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ENVIRONMENTAL PROTECTION

WATER MONITORING AND STANDARDS

BUREAU OF MARINE WATER MONITORING

Shellfish Growing Water Classifications

Proposed Amendments: N.J.A.C. 7:12-1.5, 3.2, 4.1, 4.2 and 9.10

Authorized By:	Lisa P. Jackson, Commissioner, Department of Environmental Protection
Authority:	N.J.S.A. 13:1D-9 and 58:24-1 et seq.
DEP Docket Number:	06-07-03/629
Calendar Reference:	See Summary below for explanation of exception to calendar requirement.
Proposal Number:	PRN -

Submit written comments by (60 days after publication) to:

Oneida Cuevas, Esq.
Attention: DEP Docket Number:
Office of Legal Affairs
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CDs as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The proposed amendment can be viewed or downloaded from the Department's website at <http://www.state.nj.us.dep>.

The agency proposal follows:

Summary

As the Department has provided for a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30 – 3.3(a)5.

The Department is proposing to amend its rules on the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Marine Water Monitoring. This proposed amendment would result in the downgrade of approximately 1,858 acres of shellfish waters. A summary of the specific proposed amendments follows.

N.J.A.C. 7:12-1.5, Temporary Harvest Suspension, sets forth the circumstances under which the Department would temporarily suspend the harvest of shellfish. The Department is proposing to amend N.J.A.C. 7:12-1.5(a) by adding the term “immediately” to the first sentence to clarify that under certain circumstances, the Department will immediately suspend the harvest of shellfish. The Department is

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proposing to amend N.J.A.C. 7:12-1.5(b) by adding new language to clarify that the Department will immediately suspend harvest in any waters that at the time of sampling, do not meet the standards for the particular waters' classification, pending the establishment by rulemaking of the appropriate classification and boundaries of waters as prohibited, special restricted, seasonal special restricted, or approved under this chapter. Currently, the rules do not codify this statutory authority. This proposed amendment would provide for the immediate condemnation of shellfish waters to protect public health, consistent with N.J.S.A. 58:24-2.

The Department is also proposing to delete the current language at N.J.A.C. 7:12-1.5(b) which states that the Department must immediately notify a list of agencies that are affected by the suspension of shellfish harvest because this same language is also found at N.J.A.C. 7:12-1.5(c)2. The Department proposes to amend N.J.A.C. 7:12-1.5(c)2 by deleting (c)2 and replacing it with (d) for organizational purposes. In addition, the Department is proposing to change the title of the subsection to "Immediate Shellfish Harvest Suspensions".

The Department is proposing to amend the classifications of certain shellfish waters as the result of surveys conducted by the Bureau of Marine Water Monitoring. The proposed amendments will result in the downgrade of approximately 1,829 acres of shellfish waters from Approved to Special Restricted and 29 acres from Approved to Seasonally Approved for a total of 1,858 acres to be downgraded. As a result of recent downgrades within the Delaware Bay area additional analysis and sampling have been conducted to determine the cause of the degraded water quality. However, at this point the Department has not determined the reason for the degraded water quality.

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N.J.A.C. 7:12-3, Special Restricted Shellfish Growing Waters, delineates those waters that are classified as Special Restricted. Shellfish from waters classified as Special Restricted may be utilized for human consumption only through one of the special permit programs under N.J.A.C. 7:12-9. The proposed amendments at N.J.A.C. 7:12-3.2(a)33i(1), will downgrade a portion of the northwestern section of the Delaware Bay and Delaware River area, (1,829 acres extending southward from near the mouth of Lower Deep Creek) from Approved to Special Restricted.

