

(s) *Smith Island. All of the waters of Smith Island, Chesapeake Bay, Kedges Straits, and Tangier Sound upstream of a line beginning at a point at or near the intersection of the Maryland/Virginia state line and the eastern (Tangier Sound) shoreline of Smith Island defined by Lat. 37° 57.205' N, Long. 75° 59.750' W then running along the Maryland/Virginia state line to a point at or near the intersection of the Maryland/Virginia state line and the western (Chesapeake Bay) shoreline of Smith Island defined by Lat. 37° 57.211' N, Long. 76° 2.643' W then northerly along the west shore of Smith Island to a point at or near the south side of Sheep Pen Gut at the beginning of the jetty defined by Lat. 37° 58.692' N, Long. 76° 2.754' W then running northwesterly along the jetty to a point at or near the tip of the south jetty at Sheep Pen Gut defined by Lat. 37° 58.774' N, Long. 76° 2.947' W then running approximately 26° True to the tip of the north jetty at Sheep Pen Gut defined by Lat. 37° 58.798' N, Long. 76° 2.932' W then running approximately 79° True along the jetty to a point along the west shore of Smith Island defined by Lat. 37° 58.815' N, Long. 76° 2.825' W then northerly along the shore to a point at or near Chaisey Point at the beginning of the south Big Thorofare/Goose Harbor jetty defined by Lat. 37° 59.791' N, Long. 76° 2.909' W then running approximately 296° True to a point at or near the tip of the south Big Thorofare/Goose Harbor jetty defined by Lat. 37° 59.924' N, Long. 76° 3.279' W then running approximately 0° True to a point at or near the tip of the north Big Thorofare/Goose Harbor jetty defined by Lat. 38° 0.074' N, Long. 76° 3.281' W then running approximately 36° True to a point at or near Channel Point north of Channel Island Gut defined by Lat. 38° 0.624' N, Long. 76° 2.794' W then running northerly along the west shore of Smith Island to a point at or near the tip of the south entrance to Lightning Knot Cove defined by Lat. 38° 1.083' N, Long. 76° 2.818' W then running approximately 0° True to a point at or near the tip of the north entrance to Lightning Knot Cove defined by Lat. 38° 1.156' N, Long. 76° 2.822' W then running northerly along the shore to a point at or near Fog Point defined by Lat. 38° 1.931' N, Long. 76° 2.394' then running easterly along the shore to a point at the western entrance to Fog Point Cove Creek defined by Lat. 38° 2.012' N, Long. 76° 1.859' W then running approximately 67° True to a point at or near the eastern shore at the entrance to Fog Point Creek defined by Lat. 38° 2.047' N, Long. 76° 1.761' W then running northeasterly along the shore to the western side of Bridge Creek at or near Bards Point defined by Lat. 38° 2.151' N, Long. 76° 1.651' W then running approximately 85° True to a point at or near the east shore of Bridge Creek defined by Lat. 38° 2.164' N, Long. 76° 1.432' W then running easterly along the shore to a point at or near Fishing Point on the northwestern side of Back Cove defined by Lat. 38° 2.212' N, Long. 76° 0.461' W then running approximately 136° True to a point on the southwestern side of Back Cove defined by Lat. 38° 1.435' N, Long. 75° 59.507' W then running approximately 100° True to a point north of Terrapin Sand Cove defined by Lat. 38° 1.387' N, Long. 75° 59.164' W then running approximately 118° True to a point at the former location of Terrapin Sands Point defined by Lat. 38° 0.950' N, Long. 75° 58.150' W then running approximately 197° True to a point at or near on the north side of the channel at Big Thorofare defined by Lat. 37° 58.129' N, Long. 75° 59.271' W then running approximately 187° True to a point at or near the south side of Big Thorofare defined by Lat. 37° 57.619' N, Long. 75° 59.353' W then running approximately 214° True to a point along the shore defined by Lat. 37° 57.281' N, Long. 75° 59.646' W then southerly along the shore to the point of beginning defined by Lat. 37° 57.205' N, Long. 75° 59.750' W.*

