ENVIRONMENTAL PROTECTION

WATER MONITORING AND STANDARDS

BUREAU OF MARINE WATER MONITORING

Shellfish Growing Water Classification

Proposed Amendments: N.J.A.C. 7:12-1.4, 1.5, 2.1, 3.2, 4.1, 4.2 and 9.13

Authorized By: Mark N. Mauriello, Acting Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEP Docket Number:

Calendar Reference: See Summary below for explanation of exception to calendar

requirement.

Proposal Number: PRN -

Submit written comments (no later than 60 days following publication of this proposal):

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

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CDs as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. 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 rule proposal can be viewed or downloaded from the Department's website at http://www.state.nj.us.dep/rules.

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. The proposed amendments will result in a total upgrade of approximately 1,381 acres of shellfish waters and a total downgrade of approximately 293 acres of shellfish waters resulting in a net upgrade of approximately 1,088 acres of shellfish waters. A summary of the specific proposed amendments follows.

N.J.A.C. 7:12-1.4, Classification of shellfish waters, sets forth the criteria used for the classification of shellfish waters. The Department proposes to amend N.J.A.C. 7:12-1.4(a) to

include the most recent version of the National Shellfish Sanitation Program publication entitled "Guide for the Control of Molluscan Shellfish."

N.J.A.C. 7:12-1.5, Immediate Shellfish harvest suspensions, sets forth the circumstances under which the Department would temporarily suspend the harvest of shellfish.

The Department is proposing to add a new N.J.A.C. 7:12-1.5(d) to establish the *Vibrio parahaemolyticus* Management Plan as authority for immediately suspending or restricting shellfish harvest. The National Shellfish Sanitation Program (NSSP) requires states to conduct an annual *Vibrio parahaemolyticus* risk evaluation to determine whether the risk of *Vibrio parahaemolyticus* infection from the consumption of shellfish harvested from an area is reasonably likely to occur. If a state's *Vibrio parahaemolyticus* risk evaluation determines that the risk of *Vibrio parahaemolyticus* illness is reasonably likely to occur, the state must develop and implement a *Vibrio parahaemolyticus* management plan.

Vibrio parahaemolyticus is an organism that occurs naturally in coastal waters. It is not related to pollution, which means that traditional controls for shellfish sanitation related to growing water classification are marginally effective. Instead, the occurrence of this organism in elevated levels appears to be related to the interaction of environmental variations such as temperature, salinity, fresh water inflow to the bays where shellfish grow and tidal flushing.

In compliance with the NSSP requirement above, the Department, in conjunction with the Department of Health and Senior Services, has developed and annually updates the New Jersey *Vibrio parahaemolyticus* Management Plan. The Plan establishes shellfish harvest control measures which can include restrictions on the hours of the harvest of shellfish as per the NSSP requirements to minimize the growth of the pathogen and consequently reduce the risk of illness

for the protection of public health.

Based on the 2008 risk evaluation, the Department's 2009 *Vibrio parahaemolyticus* Management Plan limited the harvest of shellfish from sunrise to 11 a.m. in the Delaware Bay from June 8, 2009 through September 4, 2009.

The *Vibrio parahaemolyticus* Management plan is available on the Bureau of Marine Water Monitoring's website at: www.nj.gov/dep/bmw.

The Department proposes recodifying N.J.A.C. 7:12-1.5(d) as N.J.A.C. 7:12-1.5(e). The Department is proposing to amend N.J.A.C. 7:12-1.5(e) to include reference to restrictions as well as suspensions since the control measures that may be implemented under new N.J.A.C. 12-1.5(d) are not limited to suspensions. In addition, for the same reason, the Department is proposing to change the section heading to "Immediate shellfish harvest suspensions and restrictions."

