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**ENVIRONMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE
BUREAU OF SHELLFISHERIES**

Oysters

Proposed Amendments and new rules: N.J.A.C. 7:25A

Proposed repeals: N.J.A.C. 7:25A-1.2, 1.9, 1.10, 4.1 – 4.6

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

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.

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

DEP Docket Number: 09-09-04/620

Proposal Number:

Submit comments by July 31, 2009 to:

Gary J. Brower, Esq.
Attention: Docket Number: 09-09-04/620
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 4th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. 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. 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 agency proposal follows:

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Summary

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

As discussed more fully below, these amendments have been developed in concert with the participants of the fishery involved to improve enforcement of existing regulations or to correct, clarify or simplify existing regulations.

The Oysters rules, N.J.A.C. 7:25A, govern the management and harvest of oysters from the Delaware River, Delaware Bay and their tributaries. N.J.A.C. 7:25A currently contains four subchapters: Subchapter 1, Oyster Management; Subchapter 2 (Reserved); Subchapter 3 (Reserved); and Subchapter 4, Oyster Cultch Program.

The Department is proposing amendments and new rules. The proposed amendments concern the management and harvest of oysters in Delaware Bay and the rules regarding oyster dredge vessel licenses. The proposed rules additionally reorganize the existing subchapters and incorporate provisions reflecting how the fishery has been operating since the start of the direct market harvest season in 1996.

Subchapter 1, Oyster Management

Subchapter 1, Oyster Management, currently includes rules regarding oyster dredge boat licenses, oyster management in Delaware Bay and the harvest of seed oysters. The subchapter assures that licensing of oyster vessels and leasing of oyster beds in Section E (generally located due west of Egg Island Point, Lawrence Township, Cumberland County) in the Delaware Bay occurs in an orderly manner. The subchapter specifies procedures and limitations on the substitution of new vessels for previously licensed vessels, procedures for renewal of oyster dredge boat licenses and procedures for the leasing of oyster ground in Section E, which is

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located above the southwest line (a line running from the mouth of Straight Creek to Crossledge Lighthouse in Delaware Bay). Furthermore, the subchapter establishes the conditions used by the Department to manage the harvest of oysters from the State's natural seed beds. These conditions include the following: season dates and area closures, daily harvest time periods, vessel marking, minimum size limits for oysters taken for direct market sale and proper tagging and containerization procedures. This subchapter also includes provisions that allow direct market harvest season participants the option to plant all or part of their allocation on their leased grounds.

The proposal continues to maintain as part of Subchapter 1 the rules governing the issuance and renewal of oyster dredging licenses and the leasing of oyster ground in Section E in Delaware Bay, with amendments as described below. However, as also further described below, it is proposed that the rules governing the taking of seed oysters from the State's natural seed beds for direct market harvest or transplant, currently part of Subchapter 1, be recodified to new Subchapters 2 and 3, respectively, and that the Oyster Cultch Program, currently contained in Subchapter 4, be recodified to be part of Subchapter 1.

As a result of the proposed amendments, Subchapter 1 will constitute the rules governing the issuance, renewal and transfer of oyster dredge vessel licenses, the leasing of oyster ground in Section E in the Delaware Bay, and the reporting of oysters harvested from the Delaware River, Delaware Bay and their tributaries. This subchapter will additionally govern the imposition, collection, and dedication of fees to finance an oyster cultch and resource enhancement program to facilitate the protection, conservation, management and improvement of the oyster resource and industry in New Jersey.

A section-by-section summary of the changes proposed to Subchapter 1 follows:

N.J.A.C. 7:25A-1.1, Scope, currently provides that this subchapter constitutes the rules governing the issuance and renewal of oyster dredging licenses, the leasing of oyster ground in Section E in Delaware Bay and the taking of oysters from the State's natural seed beds. In order

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to reflect the proposed reorganization of this chapter, including the proposal to include the Oyster Cultch Program (currently part of Subchapter 4) within Subchapter 1, the Department is proposing to delete reference currently contained in N.J.A.C. 7:25A-1.1 to the taking of oysters from the State's natural seed beds (which is proposed to be recodified to Subchapters 2 and 3) and add reference to reporting requirements and provisions for fee collection for oysters harvested, which are proposed to be recodified from Subchapter 4 to Subchapter 1. Fees collected as a result of the harvest of oysters are deposited into the Oyster Resource Development Account and are used to maintain the Oyster Cultch Program. To reflect the new content of this subsection, the title is proposed to be amended to "Purpose and scope."

The Department is proposing to delete existing N.J.A.C. 7:25A-1.2, Purpose. Proposed N.J.A.C. 7:25A-1.1, Purpose and Scope, as amended, describes the purpose of the rules: to facilitate the protection, conservation, management and improvement of the oyster resource and industry in New Jersey.

The Department is proposing to recodify existing N.J.A.C. 7:25A-1.3, Construction, to N.J.A.C. 7:25A-1.2 and is proposing to amend this section to provide a more complete identification of the statutory authority utilized to protect and manage this resource. This section provides that these rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 23:2B-14, 23:3-12.2, 50:1-1 et seq., 50:2-7 through 50:2-10, 50:2-11, 50:2-12, and 50:3-1 et seq. These statutory provisions address the authority of the Department and the Delaware Bay Section of the New Jersey Shellfisheries Council (Council), the times and manner of taking shellfish with power boats, various oyster licensing and harvesting requirements and resource enhancement activities relevant to the Delaware River, Delaware Bay and their tributaries.

The Department is proposing to recodify existing N.J.A.C. 7:25A-1.4, Definitions, to N.J.A.C. 7:25A-1.3. This section sets forth definitions for the terms that are used in the rules. With the proposed recodification of various provisions from Subchapter 1 to Subchapters 2 and 3, the lead-in to this section is being amended to indicate that the definitions provided in this

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section are applicable to the entire chapter. The proposed amendments expand the current list of definitions to include additional terms that have commonly been used within the oyster management program for many years.

The Department is proposing a definition for the term “annual harvest quota.” Each year the Division of Fish and Wildlife (Division) within the Department, in consultation with the 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 and harvest allocation recommendations are forwarded to the Division and Council. 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 (the “annual harvest quota”). Annual harvest allocations are established at a level intended to ensure the long-term viability of the resource.

The Department is proposing a definition for the term “annual tag allotment.” This term is used to describe the harvest tags issued to an individual harvester.

The Department is proposing to delete the definition of "Bay season" as this term is being replaced by the term “Oyster transplant season.” A definition is proposed for the term “Oyster transplant season” as described below. The Bay Season harvest program historically involved the transplanting of smaller seed oysters to industry leased grounds located in the lower Delaware Bay prior to marketing. This process allowed smaller, undersized oysters to grow faster in the more saline waters of the lower Bay and led to significant improvements in meat condition and quality. However, increased disease and predation levels in the lower Bay made this program no longer viable by the mid-1990s. While current conditions make it unlikely that this program would return to its former prominence, the Department is retaining this harvest option under the new designation “Oyster transplant season.”

The Department is proposing new definitions for the terms “bushel,” “cage” and “container.” For the purpose of this chapter, “bushel,” “cage” and “container” are standard,

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volumetric measures currently used within the oyster fishery and are the mechanisms used by the Division to monitor oyster harvest (i.e., dockside landings) from the Delaware River, Delaware Bay and their tributaries and collect the associated landing fees for the continuance of the Oyster Cultch Program.

The Department is proposing a definition for “Commissioner” since that term is used throughout the rules and is proposing to amend the definition of “Council” to provide the full name of the New Jersey Shellfisheries Council.

The Department is proposing a definition for the term “culling.” Culling is performed by harvesters to remove and discard undersized oysters, shell and debris.

The Department is proposing a definition for the term “Cultch.” “Cultch” is shell or other material placed on the bottom of a waterbody to enhance the setting of oyster larvae. Oyster larvae require a clean, hard surface upon which to attach as they develop from a planktonic larval stage to a sessile, benthic life form. The placement of clean shell or “cultch” greatly enhances oyster setting compared to natural rates typically observed on existing live oysters and oyster shell within the Delaware Bay, the surface of which is often fouled with sediments and/or epibiont growth such as algae and other invertebrates.

The Department is proposing a definition of “Delaware Bay Office” that describes the physical location of the Division’s field office, which was previously located at 6959 Miller Avenue in the Bivalve section of Port Norris, New Jersey, as indicated in the existing definition of “shellfish office” which this new definition replaces. The relocation of this office to 1672 East Buckshutem Road, Millville, NJ 08332, which is located six miles from the previous location in Bivalve, will not alter the present leasing, licensing and resource management functions of this Division facility. This definition also reflects the change in telephone area code for this region of the State from (609) to (856) since the last amendment of this rule.

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A definition is proposed for the term “direct market harvest season.” “Direct market harvest season” means the season, established in accordance with N.J.S.A. 50:3-8 and N.J.S.A. 50:3-9, during which the natural seed beds above the southwest line may be legally opened for the taking of oysters for the purpose of direct market sale. Pursuant to these statutory provisions, the season is from April 1 to June 30, unless the Commissioner, after consultation with the Council, determines that a more limited season is more appropriate to assure protection of the oyster resource. The direct market harvest season is the season during which the current oyster harvest program is conducted. This harvest program was developed in close cooperation with the industry in the mid-1990s. This program differed from the historical “bay season” harvest program that involved the transplanting of smaller seed oysters to industry-leased grounds located in the lower Delaware Bay prior to marketing. This new program allowed oystermen to by-pass the transplant phase by permitting the industry to harvest oysters 2½ inch or larger (market-sized) directly from the natural seed beds for direct sale. This program allowed the industry to avoid the increased disease and predation mortalities typically experienced in the lower Delaware Bay.

The Department is proposing to amend the current definition for the term “Division”. The amendment clarifies that the “Division” refers to the Division of Fish and Wildlife, which is a part of the Department of Environmental Protection

The Department is proposing a definition for the term “gross tonnage.” “Gross tonnage” means a vessel’s approximate volume as determined by a U.S. Coast Guard authorized measurement system. Pursuant to N.J.S.A. 50:3-2, the gross tonnage of a licensed vessel determines the fee applicable to licensing the vessel. The proposed definition includes reference to the portions of the Code of Federal Regulations used by the U. S. Coast Guard to determine gross tonnage.

The Department is proposing a definition for the term “harvest” or “harvesting.” “Harvest” or “harvesting” means the act of collecting oysters with dredge, tongs or other means. With respect to this rule, these terms are used in describing the times and manner in which

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oysters may be collected from the waters of the Delaware River, Delaware Bay and their tributaries.

A definition is proposed for the term “harvester.” “Harvester” is the person responsible for the operation of any vessel engaged in the act of collecting oysters with dredge, tongs or other means and includes the captain and license holder. Both the captain and the oyster dredge vessel license holder are responsible as harvesters for the operation of the vessel.

A definition is proposed for the term “harvest trip.” “Harvest trip” is the specific period from a licensed vessel’s departure from port, transit to the State’s natural seed beds for harvesting of oysters and return transit to port. Harvest trip is used in the provisions regulating the day-to-day fishery and resource coordination and management as part of a harvest season.

“Haskin Shellfish Research Laboratory” is a new definition describing the unit of Rutgers University that conducts an annual stock assessment of the State’s natural seed beds in Delaware Bay as well as other related research. The data collected by Haskin Shellfish Research Laboratory is used by the Division and the Council to establish annual harvest quotas and for resource management measures.

The Department is proposing a definition of the term “individual allocation.” The individual allocation is the individual license holder’s equal portion of the annual harvest quota.

The Department is proposing a definition of the term “land.” As used in this chapter, “land” means to enter port in possession of oysters, to dock to a man-made structure in possession of oysters or to begin offloading harvested oysters. This term is an important component of the monitoring and enforcement of harvest quotas.

A definition is proposed for the term “landing sites.” “Landing sites” are specific, Division approved oyster-offloading sites. Offloading is limited to landing sites as a control measure to assist in the monitoring and enforcement of harvest quotas.

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“Market oyster” is a new definition that defines the minimum size oyster (2½ inches) that may be harvested from the State’s natural seed beds during a harvest season. This is a control measure that was established in the mid-1990s as a mechanism to allow the harvest and sale of larger oysters from the State’s natural seed beds above the southwest line while ensuring that smaller oysters remained on the seed beds.

“Minimum tonnage license” is a new definition that refers to a license issued to a vessel that is determined to be five gross tons or less. This long-established term relates to the license fee established at N.J.S.A. 50:3-2, which fixes the vessel license fee at “not more than \$10, or less than \$2 per gross ton of the boat or vessel, whichever is greater.” Thus, any vessel up to and including a size of five gross tons would pay the minimum license fee of \$10.

The Department is proposing a definition for the terms “offload” or “offloading.” “Offload” or “offloading” means the act of physically separating a container of oysters from a vessel. This term relates directly to the monitoring and enforcement of harvest quotas. The proposed rules require that offloading occur at designated landing sites to allow monitoring and enforcement of harvest quotas.

“Oyster cultch program” is an expanded definition (formerly found at N.J.A.C. 7:25A-4.2, Definitions) which refers to the program established to conduct the purchase and placement of shell or other cultch material on the bottom of a waterbody to enhance oyster setting or for general bed maintenance. The expanded definition includes language that this program involves other enhancement activities to enhance the oyster stocks, including, but not limited to, the transplanting of seed oysters within the Delaware River, Delaware Bay and their tributaries.

The Department is proposing to define the term “oyster dealer.” “Oyster dealer” means any person who purchases oysters from Delaware Bay harvesters and who obtains the license required by N.J.S.A. 50:3-20.11. Oyster dealers are subject to specific requirements under this chapter. The existing reporting requirements for oyster dealers and the reporting requirements

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for harvesters proposed as part of these rule amendments provide the Department with the necessary supporting information to allow it to verify that harvesters are complying with harvest quotas. This additional information is necessary for management of the Delaware Bay oyster resource.

The Department is proposing a definition for the term “oyster dredge vessel license holder.” For the purposes of this chapter, “oyster dredge vessel license holder” means the owner who has legal title or right to a vessel that is licensed to harvest oysters with dredge from any of the natural beds or grounds in the Delaware River or in the Delaware Bay above the Southwest line, except in that area known as Section E.

“Oyster resource development account” is a new definition which refers to the dedicated account established pursuant to N.J.S.A. 23:3-12.2, into which is deposited all revenues received through the sale of oyster harvest tags for oysters harvested from the Delaware River, Delaware Bay and their tributaries. Revenues received from all license fees collected pursuant to N.J.S.A. 50:1-18, N.J.S.A. 50:3-2 and N.J.S.A. 50:3-20.13 are deposited in this account. The monies in this dedicated account are allocated to the Division and are disbursed only for the enhancement and management of the oyster resource in the Delaware Bay. Typically, the monies are used to fund the oyster cultch program.

“Oyster transplant season” is a new definition, which means the season, as established at N.J.S.A. 50:3-8 and N.J.S.A. 50:3-9, during which the natural seed beds may be legally opened for the taking of seed oysters for the purpose of transplanting oysters to individually leased oyster grounds in the lower Delaware Bay. Pursuant to these statutory provisions, the season may be open from April 1 to June 30, unless the Commissioner, after consultation with the Council, determines that a reduced season is appropriate to assure protection of the oyster resource. While this program has not been conducted since 1995, the rules will continue to refer to this harvest option should environmental conditions once again make it a viable harvest alternative. The harvest program historically involved the transplanting of smaller seed oysters to industry-leased grounds located in the lower Delaware Bay prior to marketing. This process

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allowed smaller, undersized oysters to grow faster in the more saline waters of the lower Delaware Bay and led to significant improvements in meat condition and quality. However, increased disease and predation levels in the lower Delaware Bay experienced in the early to mid-1990s made this program no longer viable. While current conditions make it unlikely that this program would return to its former prominence the rule provisions are retained to allow this alternative to be utilized if conditions change in the future.

