



*Martin O'Malley, Governor*  
*Anthony G. Brown, Lt. Governor*  
*John R. Griffin, Secretary*  
*Joseph P. Gill, Deputy Secretary*

---

January 5, 2011

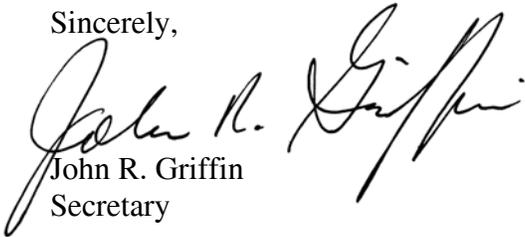
The Honorable Maggie McIntosh, Chair  
House Environmental Matters Committee  
251 Taylor House Office Building  
Annapolis, MD 21401

The Honorable Joan Carter Conway, Chair  
Senate Education, Health & Environmental Affairs Committee  
2 West Miller Senate Office Building  
Annapolis, MD 21401

Dear Honorable Chairs:

In accordance with the requirements of Section 3 of the Conservation Law Enforcement Act of 2010 (Senate Bill 987), the Department of Natural Resources respectfully submits the following report regarding changes to existing law that would enable the Natural Resources Police Force to become more effective and efficient, including the use of technology for the prevention and detection of violations. We look forward to discussing this issue with you further during the upcoming legislative session.

Sincerely,

  
John R. Griffin  
Secretary

cc: Sarah Albert (five copies), DLS



*Martin O'Malley, Governor*  
*Anthony G. Brown, Lt. Governor*  
*John R. Griffin, Secretary*  
*Joseph P. Gill, Deputy Secretary*

# **IMPROVING THE EFFECTIVENESS AND EFFICIENCY OF THE MARYLAND NATURAL RESOURCES POLICE**

DECEMBER 2010

**PREPARED FOR THE GENERAL ASSEMBLY**

The following report responds to the General Assembly’s direction in the Conservation Law Enforcement Act of 2010 (Senate Bill 987) that “the Department of Natural Resources ...conduct a study to identify additional changes to existing law that may enable the Natural Resources Police Force to become more effective and efficient, including a study of the benefits of requiring the use of technology for the prevention and detection of violations.”

The Maryland Natural Resources Police (NRP) is the enforcement arm of the Department of Natural Resources (DNR). With an authorized strength of 247 officers, the NRP provides a variety of services in addition to natural resources, maritime and public lands law enforcement throughout the State of Maryland. These services include homeland security, search and rescue, emergency medical services, education, information and communications services on a round-the-clock basis. NRP is the only police force aside from the Maryland State Police that has statewide jurisdiction. Founded in 1868 as the Maryland Oyster Police, NRP is the oldest state law enforcement agency in Maryland and continues to monitor the waters of the Chesapeake Bay and its tributaries, and Deep Creek Lake. So far during 2010, the Maryland Natural Resources Police have responded to 20,419 calls for service and officer initiated incidents. Of that number, 2,111 were related to fisheries enforcement; 2,540 were related to wildlife and hunting enforcement; 2,059 were related to recreational boating, including vessels in distress, accidents, search and rescue; and the remainder involved general criminal activity, Homeland Security, enforcement on state managed lands, special operations and patrols, and a variety of other law enforcement activities.

The following changes to Maryland law will improve the effectiveness and efficiency of the Natural Resources Police (NRP):

- ü clarifying commercial fisheries inspection laws;
- ü supporting continuous electronic vessel monitoring;
- ü increasing penalties;
- ü streamlining administrative enforcement; and
- ü authorizing electronic ticketing.

### **CLARIFY COMMERCIAL FISHERIES INSPECTION LAWS**

NRP is responsible for enforcing Maryland’s fisheries laws. These laws ensure the sustainability of ecologically and economically important natural resources like rockfish, blue crabs, and oysters. Size and sex restrictions, creel limits, and closed seasons protect these resources from over-exploitation. In order to effectively and efficiently enforce Maryland fisheries law, NRP needs clear authority to inspect commercial premises where these important resources may be stored.

