

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulation
Department of Natural Resources**
(DLS Control No. 15-030)

Overview and Legal and Fiscal Impact

This emergency regulation extends the commercial season for oysters by two weeks. Additionally, the regulation prohibits a person from possessing crabs on board a vessel engaged in the commercial oyster fishery.

The regulation presents no legal issues of concern.

Special fund revenues increase in fiscal 2015 only, due to collection of additional oyster severance and export inspection taxes. The extent of the increase cannot be reliably estimated but is expected to be minimal. Small businesses are meaningfully impacted.

Regulation of COMAR Affected

Department of Natural Resources:

Fisheries Service: Oysters: COMAR 08.02.04.03

Legal Analysis

Summary of Regulation

The regulation extends the commercial season for oysters by two weeks from March 31 to April 14. Additionally, to alleviate enforcement concerns on the use of oyster gear that may interact with crabs, the regulation prohibits a person (during this emergency period only) from possessing crabs on board a vessel engaged in catching oysters for commercial purposes.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Natural Resources cites §§ 4-215, 4-2A-03, 4-803, and 4-1008.1 as authority for the regulation. Section 4-215 requires the department to prepare a fishery management plan for oysters and adopt the plan by regulation. Section 4-2A-03 requires the Secretary to adopt limitations relating to the taking, possession, transportation, exportation, processing, sale or offering for sale, or shipment of fish in order to conserve fish. Section 4-803 authorizes the department to adopt regulations for the methods by which crabs are taken. Lastly,

Section 4-1008.1 authorizes the department to prolong by not more than two weeks the season for catching oysters.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Reason for Emergency Status

The department requests emergency status to begin March 31 and to expire on April 30, 2015. This period is within normal timeframes approved by the committee. The department indicates the emergency status is necessary due to the harsh winter the State experienced that resulted in heavy icing throughout the Chesapeake Bay and a significant number of commercial oyster harvesters being unable to engage in the fishery. This extension is requested to allow the harvesters to make up for the lost harvest days.

Fiscal Analysis

Special fund revenues increase in fiscal 2015 only, due to collection of additional oyster severance and export inspection taxes. The extent of the increase cannot be reliably estimated but is expected to be minimal. Small businesses are meaningfully impacted.

Agency Estimate of Projected Fiscal Impact

The department advises that the emergency regulation has no impact on State or local governments. The Department of Legislative Services disagrees. Special fund revenues increase in fiscal 2015 only, due to collection of additional oyster severance and export inspection taxes. A severance tax of \$1 is levied on every bushel of oysters caught within the limits of the natural oyster bars of the State, excluding the Potomac River. An inspection tax of 30 cents per bushel is levied on marketable oysters shipped in the shell outside the State. Oyster severance and export inspection tax revenue is credited to the department's Fisheries Research and Development Fund and is used only for the repletion of the State's natural oyster bars. A certain portion of those revenues is limited to use for an oyster seed program.

In fiscal 2014, the department collected \$433,178 in oyster severance tax revenue and \$64,379 in export inspection tax revenue. The extent to which special fund revenues increase as a result of the extended harvest season cannot be reliability estimated due to uncertainty regarding the number of harvesters who will take advantage of it and the remaining availability of oysters. The increase, however, is expected to be minimal.

Impact on Budget

Special fund revenues increase in fiscal 2015 only, as discussed above. The regulation does not affect the operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the emergency regulation has a meaningful impact on small businesses in the State. Licensed commercial oyster harvesters, shucking houses, and other

entities that buy oysters are expected to benefit from the extended season. The Department of Legislative Services concurs.

Contact Information

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