

New Jersey Administrative Codes (N.J.A.C.)

NEW JERSEY DEPARTMENT OF AGRICULTURE

N.J.A.C. 2:89, Aquaculture Development Rules

Authority: N.J.S.A. 4:27-1 et seq.

Description: This chapter establishes an Aquatic Organism Health Management Plan designed to protect public and private aquaculturists and wild aquatic populations from the importation of non-endemic disease-causing organisms, and assist in facilitating the exportation and importation of aquatic species requirements at N.J.S.A. 4:5-1 et seq. These rules implement the aquaculture policy framework for New Jersey through the Aquatic Farmer Licensing Program.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

N.J.A.C. 7:7, Coastal Zone Management Rules

Authority: N.J.S.A. 13:19-1 et seq.; 12:3-1 et seq., 12:5-3; 13:9A-1 et seq.

Description: This chapter establishes the rules of the Department of Environmental Protection regarding the use and development of coastal resources. The rules are used in reviewing applications for coastal permits under the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. (CAFRA permits), the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. (coastal wetlands permits), and the Waterfront Development Law, N.J.S.A. 12:5-3 (waterfront development permits). The rules also provide a basis for recommendations by the DEP to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

These rules are used to review aquaculture-related structures located landward and waterward of the mean high water line. The rules contain permits specific to aquaculture activities including (1) the placement of land-based upwellers and raceways for aquaculture activities, (2) the placement of predator screens and oyster spat attraction devices within a shellfish lease area, (3) the placement of shellfish cages within a shellfish lease area, (4) commercial shellfish aquaculture activities, and (5) the placement of shell within shellfish lease areas. The rules also set forth the standards for the review of an individual permit for shellfish aquaculture activities.

N.J.A.C. 7:12, Shellfish Growing Water Classification

Authority: N.J.S.A. 2C:64-1 et seq., 4:27-1 et seq., 13:1D-9, 23:2B-1 et seq., 50:1-5 et seq., and 58:24-1 et seq. 2

Description: The Shellfish Growing Water Classification Rules address the harvest or use of shellfish from waters other than Approved pursuant to N.J.S.A. 58:24-1 et seq., and the aquaculture of shellfish in all waters of the State pursuant to N.J.S.A. 50:1-5 et seq. Specifically, this chapter establishes: (1) the procedures for the classification of shellfish waters and the boundaries of the waters so classified; (2) the procedures for the

Department to impose immediate shellfish harvest suspensions and restrictions; (3) the requirements for shellfish license holders for the harvest, handling, and transport of shellfish in order to ensure harvested shellfish are safe for human consumption; and (4) permits for depuration plants, depuration harvesters, harvest for bait, harvest for relay, harvest for transplant, shellfish research in waters other than Approved, shellfish restoration and/or enhancement in waters other than Approved, growing seed in waters other than Approved by a nonprofit or governmental agency, short-term use of shellfish for toxins monitoring in waters other than Approved, production and growing of seed by a hatchery or nursery in waters other than Approved; and commercial shellfish aquaculture in Approved waters.

N.J.A.C. 7:25-13, Leased Tidal Grounds

Authority: N.J.S.A. 13:1B-30 et seq., 13:1D-9, 23:1-1 et seq., and 50:1-5 et seq.

Description: This rule sets forth the requirements for marking of leased tidal grounds in the Delaware River and Bay.

N.J.A.C. 7:25-24, Leasing of Atlantic Coast Bottom for Aquaculture

Authority: N.J.S.A. 13:1B-30 et seq., 13:1D-9, 23:1-1 et seq., and 50:1-5 et seq.

Description: Subchapter 24 of the Division of Fish and Wildlife's Rules, governs the leasing of bottom on New Jersey's Atlantic Coast for the culturing of shellfish. The objective of the leasing program is to provide bottom for the use in planting and cultivating of shellfish including aquaculture (grow out of hatchery reared seed) and layout (wet storage). This subchapter addresses the filing and processing of a lease application for new ground (bottom not leased as of September 18, 1989 and any leased bottom not subject to a valid lease after September 19, 1989); renewal, transfer, staking and improper staking of leases; protection of leased lands from invasion; disposition of condemned lease areas and terminated lease areas; research/educational activity leases; and, penalties.

N.J.A.C. 7:25A, Oysters

Authority: N.J.S.A. 13:1D-9, 23:2B-14, 50:1-1 et seq., 50:2-7 through 50:2-12, and 50:3-1 et seq.

