

HOUSE BILL 145

M2

11r0562

(PRE-FILED)

By: **Delegate Boyce**

Requested: July 7, 2020

Introduced and read first time: January 13, 2021

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Unlawful Taking of Oysters From Submerged Land Leases, Aquaculture Leases,**
3 **and Water Column Leases – Penalties**

4 FOR the purpose of requiring rather than authorizing the Department of Natural
5 Resources to suspend a certain tidal fish license on conviction of the license holder
6 for a certain violation; requiring a certain person who has a tidal fish license
7 suspended under this Act to complete a certain class at the person's expense;
8 prohibiting a person who has a seafood dealer authorization from purchasing,
9 offering to purchase, or possessing oysters that were unlawfully harvested from a
10 certain lease under certain circumstances; requiring the Department to request
11 certain criminal action from a local State's Attorney or the Attorney General under
12 certain circumstances; requiring the Department to suspend a certain seafood dealer
13 authorization on conviction of the holder of the authorization for a certain violation;
14 requiring the Department to give a certain written notice to a certain seafood dealer
15 before suspending the seafood dealer's authorization; providing that a certain person
16 may request a hearing under certain circumstances; requiring the Department to
17 hold a certain hearing and render a decision within a certain number of days;
18 requiring a person who has a seafood dealer authorization suspended under this Act
19 to complete a certain class at the person's expense; establishing a certain minimum
20 and maximum fine for unlawfully taking oysters from a submerged land lease or
21 water column lease under certain circumstances; making a stylistic change; and
22 generally relating to the unlawful taking of oysters.

23 BY repealing and reenacting, without amendments,
24 Article – Criminal Law
25 Section 7–104(g)
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2020 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Natural Resources
Section 4–11A–16 and 4–1201
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Law

7–104.

(g) (1) A person convicted of theft of property or services with a value of:

(i) at least \$1,500 but less than \$25,000 is guilty of a felony and:

1. is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both; and

2. shall restore the property taken to the owner or pay the owner the value of the property or services;

(ii) at least \$25,000 but less than \$100,000 is guilty of a felony and:

1. is subject to imprisonment not exceeding 10 years or a fine not exceeding \$15,000 or both; and

2. shall restore the property taken to the owner or pay the owner the value of the property or services; or

(iii) \$100,000 or more is guilty of a felony and:

1. is subject to imprisonment not exceeding 20 years or a fine not exceeding \$25,000 or both; and

2. shall restore the property taken to the owner or pay the owner the value of the property or services.

(2) Except as provided in paragraph (3) of this subsection, a person convicted of theft of property or services with a value of at least \$100 but less than \$1,500, is guilty of a misdemeanor and:

(i) is subject to:

1. for a first conviction, imprisonment not exceeding 6 months or a fine not exceeding \$500 or both; and

2. for a second or subsequent conviction, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

(3) A person convicted of theft of property or services with a value of less than \$100 is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

(4) Subject to paragraph (5) of this subsection, a person who has four or more prior convictions under this subtitle and who is convicted of theft of property or services with a value of less than \$1,500 under paragraph (2) of this subsection is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

(5) The court may not impose the penalties under paragraph (4) of this subsection unless the State's Attorney serves notice on the defendant or the defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial that:

(i) the State will seek the penalties under paragraph (4) of this subsection; and

(ii) lists the alleged prior convictions.

Article – Natural Resources

4–11A–16.

(a) (1) 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 this land in any manner.

(2) The Department shall request the office of the local State's Attorney or the Attorney General to bring a criminal action under § 7–104 of the Criminal Law Article against a person found to be in violation of this subsection provided that the leased 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.

(3) (i) **[On] SUBJECT TO SUBPARAGRAPH (V) OF THIS PARAGRAPH, ON conviction of a person for a violation of this subsection, the Department [may] SHALL suspend all existing tidal fish licenses issued to that person for a period not to exceed:**

1. 1 year for a first conviction; or

2. 2 years for a second or subsequent conviction.

(ii) Before suspending any license under this section, the Department shall give the licensee written notice of the right to request a hearing.

(iii) A licensee may request a hearing within 15 days from the date that the notice required by this section is mailed.

(iv) The Department shall hold a hearing within 30 days of the date of the request and render a decision within 30 days of the hearing.

(V) A PERSON WHO HAS A TIDAL FISH LICENSE SUSPENDED UNDER THIS PARAGRAPH SHALL, AT THE PERSON'S EXPENSE, COMPLETE A CLASS PROVIDED BY THE DEPARTMENT ON COMMERCIAL FISHERY LAWS BEFORE ENGAGING IN ANY COMMERCIAL FISHING ACTIVITY UNDER A TIDAL FISH LICENSE.

(b) A person, other than a leaseholder, may not remove, alter, transfer, or destroy any marker, shellfish, equipment, or structures on any aquaculture or submerged land lease area.

(c) A person, other than an aquaculture or submerged land leaseholder, while he is in default in payment of any rent or fee, may not use for any purpose any submerged land of the State.

(D) (1) A SEAFOOD DEALER AUTHORIZED UNDER § 4-701 OF THIS TITLE MAY NOT PURCHASE, OFFER TO PURCHASE, OR POSSESS ANY OYSTERS THAT THE SEAFOOD DEALER KNEW OR SHOULD HAVE KNOWN WERE UNLAWFULLY HARVESTED FROM A LEASE ISSUED UNDER THIS SUBTITLE.

(2) THE DEPARTMENT SHALL REQUEST THE OFFICE OF THE LOCAL STATE'S ATTORNEY OR THE ATTORNEY GENERAL TO BRING A CRIMINAL ACTION UNDER § 7-104 OF THE CRIMINAL LAW ARTICLE AGAINST A PERSON FOUND TO BE IN VIOLATION OF THIS SUBSECTION.

