

NEW JERSEY SHELLFISHERIES COUNCIL

— DELAWARE BAY SECTION —

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Policy on Leasing of Delaware Bay Bottom

The following constitutes the policies of the Delaware Bay Section of New Jersey Shellfisheries Council governing the leasing of bottom in New Jersey's Delaware Bay for the culturing of shellfish as authorized by N.J.S.A. 50:1-18 and 50:1-23 through 50:1-31. The objective of the leasing program is to provide bottom for use in the planting and cultivating of shellfish.

This policy will be in effect until such time that the New Jersey Department of Environmental Protection is able to adopt rules to effectuate the purposes of N.J.S.A. 50:1-5 et seq.

The following words and terms, when used in this document, shall have the following meanings, unless the context clearly indicates otherwise:

"Bottom" means lands of the State under the tidal waters of the State except along the Atlantic Coast of New Jersey.

"Bureau" Means the Bureau of Shellfisheries in the Division of Fish and Wildlife.

"Commercial Shellfish License" means the commercial shellfish license required and available as specified in N.J.S.A. 50:2-1 to 50:2-5 and N.J.A.C. 7:25-8.; or the oyster dredge boat license available as specified in N.J.S.A. 50:3-1 and N.J.A.C. 7:25A; or the oyster shucker, planter or dealer license available as specified in N.J.S.A. 50:3-20.11.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designee.

"Council" means the Delaware Bay Section of the New Jersey Shellfisheries Council.

"Department" means the Department of Environmental Protection.

"Lessee" means that person or persons holding a lease of bottom to be exclusively used and enjoyed by the lessee for the planting and cultivating of shellfish, approved by a majority of the Council and approved and signed by the Commissioner.

"Staking" means the placement of stakes or buoys to mark the boundaries of a leased area.

Lease application for new ground

- (a) Lease applications for new ground shall be submitted in person at the Delaware Bay Office Located at 1672 E. Buckshutem Road, Millville, NJ, on forms provided by the Department.
- (b) An application for a shellfish lease for a new ground may be submitted by any person who must meet the statutory requirements for leasing specified at N.J.S.A. 50:1-23 through 50:1-31, who in the five years prior to making application, has not been convicted of violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or of any administrative rule promulgated pursuant to those statutory provisions, and who also satisfied the following requirements:

NEW JERSEY SHELLFISHERIES COUNCIL

— DELAWARE BAY SECTION —

- (c) No single lease applicant may have more than 200 acres pending at one time. An individual may have multiple lease applications for new ground pending at any time, as long as the total acreage does not exceed 200 acres.
- (d) Once an individual's application is denied by the Council or granted by the Council and approved by the Commissioner, that individual may submit an additional lease application for new ground.
- (e) Applications for lease of new ground in areas classified as Prohibited, Special Restricted, or Seasonal Special Restricted, as defined in N.J.A.C. 7:12, will not be accepted.
- (f) Applications for lease of new ground in areas classified as Approved or Seasonal, as defined in N.J.A.C. 7:12, will be accepted subject to the provisions of this subchapter and N.J.S.A. 50:1-23.

Consideration of lease applications for new ground

- (a) Once the Department has received a fully completed lease application submitted by a person satisfying the requirements listed above, the Department shall consider the area of new ground applied for closed to use by the public and the applicant until the Council decides to deny the lease or until the applicant receives the executed lease from the Department.
- (b) Consideration of lease applications and transfer applications by the Council shall be governed by the following:
 - 1. Upon completion of the lease application or transfer application, the Bureau shall place the application to lease new or transfer ground(s) on the agenda, of the next regularly scheduled Council meeting for the Council's consideration;
 - 2. At each regularly scheduled meeting, the Council will receive public comment on all lease applications on its agenda; and
 - 3. The Council shall render a decision to deny a lease or transfer application or grant a lease application subject to approval by the Commissioner by the second regularly scheduled meeting after receiving public comment on the lease application.
- (c) The applicant must attend at least one of the Council meetings at which the lease application is discussed in order to answer any questions that the Council might have about the lease application. Failure to attend at least one of the Council meetings at which the lease application is discussed shall constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom. The Council may extend this period if they find that exigent circumstances existed.

Hydrographic survey; annual lease fees

- (a) Following approval of a lease of new ground by the Council and the Commissioner, the Bureau shall perform a hydrographic survey of the lease area described in the application to verify its location and boundaries. Before the Department issues an executed lease to the applicant, the applicant shall reimburse the Bureau for the expense

NEW JERSEY SHELLFISHERIES COUNCIL

— DELAWARE BAY SECTION —

- of the hydrographic survey at the rate of \$30.00 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the lease will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.
- (b) The annual lease fee for Delaware Bay shellfish leases is \$0.50 per acre for those areas measured in acres.

Lease renewal

- (a) Lessees shall renew their leases by submitting the annual lease fee in person at the Delaware Bay Office by December 31 for the following calendar year. Effective January 1, 2009, the Bureau will no longer conduct mailings to lessees reminding them of their responsibility to extend their respective leases.
- (b) If illness or other extenuating circumstances prevent a lessee from renewing a lease by December 31, the Council, in its discretion, may extend the payment deadline by one month if an extension is requested by the lessee or the lessee's agent at the January Council meeting or if no January meeting is held at next scheduled meeting. If a lessee does not either renew the lease by the payment deadline from the Council, the lease shall be terminated for non-payment after the January Council meeting and the area described in the terminated lease shall revert to the public bottom.
- (c) Annual renewal of the lease by the Council with the approval of the Commissioner is subject to the lessee's meeting all statutory criteria for leasing, specified at N.J.S.A. 50:1-23 through 50:1-31.
- (d) Any leases not renewed as of December 31 will be reviewed by the Department and placed on a list. Parties interested in acquiring any leases not renewed by December 31 may have their names placed in sequentially on a waiting list giving them right of first refusal to acquire said leases if no extensions are granted by the Council to the original lessees.

State and Federal permitting requirements for shellfish culture leases

- (a) State and Federal permitting requirements exist for new and existing shellfish culture leases in Delaware Bay. Please consult permitting agencies see Attachment 1 for additional information.