

SB 637_CBF_UNF.pdf

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CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 637

Tidal Fish Licenses – Oyster Authorizations – Reinstatement

Date: March 2, 2023

Position: **OPPOSE**

To: Education, Energy, & Environment Committee

From: Allison Colden, Sr. Fisheries Scientist

Chesapeake Bay Foundation (CBF) **OPPOSES** SB 637 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 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.

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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 SB 637.

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

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Uploaded by: Chesapeake Oyster Alliance

Position: UNF



Chesapeake
OYSTER ALLIANCE
10 Billion for the Bay

ANNAPOLIS AQUACULTURE – ARUNDEL RIVERS FEDERATION – CHESAPEAKE BAY FOUNDATION
CHESAPEAKE BEACH OYSTER CULTIVATION SOCIETY – COASTAL CONSERVATION ASSOCIATION MARYLAND
DOWNTOWN SAILING CENTER – FRIENDS OF ST. CLEMENTS BAY – LIVING CLASSROOMS FOUNDATION
MARK STREET VENTURES, LLC – ORCHARD POINT OYSTER COMPANY – PIRATES COVE OYSTER COMPANY – SHORERIVERS
ST. MARY'S RIVER WATERSHED ASSOCIATION – TRUE CHESAPEAKE OYSTER COMPANY, LLC
WATERFRONT PARTNERSHIP OF BALTIMORE

Senate Bill 637

Tidal Fish Licenses – Oyster Authorizations - Reinstatement

DATE: March 2, 2023

POSITION: **OPPOSE**

The Chesapeake Oyster Alliance is a broad coalition of non-profits, community organizations, 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 the Chesapeake Bay.

We, the above-listed members of the Chesapeake Oyster Alliance, **strongly OPPOSE Senate Bill 637** and **recommend an UNFAVORABLE report** from the Senate Education, Energy, and Environment Committee. This bill would weaken deterrents 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 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.

Currently, there are five 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 issues, 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 health and safety of Maryland citizens. 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.

The 2018 oyster stock assessment for Maryland determined that adult oyster populations fell more than 50% between 1999 and 2018, and that 53% of Maryland's oyster harvest areas are overfished. Since then, the Department of Natural Resources has adjusted fishing regulations in an attempt to address this chronic issue. Those who poach oyster 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 Senate Bill 637. Please contact tcouncil@cbf.org with any questions.

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Uploaded by: Emily Wilson

Position: UNF



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Acting Secretary
Allan Fisher, Deputy Secretary

March 2, 2023

BILL NUMBER: Senate Bill 637 – First Reader

SHORT TITLE: Tidal Fish Licenses - Oyster Authorizations - Reinstatement

DEPARTMENT'S POSITION: OPPOSE

EXPLANATION OF DEPARTMENT'S POSITION:

The Department opposes Senate Bill 637. 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: Emily Wilson, Director, Legislative and Constituent Services (Acting)
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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:

There have been a number of recent bills similar to this one. House Bill 1310 in 2022, House Bill 856 in 2020, and House Bill 1153 in 2019 are a few of the past bills related to removing the revocation under Natural Resources Article, Section 4-1210.

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.

SB 637 Concerned Organizations and Individuals UNF

Uploaded by: Matt Stegman

Position: UNF

Testimony before the
Senate Education, Energy, and Environment Committee
March 2, 2023

Senate Bill 637
Position: **OPPOSE**

Dear Chairman Feldman, Vice Chair Kagan, and Members of the Committee:

We, the undersigned organizations and individuals, respectfully request an unfavorable report from the Senate Education, Energy, and Environment Committee on Senate Bill 637. 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 Senate Bill 637 and thank you for your consideration.

Sincerely,

Matt Pluta
ShoreRivers

Bob Lewis
St. Mary’s River Watershed Association

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Friends of St. Clements Bay

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