

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 1340 (Delegates Haddaway-Riccio and O'Donnell)
 Environmental Matters

Natural Resources - Oysters - Sanctuaries and Poaching

This bill prohibits the Department of Natural Resources (DNR) from designating more than 25% of the available oyster habitat in State waters as oyster sanctuaries, unless DNR conducts a public hearing and provides scientific evidence of a significant increase in the harvestable oyster population. The bill also requires DNR to revoke a tidal fish license for commercial oyster harvesting under certain circumstances. The bill establishes offenses that are grounds for revocation of a tidal fish license for commercial oyster harvesting – specifically taking oysters located more than 200 feet within a closed or prohibited area, with gear that is prohibited in that area, outside of a time restriction for the harvest or possession of oysters by more than one hour, during closed seasons, or from a leased area by a person other than the leaseholder or leaseholder’s designee. If a tidal fish licensee receives a citation for one of these offenses, DNR must hold a hearing, in accordance with the Administrative Procedure Act (APA), within 60 days after issuing the citation. If the presiding officer finds or concludes that the licensee knowingly committed the offense, DNR must revoke the licensee’s tidal fish license for commercial oyster harvesting. Judicial review of decisions is authorized. A person whose tidal fish license is revoked may not engage or work in the fishery for which the license was revoked whether or not it requires the use of another license.

Fiscal Summary

State Effect: DNR general fund expenditures increase by \$600,000 annually beginning in FY 2012 to conduct enhanced oyster surveys. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	600,000	600,000	600,000	600,000	600,000
Net Effect	(\$600,000)	(\$600,000)	(\$600,000)	(\$600,000)	(\$600,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful. To the extent the bill results in the revocation of additional tidal fish licenses, it has a meaningful impact on small commercial oyster harvesting businesses.

Analysis

Current Law:

Oyster Sanctuaries

Oyster sanctuaries have been established via statute and regulation. Statutory provisions designate several oyster sanctuaries – protected oyster restoration areas – in waters of the State that are contiguous to Calvert, Dorchester, Somerset, and St. Mary’s counties. Current regulations designate numerous oyster sanctuaries throughout the Chesapeake Bay, including significant portions of the Chester, Choptank, Magothy, Severn, and South rivers.

DNR is generally authorized to take measures which seem best calculated to increase the productivity or utility of oyster resources in the State. Current regulations designating oyster sanctuaries identify this broad statutory authority as the basis for such designations.

Oyster Violations

According to the Natural Resources Fine Schedule of the District Court, effective October 1, 2010, there are several prepayable fines associated with oyster violations, including a \$125 prepayable fine for violating oyster harvest locations. If a prepayable fine is not available, or the individual chooses to appear in court, the fines that appear in the Natural Resources Article are applied by the court upon conviction. Generally, for a first offense, a person who violates Fish and Fisheries provisions of the Natural Resources Article is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000, with costs imposed in the discretion of the court. For a second or subsequent offense, a person is subject to a fine of up to \$2,000 or imprisonment for up to one year, or both, with costs imposed in the discretion of the court. In addition to any other applicable penalty, a person who unlawfully takes oysters from a leased oyster bottom, an oyster sanctuary, an oyster reserve, or an area closed to shell fish harvest by the Maryland Department of the Environment, when the area is designated and marked by buoys or other signage or the person knew or should have known that taking the oysters from the area was unlawful, is subject to a fine of up to \$3,000.

Tidal Fish Licenses

DNR may suspend or revoke a person's entitlement to engage in a particular activity under a tidal fish license if the person (1) makes any false statement in an application for a tidal fish license; (2) is convicted of a serious fishery violation; (3) fails to submit specified reports; or (4) is a nonresident and fails to appear in court pursuant to a citation issued by a Natural Resources Police officer, or to any other process issued by any court of Maryland, for a specified fishery violation. Prior to suspending or revoking a tidal fish license, DNR must hold a hearing and give the licensee at least 10 days' notice of the hearing. However, if a nonresident licensee fails to appear in court, DNR may suspend immediately and without hearing any license issued to the person in accordance with Fish and Fisheries provisions of the Natural Resources Article. During a period of suspension or revocation imposed by DNR, the person penalized cannot be authorized under any existing, renewed, transferred, or new tidal fish license to engage in the particular activity or activities for which the suspension was imposed.