A definition is proposed for the term “planting.” “Planting” refers to the act of physically moving oysters off a vessel onto a leased oyster ground. Oyster leaseholders typically plant oysters onto their leased grounds for varying durations. The leases, in the more saline and nutrient rich waters of the lower Bay, facilitate improved growth and meat condition (quality), which often leads to greater economic return when the oysters are ultimately taken to market for sale.

The definition of "Section 'E'" is proposed for amendment to remove the metes and bounds description of this leased area and to cross-reference to N.J.S.A. 50:1-23, where the survey datum is set forth.

The Department is proposing to amend the definition of “seed oysters (seed).” As amended, "seed oysters" means all oysters harvested from any of the lands lying under the tidal waters of the Delaware River, Delaware Bay and their tributaries, with the exception of the leased areas. Such oysters may be harvested during a direct market harvest season, an oyster transplant season or via the use of hand tongs, shinnecock rake or a mechanically retrieved hand scrape or dredge. Proposed amendments to this definition clarify the long established understanding that the term seed oysters applies to all oysters harvested from the Delaware River, Delaware Bay and their tributaries with the exception of the leased areas. The definition further provides that oysters that have been removed from natural seed beds and planted on leased areas are not considered to be seed oysters subsequent to planting in the leased area for purposes of fee calculations under proposed N.J.A.C. 7:25A-2.6 and N.J.A.C. 7:25A-3.6. This proposed amendment further supports Department’s intention to eliminate the potential for

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harvesters to have to pay two fees for those oysters that they harvest from the State's natural seed beds and temporarily plant in leased grounds; first upon harvest from the State's natural seed beds and second, when the same oysters are subsequently harvested after temporary placement in the leased grounds.

The Department is proposing to amend the definition of "southwest line" to include the statutory citation describing the established boundary that divides Delaware Bay for various management measurements prescribed by statute and this chapter.

A definition is proposed for the term "Tongs." "Tongs" refers to a device used in catching oysters that consists of two shafts or handles attached to opposable and complementary pincers, baskets or containers operated entirely by hand from the surface of the water and that has no external or internal power source.

"Validly licensed" is proposed for amendment to more clearly define the requirement that oyster dredge vessels licensed pursuant to N.J.S.A. 50:3-1 shall be mechanically capable of dredging oysters at the time of license application or renewal. With respect to operability, the existing definition for "validly licensed" lacks the specificity required to ensure the traditionally held position that licensed oyster vessels must be entirely capable of commercial dredging harvest under their own power. This lack of specificity has led to differing interpretations of operability, including that a licensed vessel could meet the operability standard even if it has to be towed by another vessel. Since the establishment of the limited entry fishery over 25 years ago, vessel integrity (including a sound hull and working engine) has been a key aspect of the regulation of the Delaware Bay oyster fishery.

The Department is proposing to recodify N.J.A.C. 7:25A-1.5, Licenses, to N.J.A.C. 7:25A-1.4 and rename it "Licenses; residence of vessel owners; tonnage determination" to more accurately reflect the license privilege involved, residency requirements of vessel owners and the requirements for the Division to verify gross tonnage of vessels. N.J.A.C. 7:25A-1.4(a) continues to provide that no licenses authorized by N.J.S.A. 50:3-1 shall be issued except as a

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renewal for those vessels validly licensed during the year prior to that of the license to be issued. The proposed amendments incorporate into the rules at N.J.A.C. 7:25A-1.4(b) the residency requirement established at N.J.S.A. 50:3-3, specifically that all oyster dredge vessel license holders must be legally domiciled or incorporated in the State of New Jersey. Furthermore, also pursuant to N.J.S.A. 50:3-3, no vessel owned wholly or in part by a nonresident and licensed in any other state to catch oysters on natural beds or grounds in such other state shall be licensed in this State within the same year in which such license to catch oysters in such other state shall have been or shall be issued. This statutory prohibition is incorporated into proposed N.J.A.C. 7:25A-1.4(c).

Fees for oyster licenses are based upon the gross tonnage of the vessel licensed. A minimum fee of \$10.00 applies to vessels of five gross tons or less (see N.J.S.A. 50:3-2) and a fee of \$2.00 per gross ton applies to all others. Proposed N.J.A.C. 7:25A-1.4(d) identifies the documentation that must be supplied to allow the Division to determine a vessel's gross tonnage and to assign the appropriate license fee pursuant N.J.S.A. 50:3-2. Proposed N.J.A.C. 7:25A-1.4(d)1 specifies the documentation that vessels built in the United States that are five tons or less must provide. Owners of these vessels are not required to provide documentation of the precise tonnage of the vessels because these vessels are subject to the minimum fee applicable under N.J.S.A. 50:3-2. All other vessels (those greater than five gross tons) falling under proposed N.J.A.C. 7:25A-1.4(d)2 and 3 must provide the specified documentation to allow the Department to calculate the applicable fee based upon the vessel's gross tonnage.

Fees applicable to license a vessel are statutorily established pursuant to N.J.S.A. 50:3-2. Pursuant to the Act, fees are based upon the gross tonnage of the vessel. For ease of reference, proposed N.J.A.C. 7:25A-1.4(e) codifies the statutory charges.

The Department is proposing to recodify N.J.A.C. 7:25A-1.6, Substitution of vessels; license renewal, to N.J.A.C. 7:25A-1.5. This section establishes procedures for substitution and exchanges of licensed oyster dredge vessels, as well as the transfer of vessels and licenses. In

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addition, this section contains criteria for the replacement of vessels that are lost, destroyed or disabled.

The proposed amendments to N.J.A.C. 7:25A-1.5(b) simplify the current references to the Commissioner of the Department of Environmental Protection and the Delaware Bay Section of the New Jersey Shellfisheries Council to reflect the definitions proposed for the terms “Commissioner” and “Council.”

Changes are proposed throughout N.J.A.C. 7:25A-1.5(c) to make this subsection gender neutral. Additional proposed amendments to N.J.A.C. 7:25A-1.5(c)1 and (c)2 clarify the requirement that a person replacing a licensed oyster dredge vessel or transferring the license with the vessel to a new owner is required to renew the license and pay the required annual license fee in order to retain the right to said license if the transfer is to occur after the expiration date of the current license.

Changes are proposed for N.J.A.C. 7:25A-1.5(d) to make this subsection gender neutral and to add the requirement that, when a license is reissued, the new owner is required to provide documentation of the vessel’s gross tonnage. This subsection continues to require that the new owner apply to have the license reissued in the new owner’s name. Such applications are subject to the fees specified in N.J.S.A. 50:3-2 and proposed N.J.A.C. 7:25A-1.4(e).

N.J.A.C. 7:25A-1.5(e) applies to those validly licensed vessels that are lost, destroyed or disabled. This section specifies the documentation required to verify vessel ownership and tonnage for license reissue. Furthermore, the Department is proposing to amend this subsection to increase the period during which replacement of a vessel may occur without loss of the license from two years to four years provided the other requirements of the section are satisfied. This amendment is being proposed to allow vessel owners more time to rebuild or find a replacement for vessels that are lost due to exigent circumstances. Similar to N.J.A.C. 7:25A-1.5(c) described above, the Department is also proposing to clarify that the license must be kept current at all times, even if replacement is not anticipated to occur until after the license expiration date.

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The proposed amendments to N.J.A.C. 7:25A-1.5(f) are editorial in nature only and do not alter the purpose, intent or action of this subsection.

The proposed amendment to N.J.A.C. 7:25A-1.5(g) removes the current automatic revocation of a license holder's Section E leases should said licensee not renew his/her oyster dredge vessel license within a calendar year. The nonrenewal of an oyster dredge vessel license would not preclude a person from using a Section E leased ground under other licenses or permits authorized by this chapter or N.J.A.C. 7:25, such as a commercial shellfish license or an oyster planters license. This provision was implemented at a time when demand for leases in Section E far exceeded supply. However, limited demand for Section E leases makes the concurrent revocation of an individual's Section E lease an unnecessary consequence.

The proposed addition of N.J.A.C. 7:25A-1.5(j) to this section is intended to reinforce the proposed amendments to the definition of "validly licensed" (see summary of N.J.A.C. 7:25A-1.3) as it relates to license issuance, renewal and transfer, particularly the requirement that a vessel be propelled under its own power to qualify for licensure.

The Department is proposing new N.J.A.C. 7:25A-1.5(k) to establish the documentation for determining vessel gross tonnage. This subsection describes the documentation requirements for license renewal, substitution or exchange, including what is required for vessels of various sizes as well as for vessels built outside of the United States. Vessel tonnage can be a measure of harvest capacity, with larger vessels typically being capable of harvesting larger quantities in a given period of time. This harvest capacity is particularly relevant during an oyster transplant season.

The Department is proposing to recodify N.J.A.C. 7:25A-1.7 to N.J.A.C. 7:25A-1.6 and amend it to simplify the current reference to the Delaware Bay Section of the Shellfisheries Council to reflect the definition proposed for the term "Council."

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The Department is proposing to recodify N.J.A.C. 7:25A-1.8, Expiration of Section E lot leases, to N.J.A.C. 7:25A-1.7 and amend this section to remove the current regulatory requirement that renewal of Section E leases is contingent upon the leaseholder actively working the lease. Such requirements do not currently apply to other Delaware Bay leases also used for traditional on-bottom culture of oysters. Removal of this requirement will provide consistency between Section E leases and other oyster leases in Delaware Bay.

In accordance with the statutory authority provided by N.J.S.A. 50:1-18(e), the Department is proposing a new N.J.A.C. 7:25A-1.8, Fees; Oyster Resource Development Account, to describe the imposition, collection, and dedication of fees to finance an oyster cultch and resource enhancement program. This new section is similar to the existing N.J.A.C. 7:25A-4.3, Fee, which is proposed for repeal.

The Oyster Resource Development Account was established within the “Hunters’ and Anglers’ Account” (N.J.S.A. 23:3-11 and N.J.S.A. 23:3-12) pursuant to P.L. 1996, c.112 (N.J.S.A. 23:3-12.2). Following the establishment of this account, all moneys remaining in the “Oyster Cultch Fund” were transferred to the newly established “Oyster Resource Development Account.” The Oyster Cultch Program was initiated in 1983 at the urging of the shellfish industry to ensure that adequate supplies of shell material (cultch) were maintained on the oyster seed beds. Cultch provides a stable surface for oyster spat settlement. Shell planting is considered to be the cornerstone management tool for improving the biological potential of an oyster resource. The importance of this concept was the impetus for the oyster industry’s request in the early 1980’s that a regulatory program be developed in order to provide a continuing funding source for the oyster cultch program. The current cost estimates for planting one bushel of shell on the State’s natural seed beds is approximately \$1.85 to \$2.00. This estimate includes the cost to purchase, transport, store and load shell onto barges and the costs associated with the actual barging and planting of shell on delineated shell plant sites in Delaware Bay by shell planting contractors. Furthermore, the account also provides funding for the intermediate transplant program, which utilizes industry harvest vessels to move seed oysters from growth-limited areas of the seed beds to other areas on the natural seed beds where growing conditions

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are improved. This program, initiated in 1997, has typically paid industry participants from \$1.00 to \$2.00 per bushel of seed moved. This program has played an integral role in maintaining industry quotas at a stable level since its initiation. The program fee has been set at \$2.00 per bushel since 2005.

In light of the increased costs associated with conducting various enhancement programs, the Council has consistently supported the concept of increasing landing fees in an attempt to ensure that the Oyster Cultch Program be maintained at a “revenue neutral” level. The basic concept of maintaining the Program at a “revenue neutral” level means to set the per bushel harvest landing fee at a rate that can meet the expense of planting one bushel of shell material, or cultch, for every bushel that is removed from the State’s natural seed beds from harvest activities. Therefore, the new rule will increase the per bushel landing fee from \$1.25, currently codified at N.J.A.C. 7:25A-4.3(a)1, to \$2.00 for all oysters harvested from the Delaware River, Delaware Bay and their tributaries. The continuance of the Oyster Cultch Program is a critical component of the State’s resource management program. With this in mind, and in an effort to keep up with escalating planting and resource enhancement costs, the Council and industry have supported the proposal to increase the landing fee to \$2.00 per bushel. As a result, the Council recommended increase of the fee from \$1.25 per bushel to \$2.00 per bushel.

Proposed N.J.A.C. 7:25A-1.8(a) sets forth the authority of the Commissioner, in consultation with the Council, to fix fees for oysters harvested from the Delaware River, Delaware Bay, and their tributaries and sets the fee at \$2.00 per bushel. This subsection provides for the collection of the fee by the Division prior to harvest through the purchase of tags from the Division’s Delaware Bay Office. This authority is granted pursuant to N.J.S.A. 50:1-18(e). This process is unchanged from the current process both in the purchase of tags in advance and the location through which the tags are sold. This proposed increase is in keeping with the concept of operating the Oyster Cultch Fund at a “revenue neutral” level. This increase is proposed in order to ensure that a bushel of cultch can be planted for every bushel of oysters that is removed from the State’s natural seed beds.

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In summation, in order for the Oyster Cultch Program to maintain itself financially, the landing fees for both harvest programs (direct market and transplant) must be set at a level that allows the Division to return (plant) one bushel of shell material to the seed beds for every bushel harvested by any means. Therefore, at current costs, the landing fee program must recoup \$2.00 for every bushel harvested.

As indicated earlier in this summary, the Department is proposing various amendments to reorganize this chapter. Part of the proposed reorganization of Subchapter 1 includes the deletion of N.J.A.C. 7:25A-1.9 (Oyster seed beds). However, substantially all of the provisions within this section governing the harvest of oysters from the natural seed beds above the southwest line have been moved to Subchapters 2 and 3. Those regulatory provisions governing the harvest of oysters from the natural seed beds for market, barter or other trade have been re-established in proposed Subchapter 2 (Direct market harvest season). Those provisions governing the harvest of oysters from the State's natural seed beds for transplanting directly to the leased grounds in the lower Delaware Bay (a common practice before oyster disease conditions greatly reduced the benefits of this harvest option) have been re-established in proposed Subchapter 3 (Oyster transplant season).

As part of the reorganization of Subchapter 1 and the proposed repeal of Subchapter 4, the Department is proposing to recodify N.J.A.C. 7:25A-4.4 (Designation of landing sites) to N.J.A.C. 7:25A-1.9 with amendments as described below. The Department believes that this reorganization is necessary and will make the rules easier to use by placing the majority of the general rules pertaining to the oyster fishery in one subchapter.

A number of significant infrastructure changes have occurred regarding Delaware Bay oyster landing sites since the inception of the direct market harvest season in 1996. Currently, there are four "designated landing sites" for oysters approved by the Department. The designated landing areas are: the Maurice River section of Commercial Township, the Cohansey River section of Greenwich Township, Fortescue Creek, and the Money Island section of Nantuxent Creek. Proposed new N.J.A.C. 7:25A-1.9(a) specifically identifies these designated

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landing sites. However, the proposed rule does not tie the grant of a landing site designation to licensing of the operator as an oyster dealer, as the current provision at N.J.A.C. 7:25A-4.4 does. Landing sites were originally established at the waterfront locations of oyster dealers. However, changes in the composition of the fishery and associated businesses resulted in the loss of some dealers from these waterfront locations. Since all oysters harvested from the Delaware River, Delaware Bay and their tributaries must be first sold through the holder of a Delaware Bay oyster dealer's license, the former requirement that designated landing site also be a licensed dealer is no longer necessary. This change provides greater flexibility to harvesters and dealers.

The proposed new section additionally includes a new provision at N.J.A.C. 7:25A-1.9(b) specifying that the current list of designated landing sites will be posted at the Division's Delaware Bay Office.

The Department is proposing to recodify the current N.J.A.C. 7:25A-1.10 (Review) to a new section, N.J.A.C. 7:25A-1.16, under the same title.

The Department, at the request of the participants of the oyster fishery and the Council, is proposing to add a new section at N.J.A.C. 7:25A-1.10, General control methods for oyster tonger harvest, which includes the rules governing the harvest of oysters via hand tongs from the Delaware River, Delaware Bay and their tributaries.

