

# Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

## Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

## Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

## Title 08

# DEPARTMENT OF NATURAL RESOURCES

## Subtitle 02 FISHERIES SERVICE

### 08.02.01 General

Authority: Natural Resources Article, §4-407, Annotated Code of Maryland

#### Notice of Proposed Action

[20-158-P]

The Secretary of Natural Resources proposes to amend Regulation **.13** under **COMAR 08.02.01 General**.

#### Statement of Purpose

The purpose of this action is to designate Cushwa Hatchery as a fishery management propagation area. The property that contains Cushwa Hatchery was recently acquired by the Department and will be managed by Fishing and Boating Services. All State hatcheries are designated as fishery management propagation areas. The Cushwa Hatchery facility needs to attain the same designation as all other State-owned hatcheries.

#### 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 Fishery Management Area Regulations, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue,

B-2, Annapolis, MD 21401, or call 410-260-8300, or complete the form at <https://dnr.maryland.gov/fisheries/Pages/regulations/changes.aspx#cushwa>. Comments will be accepted through November 9, 2020. A public hearing has not been scheduled.

#### .13 Fishery Management Areas.

A. (text unchanged)

B. Fishery Management Propagation Areas.

(1) The following areas are Fishery Management Propagation Areas:

(a)—(d) (text unchanged)

(e) Piney Point Aquaculture Center — St. Mary's County;

[and]

(f) Unicorn Lake Hatchery — Queen Anne's County[.]; *and*

(g) *Cushwa Hatchery — Washington County.*

(2) (text unchanged)

C.—D. (text unchanged)

JEANNIE HADDAWAY-RICCIO

Secretary 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

[20-157-P]

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 5-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 8 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 (two 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 complete the comment form at <https://dnr.maryland.gov/fisheries/Pages/regulations/changes.aspx#brookie>. Comments will be accepted through November 9, 2020. A public hearing has not been scheduled.

**.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) *Special provisions in effect on this area:*

(i) *A person may use only artificial flies and lures;*

(ii) *A person may not possess or use any natural or live bait, or any device enhanced with a scent and capable of catching fish; and*

(iii) *A person may not have brook trout in possession while fishing in this area.*

(b) *The area subject to the provisions of §H(2)(a) of this regulation 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).*

**.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] *five* fish of the [10 fish] *ten-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.

Species	Open Season
(a) (text unchanged)	
(b) Trout (all species)	No closed season, except as provided in Regulation [.01B, C, E, F, and G] .01 of this chapter.
(c)—(n) (text unchanged)	

(2) Creel and Possession Limits.

	Daily Creel	Possession
(a) Trout (all species) in aggregate	2, <i>except as specified in Regulation .01 of this chapter</i>	4, <i>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

# Title 09 MARYLAND DEPARTMENT OF LABOR

## Subtitle 10 RACING COMMISSION

### 09.10.01 Thoroughbred Rules

Authority: Business Regulation Article, §11-210, Annotated Code of Maryland

#### Notice of Proposed Action

[20-160-P]

The Maryland Racing Commission proposes to amend Regulation .57 under **COMAR 09.10.01 Thoroughbred Rules**. This action was considered by the Maryland Racing Commission at a public meeting held on August 27, 2020.

#### Statement of Purpose

The purpose of this action is to require trainers and assistant trainers of horses to complete 4 hours of continuing education each calendar year to remain eligible to renew their licenses.

#### 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 J. Michael Hopkins, Executive Director, Maryland Racing Commission, 300 East Towsontown Blvd., Towson, MD 21286, or call 410-296-9682, or email to mike.hopkins@maryland.gov, or fax to 410-296-9687. Comments will be accepted through November 16, 2020. A public hearing has not been scheduled.