

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Natural Resources**
(DLS Control No. 14-262)

Overview and Legal and Fiscal Impact

These regulations update and clarify rules for fishing in nontidal waters. The regulations modify closure periods for put-and-take trout fishing to give anglers more opportunities to harvest fish stocked by the Department of Natural Resources. The regulations also expand the trout catch-and-return area on Little Hunting Creek to include all waters within the boundaries of Cunningham Falls State Park.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Natural Resources:

Fisheries Service: Fishing in Nontidal Waters:
COMAR 08.02.11.01, .04, and .06

Legal Analysis

Background

Maryland's nontidal fisheries encompass fresh-water and cold-water species in rivers, streams, and ponds throughout the State. These fisheries are primarily recreational. Management objectives for nontidal fisheries included habitat protection, the enhancement of native brook trout populations, stocking of hatchery-produced brown and rainbow trout, and the maintenance and creation of public access to trout waters. In addition to trout, the department regulates fishing for largemouth and smallmouth bass, channel catfish, pike, eels, herring, shad, walleye, and several other fresh-water species.

The department's Put-and-Take Trout Project aims to enhance recreational fishing opportunities in Maryland by periodically stocking waters with hatchery-raised brown and rainbow trout. Maryland does not have one single day when all stocked trout streams are open. Instead, the department has established several "closure periods" in March and April that effectively create multiple "opening days" during the spring stocking period. The department reports that this has been a source of confusion to many anglers. These regulations do away with the April closure periods (which had been designated closures #3 and #4), increasing the number of days open to trout fishing and allowing anglers to fish and harvest trout in put-and-take waters immediately after stocking.

Catch-and-return areas are pristine waters that support wild rather than stocked trout populations. The existing catch-and-return area on Little Hunting Creek in Cunningham Falls State Park is considered one of the highest quality wild trout resources in Frederick County. These regulations expand this area upstream through newly acquired property adjacent to the park, which had previously been closed to public fishing.

Summary of Regulations

The regulations update trout fishing rules to lengthen the season for put-and-take trout fishing in certain waters and expand the area for catch-and-return trout fishing on Little Hunting Creek. Regulation .01 removes closures #3 and #4 statewide, so that each area stocked by the department is subject to, at most, one closure period (either #1 or #2). All closure periods are removed for Sideling Hill Creek and Flintstone Creek. The regulation also extends the catch-and-return area on Little Hunting Creek to include all waters of the creek lying within the boundaries of Cunningham Falls State Park.

The regulations also repeal several duplicative and confusing provisions concerning fishing in nontidal waters. Regulation .04 is amended to remove gear restrictions that were moved to COMAR 08.02.25.02 by an earlier regulatory action. Regulation .06, which contained seasons, minimum size limits, and creel limits for the special fishing area in the Youghiogheny Reservoir, is repealed in its entirety. The department reports that, although parts of the Youghiogheny Reservoir lie within Maryland, the reservoir falls under the jurisdiction of Pennsylvania. Regulation .06 duplicated regulations promulgated by the Pennsylvania Fish and Boat Commission. However, because Pennsylvania adopts regulations on a different schedule than Maryland, these regulations are often incorrect. Rather than continue to publish outdated rules, the department is repealing regulation .06 and instructing anglers to consult Pennsylvania's rules.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 4-205, 4-221, 4-602, 4-603, and 4-616 of the Natural Resources Article as authority for the regulations. Section 4-602, 4-603, and 4-616 are most relevant to the regulation of nontidal fisheries. Section 4-602 grants the department broad authority to adopt regulations to “extend, restrict, or prohibit catching, possessing, purchasing, transporting, or exporting fish from nontidal waters.” The department must give due regard to the distribution, abundance, economic value, and breeding habits of fish in nontidal waters when developing regulations. Section 4-603 requires the department to establish and publish by October 25 each year open seasons to catch specified species of freshwater fish, including brook trout, brown trout, and rainbow trout. Similarly, § 4-616 requires the department to adopt regulations establishing creel, possession, and size limits for freshwater fish by October 25 each year.

Section 4-205 describes the general power, duties, and responsibilities of the department with respect to fisheries management. Subsection (f) of this section provides the basis for Pennsylvania's management of the Youghiogheny Reservoir, authorizing the department to negotiate an agreement with any other state concerning catching fish, the size of fish, or fishing

seasons. Section 4-221 authorizes the department to adopt regulations to define and govern the use of recreational fishing gear.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The department has submitted revised text to correct internal cross references in COMAR 08.02.11.04 that were affected by the re-tabulation of sections within the regulation.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have 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 regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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