



*Larry Hogan, Governor*  
*Boyd Rutherford, Lt. Governor*  
*Jeannie Haddaway-Riccio, Secretary*

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DNR-FS-2019-03

SMALL BUSINESS COMPLIANCE GUIDE  
Amendment to Subtitle 02 Fisheries Service  
Regarding the Department's Regulations for Public Shellfish Fishery Areas  
COMAR 08.02.04.17  
Released October 25, 2019  
Updated October 28, 2019

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

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## **I. SUMMARY & FAQs**

### **What is being considered?**

The department would like to declassify portions of four public shellfish fishery areas (PSFA 134, 136, 140, and 156) and make a correction to one public shellfish fishery area (PSFA 119).

A lease is not allowed to be located within 150 feet of a public shellfish fishery area (PSFA), so each declassification includes the proposed lease area and the required 150 foot buffer around the proposed lease. The buffers will remain open to oyster harvest following declassification.

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

Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (September 2018) designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries. Leases cannot be located within a public shellfish fishery area (PSFA). However, if the 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 department has received five submerged land lease applications for areas that are either wholly or partially located within an existing PSFA. The criteria for declassifying a PSFA are described in the Code of Maryland Regulations (COMAR) 08.02.23.03. Each area has been surveyed and meets the requirements for a lease and declassification. Portions of four PSFAs need to be declassified so that the leases may be issued. Details are below for each area. The correction to PSFA 119 is necessary because the required buffer area between the leased area and the PSFA was inadvertently removed in a regulatory action.

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

Shellfish leaseholders and individuals who harvest oysters commercially or recreationally.

### **What do you need to do to comply with the change?**

If a regulation is adopted, the leased area will be closed to wild oyster harvest. This action does not create any new recordkeeping or reporting requirements.

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

The declassifications and correction were discussed at the September 12th meeting of the Aquaculture Coordinating Council. Members supported the changes. This idea was also discussed with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their October 2019 meetings. Changes will be discussed with the Oyster Advisory Commission at their meeting in November.

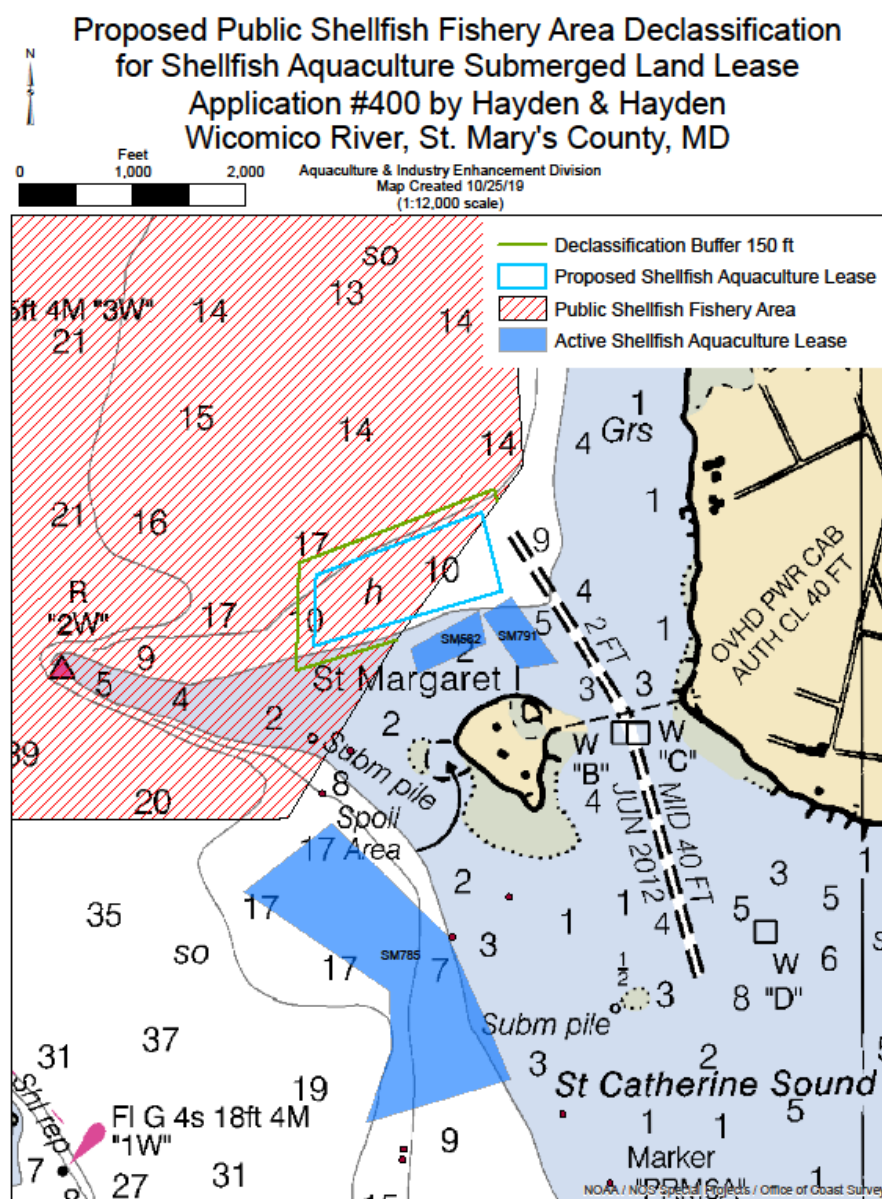
### **What is the specific regulatory action?**

