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SMALL BUSINESS COMPLIANCE GUIDE
Amendment to Subtitle 02 Fisheries Service
Regarding the Department's Regulations for Oysters
COMAR 08.02.04
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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 clarify 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
Fax: 410-260-8310

I. SUMMARY & FAQs

What is being considered?

The department is considering 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 under consideration would 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.

It is clear, based on the current statutory language, that oyster harvesters may keep a market-sized oyster which has an attached oyster which is less than 1 inch in length from hinge to bill that cannot be separated without destroying the small oyster. Oysters which are less than 1 inch in length from hinge to bill that can be separated from the market-sized oysters must be separated and returned to the bar from which they were taken. Less clear is 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 is considering clarifying that a harvester may not be in possession of an oyster which is larger than 1 inch and less than 3 inches in length from hinge to bill under any circumstance. In practice, this will require the harvester to either separate the small oyster from the market-sized oyster or return the entire cluster of oysters to the water. In attempting to separate the small oyster from the market-sized oyster, the harvester will either be able to successfully separate the oysters and return the small oyster to the oyster bar, or the small oyster will be destroyed and the shell would be returned to the bar. Either way, an ecological benefit is achieved by either an oyster or shell being returned to the bar, rather than being removed completely. Additionally, the department would like to clarify that no market-sized oyster may be included in the measurement of any undersized oysters (i.e. in the cull cup). Based on the department's discussions over the past year with both the Natural Resources Police and oyster harvesters, the department believes that these two clarifications will result in more fair, understandable, and enforceable rules.

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 would 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.

II. RECORDKEEPING AND REPORTING REQUIREMENTS

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

III. IMPLEMENTATION DATE

The department expects this change to be effective in the fall of 2022, however the exact date cannot be determined. The department will follow our normal scoping and proposal procedures.

This idea is in the scoping process (April 20—May 4). During the scoping process, the department gathers suggestions and ideas from stakeholders and others about how to solve a fishery problem or address a need. The goal of scoping is to identify issues, potential impacts, and reasonable alternatives associated with the issues so that management actions can be developed. After the public has had an opportunity to comment on possible management actions during the scoping process, the department considers these comments and develops an appropriate management strategy.

If the action is necessary and appropriate, the rules will be promulgated following the Administrative Procedures Act described in Title 10, Subtitle 1 of the State Government Article Annotated Code of Maryland.

- The General Assembly's Administrative, Executive, and Legislative Review Committee reviews the regulatory proposal for fiscal and legal analysis.
- The proposal is printed by the Division of State Documents in the Maryland Register.
- A 30 day public comment period begins on the day of publication.
- After review of the comments, the department may adopt the changes.
- If the department adopts the changes, they become effective after a notice is published in the Maryland Register that announces approval and the effective date.