

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.01 General

Authority: Natural Resources Article, §4-215, Annotated Code of Maryland

Notice of Proposed Action

[24-039-P-I]

The Secretary of Natural Resources proposes to amend Regulation **.01** under **COMAR 08.02.01 Fishery Management Plans**.

Statement of Purpose

The purpose of this action is to incorporate by reference Amendment 1 to the 2019 Maryland Chesapeake Bay Oyster Management Plan into the Code of Maryland Regulations. The amendment was adopted by the Department on December 18, 2023.

A Fishery Management Plan (FMP) provides a format for undertaking management measures throughout Maryland State waters. FMPs are amended as needed. The most recent FMP for oysters is the Maryland Chesapeake Bay Oyster Management Plan (May 2019). Shortly after adoption, the Department was directed by the Maryland General Assembly to convene the Oyster Advisory Commission (OAC) to develop a package of consensus recommendations for enhancing and implementing the FMP for oysters. The OAC provided the Department with a package of recommendations which were based on options that were rated with an agreement level of 75 percent or higher. Amendment 1 to the 2019 Maryland Chesapeake Bay Oyster Management Plan incorporates recommendations from the OAC to further define strategies for protecting, rebuilding, and managing the native oyster population.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Incorporation of OMP Amendment 1, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue, E-4, Annapolis, MD 21401, or call 410-260-8300, or submit comments to <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx#O> Ammend. Comments will be accepted through June 17, 2024. A public hearing has not been scheduled.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, Amendment 1 to the 2019 Maryland Chesapeake Bay Oyster Management Plan (December 2023) has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 51:1 Md. R. 8 (January 12, 2024), and is available online at www.dsd.maryland.gov. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.01 Fishery Management Plans.

A. The following Fishery Management Plans are adopted and incorporated by reference:

(1)—(2) (text unchanged)

(3) Maryland Chesapeake Bay Oyster Management Plan (May 2019) and Amendment 1 to the 2019 Maryland Chesapeake Bay Oyster Management Plan (December 2023);

(4)—(20) (text unchanged)

B. (text unchanged)

JOSH KURTZ
Secretary of Natural Resources

	Benefit (+) Cost (-)	Magnitude
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Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §4-215, Annotated Code of Maryland

Notice of Proposed Action

[24-053-P]

The Secretary of Natural Resources proposes to amend Regulation .04 under **COMAR 08.02.04 Oysters**.

Statement of Purpose

The purpose of this action is to modify the rule for filling all oyster containers. Specifically, the Department is proposing no longer allowing any oyster container to be filled past the brim of the container. This would standardize the rule for all containers.

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 percent 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.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have a minor indeterminable negative economic impact on commercial harvesters by resulting in the harvesting of less oysters.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	

D. On regulated industries or trade groups:

Commercial harvesters	(-)	Indeterminable
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E. On other industries or trade groups:

Oyster dealers and shucking houses	(-)	Indeterminable
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F. Direct and indirect effects on public:

NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. It is not clear how much this action will reduce commercial harvest. Factors that will influence the impact include the number of harvesters who use the affected container, how many harvesters choose to switch to alternative containers, and how many harvesters were already “overfilling” the affected container vs. filling to the brim. Ultimately, the Department believes that the reduction is likely to be minor and therefore the negative impact to commercial harvesters will also be minor.

E. If harvesters harvest fewer oysters there will be fewer oysters sold to dealers and shucking houses. Similar to the impact on harvesters, how this action will impact dealers and shucking houses is indeterminable and will depend on a variety of factors. Some dealers and shucking houses already require harvesters they purchase from to fill the affected container either to the brim or below the brim; those dealers and shucking houses will not be impacted at all. Other dealers and shucking houses are reported to require harvesters they buy from to “overfill” those containers; those dealers and shucking houses may be slightly negatively impacted by this action depending on whether the harvesters they buy from choose to continue to use the affected container or switch containers.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows:

The proposed action may have an indeterminable negative economic impact on small business. As discussed in the Estimate of Economic Impact, IID and E, above, this action may result in a slight reduction in commercial harvest, depending on a variety of factors. Harvesters will be able to avoid that reduction depending on if they continue to use the affected container. Some dealers and shucking houses will not be affected at all based on the informal rules they had in place prior to this action; other dealers and shucking houses may have fewer oysters available for purchase versus previous oyster seasons due to the requirements they had placed on the harvesters they buy from.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Oysters — Container Rules, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue, E-4, Annapolis, MD 21401, or call 410-260-8300, or submit comments to <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx#0> cont. Comments will be accepted through June 17, 2024. A public hearing has not been scheduled.