

MARYLAND REGISTER

Proposed Action on Regulations

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2. COMAR Codification

Title	Subtitle	Chapter	Regulation
08	02	05	02
08	02	15	03, .09, .10
08	02	25	01, .03

3. Name of Promulgating Authority

Department of Natural Resources

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Title 08
DEPARTMENT OF NATURAL RESOURCES
Subtitle 02 FISHERIES SERVICE

08.02.05 Fish

Subtitle 02 FISHERIES SERVICE

08.02.15 Striped Bass

Subtitle 02 FISHERIES SERVICE

08.02.25 Gear

Authority: See authority within text of regulation.

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend:

- 1) Regulation .02 under COMAR 08.02.05 Fish;
- 2) Regulations .03, .09 and .10 under COMAR 08.02.15 Striped Bass; and
- 3) Regulations .01 and .03 under COMAR 08.02.25 Gear.

Statement of Purpose

The purpose of this action is to reduce the minimum size of striped bass for the recreational and charter boat summer and fall fishery in the Chesapeake Bay and its tidal tributaries from 20 inches to 19 inches. The proposed action makes changes in several chapters to accomplish the purpose including changes to the season, gear and use of bait. All changes apply to recreational anglers and charter boats. Changes for striped bass sizes and seasons are specific to 2018 and 2019 and do not apply to other years.

The Department, in cooperation with stakeholder groups, has completed a process with the Atlantic States Marine Fisheries Commission that will allow us to reduce the minimum size of striped bass for the recreational and charter boat summer and fall fishery in the Chesapeake Bay and its tidal tributaries from 20 inches to 19 inches. The Department's intention is to reduce dead discards of striped bass that occur throughout the summer/fall when anglers are using bait.

In 2015, the Atlantic States Marine Fisheries Commission required that all states implement management measures to reduce commercial and recreational striped bass harvest coastwide. This action was taken due to concerns about the size of the

adult/migratory female portion of the population. In Maryland, we increased our minimum size for recreational anglers from 18 to 20 inches. At the same time, the 2011 year class of striped bass in the Chesapeake Bay was about to reach an 18-20 inch size. Because of this, we expected to see a large number of sublegal fish caught and released that first year. As expected, our estimated number of released fish increased in 2015 and this trend continued in 2016 and 2017. Concerned recreational anglers reported to the Department that large numbers of sublegal fish caught and released were dying as a result of a combination of factors including high water temperatures and ‘deep hooking’ while chumming and live-lining. In the summer of 2017, the Department held a meeting with stakeholders to talk about their concerns. Stakeholder groups represented included the Coastal Conservation Association, Maryland Charter Boat Association, Maryland Watermen’s Association, Maryland Sportsmen’s Foundation, and the Delmarva Fisheries Association. When concerns over the number of dead discards were raised the Department committed to working with the Atlantic States Marine Fisheries Commission to develop a plan to address the issue. The Department considered a number of management alternatives to address the issue and presented options to the Atlantic States Marine Fisheries Commission’s Technical Committee for approval. Based on feedback received from the groups mentioned above the Department presented the 19 inch/circle hook option to the Atlantic States Marine Fisheries Commission for approval.

On February 7, 2018, the Atlantic States Marine Fisheries Commission’s Atlantic Striped Bass Board approved a request from the State of Maryland to reduce the recreational striped bass minimum size limit from 20 inches to 19 inches from May 16 through December 15 this year. Making this change also requires the Department to shorten the season and require the use of circle hooks when chumming and/or live-lining. The proposal to the Atlantic States Marine Fisheries Commission was presented as a ‘conservation equivalency’ plan, meaning that the same overall fishing mortality (both kept/harvested fish and fish that die after being released – dead discards) is expected to occur with the smaller size limit. The Department anticipates less dead discards and more harvest in 2018. It has been proven that circle hooks reduce discard mortality. The configuration of the hook makes it less likely to fatally hook or ‘deep hook’ a fish when using bait compared with the standard ‘J’ hook. The Board approved the proposal and gave the Department permission to proceed with implementing these measures. The Department is required to submit a follow up report to the Atlantic States Marine Fisheries Commission next year focused on compliance and enforcement of the new regulations.

Proposed Changes to Chapter 5 Fish

Currently, there are special rules for using bait in the Susquehanna Flats and Northeast River. The regulatory text is somewhat confusing since the section referenced has two time periods, but only one applies to the bait rules. The proposed action clarifies the regulatory text by specifying that the period for special bait regulations for the Susquehanna Flats and Northeast River is March 1 through May 3. The term “circle hook” is defined in regulation (COMAR 08.02.25.01) as a non-offset hook with the point turned perpendicularly back to the shank. Therefore, the proposed action clarifies the regulatory text by removing the term “non-offset” from this chapter.

