

Fisheries Regulatory Scoping July 2016

Please review the following possible regulatory changes. DNR is looking for your advice on how to proceed with scoping (i.e. open houses, web feedback only, etc.).

American Lobster

Incorporate the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for American Lobster into regulation by reference.

Discussion: As a member of ASMFC, Maryland follows the Interstate Fishery Management Plan for American Lobster. In order to maintain a lobster fishery, Maryland must comply with the management plan and the specific rules for the lobster fishery. Maryland already follows the ASMFC management plan so rather than creating and adopting a management plan specific to Maryland, the Department plans to incorporate the ASMFC plan.

Additional Information: <http://www.asmfc.org/species/american-lobster>

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Blue Crab — Housekeeping Changes

- 1) Clarify that a licensed individual can keep 1 bushel of crabs. The current wording of the regulation for recreational crab pots can be interpreted to mean that they can only keep 2 dozen. The intention of the catch limits is to allow anyone who is licensed to keep 1 bushel of crabs.
- 2) Clarify the crabbing license exemptions so that it is clear that all individuals on a boat with a crabbing decal may help catch crabs.

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Channeled Whelk

Channeled whelks (*Busycotypus canaliculatus*) are harvested along the mid-Atlantic coast mostly for export market. They are harvested in Maryland primarily by pot and as bycatch in the otter trawl fishery. The minimum legal size for harvesting whelks in Maryland is 6 inches (152.4 mm) shell length.

- 1) Adopt a minimum girth size of 3-3/8 inches.

Discussion: At the Coastal Commercial Fisheries Forum held on October 16, 2015, a commercial constituent indicated that he would like the Department of Natural Resources to consider changing the channeled whelk minimum size measurement from length to girth. The Department periodically receives calls from harvesters complaining that whelks are lost to the fishery when the tips of the whelks are broken off before or during harvesting, which makes an otherwise legally harvestable whelk ineligible for harvest. Similarly, there is concern that the anterior canal may break off during handling.

In order to harvest a damaged channeled whelk at 6 in. minimum shell length, the recommendation is to set a minimum girth (diameter) equivalent to that length. The diameter of the shell at the widest point would have to be at least 3.375 in. for channeled whelks. This was derived from two studies on length/girth ratios with slightly different results. Fisher (2012) calculated that a 6 in. channeled whelk averages 3.23 in. However, Doctor (2009) found that the diameter at the widest point should be 3.5 in. for a 6 in. long channeled whelk. As a compromise, the recommended minimum girth is 3.375 in., which is equivalent to 3-3/8 inches.

- 2) Require an escape vent in traps.

Discussion: A commercial constituent asked the Department to consider implementing a 2 in. escape vent in the traps to allow undersized whelks to escape. The Department is considering implementing the escape vent, but would allow a grace period of 12-18 months for harvesters to retrofit their gear

References (Additional Information)

- 1) Doctor, Steve. 2009. Channeled Whelk (*Busycotypus canaliculatus*) Size Structure in the Commercial Fishery off the Maryland Coast. Maryland Department of Natural Resources.
- 2) Fisher, R.A. 2012. Channeled Whelk Assessment. Virginia Institute of Marine Science. http://www.vims.edu/research/units/centerspartners/map/frg/reports/docs_frg_reports/FRG2009_12_Robins.pdf

Scoping Recommendation for both whelk ideas: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Commercial License Targets

Commercial license targets need to be adjusted based on unlimited tidal fish licenses (UTFL) that were downgraded during the 2015/2016 license year.

Solution: 6 individuals downgraded their UTFL. Therefore, the UTFL number will be decreased by 6 and other authorizations (FGR, FIN, CB3, CLM, OYH, ODB, and CTL) will be increased by 6 each.

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Fishing in Nontidal Waters

1) Extend the upper boundary on the North Branch Potomac River's Upper Catch-and-Return Trout Fishing Area upstream about 600 feet to the public access point along the Senator Sarbanes Trail.

