

**Memorandum of Understanding Between the Department of Environmental Protection's
Division of Land Use Regulation and Marine Fisheries Administration for the
Disbursement of Monies from the Department's Dedicated Account for Shellfish Habitat
Mitigation**

THIS MEMORANDUM OF UNDERSTANDING, dated this 26th day of August, 2016, by and between the New Jersey Department of Environmental Protection's Division of Land Use Regulation, hereinafter "DLUR," and Marine Fisheries Administration, hereinafter "MFA," is entered into to establish a framework for the use and management of funds from the Department's dedicated account for shellfish habitat mitigation, hereinafter "account." This MOU is intended to ensure that the activities funded by the account result in adequate compensation for the loss of shellfish habitat resulting from permitted impacts in productive shellfish habitat; and

WHEREAS, the purpose of the account is to fund shellfish enhancement or restoration activities as well as other shellfish aquaculture activities in order to provide adequate compensation for the loss of shellfish habitat; and

WHEREAS, these funds shall be used to achieve the MFA's goals of increasing shellfish stocks, reducing natural shellfish mortality, expanded commercial and recreational shellfish opportunities, and encouraging environmentally sound shellfish aquaculture; and

WHEREAS, the establishment, use, and operation of the account is authorized by and carried out in accordance with the Waterfront Development Law, N.J.S.A. 12:5-3; Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; and the Coastal Zone Management (CZM) rules, N.J.A.C. 7:7; and

WHEREAS, the account was established in response to amendments to the CZM rules' shellfish habitat rule for mitigation of impacts associated with the construction of a single noncommercial dock, pier, or boat mooring associated with a single family dwelling in shellfish habitat (See 33 N.J.R. 1581(a); May 21, 2001 and 34 N.J.R. 535(a); January 22, 2002). The account was established to fund shellfish habitat restoration, enhancement, and related research projects using mandatory contributions collected from permittees engaging in such activities. The shellfish habitat rule was further modified in 2015 to allow for the expansion of a legally existing, operating commercial marina and the construction of a new commercial marina within shellfish habitat in certain "infill" situations, provided a monetary contribution is made to the Department's dedicated account for shellfish habitat mitigation (See 46 N.J.R. 1051(a); June 2, 2014 and 47 N.J.R. 1392(a); July 6, 2015); and

WHEREAS, in accordance with the CZM rules' requirements for shellfish habitat mitigation (See N.J.A.C. 7:7-17.9), the amount of the monetary contribution to the account is based on the area of shellfish habitat condemned due to coverage by the structure and boat moorings, the documented shellfish density on the property, and the commercial value of the shellfish. The following formula is used to calculate a permittee's required contribution to the account:

$$C = \text{AREA} * \text{DENSITY} * \text{AV} * \text{PVF}$$

Where:

C = amount of the monetary contribution, in dollars

AREA= area, in square feet, of shellfish habitat covered by structure(s) and moorings

DENSITY= applicable density of shellfish, in animals/square foot

AV= annual value for the shellfish resource, which is set at \$0.25 per animal

PVF= is the present value factor, which is set at 31.6

The area of shellfish habitat covered by structure(s) and moorings is the sum of the following:

1. The area, in square feet (width multiplied by length), of a proposed dock or pier;
2. For a proposed mooring defined by pilings, the area, in square feet, within the pilings and including the pilings themselves; and for a proposed mooring area not defined by pilings:
3. In the case where a boat is moored to a single pile or buoy such that the boat rotates around the buoy or piling: 1,900 square feet;
4. In any other case where a boat mooring is not defined by pilings: 300 square feet.

The density of shellfish for each shellfish habitat type is set forth in the table below. Maps, inventories, and surveys of shellfish habitat are available from DLUR.

<u>Habitat</u>	<u>Density (animals/square foot)</u>
Hard clam habitat, high density or high commercial value	0.75
Hard clam habitat, moderate density or moderate commercial value	0.35
Oyster, soft clam, bay scallop, or blue mussel habitat	0.75

Each permittee's contribution must be provided to the DLUR prior to the commencement of construction activities as required by the permit.

