

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	07/18/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 8/22/2014

2. COMAR Codification

**Title Subtitle Chapter Regulation**

08 02 13 10

3. Name of Promulgating Authority

Department of Natural Resources

**4. Name of Regulations Coordinator Telephone Number**  
Eileen C Mosley 410-260-8107

**Mailing Address**

Tawes State Office Building, 580 Taylor Avenue, C-4

**City State Zip Code**  
Annapolis MD 21401

**Email**  
emosley@dnr.state.md.us

**5. Name of Person to Call About this Document Telephone No.**  
Jacob Holtz 410-260-8262

**Email Address**  
jacob.holtz@maryland.gov

**6. Check applicable items:**  
X- New Regulations

- Amendments to Existing Regulations
    - Date when existing text was downloaded from COMAR online: .
  - 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  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 #410-260-8359) on July 18, 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**

July 18, 2014

# **DEPARTMENT OF NATURAL RESOURCES**

## **Subtitle 02 FISHERIES SERVICE**

### **08.02.13 Fishing License—Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure**

Authority: Natural Resources Article, §§4-206, 4-701 and 4-1201, Annotated Code of Maryland

#### **Notice of Proposed Action**

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The Secretary of Natural Resources proposes to establish Regulation .10 under COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure.

#### **Statement of Purpose**

The purpose of this action is to establish a penalty schedule for seafood dealers dealing in Maryland seafood. This action was requested by the industry to reflect the differences in the operation of seafood dealers versus seafood harvesters. Currently, when a seafood dealer commits a violation they would be penalized under the Commercial penalty schedule. The Commercial penalty schedule was devised in coordination with the Sport Fisheries Advisory Commission (SFAC) and Tidal Fisheries Advisory Commission (TFAC) Penalty Workgroup with the commercial harvester in mind. However, the number of fish it would take to incur a suspension for a harvester is considerably lower than what the Penalty Workgroup thought would qualify as a severe or egregious violation by a seafood dealer because seafood dealers aggregate the harvest of a number of individuals. This action is the result of coordination with the SFAC/TFAC Penalty Workgroup and a number of seafood dealers.

#### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

#### **Estimate of Economic Impact**

The proposed action has no economic impact.

#### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on 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 Dealer Penalties, 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@maryland.gov](mailto:fisheriespubliccomment.dnr@maryland.gov), or fax to 410-260-8310. Comments will be accepted through September 22, 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 as they create a penalty system for seafood dealers. The Department already has penalty systems for commercial harvesters, recreational anglers, and charter boats.

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

These regulations create a penalty system for seafood dealers. There is no direct impact to the regulated industry.

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

These regulations create a penalty system for seafood dealers. There is no direct impact to small businesses.

G. Small Business Worksheet:

### **Attached Document:**

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#### ***.10 Seafood Dealer Penalties.***

*A. For each conviction of a chargeable offense listed in §§E—K of this regulation, the Department shall enter on the record of the person the number of points listed for that particular conviction.*

*B. The points and penalties associated with each conviction are described in §§E—K of this regulation. All statutory references are to Natural Resources Article, Annotated Code of Maryland, unless otherwise noted.*

*C. The term 'person' as used in this regulation is defined under Natural Resources Article, §4-101, Annotated Code of Maryland.*

*D. The points and penalties as described in §§E—K of this regulation apply to individuals holding a Seafood Dealer's License under Natural Resources Article, §4-701(d)(2)(ii)(4), Annotated Code of Maryland and purchasing seafood from individuals, other than themselves, licensed under Natural Resources Article, §4-701(d)(2)(ii), Annotated Code of Maryland to harvest seafood for sale.*

*E. Tier I. The following violations are Tier I violations. A person who receives a conviction for a Tier I violation receives 5 points.*