The courts may suspend or revoke a person's fishing license if the person is convicted of violating Fish and Fisheries provisions of the Natural Resources Article and associated regulations.

Administrative Procedure Act

APA provides a standard framework of fair and appropriate procedures for agencies that are responsible for both administration and adjudication of their respective laws. Among other things, it establishes procedures to resolve contested agency actions through an impartial administrative hearing. Boards, commissions, and agency heads can conduct contested case hearings or delegate the authority to the Office of Administrative Hearings (OAH) or – with the Chief Administrative Law Judge's approval – to a person outside OAH.

Background: Since 1994, the Chesapeake Bay's oyster population has languished at 1% of historic levels; oyster bars have decreased 80% and the number of harvesters has dwindled from 2,000 in the mid-1980s to just over 500 annually since 2002. To help reverse this trend, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increases the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, establishes oyster aquaculture leasing opportunities, and maintains 76% of the bay's quality oyster habitat for a public oyster fishery. The plan was adjusted in response to public feedback, and implementing regulations were finalized in September 2010.

The expansion of Maryland's oyster sanctuary network was identified as the preferred strategy for restoring the bay's oyster resource in a six-year regional Programmatic

Environmental Impact Statement on oyster restoration alternatives and by the Maryland Oyster Advisory Commission.

As part of its oyster restoration and management efforts, DNR is focusing on promoting oyster aquaculture opportunities and strengthening enforcement of commercial fisheries laws.

- Aquaculture – To bolster the oyster population, Chapters 173 and 174 of 2009 streamlined the aquaculture regulatory process and opened new areas to leasing to promote industry growth, lessen pressure on wild oysters, and provide alternative economic opportunities for watermen. DNR began accepting new aquaculture applications for leases in early September 2010 and received approximately 16 applications for approximately 2,675 acres within the first month.
- Enforcement – In accordance with Chapter 453 of 2009, DNR introduced a new administrative penalty system to help deter violations of commercial fisheries laws. In order to further enhance enforcement, DNR is also installing a network of radar and camera units to monitor sensitive areas that are prone to oyster poaching. In addition, a pilot program was launched under which the District Court in Anne Arundel County sets aside one day each month to hear all pending natural resources cases.

State Fiscal Effect: DNR’s fall oyster survey is conducted annually to check the overall health of the oyster population within the Maryland portion of the Chesapeake Bay and its tributaries. The survey provides information, from a number of sites, about oyster spatfall intensity, observed mortality, and parasitic infection. The current survey does not provide comprehensive scientific data concerning the harvestable oyster population that could be used in the future to determine whether a significant increase in harvestable oysters has occurred.

DNR general fund expenditures increase by \$600,000 annually beginning in fiscal 2012 to conduct enhanced surveys that characterize oyster habitats and estimate oyster abundance sufficiently to meet the bill’s requirements. This assumes that DNR secures a contractor to conduct additional sampling and analysis that targets State waters located outside designated oyster sanctuaries.

This fiscal and policy note assumes that (1) DNR staff currently responsible for the commercial fishing license suspension system handles any additional hearings and administrative processing; (2) OAH can handle any additional workload with existing resources; and (3) the bill’s judicial review provisions do not significantly affect the Judiciary.

To the extent the bill deters individuals from committing offenses, DNR advises the bill may decrease staff time and resources spent on police investigations and oyster management and restoration programs, although any such impact is speculative.

Additional Comments: DNR advises that 24% of “quality” oyster habitat has been designated as oyster sanctuary and it is difficult to interpret the term “available” oyster habitat which is used in the bill.

Additional Information

Prior Introductions: SB 342 of 2010, a similar bill, passed the Senate and received a hearing in the House Environmental Matters Committee, but no further action was taken. Its cross file, HB 1191, passed in the House but received no further action from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: Although SB 538 (Senators Colburn and Pipkin - Education, Health, and Environmental Affairs) is designated as a cross file, it is different.

Information Source(s): Department of Natural Resources, Maryland Department of the Environment, Office of Administrative Hearings, Department of Legislative Services

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mlm/lgc

Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510