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DNR-FS-2020-01

SMALL BUSINESS COMPLIANCE GUIDE
Amendment to Subtitle 02 Fisheries Service
Regarding the Department's Regulations for Striped Bass
COMAR 08.02.15.07
Released June 15, 2020
Updated July 29, 2020
Updated December 7, 2020
Updated February 8, 2020

This Guide is prepared in accordance with the requirements of State Government Article, §10-110, Annotated Code of Maryland. It is intended to help small businesses comply with the revised rules adopted in the above-referenced sections of the Code of Maryland Regulations. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small businesses, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply.

The Department will clarify or update the text of the Guide as an idea moves through the regulatory process. Direct your comments and recommendations, or calls for further assistance, to Fishing and Boating Services Regulatory Division:

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410-260-8DNR; toll free in Maryland 877-620-8DNR; TTY Users Call via the Maryland Relay
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I. SUMMARY & FAQs

What was proposed?

The department proposed extending the commercial striped bass Chesapeake Bay Individual Transferable Quota (ITQ) fishery seasons for hook and line, haul seines, and drift gill nets. The proposed action does not allow additional harvest. It provides fishery participants with greater flexibility in their business model by allowing fishermen to time their fishing activity with meeting market demands. The changes are consistent with the Chesapeake Bay ITQ fishery priorities developed jointly by the department and the industry when the ITQ program was first implemented. The proposed action also reorganizes certain sections to clarify which provisions apply to each fishery.

Specifically for Hook and Line, the proposal:

1) Extends the season through December 31 (The new season would be June 1 through December 31).

- The current regulation specifies that the hook and line season ends November 30. The department has extended this season through December by issuing a public notice for several years (2014—2020).

2) Removes the prohibition for fishing on Friday.

- Currently, permittees are prohibited from fishing with hook and line on Friday, Saturday, and Sunday.

3) Extends the fishing hours to one hour after sunset.

- Currently, permittees must quit fishing by sunset.

Specifically for Haul Seines, the proposal extends the season through the end of February.

- The new season would be June 1 through the end of February. The current regulation specifies that the haul seine season ends November 30. The department extended this season through December in 2019 and 2020 by issuing a public notice.
- Haul seines are used in January and February primarily to harvest catfish and occasionally catch striped bass as bycatch. The harvest of striped bass in January and February is expected to be minimal and is not expected to impact the market, while still allowing for efficiency in haul seine activity.
- The days of the week that you can use this gear are not changing.

Specifically for Drift Gill Nets, the proposal allows harvest on Saturdays and Sundays.

- The current regulation specifies that harvesters may not use drift gill nets on Saturdays or Sundays.
- The department allowed harvest on Saturdays during December in 2018 and both Saturdays and Sundays in December in 2019 and 2020 by issuing a public notice.
- Adding Saturdays and Sundays to the entire fishing season (January 1 through the last day of February and December 1 through December 31) for drift gill nets will provide fishermen invested in drift gill net fishing gear additional days to access the market.

Why are these changes necessary?

This will give commercial striped bass permit holders in the Chesapeake Bay ITQ fishery additional choices to harvest their assigned quota. No additional harvest will be permitted. These changes do not increase a permittee's harvest, they allow permittees to have additional choices for harvest.

Adding the extensions to regulation will allow for greater business flexibility, will allow fishermen to time their fishing activity to meet market demands, and will allow them greater ability to plan their business activities. With declines in markets during the ongoing global pandemic, business flexibility is of utmost importance.

The changes are consistent with the Chesapeake Bay ITQ fishery priorities by providing greater business flexibility without increasing harvest. The changes are consistent with the Chesapeake Bay ITQ fishery priorities developed jointly by the department and the industry when the ITQ program was first implemented. Even though some of these actions can be accomplished by issuing a public notice, it will be clearer to harvesters if the information is included in the Code of Maryland Regulations and will allow businesses to plan their seasonal activity in advance.

Who will this affect?

This action applies to all commercial striped bass permittees authorized to fish in the Chesapeake Bay ITQ fishery.

Where do the rules apply?

They apply in the Chesapeake Bay and its tidal tributaries.

Has this change been discussed with advisory commissions?

These changes were requested by and discussed with the striped bass industry workgroup and reflect the recommendations of the workgroup. The recommendations were provided as updates to the TFAC and SFAC as meeting notes in October 2019. This idea was scoped with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their January 2020 meetings. Commissioners recommended moving forward with scoping. Scoping with stakeholders was delayed for several reasons so an update was provided to the commissions at their April 2020 meetings stating that scoping would begin early summer.

The original topics were scoped in June. The striped bass industry workgroup discussed the changes at their meeting in early July and realized that the scoping did not include two topics (Fridays and one hour after sunset) for the hook and line fishery. The department has added these topics and they were scoped with TFAC and SFAC at their meetings in July. Commissioners recommended moving forward with scoping with stakeholders.

What is the specific regulatory action?

Amend Regulation .07 under COMAR 08.02.15 Striped Bass.

II. DEFINITIONS

"Allocation" is defined in regulation (COMAR 08.02.15.02) as pounds or numbers of striped bass which a striped bass permittee is provided on an annual basis.

"Commercial tidal fish licensee" is defined in regulation (COMAR 08.02.15.02) as a person licensed by the Department to catch and sell finfish.

"Individual Transferrable Quota" is defined in regulation (COMAR 08.02.15.02) as the fishery in the Chesapeake Bay and its tidal tributaries that provides exclusive privileges to an individual by assigning a fixed share of the commercial striped bass quota to each individual registered with a striped bass permit.

"Striped bass permit" is defined in regulation (COMAR 08.02.15.02) as a permit issued by the Department which allows a person the privilege to commercially harvest striped bass.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

This action does not create new permit, recordkeeping or reporting requirements.

IV. REGULATORY PROCESS

The department followed our normal scoping and proposal procedures.

During the scoping process, the department gathers suggestions and ideas from stakeholders and others about how to solve a fishery problem or address a need. The goal of scoping is to identify issues, potential impacts, and reasonable alternatives associated with the issues so that management actions can be developed. After the public has had an opportunity to comment on possible management actions during the scoping process, the department considers these comments and develops an appropriate management strategy. The ideas for this proposal were scoped in two different sections from June 15 through June 30, 2020 and July 29 through August 12, 2020.

At the conclusion of the scoping process, the department determined that the action was necessary and appropriate. The rules were promulgated following the Administrative Procedures Act described in Title 10, Subtitle 1 of the State Government Article Annotated Code of Maryland.

- The General Assembly's Administrative, Executive, and Legislative Review Committee reviews the regulatory proposal for fiscal and legal analysis.
- The proposal was printed by the Division of State Documents in the Maryland Register on December 4, 2020.
- A 30 day public comment period began on the day of publication. The comment period ended at 11:59 p.m. January 4, 2021.
- After review of the comments, the department decided to adopt the changes as proposed.

V. IMPLEMENTATION DATE

This regulation change is effective February 8, 2021.