

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken.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an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

Notice of Proposed Action

[18-326-P-I]

The Secretary of Natural Resources proposes to:

- (1) Amend Regulation .17 under **COMAR 08.02.04 Oysters**; and
- (2) Amend Regulation .03 and repeal Regulation .05 under **COMAR 08.02.23 Shellfish Aquaculture and Leasing**.

Statement of Purpose

The purpose of this action is to incorporate by reference Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (September 2018). The proposed action: 1) removes aquaculture enterprise zones and references in regulation to the zones; 2) declassifies two public shellfish fishery areas (PSFA) to allow for aquaculture; 3) changes the boundary of one public shellfish fishery area that overlaps with a sanctuary; and 4) updates several public shellfish fishery areas that were inadvertently changed or omitted when the last update was completed in November 2016.

PSFAs 119 and 121

There are two aquaculture enterprise zones located in the Patuxent River, near Broome's Island, which were established by regulation in 2009. Subsequent to the establishment of the aquaculture enterprise zones and the approval of new lease laws, the Department implemented a new shellfish aquaculture leasing program that reduced the utility and function of aquaculture enterprise zones. Consequently, a leasing program for the aquaculture enterprise zone areas was never developed. The Department, after consultation with the Aquaculture Coordinating Council and the Tidal Fish Advisory Commission, is removing Island Creek and Jack's Bay Aquaculture Enterprise Zone designations and converting these two areas into

Public Shellfish Fishery Areas (PSFA) for use in the public oyster fishery.

The Department conducted oyster population surveys of the two areas in April 2018. Survey findings show a mix of oyster size classes within the two areas indicating that recruitment is recurring and growth and survivorship is favorable. These conditions support use by the public fishery that will help to increase the productivity of the sites through future shell and seed plantings.

Most of the aquaculture enterprise zone located in Island Creek will become part of PSFA 119. The portion of the zone that is on a natural oyster bar is the only part that will be classified as a public shellfish fishery area. The portion of the zone that is not on a natural oyster bar will not be classified to preserve clamming opportunities. The proposed action modifies the coordinates of PSFA 119 to include the portions of the aquaculture enterprise zone that were on the natural oyster bar.

The entire aquaculture enterprise zone located in Jack's Bay will become part of PSFA 121. The proposed action removes the exclusion area that was designated to represent the aquaculture enterprise zone and the required buffer.

PSFAs 80 and 156

The proposed action declassifies a portion of PSFA 80 by modifying the boundaries to exclude a 0.5-acre area. The Department received shellfish aquaculture lease application #277 (McBee) requesting to declassify an approximate 0.5-acre portion of PSFA 80 in Shipping Creek, Queen Anne's County. In accordance with the Code of Maryland Regulations (COMAR) 08.02.04.17, the Department evaluated harvest data and conducted a biological survey of the proposed lease site on August 24, 2016, and determined that there are no oysters or oyster bottom present in this location. Consequently, the proposed lease area meets the regulatory criteria that provides for declassifying this portion of the PSFA and the application satisfies the requirements of COMAR 08.02.23.03. Once the area is declassified, the Department will issue a water column lease to the applicant.

The proposed action declassifies a portion of PSFA 156 by modifying the boundaries to exclude a 5.6-acre area. The Department received shellfish aquaculture lease application #350 (Morris & Morris) requesting to declassify an approximate 5.6-acre portion of

PSFA 156 in Smith Creek, St. Mary’s County. In accordance with COMAR 08.02.04.17, the Department evaluated harvest data and conducted a biological survey of the proposed lease site on October 4, 2017, and determined that there are no oysters or oyster bottom present in this location. Consequently, the proposed lease area meets the regulatory criteria that provides for declassifying this portion of the PSFA and the application satisfies the requirements of COMAR 08.02.23.03. Once the area is declassified, the Department will issue a submerged land lease to the applicants.

PSFA 21

The proposed action corrects a typographical error in PSFA 21. The shape of the PSFA did not change.

PSFA 33

The proposed action modifies the coordinates of PSFA 33 because it overlaps the Hooper Straits sanctuary. The overlap was approximately 300 feet on the western side and 700 feet on the eastern side.

PSFAs 53, 54, 59, 60 and 171

Several unintentional changes were found in the November 2016 version of the Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries. It is unknown how the errors occurred, but many were due to unnoticed formatting in the document. The proposed action corrects the unintentional errors that occurred for PSFAs 53, 54, 59, 60 and 171.

The proposed action restores PSFAs 53 and 59 to their original shape. The last two lines of the descriptions were changed due to formatting errors in the 2016 document. The proposed action adds PSFAs 54 and 60. They were inadvertently omitted from the 2016 document due to formatting errors. The proposed action restores PSFA 171 to its original shape. Changes to the description were made due to formatting errors in the 2016 document.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have an economic impact on the regulated industry.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:		
(1) AEZs Converted to PSFAs — Aquaculturists	NONE	NONE
(2) AEZs Converted to PSFAs — Commercial Harvesters	(+)	Indeterminable
(3) PSFA Declassification — Aquaculturists	(+)	Indeterminable

(4) PSFA Declassification — Commercial Harvesters	NONE	NONE
(5) Other PSFA changes	NONE	NONE
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(1). There is no economic impact for this change because there have been no lease applications in the aquaculture enterprise zones, largely because the overall revisions of the leasing laws offered more attractive options for obtaining a lease at a location of one’s choice rather than establishing an operation within the confines of an aquaculture enterprise zone.