The proposed action specifies the hook requirements for a person who is using bait while recreationally fishing in the Chesapeake Bay and its tidal tributaries during the period from May 16 through December 15. Circle hooks are required from May 16 through December 15 when chumming or live-lining, regardless of which species is being targeted. If a person is not chumming or live-lining, but is fishing with bait (fish, crabs, worms or processed

bait), they must use a “J” hook or a circle hook. Allowing the use of “J” hooks will allow anglers who pursue other fish (catfish, cobia, spot, croaker, white perch, etc.) to continue to do so. No other hooks are allowed to be used during that time period. By specifying the type of hooks that may be used, the regulation eliminates the use of treble hooks when bait fishing. Treble hooks are known to increase the chances of deep hooking when used while bait fishing.

Proposed Changes to Chapter 15 Striped Bass

The proposed action changes the end of the recreational and charter boat summer and fall season for taking striped bass from December 20 to December 15 in the Chesapeake Bay and its tidal tributaries, except for the tributaries of the Potomac River. The season is not changing in the tidal tributaries of the Potomac River to maintain consistency with Potomac River Fisheries Commission’s management of striped bass in the mainstem of the Potomac River. The proposed action changes the minimum size of striped bass for the summer and fall fishery in the Chesapeake Bay and its tidal tributaries from 20 inches to 19 inches.

Proposed Changes to Chapter 25 Gear

The proposed action adds definitions for chumming and live-lining. The term “fish” is defined in Natural Resources Article, §4-101, Annotated Code of Maryland and means finfish, crustaceans, mollusks, and amphibians and reptiles which spend the majority of their life cycle in water and any part, egg, offspring, or dead body of any of these species. Chumming includes all fish and other attractants upon which fish might feed. Chumming is specific to putting those items into the water without a hook for the purpose of attracting finfish. Live-lining is specific to using live finfish with active line fishing gear (hook and line, rod and reel, or handlines). Finfish include species like minnows, spot, eels, perch, menhaden, fallfish, and chubs. It does not include species like crabs, shrimp, worms, or processed bait. The proposed action also clarifies the areas in COMAR where additional rules for active line fishing gear are located.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed action may have an economic impact on recreational anglers, charter boat operations and tackle stores from May through December 2018 and May through December 2019.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Type of Hook - Anglers/Charters	(-)	Indeterminable
(2) Shortened Season - Charters	(-)	Indeterminable
(3) Minimum Size - Anglers/Charters	(+)	Indeterminable
E. On other industries or trade groups:		
(1) Type of Hook - Tackle Shops	(-)	Indeterminable
(2) Shortened Season - Tackle Shops	NONE	NONE
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D(1). NOAA Fisheries Marine Recreational Information Program (MRIP) data from 2012-2016 shows that approximately 760,000 anglers make 2.5 million fishing trips annually in Maryland waters. Some anglers and charter captains will have to purchase new hooks, but some already have the hooks available to them so we cannot determine the actual impact.

D(2). Decreasing the season by five days means that the charter industry could be negatively impacted if customers stop scheduling trips. However, if the customer has a better experience because they are witness to less overall mortality when using circle hooks, they may schedule more trips earlier in the season. The charter industry may change their business model at the end of the season. Instead of harvesting striped bass they could plan trips for catch and release or switch to other species in December. We are not able to predict the actions of anglers or businesses so the actual impact cannot be determined.

D(3). Changing the minimum size will give anglers an increased probability of success because a greater proportion of the striped bass in the Chesapeake bay and its tidal tributaries will be harvestable. Increasing harvest can be considered by some as a more successful trip and this could enhance their fishing experience. This could increase charter businesses by having satisfied and return customers. This impact is indeterminable because we are not able to predict angler activity.

E(1). Some tackle stores may be negatively impacted because they may not sell as many J hooks that they normally do and will have excess inventory. However, they may be positively impacted because they will sell circle hooks. It is unknown how many hooks of each type tackle shops sell in a year so the actual impact is indeterminable.

E(2). People can still go fishing, so they can still purchase gear and bait, they just can't keep striped bass.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

The proposed action may have an economic impact on charter boat operations and tackle stores. Both of those types of businesses are generally considered small businesses. Please see the Assumptions in the Estimate of Economic Impact for how it could impact the 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 Bait and Striped Bass Regulations, Regulatory Staff, Department of Natural Resources Fishing and Boating Services, 580 Taylor Avenue, B-2, 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 May 29, 2018. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2019

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:

Additional funding is not necessary for these regulations. There is no action required by staff and the Natural Resources Police will enforce the changes during the normal course of their day while enforcing all regulations. No additional effort is required.

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

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

G. Small Business Worksheet:

Attached Document:

Chapter 05 Fish

Authority: Natural Resources Article, §§4-215 and 4-221, Annotated Code of Maryland

.02 General Fishing Prohibitions.

A.—E. (text unchanged)

F. Bait.

(1) When using fish, crabs, or worms as bait, or processed bait, a person recreationally angling in the Susquehanna Flats and Northeast River during the period [set forth in §E of this regulation] *March 1 through May 3* shall only use a:

(a) [Non-offset circle hooks] *Circle hook*; or

(b) "J" [hooks] *hook* with a gap of less than *or equal to* 1/2 inch between the point and the shank.

