

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Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken.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an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.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

[18-113-P]

The Secretary of Natural Resources proposes to amend:

- (1) Regulation .02 under **COMAR 08.02.05 Fish**;
- (2) Regulations .03, .09, and .10 under **COMAR 08.02.15 Striped Bass**; and
- (3) Regulations .01 and .03 under **COMAR 08.02.25 Gear**.

Statement of Purpose

The purpose of this action is to reduce the minimum size of striped bass for the recreational and charter boat summer and fall fishery in the Chesapeake Bay and its tidal tributaries from 20 inches to 19 inches. The proposed action makes changes in several chapters to accomplish the purpose including changes to the season, gear, and use of bait. All changes apply to recreational anglers and charter boats. Changes for the restrictions that are made for the period May through December for hook requirements and striped bass sizes and seasons are specific to 2018 and 2019 and do not apply to other years.

The Department, in cooperation with stakeholder groups, has completed a process with the Atlantic States Marine Fisheries Commission that will allow us to reduce the minimum size of striped bass for the recreational and charter boat summer and fall fishery in the Chesapeake Bay and its tidal tributaries from 20 inches to 19 inches. The Department's intention is to reduce dead discards of striped bass that occur throughout the summer/fall when anglers are using bait.

In 2015, the Atlantic States Marine Fisheries Commission required that all states implement management measures to reduce commercial and recreational striped bass harvest coastwide. This action was taken due to concerns about the size of the adult/migratory female portion of the population. In Maryland, we increased our

minimum size for recreational anglers from 18 to 20 inches. At the same time, the 2011 year class of striped bass in the Chesapeake Bay was about to reach an 18—20 inch size. Because of this, we expected to see a large number of sublegal fish caught and released that first year. As expected, our estimated number of released fish increased in 2015 and this trend continued in 2016 and 2017. Concerned recreational anglers reported to the Department that large numbers of sublegal fish caught and released were dying as a result of a combination of factors including high water temperatures and 'deep hooking' while chumming and live-lining. In the summer of 2017, the Department held a meeting with stakeholders to talk about their concerns. Stakeholder groups represented included the Coastal Conservation Association, Maryland Charter Boat Association, Maryland Watermen's Association, Maryland Sportsmen's Foundation, and Delmarva Fisheries Association. When concerns over the number of dead discards were raised, the Department committed to working with the Atlantic States Marine Fisheries Commission to develop a plan to address the issue. The Department considered a number of management alternatives to address the issue and presented options to the Atlantic States Marine Fisheries Commission's Technical Committee for approval. Based on feedback received from the groups mentioned above, the Department presented the 19-inch/circle hook option to the Atlantic States Marine Fisheries Commission for approval.

On February 7, 2018, the Atlantic States Marine Fisheries Commission's Atlantic Striped Bass Board approved a request from the State of Maryland to reduce the recreational striped bass minimum size limit from 20 inches to 19 inches from May 16 through December 15 this year. Making this change also requires the Department to shorten the season and require the use of circle hooks when chumming and/or live-lining. The proposal to the Atlantic States Marine Fisheries Commission was presented as a "conservation equivalency" plan, meaning that the same overall fishing mortality (both kept/harvested fish and fish that die after being released — dead discards) is expected to occur with the smaller size limit. The Department anticipates less dead discards and more harvest in 2018. It has been proven that circle hooks reduce discard mortality. The configuration of the hook makes it less likely to fatally hook or 'deep hook' a fish when using bait compared with the standard 'J' hook. The Board approved the proposal and gave the

Department permission to proceed with implementing these measures. The Department is required to submit a follow up report to the Atlantic States Marine Fisheries Commission next year focused on compliance and enforcement of the new regulations.

Proposed Changes to Chapter 5 Fish

Currently, there are special rules for using bait in the Susquehanna Flats and Northeast River. The regulatory text is somewhat confusing since the section referenced has two time periods, but only one applies to the bait rules. The proposed action clarifies the regulatory text by specifying that the period for special bait regulations for the Susquehanna Flats and Northeast River is March 1 through May 3. The term “circle hook” is defined in regulation (COMAR 08.02.25.01) as a non-offset hook with the point turned perpendicularly back to the shank. Therefore, the proposed action clarifies the regulatory text by removing the term “non-offset” from this chapter.

