

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Natural Resources**  
(DLS Control No. 16-171)

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## **Overview and Legal and Fiscal Impact**

The regulations clarify requirements for engaging in shellfish aquaculture activities in Maryland waters. The regulations also liberalize shellfish aquaculture harvester permit registration requirements to allow individuals without shellfish harvester registration cards to engage in certain aquaculture activities under the direct supervision of a shellfish aquaculture harvester permittee.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

## **Regulations of COMAR Affected**

### **Department of Natural Resources:**

Fisheries Service: Shellfish Aquaculture and Leasing:  
COMAR 08.02.23.03 and .04

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## **Legal Analysis**

### **Background**

In recent years, Maryland has significantly restructured its shellfish aquaculture program. New lease laws have removed location, size, and corporate ownership limitations, reduced the minimum harvest size for farm-raised oysters, and streamlined aquaculture permitting processes. In addition, new active use requirements have allowed the Department of Natural Resources to rescind inactive leases. These actions have increased the acreage available for leasing and made the program more attractive to private investors, including out-of-state businesses. Since September 2010, the department has issued over 100 new aquaculture leases comprising over 2,200 acres. This is in addition to the approximately 200 active leases that have continued to operate prior to that time.

Under current regulations, the holder of an aquaculture lease (other than a demonstration lease) must obtain a shellfish aquaculture harvester permit prior to engaging in shellfish aquaculture activities. A permittee may also register other individuals with the department to assist with aquaculture activities. The department issues shellfish aquaculture harvester registration cards to both permittees and their registrants, which must be carried at all times when working at

a lease site. This registration requirement limits permittees' ability to hire short-term or temporary workers.

Following discussions with the State's Aquaculture Coordinating Council, the department is proposing to loosen registration requirements to allow individuals who do not possess a shellfish harvester registration card to assist with aquaculture activities at a lease site, so long as they are working under the direct supervision of a permittee. In accordance with statutory requirements, the department indicates that the regulations have been discussed with, and are supported by, the Aquaculture Coordinating Council.

## **Summary of Regulations**

The regulations clarify that a person may not engage in aquaculture activities on submerged land in waters of the State or in the water column unless the area is leased or permitted for shellfish aquaculture purposes. The regulations also loosen restrictions concerning who may participate in shellfish aquaculture activities. In general, an individual engaged in aquaculture activities at a lease site must be in possession of a shellfish harvester registration card issued to the individual by the department. The regulations create an exception to this requirement for an individual under the supervision of a shellfish aquaculture harvester permittee who is present on the leased area. An individual who participates in aquaculture activities under this exception is subject to the same standards as individuals who possess registration cards, and must harvest, transport, and store shellfish in accordance with the National Shellfish Sanitation Program Model Ordinance. A shellfish harvester permittee is responsible for all work and acts performed at the lease site under his or her supervision.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 4-11A-02 and 4-11A-12 of the Natural Resources Article as statutory authority for the regulations. Section 4-11A-12 grants the department broad authority to adopt regulations implementing State aquaculture laws. Similarly, § 4-11A-02 establishes the aquaculture permit and requires the department to adopt regulations to ensure that aquaculture operations do not adversely impact wild fish stocks. In developing aquaculture regulations, the department must consult with the Aquaculture Coordinating Council.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations have 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 regulations have a meaningful economic impact on small businesses in the State. The Department of Legislative Services concurs. The regulations allow a leaseholder to have employees work under an aquaculture harvester permittee's supervision without each worker needing to obtain a registration card (which takes time to apply for and receive).

## **Contact Information**

**Legal Analysis:** April M. Morton – (410) 946/(301) 970-5350

**Fiscal Analysis:** Scott D. Kennedy – (410) 946/(301) 970-5510