

prior to the crabbing season.

D(2). Because this action increases the minimum size of peeler crabs, the assumption is that there will be more crabs available at larger sizes. This will be achieved through crabs remaining in the water for at least one additional molting cycle. While some of these crabs will be removed from the population through predation or other natural causes, some of the crabs that would have been harvested at the smaller, less economically valuable size will now be caught at a larger, more economically valuable size. It is not possible to determine how great of a positive impact this will achieve for the industry.

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 has a meaningful economic impact on small businesses. Please see analysis in Part A.II.D, referring to the regulated industry which is comprised of commercial licensees, some of whom are 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 Peeler Crab and Crabbing Gear Marking Regulations, Regulatory Staff, Department of Natural Resources, Fisheries Service B-2, 580 Taylor Avenue, 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 February 23, 2015. A public hearing will be held on Thursday, February 12, 2015, at 6 p.m., at the Wicomico Public Library, 122 S. Division Street, Room 4, Salisbury, MD 21801.

.03 Trotlines.

A. An individual may not set or fish a trotline within 100 feet of another individual's set [gear] *trotline, collapsible crab trap, or net ring.*

B.—D. (text unchanged)

E. Float Requirements.

(1)—(3) (text unchanged)

(4) Floats shall be marked with a buoy bearing the owner's [DNR id number.]:

(a) *DNRid number, if recreationally crabbing in the Chesapeake Bay or its tidal tributaries;*

(b) *Name and address, if recreationally crabbing in the Atlantic Ocean, its coastal bays, or their tidal tributaries; or*

(c) *Commercial license number.*

.06 Collapsible Crab Traps and Crab Net Rings.

A. An individual may not set or fish a crab net ring or collapsible crab trap within 100 feet of another individual's set [gear] *trotline, collapsible crab trap, or net ring.*

B.—C. (text unchanged)

D. A collapsible crab trap or crab net ring which is not attached to a pier, wharf, or boat shall be marked with a buoy bearing the owner's [DNRid number.]:

(1) *DNRid number, if recreationally crabbing in the Chesapeake Bay or its tidal tributaries;*

(2) *Name and address, if recreationally crabbing in the Atlantic Ocean, its coastal bays, or their tidal tributaries; or*

(3) *Commercial license number.*

.07 Crab Pots.

A.—C. (text unchanged)

D. General Requirements.

(1)—(2) (text unchanged)

(3) Notwithstanding §§E and G of this regulation, a crab pot set for recreational purposes shall be:

(a) (text unchanged)

(b) Marked with the owner's [DNRid number.]:

(i) *DNRid number, if crabbing in the Chesapeake Bay or its tidal tributaries; or*

(ii) *Name and address, if crabbing in the Atlantic Ocean, its coastal bays, or their tidal tributaries.*

(4)—(8) (text unchanged)

E.—H. (text unchanged)

.14 General Prohibitions.

A.—D. (text unchanged)

E. Notwithstanding Natural Resources Article, §4-809, Annotated Code of Maryland, a person may not:

(1)—(5) (text unchanged)

(6) [Catch] *Except as provided in §E(7) of this regulation, catch or possess more than 10 peeler crabs per bushel or more than 20 per float which are:*

(a) *Less than 3-1/4 inches across the shell from tip to tip of the spike during the period from April 1 through July 14; and*

(b) *Less than 3-1/2 inches across the shell from tip to tip of the spike during the period from July 15 through December 15; [or]*

(7) *Catch or possess more than 10 peeler crabs per bushel or more than 20 per float which are:*

(a) *Less than 3-1/4 inches across the shell from tip to tip of the spike during the period from April 1, 2015 through July 14, 2015 in the Atlantic Ocean, its coastal bays and their tributaries;*

(b) *Less than 3-1/2 inches across the shell from tip to tip of the spike during the period from July 15, 2015 through December 31, 2015 in the Atlantic Ocean, its coastal bays and their tributaries; and*

(c) *Less than 3-1/2 inches across the shell from tip to tip of the spike in the Chesapeake Bay and its tidal tributaries during the period from April 1, 2015 through December 15, 2015; or*

[(7)] (8) (text unchanged)

F.—G. (text unchanged)

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

Notice of Proposed Action

[15-054-P]

The Secretary of Natural Resources proposes to:

(1) Amend Regulation **.02** under **COMAR 08.02.05 Fish**; and

(2) Amend Regulations **.03** and **.04**, repeal existing Regulation **.07**, and adopt new Regulation **.07** under **COMAR 08.02.23 Shellfish Aquaculture and Leasing**.

