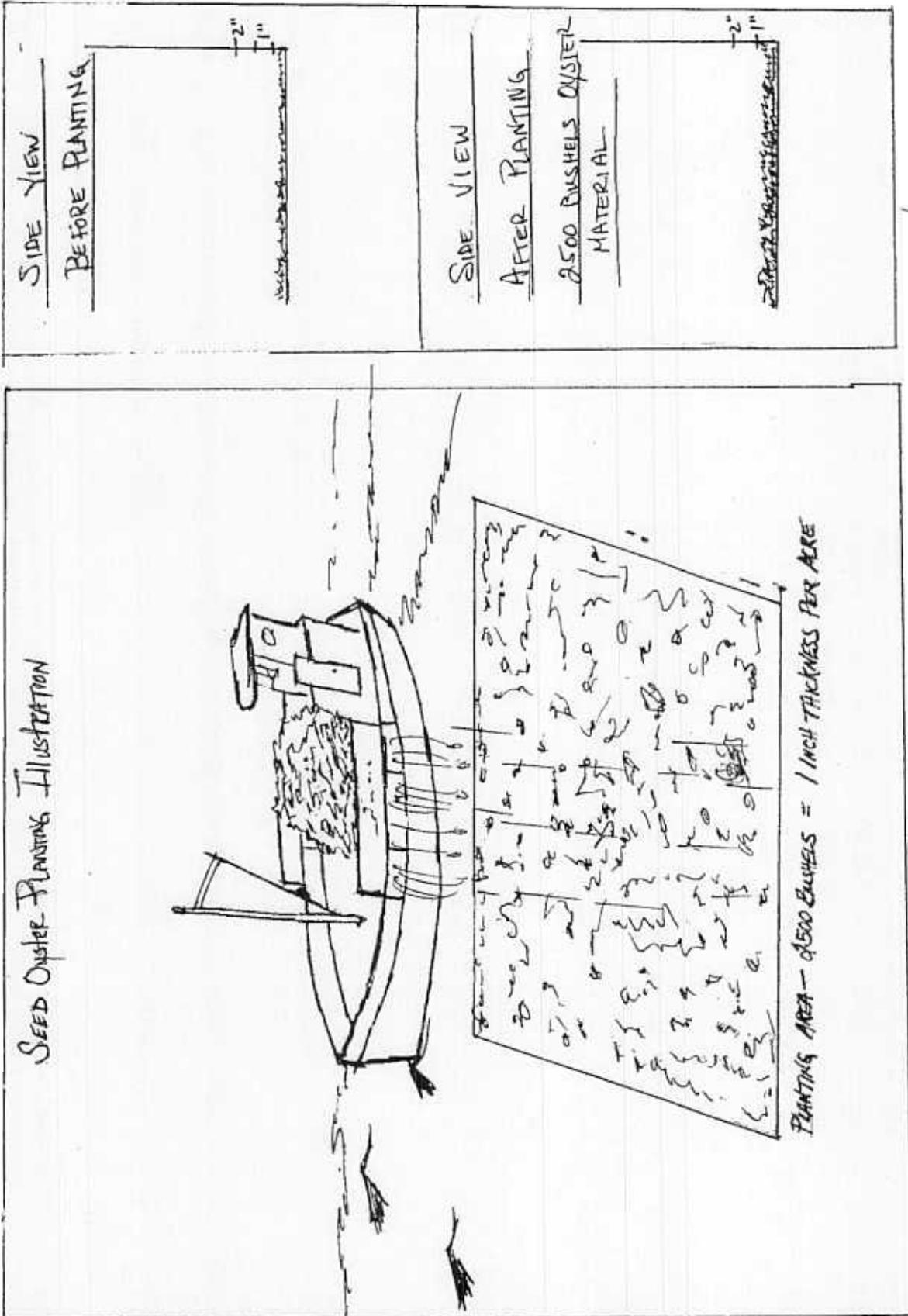
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Attachment 2:



Attachment 3

Vessel Robert Lee planting hatchery spat on shell for the Oyster Recovery Partnership.



Spat is loaded onto the vessel's deck at the hatchery using the on board crane.

A high pressure hose is used to push the shell overboard while the boat motors slowly over the planting location.