Discussion: The purpose of this idea is to increase angler access and fishing opportunities in the North Branch Potomac River. The United States Army Corps of Engineers (USACE) approached the Maryland Department of Natural Resources' Inland Fisheries Division regarding increasing public access to the Upper Catch-and-Return Trout Fishing Area in May 2016. This area under consideration is owned by the USACE – Jennings Randolph Lake Project.

Currently the public has access along the river via the Senator Sarbanes Trail; however, one must walk downstream about 500 feet before legally being able to fish. The USACE would like to provide fishing opportunities in this stretch of the river. The boundary would move upstream to the point where the Senator Sarbanes Trail meets the river, at a location agreed upon by the USACE. Also, if this additional stretch of the river would be open to public fishing, the Inland Fisheries Division would have additional stocking locations. As of now, there is only one stocking location access point in the Upper Catch-and- Return Trout Fishing Area.

2) Change the closure period from a "1" to a "0" on the following streams managed under Put-and-Take Trout Fishing Areas: Georges Creek, Accident Pond, Muddy Creek and Little Youghiogheny River.

Discussion: The above mentioned waterbodies are closed to fishing for up to three weeks after the initial stocking. Inland Fisheries staff have received calls during the past several years that catch rates were low or non-existent by opening day (Georges Creek). Georges Creek still has acid mine drainage (AMD) issues and is a very "flashy" stream during rain events. The lower portion of Georges Creek has a Youth and Blind Trout Fishing Area; however, it is no longer stocked due to periodic AMD issues. Accident Pond and Little Youghiogheny River basically serve the local community as a fishing location, and Inland Fisheries staff believe anglers travel from afar to fish these locations. Accident Pond is frequently fished by the youngsters in the community since it is located adjacent to the Town Park. The Little Youghiogheny River within the Town of Oakland is also a very "flashy" stream and does become quite turbid during rain events. Muddy Creek has experienced fish kills due to acidification; however, fish kills have been avoided since limestone was deposited in the stream (1999 - present), but during heavy snowmelt events the pH can still dip below 6.0 – so it is still on the brink at times.

In order to provide increased angler opportunity and a better return (catch) on the stocked trout a change from a "1" closure to a "0" closure will allow fishing immediately after the initial stocking. All four locations combined will provide for an additional 84 days of recreational fishing opportunities. Water quality issues that may occur during the three week closure period may be less

of an issue if anglers can fish for the trout immediately after stocking, providing a better return on the trout.

- 3) Require an individual to have a trout stamp to catch, attempt to catch or possess trout.

Discussion: Prior to the 2016 legislative session, it was unclear where an individual needed a trout stamp. Legislation became effective in 2016 that allows the Department to clarify the trout stamp requirements and remove any confusion about the management areas covered by the trout stamp. Requiring a trout stamp when you are fishing for or possessing trout was suggested rather than specifying a specific area because a person may be fishing for species other than trout in the same area.

- 4) Establish a legal dividing line on Barren Creek, a large tributary to the Nanticoke River.

Discussion: Currently there is no legal dividing line on Barren Creek. Place a dividing line at the US 50 bridge. An alternate site is the site of an old mill dam slightly downstream.

- 5) Increase the possession limit to twice the daily creel limit for certain nontidal fish species and change the daily/possession limits for yellow perch. See bold numbers in the table below for changes.

Discussion: This regulation is proposed in order to maintain consistency with having a double the daily creel possession limit on all species except American eel and baitfish. By increasing the possession to twice the daily creel, it will allow someone who may be on a multi-day fishing trip the ability to keep more than one daily limit without having to consume them each day. The species included are the species that currently don't have a possession limit or have a possession limit that is the same as the daily limit. The minimum sizes are not changing.

	Daily	Possession
Chain Pickerel	5	10
Muskellunge & Tiger Muskie	1	2
Northern Pike	2	4
Striped Bass & Hybrid Striped Bass	2	4
Trout - Statewide (all species)	2	4
Trout - Put-and-Take Areas (all species)	5	10
Walleye	5	10
Yellow Perch –		
Nontidal Streams and Rivers	10	20
Nontidal Lakes and Ponds	10	20

Scoping Recommendation for all Nontidal Changes: Scope on the Department's website, at local fishing clubs, Constant Contact, Facebook and Twitter.