N.J.A.C. 7:12-4, Seasonally Approved Shellfish Growing Waters, delineates those waters that are classified as Approved for the harvest of shellfish for part of the year and classified as Special Restricted for the remainder of the year. Under N.J.A.C. 7:12-4.1, certain waters are classified as Approved from November 1 through the following April 30 of each year. Under N.J.A.C. 7:12-4.2, certain other waters are classified as Approved from January 1 through April 30 of each year. The Department has established these different periods during which waters are classified as Approved based on pollution loading in the waters. Under N.J.A.C. 7:12-4.1(a)13iii(2)ix, the Department will downgrade portions of the Delaware Bay (Cohansey Cove, 29 acres) from Approved to Seasonally Approved (Nov – April).

The proposed amendments revising classifications of certain shellfish beds are the result of statewide surveys conducted by the Bureau of Marine Water Monitoring in the Department. In conducting these surveys, the Bureau collects and analyzes approximately 15,000 water samples per year, inventories actual and potential sources of pollution, and performs hydrographic studies of flow patterns, which distribute pollution

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for all shellfish growing waters. For this reclassification, 4,719 water samples were collected and analyzed from the Delaware Bay and Delaware River area. These surveys were conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations as described in the National Shellfish Sanitation Program "Guide for the Control of Molluscan Shellfish". The FDA further requires that each state annually appraise the quality of those waters classified as "Approved" for the harvest of shellfish. New Jersey conducts scientific investigations and research and, pursuant to N.J.S.A. 58:24-1 *et seq.*, revises the rules annually. These reclassifications reflect changes in water quality and are the result of sampling required by the National Shellfish Sanitation Program.

The names of the waterways and number of acres to be reclassified are listed below in general terms (Note: "Approved" means waters meeting the sanitary requirements to allow year-round shellfish harvesting; "Seasonally Approved" means waters meeting the sanitary requirements for harvesting part of the year; and "Special Restricted" means waters not meeting the sanitary requirements to harvest except by special permit.

Chart No.	Area	Action	Acres
10	Delaware Bay (Northeast section)	Approved to Special Restricted	1,829
10	Delaware Bay (Cohansey Cove)	Approved to Seasonally Approved	29

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Additionally, the Department is proposing to amend the boundary descriptions for two locations by adding references to markers that more precisely facilitate separating the different classifications of shellfish waters. The first location is in Jarvis Sound, described at N.J.A.C. 7:12-3.2(a)30iii and N.J.A.C. 7:12-4.2(a)10i. The other location is in Maurice River Cove, described at N.J.A.C. 7:12-3.2(a)32i and N.J.A.C. 7:12-4.1(a)13iii. Although the additional markers will not change the shellfish water classification, they will result in a more efficient means of distinguishing the boundary lines between the two classifications of waters.

N.J.A.C. 7:12-9.10, Transplant Program, lists the areas located within the Special Permits section of the rules. The Department is proposing to amend N.J.A.C. 7:12-9.10(a) and (b) by including seed clams as a part of the program. The Transplant program was originally developed for movement of oyster seed (submarket size) from areas other than Approved areas for replanting in Approved areas until they grow to market size. This proposed amendment to include clams as part of the Transplant program is intended to address the increasing interest by aquaculturists to move seed clams from non-approved waters.

Social Impact

The proposed amendments will have a positive impact on the State's shellfish growing waters. While the downgrading of specific waters may reduce localized

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recreational opportunities, the net effect of adopting the amendments will allow the Department the ability to maintain a high level of public health protection by maintaining the high water quality standards of the State's shellfish growing waters. A direct connection exists between the consumption of shellfish harvested from contaminated areas and human illness. The last major incidence of a pollution-related illness linked to shellfish from New Jersey waters was in 1966. Since then, much greater emphasis has been placed on the classification of shellfish-producing waters. The National Shellfish Sanitation Program (NSSP) developed a manual of operations that became the guiding document in the sanitary control of shellfish harvest areas. New Jersey expanded the use of the special permit programs in the early 1970s. These programs capitalized on the natural ability of shellfish to purge bacterial contamination when moved from a contaminated site to a clean site.