(t) *Exception. Crab pots may be set from April 1st to June 15th, outside of marked channels in Tyler Creek, in the area upstream of a line beginning at a point at or near the intersection of the Maryland/Virginia state line and the west side of Tyler Creek defined by Lat. 37° 57.209' N, Long. 76° 1.061' W then running northerly along the western shore of Tyler Creek past Parks Ditch and Rhodes Point Gut to a point at or near the southside of the Canal defined by Lat. 37° 59.082' N, Long. 76° 1.272' W then running approximately 3° True to a point at or near the north side of The Canal defined by Lat. 37° 59.189' N, Long. 76° 1.266' W then running along the western shore of Tyler Creek to a point defined by Lat. 37° 59.554' N, Long. 76° 1.412' W then running approximately 114° True to a point at or near Easter Point defined by Lat. 37° 59.353' N, Long. 76° 0.846' W then running southerly along the east shore of Tyler Creek to a point at or near the intersection of the Maryland/Virginia state line and the east side of Tyler Creek defined by Lat. 37° 57.208' N, Long. 76° 0.342' W then running along Maryland/Virginia state line to the point of beginning.*

I. *Atlantic Coastal Bays. Crab pots may not be set in waters designated as having a speed zone in accordance with COMAR 08.18.18.01, 08.18.18.03, 08.18.18.05, and 08.18.18.06.*

J. *Crab pots may not be set in waters that are less than 4 feet deep at mean low tide except as provided below:*

(1) *In Pocomoke Sound, all the waters shoreward of the Maryland-Virginia state line, starting with the junction with a line running from Bullbegger Point westward to the northeasternmost point of land on Fair Island defined by Lat. 37° 57.837 N, Long. 75° 38.914 W, then following the State line in a westerly direction to State line marker "A" defined by Lat. 37° 54.732 N, Long. 75° 48.065 W, thence northwesterly to Ware Point defined by Lat. 37° 56.348 N, Long. 75° 49.264 W.*

(2) *In Tangier Sound, all the waters shoreward of a line drawn from the southern tip of Deal Island at Lower Thorofare defined by Lat. 38° 7.619 N, Long. 75° 56.993 W then running approximately 223° to Lower Thorofare entrance Red Nun "2" defined by Lat. 38° 7.363 N, Long. 75° 57.315 W then running approximately 338° to a point offshore of Twiggs Point defined by Lat. 38° 8.099 N, Long. 75° 57.677 W then running approximately 356° to a point at Haines Point Light Fl. 4 § defined by Lat. 38° 10.324 N, Long. 75° 57.871 W then running approximately 105° true to the northernmost tip of Deal Island defined by Lat. 38° 10.119 N, Long. 75° 56.874 W.*

(3) *In Tangier Sound, all the waters shoreward of a line drawn from Flatcap Point defined by Lat. 38° 1.981 N, Long. 75° 52.290 W then running approximately 208° true to Janes Island Light Fl. 4 § defined by Lat. 38° 57.803 N, 75° 55.109 W then running approximately 56° true to James Island Point defined by Lat. 37° 58.474 N, Long. 75° 53.875 W.*

(4) *All the waters of Tangier Sound, Pungers Cove and Sound Gut west of a line drawn from Muscle Hole Point defined by Lat. 38° 7.617 N, Long. 76° 0.817 W then running approximately 354° true to Sound Point defined by Lat. 38° 4.724 N, Long. 76° 0.403 W on South Marsh Island.*

[H.] K. (text unchanged)

JOSH KURTZ  
Secretary of Natural Resources

## Subtitle 02 FISHERIES SERVICE

### Notice of Proposed Action

[23-292-P]

The Secretary of Natural Resources proposes to amend:

- (1) Regulation .04 under **COMAR 08.02.04 Oysters**; and
- (2) Regulation .04 under **COMAR 08.02.23 Shellfish Aquaculture and Leasing**.

