

## Fisheries Regulatory Scoping July 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.).

### American Eel

The 2012 American Eel Benchmark Stock Assessment indicated the American eel population in U.S. waters is depleted.

Discussion: The ASMFC American Eel Management Board approved Draft Addendum IV to the Interstate Fishery Management Plan (FMP) for American Eel with a goal to reduce overall mortality and increase conservation of American eel stocks. Addendum IV established a coast wide catch cap for the commercial yellow eel fishery starting in 2015. The following two management triggers were established; if the harvest cap is exceeded by more than 10% in any one year or if the harvest cap is exceeded for two consecutive years, then an individual state quota is allocated and required to be managed in the following year. Therefore, if the coast wide American eel harvest exceeds the coast wide cap by more than 10% in 2015, Maryland must have the ability to manage their quota (pre-determined in Addendum IV) starting in 2016.

Solution: In order to effectively manage a quota, more timely reporting will be required of the commercial fishery. Industry participants may be required to be permitted eel harvesters and commit to daily reporting requirements. This regulation would provide Fisheries Service with the authority under the American Eel Fishery Management Plan to modify, open or close the season by public notice.

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

### Black Bass — New Catch-and-Return Bass Fishing Areas

Add 6 tidal water bodies to the areas subject to the existing Catch-and-Return Bass regulation. Potomac River areas include: Upper Mattawoman Creek, Chicamuxen Creek, and the Spoils. Upper Chesapeake Bay areas include: Lloyd Creek, upper Northeast River, and the lower Susquehanna River.

Discussion: The largemouth bass and smallmouth bass fisheries are vast in the Chesapeake Bay watershed, and the most popular are concentrated in the tidal freshwater of Potomac River and upper Chesapeake Bay. Widespread recognition of a problem with the Potomac River fishery was noted in 2013 and 2014, but anglers were split in their responses on whether to increase restrictions on black bass fishing or to maintain regulations and await the improvement of spawning habitat. It will be proposed to adopt catch-and-return areas in Potomac River and the upper Chesapeake Bay. Catch-and-return areas are currently used in black bass fishery management to lessen negative impacts of angling effort. The catch-and-return areas are intended to improve the number of fishable bass and offer recreational anglers an opportunity to fish areas that are not fished intensively by tournament anglers during tournament days. If the regulation is enacted, survey results from MDDNR Tidal Bass Program will be evaluated for the catch-and-return areas every 5 years during annual meetings of an interdisciplinary stakeholder group to determine if the regulation remains warranted.

Scoping Recommendation: Black Bass Roundtable; Survey Monkey; popular fishing blogs; social media outlets (e.g., Maryland Bass Nation, Susquehanna River Fishing Club, Pennsylvania Bass Federation); public meeting to be held in the fall; county boards of tourism (Charles County, Cecil County); popular venues for bass tournaments (Smallwood State Park, Anchor Marine in North East); 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 2014/2015 license year.

Solution: 4 individuals downgraded their UTFL. Therefore, the UTFL number will be decreased by 4 and other authorizations (FGR, FIN, CB3, CLM, OYH, ODB, and CTL) will be increased by 4 each.

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

### **Fishery Management Plan — Incorporate Black Bass Fishery Management Plan into Regulation**

**Housekeeping** — This action would incorporate by reference the black bass FMP which has been through the review process and is now ready for adoption into regulation. The fishery management plan outlines how staff will assess population status and impose management actions, when necessary. Management actions included: protect habitat conditions; stocking; change and enforce creel limits and size limits; closing the fishery; adoptions of catch-and-return seasons or areas; and angler awareness strategies.

### **Gear — Minnow Traps**

Possible expansion of minnow trap use.

Discussion: The current regulations allow minnow traps to be used if tied off on your private property, or the private property of someone who has given you permission. You can also tie them off to an unmoored boat. The result is that if someone wanted to wade a stream they did not own riparian property on and catch their own minnows, they would need to float a kayak next to them with the minnow trap tied to that. Or, more likely, they are not going to be able to use a minnow trap. There have been a number of people who have been frustrated by their inability to catch their own bait because of the land-ownership requirement.

