

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Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken.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an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.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

08.02.05 Fish

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

Notice of Proposed Action

[20-092-P]

The Secretary of Natural Resources proposes to amend Regulation .20 under **COMAR 08.02.05 Fish**.

Statement of Purpose

The purpose of this action is to implement the Atlantic States Marine Fisheries Commission Amendment 1 to the Interstate Fishery Management Plan for Tautog. Specifically the proposed action (1) modifies the season and catch limits for the commercial and recreational fishery; (2) reorganizes the regulation for clarity by creating a commercial section which includes requirements that only apply to commercial harvesters; (3) updates the degradable materials required for pots and traps to better describe the language in the management plan; (4) establishes new regulations to implement a commercial tagging program; and (5) updates the public notice requirements for consistency with other species managed in accordance with Atlantic States Marine Fisheries Commission guidelines.

In October 2017, the Tautog Management Board approved Amendment 1 to the Tautog Fishery Management Plan (FMP), which required implementation of a commercial harvest tagging program to combat illegal and unreported harvest of tautog. In October 2018, the Board moved to postpone implementation of the tagging program, due to issues identifying a suitable tag and applicator. At that time, the Board also reviewed but did not take action on a draft document

outlining implementation guidelines for the tagging program. The FMP also required states to implement the season and size management measures of the amendment by April 2018. The goal of Amendment 1 is to sustainably manage tautog over the long-term using regional differences in biology and fishery characteristics as the basis for management.

Since details were still being developed for the tagging program in 2018 and 2019, the Department decided to manage the size, creel, and season for the fishery by public notice until a regulation could be developed for all parameters.

A new tag and applicator have been tested in collaboration with several state partners and found to be suitable for the tagging program. Thus, the Atlantic States Marine Fisheries Commission is requiring states to implement their regulatory programs in 2020 to comply with Amendment 1. The tagging program is necessary to minimize the illegal, unreported, and undocumented catch of tautog.

The changes in the proposed action will ensure Maryland's compliance with the management plan.

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 has an economic impact for the Department.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
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A. On issuing agency:		
(1) Public notice	(E-)	\$260 per year
(2) Tagging guns	(E+)	\$90 per year
(3) Tags	(E+)	\$500 per year
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
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.)

A(1). Currently, a public notice to make changes to the tautog fishery must be published in a newspaper. Each notice costs approximately \$260. Each year the Department issues one notice.

A(2). A special tagging gun is necessary to apply the harvest tag. The Department will supply one tagging gun to each federally permitted dealer for use by harvesters. The Department will also have one in our local coastal office that harvesters may use as well. There are two dealers that need the tagging guns. Each gun costs approximately \$30. The tagging guns may need to be replaced each year.

A(3). A specific tag is required for the commercial fishery. The Department is purchasing the tags and will distribute them to the harvesters. Based on harvest records, the Department anticipates spending approximately \$500 on tags and distribution each year.

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 Tautog Regulations, Regulatory Staff, Department of Natural Resources Fishing and Boating Services, 580 Taylor Avenue, B-2, Annapolis, MD 21401, or complete the comment form at <https://dnr.maryland.gov/fisheries/Pages/regulations/changes.aspx#tautog>. Comments will be accepted through June 8, 2020. A public hearing has not been scheduled.

.20 Tautog.

A. An individual may not catch or possess:

- (1) (text unchanged)
- (2) A tautog from [November 27] *May 16* through [December 31] *June 30*.

[B. Gear Restrictions. A pot and trap used to catch tautog shall have hinges or fasteners on one panel or door made of one of the following degradable materials:

- (1) Untreated hemp or jute string of 3/16 inch in diameter or smaller;
- (2) Magnesium alloy fasteners; or
- (3) Ungalvanized or uncoated iron wire of 0.094-inch diameter or smaller.]

[C.] *B. Season and Creel Limit.*

- (1) From [May 16] *July 1* through October 31, an individual may not catch and possess more than two tautog per day.
- (2) From November 1 through [November 26, and January 1 through] *May 15 of the following year*, an individual may not catch and possess more than four tautog per day.

C. Commercial Gear and Tagging Requirements.

(1) A pot or trap used to catch tautog shall have hinges or fasteners on one panel or door made of one of the following degradable materials:

- (a) Untreated hemp or jute string of 3/16 inch in diameter or smaller;
- (b) Magnesium alloy timed float releases (pop-up devices) or similar magnesium alloy fasteners; or
- (c) Ungalvanized or uncoated iron wire of 0.094 inch in diameter or smaller.

(2) Before removing any tautog caught for commercial purposes from a boat or removing a boat from the water, a person shall affix a tag supplied by the Department to the cheek bone of the tautog.

(3) Tags:

- (a) Shall be supplied by the Department;
- (b) Are not transferrable;
- (c) Expire at the end of each calendar year;
- (d) May not be reused, defaced, modified, or counterfeited;
- (e) Shall be securely affixed to a whole tautog or accompany fillets until sale to the final consumer; and

(f) Shall only be used by the commercial tidal fish licensee to whom they were assigned.

(4) A licensee shall return unused tags to the Department not later than February 15 of each year.

(5) Tautog caught for commercial purposes shall be landed in the state that is identified on the tag.

D. General.

(1) The Secretary may modify catch limits or size limits or open or close a season [as required by] *in order to implement the Atlantic States Marine Fisheries Commission Fishery Management Plan for Tautog by [publishing] issuing a public notice [in a daily newspaper of general circulation at least 48 hours in advance of the modification, stating the effective hour and date] on the Department's website.*

(2) *The public notice shall state its effective hour and date and shall be published on the Department's website at least 48 hours in advance of the effective hour and date.*

[(2)] (3) (text unchanged)

(4) *A violation of the restrictions set by the Secretary in accordance with this section is a violation of this regulation.*

(5) *An individual may not sell or purchase a commercially caught tautog, alive or dead, that has not been tagged in accordance with this regulation.*

JEANNIE HADDAWAY-RICCIO
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.05 Fish

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

Notice of Proposed Action

[20-091-P]

The Secretary of Natural Resources proposes to amend Regulation **.22** under **COMAR 08.02.05 Fish**.

Statement of Purpose

The purpose of this action is to update requirements for gear used to catch scup. Scup is managed jointly by the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council under Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (August 2002) and its subsequent addenda (Addenda XII—XXXII).