



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

ADMINISTRATIVE ORDER NO. 2015-14

WHEREAS, the Commissioner of the New Jersey Department of Environmental Protection (NJDEP) is authorized pursuant to N.J.S.A. 58:24-6 to make such specific orders regarding the growing and handling of oysters, clams or other shellfish and the disposal of polluting matter which may affect the purity of oysters, clams, or other shellfish as the Commissioner may deem necessary to enforce the provisions of N.J.S.A. 58:24-1 et seq., which governs the growing and handling of shellfish in New Jersey;

WHEREAS, the Commissioner of NJDEP is authorized pursuant to N.J.S.A. 13:1D-1 et seq., specifically N.J.S.A. 13:1D-9, to formulate, implement, and enforce policies for the protection of the environment;

WHEREAS, the Commissioner of NJDEP shall have full control and direction of the shellfish industry and resource, and of the protection of shellfish pursuant to N.J.S.A. 50:1-5;

WHEREAS the National Shellfish Sanitation Program (NSSP) is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. The purpose of the NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce through federal/state cooperation and uniformity of state shellfish programs;

WHEREAS, the State of New Jersey is a member of the ISSC and participates in the NSSP;

WHEREAS, the NSSP, among other activities, develops and updates regulatory guidelines and standards for the safe and sanitary control of the growing, processing, shipping, and handling of oysters, clams, or other shellfish, for human consumption. These regulatory guidelines and standards are published by the FDA in the NSSP Guide for the Control of Molluscan Shellfish (NSSP Guide) at Section II, which Section is called, and referred to hereinafter as, the Model Ordinance;

WHEREAS, those guidelines and standards are referenced and/or relied upon in N.J.S.A. 58:24-14 and the NJDEP Shellfish Growing Water Classification regulations found at N.J.A.C. 7:12, promulgated pursuant to N.J.S.A. 58:24-1 et seq., and N.J.S.A. 13:1D-9 et seq.;

WHEREAS, compliance with the Model Ordinance is mandatory in order for New Jersey's shellfish products to be sold in interstate commerce;

WHEREAS, pursuant to the New Jersey Aquaculture Development Act at N.J.S.A. 4:27-3, "aquaculture" is a water dependent activity defined as a form of agriculture involving "the propagation, rearing and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but is not limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators. Aquaculture shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or Federal law or regulation";

WHEREAS, the Model Ordinance at Chapter VI requires that NJDEP, as one of New Jersey's shellfish control authorities, issue operational permits, maintain records, inspect commercial aquaculture operations at least every six months, and establish seed and submarket size for various species of shellfish;

WHEREAS, the Model Ordinance at Chapter VI provides that seed may come from any growing area in any classification provided that the source of the seed is sanctioned by the authority, and such seed are cultured for a minimum of six (6) months in waters classified as Approved or Conditionally Approved;

WHEREAS, the Model Ordinance at Chapter VIII requires that, prior to licensing, each harvester shall obtain training every two years;

WHEREAS, as a member of the ISSC and participant in the NSSP, the State of New Jersey is evaluated by the FDA for compliance with criteria specified in the Model Ordinance;

WHEREAS, in its Fiscal Year 2014 Annual Program Evaluation report, FDA found that NJDEP had done an excellent job of assessing water quality, classifying shellfish waters, providing uniform timely inspections and obtaining regulatory compliance. However, FDA also found areas of non-conformance with the Model Ordinance because the State did not issue permits for aquaculture activities or clearly define the size of seed or sub-market shellfish. The FDA also found the State in non-conformance with the Model Ordinance because it did not have in place a training program on the public health and safety implications of certain practices for shellfish harvesters and certified dealers;

WHEREAS, the NJDEP is in the process of amending its rules as necessary to address the areas of nonconformance found by FDA and to ensure safety and sanitary safeguards related to the growing, harvesting, and handling of oysters, clams, or other shellfish for human consumption are in place. The proposed amendments, repeals, and new rules are being published in the New Jersey Register on November 16, 2015, and will bring the Shellfish Growing Water Classification rules, N.J.A.C. 7:12, into conformance with current

Model Ordinance standards, add new permits for various growing and harvesting activities, amend and update existing permits, modify the delineations of the various classifications of the State's shellfish growing waters to reflect the most current sanitary water quality testing data, and update and streamline the rules;

WHEREAS, NJDEP is committed to ensuring that FDA's concerns are addressed, its shellfish program is consistent with the Model Ordinance, and that public confidence that shellfish from the State of New Jersey are safe for human consumption is maintained while NJDEP promulgates amendments to its rules.

NOW THEREFORE, in order to enforce the provisions of N.J.S.A. 58:24-1 et seq., and pursuant to my authority and duty to protect the public health and to ensure that shellfish taken from the waters of this State are safe for human consumption, I hereby order as follows:

1. Inasmuch as New Jersey is a member of the ISSC and a participant in the NSSP, all applicable provisions relating to the sanitation of shellfish found in the Model Ordinance set forth in the NSSP Guide (2013 Revision) apply to all persons or entities engaged in aquaculture and/or harvesting of oysters, clams, or other shellfish, for human consumption, in New Jersey;
2. All persons and entities currently engaged in aquaculture activities shall register with the NJDEP by December 31, 2015. All persons and entities intending to engage in aquaculture activities shall register with the NJDEP 30 days prior to commencing activities. This registration shall include the location of operation(s), species of shellfish, water classification, and a brief description of the operation. The registration form is available and can be submitted on-line at www.nj.gov/dep/bmw/aquaregform.htm or the form can be obtained from and submitted to the Bureau of Marine Water Monitoring, 929 Stoney Hill Road, PO Box 405, Leeds Point, NJ 08220 or 609-748-2000.
3. Consistent with the Model Ordinance at Chapter VI, subsection .03, seed harvested from Prohibited waters shall be grown out in Approved or Conditionally Approved waters for a minimum of six months. As such, based on the growth rate for each species, the NJDEP considers "seed" to mean shellfish that have a maximum shell length, when measured across the largest dimension, as follows: for hard clam (*Mercentaria mercenaria*), equal to or less than one inch (25.4 mm); and for eastern oyster (*Crassostrea virginica*), equal to or less than one and one-half inches (38.1 mm). These definitions of seed size will ensure that the minimum six month grow out in Approved or Conditionally Approved waters will have occurred before such shellfish reach market size and are harvested;
4. Consistent with the Model Ordinance at Chapter VIII, subsection .01, every holder of a commercial shellfish license issued by the NJDEP's Division of Fish and Wildlife shall complete the NJDEP's shellfish harvester training which covers

sanitary shellfish harvest, handling, and transportation practices. The shellfish harvester training is available online at <http://www.nj.gov/dep/bmw/>.

5. New and existing aquaculture facilities and all shellfish harvesters shall continue to comply with all applicable local, state and federal regulations.
6. I am directing my staff to continue to coordinate with the New Jersey Department of Health, the New Jersey Department of Agriculture, and the Attorney General's Office on issues regarding aquaculture, including streamlining the aquaculture regulatory process, and on ensuring the proper sanitation of shellfish for human consumption.
7. I am further directing my staff to notify the Attorney General's office of violations of N.J.S.A. 58:24-1 et seq. or N.J.A.C. 7:12, and direct that all legal remedies be considered, including injunctive relief or corrective action, as appropriate to protect the public health and safety.
8. This Administrative Order shall take effect immediately, and shall remain in effect until superseded or repealed, or the proposed amendments, repeals and new rules at N.J.A.C. 7:12 described above become effective.

Dated: 11/16/2015



Bob Martin
Commissioner