

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	07/02/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 8/7/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

08 02 04 07, .12

3. Name of Promulgating Authority

Department of Natural Resources

4. Name of Regulations Coordinator

Tamara L O'Connell

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410-260-8271

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5. Name of Person to Call About this Document

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6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: 5/28/15.
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
 (vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

- Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.
- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Shara Mervis Alpert, Assistant Attorney General, (telephone #410-260-8358) on June 23, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Mark J. Belton

Title

Secretary of Natural Resources

Telephone No.

410-260-8100

Date

June 25, 2015

Title 08
DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§4-215 and 4-1106, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend Regulations .07 and .12 under COMAR 08.02.04 Oysters.

Statement of Purpose

The purpose of this action is to modify the elections for county oyster committees and clarify a latitude coordinate in a power dredge study area. Natural Resources Article, §4-1106, Annotated Code of Maryland states that oyster harvesters are required to select a county committee of oyster harvesters who earn their livelihood by catching oysters. Individuals that are catching oysters are commercially licensed and have paid the oyster license surcharge. Therefore, the proposed action clarifies the statutory requirement by stating that in order to be eligible to be a member of an oyster committee the licensed oyster harvester must have paid the oyster surcharge at least one time in the last two license years.

The current regulation requires county-specific in-person elections that require a significant amount of time and travel with very specific scheduling requirements and time limits for voting members and Department staff. Voting members must travel, sometimes long distances, in order to cast their ballots. The Department is required to be in attendance from 6 p.m. to 9 p.m. in each county to administer the election. Most of the county elections are very poorly attended and do not justify the amount of resources when a simpler procedure could result in an unbiased election that is more convenient for all voting members. The current regulation requires printing the election specifics in the newspaper and also has some inconsistent wording regarding the representation of gear types by members. Posting notices in the newspaper is expensive and does not reach all of the intended individuals. Instead of printing in the newspaper, the proposed action provides for posting the election details on the Department's website. The Department will also notify individuals in other manners such as social media, text messaging and current oyster committee representatives. The proposed action provides for county elections by mail and/or by another appropriate method (e.g., online). The proposed action also allows the Department the ability to determine a process for how to handle a situation when a vacancy cannot be filled due to individuals receiving an equal number of votes. The proposed action removes the committee

election requirement for tongers and dredgers and relies on the committee election requirement for each gear type provided in Natural Resources Article, §4-1106, Annotated Code of Maryland.

Finally, the proposed action corrects a latitude coordinate in a power dredge study area. A coordinate in one of the Queen Anne’s power dredge study areas is being changed from Lat. 38° 4.060’ N to Lat. 38° 54.060’ N because the 5 was inadvertently deleted when the area was originally proposed.

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 has an economic impact on the Department.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
<hr style="border: 1px solid black;"/>		
A. On issuing agency:		
(1) Elections	(E-)	Indeterminable
(2) Notice in Newspaper	(E-)	\$2,200 per year
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
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D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:		
Notice in Newspaper	(-)	\$2,200 per year
F. Direct and indirect effects on public:	NONE	

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

A(1). Currently, to conduct elections for county oyster committees, the Department sends two staff from Annapolis to run a 3 hour meeting in each of the 12 tidewater counties in the state. The current cost of conducting elections is made up of notices in newspapers, staff time at evening meetings, fuel to and from locations, and vehicle

costs to and from locations. The new procedure will not have costs for staff travel and meetings, but will involve costs for notices in newspapers and some form of ballot process (mail, electronic). Although there are still costs associated with the election process, there will be a net reduction in costs of administering this program and increased efficiency. The actual impact is indeterminable.

A(2). The current requirement is to place the election notice in a newspaper of general circulation and in a newspaper in each county for 2 consecutive weeks. There are 11 tidewater counties and there is an election for each county. That is a total of 44 notices for each election (11 county, 11 general, multiplied by 2 weeks). Each notice costs approximately \$200. \$200 times 44 equals \$8,800. Elections are held every 4 years, so the annual cost of the election notices would be \$2,200.

