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SUBCHAPTER 12. Surf Clams

7:25-12.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection governing the protection, conservation, management and improvement of the surf clam resource and industry in New Jersey.

7:25-12.2 Purpose

The purpose of this subchapter is to regulate the harvest of surf clams from New Jersey waters in order to conserve, protect, manage and improve the surf clam resource and industry. The surf clam harvest regulatory program includes a limitation on the number of available licenses, a limitation on harvest to specific fishing times and areas, establishment of a seasonal harvest quota and other control methods as may be necessary.

7:25-12.3 Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1.5, 50:2-6.1 through 50:2-6.3 and 23:2B-14.

7:25-12.4 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-12.5 Definitions

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

"Approved waters" means waters meeting established sanitary standards for approved shellfish harvesting, as delineated at N.J.A.C. 7:12.

"Bait clams" means surf clams taken from condemned waters, not for human consumption but only for use as bait.

"Bait clam vessel" means a vessel holding a bait clam vessel license issued pursuant to N.J.A.C. 7:25-12.15.

"Bushel" means 1.88 cubic feet of clams within the shell.

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"Cage" means a container with a standard unit of measure containing 60 cubic feet (1,700 liters). The outside dimensions of a standard cage generally are three feet (91 cm) wide, four feet (122 cm) long, and five feet (152 cm) high.

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

"Condemned waters" means waters not meeting the established sanitary standards for approved shellfish harvesting, including waters designated as Prohibited, Special Restricted, Seasonal Special Restricted and Seasonal, as delineated at N.J.A.C. 7:12.

"Council" means the Atlantic Coast Section of the New Jersey Shell Fisheries Council.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish and Wildlife in the Department of Environmental Protection.

"Fishing trip" means a departure from port, transit to the fishing grounds, fishing and return to port.

"Land" means to transfer the catch of surf clams from any vessel to any land, pier, wharf, dock, or other man-made structure.

"Licensee" means the holder of a surf clam license or a bait clam vessel license or his or her agent.

"Offload" or "offloading" means to separate physically a cage from a vessel.

"Person" includes the captain, owner or other person responsible for the operation of a vessel.

"Season quota" means the total amount of surf clams, excluding bait clams, that may be harvested by all surf clam license holders from State waters during the annual surf clam season.

"Standing stock" means the amount of the surf clam resource in State waters, measured in bushels as determined by surf clam inventories conducted by the Division.

"Surf clams" means the species *Spisula solidissima*. Unless otherwise specified, the term "surf clams" includes bait clams.

"Surf clam vessel" means a vessel equipped to harvest surf clams by means of a dredge or dredges.

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"Vessel," in addition to its normal meaning, includes the captain, owner or other person responsible for the operation of a vessel.

7:25-12.6 Applicability

(a) The rules in this subchapter shall apply to all taking, attempting to take, harvesting, or dredging of surf clams, or the participation therein, in State waters, except the following:

1. Research, inventory or educational activities involving surf clams conducted under a certificate issued by the Division pursuant to N.J.S.A. 23:4-52 or a permit issued by the Department pursuant to N.J.S.A. 50:2-6.1 for research, inventory or educational purposes;
2. Gathering from beaches of surf clams cast there by the sea, in areas adjacent to approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2, and a clamming license is required therefor as described in N.J.A.C. 7:25-8; and
3. Harvest of surf clams for personal consumption and not for sale from areas in approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2, and a clamming license is required therefor as described in N.J.A.C. 7:25-8.

(b) Compliance with this subchapter shall not exempt any person from compliance with shellfish rules adopted to protect the public health by the Department, under authority of N.J.S.A. 58:24-1 et seq., or by any department of State government or any Federal agency.

7:25-12.7 General control methods

(a) Except as provided at N.J.A.C. 7:25-12.6(a), a person or vessel shall not take, attempt to take, harvest, or dredge for surf clams, or participate therein, in any State waters without first obtaining a surf clam license and harvest tags as described in N.J.A.C. 7:25-12.12 and 7:25-12.14, or bait clam vessel license as described in N.J.A.C. 7:25-12.15.

(b) The general methods by which the Department shall control the harvest of surf clams from State waters are as follows:

1. The captain of a surf clam vessel possessing a surf clam license, or of a licensed bait clam vessel, or his or her designee, shall notify the Department of the intended fishing location of the vessel and the intended port and time of landing each day it fishes in State waters. The notification shall be made by calling the Division's Marine Enforcement Unit, Bureau of Law Enforcement, at

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(609) 748-2050, prior to fishing in State waters and prior to change of location. Changes in port of landing or time of landing must be given four hours prior to landing.