Amend Regulation .17 under COMAR 08.02.04 Oysters.

### Declassification of PSFA 134

Declassify an approximately 31 acre portion of PSFA 134 located in the Wicomico River, St. Mary's County. Modify the boundaries of PSFA 134 to exclude the 31 acre area, in order to issue a submerged land lease to the applicants. The proposed lease area is 24.8 acres.

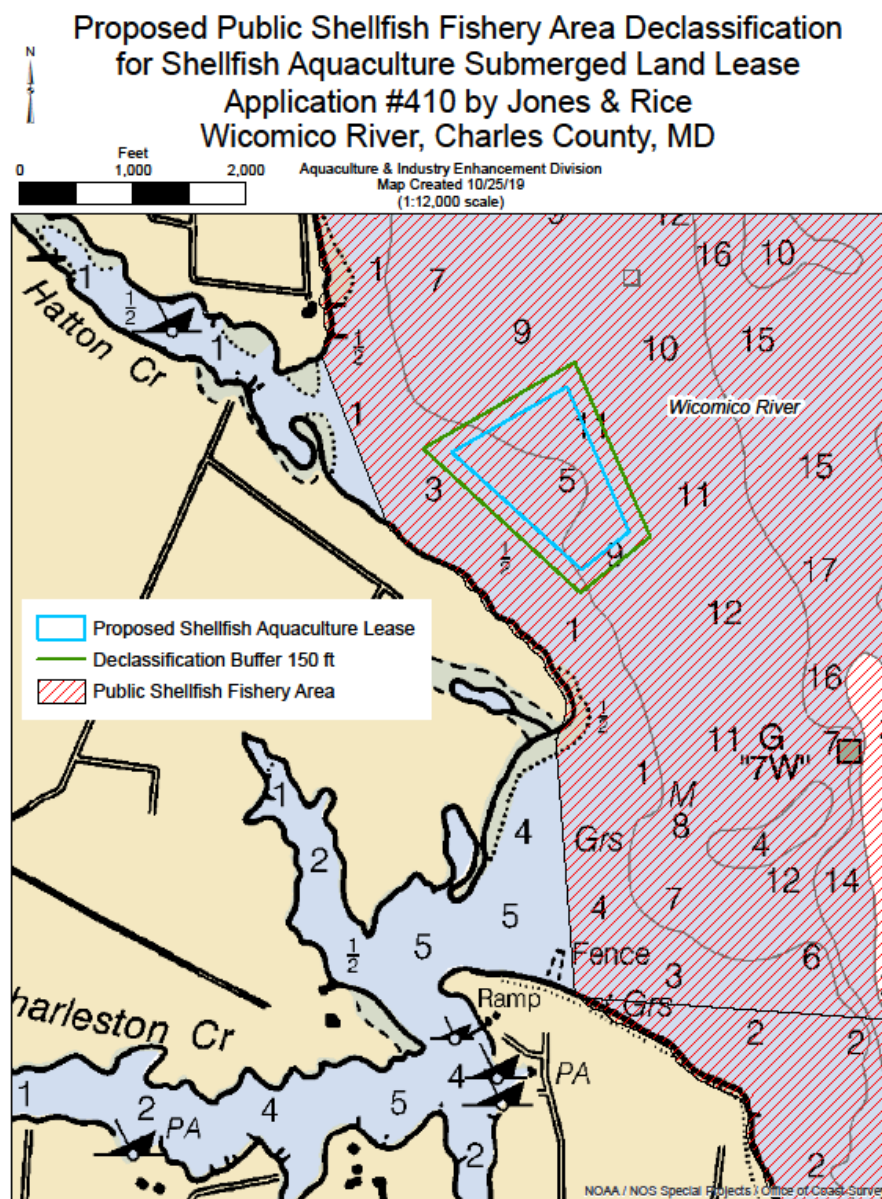
The declassification was requested in shellfish aquaculture lease application #400 (Hayden & Hayden). In accordance with the Code of Maryland Regulations (COMAR) 08.02.04.17, the department evaluated harvest data and conducted a biological survey of the proposed lease site on June 6, 2019 and determined that there are very few oysters 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.



