

(3) Between 1-1/2 hours before sunrise to 8 hours after sunrise on Memorial Day, *Juneteenth National Independence Day*, July 4, Labor Day, and the day immediately preceding each of those holidays.

E.—F. (text unchanged)

JOSH KURTZ
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§ 4-215 and 4-1019.2, Annotated Code of Maryland

Notice of Proposed Action

[23-038-P]

The Secretary of Natural Resources proposes to amend Regulation .11 under **COMAR 08.02.04 Oysters**.

Statement of Purpose

The purpose of this action is to alter the procedure for establishing the fees the Department pays for fresh oyster shells and the transportation and placement of new oyster shells. The current value is set by regulation; the Department is considering changing the regulation to set the value by public notice with consideration of current market conditions.

Current regulation sets the rate to be paid by the Department to any person for the hauling and planting of the fresh oyster shell at 25 cents per bushel and the rate to be paid to purchase new oyster shells at \$2 per bushel, for a total of \$2.25 per bushel. The 2022 cost to buy the out-of-State shell, transport the shell, and plant the shell was \$7.25 per bushel. As a result, Maryland shucking houses are not selling fresh shell to the Department because the current values established in regulation are greatly out of line with current market conditions. Changing the process of establishing the rate paid by public notice each year, rather than setting the rate in regulation, will allow the Department to pay a competitive fee based on current market conditions. If the rate set by the Department is actually reflective of market conditions, more Maryland shucking houses may be willing to sell to the Department, thereby allowing the Department more access to shells.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have an indeterminable positive economic impact by resulting in the planting of more oyster shell in the water which may result in additional oysters available for harvest.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
Maryland Department of Natural Resources	(E+)	Indeterminable
B. On other State agencies: NONE		
C. On local governments: NONE		
D. On regulated industries or trade groups:		
Oyster harvesters	(+)	Indeterminable
E. On other industries or trade groups:		
Oyster dealers	(+)	Indeterminable
F. Direct and indirect effects on public: NONE		

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

A. During the 2021—2022 oyster season, approximately 36 percent of the oysters stayed within Maryland (200,000 bushels of oysters). This is estimated using the export tax revenue and total bushels harvested as reported to the Department via Seafood Dealers Buy Tickets and Tax information. If these oysters were shucked in-State, this equates to approximately 100,000 bushels of shell with the assumption that 2 bushels of oysters creates 1 bushel of shell. Currently, in-State shucked shell is mainly being sold to aquaculture leaseholders or to out-of-State business/individuals.

Current regulation caps the cost of in-State oyster shell at \$2 a bushel if sold to the Department. The current market value of shell right now is between \$4 and \$6 dollars. Businesses/individuals are not selling shell to the Department at \$2 a bushel given the \$4—\$6 market price. This equates to less shell being able to be re-planted on Maryland's oyster bars.

Annually the Department receives revenue from an MDOT grant, severance tax on oysters harvested, and export tax on oysters sold out of State. These funds are used solely for public fishery replenishment projects including planting shucked shell. Currently there is approximately \$4,000,000 available to spend on these projects; however, in-State shucked shell is not being sold to the Department and funds are not completely spent. By allowing the price the Department pays for shell to be set by public notice to reflect current market conditions, the Department hopes to expend more of these funds. It is not determinable how much of the available funds the Department will be able to expend based on the variability of the shell market.

D. Oyster harvesters may see a long-term indeterminable positive impact based on these changes. Oyster larvae need a hard substrate to attach to and become oyster spat (baby oysters). Increasing the amount of hard substrate planted, such as shell, on an oyster bar could increase the probability that larvae will find a hard substrate and thus could potentially increase natural recruitment, the oyster population, harvest, and revenue from harvest. While it is probable that planting additional shell will lead to some amount of increase in adult oysters at some point in the future, it is not possible to definitively assess how much any prospective planting of oyster shell on a public bar may ultimately impact future availability of oysters for harvest.

E. To the extent that this action makes more oysters available for harvest by oyster harvesters, oyster dealers typically generate additional revenue as well. While it is expected this action will have a long-term positive impact on oyster dealers, the extent to which that will be the case is indeterminable.

Economic Impact on Small Businesses

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

This action may have long-term positive impacts on small businesses that harvest, process, and deal in oysters by allowing the agency to be more competitive in the shell market, which may lead to the acquisition and planting of additional oyster shells in the water and ultimately more adult oysters available for harvest.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Regulations for Fees to be Paid for Oyster Shell, Regulatory Staff, Department of Natural Resources, 580 Taylor Avenue, E-4, Annapolis, MD 21401, or call 410-260-8300, or complete the form at <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx#Ofees>. Comments will be accepted through May 22, 2023. A public hearing has not been scheduled.

.11 General Provisions.

A.—D. (text unchanged)

E. Fees for Purchasing, Hauling, and Planting Fresh Oyster Shell.

(1) Subject to other conditions and terms agreed to each year, the rate to be paid by the Department to any person for the hauling and planting of fresh oyster shell shall be [25 cents per bushel] *established by public notice in accordance with §G of this regulation, based on current fair market value.*

(2) The rate to be paid to purchase fresh oyster shell shall be [\$2 per bushel] *established by public notice in accordance with §G of this regulation, based on current fair market value.*

F. (text unchanged)

G. General.

(1) Notwithstanding Natural Resources Article, §§4-1004, 4-1008.1, 4-1009, 4-1013, and 4-1015.1, Annotated Code of Maryland, in order to implement the Maryland Chesapeake Bay Oyster Management Plan, the Secretary may issue a public notice to:

(a) Establish or modify the season, daily catch limits, days of the week, or times for catching oysters for recreational or commercial purposes; [or]

(b) Open or close an oyster harvest area for the harvesting or conservation of oysters[.]; *or*

(c) *Establish or modify the rates to be paid for the purchase, hauling, and planting of fresh oyster shell.*

(2)—(4) (text unchanged)

JOSH KURTZ

Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.11 Fishing in Nontidal Waters

Authority: Natural Resources Article, §§4-219, 4-603, and 4-616, Annotated Code of Maryland

Notice of Proposed Action

[23-045-P]

The Secretary of Natural Resources proposes to amend Regulation .01 under **COMAR 08.02.11 Fishing in Nontidal Waters**.

Statement of Purpose

The purpose of this action is to establish a new put-and-take trout fishing area, modify the start time for trout fishing in certain waters and at certain times, remove a restriction that has outlived its usefulness, establish a youth-only trout fishing day, and expand a delayed harvest area.

The action establishes a new put-and-take trout fishing area on Little Pipe Creek in Carroll County. The put-and-take area will begin at Shepherds Mill Road and extend downstream to the MD Route 75 crossing in Union Bridge. This area is approximately 1.75 stream miles. Trout will be stocked downstream of Shepherds Mill Road and within Little Pipe Creek Park. By establishing this put-and-take area and