

HB 1223 - CBF - UNF.pdf

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CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

House Bill 1223

Tidal Fish Licenses – Oyster Authorizations - Reinstatement

Date: March 6, 2024

To: Environment & Transportation Committee

Position: **OPPOSE**

From: Allison Colden
MD Executive Director

Chesapeake Bay Foundation (CBF) **OPPOSES** HB 1223 which would weaken deterrents for oyster poaching by allowing convicted poachers to re-enter the fishery after five years.

Revocation of an oyster authorization is already reserved for the most egregious poaching violations.

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.

When someone is found to have “knowingly” poached oysters, NR §4-1210 calls for the revocation of that individual’s license. The 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. Thus, under this legal standard, a person’s license can only be revoked if it can be proven they knew their actions were wrong and intended to carry them out regardless. Such action is not a mistake, but a willful disregard for the law and for the natural resources of the State of Maryland.

Of those with oyster authorizations revoked, most have a history of natural resources violations.

According to DNR, very few individuals, approximately four per year, have their licenses revoked. An examination of the history of these individuals’ interactions with the Natural Resources Police suggests a pattern of behavior. Of the individuals with revoked licenses, the average number of DNR 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.

Areas off-limits for oyster harvest are communicated, acknowledged, and backed-up with real time data.

Commercial oyster harvesters receive a Shellfish Closure Book at the start of each harvest season. This book shows the locations of all areas closed to oyster harvesting, including oyster aquaculture leases, sanctuaries, and shellfish closure areas along with commercial oyster harvest regulations and resources for additional information. In order to commercially harvest oysters, licensees must sign an affidavit each year stating that they have received the Shellfish Closure Book and know and understand the laws and regulations pertaining

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to oyster harvest. Additionally, DNR recently rolled out the new [iShellfish](#) mobile application for smartphones so that watermen and other users can determine their location in real time relative to areas closed to oyster harvest.

Oyster poaching is a significant impediment to the recovery of Maryland's oyster population.

Weakening penalties for the five most serious oyster poaching violations fails to recognize the extremely high legal standard already required to revoke an individual's license. Oyster poaching is an egregious violation that should be subject to substantial penalty to deter 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.

CBF urges the Committee's UNFAVORABLE report on HB 1223.

For more information, please contact Matt Stegman, Maryland Staff Attorney at mstegman@cbf.org.

HB 1223 Tidal Fish Licenses - Oyster Authorization

Uploaded by: Cait Kerr

Position: UNF

Wednesday, March 6, 2024

TO: Marc Korman, Chair of the House Environment and Transportation Committee, and Committee Members

FROM: Cait Kerr, The Nature Conservancy, State Policy Manager; and Michelle Dietz, The Nature Conservancy, Director of Government Relations

POSITION: Oppose HB 1223 Tidal Fish Licenses - Oyster Authorizations - Reinstatement

The Nature Conservancy (TNC) opposes HB 1223 offered by Delegates Adams and Jacobs. For the past two decades, the world has looked to the Chesapeake Bay to learn what's possible in oyster restoration. No effort in the world matches the scale of what has been accomplished here, and TNC has been proud to support and invest in oyster restoration along with many others during this time.

HB 1223 seeks to weaken deterrents for oyster poaching by allowing convicted poachers to re-enter the fishery after five years. Currently, oyster authorization revocation is reserved for the most egregious poaching violations when someone is found to have knowingly poached oysters. The legal standard for having "knowingly" poached oysters requires prosecutors to demonstrate not only that the accused was aware of the unlawfulness of their actions but also that they intended to commit the act. Under this legal standard, a person's license can only be revoked if it can be proven they knew their actions were unlawful and intended to carry them out regardless. According to the Department of Natural Resources, only about four individuals per year have their licenses revoked under the current standards.

Weakening penalties for the most severe oyster poaching violations fails to recognize the extremely high legal standard already required to revoke an individual's license. The actions that meet the threshold for revocation demonstrate a willful disregard for the law and for our state's natural resources. TNC supports the oyster industry across the state. We have a history of working across sectors to leverage private, state, and federal funding for its benefit. Oysters provide many gains for the Chesapeake Bay, including improving the Bay's health, strengthening our state and local economies, and enhancing Maryland's culture. Illegal oyster harvesting is detrimental to other watermen, oyster farmers, and Marylanders, who should be afforded the benefits that oysters provide.

The Nature Conservancy strongly opposes weakening deterrents for willfully and knowingly harvesting oysters illegally, which is harmful to other watermen's livelihoods, our economy, and the health of the Chesapeake Bay.

Therefore, we urge an unfavorable report on HB 1223.

