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SUBCHAPTER 15. Clam Relay Program

7:25-15.1 Relay of hard clams

(a) This rule is intended to implement the hard clam relay program administered statewide by the Department of Environmental Protection (department). This rule must be read together with the shellfish growing water classification rules and definitions which appear at N.J.A.C. 7:12 and are subject to amendment at anytime. N.J.S.A. 58:24-2 requires the department to condemn immediately shellfish beds subject to pollution.

(b) The general intent of this rule is to control the relay of hard clams, (*Ercenaria mercenaria*) from Special Restricted, Seasonal Special Restricted, or Condemned Waters within the Atlantic Coast Section. These designated Special Restricted, Seasonal Special Restricted, or Condemned Waters will be charted by the department and such charts will be issued to participants and available to the public. Anyone who meets the requirements set forth below in this rule may participate in this program. If it becomes necessary to limit the number of participants, then applicants will be admitted in order of their application.

(c) The department will schedule areas for harvest and designate the landing site and so notify the participants. The department will designate certain specific areas as off limits to the use of clam rakes and tongs for the harvest of hard clams in such shallow water areas as it deems abundant with soft clams. Charts of the designated soft clam areas will be provided to all participants by the department. In these designated soft clam areas, the harvest of hard clams shall be permitted only by treading.

(d) Participants shall be furnished numbered receipt forms, with the date they are to be used, by the Division. These forms shall be completed in their entirety and signed by the harvester and also signed by the buyer if the shellfish are to be sold at the landing site, for each date used. Completed and all used receipt forms shall be sent to the Division's Bureau of Shellfisheries' Nacote Creek Office no later than one week after the forms are completed.

(e) Any person who wishes to participate in this program must comply with the following conditions in order to be eligible for participation:

- 1.** Possess a current, valid, commercial clamming license issued by the division (see N.J.S.A. 50:2 et seq.);
- 2.** Possess one of the following special permits issued by the Division of Water Resources (N.J.S.A. 58:24-3 and N.J.A.C. 7:12-2) to harvest and/or buy and/or sell hard clams from condemned waters:
 - i.** Permit 5a: SPECIAL PERMIT TO HARVEST, BUY, SELL AND RELAY HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED

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SEASONAL SPECIAL RESTRICTED OR CONDEMNED WATERS IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; or

ii. Permit 5b: SPECIAL PERMIT TO HARVEST HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS FOR SALE PURPOSES ONLY IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; and

3. The above permits will show on their face the specific conditions that are deemed necessary for the proper operation of the shellfish relay program. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit will be department charts of the harvest areas showing specific sections within the estuaries that may be harvested on any particular day, as determined by the department.

(f) Any person applying for a permit 5a must have acquired a special relay lease from the department for three one-half acre lots of shellfish cleansing grounds on which the relayed shellfish are to be planted by the means hereinafter set forth. No person shall hold more than one relay lease. Applications for leases must be made in person at the Nacote Creek Shellfish Office for the department. The lease shall be subject to the following additional conditions:

1. This special relay lease shall be issued for only one year and shall be reapplied for annually on or before December 31 for the following calendar year.

2. The annual fee for this lease, to be paid at the time of application, shall be \$ 5.00.

3. Once the lease lots have been marked by the division, the lessee shall be solely responsible for the placement and maintenance of the stakes marking same, or their necessary replacement.

4. This special relay lot shall be used for relay from the specified harvest areas only. No special relay lease will be renewed if the lessee did not actively participate in the previous year's program unless such inactivity was due to unusual hardship, as determined by the department, or was due to the department's failure to administrate or operate a hard clam relay program during the previous year.

i. Upon termination of the program by the department, special relay lessees, subject to (h) below shall retain exclusive rights, for a period of 18 months, to the clams planted on their leased grounds before the termination date and may thereafter reapply to lease the grounds;

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- 5.** A lessee vacating a relay lot shall have exclusive right to hard clams planted before the date of vacation for a period of six months from that date.
 - 6.** Signs, having a white background with six-inch black lettering giving the participant's special relay permit number or code symbol and relay lot "Section A" "B," or "C," shall be placed and maintained on the participant's relay lot corners. Failure to mark lots as specified shall be deemed a violation of these rules.
 - 7.** The participant's harvest boat shall be marked on both sides, amidships, with six-inch black letters on a white background giving the participant's first initial, last name, and special relay permit number while he is engaged in any phase of the program.
 - 8.** The designated enforcement unit shall have the authority to inspect any relay lot to ensure compliance with all relay program rules. Shellfish found on any relay lot contrary to these and other applicable statutes and rules shall be subject to seizure.
 - 9.** Nonleased lots within designated relay lease areas are not open to harvest of shellfish at any time. No person shall harvest or attempt to harvest shellfish within 50 yards of any designated relay planting area except the lessee of any leased grounds that may exist within the prohibited area who may harvest on his own leasehold.
 - 10.** As a condition precedent to participation in the relay program, participants consent to the following: The designated enforcement unit may stop and inspect any vehicles involved in the hard clam relay program from the time loading begins at the landing site until the off loading at the planting site. All such stops and inspections shall be expressly for the purpose of ensuring compliance with the hard clam relay regulations and protection of the public's health.
- (g)** All clams harvested from the Special Restricted, Seasonal Special Restricted or Condemned Waters shall be landed at the site and at the time specified by the enforcement unit.
- (h)** All clams harvested by the participant shall be bagged, three-quarter bushel to the bag, in bags approved by the department. All bags shall be marked "RELAY CLAMS," with two-inch letters stenciled on the side. No unstenciled bags will be allowed in the harvester's or buyer's vehicle or boat at the harvest, landing, planting, off-loading, or transplant sites. Each bag shall be marked with the harvester's name and permit number.
- 1.** The bags will be counted by the relay harvester and listed on the numbered three-part relay receipt forms which shall be certified by the harvester. The forms must be filled out in their entirety before the clams are transported. Receipts for

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all clams must be in the transporting vehicle. In the event that the clams are to be sold to the holder of a Permit 5a, the form shall be signed by both the harvester and the buyer-planner at the landing site. The department shall provide receipt forms and seals and designate procedures for their use.

