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SMALL BUSINESS COMPLIANCE GUIDE
Amendment to Subtitle 02 Fisheries Service
Regarding the Department's Regulations for Shellfish (Oysters and Clams)
COMAR 08.02.02, COMAR 08.02.07, and COMAR 08.02.08
Released October 19, 2020

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 changes for the oyster and clam (soft-shell and hard) regulations that will ensure compliance with the National Shellfish Sanitation Program's Model Ordinance.

Overview

- 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 (NSSP). Under federal law, the state is required to comply with the NSSP for shellfish harvest and sale in order to participate in interstate commerce of shellfish.
- These changes apply to oysters, hard-shell clams, and soft-shell clams (*Mya arenaria* and genus *Tagelus*).
- It will look like we are making significant changes because we are reorganizing certain chapters and regulations for clarity. The statement of purpose will be very descriptive so that everyone knows what is changing.
- Housekeeping items will be completed as they are found.

Clams (Soft-Shell and Hard-Shell) — Recreational

- No changes, but the regulation will consolidate the rules to make them easy to understand.

All Wild Caught Shellfish — Recreational, Commercial, and Dealers

- You may not buy or offer to buy shellfish that were caught for recreational purposes.

All Wild Caught Shellfish — Dealers

- Must accept oysters, soft-shell clams, or hard-shell clams only:
 - From a licensed harvester;
 - On the same day of harvest; and
 - If tagged as required by regulation.
- Must maintain and submit any records the Department may require.
- Must follow the National Shellfish Sanitation Program Model Ordinance

All Wild Caught Shellfish — Commercial

- Commercially harvested shellfish provided or used for human consumption must be harvested in accordance with the National Shellfish Sanitation Program Model Ordinance.
- Commercially harvested shellfish that will be provided or used for human consumption 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 *Mya arenaria* must be sold at a buy station
- Razor clams must be sold to a dealer. You can sell your own razor clams if you have a dealer's license issued by the department in addition to your commercial license.

Hydraulic Clam Dredges — Commercial

- All rules for hydraulic clam dredges will be put into the same regulation instead of being spread out.
- The regulation about distance from shoreline near Sandy Point State Park in Anne Arundel County contradicts the distances in the statute. The minimum distance from shore from January 1 through March 31 should be 800 feet, not 150 feet. The correction will be made in the regulation.

Tolerance for Mya Arenaria — Commercial

- 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.
- Currently, the regulation allows for 5 percent to be under size. Assigning a number will make it clear for harvesters and enforcement.

Container Requirements — 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 bushel basket would no longer be an option.
 - Must remain in the original container until a tag is no longer required on the container.
- Razor clams (genus *Tagelus*) must be stored in a container of any size or dimension.
- Hard clams must be stored in a container of any size or dimension.

Tag Requirements — Commercial

- A tag will be required for all hard-shell clams and *Mya arenaria*.
- You can get tags from the department for a moderate fee or you can use your own tags if you are a certified dealer by the Maryland Department of Health and the tag has the appropriate information.
- You will only be able to have one type of tag, either wild shellfish or farm-raised shellfish, with you while harvesting.

Razor Clams — Commercial

- The department is considering prohibiting the commercial harvest of razor clams for human consumption.
- Razor clams would only be able to be harvested commercially for bait. They will be exempt from the safe handling requirements necessary for human consumption.
- The department is requesting feedback to see if it would be necessary to create a permit to allow harvesters to sell razor clams for human consumption. It is the department's understanding that the razor clam fishery in Maryland is a bait fishery. If a food industry is present in Maryland, the department could create a process that would include the same safe handling requirements as *Mya arenaria*. Part of that process would prohibit having bait and food clams on board at the same time.

Why is this change necessary?

These changes are necessary to ensure a safe product for consumers.

Who will this affect?

This affects recreational harvesters, commercial harvesters and dealers. Anyone who harvests or deals in hard clams, soft-shell clams (*Mya* and *Tagelus*), or oysters.

Has this change been discussed with advisory commissions?

The idea was discussed with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their July 2020 meetings.

What is the specific regulatory action?

If the department moves forward with a regulation proposal, amendments would be made to several regulations within the following chapters of the Code of Maryland Regulations (COMAR): 1) COMAR 08.02.02 Soft-Shell Clams; 2) COMAR 08.02.07 Hard-Shell Clams; and 3) COMAR 08.02.08 Shellfish—General.

II. DEFINITIONS

"Buying station" means a location where a person buys, processes, packs, or otherwise deals in oysters or clams for resale where the person purchasing oysters or clams for resale:

- (a) Possesses a valid seafood dealer authorization in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and
- (b) Is licensed and certified by the Maryland Department of Health in accordance with COMAR 10.15.07.

"Hard-shell clams" means mollusks of the species *Mercenaria mercenaria*.

"Soft-shell clams" means mollusks of the species *Mya arenaria* and of the species Genus *Tagelus*.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

This will clarify the recordkeeping and reporting requirements for all shellfish. Currently it is not completely clear who needs to complete or submit the buy ticket and tax report.

IV. IMPLEMENTATION DATE

The department expects this change to be effective in the summer or early fall of 2021, 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 19—November 3). 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.

V. ADDITIONAL INFORMATION AND LINKS

Links for the U. S. Food and Drug Administration (FDA)

[FDA National Shellfish Sanitation Program](#) (NSSP)

<https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/state-cooperative-programs/fda-national-shellfish-sanitation-program>

Additional Information for the [National Shellfish Sanitation Program](#) (NSSP)

<https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>

National Shellfish Sanitation Program’s [Model Ordinance](#)

<https://www.fda.gov/media/117080/download>

Links for the Code of Maryland Regulations (COMAR)

Regulations for soft-shell clams can be found in COMAR [Chapter 2](#)

http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=08.02.02.*

Regulations for hard-shell clams can be found in COMAR [Chapter 7](#)

http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=08.02.07.*

Regulations pertaining to all shellfish can be found in COMAR [Chapter 8](#)

http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=08.02.08.*