

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	06/03/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/8/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

08 02 12 13

08 02 08 06, .10

3. Name of Promulgating Authority

Department of Natural Resources

4. Name of Regulations Coordinator

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6. Check applicable items:

- New Regulations

- Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: 5/2/16.

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 General Provisions Article, §3-302(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 5/31/16. 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

6/1/16

Title 08
DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.12 Endangered and Threatened Fish Species

Subtitle 02 FISHERIES SERVICE

08.02.08 Shellfish — General

Authority: See text for authority

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend Regulation .03 under COMAR 08.02.12 Endangered and Threatened Fish Species, amend Regulation .10 and adopt new Regulation .06 under COMAR 08.02.08 Shellfish — General.

Statement of Purpose

The purpose of this action is to list Jonah Crab (*Cancer borealis*) as in need of conservation and adopt both recreational and commercial management measures which are based on the current status of the stock, biology, fishery, and economic and management considerations. Another purpose of this action is to correct the spelling of the scientific name of Atlantic menhaden and make corrections to the requirements of a lobster trap.

According to the information in the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Jonah Crab, Jonah crab is in need of protection against the potential negative impacts resulting from an unregulated fishery. Implementation of a coastwide conservation program is required.

“Conserve” means to use all methods and procedures for the purpose of increasing the number of individuals within a species or population up to the optimum carrying capacity of their habitat and maintaining these levels. Methods of conservation include activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation and live trapping and transplantation, including the periodic or total protection of species or populations as well as regulated taking.

The proposed action adds Jonah crab to the in need of conservation list and creates

conservation and management measures prevent overfishing and achieve, on a continuous basis, the optimum yield from each fishery. The proposed action also corrects the spelling of the scientific name for Atlantic menhaden (*Brevoortia tyrannus*). This was a typographical error when the menhaden regulation was first proposed. One of the measures in the Jonah crab plan is for harvesters directing their efforts on catching Jonah crab to use a lobster trap that conforms to the ASMFC Interstate Fishery Management Plan for American Lobster. Those requirements are slightly different than what is described in the current lobster regulation. The proposed action clarifies that the escape vents need to be in the parlor section of the lobster trap and that the volume may not exceed 22, 950 cubic inches.

Jonah Crab (*Cancer borealis*)

Current Status of Stock

The current status of the stock is unknown. Unregulated harvest of Jonah crab may compromise the sustainability of the resource. The ASMFC Interstate Fishery Management Plan for Jonah Crab identified the lack of regulations in state and federal waters and permit/license requirements as problematic.

Landings have rapidly increased in the past 10 years and without new controls, effort could increase in an unregulated manner and the long-term availability of this resource for harvest could be compromised. Prior to the ASMFC Interstate Fishery Management Plan for Jonah Crab, there were no minimum size protections, nor were there regulations to protect spawning biomass, including restrictions on the harvest of females or egg carrying females. Moreover, unregulated harvest of Jonah crab with gears other than lobster traps has the potential to create a new directed fishery that does not conform with the intention of the ASMFC Interstate Fishery Management Plan for Jonah Crab. In addition, the development of a new directed trap fishery could compromise the effectiveness of the Large Whale Take Reduction Plan.

Biology

Jonah crab is distributed in the waters of the Northwest Atlantic Ocean primarily from Newfoundland, Canada to Florida, though a few specimens have been reported as far south as Bermuda (Haefner 1977; Drew 2011). The largest recorded Jonah crab was a male caught in Canada and measured 222 mm (8.7"); females generally do not exceed 150 mm (5.9") (Robichaud et al. 2000). Sea sampling of commercial fishing gear conducted in Maine on 7,131 crabs (Reardon, 2003) and Southern New England on 8,392 crabs (CFRF, unpublished data) indicate similar size distributions with only 2-4% of females and 69-71% of males captured greater than 5". Examination of the data suggests that both sexes reach near 100% maturity by 90 mm (3.5"). Females as small as 94 mm (3.7") have been recorded as carrying eggs by commercial fishermen participating in the Lobster/Jonah Crab Research Fleet Pilot Program administered through the Commercial Fisheries Research Foundation.

Jonah crab are omnivorous and consume a variety of species, including snails, mussels, urchins, algae, and arthropods, among other benthic invertebrates. American lobster

(Ojeda and Dearborn 1991) and fish are predators of Jonah crab, particularly at smaller sizes. The apex trophic level of marine ecosystems is commonly targeted by fisheries because it is usually comprised of animals that represent the highest food and commercial value. As apex predators become depleted in areas of high fishing pressure, the fishery target will shift to species of lower trophic levels, a concept known as “fishing down marine food webs.” In regions where top trophic levels have been heavily harvested, Jonah crab is becoming a more desirable fishery target. Concurrently, in these areas in the Gulf of Maine, the Jonah crab species has begun to take on the role of apex predator (Leland 2002). Where natural apex predators have become rare, Jonah crab is now primarily responsible for controlling benthic invertebrates.

