

The proposed action would create definitions for creel limit, possession limit, and bait fish in nontidal waters. Some individuals have expressed confusion with regard to the differences between the creel limit and possession limit for certain species, and what that means for possession while fishing. There have also been questions about what species constitute bait fish. The Department would like to clarify by defining 1) “daily creel limit” as the total number of a species of fish that can be in an individual's possession while afield or on the water between 12:01 a.m. and midnight; 2) “possession limit” as the total number of a particular species, including the daily creel limit and any previously caught fish, that an individual may possess or control in any location; and 3) “bait fish” as any species of fish which are legally permitted to be put on a hook for the purpose of catching a fish which do not otherwise have a catch or possession limit. The total number of bait fish, in aggregate, while afield or on the water must not exceed 35 per individual.

The proposed action would legalize the use of cut bait in nontidal waters. Although cut bait is widely used and accepted as a method of catching catfish, current regulations prohibit its use in nontidal waters. The proposed action would allow the use of cut bait so catfish anglers may more effectively target both noninvasive and invasive catfish species and help the Department achieve its management objectives.

The proposed action would only allow the use of cut bait for species with no minimum size. Permitting an angler to possess up to one quart of cut bait allows a reasonable amount of bait to be prepared ahead of time, but does not allow an angler to possess a large quantity of fish potentially unidentifiable by law enforcement. An angler would still be able to possess whole fish that they intend to use as cut bait within any of the established limit as long as they do not exceed the one quart of cut fish limit at any time.

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 Fishing in Nontidal Waters Regulations, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue, E-4, Annapolis, MD 21401, or call 410-260-8300, or complete the comment form at <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx>. Comments will be accepted through May 22, 2023. A public hearing has not been scheduled.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Daily creel limit” means the total number of a species of fish that can be in an individual's possession while afield or on the water between 12:01 a.m. and midnight.

(2) “Possession limit” means the total number of a particular species, including the daily creel limit and any previously caught fish, that an individual may possess or control in any location.

.04 Statewide General Regulations.

A.—H. (text unchanged)

I. Bait.

(1) Term Defined. In this regulation, the term “bait fish” means any species of fish which does not otherwise have a catch or possession limit and which is legally permitted to be put on a hook for the purpose of catching fish.

[(1)] (2)—[(2)] (3) (text unchanged)

J. Possession of Fish Whose Physical Condition Has Been Altered.

(1) While at the fishing location, a person may not remove the head and tail of [fish in possession.] any:

(a) Fish for which there is a minimum size; or

(b) Trout.

(2) The head and tail of any fish for which there is a minimum size or trout shall remain attached in such a manner as to permit identification of fish species and total length.

(3) An individual may not have in possession at a fishing location more than 1 quart of fish which have been cut into pieces.

[(3)] (4) (text unchanged)

K.—P. (text unchanged)

JOSH KURTZ
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.13 Fishing Licenses—Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure

Authority: Natural Resources Article, §§4-220 and 4-701, Annotated Code of Maryland

Notice of Proposed Action

[23-056-P]

The Secretary of Natural Resources proposes to amend Regulations, .03, .05, and .10 under **COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure.**

Statement of Purpose

The purpose of this action is to update the commercial, recreational, and seafood dealer license suspension and revocation schedules. This update will deter potential violators from committing illegal acts, protect the State's fisheries resources, and update certain references to statutes and regulations. Before considering changes or updates to the penalty regulations under COMAR 08.02.13, the Department consults with the Joint Penalty Workgroup of the Tidal and Sport Fisheries Advisory Commissions. The workgroup supported making these proposed changes.

For the recreational updates, the Department is proposing to add penalties for shark handling violations, cobia size and creel limit violations, possession of a fish with the head and tail removed while fishing in nontidal waters, methods of take for black bass in nontidal waters, brook trout violations, violations in trout catch-and-release areas, culling of trout, and spot catch limit violations.

The Department has seen an increase in land-based shark fishing in certain areas. This activity is legal but comes with several requirements for the safe handling of sharks to ensure their maximum survivability after being caught. This action proposes a 90-day suspension for a second or subsequent offense of these rules. The workgroup recommended suspending only for a second or subsequent violation to prioritize educating offenders first. The recreational penalty system will also be revised by the addition of recreational suspensions for certain cobia violations. This is necessary due to their increased presence in Maryland waters. The suspension levels being proposed for cobia are similar to the suspension levels for red drum, another highly regulated yet generally less common type of fish in the Maryland portion of the Chesapeake Bay and its tidal tributaries.

