

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/25/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/30/2015

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

Lisa A Eutsler 410-260-8107

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

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5. Name of Person to Call About this Document Telephone No.

Tamara O'Connell 410-260-8271

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6. Check applicable items:

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 9/10/15.

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 September 24, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Mark J. Belton

Title

Secretary of Natural Resources

Telephone No.

410-260-8100

Date

September 22, 2015

Title 08
DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.11 Fishing in Nontidal Waters

Authority: Natural Resources Article, §4-602, 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 adopt new 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, the proposed action amends Regulation .01 by removing the #1 trout closure on both Herrington Creek and New Germany Lake; amends Regulation .04 by removing the season for river herring and increasing the size of eels; and adopts new Regulation .06 for rules that apply to the Youghioghney River Lake.

Regional biologists have documented episodes of low pH in Herrington Creek and the creek has experienced fish kills due to acid deposition from a tributary in past years during the closure period. By removing the closure period, the area would not have any closures after stocking. Allowing fishing immediately after stocking will help to reduce the chances of the problems affecting fishing success. The park manager at New Germany Lake requested that the Department remove the closure period. The park manager and Fisheries Service staff have agreed that removing the closure will provide greater fishing opportunities in the area for all types of fish that are present in the lake. It will reduce the impacts of poaching and the need for increased enforcement during the closure period allowing the effort to be focused on the open fishing period.

There is still an open season for herring in nontidal waters. Code of Maryland Regulations (COMAR) 08.02.05.09 prohibits the possession of river herring statewide. A similar situation occurs for eels. The statewide minimum size for eels should be nine inches. The nontidal regulation was overlooked at the time when the herring and eel regulations were put into place for the rest of the State. The proposed action updates the regulation with current information.

Regulations for the Youghioghney River Lake were removed from COMAR in 2014. Removing them has created a lot of confusion from both anglers and enforcement. Pennsylvania and Maryland have an agreement that Pennsylvania will manage the river lake and all Pennsylvania fishing rules will be followed. In order to alleviate confusion,

the proposed action adopts a new regulation to include the Pennsylvania rules for the Youghiogheny River Lake.

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 2016 Nontidal 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 November 30, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2016

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 the change. Regulations are already being enforced in areas where the changes occur so nothing additional is needed.

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

The changes made are for management purposes only and do not affect the Department or stakeholders economically.

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

Same reasons as E.

G. Small Business Worksheet:

Attached Document:

.01 Trout Fishing and Management Areas.

A. (text unchanged)

B. Put-and-Take Trout Fishing Areas.

(1)—(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)—(h) (text unchanged)	
(i) Garrett County:	
(i)—(vi) (text unchanged)	
(vii) New Germany Lake	[1] 0
(viii)—(xiii) (text unchanged)	
(xiv) Herrington Creek mainstem	[1] 0
(xv)—(xvii) (text unchanged)	
(j)—(n) (text unchanged)	

C.—H. (text unchanged)

.04 Statewide General Regulations.

A. Open Seasons, Creel, Possession, and Size Limits on Game and Fresh Water Fish in Nontidal Waters. Except as otherwise provided in this chapter for specific areas, the following apply Statewide:

(1) Open Seasons.

<i>Species</i>	<i>Open Season</i>
(a)—(h) (text unchanged)	
(i) Herring	[January 1 through June 5] <i>No open season</i>
(j)—(n) (text unchanged)	

(2) Creel and Possession Limits.

	<i>Daily Creel</i>	<i>Possession</i>
(a)—(i) (text unchanged)		
(j) Herring (Blueback and Alewife)	[No daily limit] <i>Closed season — none permitted</i>	

(k)—(t) (text unchanged)		
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(3) Minimum Size from Tip of Nose to End of Caudal Fin or Tail.

(a)—(l) (text unchanged)	
[(m) Herring	No minimum size]
[(n)] (m) — [(q)] (p) (text unchanged)	
[(r)] (q) Eel	[6] 9 inches
[(s)] (r) (text unchanged)	

B.—Q. (text unchanged)

.06 Youghiogeny River Lake.

A. All species of Trout and Salmon.

(1) The following apply from 8 a.m. the first Saturday after April 11 through Labor Day:

- (a) The minimum size is 7 inches; and
- (b) The daily catch limit is 5 (combined species).

(2) The following apply from 12:01 a.m. the day after Labor Day through the last day of February:

- (a) The minimum size is 7 inches; and
- (b) The daily catch limit is 3 (combined species).

(3) The season is closed from March 1 through 8 a.m. the first Saturday after April 11.

B. Bass — Largemouth, Smallmouth, and Spotted.

(1) The following apply from January 1 through the day before the first Saturday after April 11 and from November 1 through December 31:

- (a) The minimum size is 15 inches; and
- (b) The daily catch limit is 4 (combined species).

(2) The season is closed from 12:01 a.m. the first Saturday after April 11 through 12:01 a.m. the first Saturday after June 11.

(3) The following apply from 12:01 a.m. the first Saturday after June 11 through October 31:

- (a) The minimum size is 12 inches; and
- (b) The daily catch limit is 6 (combined species).

C. Muskellunge and Muskellunge Hybrids.

- (1) There is no closed season.
- (2) The minimum size is 40 inches.
- (3) The daily catch limit is 1 (combined species).

D. Pickerel.

- (1) There is no closed season.
- (2) The minimum size is 18 inches.
- (3) The daily catch limit is 4.