Current Maryland law is unclear on when and where NRP is authorized to inspect state fish resources that are taken or possessed for commercial purposes. NRP is authorized to

inspect commercial fishing licenses and audit the books of fish packers and fish dealers.<sup>1</sup> NRP is also authorized to inspect the following commercial areas without a warrant or probable cause:

- Taxidermy Operations<sup>2</sup>
- Aquaculture Operations<sup>3</sup>
- Waterfowl Processing Operations<sup>4</sup>
- Fur Dealerships<sup>5</sup>
- Regulated Shooting Areas<sup>6</sup>

However, NRP must establish probable cause and often obtain a warrant before conducting an inspection of a commercial fishing vessel or a commercial seafood establishment.<sup>7</sup> Consequently, NRP officers are frequently unable to examine closed containers or areas below deck on a commercial fishing vessel during a routine administrative inspection. Similarly, when auditing a seafood dealer's books, NRP officers are frequently unable to inspect coolers or refrigerators where illegal fish are stored. NRP officers also lack any authority to inspect commercial seafood retail establishments where illegally harvested fishery resources may be sold.

NRP should have clear authority to inspect commercial facilities owned or controlled by the Department of Natural Resources' commercial licensees. While the Fourth Amendment to the U.S. Constitution generally requires the government to obtain a warrant or establish probable cause before conducting a search, commercial premises of closely regulated industries may be subject to inspection without a warrant or probable cause if:

1. There is a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made;
2. The warrantless inspection is necessary to further the regulatory scheme; and
3. The regulatory statute performs the two basic functions of a warrant; it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers.<sup>8</sup>

Other states, including Massachusetts, Florida, and Texas, provide statutory authority for administrative inspections of commercially licensed fish business premises and places

---

<sup>1</sup> Md. Code Ann., Natural Resources § 4-701(m),-206

<sup>2</sup> Md. Code Ann., Natural Resources §§ 4-211, 10-512

<sup>3</sup> Md. Code Ann., Natural Resources § 4-11A-02

<sup>4</sup> Md. Code Ann., Natural Resources § 10-425

<sup>5</sup> Md. Code Ann., Natural Resources §§ 10-506, -508

<sup>6</sup> Md. Code Ann., Natural Resources § 10-906

<sup>7</sup> Md. Code Ann., Natural Resources § 4-1203 and 1204

<sup>8</sup> *New York v. Burger*, 482 U.S. 691, 702-703 (1987).

where fish may be stored. Given the importance and sensitivity of Maryland's fisheries, NRP should have the same clear inspection authority that it does in other commercial contexts.

Access to commercial fish harvest reports for law enforcement investigation purposes would also improve the efficiency and effectiveness of NRP. All commercial anglers holding a tidal fish license must submit fish harvest reports to the Department of Natural Resources. These reports aid in sustainably managing Maryland's fish populations and are necessary for management decisions of the Atlantic States Marine Fisheries Commission, of which Maryland is a member. In the event that information gathered from these reports may indicate that a waterman engaged in illegal fishing activity, the NRP should be able to launch an investigation. For example, historical reports submitted by watermen indicated that some caught female blue crabs without the proper license to do so and outside of the allowed season. Under current law, NRP may not utilize harvest reports submitted by watermen as sufficient evidence to begin a criminal investigation, because disclosure of the reports to NRP could inadvertently divulge the income of the fish license holder who submitted the report.

*Recommended Statutory Changes:* To address these problems, the Department recommends:

- amending Natural Resources Article §§ 4-701, 4-1203, and 4-1204 to authorize NRP to inspect any licensed commercial vessels, vehicles, and premises where Maryland fish resources may be stored; and
- amending Natural Resources Article § 4-206 to clarify that fish harvest reports may be used for law enforcement purposes notwithstanding the income limitation provision.

## **ENCOURAGE ELECTRONIC MONITORING**

---

Given budget and personnel constraints along with the sheer vastness of the Chesapeake Bay, an overwhelming need exists to leverage technology as a force multiplier in order to more effectively and quickly identify potential environmental and public safety threats such as natural resource violations, boating accidents, or criminal or terrorist acts.

Recognizing a threat to the environment, critical infrastructure, individuals, or commercial entities in sufficient time and with sufficient information to allow a response by available and locatable law enforcement mariners is currently a difficult proposition at best. Prior to the recent implementation of MLEIN, described below, NRP officers relied exclusively on a radio communication search based upon a list of geographic areas which are the responsibility of a particular officers or group of officers in order to assign a citizen generated call for service. Additionally, a NRP officer could only previously detect violations within his or her view while on the water. Coordination of multiple agencies in a water event was difficult due to limitations on radio interoperability as well as disparate information systems that cannot provide real time or near real time updates on actions or activity at the scene of an event.

