

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1238

(Delegate Smigiel, *et al.*)

Environmental Matters

**Department of Natural Resources - Tracking Device on Vessel - Prohibition
Without Court Order**

This bill prohibits the Secretary of Natural Resources or a Natural Resources Police (NRP) officer from placing or installing a tracking device on a vessel without first obtaining a court order. The bill authorizes the Secretary or a NRP officer to apply to a court of any county for an order or an extension of an order authorizing a tracking device to be put on a vessel. A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action.

Fiscal Summary

State Effect: None. The bill codifies existing procedure.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A “tracking device” is an electronic or a mechanical device that, when placed or installed on a vessel, allows individuals to remotely determine or track the location and movement of the vessel on which the device is placed or installed.

The application for an order authorizing a tracking device to be put on a vessel must include specified information and be submitted in a specified manner. A court order authorizing a tracking device (1) must be issued if the court finds that the information likely to be obtained is relevant to an ongoing criminal investigation; and (2) must

contain specified information and set forth specified directions. A court order and any subsequent extensions of the court order may not exceed a period of 60 days. If directed by a court order, individuals must provide information and all assistance necessary to put tracking devices on vessels unobtrusively and with minimum interference. The results of the tracking device must be furnished to the designated officer in a specified manner. Individuals who furnish facilities or technical assistance must be compensated for reasonable expenses and the information, facilities, or assistance that individuals provide may not be used to create a cause of action against them.

Current Law/Background: The Department of Natural Resources' (DNR) NRP serves as a public safety agency with statewide authority to enforce all natural resources and conservation laws and regulations relating to seafood harvesting and sport fishing, boating, wildlife conservation, and enforcement activities in State parks, forests, and other public lands. In addition, NRP is responsible for maritime and rural search and rescue and is the lead agency for maritime homeland security on State waterways. NRP also provides public education in the areas of hunting, boating, and water safety. Each NRP officer has full law enforcement powers statewide.

Recently, there have been several egregious commercial fishing violations in the Chesapeake Bay. On January 31, 2011, NRP officers confiscated more than 10 tons of illegally caught striped bass from four illegally anchored gill nets near Bloody Point Light, south of Kent Island in the Chesapeake Bay. This event forced DNR to shut down the striped bass gill net season. On February 7, 2011, NRP confiscated more than 1,100 pounds of illegally caught striped bass from 1,200 yards of illegally anchored gill net at the mouth of Eastern Bay, a mile south of the previously located Bloody Point gill nets. On February 11, 2011, two 900-yard strings of illegal anchored gill nets were located in Eastern Bay that contained a total of 3,879 pounds of striped bass. These incidents have heightened public concern about illegal fishing in Maryland waters.

DNR advises that the bill is consistent with the procedures it currently follows to investigate criminal violations of fisheries laws. When NRP officers have enough information to believe certain investigative techniques are needed, they take the information to the circuit court, where a judge determines whether there is sufficient evidence to establish probable cause that criminal activity is taking place. If probable cause is determined, the judge may then issue a warrant authorizing investigative techniques for the police to follow during the investigation.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 16, 2011
ncs/lgc

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