Statement of Purpose

The purpose of this action is to update the list of violations for which a person may be suspended or revoked from shellfish aquaculture and implement a demonstration lease program. The proposed action adds a section to Regulation .04 that describes the reasons for denying, suspending or revoking a shellfish harvester permit or registration card. An appeal process has also been added. This allows the Department to take into account an individual's violations in other commercial fisheries when issuing a shellfish aquaculture harvester permit or registration card.

The proposed action repeals the current Regulation .07 and moves the items in that regulation to more appropriate locations. The proposed action clarifies fishing activities in a leased area. When the shellfish aquaculture chapter was adopted the regulations allowed for normal fishing activities in a leased area, including crabbing and

fishing as long as the activity does not destroy or damage shellfish or gear which may be placed there. The term “fishing” generally relates to finfish so the proposed action clarifies that crabbing was intended to be included. Since certain gear may not damage or destroy the leased area, but may impede management of the area by the lessee, the proposed action clarifies the language by adding that any activity may not interfere with management of the leased area.

The proposed action creates a new regulation for the implementation of a demonstration leasing program. The Department is currently engaged in an effort to establish a demonstration leasing program that will provide a process for education, research and not-for-profit based institutions and companies to obtain a lease of state waters for shellfish aquaculture. These leases will differ significantly from the commercial aquaculture leases that are issued in that they will be used for research, education and to expand our knowledge related to the ecological benefits of growing shellfish.

Natural Resources Article, §4-11A-11, Annotated Code of Maryland, establishes certain restrictions and requirements for demonstration leases. The proposed action includes requirements for the application, lease usage (educational, research, ecological, source of seed, amount, methods of growth, monitoring, etc.), application review process, and prohibited activities and locations. The proposed action requires an operator card for individuals working on a lease. There will be no fees for the lease application or lease rental. The information generated from the demonstration leases will help boost citizen awareness of the benefits associated with protecting, conserving and restoring our Bay’s shellfish resources while promoting environmental stewardship.

The proposed action was discussed at the July meetings of the Aquaculture Coordinating Council, Tidal Fisheries Advisory Commission and Sport Fisheries Advisory Commission.

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 Shellfish Aquaculture Regulations, Regulatory Staff, Fisheries Service, B-2, 580 Taylor Avenue, 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 February 23, 2015. A public hearing has not been scheduled.

08.02.05 Fish

Authority: Natural Resources Article, §§4-11A-02 and 4-11A-12, Annotated Code of Maryland

.02 General Fishing Prohibitions.

A.—O. (text unchanged)

P. Fishing and Crabbing in a Leased Area. Fishing and Crabbing are permitted in an area that has been leased for shellfish aquaculture in accordance with COMAR 08.02.23 if the fishing or crabbing activity does not:

- (1) Destroy or damage shellfish or gear which may be planted or secured there; or
- (2) Interfere with the management of the leased area.

08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §§4-11A-02, 4-11A-09, 4-11A-11, 4-11A-12, and 4-11A-19, Annotated Code of Maryland

.03 Commercial Lease Procedures.

A. Aquaculture Activities on Submerged Land. [Prior] *Except for demonstration leases, prior to engaging in aquaculture activities on submerged land in waters of the State, including the areas listed in Regulations .05 and .06 of this chapter, a person shall:*

(1)—(2) (text unchanged)

B. (text unchanged)

[C. Demonstration Lease.

(1) A person may apply for a demonstration lease on a form provided by the Department as described in Regulation .03A and B of this chapter.

(2) There are no application or rental fees for a demonstration lease.]

[D.] C. Reporting. A leaseholder shall submit to the Department an annual report [on a form provided] *as required* by the Department not later than December 31.

[E.] D.— [H.] G. (text unchanged)

[I.] H. Gear.

(1) (text unchanged)

(2) The leaseholder shall be responsible and liable for equipment, gear, or *aquaculture-related* material:

(a)—(b) (text unchanged)

[J.] I (text unchanged)

[K.] J. Surrender of a Lease. A lease may be surrendered by [completing a form provided by] *providing written notice to the Department.*

.04 Shellfish Aquaculture Harvester Permit.

