

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Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken.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an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.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

[23-085-P]

The Secretary of Natural Resources proposes to:

(1) Repeal existing Regulations **.01—,08**, adopt new Regulations **.01—,04**, and amend and recodify existing Regulations **.09, .10, and .12** to be Regulations **.06, .05, and .07**, respectively, under **COMAR 08.02.02 Soft-Shell Clams**;

(2) Amend Regulation **.03** and repeal existing Regulation **.16** under **COMAR 08.02.04 Oysters**;

(3) Amend Regulations **.01** and **.02**, adopt new Regulations **.03** and **.04**, and amend and recodify existing Regulation **.03** to be Regulation **.05** under **COMAR 08.02.07 Hard-Shell Clams**; and

(4) Amend Regulations **.02** and **.07** and adopt new Regulations **.09, .11, and .12** under **COMAR 08.02.08 Shellfish—General**.

Statement of Purpose

The purpose of this action is to make changes for the oyster and clam (soft-shell and hard-shell) regulations that will ensure compliance with the National Shellfish Sanitation Program's Model Ordinance and ensure a safe product for consumers. Natural Resources Article, §4-1027, Annotated Code of Maryland, authorizes the Department, in consultation with the Maryland Department of Health, to adopt regulations to carry out the requirements of the National Shellfish Sanitation Program. Under federal law, the State is required to comply with the National Shellfish Sanitation Program for shellfish harvest and sale in order to participate in interstate commerce of shellfish. The proposed action removes rules from regulation that are already required by statute and reorganizes several chapters and regulations for clarity and accuracy. The summary below describes the substantive changes included in the proposed action.

Clams (Soft-Shell and Hard-Shell) — Recreational. There are no changes to the recreational fisheries, but the proposed action consolidates the rules in order to make them easier to understand.

All Wild Caught Shellfish — Recreational, Commercial, and Dealers. The proposed action makes it clear that you may not buy or offer to buy shellfish that were caught for recreational purposes.

All Wild Caught Shellfish — Commercial. The proposed action clearly states that commercially harvested shellfish provided or used for human consumption must be harvested in accordance with the National Shellfish Sanitation Program Model Ordinance and may not be exposed to contamination from any source. Commercially harvested shellfish must be delivered to a certified dealer by a certain time on the same day of harvest (9 p.m. from October through April; 4 p.m. from May through September). Oysters and soft-shell clams of the species *Mya arenaria* must be sold at a buy station. The proposed action also clarifies that the refrigeration requirements for soft-shell clams only apply to the species *Mya arenaria*, not to razor clams.

Hydraulic Clam Dredges — Commercial. The proposed action places all rules for hydraulic clam dredges into the same regulation instead of being spread out. The proposed action corrects the minimum distance from shoreline that a person may use a hydraulic clam dredge near Sandy Point State Park in Anne Arundel County. The distance in the current regulation (150 feet from January 1 through March 31) contradicts the distance in the statute (800 feet from January 1 through March 31); therefore, the proposed action corrects the distance in the regulation. The proposed action also clarifies that the rules for the gear apply to the harvest of both soft-shell and hard-shell clams, since both are harvested with hydraulic dredges.

Tolerance for *Mya Arenaria* — Commercial. Currently, the regulation allows a harvester to possess five percent of their harvest of soft-shell clams of the species *Mya arenaria* to be undersized. Assigning a number will make it clear for harvesters and enforcement. The proposed action states that commercial licensees may not possess more than 40 soft-shell clams of the species *Mya arenaria* per container that measure less than 2 inches along the longest dimension of the shell.

Container Requirements for Clams (Soft-Shell and Hard-Shell) — Commercial. All clams must be stored in a container prior to leaving the growing area. *Mya arenaria* must be stored in the rectangular shaped container currently described in regulation. The proposed

action removes the bushel basket. Razor clams (genus *Tagelus*) and hard-shell clams must be stored in a container of any size or dimension.

Tag Requirements for Clams— Commercial. The proposed action requires a tag for all hard-shell clams and soft-shell clams of the species *Mya arenaria*. An individual may obtain tags from the Department for a moderate fee or they can use their own tags if they are a certified dealer by the Maryland Department of Health and the tag has the appropriate information. An individual may only have one type of tag, either wild shellfish or farm-raised shellfish, with them while harvesting.