2. Any person fishing for surf clams at any time, or who has reported his intention to fish, in State waters shall have the vessel's entire harvest for that fishing trip counted as part of the licensed season allocation of surf clams.
3. A person shall not transfer surf clams from a surf clam vessel or bait clam vessel to any other vessel. All surf clams harvested in State waters shall be landed in this State. Specific hours of landing may be designated by the Division. A person shall not operate a surf clam vessel or bait clam vessel to fish in or land surf clams from both State and Federal waters on a single fishing trip. A surf clam vessel shall not land any quahogs or surf clams taken from Federal waters during the same fishing trip for which the Division's Marine Enforcement Unit, Bureau of Law Enforcement, has received notification of intent to use that vessel in State waters to harvest surf clams.
4. All surf clams shall be landed in their shells and offloaded in cages. All surf clam cages containing surf clams shall be tagged with tags obtained from the Division before offloading. The tags must be used sequentially as issued. Tags shall not be removed until cages are emptied at the processing plant, at which point the removed tags shall be destroyed and discarded.
5. It shall be unlawful to possess an empty cage to which a tag required at (b)4 above is affixed.

7:25-12.8 Season

Except for bait purposes as provided in N.J.A.C. 7:25-12.11, the annual season for taking surf clams in State waters shall begin on October 1 and extend through and including May 31.

7:25-12.9 Prohibited surf clam harvest areas; reopening of closed surf clam harvest areas

(a) The area in which surf clams may not be taken are as follows:

1. Those areas closed to shellfishing by N.J.A.C. 7:12; and
2. For the purpose of surf clam resource conservation, the Commissioner, with the advice of the Council, may close surf clam harvest areas in regions in which the average size of the surf clams is less than four inches in length (longest dimension) as determined by the Department's annual New Jersey surf clam stock assessment survey, by filing a public notice for publication in the New Jersey Register and sending notice to all license holders by first class mail.

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- i.** At such time as the average size of surf clams within these prohibited surf clam harvest areas exceeds four inches in length (longest dimension) as determined by the Department's annual New Jersey surf clam stock assessment survey, the Commissioner, with the advice of the Council, may reopen these areas, by filing a public notice for publication in the New Jersey Register and sending notice to all license holders by first class mail.

7:25-12.10 Harvest limitations; surf clam harvest quota

- (a)** The Commissioner, with the advice of Council, shall establish annually a season quota of between 250,000 and 1,000,000 bushels of surf clams. The season quota shall not exceed 10 percent of the State's estimated standing stock of surf clams.
- (b)** By September 15 of each year the Department shall send notice to all license holders by first class mail, and file notice for publication in the New Jersey Register, of the season quota for the upcoming surf clam harvest season.
- (c)** If the Department does not give notice of the season quota for the surf clam harvest season pursuant to (b) above, the season quota for the upcoming season shall be 500,000 bushels.
- (d)** Each surf clam license allocation shall be 1/57th of the season quota.

7:25-12.11 Bait clams

- (a)** A person or vessel shall not take, attempt to take, harvest, or dredge for bait clams, or participate therein, in any State waters without first obtaining:
 - 1.** A bait clam vessel license as provided for at N.J.A.C. 7:25-12.15; and
 - 2.** A special permit for bait clam harvest from the Division of Water Resources, as provided for at N.J.A.C. 7:12.
- (b)** Bait clam vessel licensees shall harvest bait clams only from condemned waters, as delineated at N.J.A.C. 7:12 and illustrated in the current Shellfish Growing Water Classification Charts, but not from condemned waters located within the prohibited fishing areas delineated at N.J.A.C. 7:25-12.9(a)1 and 2.
- (c)** Bait clam vessel licensees shall report fishing area daily as provided at N.J.A.C. 7:25-12.7(b)1 and file weekly harvest reports as provided at N.J.A.C. 7:25-12.13.
- (d)** The season for taking bait clams shall extend throughout the year.
- (e)** The time for taking bait clams shall be as follows:

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1. October 1 through May 31: Daily, between 6:00 A.M. and 6:00 P.M. Eastern Standard Time; and

2. June 1 through September 30: Monday through Saturday, between one half-hour before sunrise (Trenton Time) and 4:00 Eastern Standard Time.

