

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1372

(Chair, Environmental Matters Committee)(By Request -
Departmental - Natural Resources)

Environmental Matters

Education, Health, and Environmental Affairs

Natural Resources - Commercial Fishing Licenses, Authorizations, and Permits

This departmental bill makes changes relating to commercial fishing licenses and authorizations and fees and surcharges paid by licensees. The changes include modifications to provisions governing transfers of commercial fishing licenses and authorizations and an authorization for the Department of Natural Resources (DNR) to assess a surcharge for fish tags and the use of a specified “hailing system.” The bill requires a fair and reasonable allocation of general fund appropriations for fishery management between the recreational and commercial fisheries. The bill also requires DNR to undertake a review of the existing laws, regulations, fees, and processes associated with commercial fishing licenses and to report findings and recommendations for changes to the commercial fish license and permit fee structure to the Governor and the General Assembly by October 1, 2012.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General/special fund expenditures decrease by approximately \$260,000 annually beginning in FY 2013 as a result of DNR no longer having to bear the cost of fish tags if a surcharge is assessed on licensees for the cost. Special fund revenues and expenditures increase correspondingly on an annual basis due to the assessment of surcharges on licensees for the cost of fish tags and the use of a hailing system. Special fund revenues may also increase due to the relinquishment of unlimited tidal fish licenses for individual authorizations. The total special fund revenue and expenditure increases cannot be reliably estimated at this time.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
SF Expenditure	-	-	-	-	-
GF/SF Exp.	(\$260,000)	(\$260,000)	(\$260,000)	(\$260,000)	(\$260,000)
Net Effect	\$260,000	\$260,000	\$260,000	\$260,000	\$260,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

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

Analysis

Bill Summary:

Fish Tag and Hailing System Surcharges

The bill authorizes DNR to annually assess on specified tidal fish licensees a surcharge for costs incurred by the department for fish tags issued to the licensee and the use by a licensee of a hailing system. “Hailing system” is defined as a communication system used by licensees to notify DNR of a fishing trip, harvest, or other fishing-related information as required by the department.

License and Authorization Transfers

The bill makes various changes relating to transfers of tidal fish licenses and authorizations. Specifically, the bill:

- requires a person who desires to obtain a license or authorization by transfer (whether permanent or temporary) to, for each license or authorization applied for, pay a \$50 application fee;
- eliminates requirements that permanent transferees pay the fee for the license or authorization upon the transfer;
- includes an aunt, uncle, niece, or nephew among family members to whom a license or authorization may be permanently transferred without having to meet other requirements;

- modifies requirements applicable to temporary transfers by allowing a license or authorization to be transferred twice per license year, for any length of time within the license year, replacing an authorization for transfers of between 30 and 90 days, not subject to a limit on the number of transfers within a license year;
- eliminates a prohibition against a person transferring a license in exchange for any type of remuneration;
- eliminates certain requirements applicable to a permanent transfer of a license or authorization to a nonfamily member and reduces the amount of time a license holder must have held a license before such a transfer, allowing a license holder who has held a license for at least two years to permanently transfer the license to a person who provides a notarized bill of sale for the license or authorization being transferred;
- establishes additional standards applicable to circumstances in which a licensee allows another person to use the licensee's commercial fishing vessel for activities authorized under the license, including requiring the licensee to indicate the name of the assigned individual to DNR and allowing the licensee to change the assignment only once per license year;
- specifies procedures governing the disposition of a license or authorization on the death of the licensee, which, among other things, eliminate a current restriction that only allows a transfer to be made to a beneficiary designated by the deceased license holder if the beneficiary is a family member; and
- allows certain authorizations to set and fish 300 additional crab pots for additional crew members authorized on a license (per crew member, up to two crew members) to be transferred separately from the original crab harvester or tidal fish license.

Relinquishment of Unlimited Tidal Fish License

The bill also allows a licensee who possesses an unlimited tidal fish license (allowing the licensee to engage in various specified activities) to relinquish the unlimited tidal fish license and receive one or more authorizations to engage in specific activities instead. If the total of the fees for the authorizations is greater than the fee for an unlimited tidal fish license, the licensee must pay the difference to DNR. An existing provision that allows a tidal fish licensee who possesses three or more authorizations to engage in specific activities, one of which is a crabbing authorization, to relinquish the authorizations for an unlimited tidal fish license is limited to apply only before September 1, 2012.