Proposed N.J.A.C. 7:25A-1.10(a) prohibits the taking or harvest of oysters with hand tongs from the Delaware River, Delaware Bay and their tributaries without first obtaining a license and tags.

Proposed N.J.A.C. 7:25A-1.10(b) specifies the general control methods applicable to oysters harvested via hand tongs. In particular, those harvesting oysters by this method are required to satisfy requirements for containerization, both while the oysters are on the boat prior to offloading and immediately after offloading, tagging and weekly harvest reporting. With reference to container requirements, the harvested oysters must be contained in one-bushel

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containers while on the vessel prior to offloading. This container requirement is important as it allows the Department to easily verify on inspection whether the harvester has exceeded the number of unused tags in his or her possession. The containers required represent standard sized containers utilized by the fishery. With reference to tagging, the proposed subsection requires that tags be immediately affixed to one-bushel containers upon use, where they must remain until the oysters are delivered for sale to the oyster dealer and prohibits tags from being affixed until the container is initially used. Finally, reflecting the importance of the Department being able to ensure that only the amount of oysters allowed by the license is taken and the oyster resource is not being threatened by overfishing, proposed N.J.A.C. 7:25A-1.11(b)3 makes explicit the requirement that harvesters and all others on board must fully cooperate with Department representatives or authorized law enforcement officer's instructions to facilitate safe boarding and inspection.

Proposed N.J.A.C. 7:25A-1.10(c) specifies the requirements for the purchase and use of tags, a minimum purchase batch size of 50 tags, as well as stipulations that the tags are non-transferable, valid only for the season of issuance and that refunds for unused tags will not be given. Similar minimum purchase batch sizes are imposed under other Division managed harvest programs to minimize administration costs.

Proposed N.J.A.C. 7:25A-1.11, Oyster tonger records required, requires licensed oyster tongers to submit a weekly oyster harvest report on forms supplied by the Division. The reports provide information on the harvester, the dates, location and amount of oysters harvested, as well as the tag numbers associated with the harvest. The proposed new section additionally reinforces the importance of this information by providing at N.J.A.C. 7:25A-1.11(d) that oyster tonger license renewals are conditioned upon the harvester having complied with the reporting requirement, with no renewal to be issued if the licensee has not filed the required weekly reports in a timely manner. This provision will enable the Department and the Council to more closely monitor the harvest of an often limited stock of oysters found in the enumerated beds, creeks and rivers along Delaware Bay as described in N.J.S.A. 50:3-14, Hand Tongs, only, permitted in certain beds, creeks and rivers; exception. Proposed N.J.A.C. 7:25A-1.11(e) references N.J.S.A.

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23:2B-9 as to the limitations and requirements governing disclosure of information submitted to the Department in the weekly reports.

As part of the reorganization of Subchapter 1 and the proposed repeal of Subchapter 4, the Department is proposing to recodify N.J.A.C. 7:25A-4.5 (Records Required) to N.J.A.C. 7:25A-1.12 (to be renamed Oyster dealer records required) with amendments as described below. This new section specifies the type of information that oyster dealers who purchase oysters harvested from the Delaware River, Delaware Bay and their tributaries must maintain and provide to the Department.

Proposed N.J.A.C. 7:25A-1.12(a) continues the weekly reporting requirement of oyster landings currently required under N.J.A.C. 7:25A-4.5(a). This subsection is amended to specify that the reporting requirement is applicable not just to oysters harvested from the Delaware Bay, but from the Delaware River, Delaware Bay and their tributaries to the Bay and River to enable the Department to more closely monitor harvest from various areas for better management of the oyster resource of the region.

Proposed N.J.A.C. 7:25A-1.12(b) specifies the information that an oyster dealer must record when a harvester delivers oysters for sale. The information required is similar to that currently required at N.J.A.C. 7:25A-4.5(b), except that the oyster dealer is no longer required to record the time of the offloading, but is required to record the oyster planter or tonger's license number and the number of bushels landed by the harvester in addition to the currently required information. The proposed rule would no longer require that the harvester sign the oyster dealer's record form since now a separate form is required to be completed and submitted by the harvester. The proposed rule does not continue the current requirement that oyster dealers collect a fee from harvesters to be paid to the Department for each bushel of oysters landed at a designated landing site. Since the inception of the direct market harvest season and the oyster tag program, the landing fees have been collected through the purchase of oyster tags by the harvester.

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Proposed N.J.A.C. 7:25A-1.12(c) provides the address for submission of the weekly reports. This subsection provides that the Division must receive weekly oyster dealer reports no later than five business days after the end of the week during which oysters were received. This subsection continues the requirement contained in N.J.A.C. 7:25A-4.5(c), amended to reflect the current Department address for submission of the reports and to eliminate the reference to submission of fees collected, consistent with proposed N.J.A.C. 7:25A-1.12(b).

Proposed N.J.A.C. 7:25A-1.12(d) is similar to proposed N.J.A.C. 7:25A-1.11(c) and reinforces the importance of weekly oyster dealer reports being submitted in a timely manner.

Proposed N.J.A.C. 7:25A-1.12(e) continues the inspection requirements currently contained in N.J.A.C. 7:25A-4.5(d). This subsection has been amended to reflect terminology changes in this proposal and to specify the premises, rather than the landing site, are required to be open for inspection. This reflects the changes in this fishery as described in the summary of N.J.A.C. 7:25A-1.9(a). Proposed N.J.A.C. 7:25A-1.12(f) is a new subsection that reinforces the importance of the timely submission of landing information by providing that oyster dealer license renewals are conditioned upon the dealer having complied with the reporting requirement, with no renewal to be issued if the licensee has not filed the required weekly reports in a timely manner. This rule will enable the Department and the Council to more closely monitor the harvest of an often-limited resource. Proposed N.J.A.C. 7:25A-1.12(g) references N.J.S.A. 23:2B-9 as to the limitations and requirements governing disclosure of information submitted to the Department in the weekly reports.

The Department is proposing to add a new section at N.J.A.C. 7:25A-1.13, Signatories; certification, requiring all applicants and licensees to complete a certification on all mandatory reports and applications attesting to the accuracy and validity of all information provided. The proposed new section includes a citation to potential penalties for violations. This new section will apply to the entire chapter. The proposed section describes the certification on each weekly harvest or landing report to be signed by the harvester or oyster dealer attesting to the accuracy of the information and further describes penalties for false reporting. Under the existing rules at

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N.J.A.C. 7:25A-1.9(a), as part of the attendant conditions for harvest from the natural seed beds, individuals have been required to sign weekly harvest reports which include a certification attesting to the accuracy of the harvest information. Proposed N.J.A.C. 7:25A-1.13(b) specifies that those providing false information to the Department are subject to penalties including those indicated in N.J.S.A. 2C:28-3, criminal penalties for unsworn falsification to authorities, and N.J.S.A. 23:2B-14, which specifies other penalties for violation of various statutory provisions and the rules implementing those provisions, as referenced in proposed N.J.A.C. 7:25A-1.14.

The Department is proposing to add a new section at N.J.A.C. 7:25A-1.14, Penalties and remedies for violations, specifying that violations of this chapter are subject to the remedies and penalties provided under N.J.S.A. 23:2B-14, similar to current N.J.A.C. 7:25A-4.6. As specified in the proposed definition of the term “harvester,” the “harvester” is the person responsible for the operation of any vessel engaged in the act of collecting oysters with dredge, tongs or other means and includes the captain and license holder. For enforcement actions related to the violation of the rules of this chapter, penalties may be imposed against both the captain and oyster dredge vessel license holder (who is ultimately responsible for the operation of his or her vessel).

The Department is proposing to add new N.J.A.C. 7:25A-1.15, Requests for adjudicatory hearings, specifying the procedure for a person who is aggrieved by a Department decision under this chapter to request a hearing. This section specifies the address for requesting a hearing, the information required to be provided to the Department and provides a 30-day time frame for submission of the hearing request. This proposed new section is consistent with similar provisions in the Department’s Division of Fish and Wildlife rules, N.J.A.C. 7:25.

As indicated above, the Department is proposing to recodify N.J.A.C. 7:25A-1.10 (Review) to a new section, N.J.A.C. 7:25A-1.16 under the same title. This section is amended to reflect the new definition of “Council” and to reflect that the Division of Fish and Wildlife and the Council review the entire chapter, not just N.J.A.C. 7:25A-1, for potential changes on an annual basis.

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Subchapters 2 and 3

Subchapter 2 and 3 within N.J.A.C. 7:25A are currently reserved. As indicated above, as part of the proposed reorganization of this chapter, the Department is proposing to recodify rules related to the taking of seed oysters from the State's natural seed beds to new Subchapters 2 and 3. As described below, rules related to the direct market harvest season are proposed to be contained in Subchapter 2 and rules related to the oyster transplant season are proposed to be contained in Subchapter 3.

Subchapter 2 Direct Market Harvest Season

Proposed Subchapter 2, Direct market harvest season, includes rules governing the taking of oysters from the State's natural seed beds. The proposed subchapter regulates the direct market harvest of oysters from the State's natural seed beds in Delaware Bay. The rules for the direct market harvest season include limitations on harvest times and areas, establishment of an annual harvest quota, provisions for the purchase and use of harvest tags and a requirement for weekly reporting by harvesters. Proposed Subchapter 2 also incorporates the conditions attendant to season openings (see N.J.A.C. 7:25A-1.9(a)) by which the fishery has been operating since the start of the direct market harvest season in 1996. These conditions include the following: daily notification requirements, minimum size limits for oysters taken for direct market sale and proper tagging and containerization procedures. This subchapter also includes provisions that allow direct market harvest season participants the option to plant all or part of their allocation on their leased grounds.

Proposed N.J.A.C. 7:25A-2.1, Purpose and Scope, explains that Subchapter 2 regulates the direct market harvest of oysters from the State's natural seed beds in Delaware Bay in order to conserve, protect, manage and improve the oyster resource and industry.

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Proposed N.J.A.C. 7:25A-2.2, Applicability, defines what activities are subject to this subchapter and describes the exceptions or limits to that applicability. Particularly, proposed N.J.A.C. 7:25A-2.2(a) provides that the rules of the subchapter apply to the harvesting of oysters during a direct market harvest season, except when the harvest is conducted under a scientific collecting permit issued by the Division pursuant to N.J.S.A. 23:4-52 (Collecting mammals, reptiles, amphibians, fish and birds, their nests and eggs for scientific purposes; certificate for). Proposed N.J.A.C. 7:25A-2.2(b) states that harvesters, in addition to compliance with this subchapter, are also required to comply with the Shellfish Growing Water Classification rules at N.J.A.C. 7:12, promulgated by the Department pursuant to N.J.S.A. 58:24-1 et seq. (Inspection of beds and shellfish) which establish the areal extent and classification of waters for the harvest of oysters, clams or other shellfish based upon water quality. Furthermore, N.J.A.C. 7:25A-2.2(b) provides that compliance with the rules of this subchapter does not exempt a person from compliance with shellfish rules of the State Department of Health and Senior Services at N.J.A.C. 8:13, which provide sanitary and recordkeeping requirements for harvesting, shipping, reshipping, and shucking and repacking of shellfish, or with any applicable State or Federal law or rule.

At proposed N.J.A.C. 7:25A-2.3, the Department outlines the requirements for participation in the direct market harvest season. N.J.A.C. 7:25A-2.3(a) describes the requirement for a harvester to possess a licensed oyster dredge vessel as well as the harvest tags described in N.J.A.C. 7:25A-1.8 and N.J.A.C. 7:25A-2.6. Proposed N.J.A.C. 7:25A-2.3(b) incorporates the conditions (see existing N.J.A.C. 7:25A-1.9) under which the fishery has been operating since the start of the direct market harvest season in 1996. These conditions include the following: oyster dredge license vessel marking requirements, notification requirements by harvesters who intend to work a private leased ground during a harvest season, daily notification requirements, daily time periods for harvesting activities, minimum size limit for oysters taken for direct market sale and designation of permitted oyster landing sites. At N.J.A.C. 7:25A-2.3(b)1, the Department is proposing to change the start time to allow harvesters to begin harvest at sunrise rather than 7:00 am, as currently specified in N.J.A.C. 7:25A-1.9(a). This change will allow commencement of harvest earlier in the day when air temperatures are cooler and earlier

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completion of the daily harvest, reducing the time that the product is exposed to elevated temperatures. Proposed N.J.A.C. 7:25A-2.3(c) delineates the proper tagging and containerization procedures for oysters harvested and subsequently offloaded at designated landing sites. Furthermore, N.J.A.C. 7:25A-2.3(d) continues provisions that allow direct market harvest season participants the option to plant all or part of their allocation on their leased grounds. This subsection includes various notification, tagging and planting provisions that facilitate monitoring and enforcement of harvest quotas necessary for the Division's resource management efforts. Proposed N.J.A.C. 7:25A-2.3(d)9 states that the Division may require harvesters to conduct intermediate transplant activities (transplanting oysters from one area to another area on the State's natural seed beds). This is a management tool, currently codified at N.J.A.C. 7:25A-1.9(f), whereby oyster dredge vessel license holders have periodically been required to move oysters from underutilized seed beds of the upper Delaware Bay to supplement stocks on the more heavily fished beds of the lower Delaware Bay.

Proposed N.J.A.C. 7:25A-2.4, Direct market harvest season; closed harvest areas, includes requirements currently codified as part of N.J.A.C. 7:25A-1.9, Oyster seed beds, as well as other provisions summarized below.

Proposed N.J.A.C. 7:25A-2.4(a) states that the Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, shall determine the season for the direct market harvest of oysters from the State's natural seed beds. Environmental and economic factors such as water temperature, weather and market conditions, as well as resource management measures such as intermediate transplant programs, are taken into consideration in determining a given direct market harvest season. The season may begin as early as April 1 and extend as late as November 30, with the actual season for a particular year dependent upon conditions. Notice of the season established is provided by U.S. mail to participants in the program.

Proposed N.J.A.C. 7:25A-2.4(b) states that the Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, may open or close certain areas

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of the natural seed beds to harvest, as deemed necessary for the conservation and sustainability of the oyster resource. Areas of the State's natural seed beds are often closed when oyster stocks are low. N.J.A.C. 7:25A-2.4(b) also specifies that the Division will provide license holders in the industry with geographic coordinates delineating boundary lines of closed areas. N.J.A.C. 7:25A-2.4(c) maintains the provisions currently codified at N.J.A.C. 7:25A-1.9(s) (Oyster Seed beds) which provides for seizure and replanting of oysters taken, transported, planted or otherwise handled in violation of these rules.

By the authority granted to the Commissioner by N.J.S.A. 50:1-5, proposed N.J.A.C. 7:25A-2.5, Harvest limitations, oyster harvest quota; control dates, provides that the Department will establish a season harvest quota of oysters that may be taken from the State's natural seed beds. These quotas are one mechanism used to preserve and improve the oyster resource. At the request of the industry participants, proposed N.J.A.C. 7:25A-2.5(b) and (c) state that the Division, in consultation with the Council, may establish certain dates or deadlines by which industry participants must declare whether they will participate in a given year's harvest program. This process has been followed since 2001 at the request of the Council and industry in an effort to maximize industry participation and quota utilization. The establishment of specific control dates ensures that harvest is allocated only to those oyster dredge vessel license holders committed to participate in a given year's direct market harvest season. When such control dates were not implemented in previous years, as much as 20 percent of the annual oyster quota was not harvested. These provisions will therefore maximize the economic return for those licensees who elect to participate in a given year's direct market harvest program while continuing to ensure that the resource is protected.

