

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Natural Resources**  
(DLS Control No. 16-112)

---

**Overview and Legal and Fiscal Impact**

The regulations list Jonah crab (*Cancer borealis*) as “in need of conservation” for management purposes. The regulations establish restrictions on the recreational and commercial harvest of the species, consistent with requirements of the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Jonah Crab. The regulations also make minor technical and corrective changes to existing rules regarding Atlantic menhaden and lobster traps.

The regulations present no legal issues of concern, but additional comments have been included in the *Technical Corrections and Special Notes* section below for the Joint Committee on Administrative, Executive, and Legislative Review’s consideration.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Natural Resources:**

Fisheries Service: Shellfish – General:  
COMAR 08.02.08.06 and .10  
Endangered and Threatened Fish Species:  
COMAR 08.02.12.13

---

**Legal Analysis**

**Background**

Maryland participates with 14 other states in the ASMFC, which coordinates the conservation and management of the near-shore migratory fishery resources of the Atlantic coastal states. ASMFC prepares, adopts, and modifies coastal fishery management plans for 25 species and species groups, including Jonah crab. States are responsible for implementing and enforcing the measures contained in ASMFC coastal fishery management plans. If ASMFC determines that a particular state is not in compliance with the strategies of an adopted plan, ASMFC may petition the National Oceanic and Atmospheric Administration to impose a fishing moratorium until compliance is achieved

Jonah crab has long been considered a bycatch in the American lobster fishery. Over the past 15 years, however, reported landings of Jonah crabs have increased by more than six-fold. In the early 2000s, landings were roughly 2.6 million pounds and the Jonah crab fishery was valued at \$1.5 million. By 2014, landings increased to over 17 million pounds with a value exceeding \$12 million. Maryland's share of the fishery is relatively small, accounting for only about 1% of coastwide landings.

In response to the sudden, rapid increase in Jonah crab landings, the ASMFC approved the Interstate Fishery Management Plan for Jonah Crab in August of 2015. The plan implements a suite of measures to manage and monitor the Jonah crab resource for the first time along the U.S. Atlantic coast. Among other things, the plan establishes universal permitting and reporting requirements for commercial fishermen who catch Jonah crabs, and sets coastwide minimum size requirements. The plan also prohibits the practice of declawing Jonah crabs at sea, except in states (including Maryland) that have a historic claw fishery. The Department of Natural Resources is proposing regulations to implement these requirements.

## **Summary of Regulations**

The regulations list Jonah crab as “in need of conservation” for the purpose of regulating the Jonah crab fishery. The regulations establish recreational and commercial management measures to implement the ASMFC Interstate Fishery Management Plan for Jonah Crab. The regulations also authorize the department to establish or modify catch limits or seasons for Jonah crabs when necessary to comply with ASMFC requirements by issuing a public notice on the fisheries website.

The recreational management measures for Jonah crabs prohibit the possession of egg-bearing females and establish a daily possession limit of 50 crabs per person. There is no season or size limit for the recreational fishery.

The commercial management measures for Jonah crabs establish license and permit requirements, minimum size requirements, harvest limits, restrictions on sales, reporting requirements, and penalties. Specifically, among other things, the regulations:

- require a person to possess a tidal fish license in order to catch, possess, or land Jonah crabs for commercial purposes;
- prohibit a person from catching, landing, possessing, selling, offering to sell, or transporting egg-bearing females or undersized crabs;
- establish a minimum size of four and three quarter inches in width for Jonah crabs;
- establish the “Maryland Jonah crab landing permit” and the “Maryland Jonah crab claw landing permit”;

- restrict the number of crabs that a person who possesses the proper license and permit may harvest from fishing gear other than a federally tagged lobster pot;
- require that Jonah crabs harvested for commercial purposes from Maryland waters, or harvested from federal waters and landed in Maryland, be sold to a dealer with a federal permit;
- require a person to record the harvest of Jonah crabs in accordance with the requirements of the department;
- require a seafood dealer to transmit information weekly, or as required, on each Jonah crab transaction through the department-approved reporting system;
- establish that, in addition to any other penalty, failure to comply with regulatory requirements may result in the suspension of a permit or the denial of a subsequent permit;
- require the department to give a license holder notice of its intended action and an opportunity to appear at a hearing conducted in accordance with standard contested case procedures prior to suspending a permit or denying an application for a permit under the regulations; and
- authorize the Secretary of Natural Resources to establish or modify catch limits or seasons for Jonah crabs in order to implement the ASMFC Interstate Fishery Management Plan for Jonah Crabs by issuing a public notice on the Fisheries Service website.

The regulations also include minor technical and corrective changes to existing rules regarding Atlantic menhaden and lobster traps. A spelling error in the regulation listing Atlantic menhaden as “in need of conservation” is corrected. The lobster trap requirements are amended to specify that escape vents must be located in the parlor section of the trap and to establish a maximum volume of 22,950 cubic inches for lobster traps.

## **Legal Issues**

The regulations present no legal issues of concern, but additional comments have been included in the *Technical Corrections and Special Notes* section below for the committee’s consideration.

## **Statutory Authority and Legislative Intent**

The department cites §§ 4-2A-03, 4-701, and 4-901 of the Natural Resources Article as statutory authority for the regulations. Section 4-2A-03 authorizes the department to identify fish species that are in need of conservation and to determine conservation measures for the continued survival of those species. Subsection (b) of this section specifically authorizes the department to adopt limitations by regulation relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment necessary to conserve fish.

Section 4-701 relates to commercial tidal fish licenses. The regulation requires a person to obtain a tidal fish license before engaging in specified commercial fishing activities. Section 4-701(f) establishes a number of additional permits that allow the holder of a tidal fish license to catch specific species. Paragraph (2) of this subsection authorizes the department to establish by regulation a permit for any species (such as Jonah crabs) not specifically listed under the subsection.

Section 4-901 authorizes the department to adopt regulations restricting the possession, landing, selling, or transporting of any lobster or lobster parts. Subsection (b) of this section requires the department to hold a public hearing on proposed lobster regulations. The department indicates that a public hearing will be held on July 18, in accordance with this requirement.

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

### **Technical Corrections and Special Notes**

The regulation authorizes the department to establish or modify catch limits or seasons for Jonah crabs in order to implement the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Jonah Crabs by issuing a public notice on the Fisheries Service website. In a 2013 letter to the Chair of the committee, the Attorney General concluded that the department has the authority to adopt regulations that allow certain fisheries management actions to be taken by public notice. However, the Attorney General encouraged the General Assembly to consider making clear the precise contours of the department's public notice authority. Two cross-filed bills, SB 145/HB 145 were introduced in the 2014 legislative session to clarify the department's authority with regard to implementing fisheries management actions through public notice (such as posting on the department website), rather than through notice and comment rulemaking procedures established by the Administrative Procedure Act. SB 145 was withdrawn following a hearing before the Senate Education, Health, and Environmental Affairs Committee and HB 145 was referred to interim study by the House Environmental Matters Committee.

### **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.

### **Contact Information**

**Legal Analysis:** April M. Morton – (410) 946/(301) 970-5350

**Fiscal Analysis:** Richard L. Duncan – (410) 946/(301) 970-5510