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ENVIRONMENTAL PROTECTION

WATER MONITORING AND STANDARDS

BUREAU OF MARINE WATER MONITORING

Shellfish Growing Water Classification

Proposed Recodification with Amendment: N.J.A.C. 7:12-9.4 as 9.7

Proposed Amendments: N.J.A.C. 7:12-1.1, 1.2, 1.4, 1.5, 2.1, 3.2, 4.1, 4.2, 7, 9.1, 9.7, 9.8, and 9.10

Proposed Repeals: N.J.A.C. 7:12-1.3, 2.2, 3.1, 9.6, and 9.9

Proposed New Rules: N.J.A.C. 7:12-8, 9.4, 9.14, and 9.15

Proposed Repeals and New Rules: N.J.A.C. 7:12-5.1, 9.2, 9.3, 9.5, 9.11, 9.12, and 9.13

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 2C:64-1 et seq., 4:27-1 et seq., 13:1D-9, 23:2B-1 et seq., 50:1-5 et seq., and 58:24-1 et seq.

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

DEP Docket Number: 11-15-10.

Proposal Number: PRN 2015-148.

Submit written comments by January 15, 2016, electronically at www.nj.gov/de/rules/comments.

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The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

G. Colin Emerle, Esq.

Attn: DEP Docket Number: 11-15-10

Office of Legal Affairs

Department of Environmental Protection

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The agency proposal follows:

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.

The Department of Environmental Protection (Department) is proposing, through amendments, repeals, and new rules, changes to the Shellfish Growing Water Classification rules at N.J.A.C. 7:12.

N.J.S.A. 58:24-1 et seq. authorizes the Department to inspect waters from which oysters, clams, and other shellfish are harvested for human consumption for the purpose of ascertaining the sanitary conditions of those waters, to restrict or close those waters to harvest if necessary to

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protect the health of those who would consume the shellfish, and to prohibit the taking of shellfish from such waters without the appropriate permit. New Jersey participates in the National Shellfish Sanitation Program (NSSP), which is recognized by the Interstate Shellfish Sanitation Conference (ISSC; New Jersey is a member of the conference) and the U.S. Food and Drug Administration (FDA). The NSSP, among other things, develops and updates regulatory guidelines for the sanitary control of shellfish produced and sold for human consumption. The regulatory guidelines are published by the FDA as the NSSP Guide for the Control of Molluscan Shellfish (NSSP Guide). The Department makes the applicable standards of the NSSP Guide part of the Shellfish Growing Water Classification rules through rulemaking.

The proposed amendments, repeals, and new rules will bring the Shellfish Growing Water Classification rules into conformance with current NSSP standards, add new permits for various growing and harvesting activities, amend and update existing permits, modify the delineations of the various classifications of the State's shellfish growing waters to reflect the most current sanitary water quality testing data, and update and streamline the rules generally.

The Department is proposing to update the list of statutory authorities under which it administers the Shellfish Growing Water Classification rules. In addition to N.J.S.A. 58:24-1 et seq. (mentioned above) and the Department's general enabling authority under N.J.S.A. 13:1D-9, the Department is including N.J.S.A. 2C:64-1 et seq., which governs forfeiture procedures that could be invoked under certain circumstances for shellfish violations; N.J.S.A. 4:27-1 et seq., the New Jersey Aquaculture Development Act, which designates the Department as the lead agency with respect to regulation of aquaculture activities in the waters of the State (under the statute the Department of Agriculture is the lead agency with respect to the development, marketing,

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promotion, and advocacy of aquaculture); N.J.S.A. 50:1-5 et seq., which vests in the Department the full control and direction of the shellfish industry and resource and of the protection of shellfish throughout the State; and N.J.S.A. 23:2B-1 et seq., which governs marine fisheries management.

Subchapter 1. Classification of Certain Shellfish Waters

Subchapter 1 contains the general provisions by which the Department classifies shellfish growing waters and determines whether and how the harvest of shellfish from those waters must be restricted in order to protect the public from the risks associated with the consumption of shellfish. The subchapter also sets forth various aspects of the Department's enforcement powers under the governing statutes.

Chapter scope, general enforcement provisions, shellfish growing water charts, NSSP information, Department address (N.J.A.C. 7:12-1.1)

The Department is proposing a new chapter scope provision at N.J.A.C. 7:12-1.1(a), replacing the scope section currently located at N.J.A.C. 7:12-1.3, which is proposed for repeal. The new scope provision recognizes that the rules as proposed to be amended include requirements for shellfish license holders regarding the harvest, handling, and transport of shellfish to ensure harvested shellfish are safe for human consumption. These requirements are found in proposed new Subchapter 8, described below, and apply to those persons who hold a shellfish license for commercially harvesting shellfish issued by the Department's Division of Fish and Wildlife. The new scope provision also lists the permits that are issued under the

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Shellfish Growing Water Classification rules, both existing and new. The permits are found in Subchapter 9, and the proposed repeal of several existing permits, the proposed amendments to the other existing permits, and the proposed six new permits are described below with respect to that subchapter.

The Department is proposing to delete N.J.A.C. 7:12-1.1(b) because it is unnecessary to state that the Department will revise the rules as necessary as technological data becomes available. References to this “code” and “regulation” in N.J.A.C. 7:12-1.1(b) and (c) (as recodified from existing subsections (c) and (d)) are replaced with references to this “chapter.” At N.J.A.C. 7:12-1.1(d) (as recodified from existing subsection (e)), the Department is proposing to delete an obsolete reference to N.J.S.A. 13:1D-7a, which transferred certain functions in 1970 from the Department of Health to the Department of Environmental Protection; those functions were subsequently subsumed into N.J.S.A. 58:24-1 et seq. and so are covered by the other referenced statutory provision in this subsection, N.J.S.A. 58:24-7. Other minor changes are proposed to paraphrase rather than quote the statutory provision providing the Department access to, for purposes of inspection and enforcement, shellfish beds and waters and other places where shellfish are grown or sold or stored with intent to sell or distribute. The Department is also proposing a provision stating its authority pursuant to N.J.S.A. 23:2B-9 to inspect any record required to be kept under the rules.

At N.J.A.C. 7:12-1.1(e) (as recodified from existing subsection (f)), as well as elsewhere in the existing rules, the Department is updating the reference to the Department of Health to reflect the current name of the department. Reference to oysters, clams, or other shellfish is shortened to simply shellfish, since shellfish for purposes of these rules is specifically defined as

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oysters, clams, mussels, and scallops (see N.J.A.C. 7:12-1.2). Proposed new N.J.A.C. 7:12-1.1(h), which prohibits persons from throwing anything overboard after being hailed by an enforcement entity before that entity conducts its inspection, and new N.J.A.C. 7:12-1.1(i), which requires all persons onboard to comply with the instructions of the enforcement entity conducting an inspection, are moved from N.J.A.C. 7:12-9.1 to N.J.A.C. 7:12-1.1 where other general provisions relating to enforcement of the rules are located (see N.J.A.C. 7:12-1.1(b) through (f)).

At N.J.A.C. 7:12-1.1(j) (as recodified from existing subsection (i)), the Department is proposing amendments that update the sources from which the shellfish growing water charts are available, including on-line posting, and that add a statement that notice of emergency closures or harvest suspensions in the waters depicted on the charts will be provided in accordance with N.J.A.C. 7:12-1.4, again including on-line posting. The Department is deleting the description in the existing rule regarding the nautical charts from which the growing water charts were derived because it is outdated. The Department is also deleting the provision in subsection (j) stating the Department condemns all shellfish growing waters described in the rules and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year except as noted in N.J.A.C. 7:12-4 and 5 because it is no longer accurate. As part of N.J.A.C. 7:12-9, the Department is proposing new N.J.A.C. 7:12-9.15, Commercial Shellfish Aquaculture Permit, which governs certain activities in Approved waters. In addition, all waters that the Department has classified are delineated in Subchapters 2, 3, and 4, and subject to any immediate closures or restrictions pursuant to N.J.A.C. 7:12-1.4.

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At N.J.A.C. 7:12-1.1(k), which describes the NSSP, the Department is proposing minor changes in wording that do not affect meaning and adding the on-line address where the NSSP Guide can be obtained from the U.S. Food and Drug Administration (FDA). Proposed new N.J.A.C. 7:12-1.1(l) provides the address of the Department's Bureau of Marine Water Monitoring, where charts, permit application forms, and other information can be obtained.

Definitions (N.J.A.C. 7:12-1.2)

The Department is proposing to delete, add, and amend definitions at N.J.A.C. 7:12-1.2.

The following definitions are deleted because the terms are not used in the existing rules or in the rules as they are proposed to be amended: "bait harvesting," "deuration unit," "monitoring system," "spawner area," and "Special Permit Programs."

The definition of "depletion" is deleted because the depletion program permit at existing N.J.A.C. 7:12-9.6 is proposed to be repealed. Similarly, the definition of "transfer" is deleted because the transfer program permit at existing N.J.A.C. 7:12-9.9 is proposed to be repealed.

The definition of "deuration process" is deleted because "deuration" is itself defined as a process. The definition of "deuration" is amended to conform to the definition of the term in the NSSP Guide.

The definitions of "hard clams" and "soft clams," which identify the genus and species of these types of clams, are deleted because where these clams are mentioned in the rules, the genus and species are referenced in context.

The definition of "harvester allocation tag," which provides that such tags must comply with Department of Health rules, is deleted because where the term is used in the deuration

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plant permit and the depuration harvester permit at N.J.A.C. 7:12-9.5 and 9.6, respectively, it is used with reference to the Department of Health rules, rendering the definition duplicative.

The definition of “Interstate Shellfish Sanitation Conference” or “ISSC” is deleted as unnecessary and duplicative of the provision at N.J.A.C. 7:12-1.1(k), described previously. The definition of “research” is deleted because the term is described in context at proposed new N.J.A.C. 7:12-9.10, Permit for Shellfish Research in Waters Other Than Approved. Similarly, the definition of “sanctuary” is deleted, as that term is described in context at N.J.A.C. 7:12-7.1.

