

Fisheries Regulatory Update, May 2011

Effective Regulations:

NONE

Proposed Regulations:

Black Sea Bass — Recreational Season – Emergency & Proposed

08.02.05.21

Comment Period Ends 7/18/11, Scheduled Effective 8/22/11

Regulations for 2011 will be the same as last year. Season: May 22 through October 11 and November 1 through December 31; Size: 12 ½ ; Creel: 25.

Snapper Grouper – Housekeeping Correction

08.02.05.29

Comment Period Ends 7/18/11, Scheduled Effective 8/22/11

The proposed action corrects references for recreational creel limits. The action also updates the public notice provision to include reasons why a public notice would be issued and that the notice would be issued on the Fisheries Service website rather than a newspaper.

Striped Bass Permit — Transfer due to TFL Buyback Program

08.02.15.04

Comment Period Ends 7/5/11, Scheduled Effective 8/8/11

The purpose of this action is to amend Regulation 08.02.15.04 relating to the transfer of a striped bass permit. DNR has launched a program to buy back Unlimited Tidal Fish Licenses (“TFL”). TFL holders with a striped bass permit will be able to participate in the buyback, but must transfer their striped bass permit before August 31, 2011. The package was scoped at the February 2011 Scoping Meeting. All comment was favorable for change. The 1-year provision came after discussions at TFAC.

- Replaces the 3-year holding requirement with a 1-year holding requirement for transfer of a striped bass permit
- Exempts 2011 TFL Buyback participants from the holding requirement

Summer Flounder — Recreational Size & Season

08.02.05.12

Emergency and Permanent Proposals

Comment Period Ends 7/5/11, Scheduled Effective 8/8/11

- Reduces the minimum size from 19 inches to 18 inches for summer flounder caught in State waters. (NOTE: this change in size limit also applies to summer flounder caught by commercial hook and line fishermen.)
- Changes the recreational season to April 16 through November 30. Regulations for 2011 will be: Season: April 16-November 30; Size: 18”; Creel: 3.

Upcoming Regulations:

Soft-Shell Clam Regulation Clarifications

Modifies the soft-shell clam regulations in order to make clear which regulations apply to which species of clam (*Mya arenaria* and *Tagelus*).

Results of Scoping and Public Comment: Moving forward as planned.

Standardization of Bushel Containers and Oyster Tagging

The Department is proposing to add new regulations to bring Maryland in line with FDA requirements under the National Shellfish Sanitation Program's shellstock identification and traceability requirements. The regulation will include:

- Requirements for information to be included on the tag (harvesters license #, date, location, and type and quantity of shellfish)
- A requirement to place shellstock into a proper container (orange fish basket, clam crate, or standard MD tub). This will have to be done on the water, prior to leaving the bar.
- If the shellstock is harvested at more than one location, there will be a requirement to tag each container at its growing area.
- A requirement to tag each container of shellstock and the tag shall be in place while the shellstock is being transported to a dealer.
- Provisions for when the harvester is also the dealer
- Provisions for removing tags after they reach the dealer or are sold by a certified harvester
- Requirement for retaining the harvester tag for 90 days.
- Provisions for shore-based aquaculture operations
- Each tag will be pre-numbered and be marked with the year.

Results of Scoping and Public Comment: Moving forward as planned.

Penalties for Failing a Commercial Tag Audit

The Department is proposing to create a penalty for failing a tag audit related to striped bass and yellow perch commercial tags. Licensees are required to return unused tags. An audit of the reported harvest is compared to the number of tags returned. If a licensee fails this audit a penalty would be applied. The Department will define what determines "failure" of an audit and determine an appropriate penalty. A possible penalty would be that the licensee would not be allowed to get a permit the following year.

Results of Scoping and Public Comment: Moving forward as planned.

Public Notices:

Lease Application

Application for submerged land lease by M. Jay Robinson in Fishing Bay, Dorchester County, Maryland, along the western shore thereof between Tedious Creek and Goose Creek

Lease Application

Applications for three submerged land leases by Metompkin Seafood, Inc. , Joshua I. Todd and Casey I. Todd in Little Annessex River, Somerset County, Maryland published in the Crisfield Times on April 20, April 27, May 4 and May 11.

Lease Application

Applications for two submerged land leases by Metompkin Seafood, Inc. , Joshua I. Todd and Casey I. Todd in Big Annessex River, Somerset County, Maryland published in the Crisfield Times on April 20, April 27, May 4 and May 11.

