

## Can a person (that has both commercial and guide licenses) harvest commercial catch while taking compensation for the trip (guide)?

Other than crabs, as recently provided for in regulation, the answer is no.

The answer is not straight-forward in one regulation or law. In fact, you have to piece together law and regulation for this conclusion. The Department's Assistant Attorney General provided the opinion based on the following references:

COMAR 08.02.18.02B(6) "Fishing guide" means an individual who accepts direct or indirect consideration for providing instruction, direction, supervision, or transportation to an individual for the purpose of catching fish by angling.

Fish is defined in Natural Resource Article 4-101 as "finfish, crustaceans, mollusks, and amphibians and reptiles which spend the majority of their life cycle in the water and any part egg, offspring, or dead body of any of these species."

Angling is defined in Natural Resource Article 4-601 as "catching or attempting to catch fish by hook and line, with the line held in hand, attached to a pole or rod held in hand, or attended in a manner that the fish voluntarily takes bait or lure in its mouth."

COMAR 08.02.05.02J states: A commercial tidal fish licensee may not catch or possess fish of the species listed in Natural Resources Article, §4-215, Annotated Code of Maryland, except crabs or shellfish, for commercial purposes during a trip for which fishing guide services are provided to a person for compensation from a vessel or shore in Maryland waters.

Natural Resource Article 4-215 is the fishery management plan law. So it means any species for which we have a fishery management plan (FMP) cannot be caught for commercial purposes while fishing guide services are employed.

You can put these rules together two different ways and come to the same conclusion that you cannot operate as a guide and a commercial harvester at the same time.

- Regulation specifically states that you cannot do this for a species that has an FMP unless it is crabs or shellfish. Crabs are now provided for in regulation. Oysters remain an open question under this regulation.
- The meat of the opinion lies in the definition of a fishing guide. The definition of fish in law includes oysters. However, the definition of fishing guide states that with a fishing guide authorization one may take compensation for fishing in the form of "angling," i.e. with a hook and line.
- A commercial harvester could provide "instruction" – basically showing how commercial fishing is done – but cannot keep the fish/crabs that were harvested.