

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 10

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Natural
Resources)

Education, Health, and Environmental Affairs

Environment and Transportation

Natural Resources - Oysters, Clams, and Clamming - Licenses and Regulations

This departmental bill (1) repeals duplicative license requirements; (2) modifies the definition of “shinnecock rake”; (3) clarifies a provision that allows for specified harvesting of hard-shell clams in Worcester County; and (4) authorizes the Department of Natural Resources (DNR), in consultation with the Maryland Department of Health (MDH), to adopt regulations to carry out the requirements of the National Shellfish Sanitation Program (NSSP).

Fiscal Summary

State Effect: None. The bill does not affect State finances.

Local Effect: None.

Small Business Effect: DNR has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Repeal of Duplicative License Requirements

The bill repeals license requirements in State law for certain commercial activity (harvesting, shipping, selling, and landing) relating to oysters and clams, which are duplicative of other State law provisions. The provisions being repealed:

- prohibit a person from catching oysters or clams for commercial purposes in the waters of the State unless the person first obtains a license (and require DNR to require an applicant for an oyster license to give the applicant's address and telephone number);
- require any person desiring to catch hard-shell clams by rake in the waters of Worcester County to apply to DNR for a license (and to provide specified information and certification to DNR);
- require a person (other than a person selling their own catch) to obtain a license before engaging in the business of shipping or selling hard-shell clams taken from the waters of the State; and
- require a person in charge of any boat or vessel rigged for catching surf clams or ocean quahogs to obtain a license from DNR before catching any surf clams in the waters of the State or landing any surf clams or ocean quahogs in the State.

"Shinnecock Rake" Definition

The bill modifies the definition of "shinnecock rake," primarily by indicating that it is a specified tool that *is towed from a vessel under power*, as opposed to a hand tool.

Harvesting Hard-shell Clams in Worcester County

The bill clarifies a provision allowing a person to catch hard-shell clams with a handscrape, shinnecock rake, or hydraulic dredge in the waters of Worcester County to instead allow a person to catch hard-shell clams with those types of gear in *the State waters of the Atlantic Ocean*.

National Shellfish Sanitation Program Regulations

The bill authorizes DNR, in consultation with MDH, to adopt regulations to carry out the requirements of NSSP.

Current Law/Background:

Commercial Licenses

State fisheries law requires a person guiding fishing parties or catching, selling, buying, processing, transporting, exporting, or otherwise dealing in fish caught in tidal waters to be licensed pursuant to the provisions described below.

Tidal Fish License and Authorizations

Pursuant to State fisheries law, DNR issues a single commercial license, known as a tidal fish license, which authorizes a licensee to engage in each activity indicated on the license. The fees paid by the licensee are based on the authorizations issued to the licensee, pursuant to a statutory fee schedule which establishes the various authorizations and associated fees. “Fish” is defined to include finfish, crustaceans, mollusks, and amphibians and reptiles which spend the majority of their life cycle in water.

Seafood Dealer and Landing Licenses

DNR issues a seafood dealer license for persons who buy, process, pack, resell, market, and otherwise deal in fish caught in Maryland tidal waters. The annual fees are (1) \$50 for a person who has an authorization to catch fish for sale and (2) \$250 for a person who does not. DNR also issues a seafood landing license that authorizes an otherwise-unlicensed person to sell fish caught in out-of-state tidal waters to buyers on shore in Maryland. The annual license fee is \$350.

“Shinnecock Rake” Definition

“Shinnecock rake” is defined as a hand tool used to catch hard-shell clams or oysters, which usually consists of a tooth bar with projecting long, outwardly, and upwardly curving teeth which are progressively smaller towards the ends, form a basket, and are set transversely at the end of a long, usually wooden handle. DNR indicates that the bill clarifies the definition of a shinnecock rake as a mechanical gear.

Harvesting Hard-shell Clams in Worcester County

In general, a person may not catch hard-shell clams in the waters of the State with a shinnecock rake or similar device. However, a person may catch hard-shell clams with a handscrape, shinnecock rake, or hydraulic dredge in the waters of Worcester County (with the exception of the Atlantic Coastal Bays). The bill clarifies that the authorization to catch hard-shell clams with a handscrape, shinnecock rake, or hydraulic dredge applies to the State waters of the Atlantic Ocean.

National Shellfish Sanitation Program

NSSP is a federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference for the sanitary control of shellfish produced and sold for human consumption. In Maryland, DNR, MDH, and the Maryland Department of the Environment work closely together to ensure compliance with NSSP. DNR indicates that the authority in the bill allows the department to carry out NSSP requirements and maintain the ability for Maryland-harvested shellfish to be sold in interstate commerce.

DNR has been able to ensure compliance with NSSP requirements in wild commercial shellfish fisheries, through fishery management plan measures, and in aquaculture, through specific statutory authority. The bill, however, gives DNR more comprehensive authority to ensure compliance with NSSP requirements, including by recreational fisheries. DNR also does not have a fishery management plan for hard-shell clams in the Chesapeake Bay and, therefore, lacks the authority to ensure compliance with NSSP requirements in both commercial and recreational hard-shell clam fisheries. DNR advises that with recent and dramatic changes in clam population dynamics in the bay, FDA has been focused on examining the compliance of those fisheries.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2019
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Natural Resources – Clams and Clamming

BILL NUMBER: SB10

PREPARED BY: Sarah Widman

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The bill makes clarifications and corrections to text to align with current practices. These changes have no fiscal impacts on small businesses or industry. The regulatory authority would allow the department to write regulations to comply with federal law which is needed to keep the hard clam fishery open. However, the fiscal impact from that would be associated with any drafted regulations and not with the bill text.

Without the regulatory authority for hard clams, the department will not be able to write regulations to comply with the federal requirements under the National Shellfish Sanitation Program. This is required to have an open fishery that harvests for public consumption. There were 81 licensees declared for the hard clam fishery for the 2017-2018 season, and 67 reported harvest. The dockside value of the 1429 lbs. of meat harvested was approximately \$357.