**Statement of Purpose**

The purpose of this action is to allow the use of bulk tags for oysters in both the wild fishery and the aquaculture industry under the guidelines of the National Shellfish Sanitation Program. The Department received complaints from both sectors that writing and tagging individual bushel baskets is onerous to the industry. This requirement has also been periodically problematic in the past for the Department, which is responsible for procuring and selling the tags to watermen, as both supply chain disruptions and issues with the state procurement process have resulted in temporary tag shortages.

Procuring harvest tags is cumbersome and increasingly costly for the Department. Although, in most cases, the Department is achieving cost recovery of the tags, the Department needs to spend about \$40,000 per year on tags. By reducing the number of tags harvesters are required to use through the use of a bulk tag versus tagging each container singly, harvesters will be able to reduce their expenditures. Lastly, it is impossible to predict the number of tags required each year in the wild fishery as the number of tags requested by harvesters has varied independently of the reported harvest.

The Department is proposing to allow the use of bulk tags for a single lot of oysters. In the aquaculture context, a single lot will be defined as oysters coming from a single lease, harvested during a single trip on a single day. In the commercial public fishery context, a single lot of oysters will be defined as oysters coming from a single bar, harvested during a single trip on a single day by a single harvester. A bulk tag covering oysters harvested in the commercial public fishery would still need to be completed before leaving the oyster bar, just as individual bushels currently need to be tagged before leaving the bar. If two harvesters were on board a vessel engaged in the commercial public fishery, both harvesters would need a bulk tag for their oysters. If bulk tags are used, a lessee/licensee will not be allowed to change the harvest tag to a dealer tag until the oysters have been delivered to the dealer's physical location. A bulk tag would need to indicate the number of bushels harvested in the lot, the date, the NOAA code, and either the lease number (aquaculture) or bar name (commercial public fishery) from which the oysters were taken.

This action does not require bulk tags; it merely provides bulk tags as an option for individuals to maintain compliance with tagging requirements. In some cases, bulk tags are not allowed – specifically if individuals are harvesting more than “one lot,” as previously described. Within the commercial public fishery, a licensee could still harvest from multiple oyster bars within a single trip; however, individual tags would be needed for each bushel harvested. A lessee could also still harvest from multiple leases within a single trip; however, individual tags would be required for each bushel harvested.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action may have an indeterminable economic impact, depending on how many individuals choose to use bulk tags. Bulk tags may have an indeterminable positive economic impact on both the wild oyster fisher and the aquaculture industry by lowering certain regulatory burdens by streamlining the tagging process.

**II. Types of Economic Impact.**

| Impacted Entity                             | Revenue<br>(R+/R-)<br>Expenditure<br>(E+/E-) | Magnitude      |
|---|--|----------------|
| A. On issuing agency:                       |  |                |
| Department of Natural Resources             | (E-)   | Indeterminable |
| B. On other State agencies:                 |  |                |
|   | NONE   |                |
| C. On local governments:                    |  |                |
|   | NONE   |                |
| D. On regulated industries or trade groups: |  |                |
| (1) Aquaculture leaseholders                | (+)  | Indeterminable |
| (2) Wild oyster harvesters                  | (+)  | Indeterminable |
| 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.)

A. This action may have an indeterminable impact on the Department by reducing expenditures. The Department is responsible for procuring tags; this process is cumbersome and prone to delays. A significant amount of staff time is spent on the procurement and distribution process. By allowing bulk tags, the Department hopes to reduce the number of tags purchased, which may allow for a less burdensome procurement process. Additionally, there will be fewer tags to distribute, which will hopefully lead to savings in staff time for other duties. The Department currently spends approximately \$40,000 on tags for the wild fishery although most of this is recovered through tag fees. Additionally, the Department spends approximately \$14,000 on tags for the aquaculture industry. Those fees are not charged to the industry and are wholly borne

by the Department. This action may reduce those expenditures by over 90 percent if both industries fully switch to bulk tags. Depending on how many individuals choose to continue to use individual tags, a lesser amount of expenditures will be reduced.