(f) A weekly bait clam vessel quota may be set by the Commissioner with notice by mail to all license holders.

(g) A person shall not operate the identical vessel to take surf clams in the waters of this State for bait purposes and for human consumption on the same day.

7:25-12.12 Landing fees, tags, transfers of tags

(a) Holders of surf clam license shall pay a landing fee of 15 cents (\$ 0.15) for each bushel landed by the purchase of tags to be attached to each 32 bushel cage (\$ 4.80 for each tag). Tags will be available from the Division's Nacote Creek Shellfish Office, Port Republic, New Jersey, in batches of 50 or more tags. Tags provided under this section shall be valid only for the season for which issued.

(b) Bait clam vessel licensees shall pay a landing fee of 15 cents (\$ 0.15) for each bushel of bait clams harvested from the waters of this State at the time of providing to the Division their weekly surf clam harvest report as required at N.J.A.C. 7:25-12.13.

(c) A licensee may transfer part or all of his or her assigned surf clam tags to another licensee, provided that the other licensee meets all statutory and regulatory criteria for licensing, and receives the Department's approval of a notarized statement of transferor's intent to transfer such tags. The statement of intent shall be signed by the transferor, and shall include the respective sequential surf clam tag numbers. Each license holder shall be limited to a maximum of three tag transfer actions during the term of the license. A transfer which would result in an allocation of tags to a single vessel greater than that allowed under three licenses is prohibited and will not be approved by the Department.

7:25-12.13 Weekly reporting

(a) All surf clam licensees and bait clam vessel licensees shall provide to the Division weekly surf clam harvest reports on forms supplied by the Division. Weekly reports shall include the following:

1. The harvest vessel name and New Jersey surf clam license or bait clam vessel license number;

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2. The dates fished and, for each date fished, the fishing time in hours, the numbers of bushels harvested and the number of the New Jersey Inshore Surf Clam Harvest Zone fished;
 3. For each surf clam or bait clam landing, the port at which the clams were landed;
 4. The name and signature of the captain of the surf clam vessel or bait clam vessel, or the captain's agent, attesting to the validity of the report (see N.J.A.C. 7:25-12.18); and
 5. Sequential listing of surf clam tags used.
- (b) The week for surf clam and bait clam harvest reporting purposes shall begin on Sunday and run through the following Saturday.
- (c) Weekly surf clam bait harvest reports shall be mailed, together with a check or money order for the proper amount of the landing fee, as determined pursuant to N.J.A.C. 7:25-12.12, made payable to the "Treasurer, State of New Jersey," to:
Nacote Creek Shellfish Office
New Jersey Department of Environmental Protection
PO Box 418, Route 9
Port Republic, New Jersey 08241-0418
- (d) Weekly surf clam harvest and bait clam harvest reports shall be submitted to the Division by Saturday, 6:00 P.M. of the week following the week fished.
- (e) If a surf clam vessel or bait clam vessel does not fish in State waters during a given week, the licensee shall provide a weekly report to that effect. If a surf clam licensee has harvested his or her total season allocation, a final report shall be filed to that effect.
- (f) The Division will furnish total State surf clam harvest information to all licensees on an annual basis.
- (g) Except for the total State surf clam harvest in bushels, information provided on weekly surf clam and bait clam harvest reports is confidential and shall not be available for public inspection.
- 7:25-12.14 Issuance of surf clam licenses
- (a) An applicant for a surf clam license or licenses shall be the bona fide owner of a surf clam vessel or vessels and a resident of New Jersey.
- (b) No more than three surf clam licenses may be fished by a single license holder on a single surf clam vessel, to be identified at the time of application. The top and sides of the

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surf clam vessel shall be marked with the New Jersey surf clam license number or numbers in markings at least 18 inches in size, clearly legible and in good repair with no obstruction.

(c) Application for a surf clam license shall be made in person by the vessel owner or agent of the owner to:

Nacote Creek Shellfish Office
Division of Fish and Wildlife
New Jersey Department of Environmental Protection
PO Box 418, Route 9
Port Republic, New Jersey 08241-0418
(609) 748-2040

(d) The license year for surf clam licenses shall be July 1 to June 30.

