

SENATE BILL 346

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(PRE-FILED)

By: **Chair, Education, Health, and Environmental Affairs Committee (By Request
– Departmental – Natural Resources)**

Requested: September 23, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Natural Resources – Public Notices and Hearings**

3 FOR the purpose of repealing certain provisions of law that require the Department of
4 Natural Resources to provide public notice of certain administrative actions through
5 certain publication in certain newspapers and authorizing the Department to
6 provide the public notice on the Department's website and, under certain
7 circumstances, through certain other media in certain manners; repealing certain
8 requirements that the Department hold certain hearings or provide certain public
9 notice before certain regulations may take effect; repealing a requirement that the
10 Department publish in certain newspapers certain regulations after final adoption;
11 altering the notice standards that apply to the Natural Resources Police Force when
12 enforcing certain shellfish harvest area restrictions or closures; authorizing the
13 Department to adopt regulations that allow the establishment by public notice of
14 certain standards governing the surf clam harvest; altering the time frames within
15 which certain notices are required to be provided; making certain conforming and
16 stylistic changes; and generally relating to public notices and hearings provided by
17 the Department of Natural Resources.

18 BY repealing and reenacting, without amendments,
19 Article – Natural Resources
20 Section 4–215.1(b), 4–742(a)(1), 4–803(a), and 4–1009.1(b)
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2020 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Natural Resources
25 Section 4–215.1(d), 4–739, 4–742(b), 4–1009(a) and (b), 4–1009.1(c), 4–1039(a) and
26 (c), 4–1043, 4–1103(b), and 4–11A–09(g)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2018 Replacement Volume and 2020 Supplement)

2 BY repealing

3 Article – Natural Resources

4 Section 4–803(d)

5 Annotated Code of Maryland

6 (2018 Replacement Volume and 2020 Supplement)

7 BY repealing and reenacting, without amendments,

8 Article – Natural Resources

9 Section 8–704(a) and 8–721(c) and (d)

10 Annotated Code of Maryland

11 (2012 Replacement Volume and 2020 Supplement)

12 BY repealing

13 Article – Natural Resources

14 Section 8–704(e)

15 Annotated Code of Maryland

16 (2012 Replacement Volume and 2020 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article – Natural Resources

19 Section 8–721(e)

20 Annotated Code of Maryland

21 (2012 Replacement Volume and 2020 Supplement)

22 BY renumbering

23 Article – Natural Resources

24 Section 8–704(f), (g), (h), and (i), respectively

25 to be Section 8–704(e), (f), (g), and (h), respectively

26 Annotated Code of Maryland

27 (2012 Replacement Volume and 2020 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

29 That the Laws of Maryland read as follows:

30 **Article – Natural Resources**

31 4–215.1.

32 (b) The Department may completely close an area of State waters to all finfishing
33 if the Department:

34 (1) In a written report made available to the general public:

35 (i) Makes a finding that the closure is necessary, after due
36 consideration of:

- 1 1. The scientific basis for the closure;
- 2 2. The purpose of the closure;
- 3 3. The rationale for the selection of the specific area to be
4 closed;
- 5 4. The sufficiency of the area closed to generate the benefits
6 projected; and
- 7 5. The likelihood that the same objective could be effectively
8 accomplished through the use of alternative management measures; and

9 (ii) Develops protocols and a reporting timeline to monitor and
10 evaluate the effectiveness of the closure; and

11 (2) Holds at least one public hearing in accordance with the requirements
12 under subsection (d) of this section.

13 (d) (1) [For 2 successive weeks in] **IN** advance of a public hearing required
14 under subsection (b)(2) of this section, the Department shall:

15 (i) [Post] **AT LEAST 2 WEEKS BEFORE THE HEARING, POST** a
16 notice of the date, time, place, and purpose of the hearing in a prominent position on the
17 Department's official Internet website; and

18 (ii) [Advertise] **PROVIDE NOTICE OF** the date, time, place, and
19 purpose of the hearing [in at least:

20 1. One newspaper of general daily circulation in the State;
21 and

22 2. One newspaper circulated in the affected region of each
23 county in which waters may be directly affected by the proposed closure] **THROUGH**
24 **OTHER MEDIA SO THAT AN AFFECTED PERSON HAS A REASONABLE OPPORTUNITY**
25 **TO BE INFORMED.**

26 (2) At least 15 days before the public hearing, the Department shall make
27 available to the general public the report required under subsection (b)(1) of this section.

28 4-739.