Fishery

Since 1990 on average 95% of the coast wide landings have come from pots and traps; less than 1% of the catch was identified to come from dredges and trawls. In the early 1990s ex-vessel coast wide values were approximately \$1 to \$1.5 million dollars. Ex-vessel value increased in 2005 to \$3.5 million. From 2007 to 2011 ex-vessel value fluctuated from \$4.5 to \$5.6 million dollars, and reached an estimated \$12.7 million in 2013.

Jonah crab in Maryland is predominately a bycatch species in the American lobster fishery. Maryland landings are estimated at less than 1% of the coast wide landings, yet are very important to fishery participants and allow for income to offset reductions in other fisheries. Some Maryland lobstermen declaw the Jonah crab at sea. This historical practice of declawing the Jonah crab is currently permitted in the ASMFC Interstate Fishery Management Plan only for fishing vessels from states with a history of claw-only landings before the control date of June 2, 2015 (i.e. Maryland, Delaware, Virginia, and New Jersey). Maryland lobstermen remove both claws from the large male Jonah crab and return the crab to the ocean while other lobstermen retain and land the whole crab. The local dockside market is steady and expanding. Some lobstermen are exploring alternative markets such as claw clusters and picked claw meat. The value of the Maryland Jonah crab fishery is estimated at \$150,000 based of confidential fisherman and dealer reports.

Economic Considerations

Jonah crab is valuable to seafood consumers who do not or cannot fish themselves. Fishing vessels and seafood distributors engaged in the commercial harvesting and marketing of Jonah crab produce expenditures and generate employment in the course of business activities. The economic impact in Maryland from enforcing the current coastwide ASMFC Interstate Fishery Management Plan should have no negative outcomes because the participants are generally compliant or exceed the management measures. Compliance should protect the market and allow for sustainability in the future. An ASMFC non-compliance finding resulting from not implementing the conditions of the fishery management plan would require a fishery shutdown and loss of revenue estimated at \$150,000 not including indirect costs (e.g. bait, ice, fuel).

Management Considerations

The ASMFC Interstate Fishery Management Plan for Jonah Crab requires commercial and recreational fisheries management measures in Maryland. The commercial management measures are as follows: 1) Participation in the directed trap fishery is limited to only those vessels and permit holders that already hold a federal lobster permit or can prove prior participation in the Jonah crab fishery before the control date of June 2, 2015; 2) All traps must conform to specifications of the lobster management plan, including the trap tag and escape vent requirements; 3) Landing of Jonah crab by all other individuals would require an incidental permit from a state or federal agency for the appropriate jurisdiction in which the vessel is fishing and would be subject to landing limits; 4) Mandatory reporting for dealers and harvesters; 5) Fishery dependent sampling; 6) A minimum size of 4.75 inches with no tolerance; 6) A prohibition on the retention of egg-bearing females; and 7) Only whole crabs may be retained and sold with the exception of individuals who can prove a history of claw landings before the June 2, 2015 control date in the states of New Jersey, Delaware, Maryland, and Virginia.

The recreational management measures consist of a 50-crab daily possession limit of any size and a prohibition on the possession of egg bearing females.

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 Jonah Crab 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 August 8, 2016. A public hearing will be held, TBD

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2017

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 regulation change. The Department already has the ability to issue permits for certain species and this will not add to the financial burden.

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

All of the harvesters who currently land Jonah crabs will be able to participate in this fishery and harvest at their current levels. No one will be excluded and all will be able to land claws because they all have Jonah crab landings prior to June 2, 2015. None of the harvesters have landings that exceed the catch limits set in the proposed action.

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

See section E

G. Small Business Worksheet:

Attached Document:

Chapter 12 Endangered and Threatened Fish Species

Authority: Natural Resources Article, §4-2A-03, Annotated Code of Maryland

.03 Listing of Species.

A. The following species are listed as in need of conservation:

(1)—(16) (text unchanged)

(17) Snapper Grouper Complex:

(a)—(ppp) (text unchanged)

(qqq) Sand tilefish (*Malacanthus plumieri*); [and]

(18) Atlantic menhaden [(*Brevoortia tyrannus*).] (*Brevoortia tyrannus*); and

(19) Jonah crab (*Cancer borealis*).

B. (text unchanged)

Chapter 08 Shellfish — General

Authority: Natural Resources Article, §§4-2A-03 and 4-901, Annotated Code of Maryland

.06 Jonah Crabs.

A. *Definitions*

(1) *In this regulation the following terms have the meanings indicated.*

- (2) *Term Defined.* “Federally tagged lobster trap” means a trap that:
- (a) Meets the requirements described in COMAR 08.02.08.10E and F; and
 - (b) Has a tag that was issued by the National Marine Fisheries Service.

