

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§4-215 and 4-11A-04, Annotated Code of Maryland

Notice of Proposed Action

[20-025-P-I]

The Secretary of Natural Resources proposes to amend Regulation .17 under **COMAR 08.02.04 Oysters**.

Statement of Purpose

The purpose of this action is to incorporate by reference Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (November 2019). This document designates each public shellfish fishery area (PSFA) located in the Chesapeake Bay and its tidal tributaries. The proposed action: 1) makes a correction to PSFA 119; and 2) declassifies portions of four PSFAs to allow for shellfish aquaculture.

By law, leases for shellfish aquaculture cannot be located within a PSFA, or within 150 feet of a PSFA. However, if a proposed lease area meets certain criteria the PSFA may be declassified and a lease can be issued in that location. A person may petition the Department to declassify a portion of a PSFA for the purpose of issuance of a commercial shellfish aquaculture lease in conjunction with submission of an application for a lease within a PSFA. The Department has received five submerged land lease applications for areas that are either wholly or partially located within an existing PSFA. The criteria for declassifying a PSFA are not affected by this proposed action and are described in the COMAR 08.02.04.17B.

The Department's resource surveys of the areas indicate that all of the areas meet the minimum criteria for declassification, are therefore no longer viable for the commercial fishery, and may be declassified. Since a lease is not allowed to be located within 150 feet of a PSFA, each declassification includes the proposed lease area and the required 150 foot buffer around the proposed lease. The buffers will remain open to oyster harvest following declassification. Once the areas are declassified, the Department will issue shellfish aquaculture leases to the applicants. The shellfish aquaculture operations established at these locations will result in rehabilitated oyster bottom that can provide both ecological and economic benefits consistent with the Department's resource management and economic development goals.

PSFA 119

The proposed action inserts the required buffer between PSFA 119 and existing Shellfish Lease CA 603. The area is located in the Patuxent River. A regulation change, effective February 2019, eliminated two aquaculture enterprise zones and converted the areas into PSFAs. Shellfish Lease CA 603 was adjacent to one of the aquaculture enterprise zones. The buffer area around the leased area was inadvertently removed during that regulation change. Recognizing that a buffer between the PSFA and Shellfish Lease CA 603 existed prior to the removal of the adjacent aquaculture enterprise zone, and that a buffer is required by law for all shellfish leases issued within a PSFA after September of 2011, the proposed action reinserts a buffer area between PSFA 119 and the lease.

PSFA 134

The proposed action declassifies a portion of PSFA 134 by modifying the boundaries to exclude an approximately 31-acre portion located in the Wicomico River, St. Mary's County. The declassification was requested in shellfish aquaculture lease application #400 (Hayden & Hayden). The proposed lease area is 24.8 acres. The Department evaluated harvest data and conducted a biological survey of the proposed lease site on June 6, 2019 and

determined that there are very few oysters present in this location. The lease application meets the requirements of COMAR 08.02.23.03, and the Department has determined it may be approved in accordance with Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland. Consequently, the proposed lease area meets the regulatory criteria for declassifying this portion of the PSFA.

PSFA 136

The proposed action declassifies a portion of PSFA 136 by modifying the boundaries to exclude an approximately 46.7-acre portion located in Wicomico River, Charles County. The declassification was requested in shellfish aquaculture lease application #410 (Jones & Rice). The proposed lease area is 28.3 acres. The Department evaluated harvest data and conducted a biological survey of the proposed lease site on April 2, 2019 and determined that there are no oysters or oyster bottom present in this location. The lease application meets the requirements of COMAR 08.02.23.03, and the Department has determined it may be approved in accordance with Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland. Consequently, the proposed lease area meets the regulatory criteria for declassifying this portion of the PSFA.

PSFA 140

The proposed action declassifies a portion of PSFA 140 by modifying the boundaries to exclude an approximately 7.7-acre portion located in St. Clement's Bay, St. Mary's County. The declassification was requested in shellfish aquaculture lease application #399 (Hayden & Hayden). The proposed lease area is 31.5 acres, 2.5 acres of which is located within PSFA 140. The Department evaluated harvest data and conducted a biological survey of the proposed lease site on June 6, 2019 and determined that there are no oysters or oyster bottom present in this location. The lease application meets the requirements of COMAR 08.02.23.03, and the Department has determined it may be approved in accordance with Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland. Consequently, the proposed lease area meets the regulatory criteria for declassifying this portion of the PSFA.