The proposed action specifies the hook requirements for a person who is using bait while recreationally fishing in the Chesapeake Bay and its tidal tributaries during the period from May 16 through December 15. Circle hooks are required from May 16 through December 15 when chumming or live-lining, regardless of which species is being targeted. If a person is not chumming or live-lining, but is fishing with bait (fish, crabs, worms, or processed bait), they must use a “J” hook or a circle hook. Allowing the use of “J” hooks will allow anglers who pursue other fish (catfish, cobia, spot, croaker, white perch, etc.) to continue to do so. No other hooks are allowed to be used during that time period. By specifying the type of hooks that may be used, the regulation eliminates the use of treble hooks when bait fishing. Treble hooks are known to increase the chances of deep hooking when used while bait fishing.

Proposed Changes to Chapter 15 Striped Bass

The proposed action changes the end of the recreational and charter boat summer and fall season for taking striped bass from December 20 to December 15 in the Chesapeake Bay and its tidal tributaries, except for the tributaries of the Potomac River. The season is not changing in the tidal tributaries of the Potomac River to maintain consistency with Potomac River Fisheries Commission’s management of striped bass in the mainstem of the Potomac River. The proposed action changes the minimum size of striped bass for the summer and fall fishery in the Chesapeake Bay and its tidal tributaries from 20 inches to 19 inches.

Proposed Changes to Chapter 25 Gear

The proposed action adds definitions for chumming and live-lining. The term “fish” is defined in Natural Resources Article, §4-101, Annotated Code of Maryland, and means finfish, crustaceans, mollusks, and amphibians and reptiles which spend the majority of their life cycle in water and any part, egg, offspring, or dead body of any of these species. Chumming includes all fish and other attractants upon which fish might feed. Chumming is specific to putting those items into the water without a hook for the purpose of attracting finfish. Live-lining is specific to using live finfish with active line fishing gear (hook and line, rod and reel, or handlines). Finfish include species like minnows, spot, eels, perch, menhaden, fallfish, and chubs. It does not include species like crabs, shrimp, worms, or processed bait. The proposed action also clarifies the areas in COMAR where additional rules for active line fishing gear are located.

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 may have an economic impact on recreational anglers, charter boat operations, and tackle stores from May through December 2018 and May through December 2019.

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 (+)
		Cost (-)
		Magnitude
D. On regulated industries or trade groups:		
(1) Type of hook — anglers/charter	(-)	Indeterminable
(2) Shortened season — charter	(-)	Indeterminable
(3) Minimum size — anglers/charter	(+)	Indeterminable
E. On other industries or trade groups:		
(1) Type of hook — tackle shops	(-)	Indeterminable
(2) Shortened season — tackle shops	NONE	NONE
F. Direct and indirect effects on public:	NONE	
III. Assumptions. (Identified by Impact Letter and Number from Section II.)		
D(1). NOAA Fisheries Marine Recreational Information Program (MRIP) data from 2012—2016 shows that approximately 760,000 anglers make 2.5 million fishing trips annually in Maryland waters. Some anglers and charter captains will have to purchase new hooks, but some already have the hooks available to them so we cannot determine the actual impact.		
D(2). Decreasing the season by 5 days means that the charter industry could be negatively impacted if customers stop scheduling trips. However, if the customer has a better experience because they are witness to less overall mortality when using circle hooks, they may schedule more trips earlier in the season. The charter industry may change their business model at the end of the season. Instead of harvesting striped bass they could plan trips for catch and release or switch to other species in December. We are not able to predict the actions of anglers or businesses so the actual impact cannot be determined.		
D(3). Changing the minimum size will give anglers an increased probability of success because a greater proportion of the striped bass in the Chesapeake bay and its tidal tributaries will be harvestable. Increasing harvest can be considered by some as a more successful trip and this could enhance their fishing experience. This could increase charter businesses by having satisfied and return customers. This impact is indeterminable because we are not able to predict angler activity.		