Description: This chapter constitutes the rules governing the issuance, renewal, substitution and transfer of oyster dredging licenses, the leasing of oyster ground in Section E in Delaware Bay, the taking and reporting of oysters from the Delaware River, Delaware Bay and their tributaries, with the exception of the leased areas, and the imposition, collection and 3 dedication of fees to finance an oyster cultch and resource enhancement program to facilitate the protection, conservation, management and improvement of the oyster resource and industry in New Jersey. The oyster management program, which includes, as a component, the oyster cultch and resource enhancement program, includes a limitation on the number of available licenses, a limitation on harvest to specific fishing times and areas and the establishment of a seasonal harvest quota.

NEW JERSEY DEPARTMENT OF HEALTH

N.J.A.C. 8:13, Shellfish

Authority: N.J.S.A. 24:2-1

Description: This chapter provides uniform sanitary standards based upon the National Shellfish Sanitation Program Model Ordinance, developed through a Memorandum of Understanding between the U.S. Food and Drug Administration and the Interstate Shellfish Sanitation Conference. Specifically, it establishes the minimum sanitation and recordkeeping requirements for the harvesting, shipping, reshipping of shellstock, and shucking and repacking of raw molluscan shellfish including clams, oysters, mussels, and whole scallops shipped in both interstate and intrastate commerce. This chapter also establishes requirements regarding the depuration of hard shell and soft shell clams.

New Jersey Statutory Authority (N.J.S.A.)

N.J.S.A. 2C:64, Forfeiture

Description: This Act addresses the forfeiture of property including forfeiture procedures, seizure of property and the statute of limitations on claims, and the disposal of forfeited property.

N.J.S.A. 4:27, Aquaculture Development Act

Description: The Aquaculture Development Act directs the Department of Agriculture to adopt a program for licensing the possession and ownership of aquacultured organisms through an Application for an Aquatic Farmer License. The Act also states that the Secretary of Agriculture, in consultation with the Commissioner of Environmental Protection, develop and implement an aquaculture permitting review program to provide for the coordinated review of any aquaculture project. The Act also directs the Department of Agriculture to adopt rules and regulations establishing an Aquatic Organism Health Management Plan designed to protect public and private aquaculturists and wild aquatic populations from the importation of non-endemic disease-causing organisms, and to assist in facilitating the exportation and importation of aquatic species in to and out of the State. It includes disease reporting and quarantine requirements as set forth in N.J.S.A. 4:5-1 et seq.

N.J.S.A. 12:3-1 et seq., Tidelands Act

Description: This Act authorizes the Tidelands Resource Council to manage all lands that are currently and formerly flowed by the mean high tide of a natural waterway. The State of New Jersey claims ownership of these tidelands and holds them in trust for the people of the State to ensure the public's right to access and use these lands. The Act allows the council to convey tidelands at its discretion and establishes the procedures for selling and renting these lands.

N.J.S.A. 12:5-3, Waterfront Development Law

Description: This Law authorizes the Department of Environmental Protection to regulate the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable or other similar development on or adjacent to tidal waterways throughout the State. Outside of the CAFRA area and Hackensack Meadowlands District, the Law applies in upland areas adjacent to tidal waters extending from the mean high water line to the first paved public road, railroad or surveyable property line. Upland jurisdiction extends from the mean high water line landward a minimum of 100 feet and not exceeding 500 feet. Within this area, construction, reconstruction, alteration, expansion or enlargement of any structure, or the excavation or filling of any area are subject to this Law.

N.J.S.A. 13:19-1 et seq., Coastal Area Facility Review Act (CAFRA)

Description: The Coastal Area Facility Review Act (CAFRA) authorizes the Department to regulate a wide variety of residential, commercial, public or industrial development such as construction, relocation, and enlargement of buildings and structures; and associated work such as excavation, grading, site preparation and the installation of shore protection structures within the CAFRA area. The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge, Middlesex County. It extends south along the coast around Cape May, and then north along the Delaware Bay ending at Kilcohook National Wildlife Refuge in Salem County. The inland limit of the CAFRA area is an irregular line that follows public roads, railroad tracks, and other features. The width of the CAFRA area varies from a few thousand feet to 24 miles. The CAFRA area is divided into zones with different regulatory thresholds for each zone.