Solution: Consider allowing the use of a minnow trap on public property if the trap owner is present. There may need to be restrictions in certain areas.

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

### **General — Altering a Fish**

Natural Resources Police officers have asked Fisheries to add a requirement that prohibits a person from cutting a tail to alter the fish's length

Solution: language exists in striped bass and nontidal - we would create similar language that would apply to the entire subtitle (all fish).

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

### **General — Commercial Labeling of Gear/Vehicles/Vessels**

COMAR 08.02.01.02 is unclear if the following statement applies to commercial gear as well as vehicles, vessels and places of business. "Display of Identification Number. The licensee's identification number shall be plain vertical block characters of not less than 4 inches in height and shall contrast with the color of the background. All numbers shall be distinctly visible and legible."

Discussion: The regulation does not appear to be intended for gear marking since placing a 4 inch number on most gear is difficult or impossible. It should probably just apply to vehicles, vessels and places of business. A licensee would still be required to mark their gear with their identification number, but it will not have to be 4 inches.

Solution: Clarify that the display of a 4" identification number does not apply to gear.

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

### **General — Commercial Use of Another Person's Gear**

Clarify the use of your own gear vs using another licensee's gear. Example: Can waterman Joe use waterman Bill's gill net if both watermen are aboard the vessel? The gear is only marked with Bill's license number.

Discussion: State law (NRA 4-505) prohibits a person from catching and carrying away fish from another person's net. This was intended to protect watermen from theft, but the law clearly says you have to fish your own gear. By regulation, gill nets used for striped bass have to have "Each marker, cork, or float marked with the licensee's commercial tidal fish number; or a float line with a marker permanently affixed every 50 feet bearing the licensee's commercial tidal fish number." Bill's gill net is marked correctly and in compliance with this regulation. The problem is that Bill is not fishing it, Joe wants to fish Bill's net. Joe's license number is not on the net.

Solution: Clarify the law in regulation to say that you may use someone else's gear if the owner of the gear is on board the boat and the owner of the gear is in possession of their valid commercial license. This provision will be limited to finfish gear. Note that if there is a gear violation (corks, length, anchor, etc), the citation will be written to the owner of the gear. If there is a fish violation (size, lbs. etc), the citation will be written to the individual harvesting the fish.

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

### **Nontidal — Put-and-Take Trout Stocking — Herrington Creek and New Germany Lake**

Regional biologists have documented episodes of low pH in Herrington Creek and the creek has experienced fish kills due to acid deposition from a tributary in past years during the closure period. The park manager at New Germany Lake requested that the Department remove the closure.

Discussion/Solution: Remove the spring put-and-take trout stocking closure period from Herrington Creek and New Germany Lake. The areas would not have any closures after stocking. Allowing fishing immediately after stocking will help to reduce the chances of these problems affecting fishing success. It will reduce the impacts of poaching and the need for increased enforcement during the closure period allowing that effort to be focused on the open fishing period.

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

### **Nontidal — Northern Pike in Deep Creek Lake**

Through angler reports and field experiences the Department has identified the potential to develop a trophy Northern Pike fishery in Deep Creek Lake. Current statewide Northern Pike regulations are not suitable for the development of a trophy fishery; therefore, the Department is considering a regulation change, specific to Deep Creek Lake and its tributaries, to increase the overall size and reproductive potential of the Northern Pike. An additional potential benefit of this management strategy could be the biological control of Chain Pickerel in the lake – a species generally considered to be a nuisance by anglers and a known prey species of Northern Pike.

Solution: In order to develop the trophy potential of the Northern Pike in Deep Creek Lake, the Department plans to reduce overall harvest, protect adult fish until they reach a larger size, and improve reproductive potential through a closed season aimed at protecting pre-spawn fish. On Deep Creek Lake and its tributaries, change from 2 Northern Pike daily, 2 in possession, 30" minimum size, and no closed season to 1 Northern Pike daily, 1 in possession, 40" minimum size, and no harvest from January 1 through April 30, inclusive.

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

### **Nontidal — River Herring**

There is still an open season for herring in nontidal waters.