### Declassification of PSFA 136

Declassify an approximately 46.7 acre portion of PSFA 136 located in Wicomico River, Charles County. Modify the boundaries of PSFA 136 to exclude the 46.7 acre area, in order to issue a submerged land lease to the applicants. The proposed lease area is 28.3 acres.

The declassification was requested in shellfish aquaculture lease application #410 (Jones & Rice). In accordance with COMAR 08.02.04.17, the department evaluated harvest data and conducted a biological survey of the proposed lease site on April 2, 2019 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.



Declassify an approximately 7.7 acre portion of PSFA 140 located in St. Clement's Bay, St. Mary's County. Modify the boundaries of PSFA 140 to exclude the 7.7 acre area, in order to issue a submerged land lease to the applicants. The proposed lease area is 31.5 acres, 2.5 acres of which is located within PSFA 140.

Proposed Public Shellfish Fishery Area Declassification  
for Shellfish Aquaculture Submerged Land Lease  
Application #399 by Hayden & Hayden  
St. Clement's Bay, St. Mary's County, MD

Aquaculture & Industry Enhancement Division  
Map Created 10/25/19  
(1:12,000 scale)

Map details include:  
- Scale: 0 to 2,000 Feet  
- Map Created: 10/25/19  
- Scale: 1:12,000  
- Legend:  
 - Declassification Buffer 150 ft (Green line)  
 - Proposed Shellfish Aquaculture Lease (Blue area)  
 - Public Shellfish Fishery Area (Red hatched area)  
 - Active Shellfish Aquaculture Lease (Blue area)  
- Map features: Heron Island, Clements Island, Shoaling rep. 1993, Marker "PRM3C", "N"4", "C"5", "C"7", "C"3", "C"4", "C"5", "C"6", "C"7", "C"8", "C"9", "C"10", "C"11", "C"12", "C"13", "C"14", "C"15", "C"16", "C"17", "C"18", "C"19", "C"20", "C"21", "C"22", "C"23", "C"24", "C"25", "C"26", "C"27", "C"28", "C"29", "C"30", "C"31", "C"32", "C"33", "C"34", "C"35", "C"36", "C"37", "C"38", "C"39", "C"40", "C"41", "C"42", "C"43", "C"44", "C"45", "C"46", "C"47", "C"48", "C"49", "C"50", "C"51", "C"52", "C"53", "C"54", "C"55", "C"56", "C"57", "C"58", "C"59", "C"60", "C"61", "C"62", "C"63", "C"64", "C"65", "C"66", "C"67", "C"68", "C"69", "C"70", "C"71", "C"72", "C"73", "C"74", "C"75", "C"76", "C"77", "C"78", "C"79", "C"80", "C"81", "C"82", "C"83", "C"84", "C"85", "C"86", "C"87", "C"88", "C"89", "C"90", "C"91", "C"92", "C"93", "C"94", "C"95", "C"96", "C"97", "C"98", "C"99", "C"100", "C"101", "C"102", "C"103", "C"104", "C"105", "C"106", "C"107", "C"108", "C"109", "C"110", "C"111", "C"112", "C"113", "C"114", "C"115", "C"116", "C"117", "C"118", "C"119", "C"120", "C"121", "C"122", "C"123", "C"124", "C"125", "C"126", "C"127", "C"128", "C"129", "C"130", "C"131", "C"132", "C"133", "C"134", "C"135", "C"136", "C"137", "C"138", "C"139", "C"140", "C"141", "C"142", "C"143", "C"144", "C"145", "C"146", "C"147", "C"148", "C"149", "C"150", "C"151", "C"152", "C"153", "C"154", "C"155", "C"156", "C"157", "C"158", "C"159", "C"160", "C"161", "C"162", "C"163", "C"164", "C"165", "C"166", "C"167", "C"168", "C"169", "C"170", "C"171", "C"172", "C"173", "C"174", "C"175", "C"176", "C"177", "C"178", "C"179", "C"180", "C"181", "C"182", "C"183", "C"184", "C"185", "C"186", "C"187", "C"188", "C"189", "C"190", "C"191", "C"192", "