E. The current requirement is to place the election notice in a newspaper of general circulation and in a newspaper in each county for 2 consecutive weeks. There are 11 tidewater counties and there is an election for each county. That is a total of 44 notices for each election (11 county, 11 general, multiplied by 2 weeks). Each notice costs approximately \$200. \$200 times 44 equals \$8,800. Elections are held every 4 years, so the newspapers (collectively) would receive \$2,200 less per year from the Department.

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 Oyster Regulations, Regulatory Staff, Department of Natural Resources Fisheries Service, B-2, 580 Taylor Avenue, 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 August 24, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Reimbursable funds from the Maryland Department of Transportation

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The commercial oyster harvesters will not be impacted economically by removing the on-site election process. The election process will be a cost to the Department. County oyster committees have requested this so that more individuals will participate in the election.

G. Small Business Worksheet:

Attached Document:

.07 Election of Committees of Oystermen.

[A. A committee of licensed tongers shall be elected for each county bordering on the tidal waters of the Chesapeake Bay and its tributaries and for Worcester County, if licensed tongers reside in the county, in accordance with the provisions of this regulation.]

A. Eligibility for Oyster Committee Members. A licensed oyster harvester who has paid the oyster license surcharge for at least one of the last two license years is eligible to be a representative on a county oyster committee.

B. Balloting Procedure.

(1) When an election for a county is to be held, the Department shall publish notice of the election [in one newspaper of general daily circulation in the State, and in at least one newspaper circulated in each county involved, for two successive weeks in advance of the election] *on the Department's website*. [Each] *The* notice shall state the [date, location, and time of the election, and the number of representatives to the committee to be elected] *ballot procedure*.

(2) [Licensed oystermen may vote only in the county in which they reside.] *A licensed oyster harvester may vote only for the oyster committee candidates for the county in which the licensed oyster harvester resides.* The elections shall be conducted by the Department and shall be by secret [written] ballot [cast in person at the election site. The polling period shall be from 6 p.m. to 9 p.m]. After the election has been closed, the Department shall tally and announce the results. The persons receiving the most votes shall be elected to the vacancies on the committee, and the Department shall notify those persons of their election by certified mail. If a person elected is unable or unwilling to serve on the committee, the person receiving the highest number of votes who is able or willing to serve shall be elected.

(3) If a vacancy cannot be filled because two or more persons have received an equal number of votes, the [Department] *representative* shall [hold a run-off election in the same manner as provided for in this regulation between the persons receiving an equal number of votes. The run-off election shall be held within 30 days after the initial election] *be selected by a process determined by the Department in consultation with the current oyster committee of the county in which the tie occurred.*

[C. A committee of licensed dredgers shall be elected in each county bordering on the tidal waters of the Chesapeake Bay and its tributaries or Worcester County, if licensed dredgers reside in the county. The election shall be conducted in accordance with the procedures for electing tongers committees.]

[D.] *C. If a county has less than five licensed [resident tongers or dredgers] oyster harvesters who are eligible to be a committee representative, then all of the eligible licensed [resident tongers or dredgers] oyster harvesters of that county shall constitute the respective committee.*

.12 Power Dredging.

A.—B. (text unchanged)

C. Power Dredge Study Areas. An individual may catch oysters only by power dredge in the areas listed in §C(1)—(3) of this regulation.

(1) Queen Anne's County Power Dredge Study Areas:

(a) All of the waters of Eastern Bay enclosed by a line beginning at a point defined by Lat. 38°53.805' N, Long. 76°15.450' W; then running 274° True to a point defined by Lat. 38°53.831' N, Long. 76°15.920' W; then running 313° True to a point defined by [Lat. 38° 4.060' N] *Lat. 38° 54.060' N*, Long. 76° 16.230' W; then running 53° True to a point defined by Lat. 38°54.482' N, Long. 76°15.511' W; then running 91° True to a point defined by Lat. 38°54.476' N, Long. 76°15.059' W; then running 199° True to a point defined by Lat. 38°54.130' N, Long. 76°15.213' W; then running 210° True to the point of beginning; and

(b) (text unchanged)

(2)—(3) (text unchanged)

D.—E. (text unchanged)

MARK J. BELTON
Secretary of Natural Resources