

MARYLAND REGISTER

Proposed Action on Regulations

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Title Subtitle Chapter Regulation

08 02 11 01, .03, .04

3. Name of Promulgating Authority

Department of Natural Resources

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Title 08
DEPARTMENT OF NATURAL RESOURCES
Subtitle 02 FISHERIES SERVICE

08.02.11 Fishing in Nontidal Waters

Authority: Natural Resources Article, §§4-602, 4-603, and 4-616, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend Regulations .01, .03, and .04 under COMAR 08.02.11 Fishing in Nontidal Waters.

Statement of Purpose

The purpose of this action is to eliminate the harvest of brook trout adults in Maryland's most pressured waters and stressed populations. The proposed action prohibits the possession of brook trout while fishing in nontidal waters of the State that are designated as a put-and-take area and in all waters located east of Interstate 81. The proposed action also reorganizes sections for clarity, corrects references to sections of the regulation, and removes duplicate information.

Recent results from a five-year statewide brook trout survey (2014-2018) indicate a 27 percent additional loss in occupied brook trout watersheds since 1987. The central part of the state, east of I-81, experienced the greatest decline, with a 20.1 percent loss in the Catoctin Mountain region and a 50 percent loss in the Piedmont region. The Piedmont region is generally an urban and densely populated area susceptible to a warmer climate given its lower elevation, all of which puts additional stressors on the remaining brook trout populations.

Brook trout are listed in Maryland's State Wildlife Action Plan (SWAP) as a Species of Greatest Conservation Need (SGCN). Human population growth, urbanization, and climate change have resulted in considerable habitat degradation; mainly through loss of forest cover and riparian zones, increased water temperatures, and siltation. Consequently, brook trout are found in less than 35 percent of historically occupied subwatersheds in Maryland. In an effort to maintain and enhance the current brook trout populations, the Department is in the process of developing a conservation plan to improve population resilience. Additionally, Maryland is a signatory partner of the Chesapeake Bay Agreement. The Agreement includes the Brook Trout Outcome, which calls for an eight percent increase in occupied habitat by 2025.

Catch-and-release regulations for brook trout were implemented in the upper Savage River in Garrett County in 2007. An anticipated benefit from the regulation was to protect the largest fish (most fecund, best spawning success) during low flow and poor

reproduction years to sustain brook trout in subsequent years when conditions are better. Annual brook trout population monitoring has indicated that the upper Savage River supports a stable population even with the normal environmentally driven annual fluctuations. Furthermore, compared to pooled sites open to harvest by anglers (2 fish per day, no closed season) from around the state, the upper Savage River has maintained statistically significant greater brook trout densities for each year of monitoring following the regulation change.

Results from the Department's 2016 wild trout angler preference survey indicated 85.7 percent of respondents support more restrictive regulations to conserve brook trout, and catch-and-release was the most popular option. Additionally, the Department stocks around 330,000 hatchery raised trout, 175,000 east of I-81, to provide anglers a recreational and consumptive option. The Department believes that the value of releasing native brook trout is greater, both socially and ecologically, than harvest, especially given the abundant opportunity to harvest stocked trout.

The proposed action prohibits the possession of brook trout in nontidal waters of the State that are designated as a put-and-take area. All brook trout caught from a put-and-take trout fishing area must be released. Catch-and-release of brook trout from put-and-take waters will reduce the harvest of brook trout in these areas by anglers who are targeting stocked trout. Forty-five percent of trout anglers indicated harvest is a motivating factor to angling in stocked streams, thus more brook trout caught in these streams may be harvested than would normally occur if no trout were stocked.

The proposed action prohibits the possession of brook trout while fishing in nontidal waters of the State located east of Interstate 81. All brook trout caught from waters east of Interstate 81 (I-81) must be released. Maryland has the southernmost Piedmont brook trout population in the United States, a unique occurrence which warrants further protection. Brook trout in Maryland's Piedmont region are at higher risk of further loss if the climate continues to trend warmer and human impacts continue. Harvesting any brook trout in the central part of the state could have adverse impacts on population recruitment, genetic fitness, and future existence. Given the declining populations in central Maryland, the Department believes catch-and-release regulations will help to minimize population impacts from harvest of the largest most fecund adults, afford additional years to spawn, and increase recreational opportunities by increasing the probability of catching a brook trout more than once.

Brook trout populations are inherently variable in recruitment and abundance. Droughts, high flows, and anchor ice are all factors that can impact recruitment and future abundance. Eliminating harvest will not correct population declines attributed to weather extremes, climate change, and land use changes but it may minimize further loss, particularly during stressful periods when large adults are most vulnerable.

