

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 342

(Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Natural Resources - Oysters - Hearing for Poaching and Designation of Sanctuaries

This bill requires the Department of Natural Resources (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 use or receive another tidal fish license to catch oysters. DNR is prohibited from designating a new oyster sanctuary in State waters before April 1, 2011.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: The bill may limit DNR’s ability to expend federal oyster restoration funding in FY 2010 and 2011 and to secure federal oyster restoration funding in FY 2011.

Local Effect: None.

Small Business Effect: 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: According to the Natural Resources Fine Schedule of the District Court, effective October 1, 2009, there are several prepayable fines associated with oyster violations, including a \$125 prepayable fine for violating oyster harvest locations and times. 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.

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 specified 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.

The 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.

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 areas of the Corsica, Choptank, Nanticoke, and Patuxent 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.

Background: At its peak, the Chesapeake Bay’s oyster population acted as a natural filter, removing 133 million pounds of nitrogen annually. Affected by diseases, habitat loss, and harvest pressures, the oyster stock has significantly declined. Today, the oyster population has dropped to less than 1% of its original population, and remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year.

In December 2009, Governor Martin O’Malley proposed a new management and restoration plan for oysters and the Maryland oyster industry. The proposal seeks to increase Maryland’s network of oyster sanctuaries, expand oyster aquaculture leasing opportunities, and maintain 167,720 acres of natural oyster habitat for a public oyster fishery. During January 2010, DNR held a series of open houses to solicit public comments on the oyster plan’s proposed implementation regulations. Comments and suggestions were collected and are currently being reviewed.

Over the past few months, DNR has strengthened its efforts to protect Maryland’s native oyster population. In accordance with Chapter 453 of 2009, DNR proposed a new administrative penalty system to deter violations of commercial fisheries laws last fall. During the first week of January 2010, NRP made four charges against individuals who possessed undersize and/or uncultured oysters. In mid-January 2010, NRP made four more charges related to oyster poaching in Talbot County. On February 2, 2010, DNR suspended two individuals’ oyster harvesting licenses for the rest of the season. As part of its enhanced enforcement efforts, DNR is installing a network of radar and camera units to assist in monitoring sensitive areas that are prone to oyster poaching. In addition,

DNR, the Attorney General's Office, and the District Court of Maryland recently launched a pilot program under which the court in Anne Arundel County will set aside one day each month to hear all pending natural resources cases.

State Fiscal Effect: Generally, the bill's new requirements 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 bill's judicial review provisions do not significantly affect the Judiciary.

DNR collaborates on oyster restoration with federal partners, including the U.S. National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers. In fiscal 2010, DNR has a \$1.0 million grant from the Army Corps and a \$2.6 million grant from NOAA for oyster restoration work. DNR is limited to using these funds in oyster sanctuaries. In addition, DNR's current oyster restoration efforts with federal partners are predicated upon expanding the State's oyster sanctuary network. DNR advises that being limited to the current sanctuaries will not provide sufficient restoration opportunities for continued federal funding support. Thus, to the extent the bill's changes prevent additional sanctuaries from being established in a timely manner, the bill may limit DNR's ability to expend federal oyster restoration funding in fiscal 2010 and 2011. Also, the bill may limit DNR's ability to secure future federal oyster restoration funding in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: HB 1191 (Delegate McIntosh, *et al.*) - Environmental Matters.

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

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