



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

House Bill 1310

Tidal Fish Licenses – Oyster Authorizations - Revocation

Date: March 9, 2022

Position: **OPPOSE**

To: Environment and Transportation Committee

From: Allison Colden, Sr. Fisheries Scientist

Chesapeake Bay Foundation (CBF) **OPPOSES** HB 1310 which would weaken penalties for oyster poaching by removing the requirement for the Department of Natural Resources (DNR) to revoke an individual's oyster authorization for the five most serious categories of poaching violations. The bill would also allow 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 three 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

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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 to oyster harvest. Additionally, in accordance with HB800 passed in 2021, 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 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.

CBF urges the Committee's UNFAVORABLE report on HB 1310. For more information, please contact Dr. Allison Colden, Maryland Senior Fisheries Scientist at acolden@cbf.org and 443.482.2160.