The definition of “Shellfish Resource Recovery Steering Committee” or “SRRSC” is deleted because the term is not used in the permit for depuration plants as proposed to be amended (see N.J.A.C. 7:12-9.5) and the other existing provision that uses the term, N.J.A.C. 7:12-9.13, Scientific Collection and Non-Human Consumption Program, is proposed for repeal. The Department notes, however, that it will continue coordination between groups within the Department as well as with agencies that participate in the management of shellfish resources and the shellfish industry, including the Department of Agriculture, Department of Health, and FDA.

Definitions for “National Shellfish Sanitation Program” or “NSSP,” and for “NSSP Guide” are proposed because, as described at N.J.A.C. 7:12-1.1(k) and noted above, the standards for the sanitary control of shellfish prescribed by the FDA are set forth in the NSSP Guide. The NSSP Guide includes requirements that the administering authority must implement in its shellfish sanitation program, as well as requirements for harvesters and shellfish dealers. The Department is the administering authority for the aspects of the State’s shellfish sanitation program relating to aquaculture and harvesting, and includes the NSSP standards for harvesters, including those engaged in aquaculture, in these rules. The Department of Health is the

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administering authority for those aspects of the State's shellfish sanitation program relating to post-harvest shellfish processing and shipping by shellfish dealers. Where appropriate, these rules cross-reference the Department of Health's rules.

The Department is proposing to conform the descriptive designations of the various classifications of shellfish growing waters in the rules to the NSSP Guide classifications. Shellfish growing waters may be classified as Approved, Conditionally Approved, Restricted, Conditionally Restricted, or Prohibited. The definitions of "Seasonal area" and "Seasonal Special Restricted Area" are deleted because those designations are not used in the NSSP Guide. The proposed amended definitions for "Approved" and "Prohibited" and the proposed new definitions for "Conditionally Approved," "Restricted," and "Conditionally Restricted" refer to N.J.A.C. 7:12-1.3, which incorporates by reference the NSSP Guide criteria for classifying shellfish growing waters and describes the factors on which the Department bases its determinations for classifying waters. Approved waters meet the NSSP Guide standards such that shellfish may be harvested for direct marketing. (The definition of the term "direct marketing" is described below.) Prohibited waters do not meet those standards and no harvest is allowed for direct marketing. The boundaries of Prohibited waters in New Jersey are delineated in Subchapter 2. Restricted waters, which are called Special Restricted in the existing rules, are closed to shellfish harvesting other than for depuration or relay. The boundaries of Restricted waters in New Jersey are delineated in Subchapter 3. Conditionally Approved waters, which are called Seasonally Approved in the existing rules, meet the definition of Approved when in open status – meaning shellfish can be harvested for direct marking – and Restricted when in closed status, meaning shellfish can be harvested only for depuration or relay. The boundaries of Conditionally Approved waters in New Jersey are delineated in Subchapter 4. Conditionally

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Restricted waters, which are called Seasonal Special Restricted in the existing rules, meet the definition of Restricted when in the open status and the definition of Prohibited when in the closed status. Currently there are no waters classified as Conditionally Restricted in New Jersey (see Subchapter 5).

Because N.J.S.A. 58:24-1 et seq. authorizes the Department to condemn waters determined unsafe for the harvest of shellfish for human consumption, these rules use the term “condemned” with respect to the general enforcement provisions in Subchapter 1 (described above). In effect, waters that the Department has condemned pursuant to the statute and these rules are those from which harvest of shellfish is prohibited or restricted. Thus the term “condemned” is defined to mean waters that, pursuant to N.J.A.C. 7:12-1.3, do not meet the NSSP Guide criteria for the harvest of shellfish for direct marketing. Condemned waters in New Jersey are those in the Prohibited and Conditionally Restricted classifications, as well as those in the Conditionally Approved classification when in closed status (that is, when those waters meet the definition of Restricted).

The proposed new definitions for “harvest” and “direct marketing” are based on the definitions for these terms in the NSSP Guide. Direct marketing is used in the rules as a qualifier for harvest. Shellfish that are harvested for direct marketing are to be sold for human consumption; the shellfish do not first need to be subjected to a process to reduce pathogens, either by depuration or by relay to Approved waters for natural cleansing, or have already been subjected to such a process.

In general terms, shellfish seed are submarket-size shellfish that are grown to market size for eventual harvest. The Department is proposing a definition of “seed” that ensures there will be sufficient time (a minimum of six months pursuant to the NSSP Guide for seed harvested

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from waters classified as Prohibited) for pathogens in the shellfish to be cleansed during grow-out in Approved waters before the shellfish are harvested for direct marketing. The definition sets specific maximum shell lengths for the seed of six shellfish species: hard clam, soft clam, eastern oyster, blue mussel, bay scallop, and sea scallops. Eastern oyster and hard clam seed are currently grown commercially in New Jersey. It is anticipated that the shellfish industry in New Jersey might also seek to commercially grow soft clam, blue mussel, and scallops. The seed sizes are set based on the known growth rate for each species and will ensure that the minimum six month grow-out in Approved waters will have occurred before such shellfish reach market size and are harvested.

A definition of “aquaculture” is proposed for purposes of the new permit at N.J.A.C. 7:12-9.15, Commercial Shellfish Aquaculture Permit, which governs the growing of shellfish in Approved waters and their harvest for direct marketing. The definition of aquaculture is based on the definition of the term in the New Jersey Aquaculture Development Act, N.J.S.A. 4:27-1 et seq., and in the Department of Agriculture’s rules implementing the provisions of that statute regarding licensure of the possession and ownership of aquacultured organisms.

The term “polyculture” is defined for purposes of the new commercial shellfish aquaculture permit, and is based on the NSSP Guide definition for the term. A land-based aquaculture operation is a polyculture operation if more than one shellfish species or a shellfish species and other aquatic organisms are grown in the same system. The term “poisonous or deleterious substance” is also defined based on the NSSP Guide definition, and is used in the new commercial shellfish aquaculture permit, which requires as part of the operational plan for a land-based system that there be procedures in place to prevent the introduction of such substances into the aquaculture operation.

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A definition of “broodstock” is proposed for purposes of the new permit at N.J.A.C. 7:12-9.14, Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed.

Broodstock are sexually mature shellfish which are necessary for a nursery operation to produce seed; however, to avoid any risk that the potentially market-sized broodstock might be harvested (or poached) for direct marketing, the permit imposes conditions intended to restrict the numbers, use, and access to broodstock at a facility conducting hatchery activities in waters other than Approved.

A definition of “landing” is proposed, based on the NSSP Guide definition of the term, for purposes of the depuration harvester permit at N.J.A.C. 7:12-9.6 and the relay harvest permit at N.J.A.C. 7:12-9.8. Both permits require the harvester to use specifically designated landing sites for harvested shellfish.

The requirements of Subchapter 8 regarding the harvest, handling, and transport of shellfish to ensure harvested shellfish are safe for human consumption apply to holders of shellfish licenses for commercial shellfish harvesting. Shellfish licenses are issued by the Department’s Division of Fish and Wildlife. There are several types of licenses, issued under different statutes and chapters of the Division’s rules in Title 7 of the Administrative Code. Rather than identify the specific Fish and Wildlife shellfish license(s) a harvester must have in order to obtain a permit under the Shellfish Growing Water Classification rules, the Department is proposing to use the term “shellfish license” and define the term as meaning the applicable commercial shellfish license issued by the Division. The applicant will need to have a valid commercial shellfish license that is applicable to the activity for which he or she seeks a permit under the Shellfish Growing Water Classification rules. For example, a harvester applying for a Permit for the Harvest of Surf Clams from Prohibited Waters for Bait pursuant to N.J.A.C. 7:12-

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9.7 would need to have a valid Division of Fish and Wildlife bait clam vessel license according to the Division of Fish and Wildlife Surf Clam rules at N.J.A.C. 7:25-12. A harvester applying for a Commercial Shellfish Aquaculture Permit pursuant to N.J.A.C. 7:12-9.15 to conduct aquaculture in Atlantic coastal waters would need to have a valid Division of Fish and Wildlife commercial clam license or an oyster dredge boat license according to the Division of Fish and Wildlife rules for Leasing of Atlantic Coast Bottom for Aquaculture at N.J.A.C. 7:25-24.

A definition of “certified dealer” is proposed because commercial harvesters operating pursuant to a permit under these rules may sell their shellfish only to a certified dealer (with the exception of depuration harvesters who, in accordance with N.J.A.C. 7:12-9.6, must sell to a depuration plant certified by the Department of Health). Also, certain requirements apply to certified dealers. A certified dealer is a person who receives or accepts shellfish for shucking, repacking, shipping, or sale pursuant to a certificate issued by the Department of Health.

The requirements in Subchapter 8 include a *Vibrio parahaemolyticus* Control Plan with time to temperature control requirements for harvesting oysters at N.J.A.C. 7:12-8.6. The temperature control is achieved by refrigerating the oysters at a certain temperature within a certain timeframe after the start of harvest, depending on the dates of harvest and where in the tidal zone the oysters are harvested. For purposes of these requirements, the Department is proposing definitions for “refrigeration,” “intertidal harvesting,” “subtidal harvesting,” and “tide-dependent harvesting.”

The Department is proposing to amend the definition of “shellfish” to delete reference to shellfish being shucked or fresh frozen, or being in whole or in part, because the Shellfish Growing Water Classification rules apply only to live shellfish in the shell. Any processing for human consumption of harvested shellfish (shucking, freezing, cutting into parts) is under the

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jurisdiction of the Department of Health. Accordingly, the Department is proposing a definition of “shellfish” that is based on the NSSP Guide definition of shellstock (which is, “live molluscan shellfish in the shell”) but retains reference to “any species of oysters, clams, mussels, or scallops” rather than the general modifier “molluscan.”

The definition of “deuration plant” is proposed to be simplified to state that it is a facility that conducts deuration pursuant to a permit under these rules (that is, the Soft Clam and/or Hard Clam Deuration Plant Permit at N.J.A.C. 7:12-9.5) and the Department of Health’s rules (which govern the certification of the plants and the plants’ processing and shipping of shellfish).

The definition of “Department maintained markers” is modified to update the terminology referring to the Department and shellfish growing waters.

The definition of “designated enforcement unit(s)” is updated to reflect the current names of the agencies that conduct enforcement.

The defined term “relaying” is amended to “relay” and defined based on the definition in the NSSP Guide, which describes relay as the activity of moving shellfish from Restricted waters to Approved waters for the purpose of reducing pathogens or poisonous or deleterious substances in the shellfish by using the ambient water as the treatment process.

The defined term “transplanting” is amended to “transplant” and the definition is amended, for purposes of N.J.A.C. 7:12-9.9, Permit for the Harvest of Seed Oysters and/or Seed Clams from Restricted Waters and Transplant to Approved Waters, to replace reference to submarket size shellfish with seed, to include the amended growing water classifications (described previously), and to replace reference to growth to market size with grow-out for a minimum of six months. As noted above with respect to the definition of “seed,” the six months

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of grow-out will ensure that pathogens are reduced to acceptable levels before the shellfish are harvested for direct marketing.

Classification of shellfish waters; immediate shellfish harvest suspensions and restrictions

(N.J.A.C. 7:12-1.3 and 1.4)

At proposed N.J.A.C. 7:12-1.3 (existing N.J.A.C. 7:12-1.4), which describes how the Department classifies shellfish growing waters to meet the standards in the NSSP Guide, the Department is proposing to update the reference to the most current NSSP Guide (2013) and the address from which it can be obtained, and to update the designations of the various growing water classifications (described above with respect to the definitions).

N.J.A.C. proposed 7:12-1.4 (existing N.J.A.C. 7:12-1.5), which describes the basis for and procedures by which the Department imposes immediate shellfish harvest suspensions and restrictions, is proposed to be amended to update various agency names, and to clarify that the annual assessment is to determine the risk of *Vibrio* illnesses from the consumption of shellfish not whether that risk is reasonably likely to occur. In accordance with the NSSP Guide, the bacterium *Vibrio vulnificus* is proposed to be included along with *Vibrio parahaemolyticus* in the provision at N.J.A.C. 7:1.4(d), which addresses the annual risk assessment of illness from consumption of shellfish that the Department conducts. Also in this provision, the title of the plan regarding measures to minimize growth of these bacteria is updated to “Control Plan,” reflecting NSSP Guide terminology. The on-line address from which the Department’s Control Plan can be obtained is added, as well as a cross-reference to the *Vibrio parahaemolyticus* Control Plan time to temperature control requirements being proposed at N.J.A.C. 7:12-8.6.

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N.J.A.C. 7:12-1.4(e) is modified to provide that, in addition to the means of notice already specified, any notice of harvest suspension will also be posted on the Bureau of Marine Water Monitoring's website.

Subchapters 2 through 5. Shellfish Growing Water Classifications (Prohibited, Restricted, Conditionally Approved, and Conditionally Restricted)

Subchapters 2 through 5 set forth the boundaries of the waters the Department has determined in accordance with N.J.A.C. 7:12-1.3 (as proposed to be recodified from N.J.A.C. 7:12-1.4 with amendments, as described above) meet the specific shellfish growing water classifications. As noted previously, the Department is amending the descriptive designations of the various classifications to those used in the NSSP Guide. Accordingly, the subchapter headings, section headings, and rule text in Subchapters 2 through 5 are amended to reflect the amended designations. The Department is also proposing to clarify and streamline Subchapters 2 through 5 so that the four subchapters will contain only the boundary descriptions of the growing water classifications, as described below.

The Department is proposing to repeal existing N.J.A.C. 7:12-2.2 and N.J.A.C. 7:12-3.1, which describe how the shellfish from the respective growing water classifications may be used, because they are unnecessary and duplicative of other rules in the chapter, including the definitions and the permit provisions of Subchapter 9.

Existing N.J.A.C. 7:12-4.1 and 4.2 delineate waters that are classified as Special Restricted for part of the year and Approved for the remainder of the year, with the distinction between the two sections being the length of time the waters are classified as Approved, as

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reflected in the date span listed in the respective section titles. To align more closely with the NSSP Guide, the Department is proposing to recodify existing N.J.A.C. 7:12-4.2 as N.J.A.C. 7:12-4.1(b), since all the waters in the subchapter are classified as Conditionally Approved, and is amending the text at subsections (a) and (b) to reflect the date spans during which the waters are in closed status and open status. The definition of “Conditionally Approved” at N.J.A.C. 7:12-1.2 makes clear that when Conditionally Approved waters are in the open status they meet the definition of Approved (in which case shellfish can be harvested for direct marketing), and that when such waters are in the closed status they meet the definition of “Restricted” (in which case shellfish can be harvested only for depuration or relay).

Since at this time the Department has not delineated any shellfish growing waters in the Conditionally Restricted classification, the Department is proposing to repeal current N.J.A.C. 7:12-5.1 and proposed new N.J.A.C. 7:12-5.1 to make that statement. Should the Department determine at a future time to classify waters as Conditionally Restricted, it will undertake rulemaking to delineate those waters in this subchapter.

Revisions to boundaries of shellfish growing waters within the respective shellfish growing water classifications in Subchapters 2, 3, and 4

The Department is proposing amendments to update the delineations of shellfish growing waters classified as Prohibited, Restricted, and Conditionally Approved at N.J.A.C. 7:12-2.1, 3.1, and 4.1, respectively, reflecting data the Department has collected through annual assessments conducted in accordance with the NSSP Guide in which thousands of water samples are collected and actual and potential sources of pollution are inventoried.

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The table below summarizes the changes in shellfish growing water classifications resulting from the proposed amendments, as well as the justification for the changes based on the water quality data.

Table 1. Shellfish Growing Water Classification Changes

<u>Area</u>	<u>Current Classification</u>	<u>Proposed Classification</u>	<u>Classification Change</u>		<u>Justification for Proposed Change</u>	<u>Affected Proposed Rule</u>
			<u>Downgrade (Acres)</u>	<u>Upgrade (Acres)</u>		
Keyport Harbor	Special Restricted	Prohibited	957.0	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Special Restricted.	N.J.A.C. 7:12-2.1(a)3i Deletion of current N.J.A.C. 7:12-2.1(a)3ii N.J.A.C. 7:12-3.1(a)1
Atlantic Highlands (Municipal Harbor)	Special Restricted	Prohibited	17.4	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Special Restricted.	N.J.A.C. 7:12-2.1(a)3vi N.J.A.C. 7:12-3.1(a)1
Navesink River	Special Restricted	Prohibited	565.7	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Special Restricted.	N.J.A.C. 7:12-2.1(a)3vii N.J.A.C. 7:12-3.1(a)3i through iii
Glimmer Glass	Special Restricted	Prohibited	99.4	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Special Restricted.	N.J.A.C. 7:12-2.1(a)5iii N.J.A.C. 7:12-3.1(a)5
Lake Louise	Special Restricted	Prohibited	24.2	N/A	Lake Louise is man-made lagoon dredged for the purpose of access to property and used for the dockage of boats. Pursuant to N.J.A.C. 7:12-2.1(a)1i, this area is classified as Prohibited.	N.J.A.C. 7:12-2.1(a)5iv N.J.A.C. 7:12-3.1(a)5
Upper Barnegat Bay	Approved	Restricted	128.7	N/A	Fecal coliform levels exceeded criteria for Approved waters. This area is classified as Restricted due to high fecal coliform levels in the winter.	N.J.A.C. 7:12-3.1(a)7

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Atlantic Ocean	Approved	Prohibited	2174.5	N/A	This downgrade expands the prohibited buffer zone which surrounds the Ocean County Utilities Authority Central wastewater treatment plant outfall.	N.J.A.C. 7:12-2.1(a)21iii
Tuckerton Creek	Special Restricted	Prohibited	23.5	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Special Restricted.	N.J.A.C. 7:12-2.1(a)8 N.J.A.C. 7:12-3.1(a)18 N.J.A.C. 7:12-4.1(a)4iv
Stites Sound Tributaries	Approved	Conditionally Approved	93.8	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Approved. New classification is Conditionally Approved (in open status from November through April).	N.J.A.C. 7:12-4.1(a)11i
Maurice River	Special Restricted	Prohibited	1020.9	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Special Restricted.	N.J.A.C. 7:12-2.1(a)19vii N.J.A.C. 7:12-3.1(a)32i(2)
Delaware Bay-Cherry Tree Creek	Seasonally Approved	Restricted	10.0	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Seasonally Approved.	N.J.A.C. 7:12-3.1(a)32xi Deletion of current N.J.A.C. 7:12-4.1(a)14xi
Jacobs Creek / Dunk Pts.	Approved	Conditionally Approved	94.4	N/A	Downgrade is proposed due to elevated levels of bacteria; the data no longer supports the current classification of Approved. This area is downgraded to Conditionally Approved (in open status from November through April).	N.J.A.C. 7:12-4.1(a)14x
Metedeconk River	Prohibited	Restricted	N/A	503.0	Upgrade is proposed due bacteria levels decreasing; the data supports an upgrade of classification to Restricted.	N.J.A.C. 7:12-2.1(a)6i through -iv N.J.A.C. 7:12-3.1(a)6
Crook Horn Creek	Special Restricted	Conditionally Approved	N/A	74.9	Upgrade is proposed due bacteria levels decreasing; the data supports an upgrade of classification to Conditionally Approved (in open status from November through April).	N.J.A.C. 7:12-3.1(a)25iv and v N.J.A.C. 7:12-4.1(a)9vi

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Jarvis Sound	Special Restricted	Conditionally Approved	N/A	54.9	Upgrade is proposed due bacteria levels decreasing; the data supports an upgrade of classification to Conditionally Approved (in open status from November through April).	N.J.A.C. 7:12-3.1(a)30ii N.J.A.C. 7:12-4.1(b)10ii
Cedar Bonnet Island	Seasonally Approved	Approved	N/A	318.6	Upgrade is proposed due bacteria levels decreasing; the data supports an upgrade of classification to Approved.	N.J.A.C. 7:12-4.1(a)4ii(1)

Subchapter 7. Sanctuaries

Subchapter 7 consists of a single section describing shellfish sanctuaries. The Department is proposing amendments at N.J.A.C. 7:12-7.1 to update that description and clarify that if it determines to establish a shellfish sanctuary, it will set forth the boundaries of the sanctuary area in the rule, similar to the way boundaries of the various shellfish growing water classifications are set forth in Subchapters 2 through 4. Rather than limiting the potential use of sanctuaries to research purposes such as spawner areas, the Department is proposing that they may be used for the broader purpose of re-establishing shellfish populations, which may be undertaken as research or as a means to manage the shellfish resource. The existing rule provides that the relocation site, that is, the sanctuary, will be classified as Prohibited for purposes of shellfish harvesting. However, the water quality at any given sanctuary may support a shellfish growing water classification other than Prohibited. What is key is that the shellfish in the sanctuary are protected from harvest so that the population may be re-established; thus the Department is proposing that the rule simply state that no shellfish may be harvested from within a sanctuary.

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Subchapter 8. Shellfish Harvest, Handling, and Transport Requirements for Shellfish

License Holders

Subchapter 8 is currently reserved. The Department is proposing new N.J.A.C. 7:12-8, Shellfish Harvest, Handling, and Transport Requirements for Shellfish License Holders, to establish in the rules procedures and requirements from the NSSP Guide for ensuring the safety of shellfish that is commercially harvested for human consumption. This subchapter therefore applies to those persons who hold a shellfish license, which, as proposed to be defined at N.J.A.C. 7:12-1.2, means a commercial shellfish license issued by the Department's Division of Fish and Wildlife. The requirements include mandatory training in methods and best practices for harvesting, handling, and transporting shellfish; requirements relating to the physical arrangement, management, and maintenance of shellfish harvesting vessels to avoid contamination of shellfish; requirements to wash harvested shellfish; requirements for the tagging of containers of shellfish so the contents can be identified and tracked after harvest; and requirements relating to controlling the temperature of harvested shellfish in order to prevent illness due to *Vibrio parahaemolyticus*.

Scope and applicability; shellfish harvester training (N.J.A.C. 7:12-8.1 and 8.2)

As noted above, the requirements of N.J.A.C. 7:12-8 apply to those who hold valid shellfish licenses. A person who violates any of the requirements maybe subject to prosecution and/or penalties under the applicable statutes.

Every applicant for a shellfish license (which have a one-year term) must certify as part of the application that he or she has completed the Department's shellfish harvester training

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within the past two years. Holders of shellfish licenses that are valid when these new rules become operative have 90 days to complete the training. The training will be offered on-line. In accordance with the NSSP Guide, the training is designed to give harvesters the information necessary for them to understand why and how their harvest of shellfish must be protected from sources of contamination and from prolonged elevated temperatures that foster the growth of *Vibrio parahaemolyticus* in shellfish. The training covers the basic elements of the requirements set forth in detail at N.J.A.C. 7:12-8.3 through 8.6.

Requirements for vessels used to harvest and/or transport shellfish (N.J.A.C. 7:12-8.3)

In accordance with the NSSP Guide, proposed new N.J.A.C. 7:12-8.3 establishes various standards for the vessels used by shellfish license holders so that harvested shellfish are not exposed to unsanitary conditions and contamination. On all vessels used for commercial shellfish harvesting (for direct marketing, depuration, or relay), decks and storage bins must be constructed and located so that bilge water or water from overboard does not contact the shellfish; the bilge pump discharge must be located so that the discharge does not contaminate shellfish; containers for storing shellfish must be clean and made of safe materials; coverings must be used to protect shellfish from hot sun, birds, and other conditions that might contaminate or cause the deterioration of the shellfish; and cats, dogs, or other animals are prohibited.

In addition to the above-listed requirements, if the vessel is used to harvest and/or transport shellfish for direct marketing, the decks and storage bins for shellfish must be kept clean either with potable water or water from Approved waters or Conditionally Approved

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waters in the open status, and provided effective drainage. If a vessel used for harvesting shellfish from waters other than Approved is to be subsequently used to harvest shellfish for direct marketing, the vessel and equipment must first be thoroughly cleaned.

Last, there must be a Type III marine sanitation device (MSD) on every vessel used for shellfish harvesting. Human sewage must not be discharged into shellfish growing waters. As defined by Federal regulation, a Type III MSD is designed to prevent the overboard discharge of treated or untreated sewage or any waste derived from sewage. In order to avoid contamination of the shellfish growing waters and any harvested shellfish onboard, the MSD must be used in the way intended and properly handled, emptied, and cleaned.

Requirements for wash shellfish and tagging shellfish containers (N.J.A.C. 7:12-8.4 and 8.5)

Proposed new N.J.A.C. 7:12-8.4 sets forth the requirement to wash harvested shellfish free of bottom sediments as soon after harvesting as practicable. The water used for the washing must be from a potable source or from waters classified as either Approved or Conditionally Approved in the open status, except that shellfish harvested for depuration must be washed in accordance with the Department of Health's rules. Washing sediments from shellfish at the time of harvest helps to prevent contamination of the shellfish and processing equipment at the certified dealer's facility where the shellfish ultimately are processed for sale.

Proposed new N.J.A.C. 7:12-8.5 establishes requirements for shellfish license holders to tag the containers of harvested shellfish at the location of harvest. The durable, waterproof tag must remain attached to the container during transport to the certified dealer who purchases the shellfish. The tagging is essential to ensuring the safety of the public because, in case of an

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outbreak of illness, the tags enable the shellfish that caused the illness to be traced back rapidly and accurately to the point of origin so appropriate measures may be taken immediately to address the problem at its source, including the suspension of the harvest of shellfish from the implicated harvest area.

Shellfish harvested on different dates or from different harvest locations are not to be commingled in a single container with a single tag because that would defeat the purpose of the tagging requirements (traceability). The rule specifies the size of the tag, and the information that must be recorded on the tag, which includes the harvester identification number, harvest date and time, harvest location, type and quantity of shellfish in the container, and a standard statement that the tag must stay on the container as long as shellfish are in it and thereafter kept on file for 90 days. (The entity that receives the container and empties it of shellfish, for instance, a restaurant, would be responsible for retaining the tag for 90 days; this is, again, for purposes of traceability.)

A single harvester may use a single tag for multiple containers of shellfish on a wrapped pallet, provided the tag also specifies the number of containers under the bulk tag and includes an estimate of the total weight, volume, or count of shellfish, and states all the shellfish under the bulk tag have the same harvest date and harvest location. If the harvester sells the shellfish in bulk to a certified dealer, then the harvester must provide a transaction record to the certified dealer that includes all the information on the bulk tag with the addition of the name of the certified dealer. This will ensure the shellfish can be traced from the ultimate location of use through the middleman back to the harvest source.

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Vibrio parahaemolyticus Control Plan time to temperature control requirements for harvesting oysters (N.J.A.C. 7:12-8.6)

Vibrio parahaemolyticus (Vp) and *Vibrio vulnificus* (Vv) are naturally occurring bacteria found in seawater. They are in the same family as the bacteria that cause cholera. When shellfish that contain virulent strains of the bacteria at high levels are eaten raw or undercooked, gastrointestinal illness can result and can be severe for immunocompromised individuals. The bacteria grow and multiply more rapidly during the warmer months when water temperatures are higher and shellfish filter and ingest greater numbers of them. If shellfish are not kept cool after harvest, the numbers of bacteria can increase to illness-causing levels.

As noted above with respect to N.J.A.C. 7:12-1.4(d), in accordance with the NSSP Guide, the Department annually conducts an assessment to determine the risk of Vp and Vv illnesses attributable to the consumption of shellfish. Based on the assessment, the Department develops/updates Control Plans for the two types of bacteria, which contain control measures and best practices to be employed by commercial harvesters.

Each year the Department reviews the previous year's records regarding Vp illnesses and water and air temperature data for New Jersey. Five-year averages of water and air temperature are entered into an FDA Risk Calculator Model. This model estimates maximum time to refrigeration that would result in an acceptable risk of one illness in 100,000 oyster servings. States, in consultation with FDA, may use their own Vp data and studies to make adjustments to the maximum time to refrigeration in order to develop effective control measures. The Department conducts studies and records data on Vp levels in shellfish and uses that data to determine appropriate time to refrigeration controls in its Vp Control Plan.

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To date, there have been no Vv illnesses attributable to shellfish harvested in New Jersey waters and so the Department has not developed a Vv Control Plan. There have been historic incidences of Vp illnesses attributable to oysters harvested in New Jersey, and so the Department does have a Vp Control Plan for oysters. The mandatory aspects of the current 2015 Vp Control Plan are the time to temperature control requirements that are proposed at new N.J.A.C. 7:12-8.6. If in the future the Department develops a Vv Control Plan with mandatory control measures, or as part of an update to the Vp Control Plan modifies the mandatory control measures or determines it is necessary to cover species in addition to oyster under the control plan, it will undertake rulemaking to include the control measures in this subchapter.

The Vp time to temperature control requirements for harvesting oysters proposed at N.J.A.C. 7:12-8.6 establish, for specific dates of harvest, the maximum time, in hours, that harvested oysters can be out of the water and not in refrigeration. The time periods, and maximum times to refrigeration depend on where in the tidal zone the oysters are harvested. The time to refrigeration includes any time used to transport the shellfish from harvest to the place where they are put in refrigeration, for instance, at the certified dealer or in a truck with a refrigeration unit at the landing site. “Refrigeration” is specifically defined at N.J.A.C. 7:12-1.2 (based on the NSSP Guide) to mean a mechanical unit that is chilled to a temperature of 45 degrees Fahrenheit (7.2 degrees Celsius) or colder at the time shellfish are placed in the unit and maintained at that temperature thereafter.

For subtidal harvesting, which is conducted in the area that lies below the low tide line and is normally covered by water (see proposed definition of “subtidal harvesting” at N.J.A.C. 7:12-1.2), the maximum time to refrigeration earlier in the summer (June 1 to June 14) and later

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in the summer (July 15 to August 31) is seven hours. During the time when New Jersey has historically experienced the most cases of reported Vp illness, from June 15 to July 14, the maximum time to refrigeration is six hours. The rule also sets the time of day by which the oysters must be in refrigeration. Corresponding to these periods of the summer, the harvested oysters must be in refrigeration no later than 12:00 P.M. (noon) from June 15 to July 14. Before and after that period, the deadline is 1:00 P.M. These times reflect the seven-hour and six-hour maximum times to refrigeration counting from a harvest start time of 6:00 A.M. If harvest is begun later than 6:00 A.M., the 12:00 P.M. or 1:00 P.M. deadline, as applicable depending on the date, still must be met. The deadlines ensure that the harvest occurs during the coolest part of the day, thereby reducing the potential growth of Vp, and also facilitate enforcement. There is an exception to these timeframes and deadlines if the harvester conducting subtidal harvesting puts the oysters directly into refrigeration on the vessel. In that case, the harvester must fly a specifically colored and marked flag on the vessel and must notify the Department's marine enforcement office before the first trip to harvest oysters.

For intertidal harvesting, which is conducted in the area that is above water at low tide and below water at high tide (see proposed definition at N.J.A.C. 7:12-1.2), for the entire season from June 1 to August 31, the maximum time to refrigeration is four hours. The time starts to run when the first oysters that will be harvested are exposed to the air by the receding tide.

For tide-dependent harvesting, which is subtidal harvesting that can only be accomplished during a stage of the tide cycle allowing the harvester access to the shellfish (see proposed definition at N.J.A.C. 7:12-1.2), for the entire season from June 1 to August 31, the maximum time to refrigeration is four hours. The time starts to run when harvest begins. For

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this type of harvesting, the harvester must notify the Department's marine enforcement office each day by 8:30 A.M. or before any harvest activity.

All oyster harvesters must keep a journal to record on each harvest date the harvest start time, the time the last shellfish was placed in refrigeration, and the shell temperature measured with a handheld laser thermometer of the shellfish in one of the containers from the day's harvest at the time the container is off-loaded. A copy of the journal must be submitted to the Department by September 15 each year. The information is used to help determine if a reported Vp illness or outbreak was the result of post-harvest handling issues or temperature abuse by the harvester (for instance, not having kept the shellfish shaded from the sun on the vessel), for the annual Vp risk assessment, and the development of additional best management practices to reduce Vp growth.

Subchapter 9. Shellfish Permits for Harvest from Waters Other Than Approved;

Research; Restoration and Enhancement; Toxins Monitoring; and Aquaculture

Existing Subchapter 9 establishes permits for shellfish harvesting activities in waters other than Approved. The Department is proposing to repeal several of the existing permits, amend others, and add new permits for various shellfish activities, including a new permit for the commercial aquaculture of shellfish in Approved waters. The Department is also proposing amendments and new rules relating to the administration and enforcement of permits, permit application requirements, and administrative hearings on permit decisions.

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General provisions for shellfish permits; requirement to apply; application and issuance; adjudicatory hearings (N.J.A.C. 7:12-9.1 through 9.4)

The Department is proposing to amend and reorganize into several discrete sections existing N.J.A.C. 7:12-9.1, which contains general provisions for the permits issued under the Shellfish Growing Water Classification rules. As part of updating the rules, the Department is removing references to “programs” throughout Subchapter 9 and instead uses the terms “permit” and “this subchapter” as appropriate.

At N.J.A.C. 7:12-9.1(a), the Department is proposing to replace a general statement that the Department may issue permits for harvesting shellfish from condemned waters with a scope provision that identifies the types of permits issued under the rules and establishes several basic requirements regarding those permits. First, each permit is valid for the period specified in the issued permit document, subject to the limitation that that period of validity ends December 31 of the year the permit document is issued. Certain permits, for example, for toxins monitoring or research, may only be necessary for several months of the year, during the growing season. Other permits, for instance, for aquaculture, will be necessary for the entire year because activities are conducted all year. An issued permit cannot be transferred to another person. Those permittees who are required to have a commercial shellfish license as a condition of the permit must also comply with all the requirements of Subchapter 8, including the training and shellfish harvesting requirements in addition to the requirements of Subchapter 9 governing their specific permits. Last, a permit issued under Subchapter 9 does not exempt the permittee from complying with all other applicable State laws and rules, for instance, the Department’s Division

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of Fish and Wildlife rules or the Division of Land Use Regulation's rules, or the Department of Health's rules.

Existing N.J.A.C. 7:12-9.1(b) removes a provision about issuing permits to those between 14 and 18 years of age so long as they work under the supervision of an adult over age 18. The Department issues permits only to adults. Proposed new N.J.A.C. 7:12-9.1(b) requires permittees to keep the Department apprised of their current addresses; this requirement is relocated from existing N.J.A.C. 7:12-9.3(c). Proposed N.J.A.C. 7:12-9.1(c), (d), and (e) are recodified from existing (d) through (f) with minor changes in wording and with additions reflecting the updated authorities for the rules described previously. Proposed new N.J.A.C. 7:12-9.1(f) and (g) establish that any person who takes shellfish from waters other than Approved without a permit issued under Subchapter 9 or who conducts aquaculture activities without a permit issued under Subchapter 9 is subject to prosecution and/or penalties under the applicable statutes, including forfeiture of shellfish. Existing N.J.A.C. 7:12-9.1(g) is deleted because N.J.A.C. 7:12-9.1(f) replaces and updates it. N.J.A.C. 7:12-9.1(h) is amended to update terminology, and to replace the provision about post-suspension hearings with a cross-reference to the proposed new hearings provision at N.J.A.C. 7:12-9.4.

Existing N.J.A.C. 7:12-9.1(i) is deleted because the appropriate remedies for persons discriminated against in employment are available elsewhere, for instance, under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Existing N.J.A.C. 7:12-9.1(j), which says the Department may apply more restrictive delineations in harvest areas if necessary for public health protection, is deleted because it is covered in the provisions governing the respective permits, where applicable. Existing N.J.A.C. 7:12-9.1(k) and (l) are deleted because their

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content is recodified to N.J.A.C. 7:12-1.1(h) and (i), as noted in the Summary above. Existing N.J.A.C. 7:12-9.1(m) is recodified as N.J.A.C. 7:12-9.1(i) and clarified, including updating the information regarding where the Trenton sunrise and sunset timetable can be found.

Proposed new N.J.A.C. 7:12-9.2 requires that any person engaged in shellfish hatchery, nursery, and/or aquaculture activities regulated under the permits at N.J.A.C. 7:12-9.14 and 9.15 must apply for the applicable permit on or before the date that is 30 days from the operative date of the new and amended rules. This provides a reasonable period for entities to prepare to apply for the necessary permit. If the Department denies an application for a permit, the applicant may submit a hearing request challenging the denial.

Existing N.J.A.C. 7:12-9.3 is proposed to be repealed, and a new rule governing application for and issuance of permits is proposed in its place. The Department is proposing to use a new Consolidated Permit Application Form for the Subchapter 9 permits. The application form must be completed and submitted by mail or hand-delivery to the Department. On the form, the applicant must provide identifying information (name, address, phone number, date of birth), driver's license number, the number of the applicant's current permit if he or she has one, the number of the applicant's shellfish license if he or she has one, the conservation identification number issued by the Department's Division of Fish and Wildlife if he or she has one, and identifying and contact information for the organization or company with which the applicant is affiliated or employed. The consolidated permit application also identifies the permit-specific information that must be submitted as itemized in the requirements for the respective permits in Subchapter 9. Once the Department determines the application meets the

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applicable requirements of Subchapter 9, it will issue the permit. If the Department denies the application for the permit, the applicant may submit a hearing request challenging the denial.

The application for a permit must include a \$25.00 application fee. However, there is no application fee for the Commercial Shellfish Aquaculture Permit proposed at N.J.A.C. 7:12-9.15 because the activities are conducted in Approved waters and thus are not governed by N.J.S.A. 58:24-3. That statute imposes a \$25.00 fee for permits to take shellfish from condemned waters, meaning, for purposes of these rules, waters other than Approved. The Department is proposing to eliminate the \$10.00 charge for a duplicate permit (see existing N.J.A.C. 7:12-9.1(c)) because the cost to the Department of providing a duplicate permit is nominal.

Proposed new N.J.A.C. 7:12-9.4 establishes the procedure for a person to seek an adjudicatory hearing on a permit decision in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and implementing rules. The provisions establish the content of a hearing request, the 30-day time period within which it must be submitted, and the address to which it must be submitted.

Soft clam and/or hard clam depuration plant and depuration harvester permits (N.J.A.C. 7:12-9.5 and 9.6)

To streamline the rules and focus resources on permitting shellfish activities that are in demand, the Department proposes to repeal existing N.J.A.C. 7:12-9.6, Depletion program. As stated in the rule, the purpose of the program is to allow for the harvest of clams, oysters, or mussels from areas affected by intermittent pollution sources when conditions are favorable, and

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to provide for the safe utilization of an otherwise unusable resource and diminish the possibility of illegal harvesting. However, according to the Department's records, there have been no applications for the permit for at least a decade. For the same reasons, the Department is proposing to repeal the unused permit provision at existing N.J.A.C. 7:12-9.5, which allows a depuration plant holding a permit for depuration of hard and/or soft clams harvested from Special Restricted waters (denominated Restricted under the proposed rules) and Seasonal Special Restricted waters (denominated Conditionally Restricted under the proposed rules) to sell, for bait purposes only, unmarketable soft clams and/or hard clams that have been damaged during harvesting or depuration processing. The two depuration plants in New Jersey have not expressed any interest in the permits based on the Department's records dating back at least a decade.

Existing N.J.A.C. 7:12-9.2, which contains certain general provisions regarding hard and soft clam depuration, is proposed to be repealed. Proposed new N.J.A.C. 7:12-9.5, Soft Clam and/or Hard Clam Depuration Plant Permit, combines aspects of existing N.J.A.C. 7:12-9.2 with aspects of existing N.J.A.C. 7:12-9.7, which contains provisions for the soft clam and hard clam depuration programs. Other aspects of existing N.J.A.C. 7:12-9.7 are continued, with amendments and additions, and recodified at N.J.A.C. 7:12-9.6, Soft Clam and/or Hard Clam Depuration Harvester Permit.

The purpose of the depuration plant and depuration harvesters permits at N.J.A.C. 7:12-9.5 and 9.6 is to allow soft and hard clams to be harvested from Restricted waters and ultimately marketed after processing through a permitted (by the Department) and certified (by the Department of Health) depuration plant. While the existing depuration permits apply also to

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clams harvested from Seasonal Special Restricted waters (to be denominated Conditionally Restricted under the proposed rules), the Department is proposing to limit the new and amended permits to clams harvested from Restricted waters. The Department does not delineate any waters in the Seasonal Special Restricted (now Conditionally Restricted) classification and does not anticipate doing so.

Most of the provisions in the depuration plant permit at proposed new N.J.A.C. 7:12-9.5 are, as noted, continued from the existing rules with changes that update the rules with respect to terminology and references to other rules in the chapter, and make clear the plant's responsibilities with respect to shellfish containers, Harvester Allocation Tag requirements, notification to the Department's Bureau of Law Enforcement, Marine Region office, and weekly reports to the Department's Division of Fish and Wildlife. The provisions in existing N.J.A.C. 7:12-9.5 that provide that an entity seeking to construct or operate a depuration plant must comply with the Department of Health rules and submit a plan about overland transportation for approval to the Shellfish Resource Recovery Steering Committee (SRRSC) are proposed to be deleted. In their place, the Department is proposing provisions at N.J.A.C. 7:12-9.5(a) that explain the link between the Department's permitting of these plants and the Department of Health's certification of them, and require that the shellfish transportation plan must be submitted and approved by the Department. The elements of the transportation plan are based on the NSSP Guide, and focus on controlling the transportation of the shellfish from the harvest area to the depuration plant in order to prevent potential illegal diversion of the harvested clams to direct marketing. The permit as proposed also includes a requirement for the Consolidated Permit Application Form, explained previously, and permit-specific submittals.

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Proposed amended N.J.A.C. 7:12-9.6, the permit for depuration harvesters, recodified from existing N.J.A.C. 7:12-9.7, establishes a single permit, rather than a separate permit, for hard clams and for soft clams. The permit requirements are, similar to the depuration plant permit at N.J.A.C. 7:12-9.5, updated with respect to terminology and references to other rules in the chapter, and clarified with respect to the depuration harvester's responsibilities for marking the vessel used to harvest the shellfish, obtaining and handling the approved containers from the depuration plant, and properly entering information on the Harvester Allocation Tags attached to the containers. The Department is adding the requirement for the Consolidated Permit Application form and permit-specific submittals.

The Department is proposing a new provision in the depuration harvester permit that will allow the harvester to have onboard, in addition to the approved containers, up to three clam baskets to cull and sort clams. Because the depuration harvester is working in Restricted waters, the harvested clams cannot be used or sold for human consumption until after they have gone through depuration. The restriction that only approved containers can be used to hold shellfish is a means of ensuring the clams in the containers cannot be confused with clams harvested from Approved waters. However, the Department has determined that it is reasonable to allow the harvester to use a few baskets for purposes of culling and sorting the clams into the approved containers.

The Department is proposing to delete the provision in the existing permit that allows a harvester to sell or purchase part of a day's catch to a relay harvester to simplify the permit requirements and because the relay program has not been active in more than 10 years.

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Permit for Harvest of Surf Clams from Prohibited Waters for Bait (N.J.A.C. 7:12-9.7)

The existing permit for harvesting surf clams, also referred to as sea clams, at N.J.A.C. 7:12-9.4 is proposed to be recodified with amendments at N.J.A.C. 7:12-9.7. The amendments make the elements of the permit consistent with other permits, including the requirement for the Consolidated Permit Application form and permit-specific submittals. Other proposed amendments update and clarify the requirements applicable to the permit, and eliminate redundancies with the general permitting provisions found at N.J.A.C. 7:12-9.1 as amended. Because the surf clams are harvested from Prohibited waters, the amendments also prohibit the use or sale of surf clams for human consumption and require the permittee to inform employees of the risks of consuming shellfish from waters other than Approved.

Permit for Harvest of Hard Clams or Oysters from Restricted Waters and Relay to Approved Waters (N.J.A.C. 7:12-9.8)

The Department is proposing amendments to streamline and update the relay permit at existing N.J.A.C. 7:12-9.8, pursuant to which shellfish harvested from waters other than Approved are relayed and planted on a relay lease in Approved waters to allow pathogens in the shellfish to be reduced and the shellfish subsequently harvested for direct marketing. Rather than two types of relay permits as under the existing rule, one (permit 5a) for harvesting and relaying by a harvester who has a relay lease in Approved waters where the harvested shellfish can be planted, and one (permit 5b) for harvesting and sale to another entity that has a relay lease and will do the planting, the Department is proposing to eliminate the latter permit to simplify

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the relay permitting program. A harvester who does not have a relay lease who would have sought the existing permit 5b can still harvest for relay under the proposed amended permit if he or she is employed by a harvester who does have a relay lease. The existing permits allow relay harvesting from Special Restricted, Seasonal Special Restricted, and Condemned waters. As noted previously, Special Restricted waters are denominated Restricted waters under the proposed rules. The Department does not designate any waters as Seasonal Special Restricted (now denominated Conditionally Restricted). The other category of Condemned waters is Prohibited, in which relay harvesting cannot be conducted because no harvesting is allowed from such waters for direct marketing, depuration, or relay. Consequently, the Department is proposing to limit the shellfish growing waters from which harvest for relay can be conducted to only Restricted waters. This accords with the NSSP Guide.

The Department does not currently issue relay permits in part because of lack of interest by shellfish harvesters. However, the Department is proposing that the relay permit be available for oysters as well as hard clams, which might create more interest since there is a better market for oysters than for hard clams.

The rule is amended to include the Consolidated Permit Application form and permit-specific submittals. The conditions and requirements for the permit are updated and clarified. The Department will no longer be providing specially marked relay bags. Instead, the rule is amended to require the permittee to create and use specifically marked Relay Tags to transport the shellfish from the Restricted waters to the relay lease for planting. The Relay Tags will serve the same purpose of properly marking relay shellfish so they are not illegally diverted to market before being placed in Approved waters for the necessary period of natural cleansing. As under

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the existing permits, to ensure the shellfish are not illegally diverted for direct marketing after harvest and before planting, which could pose a risk to public health, the relay program involves the Department's Bureau of Law Enforcement, Marine Region in monitoring the relay harvest activities, including sealing the vehicle compartment in which the relay-harvested shellfish are transported and subsequently unsealing the compartment at the site where the shellfish are off-loaded onto the vessel used to take them to the relay lease for planting. The permittee must obtain written permission to harvest the shellfish from the relay lease for direct marketing, and the permission is predicated on the passage of at least 30 days from planting and the water temperature having been at or above 10 degrees Celsius (50 degrees Fahrenheit) for that period. That level of water temperature for 30 days ensures the shellfish have been actively filtering the water long enough to purge pathogens.

Permit for Harvest of Seed Oysters and/or Seed Clams from Restricted Waters and Transplant to Approved Waters (N.J.A.C. 7:12-9.9)

Existing N.J.A.C. 7:12-9.9, which establishes a Transfer permit allowing the harvest and transfer of shellfish from leased lots in waters classified as other than Approved to other leased lots for culturing and/or purging of pollutants and ultimate marketing, is proposed to be repealed. The activity allowed under the transfer permit is a form of relay but the permit does not contain the same safeguards against potential illegal diversion of the shellfish as are in the relay permit (see N.J.A.C. 7:12-9.8). A harvester interested in moving shellfish from a leased lot in waters other than Approved to a leased lot in Approved waters could do so under the relay permit, which ensures the proper controls are in place.

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The Department is proposing amendments to recodify existing N.J.A.C. 7:12-9.10, Transplant program, at N.J.A.C. 7:12-9.9 with amendments. The existing rule establishes a permit for the harvest of seed oysters and/or seed hard clams from waters classified other than Approved and the transplanting of the seed to leased lots in Approved waters and/or Seasonally Approved waters to allow the shellfish to purge pollutants, grow and ultimately be harvested for marketing after written permission from the Department. Pursuant to the NSSP Guide, no shellfish larger than seed can be harvested from Prohibited waters. Because “waters other than Approved” include Prohibited waters, and because the Department is proposing to include in the transplant permit an allowance (explained below) that harvested seed may contain up to three percent shellfish above seed size, the Department is proposing to limit the harvest of seed for transplant to waters classified as Restricted.

