

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 3, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.
ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

DIVISION OF FISH AND WILDLIFE

Oysters

Adopted Amendments: N.J.A.C. 7:25A-1.3, 1.4, and 1.5

Proposed: April 4, 2016, at 48 N.J.R. 538(a).

Adopted: September 8, 2016, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: September 9, 2016, as R.2016 d.125, **without change**.

Authority: N.J.S.A. 13:1D-9, 23:2B-14, 50:1-1 et seq., 50:2-7 through 50:2-12, and 50:3-1 et seq.

DEP Docket Number: 01-16-03.

Effective Date: October 3, 2016.

Expiration Date: April 11, 2018.

The Department of Environmental Protection is adopting amendments to N.J.A.C. 7:25A-1.3, 1.4, and 1.5 to allow for the consolidation of up to six oyster dredge vessel licenses and the annual oyster harvest quotas assigned to those licenses to one designated harvest vessel, so long as each oyster dredge vessel and the designated harvest vessel are wholly owned by the same person.

The amendments are necessary to allow oyster dredge vessel harvesters with multiple vessels to maintain their current level of oyster harvesting while repairing or retiring aged oyster dredge harvest vessels. A license is issued to a vessel and each license has an associated annual

harvest quota. Harvesters who consolidate their vessels' licenses onto a single oyster dredge harvest vessel may then retire a different vessel, or take that other vessel out of service for repairs, but continue to harvest that vessel's associated annual harvest quota utilizing the oyster dredge harvest vessel to which the consolidated license has been issued (the "designated harvest vessel").

Summary of Public Comments and Agency Responses:

The following persons timely submitted comments on the proposal:

1. Donald Ahlers
2. Barbara Sachau

A summary of the timely submitted comments and the Department's responses follows.

The number(s) in parentheses after each comment identifies the commenter(s) listed above.

1. COMMENT: Most of the permits issued under this regulation sit idle. (1)

RESPONSE: There are currently 80 commercial oyster dredge vessel licenses issued in New Jersey each year. As stated in the notice of proposal, each license is issued to a specific harvest vessel and each license is allocated an equal share of the overall State quota of oysters that can be harvested from the State's natural seed beds in that year. All 80 licenses are currently participating in the 2016 harvest program and have participated in past annual harvests every year. Every year the majority of the overall State quota is harvested.

2. COMMENT: Legal boats will use the quota and overfish. (1)

3. COMMENT: There should not be any oyster harvesting in this State. The Department allows overutilization of the State's resources and it is negatively affecting the environment. (2)

RESPONSE TO COMMENTS 2 AND 3: To monitor the harvest of the State's oyster resources and ensure that that resource is protected and overharvest does not occur, the Department has developed a comprehensive oyster management program. The oyster management program and rules outline a very systematic procedure for managing the oyster fishery and for licensing commercial oyster dredge vessels in Delaware Bay. The rules specify the manner in which the harvest of oysters may occur, employ mechanisms, such as harvest tags to monitor the number of oysters individual harvesters have taken, designate specific landing sites where all oysters harvested from the Delaware River, Delaware Bay, and their tributaries must be landed, and require that oyster dealers taking oysters harvested from these waters file weekly reports providing detailed information on all oysters received by the dealer, including information on the oyster dredge vessel license number and the number of bushels landed by the harvester. These requirements allow the Department to ensure that only a sustainable harvest is occurring. Further, the rules include stiff penalties that include license revocation should a vessel be caught over harvesting its individual annual quota to discourage any violation of the management program.

Before the implementation of the original oyster management rules in 1981, the Delaware Bay commercial oyster fishery operated under an "open-access" policy, in which access to the resource was open to any and all with few harvest controls in place. Under this system, each individual participant had an economic incentive to harvest the maximum amount that he or she could harvest each year in order to maximize short-term profits. The result was that the resource was being overharvested.