	<i>Statute or Regulation</i>	<i>Description</i>
	4-215, COMAR 08.02.04.04	<i>Violating Requirements Pertaining to Tagging Oysters: less than 5 Bushels</i>
	4-1027	<i>Selling or Shipping Hard-Shell Clams without the Proper License</i>
	COMAR 08.02.02.05	<i>Possessing Undersized Soft-Shell Clams: 15%—24% per Bushel in 5 or More Bushels</i>
	4-1036, COMAR 08.02.02.08, COMAR 08.02.02.09	<i>Unlawfully Selling or Shipping Soft-Shell Clams</i>
	4-215, 4-803, COMAR 08.02.03.14E	<i>Possessing Undersized Crabs — 10 or more bushels containing:</i> (a) <i>Hard Crabs:</i> (i) <i>10—30 per bushel;</i> (ii) <i>23—75 per barrel;</i> (b) <i>Peelers:</i> (i) <i>Over 15 per bushel;</i> (ii) <i>Over 25 per float; or</i> (c) <i>Soft Crabs: 10 or more</i>
	4-215, 4-803, COMAR 08.02.03.14B	<i>Possessing Female Crabs in Male Crab Bushels — 10 bushels or more containing over:</i> (a) <i>10 per bushel; or</i> (b) <i>23 per barrel</i>
	4-215, 4-803, COMAR 08.02.03.11A	<i>Violating Regulations Pertaining to Mature Female Crab Closure Period — 5 bushels or more containing over:</i> (a) <i>8 per bushel; or</i> (b) <i>18 per barrel</i>
	4-809(c)	<i>Possessing Fat, Snot, Green or Buckram Crab in Worcester County: 20 or more</i>
	COMAR 08.02.06.01	<i>Violating Snapping Turtle Size Limits: 12 or more undersized snapping turtles</i>
0	COMAR 08.02.06.01	<i>Possessing Snapping Turtle Eggs</i>
1	4-2A-03, 4-215, COMAR 08.02.15.05	<i>Violating Requirements Pertaining to Tagging Whole Striped Bass: 5—15 fish</i>
2	4-2A-03, COMAR 08.02.15.07	<i>Violating Requirements Pertaining to Striped Bass Size Limits: 5—15 fish</i>
3	4-215, COMAR 08.02.21.03	<i>Violating Requirements Pertaining to Yellow Perch Size Limits: 11—24 Fish</i>
4	4-733, COMAR 08.02.15.12	<i>Possessing Fish Whose Size or Weight Cannot Be Determined — more than 50 lbs</i>

*F. Tier II. The following violations are Tier II violations. A person who receives a conviction for a Tier II violation receives 10 points and a 30 day suspension.*

	<i>Statute or Regulation</i>	<i>Description</i>
	4-1007, COMAR 08.02.04.16, COMAR 08.02.23.04F	<i>Failure to be properly licensed as a Buy Station when buying oysters</i>
	4-215, COMAR 08.02.04.04	<i>Possessing Undersized Oysters: 15%—24% per Bushel in 5 Bushels or More</i>
	COMAR 08.02.02.05	<i>Possessing Undersized Soft-Shell Clams: 25%—49% per Bushel in 5 or More Bushels</i>
	4-215, COMAR 08.02.21.03B	<i>Violating Requirements Pertaining to Yellow Perch Size Limits: 25—50 fish</i>

*G. Tier III. The following violations are Tier III violations. A person who receives a conviction for a Tier III violation receives 15 points and a 60 day suspension.*

<i>Statute or Regulation</i>	<i>Description</i>
4-743	<i>Knowingly Violating Shellfish Quarantine</i>
COMAR 08.02.03.14	<i>Possessing Undersized Hard Crabs — 10 or more bushels containing: (a) 31—40 per bushel; or (b) 76—100 per barrel</i>
4-902	<i>Violating Regulations Pertaining to Terrapins—No Commercial Sale</i>
4-2A-03, 4-215, COMAR 08.02.15.05	<i>Violating Requirements Pertaining to Tagging Whole Striped Bass: 16—25 fish</i>
4-2A-03, COMAR 08.02.15.07	<i>Violating Requirements Pertaining to Striped Bass Size Limits: 16—25 fish</i>
4-215, COMAR 08.02.21.03	<i>Violating Requirements Pertaining to Yellow Perch Size Limits: 51 or more fish</i>
<i>Natural Resources Article, Title 4, COMAR 08.02.03, COMAR 08.02.04, COMAR 08.02.05, COMAR 08.02.15, COMAR 08.02.21, COMAR 08.02.22, COMAR 08.02.23</i>	<i>Purchasing fish harvested during a closed fishing season</i>

