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SUBCHAPTER 24. Leasing of Atlantic Coast Bottom for Aquaculture

7:25-24.1 Scope and Authority

This subchapter constitutes the rules of the Department of Environmental Protection governing the leasing of bottom on New Jersey's Atlantic Coast 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, including aquaculture (growout of hatchery reared seed) and layout (wet storage). If bottom will be used for cleansing (relay) activities, its use is subject to the requirements of N.J.A.C. 7:12-9.7 and 7:25-15.1 instead of this subchapter.

7:25-24.2 Construction

This subchapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5 et seq.

7:25-24.3 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.

7:25-24.4 Definitions

The following words and terms, when used in this subchapter, 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 in the tidal waters of the Delaware River, Delaware Bay and their tributaries.

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

"Commercial Shellfish License" means the commercial clam license required and available as specified in N.J.S.A. 50:2-1 to 50:2-5 and N.J.A.C. 7:25-8.1; 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 Atlantic Coast Section of the New Jersey Shell Fisheries Council.

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"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.

"New ground" means bottom not leased as of September 18, 1989, and any leased bottom not subject to a valid lease after September 18, 1989.

"Overstaking" means the placement of stakes or buoys so as to delineate an area greater than that described in the lease.

"Productive" means a determination by the Bureau that the bottom surveyed exhibits significant natural recruitment of one or more shellfish species, as evidenced by one or more of the following factors: shellfish density, shellfish year class strength, presence of juvenile shellfish, size distribution of shellfish population, environmental parameters (such as salinity), and historical production record.

"Public bottom" means bottom not subject to a valid lease on which shellfish may be harvested by members of the public subject to the provisions of this subchapter and any other applicable statutes and regulations.

"Shellfish" means hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), sea clams (surf clams) (*Macrura solidissima*, also known as *Spisula solidissima*) and oysters (*Crassostrea virginica*).

"Shellfish Certificate" means any of the classifications of licenses or certificates issued by the New Jersey Department of Health pursuant to N.J.A.C. 8:13.

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

7:25-24.5 Lease applications for new ground

(a) Lease applications for new ground shall be submitted in person, on forms provided by the Department, to:

Nacote Creek Shellfish Office
P.O. Box 418, Route 9
Port Republic, New Jersey 08241-0418
(609) 441-3284

(b) An application for a shellfish lease for 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

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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 satisfies the following requirements:

1. Holds a valid New Jersey Commercial Shellfish License; or
2. Holds a valid New Jersey Shellfish Certificate.

(c) The biological survey fee for a lease of new ground is \$ 15.00 per application, payable upon application.

(d) Except pursuant to (e) below, no single lease application for new ground shall cover more than two acres.

(e) An application for a single lease of new ground of more than two acres will be accepted only for those lots located within the interior of a block of leased lots, containing more than two acres but less than three acres, which have already been mapped by the Department as of September 18, 1989.

(f) An individual may have only a single lease application for new ground pending at any time. 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.

(g) Applications for leases 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.

(h) Applications for leases 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.

7:25-24.6 Considerations of lease applications for new ground

(a) Once the Department has received a fully completed lease application and biological survey fee, submitted by a person satisfying the requirements at N.J.A.C. 7:25-24.5(b), (d), (f) and (g), 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) Once an applicant satisfying the requirements at N.J.A.C. 7:25-24.5(b), (d), (f), and (g) has submitted a fully completed lease application and biological survey fee to the Department, the applicant shall delineate the approximate boundary of the proposed lease area with temporary corner stakes or buoys marked with the applicant's last name, to enable the Bureau to conduct the biological survey specified in (c) below.

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(c) Except as specified in (c)1 and 2 below, before the Council grants any lease application for new ground, the Bureau will conduct a biological survey to determine the shellfish productivity of the proposed lease area. If the applicant fails to place temporary stakes on the proposed lease area within six months of submitting the lease application, the Council shall automatically deny the application.

1. Any application to lease new ground in the area west of the exterior line delineated by lot numbers 2239, 2240, 2224, 2236.1, 2262.1, 2262, 2261, 2267, 2271, 2269, 2252, 2251, 2254, 2213.1, 2213, and 2282, on the Bureau's Section B, Chart 24.2, available for public inspection at the Nacote Creek Shellfish Office, in the region known as Dry Bay/Hammock Cove shall be exempt from the requirement of a biological survey and from payment of the biological survey fee.

2. Any application to lease new ground in the following areas will be exempt from the requirement of a biological survey and from payment of the biological survey fee, provided, however, that after September 18, 1989 applications for new ground in the following areas will only be accepted from applicants who possess no other leases:

i. Big Creek (Great Bay) lot numbers: 398, 399, 400.1, 401.1, 402.1, 403.1, 404.1, 405.1, 406, 407.1, 408.1, 409.1, 410, 411.1, 412.1, on the Bureau's Section B, Chart 10, available for inspection at the Nacote Creek Shellfish Office; and

ii. Mordecai Island (Little Egg Harbor Bay) lot numbers: 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, on the Bureau's Section B, Chart 13.1, available for inspection at the Nacote Creek Shellfish Office.