In addition, the adoption of these amendments will benefit the more than 9,000 persons licensed to harvest shellfish by assuring that they will be harvesting shellfish from waters that meet the water quality requirements as stipulated by the NSSP for the safe consumption of shellfish. These amendments would also benefit the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. The continued monitoring efforts undertaken by the Department ensure that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters.

As a result of the increased interest in transplanting seed clams by aquaculturists, the proposed amendment to the Transplant Program will have a positive social impact by

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allowing the Department to monitor the seed clams in the same manner that seed oysters are monitored.

Economic Impact

The Shellfish Growing Water Classification rules delineate the classification of the waters of the State for shellfish harvesting and the Special Resource Recovery programs under the National Shellfish Sanitation Program guidelines established by the Interstate Shellfish Sanitation Conference. The proposed amendments to the shellfish classification will ensure that the public health will continue to be protected by only allowing the harvest of shellfish from waters Approved for shellfish harvesting. Additionally, those individuals harvesting and/or selling shellfish will be able to consume and sell a safe and healthy product. The reclassifications contained in these amendments represent the Department's commitment to maintaining the high water quality standards of the State's shellfish growing waters.

The economic benefits of protecting public health from the potential of consuming contaminated shellfish have been recognized by the shellfish industry. The Department anticipates that the economic losses from illnesses associated with contaminated shellfish would be greater than the economic loss from such downgrades.

The Department anticipates that the Transplant Program will not have any economic impact.

Environmental Impact

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The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured. The proposed amendments represent a tangible measurement of the quality of New Jersey's coastal surface waters as well as providing an historical record for future comparison. The proposed amendments will have a positive environmental impact by validating the need for the extensive monitoring efforts upon which the specific changes herein are based. The proposed amendments will also help to identify areas of concern for the Department to focus its efforts in determining the reason for the degraded water quality. The proposed amendments to the Transplant Program will have no impact on the environment.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 *et seq.*, (P.L. 1995, c 65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed amendments are developed under public health control procedures of the National Shellfish Sanitation Program (NSSP). The NSSP is a tripartite cooperative program consisting of the States, shellfish industry and the Federal Food and Drug Administration. This cooperative program is managed through the Interstate Shellfish Sanitation Conference, which developed the sanitary control procedures defined in the Guide for the Control of Molluscan Shellfish. Each shellfish producing state has

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the responsibility to adopt laws and regulations consistent with the guidelines of the NSSP. The Food and Drug Administration is responsible for reviewing the state shellfish control program to ensure that it is consistent with all other state shellfish control programs. These proposed amendments implement the NSSP guidelines and contain no standards or requirements that exceed the standards or requirements imposed by Federal Law. Executive Order No 27(1994) and NJSA 52:14B-1 et seq. (P.L. 1995, c.65), do not require further analysis.

Jobs Impact

The Shellfish Growing Water Classification rules enable individuals to harvest shellfish from Approved and Seasonally Approved waters and through the special permit programs from Special Restricted waters. The proposed amendments to the classifications will result in a downgrade of shellfish waters by approximately 1,858 acres. Although this amendment will reduce the amount of waters available for direct harvest, which in turn will reduce the harvesters' area of available shellfish waters it will show the Department's commitment to maintaining the high water quality standards of the State's shellfish growing waters. The proposed amendment to the classifications and the Transplant Program will have no impact on job employment opportunities.

Agricultural Industry Impact Statement

Pursuant to P.L. 1998, c.48, the Department has evaluated this rulemaking to determine the nature and extent of the proposed rule on the agriculture industry.

