

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Natural Resources**
(DLS Control No. 14-247)

Overview and Legal and Fiscal Impact

This regulation clarifies that licensed shellfish harvesters must harvest oysters in accordance with the National Shellfish Sanitation Program (NSSP) Model Ordinance.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Natural Resources:

Fisheries Service: Oysters:
COMAR 08.02.04.03

Legal Analysis

Background

The NSSP is a cooperative program between state and federal agencies for the sanitary control of shellfish produced and sold for human consumption. The program is designed to create uniformity among state shellfish handling procedures and improve the sanitation of shellfish moving in interstate commerce. Participants in the NSSP include state health and environmental agencies, the U.S. Food and Drug Administration (FDA), the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and representatives of the shellfish industry.

FDA is responsible for creating the NSSP Model Ordinance, which represents the FDA's thinking on the safe and sanitary control of the growing, harvesting, processing, and shipping of shellfish for human consumption. Any state that participates in the NSSP must agree to enforce the Model Ordinance as the minimum requirements for shellfish handling within its borders. Department of Health and Mental Hygiene (DHMH) shellfish sanitation regulations incorporated the NSSP model ordinance in its entirety ([COMAR 10.15.07.01](#)).

In Maryland, a licensed shellfish harvester must have both a Tidal Fish Dealer License issued by the Department of Natural Resources and a Shellfish Certification from DHMH in order to sell oysters or clams for human consumption directly to private individuals or on the retail market. However, a licensed shellfish harvester who does not have a Shellfish

Certification may still sell to a licensed dealer, provided that the dealer has a valid Shellfish Certification.

Summary of Regulation

The regulation clarifies that a commercial tidal fish licensee must harvest oysters in accordance with the NSSP Model Ordinances, which is currently incorporated by reference in DHMH regulations. The department advises that the harvest provisions of the Model Ordinance already apply to any person licensed to harvest oysters for sale for human consumption, whether or not the person is also required to hold a Shellfish Certification from DHMH. The regulation is intended to clarify these requirements and assist the Natural Resources Police in enforcing these requirements.

The NSSP Model Ordinance broadly defines a “harvester” as “a person who takes shellstock by any means from a growing area.” Under the Model Ordinance, harvesters must:

- be licensed by the appropriate state agencies to harvest shellfish;
- undergo training every two years on shellfish harvest, handling, and transportation practices;
- assure that shellfish are harvested, handled, and transported to prevent contamination, deterioration, and decomposition;
- assure that all vessels used to harvest and transport shellfish are properly constructed, operated, and maintained to prevent contamination, deterioration, and decomposition of shellfish;
- use an approved marine sanitation device, portable toilet, or other sewage disposal receptacle to contain human sewage aboard any vessel used to harvest or buy shellfish;
- wash shellfish to remove bottom sediments as soon after harvesting as practicable;
- affix an identification tag to each container of shellfish during harvesting; and
- comply with applicable time and temperature requirements and provide dealers with records demonstrating compliance with these requirements.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 4-215 of the Natural Resources Article as authority for the regulation. This section requires the department to prepare fishery management plans that contain descriptions, objectives, and conservation and management measures for specified

species, including oysters. Under § 4-215(f), a fishery management plan may include limitations on catch size, number, and other factors; the incorporation of conservation and management measures proposed or adopted by interstate bodies; and other measures, requirements, or conditions and restrictions necessary and appropriate for fishery management. The department is required to adopt fishery management plans and any measures implementing those plans by regulation. Although the nexus between conservation and sanitation is somewhat tenuous, regulating the proper handling of oysters arguably constitutes a measure or requirement that is “necessary and appropriate for fishery management.” Therefore, the cited authority is correct and complete, and it is likely that the regulation complies with the legislative intent of the law.

Special Notes

As noted, there is some uncertainty regarding the extent to which sanitation standards are pertinent to regulation within a fishery management plan, which generally consists of conservation measures. However, there appears to be less uncertainty regarding the current authority of Natural Resources Police to enforce NSSP standards currently incorporated in DHMH regulations. Thus, the present action appears to be more useful as a point of clarity regarding current authority than as a necessary basis for expanding authority.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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