N.J.A.C. 7:12-2, Prohibited Shellfish Growing Waters, delineates those waters that are classified as Prohibited. Shellfish from waters classified as Prohibited cannot be utilized for human consumption. As a result of surveys conducted by the Water Monitoring and Standards program, the proposed amendments will downgrade 120 acres in the Navesink River, (see N.J.A.C. 7:12-2.1(a)3viii), 150 acres in Branchport Creek, tributary to the Shrewsbury River, (see N.J.A.C. 7:12-2.1(a)3ix), and 23 acres in Tuckerton Creek (see N.J.A.C. 7:12-2.1(a)8), from Special Restricted to Prohibited, for a total of 293 acres to be downgraded.

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. As a result of surveys conducted by the Water Monitoring and Standards program, the proposed amendments at N.J.A.C. 7:12-3.2(a)1 will upgrade a portion of the Raritan Bay known as Keyport Harbor (1,050 acres) from Prohibited to Special Restricted.

The Department is proposing to amend N.J.A.C. 7:12-3.2(a)20viii to accurately describe the location of the closure markings located at Cape Horn Creek in the Mullica River Great Bay area.

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. As a result of surveys conducted by the Water Monitoring and Standards program, the Department is proposing to upgrade 110 acres of shellfish waters in Crook Horn Creek from Seasonally Approved (November to April) to Approved. Under N.J.A.C. 7:12-4.2(a)10i, the Department is proposing to upgrade approximately 221 acres of shellfish waters in Sunset Lake from Special Restricted to Seasonally Approved (January to April).

The proposed amendments above revising classifications of certain shellfish beds are the result of statewide surveys conducted by the Water Monitoring and Standards program, Bureau of Marine Water Monitoring. 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 water currents, which distribute pollution. For this reclassification, 4,719 water samples were collected and analyzed. 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 monitoring and, pursuant to N.J.S.A. 58:24-1 et seq., revises the rules annually. The reclassifications in this proposal reflect changes in water quality, either improving or declining as shown in Table 1 and are the result of sampling required by the NSSP.

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; "Seasonal" means waters meeting the sanitary requirements for harvesting part of the year; "Special Restricted" means waters not meeting the sanitary requirements to harvest except by special permit, i.e. depuration or relay of shellfish; and "Prohibited" means waters not meeting the sanitary requirements for shellfish harvesting).

Table 1. Shellfish growing water classification changes.

Chart #	Area	Action Water Quality	Justification for Proposed Classification ¹	Classification Trend	
		Changes		Improving	Declining
				(Acres)	(Acres)
1	Keyport Harbor	Prohibited to Special Restricted	Monitoring that began in 2005 shows levels are within the criteria for Special Restricted waters (geometric means less than 700 total coliform MPN/100 mL and less than 10% of samples over 3,300 total coliform MPN/100 mL)	1,050	
14	Crook Horn Creek	Seasonal November 1 thru April 30 to Approved	Water quality results have confirmed that potential pollution sources (nonpoint source and marina impacts) are not impacting these waters.	110	
17	Sunset Lake	Special Restricted to Seasonal January 1 thru April 30	Stations in these waters met the Seasonally Approved criteria during the January through April time period. The geometric mean was less than 70 total coliform MPN/100 mL and the estimated 90 th percentile statistic was below the criterion of 330 total coliform MPN/100 mL in these waters.	221	
3	Navesink River	Special Restricted to Prohibited	Total coliform levels exceeded criteria for Special Restricted waters. The estimated 90 th percentile statistic was above the criterion of 3,300 total coliform MPN/100 mL at 2 stations in these waters.		120
3	Branchport Creek	Special Restricted to Prohibited	Monitoring that began in 2004 shows levels at three stations exceeded the criteria for Special Restricted waters. The estimated 90 th percentile statistic was above the criterion of 3,300 total coliform MPN/100 mL at 3 stations.		150
10	Tuckerton Creek	Special Restricted to Prohibited	Total coliform levels exceeded the criteria for Special Restricted waters. The estimated 90 th percentile statistic was above the criterion of 3,300 total coliform MPN/100 mL at this station.		23
Total Acreage				1,381	293

¹Classification of waters are made in accordance with the methods and criteria as described in the National Shellfish Sanitation

Program "Guide for the Control of Molluscan Shellfish".