The action also proposes to adopt a 180-day suspension for the possession of fish with head or tail removed while fishing in nontidal waters. Anglers are not allowed to remove the head or tail from a fish while fishing in nontidal waters because it is important to ensure that fish with size limits are of legal size. Adding a suspension for this type of violation will help to ensure better compliance with current size limits. The action also proposes a 180-day suspension for a violation of the statutory provision prohibiting the catching of black bass by means other than angling (hook and line) in nontidal waters. The Department also has a regulation prohibiting the shooting of black bass with projectile gears which is currently covered by the penalty schedule. If the offense were charged as a violation of the gear regulation, it would potentially result in either a 180-day suspension or a 1-year suspension. This action would add the statutory violation to the penalty schedule. The workgroup recommended adding the statutory violation at the lower of the two possible penalties.

The three trout violations added to the penalty schedule will result in greater parity in administrative penalties being levied on violations. Brook trout regulations changed recently to extend protections for brook trout to much of the State's nontidal waters. Currently, the only brook trout-specific suspension related to a previous special management area. This change will extend that same penalty to all of the new areas which are being managed in the same way as that previous special management area. Violations in delayed harvest areas currently result in a 1-year suspension, while there is no current administrative penalty for violations in catch-and-release areas. This action will create an identical punishment for similar violations in the two areas. The Department currently has rules regarding culling two species: striped bass and trout. A striped bass culling violation now results in a 1-year suspension; this action will add an identical penalty for culling trout.

Lastly for the recreational changes, regulations were adopted for spot in 2021 which established a recreational catch limit. The proposed levels of suspension mirror the levels set for exceeding the catch limit for croaker, another common small fish in the Chesapeake Bay and its tidal tributaries.

For the commercial updates, the Department is proposing to add administrative penalties for possession of undersized conch, the use of an unattended drift gill net, lying on a commercial license application, and failing to obtain a bait harvester permit.

The Department has statutory authority to suspend or revoke an individual's tidal fish license and their entitlement to engage in commercial fishing activities for any violation recommended by the penalty workgroup and for a small number of specific violations described in the statute. The recommendations of the penalty workgroup are reflected in the penalty schedule in regulation. The Department recently encountered the issue of nonresidents lying on their commercial fishing license application, presenting themselves as residents in order to obtain commercial oyster and clam harvester licenses illegally. In order to be as transparent as possible, the Department and the workgroup decided to propose adding the penalty for the offense to the schedule in regulation, even though the Department has the authority to suspend or revoke without doing so. Setting the penalty at 35 points, which results in the revocation of the license and the individual's entitlement to engage in commercial fishing activities, will ensure that individuals convicted of illegally obtaining a license will not be able to participate in that fishery in the future.

Adding an unattended gill net violation in the Chesapeake Bay and its tidal tributaries as a 5-point violation will help to ensure greater compliance with the attendance requirements for gill nets. Because the addition of 5 points on a licensee's record does not result in an immediate suspension, it essentially will act as an enhancement to the penalty for other violations committed and provide an incentive to avoid further illegal behavior during the time period the points are on the individual's license record.

Lastly for the commercial updates, both the bait harvester permit and undersized conch additions were oversights from previous iterations of the commercial penalty schedule. A bait harvester permit is required for an individual to commercially harvest bait fish if they are not otherwise commercially licensed. Because it allows commercial harvest, failure to obtain that permit prior to engaging in the activity should be treated the same as any other failure to obtain a commercial authorization. All other failures to obtain a commercial authorization prior to engaging in the commercial activity result in 30 points being placed on the individual's commercial licensing record, which is why the Department is adding failing to obtain the bait harvester permit prior to harvesting bait at that level. For conch, the Department wants to ensure that significant violations of the conch size limit have some administrative consequence. Maryland already has the most restrictive conch size limit among its neighboring states and assigning points to a commercial harvester's licensing record for these types of violations will ensure that repeat violators will be suspended.

For the seafood dealer update, buy tickets are an important component of how the Shellfish Division manages oysters. Buy tickets provide a measure of harvest accountability, as well as ensuring that the required taxes are being paid. Those taxes are used for oyster replenishment activities, which help to ensure a viable fishery into the future. If buy tickets are not filled out when oysters are sold, those taxes are not being paid and the fishery is short-changed of needed funds. Additionally, buy ticket information is used by the Shellfish Division in the oyster stock assessment. Because there are times where a dealer may lose paperwork or mistakenly forget to fill out the necessary forms, the penalty workgroup recommended that a first offense only be subject to a fine in District Court, while a second or subsequent offense would result in the suspension of that seafood dealer.

