

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Natural Resources**  
(DLS Control No. 20-033)

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## **Overview and Legal and Fiscal Impact**

The regulations alter catch limits, size limits, and seasons in order to reduce total removals of striped bass during the recreational and charter boat summer and fall fishery in Maryland's Chesapeake Bay and its tidal tributaries. The regulations, together with prior regulations relating to the spring trophy season (*see* DLS Control No. 19-234), bring the State into compliance with Addendum VI to Amendment 6 of the Interstate Fishery Management Plan for Atlantic Striped Bass.

The regulations present no legal issues of concern.

Special fund revenues may decrease by an indeterminate amount, as discussed below. Small businesses are meaningfully affected.

## **Regulations of COMAR Affected**

### **Department of Natural Resources:**

Fisheries Service: Striped Bass:  
COMAR 08.02.15.09, .10, and .12

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## **Legal Analysis**

### **Background**

Maryland participates with 14 other states in the Atlantic States Marine Fisheries Commission (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 27 species and species groups, including striped bass. On October 30, 2019, the ASMFC Striped Bass Management Board approved Addendum VI to Amendment 6 of the Interstate Fishery Management Plan for Atlantic Striped Bass. Addendum VI was initiated in response to ASMFC's most recent stock assessment for striped bass, which indicated that the resource is overfished and experiencing overfishing. Addendum VI requires all states to achieve an 18% reduction in total harvests (commercial and recreational) relative to 2017 levels. Among other things, Addendum VI mandates the use of circle hooks when fishing with bait in order to reduce release mortality in recreational striped bass fisheries. States must implement

mandatory circle hook requirements by January 1, 2021. All other provisions of Addendum VI must be implemented by April 1, 2020.

While Addendum VI includes specific management measures for the recreational striped bass fishery, it also allows states to file conservation equivalency plans proposing alternative measures aimed at providing equivalent conservation outcomes. The proposed action implements Maryland's conservation equivalency plan, which was submitted to the ASMFC Technical Committee in November 2019 and approved by the ASMFC Striped Bass Management Board in February 2020. The Department of Natural Resources indicates that the plan was selected based on public comment and Maryland's goal to reduce total removals paying particular attention to decreasing dead discards during the summer and fall season.

### **Summary of Regulations**

The regulations alter catch limits, size limits, and seasons in order to reduce total removals of striped bass during Maryland's recreational and charter boat summer and fall fishery. Specifically, the regulations:

- move up the end date for the summer and fall recreational fishery in both Chesapeake Bay and its tidal tributaries and the Maryland tributaries of the Potomac River to December 10;
- reduce the recreational catch limit during the summer and fall recreational fishery from two striped bass per person to one striped bass per person;
- require that all striped bass in a person's possession meet the size and possession limits set forth in regulation for that area in which the person is fishing;
- repeal a provision allowing the captain or the mate to keep a striped bass during a charter trip; and
- prohibit the targeting of striped bass from August 16, 2020 through August 31, 2020.

The department indicates that these measures (with the exception of the closed season in August) will be implemented by public notice, pending final adoption of the regulations. The department also plans to implement a voluntary pilot program under COMAR 08.02.01.10. The pilot program will allow participating charter captains to keep two fish per person per day, if they agree to use the State's Fishing Activity & Catch Tracking System (FACTS). FACTS is an electronic reporting system that provides real-time data on harvest, discards, and fishing activity. Electronic reporting in Maryland requires that participants send a 'Trip Start Hail' before they leave the dock and a 'Trip End Hail' before they return to the dock.

Finally, the department indicates that the regulations, together with prior regulations regarding the spring trophy season and the proposed pilot program, ensure Maryland's compliance with Addendum VI to the Interstate Fishery Management Plan for Atlantic Striped Bass, as outlined in the State's approved conservation equivalency plan.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 4-215 of the Natural Resources Article as statutory authority for the regulations. Section 4-215 requires the department to prepare fishery management plans for 25 species, including striped bass. Subsection (h) of this section requires the department to adopt proposed management plans and any conservation and management measures by regulation. The Secretary is also authorized to adopt implementation measures and to adjust conservation and management measures under a fishery management plan.

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

## **Fiscal Analysis**

Special fund revenues may decrease by an indeterminate amount, as discussed below. Small businesses are meaningfully affected.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that special fund (Fisheries Research and Development Fund) revenues from recreational fishing license fees may decrease to the extent that individuals choose to not purchase a license because of the striped bass fishing restrictions in the regulations. The department indicates that the extent of any special fund revenue decrease cannot be determined since it depends on choices made by those individuals that otherwise would purchase a license in the absence of the regulations. The Department of Legislative Services concurs.