The Department is proposing to amend N.J.A.C. 7:12-9.13 to include the restoration of shellfish beds as part of the scientific and non-human consumption program. The restoration of shellfish beds includes, among other activities, the gardening of shellfish for non-human consumption in an attempt to help restore shellfish to water areas where they have been depleted.

In addition, the Department is proposing to establish that the Shellfish Resource Recovery Steering Committee (SRRSC) will review all applications for a scientific collection permit. Following this review, the SRRSC will make a recommendation regarding the scientific collection permit application to the Commissioner of the Department or his or her designee. The premise underlying this review is to better ensure the safety of shellfish consumed in the State.

Social Impact

The proposed amendments will have a positive overall impact on the State's shellfish growing waters. While the downgrading of specific waters may, in limited cases, reduce localized 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. The *Vibrio parahaemolyticus* Management Plan is another mechanism to ensure that best practices are used to protect public health. A direct connection exists between the consumption of shellfish harvested from contaminated areas and human illness. The last major incident 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. The additional duties of the Shellfish Resource Recovery Steering Committee will enhance the Department's protection of the public health of consumers and will help maintain a vibrant shellfish industry in New Jersey.

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 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 shellfish growing water reclassification contained in these amendments represents 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. Economic losses from illnesses associated with contaminated shellfish would be greater than the temporary economic loss from such downgrades.

The Department anticipates the proposed *Vibrio parahaemolyticus* Management Plan will allow for the continued harvest of shellfish in a manner to ensure that best practices are used to protect public health, resulting in no economic loss. The duties of the Shellfish Resource Recovery Steering Committee will not have any economic impact.

Environmental Impact

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. Neither the *Vibrio parahaemolyticus* Management Plan nor the additional duties of the Shellfish Resource Recovery Steering Committee will have any environmental impact.

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 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's shellfish control program to ensure that it is consistent with national standards applicable to 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 N.J.S.A. 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 293 acres, and an upgrade of approximately 1,437 acres of shellfish waters resulting in a net upgrade of approximately 1,144 acres of shellfish waters. The proposed upgrade of approximately 1,437 acres of waters will continue to support the shellfishing employment opportunities within the Approved waters in the State.

The Department anticipates the *Vibrio parahaemolyticus* Management Plan will allow for the continued harvest of shellfish in a manner that ensures best practices are used to protect public health, resulting in no job loss. The duties of the Shellfish Resource Recovery Steering Committee 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.

The Department anticipates that the proposed amendments, which modify the classification of shellfish harvesting waters, include the *Vibrio parahaemolyticus* Management Plan as an authority for imposing harvest controls, and specify the additional duties of the Shellfish Resource Recovery Steering Committee will have no effect upon agricultural concerns.

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, recordkeeping requirements or other compliance requirements on small businesses. The proposed amendments which modify the classification of shellfish harvesting waters, include the *Vibrio parahaemolyticus* Management Plan as an authority for imposing harvest controls, and specify the additional duties of the Shellfish Resource Recovery Steering Committee will not impose any additional costs of compliance nor will professional services be needed 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 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 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.

Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments for the purposes of determining their impact, if any, on the affordability of housing. The Department has determined that the proposed amendments will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. The Department finds that the proposed amendments do not change land use policies or the nature and scope of the regulations. Therefore, it is extremely unlikely that the proposed amendments would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments for purposes of determining their impact, if any, on smart growth development. The Department has determined that the proposed amendments will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Department finds that the proposed amendments do not change land use policies or the nature and scope of the regulations. Therefore, it is extremely unlikely that the proposed amendments would evoke a change in housing production within Planning areas 1 or 2 or within Designated Centers.

