

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Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken.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an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.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

Notice of Proposed Action

[17-265-P]

The Secretary of Natural Resources proposes to:

- (1) Amend Regulation **.07** under **COMAR 08.02.03 Crabs**;
- (2) Repeal Regulation **.01** and amend Regulations **.02** and **.07** under **COMAR 08.02.05 Fish**;
- (3) Amend Regulations **.04** and **.07** under **COMAR 08.02.15 Striped Bass**; and
- (4) Repeal existing Regulations **.04** and adopt new Regulations **.04—**~~**.07**~~ under **COMAR 08.02.25 Gear**.

Statement of Purpose

The purpose of this action is to allow harvesters to share gear. The Department has been contacted by fishermen about the possibility of allowing harvesters to share gear, which is currently prohibited by statute and regulation. After a review of current laws the Department has concluded that by clarifying what is intended by Natural Resources Article, §4-505, Annotated Code of Maryland, harvesters would be able to share gear. A small amount of reorganization and establishing additional requirements for pound nets was necessary to accomplish the purpose.

Proposed Change to COMAR 08.02.03 Crabs

The proposed action repeals the provision that prohibits someone from fishing a crab pot licensed to another individual. This is no longer necessary because new text is being added to COMAR 08.02.25 that clarifies Natural Resources Article, §4-505, Annotated Code of Maryland. The clarification in COMAR 08.02.25 will allow licensees to share gear under certain circumstances. This change will provide harvesters greater flexibility.

Proposed Changes to COMAR 08.02.05 Fish

The proposed action repeals Regulation .01 of COMAR 08.02.05 which mainly deals with pound nets and relocates the pound net text to a new regulation in the gear chapter. The relocation makes it easier to find information about specific gear. The text relating to the use of eels as bait was relocated to the regulation that covers general fishing prohibitions (COMAR 08.02.05.02). The proposed action modifies Regulation .07 to correct the citation that refers to the regulation being repealed.

Proposed Changes to COMAR 08.02.15 Striped Bass

The proposed action modifies two regulations in the striped bass chapter by correcting citations that refer to the regulation that is being repealed. The proposed action modifies Regulation .07 by repealing text related to using another licensee gill net or pound net. This text is no longer necessary because new text is being added to Chapter 25 that clarifies Natural Resources Article, §4-505, Annotated Code of Maryland. The clarification in Chapter 25 will allow licensees to share gear under certain circumstances. It will no longer just apply to striped bass.

Proposed Changes to COMAR 08.02.25 Gear

The proposed action modifies Regulation .04 by removing text related to archery equipment and finfish trotlines. This regulation will now be a general regulation for commercial gear. The proposed action creates new regulations for archery equipment, finfish trotlines and pound nets. The reorganization will make it easier to find information. The new regulations for archery equipment (Regulation .05) and finfish trotlines (Regulation .06) are simply relocated and renumbered; no changes to previous text were made.

The proposed action clarifies Natural Resources Article, §4-505, Annotated Code of Maryland, by establishing rules in Regulation .04 that allow licensees to share commercial gear. The intent of Natural Resources Article, §4-505, Annotated Code of Maryland is to prevent someone from stealing someone else's catch or sabotaging someone else's gear. An individual is not considered in violation of Natural Resources Article, §4-505, Annotated Code of Maryland if the individual is designated as an operator or co-user in accordance with regulation. The proposed action allows licensees and co-users the ability to share any piece of commercial gear for any species. The

proposed action allows licensees and co-users to take others with them to harvest from a piece of gear and creates rules for when they are not on the same vessel.