Proposed N.J.A.C. 7:25A-2.6, Fees, tags; transfer of tags, refunds prohibited, includes requirements for the purchase and use of tags, including the minimum price per tag (currently codified at N.J.A.C. 7:25A-4.3), as well as a minimum purchase batch size of 200 tags unless a lesser amount is needed to fulfill an individual's season allocation, stipulations that the tags are valid only for the season of issuance and that refunds for unused tags will not be given unless the program is terminated or suspended by the Department. These latter provisions have been

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included in the conditions by which the fishery has operated for many years. This section also stipulates that only vessels propelled under their own motive power are eligible to purchase tags and harvest oysters. This addition reinforces the requirement that vessels must be capable of harvesting oysters while under their own motive power in order to obtain a license, purchase tags or harvest oysters consistent with the definition of validly licensed. These provisions greatly reduce the Department's costs to administer the program while having only minimal impact to program participants.

Proposed N.J.A.C. 7:25A-2.7, Harvest reporting, describes the requirements for submission of weekly harvest reports and the information that must be included on harvest forms supplied by the Division. These reporting requirements are currently required as conditions attendant to the season (see existing N.J.A.C. 7:25A-1.9(a)) and are conditions by which the fishery has operated for many years. In addition, this section stipulates that oyster dredge license renewal is conditioned on the licensee's continuing compliance with all provisions of this subchapter and that the Department will not renew any oyster dredge vessel license for any licensee who has not submitted the required weekly harvest reports by December 31 of the license year. This latter provision is consistent with similar sections proposed at N.J.A.C. 7:25A-1.11(d), N.J.A.C. 7:25A-1.12(e) and N.J.A.C. 7:25A-3.7(d).

Subchapter 3 Oyster Transplant Season

Proposed Subchapter 3, Oyster transplant season, provides the framework for the harvest of oysters from the State's natural seed beds for transplanting directly to the leased grounds in the lower Delaware Bay, a common practice before oyster disease conditions greatly reduced the benefits of this harvest option. This subchapter retains the rules, currently codified at N.J.A.C. 7:25A-1.9, by which the fishery operates during this harvest program (known under the current rules as the "Bay Season"). The proposed new subchapter includes the rules governing the harvest of seed oysters from the State's natural seed beds. This subchapter provides for the transplanting of seed oysters from the State's natural seed beds directly to industry leased grounds when environmental conditions make this a viable management option. Although this

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management option has not been employed in many years as high disease levels have been present in the planting grounds, the proposed reorganization and amendments maintain this harvest option for future use if disease and environmental conditions are suitable.

Subchapter 3 includes the specification of harvest times and areas, establishes an annual harvest quota, provides a mechanism for the collection of fees for oysters harvested from the State's natural seed beds, establishes a requirement for weekly reporting by harvesters and provides for other control methods, such as harvester notification and tag purchasing requirements as may be necessary to protect the resource.

Proposed N.J.A.C. 7:25A-3.1, Purpose and Scope, explains that this proposed subchapter constitutes the rules of the Department governing the taking of seed oysters from the State's natural seed beds as part of an oyster transplant season as well as transplanting of these oysters to leased grounds.

N.J.A.C. 7:25A-3.2, Applicability, defines the activities to which this subchapter applies and describes the exceptions or limits to that applicability. N.J.A.C. 7:25A-3.2(a) states that the rules of the subchapter apply to the harvesting of oysters during an oyster transplant season, except for harvest conducted under a scientific collecting permit issued by the Division pursuant to N.J.S.A. 23:4-52, Collecting mammals, reptiles, amphibians, fish and birds, their nests and eggs for scientific purposes; certificate for. N.J.A.C. 7:25A-3.2(b) states that harvesters, beyond compliance with this subchapter, are also required to remain compliant with the Shellfish Growing Water Classification rules, N.J.A.C. 7:12, adopted by the Department under the authority of N.J.S.A. 58:24-1 et seq. to protect the public health. The Shellfish Growing Water Classification rules provide for the inspection of beds and shellfish, as well as water quality and the prohibition of taking and distributing oysters, clams or other shellfish from condemned waters. Furthermore, N.J.A.C. 7:25A-3.2(b) also states that compliance with the rules of this subchapter does not exempt any person from compliance with the State Department of Health and Senior Services' Shellfish rules at N.J.A.C. 8:13 or any rule of any other State or Federal agency.

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Proposed N.J.A.C. 7:25A-3.3, General control methods for Oyster transplant season, outlines the provisions utilized to manage the oyster transplant season.

Proposed N.J.A.C. 7:25A-3.3(a) describes the requirement for a harvester to possess a licensed oyster dredge vessel as well as the harvest tags obtained in accordance with N.J.A.C. 7:25A-3.6.

N.J.A.C. 7:25A-3.3(b) incorporates those general control measures for the oyster transplant season currently codified at N.J.A.C. 7:25A-1.9, Oyster seed beds, as well as additional control measures described herein. These rules include the following: days and hours for harvesting activities, daily notification requirements, procedures for confirming oyster transplant and tagging requirements. This subsection also outlines the notification requirements for harvesters who intend to work on their private leased ground during an oyster transplant season, the requirement that seed oysters must be planted on the day taken and planted loosely on the bottom and not containerized, and the stipulation that when a licensed oyster dredge vessel works any part of the day on the seed beds during an oyster transplant season, all oysters in the possession of oyster dredge vessel license holders shall be deemed seed oysters and must be planted as required in this section. This section also provides a mechanism for individuals to harvest oysters for market purposes from the seed beds during a designated oyster transplant season in accordance with specific conditions.

Proposed N.J.A.C. 7:25A-3.3(c), currently codified at N.J.A.C. 7:25A-1.9(f), states that the Division may require harvesters to conduct intermediate transplant activities (transplanting oysters from one area to another area on the State's natural seed beds). Intermediate transplant is often conducted to enhance specific areas on the State's natural seed beds. Notice will be provided to harvesters by first class mail.

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Proposed N.J.A.C. 7:25A-3.4, Oyster transplant season; closed harvest areas, is comprised primarily of the rules currently codified at N.J.A.C. 7:25A-1.9 (Oyster seed beds). Historically, the oyster transplant season (currently known as “Bay Season”) was conducted during the months of April, May and June, pursuant to N.J.S.A. 50:3-8 and N.J.S.A. 50:3-9. Given the period of oyster spawning (June, July and August), the timing of this traditional season was intended to protect young, fragile oysters, which are often susceptible to shell damage caused by mechanical dredge harvest. Likewise, this narrow seasonal “window” also prohibited mechanical harvest during the winter months when an oyster’s ability to repair shell damage (caused by mechanical dredge harvest) is inhibited below certain water temperatures (typically 10 degrees Celsius or 50 degrees Fahrenheit).

Proposed N.J.A.C. 7:25A-3.4(a) (currently N.J.A.C. 7:25A-1.9(a)) states that the Division, in consultation with the Council, shall determine the season for the oyster transplant season. Proposed N.J.A.C. 7:25A-3.4(a) states that the oyster transplant season may occur during the period of April 1 through June 30, consistent with N.J.S.A. 50:3-8 and N.J.S.A. 50:3-9. While the season may begin as early as April 1 and extend as late as June 30, the actual season for a particular year is dependent upon various environmental and market conditions, with the season set for a term that will assure that the resource is adequately protected. Notice of the season established is provided at the public meeting of the Council and by mail to participants in the program.

Proposed N.J.A.C. 7:25A-3.4(b) states that the Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, may open or close certain areas of the natural seed beds to harvest, as deemed necessary for the conservation and sustainability of the oyster resource. Areas of the State’s natural seed beds are often closed when oyster abundances or stocks are low. Notice of the season or opening or closure of oyster beds or groups of beds shall be established at a public meeting of the Council and all oyster dredge vessel license holders shall be notified by mail.

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Proposed N.J.A.C. 7:25A-3.4(c) incorporates without change a list of areas where oysters may be planted (currently codified at N.J.A.C. 7:25A-1.9(b)).

Proposed N.J.A.C. 7:25A-3.4(d) through N.J.A.C. 7:25A-3.4(f) maintain those rules currently codified at N.J.A.C. 7:25A-1.9(g) and N.J.A.C. 7:25A-1.9(h) related to establishment of an advisory committee and physical tests of the oyster seed beds during an oyster transplant program. These tests may be used to determine periods for which specific beds would be open to transplant harvest. Based on the results of these tests, this committee would make recommendations to the Division, in consultation with the Council, to determine which beds would remain open. An annual oyster resource stock assessment review committee is convened each winter to review the quantitative status of the oyster stocks. This practice (described in more detail under the definition for “annual harvest quota”) has, in effect, replaced the advisory committee and physical testing practice. However, since the oyster transplant season has not occurred in earnest since 1995, the provisions that were once used to guide this mode of harvest are being retained should they be necessary for proper resource management. As a result, it would be inappropriate to retain the word “shall” as the testing and committee review may or may not be appointed.

Proposed N.J.A.C. 7:25A-3.4(f)3 states that the Division shall provide all eligible license holders with the coordinates of any boundary line(s) of any closed areas that are established in consultation with the Council. Notification will be conducted by first class mail. A list of all closed areas will be posted at the Division’s Delaware Bay Office and would be available for public inspection.

Proposed N.J.A.C. 7:25A-3.4(g), currently codified at N.J.A.C. 7:25A-1.9(s), continues the existing requirement that all oysters taken, transported or otherwise handled in violation of this subchapter may be seized by the Department and replanted upon the State’s natural seed beds.

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By the authority granted to the Commissioner by N.J.S.A. 50:1-5, proposed N.J.A.C. 7:25A-3.5(a) (Oyster transplant harvest limitations, quota, control dates), states that the Department shall establish a season harvest quota of seed oysters that may be taken from the State's natural seed beds during an oyster transplant season. These quotas are one mechanism used to preserve and improve the oyster resource.

Proposed N.J.A.C. 7:25A-3.5(b) states that the Division, in consultation with the Council, may establish certain dates or deadlines by which industry participants must declare whether they will participate in a given year's oyster transplant season. Other control dates established by the Division may include dates by which all or portions of an oyster harvester's tag allotment must be purchased. This provision helps the Department maximize return to those that do participate by re-allocating unused quota to eligible participants while continuing to assure that the oyster resource is protected.

Proposed N.J.A.C. 7:25A-3.6, Fees, tags; transfer of tags, refunds prohibited, includes requirements for the purchase and use of tags, including the price per tag (currently codified at N.J.A.C. 7:25A-4.3) as well as a minimum purchase batch size of 200 tags. This subsection additionally provides that the tags are valid only for the season of issuance and that refunds for unused tags will not be given unless the program is terminated or suspended by the Department. While the provisions for the purchase and use of tags, as well as the price per tag, are currently included in the rules, the provisions for minimum batch size, seasonal validity of tags and the no-refund policy for unused tags have been part of the attendant conditions (see N.J.A.C. 7:25A-1.9(a)) by which the fishery has operated for many years. These provisions greatly reduce the Department's costs to administer the program while having only minimal impact to program participants. This section also stipulates that only vessels propelled under their own motive power are eligible to purchase tags and harvest oysters. This addition reinforces the definition of "validly licensed" vessels, that is, that vessels must be capable of harvesting oysters while under their own motive power in order to obtain a license, purchase tags or harvest oysters.

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Proposed N.J.A.C. 7:25A-3.7, Transplant harvest records required, describes the requirements for submission of weekly harvest reports and the information that must be included on harvest forms supplied by the Division. In addition, this section stipulates that oyster dredge license renewal is conditional on the licensee's continuing compliance with all provisions of this subchapter and that the Department will not renew any oyster dredge vessel license for any licensee who has not submitted the required weekly harvest reports by December 31 of the license year. This latter provision is consistent with similar sections proposed at N.J.A.C. 7:25A-1.11(d), N.J.A.C. 7:25A-1.12(e) and N.J.A.C. 7:25A-2.7(e).

As indicated in the summary above, as part of the reorganization of this chapter, regulatory provisions currently codified at N.J.A.C. 7:25A-4 are being relocated to other parts of the chapter. Accordingly, Subchapter 4 is proposed for repeal.

Social Impact

The Department anticipates that the proposed amendments and new rules will have a positive social impact on participants of the oyster industry and also the general public. The rules will greatly enhance the Department's management program for the oyster fishery in the Delaware Bay. The current management program, which was initiated in 1996, has evolved significantly over the past 12 years. This program is designed to control harvest pressure on the State's natural oyster beds, establish procedures for licensing and replacing oyster dredge boats, provide for the leasing of bay bottom above the southwest line in that area known as Section E and maintain a funding program for oyster resource enhancement activities.

These amendments and new rules were reviewed and discussed by the Council, an advisory group to the Commissioner composed of individuals involved in the oyster industry. The Council considers these rules necessary for the regulation of the fishery. These amended rules will permit the Department to monitor, protect and initiate management strategies to improve the long-term productivity of the oyster resource, which will continue the positive social impact of the rules.

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The amendments and new rules will also continue the concept of allowing the oyster harvesters to sell seed oysters which are 2½ inches or larger from the seed beds during the direct market harvest season. This strategy permits the oystermen to capitalize immediately on the marketability of the oysters from seed harvest instead of having to initially transfer the seed to the planting grounds for grow-out. The latter practice, which was required until the rules were amended in 1996, required the reharvest of the oysters for market, adding substantially to the operating costs of the harvester. Also, because of the relative inefficiency of the oyster dredge, large quantities of oysters would have to be planted in order to ensure the recovery of adequate quantities of oysters to recoup operating expenses. Additionally, if the oysters remain on the planting ground for an extended period, significant mortality may result from disease and predation. The ability to market oysters immediately after harvest from the seed beds minimizes overhead costs to the harvester. This capability also provides for the prudent utilization and conservation of the existing resource. Continuation of this existing provision in the reorganized and amended Chapter will have a positive social impact.

The amendments and new rules will also continue the Oyster Cultch Program, which provides a funding source for both maintenance and enhancement of the oyster resource. In general, adopting the amended and new rules in this chapter will help the Department continue the long-term management program for the State's oyster resource. It is anticipated that the program will continue to benefit the oyster industry and the State by maximizing the long-term sustainable yield of oysters, improving the economic well-being of the industry and support communities, improving the employment environment and providing the public with a high quality oyster, safe for consumption.

These amendments and new rules will improve the Department and Council's ability to select prudent management strategies and general control methods. The amended rules provide flexibility to industry members regarding the harvest of oysters from the Delaware River, Delaware Bay and their tributaries, giving them the ability to harvest oysters for market sale or transplanting to individual leases during a permitted harvest season.

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Economic Impact

These proposed amendments and new rules provide a systematic procedure for managing the oyster fishery in Delaware Bay in order that the fishery may continue to operate at a biologically sustainable level. The program is designed so that the Department, in consultation with the Council, after careful consideration of the most current biological and physical data, can make appropriate decisions on harvest strategies. Proposed Subchapter 2, Direct market harvest season, facilitates the generation of an immediate cash flow for the harvester. This cash flow can be converted into wages, equipment, debt maintenance and operating capital. Proposed Subchapter 3, Oyster transplant season, provides for the transplanting of oysters from the State's natural seed beds directly to industry leased grounds when environmental conditions make this a viable management option. Under such conditions, harvesters would benefit economically via improved oyster meat quality (with likely higher dockside product value) and with greater flexibility with respect to selling those oysters from their leased grounds during favorable market conditions. The proposed amendments and new rules contain provisions that allow harvesters to elect either to directly market the oysters or transplant the oysters for later sale during either a designated direct market harvest season or an oyster transplant season. In this way, individual harvesters can elect to use their available allocation for immediate economic gain by taking oysters directly to market or for potential long-term gains by transplanting the harvested oysters to their individual leased grounds.

