

### **Written Testimony in Opposition to House Bill 893**

*Tidal Fish Licenses - Oyster Authorizations - Administrative Penalties  
Before the Environment and Transportation Committee: February 19, 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** HB893 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. The current legal and regulatory frameworks deter poachers and educate fisherman—both aspects needed to protect the Chesapeake Bay and its aquatic inhabitants.

HB893'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 by requiring mandatory license revocations for serious infractions and issuing multi-year bans for repeat offenders. Maryland's current framework allows for the Maryland Department of Natural Resources (DNR) to use their discretion in whether or not to even seek a penalty. If they choose so, trial proceedings ensure due process like any other judicial hearing. Each party has the opportunity plead their case and DNR must prove the oysterman *knowingly* violated the law. Without a strong system to deter those who otherwise would poach oysters, our at-risk oyster population will be further depleted.

#### **Current Process and Fairness:**

Education of waterman is important in the regulatory scheme to ensure everyone has the tools needed to responsibly fish. Maryland is obligated to provide each licensed individual with a rule book 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. 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. The system allows DNR discretion to

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consider mitigating factors when deciding whether to further bring an enforcement proceeding. If DNR finds the violation was egregious enough under §4-1210 to consider revoking their license, DNR has 90 days to provide notice to the poacher of a hearing with an administrative law judge. This time frame allows both due process and adequate investigation time for both parties.

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 the 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. The administrative process under §4-1210 mirrors legal proceedings.

### **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. 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** HB893 as it challenges the integrity of Maryland's equitable and operational system for Administrative Penalties. For these reasons, we request an unfavorable report on House Bill 893.

*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.*

**Oral Testimony in Opposition to House Bill 893**

*Tidal Fish Licenses - Oyster Authorizations - Administrative Penalties  
Before the Environment and Transportation Committee: February 14, 2025*

Thank you, Mr. Chairman, Vice Chairwoman and members of the committee for granting us the opportunity to provide testimony in opposition of HB893 which would change administrative penalties for violations of Maryland's fisheries laws.

*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.*

Maryland's current enforcement framework is both *fair* and *effective* in deterring poaching while protecting due process rights. But before I get to the administrative process, I want to highlight that Maryland goes to *great* lengths to educate fishermen about where, when, and how they can responsibly harvest oysters and other aquatic life. Each year, DNR provides fisherman with an updated rulebook, including comprehensive maps, to ensure they are fully informed of regulations and boundaries. Upon receiving these materials, the fisherman must sign an affidavit acknowledging they understand these laws. From the beginning, Maryland gives fisherman with tools for success—they are not left unequipped.

Maryland has been committed to protecting and promoting its natural resources, especially its oyster populations, which are at a *historical low*. Maryland is *not* an outlier in enforcing its fisheries laws. Maryland is in line with other Chesapeake Bay states, and notably, Virginia's penalties for poachers are harsher, requiring mandatory license revocations for serious infractions and issuing multi-year bans for repeat offenders.

Maryland's framework is also *fair* and *equitable* in addressing violations. Under the current system, individuals who receive a citation may have the option to prepay the fine and admit guilt or can argue their case in district court. Separately, DNR also has discretion when deciding whether to seek further penalties, ensuring that enforcement is measured and appropriate to the severity of the violation. If DNR finds the violation egregious enough to revoke their license, the poacher must be notified within 90 days that they must go before an administrative judge.

These hearings mirror judicial proceedings with due process safeguards that ensure equity for *both* parties. And importantly, before any penalty is imposed, the Department must *prove* that a violation was committed *knowingly*, so that honest mistakes are not unfairly punished. The enforcement process itself is protective of due process and fully compliant with the Administrative Procedure Act, providing a fair and transparent system just like any other administrative proceeding.

Maryland has built an enforcement system that effectively deters poaching while remaining fair. Watermen are given the resources to comply with the law, enforcement is not arbitrary, and due process protections are firmly in place. Changing this system would not strengthen fisheries management—it would weaken it.

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For these reasons and those stated by others on this panel, the University of Maryland Environmental Law Clinic **opposes** HB893 and requests an unfavorable report.