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The Department anticipates that the proposed amendments, which modify the classification of shellfish harvesting waters, will have no effect upon agricultural concerns. The Department anticipates that the proposed amendments to the Transplant Program will have a positive impact on the agriculture industry by allowing for the aquacultural monitoring of seed clams.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 *et seq.*, the Department has determined that the proposed amendments will not impose reporting, record keeping requirements or other compliance requirements on small business. The proposed amendments delineate areas from which shellfish may not be harvested. No additional costs of compliance are anticipated, and no professional services will need to be employed to comply with the proposed amendments. As the shellfish classifications benefit licensees, no lesser requirements or exemptions are provided based on business size.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State

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Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' impact on smart growth and the implementation of the State Plan. The proposed amendments to the shellfish classification and the Transplant Program do not involve land use policies or infrastructure development and, therefore, will not have any impact on the achievement of smart growth. The proposed amendments are intended to protect public and environmental health, which are goals of the State Plan. Accordingly, the reclassification of the State's water and shellfish resources are supportive of the goals of the State Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:12-1.5 [Emergency] **Immediate Shellfish** harvest suspensions

(a) The Department shall **immediately** suspend harvest in areas impacted by an intermittent pollution episode or emergency condition when the event has or may have a deleterious impact on public health. Examples of such events include the following: wastewater facility malfunctions, sewer line breaks, malfunctioning septic systems, catastrophic storm events, or other hazardous material spills. The Department shall consider the following factors in determining the necessity, area extent, and length of such a[n emergency] suspension:

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1.-6. (No change.)

(b) The Department shall immediately suspend harvest in any waters that, at the time of sampling, do not meet the standards for the particular waters' classification, pending the establishment by rulemaking of the appropriate classification and boundaries of the waters as prohibited, special restricted, seasonal special restricted, seasonally approved or approved under this chapter.

[(b) The Department shall immediately notify representatives of agencies or organizations affected by an emergency suspension by fax or email. Notice of harvest suspension shall be posted in areas where those harvesting shellfish would be likely to enter the water. The following agencies shall be notified:

1. State enforcement agencies, including the NJDEP Water Compliance and Enforcement Program, Division of Fish and Wildlife Enforcement and the New Jersey State Marine Police in the area in which the suspension occurred;
2. The shellfish program in the State Department of Health and Senior Services and the health agencies in the county in which the suspension occurred;
3. The U.S. Food and Drug Administration (USFDA);

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4. The U.S. Environmental Protection Agency (USEPA); and

5. Members of the Atlantic Coast Shellfish Council and/or the Delaware Bay Shellfish Council.]

(c) The Department shall develop a marine biotoxin contingency plan to routinely sample shellfish growing water for marine organisms. The Department shall expand the sampling and analysis of shellfish waters and/or shellfish tissue in the event that phytoplankton that produce various marine biotoxins or naturally occurring harmful algal blooms are identified in a harvest area. The Department shall immediately suspend shellfish harvest in the event that it is determined that the level of biotoxin present in shellfish meats or the level of naturally occurring harmful algal blooms in the waters of the harvest area is sufficient to cause a health risk.

1. The factors considered in determining the necessity, extent, and length of such a[n emergency] suspension shall include:

i.-vi. (No change.)

[2.] **(d)** The Department shall immediately notify representatives of agencies or organizations affected by [such an emergency] **a harvest** suspension **under this section** by fax or email. Notice of harvest suspension shall be posted in areas where those harvesting shellfish would be likely to enter the water. The following agencies or

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organizations shall be notified:

- [i.] 1. State enforcement agencies including the NJDEP Water Compliance and Enforcement Program and the New Jersey State Marine Police in the area in which the suspension occurred;
- [ii.] 2. The shellfish program in the State Department of Health and Senior Services and the health agencies in the county in which the suspension occurred;
- [iii.] 3. The U.S. Food and Drug Administration (USFDA);
- [iv.] 4. The U.S. Environmental Protection Agency (USEPA); and
- [v.] 5. Members of the Atlantic Coast Shellfish Council and/or the Delaware Bay Shellfish Council.