## **Maritime Law Enforcement Information Network (MLEIN)**

NRP recently launched the Maritime Law Enforcement Network, an enhanced technology system that enables stronger search and rescue, homeland security, and natural resources law enforcement operations on Maryland's waterways. Utilizing the information provided by interconnected, state of the art radar and camera equipment, MLEIN will allow NRP to better protect oyster sanctuaries and aquaculture areas, deter night-time poaching, and quickly respond to marine emergencies. Maryland is one of the first jurisdictions to use MLEIN for natural resources enforcement and expects the system to significantly deter fisheries violations.

MLEIN includes a vessel tracking component that utilizes closed-circuit television (CCTV) and radar strategically located along waterways that feed information from a vessel's international Automatic Identification System (AIS) tracker. All international vessels transmit their location and basic information through the AIS program. AIS data is widely available, including on some commercial sites. However, AIS transponders can be deactivated, and not all ships carry them. Integrating AIS data with radar and CCTV in the future will allow law enforcement immediately to identify "non-international" maritime traffic.

MLEIN integrates the vessel tracking system, CCTV, radar, and other data into a situational awareness platform. By coordinating information among law enforcement agencies, MLEIN allows officers to view incidents in multiple jurisdictions through radar signatures and images. NRP's camera equipped vessels can transmit images back to command centers, providing instantaneous information to all responding units. The information received through the network is also transmitted to NRP officers in the field through mobile terminals. The new MLEIN system, currently being phased in throughout the Chesapeake Bay area, is monitored 24/7 by the NRP at their Sandy Point Communication Center.

The use of a sophisticated vessel tracking and information sharing system by NRP enables a greater leveraging of the existing field force and allows greater productivity per officer than could have been the case were the NRP to remain technologically stagnant.

## **Vessel Monitoring Systems (VMS)**

Vessel Monitoring Systems are another form of electronic monitoring used to enforce fisheries laws in the United States<sup>9</sup> and in international waters. VMS systems require fishermen to install tracking devices on their vessels. Once installed, VMS allows regulators to track commercial boats at sea and other detailed information about the vessel's activity such as number of hours and days at sea, location, speed, heading, and in some cases, catch reports. VMS data transmissions are typically made on an hourly basis.

---

<sup>9</sup> [http://www.nmfs.noaa.gov/ole/ak\\_faqs.html](http://www.nmfs.noaa.gov/ole/ak_faqs.html)

Federal regulations require VMS onboard vessels participating in the following commercial fisheries:

- New England scallop;<sup>10</sup>
- South Atlantic rock shrimp;<sup>11</sup>
- Gulf of Mexico reef fish;<sup>12</sup> and
- many Alaskan fisheries.<sup>13</sup>

The Northwest Atlantic Fisheries Organization (NAFO) requires the use of VMS on vessels participating in all but six of the regulated fisheries. The stated purpose of this requirement is to “improve and maintain compliance with the Conservation and Enforcement Measures for vessels fishing in the NAFO Regulatory Area.”<sup>14</sup> The VMS requirement is written into the NAFO regulations as one of the requirements pertaining to the monitoring of the fisheries.<sup>15</sup>

The North East Atlantic Fisheries Commission (NEAFC) also requires VMS. There are no exceptions to the VMS requirement in NEAFC – all commercial fishing vessels subject to NEAFC must have VMS onboard.

Many other countries require VMS to participate in their commercial fisheries, including: Argentina, Australia, Canada, Chile, China, Costa Rica, France, Germany, Iceland, Mexico, New Zealand, Russia, South Africa, and the United Kingdom. In Argentina VMS transmissions are required every 7 minutes.

*Recommended Statutory Change:* As a first step to using this vessel tracking technology, the Department recommends amending Natural Resources Article § 4-1207 to authorize the Department to require a working continuous electronic monitoring system aboard any commercial fishing vessel where an individual works who is convicted, pleads *nolo contendere*, or receives probation before judgment for a Tier II or Tier III violation under the commercial point system outlined in Natural Resources regulations. The probation monitoring period would occur for a period of 5 years after conviction and be in addition to any other penalty imposed by the court or Department.