NOW, THEREFORE, in consideration of these premises and pursuant to the authority of N.J.S.A. 12:5-3; N.J.S.A. 13:19-1 et seq.; and N.J.A.C. 7:7, it is understood by and between the parties hereto as follows:

1. Beginning in the year this MOU is signed and continuing until such time as this MOU is dissolved or superseded by statute, rule or agreement by the signatories hereto, MFA will prepare a Five Year Plan (Plan) that will serve as a conceptual spending plan. Such Plan will identify the goals of the MFA for the five year period and will conceptually propose activities that will help the MFA achieve those goals. Specifically, the Plan will generally describe each planned activity and include background information, objectives, and tasks to be undertaken. The Plan will also include methods for evaluating the performance of the implemented activities. The Five Year Plan is considered a living document that can be amended by the MFA to: incorporate new activities that meet the below categories, modify proposed activities, and remove proposed activities.
2. Monies from the account may fund activities in any of the following five categories:
 - a. Site assessment and delineation: Activities under this category are intended to provide up-to-date assessments of shellfish resources throughout the State that can aid MFA in identifying locations for future shellfish enhancement, restoration or aquaculture activities that provide the best potential for success. Potential activities under this category could include, for example, shellfish surveys and the associated costs with carrying out such work.

- b. MFA coordinated enhancement work: This category addresses the enhancement and restoration of shellfish resources in waters of the State. Potential action items include project planning, permits acquisition, securing materials, and construction of the enhancement or restoration project. Activities under this category may include, but are not limited to, hard clam and oyster seeding and shell planting.
- c. Contracts and Procurement: MFA may enter into contracts with vendors, consultants or persons or entities obtained through normal Department contracting procedures to conduct activities which meet the MFA's goals of increasing shellfish stocks, reducing natural shellfish mortality, and encouraging environmentally sound aquaculture. Potential vendors, consultants or persons may include academic institutions and /or non-governmental organizations that are involved in shellfish enhancement, restoration, or aquaculture activities.
- d. Shellfish Aquaculture Development: Monies from the account may be used to fund activities that increase shellfish aquaculture productivity by exploring new lease areas and providing funding to growers for upgrading or improving existing operations and productivity and support MFA's goals.
- e. Monitoring: MFA may use monies from the account to establish monitoring standards and to monitor shellfish enhancement and/or restoration sites to assess project success. The standards developed will be shared with the DLUR and may inform future rulemaking.

3. MFA will prepare and submit to DLUR a report summarizing each year's activities by January 15 of the following year. This report will summarize the activities conducted the previous year and describe how such activities implement the plan. The report will provide a summary of each ongoing and completed activity. The report will include monitoring results on the success or failure of enhancement and restoration activities. DLUR will post the report on the Department's website dedicated to shellfish habitat mitigation.
4. TERM. The term of this MOU shall expire when all funds have been spent from the account or the conditions of paragraph 1 have occurred. DLUR and MFA shall meet periodically to review the MOU and progress thereunder and may renew or modify the MOU prior to the expiration thereof. DLUR and MFA may also agree to determine terms and conditions of a new MOU.
5. BINDING EFFECT. All of the terms, conditions, and covenants to be observed and performed by the parties shall be applicable to and binding upon successors and assigns, as the case may be.
6. MODIFICATION. This MOU will be reviewed and assessed periodically by the signatories and their successors and their designees to determine if any additions, deletions, and/or modifications are needed to any provision herein.
7. SEVERABILITY/WAIVER. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this MOU shall be interpreted as if such invalid agreements or covenants were not contained herein. Should one of more covenants or conditions be waived by either party, such waiver shall not be deemed to waive

or render unnecessary the consent or approval of the waiving party to or of any subsequent similar act by the other party.

8. NOTICES. All notices, reports, statements, requests, or authorizations required to be given hereunder shall be personally delivered, sent by mail, or email to the following address, unless a party has been notified of a change of address:

To DLUR:

Division of Land Use Regulation, Director

Mail Code 501-2

PO Box 420

Trenton, NJ 08625

EMAIL:

Director of Land Use Regulation: Diane Dow

Office of Policy Implementation: Kim Springer, Jill Aspinwall, Mariel

Hathaway

To MFA:

Marine Fisheries Administration, Administrator Mail Code 501-3

PO Box 420

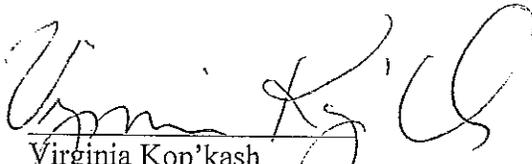
Trenton, NJ 08625

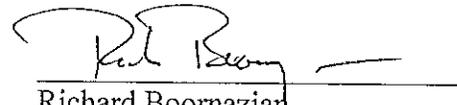
Email:

Administrator of Marine Fisheries Administration: Brandon Muffley

Bureau of Shellfisheries: Russ Babb, Jeff Normant

9. EFFECTIVE DATE. The undersigned are authorized to sign this MOU and to bind their respective parties to the terms and provisions of this MOU. This MOU shall become effective upon execution by the parties.


Virginia Kop'kash
Assistant Commissioner
Land Use Management


Richard Boornazian
Assistant Commissioner
Natural and Historic Resources