D(1). This action may have an indeterminable positive impact on aquaculture leaseholders. Currently, leaseholders must tag each bushel of oysters one their lease, then switch those tags out for dealer tags once the bushels have been landed. This leads to an expenditure of time and money to essentially double tag those bushels. By allowing bulk tags, aquaculture leaseholders will only have to fill out and use one tag while they are on the lease, the tag each bushel with dealer tags once they have landed. This will result in some amount of savings of time.

D(2). This action may have an indeterminable positive impact on wild oyster harvesters. Most wild oyster harvesters currently purchase tags from the Department. Each bushel of oysters must be tagged prior to leaving the bar. By allowing bulk tags, harvesters will be able to use approximately 10 percent of the tags the currently use, resulting in a 90 percent cost savings. This number is based on individuals using power dredges and the 2023—2024 bushel limit of 10 bushels per licensee per day. Individuals using other gears will save even more as they have higher bushel limits and will still only have to use the one bulk tag. Licensees will also save an indeterminable amount of time because they will only have to fill out one tag, rather than a tag for each bushel harvested.

#### **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 positively impact both shellfish aquaculture leaseholders and wild oyster harvesters by reducing the number of tags they must purchase and use and saving them the time of filling all of those tags out.

#### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

#### **Opportunity for Public Comment**

Comments may be sent to Wild Oysters and Aquaculture — Bulk Tags, Regulatory Staff, Department of Natural Resources, Fishing and Boating Services, 580 Taylor Ave E4, Annapolis MD 21401, or call 410-260-8300, or submit comments to <https://dnr.maryland.gov/fisheries/pages/regulations/changes.aspx#tagging>. Comments will be accepted through February 12, 2024. A public hearing has not been scheduled.

## **08.02.04 Oysters**

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

### **.04 Oyster Container and Tagging Requirements.**

#### **A. Containers.**

(1)—(3) (text unchanged)

(4) Oysters stored in accordance with §A of this regulation shall remain in the original container until a tag is no longer required on the container in accordance with [§B(4)(d)] §D(1)(d) of this regulation.

(5) (text unchanged)

#### **B. Tagging of Individual Containers.**

(1)—(3) (text unchanged)

#### **C. Bulk Tagging.**

##### *(1) Definitions.*

(a) *In this regulation, the following terms have the meaning indicated.*

(b) *“Bulk tag” means a tag that provides the necessary information as required by the National Shellfish Sanitation Program Model Ordinance for a single lot of oysters.*

(c) *“Single lot” means oysters coming from a single oyster bar, harvested during a single trip on a single day by a single harvester.*

(2) *Except as provided in §C(3) of this regulation, an individual storing oysters in accordance with §A(1)—(3) of this regulation may complete and affix a Department-issued bulk tag to a single container of oysters prior to leaving the bar from which the oysters were harvested.*

(3) *An individual storing oysters in accordance with §A(1)—(3) or (5) of this regulation may use a bulk tag not supplied by the Department if:*

(a) *The individual:*

(i) *Is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and*

(ii) *Follows the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01; or*

(b) *Each tag the individual uses contains the statement “Wild Shellfish”, the state in which the harvest occurred, and, in the order specified, the following information:*

(i) *The harvester’s license number as assigned by the Department;*

(ii) *The date of harvest, including the year;*

(iii) *The bar name;*

(iv) *The name of the region or the National Oceanic and Atmospheric Administration code for the area in which the harvest occurred;*

(v) *The type of shellfish;*

(vi) *The statement “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS” in bold capitalized type;*

