

SenatorBailey_FAV_SB317.pdf

Uploaded by: Jack Bailey

Position: FAV

JACK BAILEY
Legislative District 29
Calvert and St. Mary's Counties

Budget & Taxation Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 401
Annapolis, Maryland 21401
410-841-3673 • 301-858-3673
800-492-7122 Ext. 3673
Jack.Bailey@senate.state.md.us

District Office
Dorsey Professional Park
23680 Three Notch Road, Unit 101
Hollywood, Maryland 20636
240-309-4238

February 27, 2024

Senate Bill 317 – Oysters, Striped Bass, and Crabs – Commercial Authorizations – Suspensions and Revocations

Dear Chairman Feldman and Members of the Committee:

I am writing to introduce Senate Bill 317. This bill would protect the due process rights of commercial watermen by ensuring that the Department of Natural Resources may not revoke their license to catch oyster, striped bass, or crabs unless the license holder has been convicted of or pled nolo contendere to a violation of the State's natural resources law.

The bill allows for a suspension of an individual's license for a period not to exceed three years if that individual receives a citation for certain offenses relating to oysters, striped bass, and crabs. This suspension shall immediately end upon the individual submitting documentation demonstrating the underlying violation resulted in an acquittal, dismissal, not guilty verdict, or an entry of nolle prosequi. However, if the license holder is convicted or pleads nolo contendere to the underlying violation, the Department may extend their suspension or revoke their authorization in the same manner they can currently.

Under current law, DNR can pursue a revocation of a commercial waterman's authorizations on the basis of a citation alone. We should never use an administrative proceeding with a lower burden of proof as a substitute for a conviction of a criminal violation that carries with it the presumption of innocence. This bill is consistent with the intent of current law by providing DNR with a way to expeditiously remove bad actors from our State's waterways but also provides an avenue for the restoration of the license should a conviction not be obtained.

I respectfully request a favorable report on Senate Bill 317. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bailey'.

Senator Jack Bailey

02.21.24 LOS SB 0317 Joint.pdf

Uploaded by: Terry Hale

Position: FAV

Danielle Hornberger
County Executive

Steven Overbay
Director of Administration

Office: 410.996.5202
Email: dhornberger@ccgov.org



Jackie Gregory
Council President

Robert Meffley
Vice President

Office: 410.996.5201
Email: council@ccgov.org

CECIL COUNTY GOVERNMENT
Cecil County Administration Building
200 Chesapeake Boulevard, Elkton, MD 21921

February 21, 2024

The Honorable Brian J. Feldman
The Honorable Cheryl C. Kagan
Education, Energy and the Environment Committee
2 West
Miller Senate Office Building
Annapolis, MD 21401

RE: SB 0317– Oysters, Striped Bass, and Crabs - Commercial Authorizations - Suspensions and Revocations
Letter of Support

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

The County Council and the County Executive of Cecil County unanimously support SB 0317 - Oysters, Striped Bass, and Crabs - Commercial Authorizations - Suspensions and Revocations. The hearing on this legislation is scheduled on February 27, 2024.

It is our understanding that this legislation is prohibiting the Department of Natural Resources from revoking a person's authorization to catch oysters, striped bass, or crabs unless the person has been convicted of or entered an accepted plea of nolo contendere to a certain crime; altering and establishing certain procedures for the suspension or revocation of an authorization to catch oysters, striped bass, or crabs; and authorizing the Department to reinstate a certain authorization under certain circumstances.

Cecil County strongly supports our commercial fisheries and believes that due process should extend to all our citizens.

The County Executive and County Council of Cecil County respectfully request that the Education, Energy and Environment Committee send a favorable report on SB 0317.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hornberger".

Danielle Hornberger
County Executive

A handwritten signature in blue ink, appearing to read "Jackie Gregory".

Jackie Gregory
President of County Council

SB 317 - CBF - UNF.pdf

Uploaded by: Allison Colden

Position: UNF



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 317

Oysters, Striped Bass, and Crabs – Commercial Authorizations – Suspensions and Revocations

Date: February 27, 2024
To: Education, Energy, and the Environment Committee

Position: **Opposed**
From: Allison Colden
MD Executive Director

Chesapeake Bay Foundation (CBF) **OPPOSES** Senate Bill 317, which would prohibit the Department of Natural Resources (DNR) from revoking an authorization to catch oysters, striped bass, or crabs unless an individual is convicted of a certain crime. These changes would significantly alter the process by which DNR conducts hearings and renders administrative penalties to those who violate fishing laws and regulations.

Though there are strong natural resources laws on the books, lack of enforcement has led to repeat offenses which damage Maryland's natural resources and economy. For example, in a 2018 review of oyster poaching violations dating back to 2013, CBF found that enforcement of laws is uneven across counties, with Somerset County declining to prosecute in one-third of cases while Talbot County dropped poaching charges in only five percent of cases. District Courts also frequently assessed fines on offenders at a fraction of what state laws permit or for court costs only. Due to this uneven record of prosecution and penalties frequently assessed at levels far lower than allowed by current law, CBF supported legislation last year to develop the Environmental and Natural Resources Crimes Unit in the office of the Attorney General ([2023 Md. Laws, Chap. 689](#)).

While Maryland's oyster population has benefitted in recent years from favorable environmental conditions and increased production, striped bass and blue crab populations are struggling. For example, 2023 marked the fifth consecutive year of juvenile striped bass numbers far below average with an index of 1.0 compared to the long-term average of 11.3. Concerns over striped bass reproduction are compounded by overfishing of adult striped bass, which has spurred recent action at both the state and regional levels to reduce recreational and commercial fishing mortality.^{1,2}

Similarly, certain segments of the Bay's blue crab population are showing concerning trends. Juvenile blue crabs have remained below the long-term average for four consecutive years and the number of adult male blue crabs was the lowest ever recorded in 2022. Based on these results, the Chesapeake Bay Stock Assessment Committee, which reviews the annual DNR blue crab winter dredge survey results and provides

¹ Maryland Department of Natural Resources. [Maryland Enacts Striped Bass Emergency Regulations to Increase Protections for the Spawning Population](#). Accessed 16 February 2024.

² Atlantic States Marine Fisheries Commission. [ASMFC Atlantic Striped Bass Board Approves Addendum II Establishes Measures to Continue Progress Towards Stock Rebuilding](#). Accessed 16 February 2024.

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management recommendations, kicked off a new crab stock assessment with the hopes of uncovering some of the underlying causes of blue crab decline and recommending any changes needed to crab management.

Given the opportunity for more consistent and timely handling of natural resources cases by the newly-formed Environmental and Natural Resources Crime Unit and the current poor stock status of both striped bass and blue crabs, now is not the appropriate time to make significant changes to fisheries revocations law. To successfully rebuild our iconic striped bass and blue crab populations, we will need all tools available to ensure compliance with critical regulations meant to reduce mortality and bring these species back to sustainable levels.

CBF urges the Committee's UNFAVORABLE report on SB 317.

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

MGA- 2024.pdf

Uploaded by: James Ronayne

Position: UNF

Good afternoon ladies and gentlemen of the committee. My name is James Ronayne and I'm a Senior at Annapolis High School. I am an avid sailor, waterman, and photographer on the bay. I am here today in protest of Senate Bill 317.

As a Photographer on the Bay, my favorite thing to do is take pictures of the hard-working watermen who devote their lives to the water. Through my journey as a photographer on the bay, I have met and taken pictures of almost every waterman on the east side of the Chesapeake from the Magothy down to Deale. Through my literal lens, I have grown a great appreciation for the work of a waterman. These folks are doing dark-to-dark work. They begin their day before the sun rises and finish it after the sun has set. This is back-breaking, hard manual labor that repeats every day, no matter the conditions. Many of them work year-round changing fisheries as the seasons rotate. I have had the great privilege of being able to document this display of hard work and heritage over the past few seasons of Crabbing, Oystering, and Fishing. I have established relationships with these watermen and a few of them even have my photos hanging on the walls of their homes. Most watermen are good, honest, hardworking people who just want to utilize their part of the fishery. Unfortunately, there are a few poachers who abuse the fishery. They Poach from protected areas or keep undersized species. These Poachers are actively destroying the ecology of the Chesapeake and tarnishing the name of honest watermen.

These Poachers have an obvious leg up on the honest watermen. They go to untouched fishing grounds and keep more fish/crabs/oysters. It is not fair that the folks who follow the rules should be at a disadvantage to those who Cheat.

Senate Bill 317 would prohibit MD DNR from Revoking a Poacher's authorization to harvest species in the Bay, Allowing illegal fishing to only be put on pause rather than stopped. This action for DNR is a safeguard against unlawful fishing practices in the Bay. Watermen are good at what they do. There is no "Accidental" lawbreaking. No boats are "drifting" into sanctuaries and harvesting oysters. Being able to harvest is a Privilege, not a Right.

I urge the Committee to protect the integrity of these hard-working watermen and I am respectfully requesting an Unfavorable report on Senate Bill 317.

SB0317_DNR_OPP_EEE_2-27-24.pdf

Uploaded by: Kristen Fidler

Position: UNF



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

February 27, 2024

BILL NUMBER: Senate Bill 317 – First Reader

SHORT TITLE: Oysters, Striped Bass, and Crabs – Commercial Authorizations – Suspensions and Revocations

DEPARTMENT’S POSITION: OPPOSE

EXPLANATION OF DEPARTMENT’S POSITION

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.

Under its current authority, when a citation is issued for one of the enumerated offenses the Department assesses the circumstances and makes a decision whether to move forward with pursuing a revocation action against the individual or not. If the Department initiates a revocation action against the individual, the Department must prove its case in front of the Office of Administrative Hearings. If the Department is successful, the individual is permanently revoked from the commercial oyster fishery, subject to appeals to Circuit Court and beyond. The outcome of the criminal case in District Court has no bearing on the case in front of the Office of Administrative Hearings because they have different evidentiary standards, one being a criminal matter (District Court) and one being a civil administrative matter (Office of Administrative Hearings). If the Department chooses to not initiate a revocation action against the individual, and the individual is convicted in District Court (subject to appeals, etc.), the Department may elect to initiate an administrative action in accordance with COMAR 08.02.13.02 and .03, which were promulgated under the authority of Natural Resources Article, §4-701, Annotated Code of Maryland. If the individual receives any disposition other than guilty or nolo contendere, the Department is not able to take any administrative action against the individual.

The current authority requires the Department to hold a hearing on a revocation action under Natural Resources Article, §4-1210, Annotated Code of Maryland within 90 days of the date of the offense. In practice that time period may be waived by the accused in order to better prepare their defense. Under the proposed legislation, the Department would first hold a hearing to suspend a license or authorization. That hearing would have to be within 90 days of the offense, just as the current revocation hearing. There are many times that the criminal case is heard before the administrative case. Under current authority, the criminal case has no bearing on the administrative case. Under the proposed

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

legislation, depending on the outcome of that criminal case – which is held under a different evidentiary standard than the administrative case – the Department would either schedule a second hearing (to convert the suspension to a revocation if the disposition is guilty and the initial suspension hearing has been completed), attempt to modify the agency action from a suspension to a revocation (if the disposition is guilty or nolo contendere and the suspension hearing has not been held), or withdraw the action (if the disposition is an acquittal, dismissal, not guilty, or entry of nolle prosequi). It is possible, based on timing and other circumstances, that the Department would not be able to modify the agency action from a suspension to a revocation. In those cases, the Department would first have to hold the hearing to suspend the individual, then hold a second hearing to revoke the individual.

The proposed legislation requires the revocation hearing to occur within 90 days of the disposition. The Department waits 30 days from the date of disposition to ensure that the appeal rights of the defendant have run out without appeal before sending a Notice of Agency Action (if the disposition is appealed, the Department waits for those appeals to be exhausted). Upon mailing a Notice of Agency Action, the Administrative Procedures Act requires the defendant to be given 30 days to request a hearing on the matter. That means in an absolute best case scenario, the Department would be attempting to schedule a hearing with the Office of Administrative Hearings on less than 30 days' notice. In practice, it would be incredibly challenging - possibly impossible - for the Department to continue to revoke individuals under this section.

There would also be additional operational impacts related to the entry of data and restrictions in the agency's licensing system and other databases, as well as the Interstate Wildlife Violator Compact. This would be handled by existing staff.

Lastly, the Department anticipates the potential for future fiscal impacts based on the clause which would allow the Department to reinstate individuals who had previously been revoked under Natural Resources Article, 4-1210, Annotated Code of Maryland. If the Department were to choose to create a program by which revoked individuals could be reinstated, or if the Department were required to create such a program based on a court order, there would be the potential for significant operational and fiscal impacts. The details of those impacts would depend heavily on the structure of the program, but if revocation were no longer permanent and a license could be reinstated, the Department would no longer be able to reissue the license of an individual who had been revoked.

BACKGROUND INFORMATION

There have been a number of recent bills similar to this one. Senate Bill 637 in 2021. 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

Senate Bill 317 removes the Department's ability to revoke an individual for certain offenses on issuance of a citation, requires the Department to go through a two-step process to achieve a revocation dependent on certain outcomes in District Court, requires the Department to end suspensions based on certain outcomes in court, and authorizes the Department to reinstate individuals whose authorizations had previously been revoked.

SB 317 - Sign-on - UNF.pdf

Uploaded by: Matt Stegman

Position: UNF

Testimony before the
Senate Education, Energy, and Environment Committee
February 27, 2024

Senate Bill 317
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 317. This bill would weaken penalties for oyster poaching by allowing for suspension in place of revocation of an oyster harvest authorization and allowing for reinstatement of an oyster authorization at any time following a District Court ruling other than a guilty verdict.

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. The statutory requirement that an individual’s authorization to catch oysters be revoked reflects the seriousness of these actions and is 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.

Requiring a suspension in place of a revocation is a serious undermining of the Department’s authority and muddies the definition of a suspension versus a revocation. It limits a suspension to not more than 3 years, at which time the person’s license is reinstated regardless of administrative or criminal penalties. The bill also fails to acknowledge that oyster poaching cases frequently result in nolle prosequi verdicts as prosecutors defer to administrative action which must be taken no more than 90 days following the citation. By conditioning administrative penalties on the outcome of criminal cases, this bill simultaneously complicates the process for both the Department and the parties involved while weakening the Department’s ability to disincentivize poaching of the state’s natural resources.

Oysters are a public resource, belonging to all Marylanders. Regulations and the penalties which reinforce them are put in place to protect these resources, which are held in public trust for the benefit of all. Violation of these regulations in a manner that invokes the most serious penalties the Department can levy should not be taken lightly, as is reflected in the current statute.

We urge the Committee to provide an **unfavorable** report on Senate Bill 317 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