

Chapter 458

(Senate Bill 442)

AN ACT concerning

**Aquaculture Leases and Shellfish Nursery Operations – Wetlands
Aquaculture Coordinating Council – Application of Tidal Wetlands Permit
Requirements to Aquaculture Operations – Study**

FOR the purpose of ~~exempting under certain circumstances certain activities and the use of certain equipment associated with an aquaculture lease or a shellfish nursery operation from the requirement to obtain certain licenses from the Department of the Environment or the Board of Public Works; establishing that the use of certain equipment on or attached to a pier and associated with an aquaculture lease or a shellfish nursery operation is not included as a nonwater dependent project for the purposes of the requirement to obtain a State or tidal wetlands license; establishing that certain aquaculture activity and the installation of certain equipment on a pier for the cultivation of shellfish seed under a certain permit are lawful uses on private wetlands; making certain conforming changes; altering a certain definition; requiring the Aquaculture Coordinating Council, in coordination with the Department of the Environment, to review certain policies and submit its findings and recommendations to the Governor and the General Assembly on or before a certain date; making this Act an emergency measure; providing for the termination of this Act; and generally relating to ~~wetlands license or~~ the application of State or tidal wetlands license and permit requirements ~~for~~ to aquaculture ~~leases and shellfish nursery~~ operations in the State.~~

~~BY repealing and reenacting, without amendments,
Article – Environment
Section 16-101(a), 16-104(b)(1), and 16-202(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, with amendments,
Article – Environment
Section 16-101(i), 16-202(h), and 16-304
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 4-11A-09(a), 4-11A-10(a), and 4-11A-23(a) and (b)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

~~BY adding to~~

~~Article—Natural Resources
Section 4-11A-10(d-1)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, with amendments,
Article—Natural Resources
Section 4-11A-23(d)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Aquaculture Coordinating Council, in consultation with the Department of the Environment, shall:

(1) review the policies of the Department of the Environment regarding the application of *State or tidal wetlands license and permit requirements to aquaculture operations in the State; and*

(2) in addition to the reporting requirement under § 4-11A-03.2 of the Natural Resources Article, and on or before December 1, 2021, report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly its findings and recommendations, including any proposed legislation, on changes necessary to eliminate conflicts or redundancies in the oversight of aquaculture operations by the Department of the Environment and the Department of Natural Resources. ~~Laws of Maryland read as follows:~~

~~Article—Environment~~

~~16-101.~~

~~(a) In this title the following words have the meanings indicated.~~

~~(i) (1) “Nonwater dependent project” means a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands.~~

~~(2) “Nonwater dependent project” includes:~~

~~(i) A dwelling unit on a pier;~~

~~(ii) A restaurant, a shop, an office, or any other commercial building or use on a pier;~~

~~(iii) A temporary or permanent roof or covering on a pier;~~

~~(iv) A pier used to support a nonwater dependent use; and~~

~~(v) A small scale renewable energy system on a pier, including:~~

~~1. A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;~~

~~2. A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and~~

~~3. A wind energy system and its wind turbine, tower, base, or other necessary equipment.~~

~~(3) "Nonwater dependent project" does not include:~~

~~(i) A fuel pump or other fuel dispensing equipment on a pier;~~

~~(ii) A sanitary sewage pump or other wastewater removal equipment on a pier;~~

~~(iii) A pump, a pipe, or any other equipment ON OR attached to a pier and associated with [a];~~

~~1. AN AQUACULTURE LEASE ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER TITLE 4, SUBTITLE 11A OF THE NATURAL RESOURCES ARTICLE; OR~~

~~2. A shellfish nursery operation under a permit issued by the Department of Natural Resources under § 4-11A-23 of the Natural Resources Article; or~~

~~(iv) An office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.~~

~~16-104.~~

~~(b) (1) Except as provided in paragraphs (2) and (3) of this subsection and notwithstanding any other provision of law, the Board of Public Works may not issue a license to authorize a nonwater dependent project located on State wetlands.~~

~~16-202.~~

~~(a) A person may not dredge or fill on State wetlands without a license.~~

~~(b) The provisions of this section do not apply to any operation for:~~

~~(1) Dredging and filling being conducted as of July 1, 1970, as authorized under the terms of an appropriate permit or license granted under the provisions of existing State and federal law;~~

~~(2) Dredging of seafood products by any licensed operator, harvesting of seaweed, or mosquito control and abatement as approved by the Department of Agriculture;~~

