Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Department of Natural Resources
(DLS Control No. 16-082)

Overview and Legal and Fiscal Impact

The regulation adds Amendment 1 to the Chesapeake Bay American Eel Fishery Management Plan and incorporates the amendment by reference.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Natural Resources:
Fisheries Service: General: COMAR 08.02.01.01

Legal Analysis

Background

The life history strategy of the American eel is unique. Eels spawn in the Sargasso Sea (east of the Bahamas and south of Bermuda) and their larvae are carried by currents for approximately one year along the entire Atlantic coast from South America to Greenland. As the larvae approach the continental shelf, they change into glass eels, which actively swim to the Atlantic coast. After approximately 2 months, the glass eels become pigmented and are referred to as elvers. The elvers either remain in the estuaries or continue their migration to rivers and streams. They continue to grow into larger, immature yellow eels and spend most of their life in this stage. Their final life stage occurs when the yellow eels become sexually mature and are considered silver eels. Mature silver eels then migrate back to the Sargasso Sea to spawn and die.

The broad geographic range and complex life cycle of American eel makes them difficult to assess and challenging to manage. In 1991, the State of Maryland along with the Commonwealth of Virginia, the Commonwealth of Pennsylvania, the District of Columbia, the Chesapeake Bay Commission, and the federal government adopted a Chesapeake Bay American Eel Fishery Management Plan. The goal of the plan is to manage the American eel population in the Chesapeake Bay and its tributaries so that harvests do not exceed the natural capacity of the population to maintain its size from year to year. In 2014, the Department of Natural Resources reviewed the Chesapeake Bay plan and concluded that the plan's management framework is still appropriate for managing the eel population in the Chesapeake and Atlantic Coastal bays. However, the department recommended amending the plan to incorporate the Atlantic States Marine Fisheries Commission (ASMFC) guidelines for managing American eel.

The ASMFC adopted its Coastal Fisheries Management Plan for American Eel in 1999 – several years after the creation of the Chesapeake Bay plan. The goal of the coastal management plan is to conserve and protect the American eel resource to ensure its continued role in the ecosystem while providing the opportunity for its commercial, recreational, scientific, and educational use. Under the plan, Atlantic coastal states, including Maryland, are required to implement fishery-independent young-of-the-year monitoring surveys and complete annual compliance reports. The ASMFC has also adopted four addenda to the coastal management plan. Among other things, the addenda require states to implement commercial licensing and reporting systems for American eel fisheries, establish recreational size and creel limits for American eel, and improve upstream and downstream passage for eels at dams.

Summary of Regulation

The regulation alters the list of Chesapeake Bay Program Agreement Commitment Reports incorporated by reference to include Amendment 1 to the 1991 Chesapeake Bay American Eel Fishery Management Plan. Among other things, Amendment 1 provides for the adoption of current and future management requirements established by the ASMFC. The amendment also commits Maryland to taking the following actions:

- Action 1 – Follow the ASMFC guidance and compliance requirements for American eel;
- Action 2 – Continue to collect biological data to support coastal stock assessments and contribute to the development of biological reference points;
- Action 3 – Improve stock status by reducing overall mortality and enhancing population levels by increasing the availability of habitat, especially through the removal of blockages to upstream and downstream migration;
- Action 4 – As the status of the American eel stock changes over time, adjust management strategies to meet conservation and protection objectives;
- Action 5 – Establish an eel harvester permit for all commercial eel harvesters, including crab license holders, in order to obtain timely, accurate, and verifiable harvest reporting for American eel caught from Maryland waters; if a state quota is implemented, the department will require daily reporting with procedures and protocols to be determined;
- Action 6 – Continue to implement minimum size limits, possession limits, mesh size requirements, seasonal restrictions, gear restrictions, and other management measures as necessary to meet the management framework for protecting and conserving the American eel resource;
- Action 7 – Implement and manage the commercial eel fishery by a quota system when one of the ASMFC management triggers is met;
- Action 8 – Continue to prohibit an elver fishery;

- Action 9 – Work with stakeholders to evaluate and discuss challenges and priorities in managing the American eel fishery; and

- Action 10 – Continue to conduct an annual young-of-year survey, the fishery independent adult surveys, and the commercial harvest survey.

Legal Issues

The regulation presents 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 regulation. Section 4-215 requires the department to prepare fishery management plans for 24 species, including American eel. Subsection (f)(2) of this section authorizes the department to incorporate "relevant fishery conservation and management measures proposed or adopted by interstate bodies of which Maryland is a member" into its fishery management plans.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation has 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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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