

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Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken.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an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.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

### 08.02.15 Striped Bass

Authority: Natural Resources Article, §§4-215, 4-701, 4-704.1, and 4-731, Annotated Code of Maryland

#### Notice of Proposed Action

[15-135-P]

The Secretary of Natural Resources proposes to amend Regulation **.04** under **COMAR 08.02.15 Striped Bass**.

#### Statement of Purpose

The purpose of this action is to make changes to the registration and transfer rules for the commercial striped bass fishery. The Commercial Striped Bass Industry Workgroup (SBWG) has recommended that the Department propose regulations to allow for the permanent transfer of a striped bass permit and/or quota shares. The Department does not currently allow for the permanent transfer of a striped bass permit and/or quota share without the inclusion of the seller's commercial fishing license (TFL, FIN, or HLI). Only temporary transfers/leases of permits and quota shares have been available to permit holders since the inception of the individual transferrable quota (ITQ) system in 2014. The Department is proposing these changes to allow a striped bass permit holder to manage their permit and quota share in a way that provides the most flexibility in their business due to the SBWG recommendation.

This action will extend the registration period for striped bass permits. Rather than being required to register from August 1 through August 31, permit holders will have until September 30 to register their permits, or the next business day if September 30 falls on a weekend. All permits will have to be renewed every year or be relinquished to the Department. Currently, permits are required to be registered every three years to maintain eligibility in the fishery. The

action also removes the late declaration period and modifies the exemption provision to create an appeal to the Tidal Fisheries Advisory Commission for those individuals who have missed the registration deadline.

This action will allow a permit holder to sell their permit and/or quota shares independently of the commercial fishing license. This action will allow individual permit holders to accumulate quota shares and hold more shares of the fishery than what was initially allocated to them. The most an individual will be able to hold permanently will be 1 percent of the Chesapeake Bay commercial fishery. On a temporary basis, there is a soft cap of 1.5 percent of the Chesapeake Bay commercial fishery, meaning that someone would be able to exceed the 1.5 percent cap if they have less than 1.5 percent prior to the last transaction. There will also be a yearly cap on share transfers that any individual may permanently acquire set at 0.2 percent of the Chesapeake Bay commercial quota. The limitation to 0.2 percent of the Chesapeake Bay commercial quota is equal to roughly 3,000 pounds under the current quota, which is the amount the SBWG felt should be the yearly maximum an individual should be able to acquire. This limitation would not apply to a buyer of an entire commercial fishing business, including the transferor's commercial fishing license.

In addition, this action will allow a permit holder to sell only quota shares and keep the permit (without any allocation) for future use, or to sell a striped bass permit without transferring away their commercial fishing license.

The time period for permanent transfers in the Chesapeake Bay fisheries will be during the registration period, August 1 through September 30. This time period will not apply in a transaction where the transfer includes the transferor's commercial fishing license.

This action will also require an individual to possess at least 0.0185 percent of the Chesapeake Bay fishery in order to declare for the Chesapeake Bay Common Pool fishery. This is the minimum baseline share amount that was initially distributed to permit holders in 2014. This is being done so that individuals without a share or with less than the minimum amount initially allocated are not taking advantage of individuals with the baseline amount or more who have contributed their share to the Common Pool. Also in the Common Pool, the transfer time periods will be adjusted. The March 1 through March 31 time period remains unchanged, but the current transfer

period from August 1 through August 30 will be extended to match the new registration period from August 1 through September 30. This action also clarifies that the transfer period in August and September is for the next quota year, not the current quota year.

Lastly, this action makes stylistic and grammatical clarifications and changes and reorganizes text.

**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 will have an indeterminable economic impact on both striped bass permittees and individuals who are attempting to join the striped bass fishery.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
License transfer fees	(R+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Striped bass permit holders with multiple permits	(+)	Indeterminable
(2) Striped bass permit holders leaving fishery	(+)	Indeterminable
(3) Tidal fish licensees entering striped bass fishery	(+)	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.)

A. Previous to this package, a striped bass permit in the Chesapeake Bay may only be transferred if the transferor is also transferring their tidal fish license to the transferee. By allowing striped bass permits to be transferred without an associated tidal fish license, the Department anticipates that more striped bass permits will be transferred. The transfer fee is \$50 per transfer. It is unknown how many additional transfers will be processed due to this change.

D(1). Striped bass permit holders with multiple permits will now be able to transfer their excess permits away while still being able to keep their tidal fish license. Assuming these permit holders are able to find purchasers for their individual permits, the current permit holders will benefit economically twofold: they will make money in the sale of the excess permits and they will no longer have to pay to renew their excess permits.

