



110 N. CROSS STREET
CHESTERTOWN, MARYLAND 21620
PHONE: 410-810-1381
FAX: 410-810-1383
www.delmarvafisheries.org

House Environment and Transportation Committee

Testimony re House Bill 145

Unlawful Taking of Oysters from Submerged Land Leases, Aquaculture Leases,
and Water Column Leases – Penalties

Support with Amendments

Wednesday, January 20, 2021
Virtual Bill Hearing

With amendments to treat aquaculture leaseholders and tidal fish license (TFL) holders and licensed seafood dealers equally under the law with respect to oysters, Delmarva Fisheries Association (DFA) can support HB 145 for purposes of increasing and expanding penalties for the unlawful taking of oysters by any person from any place in the Maryland portion of Chesapeake Bay.

Is there a problem with the theft of oysters from aquaculture leases? Are DNR Natural Resources Police (NRP) overwhelmed with oyster poaching or seeing a trend in TFL holders and seafood dealers stealing oysters from prohibited areas? We have requested information from DNR detailing the number of citations or other enforcement actions by NRP officers involving the unlawful taking of oysters – from public bottom (PSFAs), from aquaculture (private) leases, from sanctuaries and oyster reserve areas and from areas closed to shellfish harvest per MDE. Such information we believe is pertinent to the justification and scope of HB 145.

Anecdotally, DFA is aware of a couple of reports in the past five years of violations by a TFL holder(s) on an aquaculture lease(s), and on the other hand there have been more than five cases involving aquaculture leaseholders removing oysters from public bottom and PSFAs to supplement their leases, with scant information about the prosecution of such violations. As the Fiscal and Policy Note re HB 145 indicates, there are laws on the books applicable to any person who unlawfully harvests oysters or who steals a leaseholder's oysters.

There is currently no shortage of wild oysters being harvested by the public oyster fishery from public shellfish areas and bottom, despite a most challenging seafood market due to the COVID-19 pandemic. In general, licensed oystermen are fetching about \$30/bushel for wild harvested oysters compared to \$50/bushel this time last year. Regardless of gear type, commercial watermen are harvesting their limits in good time on the limited days they are permitted to work. Per available harvest reports, there were 33,000 bushels harvested in October 2020 compared to 19,000 in October 2019.

The legal harvest size in Maryland for a wild oyster is 3 inches. The legal harvest size for an aquaculture oyster is 2.5 inches. Who is stealing aquaculture oysters - which are smaller, genetically modified (i.e., triploids from hatcheries) and caged - when there is an abundance of wild natural oysters?

When it comes to enforcement of oyster laws there should be equal treatment under the law. As much as the theft of oysters from an aquaculture lease or a sanctuary is a crime regardless of the scofflaw, so should the unlawful taking of oysters from the public bottom (the public trust) be a crime and equally punishable, especially if by an aquaculture leaseholder who has been granted the unique privilege of “owning” a part of the public waters and Bay bottom held in the public trust by the State of Maryland.

CONTACT: Capt. Robert Newberry at 410-708-9851 or rnewberry56@gmail.com
Chip MacLeod at 410-810-1381 or cmacleod@mlg-lawyers.com