Striped Bass Authorizations and Use of Striped Bass Surcharge Revenue

The bill modifies a requirement that DNR by regulation limit the total number of authorizations to fish for striped bass to 1,231 participants in the commercial fishery and 499 participants in the charter boat fishery to specify that the limits established by regulation must *not exceed* 1,231 participants in the commercial fishery and 499 participants in the charter boat fishery.

The bill also amends a provision that requires DNR to use funds received from the sale of striped bass licenses for enforcement purposes to instead require that revenue from striped bass surcharges be used for both enforcement purposes and striped bass management.

Allocation of General Fund Appropriations for Fishery Management

The bill specifies that, except for any appropriation made for aquaculture, an appropriation from the general fund made for fishery management purposes must be allocated fairly and reasonably between the recreational and commercial fisheries.

Review of Commercial Fish License and Permit Fee Structure

The bill requires DNR to review the existing laws, regulations, fees, and processes associated with commercial fishing licenses in the State. As part of the review, the department must consider:

- the costs of managing and enforcing commercial fisheries;
- the structure of the commercial license and permit system and associated fees and surcharges;
- accountability of licensees; and
- setting commercial license revenue at a level that covers a fair and reasonable portion of the management and enforcement costs of the commercial fisheries.

DNR must collaborate with representatives of the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission in conducting the review. The department must report its findings and recommendations for changes to the commercial fish license and permit fee structure to the Governor and the General Assembly by October 1, 2012. The report must identify the actions needed to implement the plan by July 1, 2013. In conducting the review and developing the recommendations, DNR must determine the allocation of the user fees for fisheries management of commercial or recreational fisheries based on revenues from those respective sectors.

Current Law: A tidal fish license authorizes a licensee to guide fishing parties, catch fish for commercial purposes and buy, sell, process, transport, export, or otherwise deal in fish which were caught in the tidal waters of Maryland. A licensee pays fees for one or more authorizations on the license to engage in specific commercial fishing activities. There is also an unlimited tidal fish license which authorizes the licensee to engage in generally all of the different activities for which authorizations can be obtained.

License Transfers

A license may be transferred between individuals, permanently or temporarily, subject to certain rules and restrictions. DNR may approve a temporary transfer for not less than 30 days and not more than 90 days. A person may not transfer a license in exchange for any type of remuneration.

DNR may approve a permanent transfer of a license or authorization to specified family members of the licensee if the licensee requests the transfer and the transferee pays the fee for the license or authorization or, upon the death of the licensee, if the licensee or an authorized representative of the licensee indicates or had indicated that person's name to the department.

A permanent transfer of a license or authorization to other persons may also be approved under provisions applicable to:

- a licensee who has held a valid tidal fish license in each of the three immediately preceding seasons; or
- an authorized representative of a deceased licensee regardless of the number of seasons the deceased licensee held a valid tidal fish license.

Under those provisions, a license may be transferred to a person who has:

- purchased a vessel used for commercial fishing from the license holder or purchased equipment and assets with a minimum value of \$2,000 and the commercial fishing business from the license holder;
- been a crew member for at least two years in any commercial fishery as certified by three tidal fish licensees;
- paid the fee for the license or authorization; and
- provided a notarized bill of sale.

DNR is also required to have established by regulation a procedure for a licensee, except a fishing guide licensee or master fishing guide licensee, to voluntarily register the licensee's commercial fishing vessel number on the face of the license and allow another person to use the vessel for the commercial activities authorized on the license.

Background:

Improved License Accountability and Business Flexibility

DNR indicates that the bill's provisions will improve accountability and enforcement of the commercial fishing laws and regulations and will also provide greater business flexibility to the commercial fishing industry.

The hailing system is expected to help the department to more effectively monitor, validate, and enforce commercial fishing activity and harvest and is initially planned for use in the striped bass fishery. The system would involve fishermen informing the department, by phone or text, of their intent to fish for striped bass prior to commencement of fishing, and their planned unloading location and estimated harvest volume prior to completing the day's fishing trip.

DNR indicates that the ability of a licensee under current law to make an indefinite number of temporary transfers, and for a person to assign a commercial fishing license to a vessel and allow anyone else to use the license while on the vessel, can pose difficulties in tracking licenses and ensuring accurate reporting of fishing activity under the license. The bill limits temporary transfers to two per license year and establishes additional standards applicable to the use of a licensee's vessel by another person.

