

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	11/06/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 12/12/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

08 02 01 05

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
 - Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: 6/30/2014.
 - 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 October 31, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Eileen C. Mosley

Title

Regulations Coordinator

Telephone No.

410-260-8107

Date

November 6, 2014

Title 08
DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.01 General

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

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend Regulation .05 under COMAR 08.02.01 General.

Statement of Purpose

The purpose of this action is to modify the number of commercial fishing license authorization targets. The proposed action makes modifications to the authorization targets to reflect the number of tidal fish license conversions and the number of licenses the Department purchased from license holders up to April 1, 2014. It does not include changes or conversions made in the 2014-2015 license year. Prior to September 1, 2012 a licensee could convert (upgrade) multiple authorizations to an unlimited tidal fish license (UTFL). The law changed and upgrades are no longer allowed; however the law now allows the conversion (downgrade) of a UTFL into its individual component authorizations. Downgrading a UTFL decreases the UTFL target and increases the target of each license type that is included in a UTFL (resident fishing guide (FGR), unlimited finfish harvester (FIN), crab harvester 300 pot (CB3), clam harvester (CLM), oyster harvester (OYH), oyster dredge boat (ODB), and conch turtle lobster (CTL)). The number and type of authorizations involved in an upgrade to a UTFL, a downgrade of a UTFL, and those purchased by the Department provide the basis for changes to the license authorization target levels.

During the 2011/2012 license renewal period, there were 24 upgrades to a UTFL. The authorizations relinquished in order to upgrade to the UTFL consisted of 4 FGR, 16 finfish hook and line (HLI), 8 FIN, 24 limited crab harvester (LCC), 1 CB3 and 21 OYH.

During the 2012/2013 license renewal period, there were 37 upgrades to a UTFL. The authorizations relinquished in order to upgrade to the UTFL consisted of 8 FGR, 22 HLI, 10 FIN, 35 LCC (34 LCC and 1 male only LCC), 2 CB3, 3 CLM and 31 OYH. Also, during the 2012/2013 license renewal period, 4 individuals downgraded their UTFL which decreased the UTFL target and increased the targets for the license types included in the UTFL.

During the 2013/2014 license renewal period, 6 individuals downgraded their UTFL.

Applicants could choose which license components of the UTFL they wanted to retain. In summary, the UTFL number is decreased by 6 and the number for FIN, CLM, OYH, ODB, and CTL is increased by 6 each, FGR increased by 5, FGN increased by 1, CB3 increased by 3, and LCC increased by 2.

The license buyback program occurred during 2010, 2011 and 2012. During that period the Department purchased a total of 683 LCC, 11 CB3, 5 CB6, 9 CB9 and 97 UTFL authorizations from license holders. Most of the buybacks have been accounted for in previous regulation packages. The proposed action increases the LCC target by 5 because the previous regulation proposals were incorrect due to being proposed prior to final calculations. Previous regulation proposals only account for 82 of the UTFL and 9 of the CB3 buybacks. The proposed action decreases the UTFL target by 15 and the CB3 by 2 in order to capture all of the authorizations that were purchased.

The target for the crab harvester 600 pot (CB6) and crab harvester 900 pot (CB9) was set on September 1, 1998 based on the number of authorizations at that time. Based on that criterion, the target for CB6 was 225 and the target for CB9 was 404. That number was not previously included in the regulation. During the license buyback period, 5 CB6 and 12 CB9 authorizations were bought back by the Department. The proposed action includes the revised number for those authorizations in the table so that all authorization targets are in one location.

The proposed action creates a category for LCC licenses that have been designated as male only (LCCM). This license type was created by regulation in 2010. At the time, there were a total of 489 LCCs designated as male only licenses. The target has been adjusted by subtracting license buybacks (27) and upgrades (1) and is proposed in this regulation.

The proposed action shows the target number for each authorization available after all of the additions and subtractions. The targets are correct as of April 1, 2014. References to the apprenticeship program have been removed in this action since the apprenticeship program was removed from the Natural Resources Code in 2012. The Tidal Fisheries Advisory Commission was consulted regarding these changes at their July 2014 meeting.

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 License Target 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@maryland.gov, or fax to 410-260-8310. Comments will be accepted through December 15, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

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:

No additional funds are necessary to implement this action.

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

The numbers have been adjusted to reflect the current amount of licenses available. This action does not have an economic impact.

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

The numbers have been adjusted to reflect the current amount of licenses available. This action does not have an economic impact on small businesses.

G. Small Business Worksheet:

Attached Document:

.05 Targets for the Number of Tidal Fish License Authorizations and Apprenticeship Permits.

A. The targets for the number of tidal fish license authorizations issued by the Department are the number of authorizations issued between September 1, 1998, and March 31, 1999, including adjustments made annually according to specifications listed in §B of this regulation, listed by the following categories:

Abbreviation	Authorization	Number
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FGR	Fishing Guide Resident	[474] 471
FGN	Fishing Guide Nonresident	[56] 57
HLI	Finfish—Hook and Line	[282] 244
FIN	Unlimited Finfish Harvester	[261] 253
LCC	Limited Crab Harvester	[3,082] 2,598
<i>LCCM</i>	<i>Limited Crab Harvester—Male Only</i>	461
CB3	Crab Harvester—300 Pots	[249] 252
<i>CB6</i>	<i>Crab Harvester—600 Pots</i>	220
<i>CB9</i>	<i>Crab Harvester—900 Pots</i>	392
CLM	Clam Harvester	[14] 21
OYH	Oyster Harvester	[728] 686
ODB	Oyster Dredge Boat	[3] 13
CTL	Conch, Turtles, and Lobster Harvester	[10] 20
TFL	Unlimited Tidal Fish	[2,074] 2,110

B. The targets for the number of tidal fish licenses may be modified based on:

(1)—(4) (text unchanged)

(5) The number of license conversions made in accordance with Natural Resources Article, [§4-701(k)] §4-701(m), Annotated Code of Maryland; and

(6) (text unchanged)

C. Except for authorizations relinquished for conversions made in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, authorizations that are revoked or voluntarily relinquished to the Department may be reallocated to individuals [who have completed the criteria for the tidal fish license apprenticeship program] *on the commercial license waiting list maintained by the Department.*

[D. The Department may accept an application for an apprenticeship permit from an individual who is 14 years old or older and does not qualify for a commercial tidal fish license or authorization for a particular fishing activity.

E. The Department shall maintain a list in chronological order for each category of authorizations for particular fishing activities of individuals who have applied for an apprenticeship permit but have not been issued an apprenticeship permit.

F. The Department shall issue a permit to the first individual on the list described in §E of this regulation when an authorization is available.

G. The Department shall review annually the number of tidal fish authorizations issued and based on the results of the review shall publish notice in a daily newspaper of general circulation the number of apprenticeship permits that may be issued for each particular fishing activity.

H. Criteria for the Tidal Fish License Apprenticeship Program.

(1) The criteria for an individual who holds a valid tidal fish license and who has applied for an additional authorization other than a fishing guide authorization or an unlimited tidal fish authorization shall include documentation at the time of application for an apprenticeship permit that, for the previous 2 years, at least 20 percent of the individual's gross income was from the individual's commercial fishing activities.

(2) An individual who does not hold a valid tidal fish license shall complete an 8-hour educational program approved by the Department concerning commercial fishing activities and a boater safety course; and:

(a) For a single authorization, have the following experience in the activity permitted by the authorization for which the individual applies:

(i) 50 8-hour days per year for 3 consecutive years (1,200 hours); or

(ii) 150 8-hour days (1,200 hours); or

(b) For multiple authorizations or the unlimited tidal fish license, have the following experience in at least two separate fishing activities:

(i) 60 8-hour days for 3 consecutive years (1,440 hours); or

(ii) 180 8-hour days (1,440 hours).

(3) The days of experience shall be documented by the permittee on the forms provided by the Department and submitted to the Department on a monthly basis when engaged in practical experience. The documentation shall include the:

(a) Number of hours spent gaining practical experience in the presence of a tidal fish licensee;

(b) Particular fishing activities;

(c) Signature of a tidal fish licensee certifying that the recorded information regarding the practical experience in fishing activities is true and correct; and

(d) Copies of appropriate income tax forms documenting the permittee's compensated employment.

(4) Only the following individuals may use their past experience to meet the requirements set forth in §H(2)(a) and (b) of this regulation:

(a) An individual who served as a crew member to a tidal fish licensee within the past 10 years;

(b) An individual who held a Maryland Provisional Charter Boat permit in accordance with Natural Resources Article, §4-210.2, Annotated Code of Maryland;

(c) An individual who held a tidal fish license within the past 10 years and has not permanently transferred a tidal fish license within the past 24 months;

(d) An individual who held a temporary transfer of a tidal fish license within the past 10 years; or

(e) An individual who harvested fish from the waters of the Exclusive Economic Zone (EEZ) and landed the fish in Maryland.

I. Limited Crab Harvester. Notwithstanding Natural Resources Article, §4-701(k), Annotated Code of Maryland, an individual may not use a limited crab harvester authorization that has a frozen or male only status, as described in COMAR 08.02.03.14F, as one of the required authorizations to upgrade to an unlimited tidal fish authorization unless by April 6, 2010, that individual possesses a limited crab harvester authorization that has a frozen or male only status and:

(1) At least two additional commercial fishing authorizations, as described in Natural Resources Article, §4-701(d), Annotated Code of Maryland;

(2) Has entered into the process of acquiring at least two additional commercial fishing authorizations, as described in Natural Resources Article, §4-701(d), Annotated Code of Maryland, through:

(a) The Department's apprenticeship program, as described in Natural Resources Article, §4-701.1, Annotated Code of Maryland; or

(b) The submission of an application to the Department for a permanent transfer in accordance with Natural Resources Article, §4-701(i), Annotated Code of Maryland; or

(3) One additional commercial fishing authorization, as described in Natural Resources Article, §4-701(d), Annotated Code of Maryland, and has entered into the process of acquiring at least one additional commercial fishing authorization through:

(a) The Department's apprenticeship program, as described in Natural Resources Article, §4-701.1, Annotated Code of Maryland; or

(b) The submission of an application to the Department for a permanent transfer in accordance with Natural Resources Article, §4-701(i), Annotated Code of Maryland.]

JOSEPH P. GILL

Secretary of Natural Resources