

## **PENALTIES – Updates to Commercial and Recreational Penalty Systems (2022)**

### **What is being considered?**

The department is considering updates to its commercial and recreational penalty schedules.

#### 1. Recreational updates

- Add penalty for shark handling violations – 90 day suspension for second or subsequent offense
- Add the following violations to the penalty schedule with 180 day suspensions:
  - Possession of fish with head and tail removed while fishing in nontidal waters
  - Catching black bass by means other than angling (hook and line) in nontidal waters
- Add the following violations to the penalty schedule with 1 year suspensions:
  - Violations in trout catch-and-release areas
  - Culling trout

#### 2. Commercial updates

- Add lying on commercial license application (35 points/revocation)
- Add use of unattended gill net in the Chesapeake Bay and its tidal tributaries (5 points/no immediate suspension)

3. Housekeeping updates: References to regulations which have been removed or amended will be updated.

### **Why is this change necessary?**

The department regularly updates its penalty schedule under the advice of the Sport Fisheries Advisory Commission/Tidal Fisheries Advisory Commission Joint Penalty Workgroup. The changes the department is considering are recommendations of the workgroup.

For the recreational updates, the department has seen an increase in land-based shark fishing in certain areas. This activity is legal, but comes with a number of requirements for the safe handling of sharks to ensure their maximum survivability following being caught. The workgroup recommended imposing a suspension only for a second or subsequent violation at this time to prioritize education of offenders first. For the possession of fish with head or tail removed while fishing in nontidal waters, it is important to ensure that fish with size limits are of legal size. Adding a suspension for this type of violation will help to ensure better compliance with current size limits. Based on a prohibition in the Maryland Annotated Code, black bass (largemouth and smallmouth bass) may only be caught in nontidal waters with hook and line. The department also has a regulation prohibiting the shooting of black bass with projectile gears. This action would add the statutory violation to the penalty schedule. If the violation were charged as a violation of the gear regulation it would potentially result in either a 180 day suspension or a 1 year suspension; the workgroup recommended adding the statutory violation at the lower of the two possible penalties. The two trout violations being added to the penalty schedule will result in greater parity in administrative penalties being levied on violations. Violations in delayed harvest areas currently result in a one year suspension while there is no current administrative penalty for violations in catch-and-release areas. This action will create an identical penalty for similar violations in the two areas. The department currently has rules regarding the culling of two species: striped bass and trout. A striped bass culling violation

currently results in a one year suspension; this action will add an identical penalty for culling trout.

For the commercial updates, the department has statutory authority to suspend or revoke an individual's tidal fish license and their entitlement to engage in commercial fishing activities both for any violation recommended by the penalty workgroup and for a small number of specific violations described in statute. The recommendations of the penalty workgroup are reflected in the penalty schedule in regulation. The department recently encountered the issue of a nonresident lying on their commercial fishing license application, presenting themselves as residents, in order to illegally obtain commercial oyster and clam harvester licenses. In order to be as transparent as possible, the department and the workgroup both thought it would be best to add the penalty for the offense to the schedule in regulation, even though the department has the authority to suspend or revoke without doing so. Setting the penalty at 35 points, which results in revocation of the license and the individual's entitlement to engage in commercial fishing activities, will ensure that individuals who are convicted of illegally obtaining a license will never be able participate in that fishery in the future either. Finally, the addition of an unattended gill net violation in the Chesapeake Bay and its tidal tributaries as a 5 point violation will help to ensure greater compliance with the attendance requirements for gill nets. Because 5 points on a licensee's record does not result in an immediate suspension, it essentially will act as an enhancement to the penalty for other violations committed and provide an incentive to avoid further illegal behavior during the time period the points are on the individual's license record.

**Who will this affect?**

Individuals who violate Maryland fisheries laws.

**When would this be effective?**

The department projects that this change could be effective in the spring of 2023. However, the exact date cannot be determined. The department will follow our normal proposal procedures if this concept moves forward.

**Has this change been discussed with stakeholders?**

1. Penalty Workgroup in June, 2022.
2. Discussed at Sport Fisheries Advisory Commission (SFAC) and Tidal Fish Advisory Commission (TFAC) July 2022 meetings as part of the workgroup reports.

**Additional Info**

Information about penalties, including tables for commercial and recreational violations can be found in the Code of Maryland Regulations (COMAR).

Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure ([COMAR 08.02.13](#))