Lease Application

Application for submerged land lease by Dale "Simon" Dean and Rachel A. Dean in Patuxent River, Calvert County, Maryland, located east – southeast of Broomes Island and north – northeast of Sotterley Point published in the Calvert Recorder on April 22, April 29, May 6 and May 13.

Lease Application

Application for submerged land lease by John A. Orme and Lorraine M. Orme in Rhode River, Anne Arundel County, Maryland, located on the southerly side thereof, north of Locust Point published in the Evening Capital on April 28, May 5, May 12, May 19.

Spiny Dogfish

The commercial spiny dogfish fishery opened at 12:01 a.m., May 1, 2011. Commercial fishing vessels without a federal spiny dogfish permit from the National Marine Fisheries Service (NMFS) may possess or land in Maryland up to 3000 pounds of spiny dogfish per day from Maryland waters (0 – 3 miles from shore).

Topics Discussed at the Scoping Meeting on May 9, 2011

Penalty (Feedback by May 24)

The action would add a new regulation for egregious or repeat crab or striped bass violations based on HB 1154/SB 635 from the 2011 General Assembly Session relating to 1) using illegal gear, 2) harvesting during closed season, 3) harvesting from a closed area, 4) exceeding harvest, catch, or size limits, or 5) violating tagging and reporting requirements. This action will also add the oyster poaching penalties provided by SB 159/HB 273 from the 2011 General Assembly (SFAC/TFAC Penalty Workgroup will be consulted).

Commercial Horseshoe Crabs, Summer Flounder, Black Sea Bass (Feedback by May 24)

The purpose of this action is to create consistency between regulations for the black sea bass, summer flounder, and horseshoe crab commercial fisheries and to allow some flexibility in coastal commercial permitting. Currently, there are inconsistencies in the regulations between the fisheries with regards to ownership in federally permitted vessels, changing of declared vessels, the number of commercial permits allowed on a federally permitted vessel, and quota overage management. The proposed changes would address these inconsistencies by amending the summer flounder regulations to adopt the wording of the black sea bass regulations regarding ownership of a federally permitted vessel and changing declared vessels; amending the summer flounder and horseshoe crab regulations to adopt the black sea bass regulations that allow for two permits to be fished from one vessel; and amending the horseshoe crab regulations to manage quota overages by deducting an overage in the annual harvest from the following year's quota.

In addition to the above changes, the proposed regulations will also add flexibility to the coastal permitted fisheries. Currently, the regulations for horseshoe crabs, summer flounder, and black sea bass establish declaration deadlines, but do not allow for late declarations or define the consequences for late declarees. The proposed changes would open a 14 day period during which late declarees could appeal to declare late. Current regulations also limit the transfer of permit allocations to 30% of a permit allocation in black sea bass and no transfer specifications are made in summer flounder. The proposed changes would allow permit holders in both fisheries to transfer a full permit allocation to another permit holder.

Oysters (Feedback by May 24)

The action would clarify that oyster taxes (severance and export) only apply to oyster caught in the public commercial fishery. It has been determined that the statute applies the oyster taxes to oysters caught on a natural oyster bar and the funds are used for repletion activities. Therefore, these taxes do not apply to oysters grown and harvested through aquaculture.

Clams (Feedback by May 24)

The action would require an individual to declare their intent to harvest clams. There will be no fee for this declaration. This would allow the Department to determine the licensees that should be submitting clam reports and who should receive shellfish closure books.

Leasing in Sanctuaries (Feedback by May 24)

The action would allow shellfish leasing in oyster sanctuaries except for Historic oyster bars as defined by the Yates survey (1906 to 1912) as specified in House Bill 208 from the 2011 General Assembly Session. Previously leasing was not allowed in sanctuaries except those areas leased before the 2010 sanctuary regulations went in place. In 2010 regulations changed sanctuary areas to include a larger network of oyster sanctuaries. Aquaculture leasing in sanctuaries under specified conditions can be compatible to restoration by adding to localized water quality improvements, providing ecosystem functions through habitat creation, and if reproductive oysters are used for aquaculture could enhance natural recruitment within the sanctuary. The Department is interested in establishing

initial limits on the amount of leased area allowed within a sanctuary (i.e. 10% of entire sanctuary), prohibiting leases on historic Yates bars in a sanctuary, prohibiting leasing from within 150 feet of a Yates bar in a sanctuary and implementing stringent penalties to a lease holder for poaching off the lease within a sanctuary.