(d) The leasing of new ground in areas classified as productive is discouraged.

1. Applications to lease new ground will not be accepted for the following productive areas, as delineated by the Bureau by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12316 (23rd Ed., November 15/86), available for inspection at the Nacote Creek Shellfish Office:

i. Cape Horn (Great Bay);

ii. Goosebar (Little Egg Harbor Bay);

iii. Lakes Bay; and

iv. Sunflower Island.

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2. For lease applications in all other areas, the Bureau will classify the productivity of the proposed lease area based on the results of the biological survey, and provide this information to the Council to aid the Council's evaluation of the lease application.

(e) Consideration of lease applications by the Council shall be governed by the following:

1. Upon completion of the biological survey, the Bureau shall place the application to lease new ground on the agenda, filed with the Secretary of State pursuant to N.J.S.A. 10:4-6 et seq., 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 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.

(f) The applicant shall 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.

(g) Once the Council and the Commissioner have decided whether to grant or deny the lease application, the applicant shall remove any temporary corner stakes or buoys placed pursuant to (b) above. If a lease application is approved by the Council and the Commissioner, the lessee is subject to the staking requirements of N.J.A.C. 7:25-24.10 upon receiving the executed lease from the Department.

7:25-24.7 Hydrographic survey charges; 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 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 Atlantic coast shellfish leases is \$ 2.00 per acre for those areas measured in acres.

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(c) The annual lease fee for Atlantic coast shellfish leases is \$ 2.00 per 100 linear feet of shoreline for those areas measured in linear feet of shoreline (Mullica River and tributaries, Motts Creek and tributaries).

(d) Notwithstanding (b) and (c) above, the minimum annual lease fee for any lessee leasing bottom on the Atlantic Coast is \$ 5.00.

7:25-24.8 Lease renewal

(a) Lessees may renew their leases by submitting the annual lease fee in person at the Nacote Creek Shellfish Office by December 31 for the following calendar year. 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. If a lessee does not either renew the lease by the payment deadline or receive an extension of 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.

(b) Renewal of the lease 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.

(c) Renewal of the lease is subject to the lessee's maintaining a valid Commercial Shellfish License or Shellfish Certificate.

(d) Renewal of the lease is subject to the lessee's not having been convicted in the year prior to renewal of any 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.

(e) At the time of renewal, the lessee shall file a completed report indicating the number of days the lease was worked during the past lease term. The Bureau will provide reporting forms to all lessees by September 15 of each year.

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances:

1. The new lessee shall meet all statutory criteria for leasing specified at N.J.S.A. 50:1-23 through 50:1-31, shall be the holder of a valid Commercial Shellfish License or a Shellfish Certificate and shall not have been convicted in the five years prior to the transfer of violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or any administrative rule promulgated pursuant to those statutory provisions;

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2. The new lessee and the current lessee shall apply for the lease transfer in person at the Nacote Creek Shellfish Office;
3. A lease of new ground acquired through the application process shall not be transferred for a period of one year following the grant of the lease;
4. An application for a lease transfer shall be placed on the agenda of the next regularly scheduled Council meeting for consideration. At that meeting, the Council will receive public comment on the transfer application and shall render a decision to deny the lease application or shall grant the transfer application subject to approval by the Commissioner. A hydrographic survey of the lease area will be required only if the Council or the Department request at the Council meeting that the Bureau perform such a survey to verify the lease area location and/or boundaries; and
5. Following approval of a transfer by the Council and the Commissioner for which a hydrographic survey is requested by either the Council or the Department, the Bureau shall perform a hydrographic survey of the lease area described in the transfer application to verify its location and boundaries. Before the Department issues an executed lease to the new lessee, the new lessee shall reimburse the Bureau for the expense of the hydrographic survey at a rate of \$ 30.00 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the transfer will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

7:25-24.10 Staking of leases

(a) All leases must be staked before working or by May 1 of each year, whichever occurs first, as specified below:

1. There shall be at least two stakes or buoys at each corner;
2. Line stakes or buoys shall be placed no greater than 150 feet apart so as to delineate a definite line between corners;
3. All stakes and buoys must project at least four feet above high water;
4. If the lessee of record holds leases for two or more adjacent leased areas, it is only necessary that the outside perimeter of the lessee's combined area be staked as specified in (a)1, 2 and 3 above; and
5. The above staking requirements do not apply where corner or line stakes or buoys would fall within a designated navigation channel. The placement of corner or line stakes or buoys within designated navigation channels is prohibited.

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(b) Failure to stake leases as specified at (a) above before working or by May 1 of each year shall subject the violator to termination of the lease upon the recommendation of the Council and the approval of the Commissioner

7:25-24.11 Improper staking of leases

(a) Any person who stakes an area for which he or she does not possess a valid lease or lease application shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

(b) If a survey by the Bureau of Shellfisheries reveals that a lease is overstaked the lessee shall be required to:

1. Pay the expense of the survey;
2. Pay a monetary penalty as provided in N.J.A.C. 7:25-24.17; and
3. Relocate corner and line stakes to their proper positions immediately.