The rule is proposed to be amended to include the Consolidated Permit Application form and permit-specific submittals, and the conditions and requirements for the permit are updated and clarified. In addition, because the permit is applicable only to the harvest of seed oysters and clams, and because the Department is proposing a definition of seed (described previously) that sets specific maximum seed sizes for different species of shellfish, the requirements in the existing Transplant permit relating to obtaining permission from the Department to harvest and setting a minimum 30-day purge period for the transplanted seed are deleted. The maximum seed sizes for oysters and hard clams are set such that the seed will remain in Approved or Conditionally Approved waters for pathogen purging for at least six months before the shellfish reach market size. To minimize the risk that market size or close-to-market size shellfish are transplanted and then harvested for direct marketing before sufficient purging occurs, the

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Department is proposing a new requirement that no more than three percent of the shellfish that are harvested for transplant under this permit can be larger than seed. The three percent allowance parallels a provision in the Division of Fish and Wildlife's rules at N.J.A.C. 7:25-9.5 regarding the enforcement of the minimum harvest size for hard clams.

Permit for Shellfish Research in Waters Other Than Approved (N.J.A.C. 7:12-9.10)

Existing N.J.A.C. 7:12-9.11, which establishes a permit for sea or surf clams, soft clams, and hard clams harvested from waters other than Approved to be sold, for bait purposes only, by a person other than the original harvester or depuration plant, for example, a bait store, is proposed to be repealed. Existing N.J.A.C. 7:12-9.12, which establishes a permit for the lessee of shellfish grounds to purchase seed oysters harvested in waters classified other than Approved for planting on the lessee's leased lots in Approved waters and/or Seasonally Approved waters, is also proposed to be repealed. The Department is proposing to repeal these permits, neither of which has been sought by any applicant in at least 10 years, to streamline the rules and focus its resources on permitting shellfish activities that are in demand.

The Department is also proposing to repeal existing N.J.A.C. 7:12-9.13, Scientific Collection and Non-Human Consumption Program, under which the Department issues permits for the collection of shellfish from waters classified other than Approved for the purpose of non-human consumption and scientific research, including the restoration of shellfish beds. To replace it, the Department is proposing new N.J.A.C. 7:12-9.10, Permit for Shellfish Research in Waters Other Than Approved, which establishes specific application requirements and parameters governing such research projects.

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An applicant for the shellfish research permit must submit the Consolidated Permit Application form as well as a copy of a valid scientific collection permit issued by the Department's Division of Fish and Wildlife and a project overview. The scientific collection permit is necessary, pursuant to the Division's rules at N.J.A.C. 7:25-4.6, for an activity involving the collection of shellfish for scientific studies, provided the activity is shown to have a beneficial effect on the conservation of the species, the public welfare, or the environment. The project overview gives the Department specific information about the research the applicant intends to conduct using shellfish in waters other than Approved.

Collection of shellfish from such waters is appropriate only if absolutely necessary to the achievement of the research objective because the paramount concern of the Shellfish Growing Water Classification rules is minimizing risk to public health from consumption of shellfish and any time shellfish are collected there is some potential they might be consumed. Consequently, the project overview must include a detailed description of the objective of the research and explain why the research requires shellfish from waters other than Approved. The project overview must identify the project manager and other participants, including their roles and responsibilities. It must include the location of the project, the time it will take to accomplish the project, the methods and equipment to be used, and the species and size, and estimated number of shellfish to be collected. If a given project already approved under the shellfish research permit is to be continued into the next year, the applicant must include in the project overview a project summary report, which is described further below.

The shellfish research permit is subject to specific requirements and conditions that are intended to ensure that the permittee conducts the research project as approved and that the risk

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of consumption of the shellfish collected from waters other than Approved is minimized. The latter is achieved not only through adherence to the project parameters as described in the project overview and approved in the permit, but also by the condition making the permittee responsible for informing all participants in the research project that any shellfish collected are not for human consumption because they are from waters other than Approved and may cause illness if they are consumed.

The permit also requires that the permittee submit a project summary report at the end of the permit period that describes the materials and methods used over the course of the research project during that period, as well as the results the project yielded, and a discussion analyzing the results in relation to the objective of the project. The project summary report will help the Department evaluate whether the research was an appropriate use of the shellfish and, should the permittee seek to continue the research, whether issuance of the permit is warranted for another term.

Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved (N.J.A.C. 7:12-9.11)

The Department is proposing new N.J.A.C. 7:12-9.11, Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved, for shellfish gardening at a single site in waters other than Approved conducted by a non-profit organization or government agency for purposes of restoring or enhancing the shellfish resource or enhancing water quality, and not for human consumption.

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An applicant for the shellfish restoration and/or enhancement permit must submit the Consolidated Permit Application form as well as a copy of a valid scientific collection permit issued by the Department's Division of Fish and Wildlife and a project overview. The project overview must describe the objectives of the project as well as the design of the project, including considerations of site selection, source of shellfish (wild or hatchery), minimizing predation, spatial arrangement, and shellfish density. The overview must describe any structures or any alteration or enhancement of the waterway's bottom that will be used to facilitate the growing of the shellfish, as well as a map showing the locations of the structures and GPS coordinates for them. The overview must establish criteria by which the success of the project will be measured with respect to the objectives, explain the methods and schedule for monitoring shellfish growth and health, and include a schedule for maintenance activities. In addition, the project overview must identify the project manager and other participants, including their roles and responsibilities. It must include the location of the project, the time it will take to accomplish the project, the methods and equipment to be used, and the species and size, and estimated number of shellfish to be used each year if a multi-year project is anticipated.

The shellfish grown under the shellfish restoration and/or enhancement permit may approach a size that would be attractive to poachers looking to illegally market the shellfish. However, because the shellfish are from waters other than Approved they are unfit for human consumption. Thus a key component of the project overview is the security plan, which must ensure adequate controls are in place to prevent the unauthorized harvest of shellfish from the project site. The minimum requirements of the security plan are continuous surveillance and patrol (24 hours a day, 365 days a year), provisions requiring immediate notification of law

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enforcement in the event of any security breach or emergency, and other site-specific security measures, such as signs or fencing, that limit access to the site or to the shellfish.

Last, if a given shellfish restoration or enhancement project was approved under the permit and is to be continued into the next year, the applicant must include in the project overview a project summary report.

Similar to the shellfish research permit at proposed N.J.A.C. 7:12-9.10, described above, the shellfish restoration and/or enhancement permit is subject to specific requirements and conditions that are intended to ensure that the permittee conducts the project as approved and that the risk of consumption of the shellfish grown in waters other than Approved is minimized. As in that permit, the permit for shellfish restoration and/or enhancement requires the permittee to inform all participants that the shellfish being grown at the site are not for human consumption and pose risk of illness if they are consumed. In addition, to help protect the larger community, if there is any theft of shellfish, tampering with structures, or significant shellfish mortality, the permittee must immediately telephone WARN DEP in order that the Department can take appropriate steps to try to prevent the unsafe shellfish from reaching consumers.

At the end of the permit period, the permittee must submit a project summary report that describes the materials and methods used over the course of the restoration and/or enhancement project during that period, as well as the results the project yielded, and a discussion analyzing the results in relation to the objective of the project. The project summary report will help the Department evaluate whether the restoration and/or enhancement project was successful and, should the permittee seek to continue the restoration and/or enhancement project, whether issuance of the permit is warranted for another term.

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Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency (N.J.A.C. 7:12-9.12)

The Department is proposing new N.J.A.C. 7:12-9.12, Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency, to authorize a non-profit or government agency to conduct a project involving the distribution of shellfish seed to participants to grow at various locations in waters other than Approved and the subsequent collection of the seed for relocation to Approved or Conditionally Approved waters, to a shellfish restoration and/or enhancement project under the permit proposed at N.J.A.C. 7:12-9.11 (described above), or to waters outside New Jersey. The permit will authorize projects that usually serve a dual purpose; to educate participants and “connect” them to an ecosystem or water body that is undergoing restoration efforts and to grow seed for relocation to Approved or Conditionally Approved waters for purposes of shellfish resource management and/or improving water quality through the filtration activity of the shellfish.

While the activities conducted under this permit are intended to help improve the shellfish resource and water quality, similar to the goal of the shellfish restoration and/or enhancement permit, the seed growing permit is structured differently and, importantly, does not allow the growing of any shellfish larger than seed. This essentially eliminates the potential that any market-sized shellfish from waters other than Approved will be used for human consumption or exposed to poaching and illegal diversion to market. Thus, there is no requirement for a security plan and continual monitoring as there is under the shellfish restoration and/or enhancement permit. However, the permit is not available to individuals. The permit will be available only to

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a nonprofit organization or government agency because it is premised on that organization or agency diligently overseeing the activities of the participants in the seed growing project.

The permit contemplates that the project participants will grow the seed in upwellers, downwellers, floats, or raceways at or near docks. Those waters are classified as Prohibited pursuant to N.J.A.C. 7:12-1.4 and 2.1 because of the likelihood of pollution from illicit sanitary waste or other discharges from boats, metals from boat bottom paint, and oils and fuels. The permittee must inspect participants' sites to ensure all seed remains at or below the defined seed size for the species (see the proposed definition of "seed" at N.J.A.C. 7:12-1.2). If shellfish larger than seed are found, the permittee must immediately notify the Department's marine enforcement so the shellfish can be removed to waters classified as Approved or Conditionally Approved or destroyed. The permittee must also immediately notify marine enforcement if there is any theft of seed, tampering with structures, or significant seed mortality. The permittee must keep records of the disposition of all seed and keep records of its inspections of the participants' sites.

An applicant for the seed growing permit must submit the Consolidated Permit Application form as well as a copy of a valid scientific collection permit issued by the Department's Division of Fish and Wildlife and a project overview that details the objective of the project; the locations where participants will grow seed; the anticipated dates that the project manager will buy seed, distribute it to the participants, collect it back from the participants, and relocate the seed to other waters for grow-out; and the species and estimated number of seed to be purchased and the species and number to be distributed to each participant. The project overview must also explain the criteria by which success of the project will be measured with respect to the objective; the

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methods and schedule for monitoring seed growth and health; the schedule for inspecting the participants' sites; and the specific locations where the seed collected from participants will be relocated.

