Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Department of Natural Resources

(DLS Control No. 15-130)

Overview and Legal and Fiscal Impact

The regulation implements Chapter 147 of 2015, authorizing the use of a breech loading center fired rifle while hunting under a deer management permit during deer season in Charles or St. Mary's counties. The regulation also authorizes the Department of Natural Resources to issue a deer management permit to prevent damage to certain native plants.

The regulation presents one legal issue of concern of which the department has been notified. Please see the Legal Issue section of the Legal Analysis below for additional comments.

The regulation has no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Natural Resources:
Wildlife: Forest Wildlife: COMAR 08.03.04.02

Legal Analysis

Background

White-tailed deer thrive in habitat that is composed of woods and openings. Because hunter access in those areas is limited, suburban development has provided excellent deer habitat in the State, resulting in an escalation of deer populations in suburban areas. Higher populations of deer can lead to a greater number of negative interactions with suburban residents such as deer-vehicle collisions and vegetation damage. To address these problems, the department issues deer management permits to individuals so that they may harvest a certain number of deer outside of the regular deer hunting seasons in order to mitigate severe crop damage.

In 2015 the General Assembly passed Chapter 147 that, among other things, authorized a holder of a deer management permit in Charles or St. Mary's counties to use a breech loading center fired rifle to hunt deer under the permit during deer season. Chapter 147 also authorized a holder of a deer management permit in Charles or St. Mary's counties who leases State land for crop cultivation to hunt deer on the leased land in the locations and under the conditions set forth in the permit. Additionally, Chapter 147 repealed a provision of law authorizing the department to terminate the deer hunting season for a deer management permit. Chapter 147 was an emergency bill and went into effect on approval by the Governor on May 12, 2015.

Summary of Regulation

The regulation implements Chapter 147, authorizing a person in Charles or St. Mary's counties who is hunting deer during deer season under a deer management permit to use a breech loading center fired rifle. The regulation repeals a provision terminating the use of a deer management permit for crop protection in Charles or St. Mary's county on July 1, 2017. The regulation also authorizes the department to issue a deer management permit for the prevention of damage to professionally managed native plant communities of ecological significance. Lastly, the regulation makes several clarifying and technical corrections.

Legal Issue

This regulation authorizes the department to issue a deer management permit for the prevention of damage to native plant communities of ecological significance managed under the direction of a professional botanist or ecologist. Section 10-415(d) of the Natural Resources Article defines "deer management permit" as a permit that authorizes the holder to hunt deer outside of the deer hunting season for the purpose of preventing damage to crops. Although "crops" is not defined in statute, the common understanding of the term is vegetation that is grown for a commercial purpose. Current Regulation .02D(1) authorizes the issuance of a deer management permit for economic loss to specified crops. Moreover, the department's webpage for deer management permits states that "Maryland landowners or agricultural lessees that are experiencing severe economic loss from deer to commercially grown crops (includes row crops, truck crops, pasture, nursery stock, orchards, and certain tree plantings) may be eligible to receive a Deer Management Permit" (emphasis added). It is the opinion of the Department of Legislative Services that native plant communities, even when managed, are not a crop and that the department is overreaching its statutory authority by broadening the deer management permit to apply to these communities.

The department has responded that, because "crops" is not defined in statute, there is no requirement that a crop be commercial. Additionally, the department currently issues deer management permits for the protection of ornamental vegetation, which the department states is not a commercial crop. Consequently, the department has determined that the regulation is consistent with State law.

Statutory Authority and Legislative Intent

The department cites §§ 10-205 and 10-408 of the Natural Resources Article as statutory authority for the regulation. Those provisions of law establish the broad authority of the department to regulate, respectively, the hunting of wildlife in the State and the use of weapons while hunting designated wildlife in the State. In addition, § 10-415(d) was amended by Chapter 147 to make the changes discussed above.

With the addition of § 10-415, this authority is correct and complete. Except as noted in the Legal Issue section above, the regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the department agrees to make the following changes to the regulations:

- adding § 10-415 of the Natural Resources Article as legal authority for the regulations and

- changing the term "rifle" in Regulation .02F(8)(b) to "breech loading center fired rifle" for consistency with § 10-415 of the Natural Resource Article.

Fiscal Analysis

The regulation has no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulation, in part, implements Chapter 147 of 2015 (Senate Bill 68). The fiscal and policy note for Senate Bill 68 estimated that the bill does not materially impact State finances and that any decrease in workload for the department can be handled by reallocating affected staff to other areas.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State, but that the regulation likely results in a minimal decrease in crop damage to agricultural crops as a result of a slight increase in the number of deer harvested by deer management permit holders. The Department of Legislative Services concurs.

Contact Information

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