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

N.J.A.C. 7:12-1.4 Classification of shellfish waters

(a) The Department shall classify the shellfish waters of the State for the purpose of harvesting shellfish. The classification of all shellfish waters shall adhere to the guidance and criteria contained within the National Shellfish Sanitation Program publication entitled Guide for the Control of Molluscan Shellfish, [1999] 2007, incorporated herein by reference, as amended and supplemented, published by the Interstate Shellfish Sanitation Conference (209-2 Dawson Drive, Columbia, SC 29223, (803) 788-7559, www.issc.org/issc in cooperation with the US Food and Drug Administration. Shellfish waters may be classified as Approved, Seasonally Approved, Special Restricted, Seasonal Special Restricted or Prohibited. Classification of shellfish waters shall be determined based on the following factors:

1. -5. (No change.)

N.J.A.C. 7:12-1.5 Immediate Shellfish harvest suspensions and restrictions

(a) - (c) (No change.)

- (d) The Department shall conduct, in accordance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish referenced at N.J.A.C. 7:12-1.4(a), an annual assessment to determine whether the risk of *Vibrio parahaemolyticus* illness from the consumption of shellfish harvested from shellfish growing waters is reasonably likely to occur. Based on the results of the risk assessment, the Department shall develop and annually update and implement a *Vibrio parahaemolyticus* Management Plan that identifies shellfish growing waters affected by *Vibrio parahaemolyticus*. The *Vibrio parahaemolyticus* Management Plan establishes control measures to minimize growth of *Vibrio parahaemolyticus* in shellfish harvested from those waters, including restrictions on the hours during which shellfish may be harvested.
- [d] (e) The Department shall immediately notify representatives of agencies or organizations affected by a harvest suspension **or restriction** under this section by fax or email. Notice of harvest suspension **or restriction** shall be posted in areas where those harvesting shellfish would be likely to enter the water. The following agencies or organizations shall be notified:
- 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 or restriction 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 **or restriction** occurred;

3.-5. (No change.)

N.J.A.C. 7:12-2.1 Shellfish growing water classification—Prohibited

- (a) The following shellfish growing waters are classified Prohibited:
- 1.-2. (No change.)
- 3. Monmouth Middlesex County area (note that a portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3):
 - i. [All those waters of the Raritan Bay, Raritan River and Arthur Kill (and tributaries) lying south and west of the New Jersey/New York boundary and lying west of a line beginning on the northernmost point of land on Conaskonk Point, Union Beach, New Jersey (latitude 40 degrees 27 minutes 31.99 seconds N., longitude 74 degrees 10 minutes 44.50 seconds W.), and bearing approximately 261 degrees T to a point of land at latitude 40 degrees 27 minutes 12 seconds N., latitude 74 degrees 13 minutes 27.98 seconds W., until it intersects a line at latitude 40 degrees 27 minutes 24.78 seconds N., longitude 74 degrees 11 minutes 43.86 from the tank between Keyport and Union Beach, New Jersey at latitude 40 degrees 26 minutes 31.16 seconds N., longitude 74 degrees 11 minutes 25.18 seconds W., bearing approximately 345 degrees T to the Iso G 6 sec 80 foot tower at latitude 40 degrees 30 minutes 27.82 seconds N., longitude 74 degrees 12 minutes 47.94 seconds W., at Red Bank, Staten Island, New York, until it intersects the New York-New Jersey boundary at latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W., where this line terminates] All those waters of the Raritan River,

Arthur Kill (and tributaries), and portion of the Raritan Bay that are lying south and west of the New Jersey-New York boundary and lying west of a line beginning at the New Jersey-New York boundary with coordinates of latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W., then bearing approximately 165 degrees T in a southeasterly direction toward a point with latitude 40 degrees 27 minutes 24.8 seconds N., longitude 74 degrees 11 minutes 43.9 seconds W., and then proceeding in a westerly direction at approximately 261 degrees T to a point of land with latitude 40 degrees 27 minutes 12 seconds N., latitude 74 degrees 13 minutes 28.0 seconds W., and terminating;

ii. All those waters of the Matawan Creek and Luppatatong Creek south of a straight line connecting a Department maintained marker located on the east shore at coordinates latitude 40 degrees 26 minutes 21.7 seconds N., and longitude 74 degrees 12 minutes 7.9 seconds W., and a Department maintained marker located on the west shore at coordinates latitude 40 degrees 26 minutes 29.3 seconds N., and longitude 74 degrees 12 minutes 26.2 seconds W., and terminating;

[ii] iii. (No change in text.)

