

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Natural Resources**
(DLS Control No. 15-411)

Overview and Legal and Fiscal Impact

These regulations update and modify the penalty schedules for commercial fishing, recreational fishing, and charter boat and fishing guide licenses. Existing penalties are modified, new penalties are added, and minor errors are corrected.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Natural Resources:

Fisheries Service: Fishing Licenses – Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure:
COMAR 08.02.13.03, .05, and .08

Legal Analysis

Background

In its 2008 report to the General Assembly, the Task Force on Fisheries Management recommended updating the way the Department of Natural Resources handled violations of fisheries laws and regulations to provide for tougher penalties. The General Assembly responded by adopting Chapters 207 and 453 of 2009, which clarified and strengthened the department's authority to suspend or revoke fishing entitlements.

Following the passage of Chapters 207 and 453, the department worked closely with a penalty workgroup and with the State's fishery advisory commissions to develop regulations for the suspension and revocation of fishing licenses and authorizations. The commercial penalty system is based on point assignments, and a similar point-based system has been established for commercial charter boat and fishing guide licensees. By contrast, the recreational penalty schedule does not use points. Instead, an individual is subject to a certain suspension period ranging from 30 to 365 days based on the offense he or she has committed. The department may prohibit an individual who receives multiple suspensions in a two-year period from engaging in any recreational fishing activities for up to five years.

Summary of Regulations

The regulations update the penalty schedules for commercial fishing, recreational fishing, and charter boat and fishing guide licenses. The major changes for each license category are summarized as follows:

Commercial Licenses

- alters current Tier II and Tier III violations for striped bass and establishes new Tier IV, Tier V, Tier VI, and Tier VII violations for striped bass;
- increases the penalty for dynamiting from Tier V to Tier VI;
- establishes that a person may be suspended for up to three years for a violation of the Lacey Act (a federal conservation and poaching law);

Recreational Licenses

- adds a 30-day, 90-day, 180-day suspension for violating the size limits for white perch;
- adds a 90-day suspension for a violation of collapsible crab trap or net ring restrictions;
- repeals the 90-day suspension for violating size or daily catch limits for black bass;
- adds a 90-day, 180-day, and 365-day suspension for violating a striped bass public notice;
- adds a 180-day and 365-day suspension for possession of a specified number of striped bass between midnight and 5 a.m.;
- adds a 365-day suspension for operating without a required commercial fishing license or authorization;
- repeals the 365-day suspension for (1) unlicensed tidal and non-tidal commercial fishing guide; (2) fishing or crabbing while the individual's license is suspended or revoked; (3) failure to obtain a tidal fish license for commercial activity; (4) unlawfully selling striped bass; and (5) taking oysters or clams for commercial purposes without a license;
- reduces the number of undersized black bass that will trigger a 365-day suspension from 11 fish to 5 fish;
- adds a 365-day suspension for the commercial harvest or sale of fish from nontidal waters;
- repeals a 365-day suspension for a violation of the Lacey Act;

- adds a 730-day suspension for a violation of the Lacey Act, any conspiracy to commit a Lacey Act violation, or for fishing or crabbing while the individual's license is suspended or revoked;
- increases the number of years during which an individual who receives suspensions for specified violations may be prohibited from engaging in all recreational fishing activities;

Commercial Charter Boat and Fishing Guide Licenses

- repeals the Tier I violation for exceeding the daily catch limit for crabs;
- adds Tier I, Tier II, Tier III and Tier IV violations for violating a striped bass public notice;
- adds Tier IV and Tier V violations for violating possession, size, and catch limits for most species in tidal waters; and
- subjects an individual to a suspension period of up to three years for a violation of the Lacey Act.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 4-220, 4-701, 4-745, 4-1201, and 4-1210 of the Natural Resources Article as statutory authority for the regulations. Section 4-220 provides the department's authority to suspend or revoke recreational fishing licenses. Subsection (b) of this section authorizes the department to adopt regulations listing criteria for suspensions. Section 4-701 provides the department's authority to suspend or revoke a person's entitlement to engage in commercial activities under a tidal fish license. Subsection (n) of this section requires the department to adopt regulations that include, among other things: a schedule of points assigned to various offenses; enhanced penalties for repeated violations; and enhance penalties for violations of laws and regulations that protect species the department considers to be in need of special protection. Section 4-745 requires a person to have a Chesapeake Bay and coastal sport fishing license or registration in order to fish for finfish in the Chesapeake Bay or its tributaries or in State waters of the Atlantic Ocean and the Atlantic Coastal Bays and their tributaries. Section 4-1201 specifies various penalties for violations of Title 4 of the Natural Resources Article pertaining to fish and fisheries. Although not cited by the department, § 4-747 prohibits a person from possessing, selling, offering for sale, trading, or distributing a shark fin. The remaining cited authority is not relevant to these regulations.

With the addition of § 4-747, the relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The Department of Legislative Services contacted the department regarding adding § 4-747 of the Natural Resources Article as statutory authority for the regulations.

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 indicates that the regulations may have a meaningful economic impact on small businesses in the State since those that violate the law and are subject to greater penalties under the regulations. The Department of Legislative Services disagrees that the regulations have a meaningful economic impact on small business because the updated penalties do not affect small businesses that comply with the law and regulations.

Contact Information

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