For context, the amount of special fund revenues generated from fees for recreational fishing licenses affected by the regulations (licenses to fish in tidal waters) in calendar 2019 was \$4.6 million. Those tidal recreational fishing licenses cover fishing in both the Chesapeake Bay (and its tidal tributaries) and the Atlantic Ocean, its coastal bays, and their tributaries. The department has indicated, independent of the “Estimate of Economic Impact” accompanying the regulations, that while the extent of any decrease in special fund revenues resulting from these regulations cannot be predicted, it does not expect the decrease to be extensive. The Department of Legislative Services notes, however, that the decrease in special fund revenues could still be significant.

As mentioned by the department in the “Estimate of Economic Impact,” any decrease in special fund revenues from recreational fishing license fees (as well as any impact on small businesses, discussed below) that results from these regulations in calendar 2020 may be difficult to distinguish from any decrease (or small business impact) resulting from reduced recreational fishing pursuant to government directives issued in response to the Coronavirus Disease 2019

(COVID-19) pandemic or individual decision-making in response to the pandemic. Under the Governor’s Stay At Home Order issued on March 30 and subsequent [guidance](#) issued by the department, individuals were not allowed to engage in recreational fishing other than subsistence fishing. The Governor’s amended Stay At Home Order issued on May 6 allows for recreational fishing, as a “permitted outdoor activity,” provided it is not conducted in groups of more than 10 people and is conducted in compliance with specified directives and social distancing guidelines.

## **Impact on Budget**

The regulations may have an impact on the fiscal 2021 or future year budgets (the regulations are not expected to take effect until fiscal 2021, on or after July 1, 2020) if special fund revenues decrease as a result of the regulations, limiting the amount of spending that can be supported by those revenues. However, the department has indicated that, while any impact on the department’s budget cannot be predicted, it is unlikely that special fund revenues will decrease to an extent where the department’s operating budget would be affected.

As background, under the department’s fiscal 2020 and 2021 budgets, \$10.4 million and \$10.5 million in special funds, respectively, are appropriated from the Fisheries Research and Development Fund, mostly for the department’s Fishing and Boating Services division, but also for the Natural Resources Police and other purposes. The fund receives revenue from both commercial and tidal recreational fishing license fees. According to the Department of Budget and Management’s [FY 2019 Statement of Dedicated Special Funds](#), the Fisheries Research and Development Fund received \$9.7 million in revenues in fiscal 2019, down from \$9.9 million in fiscal 2018 and \$10.4 million in fiscal 2017. The fund had a \$3.1 million balance at the end of fiscal 2019 (the remaining funds left from the fiscal 2019 revenues and previous fund balance after accounting for fiscal 2019 spending). For illustrative purposes, if revenues in fiscal 2020 and 2021 remain at the same level as fiscal 2019, the projected balance at the end of fiscal 2021 would be \$1.5 million, accounting for the fiscal 2020 and fiscal 2021 appropriations.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have a meaningful economic impact on small businesses in the State. The regulations are expected to negatively affect charter boat businesses, bait stores, tackle stores, and marinas. The limit of one striped bass per person per day, the 16-day closure of the fishery in August, and the earlier December closure of the season, are each expected to affect those businesses. The department provides additional detail on these impacts in the “Estimate of Economic Impact” accompanying the regulations. The Department of Legislative Services concurs with this assessment, but with the following comments:

- The regulations likely also affect other small businesses beyond charter boat businesses, bait stores, tackle stores, and marinas. National Oceanic and Atmospheric Administration (NOAA) data on the economic contribution of marine recreational fishing (defined as recreational fishing for finfish in the open ocean or any body of water that is salt water or brackish water), indicate that tidal recreational fishing in the Chesapeake Bay, and Maryland overall, is responsible for a significant amount of spending in the State for various goods and services ([Addendum to Fisheries Economics of the United States 2016](#),

NOAA Technical Memorandum NMFS-F/SPO-187a, January 2020). According to the data, in Maryland in 2016, an estimated \$311.0 million was spent on trip-based expenditures (including charter fees, bait, boat fuel, auto fuel, food from grocery stores and restaurants, and lodging), and \$658.7 million was spent on durable goods (including tackle; rods and reels; accessories; and boat purchases, maintenance, and storage).

- While not mentioned in the “Estimate of Economic Impact” accompanying the regulations, the pilot program for charter boat businesses that is mentioned in the “Statement of Purpose” is expected to mitigate the impact of the regulations on charter boat businesses by allowing passengers on charter boats that participate in the program to keep two fish per person per day.

## **Contact Information**

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