29 [(a)] The Department may make rules and regulations governing catching sturgeon
30 in the waters of the State or possessing and selling within the State sturgeon caught in the
31 waters of the State.

1 [(b) The rules and regulations of the Department become effective only after a
2 public hearing is held. The time, place, and purpose of the public hearing shall be advertised
3 in one newspaper of general daily circulation in the State, and at least one newspaper
4 circulated in each county, at least once per week for two successive weeks in advance of the
5 hearing. After the hearing and adoption of the rules and regulations, they shall be
6 published in the newspapers which published the notice of the hearing.]

7 4-742.

8 (a) (1) If the Department of the Environment determines by appropriate
9 investigation that any area of waters of the State devoted to the production or storage of
10 shellfish is polluted so that shellfish produced or stored in the area are a hazard to public
11 health, it shall restrict the area for the catching or storing of shellfish.

12 (b) (1) The action of the Department of the Environment to restrict an area of
13 water becomes effective immediately upon giving formal notice of the action to the
14 Department. Notice also shall be given the appropriate governing body and the committee
15 of oystermen of any county affected by the restriction.

16 (2) The Natural Resources Police Force shall patrol the area to warn
17 watermen until public notice is given [in newspapers of general circulation in each of the
18 counties whose watermen work the restricted area normally] **ON THE DEPARTMENT'S**
19 **WEBSITE AND THROUGH OTHER MEDIA**. No arrests may be made until [the next
20 workday following the day] **48 HOURS AFTER** the notice appeared unless the watermen
21 fail to heed a warning of the officers.

22 (3) (i) If the Department of the Environment closes any area to the
23 catching of shellfish under this section, in addition to the notice required in paragraph (1)
24 of this subsection, the Department of Natural Resources shall mark the area so that the
25 area can be seen from the water.

26 (ii) The Department of Natural Resources shall adopt [rules and]
27 regulations to provide for the marking in a plain and visibly obvious fashion of any area
28 that is closed to the catching of shellfish because of pollution. Even in the absence of such
29 marking devices, a person may not catch shellfish in a restricted area as designated by the
30 Department of the Environment if notice has been given to the appropriate governing body
31 and the committee of watermen of any county affected by the restriction.

32 4-803.

33 (a) The Department may adopt rules and regulations to effectuate the following
34 purposes:

35 (1) To restrict catching and possessing any blue crab;

- 1 (2) The methods by which crabs are taken;
- 2 (3) To close or open any specified area to catch crabs;
- 3 (4) To prohibit or restrict devices used to catch crabs;
- 4 (5) To establish seasons to catch crabs;
- 5 (6) To establish that the workday for tidal fish licensees who catch crabs
6 using trotline gear may begin earlier than 1 hour before sunrise; and
- 7 (7) To establish minimum size limits for hard, soft, and peeler crabs.
8 However, this section does not permit the Department to change existing license fees for
9 catching, picking, canning, packing, or shipping cooked hard or soft crabs or crab meat; or
10 for selling, or shipping live hard or soft crabs by barrel or crate. The Department may set
11 license fees on types of gear or equipment if not otherwise set by law.

12 [(d) The Department's regulations may not become effective under this section
13 until the Department first holds public hearings. The Department shall advertise the time,
14 place, and purpose of the hearings in one newspaper of general daily circulation in the
15 State, and at least in one newspaper circulated in the affected region of each county whose
16 waters may be directly affected by the proposed regulations at least once per week for 2
17 successive weeks in advance of the hearings.]

18 4-1009.

19 (a) **(1)** During the closed season for taking oysters, a person may take seed
20 oysters from the natural bars of the State marked by the Department for a period not
21 exceeding one month in any one year, at times designated by the Department.

22 **(2)** The seed oysters shall be taken only in accordance with rules and
23 regulations the Department prescribes, sold only to lessees of private oyster grounds,
24 delivered only on leased oyster bottoms and subject to the provisions of § 4-1103(c) of this
25 title.

26 (b) The Secretary may establish by rule or regulation daily catch limits on the
27 quantities of oysters which may be caught from the waters of the State except leased areas
28 and aquaculture enterprise zones, and may amend the daily catch limits to conserve the
29 public oyster resource. [Notice of the establishment or amendment of these catch limits,
30 including all applicable reasons for the Department's action, shall be given before
31 publication, to the Joint Committee on Administrative, Executive, and Legislative Review
32 and by publication of the notice in at least one newspaper of general circulation in the State,
33 in at least one newspaper of general circulation in each county in which the affected waters
34 are located, and on the website of the Department not less than one week prior to the
35 effective date.]