[iii] **iv.** (No change in text.)

[iv] v. (No change in text.)

[v] **vi.** (No change in text.)

[vi] **vii.** (No change in text.)

[vii.] viii. [All waters west of the Highway 35 Bridge (Coopers Bridge) in Red Bank,] All waters west of a line starting from a Department maintained marker located on the

northern shore of the Navesink River at coordinates latitude 40 degrees 21 minutes 31.1 seconds N., longitude 74 degrees 4 minutes 5.5 seconds W., then bearing 144 degrees T in a southeasterly direction to the Department maintained marker on the southern shore of the Navesink River near Marine Park at coordinates latitude 40 degrees 21 minutes 17.6 seconds N., longitude 74 degrees 3 minutes 53.0 seconds W., including all of Swimming River, Shadow Lake and tributaries.

ix. All waters south of a line starting from a Department maintained marker located at the tip of land on the eastern shore of the river between the mouth of Manahassett Creek and the South Shrewsbury River at coordinates latitude 40 degrees 19 minutes 41.0 seconds N., longitude 73 degrees 59 minutes 45.2 seconds W., then bearing 270 degrees T west to a Department maintained marker located on the western bank of the South Shrewsbury River at coordinates latitude 40 degrees 19 minutes 41.0 seconds N., longitude 73 degrees 59 minutes 57.7 seconds W.

4. - 7. (No change.)

8. Tuckerton area (Note: A Portion of Tuckerton Cove is also designated as Seasonal or Special Restricted. See 7:12-4 and 7:12-3. A Portion of Tuckerton Creek is also designated as Special Restricted. See N.J.A.C. 7:12-3: The waters of Tuckerton Creek and tributaries north of a line beginning at a point on the eastern bank of Tuckerton Creek just north of Bass Rd. with coordinates of latitude 39 degrees 35 minutes 14.5 seconds N., and longitude 74 degrees 20 minutes 28 seconds W., and then bearing 315 degrees T for 0.03 nautical miles to a point on the western side of Tuckerton Creek with

coordinates of latitude 39 degrees 35 minutes 15.6 seconds N., and longitude 74 degrees 20 minutes 29.4 seconds W.

- [8.] **9.** (No change in text.)
- [9.] **10.** (No change in text).
- [10.] **11.** (No change in text.)
- [11.] **12.** (No change in text.)
- [12.] **13.** (No change in text.)
- [13.] **14.** (No change in text.)
- [14.] **15.** (No change in text.)
- [15.] **16.** (No change in text.)
- [16.] **17.** (No change in text.)
- [17.] **18.** (No change in text.)
- [18.] **19.** (No change in text.)
- [19.] **20.** (No change in text.)
- [20.] **21.** (No change in text.)
- 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. All those waters contained within a line beginning on the northernmost point of Conaskonk Point, latitude 40 degrees 27 minutes 31.99 seconds N., longitude 74 degrees 10 minutes 44.50 seconds W., near Union Beach, New Jersey and [bearing approximately 261 degrees T to a point of land at latitude 40 degrees 27 minutes 12 seconds N., latitude 74 degrees 13 minutes 27.98 seconds W.,] continuing in a southwesterly direction along the coastline to a Department maintained marker at latitude 40 degrees 26 minutes

