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DNR-FS-2024-2

SMALL BUSINESS COMPLIANCE GUIDE

Amendment to Subtitle 02 Fisheries Service

Regarding the Department's Regulations for Oysters – Container Rules

COMAR 08.02.04.04

Released January 22, 2024

Updated May 17, 2024

Updated May 26, 2024

Updated July 30, 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 has been proposed?

The Department has proposed modifying the rule for filling certain oyster containers. Specifically, the Department is considering no longer allowing any oyster container to be filled past the brim, which would standardize the rule for all containers.

Why is this change necessary?

Currently oysters in the wild fishery must be put into a container (“containerized”) after they are harvested. There are three legal types of containers, commonly known as metal oyster tubs, clam crates, and orange baskets (although some are other colors such as green or purple). Metal oyster tubs and clam crates both contain one Maryland oyster bushel, whereas orange baskets are roughly 10% smaller. This has at times led to confusion.

Harvesters are not allowed to fill metal oyster tubs or clam crates past the top of those containers. Harvesters have been allowed to exceed the rim of the orange baskets because that container is volumetrically less than a Maryland oyster bushel. If a Maryland oyster bushel were unloaded into an orange basket, on average the oysters would exceed the top of the basket by between one to two inches. In industry practice, harvesters are filling the baskets well above the rim by many inches and even to the point of creating a distinct “cone” on top of the basket. This is legal, since the regulation does not prohibit the overfilling of orange baskets, but also leads to concerns regarding exceeding catch limits and potential overharvest. There is also consistent confusion due to there being different rules for different containers (some of which may be “overfilled” and some of which may not exceed the rim of the container). The Department believes that standardizing the rules for the containers will address both the confusion and the potential for overharvest and lead to greater consistency in measuring catch and enforcement of catch limits.

Who will this affect?

Commercial wild oyster harvesters and oyster buyers.

Has this change been discussed with advisory bodies?

This idea was discussed with the Sport Fisheries Advisory Commission and Tidal Fisheries Advisory Commission at their January 2024 meetings.

What is the specific regulatory action?

Amend Regulation .04 under COMAR 08.02.04 Oyster Container and Tagging Requirements.

II. RECORDKEEPING AND REPORTING REQUIREMENTS

This action will not create new recordkeeping or reporting requirements.

III. REGULATORY PROCESS

The Department followed our normal scoping and proposal procedures.

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 January 22—February 6, 2024.

At the conclusion of the scoping process, the Department determined that the action is necessary and appropriate. The rules were 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 was printed by the Division of State Documents in the Maryland Register on May 17, 2024.
- A 30 day public comment period began on the day of publication. The comment period closed at 11:59 p.m. June 17, 2024.
- After review of the comments, the Department decided to adopt the changes as proposed.
- The final action adopting the regulation change was published in the Maryland Register on July 26, 2024.

IV. IMPLEMENTATION DATE

This regulation change is effective August 5, 2024.