



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Secretary
David Goshorn, Deputy Secretary

DNR-FS-2023-04

SMALL BUSINESS COMPLIANCE GUIDE

Amendment to Subtitle 02 Fisheries Service

Regarding the Department's Regulations for Shellfish Aquaculture and Wild Oysters — Bulk Tagging
COMAR 08.02.04 Oysters and 08.02.23 Shellfish Aquaculture and Leasing

Released April 28, 2023

Updated January 12, 2024

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

I. SUMMARY & FAQs

What was proposed?

After consultation with the Aquaculture Coordinating Council and Oyster Advisory Commission, the Department has proposed to allow the use of bulk tags for oysters under the National Shellfish Sanitation Program. The Department is considering allowing the use of bulk tags for a single lot of oysters. A single lot would be defined in the aquaculture context as oysters coming from a single lease, harvested during a single trip on a single day. In the commercial public fishery context, a single lot of oysters would be defined as oysters coming from a single bar, harvested during a single trip on a single day. A bulk tag covering oysters harvested in the commercial public fishery would still need to be completed before leaving the oyster bar, just as individual bushels currently need to be tagged before leaving the bar. If two harvesters were on board a vessel engaged in the commercial public fishery, both harvesters would need a bulk tag for their oysters. If bulk tags are used, a leasee/licensee would not be able to change the harvest tag to a dealer tag until the oysters have been delivered to the dealer's physical location. A bulk tag would need to indicate the number of bushels harvested in the lot, the date, and the NOAA code and either the lease number (aquaculture) or bar name (commercial public fishery) from which the oysters were taken.

Within the commercial public fishery, a licensee could still harvest from multiple oyster bars within a single trip, however, individual tags would be needed for each bushel harvested. A leasee could still harvest from multiple leases within a single trip, however; individual tags would be needed for each bushel harvested.

Why is this change necessary?

The change will provide both shellfish aquaculture leaseholders and commercial public harvest licensees with a business flexibility that they have asked for, while still properly documenting harvest and being enforceable.

Who will this affect?

This change will impact shellfish aquaculture leaseholders and commercial oyster licensees.

Has this change been discussed with stakeholders?

Aspects of this concept have been discussed with the Aquaculture Coordinating Council (October 2022) and the Oyster Advisory Commission (November 2022). The concept was scoped with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their April 2023 meetings.

What is the specific regulatory action?

Amend Regulations .04 under COMAR 08.02.04 Oysters and .04 under COMAR 08.02.23 Shellfish Aquaculture and Leasing.

II. RECORDKEEPING AND REPORTING REQUIREMENTS

This action will reduce recordkeeping or reporting requirements by reducing the number of tags that an oyster harvester or aquaculture permittee will be responsible for completing.

III. IMPLEMENTATION DATE

The Department projects that this change will be effective in the summer/fall of 2024. However, the exact date cannot be determined. The Department will follow our normal proposal procedures if this concept moves forward.

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. This proposal was scoped from April 28, 2023—May 14, 2023.

At the conclusion of the scoping process, the Department determined that 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. The proposed action was printed in the Maryland Register on January 12, 2024. The comment period will close at 11:59 p.m. February 12, 2024.
- 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.