

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	06/04/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/11/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

08 02 05 12

3. Name of Promulgating Authority

Department of Natural Resources

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

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6. Check applicable items:

New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 4/28/2014.

- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes **X-** No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Shara Mervis Alpert, Assistant Attorney General, (telephone #410-260-8358) on 6/4/2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Eileen Mosley

Title

Regulations Coordinator

Telephone No.

410-260-8107

Date

6/4/2014

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.05 Fish

Authority: Natural Resources Article, §§4-215 and 4-701, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Natural Resources proposes to amend Regulation .12 under COMAR 08.02.05 Fish.

Statement of Purpose

The purpose of this action is to establish a two year study for Summer Flounder in the Atlantic Ocean in order to evaluate whether commercial size limits could be uniform across all gear types including hook and line. The action also clarifies the declaration period for a Summer Flounder permit and adds standard language to notify permittees of appeal rights should the Department undertake an administrative action against the permittee.

The action establishes a study for Summer Flounder in the area of the Atlantic Ocean between 1-3 miles from the Maryland coast. The study will consist of a season in May and a season in October. During these seasons in this area, Summer Flounder may be harvested by commercial licensees using hook-and-line gear at the size limit for all other commercial gear, which is 14 inches. Currently, commercial licensees using hook-and-line gear must abide by the recreational size limit when harvesting Summer Flounder. Outside of the study area, and outside of the study dates, commercial licensees using hook-and-line gear will still be required to follow the recreational size limit, which is currently 16 inches. The study will be run for two years, through May 2016. At the conclusion of this period, the Department will evaluate the effect of these regulations on Summer Flounder fisheries and the extent of conflict among various user groups.

The action also clarifies the declaration for the summer flounder permit. Currently, permittees declare for the permit during license renewal; the old language was not clear that license renewal was the only time to do so, but the new language does. Lastly, the action adds standard language to the penalty section of the regulation to notify permittees of their appeal rights.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed action may have a slight positive economic impact for certain commercial licensees, and may have a slight negative economic impact for other commercial licensees.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:		
NRP Enforcement	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:		
(1) Commercial License Holders Fishing Atlantic Ocean	(+)	Indeterminable
(2) Chesapeake Bay Pound Netters	(-)	Indeterminable
(3) Non-Permitted Atlantic Ocean Licensees	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

B. Enforcement of the study regulations will be handled by current Natural Resources Police staff.

D(1). This action will potentially have a positive impact on commercial license holders fishing in the Atlantic Ocean with hook-and-line gear. This potentially includes all commercial licensees with TFL, FIN, and HLI licenses. Those licensees who use hook-and-line gear to catch Summer Flounder will now have a season and an area in which they will be able to catch Summer Flounder with a minimum size of 14", rather than the current minimum size of 16" for recreational anglers and commercial hook-and-line anglers. If these licensees do not have Summer Flounder permits, they will be limited to the current 100-pound-per-day limit that all non-permitted licensees have. Based on research done by the Fisheries Service, a 14-inch Summer Flounder has a dockside value between \$1.25 and \$2.75/pound. Therefore, a licensee catching their full daily allowance of 14-inch Summer Flounder will stand to make between \$125-275 per trip based on the sale of the Summer Flounder prior to expenses. In comparison, a 16-inch Summer Flounder (the current minimum size for commercial fishermen using hook-and-line) would bring between \$1.50 and \$3.50/pound. Therefore, a licensee catching their full daily allowance of 16-inch Summer Flounder will stand to make between \$150-\$350 per trip based on the sale of the Summer Flounder prior to expenses. The actual benefit these

licensees will realize from this regulation will be those Summer Flounder that the licensees catch between 14 and 16 inches. It is not known at this time what percentage of the catch these fish will make up, nor is it known how many licensees will take advantage of the special season in the Atlantic Ocean.

D(2). The allowable quota for Summer Flounder caught by commercial licensees who are not Summer Flounder Permit holders is shared by all commercial licensees who do not hold a Summer Flounder Permit. In the Chesapeake Bay, pound nets make up the vast bulk of the Summer Flounder harvest. None of the pound net fishermen in the Chesapeake Bay hold a Summer Flounder Permit. If more of the quota for non-permit holders is caught by hook-and-line fishermen in the Atlantic Ocean, it will decrease the quota available to Chesapeake Bay pound net fishermen, resulting in a negative economic impact. Because it is not known at this time how much the special season in the Atlantic Ocean will increase the hook-and-line fishery, it is not known at this time how great of an economic impact this regulation will have on the pound net fishermen in the Chesapeake Bay.

D(3). The allowable quota for Summer Flounder caught by commercial licensees who are not Summer Flounder Permit holders is shared by all commercial licensees who do not hold a Summer Flounder Permit. In the Atlantic Ocean, most commercial licensees use gear other than hook-and-line, and only seven licensees hold Summer Flounder permits. If more of the quota for non-permit holders is caught by hook-and-line fishermen in the Atlantic Ocean, it will decrease the quota available to commercial licensees in the Atlantic Ocean that use gear other than hook-and-line and do not have a Summer Flounder Permit, resulting in a negative economic impact. Because it is not known at this time how much the special season in the Atlantic Ocean will increase the hook-and-line fishery, it is not known at this time how great of an economic impact this regulation will have on the commercial licensees in the Atlantic Ocean that use gear other than hook-and-line and do not have a Summer Flounder Permit.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Please see analysis in Part A.II.D. Most of the regulated industry, commercial licensees, are also small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Summer Flounder Study Regulations, Regulatory Staff, Department of Natural Resources, Fisheries Service B-2, 580 Taylor Avenue, Annapolis MD 21401, or call (410)260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to (401)260-8310. Comments will be accepted through July 28, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 15

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

There are no funds necessary to implement these regulations. The enforcement of the special season will be handled by current staff.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

.12 Summer Flounder.

A.—B. (text unchanged)

C. Licenses and Permits.

(1)—(3) (text unchanged)

(4) Declaration.

(a) Tidal fish licensees shall declare their intent to fish for summer flounder [by] *between August 1 and August 31* of each year.

(b)—(e) (text unchanged)

(5)—(9) (text unchanged)

D. (text unchanged)

E. Reporting and Penalties.

(1)—(4) (text unchanged)

(5) *Prior to suspending a permit under this regulation or denying an application for a permit, the Department shall give the licensee notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.*

F. (text unchanged)

G. *Summer Flounder Study Area.*

(1) *Study Area. The study area is that part of the Atlantic Ocean located between 1 and 3 miles from the Maryland shoreline.*

(2) *The study shall:*

(a) *Occur May 1 through May 15 and October 16 through October 31, dates inclusive; and*

(b) *Conclude on May 16, 2016.*

(3) *Any individual licensed to catch finfish for commercial purposes may harvest summer flounder in accordance with §G of this regulation.*

(4) *Notwithstanding §B(2) of this regulation, a commercial licensee fishing in the study area may not catch or possess a summer flounder less than 14 inches total length, regardless of the gear type used.*

(5) An individual participating in this study shall comply with all other commercial fishing requirements of this regulation.

(6) During the study period described in §G(2) of this regulation, a commercial licensee may not engage in fishing activities in the Atlantic Ocean, within 1 mile of the Maryland shore, its coastal bays or their tidal tributaries while in possession of summer flounder, caught by hook and line, that are less than the size described in §B(2)(a) of this regulation.

JOSEPH P. GILL
Secretary of Natural Resources