Subchapter 3. Shellfish Growing Water Classification – Special Restricted

N.J.A.C. 7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

- 1. – 29. (No Change.)
- 30. The Wildwoods area:

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i. – ii. (No Change.)

iii. All of the waters in the south portion of Jarvis Sound from a [point] **Department maintained marker** north of the mouth of Upper Thorofare at latitude 38 degrees 58 minutes 12.4 seconds N, longitude 74 degrees 52 minutes 39.1 seconds W, bearing approximately 222 degrees T across to a Department maintained marker on the south side of the mouth of Upper Thorofare then continuing along the shoreline in an easterly direction to a Department maintained marker on the west side of the mouth of Middle Thorofare bearing approximately 125 degrees T across the mouth of Middle Thorofare to a Department maintained marker on the other side then again continuing east to a Department maintained marker on the west side of the mouth of Lower Thorofare and bearing approximately 084 degrees T across the mouth of Lower Thorofare to a Department maintained marker on the other side then continuing along the shoreline in a northerly direction to a [point] **Department maintained marker** at latitude 38 degrees 57 minutes 38.4 seconds N, longitude 74 degrees 51 minutes 56.6 seconds W., then bearing approximately 316 degrees T **to a Department maintained marker at latitude 38 degrees 57 minutes 54.7 seconds N, longitude 74 degrees 52 minutes 16.6 seconds W, and** back to the point of origin and terminating.

31. (No Change.)

32. Delaware Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. Maurice River and Maurice River Cove: Maurice River and tributaries thereof and that portion of Maurice River Cove between the following two lines:

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(1) All of the water upstream of a line beginning at the East Point Lighthouse and bearing approximately 226 degrees T to Flashing Green 2.5 second "5" (Fl G 2.5 sec "5") in the Maurice River Approach Channel then bearing approximately 323 degrees T to a Department maintained marker at latitude 39 degrees 11 minutes 47.9 seconds N, longitude 75 degrees 2 minutes 41.6 seconds W, then bearing approximately 323 degrees T to a Department maintained marker at latitude 39 degrees 12 minutes 16.7 seconds N, longitude 75 degrees 3 minutes 10.0 seconds W, then bearing approximately 323 degrees T to a Department maintained marker at latitude 39 degrees 12 minutes 52.5 seconds N, longitude 75 degrees 3 minutes 45.2 seconds W on the western bank of the Maurice River Cove and terminating;

(2) (No Change.)

iv.-x. (No. Change.)

33. Delaware River area:

i. All of the New Jersey portion of the Delaware River and its tributaries thereof and the New Jersey section of Delaware Bay and its tributaries between the two lines described herein:

(1) A straight line beginning [at the tower just] northwest of the mouth of [Mad Horse] Cherry Tree Creek bearing approximately [173] 169 degrees T to a point at Latitude 39 degrees 24 minutes 8.8 seconds N. Longitude 75 degrees 26 minutes 29.7 seconds W. then bearing approximately 169 degrees to a [tower on Bombay Hook Point] point northwest of Big Stone Beach, Delaware, at Latitude 39 degrees 0 minutes 38

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seconds N., Longitude 75 degrees 20 minutes 2 seconds and this line intersects the New Jersey-Delaware boundary line at Latitude 39 degrees [21] 20 minutes [16] 9.9 seconds N., Longitude 75 degrees [26] 25 minutes [44] 24.5 seconds W.; and

(2) – (3) (No Change.)

N.J.A.C. 7:12-4.1 Seasonally Approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1. – 12. (No Change)

13. Delaware Bay:

i. – ii. (No Change.)

iii. Maurice River Cove: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly.

(1) All those waters inside of a line beginning at Flashing Green 2.5 second "5" (FL G 2.5 sec. "5"), then bearing approximately 188 degrees T to flashing Green 4 second "3" (FL G 4 sec "3"), then bearing approximately 171 degrees T to a point at latitude 39 degrees 10 minutes 23.32 seconds N., longitude 75 degrees 2 minutes 19.99 seconds W., then bearing approximately 290.5 degrees T to a Department maintained marker at latitude 39 degrees 11 minutes 6 seconds N., Longitude 75 degrees 04 minutes 50