1 4-1009.1.

2 (b) Notwithstanding any other provision of law, by publishing public notice, the
3 Department may establish for a harvest reserve area:

4 (1) The opening or closure of an area for the harvesting or conservation of
5 oysters;

6 (2) The harvest limit;

7 (3) The seasons, days, and times when oysters may be harvested;

8 (4) A minimum size limit of not less than 3 inches; and

9 (5) A maximum size limit.

10 (c) (1) An action of the Department under subsection (b) of this section may
11 not become effective until:

12 (i) A copy of the notice to be published under item (ii) of this
13 paragraph has been delivered to the Joint Committee on Administrative, Executive, and
14 Legislative Review; and

15 (ii) 48 hours after notice has been [published:

16 1. In at least one newspaper of general circulation in the
17 State;

18 2. In at least one newspaper of general circulation in each
19 county in which the affected waters are located; and

20 3. On] **POSTED ON** the website of the Department.

21 (2) The notice required under paragraph (1) of this subsection shall state
22 all applicable reasons for the Department's action.

23 4-1039.

24 (a) The Department may open or close any area in which the catching of
25 soft-shell clams by hydraulic clam dredge is not prohibited under the provisions of this
26 subtitle if:

27 (1) [in] **IN** its opinion other natural resources will not be significantly
28 damaged;

29 (2) [the] **THE** area to be opened is clearly defined and plainly marked; and

1 (3) [the] **THE** area is patrolled by Natural Resources Police vessels during
2 dredging operations.

3 (c) Before opening or closing any area the Department shall publish notice [in at
4 least one newspaper of general circulation in the State, and in at least one newspaper of
5 general circulation in each county. Any closing or opening shall be effective no less than 24
6 hours from publication of notice]:

7 (1) **ON THE DEPARTMENT'S WEBSITE AT LEAST 24 HOURS BEFORE**
8 **THE EFFECTIVE HOUR AND DATE OF THE OPENING OR CLOSURE; AND**

9 (2) **THROUGH OTHER MEDIA SO THAT AN AFFECTED PERSON HAS A**
10 **REASONABLE OPPORTUNITY TO BE INFORMED.**

11 4-1043.

12 The Department may [establish] **AUTHORIZE THE ESTABLISHMENT BY PUBLIC**
13 **NOTICE OF** size limits and open and close areas for harvesting of surf clams. [The
14 Department shall publish a notice of its proposal to open or close an area or change size
15 limits at least 30 days before the effective date of the proposal and shall hold a public
16 hearing on the proposal at least 15 days before the effective date unless a public hearing
17 on a substantially similar proposal has been conducted in the State by a federal
18 management authority with notice advertised by the Department as required by this
19 section. The notice shall include the time and place of any hearing and shall be published
20 in at least one newspaper of general circulation in the State and at least one newspaper of
21 general circulation in Worcester County.]

22 4-1103.

23 (b) The Department may, **THROUGH THE ADOPTION OF REGULATIONS**, select
24 and reserve for its own use areas[, to be known as seed areas,] within the waters of the
25 State for the propagation of seed oysters. [The number, size, and location of these areas
26 shall be determined from time to time by the Department. The Department shall, before
27 publication, deliver a notice of reservation, including all applicable reasons for the
28 Department's act, to the Joint Committee on Administrative, Executive, and Legislative
29 Review and publish the notice not less than 30 days before the closing date of any seed area
30 in one newspaper of general circulation in the State and at least one newspaper of general
31 circulation in each county in which the affected waters are located, and on the website of
32 the Department. The Department shall schedule a public hearing on the proposal not less
33 than 15 days before the proposed closing date. The hearing shall be held at the county seat
34 of the county in which the affected waters are located. If the affected waters are located in
35 more than one county, the hearing shall be held in that county seat closest to the affected
36 waters, but if the area affected is totally within State waters, the hearing shall be held in
37 Annapolis.]

1 4-11A-09.

2 (g) (1) If an application for a submerged land or water column lease in the
3 Chesapeake Bay or in the Atlantic Coastal Bays meets the requirements of this subtitle:

4 (i) The applicant for the lease shall mark the proposed area with a
5 stake; and

6 (ii) The Department shall:

7 1. Advertise the application on the website of the
8 Department [and once a week] for **AT LEAST 2 CONSECUTIVE** weeks [in a newspaper
9 published in the county or counties where the proposed lease is to be located];

10 2. Notify the owners of property directly in front of the
11 proposed activity;

12 3. Notify each Chair of an Oyster Committee in the county in
13 which the proposed activity is located; and

14 4. Notify other interested parties that the Department
15 deems appropriate.

