

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Natural Resources**  
(DLS Control No. 14-044)

---

## **Overview and Legal and Fiscal Impact**

This regulation allows an individual who holds an Atlantic Menhaden Bycatch Allowance Landing Permit (permittee) to designate another individual to act as an operator. Subject to certain conditions, an operator may use the permittee's pound nets to harvest Atlantic menhaden on the permittee's behalf.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies. Small businesses may be positively impacted.

## **Regulation of COMAR Affected**

### **Department of Natural Resources:**

Fisheries Service: Fish: COMAR 08.02.05.07

---

## **Legal Analysis**

### **Background**

Atlantic menhaden support one of the most important and productive fisheries on the Atlantic coast. Millions of these small oily fish are harvested each year for processing into fertilizer, animal feed, dietary supplements, and bait. Menhaden also play an important role in marine ecosystems, serving as an important food source for bird and fish species such as osprey and striped bass.

Recent stock assessments conducted by the Atlantic States Marine Fisheries Commission (ASMFC) indicate that overfishing has caused sharp declines in Atlantic menhaden populations. As a result, ASMFC has adopted measures requiring each of its member states, including Maryland, to reduce annual commercial harvests of Atlantic menhaden by 20% and to shut down the commercial fishing season as soon as annual quotas have been met. The new ASMFC measures also establish bycatch allowances for menhaden and introduce new reporting and monitoring requirements for fishers catching menhaden as bycatch.

In 2013, the Department of Natural Resources adopted regulations implementing the new ASMFC requirements. These regulations include provisions specific to individuals who harvest

menhaden as bycatch from pound nets in the Chesapeake Bay. While pound net fishers typically target higher-value fish like striped bass, menhaden nevertheless make up a significant portion of harvests from pound nets. Pound net fishers sell their menhaden bycatch to crabbers and other fishers for use as bait, thus supplementing their income from target fish species. To accommodate the pound net fishers, the department established an Atlantic Menhaden Bycatch Allowance Permit system. This system allows individuals who operate pound nets registered with the department to continue harvesting menhaden after Maryland's annual catch limit has been reached and the targeted menhaden fishery has been closed. This regulation is intended to improve flexibility for individuals who harvest menhaden from pound nets under an Atlantic Menhaden Bycatch Allowance Landing Permit.

## **Summary of Regulation**

The regulation allows a permittee to designate another individual to act as an "operator," which the regulation defines as "an individual who is not a permittee and acts as an agent of a permittee." The operator must be the individual whom the permittee has authorized to use the permittee's commercial fishing license in accordance with § 4-701(k) of the Natural Resources Article. The operator may only fish the pound nets that the permittee has registered in the permittee's name and has notified the department as being active, and the operator must be on board the vessel named on the permittee's tidal fish license and in possession of the permittee's tidal fish license while harvesting menhaden under the permit. The permittee is responsible for reporting any menhaden harvested by the operator in accordance with existing regulations. Finally, the regulation makes technical changes for clarity and consistency in language.

## **Legal Issue**

The regulation presents no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 4-2A-03 of the Natural Resources Article as authority for the regulation. This section requires the department to develop conservation programs designed to ensure the continued ability of fish deemed "in need of conservation" to perpetuate themselves successfully. In the summer of 2013, the department officially listed Atlantic menhaden as being "in need of conservation" under COMAR 08.02.12.03. This listing enables the department to adopt regulations restricting fishing for the species. Additionally, the department may wish to cite § 4-701(k) of the Natural Resources Article, which authorizes the transfer of a tidal fishing license under specified circumstances and procedures, similar to the authority granted in this regulation; the department has been notified of this suggested addition. The authority is otherwise correct and complete. The regulation complies with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies. Small businesses may be positively impacted.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation may have a meaningful positive impact on small businesses by allowing an Atlantic menhaden bycatch allowance permittee to use an operator to land menhaden under the permit. The department advises that it is not known how many permittees will choose to use an operator or what economic benefit those permittees will realize as a result. The Department of Legislative Services concurs.

## **Contact Information**

**Legal Analysis:** April M. Morton – (410) 946/(301) 970-5350

**Fiscal Analysis:** Scott D. Kennedy – (410) 946/(301) 970-5510