Gear — Commercial and Recreational

Due to bills passed by the General Assembly during the 2016 Session, the Department must write regulations for a number of gears. The Sport Fish/Tidal Fish Gear Workgroup met on June 30, 2016 to discuss the gears and the potential rules.

- 1) Finfish Trotlines (Commercial Use)

Discussion: House Bill 63 provides the Department the ability to regulate the use of commercial finfish trotlines. Previously, the legality of the use of finfish trotlines by commercial licensees was vague due to multiple statutory interpretations. The rules the Department is considering are:

- Length – 1,200 foot maximum per trotline
- Number of trotlines – no limit
- No limit on number of hooks – let users self-regulate, allow the total length limit to limit the number
- Depth – must be set in water no less than 6 feet deep at mean low tide, must be set at least 6 feet below water surface
- Minimum hook size: 5/0
- Floats – make the rules the same as crab trotline floats
- Type of hooks – require circle hooks
- Bait limitations – prohibit all live bait
- Season/area restrictions – from March 1 to June 15, must set baits on bottom, no suspended baits allowed; prohibit finfish trotline gear in mainstem of Bay below Bay Bridge, including Pocomoke and Tangier Sounds (protected shark issue)

2) Bowfishing (Commercial Use)

Discussion: House Bill 1387/SB 1054 allows the Department to regulate the commercial use of bowfishing gear. Since the Department already has rules for bows in the recreational sector, the intention is to mirror the recreational rules for commercial users. The rules are largely intended to protect public safety, so it makes sense that the rules would be the same.

See attachment — Recreational Rules for Bows

3) Gigging (Recreational Use in Tidal and Nontidal Waters)

Discussion: House Bill 766 repealed the prohibition on the recreational use of gigs in tidal waters. The Department must now write rules for gigs in tidal waters in order for recreational users to be able to use the gear. Specifically, the Department will require a person to use the gig by hand (no mechanical devices) and will prohibit using a gig to catch trout, walleye, striped bass, striped bass hybrids, northern pike, muskellunge, muskellunge hybrids (including tiger musky), largemouth and smallmouth bass, snapping turtles, sharks, lobster and any species listed as threatened or endangered. The Department considered other rules such as requiring a retrieval line or safety zone, but is not pursuing those restrictions because gigs are hand-held and do not present the same safety issues as other projectile gear (bows and spear guns). The Department will also change the requirements for gigs in nontidal waters to be consistent with the rules in tidal water.

4) Slat Baskets, Bush Bobs, Bank Poles, and Dip Nets (Recreational Use in Nontidal Waters)

Discussion: House Bill 766 repealed the rules on slat baskets, bush bobs, bank poles, and dip nets in nontidal waters. The Department therefore needs to write rules for these gears.

- Prior to HB 766, slat baskets – which are the same gear as eel pots – were prohibited in nontidal waters. The Department will continue to prohibit slat baskets in nontidal waters.
- Bush bobs and bank poles were originally allowed in Allegany and Washington counties and in the Potomac and Monocacy rivers in Frederick and Carroll counties. However, the statutory rules regarding their use were problematic with regards to the species that were allowed, and staff presented public safety concerns regarding these gears. As such, the Department is scoping eliminating the use of these gears in nontidal waters to 1) eliminate the possibility of individuals accidentally breaking the law; 2) to protect more sensitive species from over-harvest; and 3) to protect public safety.
- Dip nets had been allowed in the Susquehanna River and in Allegany and Washington counties and in the Potomac and Monocacy rivers in Frederick and Carroll counties. Because the traditional fishery in the Susquehanna was for shad and herring, and because there is no open season for either species, the Department will no longer allow the use of dip nets in the nontidal portion of the Susquehanna. However, the traditional fishery in the western portion of the state

centers on suckers. Therefore, the Department proposes to allow the use of dip nets in the Potomac and Monocacy rivers and Conococheague Creek in Washington, Allegany, Frederick, and Carroll counties, but only for the harvest of suckers, carp, catfish, and Northern snakehead. This will allow the traditional fishery to remain, but address biologist concerns of using dip nets to target species such as largemouth and smallmouth bass.

