

## Fisheries Regulatory Scoping April 2015

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.).

### **Blue Crab — Definition of Float**

The current regulation allows 20 undersized peelers per float, but does not define float. Harvesters may call any container a float which creates problems for both the resource and enforcement.

Discussion: NRP brought to Fisheries Service staff attention the difficulty they are having with enforcement of the tolerance limit on undersized peelers due to the fact there is no legal definition for a “float” in our current regulations. The lack of a definition to standardize the size of a float means there is no basis to keep small containers (some as small as 1ft<sup>2</sup>) from being called a float.

Solution: Based on feedback from the industry, it was determined that the typical float, used to shed peelers that will be sold as soft crabs, is built with a 4ft x 8ft sheet of plywood as the base. Recognizing that there could be reasons for a peeler float to have dimensions other than 4ft x 8ft Fisheries Service is proposing a float be defined as an area that is equal to or greater than 32 ft<sup>2</sup>.

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

### **General — Determination of Tolerance**

The regulations allow catch tolerances for several species. However, the regulations do not clearly state how an officer may determine the tolerance.

Solution: Natural Resource Police has asked the Department to include a statement in regulation that will allow an officer to take a subsample of the harvest or combine containers for measurement in order to determine if the tolerance has been exceeded.

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

### **Nontidal — Eel Minimum Size**

The statewide minimum size for harvesting eels is 9 inches. The nontidal regulation was not changed when the other eel changes were made. This rule change is necessary to comply with the Atlantic States Marine Fisheries Commission.

Solution: Change the eel minimum size from 6 inches to 9 inches.

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

### **NSSP Compliance for Shellfish**

The National Shellfish Sanitation Program (NSSP) is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. The Department has made a commitment to ensure that all shellfish harvest from Maryland waters complies with the requirements of the NSSP. Current regulation states that harvesters shall harvest shellfish in accordance with the NSSP; however, that is not always clear to harvesters and enforcement officers.

Solution: The Department will evaluate which portions of the NSSP apply to shellfish harvesters (wild and aquaculture) and then clearly state what is required in regulation. Items would include requirements like training, pet prohibitions, human waste containers, etc.

Scoping Recommendation: Scope at the Aquaculture Coordinating Council meeting, on the Department’s website, Constant Contact, Facebook and Twitter.

## **Oysters — Harvest Reserve Areas — Removal of Several Areas**

The County Oyster Committees have requested that the Department remove several harvest reserve areas from regulation. The areas include:

Chester River: Blunt Oyster Reserve; Coppers Hill Reserve; Devils Playground Reserve; Horse Race Reserve

Choptank River: Howell Point Oyster Reserve; La Trappe Creek

Eastern Bay: Cox Neck Reserve

Poplar Island Oyster Reserve

South River: Brewer Reserve

Upper Bay: Nine Foot Knoll Reserve

Discussion/Solution: Harvest reserve areas were developed in consultation with the industry and are areas that are reserved for the restoration and harvesting of oysters on a rotational basis. The areas were originally designated to provide ecological benefits and increase oyster population.

The oyster committees have determined that the reserve areas are not functioning as originally designed and would like them open to oystering at all times during the oyster season. The areas would no longer be defined in regulation and all harvest times, seasons, catch limits, gear limits, etc., would apply.

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

## **Shellfish Aquaculture**

1) Liberalize Registration Requirement: Current regulations require every individual that is conducting aquaculture activities to have either a Shellfish Aquaculture Harvester Permit or Registration Card in order to participate in activity on the lease. The industry has requested that allowances be made for harvesters that are accompanying a Permittee out on a boat. They have requested that the Department exempt them from the Registration requirement.

Solution: Allow a harvester on a boat working with a Permittee to be exempt from applying for and receiving a Registration Card. This would allow lease holders to hire short-term laborers that will be supervised by the permittee.

2) Possession of Permit: The current regulation only requires a harvester to have the Shellfish Aquaculture Harvester Permit when on the leased area.

Solution: Require the harvester to have the card in their possession at any time that they are in possession of or handling farm-raised shellfish.

3) Water Column Rental Fees: The Department worked with the Aquaculture Coordinating Council to establish an annual Water Column Lease rental rate of \$25 per acre that is applicable to all water column leases. The current regulation does not apply the \$25 water column rental rate to a water column lease outside of an Aquaculture Enterprise Zone (AEZ).

Solution: Include a rental rate fee of \$25 per acre for all water column leases not included in an AEZ.

4) Rental Fees for Leases Less than 1 Acre: The Department would like to establish a minimum lease rental rate for a submerged land or water column lease that is less than 1 acre in size.

Solution: A lease less than 1 acre will pay the rent for one full acre (\$3.50 for a submerged land lease or \$25 for a water column lease).

5) Power Dredging Notification: The current regulation requires individuals working leases that are located in a sanctuary to call the Department 48-hours in advance of power dredging. The leases that existed prior to the creation of the sanctuaries in 2010 (Oyster Sanctuaries of the Chesapeake Bay and Its Tidal Tributaries) are adjacent to the sanctuaries, but are not considered part of the sanctuary.

Therefore, these leases are exempt from the notification requirement. Anyone working a lease that is adjacent to a sanctuary should be required to notify the Department prior to using a power dredge.

Solution: Include the existing leases not considered to be part of a sanctuary in the notification requirement.

6) Public Shellfish Fishery Area (PSFA) Correction: In 2011 and 2012, the Department started the process to declassify a portion of PSFA bar 109 in Leadenham Creek, Talbot County. After all required surveys were completed and the harvest records and other quantitative data was considered, a lease was approved in a portion of the bar on November 26, 2012. The Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (June 2012) does not include this declassification and needs to be updated.

Solution: Update the Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (June 2012).

7) Clarify Wild vs Aquaculture Regulations: As the shellfish aquaculture industry grows it is becoming necessary to determine which regulations from the wild harvest and shellfish chapters apply to farm-raised shellfish harvest.

Solution: The Department will evaluate all regulations from the oyster and shellfish chapters (COMAR 08.02.04 and 08.02.08) and then clearly state in the shellfish aquaculture chapter (COMAR 08.02.23) which regulations apply to farm-raised harvest.

Scoping Recommendation for All Shellfish Aquaculture Issues: Scope at the Aquaculture Coordinating Council meeting and on the Department's website, Constant Contact, Facebook and Twitter.

### **Striped Bass — Atlantic Fishery**

1) Tolerance: The Atlantic Striped Bass commercial permit holders have requested a review of their current tolerance limit of 50 pounds per individual.

Discussion: Tolerance limits in this fishery changed when the Atlantic permits were converted to an Individual Transferable Quota (ITQ) fishery in 2015. Permit holders have suggested limits for consideration.

2) Season: The industry has also asked the Department to consider a permanent expansion of the Atlantic season to allow striped bass harvest in May and October.

Discussion: Currently, the Atlantic fishery is open from January - April and November - December. Adding two months to the season would provide permit holders more opportunity to harvest their quota. Over the past 6 years, the Atlantic fishery has harvested an average of 64% of their available quota. This is due to fish being available to permit holders inside the 3 mile line.

Scoping Recommendation: Discuss with Atlantic fishery permit holders and Scope on the Department's website, Constant Contact, Facebook and Twitter.

### **Regulations Being Developed — Ideas Previously Scoped**

Restitution; shellfish line clarifications (changes in shoreline/points due to erosion)