The new regulation for pound nets is Regulation .07. The regulation text was relocated from COMAR 08.02.05.01. Except for the establishment of co-users, there are only slight modifications to the original text for organizational and clarity purposes. Specifically, the proposed action adds definitions for co-user and registrant to be clear what is meant in the regulation; removes duplicate language that is in statute and should not be repeated in regulation; and removes the specific registration form requirements because forms and information change. Registration is still required, but the sections are reorganized to reflect current requirements. The proposed action establishes the ability to name co-users for pound nets and creates rules for co-users. Rules for co-users include the ability to designate, remove or change one or more co-users and requirements for marking the pound net. Prior to interacting with gear or harvesting fish, the co-user must be designated by the owner of the pound net site to the Department as being authorized to use the specified pound net site. A co-user has the same permissions for the use of the pound net as the owner. The owner will still be responsible for the net and all of the associated requirements to ensure that the Department has one point of contact for the net.

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 a positive economic impact for commercial harvesters.

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 (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:		
(1) Commercial harvesters	(+)	Indeterminable
(2) Commercial industry	(+)	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(1). The proposed action provides harvesters with greater flexibility in how they run their business and harvest fish. It is indeterminable how many harvesters will take advantage of sharing gear or if their harvest will increase or become more efficient because of it; therefore, the actual value that harvesters will benefit is indeterminable.

D(2). The value to the commercial industry (fish dealers, packers, store fronts and restaurants) increases when harvesters have greater flexibility, but that total value is indeterminable. It is indeterminable how many harvesters will take advantage of sharing gear or if their harvest will increase; therefore, it is indeterminable how the industry will benefit.

Economic Impact on Small Businesses

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

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Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Sharing Gear 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 November 13, 2017. A public hearing will be held, but the time and location are yet to be determined.

08.02.03 Crabs

Authority: Natural Resources Article, §§4-215 and 4-803, Annotated Code of Maryland

.07 Crab Pots.

- A.—C. (text unchanged)
- D. General Requirements.
 - (1)—(5) (text unchanged)
 - [(6) A person may not fish a crab pot licensed to another person.]
 - [(7)] (6) — [(9)] (8) (text unchanged)
- E.—H. (text unchanged)

08.02.05 Fish

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

Regulation	Section
[.01	4-221
.01A	4-510
.01B	4-710(g)
.01C	4-710(g)
.01D	4-704, 4-711
.01E	4-215
.01F	4-215]

.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 shall use:
 - [(1)] (a) — [(2)] (b) (text unchanged)
 - (2) A person may not use eels as bait while fishing with hook and line in the tidal waters of the Chesapeake Bay and its tributaries, except for a recreational, charter, or commercial hook and line fisherman authorized to participate in and fish during summer and fall striped bass seasons established in COMAR 08.02.15.
 - G.—P. (text unchanged)

.07 Atlantic Menhaden.

- A.—C. (text unchanged)
- D. Atlantic Menhaden Bycatch Allowance Landing Permits.
 - (1)—(3) (text unchanged)
 - (4) Operators.
 - (a)—(b) (text unchanged)
 - (c) An operator may only fish the pound nets that the permittee has:
 - (i) (text unchanged)
 - (ii) Notified the Department as being active in accordance with [Regulation .01C of this chapter] *COMAR 08.02.25.07*.
 - (d) (text unchanged)
 - (5)—(6) (text unchanged)
- E.—F. (text unchanged)

08.02.15 Striped Bass

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

.04 Tidal Fish Licensee Intent to Fish.

- A.—D. (text unchanged)
- E. Pound Net Requirements to Participate in the Striped Bass Fishery.
 - (1) (text unchanged)
 - (2) A pound net used to harvest striped bass shall be registered as active with the Department in accordance with *COMAR [08.02.05.01C] 08.02.25.07*.
- F.—G. (text unchanged)

.07 Commercial Fishery.

- A.—D. (text unchanged)
- E. Pound Net Fishery Limitations.
 - (1)—(2) (text unchanged)
 - (3) A commercial tidal fish licensee shall comply with all additional requirements in the pound net fishery as described in *COMAR [08.02.05.01] 08.02.25.07*.
- F. General.
 - (1)—(6) (text unchanged)
 - [(7) Notwithstanding Natural Resources Article, §4-505, Annotated Code of Maryland, a tidal fish licensee may harvest striped bass from a gill net or pound net belonging to another licensee if:
 - (a) The licensee has permission of the gear owner;
 - (b) The gear owner is present at the net while the harvest occurs; and
 - (c) Both licensees are in possession of their tidal fish license.]