(vii) *The following statement in bold capitalized letters: “ALL SHELLFISH CONTAINERS IN THIS LOT HAVE THE SAME HARVEST DATE AND ARE FROM A SINGLE AREA OF HARVEST”;* and

(viii) *The number of individual containers in the lot.*

(4) *If one licensee is present on the vessel, only one bulk tag may be used.*

(5) *If a bulk tag is used, the vessel may only harvest from one bar on that day.*

*D. Tagging Provisions for Both Tagging of Individual Containers and Bulk Tags.*

[(4)](1)—[(6)](3) (text unchanged)

(4) *Only one type of tag, individual or bulk, may be present on a vessel while harvesting oysters.*

[(7)](5)—[(9)](7) (text unchanged)

[C.] *E. Exemptions.*

(1) Oysters harvested for recreational purposes and not for sale are exempt from the requirements of §§A [and B]—D of this regulation.

(2) Oysters harvested from a lease and stored and tagged in accordance with COMAR 08.02.23 are exempt from the requirements of §§A [and B]—D of this regulation.

## 08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §4-11A-12, Annotated Code of Maryland

### .04 Shellfish Aquaculture Harvester Permit.

A.—F. (text unchanged)

G. Containers.

(1) (text unchanged)

(2) Oysters shall remain in the original container until a tag is no longer required on the container in accordance with [§H(4)(d)] §J(1)(d) of this regulation.

H. Tagging of Individual Containers.

(1) Except as provided in §§H(2) and I of this regulation, an individual storing oysters in accordance with §H of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the lease from which the oysters were harvested.

(2)—(3) (text unchanged)

I. Bulk Tagging.

(1) *Definitions.*

(a) *In this regulation the following terms have the following meanings.*

(b) *“Bulk tag” means a tag that provides the necessary information as required by the National Shellfish Sanitation Program Model Ordinance for a single lot of oysters.*

(c) *“Single lot” means oysters coming from a single lease, harvested during a single trip on a single day.*

(2) *Except as provided in §I(3) of this regulation, an individual storing oysters in accordance with §G of this regulation may complete and affix a Department-issued bulk tag to a single container of oysters prior to leaving the lease from which the oysters were harvested.*

(3) *An individual storing oysters in accordance with §G of this regulation may use a bulk tag not supplied by the Department if:*

(a) *The individual:*

(i) *Is licensed and certified to sell shellfish by the Maryland Department of Health in accordance with COMAR 10.15.04 and 10.15.07; and*

(ii) *Follows the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Maryland Department of Health in COMAR 10.15.07.01; and*

(b) *Each tag contains:*

(i) *The statement “Farm-Raised Shellfish”;*

(ii) *The lease number; and*

(iii) *The following statement in bold capitalized letters: “ALL SHELLFISH CONTAINERS IN THIS LOT HAVE THE SAME HARVEST DATE AND ARE FROM THE SAME LEASE”;* and

(iv) *The number of individual containers in the lot.*

(4) *If a bulk tag is used, the vessel may only harvest from one lease on that trip.*

J. Tagging Provisions for Both Tagging of Individual Containers and Bulk Tags.

[(4)](1) —[(6)](3) (text unchanged)

(4) *An individual shall possess only one type of tag, individual or bulk, while harvesting oysters.*

[(7)](5)—[(8)](6) (text unchanged)

[I.] K. (text unchanged)

JOSH KURTZ

Secretary of Natural Resources

## Subtitle 02 FISHERIES SERVICE

### 08.02.05 Fish

Authority: Natural Resources Article, §4-2A-03, Annotated Code of Maryland

#### Notice of Proposed Action

[23-267-P]

The Secretary of Natural Resources proposes to amend Regulation .07 under **COMAR 08.02.05 Fish**.

#### Statement of Purpose

The purpose of this action is to clearly allow the recreational harvest of Atlantic menhaden. The action proposes to allow the Department to correct a technical error. When the Department originally declared Atlantic menhaden as “In Need of Conservation” and adopted regulations for