

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1172

(Delegate Jacobs, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Oyster Poaching - Administrative Penalties

This bill modifies provisions that establish grounds and a process for the revocation of a person’s license to catch oysters. References to a “license to catch oysters” are replaced with references to an “authorization to catch oysters.” The bill removes a requirement that the Department of Natural Resources (DNR) hold a hearing within 60 days of a person receiving a citation for taking oysters unlawfully to determine whether the person’s license to catch oysters must be revoked. Instead, a hearing must simply be held before the revocation of an authorization to catch oysters. If a hearing is held, it must be held within 90 days after the offense occurs. DNR must also report annually, by December 31 each year, on the number of citations issued for taking oysters unlawfully and the action taken or penalty imposed by DNR for each offense. **The bill takes effect July 1, 2018, and the reporting requirement terminates June 30, 2021.**

Fiscal Summary

State Effect: General fund expenditures may decrease minimally beginning in FY 2019. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Revocation of a Person's License to Catch Oysters

In addition to any other penalty or fine, a person who holds a license to catch oysters and receives a citation for any of the following offenses may have the license revoked: (1) taking oysters located more than 200 feet within a closed or prohibited area; (2) taking oysters with gear that is prohibited in that area; (3) taking oysters outside of a time restriction for the harvest of oysters by more than one hour; (4) taking oysters during closed seasons; and (5) taking oysters from a leased area by a person other than the leaseholder or the leaseholder's designee.

Within 60 days after a licensee receives a citation for one of those offenses, DNR must hold a hearing on the matter. After a hearing, if the presiding officer finds or concludes that the person knowingly has committed an offense, DNR must revoke the person's license to catch oysters. A person who is aggrieved by DNR's final decision may obtain judicial review of the decision in accordance with the Administrative Procedure Act.

A person whose license has been revoked may not engage or work in the fishery for which the license was revoked, whether or not it requires the use of another license.

"License" and "Authorization"

DNR uses a single, commercial license, known as a tidal fish license, which authorizes a licensee to engage in each activity indicated on the license. The department may issue authorizations for activities listed in statute for which the indicated fee has been paid. The authorization for harvesting oysters for sale, for example, has a fee of \$250 for a dredge boat and \$100 for harvesting other than from a dredge boat.

State Expenditures: General fund expenditures may decrease minimally each year, beginning in fiscal 2019, due to a decrease in hearings held regarding unlawful taking of oysters. Each hearing costs the department approximately \$3,500. DNR indicates that under current law, it must proceed to a hearing for revocation and cannot instead agree to a lesser penalty for a violation. The bill, however, allows DNR to consider the circumstances of any offense prior to proceeding to a hearing for revocation. DNR indicates that a relatively small number of revocations for unlawfully taking oysters occur each year (approximately five per year). DNR can meet the bill's reporting requirement using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 558 (Senators Simonaire and Hershey) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Department of Legislative Services

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