5) Change the Definition of Bow to Archery Equipment (Recreational and Commercial)

Discussion: This is a housekeeping action to better characterize the gear that people are using. The Department would like to change the definition from bow to archery equipment. Archery equipment better encompasses the gear that individuals use and is consistent with terminology used by the Wildlife and Heritage Service. The definition includes vertical and cross bows.

Scoping Recommendation for Gear Changes: Scope on the Department's website, Constant Contact, Facebook and Twitter

Horseshoe Crab

Require that horseshoe crabs must be harvested from a vessel and prohibit the harvest of horseshoe crabs from shore.

Discussion: Harvesting horseshoe crabs from shore is not a traditional method in Maryland. It is also biologically irresponsible to harvest or disturb spawning horseshoe crabs.

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Scup

Change the minimum mesh size for trawls from 4 ½ inches to 5 inches for the harvest of scup.

Discussion: The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Fishery Management Plan requires a five inch minimum diamond mesh size for scup. Maryland regulations require a 4-1/2 inch minimum mesh size, which is out of compliance with ASMFC. This action is a housekeeping issue that will ensure our compliance with the management plan.

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Sharks — Smoothhound

Eliminate the recreational possession limit for smoothhound sharks (smooth dogfish).

Discussion: The Department would like to update the recreational smoothhound rules because both the Atlantic States Marine Fisheries Commission (ASMFC) and the National Marine Fisheries Service (NMFS) allow recreational anglers an unlimited number of smoothhound sharks.

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Tuna

Update tuna regulations to provide more consistency with the National Marine Fisheries Service (NMFS) and list bigeye tuna as in need of conservation.

Discussion: Tuna are highly migratory species and generally found off Maryland's coast in federal waters. Management of tunas is coordinated with the NMFS. A review of tuna regulations revealed that it's time to once again update those regulations to provide more consistency with NMFS, reduce confusion with state and federal regulations, and provide flexibility in how tuna are landed.

Specifics:

1) The Department would like to add bigeye tuna to the list of in need of conservation. According to the information in the National Oceanographic Atmospheric Administration (NOAA) Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), July 2006, bigeye tuna need

protection against the potential negative impacts resulting from an unregulated fishery. This will allow the Natural Resources Police to enforce the federal limits under state authority.

2) The Department is recommending changes that incorporate flexibility in how fish are landed consistent with NMFS to the recreational and commercial bluefin and yellowfin fisheries.

Recreational http://www.fisheries.noaa.gov/sfa/hms/compliance/guides/documents/rec_tunas.pdf

Commercial http://www.fisheries.noaa.gov/sfa/hms/compliance/guides/documents/4_qr_tuna.pdf

Scoping Recommendation: Scope on the Department's website, Constant Contact, Facebook and Twitter.

Recreational Oystering Days of the Week

Change the days of the week for recreational oystering from Monday through Saturday to Friday and Saturday only.

Discussion: The Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission held a meeting on July 13, 2016 to discuss legal methods for increasing accountability and curbing recreational harvest effort. Currently, recreational oyster harvesting is allowed for Maryland residents with gears, excluding dredges, Monday through Saturday. Each resident is allowed to harvest one bushel of oysters per day. There is no required license for residents to recreationally harvest oysters. A free license would not indicate actual usage for accountability, so a limit on effort would be another way to cut back on potential increases on recreational harvest. There's no way to know how many residents harvest oysters recreationally.

Specifics: Right now, recreational harvesters often harvest off of bars that are planted with seed paid for through taxes applied to commercially harvested bushels. The commercial sector and NRP have seen an increase in recreational users harvesting from these bars. After discussing each concept, the group decided the best option would be to limit the harvest to Friday and Saturdays for recreational harvesters. This would reduce recreational harvesting effort. Also, because Saturdays are a commercial day off, it would improve enforcement as one of the two allowable days would be open only to recreational harvesting.

Scoping Recommendations: Scope on the Department's website, Constant Contact, Facebook and Twitter.