

GUIDELINES ON THE SCOPE OF LICENSE AND PRIVILEGE REVOCATION ORDERS ISSUED UNDER VIRGINIA CODE § 28.2-232

Section § 28.2-232 of the Code of Virginia authorizes the Virginia Marine Resources Commission (the “Commission”) to revoke the licenses and fishing privileges of a person who has violated certain laws for a period of up to five years. People who have had their licenses and fishing privileges revoked have expressed confusion about the activities they are forbidden to engage in after the revocation order is issued. The Commission has promulgated this guidance document to help clear up that confusion by expressing its view of the law. Note, however, that this guidance document does not have the force of law and is not binding on the Commission, law enforcement officers, prosecutors, or other officials. Note also that this document does not constitute legal advice. The Commission encourages any person who has had their licenses and privileges revoked to consult with a private attorney to discuss the legality of any contemplated work in the fishing industry.

A revocation order that revokes a person’s licenses necessarily forbids the person from engaging in any activity for which a license is required under the Code of Virginia or the Commission’s regulations. Thus, for example, a person who has had his fishing licenses and privileges revoked will not be allowed to use any commercial gear to harvest fish or other marine organisms, fish recreationally, purchase another fisherman’s catch for commercial resale, or land seafood caught in other jurisdictions in Virginia for commercial purposes.

In addition, the revocation of a person’s fishing privileges forbids the person from engaging in any activity that constitutes fishing, as that term is defined in Virginia Code § 28.2-100, in the Commonwealth’s tidal waters. In addition to the actual using, setting, or operating the gear used to harvest marine organisms, the statute defines the term “fishing” to include all operations involved in taking or catching marine organisms and transporting or preparing for market those marine organisms. In other words, a person whose fishing privileges have been revoked is forbidden from doing any work onboard a fishing vessel that in any way pertains to the harvesting of marine organisms, preparing them for market, or transporting them from the place of harvest to the land. Thus, for example, a person under a revocation order would be forbidden from driving a boat while the boat has gear in the water or while it has marine organisms on board, culling oysters, or assisting other crewmembers with the use of any gear.

While the scope of the order is expansive, it does not forbid all activities pertaining to fishing or boating. A person under a revocation order may still fish commercially in other jurisdictions so long as the person complies with all applicable licensing requirements in those jurisdictions. The person’s catch can even be landed in Virginia so long as the person whose licenses and privileges have been revoked is not driving the boat in Virginia waters and some other person onboard has a valid seafood landing license. In addition, the person whose licenses and privileges have been revoked is not forbidden from fishing recreationally in those inland waters subject to the jurisdiction of the Department of Game and Inland Fisheries. Nor is the person forbidden from engaging in boating or other recreational activities in the tidal waters that do not involve the harvest of marine organisms. The person may also participate in the fishing industry by preparing seafood for, and transporting it to, market so long as those activities occur

on land. Thus, the person could drive a truck transporting seafood to a seafood buyer or from a buyer to retail stores and could work in a seafood processing facility.

Once the revocation period has elapsed, the person that was the subject of the order will be allowed to immediately purchase a commercial fisherman's registration license and any other license that the person would otherwise qualify for were it not for the revocation order.