21.7 seconds N., longitude 74 degrees 12 minutes 7.9 seconds W., then bearing 300 degrees T across the mouth of Matawan Creek to a Department maintained marker at latitude 40 degrees 26 minutes 29.3 seconds N., longitude 74 degrees 12 minutes 26.2 seconds W., then continuing along the shoreline in a northwesterly direction to a point of land at latitude 40 degrees 27 minutes 12 seconds N., latitude 74 degrees 13 minutes 28.0 seconds W., then bearing approximately 80 degrees T, until it intersects a line at latitude 40 degrees 27 minutes 24.[7]8 seconds N., longitude 74 degrees 11 minutes 43.[86] 9 from the tank between Keyport and Union Beach, New Jersey at latitude 40 degrees 26 minutes 31.16 seconds N., longitude 74 degrees 11 minutes 25.18 seconds W., bearing approximately 345 degrees T to the Iso G 6 sec 80 foot tower at latitude 40 degrees 30 minutes 27.82 seconds N., longitude 74 degrees 12 minutes 47.94 seconds W., at Red Bank, Staten Island, New York, until it intersects the New York-New Jersey boundary at latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W., then along that boundary in an easterly direction until it intersects the Chapel Hill South Channel at approximately latitude 40 degrees 30 minutes 30.20 seconds N., and longitude 74 degrees 2 minutes 22.03 seconds W., (just south of R "10" 18 Fl R4s Bell, located in New York State waters), thence in a southeasterly direction at a bearing of 151 T to the northernmost tip of Sandy Hook, approximately latitude 40 degrees 28 minutes 39.57 seconds N., and longitude 74 degrees 1 minute 4.02 seconds W., then proceeding in a generally southerly direction following the western shoreline of Sandy Hook to the westernmost extent of the Rt. 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on the mainland and then following the shoreline in a generally northwesterly direction until it

intersects a line bearing approximately 201 degrees T from the navigational marker designated as Flashing light 4 second 29ft 8M (Fl 4 sec 29ft 8M) marking the easternmost extent of the Atlantic Highlands Municipal Yacht Basin's breakwater (this stonepile forms the basin's northern boundary), and then along that line in a northerly direction to the marker designated as a Flashing light 4 second 29ft 8M and following the northern side of the breakwater in a westerly direction until it reaches the structure forming the western boundary of the Yacht Basin, and then following the western edge of this structure in a southerly direction to the mainland, then following the shoreline in a generally northwesterly direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.

2. Shrewsbury River and Tributaries (not including the Navesink River). (Note: [A portion is] Portions are also designated as Prohibited or Seasonal. See N.J.A.C. 7:12-2 and 7:12-4.)

i. – iii. (No change.)

iv. All waters west of a straight line connecting a Department maintained marker at coordinates latitude 40 degrees, 21 minutes, 12.9 seconds [North] N., and longitude 73 degrees, 59 minutes, 31.5 seconds [West] W., and a Department maintained marker at coordinates latitude 40 degrees, 20 minutes, 27.1 seconds [North] N., and longitude 73 degrees, 59 minutes, 4.2 seconds [West] W., excluding all waters south of a line starting from a Department maintained marker located at the tip of land on the eastern shore of the river between the mouth of Manahassett Creek and the South Shrewsbury River at coordinates latitude 40

degrees 19 minutes 41.0 seconds N., longitude 73 degrees 59 minutes 45.2 seconds W., then bearing 270 degrees T W., to a Department maintained marker located on the western bank of the South Shrewsbury River at coordinates latitude 40 degrees 19 minutes 41.0 seconds N., longitude 73 degrees 59 minutes 57.7 seconds W.

3. All waters of the Navesink River and tributaries west of the Oceanic Bridge and [ending at the Highway 35 Bridge (Cooper's Bridge) in Red Bank] a line starting from a Department maintained marker located on the northern shore of the Navesink River at coordinates latitude 40 degrees 21 minutes 31.1 seconds N., longitude 74 degrees 4 minutes 5.5 seconds W., then bearing 144 degrees T in a southeasterly direction to the Department maintained marker on the southern shore of the Navesink River near Marine Park at coordinates latitude 40 degrees 21 minutes 17.6 seconds N., longitude 74 degrees 3 minutes 53.0 seconds W.