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E(1). Some tackle stores may be negatively impacted because they may not sell as many J hooks that they normally do and will have excess inventory. However, they may be positively impacted because they will sell circle hooks. It is unknown how many hooks of each type tackle shops sell in a year so the actual impact is indeterminable.

E(2). People can still go fishing, so they can still purchase gear and bait, they just can't keep striped bass.

Economic Impact on Small Businesses

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

The proposed action may have an economic impact on charter boat operations and tackle stores. Both of those types of businesses are generally considered small businesses. Please see the Assumptions in the Estimate of Economic Impact for how it could impact the 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 Bait and Striped Bass 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 May 29, 2018. A public hearing has not been scheduled.

08.02.05 Fish

Authority: Natural Resources Article, §§4-215 and 4-221, Annotated Code of Maryland

.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] *March 1 through May 3* shall *only* use a:

(a) [Non-offset circle hooks] *Circle hook*; or

(b) "J" [hooks] *hook* with a gap of less than *or equal to* 1/2 inch between the point and the shank.

(2) *Except for chumming or live-lining, when using fish, crabs, or worms as bait, or processed bait, a person recreationally angling in the Chesapeake Bay and its tidal tributaries during the periods May 16, 2018 through December 15, 2018 and May 16, 2019 through December 15, 2019 shall only use a:*

(a) *Circle hook*; or

(b) "J" *hook*.

(3) *When chumming or live-lining, a person recreationally angling in the Chesapeake Bay and its tidal tributaries during the periods May 16, 2018 through December 15, 2018 and May 16, 2019 through December 15, 2019 shall only use a circle hook.*

[2] (4) (text unchanged)

G.—P. (text unchanged)

08.02.15 Striped Bass

Authority: Natural Resources Article, §§4-215, 4-2A-03, and 4-732, Annotated Code of Maryland

.03 Spawning Rivers, Areas, and Reaches.

A.—D. (text unchanged)

E. Fishing Restrictions for the Period March 1 Through the Third Friday in April. The restrictions in this section apply to the waters of the Chesapeake Bay and its tidal tributaries that are not closed in

accordance with §D(1) of this regulation. During the period from March 1 through the third Friday in April:

(1) A person recreationally angling:

(a) When using fish, crabs, or worms as bait, or processed bait, shall *only* use a:

(i) Circle [hooks] *hook*; or

(ii) "J" [hooks] *hook* with a gap of less than *or equal to* 1/2 inch between the point and the shank;

(b) (text unchanged)

(c) Shall *only* use barbless hooks while trolling; and

(2) (text unchanged)

.09 Recreational and Charter Boat Summer and Fall Fishery in the Chesapeake Bay and Its Tidal Tributaries.

A. Early Season.

(1) (text unchanged)

(2) Chesapeake Bay and Its Tidal Tributaries.

(a) (text unchanged)

(b) Catch Restrictions.

(i) (text unchanged)

(ii) [A] *Except as provided in §A(2)(b)(iii), a person may catch and possess two striped bass at least 20 inches total length, only one of which may be greater than 28 inches total length.*

(iii) *During the periods May 16, 2018 through May 31, 2018 and May 16, 2019 through May 31, 2019, a person may catch and possess two striped bass at least 19 inches total length, only one of which may be greater than 28 inches total length.*

(3) Susquehanna Flats and Northeast River.

(a) (text unchanged)

(b) Catch Restrictions.

(i) (text unchanged)

(ii) [A] *Except as provided in §A(3)(b)(iv), a person may catch and possess one striped bass between 20 and 26 inches, inclusive, total length.*

(iii) (text unchanged)

(iv) *During the periods May 16, 2018 through May 31, 2018 and May 16, 2019 through May 31, 2019, a person may catch and possess one striped bass between 19 and 26 inches, inclusive, total length.*

B. Summer and Fall Season.

(1) The recreational and charter boat summer and fall season for taking striped bass is [June 1 through December 20.]:

(a) *June 1 through December 15 for the years 2018 and 2019; and*

(b) *June 1 through December 20 for all other years.*

(2) (text unchanged)

(3) Catch Restrictions.