PSFA 156

The proposed action declassifies a portion of PSFA 156 by modifying the boundaries to exclude an approximately 33.6-acre portion, located in Smith Creek, St. Mary's County. The boundaries are modified in order to issue two submerged land leases to the applicants. The adjoining proposed lease areas are 7.8 acres and 9.5 acres, respectively.

The declassification of the proposed 7.8-acre lease area and its required buffer was requested in shellfish aquaculture lease application #421 (Morris, III). The Department evaluated harvest data and conducted a biological survey of the proposed lease site on March 20, 2019 and determined that there are essentially no oysters (one single live oyster was found) and no oyster bottom present in this location. The lease application meets the requirements of COMAR 08.02.23.03, and the Department has determined it may be approved in accordance with Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland. Consequently, the proposed lease area meets the regulatory criteria for declassifying this portion of the PSFA.

The declassification of the proposed 9.5-acre lease area and its required buffer was requested in shellfish aquaculture lease application #422 (Morris & Morris). The Department evaluated harvest data and conducted a biological survey of the proposed lease site on March 20, 2019 and determined that there are no oysters or oyster bottom present in this location. The lease application meets the requirements of COMAR 08.02.23.03, and the Department has

determined it may be approved in accordance with Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland. Consequently, the proposed lease area meets the regulatory criteria for declassifying this portion of the PSFA.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have an economic impact on the regulated industry.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) PSFA declassification — aquaculturists	(+)	Indeterminable
(2) PSFA declassification — commercial harvesters	NONE	NONE
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

D(1). If issued, the proposed lease sites will allow for the development of commercial aquaculture businesses in the name of the applicants. The direct economic impacts to the applicants are indeterminable. However, because these will be commercial operations, it is assumed that the applicants will be receiving revenue from the aquaculture activity that is proposed at these sites.

D(2). This action will remove approximately 119 acres of bottom from the existing public shellfish fishery areas. The process for declassification of a public shellfish fishery area is set forth in COMAR 08.02.04.17. Resource surveys of each of the areas yielded a density of oysters below the minimum threshold necessary to consider the bottom viable for the commercial oyster fishery. Therefore, removing the acres should have no economic impact for commercial fishermen.

Economic Impact on Small Businesses

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

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Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to PSFA Regulations, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue, B-2, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment.dnr@maryland.gov, or fax to 410-260-8310. Comments will be accepted through February 18, 2020. 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, the document entitled Public Shellfish Fishery Areas of the Chesapeake Bay and its Tidal Tributaries (November 2019) 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 47:1 Md. R. 9 (January 3, 2020), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.17 Public Shellfish Fishery Area.

A. Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries [(September 2018)] (November 2019) designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries and is hereby incorporated by reference.

B. (text unchanged)

JEANNIE HADDAWAY-RICCIO
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.05 Fish

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

Notice of Proposed Action

[20-014-P]

The Secretary of Natural Resources proposes to amend Regulation **.21** under **COMAR 08.02.05 Fish**.

Statement of Purpose

The purpose of this action is to update requirements for gear used to catch black sea bass. Black sea bass is managed jointly by the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council under Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (August 2002) and its subsequent addenda (Addenda XII—XXXII). The objectives of the fishery management plan are to reduce fishing mortality to assure overfishing does not occur, reduce fishing mortality on immature black sea bass to increase spawning stock biomass, improve yield from the fishery, promote compatible regulations among states and between federal and state jurisdictions, promote uniform and effective enforcement, and minimize regulations necessary to achieve the stated objectives.

The fishery management plan for black sea bass specifies the threshold that governs trawl mesh size. The mesh size of a net determines what size fish are captured by a net. The larger the mesh size, the larger the size of the fish that are retained by the net. Mesh size regulations are used to decrease retention of fish smaller than the legal size. The goal is to retain only legal size fish. Trawl catch mesh