(e) A licensee may transfer a surf clam license to a new licensee, provided that the new licensee meets all statutory and regulatory criteria for licensing (including, without limitations, application for a license under (c) above and payment of the fee stipulated in N.J.A.C. 7:25-12.16(a)), and receives the Department's approval of a notarized statement of transferor's intent to transfer such tags. The statement of intent shall be signed by the transferor. A license may be transferred no more than three times during its term.

(f) A person shall not transfer a surf clam license or surf clam tags while an enforcement action by the Department for violation of this subchapter is pending. An enforcement action is pending against a license holder from the time the Department issues a Summons or Notice of Violation to the license holder until such time as a final legal disposition of the enforcement action has been rendered. If the final legal disposition of the enforcement action requires that a monetary penalty be paid or orders a suspension of the surf clam license, the surf clam license or surf clam tags shall not be transferred until the monetary penalty has been paid or the suspension time has run, whichever is later.

7:25-12.15 Issuance of bait clam vessel licenses

(a) An applicant for a bait clam vessel license shall be the bona fide owner of the bait clam vessel and a resident of New Jersey, as required by N.J.S.A. 50:2-6.1. Applicants shall submit proof of vessel ownership and proof of residency as part of the bait clam vessel license application.

(b) Application for a bait clam vessel license shall be made in person by the bait clam vessel owner or agent of the vessel owner to:

Nacote Creek Shellfish Office
Division of Fish and Wildlife
New Jersey Department of Environmental Protection
PO Box 418, Route 9
Port Republic, New Jersey 08241-0418

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(c) The license year for bait clam vessel license shall be July 1 to June 30.

(d) The top and sides of the bait clam vessel shall be marked with the New Jersey bait clam vessel license number in markings at least 18 inches in size, clearly legible and in good repair and with no visual obstruction.

7:25-12.16 Licensing fees

(a) The annual fee for each surf clam license shall be the minimum provided for at N.J.S.A. 50:2-6.3.

(b) The annual fee for a bait clam vessel license shall be the minimum provided for at N.J.S.A. 50:2-6.3.

7:25-12.17 Renewal of surf clam licenses and bait clam vessel licenses

(a) Surf clam licenses and bait clam vessel licenses shall be renewed annually by payment of the annual license fee on or before the June 30 immediately preceding the license year. If a surf clam licensee has not paid the annual license fee on or before the expiration date, the Department shall retire that surf clam license from the surf clam fishery.

(b) Surf clam license and bait clam vessel license renewal is specifically conditioned on the continuing compliance of the licensee with all the requirements of this subchapter and all statutory criteria for licensing and harvest. The Department shall not renew a surf clam license or a bait clam vessel license for a licensee who, by June 30, has not filed the required weekly reports in a timely fashion, as specified at N.J.A.C. 7:25-12.13, and, in the case of bait clams, paid the required landing fee in a timely fashion, as specified at N.J.A.C. 7:25-12.12, for any part of the preceding license year.

7:25-12.18 Signatories; certification

(a) All applicants and licensees shall, upon submission of initial, renewal, replacement applications, transfer applications or weekly harvest reports, sign the following certification on the application or report forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

(b) Penalties for false swearing or false reporting may include the penalties set forth in N.J.S.A. 2C:28-3 and the penalties set forth in N.J.A.C. 7:25-12.19.

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7:25-12.19 Penalties

Violation of any section of this subchapter, or any license or order issued pursuant to it, shall subject the violator to the penalties set forth in the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of \$ 100.00 to \$ 3,000 for a first violation, and \$ 200.00 to \$ 5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation, and revocation of any license issued under this subchapter and N.J.S.A. 50:2-6.1 through 50:2-6.3. The Department may compromise and settle any claim for a penalty under this subsection in such amount as in the discretion of the Department may appear appropriate and equitable under all the circumstances.

7:25-12.20 Hearings

(a) Except as provided in (b) below, prior to the suspension or revocation of any license, the licensee has a right to a hearing, upon the licensee's request to the Department. The request for a hearing shall be sent to the New Jersey Department of Environmental Protection, Office of Administrative Hearings and Dispute Resolution, ATTENTION: Adjudicatory Hearing Requests, 401 E. State Street, Mail Code 401-07A, PO Box 402, Trenton, New Jersey 08625-0402. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) When necessary to protect the public health, safety or welfare, the Department may immediately suspend a license without a pre-suspension hearing. In that case, the hearing shall be conducted on an expedited basis.