Razor Clams — Commercial. The proposed action prohibits the commercial harvest of razor clams (*Genus tagelus*) for human consumption. Razor clams may only be harvested commercially for use as bait. Since they may only be used as bait, razor clams (*Genus tagelus*) are exempt from the safe handling requirements necessary for human consumption.

Hard-Shell Clams — Commercial. The proposed action removes a reference to allow the harvest of hard-shell clams in the Chester River ORA Zone A. Hard-shell clams have a minimum salinity of about 15 parts per thousand, which is much higher than the average salinity in the Chester River. Hard-shell clams generally do not occur north of Tangier Sound and providing rules for their harvest so far north of that creates a false impression that they may exist there.

Surf Clams. The proposed action requires individuals to follow federal rules. Surf clams are harvested from federal waters and landed in Maryland, therefore the rules should be consistent with federal waters. Instead of making a regulation change each time the federal rule changes, the new regulation references the federal code. Having clear consistent rules will make it easier for harvesters and enforcement. Additionally the proposed action removes an antiquated reference to an annual review and determination process that was instituted prior to the advent of the modern Administrative Procedures Act. Any changes in the future will go through the current regulatory process.

All Wild Caught Shellfish — Reporting. The proposed action places the requirements for forms related to the purchase and sale of oysters and clams into one regulation located in the Shellfish—General chapter. The requirements for the shellfish buy ticket and shellfish tax report are the same for soft-shell clams of the species *Mya arenaria*, oysters, and hard-shell clams; therefore, putting them into one location, rather than within a regulation for each species, keeps rules consistent and helps harvesters know the rules.

All Wild Caught Shellfish — Dealers. The proposed action states that dealers must accept oysters, soft-shell clams of the species *Mya arenaria*, or hard clams only from a licensed harvester, on the same day of harvest, and if tagged as required by regulation. All dealers must maintain and submit any records the Department may require and the proposed action requires dealers to follow the National Shellfish Sanitation Program Model Ordinance.

The proposed changes are consistent with the National Shellfish Sanitation Program Model Ordinance, help to ensure a safe product for consumers, and provide better clarity and organization in Department regulations.

Estimate of Economic Impact

I. Summary of Economic Impact. If the Department does not maintain compliance with the National Shellfish Sanitation Program Model Ordinance, oyster and clam harvesters will not be allowed to ship their catch out of the State. This would result in an indeterminable loss for harvesters. It would result in a loss to the Department of \$336,000 due to lost export taxes (average number of bushels exported multiplied by the \$1 export tax). This number is true for future years due to the General Assembly having raised the bushel tax from \$0.30 to \$1 during the 2023 Session. Previous years averaged \$112,250 in export taxes, based on an average of 336,000 bushels being exported.

By taking this action, harvesters will be able to maintain their out-of-State market and the Department will continue to collect an average of \$336,000 in export taxes. The net result is that by taking this action, there will be no economic impact; if this action is not taken, those negative impacts would potentially occur. For clam harvesters, there may be an indeterminable cost due to the requirement to tag clams of the species *Mya arenaria*.

II. Types of Economic Impact.

Impacted Entity	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:		
Clam harvesters	(-)	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.)

D. There may be an indeterminable cost to clam harvesters due to the requirement to tag clams of the species *Mya arenaria*. How much of a cost this may be is indeterminable because it is not known how many tags harvesters will need, and the cost of waterproof paper and indelible ink pens may vary.

Economic Impact on Small Businesses

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

By maintaining compliance with the National Shellfish Sanitation Program Model Ordinance, oyster and clam harvesters will be able to maintain their out-of-State markets. If this action is not taken, harvesters may experience indeterminable negative economic outcomes. Any oysters or clams that would have been exported may still be sold in-State, but at a market rate that was lower than the expected export market. Because it is not possible to know the difference between the theoretical export market vs. the theoretical import market at this time (especially if the market becomes flooded with product that would otherwise be exported and/or a higher export market price due to lack of availability), it is not possible to assign an exact value.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to NSSP Regulations, Regulatory Staff, Maryland Department of Natural Resources, Fishing and Boating Services, 580 Taylor Avenue, E4, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment.dnr@maryland.gov. Comments will be accepted through October 10, 2023. A public hearing has not been scheduled.

08.02.02 Soft-Shell Clams

Authority: Natural Resources Article, §§4-215, 4-1001, 4-1004, 4-1007, 4-1027, 4-1033, 4-1036, 4-1037, and 4-1039, Annotated Code of Maryland

.01 Scope.

This chapter applies only to soft-shell clams that are defined in Natural Resources Article, §4-1001, Annotated Code of Maryland, as mollusks of the species *Mya arenaria* and of the genus *Tagelus*.

.02 Recreational Fishery.

A. An individual may not catch more than one standard U.S. bushel of soft-shell clams per day.

B. An individual may not catch or possess soft-shell clams of the species *Mya arenaria* that are less than 2 inches in length, measured along the longest part of the shell.

C. An individual may not offer to sell or sell soft-shell clams that were caught for recreational purposes.

.03 Commercial Fishery.

A. An individual may not catch soft-shell clams for commercial purposes on Sunday.

B. *Size Limit.* An individual licensed to catch soft-shell clams for commercial purposes may not possess more than 40 soft-shell clams of the species *Mya arenaria* per container that measure less than 2 inches along the longest dimension of the shell.

C. *Catch Limit.* The daily commercial catch limit of soft-shell clams of the species *Mya arenaria* is:

- (1) 15 containers from May 15 through October 31; and
- (2) 8 containers from November 1 through May 14.

D. *Times for Harvesting, Landing, and Delivering.*

(1) From May 1 through September 30, an individual harvesting soft-shell clams for commercial purposes:

(a) May harvest soft-shell clams only between ½ hour before sunrise and 1 p.m.;

(b) Shall land soft-shell clams not later than 3 p.m. on the same day of harvest; and

(c) Shall deliver soft-shell clams of the species *Mya arenaria*:

(i) To a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(ii) Not later than 4 p.m. on the same day of harvest.

(2) From October 1 through April 30, an individual harvesting soft-shell clams for commercial purposes:

(a) May harvest soft-shell clams only between sunrise and sunset;

(b) Shall land soft-shell clams not later than 1 hour after sunset on the same day of harvest; and

(c) Shall deliver soft-shell clams of the species *Mya arenaria*:

(i) To a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(ii) Not later than 9 p.m. on the same day of harvest.

(3) An individual shall notify the Natural Resources Police when there is an emergency which would prevent compliance with the times specified in this section.

E. Soft-shell clams of the species *Mya arenaria* may only be sold in accordance with COMAR 08.02.08.02.

F. A person may not expose soft-shell clams harvested for human consumption to contamination from any source.

G. In addition to the requirements of this chapter, a tidal fish licensee who harvests soft-shell clams that will be provided for human consumption shall harvest soft-shell clams in accordance with the National Shellfish Sanitation Program Model Ordinance that is incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01A.

H. An individual licensed to harvest soft-shell clams for commercial purposes may not provide or sell soft-shell clams of the genus *Tagelus* for human consumption.

.04 Container and Tagging Requirements.

A. *Definition.*

(1) In this regulation, the following term has the meaning indicated.

(2) *Term Defined.* “Growing area” means the location, defined by the specific NOAA code for the area in which the harvest occurred.

B. *Containers.*

(1) Soft-shell clams of the species *Mya arenaria* harvested for commercial purposes shall:

(a) Be stored prior to leaving the growing area from which they were harvested in a rectangular shaped container with dimensions that do not exceed 20 inches long by 12-½ inches wide by 11-¼ inches deep (inside measurements), which may be filled to a level even with the top of the basket from side to side and end to end; and

(b) Remain in the original container until a tag is no longer required on the container in accordance with §C(3)(d) of this regulation.

(2) Soft-shell clams of the genus *Tagelus* harvested for commercial purposes shall be stored prior to leaving the growing area from which they were harvested in a container of any size or dimension.

C. *Tagging — Mya Arenaria.*

(1) An individual shall complete and affix a Department-issued tag to each container of soft-shell clams of the species *Mya arenaria* prior to leaving the growing area from which they were harvested.

(2) An individual may use a tag not supplied by the Department if:

(a) The individual:

(i) Is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(ii) Follows the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01; and

(b) Each tag the individual uses contains the statement “Wild Shellfish”, the state in which the harvest occurred, and, in the order specified, the following information:

(i) The harvester’s license number as assigned by the Department;

(ii) The date of harvest, including the year;

(iii) The name of the river, region, or the National Oceanic and Atmospheric Administration code for the area in which the harvest occurred;

(iv) The type and quantity of shellfish; and

(v) The statement “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS” in bold capitalized type.

(3) *Tags:*

(a) Shall be durable and waterproof;

(b) Shall be at least 5-½ x 2-¾ inches in size;

(c) Shall be completed legibly in indelible ink;

(d) Shall stay affixed to the container until the container is in the possession of a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(e) May not be reused.

(4) In addition to the tagging requirements of this regulation, a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and

10.15.07 shall follow the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01.

(5) An individual shall only possess one type of tag, wild shellfish or farm-raised shellfish, while harvesting soft-shell clams.

(6) An individual may not use a:

(a) Farm-raised shellfish tag to tag wild shellfish; or

(b) Wild shellfish tag to tag farm-raised shellfish.

(7) If a tidal fish licensee obtains tags from the Department, the licensee shall be assessed an annual surcharge for the costs incurred by the Department for the tags.

D. Exemptions.

(1) Soft-shell clams harvested recreationally for the person's own use and consumption are exempt from the requirements of §B of this regulation.

(2) Soft-shell clams harvested from a lease and stored and tagged in accordance with COMAR 08.02.23.04 are exempt from the requirements of §§B and C of this regulation.

[.10] .05 Refrigeration of Soft-Shell Clams (*Mya Arenaria*) — Methods and Procedures.

A. General Requirements from April 15—October 31.

(1) [An operator of a hydraulic clam dredge] From April 15 through October 31, an individual who harvests soft-shell clams of the species *Mya arenaria* shall immediately place the harvested soft-shell clams into either [a] an operating mechanical refrigeration unit or an insulated [cooled] storage unit cooled with ice or ice packs.

(2)—(3) (text unchanged)

(4) A portion of a daily catch of soft-shell clams may be confiscated by authorized officers of the Department of Natural Resources or the Maryland Department of Health, if the internal temperature of samples taken at a checking station is greater than 60°F in more than one container or basket as defined in Regulation .04 of this chapter.

(5) (text unchanged)

(6) Soft-shell clams of the species *Mya arenaria* transported by a vehicle shall be placed in an insulated storage unit, cooled mechanically or with ice or ice packs, and maintained at 60°F or lower while in transport.

B. Approved Methods for Refrigeration of Soft-Shell Clams (*Mya Arenaria*).

(1)—(4) (text unchanged)

(5) Ice, when used to refrigerate clams, shall be:

(a) Made or obtained from a potable source in compliance with [COMAR 10.15.03.07] with the requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01A;

(b)—(c) (text unchanged)

C. A person may not expose soft-shell clams of the species *Mya arenaria* to deterioration from excessive heat from the sun or the motors of the vessel.

[.09] .06 Harvesting Razor Clams (Genus *Tagelus*) from Restricted Areas.

[A. In this regulation, “harvest” means to take, kill, trap, gather, catch, or in any manner reduce fish to personal possession or to attempt to engage in this conduct.

B. The harvest of razor clams may occur in any area lawfully open for the harvest of soft-shell clams as of May 1, 1986.]

[C.] A. — [D.] B. (text unchanged)

[E.] C. Any razor clams harvested under [§C] §A of this regulation:

(1)—(2) (text unchanged)

(3) May not be transported or stored with soft-shell clams, hard-shell clams, [and] or oysters that will be used or sold for human consumption.

[F.] D. (text unchanged)

[.12] .07 [Restricted Areas] General.

[A. From May 1 through September 30, an individual may not catch or attempt to catch soft-shell clams by hydraulic dredge within 300 feet of a private bathing beach which extends not more than 300 feet along the shore and is marked with a sign which shall:

(1) Be posted and maintained by the owner of the private bathing beach;

(2) Be a minimum of 2 feet high by 3 feet wide with legible black letters measuring a minimum of 4 inches high and 2 inches wide;

(3) State “Private Bathing Beach—No Clam Dredging Within 300 Feet”;

(4) Be made of durable material;

(5) Conform to local ordinances and codes; and

(6) Be maintained during the conduct of all activities to which the sign pertains.]

A. Subject to the provisions of §§B and C of this regulation, an individual may catch soft-shell clams only from waters approved for shellfish harvest by the Maryland Department of the Environment.

B.—C. (text unchanged)

08.02.04 Oysters

Authority: Natural Resources Article, §4-1008.1, 4-1009, 4-1009.1, 4-1012, 4-1013, 4-1015, 4-1015.1, 4-1018, 4-1019, 4-1019.2, 4-1027, 4-1103, 4-1106, 4-11A-04, 4-11A-05, and 4-11A-12, Annotated Code of Maryland

.03 Catching Oysters for Commercial Purposes.

A.—B. (text unchanged)

C. Times for Catching and Delivering.

(1)—(2) (text unchanged)

(3) An individual who harvests oysters for commercial purposes shall deliver oysters:

(a) To a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(b) Not later than 9 p.m. on the same day of harvest.

D. (text unchanged)

E. [The Department of] An individual shall notify the Natural Resources Police [shall be notified by the licensee] when [the licensee's vessel has] there is an emergency which would prevent [it from landing during] compliance with the times specified in §§C and D of this regulation.

F.—G. (text unchanged)

08.02.07 Hard-Shell Clams

Authority: Natural Resources Article, §§4-215, 4-1021, [and] 4-1023, and 4-1027, Annotated Code of Maryland

.01 Recreational [Hard-Shell Clam Daily Catch Limit in Worcester County] Fishery.

A. Catch Limit.

(1) Except as described in §A(2) of this regulation, an individual may not catch more than one standard U.S. bushel of hard-shell clams per day.

(2) [A person] An individual may not catch more than 250 hard-shell clams (M. mercenaria) per day for personal consumption and use from the waters of Worcester County.

B. An individual may not offer to sell or sell hard-shell clams that were caught for recreational purposes.

C. An individual shall only use hand-operated gear to catch hard-shell clams.

.02 Use of Hard-Shell Clam Dredges in Tangier Sound and Pocomoke Sound.

A. (text unchanged)

B. Areas Where Hard-Shell Clams May Be Taken by Dredge. Subject to [the provisions of] Regulation [.03C].05 of this chapter and except as provided in §C of this regulation, [a licensed person] an individual licensed to catch hard-shell clams may catch hard-shell clams with a dredge only in the [following] waters of:

(1) Tangier Sound. In the waters of Tangier Sound bounded on the south by the Maryland-Virginia line, and bounded on the north as follows: beginning at tenth point at the mouth of Big Annessex River and following the dredging line to Porpoise Point, thence along shore to Hazard Point, thence in a northwesterly direction following the dredging line to South Point on Little Deal Island, thence in a southwesterly direction in a straight line to Mussel Hole Point, thence in a straight line through Solomons Lump Light to the shore on the northerly tip of Smith Island.

(2) Pocomoke Sound. In the waters of Pocomoke Sound which are southwesterly of a straight line drawn from Maryland-Virginia boundary marker "D" to the most easterly point at the mouth of Gunby Creek, with the exception of the waters of Apes Hole Creek which are westerly of a line drawn from Long Point to the southernmost point at the mouth of Cedar Gut.]

(1) Tangier Sound that are bounded on the:

(a) South by the Maryland-Virginia line; and

(b) North by a line beginning at a point at Tenth Point at the mouth of Big Annessex River defined by Lat. 38°02.303' N, Long. 75°51.610' W; then running 334° True to a point at Porpoise Point defined by Lat. 38°03.648' N, Long. 75°52.422' W; then running along shore to a point at Hazard Point defined by Lat. 38°04.571' N, Long. 75° 52.694' W; then running 307° True to a point at South Point on Little Deal Island defined by Lat. 38°06.710' N, Long. 75°56.460' W; then running 238° True to a point at Mussel Hole Point defined by Lat. 38°04.670' N, Long. 76°00.400' W; then running 194° True to a point on the shore on the northerly tip of Smith Island defined by Lat. 38°02.367' N, Long. 76°01.050' W; and

(2) Pocomoke Sound that are southwesterly of a straight line drawn from Maryland-Virginia boundary marker "D" defined by Lat. 37°56.473' N, Long. 75° 45.705' W; then running 342° True to a point at the most easterly point of the sound at the mouth of Gunby Creek defined by Lat. 37°58.410' N, Long. 75°46.498' W, except as provided in §C of this regulation.

[C. Report of Catch. Any person licensed to catch hard-shell clams with a hydraulic clam dredge shall maintain and submit to the Department any records of catches from the waters of Tangier Sound and Pocomoke Sound the Department may require.]

C. Exception. Hard-shell clams may not be taken with a dredge in the waters of Apes Hole Creek westerly of a line drawn from a point at Cedar Gut defined by Lat. 37°57.448' N, Long. 75°48.752' W; then running 215° True to a point at Long Point defined by Lat. 37°56.854' N, Long. 75° 49.283' W.

.03 Commercial Fishery.

A. An individual may not catch hard-shell clams for commercial purposes on Sunday.

B. An individual may not possess more than 10 percent of hard-shell clams per container with a transverse dimension of less than 1 inch.

C. Times for Harvesting, Landing, and Delivering.

(1) From May 1 through September 30, an individual harvesting hard-shell clams for commercial purposes:

(a) Shall land hard-shell clams not later than 3 p.m. on the same day of harvest; and

(b) Shall deliver hard-shell clams:

(i) To a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(ii) Not later than 4 p.m. on the same day of harvest.

(2) From October 1 through April 30, an individual harvesting hard-shell clams for commercial purposes:

(a) Shall land hard-shell clams not later than 1 hour after sunset on the same day of harvest; and

(b) Shall deliver hard-shell clams:

(i) To a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(ii) Not later than 9 p.m. on the same day of harvest.

(3) An individual shall notify the Natural Resources Police when there is an emergency which would prevent compliance with the times specified in this section.

D. In addition to the requirements of this chapter, a commercial licensee who harvests hard-shell clams shall harvest hard-shell clams in accordance with the National Shellfish Sanitation Program Model Ordinance that is incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01A.

.04 Container and Tagging Requirements.

A. Definition.

(1) In this regulation, the following term has the meaning indicated.

(2) Term Defined. "Growing area" means the location, defined by the specific NOAA code for the area in which the harvest occurred.

B. Containers. Hard-shell clams harvested for commercial purposes shall:

(1) Be stored prior to leaving the growing area from which they were harvested in a container of any size or dimension; and

(2) Remain in the original container until a tag is no longer required on the container in accordance with §C(3)(d) of this regulation.

C. Tagging.

(1) An individual shall complete and affix a Department-issued tag to each container of hard-shell clams prior to leaving the growing area from which they were harvested.

(2) An individual may use a tag not supplied by the Department if:

(a) The individual:

(i) Is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and

(ii) Follows the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01; and

(b) Each tag the individual uses contains the statement "Wild Shellfish", the state in which the harvest occurred, and, in the order specified, the following information:

(i) The harvester's license number as assigned by the Department;

(ii) The date of harvest, including the year;

(iii) The name of the river, region, or the National Oceanic and Atmospheric Administration code for the area in which the harvest occurred;

(iv) The type and quantity of shellfish; and

(v) The statement "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS" in bold capitalized type.

(3) Tags:

- (a) Shall be durable and waterproof;
- (b) Shall be at least 5-½ x 2-¾ inches in size;
- (c) Shall be completed legibly in indelible ink;
- (d) Shall stay affixed to the container until the container is in the possession of a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and
- (e) May not be reused.

(4) In addition to the tagging requirements of this regulation, a person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07 shall follow the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01.

(5) An individual shall only possess one type of tag, wild shellfish or farm-raised shellfish, while harvesting hard-shell clams.

(6) An individual may not use a:

- (a) Farm-raised shellfish tag to tag wild shellfish; or
- (b) Wild shellfish tag to tag farm-raised shellfish.

(7) If a tidal fish licensee obtains tags from the Department, the licensee shall be assessed an annual surcharge for the costs incurred by the Department for the tags.

D. Exemptions.

(1) Hard-shell clams harvested recreationally for the person's own use and consumption are exempt from the requirements of §B of this regulation.

(2) Hard-shell clams harvested from a lease and stored and tagged in accordance with COMAR 08.02.23.04 are exempt from the requirements of §§B and C of this regulation.

[.03].05 General.

A. Size Limit.

[(1)] Except as provided in [§A(2) of this regulation] Regulation .03B of this chapter, a person may not possess hard-shell clams harvested from State waters with a transverse dimension of less than 1 inch.

[(2)] A person may possess not more than 10 percent of the catch per bag which measures less than the minimum size specified in §A(1) of this regulation.]

B. (text unchanged)

C. Prohibited Areas and Exception.

[(1)] Except as provided in §C(2) of this regulation, an individual may not harvest hard-shell clams within 150 feet of a:

- [(a)] (1)—[(d)] (4) (text unchanged)

[(2)] An individual may harvest hard-shell clams from the Chester ORA Zone A sanctuary.]

D. Subject to §C of this regulation, an individual may catch hard-shell clams only from waters approved for shellfish harvest by the Maryland Department of the Environment.

08.02.08 Shellfish — General

Natural Resources Article, §§4-206, 4-215, 4-2A-03, 4-701, 4-743, 4-901, 4-904, 4-1004, 4-1007, 4-1027, 4-1033, 4-1043, and 4-1106, Annotated Code of Maryland

.02 Buying Station.

A. Definitions.

- (1) (text unchanged)
- (2) Term Defined. "Buying station" means a location where a person buys, processes, packs, or otherwise deals in oysters, *soft-shell clams*, or *hard-shell clams* for resale [where] and the person purchasing oysters, *soft-shell clams*, or *hard-shell clams* for resale:
 - (a)—(b) (text unchanged)

B. A person may only sell oysters, *soft-shell clams of the species Mya arenaria*, or *hard-shell clams* at a:

- (1)—(2) (text unchanged)

.07 Surf Clams.

A. [Closed Area for Harvesting Surf Clams and Exceptions.] *Maryland Waters.*

[(1)] A person may not catch, attempt to catch, or possess any surf clams *harvested* from Maryland waters which extend from the Maryland shore to 3 miles offshore[, except as permitted here].

[(2)] Exceptions. A person may harvest surf clams from Maryland waters in cooperation with a scientific investigation of the Department of Natural Resources and cooperating persons having a valid scientific collecting permit.]

B. [Minimum Size for] Offshore [Surf Clams and Exceptions] *Waters.*

(1) A person may not possess or land surf clams[,] harvested from offshore waters, which extend from 3—200 miles offshore, [which measure less than 5-½ inches at the longest dimension of the surf clam except as provided in §B(2).] in violation of the:

- (a) Catch limit established in 50 CFR 648; or
- (b) Size specifications established in 50 CFR 648.

[(2)] Exceptions.

(a) Ten percent of all full cages in possession, to the nearest whole cage, or at least one cage, can be withheld by the operator from inspection by the authorized officer; and

(b) As many as 240 surf clams in any full cage inspected by the authorized officer may be less than 5-½ inches in length.]

(2) A person may not catch, possess, or land surf clams when the National Oceanic and Atmospheric Administration closes the fishery in accordance with 50 CFR 648.

[C. Effective Period of These Sections. On the basis of study findings and interpretations, the Secretary of Natural Resources shall annually determine whether the provisions of §A shall remain in force. At the same time, if those provisions are to remain in force, he shall determine what, if any, changes are necessary.]

.09 Seafood Dealers.

A. A person licensed to buy, process, pack, resell, market, or otherwise deal in *soft-shell clams*, *hard-shell clams*, or oysters in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, shall:

(2) Accept *soft-shell clams*, *hard-shell clams*, or oysters only:

- (a) From a licensed harvester;
- (b) On the same day of harvest; and
- (c) If tagged as required in accordance with COMAR 08.02.02.04, 08.02.04.04, or 08.02.07.04.

(3) Follow the requirements of the National Shellfish Sanitation Program Model Ordinance that is incorporated by reference in COMAR 10.15.07.01A; and

(4) Implement *Vibrio parahaemolyticus* control measures in accordance with COMAR 10.15.07.06.

B. A person who is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07 shall:

(1) Follow the requirements of the National Shellfish Sanitation Program Model Ordinance that is incorporated by reference in COMAR 10.15.07.01A; and

(2) Implement *Vibrio parahaemolyticus* control measures in accordance with COMAR 10.15.07.06.

C. Any person possessing a license to deal in *soft-shell clams* shall maintain and submit to the Department any records the Department may require.

.11 Hydraulic Clam Dredge.

A. General Restrictions.

(1) An individual may not operate a hydraulic clam dredge unless they possess a valid tidal fish license to catch clams.

(2) The owner of a hydraulic clam dredge may not permit the operation of the dredge by more than one individual on any one day, including the owner.

B. Measurement of Rig.

(1) A hydraulic clam dredging rig may not have more than one conveyor or elevator, blade, and water manifold.

(2) The water manifold may not be more than 36 inches in width measuring from the outside jets.

(3) The outside jets on the water manifold shall be set parallel to, or inclined inward toward, the median vertical longitudinal plane of the dredge.

C. Muffler Required. A hydraulic clam dredge vessel shall have mufflers properly installed on all motors and engines in accordance with COMAR 08.18.03.08.

D. An individual may not harvest clams by hydraulic dredge in the Chesapeake Bay offshore of Sandy Point State Park in Anne Arundel County within:

- (1) 800 feet of the shoreline January 1 through March 31;
- (2) 1,500 feet of the shoreline April 1 through September 30; and
- (3) 800 feet of the shoreline October 1 through December 31.

E. Private Bathing Beach.

(1) From May 1 through September 30, an individual may not catch or attempt to catch clams by hydraulic dredge within 300 feet of a private bathing beach.

(2) The private bathing beach shall be marked with a sign which shall:

- (a) Be posted and maintained by the owner of the private bathing beach;
- (b) Be a minimum of 2 feet high by 3 feet wide with legible black letters measuring a minimum of 4 inches high and 2 inches wide;
- (c) State "Private Bathing Beach—No Clam Dredging Within 300 Feet";
- (d) Be made of durable material; and
- (e) Conform to local ordinances and codes.

.12 Reporting.

A. Shellfish Buy Ticket.

(1) A shellfish buy ticket shall be:

- (a) Provided by the Department;
- (b) Completed in accordance with this regulation; and
- (c) Returned to the Department in accordance with this regulation.

(2) When soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters are sold to a buying station:

(a) The seller shall provide the information necessary for the buyer to complete a shellfish buy ticket;

(b) The buyer shall complete a shellfish buy ticket for every soft-shell clam of the species *Mya arenaria*, hard-shell clam, or oyster purchase; and

(c) Both the seller and the buyer shall sign the shellfish buy ticket.

(3) When soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters are sold at a location other than a buying station, the seller shall complete and sign a shellfish buy ticket.

(4) An individual who harvests oysters from a public oyster bar, soft-shell clams of the species *Mya arenaria*, or hard-shell clams and places them on a lease shall complete and sign a shellfish buy ticket.

(5) The shellfish buy ticket shall be returned to the Department in accordance with §D of this regulation.

(6) A shellfish buy ticket is not required for the sale or purchase of shellfish harvested from a leased area.

B. Shellfish Tax Report.

(1) A shellfish tax report shall be:

- (a) Provided by the Department;
- (b) Completed in accordance with this regulation; and
- (c) Returned to the Department in accordance with this regulation.

(2) When soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters are sold at a:

- (a) Buying station, the buyer shall complete a Shellfish Tax Report; or
- (b) Location other than a buying station, the seller shall complete a Shellfish Tax Report.

(3) The shellfish tax report shall be returned to the Department in accordance with §D of this regulation.

C. Shellfish Export Certificate.

(1) When soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters are shipped out of State, the seller shall complete a shellfish export certificate for each shipment.

(2) The original shellfish export certificate shall accompany the shipment of oysters out of State.

(3) A copy of the shellfish export certificate shall be submitted to the Department in accordance with §D of this regulation.

D. Requirements for Return of Documents.

(1) Except as provided in §D(3) of this regulation, a person shall return the completed shellfish buy ticket, shellfish tax report, and shellfish export certificate to the Department each week for all soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters purchased or sold during the week ending on the previous Saturday, even if no taxes are due.

(2) All forms, reports, and certificates shall be accompanied by any money due to the State for the respective period of time.

(3) Exceptions.

(a) A person who has indicated on a form provided by the Department that they will not be buying or selling oysters, soft-shell clams of the species *Mya arenaria*, or hard-shell clams for a particular period of time is exempt from submitting the records required by §A—C of this regulation for the time period specified on the form.

(b) Individuals whose sales or purchases would require payment of taxes of less than \$25 weekly may submit the required documents monthly.

JOSH KURTZ
Secretary of Natural Resources

Subtitle 07 FORESTS AND PARKS

08.07.08 Licensed Forest Products Operator

Authority: Natural Resources Article, §5-608.1, Annotated Code of Maryland

Notice of Proposed Action

[23-186-P]

The Secretary of Natural Resources proposes to adopt new Regulation .08 under **COMAR 08.07.08 Licensed Forest Products Operator**.

Statement of Purpose

The purpose of this action is to assist Maryland manufacturers and distributors of firewood in meeting the regulatory requirements imposed by other states. The proposed regulations would establish a Voluntary Firewood Heat Treatment Certification Program administered by the Department of Natural Resources to certify forest products operators who export firewood to other states are properly applying heat treatments in accordance with specific standards acceptable to those other states.