The proposed amendments and new rules will continue the landing fee program. The current program assesses a fee of \$0.70 per bushel for oysters harvested from industry leased grounds. The current program also assesses a fee of \$1.25 per bushel for oysters taken directly from the State's natural seed beds for market, barter or other trade. The proposed amendments and new rules eliminate the general fee of \$0.70 per bushel for oysters harvested from industry leased grounds, which will eliminate the potential that harvesters are required to pay fees upon harvest from the State's natural beds and further fees upon harvest of the same oysters from the leased grounds, if they elected to transplant their allocation during a designated direct market

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harvest season. The proposed amendments will increase the per bushel landing fee from the \$1.25 per bushel currently reflected in the rules to \$2.00 for all oysters harvested from the Delaware River, Delaware Bay and their tributaries. This fee increase is proposed in order to maintain the Oyster Cultch Program. The fee must be set at a rate that can meet the expense of planting one bushel of shell material, or cultch, for every bushel of material that is removed from the State's natural seed beds from harvest activities. The continuance of the Oyster Cultch Program is a critical component of the State's resource management program and the fee increases are fully supported by the Council. When considering the dockside value of a bushel of oysters over the last five years, which has generally ranged from \$30 to more than \$40 per bushel ex-vessel (that is, the amount paid directly to the harvester at time of landing), this would be considered a nominal increase in operating costs to the harvester. While this increase may represent a negative economic impact to an individual oysterman, with the actual impact depending upon the amount of the resource the oysterman takes, the oyster industry overall, and thus the individual oysterman as well, will benefit economically from the resource enhancement activities funded through the oyster resource development account. This adjustment to reflect current costs in conducting the enhancement programs will ensure that the cultch planting activities will continue to protect and enhance this valuable and ecologically important resource and those that depend upon it for income.

The current landing fees for the harvest of oysters from the Delaware River, Delaware Bay and their tributaries have been extended to oysters harvested by tonger license holders, who pay no landing fee under the existing rules. While this may represent a negative economic impact, this harvester group has benefited and will continue to benefit economically from the resource enhancement activities funded via the Oyster Resource Development Account, which to date has been funded by the dredge vessel license holders. The extension of this fee to oyster tonger license holders was requested by industry and the Council so that all user groups contribute to the resource enhancement activities from which all parties benefit. This harvester group has been supportive of the landing fee in order to maintain the enhancement programs.

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The proposed amendments and new rules include amendments to require reporting by dredge vessel license holders and oyster tongers. While requirements for dredge vessel license holders are being placed explicitly in the rules, this reporting has been required as a condition attendant (see N.J.A.C. 7:25A-1.9(a)) for many years. Accordingly, there will be no practical impact on dredge vessel license holders. The proposed amendment to require reporting by oyster tongers imposes nominal reporting requirements. It is not anticipated that oyster tongers will need to retain assistance in preparing these reports or will incur more than nominal costs in time spent completing these reports. Harvest reporting requirements, including the proposed new reporting requirements for tongers, are key enforcement tools that deter illegal harvest. For this reason, the amended penalty provision language in the proposal and the benefits provided by that section will result in positive economic impacts to the industry at large. Changes to reporting requirements will provide the Department with an additional means to ensure that actual harvest does not exceed the established quotas for a given season, thereby protecting the long-term viability of the oyster resource and the economic benefits it provides.

Environmental Impact

The rules proposed for amendment are expected to have a positive environmental impact on the State's oyster resource in Delaware Bay. The amended rules contain several provisions designed to encourage prudent oyster harvest practices and to protect the State's oyster resource from over-harvest. In particular, these amendments and new rules include new reporting requirements for oysters harvested by oyster dredge vessels and oyster tongers. The collection of harvest data from all oyster harvesters and licensed oyster dealers who purchase these oysters provides the Department with an important crosscheck to confirm and monitor actual harvest. Without these additional provisions, unreported or underreported harvest from the seed beds could severely deplete the seed beds in a relatively short period of time.

The proposed rules will enhance the Department's oyster resource management and enhancement capabilities with increased revenue into the Oyster Resource Development Account. This account, established at N.J.S.A. 23:3-12.2, is allocated to the Division for the

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enhancement of the resource in Delaware Bay. One such enhancement measure is the transplanting of seed oysters from one bed to another. This provision permits the transfer of the slow-growing, underutilized stocks of the uppermost seed beds to intermediate beds in the bay. These stocks, and the industry, benefit from accelerated growth rates and improved meat quality, which normally occurs when oysters are transplanted to higher salinity areas. The proposed reorganized and amended rules maintain the Oyster Cultch Program, which provides a mechanism for the maintenance and enhancement of the oyster seed beds via planting of cultch and movement of seed oysters. The proposed amendments and new rules enhance the accuracy of the current harvest reporting system and also extend the oyster landing fee to include oysters harvested via hand tongs. The additional revenue will supplement current revenues into the Oyster Resource Development Account. Management strategies that are capable of maintaining viable oyster stocks not only provide benefits to those individuals with parochial resource interest, but also have ancillary benefits to the environment and other estuarine organisms and fisheries as well. Healthy oyster reefs also improve the quality of the environment by continuously filtering the water column, removing contaminants and by serving as habitat for numerous other species. These species include sponges, polychaetes, crustaceans, gastropods, echinoderms and finfish such as striped bass, croakers, porgies, sea bass, tautog, flatfish and others.

The amended and new rules will improve the regulatory framework that allows the Department to manage the direct market harvest season and the oyster transplant season, and enhance the Department's ability to effectively manage the harvest of oysters from the State's natural seed beds to ensure compliance with annual harvest quotas. Properly managed harvest provides economic gain to harvesters while maintaining the positive ecological benefits that healthy oyster reefs provide. A reduction in oyster abundance would contribute to the demise of the numerous benthic assemblages that are associated with healthy, active oyster reefs and would impact the fish stocks that utilize reefs for spawning, nursery or foraging habitat. Water quality would also suffer since individual oysters are capable of filtering large volumes of water while removing suspended material from the water column.

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The amendments and new rules will positively impact the Oyster Resource Development Account, which provides money for improving the biological potential of the oyster beds via the collection of fees for oysters harvested from the Delaware River, Delaware Bay and their tributaries, thus creating positive environmental benefits. The proposed amendments extend the current landing fee to oysters harvested via hand tongs from Delaware River, Delaware Bay and their tributaries, thereby providing additional financial resources to be used for resource enhancement programs and corresponding positive environmental impacts.

Federal Standards Statement

N.J.S.A. 52:14B-4 et seq. requires State agencies, that adopt, readopt or amend State regulations that exceed Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed amendments and new rules 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, no further analysis is required.

Jobs Impact

The Department has evaluated this rulemaking to determine the impact of the proposed amendments and new rules on jobs. The proposed amendments and new rules are designed to maximize the long-term production of oysters in Delaware Bay. The amended rules governing the harvest of oysters from the Delaware River, Delaware Bay and their tributaries, which offer harvesters the opportunity to either transplant their harvest allocation or take it directly to market, allow individuals to make business decisions that would ideally maximize their economic return. Expansion of the oyster program, including enhancement of the oyster cultch program via the extension of the current landing fee requirement to oyster tongs, and the economic benefits to fishermen, may increase employment within the fishery itself and in support services in the region. The proposed amendments and new rules, which encourage prudent oyster harvest practices and protect the State's resource from overharvest, will ensure that the industry and the jobs related to the industry remain strong over the long term. As

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indicated in the Economic Impact analysis above, the proposed amendments and new rules include amendments to require reporting by dredge vessel license holders and oyster tongers. While requirements for dredge vessel license holders are being placed explicitly in the rules, this reporting has been required as a condition attendant (see N.J.A.C. 7:25A-1.9(a)) for many years. The proposed amendment to require reporting by oyster tongers imposes nominal reporting requirements. It is not anticipated that oyster tongers will need to retain assistance in preparing these reports. Accordingly, it is not anticipated that these amendments and new rules will have any impact on jobs.

Agriculture Industry Impact Statement

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments and new rules on the agriculture industry. The proposed amendments and new rules are not expected to have any impact upon agriculture in New Jersey.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed amendments and new rules for reporting, record keeping or other compliance requirements on small businesses.

Although most oyster harvesters are “small businesses” as defined by the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq., the paperwork involved with the oyster dredge licenses, oyster leases and harvest reporting is minimal. Likewise, the Department has determined that compliance with the harvest requirements imposed by the rules in this chapter will not be burdensome to small business oyster harvesters. While the proposed amendments and new rules include new reporting requirements for oyster dredge vessel and oyster tonger licensees, this additional paperwork is minimal. The Department anticipates that small businesses affected by the proposed amendments and new rules will not need additional professional services or need to incur additional capital costs in order to comply with the rules.

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In developing this rule proposal, the Department has balanced the need to protect and preserve the State's oyster resources against the economic impact of the proposed rule on small businesses. The Department has determined that reducing the requirements applicable to those meeting the definition of small businesses would undercut the purpose of the rules and place the continued viability of the resource at risk. Therefore, no exemption from coverage for small businesses is provided.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-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 rule amendments' impact on smart growth and the implementation of the State Plan. The oyster management rules at N.J.A.C. 7:25A do not implicate land use policies or infrastructure development and, therefore, do not have any impact on the achievement of smart growth. The rules are intended to conserve the State's natural resources, which is one of the overall goals of the State Plan. Accordingly, the oyster management rules are consistent with the goals of the State Plan.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the proposed rule amendments and new rules to determine what, if any, impact they will have on the affordability of housing. The Department has determined that the rules will have no impact on the affordability of housing. The oyster management rules at N.J.A.C. 7:25A do not implicate land use policies or development and, therefore, do not have any impact on the average cost of housing.

Smart Growth Development Impact

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Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the proposed rules to determine what, if any, impact these rules will have on smart growth development. The rules do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposed amendments and new rules follows (addition indicated in boldface **thus**;) deletions indicated in brackets [thus]:

SUBCHAPTER 1. OYSTER MANAGEMENT

7:25A-1.1 **Purpose and** Scope

[The following shall] **This chapter** constitutes the rules governing the issuance [and renewal], **renewal, substitution and transfer** of oyster dredging licenses, the leasing of oyster ground in Section E in Delaware Bay, [and] the taking **and reporting** of [seed] oysters from the [State's natural seed beds] **Delaware River, Delaware Bay and their tributaries (with the exception of the leased areas) and the imposition, collection and dedication of fees to finance an oyster cultch and resource enhancement program to facilitate the protection, conservation, management and improvement of the oyster resource and industry in New Jersey. The oyster management program, which includes, as a component, the oyster cultch and resource enhancement program, includes a limitation on the number of available licenses, a limitation on harvest to specific fishing times and areas and the establishment of a seasonal harvest quota.**

[7:25A-1.2 Purpose

The purpose of this subchapter is to provide an orderly procedure for the licensing of oyster vessels, the leasing of oyster grounds in Section E in Delaware Bay and the taking of seed oysters from the State's natural seed beds and the possible direct sale of those oysters.]

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7:25A-[1.3] **1.2** Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of **N.J.S.A. 23:2B-14, N.J.S.A. 23:3-12.2, N.J.S.A. 50:1[-5,] [50:1-23, and 50:1-27]-1 et seq., 50:2-7 through 50:2-10, 50:2-11, 50:2-12, and 50:3-1 et seq.**

7:25A-[1.4] **1.3** Definitions

The following words and terms, when used in this [subchapter] **chapter**, shall have the following meanings unless the context clearly indicates otherwise.

“Annual harvest quota” means the total amount of the oyster resource from the State’s natural seed beds that may be harvested by all licensed oyster vessels during a direct market harvest season or oyster transplant season.

“Annual tag allotment” means the harvest tags issued by the Division to an oyster dredge vessel license holder in an amount equal to a harvester’s individual allocation.

["Bay season" means April 1 to June 30, the season, as established at N.J.S.A. 50:3-8, during which the natural seed beds are legally open for the taking of seed oysters.]

“Bushel” means the volume of oysters within the shell containerized in baskets or bags having a capacity of not more than one standard bushel, as defined at N.J.S.A. 51:1-16.

“Cage” means a container used during a direct market harvest season or oyster transplant season containing 29.87 cubic feet (842.7 liters) and having a capacity of not more than 24 bushels of oysters within the shell.

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“Commissioner” means the Commissioner of the Department of Environmental Protection or his or her designee.

“Container” means a holding or transporting apparatus used to retain oysters, in 24-bushel cages or in baskets or bags with a capacity of not more than one U.S. standard bushel.

"Council" means the Delaware Bay Section of the New Jersey Shellfisheries Council.

“Culling” means the act of sorting and discarding undersized oysters, dead shell and/or debris.

“Cultch” means shell and other material placed on the bottom of a waterbody that is capable of functioning as a substrate for the attachment or setting of oyster larvae. Cultch is deployed in selected locations to either enhance recruitment or restore or maintain oyster habitat.

“Delaware Bay Office” means the Division’s Delaware Bay region field office located at 1672 E. Buckshutem Road, Millville, New Jersey 08332. The office telephone number is (856) 785-0730.

...

“Direct market harvest season” means April 1 to June 30, the season, as established at N.J.S.A. 50:3-8 and N.J.S.A. 50:3-9, during which the natural seed beds may be legally opened for the taking of oysters for the purpose of direct market sale. Pursuant to N.J.S.A. 50:3-8, the duration of the direct market harvest season may be modified by the Commissioner after consultation with the Council.

"Division" means the Division of Fish and Wildlife in the Department of Environmental Protection.

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“Gross tonnage” means a vessel’s approximate volume as determined by a U.S. Coast Guard authorized measurement system, in accordance with the Code of Federal Regulations, Title 46 (Shipping), Part 69 (Measurement of Vessels), Subpart A (General), Section 69.9 (Definitions).

“Harvest” or “harvesting” means the act of collecting oysters with dredge, tongs or other means.

“Harvester” means the captain, license holder, or other person responsible for the operation of a vessel engaged in the act of collecting oysters with dredge, tongs or other means.

“Harvest trip” means a departure from port, transit to the State’s natural seed beds, harvesting and return to port.

“Haskin Shellfish Research Laboratory” means the Rutgers University Haskin Shellfish Research Laboratory, located in Port Norris, New Jersey.

“Individual allocation” means an oyster dredge vessel license holder’s equal fraction of the annual harvest quota that is available for harvest pursuant to N.J.A.C. 7:25A-2.

“Land” means to enter port in possession of oysters, to dock to a man-made structure in possession of oysters or to begin offloading harvested oysters.

“Landing sites” means all Division-approved offloading sites.

“Market oyster” means any seed oyster taken from the State’s natural seed beds as part of a direct market harvest season or oyster transplant season with a minimum size of two and one-half inches (2 ½) in height from hinge to lip.

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“Minimum tonnage license” means an oyster dredge vessel license issued to a vessel which is five gross tons or less.

...

“Offload” or “Offloading” means to separate physically a container of oysters from a vessel.

“Oyster cultch program” means the program governing the purchase and planting of shell or other cultch material in order to increase oyster recruitment or for general bed maintenance. The program also includes other enhancement activities such as, but not limited to, the transplanting of seed oysters within the Delaware River, Delaware Bay and their tributaries and other support activities.

“Oyster dealer” means any person who purchases oysters harvested by individuals from the Delaware River, Delaware Bay and their tributaries, in the shells as they are offloaded from oyster vessels, and who is licensed pursuant to N.J.S.A 50:3-20.11.

“Oyster dredge vessel license holder” means the owner who has legal title or right to a vessel that is licensed to harvest oysters with dredge from any of the natural beds or grounds in the Delaware River or in the Delaware Bay above the Southwest line, except in that area known as Section E.

“Oyster resource development account” means the dedicated account into which are deposited all revenues received through the sale of oyster harvest tags from oysters harvested from the Delaware River, Delaware Bay and their tributaries, including but not limited to, all license fees collected pursuant to this chapter and N.J.S.A. 50:1-18, N.J.S.A. 50:3-2, and N.J.S.A. 50:3-20.13. The monies in the account are allocated to the Division and shall be disbursed only for the enhancement and management of the oyster resource in

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the Delaware Bay in the amounts and manner prescribed by the Commissioner, after consultation with the Delaware Bay Section of the New Jersey Shellfisheries Council.

“Oyster transplant season” means April 1 to June 30, the season, as established at N.J.S.A. 50:3-8 and 50:3-9, during which the natural seed beds may be legally opened for the taking of seed oysters for the purpose of transplanting oysters to the leased grounds. Pursuant to N.J.S.A. 50:3-8, the duration of the oyster transplant season may be modified by the Commissioner after consultation with the Council.