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Uploaded by: Chesapeake Oyster Alliance

Position: UNF



Chesapeake
OYSTER ALLIANCE
10 Billion for the Bay

ADVOCATES FOR HERRING BAY | ANNAPOLIS AQUACULTURE | ANNAPOLIS MARITIME MUSEUM | ARUNDEL RIVERS FEDERATION
BLACK GIRLS DIVE FOUNDATION | BLUE OYSTER ENVIRONMENTAL | CHESAPEAKE BAY FOUNDATION | CHESAPEAKE BEACH OYSTER CULTIVATION
SOCIETY | COASTAL CONSERVATION ASSOCIATION MARYLAND | FRIENDS OF ST. CLEMENTS BAY | LIVING CLASSROOMS FOUNDATION
MARINE SCIENCE FOUNDATION | MARK STREET VENTURES | OYSTER GIRL OYSTERS | PIRATES COVE OYSTER COMPANY
SEVERN RIVER ASSOCIATION | SHORERIVERS | TRUE CHESAPEAKE OYSTER COMPANY

House Bill 1223

Tidal Fish Licenses - Oyster Authorizations – Reinstatement

DATE: March 6, 2024

POSITION: **OPPOSE**

The Chesapeake Oyster Alliance is a broad coalition of 111 (and counting) non-profits, academic institutions, oyster growers, and business owners with the shared goal of adding 10 billion oysters in the Bay by the year 2025. With a focus on oyster restoration, science-based fishery management, and increased aquaculture, the Chesapeake Oyster Alliance aims to accelerate oyster recovery efforts and in so doing the recovery of Chesapeake Bay.

In its 2009 report, the Maryland Oyster Advisory Commission stated, *“there is no single factor more important to the future of ecologic restoration and aquaculture than to address and dramatically reduce ongoing illegal oyster harvesting activities.”* Oyster poaching is a significant impediment to oyster recovery. Over the past 5 years, there have been nearly 90 citations issued for oystering in sanctuaries, which represents a fraction of poachers who were caught. The statutory requirement that an individual’s authorization to catch oysters be revoked if they are found guilty of one of these five violations reflects the seriousness of these actions and are intended to serve as a strong deterrent to those who would consider skirting these regulations for monetary gain.

We, the above-listed members of the Chesapeake Oyster Alliance, **strongly OPPOSE House Bill 1223** which would weaken deterrents for oyster poaching penalties and undermine oyster recovery:

HB1223 prohibits the Department of Natural Resources from revoking an oyster authorization unless a citation results in a guilty verdict in District Court. This fails to recognize that many revocations result from points accumulated on a fishing license, rather than a singular offense. Removing the ability of DNR to revoke an oyster authorization for repeated bad actors is a significant weakening of poaching penalties. HB1223 also allows for reinstatement of an oyster authorization which prevents those on the waitlist from accessing opportunities in the oyster fishery while those with revoked licenses get to re-enter the fishery.

Those who poach oysters undermine the efforts to remedy overfishing, weaken oyster recovery and threaten the future of the oyster industry. Weakening oyster poaching is a detriment to the honest efforts of watermen who comply with harvest regulations.

The Chesapeake Oyster Alliance respectfully requests an **unfavorable** report on HB1223. Please contact Tanner Council (tcouncil@cbf.org) with any questions.

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Uploaded by: Chesapeake Oyster Alliance

Position: UNF

Testimony before the
House Environment and Transportation Committee
March 6, 2024

House Bill 1223
Position: **OPPOSE**

Dear Chairman Korman, Vice Chair Boyce, and Members of the Committee:

We, the undersigned organizations and individuals, respectfully request an unfavorable report from the House Environment and Transportation Committee on House Bill 1223. This bill would weaken penalties for oyster poaching and allow reinstatement of a revoked license after five years.

In its 2009 report, the Maryland Oyster Advisory Commission stated, “there is no single factor more important to the future of ecologic restoration and aquaculture than to address and dramatically reduce the ongoing illegal oyster harvesting activities.” Oyster poaching is a significant impediment to oyster recovery. Over the past 5 years, there have been over 80 citations issued for oystering in sanctuaries, which represents a small fraction of poachers who were actually caught for just one category of poaching violations.

Currently, there are five categories of oyster poaching violations that can trigger revocation of an oyster authorization. These include harvesting oysters inside a sanctuary, removing oysters from an aquaculture lease, harvesting oysters in areas closed for water quality, harvesting out of permitted times, and harvesting with a gear type that is not permitted. These are egregious violations that threaten the viability of the industry, the recovery of the oyster population, and the safety of Maryland citizens. The statutory requirement that an individual’s authorization to catch oysters be revoked if he is found guilty of one of these five violations reflects the seriousness of these actions and are intended to serve as a strong deterrent to those who would consider skirting these regulations for monetary gain.

Even if an individual’s oyster authorization is revoked, they can continue to operate in other fisheries, meaning their opportunity to earn a livelihood in the fishing industry is not completely shut down. In this regard, Maryland’s penalties are less stringent than other states’, like Virginia, who has the authority to seize vessels and harvest equipment, preventing individuals from participating at all in commercial harvesting.

The requirement to attend a class for “rehabilitation” is unlikely to improve compliance with oyster regulations. At the start of each season, each licensed harvester receives a Shellfish Closure Book detailing harvest regulations and management boundaries and must submit a signed affidavit that they have read and understand the fishery regulations. The law requires that those who have their license revoked did so knowingly, so there is little new information such a class could provide that would not have already been available before they committed the violation.