According to DNR, the bill will provide more business flexibility to the commercial fishing industry by allowing (1) a licensee to receive compensation for the temporary or permanent transfer of a license; (2) an unlimited tidal fish license to be relinquished in favor of individual authorizations that can be transferred; and (3) additional crab pot authorizations for additional crew members authorized on a license to be transferred separately from the original crab harvester or tidal fish license.

DNR Fisheries Service Funding

DNR indicates that the bill's requirement that the department undertake a review regarding commercial fishing licensing and report on changes to the commercial fish license and permit fee structure is a necessary first step to meet the fiscal needs of managing Maryland's fisheries. According to DNR, fisheries management needs and costs have increased over the past decade as the State has responded to public scrutiny for improved accountability, enforceability, and sustainability of fisheries resources.

Two special funds provide significant support to the Fisheries Service: the Fisheries Research and Development Fund and the Fisheries Management and Protection Fund. As illustrated in **Exhibit 1**, both special funds are projected to have no end-of-year fund balance in fiscal 2013, primarily due to the fund balances being used to offset DNR

general fund reductions in recent years. The Fisheries Service is projected to have a program deficit beginning in fiscal 2013 that may grow to \$3.2 million by fiscal 2014.

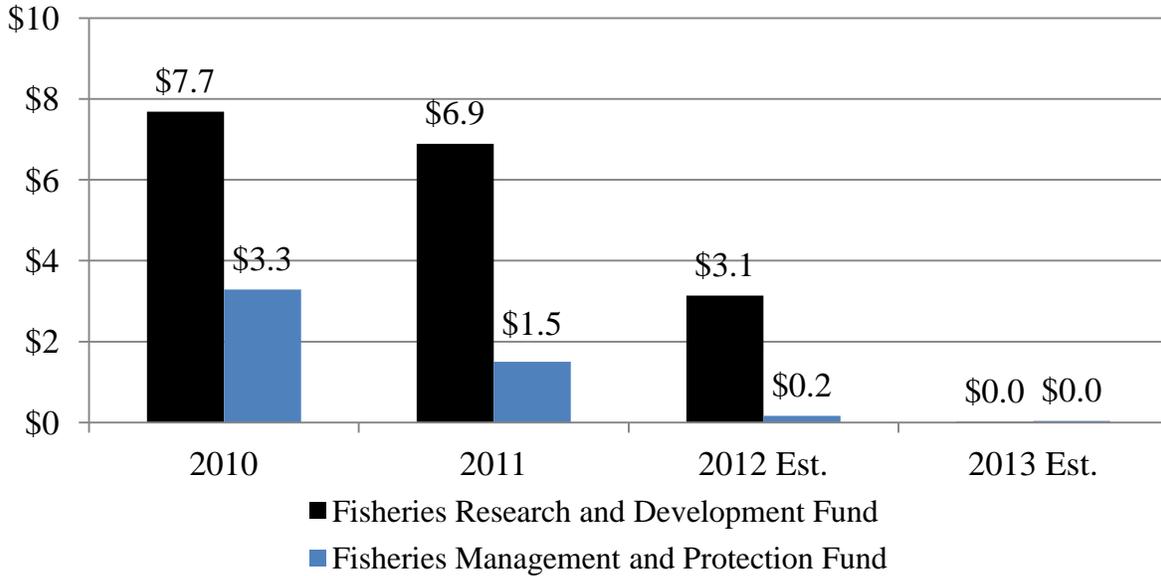
In response to diminishing resources and concerns about the extent to which recreational and commercial fishing fees are covering associated management costs, DNR completed a cost-recovery analysis of the Fisheries Service's revenues and expenditures. The analysis focuses on the funds generated by each of the three management sectors: recreational, commercial, and aquaculture. The results of the cost-recovery analysis are summarized in **Exhibit 2**, and the overall findings included that:

- 93% of recreational fishery management costs are supported with user fees from recreational fishing (*e.g.*, State fishing licenses and the federal excise tax on sport fishing equipment);
- 57% of commercial fishery management costs are supported with general funds, with user fees from commercial fishing (*e.g.*, State fishing licenses) covering only 20% and federal and reimbursable fund sources covering 23% of the remaining costs; and
- 78% of aquaculture management costs are supported with general funds, with user fees from aquaculture covering only 9% of the operating costs, and federal and reimbursable fund sources covering 13% of the remaining costs.

