

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Natural Resources**
(DLS Control No. 15-053)

Overview and Legal and Fiscal Impact

This regulation modifies registration and transfer rules for the commercial striped bass fishery based on recommendations of the Commercial Striped Bass Industry Workgroup. The regulation authorizes the permanent transfer of striped bass permits and quota shares, extends the registration period for striped bass permits, and makes minor technical and stylistic changes.

The regulation presents no legal issue of concern.

Special fund revenues increase due to the collection of transfer and/or permit fees.

Regulation of COMAR Affected

Department of Natural Resources:

Fisheries Service: Striped Bass:
COMAR 08.02.15.04

Legal Analysis

Background

Fishing for striped bass occurs in two areas of the State – the Chesapeake Bay and its tidal tributaries, and the Atlantic Ocean and its coastal bays and their tributaries. In 2013, the Department of Natural Resources adopted regulations establishing a hybrid individual transferrable quota (ITQ) and common pool system for the commercial striped bass fishery in the Chesapeake Bay. Under this new system, the department allocates a certain share of the State's total commercial quota (established by the Atlantic States Marine Fisheries Commission) to each tidal fish licensee who holds a permit to participate in the Chesapeake Bay striped bass fishery. A licensee may register to participate in either the ITQ fishery or the common pool system. Under the ITQ fishery, a licensee may catch the entirety of his or her allocation at any point in the season, using any approved gear, or may sell all or part of that allocation to another licensee. Alternatively, the common pool fishery is comprised of licensees who have chosen to combine their individual allocations. This combined allocation is then available to be fished by anyone registered in the common pool.

In 2014, the department adopted regulations formalizing the Atlantic Ocean striped bass fishery as an ITQ fishery.

Summary of Regulation

The regulation alters requirements for commercial tidal fish licensees participating in the commercial striped bass fishery and makes minor technical and stylistic changes.

The regulation updates registration requirements for the commercial striped bass fishery by requiring striped bass permits to be registered annually to maintain eligibility in the fishery rather than every 3 years, extending the registration period, and altering rules for late registrations. Under the regulation, striped bass permits must be registered by September 30 rather than August 31 as currently required, or the next business day if September 30 falls on a weekend. A commercial tidal fish licensee who fails to register his or her striped bass permits by the deadline may submit an appeal to the Tidal Fisheries Advisory Commission. The department may only consider late registrations on the recommendation of the commission. Any permit that is not registered in accordance with the regulation must be relinquished to the department. The department must then reissue these permits to tidal fish licensees on the striped bass permit waiting list. However, any striped bass permit issued to an individual on the waiting list shall be issued without a quota allocation from any striped bass fishery.

The regulation also modifies rules regarding the transfer of striped bass permits and individual striped bass quota allocations. The regulation allows a permit holder to permanently transfer his or her permit or quota allocation independently of his or her commercial tidal fish license – something that is prohibited under the current rules. This will allow individual permit holders to accumulate more quota shares than was initially allocated to them. Any permanent transfer must be made between August 1 through September 30, or the next business day if September 30 falls on a weekend. The time period does not apply when the permit holder transfers his or her quota and license to the same individual. The regulation maintains a hard cap of 1% on the percentage of the State's total Chesapeake Bay commercial striped bass quota that any individual may permanently hold. However, the regulation introduces a new rule limiting the share transfers that an individual may permanently acquire during a single year to 0.2% of the Chesapeake Bay quota. This limitation does not apply to an individual who is buying an entire commercial fishing business, including the transferor's commercial tidal fish license. The regulation also introduces a soft cap of 1.5% on the percentage of the Chesapeake Bay quota that an individual may acquire through temporary transfers.

Finally, the regulation alters eligibility requirements for individuals participating in the Chesapeake Bay Common Pool Fishery. An individual must possess at least 0.0185% of the Chesapeake Bay commercial quota – an amount equal to the baseline share that was initially distributed to permit holders in 2014 – in order to declare in the common pool fishery. This is to ensure that individuals possessing less than the baseline amount do not take advantage of other individuals contributing their larger shares to the common pool. Transfer time periods for the common pool fishery are also adjusted, consistent with the new timeline for registering striped bass permits.

Legal Issue

The regulation presents no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 4-215, 4-701, 4-704.1, and 4-731 of the Natural Resources Article as authority for the regulations. Section 4-215 requires the department to prepare fishery management plans that contain descriptions, objectives, and conservation and management measures for specified species, including striped bass. Under § 4-215(f), a fishery management plan may include, among other things, limitations on catch size, number, and other factors; the incorporation of conservation and management measures proposed or adopted by interstate bodies; and other measures, requirements, or conditions and restrictions necessary and appropriate for fishery management. The department is required to adopt fishery management plans and any measures implementing those plans by regulation.

Section 4-701 governs tidal fish licenses and, in subsection (j), authorizes the department to adopt regulations limiting participation in the commercial striped bass fishery and modify the target number of authorizations based on recommendations of the commission. Section 4-701(k) authorizes the department to approve permanent or temporary transfers of tidal fish licenses or fishing authorizations, under certain conditions. Section 4-704.1 expressly prohibits a person from catching striped bass for sale unless the person has purchased a valid license under § 4-701. Similarly, § 4-731 prohibits a person from selling, offering for sale, or crossing State lines with any striped bass caught in the State, unless the person possesses either a valid commercial fishing license or a valid bill of sale for the fish.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

Special fund revenues increase due to the collection of transfer and/or permit fees.

Agency Estimate of Projected Fiscal Impact

The department advises that special fund (Fisheries Research and Development Fund) revenues increase by an indeterminate amount due to transfer fees (\$50/transfer) collected as a result of permanent transfers of striped bass permits. The Department of Legislative Services generally concurs. Based on information provided by the department, it appears that the revenue increase is relatively minimal on an annual basis (likely less than \$10,000). The department has also indicated that permanent transfers of permits may take the place of existing annual temporary transfers (that are also subject to transfer fees) in some cases, which would offset the overall increase in revenues to at least some extent by reducing future annual fee revenues generated from transfers of those permits.

Special fund revenues may also increase due to the collection of additional striped bass permit fees because the regulation requires an individual to register a permit every year, rather than every three years, in order to retain the permit. The permit fee is \$150 or \$200 depending on the type of tidal fish license an individual possesses. The department indicates, however, that currently most permits are registered each year.

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 regulation has a meaningful economic impact on small businesses in the State. The regulation provides flexibility and economic opportunities to existing striped bass permittees as well as individuals interested in obtaining a permit and/or share of the harvest quota by allowing for a striped bass permit and/or a permittee's harvest quota share to be permanently transferred independent of the permittee's commercial fishing license. The Department of Legislative Services concurs.

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