16 (2) (i) Within [30] **37** days of [publication of the last advertisement]
17 **THE FIRST DAY THAT THE ADVERTISEMENT IS POSTED ON THE DEPARTMENT'S**
18 **WEBSITE** under paragraph (1) of this subsection, any person who has a specific right, duty,
19 privilege, or interest that is different from that held by the general public and may be
20 adversely affected by the proposed lease may file a petition with the Department protesting
21 the issuance of the lease.

22 (ii) The protest shall be heard in accordance with the requirements
23 of the Administrative Procedure Act under Title 10, Subtitle 2 of the State Government
24 Article.

25 (iii) The Department shall hold a public informational meeting on the
26 issuance of a lease on the request of any person.

27 (iv) Immediately after termination of the period prescribed in
28 subparagraph (i) of this paragraph for filing a petition or after a final decision dismissing
29 a protest, the Department shall survey the proposed leased area and issue a lease to the
30 applicant.

31 8-704.

32 (a) The Department may adopt regulations necessary to carry out the provisions
33 of this subtitle, including the determination of the state of principal use for the purpose of

1 assessing the vessel excise tax.

2 [(e) Department regulations do not become effective unless advertised publicly in
3 at least 2 daily newspapers of general circulation and at least 1 weekly newspaper serving
4 the area or areas involved at least 45 days before the effective date. If 50 citizens of the
5 State file a petition with the Department at least 15 days prior to the effective date, the
6 Department shall conduct a public hearing on the proposed regulations.]

7 8-721.

8 (c) (1) Except as provided in subsection (g)(2) of this section, not later than 15
9 days before an abandoned or sunken vessel is seized, removed, or taken into custody under
10 subsection (b) of this section, the Department shall send a notice, by certified mail, return
11 receipt requested, bearing a postmark from the United States Postal Service to the last
12 known registered owner of the vessel, as shown on the records of the Department.

13 (2) (i) Except as provided in subparagraph (ii) of this paragraph, as
14 soon as reasonably possible but not later than 15 days after the Department takes an
15 abandoned or sunken vessel into custody, the Department shall send a notice, by certified
16 mail, return receipt requested, bearing a postmark from the United States Postal Service
17 to the last known registered owner of the vessel and to each known secured party, as shown
18 on the records of the Department.

19 (ii) As soon as reasonably possible but not later than 15 days after
20 the Department takes an abandoned or sunken vessel into custody in accordance with
21 subsection (g)(2) of this section, the Department shall send a notice, by certified mail, return
22 receipt requested, bearing a postmark from the United States Postal Service to the last
23 known registered owner of the vessel and to each known secured party, as shown on the
24 records of the Department.

25 (d) The notices required by subsection (c) of this section shall:

26 (1) Describe the vessel;

27 (2) If the vessel was taken into custody in accordance with subsection (g)(2)
28 of this section, describe the actual or potential hazard mitigated by removal of the vessel;

29 (3) Give the location where the vessel is being held;

30 (4) Inform the owner and secured party of a right to reclaim the vessel
31 within 3 weeks of receipt of the notice required in subsection (c)(2) of this section upon
32 payment to the Department of any expenses incurred during removal and custody of the
33 vessel; and

34 (5) State that failure to claim the vessel will constitute:

35 (i) A waiver of all right, title, and interest in the vessel; and

1 (ii) A consent to the Department's disposition of the vessel.

2 (e) (1) If the Department is unable to determine the last registered owner or
3 the identity of any secured party of the abandoned or sunken vessel, or if the certified mail
4 notice required under subsection (c) of this section is returned as undeliverable, the
5 Department shall give the required notice by publication [in at least 1 newspaper of general
6 circulation in the area where the abandoned or sunken vessel was found] **ON THE**
7 **DEPARTMENT'S WEBSITE AND THROUGH OTHER MEDIA.**

8 (2) The notice by publication shall contain the information required under
9 subsection (d) of this section and shall be published within 30 days of the seizure of the
10 abandoned or sunken vessel, or within 15 days of the return of the certified mail notice as
11 undeliverable.

12 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 8-704(f), (g), (h),
13 and (i), respectively, of Article – Natural Resources of the Annotated Code of Maryland be
14 renumbered to be Section(s) 8-704(e), (f), (g), and (h), respectively.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2021.