Discussion: The nontidal regulation was not changed when the river herring season was closed. Herring should be closed statewide.

Solution: Close the season, making it consistent with tidal waters.

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

### **Nontidal — Youghigheny Reservoir**

Regulations for the Youghigheny Reservoir were removed from COMAR in 2014. Removing them has created an enforcement problem.

Discussion: Even though part of the reservoir is in MD, we do not manage it in any way. The reservoir is managed by Pennsylvania. COMAR used to mirror PA regulations, but MD regulations were often incorrect because PA and MD are on different regulation schedules. The correction for that was to remove the reservoir regulations. However, removing the regulations has created an enforcement problem.

Solution: Put the reservoir regulations back into COMAR or reference PA regulations. That way NRP officers can enforce the PA regulations.

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

### **Penalty Changes for 2015**

Annual changes based on the penalty workgroup meeting that was held on June 2, 2015.

#### **COMMERCIAL CHANGES:**

1. Add violation of striped bass public notice (usually pertains to size/creel/season) to match other striped bass violations
2. Increase penalty for dynamiting from Tier V (25 points/180 days) to Tier VI (30 points/365 days) – aligns it with penalty for recreational and charter violations
3. Add Natural Resources Article, §4-1210(d), Annotated Code of Maryland to list of authority for “operating while suspended or revoked”
4. Add offenses related to Lacey Act (i.e. conspiracy to violate Lacey Act), increase penalty for Lacey Act violation – Lacey Act misdemeanor or a related offense will result in 1 year suspension; Lacey Act felony or a related offense will result in 2 year suspension
5. Amend violations for exceeding striped bass commercial catch limit to be more in line with current management practices (ITQ)
  - a. Tier II (10 points/30 day suspension of entire commercial fishing license/1 year suspension from striped bass fishery): the lesser of 50-99% of an individual's allocation OR between 500-999 pounds
  - b. Tier III (15 points/60 day suspension of entire commercial fishing license/1 year suspension from striped bass fishery): the lesser of 100-149% of an individual's allocation OR between 1,000-1,499 pounds
  - c. Tier IV (20 points/90 day suspension of entire commercial fishing license/1 year suspension from striped bass fishery): the lesser of 150-199% of an individual's allocation OR between 1,500-1,999 pounds
  - d. Tier V (25 points/180 day suspension of entire commercial fishing license/1 year suspension from striped bass fishery): the lesser of 200-249% of an individual's allocation OR between 2,000-2,499 pounds
  - e. Tier VI (30 points/365 day suspension of entire commercial fishing license/1 year suspension from striped bass fishery): the lesser of 250-299% of an individual's allocation OR between 2,500-2,999 pounds

- f. Tier VII (35 points/commercial license revocation): the lesser of 300% or more of an individual's allocation OR 3,000 pounds

**RECREATIONAL CHANGES:**

1. Add number of collapsible crab traps – 90 days (matches trotline length violation)
2. Add white perch size limit violation
  - a. 30 days for 20-49 undersized fish
  - b. 90 days for 50-99 undersized fish
  - c. 180 days for 100 or more undersized fish
3. Add possession of striped bass between midnight and 5 a.m. to the penalty schedule to match other striped bass violations (i.e. size limit or over the daily limit)
4. Add violation of striped bass public notice (usually pertains to size/creel/season) to match other striped bass violations
5. Amend tidal black bass penalties to match nontidal black bass penalties – both will be:
  - a. 180 days for season or catch/possession limit violation
  - b. 180 days for 3-4 undersized fish
  - c. 365 days for 5 or more undersized fish
6. Fishing on a suspended license – increase penalty from 1 additional year to 2 additional years
7. Add offenses related to Lacey Act (i.e. conspiracy to violate Lacey Act), increase penalty for Lacey Act violation – both a violation of the Lacey Act or a related offense will result in 2 year suspension
8. Amend enhanced penalties for repeat violators
  - a. Any person who receives 5 or more 180-day or 365-day suspensions within an 8 year period will receive an additional 5 year suspension
  - b. Any person who receives 3 or more 30-day or 90-day suspensions within a 3 year period will receive an additional 1 year suspension

