

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1187 (Delegate O'Donnell)  
Environmental Matters

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Natural Resources - Aquaculture Operations - Exemptions

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This bill exempts aquaculture operations from all provisions of Title 4 – Fish and Fisheries, of the Natural Resources Article and associated regulations that establish harvesting restrictions for wild stocks of fish, including season restrictions, catch limits, minimum size limits, quotas, and method of harvest restrictions.

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Fiscal Summary

**State Effect:** Although the bill's changes could generally be handled with existing resources, according to the Department of Natural Resources (DNR) and the Maryland Department of the Environment (MDE), the bill could result in the State being in violation of the U.S. Food and Drug Administration's (FDA) National Shellfish Sanitation Program (NSSP). This could affect the State agencies involved with that program, including DNR, MDE, and the Department of Health and Mental Hygiene (DHMH).

**Local Effect:** The bill would not directly affect local governments.

**Small Business Effect:** Meaningful.

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Analysis

**Current Law:** The definition of fish includes shellfish. A person must obtain a permit from DNR to engage in aquaculture activities; there is no permit fee. "Aquaculture" means the commercial rearing of fish or aquatic plants for sale, trade, barter, or shipment. DNR is required by law to promulgate by regulation requirements that are necessary to

ensure that aquaculture operations do not adversely impact wild stocks of fish. In general, except as otherwise provided by law, all provisions of Title 4 – Fish and Fisheries, of the Natural Resources Article that are applicable to the taking, possession, sale, and transport of finfish do not apply to finfish that are in or from aquaculture operations in nontidal ponds, lakes, or impoundments.

Among several other provisions in Title 4 of the Natural Resources Article, current law prohibits a person from transporting or attempting to transport outside the State oysters measuring less than three inches in length regardless of whether they are caught on the natural bars of the State or from private beds and lots in the State. Statute and regulations also provide for minimum sizes of other shellfish species. Title 4 also authorizes MDE to restrict polluted areas for the catching or storing of shellfish and to close certain areas to the catching of oysters or clams because of pollution.

**Background:** NSSP is the federal/state cooperative program for the sanitary control of shellfish produced and sold for human consumption. The purpose of NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce through federal/state cooperation and uniformity of state shellfish programs.

DNR, MDE, and DHMH work closely together to ensure compliance with NSSP in Maryland. If MDE determines by appropriate investigation that any area of water devoted to the production or storage of shellfish is polluted so that shellfish produced or stored in the area are a hazard to public health, it must restrict the area for the catching or storing of shellfish. After establishing a restriction, MDE must test the water in the restricted area or inspect the source of pollution at least twice monthly. A person may not process, sell, or keep for sale any shellfish if it is from an unknown or uncertified source. DHMH is authorized to detain and take any necessary action on any shipment of shellfish if it is from such a source. DNR maintains the patrol component of Maryland's Shellfish Program.

The NSSP Guide for the Control of Molluscan Shellfish consists of a model ordinance, supporting guidance documents, recommended forms, and other related materials associated with the program. Among other things, the model ordinance provides that each authority (the State) must establish the submarket size for each species of shellfish and that all sources of seed must be sanctioned by the authority.

**State Fiscal Effect:** The impact of this bill on the State is difficult to determine. The bill's changes could generally be handled with existing resources. DNR advises, however, that the Natural Resources Police would not be able to determine if oysters are from wild stock or aquaculture; accordingly, it would be unable to continue to enforce the wild oyster size limit.

In addition, DNR advises that, because aquaculture operations would become exempt from all provisions of Title 4 – Fish and Fisheries, of the Natural Resources Article relating to wild stocks, including size limits, the bill could result in a violation of NSSP. MDE also advises that, with respect to aquaculture harvesting operations, the bill would remove its authority to close shellfish harvesting areas due to pollution. This, too, would result in a violation of NSSP. FDA concurs that the bill may interfere with MDE’s ability and need to control the taking of shellfish from certain waters because of public health concerns. Accordingly, Maryland could be removed from the Interstate Shellstock Shippers List. If this happens, it could result in the closure of the entire shellfish harvesting industry in the State.

Most directly, a closure of the shellfish industry could result in a decrease in special fund revenues for DNR from oyster taxes (\$1 per bushel) and oyster surcharges (\$300 each) it otherwise would collect; a decrease in special fund revenues to MDE from any State tidal wetlands license fees (\$1,000 one-time fee) that otherwise might be assessed by the Board of Public Works (BPW) for aquaculture operations; a decrease in revenues to the Annuity Bond Fund from water column lease payments (\$80 per acre) that otherwise might be assessed by BPW for aquaculture operations; and a decrease in general fund revenues from “food establishment” licenses issued by DHMH to shellfish shippers (\$150 each). The bill could result in a decrease in workload for DNR, MDE, and DHMH with respect to their current activities under NSSP. It is assumed, however, that any affected staff would simply be diverted to other related activities.

A closure of the shellfish industry would also have an indirect negative impact on the State’s economy.

**Small Business Effect:** Although aquaculture permittees might benefit in some ways from reduced regulation, if the bill results in the closure of the shellfish industry in Maryland, this could have a significant negative impact on Maryland businesses. DNR advises that the 2002-2003 average dockside value for shellfish totaled approximately \$4.6 million. This does not include the impact to processors, distributors, wholesalers, retailers, or others involved in the industry.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Maryland Department of the Environment, Department of Health and Mental Hygiene, Board of Public Works, U.S. Food and Drug Administration, Department of Legislative Services

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