

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/12/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/17/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

08 02 11 01, .04, .06

3. Name of Promulgating Authority

Department of Natural Resources

4. Name of Regulations Coordinator Telephone Number
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5. Name of Person to Call About this Document Telephone No.
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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 9/3/2014.

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 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 9/11/2014. 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

9/12/2014

Title 08
DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.11 Fishing in Nontidal Waters

Authority: Natural Resources Article, §§4-205, 4-221, 4-602, 4-603, and 4-616,
Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend Regulations .01 and .04 and repeal Regulation .06 under COMAR 08.02.11 Fishing in Nontidal Waters.

Statement of Purpose

The purpose of this action is to update and clarify existing regulations for fishing in nontidal waters.

Specifically this action amends Regulation .01 by removing the #1 trout closure on both Sideling Hill Creek and Flintstone Creek, removing the #3 and #4 trout closure periods from all areas and extending the existing Catch-and-Return Area on Little Hunting Creek to include all areas within the boundaries of Cunningham Falls State Park. This action removes duplicative language in Regulation .04 that has been moved to COMAR 08.02.25.02. This action also repeals Regulation .06.

Closure period #1 is being removed from Sideling Hill Creek and Flintstone Creek because poor fishing in these streams over the last several seasons has generated numerous complaints. These areas have traditionally been stocked near the beginning of the three week 1 closure period leaving a long period for potential poaching to occur. A long closure increases the risk of high water causing the trout to move out of publicly accessible areas. Regional biologists have documented episodes of high pH in these streams due to photosynthesis of heavy benthic algal growth. This may increase mortality or cause the fish to move out stocked areas. Allowing fishing immediately after stocking will help to reduce the chances of these problems affecting fishing success.

The #3 and #4 trout closure periods are being removed from all stocked trout areas because multiple opening days have been a source of confusion to many anglers. There remains support for an “opening day of trout season” in Maryland, and maintaining closures #1 and #2 (both open on the last Saturday of March) preserves that tradition. The removal of closures #3 and #4 will allow anglers to fish and harvest trout in Put-And-Take waters immediately after stocking. This will increase the number of days open to trout fishing. It will reduce the impacts of poaching and the need for increased

enforcement during the closure periods allowing for more enforcement during legal fishing times. It will also reduce the loss of fish due to extreme weather events and migration out of publicly accessible waters.

The existing Catch-and-Return Area on Little Hunting Creek is being extended to include all areas within the boundaries of Cunningham Falls State Park because the recently acquired property has exceptional water quality and fish habitat. Little Hunting Creek is one of the highest quality wild trout resources in Frederick County supporting both native Brook Trout and naturalized Brown Trout. The creek within the Cunningham Falls State Park Manor Area has been managed for wild trout since 1994 with no trout stocking and under artificial lures and flies only, catch-and-return regulations. Under this management, the wild trout populations have thrived and provided fishermen with a high quality, wild trout resource. This change would extend those regulations upstream through a newly acquired property adjacent to the Park which had previously been closed to public fishing. Surveys in 2013 documented a brown trout standing crop of 125 lb/acre and a density of more than 565 adult brown trout per acre in this section. The regulation will protect this resource from overharvest and maintain a high quality fishery.

Gear regulations were moved to COMAR 08.02.25.02 in an earlier regulatory action. The gear regulations in COMAR 08.02.11.04 are now duplicative and their removal in this action is purely a housekeeping measure.

COMAR 08.02.11.06 is being repealed because it merely duplicates regulations that Pennsylvania promulgates. Pennsylvania is the managing regulatory authority in the Youghiogheny Reservoir. Because Pennsylvania promulgates regulations on a different schedule than Maryland, these regulations are often incorrect. Rather than continue to have incorrect rules, the Department is removing these regulations and directing anglers to consult Pennsylvania's rules.

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 Nontidal Regulations, Regulatory Staff, Department of Natural Resources, Fisheries Service, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment.dnr@maryland.gov, or fax to 410-260-8310. Comments will be accepted through November 17, 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:

These regulations change when and how anglers may catch trout, removes duplicative language, and removes out-of-date regulations. There are no funds necessary for their implementation.

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

These regulations change when and how anglers may catch trout, removes duplicative language, and removes out-of-date regulations. While fishing opportunities may change, slightly, there is no economic benefit.

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 change when and how anglers may catch trout, removes duplicative language, and removes out-of-date regulations. There is no impact to small businesses.

G. Small Business Worksheet:

Attached Document:

.01 Trout Fishing and Management Areas.

A. (text unchanged)

B. Put-and-Take Trout Fishing Areas.

(1) Open Season. Put-and-take trout fishing areas are closed to all fishing from 10 p.m. of the first date to 5:30 a.m. of the last date, during the period listed in the following schedule:

(a) (text unchanged)

(b) Closure 1—From the first Sunday after March 4 to the last Saturday in March; *and*

- (c) Closure 2—From Sunday to Saturday of the last full week of March[;].
- [(d) Closure 3—From the first Sunday after April 8 to the following Saturday; and
- (e) Closure 4—From the first Sunday after April 15 to the following Saturday.]