**CHARTER CHANGES:**

1. Add violation of striped bass public notice (usually pertains to size/creel/season) to match other striped bass violations
2. Increase penalty for exceeding daily catch limit for crabs – currently a Tier I violation (no suspension), will move to Tier IV (20 points/90 days) – aligns suspension with recreational levels, addresses concerns of illegal charters
3. Increase maximum penalty for size limit or creel limit violations – current maximum is Tier III (15 points/60 days) – increase maximum to Tier VI (30 points/365 days)
4. Add offenses related to Lacey Act (i.e. conspiracy to violate Lacey Act), increase penalty for Lacey Act violation – Lacey Act misdemeanor or a related offense will result in 1 year suspension; Lacey Act felony or a related offense will result in 2 year suspension

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

**Public Shellfish Fishery Area (PSFA) — Declassify a Portion of PSFA 110**

The Department received an application for a 16.3 acre submerged land lease in Edge Creek, Talbot County. The proposed lease site is located within PSFA 110 and since a lease may not be located in a PSFA, the lease applicant has petitioned the Department to declassify the proposed lease site portion of PSFA 110 in accordance with COMAR 08.02.04.17. The Department conducted a biological survey of the proposed site and found no live oysters within this area. Declassification of this portion of the PSFA would result in the establishment of a submerged land lease and oyster habitat improvement.

**Solution:** Once the application has successfully completed the Department's shellfish lease review process, coordinates for PSFA 110 would be amended to exclude the 16.3 acre area proposed to be established as a submerged land lease.

**Scoping Recommendation:** Scope at the Aquaculture Coordinating Council, Department's website, Constant Contact, Facebook and Twitter.

## **Spiny Dogfish — Commercial Fishery**

Five of seven members of the Spiny Dogfish Work Group (SDWG) met on May 27, 2015 to discuss performance of the fishery.

Eligibility — The SDWG voted unanimously to change the 2 year/10,000 lb landing requirement to 3 years/15,000 lbs.

Discussion: Since limited entry was implemented there have been significant changes that impacted the fishery. Specifically, there were two seasons of harsh winters, European market was lost, fuel costs, fish were mostly in federal waters in 2014/2015, and the price was \$0.14-17/lb.

Level of Controversy: Opposition should be minimal although there are a few non-permit holders that could disapprove because permit holders have not caught the quota and they would like to be able to land more spiny dogfish.

Eliminating paper permits —The SDWG voted unanimously in support of eliminating paper permit cards.

Discussion: Permits are listed on the commercial fishing license. COMAR requires spiny dogfish to be sold to a federally permitted dealer so the landings data are available to managers within one week which is faster than the permit card. Permit cards are not submitted until the end of the season. The Spiny dogfish fishing season is May 1-April 30.

Level of Controversy: None anticipated.

New Entrants — Allow someone who owns an Atlantic Striped Bass Permit to have a vessel trip limit of 5,000 lbs. Four out five of the SDWG members supported this measure.

Discussion: This is a way to allow new people into the fishery. This will help catch the quota by watermen that catch spiny dogfish as bycatch when targeting striped bass. This may help reduce dead discards of spiny dogfish.

Level of Controversy: There may be some opposition to this measure because of the number of Atlantic striped bass permit owners this will allow to catch up to 5,000 lbs. Additionally, there may be opposition because non-permit holders want to catch more than 5,000 lbs since the quota has not been caught.

Scoping Recommendation for All Spiny Dogfish Changes: Scope on the Department's website, Constant Contact, Facebook and Twitter.

## **Possible Pilot Program for the 2016 Commercial Yellow Perch Fishery – No regulations are necessary to implement this pilot program**

Fisheries Service intends to initiate a pilot program for the commercial yellow perch fishery, whereby commercial fishermen who voluntarily participate in the pilot will no longer be required to tag individual yellow perch and provide the Department with daily call-ins. Instead, the pilot participants will use the new electronic reporting and hailing system each day they participate in the fishery. To replace the individual tags, pilot participants will be using a box or container tag which will contain detailed information about the contents of the container.