



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

House Bill 1498

Tidal Fish Licenses – Oyster Authorizations - Revocation

DATE: MARCH 6, 2020

POSITION: OPPOSE

The Chesapeake Bay Foundation OPPOSES HB 1498. This bill would weaken penalties for oyster poaching by removing the requirement for the Department of Natural Resources to revoke a person's authorization to catch oysters if they are found guilty of poaching. In the case the Department revokes an authorization, this bill allows convicted offenders to apply for an authorization reinstatement after five years.

Under current law, there are two sections that address illegal oyster harvest, NR §4-1201 and NR §4-1210, which are differentiated by the violations they include and the legal standards required for prosecution. NR §4-1201 prohibits the taking of oysters from leased oyster bottom, an oyster sanctuary, an oyster reserve or other areas closed to harvest if the individual "should have known" that such taking was unlawful. The maximum penalty for a violation under NR §4-1201 is a \$3,000 fine. An analysis of over 5,000 oyster poaching citations from 1959 to 2010 indicated that the average fine charged was \$179.

Alternatively, NR §4-1210 calls for the revocation of an individual's license when they are found to have "knowingly" poached oysters. The heightened legal standard for having "knowingly" violated the statute requires prosecutors to demonstrate not only that the accused had knowledge that their action was wrong, but also that they had intent to commit the act. Such action is not a mistake, but a willful disregard for the law and for the natural resources of the State of Maryland.

According to DNR, very few individuals have their licenses revoked for poaching each year. In 2019, there was only one revocation. An examination of the history of these individuals' interactions with the Natural Resources Police suggests that these are not individuals who simply made a singular mistake. Of the individuals with revoked licenses, the average number of Department of Natural Resources citations is 18, and half of those individuals have more than 20 violations. These often include repeated offenses in the oyster fishery, violations in the crab, striped bass, and clam fisheries as well as hunting violations. At least 10 individuals have been cited for multiple violations that, individually, would be subject to revocation or have been caught oystering under suspension or revocation. Several others have continued to commit violations even after their license has been revoked.

Removing the requirement that DNR revoke a person's authorization to catch oysters after being found guilty of poaching represents a significant weakening of oyster poaching penalties and fails to uphold the integrity of the law. The ability of repeat offenders to apply for reinstatement after five years puts our natural resource in great jeopardy.

Oyster poaching is an egregious violation that should be subject to substantial penalty that deters future would-be violators. According to a 2008 report by the Oyster Advisory Commission, there is no greater challenge to the recovery of oyster populations than the illegal harvest of oysters. Individuals that choose to steal oysters are stealing from honest watermen, oyster farmers, and the citizens of Maryland who should be afforded the benefits that oysters provide.

For these reasons, the Chesapeake Bay Foundation recommends an UNFAVORABLE report on HB 1498 from the Environment and Transportation Committee. Please contact Dr. Allison Colden at acolden@cbf.org or 443.482.2160 with any questions.

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<https://www.thebaynet.com/articles/0220/police-fail-to-cite-poacher-in-the-st-marys-river-shellfish-sanctuary.html>

Police Fail to Cite Poacher in the St. Mary's River Shellfish Sanctuary

St Mary's County

02/06/2020

By St. Mary's River Watershed Association



St. Mary's City, MD - On January 9, 2020 the call was made to the Maryland Poacher Hotline at 8:22 am reporting a vessel dredging and harvesting oysters in the St. Mary's River shellfish sanctuary. A photo was texted to the hotline at the same time documenting the violation. A Natural Resources Police officer showed up about 45 minutes later, simply told the violator to depart the area, and allowed the poacher to keep and sell the oysters. The officer failed to do his job, which is to cite the violator for poaching in a sanctuary, to confiscate their license or licenses, and to confiscate the illegally harvested oysters.

"Unbelievable," was the response from Association executive director Bob Lewis to the lack of enforcement. "I caught them red-handed and the responding officer failed their oath of office, failed the public trust, and failed our river and oysters."

Upon further inquiry to the resources police, Area commander Lt. Catherine Medellin called Lewis to inform him on what went down. She indicated that the suspected waterman told the officer he was confused as to where the sanctuary boundary line was and pointed out a sign on the shoreline. That sign was indicating the boundary of the conditional area, a designation of potential health risks, which has nothing to do with sanctuary boundary lines.

“The sanctuary boundary was designated on October 1, 2010 and a buoy sign was placed in the river,” Lewis told Medellin. “That boundary signage has remained unchanged to this day. I do not believe that anyone was confused over the boundary line.”

Medellin told Lewis the waterman had worked southern Maryland for years and the officer was in southern Maryland for about five years. “It was an error by the officer. [They] are very upset over this incident. He realizes now that he should have confiscated the oysters,” Medellin told Lewis over the phone on January 13.

In answer to Lewis’ disbelief that an officer would overlook a blatant poaching violation, Medellin stated that the investigating officer told her that he “had spoken with this waterman just a couple days before” telling them that the “conditional line and sanctuary line were the same.”

“Therefore, the officer felt that he could not cite the waterman,” Medellin said.

“This is incredible,” responded Lewis to Medellin. “I do not believe either the officer or the waterman was confused over the boundary. The waterman knew he was poaching. They all have GPS and they sign an affidavit at the time of license purchase stating that they will comply with restricted area boundaries.”

Lewis requested a copy of the written report of the incident only to be told there was none. “So the extent of Resources Police action on this was to verbally ask the poacher to depart the area.” Lewis responded to Medellin. “This whole story lacks credibility.”