(a) (text unchanged)

(b) [A] *Except as provided in §B(3)(c), a person may catch and possess two striped bass at least 20 inches total length, only one of which may be greater than 28 inches total length.*

(c) *During the periods June 1, 2018 through December 15, 2018 and June 1, 2019 through December 15, 2019, a person may catch and possess two striped bass at least 19 inches total length, only one of which may be greater than 28 inches total length.*

C. (text unchanged)

.10 Recreational and Charter Boat Summer and Fall Fishery for Maryland Tributaries of the Potomac River.

A.—B. (text unchanged)

C. Size Limit.

(1) [A] *Except as provided in §C(2), a person may catch and possess two striped bass at least 20 inches total length, only one of which may be greater than 28 inches total length.*

(2) *During the periods May 16, 2018 through December 31, 2018 and May 16, 2019 through December 31, 2019, a person may*

catch and possess two striped bass at least 19 inches total length, only one of which may be greater than 28 inches total length.

08.02.25 Gear

Authority: Natural Resources Article, §§4-215 and 4-221, Annotated Code of Maryland

.01 Gear Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1)—(4) (text unchanged)

(5) “*Chumming*” means placing fish, parts of fish, or other natural or manmade attractants upon which fish might feed, in the water, not attached to a hook, for the purpose of attracting fish to a particular area so that they might be caught.

[(5)] (6) — [(25)] (26) (text unchanged)

(27) “*Live-lining*” means using a live finfish on a hook for the purpose of catching other fish with:

- (a) Hook and line;
- (b) Rod and reel; or
- (c) Handlines.

[(26)] (28) — [(43)] (45) (text unchanged)

.03 Recreational Gear — Tidal Waters.

- A.—B. (text unchanged)

C. Active Line Fishing Gear.

(1)—(4) (text unchanged)

(5) Additional restrictions on active line fishing gear [used to catch striped bass] may be found at COMAR 08.02.05.02 and COMAR 08.02.15.03.

- D.—G. (text unchanged)

MARK J. BELTON
Secretary of Natural Resources

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards

Authority: Labor and Employment Article, §§2-106(b)(4) and 5-312(b), Annotated Code

Notice of Proposed Action

[18-091-P]

The Commissioner of Labor and Industry proposes to adopt, through incorporation by reference under **COMAR 09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards**, amendments to 29 CFR Part 1910, published in 81 FR 82981—83006 (November 18, 2016).

Statement of Purpose

The purpose of this action is to incorporate by reference amendments to 29 CFR §§1910 Construction, 1915 Maritime, and

1926 General Industry standards for employee safety and health related to silica exposure.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. This action is being taken to incorporate by reference updates to the existing federal standards regarding employee exposure to silica. It is not expected to have a large impact on the Department as the changes update existing standards currently enforced. A comprehensive economic impact was performed by the Department of Labor and is contained in Section VII of the preamble to this Federal Register proposed for adoption. In summary on a nationwide scale, the rule is estimated to prevent 642 fatalities and 918 moderate-to-severe silicosis cases annually once it is fully effective, and the estimated cost of the rule is \$1,030 million annually. The discounted monetized benefits of the rule are estimated to be \$8.7 billion annually, and the rule is estimated to generate net benefits of approximately \$7.7 billion annually. To extrapolate, Maryland currently accounts for 2.1% of the nation’s gross domestic product (GDP). Under the federal assumptions of economic impact and assuming a proportionate affect based on Maryland’s share of the GDP, Maryland could potentially have a net benefit of \$160 million annually.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
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A. On issuing agency: Outreach and enforcement	(E+)	Minimal
B. On other State agencies:	NONE	
C. On local governments:	NONE	

Benefit (+)	Cost (-)	Magnitude
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D. On regulated industries or trade groups:	(+)	Minimal
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Minimal

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

A. There will be a small increase in operational expenses associated with assisting employers with, and ensuring compliance with, the updated federal silica standards.

D. according to the Department of Labor’s economic impact this rule will have positive net economic impact.

F. The positive net economic impact on industry is estimated to have a corollary positive economic impact on the public.

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.