B. Recreational.

- (1) An individual may not possess any Jonah crab that is egg-bearing or from which eggs have been intentionally removed.
- (2) There is no season or size limit for the recreational fishery.
- (3) The daily possession limit is 50 Jonah crabs per person per day.

C. Commercial Fishery.

- (1) A person shall be licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland and permitted in accordance with this regulation in order to catch, possess, or land Jonah crabs for commercial purposes.
- (2) A person may not catch, land, possess, sell, offer to sell, or transport any Jonah crab:
 - (a) Which is egg-bearing or from which eggs have been intentionally removed; or
 - (b) Measuring less than 4-3/4 inches in width, measured at the widest part of the carapace (body shell).
- (3) *Maryland Jonah Crab Landing Permits.*
 - (a) An individual is eligible to declare for a permit to catch and land Jonah crabs in Maryland if they are properly licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland.
 - (b) An individual is eligible to declare for a permit to catch and land Jonah crab claws in Maryland if they are properly licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland and if the licensee can provide proof that they participated in the Jonah crab fishery prior to June 2, 2015.
 - (c) A landing permit is valid for the current commercial license year.
 - (d) Landing permits may not be transferred.
- (4) Proof of eligibility for a landing permit as required in §C(3)(b) of this regulation shall be documented by records of the Department or records of the National Marine Fisheries Service.

(5) *Catch Limits.*

- (a) An individual who is not in possession of a Maryland Jonah crab landing permit may not land Jonah crabs in Maryland.
- (b) An individual who is not in possession of a Maryland Jonah crab claw landing permit may land only whole Jonah crabs in Maryland.
- (c) An individual may land an unlimited number of Jonah crab claws and whole Jonah crabs per vessel per trip if the individual:
 - (i) Harvests Jonah crabs from a federally tagged lobster trap;
 - (ii) Is in possession of a valid federal lobster permit issued by the National Marine Fisheries Service;
 - (iii) Is in possession of a valid Maryland Jonah crab landing permit; and
 - (iv) Is in possession of a valid Maryland Jonah crab claw landing permit.
- (d) An individual may land an unlimited number of whole Jonah crabs per vessel per trip if the individual:
 - (i) Harvests Jonah crabs from a federally tagged lobster trap;
 - (ii) Is in possession of a valid federal lobster permit issued by the National Marine Fisheries Service; and
 - (iii) Is in possession of a valid Maryland Jonah crab landing permit.
- (e) An individual who harvests Jonah crabs from fishing gear other than a federally tagged lobster trap and is in possession of valid Maryland Jonah crab and Jonah crab claw landing permits may not land more than 2,000 Jonah crab claws per vessel per trip, regardless of whether or not the claws are attached to the Jonah crab.
- (f) An individual who harvests Jonah crabs from fishing gear other than a federally tagged lobster trap and is in possession of a valid Maryland Jonah crab landing permit may not land more than 1,000 whole Jonah crabs per vessel per trip.

(6) Jonah crabs harvested for commercial purposes from Maryland waters of the Atlantic Ocean or from the waters of the EEZ and landed in Maryland shall be sold to a dealer with a federal permit.

D. Reporting and Penalties

- (1) An individual shall record the harvest of Jonah crabs in accordance with Natural Resources Article, §4-206, Annotated Code of Maryland.
- (2) A dealer shall transmit information weekly, or as required, on each Jonah crab transaction through the Department-approved reporting system.
- (3) In addition to any other penalty, failure to comply with this regulation may result in the suspension of the current permit or the denial of a subsequent permit.
- (4) Prior to suspending a permit or denying an application for a permit under this regulation, the Department shall give the licensee notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.

E. General

(1) *The Secretary may 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.*

(2) *The public notice shall state its effective hour and date and shall be published on the Fisheries Service website at least 48 hours in advance of the effective hour and date.*

(3) *The Secretary shall make a reasonable effort to disseminate the public notice through various other media so that an affected person has reasonable opportunity to be informed.*

(4) *A violation of the restrictions set by the Secretary in accordance with §E of this regulation is a violation of this regulation.*

.10 American Lobsters.

A.—D. (text unchanged)

E. A lobster trap:

(1) Shall have a minimum of:

(a) One rectangular escape vent *located in the parlor section of the trap* which shall be a minimum of 2 inches by 5-3/4 inches; or

(b) Two circular escape vents *located in the parlor section of the trap* which shall have a minimum diameter of 2-5/8 inches;

(2) *May not exceed a volume of 22,950 cubic inches;*

[(2)] (3) — [(3)] (4) (text unchanged)

F. (text unchanged)

MARK J. BELTON

Secretary of Natural Resources