Crabs (Feedback by May 17)

The action would eliminate the regulation that prohibits commercial harvest of blue crabs on the 2nd and 3rd Thursdays in November. The regulation is no longer needed because of the implementation of more effective year-long regulations that limit blue crab harvest, including the closure of the female crab fishery on November 10. The two closed days in November now impact male harvest only and do not result in any measurable reduction in harvest.

The action would remove the requirement to list a vessel number on a crabbing license. The provision was originally put in place in 2001 to assist with enforcement of the commercial day off requirement. However, Natural Resources Police now have access to the computer license system (COIN) to confirm a waterman's day off rather than what is printed on the license. Therefore, the provision is no longer needed for enforcement purposes.

The action would also clarify that all recreational crab pots are required to be marked with the owner's name and address regardless of whether they are set on a pole, buoy or attached to the owner's pier or dock. This aids enforcement officers when identifying the owner of the pot.

The action would allow all types of temporary and permanent transfers of frozen and male only limited crab harvester licenses (LCCs). Some permanent transfers are currently allowed. Prohibiting the temporary and some permanent transfers of these LCCs has caused a restriction on temporary and permanent transfers of other authorizations as well. This was unintended; allowing all types of transfers of frozen and male only LCCs will provide license holders with more business flexibility and does not affect conservation measures.

Commercial crab fishery options based on the winter dredge survey will be scoped. These will include changes to the current female closure periods and catch limits.

River Herring (Feedback by June 24)

This action would prohibit all recreational and commercial fishing for river herring beginning on January 1, 2012. Amendment 2 to the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan requires all river herring fisheries to be closed by January 1 of 2012 with exceptions for sustainable fisheries. This measure was deemed necessary to reverse a steady declining trend in river herring abundance, following a 93% reduction in coast wide landings from 1985 to 2007.

HOUSEKEEPING (No Substantive Changes):

Shellfish - Removes Harvest Reserve Areas (HRAs) that are in sanctuaries. HRAs are listed in regulation and need to be opened by public notice before an individual may harvest oysters in those areas. The HRAs that are being removed are areas that are in sanctuaries. The sanctuaries were established by regulation in 2010. The sanctuary regulation, because it is newer, overrides the HRA regulation and makes several HRAs not available for opening.

Nontidal – The nontidal regulatory chapter (COMAR 08.02.11 Fishing in Nontidal Waters) is made up of Regulations 1 through 11. We recently reviewed the chapter and think it needs to be reorganized in order to present regulations in a more concise and clear order. No substantive changes are being made. Sections of regulation will appear in different locations (all sections related to trout are being put into one regulation, nontidal/tidal dividing lines are being moved out of this chapter and into 08.02.01 General since they apply to both tidal and nontidal, zebra mussels will be moved to the chapter on nuisance species, and other similar changes).

Hearings – Corrects hearing procedures in the suspension chapter based on HB 396/SB414. HB 396/SB414 changed the hearing requirement to require the Department to provide an opportunity for a hearing.

General - Adds recreational license reciprocity agreement language for recreational fishing registrations. The recreational license reciprocity agreement was altered in light of the changes local jurisdictions made regarding the Federal Saltwater Angler Registry. Maryland and Virginia have reciprocal licenses under this agreement but will require the holders of such licenses to register in their State.

Felt definition - Defines what a felt is in order to clarify current ban for enforcement purposes. Felt will be defined to include all felt or felt-like materials.

Crayfish terminology - Updates the nuisance species regulation to use the more scientifically appropriate term, “crayfish” and not “crawfish.”

License Targets - The action would adjust the numbers of limited crab harvester (LCC), crab harvester -300, 600, 900 pots (CB3, CB6, CB9), and unlimited tidal fish (TFLs with CB3, CB6, CB9) licenses. These adjustments would be made based on the decrease in each license category due to the latent effort buy back programs.

Leasing – The action would make regulatory corrections based on HB 1053/SB 847. The General Assembly passed HB 1053/ SB 847 during the 2011 Session which moved the authority to issue water column leases from Maryland Department Environment to Maryland Department of Natural Resources (DNR). Regulations relating to leases need to be updated to indicate that DNR can issue water column leases.