08.02.25 Gear

Authority: Natural Resources Article, §§4-215, 4-505, and 4-711, Annotated Code of Maryland

.04 Commercial Gear — General.

- A. An individual is not considered in violation of Natural Resources Article, §4-505, Annotated Code of Maryland, if the individual:
 - (1) Is designated as an operator or co-user in accordance with this subtitle; or
 - (2) Harvests fish in accordance with §B of this regulation.
- B. A licensee may harvest fish from gear belonging to another individual and is not considered in violation of Natural Resources Article, §4-505, Annotated Code of Maryland, if:
 - (1) The licensee has permission of the gear owner or designated co-user;

- (2) The gear owner or designated co-user is present at the piece of gear while the harvest occurs;
- (3) The licensee has obtained and is in possession of a valid permit necessary for the species being harvested; and
- (4) Both licensees are in possession of their tidal fish license.

.05 Commercial — Archery Equipment.

- A. Archery equipment shall have a retrieval line attached to any projectile.
- B. An individual may use archery equipment to take any fish during an open commercial season except for the following species:
 - (1) All shark species;
 - (2) American lobster;
 - (3) Muskellunge;
 - (4) Muskellunge hybrids, including tiger musky;
 - (5) Northern pike;
 - (6) Snapping turtles;
 - (7) Striped bass;
 - (8) Striped bass hybrids;
 - (9) Walleye; and
 - (10) Any species listed as threatened or endangered under *COMAR 08.03.08*.

C. Additional Restrictions.

- (1) Except as provided in §C(2) of this regulation, a person may not shoot archery equipment within 100 yards of any:
 - (a) Human being;
 - (b) Private or public swimming area;
 - (c) International diving flag;
 - (d) Occupied duck blind; or
 - (e) Vessel other than the vessel occupied by the individual using archery equipment.
- (2) The distance restriction in §C(1) of this regulation does not apply if the person using the archery equipment receives permission from all affected parties within that area prior to engaging in fishing activities.

.06 Commercial — Finfish Trotlines.

- A. An individual may not set or fish a finfish trotline within 100 feet of another individual's set trotline.
- B. The length of a finfish trotline is measured along the baited portion of the line.
- C. A finfish trotline:
 - (1) May not exceed 1,200 feet in length;
 - (2) May not be baited with live bait; and
 - (3) Shall only be rigged with circle hooks with a minimum size of 5/0.
- D. Float Requirements.
 - (1) A finfish trotline shall have a float of the same color, size, and shape attached to each end.
 - (2) Floats that have a round or spherical shape shall be at least 12 inches in diameter.
 - (3) Floats that do not have a round or spherical shape shall be at least 12 inches long and 10 inches wide.
 - (4) Floats shall be marked with the owner's commercial license number.
- E. Depth Requirements.
 - (1) During the period from June 16 through the end of February, a finfish trotline shall be set:
 - (a) At least 10 feet below the surface of the water, in waters that are at least 10 feet deep at mean low tide; or
 - (b) On the bottom of the water body in which they are set, in waters that are less than 10 feet deep at mean low tide.
 - (2) During the period from March 1 through June 15, finfish trotlines shall be set on the bottom of the water body in which they are set.

F. Area Restrictions. A finfish trotline:

(1) Shall only be set in the Chesapeake Bay and its tidal tributaries; and

(2) May not be set in the Chesapeake Bay south of the William Preston Lane, Jr. Memorial Bay Bridge, including Pocomoke Sound and Tangier Sound.

G. An individual shall be appropriately licensed to catch finfish under Natural Resources Article, §4-701, Annotated Code of Maryland, and permitted in accordance with this regulation in order to use a finfish trotline.

H. Finfish Trotline Permit.

(1) A finfish trotline permit may only be issued to a licensee who has met all reporting requirements as required by Natural Resources Article, §4-206, Annotated Code of Maryland, and this regulation.