(2)—(5) (text unchanged)

(6) Except as provided in §C(1) of this regulation the following areas are subject to the provisions in §B(1)—(4) of this regulation:

	Closure Periods
(a) Allegany County:	
(i) Evitts Creek mainstem upstream of Interstate 68	1[, 3]
(ii) (text unchanged)	
(iii) Flintstone Creek watershed	[1, 3] 0
(iv) Wills Creek mainstem upstream of the U.S. Army Corps of Engineers Flood Control Project at The Narrows above Cumberland	1[, 3]
(v) Fifteen Mile Creek watershed	1[, 4]
(vi) North Jennings Run watershed	2[, 3]
(vii) Jennings Run mainstem downstream of the confluence of North Jennings Run	2[, 3]
(viii)—(xi) (text unchanged)	
(xii) Georges Creek mainstem from the upper extent of Town Park in Westernport upstream to Neff Run	1[, 3]
(xiii)—(xvi) (text unchanged)	
(b) Anne Arundel County:	
(i) Severn Run mainstem upstream of Maryland Route 3	1[, 4]
(ii) (text unchanged)	
(c) Baltimore County and Baltimore City:	
(i) Patapsco River mainstem from the B & O Viaduct upstream to Bloedes Dam	1[, 3]
(ii) Little Falls mainstem from Wiseburg Road upstream to Valley Mill Road	1[, 4]
(iii) Gunpowder Falls mainstem from a red post located 1.6 miles downstream of Corbett Road downstream to the hiker/biker bridge located approximately 1 mile downstream of Phoenix Road; and, from Cromwell Bridge downstream to the Interstate 95 bridge	1[, 4]
(iv) Little Gunpowder Falls mainstem from Jericho Road upstream to Maryland Route 165	1[, 4]
(v)—(ix) (text unchanged)	
(d)—(e) (text unchanged)	
(f) Carroll County:	
(i) Beaver Run mainstem upstream of Maryland Route 91	1[, 3]
(ii) Piney Run mainstem downstream from Arrington Road	1[, 3]
(iii)—(vi)	
(vii) South Branch Patapsco River mainstem from West Friendship Road (Howard County side) and Main Street (Carroll County side) downstream to its confluence with the North Branch Patapsco River	1[, 3]
(viii) (text unchanged)	
(g) Cecil County:	
(i) Principio Creek mainstem upstream of Maryland Route 7	1[, 4]
(ii) (text unchanged)	
(iii) Big Elk Creek mainstem from the bridge at Maryland Route 277 upstream to the Pennsylvania state line	1[, 4]
(iv) (text unchanged)	
(h) Frederick County:	
(i) Fishing Creek mainstem upstream of Fishing Creek Reservoir including the left fork (Steep Creek)	1[, 4]
(ii) Owens Creek mainstem from Buck Lantz Road downstream to Roddy Road	1[, 4]
(iii) Friends Creek watershed	1[, 4]
(iv) Middle Creek mainstem from the Maryland Route 17 bridge at the junction of Bittle Road upstream to the confluence of Spruce Run	1[, 4]
(v)—(xiii) (text unchanged)	
(i) Garrett County:	
(i)—(ii) (text unchanged)	

(iii) Bear Creek mainstem from the corner of Fish Hatchery Road and Rabbit Hollow Road downstream to the confluence with the Youghiogheny River at Friendsville.	1[, 3]
(iv) Mill Run mainstem downstream of uppermost bridge of Mill Run Road	1[, 4]
(v) Muddy Creek mainstem	1[, 4]
(vi)—(xi) (text unchanged)	
(xii) Accident Pond	1[, 4]
(xiii) Little Youghiogheny River mainstem, from Maryland Route 219 downstream to the Youghiogheny River	1[, 4]
(xiv) Herrington Creek mainstem	1[, 4]
(xv)—(xvii) (text unchanged)	
(j) Harford County:	
(i) Deer Creek mainstem from 1 mile south of Rocks State Park upstream to the bridge at Maryland Route 23	1[, 3]
(ii) Little Gunpowder Falls mainstem from Jericho Road upstream to Maryland Route 165	1[, 4]
(iii) (text unchanged)	
(k) Howard County, Montgomery County, and Prince George's County:	
(i)—(x) (text unchanged)	
(xi) Patuxent River mainstem from base of Rocky Gorge Reservoir Dam in Laurel downstream to the Baltimore and Ohio Railroad crossing	1[, 3]
(xii) South Branch Patapsco River mainstem from West Friendship Road (Howard County side) and Main Street (Carroll County Side) downstream to its confluence with the North Branch Patapsco River	1[, 3]
(xiii) Great Seneca Creek from Maryland Route 28 upstream to Maryland Route 355	1[, 3]
(xiv)—(xviii) (text unchanged)	
(l) Washington County:	
(i) Beaver Creek from the downstream side of the bridges located on the private farm lane below the Albert Powell State Trout Hatchery downstream to Black Rock Creek; and from Beaver Creek Road downstream to the confluence with Antietam Creek	1[, 3]
(ii) Sideling Hill Creek watershed	1[, 4] 0
(iii)—(v) (text unchanged)	
(vi) Licking Creek mainstem	1[, 3]
(vii)—(ix) (text unchanged)	
(m)—(n) (text unchanged)	

C. Catch-and-Return Trout Fishing Areas.

(1)—(2) (text unchanged)

(3) Areas Limited to Use of Artificial Lures Only.