This action updates all references to regulations that have been removed or amended. This action also updates and standardizes certain references to the Annotated Code of Maryland and the Code of Maryland Regulations.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have an economic impact on suspended or revoked licensees, but the extent of the impact is indeterminable.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
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:		
Licensees	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

D. The proposed action may have a negative impact on licensees who are suspended or have their licenses revoked based on committing one of the listed offenses. However, it is not possible to determine the number of individuals who may violate the listed laws, nor is it possible to determine to what extent the suspension or revocation would economically impact the individual or individuals.

Economic Impact on Small Businesses

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

The proposed regulation may have a meaningful economic impact on small businesses which violate the law and are therefore suspended or revoked from their commercial fishing activities. It is not possible to predict how many businesses will violate the law and therefore receive suspensions or revocations, or to what extent such suspension or revocation would economically impact those businesses. The proposed action may have a meaningful positive economic impact on small businesses which do not violate the law as well, by allowing for more harvest by law-abiding licensees. It is not possible to predict how many businesses will violate the law and therefore receive suspensions or revocations, or to what extent such suspension or revocation would economically benefit the remaining law-abiding 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 Fishing License Penalty Regulations, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue, E-4, Annapolis, MD 21401, or call 410-260-8300, or complete the comment form at <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx#penalty>. Comments will be accepted through May 22, 2023. A public hearing has not been scheduled.

.03 Point Assignment Schedule.

A.— B. (text unchanged)

C. Tier I. The following violations are Tier I violations. A person who receives a conviction for a Tier I violation receives 5 points.

	Statute or Regulation	Description
1—70	(text unchanged)	
71	COMAR 08.02.05.02	Use of Unattended Drift Gill Net in the Chesapeake Bay or Its Tidal Tributaries
72	COMAR 08.02.08.14	Possessing Undersized Conch: 10% of the catch or more

D.—G. (text unchanged)

H. Tier VI. The following violations are Tier VI violations. A person who receives a conviction for a Tier VI violation receives 30 points.

	Statute or Regulation	Description
1	(text unchanged)	
2	Natural Resources Article, Title 4, COMAR 08.02.02.01, 08.02.02.09, 08.02.03.03, 08.02.04.05, 08.02.05.03,	Operating Without a Required Commercial Fishing License or Authorization

	08.02.05.08, 08.02.08.03, 08.02.15.05, 08.02.18.03, 08.02.18.04, 08.02.18.05, 08.02.18.06, 08.02.20.02	
3—15	(text unchanged)	

I. Tier VII. The following violations are Tier VII violations. A person who receives a conviction for a Tier VII violation receives 35 points.

	Statute or Regulation	Description
1—3	(text unchanged)	
4	4-701	<i>Making Any False Statement in an Application for a Tidal Fish License</i>
[4] 5	(text unchanged)	

J.—K. (text unchanged)

.05 Recreational Fishing Suspension and Revocation.

A.—C. (text unchanged)

D. A person who receives one of the following violations may be suspended for up to 90 days.

	Statute or Regulation	Description
(1)—(12)	(text unchanged)	
(13)	COMAR 08.02.03.10, <i>COMAR 08.02.03.14</i>	Crabs — Daily Catch Limit
(14)	(text unchanged)	
(15)	COMAR 08.02.03.12B(2), <i>COMAR 08.02.03.14</i>	Crabs — Daily Catch Limit — Worcester County
(16)	(text unchanged)	
(17)	<i>COMAR 08.02.05.03</i>	<i>Daily Catch Limits — Spot: 4—6 fish over daily catch limit</i>
[(17)] (18)— [(34)] (35)	(text unchanged)	
(36)	<i>COMAR 08.02.05.17</i>	<i>Daily Size Limits — Cobia: 2 fish</i>
(37)	<i>COMAR 08.02.05.17</i>	<i>Catch Limit — Cobia: 2 fish over catch limit</i>
[(35)] (38)— [(61)] (64)	(text unchanged)	
(65)	<i>COMAR 08.02.22.03</i>	<i>Shark Handling Violation (Second or Subsequent Offense)</i>
[(62)] (66)— [(63)] (67)	(text unchanged)	

