

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

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

Notice of Proposed Action

[25-263-P-I]

The Secretary of Natural Resources proposes to amend Regulation .17 under **COMAR 08.02.04 Oysters**.

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 (October 2025)”. This document designates each public shellfish fishery area (PSFA) located in the Chesapeake Bay and its tidal tributaries and replaces “Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (June 2023)”. The document is being incorporated to:

- (1) Declassify a portion of PSFA 83 to allow for shellfish aquaculture; and
- (2) Make corrections to the buffers of PSFA 152 and PSFA 156.

Leases cannot be located within a PSFA or within 150 feet of a PSFA. However, if a proposed lease area meets certain criteria, the PSFA may be declassified and a lease can be issued in that location. A person may petition the Department to declassify a portion of a PSFA for the purpose of issuance of a commercial shellfish aquaculture lease in conjunction with submission of an application for a lease within a PSFA. The criteria for declassifying a PSFA are not affected by this proposed action and are described in the Code of Maryland Regulations (COMAR) 08.02.04.17.

PSFA 83

The proposed action declassifies a portion of PSFA 83 by modifying the boundaries to exclude an approximately 8-acre portion located in Crab Alley Bay, Queen Anne’s County. The declassification was requested in shellfish aquaculture lease application #524 (Lewis, Jr. & Lewis). The proposed lease area is 1.6 acres. In accordance with COMAR 08.02.04.17, the Department evaluated commercial oyster harvest data and conducted a biological survey of the proposed lease and surrounding buffer area. The Department determined that the average density of oysters per square meter within the proposed lease area meets the regulatory criteria that provides for declassification, and the lease application satisfies the requirements of COMAR 08.02.23.03.

Since a lease is not allowed to be located within 150 feet of a PSFA, the proposed declassification includes the leased area (1.6 acres) and the required 150-foot buffer (6.4 acres) around the portion of the leased area that falls within the PSFA. The buffer remains open to oyster harvest following declassification. Once the area is declassified, the Department will issue the shellfish aquaculture lease to the applicants. The shellfish aquaculture operation established at this location will result in rehabilitated oyster bottom that can provide both ecological and economic benefits consistent with the Department’s resource management and economic development goals.

PSFA 152

The proposed action modifies the northwestern boundary of PSFA 152 so that it cleanly abuts rather than overlaps the Upper

Patuxent Oyster Sanctuary. The PSFA is located in the Patuxent River, Calvert County. The boundaries of the Upper Patuxent Oyster Sanctuary are described in the “Oyster Sanctuaries of the Chesapeake Bay and Its Tidal Tributaries September 2010” document, which is incorporated by reference into Maryland regulation (Code of Maryland Regulations 08.02.04.15). The same regulation establishes that a person may not harvest wild oysters from a sanctuary described in that document. By definition, a PSFA is a commercially harvestable area, so the two cannot occupy the same location; therefore the boundary of PSFA 152 was adjusted to eliminate the overlap.

PSFA 156

The proposed action modifies the boundaries of PSFA 156 so that its 150-foot buffer no longer overlaps with shellfish aquaculture leases SM 524 and SM 790. The PSFA is located in Smith Creek, St. Mary’s County. PSFAs were initially established in September of 2011 and the law required a 150-foot buffer between all shellfish aquaculture leases and PSFAs. The overlaps were inadvertently created when the PSFA boundaries were originally established.

Shellfish aquaculture lease SM 524 predates the establishment of the PSFAs. During a recent mapping exercise, the Department realized that there was not a full 150-foot buffer between the PSFA and the lease area. The proposed action ensures that there is a full buffer.

Shellfish aquaculture lease SM 790 was issued in 2019 after the area was declassified. However, it was recently discovered that the buffer area was not designated properly. The proposed action ensures that the PSFA and its 150-foot buffer no longer overlap with the shellfish aquaculture lease.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action has a positive economic impact on the Department and the regulated industry.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
Benefit (+)		
<hr/>		
A. On issuing agency:		
Maryland Department of Natural Resources	(R+)	\$5.60 per year
B. On other State agencies:	NONE	
C. On local governments:	NONE	
Cost (-)		
<hr/>		
D. On regulated industries or trade groups:		
Shellfish Aquaculturists	(+)	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. This action will allow the issuance of a 1.6 acre submerged land lease in the area. The current annual rental rate for a submerged land lease is \$3.50 per acre per year (COMAR 08.02.23.03). This will result in an annual increase in revenue of \$5.60.