(a) (text unchanged)

(b) Areas subject to the provisions of this section are:

(i)—(vi) (text unchanged)

(vii) Little Hunting Creek, Frederick County. Mainstem from a red post located approximately 1/4 mile downstream of Maryland Route 806, upstream [approximately 1 mile] to include all waters of Little Hunting Creek within the [upper boundary] boundaries of Cunningham Falls State Park[Manor Area].

(4) (text unchanged)

D.—H. (text unchanged)

.04 Statewide General Regulations.

[A. Use of Projectile Gear.

(1) Subject to the provisions of this section, a person may use projectile gear to take fish in nontidal waters except for all trout species, walleye, striped bass, striped bass hybrid, northern pike, muskellunge, muskellunge hybrids including tiger musky, and largemouth and smallmouth bass.

(2) A person may not take or attempt to take any fish with a projectile gear in a Put-and-Take Trout Fishing Area or Special Fisheries Management Area for trout at any time.

(3) A person may not take or attempt to take any fish with a projectile gear in State-controlled community ponds or lakes. However, the Department may permit the taking of carp in community ponds and lakes when it deems advisable.]

[B.] A.—[L.] K. (text unchanged)

[M. Use of Dip Nets, Cast Nets, and Seines in Nontidal Waters.

(1) A person may not use a dip net to fish for any trout species, walleye, striped bass, striped bass hybrid, northern pike, largemouth bass, smallmouth bass, muskellunge, or muskellunge hybrids including tiger musky.

(2) A person may use a net as a landing net.

(3) A person may not bait a net by attaching an attractant to the net material or frame.

(4) A person may not use seines, traps, or nets of any description in or upon the waters of the State described in Regulation .01B—H of this chapter. This section does not apply to landing nets used to land fish caught by angling.

(5) A nonresident may not fish in the nontidal waters of the State with nets of any description, except a landing net.

(6) Subject to the provisions of §M of this regulation, a seine not more than 6 feet in length nor more than 4 feet in depth or a dip net may be used by residents to catch bait fish.]

[N.] L.—[R.] P. (text unchanged)

[S.] Q. In addition to any requirements in this chapter, gear may only be used in accordance with the requirements in [COMAR 08.02.24] *COMAR 08.02.25*.

.06 [Special Fishing Area, Youghiogheny Reservoir.] Repealed.

[The portion of the Youghiogheny Reservoir lying within the State constitutes a special fishing area and is subject to the following seasons, minimum size limits, and creel limits as shown in Table 1.

Table 1

Species	Seasons	Minimum Size	Daily Limit
A. All species of Trout and Salmon.	Regular season: 8 a.m. the first Saturday after April 11 to midnight, Labor Day.	7 inches	5 (combined species)
	Extended season: All approved trout waters and downstream plus lakes and ponds: January 1 through the last day of February, and the day after Labor Day through December 31.	7 inches	3 (combined species)
B. Bass — Largemouth, Smallmouth, and spotted.	January 1 through the day before opening day of regular trout season and November 1 through December 31.	15 inches	4 (combined species)
	The opening day of regular trout season through the first Friday after June 11	No harvest- Catch and immediate release only, no tournaments permitted.	
	The first Saturday after June 11 through October 31.	12 inches	6 (combined species)
C. Muskellunge and Muskellunge Hybrids.	Open year round.	40 inches	1 (combined species)
D. Pickerel	Open year round.	18 inches	4
E. Pike, Northern.	Open year round.	24 inches	2
F. Walleye.	January 1 through March 14, and the first Saturday in May through December 31.	15 inches	6
G. Sauger.	January 1 through March 14, and the first Saturday in May through December 31	12 inches	6
H. American Shad.	Open year round	No minimum	6
I. Herring and Gizzard Shad.	Open year round	No minimum	50 (combined species)
J. Striped Bass and Striped Bass/White Bass Hybrids.	Open year round	20 inches	2 (combined species)
K. Sunfish, Yellow Perch, White Perch, Crappies, Catfish, Rock Bass, Suckers, Carp, White Bass.	Open year round	No minimum	50 (combined species)
L. Bait Fish, Fish Bait (except mud bugs).	Open year round	No minimum	50 (combined species)
M. Mud Bugs (dragonfly nymphs).	Open year round	No minimum	Unlimited if taken from lakes, ponds, swamps, and adjacent areas. 50 per day if taken from rivers and streams.

N. American Eel (as baitfish).	Open year round	6 inches to 8 inches	50
O. Paddlefish.	Closed year round		0]