“Planting” means to physically move oysters off a vessel onto a leased ground.

"Section 'E' " means [all of] the leased area [within the boundaries] above the southwest line described [herein:] at N.J.S.A. 50:1-23 [beginning at a point (X=1820400) (Y=146800) said point being Channel Buoy R “32” and corner #1 of said section and running thence N 28'-14 " -14.2 " E 6612.18 feet to corner #2 (X=1826233) (Y=149914); thence S 56'-32 " -38.4 " E 33401.27 feet to corner #3 being also corner #1 lot 530 section D leased oyster ground lot (X=1854100) (Y=131500) located on or near the southwest line; thence along the southwest line S 55'-16 " -29.1 " W 19222.67 feet to old Crossledge Lighthouse foundation being corner # 4 of the section (X=1838301) (Y=120550); thence N 16'-02 " -14.0 " W 17740.41 feet to corner #5 being also BR “WR” buoy marking a wreck in the bay (X=1833400) (Y=137600); thence N 42'-42 " -33.7 " W 3,538.36 feet to a point in Delaware Bay being corner #6 of section E (X=1831000) (Y=140200); thence S 70'-17 " -31.3 " W 7116.88 feet to corner # 7 being a point on the east side of the Main Ship Channel in Delaware Bay (X=1824300) (Y=137800); thence N 23'-25 " -43.3 " W 9818.67 feet to corner # 1 the place of beginning].

"Seed oysters [(seed)]" means all oysters [taken] harvested from [the natural seed beds] any of the lands lying under the tidal waters of the Delaware River, Delaware Bay and their tributaries (with the exception of the leased areas). For purposes of fee calculations pursuant to N.J.A.C. 7:25A-2.6 and N.J.A.C. 7:25A-3.6, oysters that have been removed

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from natural seed beds and planted on leased areas are not considered to be seed oysters subsequent to planting in the leased area.

["Shellfish Office" means the Bureau of Shellfisheries office located on Miller Avenue, Port Norris, New Jersey. The office telephone number is (609) 785-0730 and marine contact during bay season will be VHF Channel 68.]

"Southwest line" means a line running directly from the mouth of Straight Creek to Crossledge Lighthouse in Delaware Bay, **as described at N.J.S.A. 50:3-11.**

...

"Tongs" means a device used in catching oysters that consists of two shafts or handles attached to opposable and complementary pincers, baskets or containers operated entirely by hand from the surface of the water and that has no external or internal power source.

"Validly licensed" means those vessels:

1. Which are operable, that is, **entirely** capable of **the commercial dredging harvest of** [taking] **oysters under their own motive power at the time of license application or renewal** [within the previous calendar year,] unless exempted from this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation; and

2. (No change.)

7:25A-[1.5] **1.4 Licenses; residence of vessel owners; tonnage determination; license fees**

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(a) No licenses authorized by N.J.S.A. 50:3-1 shall be issued except as renewal for those vessels validly licensed during the year prior to that of the license to be issued.

(b) The owner of a licensed oyster dredge vessel shall be legally domiciled or incorporated in the State of New Jersey.

(c) No vessel owned wholly or in part by a nonresident and licensed in any other state to catch oysters on natural beds or grounds in such other state shall be licensed in this State within the same year in which such license to catch oysters in such other state shall have been or shall be issued.

(d) For the purposes of licensing, gross tonnage shall be determined based on one of the following:

1. For vessels five gross tons or less that are not eligible for a United States Coast Guard Certificate of Documentation and were built in the United States, the applicant shall provide a current New Jersey Motor Vehicle Registration for the vessel and shall certify that the vessel is not eligible for a United States Coast Guard Certificate of Documentation.

2. For vessels greater than five gross tons that were built in the United States, the applicant shall provide a current copy of the United States Coast Guard Certificate of Documentation for the vessel. The Certificate of Documentation shall include the owner's name and address as well as the dimensions and gross tonnage of the vessel.

3. For any vessel built outside of the United States, the applicant shall provide gross tonnage documentation in accordance with N.J.A.C. 7:25A-1.5(k).

(e) For vessels five gross tons or less qualifying under (d)1 above, the minimum annual license fee of \$10.00 established at N.J.S.A. 50:3-2 applies. For vessels qualifying

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under (d)2 or 3 above, the annual license fee of \$2.00 per gross ton established at N.J.S.A. 50:3-2 applies.

7:25A-[1.6] 1.5 Substitution [;], exchanges or transfers of licensed oyster dredge vessels;
license renewal

(a) (No change.)

(b) Two persons owning vessels validly licensed pursuant to N.J.S.A. 50:3-1 may exchange their vessels with the approval of the [commissioner of Environmental Protection] **Commissioner** and the [Delaware Bay Section of the Shellfisheries] Council and be exempt from the tonnage limitation set forth in (a) above.

(c) A person **replacing or** transferring ownership of [his] **his/her** licensed oyster vessel [may] **shall** do one of the following:

1. File a notarized Statement of Intent with the Department indicating that [he] **he/she** has sold the vessel and wishes to replace it with another vessel within one year. **If transfer of the license to the replacement vessel is to occur after the expiration date of the current license, the license holder shall renew the license prior to expiration and pay the annual license fee specified in N.J.A.C. 7:25A-1.4(e) to retain the right to the license to be transferred;** or

2. File a notarized Statement of Intent with the Department indicating that [he] **he/she** will waive all rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the vessel to its new owner who shall meet all statutory criteria for licensing. **If transfer of the licensed vessel is to occur after the expiration date of the current license, the license holder shall renew the license prior to expiration and pay the**

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annual license fee specified in N.J.A.C. 7:25A-1.4(e) to retain the right to the licensed vessel to be transferred.

(d) The new owner of a transferred vessel **for which the previous owner has filed a notarized Statement of Intent with the Department under (c)2 above indicating that he/she will waive all rights and conditions of that license intending to transfer the right to the license with the vessel to its new owner,** must have [its] **the** license reissued in [his] **his/her** own name. Application for reissue must include documentation as to ownership of the vessel, [and] the current year's license, **documentation of the gross tonnage of the vessel as specified in (k) below and the annual license fee specified in N.J.A.C. 7:25A-1.4(e).**

(e) A licensed vessel that is lost, destroyed or disabled may be replaced within [two] **four** years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, that [he] **he/she** will replace the vessel. **If transfer of the license to the new vessel is to occur after the expiration date of the current license, the license holder shall renew the license prior to expiration and pay the annual license fee specified in N.J.A.C. 7:25A-1.4(e) to retain the right to the license to be transferred.** The replacement vessel shall be licensed upon proof of loss and of replacement of the previously licensed vessel. No replacement vessels shall have more than a 10-percent greater gross tonnage than the previously[-]licensed vessel.

(f) Except as specified in (c)1 and (e) above, in order to maintain licensing during subsequent years, oyster dredge [boat] **vessel** licenses shall be renewed annually on or before December 31. Application for renewal shall include proof of ownership of the vessel, an affidavit attesting that the vessel was validly licensed and evidence of compliance with N.J.A.C. 7:25A-[1.5]**1.4.**

(g) A license not renewed within the calendar year shall be retired [together with the license holder's Section E leases].

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(h) through (i) (No change)

(j) Only vessels propelled under their own motive power are eligible for license renewal.

(k) The application for license reissuance, including renewal and reissuance to a new licensee as a result of a transfer, shall include documentation as to ownership and vessel gross tonnage, including the following:

1. **A valid Certificate of Title; or**

2. **A current New Jersey Motor Vehicle Registration, and as applicable:**

i. If the vessel is eligible for a United States Coast Guard Certificate of Documentation, in accordance with N.J.A.C. 7:25A-1.4(d)2, a current copy of the Certificate; or

ii. If the vessel is not eligible for a United States Coast Guard Certificate of Documentation, a certificate of measurement (survey) from a United States Coast Guard authorized certification organization indicating that an admeasurement of the vessel had been conducted. The applicant shall provide the Division with an official copy of the survey with raised seal, which must indicate the gross tonnage of the vessel prior to completion of the transfer and subsequent issuance of the license.

7:25A-[1.7] **1.6** Leasing of Section E

The owner of an operable vessel which is licensed to dredge oysters pursuant to N.J.S.A. 50:3-1 may lease ground in Section E upon application and approval of the [Delaware Bay Section of the Shellfisheries] Council.

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7:25A-[1.8] **1.7** Expiration and renewal of Section E lot leases

(a) Each Section E lot lease will expire at the end of the calendar year in which it was issued. Lease holders or their heirs and assigns will have the option to renew each year [provided the leased lot to be renewed has been, in the judgment of the Delaware Bay Section of the Shellfisheries Council and the division, actively worked by the recorded lease holder, and an accurate report of the use to which the lot was put is first filed with the Division on a form provided by the Division].

(b) Nothing in this chapter shall be construed to affect the exclusive power of the [Shellfisheries] Council, subject to approval by the Commissioner [of Environmental Protection], to lease shellfish ground as defined in N.J.S.A. 50:1-18.

7:25A-1.8 Fees; Oyster Resource Development Account

(a) In accordance with N.J.S.A. 50:1-18(e), the Commissioner, in consultation with the Council, shall fix the fee for all oysters harvested from the Delaware River, Delaware Bay and their tributaries, with the exception of the leased areas. The fee for all oysters harvested from the Delaware River, Delaware Bay and their tributaries, with the exception of the leased areas, shall be \$2.00 per bushel. The fee pursuant to this section will be collected by the Division prior to harvest through the purchase of tags from the Division's Delaware Bay Office.

(b) The fee imposed pursuant to this section, except as may otherwise be provided by law, shall be collected by and allocated to the Division and shall be deposited in the "Oyster Resource Development Account", established pursuant to section 8 of P.L. 1996, c.112 (C.23:3-12.2). The fees shall be disbursed only for the enhancement and management of the oyster resource from the Delaware River, Delaware Bay and their tributaries in the amounts and manner prescribed by the Commissioner after consultation with the Council.

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[7:25A-1.9 Oyster seed beds

(a) The Division with the advice of the Delaware Bay Section of the Shellfisheries Council and the Haskin Shellfish Research Laboratory of Rutgers University, shall determine the season for the taking of seed oysters from the natural seed beds above the Southwest Line in Delaware Bay and shall determine which of the natural seed beds above the Southwest Line shall be opened. Reasonable notice shall be given by the Division to all oyster dredge boat license holders of the dates of the beds to be opened and the conditions attendant on the opening. Oyster seed beds shall be closed as determined in accordance with (i) below. Daily harvest shall be from 7:00 A.M. to 3:30 P.M. Monday through Friday.

(b) Seed oysters (seed) may be taken for the purpose of planting or replanting at the times and in the manner prescribed on leased grounds:

1. Below the Southwest Line; or
2. In the Atlantic Coast Section only on days and at times designated by prior written agreement with the Division; or
3. In Section E.

(c) Any vessel unable to plant in seed oysters because of mechanical problems, water conditions or other verifiable emergency must immediately contact the Shellfish Office by VHF radio, Channel 68, or by telephoning (609) 785-0730.

(d) All seed oysters shall be planted on the day taken by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose except that the Division with the advice of

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the Council may designate times, manner and section(s) of the natural seed beds from which seed oysters may be taken for market, barter, or other trade during any period when the natural seed beds are legally opened.

(e) Oysters taken pursuant to (d) above for market, barter or other trade shall be bagged or containerized in one bushel bags or containers on board the harvesting vessel with harvest tags furnished by the Division. Tags shall remain in place until the oysters are delivered for sale by the harvester.

1. The minimum size limit for seed oysters taken for market, barter or other trade shall be 2 1/2 inches in height from hinge to lip.

(f) The Division with the advice of the Council may require harvesters authorized to harvest seed oysters from the natural seed beds to move specified quantities of seed oysters (other than those culled for market, barter or other trade) from one location on the natural seed beds to another during any period open for harvest from the seed beds as provided in (d) above.

(g) An Advisory Committee shall be appointed by the Commissioner and shall be composed of two members of the Council, two members of the Haskin Shellfish Research Laboratory of Rutgers University, and the Director of the Division or his or her designee.

(h) Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in (g) above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

(i) Based upon the data and tests referred to in (h) above and the recommendation of the Advisory Committee described in (g) above, the Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

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1. It shall be illegal to harvest seed oysters from any closed beds.

2. It shall be prima facie evidence of the violation of (i)1 above if any vessel is observed by Radar or LORAN or other reliable means to be on closed beds with dredge in water.

(j) The Bureau of Shellfisheries of the Division shall publish coordinates of any boundary line or lines established by the Delaware Section of the Shellfisheries Council, and may, as practical, place marker buoys along such line or lines.

(k) Nothing in this section shall be construed to affect any existing regulations concerning areas condemned for the taking of shellfish by the State of New Jersey.

(l) The top and sides of licensed oyster vessels shall be marked with the license number, each number at least 18 inches in size, clearly legible and in good repair, and with no obstruction to view.

(m) No vessel shall take or possess seed oysters from the natural seed beds above the Southwest Line on the same day such vessel works or harvests on leased shellfish grounds.

(n) During Bay Season, harvesters must notify the Bivalve Shellfish Office to give notice of intent to work any leased grounds.

(o) If a vessel works any part of the day on the seed beds, all oysters in possession shall be deemed seed oysters and must be planted as required in (c) above and in accordance with this chapter before the vessel may return to harvesting from the seed beds.

(p) The operator of, or any other person aboard, any oyster harvesting vessel subject to this chapter shall immediately comply with instructions and signals issued by an authorized law enforcement officer and comply with his or her instructions to facilitate safe boarding and

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inspection of the vessel, its gear, equipment, and catch, for the purpose of enforcement of this chapter.

(q) This chapter shall apply to any vessel which harvests or receives seed oysters in any manner.

(r) Any person who violates the provisions of this section shall be liable to a penalty of not less than \$ 100.00 or more than \$ 3,000 for the first offense and not less than \$ 200.00 or more than \$ 5,000 for any subsequent offense, as provided in N.J.S.A 23:2B-14

(s) Any oysters taken, transported, planted or otherwise handled in violation of this chapter may be seized and replanted upon the State's natural seed beds.]

7:25A-1.9 Designation of landing sites

(a) **All oysters harvested from Delaware River, Delaware Bay and their tributaries shall be landed at one of the following designated landing sites: the Maurice River section of Commercial Township, the Cohansey River section of Greenwich Township, Fortescue Creek or the area known as Money Island on Nantuxent Creek.**

(b) **No oysters shall be landed except at designated landing sites. A list of designated landing sites will be posted at the Division's Delaware Bay Office.**

[7:25A-1.10 Review

The division and the Delaware Bay Section of the Shellfisheries Council shall review this subchapter annually at a regularly scheduled meeting of the Council.]

7:25A-1.10 Requirements and conditions for oyster tonger harvest

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(a) No person shall catch, take or attempt to catch or take by tonging or by any hand-operated device any oysters in the Delaware River, Delaware Bay and their tributaries without first obtaining an oyster license required by N.J.A.C. 7:25-7.10 and oyster harvest tags as described in (c) below. The harvest of oysters from the Delaware River, Delaware Bay and their tributaries by hand tongs is permissible in those areas described at N.J.S.A. 50:3-14 and 50:3-16.3.

(b) The harvest of oysters with tongs from Delaware River, Delaware Bay and their tributaries, excluding the leased areas, shall be subject to the following requirements.

1. All oysters harvested using tongs shall be landed in their shells and shall be containerized in one-bushel containers. Each container shall be tagged with tags obtained from the Division. Tags shall be affixed to containers immediately upon use, regardless of the volume of oysters placed in the container. Tags shall be used sequentially as issued. Tags shall remain in place until the oysters are landed and officially delivered for sale by the harvester to the oyster dealer, at which point the exact number of bushels offloaded shall be recorded on the oyster dealer's weekly report as described in N.J.A.C. 7:25A-1.12.