4. - 17. (No change.)

18. Tuckerton area (Note: [A portion is] **Portions are** also designated as **Prohibited or**Seasonal. See N.J.A.C. 7:12-[4]**2** and 12-4): [All of] **The waters of Tuckerton Cove and**Tuckerton Creek and tributaries thereof [north and west of a straight line connecting the west and east banks of the cove formed by the alignment of the range (Department maintained) located] **between a location on Gaunt Point that is west of Little Egg Harbor Boulevard and situated on the eastern bank of Tuckerton Cove with coordinates of latitude 39 degrees 34 minutes 41.7 seconds N., and longitude 74 degrees 19 minutes 58.8 seconds W., and then bearing 230 degrees T for 0.34 nautical miles to a point** on the west bank of
Tuckerton Cove [and the telephone pole (P-21377) on the east bank. When the range is aligned, the bearing it creates is approximately 049 degrees T (reciprocal 229 degrees T)] **with**

coordinates of latitude 39 degrees 34 minutes 28.8 seconds N., and longitude 74 degrees 20 minutes 19.3 seconds W., then in a northern direction proceeding up Tuckerton Creek for 0.88 nautical miles to a point on the western shoreline with coordinates of latitude 39 degrees 35 minutes 15.6 seconds N., and longitude 74 degrees 20 minutes 29.4 seconds W., then bearing 135 T for 0.03 nautical miles to a point on the eastern bank of Tuckerton Creek just north of Bass Road with coordinates of latitude 39 degrees 35 minutes 14.5 seconds N., and longitude 74 degrees 20 minutes 28 seconds W., then continuing southbound along the shoreline to the point of origin and terminating.

- 19. (No change.)
- 20. Mullica River Great Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):
- i. vii. (No change.)

viii. All those waters [of Cape Horn Marina and tributaries upstream from a straight line connecting two Department maintained markers; and] surrounding Cape Horn Marina north of a line starting from a Department maintained marker located at the mouth of the cove with coordinates of latitude 39 degrees 32 minutes 29.9 seconds N., and longitude 74 degrees 20 minutes 1.1 seconds W., then heading in a westerly direction to a point of land at a Department maintained marker with coordinates latitude 39 degrees 32 minutes 32.0 seconds N., and longitude 74 degrees 20 minutes 7.0 seconds W., then heading in a northwesterly direction across the mouth of Jimmies Creek to a point of land at a Department maintained marker with coordinates latitude 39 degrees 32 minutes 35.0 seconds N., and longitude 74 degrees 20 minutes 10.8 seconds W., and terminating. ix. (No change.)

- 21. 29. (No change.)
- 30. The Wildwoods area:
- i. (No Change.)

ii. All of [Sunset Lake south of a line beginning at a Department maintained marker at the end of Aster Street, Wildwood Crest and bearing approximately 290 degrees T to a Department maintained marker on the south end of Ephraims Island then bearing approximately 240 degrees T to a Department maintained marker at Shaw Island then along the shoreline in a westerly direction to a Department maintained marker then bearing approximately 273 degrees T across Shaw Cutoff to a Department maintained marker at the north side of the mouth of Stingaree Creek then across the mouth of Stingaree Creek to a Department maintained marker on the other side of Stingaree Creek then continuing in a westerly direction along the shoreline of Swain Channel and including Swain Channel, Taylor Sound and the Intracoastal Waterway within a line from the mouth of Swain Channel at coordinates of latitude 38 degrees 58 minutes 49.7 seconds N., longitude 74 degrees 50 minutes 57.0 seconds W., [to a Department maintained marker at the junction of Taylor Sound and Swain Channel. All that portion of Taylor Sound beginning at a Department maintained marker at the junction of Swain Channel and Taylor Sound then continuing along the shoreline in a northwesterly direction to Terrapin Thorofare and including Terrapin Thorofare, then continuing along the shoreline to a Department maintained marker at the north side of the mouth of Taylor Creek bearing approximately 213 degrees T to a Department maintained marker on the south side of the mouth of Jones Creek, then continuing along the shoreline in an easterly direction to a Department maintained marker on the west side of the mouth of Reubens Thorofare, then bearing 123 degrees T across the mouth of Reubens Thorofare to a Department maintained

