



February 26, 2020

Chairman Kumar Barve
Environment and Transportation
House of Delegates

Chairman Barve and distinguished committee members:

Thank you for your consideration of this important piece of legislation that protects oyster aquaculture commercial endeavors from theft. This legislation stems from 2018 when Senator Klausmeier and Delegates Mautz and Lafferty asked the Aquaculture Coordinating Council to prepare a report on aquaculture theft and make recommendations on policy changes the General Assembly could pursue to better protect Maryland's growing aquaculture industry. Attached is the report.

The recommendations included making the theft of aquaculture oysters a felony and adding severe penalties for the purchaser of oysters harvested illegally from aquaculture farms. This legislation takes the first step in implementing these recommendations. As drafted, HB 856 applies the criminal statute to theft of aquaculture oysters on the second offense. For a first offense, the legislation requires the violator to take a course on commercial fishery laws at their own expense and suspends all fishery licenses until the completion of the course.

However, through our analysis of the existing laws, theft of aquaculture oysters is penalized in two different sections of the Natural Resources Title. Commonly, theft of oysters, including aquaculture oysters, is found in 4-1201 and has penalties up to a misdemeanor. 4-11A-16 provides for far more severe penalties and is specific to theft of aquaculture oysters. Under this statute, the Department of Natural Resources "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." The Chesapeake BaySavers are greatly concerned that the Department is failing to have the state's attorneys and attorneys general apply this far more strict standard and defaulting to 4-1201.

As a result, we support the amendments proposed by Delegate Boyce that strikes the penalty for aquaculture theft from 4-1201 and requires the prosecuting office to use 4-11A-16. Additionally, 4-11A-16 gives the Department the option of suspending other tidal fishery licenses. We support Delegate Boyce's amendment that requires the suspension of all licenses held by the person until the completion of a course on commercial fishery laws.

The report also found that other states have placed penalties on the purchaser of illegally harvested aquaculture oysters. Applying the same penalties to the purchasers, if they knowingly purchased illegal oysters, as the person committing the crime is critical. We have to eliminate the market for illegal aquaculture oysters. We thank the committee for their consideration of our testimony and urge a favorable report.

HB 856
Amendments

AMENDMENT No. 1

On page 5, strike in its entirety, lines 24 through 37.

On page 6, strike in its entirety, lines 1 through 10.

EXPLANATION: This amendment strikes language in 4-1201 and amends it into 4-11A-16.

NOTE: AMENDMENTS No. 2 and No. 3 are inserted into *Natural Resources. 4-11A-16.*

AMENDMENT No. 2

4-11A-16.

(a)(3)(i). On conviction of a person for violation of this subsection, the Department ~~may~~ **SHALL** suspend all existing tidal fish licenses issued to that person for a period not to exceed:

(V) UPON CONVICTION, THE LICENSEE SHALL BE REQUIRED, AT THE LICENSEE'S EXPENSE, TO COMPLETE A CLASS PROVIDED BY THE DEPARTMENT ON COMMERCIAL FISHERY LAWS PRIOR TO RECEIVING ANY TIDAL FISH LICENSES.

EXPLANATION: This amendment requires the Department to automatically revoke all tidal fishery licenses by changing may to shall. Additionally, this amendment requires the licensee to complete a class on commercial fishery laws before being eligible to receive any tidal fishery licenses back.

AMENDMENT No. 3

4-11A-16.

(D) (1) A PERSON MAY NOT KNOWINGLY PURCHASE OR POSSESS OYSTERS HARVESTED WITHOUT AUTHORITY ON ANY AQUACULTURE OR SUBMERGED LAND LEASE AREA OR PURCHASE OYSTERS FROM A SELLER WITHOUT PROPER LICENSING.

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

(3)(I) ON CONVICTION OF A PERSON FOR A VIOLATION OF THIS SUBSECTION, THE REGULATING AGENCY MAY SUSPEND RETAIL 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 CONVICTION; OR

3. REVOCATION FOR SUBSEQUENT OFFENSES.

EXPLANATION: This amendment enables the state's attorney or the Attorney General to initiate a criminal proceeding against the purchaser of oysters harvested illegally from an aquaculture lease. Additionally, this amendment enables the appropriate regulating agency to suspend or revoke retail licenses.