(2) An individual may be issued only one finfish trotline permit.

(3) An individual shall have their finfish trotline permit in their possession while using a finfish trotline.

(4) A finfish trotline permit may not be transferred.

(5) Reporting and Penalties.

(a) In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, a finfish trotline permittee shall report in the manner specified by the Department.

(b) In addition to any other penalty established in COMAR 08.02.13, failure to comply with this regulation may result in the suspension of the current permit or the denial of a subsequent permit.

(c) Prior to suspending a permit under this regulation or denying an application for a permit, the Department shall give the licensee notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.

I. The provisions of this regulation shall be effective through June 30, 2019.

.07 Commercial — Pound Nets.

A. Definitions.

(1) For purposes of this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) "Co-user" means an individual who is:

(i) Properly licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland;

(ii) Designated in writing to the Department by the registrant; and

(iii) Authorized to harvest fish from the specified pound net site.

(b) "Registrant" means the individual who registered the pound net site and owns the pound net.

B. Pound Net Sites.

(1) An individual may not set a pound net in State waters unless:

(a) The individual has submitted a completed registration form provided by the Department;

(b) The individual is properly licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland;

(c) The site is approved by the Department;

(d) The site is registered in the individual's name; and

(e) The individual has notified the Department of the setting of the net in compliance with §E of this regulation.

(2) An individual may not register more than eight pound net sites with the Department.

(3) The pound net site registrant shall notify the Department in writing to cancel a pound net site registration.

(4) A pound net set at a registered site by the registrant has priority over other commercial finfish gear with regard to any distance requirements set forth in Natural Resources Article, §4-711, Annotated Code of Maryland.

(5) A commercial tidal fish licensee that intends to use a pound net to harvest striped bass shall comply with the additional structural requirements described in COMAR 08.02.15.04.

(6) The Department may approve the permanent transfer of a registered pound net site upon completion of the appropriate transfer application and pound net site registration.

(7) The Department may revoke the registration of a pound net site for cause, including but not limited to, the revocation or lapse of the registrant's commercial tidal fish license.

C. Co-Users.

(1) A registrant may designate one or more co-users for each pound net site by completing a form provided by the Department.

(2) A registrant may designate or remove a co-user at any time during the year.

(3) A co-user shall display their commercial identification number on the designated pound net.

(4) A co-user is authorized to harvest fish only from the specified pound net site.

D. Marking of Pound Nets. The registrant shall mark the pound net while the stakes are in the water, regardless of whether the nets are attached, as follows:

(1) The stake at the head of a pound net shall be marked by a light that is functional between sunset and sunrise, which shall be:

(a) Placed on the stake at least 6 feet above normal high water; and

(b) Visible in all directions for at least 1 mile on a clear night; or

(2) The stake of a pound net shall be marked with retro-reflective tape, as specified by the Department, which is placed on the stake at least 6 feet above normal high water in the following areas and manner:

(a) On all State waters, except for Potomac River tributaries:

(i) The stake at each end of the pound net shall be marked with three 4-inch bands of orange retro-reflective tape which do not overlap; and

(ii) The stakes between the two end stakes, at intervals not greater than 150 feet apart, shall be marked with a single 4-inch band of white retro-reflective tape; and

(b) On Potomac River tributaries:

(i) The end stake closest to the channel and on the right side of channel when entering from a seaward direction, shall be marked with three 4-inch bands of red retro-reflective tape, which do not overlap, and the opposite end stake shall be marked with three 4-inch bands of green retro-reflective tape which do not overlap;

(ii) The end stake closest to the channel and on the left side of the channel when entering from a seaward direction shall be marked with three 4-inch bands of green retro-reflective tape which do not overlap, and the opposite end stake shall be marked with three 4-inch bands of red retro-reflective tape which do not overlap; and

(iii) At least three stakes between the two end stakes, at intervals not greater than 150 feet apart, shall be marked with a single 4-inch band of white retro-reflective tape.

E. Pound Net Activity Notification.

(1) The registrant shall ensure that written notice is received by the Department at least 7 days prior to setting any pound net.