E. Northern Pike.

- (1) There is no closed season.
- (2) The minimum size is 24 inches.
- (3) The daily catch limit is 2.

F. Walleye and Walleye Hybrids.

- (1) The season is open only from:
 - (a) January 1 through March 14; and
 - (b) The first Saturday in May through December 31.
- (2) The minimum size is 15 inches.
- (3) The daily catch limit is 6.

G. Sauger.

- (1) The season is open only from:
 - (a) January 1 through March 14; and
 - (b) The first Saturday in May through December 31.
- (2) The minimum size is 12 inches.
- (3) The daily catch limit is 6.

- H. American Shad.*
- (1) *There is no closed season.*
 - (2) *There is no minimum size.*
 - (3) *The daily catch limit is 3.*
- I. River Herring (Alewife and Blueback Herring).*
- (1) *There is no closed season.*
 - (2) *There is no minimum size.*
 - (3) *The daily catch limit is 50 (combined species).*
- J. Gizzard Shad.*
- (1) *There is no closed season.*
 - (2) *There is no minimum size.*
 - (3) *The daily catch limit is 50.*
- K. Striped Bass and Striped Bass Hybrids.*
- (1) *There is no closed season.*
 - (2) *The minimum size is 20 inches.*
 - (3) *The daily catch limit is 2 (combined species).*
- L. Sunfish, Yellow Perch, White Perch, Crappies, Catfish, Rock Bass, Suckers, Carp, and White Bass.*
- (1) *There is no closed season.*
 - (2) *There is no minimum size.*
 - (3) *The daily catch limit is 50 (combined species).*
- M. Bait Fish and Fish Bait.*
- (1) *Except as closed in §Q of this regulation:*
 - (a) *Bait fish includes:*
 - (i) *All forms of the minnow family (Cyprinidae) except carp and goldfish;*
 - (ii) *Suckers, chubs, fallfish, lampreys measuring less than eight inches in length; and*
 - (iii) *All forms of darters, killifishes and madtoms (stonecats); and*
 - (b) *Fish bait includes the nymphs, larvae and pupae of all insects spending any part of their life cycle in the water.*
 - (2) *There is no closed season.*
 - (3) *There is no minimum size.*
 - (4) *The daily catch limit is 50 (combined species).*
- N. Mud Bugs (dragonfly nymphs).*
- (1) *There is no closed season.*
 - (2) *There is no minimum size.*
 - (3) *There is no daily catch limit.*
- O. American Eel.*
- (1) *There is no closed season.*
 - (2) *The minimum size is 9 inches.*
 - (3) *The daily catch limit is 25.*
- P. Crayfish.*
- (1) *There is no closed season.*
 - (2) *There is no minimum size.*
 - (3) *The daily catch limit is 50.*
 - (4) *The head of the crayfish must be immediately removed behind the eyes upon capture unless used as bait in the water from which taken.*
- Q. There is no open season for:*
- (1) *Species listed as endangered, threatened or in need of conservation in COMAR 08.03.08;*
 - (2) *Any species of mussel;*
 - (3) *Any species of clam;*
 - (4) *Paddlefish (Polyodon spathula);*
 - (5) *Northern brook lamprey (Ichthyomyzon fossor);*
 - (6) *Mountain brook lamprey (Ichthyomyzon greeleyi)*
 - (7) *Lake sturgeon (Acipenser fulvescens);*
 - (8) *Atlantic sturgeon (Acipenser oxyrinchus);*
 - (9) *Spotted gar (Lepisosteus oculatus);*
 - (10) *Hickory shad (Alosa mediocris);*
 - (11) *Cisco (Coregonus artedi);*
 - (12) *Northern redbelly dace (Phoxinus eos.)*
 - (13) *Gravel chub (Erimystax x-punctatus)*
 - (14) *River shiner (Notropis blennius);*
 - (15) *Ghost shiner (Notropis buechanani);*
 - (16) *Blackchin shiner (Notropis heterodon);*

- (17) Redfin shiner (*Lythrurus umbratilis*);
- (18) Bigmouth buffalo (*Ictiobus cyprinellus*);
- (19) Black bullhead (*Amerius melas*);
- (20) Mountain madtom (*Noturus eleutherus*);
- (21) Tadpole madtom (*Noturus gyrinus*);
- (22) Northern madtom (*Noturus stigmosus*);
- (23) Burbot (*Lota lota*);
- (24) Threespine stickleback (*Gasterosteus aculeatus*);
- (25) Banded sunfish (*Enneacanthus obesus*);
- (26) Warmouth (*Lepomis gulosus*);
- (27) Longear sunfish (*Lepomis megalotis*);
- (28) Iowa darter (*Etheostoma exile*);
- (29) Eastern sand darter (*Etheostoma pellucida*);
- (30) Bigmouth shiner (*Notropis dorsalis*);
- (31) Southern redbelly dace (*Phoxinus erythrogaster*);
- (32) Spotted sucker (*Minytrema melanops*);
- (33) Brindled madtom (*Noturus miurus*);
- (34) Bluebreasted darter (*Etheostoma camurum*);
- (35) Spotted darter (*Etheostoma maculatum*);
- (36) Tippecanoe darter (*Etheostoma tippecanoe*);
- (37) Gilt darter (*Percina evides*); and
- (38) Chesapeake logperch (*Percina bimaculata*).

MARK J. BELTON
Secretary of Natural Resources