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April 23, 2010

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: *House Bills 686 and 1472 and Senate Bill 1043*

Dear Governor O'Malley:

We have reviewed and hereby approve House Bill 686, "St. Mary's County – Wild Waterfowl Hunting," and House Bill 1472 and Senate Bill 1043, "Hunting Wild Waterfowl - Dorchester, St. Mary's, Somerset, and Wicomico Counties," for constitutionality and legal sufficiency. We write to discuss the interaction between the two bills. We also note that while the title to House Bill 1472 and Senate Bill 1043 is arguably misleading with respect to the changes made with respect to St. Mary's County, the title to House Bill 686 adequately describes these changes. Finally, we discuss an interpretive issue with House Bill 1472 and Senate Bill 1043.¹

House Bill 686 and companion bills House Bill 1472 and Senate Bill 1043 amend Natural Resources Article §§ 10-604, 10-605 and 10-606. Each of these sections contains parallel provisions relating to the hunting of wild waterfowl while standing in water on the natural bottom, § 10-604, from a boat that is drifting or being sculled, § 10-605, or from a boat that is anchored, § 10-606. In each section, subsection (a) lists the locations in which a person may engage in the otherwise prohibited hunting, including "other waters of the State in areas and on days the Department prescribes by regulation." Also in each section, a later provision, subsection (d)(1) in §§ 10-604 and 10-606 and (c)(1) in § 10-605, provides that a person must be at least 800 yards from

¹ House Bill 1472 and House Bill 1043 are identical with respect to Dorchester, Somerset and Wicomico counties, and are the same with respect to St. Mary's County, with the single exception noted below.

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shore when hunting wild waterfowl while standing in the water, or from a boat, except in certain named areas. Finally, in each section, subsection (d)(2) or (c)(2) provides that a person need only be 400 yards from shore in certain named areas.

House Bill 686 amends subsection (c) or (d) in each section to add St. Mary's County to the area exempted from the 800 yard limit and to include it within the areas covered by the 400 yard limit, thus permitting a person to hunt wild waterfowl within the 400 yard limit in those areas of St. Mary's County where the Department has, by regulation, permitted the hunting of wild waterfowl while standing in the water or from a boat. This change is adequately described by the title of the bill. House Bill 1472 and Senate Bill 1043 also include portions of these changes, but House Bill 1472 does not amend (d)(1) in either § 10-604 or § 10-606, and Senate Bill 1043 does not have this change in § 10-604. It is our view that this oversight will be corrected by the signing of House Bill 686 regardless of signing order. Signing of House Bill 686 will also avoid any issues that might otherwise have arisen from the fact that the identical titles of House Bill 1472 and Senate Bill 1043, which correctly reflect the changes made by those bills with respect to Dorchester, Somerset and Wicomico counties, but incorrectly indicate that the changes with respect to St. Mary's are parallel to those changes, which they are not.

House Bill 1472 and Senate Bill 1043 amend subsection (a) of each of the affected sections to add portions of the waters of Dorchester, Somerset and Wicomico counties to the list of areas where wild waterfowl hunting is permitted while standing in the water or from a boat. The bills also add the listed areas to those that are not subject to the 800 yard limit, and to those that are included in the 400 yard limit. The inclusion in the 400 yard limit reads as follows:

THE WATERS OF TANGIER SOUND, FISHING BAY, MONIE BAY, MANOKIN RIVER, BIG ASSEMESSEX RIVER, POCOMOKE SOUND, AND KEDGES STRAITS IN THE WATERS OF DORCHESTER, SOMERSET, AND WICOMICO COUNTIES THAT THE DEPARTMENT BY REGULATION PRESCRIBES FOR HUNTING UNDER SUBSECTION (A)[(5)] OF THIS SECTION.

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Because the bills expressly includes these areas in those where this hunting is permitted by including them in subsection (a) of each of the sections, the Department could not use its designation authority contrary to this specific language. As a result, it is our view that the language relating to Department regulation is surplusage, and that the intention was to allow these activities in these areas, and to allow them in areas 400 yards from shore, without the need of a Departmental designation.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable John F. Wood, Jr.
The Honorable Adelaide C. Eckardt
The Honorable D. Page Elmore
The Honorable Rudolph C. Cane
The Honorable J. Lowell Stoltzfus
The Honorable John P. McDonough
Joseph Bryce
Karl Aro