Since 1981, the Department's goal has been to manage and maintain the oyster resource at a healthy and biologically sustainable level while also permitting the fishery to operate. Each year, the Department's Division of Fish and Wildlife (Division), in consultation with the Delaware Bay Section of the New Jersey Shellfisheries Council (Council) and Rutgers University, reviews the quantitative oyster resource data collected during the annual fall survey of the natural oyster seed beds. This data is peer reviewed by a stock assessment review committee (SARC) of resource experts. The SARC consists of State and Federal biologists, industry representatives, scientists, and academia from across the country and outside the United States. The 2016 SARC concluded that the Delaware Bay oyster stock is 'not overfished' and that 'overfishing is not occurring' (see <http://hsrl.rutgers.edu/SAWreports/SAW2016.pdf> at p. 33 - 35), nor has either condition occurred since the inception of a port sampling program in 2004. Both traits are characteristic of and requirements for a sustainable stock. These findings indicate that the resource is stable and sustainable and managed in an appropriate manner. In addition to information developed through the annual fall survey of the natural oyster seed beds, the Department, in consultation with the Council, considers the most current biological and physical data to make science-based decisions on harvest quotas. Based upon the information developed through this process, the Division, in consultation with the Council, sets the annual quantity of the oyster resource (in bushels) that may be harvested from the State's natural seed beds by all licensed oyster vessels during a harvest season, with annual harvest allocations established at a level intended to ensure the long-term viability of the resource. As a result, the harvest quotas often change each year taking into account the status of the oyster stock to ensure that overfishing does not occur.

4. COMMENT: These rules are for the chosen few. (1)

5. COMMENT: The nine million citizens of New Jersey are kept out of the decisions that are made with profiteers. The general public has no voice at all with the NJDEP. (2)

RESPONSE TO COMMENTS 4 AND 5: The Department believes that protection of the State's natural resources, including the oyster resource, and input from outside experts and the general public, through mechanisms including the SARC process referenced in the Response to Comments 2 and 3 and the public comment period provided in this rulemaking, are of utmost importance.

The importance of this resource and its associated impact to the bayshore communities of the Delaware Bay cannot be overstated. The industry is centered in one of the poorest regions of the State where unemployment rates are typically above the State average. The projected sustainable 2016 harvest is expected to have a dockside value to the industry of approximately \$5.05 million (at \$50.00 per bushel) with a total positive economic impact of \$30 million to the region (using the typical economic multiplier of six, which is used by the National Marine Fisheries Service). The oyster harvest program supports not only individual families engaged in harvesting oysters, but also the bayshore region of the State in general and does so in a sustainable manner.

The commercial oyster dredge fishery is managed as a limited entry fishery rather than an open-access fishery. There are only 80 licenses currently available, and those licenses can only be obtained by other fisherman through a transfer of a license from a current commercial oyster dredge fisherman. In the past, the commercial oyster dredge fishery had been an open fishery where anyone could participate. However, due to the decline in the oysters available from the State's natural seed beds, there were far more fishermen participating in the fishery than the

resource could support. Because of this, the Department limited the number of commercial licenses to only those people who were actively participating in the fishery.

While the commercial oyster dredge fishery has been limited to protect the sustainability of the resource, there are a number of oyster harvesting areas where any fisherman may obtain a commercial shellfish license that entitles that fisherman to harvest oysters using hand implements from specific harvest areas. There are no limits for this type of oyster harvesting. Additionally, any recreational shellfisher may also obtain a recreational shellfish license that entitles that harvester to take up to 150 shellfish, including oysters, per day.

In addition to seeking public input when changes are made to the Oysters rules, the New Jersey Shellfisheries Council holds regularly scheduled public meetings to discuss proposed rules, management decisions, and quota setting process. These meetings are held in accordance with the Senator Byron M. Baer Open Public Meetings Act, commonly referred to as the “Sunshine Law.” In fact, the consolidation proposal was discussed publicly and developed in a public manner over the course of many years with full input from the industry as well as academia and public attendees at the scheduled meetings. All of these proposals were discussed at the monthly meetings of the Delaware Bay Section of the New Jersey Shellfisheries Council (<http://www.state.nj.us/dep/fgw/mcnclmtg.htm>), as well as at the two-day stock assessment workshop, all of which are announced well in advance and are open to the public. The Council appointed a consolidation committee that met numerous times from 2004 through 2008, providing the committee’s consolidation recommendations and proposals at several public Council meetings. The Department presented the proposed consolidation rule at Council meetings during the summer of 2015, and kept stakeholders aware of the regulatory process and changes through these Council meetings.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies which adopt, readopt, or amend State regulations that exceed Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted amendments are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

Full text of the adopted amendments and new rules follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

(No change from proposal.)