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 Brook Trout Regulations, Regulatory Staff, Maryland Department of Natural Resources Fishing and Boating Services, 580 Taylor Avenue, B-2, Annapolis, MD 21401, or call 410-260-8300, or email to please see mailbox comment, or fax to 410-260-8310. Comments will be accepted through November 9, 2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2021

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 funds are necessary to implement the changes. The rules will be enforced during the normal course of operations.

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

Even though anglers will not be able to keep brook trout, they will still be able to fish for them in all areas of the state. Therefore, this action will not impact license sales.

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

Even though anglers will not be able to keep brook trout, they will still be able to fish for them in all areas of the state. Therefore, this action will not impact tackle stores.

G. Small Business Worksheet:

Attached Document:

.01 Trout Fishing and Management Areas.

- A. (text unchanged)
- B. Put-and-Take Trout Fishing Areas.
- (1)—(2) (text unchanged)
- (3) Creel and Possession Limits [(all species of trout) in aggregate — Daily: 5, Possession: 10;].
- (a) *Brook trout — Daily: 0, Possession: 0.*
- (b) *All other species of trout in aggregate — Daily: 5, Possession: 10.*
- [(4) Minimum size (all species of trout) — No minimum size restriction]
- [(5)] (4) Public and private ponds in which State-supported fishing rodeos are held may be designated as put-and-take trout fishing areas on the day of the rodeo and are subject to the provisions in [§B(1)—(4)] §B(1)—(3) of this regulation.
- [(6)] (5) Except as provided in §C(1) of this regulation the following areas are *designated as put-and-take trout fishing areas and are* subject to the provisions in [§B(1)—(4)] §B(1)—(3) of this regulation:
- (a)—(n) (text unchanged)
- C.—D. (text unchanged)
- E. Areas Limited to Fishing by Persons Younger than 16 Years Old, Persons 65 Years Old or Older, and Blind Persons.
- (1) Special provisions in effect on these areas:
- (a) (text unchanged)
- (b) Section [B(1)—(4)] B(1)—(3) of this regulation shall apply to these special trout management areas.
- (2) (text unchanged)
- F. Areas Limited to Fishing by Persons under 16 Years Old and Blind Persons.
- (1) Special provisions in effect on these areas.
- (a) (text unchanged)
- (b) Section [B(1)—(4)] B(1)—(3) of this regulation shall apply to these special trout management areas.
- (2) (text unchanged)
- G. (text unchanged)
- H. [Zero Creel Limit Areas] *Special Restrictions* for Brook Trout.
- [(1) Special provisions in effect in these areas are:
- (a) Open season — no closed season;
- (b) Creel limit. Brook trout: daily — 0, possession — 0; all other trout species in aggregate: daily — 2, possession — 4;
- (c) Tackle is restricted to artificial flies and lures; and
- (d) In these areas, a person may not possess or use any natural or live bait, or any device enhanced with a scent and capable of catching fish.]
- (1) *Nontidal Waters East of Interstate 81. A person may not have brook trout in possession while fishing in nontidal waters of the State located east of Interstate 81.*
- (2) [The area subject to the provisions of this section is the] Savage River mainstem and tributaries upstream of the Savage River Reservoir dam, excluding impoundments and Put-and-Take Trout Fishing Areas (Savage River Reservoir, Savage River from Savage River Reservoir upstream to Poplar Lick Run, and New Germany Lake).
- (a) *A person may use only artificial flies and lures.*
- (b) *A person may not possess or use any natural or live bait, or any device enhanced with a scent and capable of catching fish.*
- (c) *A person may not have brook trout in possession while fishing in this area.*

.03 Special Fisheries Management Areas.

- A.—C. (text unchanged)
- D. Limited Harvest Fishing Areas.
- (1) The following special requirements are in effect in these areas:
- (a) (text unchanged)
- (b) If these areas are also on the put-and-take trout fishing list, up to 5 fish of the 10 fish limit may be trout species *other than brook trout*; and
- (c) (text unchanged)
- (2) (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) (text unchanged)	
(b) Trout (all species)	No closed season, except as provided in Regulation .01 [B, C, E, F, and G] of this chapter.
(c)—(n) (text unchanged)	

(2) Creel and Possession Limits.

	<i>Daily Creel</i>	<i>Possession</i>
(a) Trout (all species) in aggregate	<i>2, except as specified in Regulation .01 of this chapter</i>	<i>4, except as specified in Regulation .01 of this chapter</i>
[(i) Put-and-take areas	5	10
(ii) Other areas not described in Regulation .03 of this chapter	2	4]
(b)—(t) (text unchanged)		

(3) (text unchanged)

B.—P. (text unchanged)

JEANNIE HADDAWAY-RICCIO
Secretary of Natural Resources