~~(3) Improvement of wildlife habitat or agricultural drainage ditches as approved by an appropriate unit;~~

~~(4) Routine maintenance or repair of existing bulkheads, provided that there is no addition or channelward encroachment;~~

~~(5) [Aquaculture activities occurring under a] **ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED WITH AN AQUACULTURE** lease issued by the Department of Natural Resources under Title 4, Subtitle 11A of the Natural Resources Article; or~~

~~(6) Installing a pump, a pipe, or any other equipment **ON OR** attached to a pier for the cultivation of shellfish seed in a shellfish nursery under a permit issued by the Department of Natural Resources under § 4-11A-23 of the Natural Resources Article, provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier.~~

~~16-304.~~

~~Notwithstanding any regulation adopted by the Secretary to protect private wetlands, the following uses are lawful on private wetlands:~~

~~(1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;~~

~~(2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted;~~

~~(3) Exercise of riparian rights to improve land bounding on navigable water, to preserve access to the navigable water, or to protect the shore against erosion;~~

~~(4) Reclamation of fast land owned by a natural person and lost during the person's ownership of the land by erosion or avulsion to the extent of provable preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the land;~~

~~(5) Routine maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment; [and]~~

~~(6) ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED WITH AN AQUACULTURE LEASE ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER TITLE 4, SUBTITLE 11A OF THE NATURAL RESOURCES ARTICLE; AND~~

~~(7) Installing a pump, a pipe, or any other equipment ON OR attached to a pier for the cultivation of shellfish seed in a shellfish nursery under a permit issued by the Department of Natural Resources under § 4-11A-23 of the Natural Resources Article, provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier.~~

~~Article — Natural Resources~~

~~4-11A-09:~~

~~(a) A person who wishes to obtain an aquaculture, water column, or submerged land lease shall pay a nonrefundable application fee established by the Department, in consultation with the Aquaculture Coordinating Council, and complete and submit an application to the Department.~~

~~4-11A-10:~~

~~(a) A leaseholder shall:~~

~~(1) Subject to subsection (b) of this section, actively use the lease and comply with any standards for planting, harvesting, and use of the leased area established by the Department;~~

~~(2) Mark each lease area with an 8-inch by 12-inch marker displaying the initials of the leaseholder and posted on a minimum of four poles;~~

~~(3) Comply with any other marking requirements established by the Department for the protection of navigation;~~

~~(4) Comply with the regulations established by the Maryland Department of Health in consultation with the Department of the Environment to carry out the mandate of the National Shellfish Sanitation Program; and~~

~~(5) Pay the rent and the aquaculture development surcharge for the lease at the time established by the Department.~~

~~(D-1) A LEASEHOLDER IS NOT REQUIRED TO OBTAIN A TIDAL WETLANDS LICENSE OR PERMIT FROM THE DEPARTMENT OF THE ENVIRONMENT OR A STATE WETLANDS LICENSE FROM THE BOARD OF PUBLIC WORKS UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE FOR ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED WITH A LEASE ISSUED UNDER THIS SUBTITLE.~~

~~4-11A-23.~~

~~(a) (1) In this section the following words have the meanings indicated.~~

~~(2) "Permit" means a shellfish nursery permit.~~

~~(3) "Pier" has the meaning stated in § 16-101 of the Environment Article.~~

~~(b) A person may not engage in the commercial rearing of shellfish seed outside an area leased under this subtitle without first obtaining a permit from the Department.~~

~~(d) (1) For a shellfish nursery to be located in waters of the State outside a leased area, the Department may issue a permit only:~~

~~(i) To the owner of a pier or other structure constructed on or about the water and approved by the U.S. Army Corps of Engineers, or to a person with the permission of the owner of the pier or other structure; and~~

~~(ii) For the cultivation of shellfish seed within 20 feet of the pier or other structure, in an area of water not exceeding 200 square feet.~~

~~(2) A person is not required to obtain a water column lease or a submerged land lease for a permitted in-water shellfish nursery operation.~~

~~(3) Shellfish nursery products are exempt from water quality classifications and restrictions established by the Department of the Environment under the National Shellfish Sanitation Program.~~

~~(4) A person cultivating shellfish seed using a pump, a pipe, or any other equipment ON OR attached to a pier in accordance with a permit issued under this section is not required to obtain a tidal wetlands license or permit from the Department of the Environment or a State wetlands license from the Board of Public Works under Title 16 of the Environment Article, provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021 is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. It shall remain effective through May 31, 2022, and, at the end of May 31, 2022, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.