C"193", "C"194", "C"195", "C"196", "C"197", "C"198", "C"199", "C"200", "C"201", "C"202", "C"203", "C"204", "C"205", "C"206", "C"207", "C"208", "C"209", "C"210", "C"211", "C"212", "C"213", "C"214", "C"215", "C"216", "C"217", "C"218", "C"219", "C"220", "C"221", "C"222", "C"223", "C"224", "C"225", "C"226", "C"227", "C"228", "C"229", "C"230", "C"231", "C"232", "C"233", "C"234", "C"235", "C"236", "C"237", "C"238", "C"239", "C"240", "C"241", "C"242", "C"243", "C"244", "C"245", "C"246", "C"247", "C"248", "C"249", "C"250", "C"251", "C"252", "C"253", "C"254", "C"255", "C"256", "C"257", "C"258", "C"259", "C"260", "C"261", "C"262", "C"263", "C"264", "C"265", "C"266", "C"267", "C"268", "C"269", "C"270", "C"271", "C"272", "C"273", "C"274", "C"275", "C"276", "C"277", "C"278", "C"279", "C"280", "C"281", "C"282", "C"283", "C"284", "C"285", "C"286", "C"287", "C"288", "C"289", "C"290", "C"291", "C"292", "C"293", "C"294", "C"295", "C"296", "C"297", "C"298", "C"299", "C"300", "C"301", "C"302", "C"303", "C"304", "C"305", "C"306", "C"307", "C"308", "C"309", "C"310", "C"311", "C"312", "C"313", "C"314", "C"315", "C"316", "C"317", "C"318", "C"319", "C"320", "C"321", "C"322", "C"323", "C"324", "C"325", "C"326", "C"327", "C"328", "C"329", "C"330", "C"331", "C"332", "C"333", "C"334", "C"335", "C"336", "C"337", "C"338", "C"339", "C"340", "C"341", "C"342", "C"343", "C"344", "C"345", "C"346", "C"347", "C"348", "C"349", "C"350", "C"351", "C"352", "C"353", "C"354", "C"355", "C"356", "C"357", "C"358", "C"359", "C"360", "C"361", "C"362", "C"363", "C"364", "C"365", "C"366", "C"367", "C"368", "C"369", "C"370", "C"371", "C"372", "C"373", "C"374", "C"375", "C"376", "C"377", "C"378", "C"379", "C"380", "C"381", "C"382", "C"383", "C"384", "C"385", "C"386", "C"387", "C"388", "C"389", "C"390", "C"391", "C"392", "C"393", "C"394", "C"395", "C"396", "C"397", "C"398", "C"399", "C"400", "C"401", "C"402", "C"403", "C"404", "C"405", "C"406", "C"407", "C"408", "C"409", "C"410", "C"411", "C"412", "C"413", "C"414", "C"415", "C"416", "C"417", "C"418", "C"419", "C"420", "C"421", "C"422", "C"423", "C"424", "C"425", "C"426", "C"427", "C"428", "C"429", "C"430", "C"431", "C"432", "C"433", "C"434", "C"435", "C"436", "C"437", "C"438", "C"439", "C"440", "C"441", "C"442", "C"443", "C"444", "C"445", "C"446", "C"447", "C"448", "C"449", "C"450", "C"451", "C"452", "C"453", "C"454", "C"455", "C"456", "C"457", "C"458", "C"459", "C"460", "C"461", "C"462", "C"463", "C"464", "C"465", "C"466", "C"467", "C"468", "C"469", "C"470", "C"471", "C"472", "C"473", "C"474", "C"475", "C"476", "C"477", "C"478", "C"479", "C"480", "C"481", "C"482", "C"483", "C"484", "C"485", "C"486", "C"487", "C"488", "C"489", "C"490", "C"491", "C"492", "C"493", "C"494", "C"495", "C"496", "C"497", "C"498", "C"499", "C"500", "C"501", "C"502", "C"503", "C"504", "C"505", "C"506", "C"507", "C"508", "C"509", "C"510", "C"511", "C"512", "C"513", "C"514", "C"515", "C"516", "C"517", "C"518", "C"519", "C"520", "C"521", "C"522", "C"523", "C"524", "C"525", "C"526", "C"527", "C"528", "C"529", "C"530", "C"531", "C"532", "C"533", "C"534", "C"535", "C"536", "C"537", "C"538", "C"539", "C"540", "C"541", "C"542", "C"543", "C"544", "C"545", "C"546", "C"547", "C"548", "C"549", "C"550", "C"551

