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DNR-FS-2023-11

SMALL BUSINESS COMPLIANCE GUIDE

Amendment to Subtitle 02 Fisheries Service

Regarding the Department's Regulations for Nuisance and Prohibited Species – Blue and Flathead Catfish

COMAR 08.02.19.04 and .08

Released July 28, 2023

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:

410-260-8300

410-260-8DNR; toll free in Maryland 877-620-8DNR; TTY Users Call via the Maryland Relay

I. SUMMARY & FAQs

What is being considered?

The Department is considering prohibiting the live possession of invasive blue catfish and flathead catfish. Blue catfish and flathead catfish can potentially cause significant negative impacts on native and naturalized fish species via predation, resource competition, and displacement. It is illegal to move blue and flathead catfish from one “waterbody” to another. “Waterbody” is defined by a HUC-6 designation. Because HUC-6 designations are not easily understood by the general public or law enforcement, allowing for the live possession of these catfishes has made enforcement of this prohibition challenging. In line with the Department’s [Aquatic Nuisance Species Management Plan](#), the general prohibition on the possession of live blue and flathead catfish will reduce the possibility of these fish being illegally introduced to water bodies around the State.

The Department has already prohibited the live possession of other invasive fish, such as the northern snakehead. For northern snakeheads, anglers may immediately release a live fish back to the water from which it was caught but may not retain a live snakehead in their possession. Prohibiting the possession of live blue catfish and flathead catfish will standardize the possession rules for the three invasive fishes managed by the Department, making it easier for law enforcement to enforce the rules and the general public to comply with them.

An exception for live possession of blue catfish and flathead catfish would be made for commercial licensees, fish processors, transporters, and facilities exhibiting these species. Many commercial licensees have developed live markets for blue catfish and flathead catfish. These fish are generally sold to wholesale fish processors who transport live catfish to facilities where the fish are processed for food or other beneficial uses. Commercial licensees and licensed seafood dealers would be exempt from the live possession prohibition. Individuals intending to transport live blue catfish or flathead catfish throughout the state to release the fish to fee fishing ponds in their home states would need to have a bill of sale or bill of lading to establish the provenance of the fish in their possession. Facilities which exhibit these species, such as Bass Pro Shops or zoos, may likewise be required to obtain a permit to hold blue catfish or flathead catfish in exhibition tanks.

Why is this change necessary?

Current rules allowing the live possession of blue catfish and flathead catfish have made enforcing the prohibition on introduction difficult. This has resulted in the increased potential for the illegal introductions of these fish, which has been documented. The Department is responsible for reducing the impacts of these invasive fishes by regulating the transportation and introduction of them in the state. The Department believes the only way to curb illegal introductions effectively is to prohibit live possession of these fish.

Who will this affect?

Recreational anglers, fee fishing pond owners, and facilities that offer live viewing tanks with blue catfish or flathead catfish.

Has this change been discussed with stakeholders?

This idea was scoped with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their July 2023 meetings.

What is the specific regulatory action?

Amend Regulation .04 and .08 under COMAR 08.02.19 Nuisance and Prohibited Species.

II. RECORDKEEPING AND REPORTING REQUIREMENTS

This action would create new recordkeeping or reporting requirements.

III. IMPLEMENTATION DATE

The Department projects that this change could be effective in the winter of 2023-2024. However, the exact date cannot be determined. The Department will follow our normal proposal procedures if this concept moves forward.

This idea is in the scoping process (July 28—August 13). 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.

If the action is necessary and appropriate, the rules will be 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 is printed by the Division of State Documents in the Maryland Register.
- A 30 day public comment period begins on the day of publication.
- After review of the comments, the Department may adopt the changes.
- If the Department adopts the changes, they become effective after a notice is published in the Maryland Register that announces approval and the effective date.