E. A person who receives one of the following violations may be suspended for up to 180 days.

	Statute or Regulation	Description
(1)—(9)	(text unchanged)	
(10)	<i>COMAR 08.02.05.03</i>	<i>Daily Catch Limits — Spot: 7—10 fish over daily catch limit</i>
[(10)] (11)— [(43)] (44)	(text unchanged)	
[(44)] (45)	[COMAR 08.02.11.01H] <i>COMAR 08.02.11.01</i>	[Creel Limit Violations in Zero Creel Limit for Brook Trout Fishing Areas] <i>Illegal Possession of Brook Trout</i>
[(45)] (46)	<i>COMAR 08.02.11.01</i> , COMAR 08.02.11.04A(1), COMAR 08.02.11.06	Season Violations — Nontidal Waters
[(46)] (47)	<i>COMAR 08.02.11.01</i> , COMAR 08.02.11.04A(2), COMAR 08.02.11.06	Exceeding Daily Catch or Possession Limits — Nontidal
(48)	<i>COMAR 08.02.11.04</i>	<i>Possession of Fish with Head and Tail Removed While Fishing in Nontidal Waters</i>
[(47)] (49)— [(62)] (64)	(text unchanged)	
(65)	4-617	<i>Catching Black Bass by Means Other than Angling (Hook and Line) in Nontidal Waters</i>

F. A person who receives one of the following violations may be suspended for up to 1 year.

	Statute or Regulation	Description
(1)—(3)	(text unchanged)	
(4)	Natural Resources Article, Title 4, COMAR 08.02.02.01, 08.02.02.09, 08.02.03.03, 08.02.04.05, 08.02.05.03, 08.02.05.08, 08.02.08.03, 08.02.15.05, 08.02.18.03, 08.02.18.04, 08.02.18.05, 08.02.18.06, 08.02.20.02	Operating Without a Required Commercial Fishing License or Authorization
(5)—(36)	(text unchanged)	
(37)	<i>COMAR 08.02.05.17</i>	<i>Daily Size Limits — Cobia: 3 or more fish</i>
(38)	<i>COMAR 08.02.05.17</i>	<i>Catch Limit — Cobia: 3 or more fish over catch limit</i>
[(37)] (39)— [(74)] (76)	(text unchanged)	

(77)	COMAR 08.02.11.01	Possession of Trout in Catch-and-Release Area
[(75)] (78)— [(76)] (79)	(text unchanged)	
(80)	COMAR 08.02.11.04L	Culling Trout
[(77)] (81)— [(108)] (112)	(text unchanged)	

G.—N. (text unchanged)

.10 Seafood Dealer Penalties.

A.—E. (text unchanged)

F. Tier II. The following violations are Tier II violations. A person who receives a conviction for a Tier II violation receives 10 points and a 30-day suspension.

	Statute or Regulation	Description
(1)—(2)	(text unchanged)	
(3)	COMAR 08.02.04.16	Failure of Oyster Buyer to Fill Out Buy Ticket — Second or Subsequent Offense
[(3)] (4)— [(4)] (5)	(text unchanged)	

G.—L. (text unchanged)

JOSH KURTZ
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.20 Bait

Authority: Natural Resources Article, §§4-219 and 4-602, Annotated Code of Maryland

Notice of Proposed Action

[23-035-P]

The Secretary of Natural Resources proposes to amend Regulation .01 and adopt new Regulation .03 under **COMAR 08.02.20 Bait**.

Statement of Purpose

The purpose of this action is to prohibit the use of largemouth bass, muskellunge, northern pike, pickerel, smallmouth bass, striped bass, striped bass hybrids, tiger muskellunge, walleye, and all species of trout as bait.

The proposed restrictions on species which may not be used as bait are necessary in part because large, piscivorous, invasive flathead catfish (*Pylodictis olivaris*) have become established in the nontidal waters of the Potomac and Susquehanna Rivers. Because of their large size and fighting ability, flathead catfish have become popular with the catfishing tournament community. The largest specimens are typically caught using large, live fish as bait. Some anglers have begun using large and smallmouth bass as bait. Current regulations allow the use of largemouth and smallmouth bass and all other sportfish as bait as long as they are caught using legal gear and within the size and creel limits established for that species.

Additionally, Maryland spends considerable resources to protect and enhance largemouth bass, muskellunge, northern pike, pickerel, smallmouth bass, striped bass, striped bass hybrids, tiger muskellunge, trout, and walleye, as well as control invasive species such as flathead catfish. Annually, significant financial investments are made by the Department by 1) monitoring and assessing sportfish populations to determine status and trends to identify needed management actions, 2) conducting all aspects of successful fish production in our warmwater and coldwater hatchery facilities, and 3) safely stocking the various species produced in waters throughout the State. Allowing intensively managed sportfish species to be used as bait is counter to the Department’s goals and objectives of enhancing recreational fisheries and creates conflict among our angling groups.

Estimate of Economic Impact

I. Summary of Economic Impact. This action may have an indeterminable impact on fishermen who currently use a species for bait which will be prohibited under this action, or dealers who sell those species for bait.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude