



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 76

Tidal Fish Licenses – Oyster Authorizations – Administrative Penalties

Date: February 4, 2025
To: Education, Energy and the Environment Committee

Position: **UNFAVORABLE**
From: Allison Colden,
Executive Director

Chesapeake Bay Foundation (CBF) **OPPOSES** Senate Bill 76 which would strip the Department of Natural Resources (DNR) of its discretion and authority to revoke an individual's authorization to harvest oysters after a finding that the individual did knowingly poach oysters from an oyster sanctuary, aquaculture lease, or area closed due to shellfish sanitation regulations. This action would constitute a significant undermining of the Department's authority and limit their ability to remove 'bad actors' from the oyster fishery whose actions threaten public health, state-funded oyster recovery efforts, and private investments in water quality improvements.

Currently, DNR has the discretion to pursue penalties up to and including revocation of an authorization to harvest oysters after a violation has been established through an administrative hearing process. If, after the conclusion of an administrative hearing and all associated appeals, an administrative law judge determines, on the preponderance of evidence, that the individual *knowingly* harvested oysters illegally, DNR will revoke their authorization to harvest oysters. This administrative process is limited to a small subset of violations in the oyster fishery which are considered most offensive to public health, personal property, and the sustainability of public trust resources. It is also aligned with other professional licensing scenarios (e.g. doctors, lawyers) where a regulatory entity can remove an individual's ability to practice in that industry based on a violation of the standards and norms of the profession.

The administrative process occurs separately from any criminal penalties associated with oyster poaching. Such penalties are rarely assessed – many cases result in a probation before judgment or *nolle prosequi*. Even when fines are assessed, they are minimal (\$118, on average), rendering criminal penalties an accepted "cost of doing business" rather than a significant deterrent to illegal harvest.

Since the passage of legislation in 2011 establishing DNR's administrative revocation authority for oyster authorizations, the General Assembly has amended the law on several occasions. Each time, the General Assembly has afforded DNR additional discretion that allows the department to consider an individual's history in the fishery, the severity of the alleged offense, the hardship a penalty may impose on the individual, and other mitigating circumstances when choosing whether and what type of penalty to pursue for poaching violations. The outcome of these changes has been a significant *decrease* in revocations imposed (less than 1 per year). Further, current law also allows a full-time waterman who has had their oyster authorization revoked to participate in other fisheries so that they may maintain a livelihood in the seafood industry even after revocation of the privilege to harvest oysters.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403

We believe that prior wise decisions made by the General Assembly have appropriately balanced a need for a strong deterrent from poaching activity and DNR's ability to remove 'bad actors' from the fishery with the discretion to decline to pursue revocation when circumstances or history do not warrant it.

CBF urges the Committee's UNFAVORABLE report on SB 76.

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