

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 635

(Senators Frosh and Simonaire)

Education, Health, and Environmental Affairs

Environmental Matters

Natural Resources - Authorization to Catch Striped Bass and Crabs - Revocation

This bill requires the Department of Natural Resources (DNR) to revoke a commercial fishing authorization to catch striped bass or crabs if a specified offense is committed. DNR, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, must adopt regulations that establish grounds for revoking an authorization. The bill establishes categories of egregious or repeat violations that are grounds for revocation, including using illegal gear; harvesting during closed seasons; harvesting from a closed area; violating established harvest, catch, or size limits; and violating tagging and reporting requirements. If an individual receives a citation for one of these offenses, DNR must hold a hearing, in accordance with the Administrative Procedure Act (APA). If the presiding officer finds or concludes that the individual knowingly committed an offense, DNR must revoke the individual's authorization to catch striped bass or crabs. Judicial review of decisions is authorized. A person whose authorization to catch striped bass or crabs is revoked may not engage or work in the striped bass or crab fishery, whether or not it requires the use of another license. DNR is required to adopt implementing regulations by January 1, 2012.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: The bill's changes can be absorbed within existing budgeted resources. This assumes that DNR staff who are currently responsible for the commercial fishing license suspension system handle any additional hearings and administrative processing. It also assumes that the Office of Administrative Hearings (OAH) can handle any additional workload with existing resources and that the bill's judicial review provisions do not significantly affect the Judiciary.

Local Effect: None.

Small Business Effect: Potential meaningful. To the extent the bill results in the revocation of additional fishing authorizations, it has a meaningful impact on small commercial fishing businesses.

Analysis

Current Law: According to the Natural Resources Fine Schedule of the District Court, effective October 1, 2010, there are several prepayable fines associated with striped bass and crab violations, including a \$250 prepayable fine for catching striped bass without a permit. 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.

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 (NRP) 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 Fishery provisions of the Natural Resources Article and associated regulations.

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 OAH or – with the Chief Administrative Law Judge’s approval – to a person outside OAH.

Background: A tidal fishing license is the single commercial license issued by DNR with respect to fishing and fisheries in tidal waters. A person must obtain authorizations on the license, for which various fees apply, to engage in different types of fishing or commercial activity. The annual fee for an unlimited authorization is \$300. The fee for catching finfish for sale by hook and line only, as an example of a more specific authorization, is \$37.50. The license year for each tidal fish license is from September 1 through August 31 of the following year.

Recently, there have been several significant commercial fishing incidents involving the use of illegal gill nets in the Chesapeake Bay to catch striped bass (rockfish). On January 31, 2011, NRP officers confiscated more than 10 tons of illegally caught striped bass from four illegally anchored gill nets near Bloody Point Light, south of Kent Island, in the Chesapeake Bay. This event forced DNR to shut down the striped bass gill net season. On February 7, 2011, NRP confiscated more than 1,100 pounds of illegally caught striped bass from 1,200 yards of illegally anchored gillnet at the mouth of Eastern Bay, a mile south of the previously located Bloody Point gill nets. On February 11, 2011, two 900-yard strings of illegal, anchored gill nets were located in Eastern Bay that contained a total of 3,879 pounds of striped bass. These incidents have heightened public concern about illegal fishing in Maryland waters.

State Fiscal Effect: Generally, the bill’s new requirements can be absorbed within existing budgeted resources. This assumes DNR staff who are currently responsible for the commercial fishing license suspension system handle any additional hearings and administrative processing. It also assumes 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 Information

Prior Introductions: None.

Cross File: HB 1154 (Delegate Gilchrist) – Environmental Matters.

Information Source(s): Department of Natural Resources, Department of Legislative Services

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