(2) *Except for chumming or live-lining, when using fish, crabs, or worms as bait, or processed bait, a person recreationally angling in the Chesapeake Bay and its tidal tributaries during the periods May 16, 2018 through December 15, 2018 and May 16, 2019 through December 15, 2019 shall only use a:*

(a) *Circle hook; or*

(b) *"J" hook.*

(3) *When chumming or live-lining, a person recreationally angling in the Chesapeake Bay and its tidal tributaries during the periods May 16, 2018 through December 15, 2018 and May 16, 2019 through December 15, 2019 shall only use a circle hook.*

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

G.—P. (text unchanged)

Chapter 15 Striped Bass

Authority: Natural Resources Article, §§4-215, 4-2A-03, 4-732, Annotated Code of Maryland

.03 Spawning Rivers, Areas, and Reaches.

A.—D. (text unchanged)

E. Fishing Restrictions for the Period March 1 [Through] *through* the third Friday in April. The restrictions in this section apply to the waters of the Chesapeake Bay and its tidal tributaries that are not closed in accordance with §D(1) of this regulation. During the period from March 1 through the third Friday in April:

(1) A person recreationally angling:

(a) When using fish, crabs, or worms as bait, or processed bait, shall *only* use a:

(i) Circle [hooks] *hook*; or

(ii) "J" [hooks] *hook* with a gap of less than *or equal to* 1/2 inch between the point and the shank;

(b) (text unchanged)

(c) Shall *only* use barbless hooks while trolling; and

(2) (text unchanged)

.09 Recreational and Charter Boat Summer and Fall Fishery in the Chesapeake Bay and Its Tidal Tributaries.

A. Early Season.

(1) (text unchanged)

(2) Chesapeake Bay and Its Tidal Tributaries.

(a) (text unchanged)

(b) Catch Restrictions.

(i) (text unchanged)

(ii) [A] *Except as provided in §A(2)(b)(iii), a person may catch and possess two striped bass at least 20 inches total length, only one of which may be greater than 28 inches total length.*

(iii) *During the periods May 16, 2018 through May 31, 2018 and May 16, 2019 through May 31, 2019, a person may catch and possess two striped bass at least 19 inches total length, only one of which may be greater than 28 inches total length.*

(3) Susquehanna Flats and Northeast River.

(a) (text unchanged)

- (b) Catch Restrictions.
 - (i) (text unchanged)
 - (ii) [A] *Except as provided in §A(3)(b)(iv), a person may catch and possess one striped bass between 20 and 26 inches, inclusive, total length.*
 - (iii) (text unchanged)
 - (iv) *During the periods May 16, 2018 through May 31, 2018 and May 16, 2019 through May 31, 2019, a person may catch and possess one striped bass between 19 and 26 inches, inclusive, total length.*

B. Summer and Fall Season.

- (1) The recreational and charter boat summer and fall season for taking striped bass is [June 1 through December 20.]:
 - (a) *June 1 through December 15 for the years 2018 and 2019; and*
 - (b) *June 1 through December 20 for all other years.*
- (2) (text unchanged)
- (3) Catch Restrictions.
 - (a) (text unchanged)
 - (b) [A] *Except as provided in §B(3)(c), a person may catch and possess two striped bass at least 20 inches total length, only one of which may be greater than 28 inches total length.*
 - (c) *During the periods June 1, 2018 through December 15, 2018 and June 1, 2019 through December 15, 2019, a person may catch and possess two striped bass at least 19 inches total length, only one of which may be greater than 28 inches total length.*

C. (text unchanged)

.10 Recreational and Charter Boat Summer and Fall Fishery for Maryland Tributaries of the Potomac River.

A.—B. (text unchanged)

C. Size Limit.

- (1) [A] *Except as provided in §C(2), a person may catch and possess two striped bass at least 20 inches total length, only one of which may be greater than 28 inches total length.*
- (2) *During the periods May 16, 2018 through December 31, 2018 and May 16, 2019 through December 31, 2019, a person may catch and possess two striped bass at least 19 inches total length, only one of which may be greater than 28 inches total length.*

Chapter 25 Gear

Authority: Natural Resources Article, §§4-215 and 4-221, Annotated Code of Maryland

.01 Gear Definitions.

A. (text unchanged)

B. Terms Defined.

- (1)—(4) (text unchanged)
- (5) *“Chumming” means placing fish, parts of fish or other natural or manmade attractants upon which fish might feed, in the water, not attached to a hook, for the purpose of attracting fish to a particular area so that they might be caught.*
- [(5)] (6) — [(25)] (26) (text unchanged)
- (27) *“Live-lining” means using a live finfish on a hook for the purpose of catching other fish with:*
 - (a) *Hook and line;*
 - (b) *Rod and reel; or*
 - (c) *Handlines.*
- [(26)] (28) — [(43)] (45) (text unchanged)

.03 Recreational Gear — Tidal Waters.

A.—B. (text unchanged)

C. Active Line Fishing Gear.

- (1)—(4) (text unchanged)
 - (5) Additional restrictions on active line fishing gear [used to catch striped bass] may be found at *COMAR 08.02.05.02 and COMAR 08.02.15.03.*
- D.—G. (text unchanged)

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