2. The harvester shall retain one copy, forward one copy to the Bureau of Shellfisheries' Nacote Creek Office each Friday, and give the third copy to the buyer who shall carry it with the bagged clams directly to the relay lot. Unused, spoiled, or voided forms shall be returned to the Bureau of Shellfisheries' Nacote Creek Office with the completed forms each Friday.

3. Participants will place their counted bags in the truck, said vehicle provided by the participants and approved by the enforcement unit, for transportation to the planting area. The truck will be sealed by department personnel or their designated agents at the harvest landing site and opened by same at the planting off-loading site. The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site. Deviation from a specified route will not be tolerated except in an emergency. In the case of a mechanical failure or act of God interrupting this process, the transporter will notify the enforcement unit immediately in order to receive further instructions with which he shall comply.

4. Clams in bags shall be transported to the participant's leased lots and planted within the time frame specified by the enforcement unit. The bags of clams will be directly transported to the respective planting lots and immediately planted thereon. All clams shall be removed from the bags as they are planted on the relay lots.

5. Participants shall not harvest any shellfish on the same trip they plant clams from the day's relay. Persons harvesting clams from relay lots after receipt of written permission from the Bureau of Shellfish Control shall not have any stenciled transport bags in their boats at the time they harvest.

6. The Bureau of Shellfisheries shall notify the participants of the dates the relay shall be conducted, the area to be harvested, the hours clams must be landed and planted, and the landing site to be used. Relay clams shall be planted on the subplot designated by the department.

(i) Clams shall be relayed to the leased lots on a schedule set by the department and shall remain upon said leased lots until written permission for harvest has been granted by the Division of Water Resources, Bureau of Shellfish Control. Further, relay clams shall only be planted on the subplot designated by the department. Planting on sublots already in the cleansing period, or released for harvest, is a violation of these regulations and will jeopardize the entire program.

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(j) Only the lessee or his designated substitute harvester shall remove clams from the leased lots. The designated substitute harvester must process a letter of permission, issued by the division's Bureau of Shellfisheries, from the lessee giving the dates for which he is allowed harvest privileges and the lessee's Division of Water Resources Permit 5a number at all times during harvest operations.

(k) The department shall establish a schedule of dates and times for the relay and the areas of the Special Restricted, Seasonal Special Restricted, or Condemned Waters which shall be opened to participants in this program for the harvest of clams. The truck will be sealed at the landing site and unsealed at the planting off-loading site at times established and announced to all participants by the enforcement unit. Any truck carrying relay clams not under seal, or with a broken seal shall be in violation of these regulations.

(l) The department may terminate this program, or anyone's participation therein, at any time for just cause and upon notice to the affected participants. Just cause shall include, but not be limited to, peril to public health, excessive depletion or threat thereof to the shellfish stocks, lack of industry participation, and violation of the rules of the relay program deemed by the department detrimental to the program. Possession of any unmarked bag of clams, or loose clams, in a vessel which has left the relay lots after planting, or any misrepresentation on the receipt form by the harvester or buyer, shall be prima facie evidence of a violation of these rules.

(m) Penalty:

1. Any participant violating this rule or the terms of the special relay permit issued by the Division of Water Resources may have his permits revoked or suspended. This participant may also be subject to prosecution, including fine, imprisonment, and forfeiture of vessel, vehicle, and all equipment.
2. Any lessee who is convicted of an offense which results in the revocation of a Shellfish Harvesting License or Special Permit mentioned in (e)2 above shall have this lease terminated by the department; provided, however, that upon lessee's giving notice to the division within 10 days of departmental notice of termination of said lease, the lessee shall be given the opportunity to show why his lease should not be terminated. Upon issuance of summons to lessee, any transfer of lease will be stayed pending final disposition of said summons. If notice is given within the aforementioned 10-day period, termination of the lease will not be effective until the next regularly scheduled meeting of the Atlantic Coast Section of the Shell Fisheries Council. The Atlantic Coast Section of the Shell Fisheries Council shall have the authority to permanently suspend such termination for good cause shown.
3. Nothing in this section shall allow the termination of a lease because of a violation of N.J.S.A. 50:2-1 or N.J.S.A. 50:2-5. A violation of this rule is a violation of N.J.S.A. 50:1-5 and is subject to a penalty under N.J.S.A. 23:2B-14a

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(first offense \$ 100.00 to \$ 3,000.00; subsequent offense \$ 200.00 to \$ 5,000.00); except that anyone in violation of N.J.A.C. 7:25-15.1(d) and (h)1 (failure to complete report), (f)6 (failure to properly post lot), and (f)7 (failure to mark harvest boat) shall be subject to a penalty of \$ 20.00 for the first offense and \$ 40.00 for each subsequent offense.