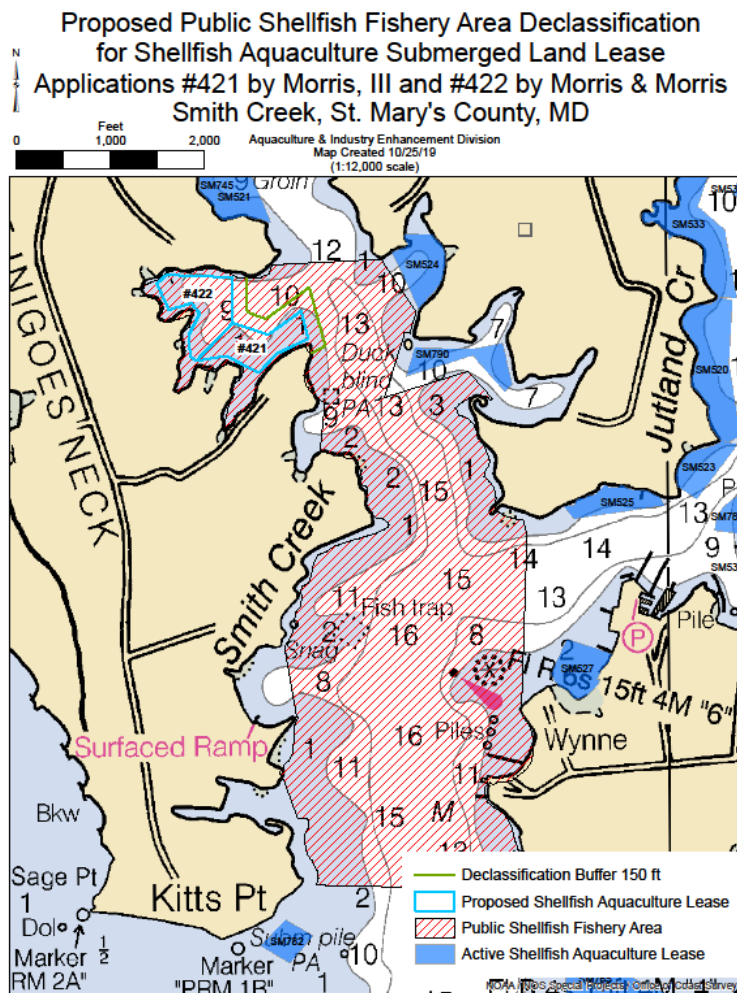


## Declassification of PSFA 156

Declassify an approximately 33.6-acre portion of PSFA 156 located in Smith Creek, St. Mary's County. Modify the boundaries of PSFA 156 to exclude the 33.6-acre area, in order to issue two submerged land leases to the applicants. The adjoining proposed lease areas are 7.8 acres and 9.5 acres, respectively.

The declassification of the proposed 7.8 acre lease and its required buffer was requested in shellfish aquaculture lease application #421 (Morris, III). In accordance with COMAR 08.02.04.17, the department evaluated harvest data and conducted a biological survey of the proposed lease site on March 20, 2019 and determined that there practically no oysters (one single live oyster was found) and no 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.

The declassification of the proposed 9.5 acre lease and its required buffer was requested in shellfish aquaculture lease application #422 (Morris & Morris). In accordance with COMAR 08.02.04.17, the department evaluated harvest data and conducted a biological survey of the proposed lease site on March 20, 2019 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.



### **Correction of PSFA 119**

The department needs to insert a buffer between PSFA 119 and existing Shellfish Lease CA 603. The area is located in the Patuxent River.

A regulation change, effective February 2019, eliminated two aquaculture enterprise zones and converted the areas into public shellfish fishery areas. Shellfish Lease CA 603 was adjacent to one of the aquaculture enterprise zones. The buffer area around the leased area was inadvertently removed during that regulation change.

Recognizing that a buffer between the PSFA and Shellfish Lease CA 603 existed prior to the removal of the adjacent aquaculture enterprise zone, and that a buffer is required by law for all shellfish leases issued within a PSFA after September of 2011, the department must correct the overlap of PSFA 119 with the lease by re-inserting a small buffer area.

## **II. IMPLEMENTATION DATE**

The department expects this change to be effective in the spring of 2020, however the exact date cannot be determined. The department will follow our normal scoping and proposal procedures.

This idea is in the scoping process (October 25—November 10). 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.

## **III. INTERNET LINKS & ADDITIONAL RESOURCES**

- [Natural Resources Article, §4-11A-04, Annotated Code of Maryland](#)
- [Code of Maryland Regulations 08.02.04.17](#)
- [Code of Maryland Regulations 08.02.23.03](#)