D(2). Striped bass permit holders who want to leave the striped bass fishery but keep their commercial license will now be able to do so. Previously, to leave the striped bass fishery but continue to commercially harvest other species, these individuals would have had to sell their entire license, along with the striped bass permit, then

find another license to buy that did not include a striped bass permit. This action will allow these individuals to make money selling their striped bass permit without the hassle of having to find a buyer for the entire license, in addition to finding someone else selling the license they would then be seeking.

D(3). By allowing current striped bass permit holders to sell their permits without being required to sell their tidal fish license, current tidal fish licensees without a striped bass permit are now going to be able to purchase a permit. Previously, since a striped bass permit was only able to be transferred along with a tidal fish license, these individuals would have had to either transfer away their current license to purchase the transferor's license with the striped bass permit or wait on the permit waiting list, which could take many years. They will now potentially have much easier access to purchase a permit. This should allow additional licensees to enter the striped bass fishery. The magnitude of the impact is indeterminable, as it is not known how much money the new entrants will save by only having to purchase the permit, rather than both the permit and the license, or how much money they will now be able to make in the striped bass fishery.

**Economic Impact on Small Businesses**

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

See IID of the Economic Impact Statement for analysis of the economic impact on small businesses. Licensed commercial harvesters 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 Commercial Striped Bass Permit Rules, 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 June 29, 2015. A public hearing will be held, June 3, 2015, 5 p.m. at the Tawes State Office Building, Conference Room C1, 580 Taylor Avenue, Annapolis, MD 21401

**.04 Tidal Fish Licensee Intent to Fish.**

*A. Striped Bass Permit.*

(1) *The total number of permits authorizing commercial licensees to fish for striped bass may not exceed:*

- (a) *1,231 for commercial tidal fish licensees; and*
- (b) *499 for fishing guide licensees.*

(2) *A commercial tidal fish licensee shall possess a striped bass permit while commercially fishing for striped bass.*

(3) *A commercial tidal fish licensee who has not registered to catch striped bass in accordance with §B of this regulation or who has not received a transfer of a striped bass permit and allocation in accordance with §F or G of this regulation may not catch striped bass for sale.*

**[A.] B. Registration Procedures.**

(1) **Registration.**

(a) *An individual may register for a permit to participate in the next quota year's striped bass fishery if they:*

(i) *Are currently authorized to commercially harvest striped bass in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland;*

(ii) *Have received a striped bass permit from the Department in accordance with §C of this regulation; or*

(iii) *Have received a permanent transfer of a striped bass permit as described in §H of this regulation.*

[(a)] (b) A commercial tidal fish licensee[, other than a fishing guide licensee,] shall register for a striped bass permit to participate in a commercial striped bass fishery in accordance with [§§A and B of] this [regulation,] *section* by [August 31] *September 30* of each year, *or the next business day if September 30 falls on a weekend.*

[(i)] (c) A *commercial* tidal fish licensee who has not registered by [August 31] of *September 30* of the current year, [and who has not registered late in any of the three preceding years,] *or the next business day if September 30 falls on a weekend,* may [apply up to September 14 of the current year to the Director of Fisheries Service if the licensee can show good reason why the application should be validated] *submit an appeal to the Tidal Fisheries Advisory Commission to be heard at their next meeting.*

[(ii)] An individual that does not register by September 14 of the current year, or the close of business the next business day when September 14 occurs on a weekend, is not eligible to participate in the striped bass fishery for the next calendar year.]

[(iii)] (d) An exception to the September [14] 30 deadline will *only* be considered by the Department [only for an individual who can provide satisfactory documentation of a physical or mental incapacity that prevented that individual from meeting the registration time period established in this subsection] *if the Tidal Fisheries Advisory Commission recommends to the Department that the individual who has made an appeal under §B(1)(c) of this regulation be allowed to register.*

(e) *Any permit that is not registered by the deadline established in §B(1)(b) of this regulation shall be relinquished to the Department.*

[(b)] (f) The Department shall:

(i) Make registration available to eligible *commercial* tidal fish [license holders] *licensees* not later than August 1 of each year; [and]

(ii) Use the registrations received as of September [14] 30 of each year, *or the next business day if September 30 falls on a weekend,* to determine allocations for the striped bass fishery permittees; *and*

(iii) *Issue any striped bass permit that is not registered by the deadline established in §B(1)(b) of this regulation in accordance with §C of this regulation.*

(2) Registration Type.

(a) When registering for a striped bass permit, a *commercial* tidal fish licensee shall specify and may be authorized to fish in one of the following fisheries:

(i)—(ii) (text unchanged)

(iii) Atlantic Ocean[, its coastal bays and their tidal tributaries].

(b) A *commercial* tidal fish licensee who had a striped bass permit registered in the Chesapeake Bay pound net or haul seine fisheries as of May 10, 2013 and receives shares and allocation from those permits shall register in the Chesapeake Bay individual transferrable quota fishery.

(c) A *commercial* tidal fish licensee may not possess striped bass permits registered in both the Chesapeake Bay common pool fishery and the Chesapeake Bay individual transferrable quota fishery.

(d) A *commercial* tidal fish licensee may not possess striped bass permits registered in both a [the] Chesapeake Bay fishery [and its tidal tributaries] and in the Atlantic Ocean[, its coastal bays and their tidal tributaries] fishery.

(e) (text unchanged)

[B. Striped Bass Permit.

(1) A tidal fish licensee, other than a fishing guide licensee, shall possess a striped bass permit while commercially fishing for striped bass.

(2) The total number of permits authorizing commercial licensees to fish for striped bass may not exceed:

(a) 1,231 for commercial tidal fish licensees; and

(b) 499 for fishing guide licensees.

(3) An individual who is authorized to commercially harvest striped bass in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, and participated in at least one striped bass fishery during the past 3 years, or who has received a permanent transfer of a striped bass permit as described in §G of this Regulation is allowed to register to participate for the next striped bass fishery.]

C. *Striped Bass Permit Waiting List.*

[(4)] (1) — [(7)] (4) (text unchanged)

(5) *Any striped bass permit issued by the Department in accordance with this section shall be issued without an associated share of any striped bass fishery.*

[C.] D. Commercial Fisheries.

(1) Chesapeake Bay Common Pool Fishery.

(a) (text unchanged)

(b) *An individual may only register for the common pool fishery if the individual possesses a share of the Chesapeake Bay fisheries equal to at least 0.0185 percent of the commercial quota for the Chesapeake Bay.*

[(b)] (c) (text unchanged)

(2) — (3) (text unchanged)

[D. A commercial tidal fish licensee who has not registered to catch striped bass in accordance with §A of this regulation or who has not received a transfer of a striped bass permit and allocation in accordance with §F or G of this regulation may not catch striped bass for sale.]

E. (text unchanged)

F. Temporary Transfers.

(1) — (2) (text unchanged)

(3) Except as provided in §G of this regulation, a *commercial* tidal fish licensee may not transfer shares.

(4) Chesapeake Bay Common Pool Fishery. A striped bass permit registered in the common pool fishery may only be temporarily transferred [during the periods March 1 through March 31, or the next business day if March 31 falls on a weekend, and]:

(a) *Prior to the start of the quota year, from August 1 through [August 31] September 30, or the next business day if [August 31] September 30 falls on a weekend; or*

(b) *During the quota year, from March 1 through March 31, or the next business day if March 31 falls on a weekend.*

(5) Chesapeake Bay Individual [Transferable] *Transferrable* Quota Fishery.

(a) Prior to the start of the quota year, during the period August 1 through September 30, or the next business day if September 30 falls on a weekend, a *commercial* tidal fish licensee:

(i) May complete up to four transactions where a permit or a portion of their allocation is temporarily transferred from the permittee to another *commercial* tidal fish licensee; and

(ii) (text unchanged)

(b) During the quota year, a *commercial* tidal fish licensee may only temporarily transfer a striped bass permit or allocation if the *commercial* tidal fish licensee transfers all remaining allocation and associated tags.

(c) (text unchanged)

(d) [Beginning January 1, 2014, a] A *commercial* tidal fish licensee may not receive an allocation transfer when the licensee possesses [1] 1.5 percent or more of the total commercial quota for the [state] *Chesapeake Bay fisheries.*

(6) Atlantic Fishery.

(a) Prior to the start of the quota year, during the period August 1 through September 30, or the next business day if

September 30 falls on a weekend, a *commercial* tidal fish licensee may temporarily transfer:

(i) (text unchanged)

(ii) A permit or permits to a *commercial* tidal fish licensee; or

(iii) Both allocation and a permit or permits to a *commercial* tidal fish licensee.

(b) During the quota year, a *commercial* tidal fish licensee may only temporarily transfer a striped bass permit or allocation if the *commercial* tidal fish licensee also transfers all remaining allocation and associated tags.

(c) — (d) (text unchanged)

(e) A *commercial* tidal fish licensee registered in the Atlantic Ocean fishery may not [possess] *receive an allocation transfer that would result in the licensee possessing* more than 10 percent of the Atlantic Ocean quota [on a temporary basis].

(7) — (8) (text unchanged)

(9) For purposes of the license suspension criteria, if a *commercial tidal fish* licensee transfers the striped bass permit to another licensee, the transferee that committed the violation shall be held responsible.

(10) The registration type of a striped bass permit may not be changed under a temporary transfer [as described in §F(1)—(6) of this regulation].

G. Permanent Transfers.

(1) A commercial tidal fish licensee may permanently transfer a striped bass permit if:

(a) (text unchanged)

(b) The transferor [was] *is* authorized to harvest striped bass in the [immediately preceding] *current* quota year;

(c) The transferee is a valid commercial tidal fish licensee, *if the transferee is not receiving the transferor's commercial tidal fish license*;

(d) — (e) (text unchanged)

[(2) If the permit is registered in one of the Chesapeake Bay fisheries, a commercial tidal fish licensee shall also:

(a) Transfer the licensee's commercial tidal fish license in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and

(b) Transfer any remaining allocation and all shares associated with the striped bass permit in the manner specified by the Department.

(3) A transferee receiving a share of Chesapeake Bay fishery may not transfer that share to the Atlantic Ocean fishery.]

[(4)] (2) [If the permit is registered in the Atlantic Ocean fishery, a] A commercial *tidal* fish licensee may permanently transfer:

(a) (text unchanged)

(b) The licensee's share, or any portion of that share, without transferring the licensee's tidal fish license or striped bass permit; [or]

(c) A striped bass permit and a portion of the licensee's share without transferring the licensee's tidal fish license, so long as the licensee retains at least one striped bass permit; *or*

(d) *The licensee's share and all striped bass permits, along with the licensee's tidal fish license.*

[(5) A transferee receiving a share of the Atlantic Ocean fishery may not transfer that share to either of the Chesapeake Bay fisheries.]

(3) *The permanent transfer of a licensee's share or any portion of that share in the Chesapeake Bay fisheries may only be completed from August 1 through September 30, or the next business day if September 30 falls on a weekend.*

(4) *The time period described in §G(3) of this regulation does not apply to a transaction where the transferee also receives the transferor's commercial tidal fish license.*

(5) *A commercial tidal fish licensee registered in either of the Chesapeake Bay fisheries may not receive a share in a permanent transfer:*

(a) *That would result in the transferee possessing more than 1 percent of the total commercial quota for the Chesapeake Bay fisheries; or*

(b) *Equal to more than 0.2 percent of the Chesapeake Bay commercial quota in a single quota year.*

(6) *The transfer limit described in §G(5)(b) of this regulation does not apply to a transaction where the transferee also receives the transferor's commercial tidal fish license.*

[(6)] (7) A tidal fish licensee registered in the Atlantic Ocean fishery may not [possess] *receive a share in a permanent transfer that would result in the transferee possessing* more than 5 percent of the commercial quota for the Atlantic Ocean [quota on a permanent basis] *fishery.*

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

[(8)] (9) A [permit holder] *transferee* receiving a striped bass permit registered in a Chesapeake Bay fishery through a permanent transfer [described in this section] may not have that authorization changed to a striped bass permit registered in the Atlantic Ocean fishery.

[(9)] (10) A [permit holder] *transferee* receiving a striped bass permit registered in the Atlantic Ocean fishery through a permanent transfer [described in this section] may not have that authorization changed to a striped bass permit registered in [either of the] *a Chesapeake Bay [fisheries] fishery.*

(11) *A transferee receiving a share of a Chesapeake Bay fishery through a permanent transfer may not transfer that share to the Atlantic Ocean fishery.*

(12) *A transferee receiving a share of the Atlantic Ocean fishery through a permanent transfer may not transfer that share to a Chesapeake Bay fishery.*

MARK J. BELTON  
Secretary of Natural Resources

**Title 10**  
**DEPARTMENT OF HEALTH**  
**AND MENTAL HYGIENE**  
**Subtitle 28 BOARD OF EXAMINERS IN**  
**OPTOMETRY**

**10.28.13 Civil Penalties**

Authority: Health Occupations Article, §§11-205, 11-313, 11-314, [and] 11-315, and 11-505, Annotated Code of Maryland

**Notice of Proposed Action**  
[15-136-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .02, and .05 and adopt new Regulation .06 under **COMAR 10.28.13 Civil Penalties**. This action was considered at a public meeting on December 3, 2014, notice of which was given by publication on the Board's website at <http://dhmh.maryland.gov/optometry/SitePages/members-meetings.aspx#2002%20Board%20Meeting%20Calendar> pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.