*H. Tier IV. The following violations are Tier IV violations. A person who receives a conviction for a Tier IV violation receives 20 points and 90 day suspension.*

<i>Statute or Regulation</i>	<i>Description</i>
COMAR 08.02.04.04	<i>Possessing Undersized Oysters: 25—49% per Bushel in 5 or More Bushels</i>
4-215, COMAR 08.02.04.04	<i>Violating Requirements Pertaining to Tagging Oysters: 5—9 Bushels</i>
COMAR 08.02.02.05	<i>Possessing Undersized Soft-Shell Clams: 50% per Bushel in 5 or More Bushels</i>
COMAR 08.02.03.14	<i>Possessing Undersized Hard Crabs — 10 or more bushels containing: (a) 41—50 per bushel; or (b) 101—125 per barrel</i>
4-2A-03, COMAR 08.02.05.09	<i>Possessing River Herring: 5 or more per container</i>
4-2A-05(c), COMAR 08.02.12.04A	<i>Taking Endangered or Threatened Species of Fish</i>

*I. Tier V. The following violations are Tier V violations. A person who receives a conviction for a Tier V violation receives 25 points and a 180 day suspension.*

<i>Statute or Regulation</i>	<i>Description</i>
COMAR 08.02.04	<i>Possessing Undersized Oysters: 50% or more per Bushel in 5 or More Bushels</i>
4-215, COMAR 08.02.04.04	<i>Violating Requirements Pertaining to Tagging Oysters: 10 or More Bushels</i>
COMAR 08.02.03.14	<i>Possessing Undersized Hard Crabs — 10 or more bushels containing: (a) 51 or more per bushel; or (b) 126 or more per barrel</i>
4-2A-03, 4-215, COMAR 08.02.15.05A	<i>Violating Requirements Pertaining to Tagging Whole Striped Bass: 26—35 fish</i>
4-2A-05, COMAR 08.02.15.07	<i>Violating Requirements Pertaining to Striped Bass Size Limits: 26—35 fish</i>

COMAR 08.02.21.03B, 4-215	Possessing Undersized or Oversized Yellow Perch: 41—50 fish
4-215, COMAR 08.02.03.08	Possessing Egg-Bearing Females Harvested Out-of-State — Bill of Sale Required
COMAR 08.02.05	Unlawfully Possessing American Shad, Hickory Shad, or Sturgeon

J. Tier VI. The following violations are Tier VI violations. A person who receives a conviction for a Tier VI violation receives 30 points and a 365 day suspension.

Statute or Regulation	Description
4-708, 4-701(1)(2), COMAR 08.02.13.02E	Operating When a License is Suspended or Revoked
4-701	Operating Without a Required Commercial Fishing License or Authorization
COMAR 08.02.24A, COMAR 08.02.05.24B	Unlawfully Finning Sharks or Dogfish
16 U.S.C. § 3371-3378	A Violation of the Lacey Act (Misdemeanor)
4-2A-03, 4-215, COMAR 08.02.15.05A	Violating Requirements Pertaining to Tagging Whole Striped Bass: 36 or more fish
4-2A-05, COMAR 08.02.15.07	Violating Requirements Pertaining to Striped Bass Size Limits: 36 or more fish

K. Tier VII. The following violations are Tier VII violations. A person who receives a conviction for a Tier VII violation receives 35 points and license revocation.

16 U.S.C. § 3371-3378	A Violation of the Lacey Act (Felony)
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L. In addition to the penalties as described in §§E—K of this regulation, a person who receives 5 or more violations under Natural Resources Article, Title 4 on separate days within a two year period may be subject to a suspension not to exceed 180 days.

**JOSEPH P. GILL**

*Secretary of Natural Resources*