(3) (I) SUBJECT TO SUBPARAGRAPH (V) OF THIS PARAGRAPH, ON CONVICTION OF A PERSON FOR A VIOLATION OF THIS SUBSECTION, THE

DEPARTMENT SHALL SUSPEND THE SEAFOOD DEALER AUTHORIZATION ISSUED TO THAT PERSON FOR A PERIOD NOT TO EXCEED:

1. 1 YEAR FOR A FIRST CONVICTION; OR

2. 2 YEARS FOR A SECOND OR SUBSEQUENT CONVICTION.

(II) BEFORE SUSPENDING A SEAFOOD DEALER AUTHORIZATION UNDER THIS SUBSECTION, THE DEPARTMENT SHALL GIVE THE SEAFOOD DEALER WRITTEN NOTICE OF THE RIGHT TO REQUEST A HEARING.

(III) A SEAFOOD DEALER MAY REQUEST A HEARING WITHIN 15 DAYS FROM THE DATE THAT THE NOTICE REQUIRED BY THIS SECTION IS MAILED.

(IV) THE DEPARTMENT SHALL HOLD A HEARING WITHIN 30 DAYS OF THE DATE OF THE REQUEST AND RENDER A DECISION WITHIN 30 DAYS OF THE HEARING.

(V) A PERSON WHO HAS A SEAFOOD DEALER AUTHORIZATION SUSPENDED UNDER THIS PARAGRAPH SHALL, AT THE PERSON'S EXPENSE, COMPLETE A CLASS PROVIDED BY THE DEPARTMENT ON COMMERCIAL FISHERY LAWS BEFORE ENGAGING IN ANY SEAFOOD DEALING UNDER A SEAFOOD DEALER AUTHORIZATION.

4-1201.

(a) Except as otherwise specifically provided in this title, a person who violates any provision of this title is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding \$1,000, with costs imposed in the discretion of the court.

(b) (1) Unless another penalty is specifically provided elsewhere in this title, any person found guilty of a second or subsequent violation of any provision of this title is subject to a fine not exceeding \$2,000, or imprisonment not exceeding one year, or both, with costs imposed in the discretion of the court.

(2) For the purpose of this subsection, a second or subsequent violation is one which has occurred within two years of any prior violation of this title.

(c) In addition to any administrative penalty provided in this title, violation of any rule or regulation adopted by any unit within the Department pursuant to the provisions of this title is a misdemeanor and is punishable as provided in subsections (a) and (b) of this section.

(d) (1) In addition to any other applicable penalty set forth in subsections (a)

and (b) of this section, a person who violates any provision of this title or any regulations adopted by the Secretary under the authority of this title concerning the taking of or creel limits for striped bass, commonly known as rockfish, shall be subject to the following penalties:

(i) For a first violation, a fine not exceeding \$1,500 per fish;

(ii) For a second violation, within a 2-year period, a fine not exceeding \$2,500 per fish and revocation of the fishing license for a period not less than 1 year but not more than 2 years; and

(iii) For a third violation within a 4-year period, a fine not exceeding \$2,500 per fish and revocation of the fishing license for a period not less than 2 years but not more than 5 years.

(2) In addition to any other penalty provided under this title, a person who commits any of the following violations, and the violation results in the unlawful capture of over \$20,000 worth of striped bass as determined by the proceeds of the unlawful capture, is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years:

(i) Using unlawful gear;

(ii) Harvesting during closed seasons;

(iii) Harvesting from a closed area;

(iv) Violating established harvest, catch, or size limits; or

(v) Violating tagging and reporting requirements.

(e) A common carrier transporting fish who is not the buyer, seller, or catcher of the fish or is not controlled by the buyer, seller, or catcher of the fish is not subject to any penalty under this section for transporting fish which is either unlawfully caught or of unlawful size provided that the operator of the common carrier has in his possession a valid bill of lading, stating the origin, shipper, destination and receiver of the fish and the common carrier does not know or have reason to know that the fish were unlawfully caught or of unlawful size.

(f) In addition to any other applicable penalty set forth in this title, 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 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 not exceeding \$3,000.

(g) (1) If a person is convicted of violating any provision of this title and the

violation causes or results in the injury, death, or destruction of any fish, including a protected species of animal, in addition to any other penalty provided in this title, the Secretary may order the person to pay restitution to the Department for the resource value of the fish, as determined by the regulations adopted by the Department under paragraph (2) of this subsection.

(2) The Department, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, shall adopt regulations that establish a schedule of resource values for individual species.

(3) If two or more defendants are convicted for the same violation causing or resulting in the injury, death, or destruction of protected species of animals, the court may impose restitution against the defendants jointly and equally.

(4) (i) Restitution under this section shall be paid within 30 days or a time prescribed by regulation.

(ii) In each instance, restitution paid under this section shall be credited to the Department to be used only for the replacement, habitat management, or enforcement programs for injured, killed, or destroyed fish or protected species of animals.

(h) In addition to any other applicable penalty under this title, a person who violates § 4-708(a)(1) of this title (Committing separate commercial fishing violation while license or authorization is suspended or revoked) or § 4-708(a)(2) of this title (Engaging in commercial fishing activity without holding appropriate license or authorization) is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$25,000 or both, with costs imposed in the discretion of the court.

(I) IN ADDITION TO ANY OTHER APPLICABLE PENALTY UNDER THIS TITLE, A PERSON WHO UNLAWFULLY TAKES 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, IS SUBJECT TO A FINE OF NOT LESS THAN \$2,000 AND NOT MORE THAN \$3,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.