D(2). The aquaculture enterprise zones were designated for aquaculture, but they remained open for commercial harvest. Harvest will continue as normal in these areas. Since the areas will be designated only for oyster harvest, the industry will be able to invest in the area. This may increase productivity and give harvesters greater flexibility. The actual impact is indeterminable because it is unknown if the industry will invest in the areas or if the areas will continue to be productive.

D(3). If issued, the proposed lease sites will allow for the development of commercial aquaculture businesses in the name of the applicants. The direct economic impacts to the applicants are indeterminable. However, because these will be commercial operations, it is assumed that the applicants will be receiving revenue from the aquaculture activity that is proposed at these two sites.

D(4). This action will remove approximately 0.5 and 5.6 acres of bottom from the existing public shellfish fishery areas in Shipping Creek and Smith Creek, respectively. The process for declassification of a public shellfish fishery area is set forth in COMAR 08.02.04.17. Resource surveys of each of the areas yielded a density of oysters below the minimum threshold necessary to consider the bottom viable for the commercial oyster fishery. Therefore, removing the acres should have no economic impact for commercial fishermen.

D(5). All other changes are housekeeping for clarification purposes and do not have any impact on commercial harvesters.

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 lease sites will allow for the development of commercial aquaculture businesses in the name of the applicants. The direct economic impacts to the applicants are indeterminable. However, because these will be commercial operations, it is assumed that the applicants will be receiving revenue from the aquaculture activity that is proposed at these two sites. Additional public shellfish fishery areas may give the commercial industry greater flexibility to invest in the areas which may increase productivity and ultimately lead to greater harvest.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Public Shellfish Fishery Area Regulations, Regulatory Staff, Department of Natural Resources Fishing and Boating Services, 580 Taylor Ave, B-2, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment.dnr@maryland.gov, or fax to 410-260-8310.

Comments will be accepted through January 7, 2019. A public hearing has not been scheduled.

E.—J. (text unchanged)

MARK J. BELTON
Secretary of Natural Resources

Editor’s Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (September 2018) has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 45:1 Md. R. 8 (January 5, 2018), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

Title 10
MARYLAND DEPARTMENT
OF HEALTH
Subtitle 24 MARYLAND HEALTH
CARE COMMISSION

10.24.08 State Health Plan for Facilities and Services: [Nursing Home] *Special Hospital — Chronic Services*

08.02.04 Oysters

Natural Resources Article, §§4-215 and 4-11A-04, Annotated Code of Maryland

Authority: Health General Article, §§19-109(a)(1), 19-118, and 19-120(f), Annotated Code of Maryland

.17 Public Shellfish Fishery Area.

A. Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries [(November 2016)] (*September 2018*) designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries and is hereby incorporated by reference.

B. (text unchanged)

Notice of Proposed Action

[18-327-P-I]

The Maryland Health Care Commission proposes to amend Regulation .01 under **COMAR 10.24.08 State Health Plan for Facilities and Services: Special Hospital — Chronic Services**. This action was considered by the Commission at an open meeting held on October 16, 2018, notice of which was given through publication in the Maryland Register, under General Provisions Article, §3-302(c), Annotated Code of Maryland.

08.02.23 Shellfish Aquaculture and Leasing

Natural Resources Article, §4-11A-05, Annotated Code of Maryland

Statement of Purpose

The purpose of this action is to remove nursing home services from COMAR 10.24.08, the existing chapter that covers both nursing home and special hospital — chronic services and place it in a new chapter, COMAR 10.24.20, that is devoted exclusively to comprehensive care facility (nursing home) services. The amended COMAR 10.24.08 will then be focused on special hospital — chronic services.

.03 Commercial Lease Procedures.

A. Aquaculture Activities on Submerged Land.

(1) A person may not engage in aquaculture activities on submerged land in waters of the State, including the areas listed in [Regulations .05 and] *Regulation .06* of this chapter, unless the land is leased or permitted for shellfish aquaculture purposes.

(2) To obtain a submerged land lease a person shall:

(a) (text unchanged)

(b) Submit a non-refundable fee off:

(i) \$300 [for areas not in aquaculture enterprise zones as described in Regulation .05 of this chapter; or

(ii) \$150 for areas in aquaculture enterprise zones as described in Regulation .05 of this chapter].

B. Aquaculture Activities in the Water Column.

(1) (text unchanged)

(2) To obtain a water column lease, a person shall:

(a) (text unchanged)

(b) Submit a non-refundable fee off:

(i) \$300 [for areas not in aquaculture enterprise zones as described in Regulation .05 of this chapter; or

(ii) \$150 for areas in aquaculture enterprise zones as described in Regulation .05 of this chapter].

C. (text unchanged)

D. Rent.

(1) Submerged Land Lease. Except as provided in [§D(3)] §D(2) of this regulation, the rental rate for a submerged land lease is \$3.50 per acre per year and is due in full to the Department by December 31 of the preceding year.

(2) Water Column Lease. Except as provided in §D(3) of this regulation, the rental rate for a water column lease in areas listed in Regulation .05 of this chapter is \$25 per acre per year and is due to the Department by December 31 of the preceding year.]

[(3)] (2) (text unchanged)

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 Linda Cole, Chief, Long Term Care Planning, Maryland Health Care Commission, 4160 Patterson Avenue, or call 410-764-3337, or email to linda.cole@maryland.gov, or fax to 410-358-1311. Comments will be accepted through January 7, 2019. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland Health Care Commission during a public meeting to be held on February 21, 2019, at 1 p.m., at 4160 Patterson Avenue, Baltimore, Maryland 21215.