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DNR-FS-2022-06

SMALL BUSINESS COMPLIANCE GUIDE  
Amendment to Subtitle 02 Fisheries Service  
Regarding the Department's Regulations for Oysters  
COMAR 08.02.04  
Released April 20, 2022  
Updated July 19, 2022  
Updated December 22, 2022

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 propose 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  
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## I. SUMMARY & FAQs

### **What was proposed?**

The department proposed clarifying the culling rule for oysters. The current culling law language has been interpreted in a variety of ways that has led to confusion regarding how to properly cull oysters. The changes will make it clear to all affected parties which oysters must be returned to the oyster bar, which oysters may be retained, and which oysters would be included in the calculation of the percentage of undersized oysters.

Historically, the oyster culling laws – Natural Resources Article, §§4-1015 and 4-1015.1, Annotated Code of Maryland – have controlled how oyster harvesters separate legal oysters from sub-legal oysters. The department has also implemented an oyster culling regulation at COMAR 08.02.04.11C which largely restates the culling procedure prescribed in statute. It is clear, based on the current statutory language, that oyster harvesters may keep a market-sized oyster which has an attached oyster that is less than 1 inch in length from hinge to bill that cannot be separated without destroying the small oyster. Based on the department’s survey work, an oyster that is less than 1 inch in length from hinge to bill cannot be removed from a market-sized oyster without being destroyed. The statutory text is not clear with regards to what should be done with a market-sized oyster which has an oyster that is larger than 1 inch and less than 3 inches in length from hinge to bill that cannot be separated without destroying the small oyster.

The department proposed that a harvester may possess an oyster which is larger than 1 inch and less than 3 inches in length from hinge to bill that is attached to a market-sized oyster in such a way that the undersized oyster cannot be separated from the market-sized oyster without being destroyed. Oyster harvesters are still required to separate all undersized oysters which can be removed without being destroyed and return those to the bar from which they were taken. The department believes that this proposal is in line with the original intent of the statute. Historically, Maryland was home to many oyster shucking houses. Oysters would often be shucked in relatively close proximity to where they had been harvested and the shells of the shucked oysters would be returned to the water. This meant that any small oysters which were attached to market-sized oysters were also returned to the water to continue to grow. Given this historical context, it makes sense to allow harvesters to retain undersized oysters that were attached so closely to market-sized oysters that the undersized oyster could not be removed without being destroyed. The department is also defining “undersized oyster” and “spat” so the syntax of the sentence is clearer. Additionally, the department is proposing that market-sized oysters may not be included in the measurement of any undersized oysters (i.e. in the cull cup). These changes will result in more clear and enforceable rules while adhering to the historical intent of the law.

### **Why is this change necessary?**

Rules need to be unambiguous so that oyster harvesters may clearly understand culling requirements and enforcement may ensure those rules are followed. To alleviate the current confusion, the rule will be stated in more clear terms.

### **Who will this affect?**

This change will affect recreational and commercial oyster harvesters.

**Has this change been discussed with advisory commissions?**

This idea was scoped with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their April 2022 meetings. Commissioners recommended moving forward with scoping.

**What is the specific regulatory action?**

Amend Regulation .11 under COMAR 08.02.04

**II. RECORDKEEPING AND REPORTING REQUIREMENTS**

This action would not create any new recordkeeping or reporting requirements.

**III. IMPLEMENTATION DATE**

This regulation change is effective December 26, 2022.