marker on the other side of Reubens Thorofare, then continuing easterly along the shoreline of Swain Channel to Jarvis Sound Thorofare and including Jarvis Sound Thorofare and continuing east to Old Turtle Creek and including Old Turtle Creek, then continuing in an easterly direction along the shoreline of Swain Channel to an unnamed body of water known as the Intercoastal waterway (ICW) then turning in a southerly direction at the junction with the ICW and continuing along the shoreline of the ICW to Jarvis Sound at a point at latitude 38 degrees 58 minutes 24.9 seconds N., longitude 74 degrees 51 minutes 41.7 seconds W., then bearing approximately 137 degrees T to a point at latitude 38 degrees 58 minutes 19.9 seconds N., longitude 74 degrees 51 minutes 35.6 seconds W., then turning in an easterly direction to a point at latitude 38 degrees 58 minutes 41.3 seconds N., longitude 74 degrees 50 minutes 57.4 seconds W., at the junction of the ICW and Sunset Lake then [following the shoreline around back to a Department maintained marker at] bearing approximately 2.5 degrees T to the point of origin and terminating.

iii. (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. − 8. (No change.)

- 9. Ocean City-Somers Point Area-Great Egg Harbor Bay: Seasonal-Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30 yearly;
 i. v. (no change.)
 [vi. All of Crook Horn Creek from its confluence with the northern end of Beach Creek to Middle Thorofare.]
- 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 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:
- 1. 9. (No change.)
- 10. The Wildwoods area:
- i. All of Sunset Lake south of a line beginning at a Department maintained marker at the end of Aster Street, Wildwood Crest and bearing approximately 290 degrees T to a Department maintained marker on the south end of Ephraims Island then bearing approximately 240 degrees T to a Department maintained marker at Shaw Island then along the shoreline in a westerly direction to a Department maintained marker then bearing approximately 273 degrees T across Shaw Cutoff to a Department maintained marker at the north side of the mouth of Stringaree Creek then across the mouth of Stringaree Creek to a Department maintained marker on the other side of Stringaree Creek then continuing in a westerly direction along the shoreline of Swain Channel to a point at latitude 38 degrees 58 minutes 49.7 seconds N., longitude 74 degrees 50 minutes

57.0 seconds W., then bearing approximately 182.5 degrees T to a point at latitude 38 degrees 58 minutes 41.3 seconds N., longitude 74 degrees 50 minutes 57.4 seconds W., then following the shoreline around back to the point of origin and terminating. [i.] ii. 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 Department maintained marker north of the mouth of Upper Thorofare at latitude 38 degrees 58 minutes 12.[5]4 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 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.

N.J.A.C. 7:12-9.13 Scientific Collection and Non-Human Consumption Program

The Department may continue to issue special permits for the collection of shellfish from waters classified other than Approved for the purpose of non-human consumption and scientific research, including the restoration of shellfish beds. The Shellfish Resource Recovery Steering Committee shall review the application for a scientific collection permit. Following this review, the Shellfish Resource Recovery Steering Committee shall make a recommendation regarding the permit application to the Commissioner of the Department of Environmental Protection or his or her designee. Conditions of the permit will be tailored as necessary to the specific program(s) requested. This permit is issued in conjunction with, and to the holder of, the collection permit issued by the Division of Fish and Wildlife pursuant to authority granted at N.J.S.A. 23:4-52.

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:	
	Mark N. Mauriello, Acting Commissioner
	Department of Environmental Protection