

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 856 (Delegate Boyce, *et al.*)  
Environment and Transportation

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Unlawful Taking of Oysters From Submerged Land Leases and Water Column  
Leases - Penalties

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This bill modifies and expands an existing penalty for unlawfully taking oysters from a leased oyster bottom to, among other things, make it applicable to both submerged land leases and water column leases. The bill also establishes that a person who commits a second or subsequent offense is subject to penalties for theft under criminal law. **The bill takes effect July 1, 2020.**

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Fiscal Summary

**State Effect:** Potential minimal increase in general and special fund revenues due to the bill's monetary penalty provisions. The bill's class completion requirement and *criminal law* penalty provisions are not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill modifies and expands an existing penalty of a fine of up to \$3,000 for unlawfully taking oysters from a leased oyster bottom (that is in addition to any other applicable penalty under State fisheries laws), when the area is designated and marked by buoys or other signage or the person knew or should have known that taking the oysters from the area was unlawful. The bill modifies and expands the penalty by (1) making it applicable to unlawfully taking oysters from a submerged land lease or a water column lease; (2) establishing that the fine must be at least \$2,000 (and up to the existing \$3,000

maximum); (3) requiring the person, at the person's expense, to complete a class provided by the Department of Natural Resources (DNR) on commercial fishery laws; and (4) in addition to the person being subject to revocation of the person's authorization to catch oysters under existing provisions, requiring that all of the person's commercial fishing authorizations be suspended until the person has completed the class.

Also in addition to any other applicable penalty under State fisheries laws, a person who commits a second or subsequent offense involving the unlawful taking of oysters from a submerged land lease or a water column lease, when the lease area is designated and marked by buoys or other signage or the person knew or should have known that taking the oysters from the area was unlawful (1) is guilty of the crime of theft and (2) on conviction is subject to specified penalties for theft under the Criminal Law Article of the Maryland Code, under which the penalties (imprisonment and/or fines) vary by the value of the property, reaching the level of a felony if the value is at least \$1,500.

### **Current Law:**

#### *Fine for Unlawful Taking of Oysters*

In addition to any other applicable penalty under State fisheries laws, a person who unlawfully takes oysters from a leased oyster bottom, an oyster sanctuary, an oyster reserve, or an area closed to shellfish harvest by the Maryland Department of the Environment, when the area is designated and marked by buoys or other signage or the person knew or should have known that taking the oysters from the area was unlawful, is subject to a fine of up to \$3,000.

#### *Catching, Destroying, or Transferring Aquaculture Oysters*

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 land in any manner. DNR must request the office of the local State's Attorney or the Attorney General to bring a criminal action under general theft provisions under the Criminal Law Article against a person found to be in violation of that prohibition, provided that the lease 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 of a person for a violation, subject to a requirement of notice of a right to request a hearing, DNR may suspend all existing tidal fish licenses issued to the person for a period of up to one year for a first conviction, or up to two years for a second or subsequent conviction.

### *Revocation of a Person's Authorization to Catch Oysters*

In addition to any other penalty or fine, a person who holds an authorization to catch oysters and receives a citation for any of the following offenses may have the authorization revoked: (1) taking oysters located more than 200 feet within a closed or prohibited area; (2) taking oysters with gear that is prohibited in that area; (3) taking oysters outside of a time restriction for the harvest of oysters by more than one hour; (4) taking oysters during closed seasons; and (5) taking oysters from a leased area by a person other than the leaseholder or the leaseholder's designee.

Chapter 520 of 2018 removed a requirement that DNR hold a hearing within 60 days of a person receiving a citation for taking oysters unlawfully to determine whether the person's license to catch oysters must be revoked. Instead, a hearing must simply be held before the revocation of an authorization to catch oysters. If a hearing is held, it must be held within 90 days after the offense occurs.

After a hearing is conducted, if the presiding officer finds or concludes that the person knowingly has committed an offense, DNR must revoke the person's authorization to catch oysters. A person who is aggrieved by DNR's final decision may obtain judicial review of the decision in accordance with the Administrative Procedure Act.

A person whose authorization has been revoked may not engage or work in the oyster fishery, whether or not it requires the use of another license.

### *Oyster "Authorization"*

DNR uses a single, commercial license, known as a tidal fish license, which authorizes a licensee to engage in each activity indicated on the license. The department may issue authorizations for activities listed in statute for which the indicated fee has been paid. The authorization for harvesting oysters for sale, for example, has a fee of \$250 for a dredge boat and \$100 for harvesting other than from a dredge boat.

### *General Theft Provisions of the Criminal Law Article*

Under general theft provisions of the Criminal Law Article, a person may not willfully or knowingly obtain or exert unauthorized control over property if the person (1) intends to deprive the owner of the property; (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property. Penalties for theft vary significantly based on the value of the property. For example, a person convicted of theft of property or services with a value of less than \$100 is guilty of a misdemeanor and subject to imprisonment for up to

90 days and/or a fine of up to \$500, while a person convicted of theft of property or services with a value of \$100,000 or more is guilty of a felony and subject to imprisonment for up to 20 years and/or a fine of up to \$25,000.

**State Revenues:** General fund revenues may increase minimally as a result of the bill's modification and expansion of the existing penalty of a fine of up to \$3,000 (by making it applicable to both submerged land leases and water column leases and setting a \$2,000 minimum fine), for those cases heard in the District Court. Special fund revenues may similarly increase minimally as a result of the bill's modification and expansion of the existing penalty of a fine of up to \$3,000, for those cases heard in the circuit courts. Under an existing provision under State fisheries laws, if any fine is imposed by the circuit court of any county, the fine, less the costs of collection, must be paid to the Fisheries Research and Development Fund.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 689 (Senators Klausmeier and King) - Education, Health, and Environmental Affairs.

**Information Source(s):** Department of Natural Resources; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Maryland State's Attorneys' Association; Department of Legislative Services

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