A. [A] *Except for a demonstration lease holder, a lease holder or a lease transfer applicant shall submit an application for a shellfish aquaculture harvester permit prior to engaging in aquaculture activities.*

B.—I. (text unchanged)

J. Denial, Suspension, and Revocation.

(1) *Denial. The Department may deny issuance of a shellfish aquaculture harvester permit or registration card if the applicant or listed registrant:*

- (a) *Submits an incomplete or untruthful application;*
- (b) *Has commercial fishing privileges that are currently suspended or revoked for shellfish violations;*
- (c) *Had all commercial fishing privileges revoked; or*
- (d) *Held a shellfish aquaculture harvester permit or registration card that was revoked in accordance with §J(2) of this regulation within 3 years of the date of the application.*

(2) *Suspension or Revocation. A shellfish aquaculture harvester permit or a shellfish aquaculture harvester registration card may be suspended or revoked by the Department if the individual:*

- (a) *Violates:*
 - (i) *A provision of this chapter;*
 - (ii) *A provision of Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland;*
 - (iii) *COMAR 08.02.04.15C(3);*
 - (iv) *A term or condition of the permit or registration card; or*
 - (v) *A term or condition of a Shellfish Lease Agreement;*
- (b) *Receives a conviction for taking shellfish:*
 - (i) *From a closed or prohibited area;*
 - (ii) *With illegal gear;*
 - (iii) *More than 2 hours after sunset or any time before sunrise;*

- (iv) During the closed season; or
- (v) That are under the minimum size limit;
- (c) Receives more than one conviction related to the illegal harvest of shellfish within a two year period;
- (d) Has commercial fishing privileges that are currently suspended or revoked for shellfish violations; or
- (e) Had all commercial fishing privileges revoked.

(3) Appeal.

(a) Except as provided in §J(3)(c) of this regulation, prior to denying issuance of, suspending or revoking a shellfish aquaculture harvester permit or a shellfish aquaculture harvester registration card, the Department shall give the individual 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.

(b) If an individual submits a written request for a hearing to the Department within 30 days after the date that the notice required under this paragraph is mailed, the Department shall:

(i) Hold a hearing after providing at least 10 days' notice to the individual; and

(ii) Conduct the hearing in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(c) The Department may deny an application for, or suspend or revoke a shellfish aquaculture harvester permit or a shellfish aquaculture harvester registration card issued under this chapter without a hearing if the individual:

(i) Does not submit a written request for a hearing to the Department within 30 days after the date that the notice required under this paragraph is mailed;

(ii) Fails to appear for a scheduled hearing for which the Department provided notice; or

(iii) Is prohibited from holding a permit or registration card as the result of a prior adjudication, settlement agreement, or consent order.

.07 Demonstration Lease Procedures.

A. Eligibility. The Department may only issue a demonstration lease to be used exclusively for educational, conservation, or ecological purposes to:

- (1) A public high school;
- (2) An incorporated college or university within the State;
- (3) A 4-H club; or
- (4) A nonstock, nonprofit corporation organized under the laws of the State.

B. Application.

(1) Prior to obtaining a demonstration lease, an eligible group or organization shall complete and submit an application on a form provided by the Department.

(2) The application shall include:

(a) Documentation that the applicant meets the qualifications set forth in Natural Resources Article, §4-11A-11, Annotated Code of Maryland;

(b) The name and contact information of an employee of the applicant group or organization who will be responsible for ensuring that the requirements of this regulation are met;

(c) The purpose of the demonstration lease;

(d) A declaration that the applicant intends to actively use the leased area for demonstration purposes; and

(e) A proposed plan for active use of the demonstration lease which shall include:

(i) The applicant's source and quantity of shellfish or shellfish seed;

(ii) The quantity of shellfish or shellfish seed that the applicant expects to plant on the leased area during the initial 3 years of the lease;

(iii) A description of the activities that will occur on the leased area; and

(iv) A description of the labor, materials, and equipment to be used by the applicant.

C. Application Review Process.

(1) If an application for a demonstration lease in the Chesapeake Bay or in the Atlantic Coastal Bays meets the requirements of this regulation and Natural Resources Article, §4-11A-11, Annotated Code of Maryland:

(a) The applicant for the lease shall mark the proposed area with a stake; and

(b) The Department shall:

(i) Advertise the application on the website of the Department and once a week for 2 weeks in a newspaper published in the county or counties where the proposed lease is to be located;

(ii) Notify the owners of property directly in front of the proposed activity;

(iii) Notify each Chair of an Oyster Committee in the county in which the proposed activity is located; and

(iv) Notify other interested parties that the Department deems appropriate.

(2) Within 30 days of publication of the last advertisement under §C(1) of this regulation, any person who has a specific right, duty, privilege, or interest that is different from that held by the general public and may be adversely affected by the proposed lease may file a petition with the Department protesting the issuance of the lease.

(3) The protest shall be heard in accordance with the requirements of the Administrative Procedure Act under Title 10, Subtitle 2 of the State Government Article.

(4) The Department shall hold a public informational meeting on the issuance of a lease on the request of any person.

(5) After termination of the period prescribed in §C(2) of this regulation for filing a petition or after a final decision dismissing a protest, the Department shall survey the proposed leased area and issue a lease to the applicant.