2. No container shall be tagged prior to being filled with oysters. Tags affixed to empty containers shall be subject to removal and confiscation by Division personnel. No empty container with tags affixed shall be placed onboard any vessel being prepared to harvest oysters.

3. A harvester, or any other person aboard any vessel employed in the harvesting of oysters with tongs, shall immediately comply with instructions and signals issued by an authorized law enforcement officer or other Division representative and comply with his or her instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purpose of enforcement of this subchapter.

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(c) Oyster tonger license holders shall pay a landing fee for each bushel of oysters landed in accordance with N.J.A.C. 7:25A-1.8(a). Tags will be available from the Division's Delaware Bay Office in batches of 50 or more. Tags provided under this section shall be valid only for the season for which issued and are non-transferable. Refunds will not be given for unused tags.

7:25A-1.11 Oyster Tonger Records Required

(a) All oyster tonger license holders shall provide to the Division weekly oyster harvest reports on forms supplied by the Division. Weekly reports shall include the following information:

1. The name of the oyster tonger license holder and license number;
2. The harvest dates and, for each date, the numbers of bushels harvested, the corresponding tag numbers and the name of the area of harvest;
3. For each harvest date, the designated landing site at which the oysters were landed and the name of the oyster dealer to whom the oysters were sold; and
4. The name and signature of the oyster tonger license holder attesting to the validity of the report.

(b) Weekly oyster tonger harvest reports shall be submitted to:

Delaware Bay Office
New Jersey Department of Environmental Protection
Division of Fish and Wildlife
1672 E. Buckshutem Road
Millville, NJ 08332

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(c) Weekly oyster harvest reports must be received by the Division no later than five business days after the end of the week during which oysters were harvested.

(d) The renewal of an oyster tonger license is specifically conditioned on compliance by the licensee with all the requirements of this chapter. The Department shall not renew an oyster tonger license for a licensee who has not submitted the required weekly reports in a timely fashion, as specified in this section.

(e) Disclosure of information provided in an individual's weekly harvest report submitted to the Division is subject to the limitations and requirements of N.J.S.A. 23:2B-9.

7:25A-1.12 Oyster Dealer Records Required

(a) Each oyster dealer receiving oysters harvested from the Delaware River, Delaware Bay, and their tributaries shall provide to the Division weekly oyster dealer reports containing the information specified in (b) below on forms supplied by the Division.

(b) Whenever oysters are delivered for sale by the harvester to the oyster dealer, the oyster dealer shall make an entry on the weekly oyster dealer report form obtained from the Division noting the date, oyster dredge vessel license number, oyster planter license number or oyster tonger license number, and the number of bushels landed by the harvester and received by the oyster dealer. Each entry shall be signed by the oyster dealer.

(c) Weekly oyster dealer reports shall be submitted to:

Delaware Bay Office

New Jersey Department of Environmental Protection

Division of Fish and Wildlife

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1672 E. Buckshutem Road

Millville, NJ 08332

(d) Weekly oyster dealer reports must be received by the Division no later than five business days after the end of the week during which oysters were purchased.

(e) Division personnel may inspect the premises of any dealer and, in accordance with N.J.S.A. 23:2B-9, inspect any report including entries referred to in (b) above.

(f) The renewal of an oyster dealer license is specifically conditioned on the compliance by the licensee with all the requirements of this chapter. The Department shall not renew an oyster dealer license for a licensee who has not submitted the required weekly reports in a timely fashion, as specified in this section.

(g) Disclosure of information provided in an oyster dealer's weekly report submitted to the Division is subject to the limitations and requirements of N.J.S.A. 23:2B-9.

7:25A-1.13 Signatories; certification

(a) Each applicant or licensee shall, upon submission of any report or application required under this chapter, sign the following certification on the application or report form:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant penalties, including fines and/or imprisonment, for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

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(b) Penalties for false swearing or false reporting by an applicant or licensee may include those set forth in N.J.S.A. 2C:28-3 and/or those set forth in N.J.S.A. 23:2B-14, as referenced in N.J.A.C. 7:25A-1.14.

7:25A-1.14 Penalties and remedies for violations

Violation of any provision of this chapter, or any license or order issued pursuant to it, shall subject the harvester and license holder to the applicable penalties and remedies established under N.J.S.A. 23:2B-14.

7:25A-1.15 Requests for adjudicatory hearings

(a) Any person, subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3), who believes himself or herself to be aggrieved with respect to a license and/or permit decision made by the Department under this chapter may request an adjudicatory hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A request for an adjudicatory hearing must be received by the Department within 30 calendar days after the person requesting the hearing receives notice of the Division's decision. If the Department does not receive a hearing request within the allotted time, it shall deny the hearing request.

(c) A person requesting a hearing shall provide the following information in writing to the Department at the addresses in (e) below:

- 1. The name, address, and telephone number of the person requesting the hearing;**

- 2. A copy of the decision document;**

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3. A description of any facts or issues, which the petitioner believes constitute a defense to the decision made by the Department;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(d) If the person fails to include all of the information required by (c)1 through 6 above, the Department may deny the hearing request.

(e) A request for an adjudicatory hearing shall be submitted to the Department at the address listed below, with a copy to the Division of Fish and Wildlife at the address given at N.J.A.C. 7:25A-1.12(c):

Office of Legal Affairs

Attention: Adjudicatory Hearing Requests

New Jersey Department of Environmental Protection

401 East State Street, Fourth Floor

PO Box 402

Trenton, New Jersey 08625-0402

7:25A-1.16 Review

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The Division and the Council shall review this chapter annually at a regularly scheduled meeting.

SUBCHAPTER 2 [(Reserved)] **DIRECT MARKET HARVEST SEASON**

7:25A-2.1 Purpose and Scope

This subchapter regulates the direct market harvest of oysters from the State's natural seed beds in Delaware Bay in order to conserve, protect, manage and improve the oyster resource and industry. This subchapter provides for the direct harvest and sale of oysters from the State's natural seed beds. The direct market harvest program includes the specification of harvest times and areas, establishes an annual harvest quota, provides a mechanism for the collection of fees for oysters harvested from the State's natural seed beds, and establishes a requirement for weekly reporting by harvesters.

7:25A-2.2 Applicability

(a) This subchapter applies to all taking, attempting to take, harvesting, or dredging of oysters during a designated direct market harvest season in State waters, except for the harvest of oysters for research, inventory or educational activities conducted under a scientific collecting permit issued by the Division pursuant to N.J.S.A. 23:4-52.

(b) Compliance with this subchapter shall not exempt any person from compliance with the Shellfish Growing Water Classification rules, N.J.A.C 7:12, under authority of N.J.S.A. 58:24-1 et seq., the Shellfish rules of the State Department of Health and Senior Services at N.J.A.C. 8:13, or with any applicable Federal or State law or rule.

7:25A-2.3 General control methods for direct market harvest season

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(a) Except as provided at N.J.A.C. 7:25A-2.2(a), no person or vessel shall take, attempt to take, harvest, or dredge for oysters, on the State's natural seed beds without possessing a licensed oyster dredge vessel and harvest tags as described in N.J.A.C. 7:25A-1.8(a) and N.J.A.C. 7:25A-2.6.

(b) The requirements and conditions for the direct market harvest of oysters from natural seed beds in Delaware Bay are as follows:

1. Oysters shall be harvested from the State's natural seed beds only on Monday through Friday between sunrise and 3:30 P.M. Eastern Time, unless otherwise determined by the Division in consultation with the Council. Notice of any change in these times shall be provided by first class mail to each oyster dredge vessel license holder participating in the direct market harvest program.

2. The harvester shall notify the Department of the intended harvest location and port of landing of the vessel prior to commencement of harvesting for each harvest trip. Prior to offloading, the harvester shall notify the Department of the vessel's total harvest for that harvest trip. The notifications shall be made by telephoning the Division's Delaware Bay Office, Bureau of Shellfisheries, at (856) 785-0730. Notification of changes in port of landing shall be given two hours prior to landing.

3. The minimum size limit for seed oysters taken for direct market sale shall be two and one half inches (2½) in height from hinge to lip.

4. Any harvester who has reported his or her intention to harvest on the State's natural seed beds shall have the vessel's entire harvest for that harvest trip counted as part of the licensed vessel's individual allocation for that season.

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5. A harvester shall not transfer oysters from any oyster vessel to any other vessel. All oysters harvested from the natural seed beds shall be landed at one of the designated landing sites described at N.J.A.C. 7:25A-1.9. Specific hours of landing may be established by the Division as conditions attendant to the opening of the direct market harvest oyster season pursuant to N.J.A.C. 7:25A-2.4(a). Notice of any change in hours of landing shall be provided by first class mail to each oyster dredge vessel license holder participating in the direct market harvest program.

6. During a direct market harvest season, all harvesters must notify the Delaware Bay Office of the intent to work any leased grounds. No vessel shall take or possess oysters from the natural seed beds above the southwest line on the same day such vessel harvests on leased shellfish grounds.

7. The top and sides of licensed oyster dredge vessels shall be marked with the license number, each number at least 18 inches in size, clearly legible and in good repair and with no obstruction to view.

8. The harvester and any other person aboard any licensed oyster dredge vessel shall immediately comply with instructions and signals issued by an authorized law enforcement officer or other Division representative and comply with his or her instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch.

(c) All oysters harvested for direct market shall be landed in their shells and offloaded in 24-bushel cages or one-bushel containers and shall be subject to the following:

1. All oysters harvested for direct market shall be stored in a container and each container shall be tagged with tags obtained from the Division for the total number of bushels of oysters within the container.

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2. Tags shall be affixed to containers immediately upon use, regardless of the volume of oysters placed in the container. The tags shall be used sequentially as issued for the specific licensed oyster harvest vessel. Tags shall remain in place until the oysters are landed and delivered for sale by the harvester to the oyster dealer, at which point the exact number of bushels offloaded must be recorded by the oyster dealer on the weekly oyster dealer report in accordance with N.J.A.C. 7:25A-1.12 and signed by the oyster dealer.

3. No container shall be tagged prior to being filled with oysters. Tags affixed to empty containers shall be subject to removal and confiscation by Division personnel. No empty container with tags affixed shall be placed onboard any licensed oyster vessel being prepared to harvest oysters from the seed beds. Only 24-bushel bulk tags shall be affixed to cages. Single one-bushel tags may be affixed to a maximum of one partially filled cage.

4. Tags shall not be altered in any manner.

5. For culling purposes during harvesting operations, harvesters may utilize, without tagging, one one-bushel capacity basket per deckhand to temporarily hold oysters prior to transferring to a cage.

(d) Harvesters who elect to plant all or part of their individual allocation, assigned in accordance with N.J.A.C. 7:25A-2.5(b), on their leased ground shall do so in accordance with the following conditions:

1. The Division, in consultation with the Council, may limit the times and manner in which individuals may plant all or part of their direct market harvest season allocation on their leased grounds as conditions attendant to the opening of the direct market harvest oyster season pursuant to N.J.A.C. 7:25A-2.4(a). Notice of any change in times or manner of planting shall be provided by first class mail to each oyster dredge vessel license holder participating in the direct market harvest program.

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2. The harvester shall notify the Delaware Bay Office by telephone (856-785-0730) at least three days prior to the anticipated planting day as well as the morning of the actual planting day prior to the initiation of harvesting from the natural seed beds.

3. Prior to harvest, the harvester shall purchase and retain on the harvest vessel the number of tags corresponding with the anticipated bushel volume to be transplanted. Containerization of oysters harvested during the direct market harvest season is optional when the harvester elects to transplant the oysters to leased ground.

4. Prior to leaving the harvest area, the harvester shall notify the Delaware Bay Office by telephone (856-785-0730) of the anticipated time of arrival at a specified lease section and lot number.

5. No oysters shall be planted until after the volume is confirmed by the Division during an inspection conducted in accordance with (d)6 below or the Division has given the harvester approval to plant the oysters by telephone ((856-785-0730) or VHF radio communication, should circumstances prevent an on-water inspection.

6. Prior to commencement of planting, Division personnel may meet the harvest vessel to confirm the volume of oysters being transplanted. At that time, the harvester shall provide Division personnel with the appropriate number of tags for the volume to be planted. Tags shall be used sequentially as issued for the specific, appropriately licensed oyster harvest vessel. If an on-water inspection is not conducted, the harvester shall return the number of tags corresponding to the actual bushel volume transplanted to the Delaware Bay Office within five business days.

7. To reduce the potential removal of oysters less than two and one-half (2½) inches in height by harvesters who elect to transplant all or part of their allocation during a direct market harvest season, the Division, in consultation with the Council, may close specific seed beds to such transplant harvest. Notice of any closure shall be provided by first class

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mail to each oyster dredge vessel license holder participating in the direct market harvest program.

8. Any harvester unable to plant seed oysters because of mechanical problems, water conditions or other verifiable emergency shall immediately telephone the Delaware Bay Office at (856) 785-0730 and obtain the Division's direction as to how to proceed.

9. The Division, in consultation with the Council, may require harvesters authorized to harvest seed oysters from the natural seed beds to move specified quantities of seed oysters from one location on the natural seed beds to another. Notice of any such requirement shall be provided by first class mail to each oyster dredge vessel license holder participating in the direct market harvest program.

7:25A-2.4 Direct market harvest season; closed harvest areas

(a) The Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, shall determine the season for the direct market harvest of oysters from the State's natural seed beds. The annual season for direct market harvest of oysters from the State's natural seed beds in Delaware Bay shall open no earlier than April 1 and close no later than November 30. Specific opening and closing dates shall take into account temperatures and other environmental conditions present that year. Notice of the open and close dates for each season, as well as any conditions attendant to the opening of the season, shall be provided by first class mail to each oyster dredge vessel license holder participating in the direct market harvest program.

(b) The Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, may open or close certain oyster beds or groups of oyster beds as may be necessary for the conservation of the oyster resource and the preservation of the oyster industry. Notice of the opening or closure of oyster beds or groups of oyster beds shall be provided by first class mail to each oyster dredge vessel

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license holder participating in the direct market harvest program. A list of closed areas will be posted at the Division's Delaware Bay Office.

1. It shall be illegal to harvest oysters from any closed areas or beds.

2. It shall be prima facie evidence of the violation of (b)1 above if any vessel is observed by Radar or Global Positioning System or other reliable means to be on closed beds with dredge in water.

3. The Division shall furnish coordinates to all eligible license holders of any boundary line or lines of closed areas established in consultation with the Council.

(c) Any oysters harvested, transported, planted or otherwise handled in violation of this subchapter may be seized and replanted upon the State's natural seed beds.

7:25A-2.5 Direct market harvest limitations; quota; control dates

(a) The Commissioner, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, shall establish annually a season quota for the direct market harvest of oysters from the State's natural seed beds above the southwest line.

(b) The Division, in consultation with the Council, may establish control dates for the annual direct market harvest season, which may include deadlines by which license holders must indicate their intention to participate in that year's direct market harvest program. Subsequently, the annual direct market harvest quota, as described at (a) above, shall be divided equally by the number of license holders indicating their interest in participating in the harvest by the established control date.

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(c) In order to maximize utilization of the annual direct market harvest quota, the Division, in consultation with the Council, may establish other control dates by which all or portions of a harvester's annual tag allotment (described at N.J.A.C. 7:25A-2.6) must be purchased.

7:25A-2.6 Fees; tags; transfers of tags; refunds prohibited

(a) As described at N.J.A.C. 7:25A-1.8(a), oyster dredge boat license holders shall pay a landing fee of \$2.00 for each bushel of oysters harvested by purchasing tags to be attached to each container. Tags will be available from the Division's Delaware Bay Office. One-bushel tags will be available in batches of 200 or more, unless a lesser amount is needed to fulfill an oyster dredge vessel's annual tag allotment prior to the close of a season. Twenty-four-bushel bulk tags will be available in batches of eight or more, unless a lesser amount is needed to fulfill an oyster dredge vessel's annual tag allotment prior to the close of a season. Tags provided under this section shall be valid only for the season for which they are issued and are non-transferable. Refunds will not be given for unused tags, unless harvest for the direct market harvest season is terminated or suspended by the Division.

