



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary

January 20, 2021

The Honorable Kumar Barve
Chair, Environment and Transportation Committee
Room 251, House Office Building
Annapolis, MD 21401

The Honorable Dana Stein
Vice Chair, Environment and Transportation Committee
Room 251, House Office Building
Annapolis, MD 21401

Re: Letter of Information – House Bill 145 – Unlawful Taking of Oysters From Submerged Land Leases, Aquaculture Leases, and Water Column Leases – Penalties

Dear Chair, Vice Chair and Committee Members,

House Bill 145 would seek to increase the penalty for an individual who unlawfully takes oysters from an aquaculture lease or buys oysters which the individual knew or should have known were unlawfully taken from an aquaculture lease. The bill also requires an individual to take a class offered by the Maryland Department of Natural Resources as part of the penalty.

Under current law, the department penalizes commercial harvesters with a minimum suspension of 180 to 365 days for unlawfully taking oysters from a lease. Specific to harvesting on a lease without permission, harvesters may have their license permanently revoked under Natural Resources Article, Section 4-1210. Seafood dealers can be and are similarly penalized for the sale of illegal or undersized catches. For stakeholders concerned that this bill will create a disparity in the treatment of the public fishery versus aquaculture, current regulations also allow suspensions and full lease revocations for aquaculture permittees for any violations within their lease or of any aquaculture laws including harvesting outside of their lease. Should the lessee also hold a commercial oyster license, they could face a lifetime revocation as well for harvest infractions.

There are many items of note in HB 145 that DNR wishes to point out to the committee for their consideration. First is the unprecedented standard of proof for the taking of oysters from a lease. In a criminal proceeding “known or should have known” is extremely difficult to prove and, as a result, current natural resource violations generally do not include this high of a standard. Therefore, it is extremely unlikely that the bill’s provisions would ever be used. In addition, the requirement to request theft charges through the regular enforcement process is duplicative as the department and the State Attorney are already able to bring theft charges through the regular enforcement process.

HB 145 also requires that an individual suspended under the provisions of this bill must take a class. Effectuating this portion of the legislation may be a challenge for the department. While

the class is to be taken “at the person’s expense,” the department does not currently offer such a class or have staff dedicated to such a task. It is also unclear what such a class would or should cost – it could obviously be significantly costly for the first individual, because more staff time would be required to create the class. In theory, however, the classes would become less costly as the department fine-tuned the process. Lastly, it is unclear what the desired outcome of the class should be. Individuals being suspended under this legislation stole oysters, or purchased oysters stolen from an aquaculture lease, but the bill states that the class is to be on commercial fishery laws in general.

Also unclear is the approach to seafood dealers violating the provisions of the bill. While the HB 145 contemplates suspending the seafood dealer authorization of a seafood dealer who buys oysters that they knew or should have known were unlawfully taken from an aquaculture lease, these dealer authorizations can be issued to a company or to an individual. HB 145 is not clear how the suspension should be handled for an individual versus a business.

Thank you for allowing the department this opportunity to submit information on HB 145 to the committee.

Respectfully submitted,

James W. McKitrick
Director, Legislative and Constituent Services

CC: The Honorable Regina T. Boyce