Fisheries Service general fund appropriations are currently applied disproportionately across the three management sectors to cover operating costs. Of the Fisheries Service's total \$5.6 million fiscal 2012 general fund appropriation, 65% is allocated to commercial programs, 19% is allocated to aquaculture programs, and 16% is allocated to recreational programs.

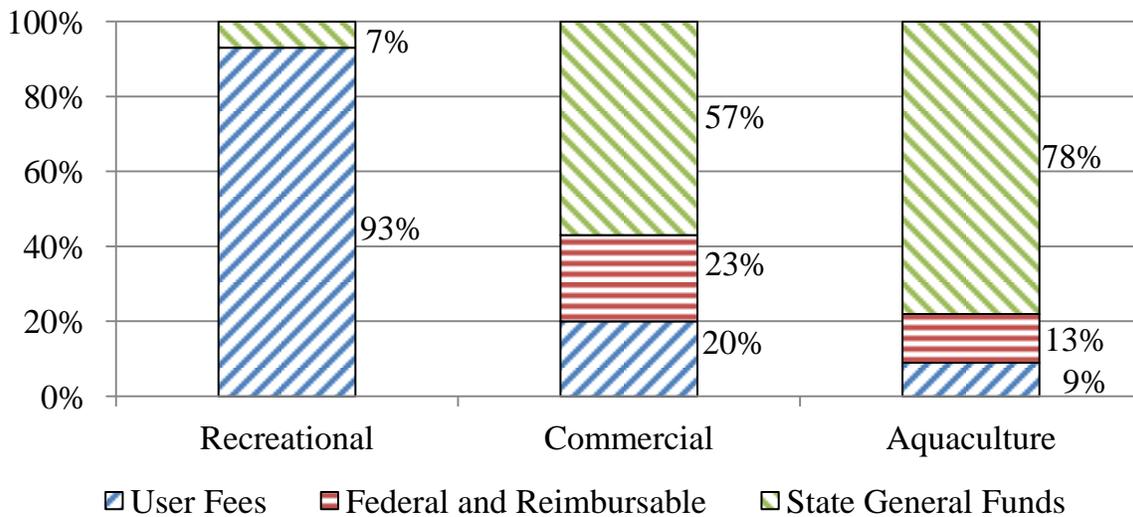
DNR advises that it plans to work with stakeholders in 2012 to identify strategies to address the projected Fisheries Service budget deficit, including increasing commercial license fees, permits, and surcharges to achieve a higher level of cost recovery. **Exhibit 3** illustrates several current commercial license fees and surcharges.

Exhibit 1
Fisheries Service Special Funds Closing Balances
Fiscal 2010-2013
(\$ in Millions)



Source: Department of Budget and Management; Department of Legislative Services

Exhibit 2
Cost Recovery by Fisheries Management Sector
Fiscal 2012



Source: Department of Natural Resources; Department of Legislative Services

Exhibit 3
Current Annual Commercial Fishing License Fees and Surcharges

<u>License</u>	<u>Current Fee</u>
Unlimited Tidal Fish (TFL)	\$300.00
Finfish – Hook and Line (HL)	37.50
Finfish Harvester – All Gear (FIN)	100.00
Crab Harvester – 300 pots	150.00
Clam Harvester	100.00
Striped Bass Surcharge with TFL	100.00
Striped Bass Surcharge with HL/FIN	200.00
Oyster Harvest Surcharge	300.00
Oyster Dredge Boat	250.00

Source: Department of Natural Resources; Department of Legislative Services

State Fiscal Effect:

Fish Tag and Hailing System Surcharges

General/special fund expenditures decrease by approximately \$260,000 annually, assuming the department assesses a surcharge on fish tags issued to the licensee to cover the costs of the fish tags. DNR currently purchases and sends, at no cost to licensees, fish tags to licensees, for the striped bass and yellow perch fisheries, to tag their harvest. Special fund revenues and expenditures increase correspondingly in the range of \$260,000, reflecting surcharge revenues collected from licensees and expenditures for the fish tags. DNR advises, however, that the amount spent on fish tags may be reduced if assessing the cost to licensees causes more efficient use of the tags.

Special fund revenues and expenditures also increase if DNR establishes a hailing system and assesses a surcharge for the costs incurred by the department for the use by a licensee of a hailing system. The cost of the hailing system cannot be reliably determined at this time. DNR indicates that the cost structure for different systems can vary in terms of how much of the cost is paid up front in comparison to ongoing costs of the system.

Unlimited Tidal Fish License Relinquishment

Special fund revenues may increase due to the relinquishment of unlimited tidal fish licenses for individual authorizations to engage in specific activities. DNR indicates that generally the incentive to relinquish an unlimited tidal fish license would be to obtain authorizations to engage in more activities than the licensee engages in to be able to transfer unused authorizations. This may, in many cases, result in authorizations being obtained for which the cumulative fees are greater than the \$300 fee for an unlimited tidal fish license. DNR limits the number of licenses and authorizations available for commercial fishing through targets established in regulation, and the bill requires the number of authorizations to be adjusted accordingly when an unlimited tidal fish license is relinquished. Therefore, relinquishment of an unlimited tidal fish license for individual authorizations, for which the cumulative fee amount is higher than the \$300 unlimited tidal fish license fee, would represent an ongoing increase in annual fee revenue, regardless of whether the authorizations are maintained by the licensee or transferred to other individuals. Any increase in special fund revenues would depend on the number of unlimited tidal fish licensees that choose to relinquish their licenses for individual authorizations and the number of authorizations obtained, and their respective fees, in each case.

For illustrative purposes, if 10% of the unlimited tidal fish licensees (there were 2,088 unlimited tidal fish licensees in 2011) were to relinquish their licenses in order to obtain five of the six authorizations (excluding the fishing guide authorization) included under the unlimited tidal fish license, the cumulative fees for which generally would be \$450, special fund revenues increase by \$31,320 annually.

License Transfer Fees

Special fund revenues are not expected to be significantly affected by the imposition of the flat \$50 fee on all license transfers. Currently there is no fee for temporary transfers, and permanent transfers require that the fee for the license or authorization be paid when the license is transferred. As shown in Exhibit 3, license fees can be up to \$300. With the bill's imposition of a \$50 flat fee on all transfers, permanent or temporary, there will be some reduction in the revenue generated from permanent transfers offset by new revenue generated from fees on temporary transfers. DNR indicates that, in 2010, there were 272 permanent transfers and 747 temporary transfers. With the bill limiting temporary transfers to two per licensing year and allowing licenses to be transferred for longer periods of time, the number of temporary transfers should be reduced going forward.

Fair and Reasonable Allocation of General Fund Appropriations

The bill's requirement that general fund appropriations for fishery management be allocated fairly and reasonably between the recreational and commercial fisheries will not affect general fund expenditures overall. DNR indicates that how this requirement will affect the allocation of general fund appropriations between the recreational and commercial fisheries in the future will likely be an issue addressed as part of the review required by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 15, 2012
ncs/lgc Revised - House Third Reader/Updated Information - April 1, 2012

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Natural Resources – Commercial Fishing Licenses, Authorizations, and Permits

BILL NUMBER: HB 1372

PREPARED BY: Department of Natural Resources

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

Small businesses, principally commercial fishing license holders, will be impacted by this proposed legislation. In 2010, there were 5,942 licensed commercial watermen. Greater business flexibility will be provided by this bill:

- (i) The bill will allow commercial fishermen to accept remuneration for the sale or transfer (currently not authorized in exchange of a payment) of their commercial fishing license and in this way take full advantage of the gains from trade and increase efficiency.
- (ii) The ability to convert an Unlimited Tidal Fish license to its component authorizations and allowing the transfer of 600 and 900 crab pot authorizations separate from the license will create opportunities for fishermen to sell or rent the authorizations they do not currently use.
- (iii) The proposal will also establish a license transfer fee. Currently, an applicant of most license transfers has to pay the license fee again. A set transfer fee will reduce the cost to watermen of most license transfers and simplify the administrative transfer process by only charging one fee.

(iv) The bill removes the ability to assign a license to a vessel and includes other provisions that will increase fisheries accountability. Higher accountability reduces management uncertainty and may lead to more flexibility with management rules.

The proposed legislation that pertains to adding Departmental authority to bill/charge for fishing tags and hauling costs will increase costs to the industry. However, the higher accountability expected to result from the new rules may translate into added management and business flexibility in the future.