## **INCREASED PENALTIES**

---

### **Hunting License and Privilege Suspension**

Unlike with fishing related natural resource law violations, the Department of Natural Resources does not have adequate authority to suspend the hunting license or privileges of a person convicted of a State or federal hunting violation. Such

---

<sup>10</sup> 50 C.F.R. 648

<sup>11</sup> 50 C.F.R. § 622.9

<sup>12</sup> 50 C.F.R. § 622.9, also see [http://sero.nmfs.noaa.gov/vms/VMSFAQs041707\\_2.pdf](http://sero.nmfs.noaa.gov/vms/VMSFAQs041707_2.pdf)

<sup>13</sup> 50 C.F.R. 679.28(f)

<sup>14</sup> [www.fao.org/fishery/vmsprogramme/VMS\\_NAFO/en](http://www.fao.org/fishery/vmsprogramme/VMS_NAFO/en)

<sup>15</sup> [www.nafo.int/fisheries/frames/regulations.html](http://www.nafo.int/fisheries/frames/regulations.html)

authority would enable the Department to properly penalize egregious or chronic wildlife law violators and improve the deterrence of future violations, including compliance with hunting safety zones. Many individuals hunting on private property are exempt by law from licensure requirements. Affording the Department the authority to revoke hunting privileges (on private property where licenses are not required) will ensure that those who repeatedly violate hunting and trapping laws will lose their ability to legally participate, regardless of their status as a license buyer.

The majority of the wildlife law violations are coupled to a pre-payable fine so violators are rarely seen in court, and repeat violators are often not appropriately sanctioned. Removing repeat offenders and/or egregious actors from the forest or field is the most effective mechanism to prevent the future abuse and theft of our natural resources.

*Recommended Statutory Change:* The Department recommends amending Natural Resources Article §§ 10-205, 10-423, 10-1101, and 10-1108 to authorize the courts and the Department of Natural Resources to suspend the hunting license or privileges of a person who is convicted of a state or federal hunting violation.

## **STREAMLINE ADMINISTRATIVE PROCEDURES**

---

Maryland natural resources law is inconsistent on when the Department of Natural Resources is required to hold a hearing before suspending a license. In some cases, DNR is required to provide a person with an “opportunity for a hearing,”<sup>16</sup> while in other cases DNR is required to hold a hearing before taking action against a license.<sup>17</sup> When State law only requires DNR to provide an opportunity for a hearing, it may serve notice of a proposed license suspension or revocation to a licensee and require the licensee to request a hearing. If a hearing is not requested by the violating licensee, the penalty is imposed as proposed.

When State law requires DNR to hold a hearing, it cannot impose a suspension without holding a hearing or obtaining a waiver from the licensee. This requirement creates a huge administrative burden for enforcement personnel and allows licensees to thwart administrative penalties by avoiding service of process and settlement negotiations or otherwise delaying hearings. When officers are scheduled to testify in administrative hearings that must be rescheduled, it creates a significant drain on enforcement personnel serving afield.

In most contexts, Maryland administrative agencies may suspend or revoke a license after providing a licensee with the opportunity for a hearing. Allowing DNR to suspend or revoke after providing the opportunity for a hearing will streamline administrative

---

<sup>16</sup> Md. Code Ann., Natural Resources § 4-11A-15

<sup>17</sup> Md. Code Ann., Natural Resources § 4-701 and 4-220

enforcement and allow NRP to focus on new cases. When DNR is required to hold a hearing and the licensee fails to appear at the hearing, the State ends up paying administrative law judges, attorneys, and any DNR witnesses for an unnecessary hearing. Limited enforcement resources should be spent investigating new cases, not conducting unnecessary hearings.

*Recommended Statutory Change:* The Department recommends amending Natural Resources Article §§ 4-701, 4-220 and any other statutes that require DNR to hold a hearing before suspending a license.

#### **AUTHORIZING ELECTRONIC TICKETING**

---

A majority of Natural Resources Police officers are now equipped with mobile data terminals (MDTs). MDTs are lap top computers and enable officers to remain on patrol while they perform administrative functions. MDTs assist with investigations by allowing officers to instantaneously access and view arrest information, license suspensions, access MLEIN, and other investigative material from their vehicle or vessel without removing them from patrol. MDTs could also enable officers to participate in e-ticketing, where citations are issued to the violators and the copies are sent to MVA or district court, thus eliminating the need for the officers to stop patrolling to deliver tickets to courts.

The Maryland State Police already have statutory authorization to issue electronic tickets, however NRP officers currently cannot.

*Recommended Statutory Change:* Amend Natural Resources Article § 1-205 and 8-2003 to authorize NRP to prepare and submit citations electronically.