(c) Failure to relocate corner or line stakes, or both, immediately upon notification of overstaking shall subject the violator to termination of the lease upon the recommendation of the Council and the approval of the Commissioner.

(d) More than one instance of overstaking shall subject the violator to termination of the lease upon the recommendation of the Council and approval of the Commissioner.

(e) Removal of a lessee's stakes or buoys by a person other than the lessee or the lessee's agent is prohibited. Violators shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

7:25-24.12 Protection of leased lands from invasion

A person shall not dredge upon, throw, cast or drag an oyster dredge, use oyster tongs, rakes, forks or other instruments or appliances used for catching oysters or clams, or tread for clams, upon any of the leased lands of the State lying under the tidal waters of the Atlantic seaboard or tributaries thereof, above Cape May Point, other than land or ground for which such person or his or her employer then holds a lease from the Council. Violators shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

7:25-24.13 Disposition of condemned lease areas

(a) Any bottom leased through the application process after September 18, 1989 and subsequently condemned for the harvest of shellfish pursuant to N.J.S.A. 58:24-1 et seq., as implemented by N.J.A.C. 7:12, shall be governed by the following:

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1. The lessee shall be given a period of two years from the date the lease area was condemned during which time the lessee may move any shellfish present to a lease in approved water. To exercise the option to remove shellfish to approved waters, the lessee of a condemned lease area shall maintain a valid Commercial Shellfish License or Shellfish Certificate, and renew the lease if necessary, as specified in N.J.A.C. 7:25-24.8;
2. Prior to moving any shellfish, the lessee shall apply for and receive a special permit for this purpose, issued pursuant to N.J.S.A. 58:24-1 et seq., as implemented by N.J.A.C. 7:12, from the Division of Water Resources, Bureau of Marine Water Classification and Analysis;
3. During the two year period following the condemnation of a lease area, the lease shall not be transferred except by descent or distribution upon the death of the lessee, using the procedure in N.J.A.C. 7:25-24.9. The new lessee shall meet all criteria for the transfer of a lease specified in N.J.A.C. 7:25-24.9(a). A transfer occurring because of the lessee's death does not affect the two year period allowed for removal of shellfish; and
4. At the end of the two year period specified in (a) above, the lease shall be terminated. The lease shall not be renewed or extended unless the lessee demonstrates the need to continue the lease to the Council and the Commissioner. Grounds for extension of the lease may include illness. Failure to obtain a permit for transplanting shellfish shall not be grounds for extension of the lease.

7:25-24.14 Disposition of terminated lease areas

If a lease governed by this subchapter is terminated for any reason, the lease area shall be considered public bottom available for harvesting or lease application provided not prohibited by this subchapter or other statutes or rules.

7:25-24.15 Research/education activities

- (a) The Council may grant, subject to the approval of the Commissioner, leases of new ground to educational institutions for the purpose of research or education, or both. Such leases shall be in the name of the institution and the responsible investigator.
- (b) The application for a research/education lease shall be accompanied by a written proposal explaining the need for the lease and describing the research to be conducted.
- (c) The holder of a research/education lease shall apply for annual lease renewal prior to December 31 of each year. Renewal of a research/education lease is contingent upon a written report on the use of the lease during the past lease term. The report shall explain the research and education activities conducted and the results obtained. In addition, a proposal for use of the lease for the coming year shall be submitted as part of the report.

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(d) Applications, reports and proposals for research/education leases and research/education lease renewals shall be reviewed by Bureau staff who shall recommend to the Council and to the Commissioner whether to grant, renew or deny each lease for the purpose of research or education, or both.

(e) A lease issued for the purpose of research or education, or both, shall not be used as a commercial venture or profit making activity for any institution, investigator, student or any other person. Shellfish or other items obtained through a research/education lease shall not be sold under any circumstances.

(f) Leases for research/education purposes are subject to the provisions of this subchapter except as follows:

1. A commercial shellfish license or shellfish certificate is not required for obtaining or renewing the lease (see N.J.A.C. 7:25-24.5);
2. The Bureau will not conduct a biological survey unless requested by the Council. If the Bureau conducts a biological survey, a biological survey fee will not be charged unless requested by the Council in its discretion (see N.J.A.C. 7:25-24.6(c));
3. A lease fee will not be charged (see N.J.A.C. 7:25-24.7);
4. The Bureau will not conduct a hydrographic survey and will not charge a hydrographic survey fee; however the lessee shall follow the provisions of N.J.A.C. 7:25-24.10 concerning staking (see N.J.A.C. 7:25-24.7); and
5. The Council, with the approval of the Commissioner, may grant a research/education lease of more than two acres if, in the opinion of the Council, the written proposal accompanying the lease application justifies the need for the increased lease size.

(g) The lessee of record shall comply with all other provisions of this subchapter.

(h) Failure to comply with the specific provisions of this section may result in termination of the lease by the Council, with the approval of the Commissioner.

7:25-24.16 Signatories; certification

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

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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. 7:25-24.17.

7:25-24.17 Penalties

Violations of any section of this subchapter, or any lease 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. The Department may compromise and settle any claim for a penalty under this subsection in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances.