

Written Testimony in Opposition to Senate Bill 76

*Tidal Fish Licenses - Oyster Authorizations - Administrative Penalties
Before the Education, Energy, and the Environment Committee: February 4, 2025*

Introduction:

Thank you, Mr. Chairman, Vice Chairwoman and members of the committee. The University of Maryland Carey School of Law Environmental Law Clinic **OPPOSES** SB76, which would significantly reduce penalties for oyster poachers.

Overview:

Maryland is committed to protecting its natural resources, particularly critical oyster populations within its waters. Oysters play an integral role in the Chesapeake Bay by filtering excess nutrients, improving water quality and creating habitats for other aquatic life. Their reefs also help to protect shores from erosion as well as storm surge, protecting coastal communities. Maryland's oyster population is on the verge of extinction. Overharvesting and poaching threaten oyster populations, disrupting ecological benefits as well as impacting local communities. Laws that deter and punish poachers are essential to protecting the Chesapeake Bay and its aquatic inhabitants.

SB76's changes to administrative penalties would undermine these efforts. Currently, Maryland stands alongside other states in enforcing penalties against individuals who violate fishing laws aimed at safeguarding these vital oyster sanctuaries. Notably, Virginia imposes significantly harsher penalties than Maryland. Maryland's Oyster populations remain at risk. Without strong penalties for those who *knowingly* poach oysters, our oyster populations may be depleted.

Current Process and Fairness:

Maryland is obligated to provide each licensed individual with a rulebook that includes detailed maps outlining designated open and closed fishing areas, as well as established sanctuaries. Each licensed fisherman is required to sign this rulebook, thereby acknowledging both the receipt of the document and their understanding of Maryland's fishing regulations. This signed rulebook serves as an affidavit, affirming the fisherman's commitment to sustainable fishing practices and understanding of the penalties associated with noncompliance. It serves as an essential tool for the State in its case against violators, as it shows the fisherman had knowledge of the regulations and, consequently, should have been aware of any violations.

Maryland's existing administrative process is both effective and fair in addressing violations. Under the current framework, the Maryland Department of Natural Resources (DNR) has 90 days from the issuance of a violation to respond. This time frame allows both due process and adequate time for investigation for both parties. Additionally, DNR has discretion whether to bring enforcement proceedings for oyster poachers.

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Under the current system, individuals who receive a citation may have the option to prepay the fine and admit guilt or attend a district court hearing to determine guilt. Concurrently, if DNR finds the violation was egregious enough under §4-1210 to revoke their license, DNR has 90 days to notify the poacher that they must go before an administrative law judge. This timeline ensures that oystermen receive notice from DNR in a timely manner after receiving a citation.

As part of the investigative process under §4-1210, DNR conducts administrative hearings that mirror legal proceedings. These hearings provide an opportunity for both the state and the defendant to present evidence, examine witnesses—including expert witnesses—and engage in cross-examination. The process adheres to strict rules of evidence, ensuring that all evidence presented is both relevant and probative. Additionally, the state bears the burden of proof of showing the accused *knowingly* violated the law. Further, the state must prove the accused's guilt by a preponderance of the evidence.

Conclusion:

Maryland's current procedures for equipping fishermen with the necessary tools and resources, including comprehensive maps within the rulebook, effectively provide them with the means to avoid violations. Furthermore, the DNR website clearly outlines the administrative hearing process for violators. Maryland's existing administrative framework fairly balances support for sustainable oystermen while also safeguarding the state's vulnerable oyster population.

The University of Maryland Francis King Cary School of Law Environment Clinic strongly **opposes** SB76 as it challenges the integrity of Maryland's equitable and operational system for Administrative Penalties. For these reasons, we request an unfavorable report on Senate Bill 76.

This testimony is submitted on behalf of the Environmental Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.