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DNR-FS-2023-07

SMALL BUSINESS COMPLIANCE GUIDE

Amendment to Subtitle 02 Fisheries Service

Regarding the Department's Regulations for OYSTERS — Partial Declassification of Public Shellfish Fishery

Area 156

COMAR 08.02.04.17 Oysters

Released April 28, 2023

Updated August 25, 2023

Updated October 20, 2023

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 has been proposed?

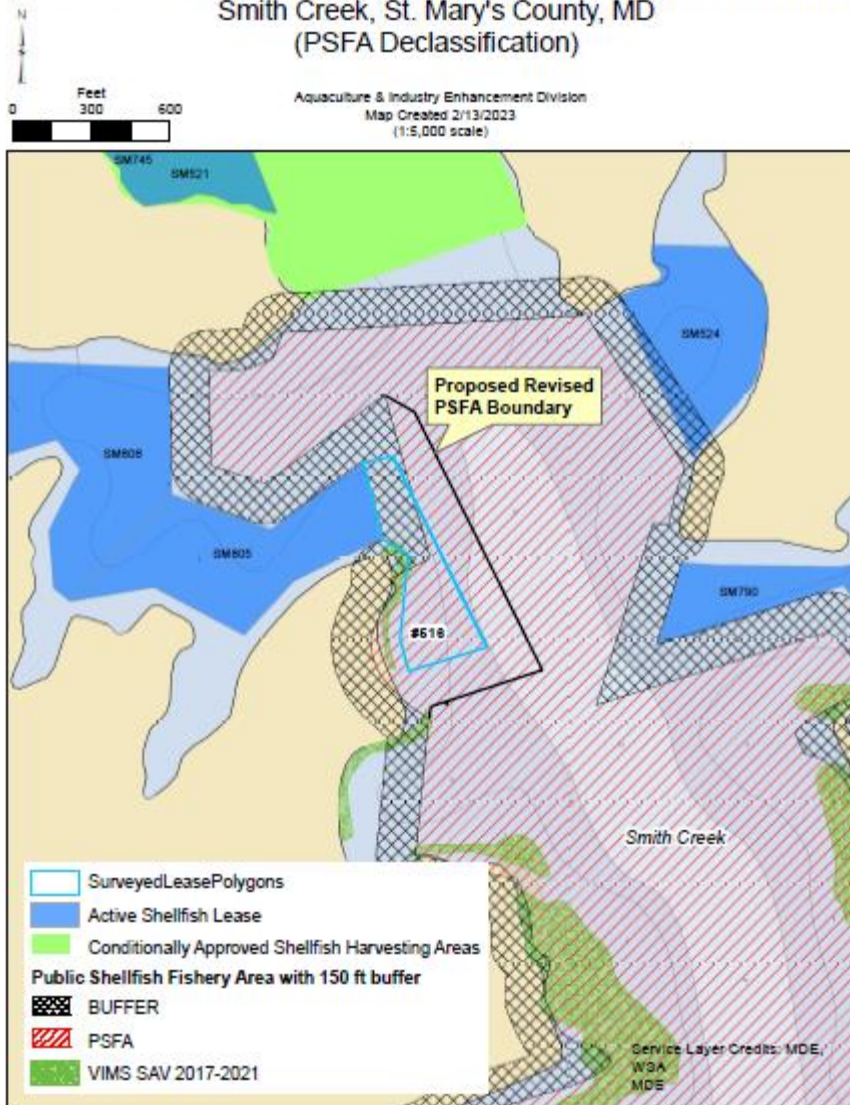
The Department proposed declassifying a portion of Public Shellfish Fishery Area (PSFA) 156. A lease is not allowed to be located within 150 feet of a public shellfish fishery area, so the declassification includes the leased area and a required 150-foot buffer around the portion of the leased area that falls within the PSFA.

Why is this change necessary?

Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (November 2019) designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries. A person may petition the Department to declassify a portion of a Public Shellfish Fishery Area (PSFA) by submitting a lease application. The change under consideration would declassify an approximate 7.3-acre portion of PSFA 156 located in Smith Creek, St. Mary's County. The declassification would modify the boundary of the PSFA by removing certain area along the western shoreline, adjacent to and south of existing shellfish aquaculture lease SM 805, in order to issue a submerged land lease. The total requested lease area is 3.6 acres, of which 2.2-acres falls within PSFA 156. The remaining 5.1 acres to be declassified consists of the required 150-foot buffer between the lease and the PSFA. The declassification of approximately 9.5-acres of PSFA 156 was originally requested in shellfish aquaculture lease application #516 (Morris, III).

In accordance with COMAR 08.02.04.17, the Department evaluated commercial oyster harvest data and conducted a biological survey of the proposed lease. The Department determined that the average density of oysters within a certain portion of the area proposed for declassification was greater than one oyster per square meter. Consequently, that portion of the application was denied; the remainder of the proposed lease area located within PSFA 156 (approximately 2.2 acres) meets the regulatory criteria that provides for declassification, and the application satisfies the requirements of COMAR 08.02.23.03. An image of the area is below.

Proposed Shellfish Submerged Land Lease #516 - John B. Morris, III
Smith Creek, St. Mary's County, MD
(PSFA Declassification)



Who will this affect?

This change will directly affect shellfish aquaculturists and individuals who harvest oysters commercially or recreationally in the area

Has this change been discussed with stakeholders?

This idea was scoped with the Sport Fisheries Advisory Commission, Oyster Advisory Commission, and Tidal Fisheries Advisory Commission at their April 2023 meetings.

What is the specific regulatory action?

Amend Regulation .17 under COMAR 08.02.04 Oysters.

II. RECORDKEEPING AND REPORTING REQUIREMENTS

This proposal alone will not create any new recordkeeping or reporting requirements.

III. IMPLEMENTATION DATE

This regulation change is effective October 30, 2023.