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seconds W., then bearing approximately 013 degrees T to a Department maintained marker on the shoreline west of the mouth of the Maurice River, then along the shoreline in a northeasterly direction to another Department maintained marker[,]
at latitude 39 degrees 12 minutes 52.5 seconds N, longitude 75 degrees 3 minutes 45.2 seconds W,
then bearing approximately 143 degrees T to a Department maintained marker at latitude 39 degrees 12 minutes 16.7 seconds N, longitude 75 degrees 3 minutes 10.0 seconds W, then bearing approximately 143 degrees T to a Department maintained marker at latitude 39 degrees 11 minutes 47.9 seconds N, longitude 75 degrees 2 minutes 41.6 seconds W, then bearing approximately 143 degrees T to Flashing Green 2.5 second "5" (FL G 2.5 sec. "5"), and terminating; and

(2) (No Change.)

iv.- viii. (No Change.)

ix. All of the waters northeast of a line from a point south of Bay Side at Latitude 39 degrees 22 minutes 51 seconds N., Longitude 75 degrees 24 minutes 14 seconds W. and bearing approximately 133 degrees T to the westernmost tip of a point of land at Latitude 39 degrees 22 minutes 33 seconds N., Longitude 75 degrees 23 minutes 50 seconds W.

7:12-4.2 Seasonally Approved growing waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31 yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for harvest of shellfish from May 1 through December 31 yearly and Approved for the harvest of shellfish from January 1 through April 30 yearly:

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1. – 9. (No Change.)

10. The Wildwoods area:

i. All of the portion of Jarvis Sound beginning at a point at latitude 38 degrees 58 minutes 25.0 seconds N, longitude 74 degrees 51 minutes 41. 8 seconds W, then continuing along the shoreline in a southerly direction to a Department maintained marker on the north side of the mouth of Meadow Creek then bearing approximately 239 degrees T to a Department maintained marker on the south side of Meadow Creek then continuing in a southerly direction to a Department maintained marker on the north side of the mouth of Punyard Creek and bearing approximately 222 degrees T across to a [point] **Department maintained marker** north of the mouth of Upper Thorofare at latitude 38 degrees 58 minutes 12. 5 seconds N, longitude 74 degrees 52 minutes 39.1 seconds W, then bearing approximately 136 degrees T to a **Department maintained marker at latitude 38 degrees 57 minutes 54.7 seconds N, longitude 74 degrees 52 minutes 16.6 seconds W, then bearing approximately 136 degrees T to a [point] Department maintained marker** at latitude 38 degrees 57 minutes 38.4 seconds N, longitude 74 degrees 51 minutes 56.6 seconds W, then continuing along the shoreline in a northerly direction to a Department maintained marker at the south side of the mouth of Shell Thorofare and bearing approximately 330 degrees T across the mouth of Shell Thorofare to the other side then continuing along the shoreline of the ICW in a northerly direction to a point at latitude 38 degrees 58 minutes 20.0 seconds N, longitude 74 degrees 51 minutes 35.7 seconds W, and bearing approximately 317 degrees T back to the point of origin and terminating.

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7:12-9.10 Transplant program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters **and/or Seed Clams**) is to allow for the harvest and possession of seed oysters **and/or seed clams** from waters classified other than Approved for transplanting to leased lots in Approved waters and/or Seasonally Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Marine Water Monitoring. The purging period will be for a minimum of 30 days at which the water temperature of the approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit) as determined by the Bureau of Marine Watering Monitoring.

(b) Permit No. 7 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58.24-3.

1. Species is limited under said permit to oysters (*Crassostrea virginica*) **and/or clams** (**Mercenaria mercenaria**).

2. – 5. (No Change.)

6. Seed oysters **and/or seed clams** transplanted to leased lots in Approved waters and/or Seasonally Approved waters shall remain upon said lots until written approval to reharvest has been granted by the Department's Bureau of Marine Water Monitoring.

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7. -10. (No Change.)

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement addressing the requirements of Executive Order No. 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of these proposed amendments. I hereby authorize this proposal.

DATE: _____
Lisa P. Jackson, Commissioner