

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 287

(Delegate O'Donnell)

Environment and Transportation

Education, Health, and Environmental Affairs

Natural Resources - Aquaculture - Liability for Trespass

This bill establishes the liability of a person, to a holder of a lease for aquaculture purposes, if the person willfully, negligently, recklessly, wrongfully, or maliciously enters the leased area to harvest, damage, or transfer shellfish or to alter, damage, or remove any markings or equipment. The bill's liability provisions, however, do not apply to a person engaging in aquaculture activity on a leased area in accordance with the terms and conditions of a shellfish aquaculture harvester registration card that is in the person's possession or an operator card that is in the possession of the person or another person present in the lease area.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A person that engages in the actions specified by the bill is liable to the leaseholder for damages in an amount of (1) three times the value of the shellfish harvested, damaged, or transferred; (2) the actual restoration costs for the leased area and any altered, damaged, or removed markings or equipment; and (3) any attorney fees or court costs incurred by the leaseholder in the matter.

On the request of a law enforcement officer, a person who enters an area leased to another person and engages in any of the actions specified in the bill must display a shellfish aquaculture harvester registration card or an operator card for the lease area.

Current Law: A person, other than the leaseholder, may not willfully and without authority catch oysters on any aquaculture or submerged land lease area, or willfully destroy or transfer oysters on the leased land in any manner. The Department of Natural Resources (DNR) must request that the office of the local State's Attorney or the Attorney General bring a criminal action for theft against a person found to have engaged in such actions provided that the leased area is designated and marked with buoys and other signage or the person knew or should have known that the harvest of oysters from the area was unlawful. On conviction, DNR may suspend all existing tidal fish licenses issued to the person for up to one year for a first conviction and for up to two years for a second or subsequent conviction, subject to a right to a hearing.

A person, other than a leaseholder, may not remove, alter, transfer, or destroy any marker, shellfish, equipment, or structures on any aquaculture or submerged land lease area. A person that engages in such actions, in addition to any other applicable penalties, is subject to general criminal penalties applicable to State fisheries laws.

A person may not engage in aquaculture unless the person has obtained a permit from DNR. DNR regulations require an individual engaged in aquaculture activities within the area described in the permit applicant's lease to be named as a permittee or a permit registrant under the shellfish aquaculture harvester permit and to be issued a shellfish aquaculture harvester registration card by the Fisheries Service within DNR. DNR has also proposed regulations for demonstration leases (leases for demonstrating the ecological benefits of growing shellfish, or research or education; not for commercial or consumption purposes), which exclude demonstration lease holders from the permit requirement, but require an operator card to be issued to a lessee at the time of lease approval. Under the proposed regulations, when one or more individuals are engaged in demonstration activities on the leased area, an individual authorized by the lessee must be present and in possession of the operator card.

Background: DNR indicates that there are currently 319 aquaculture leaseholders. The Aquaculture Coordinating Council (consisting of General Assembly members, State agency representatives, and industry representatives, among others) indicates that theft of private property is a long-standing problem in the shellfish aquaculture industry and has recommended increased law enforcement resources and penalties.

The bill's provisions are similar to State law provisions establishing liability for cutting, burning, or otherwise injuring or destroying merchantable trees or timber on another person's land without written permission.

Small Business Effect: Small business aquaculture leaseholders benefit from any damages recovered pursuant to the bill's provisions and any deterrent effect of the provisions.

Additional Information

Prior Introductions: None.

Cross File: SB 808 (Senator Klausmeier, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources, Judiciary (Administrative Office of the Courts), Aquaculture Coordinating Council, Department of Legislative Services

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