

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Natural Resources**  
(DLS Control No. 14-154)

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

This regulation establishes a summer flounder study area in the Atlantic Ocean to allow the Department of Natural Resources to evaluate whether commercial hook and line size limits should be made consistent with size limits for other commercial gears. The regulation also clarifies the declaration period for summer flounder permits and adds standard language notifying tidal fish licensees of their right to appeal certain permit determinations.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

## **Regulation of COMAR Affected**

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

Fisheries Service: Fish:  
COMAR 08.02.05.12

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## **Legal Analysis**

### **Background**

Summer flounder are found in coastal waters and bays all along the Eastern seaboard, from Nova Scotia to Florida. With an average length of 15 to 22 inches for mature individuals, the species is highly prized by both commercial and recreational fishermen.

The Atlantic States Marine Fisheries Commission, a regional organization responsible for managing coastal fish stocks, sets Maryland's commercial summer flounder quota each year. The department divides a portion of this quota amongst the individuals who possess Maryland summer flounder landing permits. A Maryland summer flounder permit holder may annually transfer up to 100% of the permittee's individual quota to another permittee upon notification to, and approval by, the department. However, no single permittee may hold more than 29% of the allocation for the total fishery. An individual who holds a tidal fish license but not a summer flounder landing permit may also catch a limited amount of summer flounder for commercial purposes. This amount is capped at 100 pounds per day from the Atlantic Ocean, its coastal bays, and tributaries, and 50 pounds per day from the Chesapeake Bay.

Under current regulations, commercial fishermen using hook and line to catch summer flounder must observe recreational minimum size limits established by the department through

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public notice (currently set at 16 inches). Commercial fishermen using other gear types, such as trawl or gill nets, are subject to a minimum size limit of just 14 inches. Department regulations provide that the Secretary of Natural Resources may establish or modify catch limits, size limits, quotas, and seasons for summer flounder in order to implement the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Summer Flounder, by issuing a public notice on the Fisheries Service website. Currently, the commercial season is planned to run throughout the entire year.

## **Summary of Regulation**

The regulation establishes a study for summer flounder in the area of the Atlantic Ocean between one and three miles from the Maryland coast. The study will consist of a season in May (from May 1 through May 15, inclusive) and another season in October (from October 16 through October 31, inclusive), and will conclude on May 16, 2016. During these seasons, commercial fishermen using hook-and-line gear to fish for summer flounder will be subject to a minimum size limit of 14 inches, consistent with the commercial minimum size limit for other gear types. At all other times, commercial fishermen using hook-and-line gear must continue to observe recreational hook-and-line size limits for summer flounder, currently set at 16 inches. The department reports that at the end of the study period it will evaluate the effects of the regulations to determine whether commercial size limits for summer flounder should be made uniform across all gear types.

The regulation also clarifies the declaration period for summer flounder landing permits. Tidal fish licensees are required to declare their intent to fish for summer flounder between August 1 and August 31 of each year. Finally, the regulation adds standard language regarding tidal fish licensees' rights to appeal certain permit determinations. Prior to suspending a summer flounder landing permit or denying an application for a summer flounder landing permit, the department must give a licensee notice of its intended action and an opportunity to appear at a hearing conducted in accordance with contested case procedures.

## **Legal Issue**

The regulation presents no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 4-215 and 4-701 of the Natural Resources Article as authority for the regulations. Section 4-215 requires the department to prepare fishery management plans for 24 species, including summer flounder. Subsection (h) of this section authorizes the department to adopt regulations implementing or adjusting conservation and management measures under a fishery management plan. Section 4-701 authorizes the department to issue tidal fish licenses (subsection (b)) and summer flounder landing permits (subsection (f)(1)(v)). Under subsection (n)(6) of this section, prior to suspending or revoking a commercial fishing license or authorization the department must notify the licensee in writing of the licensee's right to a hearing conducted in accordance with the State's contested case statutes.

This authority is 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.

### **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 impact on small businesses. For four short study periods over a two-year period, the regulation changes the size restriction applicable to summer flounder caught by commercial licensees with hook-and-line gear within a specified study area in the Atlantic Ocean. This may benefit those licensees but negatively impact other licensees that use other types of gear, to the extent that the licensees using hook-and-line gear are able to catch more of an overall statewide quota (applicable to all licensees other than a small number of permitted licensees that have separate, individual quotas). 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