N.J.S.A. 23:2A-1, The Endangered and Nongame Species Conservation Act

Description: This Act authorizes the Department to identify species of wildlife deemed to be endangered and to set up management programs designed to insure for the continued ability of wildlife to perpetuate themselves successfully. The statute also allows for the regulation of possession, transport and/or sale of endangered wildlife, and established prohibitions on “take” of endangered and nongame wildlife. “Take” is defined by the statute to mean “to harass, hunt, capture, kill or to attempt to harass, hunt, capture or kill wildlife.” Courts have subsequently clarified that “harass” means an intentional or negligent act which creates the likelihood of injury to an animal by annoying the species to such an extent as to significantly disrupt its normal behavioral patterns.

N.J.S.A. 23:2B, Marine Fisheries Management and Commercial Fisheries Act

Description: This Act addresses marine fisheries management, the development of a commercial fishing industry, and support of recreational fishing; establishes the Marine Fisheries Council; provides certain powers to the Department of Environmental Protection and Marine Fisheries Council and the New Jersey Development Authority; and establishes penalties for violations of the Act. The Act established the aquaculture task force responsible for promoting the development of aquaculture, the commercial fisheries industry, and the commercial aspects of fish products.

N.J.S.A. 24:15, Sanitation in Food, Drug and Cosmetic Establishment

Description: This Act addresses sanitation in food, drug, and cosmetic establishments and establishes a licensing and inspection program. Specifically, this Act sets forth standards for the cleanliness of establishments and employees responsible for the production, preparation, manufacturing, packing, storage, transportation or handling of food, drugs, or cosmetics intended for sale or distribution.

N.J.S.A. 50:1-5, Shellfish

Description: This Act provides that the NJDEP Commissioner has full control and direction of the shellfish industry and resource and protection of shellfish throughout the entire State. The Act directs the Commissioner to adopt rules and regulations as may be

necessary for the preservation and improvement of the shellfish industry and resource of the State, after consultation with the Shellfisheries Council and subject to the disapproval of the Marine Fisheries Council. With respect to aquaculture, the Act directs the NJDEP Commissioner, in consultation with the Secretary of Agriculture and the Shellfisheries Council, to establish appropriate policies for the use of aquaculture leases in waters of the State and for lands underneath waters of the State, including but not limited to lease specifications, fees, and assignability and termination of lease agreements. Further, the Act directs the Department of Health and Senior Services, to regulate the safety of shellfish originating within the growing waters of the State, within interstate commerce and from international sources.

N.J.S.A. 50:2-7, Culling immediately after emptying tongs or dredges

Description: This Act addresses the culling of oysters, oyster shells, and other material dredged, tonged or in any manner raised or taken from any of the beds or grounds above the southwest line in Delaware Bay, except in the area known as Section E (see N.J.S.A. 50:1-23), or from any natural oyster bed or ground, shell bed or reef, where oysters naturally spawn and grow under the tidal waters of the State.

N.J.S.A. 50:2-8, Percentage of shells; throwing back culled material

Description: This Act requires that culling that three bushels of oysters, oyster shells and other material taken from any part of a boat or vessel, after having been shoveled back from the culling board, conveyor, culling device or that part of the boat or vessel used for emptying the tongs and dredges, cannot contain more than 15 percent of shells and other material. It also requires that all shells and other material, except oysters and clams, be immediately thrown back upon the beds or grounds from which they were taken.

N.J.S.A. 50:2-9, Revocation of license on refusal to permit examination

Description: This Act addresses the penalties associated with the refusal of a person in charge of any boat or vessel licensed under Title 50 or any persons holding a tonger's license to stop and permit the officers of the department of Environmental Protection to board the boat.

N.J.S.A. 50:3-1, Necessity for license and issuance thereof

Description: This Act provides that no boat or vessel can be used in the catching or taking of oysters in the Delaware River, Delaware Bay and their tributaries in the State, without a license issued by the Commissioner of the Department of Environmental Protection for that purpose.

N.J.S.A. 58:24, Shellfish and Shellfish Beds

Description: This Act concerns the health conditions of waters within the jurisdiction of the state from which oysters, clams or other shellfish are taken to be distributed or sold for use as food, for the purpose of ensuring the sanitary condition of such oyster and clam beds, and the fitness of the shellfish within these waters or taken from these waters for use as food. The Act also establishes violations and penalties for noncompliance with the Act. In addition, the Act establishes the Monmouth County depuration and relay program fund the purpose of which is to maintain and implement depurated hard or soft clam or relayed hard clam programs in Monmouth County, or other shellfish programs of which these programs are a part.