(b) Only owners of vessels that are propelled under their own motive power are eligible to purchase tags and harvest oysters.

7:25A-2.7 Direct market harvest records required

(a) All oyster dredge vessel license holders shall provide to the Division weekly direct market harvest reports on forms supplied by the Division. Weekly reports shall include the following information:

1. The oyster dredge vessel name and oyster dredge vessel license number;

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2. The harvest dates and, for each date, the numbers of bushels harvested, the corresponding tag numbers and the name of the seed bed harvested in accordance with a chart supplied by the Division;

3. For each harvest date, the designated landing site at which the direct market harvest oysters were landed and the dealer to whom the oysters were sold; and

4. The name and signature of harvester attesting to the validity of the report (see N.J.A.C. 7:25A-1.13).

(b) Weekly direct market harvest reports shall be submitted to:

Delaware Bay Office

New Jersey Department of Environmental Protection

Division of Fish and Wildlife

1672 E. Buckshutem Road

Millville, New Jersey 08332

(c) Weekly oyster harvest reports must be received by the Division no later than five business days after the end of the week during which oysters were harvested.

(d) If the holder of an oyster dredge vessel license has harvested his or her total season allocation, the license holder shall submit a final weekly report indicating that the total allocation has been utilized.

(e) The renewal of an oyster dredge vessel license is specifically conditioned on compliance by the licensee with all the requirements of this subchapter. The Department shall not renew an oyster dredge vessel license for a licensee who has not filed the required weekly reports in a timely fashion, as specified in this section.

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(f) Disclosure of information provided in an individual's weekly harvest report submitted to the Division is subject to the limitations and requirements of N.J.S.A. 23:2B-9.

SUBCHAPTER 3 [(Reserved)] OYSTER TRANSPLANT SEASON

7:25A-3.1 Purpose and Scope

This subchapter regulates the harvest of seed oysters from the State's natural seed beds in Delaware Bay for the purpose of transplant in order to conserve, protect, manage and improve the oyster resource and industry. This subchapter provides for the transplanting of seed oysters from the State's natural seed beds directly to industry leased grounds. The oyster transplant program includes the specification of harvest times and areas as well as establishment of an annual harvest quota, provides a mechanism for the collection of fees for seed oysters harvested from the State's natural seed beds, and establishes a requirement for weekly reporting by harvesters.

7:25A-3.2 Applicability

(a) This subchapter applies to the taking, attempting to take, harvesting, or dredging of oysters during a designated oyster transplant season in State waters, except for harvest of oysters under a scientific collecting permit issued by the Division pursuant to N.J.S.A. 23:4-52 for research, inventory or educational activities.

(b) Compliance with this subchapter shall not exempt any person from compliance with the Shellfish Growing Water Classification rules , N.J.A.C 7:12, under authority of N.J.S.A. 58:24-1 et seq., the Shellfish rules of the State Department of Health and Senior Services at N.J.A.C. 8:13 or with any applicable Federal or State law or rule.

7:25A-3.3 General control methods for oyster transplant season

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(a) Except as provided at N.J.A.C. 7:25A-3.2(a), no person or vessel shall take, attempt to take, harvest, or dredge for oysters on the State's natural seed beds without possessing a licensed oyster dredge vessel and harvest tags as described in N.J.A.C. 7:25A-1.8(a) and N.J.A.C. 7:25A-3.6.

(b) The requirements and conditions for the harvest of seed oysters from State's natural seed beds in Delaware Bay are as follows:

1. Oysters shall only be harvested from the State's natural seed beds daily Monday through Friday between sunrise and 3:30 P.M. Eastern Time, unless otherwise determined by the Division in consultation with the Council. Notice of any change in these times shall be provided by first class mail to each oyster dredge vessel license holder participating in the oyster transplant program.

2. Prior to commencement of harvesting for each transplant harvest trip, the harvester shall notify the Department of the intended harvest location and planting ground(s) of the vessel. Immediately upon completion of harvesting and prior to planting on leased grounds, the harvester shall notify the Department of the vessel's entire harvest for that harvest trip. These notifications shall be made by telephoning the Division's Delaware Bay Office, Bureau of Shellfisheries, at (856) 785-0730. Notice of any change in which leased ground(s) will be planted shall be given two hours prior to planting.

3. Prior to leaving the harvest location, the harvester shall notify the Delaware Bay Office by telephone at (856) 785-0730 of the anticipated time of arrival at a specified lease section and lot number.

4. Prior to commencement of planting, Division personnel may meet the harvest vessel to confirm the volume of oysters being transplanted. At that time, the harvester shall provide Division personnel with the appropriate number of tags (as described at

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N.J.A.C. 7:25A-3.6) for the volume to be planted. Tags shall be used sequentially as issued for the specific, appropriately licensed oyster harvest vessel. The Division will verify the harvest total and collect the required harvest tags. No oysters shall be planted until after the volume is confirmed or the Division has given the harvester approval to plant the oysters by telephone at (856) 785-0730 or VHF radio should circumstances prevent an on-water inspection. If an on-water inspection is not conducted, the harvester shall return the number of tags corresponding to the actual bushel volume transplanted to the Delaware Bay Office within five business days.

5. Any harvester who has reported his or her intention to harvest on the State's natural seed beds shall have the vessel's entire harvest for that harvest trip counted as part of the licensed vessel's individual allocation for that season.

6. A harvester shall not transfer oysters to or from any oyster vessel to any other vessel.

7. A harvester shall not operate a vessel to harvest or land oysters from both the natural seed beds and the leased oyster grounds on a single day. During an oyster transplant season, each oyster harvester shall notify the Delaware Bay Office each day the harvester intends to work any leased grounds.

8. The top and sides of licensed oyster dredge vessels shall be marked with the license number, each number at least 18 inches in size, clearly legible and in good repair and with no obstruction to view.

9. Any harvester unable to plant seed oysters because of mechanical problems, water conditions or other verifiable emergency must immediately telephone the Delaware Bay Office at (856) 785-0730.

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10. The harvester and any other person aboard any licensed oyster dredge vessel shall immediately comply with instructions and signals issued by an authorized law enforcement officer or other Division representative and comply with his or her instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment and catch.

11. All seed oysters shall be planted loosely on the bottom, not in bags, baskets or other containers, on the day taken. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose unless the Division, in consultation with the Council, designates times, manner and section(s) of the natural seed beds from which seed oysters may be taken for market during any period when the natural seed beds are legally opened.

12. If a licensed oyster dredge vessel works any part of the day on the seed beds during an oyster transplant season, all oysters in possession shall be deemed seed oysters and must be planted as required in (b)11 above in accordance with all requirements of this subchapter before the vessel may return to harvesting from the seed beds. Harvesters authorized to take seed oysters for market during a designated oyster transplant season shall also be required to comply with all of the provisions governing the direct market harvest season at N.J.A.C. 7:25A-2.

(c) The Division, in consultation with the Council, may require harvesters authorized to harvest oysters from the natural seed beds to move specified quantities of seed oysters from one location on the natural seed beds to another. Notice of any required relocation of seed oysters shall be provided by first class mail to each oyster dredge vessel license holder participating in the direct market harvest program.

7:25A-3.4 Oyster transplant season; closed harvest areas

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(a) The Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, shall determine the season for the oyster transplant season. Notice of the season established as well as any conditions attendant to the opening shall be provided by first class mail to each oyster dredge vessel license holder participating in the oyster transplant program. Pursuant to N.J.S.A. 50:3-8 and N.J.S.A. 50:3-9, the oyster transplant season shall open no earlier than April 1 and close no later than June 30. Specific opening and closing dates shall take into account temperatures and other environmental conditions present that year.

(b) The Division, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, may open or close certain beds or groups of beds as may be necessary for the conservation of the oyster resource and the preservation of the oyster industry. Notice of the opening or closure of oyster beds or groups of beds shall be provided by first class mail to each oyster dredge vessel license holder participating in the oyster transplant program.

(c) Seed oysters may be taken for the purpose of planting at the times and in the manner established under (a) above on leased grounds:

1. Below the southwest line;
2. In Section E; or
3. In the Atlantic Coast Section, as described at N.J.S.A. 50:1-18(d), only on days and at times established by prior written agreement with the Division.

(d) An Advisory Committee may be appointed by the Commissioner for the purposes specified in (e) below and shall be composed of two members of the Council, two members of the Haskin Shellfish Research Laboratory of Rutgers University, and the Director of the Division or his or her designee(s).

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(e) The Advisory Committee may undertake physical tests of all areas opened pursuant to this subchapter near the end of each week, for the purpose of providing a recommendation to the Division to close any or all beds opened as provided under (a) above.

(f) Based upon the results of the tests undertaken pursuant to (e) above and the recommendation of the Advisory Committee, the Division, in consultation with the Council, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1. It shall be illegal to harvest oysters from any closed beds.

2. It shall be prima facie evidence of the violation of (f)1 above if any vessel is observed by Radar or Global Positioning System or other reliable means to be on closed beds with dredge in water.

3. The Division shall furnish coordinates to all eligible license holders of any boundary line(s) of closed areas established in consultation with the Council by first class mail. Notice of any change in these closed areas shall be provided by first class mail to each oyster dredge vessel license holder participating in the program. A list of closed areas will be posted at the Division's Delaware Bay Office.

(g) Any oysters harvested, transported, planted or otherwise handled in violation of this subchapter may be seized and replanted upon the State's natural seed beds.

7:25A-3.5 Oyster transplant harvest limitations; quota; control dates

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(a) The Commissioner, in consultation with the Council and with the advice of the Haskin Shellfish Research Laboratory, shall establish annually a season quota for the harvest of seed oysters from the State's natural seed beds above the southwest line.

(b) The Division, in consultation with the Council, may establish control dates for the oyster transplant season, which may include deadlines by which license holders must indicate their intention to participate in that year's oyster transplant program.

7:25A-3.6 Fees, tags; transfers of tags, refunds prohibited

(a) As described at N.J.A.C. 7:25A-1.8(a), during an oyster transplant season, oyster dredge vessel license holders shall purchase tags for the harvest of oysters at a harvest fee of \$2.00 for each bushel of oysters harvested. Tags will be available from the Division's Delaware Bay Office. One-bushel tags will be available in batches of 200 or more. One hundred bushel bulk tags will be available in batches of two or more. Tags provided under this section shall be valid only for the season for which they are issued and are non-transferable. Refunds will not be given for unused tags, unless harvest for the oyster transplant season is unexpectedly terminated or suspended by the Division.

(b) Only owners of vessels that are propelled under their own motive power are eligible to purchase tags and harvest oysters.

7:25A-3.7 Transplant harvest records required

(a) All oyster dredge vessel license holders shall provide to the Division weekly oyster transplant harvest reports on forms supplied by the Division. Weekly reports shall include the following information:

1. The oyster dredge vessel name and oyster dredge vessel license number;

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2. The harvest dates and, for each date, the numbers of bushels harvested, the corresponding tag numbers, the name of the seed bed harvested in accordance with a chart supplied by the Division and the section and lot number of the leased ground(s) planted; and

3. The name and signature of the harvester attesting to the validity of the report (see N.J.A.C. 7:25A-1.13).

(b) Weekly harvest reports shall be submitted to:

Delaware Bay Office

New Jersey Department of Environmental Protection

Division of Fish and Wildlife

1672 E. Buckshutem Road

Millville, NJ 08332

(c) Weekly oyster harvest reports must be received by the Division no later than five business days after the end of the week during which oysters were harvested.

(d) The renewal of an oyster dredge vessel license is specifically conditioned on compliance by the licensee with all the requirements of this subchapter. The Department shall not renew an oyster dredge vessel license for a licensee who has not filed the required weekly reports in a timely fashion, as specified in this section.

(e) Disclosure of information provided on an oyster dealer's weekly harvest report submitted to the Division is subject to the limitations and requirements of N.J.S.A. 23:2B-9.

[SUBCHAPTER 4. OYSTER CULTCH PROGRAM

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7:25A-4.1 Scope

This subchapter is intended to provide for the reporting of all New Jersey oyster landings from Delaware Bay and the imposition, collection, and dedication of fees to finance an oyster cultch program to purchase and plant no less than 40 percent of the oyster shells from the previous year's harvest on the State's oyster seed beds and to provide support for shellfish research as directed by the Commissioner after consultation with the Delaware Bay Shellfish Council.

7:25A-4.2 Definitions

“Cultch” shall mean shell planted in seed beds to catch and support a set of oysters.

“Dealer” shall mean the receiver of harvested oysters as they are offloaded from oyster vessels, in accord with N.J.S.A. 50:3-20.10 and N.J.A.C. 8:13-1.1.

“Harvest” shall mean both the removal of oysters from leased planted grounds for sale, and the oysters so removed.

“Landing Sites” shall include all departmentally designated Delaware Bay oyster shucking houses and existing significant off-landing sites.

“Oyster cultch program” shall mean the purchase and planting of oyster shell and shall also include the necessary data collection, administrative, and enforcement support activities.

7:25A-4.3 Fee

(a) A fee shall be collected from harvesters by dealers for each bushel of oysters landed at their permitted landing sites.

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1. The feel shall be initially set at \$0.35 per bushel except for seed oysters harvested for market, barter, or other trade. The fee for these oysters shall be initially set at the minimum rate of \$1.25 per bushel.

2. The fee shall be reviewed annually by the Delaware Bay Shellfish Council at a regularly scheduled meeting.

3. The fee shall subsequently be fixed by the Commissioner with the approval of the Delaware Bay Shellfish Council.

4. Notice of revised fees shall be provided in the New Jersey Register, by mailing to each dealer, and in a news release sent to the Bridgeton Evening News and the Millville Daily.

5. The fee for seed oysters taken for market, barter, or other trade, as provided for in N.J.A.C. 7:25A-1.9(d) will be collected by the Division of Fish and Wildlife prior to harvest through the purchase of tags provided for in N.J.A.C. 7:25A-1.9(e).

6. The fees imposed hereunder, except as may otherwise be provided by law, shall be deposited in a fund to be known as the "Oyster Cultch Fund", kept separate and apart from all other department and State receipts, and appropriated only to defray in full the oyster cultch program defined in N.J.A.C. 7:25A.

7:25A-4.4 Designation of landing sites & dealers

(a) The Department of Environmental Protection, upon application made by letter from the operator of a shucking house or other off-loading sites, may designate the site as an official landing site and its operator as a dealer.

(b) No oyster shall be landed except at designated sites.

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7:25A-4.5 Records Required

(a) All dealers receiving oysters harvested from Delaware Bay shall provide the Bureau of Shellfisheries weekly oyster landing reports on forms supplied by the Bureau.

(b) Whenever oysters are landed at a permitted site, the dealer shall make an entry noting the date, time, vessel license number, and the number of bushels received and collect the required fee. Each entry shall be signed by the dealer and the harvester at the time of landing.

(c) The original form shall be sent by the dealer to the Bureau of Shellfisheries, Bivalve Shellfish Office, P.O. Box 432, Port Norris, NJ 08349, at the end of every week during which oysters are received, no later than five days after the end of the week, together with a check or money order representing the amount of the fee collected, made payable to "Treasurer, State of New Jersey".

(d) The Bureau of Shellfisheries may inspect the loading sites of all dealers and every entry referred to in (b) above.

(e) The entries inspected, and the information contained therein, shall, except as otherwise provided in this section, be confidential and not be public record.

1. Insofar as possible, the information contained in these entries shall be compiled or published only in such a manner as so not to disclose the business records of any person.

2. The information contained in these entries can be provided to other states, Federal agencies, and regional fisheries agencies, provided that those entities have similar confidentiality provisions that do not disclose the business record of any person.

7:25-4.6 Penalties

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Any dealer not complying with this subchapter may be subject to prosecution pursuant to N.J.S.A. 23:2B-14.]