(2) The registrant shall ensure that written notice is received by the Department within 7 days of removing any pound net from the water.

(3) Notification shall be on a form provided by the Department.

F. Pound Net Soak Time Limits.

(1) *During the time period of January through June, pound nets shall be fished at the interval set by the Department in a public notice, with all entrapped striped bass released.*

(2) *The Secretary shall publish such notice on the Department's website no later than December 1 of the year preceding the soak time limit provision taking effect.*

MARK J. BELTON
Secretary of Natural Resources

Title 10
MARYLAND DEPARTMENT
OF HEALTH
Subtitle 09 MEDICAL CARE
PROGRAMS

Notice of Proposed Action
[17-259-P]

The Secretary of Health proposes to amend:

- (1) Regulations .04, .05, and .07 under **COMAR 10.09.04 Home Health Services;**
- (2) Regulations .04, .05, and .07 under **COMAR 10.09.09 Medical Laboratories;**
- (3) Regulations .04, .05, and .07 under **COMAR 10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Nursing Services for Individuals Younger than 21 Years Old;**
- (4) Regulations .04, .05, and .07 under **COMAR 10.09.87 Free-Standing Independent Diagnostic Testing Facilities; and**
- (5) Regulations .04, .05, and .07 under **COMAR 10.09.88 Portable X-ray Providers.**

Statement of Purpose

The purpose of this action is to require providers of home health, medical laboratory, private duty nursing, diagnostic testing, and X-ray services to identify the ordering provider by National Provider Identifier (NPI) on the claim. In addition, the ordering provider shall be an individual enrolled in the Program with an active status on the date of service, in order for the claim to be paid.

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 Michele Phinney, Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 27, 2017. A public hearing has not been scheduled.

10.09.04 Home Health Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.04 Covered Services.

A. The Program covers the services listed in §§B and C of this regulation when the services are:

- (1) Provided upon the written order of the attending physician [and furnished];
- (2) *Furnished* under the current plan of treatment;
- (3) *Ordered by an individual who is enrolled as a provider in the Program with an active status on the date of service;*
- [(2)] (4)—[(9)] (11) (text unchanged)
- B.—C. (text unchanged)

.05 Limitations.

The Program does not cover the following:

- A.—R. (text unchanged)
- S. Newborn early discharge services provided more than one time to a recipient; [and]
- T. A newborn early discharge visit provided on the same day as another skilled nursing visit billed under this chapter[.]; *and*
- U. *Home health services ordered by an:*
 - (1) *Individual who is not enrolled as a provider in the Program with an active status on the date of service; and*
 - (2) *Entity, facility, or another provider that is not an individual.*

.07 Payment Procedures.

A.—H. (text unchanged)

I. *The home health provider shall identify the individual who ordered the home health services by recording the individual practitioner's National Provider Identifier (NPI) number on the claim.*

10.09.09 Medical Laboratories

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.04 Covered Services.

The Program covers the following services:

- A. Medically necessary laboratory services, when the services are:
 - (1)—(3) (text unchanged)
 - (4) Adequately documented in the provider's files; [and]
 - (5) Clinical and diagnostic services for which certification by the [Health Care Financing Administration (HCFA)] *Centers for Medicare and Medicaid Services (CMS)* under CLIA exists, if required; *and*
 - (6) *Ordered by an individual who is enrolled as a provider in the Program with an active status on the date of service;*
- B.—C. (text unchanged)

.05 Limitations.

The following are not covered:

- A. Services for which the medical laboratory provider cannot supply a properly completed order or standing order identifying the [authorized ordering practitioner] *individual practitioner who ordered the laboratory services;*
- B.—F. (text unchanged)
- G. Medical laboratory services related to autopsies; [and]
- H. Medical laboratory services for which there was insufficient quantity of specimen, improper specimen handling, or other circumstances that would render the results unreliable; *and*
- I. *Laboratory services ordered by an:*
 - (1) *Individual who is not enrolled as a provider in the Program with an active status on the date of service; and*