We urge the Committee to provide an **unfavorable** report on House Bill 1223 and thank you for your consideration.

Sincerely,

Matt Pluta
Director of Riverkeeper Programs, ShoreRivers

Benjamin Ford
Miles-Wye Riverkeeper, ShoreRivers

David Sikorski
Executive Director
CCA Maryland

Elle Bassett
South, West and Rhode Riverkeeper
Arundel Rivers Federation

Larry Jennings
Government Relations Committee
CCA Maryland

Liz Curtz
Friends of St. Clements Bay

Bruce J. Valliant
Valliant Shellfish and Seafood, LLC

Kevin Sullivan
St. Michaels, MD

Jane Abel
Queenstown, MD

Wilson Faucette
Kensington, MD

Peter Pinkard
Queenstown, MD

Bruce Abel
Queenstown, MD

Richard Brill
Annapolis, MD

Laura Calvert
Baltimore, MD

Fred Milhiser
Avenue, MD

Vicki Halper
Deale, MD

Madeleine Beller
Baltimore, MD

Ron Hartman
Annapolis, MD

Georgeanne Pinkard
Baltimore, MD

Julie Kurland
Takoma Park, MD

Kevin Green
Annapolis, MD

G. Rick Wilson
Laurel, MD

Lani Hummel
Annapolis, MD

Suellen Keiner
Great Mills, MD

Patricia Jonas
Baltimore, MD

Jeremy Karsh
Deale, MD

Dr. James P. McVey
Calvert County, MD

Dr. Kenneth Lewis
Cockeysville, MD

Jordan Johnson

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Uploaded by: Kristen Fidler

Position: UNF



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Secretary
David Goshorn, Deputy Secretary

March 6, 2024

BILL NUMBER: House Bill 1223 – First Reader

SHORT TITLE: Tidal Fish Licenses – Oyster Authorizations – Reinstatement

DEPARTMENT’S POSITION: OPPOSE

EXPLANATION OF DEPARTMENT’S POSITION

The Department opposes House Bill 1223. Since the law has been amended to allow the Department greater discretion to bring cases under the law, the agency has reduced the average number of cases of revocation. The agency can now factor into account circumstances relating to potentially unintentional law violations when considering to pursue a case of revocation.

The new text in (e)(1) is unclear. Under the proposed text, it appears that the individual’s authorization is not actually revoked but suspended for a period of at least five years during which the agency shall hold the license for potential reinstatement. This means that authorizations will be held indefinitely or until an individual asks for, and the Department grants, the reinstatement of that authorization after five or more years. Individuals on the waitlist (under Natural Resources Article, Section 4-701) will not be able to obtain these authorizations and the fishery will not be efficiently maximized. Furthermore, it does not limit the number of times a person could apply for reinstatement. An individual could continually apply for reinstatement leading to continual hearings on the matter.

This ‘temporary’ revocation also only applies to actions taken under this section. The Department has separate authority under Natural Resources Article, Section 4-701 to take action against an individual’s authorization due to the accumulation of points on their licensing record. The courts may also revoke an individual’s license. It is possible an individual may be revoked under one or both sections of law. This would potentially result in the individual being eligible for the rescission of the revocation taken under Natural Resources Article, Section 4-1210 but still revoked under the revocation taken under Natural Resources Article, Section 4-701. Additionally, this will create two differing definitions from the term “revocation” in terms of commercial fishing licenses.

Currently, the Department revokes licenses and authorizations under the definition of revocation as described in COMAR 08.02.13.01. “Revocation” means the act of the Department permanently rescinding a fishing license, authorization, or entitlement and thereby permanently prohibiting a person from engaging in a fishing activity or activities under any circumstances. The Department defines “Suspension” as the act of the Department temporarily rescinding a fishing license, authorization, or entitlement and thereby temporarily prohibiting a person from engaging in a fishing activity or activities under any circumstances.

Contact: Dylan Behler, Director, Legislative and Constituent Services
dylan.behler@maryland.gov ♦ 410-260-8113 (office) ♦ 443-924-0891 (cell)

If revocation is now considered like a ‘suspension’ for the purposes of actions taken under this section, the Department will have to hold revoked authorizations until such time that the individual is ‘reinstated.’ That time may or may not ever come depending on the circumstances of an offense. This means that the fishery is not working at maximum capacity because the revoked authorization would not be reissued to an individual on the waitlist. It also means that the Department would not be able to collect the license fees that would otherwise be paid by a functioning member of the fishery for that authorization.

Additionally, a reasonable fee for an education program for reinstating individuals would not cover the costs of staffing an education program for reinstatement. This results in either pulling staff from existing programs and stopping those programs, or hiring additional staff to administer the education program.

For these reasons, the Maryland Department of Natural Resources respectfully requests the Committee to grant an unfavorable report.

BACKGROUND INFORMATION

This bill was introduced as SB 637 in 2023.

BILL EXPLANATION

The bill provides that the Department may reinstate a revoked authorization after a five-year period if an individual requests a reinstatement. The Department shall also provide a class for a reasonable fee to the individual as part of reinstatement.