(6) The Department, as it considers necessary to protect the public health, safety, and welfare, may:

(a) Deny a lease application for reasonable cause; or

(b) Include any conditions in a lease.

D. Fees. There are no application or rental fees for a demonstration lease.

E. Locations. In addition to restrictions provided in Natural Resources Article, §4-11A-11, Annotated Code of Maryland, a lease may not be located in the Assateague Island National Seashore as described in 16 U.S.C. §459f.

F. Prohibited Activities.

(1) Alterations, including adding any type of fill or sediment other than shell to the existing condition of the lease, are not permitted without written permission from the Department.

(2) Shell present in the leased area at the time the lease is issued may not be removed from the leased area without the written permission of the Department.

(3) Permanent structures of any kind may not be placed on the leased area without written permission from the Department.

(4) Shellfish may not be harvested from the leased area for commercial or human consumption purposes.

G. Lease Markers and Equipment. A leaseholder shall:

(1) Place a minimum of four poles at the corners of the lease perimeter;

(2) Mark each pole with an 8-inch by 12-inch marker displaying the name of the leaseholder and the lease number;

(3) Maintain and meet any standards for corner marker structures as described by the Department on its website;

(4) Permanently and individually mark all equipment or manmade material used on the lease with the lease number and name of the leaseholder; and

(5) Be responsible and liable for equipment, gear, or aquaculture-related material that has been found adrift or unattended outside the boundaries of the lease area.

H. Operators.

(1) The Department shall issue an operator card to the lessee at the time of lease approval.

(2) When one or more individuals are engaged in demonstration activities on the leased area, an individual authorized by the lessee shall be present and in possession of the operator card.

(3) Any individual engaged in demonstration activities on a leased area shall comply with the terms and conditions of the lease agreement for that area.

I. Reporting. A leaseholder shall submit to the Department an annual report as required by the Department not later than December 31.

J. Surrender of a Lease. A lease may be surrendered by providing written notice to the Department.

JOSEPH P. GILL
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
[15-055-P]

The Secretary of Natural Resources proposes to amend Regulation .29 under **COMAR 08.02.05 Fish**.

Statement of Purpose

The purpose of this action is to amend the snapper grouper complex to change the commercial harvest limits of tilefish. Maryland's regulations limiting harvest of species within the Snapper Grouper complex were adopted to address coast wide stock concerns. Regulations were based on those of state and federal partner agencies that manage snapper grouper species. Our partner agencies specify limits of tilefish in pounds of whole fish and pounds of fish that have been gutted to ensure consistency in landings data. Partner agencies also limit the amount of blueline tilefish that may be harvested. The proposed action modifies the commercial harvest limits of tilefish to be consistent with our partner agencies.

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 a positive impact on the commercial industry.

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) Commercial Harvesters	(+)	\$310 per trip
(2) Dealers/Processors	(+)	Indeterminable
E. On other industries or trade groups:		
F. Direct and indirect effects on public:	NONE	

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

D(1). The proposed action raises the harvest limit for tilefish. Since more harvest is allowed, harvesters may have a positive economic impact. The actual impact will be determined by the presence of fish, fishing effort and the market. The whole fish weight, rather than gutted weight, is being used to calculate the impact because the Atlantic Coastal Cooperative Statistics Program reports fish in whole pounds. There were a total of 4200 pounds of tilefish harvested in 2013 which yielded an average of \$1.55 per pound. At that rate an extra 200 pounds per trip translates to \$310 more per trip.

D(2). If harvesters land more tilefish, dealers and processors may benefit economically because they will have more fish to sell. The actual amount is indeterminable because it depends on actual harvest and the market.

Economic Impact on Small Businesses

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

The increase in allowable harvest of tilefish may positively impact harvesters, dealers and processors.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Snapper Grouper Regulations, Regulatory Staff, Fisheries Service, B-2, 580 Taylor Avenue, 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 February 23, 2015. A public hearing has not been scheduled.

.29 Snapper Grouper Complex.

A.—D. (text unchanged)

E. Commercial.

(1) The weight limits of this section are the total combined weight of all species defined as tilefish or grouper.

(2) Whole and gutted tilefish may not be landed in the same trip.

[(1)] (3) Tilefish. Except as provided in [§E(2)] §E(5) of this regulation, a commercial licensee may not harvest, possess, or land more than:

(a) [300] 500 pounds, whole weight, [regardless of the species,] of tilefish, [listed in §A(1) of this regulation] which may not include more than 300 pounds, whole weight, of blueline tilefish per trip; [and] or

(b) 455 pounds, gutted weight, of tilefish, which may not include more than 273 pounds, gutted weight, of blueline tilefish per trip.