D. The declassification of PSFA 83 will allow the Department to issue a submerged land lease. The lease site will allow for the

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development of a commercial aquaculture business in the name of the applicants. The direct economic impacts to the applicants are indeterminable. However, because this will be a commercial operation, it is assumed that the applicants will be receiving revenue from the aquaculture activity that is proposed at the site.

Economic Impact on Small Businesses

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

Shellfish aquaculturists and commercial harvesters are considered small businesses.

The declassification of PSFA 83 will allow the Department to issue a submerged land lease. The lease site will allow for the development of a commercial aquaculture business in the name of the applicants. The direct economic impacts to the applicants are indeterminable. However, because this will be a commercial operation, it is assumed that the applicants will be receiving revenue from the aquaculture activity that is proposed at the site.

This action will remove approximately 1.6 acres of bottom from the existing public shellfish fishery areas. The buffer area (6.4 acres) remains open for commercial harvest. The process for declassification of a public shellfish fishery area is set forth in COMAR 08.02.04.17. Resource surveys of the area yielded a density of oysters below the minimum threshold necessary to consider the bottom viable for the commercial oyster fishery. Therefore, removing the acres does not have an economic impact for commercial fishermen.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to PSFA Regulations, Regulatory Staff, Maryland Department of Natural Resources Fishing and Boating Services, 580 Taylor Ave., E-4, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment.dnr@maryland.gov or complete the comment form at <https://dnr.maryland.gov/fisheries/Pages/regulations/changes.aspx>. Comments will be accepted through January 26, 2026. A public hearing has not been scheduled.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (October 2025) 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 52:2 Md. R. 53 (January 24, 2025), and is available online at www.dsd.maryland.gov. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.17 Public Shellfish Fishery Area.

A. Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries [(June 2023)] (*October 2025*) designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries and is hereby incorporated by reference.

B. (text unchanged)

JOSH KURTZ
Secretary of Natural Resources

08.02.05 Fish

Authority: Natural Resources Article, §§4-215 and 4-2A-03, Annotated Code of Maryland

Notice of Proposed Action

[25-240-P]

The Secretary of Natural Resources proposes to amend Regulation .24 under **COMAR 08.02.05 Spiny Dogfish**.

Statement of Purpose

The purpose of this action is to implement area-based commercial gear requirements in the spiny dogfish gill net fishery to reduce bycatch of Atlantic sturgeon. This action is necessary to implement the Atlantic States Marine Fisheries Commission (ASMFC) Addendum VII to the Spiny Dogfish Interstate Fishery Management Plan. Addendum VII has gear restrictions for the Delaware and Maryland Sturgeon Bycatch Reduction Areas.

In August 2024, NOAA Fisheries published a proposed rule (Federal Register notice 89 FR 65576; August 12, 2024) to approve and implement Spiny Dogfish Framework Adjustment 6, as recommended by the Mid-Atlantic and New England Fishery Management Councils. The Councils developed Spiny Dogfish Framework Adjustment 6 in response to a 2021 Biological Opinion and 2022 Action Plan that called for reducing bycatch of Atlantic sturgeon in spiny dogfish gill net fisheries. Atlantic sturgeon harvest has been under a coastwide moratorium in federal and state waters since 1998. The ASMFC Fishery Management Plan for Atlantic Sturgeon maintains the moratorium through at least 2038, and while the 2024 stock assessment update showed signs of improvement, the stock remains depleted coastwide. The proposed rule was approved in December 2024 by NOAA Fisheries and will implement area-based gear requirements in the spiny dogfish gill net fishery to reduce bycatch of Atlantic sturgeon for harvesters that possess a federal spiny dogfish permit.

Currently, harvesters who hold a Maryland Spiny Dogfish Permit, do not possess a federal spiny dogfish permit, and only fish in state waters are not captured by the federal action. Because the specific areas included for additional management span state and federal waters, action is needed by the Department to implement corresponding measures for state-only permit holders to maintain consistency between the federal and interstate fishery management plans. ASMFC developed Addendum VII to ensure consistency with the the Mid-Atlantic and New England Fishery Management Councils Spiny Dogfish Framework Adjustment 6 by applying the overnight soak restrictions for harvesters who have state spiny dogfish permits in Maryland, but do not possess a federal spiny dogfish permit.

The proposed action creates a definition for roundfish gill nets and restrictions for using the nets in State waters of the Atlantic Ocean (0-3 miles from shore). The proposed action requires harvesters that possess a Maryland spiny dogfish permit, who do not have a federal permit and use roundfish gill nets with a mesh size equal to or greater than 5.25 inches and less than 10 inches to remove roundfish gill nets from the water by 8:00 p.m. each day and prohibits them from setting the nets prior to 5:00 a.m. the following day during the time period November 1 through March 31 each year.

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.