The specific requirements and conditions applicable to the seed growing permit are intended to ensure that the permittee conducts the project as approved and that the risk of consumption of the shellfish grown in waters other than Approved is minimized, including informing participants of that risk. At the end of the permit period, the permittee must submit a project summary report that describes the materials and methods used over the course of the seed growing project during that period, as well as the results the project yielded, and a discussion analyzing the results in relation to the objective of the project. The project summary report will help the Department evaluate whether the project was successful and, should the permittee seek to continue the seed growing project, whether issuance of the permit is warranted for another term.

Permit for Short-term Use of Shellfish for Toxins Monitoring in Waters Other Than Approved

(N.J.A.C. 7:12-9.13)

The Department is proposing new N.J.A.C. 7:12-9.13, Permit for Short-term Use of Shellfish for Toxins Monitoring in Waters Other Than Approved, to authorize the temporary placement of shellfish into waters other than Approved for purposes of a Remedial Investigation pursuant to the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, or for purposes of a study approved by the Department's Site Remediation Program where the

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applicant can demonstrate a specific need to study bioaccumulation of toxins in shellfish from known contaminated sites located in or impacting waters other than Approved. The shellfish will be held in submerged containers during the course of the project and must be removed from the water and destroyed at the end of the limited-duration monitoring project. The shellfish will necessarily be unfit for human consumption and should also not be dispersed into the environment because they will have taken up toxins from the water.

An applicant for the toxins monitoring permit must submit the Consolidated Permit Application form and a project overview detailing the objective of the project; the location of the project; the anticipated time it will take to accomplish the project; the specifications for the secure cage(s) or container(s) for the shellfish; a map showing the locations of the cages or containers, including GPS coordinates; the species and size and estimated number of shellfish to be used; the criteria by which success of the project will be measured; a schedule for placing and removing the shellfish containers at the end of the project; and a schedule for maintenance activities.

The specific requirements and conditions applicable to the toxins monitoring permit are intended to ensure that the permittee conducts the project as approved and that the risk of consumption of the shellfish grown in waters other than Approved is minimized, including informing participants of that risk. As additional precautions, a durable, waterproof tag bearing the international toxic hazard symbol and a written warning must be attached to each submerged container, and the locations of the containers are not to be indicated by any buoy, flotation device, flag, stake, or other marker. The permittee must immediately notify WARN DEP of any theft of shellfish, tampering with structures, or significant shellfish mortality.

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At the end of the permit period, the permittee must submit a project summary report that describes the materials and methods used over the course of the toxins monitoring project during that period, as well as the results the project yielded, and a discussion analyzing the results in relation to the objective of the project. The project summary report will help the Department evaluate whether the project was successful and, should the permittee seek to continue the seed growing project, whether issuance of the permit is warranted for another term.

Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed (N.J.A.C. 7:12-9.14)

The Department is proposing new N.J.A.C. 7:12-9.14, Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed, to authorize a hatchery or nursery to produce and/or grow seed at a single site in or using waters classified as other than Approved for sale or for relocation to Approved or Conditionally Approved waters. The availability of sources of shellfish seed, in particular, hard clam and oyster, is essential to the viability of New Jersey's shellfish industry. Commercial harvesters place the seed in growing areas in Approved or Conditionally Approved waters to grow to market size and then harvest them to sell for human consumption. The distinction between a hatchery and a nursery is that a nursery operation uses only shellfish seed, whereas a hatchery operation must maintain a certain number of broodstock, which are sexually mature shellfish that necessarily are larger than seed. The permit therefore requires that the hatchery take certain precautions to limit access to its broodstock in order to lessen the potential that the broodstock from waters other than Approved could be illegally diverted to market or used for human consumption.

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As described previously with respect to the proposed definition of “seed” at N.J.A.C. 7:12-1.2, seed for purposes of these rules and this permit are shellfish up to a species-specific maximum size. The Department established the seed sizes such that there will be at least six months of grow-out in Approved or Conditionally Approved waters before the shellfish will reach market size. This accords with the NSSP Guide, which provides that seed from Prohibited waters must be cultured, or grown out, for a minimum of six months before harvested for direct marketing. The six months of growing time allows the shellfish to purge themselves of any potential contaminants.

An applicant for the hatchery/nursery permit must submit the Consolidated Permit Application form and a detailed description of the hatchery or nursery operation, including the methods and equipment to be used and the species of seed. If hatchery activities are to be conducted, the description must include the species and number of broodstock and the physical location of the broodstock at all times. In addition, for hatchery activities, the description must include security measures to limit access to the broodstock, for example, locked structures or cages, surveillance, patrols, and/or fencing.

The specific requirements and conditions applicable to the hatchery/nursery permit are intended to ensure that the operations are conducted as described in the application as approved in the issued permit document. The permittee must also inform its employees involved in seed production and/or growing activities that the shellfish are not for human consumption and pose the risk of illness if they are consumed. To help protect the larger community, the permit requires that the permittee must immediately telephone WARN DEP if any broodstock are

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stolen. If there is any theft of seed or significant seed mortality, the permittee must immediately telephone the Department's Bureau of Law Enforcement, Marine Region.

Commercial Shellfish Aquaculture Permit (N.J.A.C. 7:12-9.15)

The Department is proposing new N.J.A.C. 7:12-9.15, Commercial Shellfish Aquaculture Permit, to authorize the growing of shellfish in waters classified as Approved or Conditionally Approved and harvest of the shellfish for direct marketing. Both open water and land-based aquaculture can be conducted under the permit, subject to requirements specific to each type.

The proposed commercial shellfish aquaculture permit will implement the applicable standards for commercial aquaculture from the NSSP Guide to ensure the safety of aquacultured shellfish, including defining seed size (explained previously with respect to the proposed definition of "seed" at N.J.A.C. 7:12-1.2) and requiring the commercial aquaculture permittee to have and implement an approved operational plan.

An applicant for the commercial shellfish aquaculture permit must submit the Consolidated Permit Application form, a copy of a valid shellfish license, an operational plan, and, if the applicant is a certified shellfish dealer, a copy of the shellfish certificate issued by the Department of Health. If the application is by a shellfish aquaculture operation re-applying for the permit, the application must include a report of the total quantity of shellfish, by species, harvested in the most recent calendar year.

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The operational plan for any aquaculture operation, whether water- or land-based, must include a description of the design and activities of the operation; a map showing the boundaries, including GPS coordinates, of the site where activities will be conducted; identification of the lease or Tidelands instrument for the site where the activities will be conducted; the types and locations of any structures; the species of shellfish to be grown, and the source of seed. The operational plan must describe maintenance and husbandry activities, harvesting methods, and post-harvest handling and transportation of shellfish to a certified dealer.

In addition to the above-described elements, the operational plan for a land-based operation must include the source and species of any other organism(s) to be grown in a polyculture operation; a list of drugs to be used for treatment of shellfish, subject to the caveat that no such drugs can be used without prior written approval from the Department of Health; procedures to ensure no poisonous or deleterious substances are introduced into the operation; a program of sanitation, maintenance, and supervision to prevent contamination of the shellfish; a description of the water source for the operation, including any water treatment process or method; a program to maintain water quality with respect to fecal coliform levels, and temperature and salinity; and, for a closed or recirculating operation, the source and type of food for the shellfish.

The specific requirements and conditions applicable to the commercial shellfish aquaculture permit are intended to ensure the operations are conducted in accordance with the operational plan as approved under the permit. The shellfish can only be grown in waters classified as Approved or Conditionally Approved, and they can only be harvested from Approved waters or from Conditionally Approved waters in the open status. Before shellfish can

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be harvested from a closed or recirculating operation, specific water testing requirements must be met to ensure that water within the closed or recirculating system is free from any disease causing pathogens. Water quality within a closed or recirculating operation must meet a standard of 14 Most Probable Number (MPN) or Colony Forming Units (CFU)/100 ml for fecal coliform before shellfish can be harvested for direct marketing. If water quality does not meet the standard, remedial measures must be taken to reduce pathogens, water must be retested in accordance with permit conditions, and the water within the system must meet the standard prior to marketing. Finally, there are specific recordkeeping requirements imposed on the permittee regarding source of seed, and planting and harvesting dates, quantities of shellfish harvested, and, for a closed or recirculating operation, water source, treatment, and monitoring results. The permittee must also maintain a husbandry and maintenance journal.

The Department is proposing that husbandry and maintenance activities conducted under the commercial shellfish aquaculture permit are not considered harvest. This will enable those conducting husbandry and maintenance of their shellfish and the shellfish growing equipment to do so without having to comply with harvesting requirements that would otherwise apply, such as the prohibitions on harvesting on Sunday and before sunrise, and shellfish size limits. For purposes of this aspect of the permit, husbandry and maintenance activities are those aquaculture activities relating to the care and rearing of shellfish and the maintenance of the equipment for those activities. The permit allows husbandry and maintenance activities to be conducted at any time on the aquaculture lot. A tagging system is proposed for times when shellfish are taken off the aquaculture lot for husbandry and maintenance, and records of the off-lot husbandry and maintenance activities must be recorded in a journal. If shellfish are removed from the lot for

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husbandry and maintenance they must be returned to the lot for no less than 48 hours prior to being harvested for direct marketing. During husbandry and maintenance, the shellfish may be out of the water for a period of time, which could result in bacterial levels increasing within the shellfish. FDA and Department studies indicate that after 48 hours of re-submergence, bacterial levels within shellfish return to background levels such that the shellfish are safe for harvest for direct marketing. Finally, to prevent contamination of the aquacultured shellfish, the washing of shellfish as part of husbandry and maintenance activities must use only water from a potable water source or from waters classified as Approved or Conditionally Approved in the open status.

Social Impact

The Department anticipates that the proposed new rules, repeals, and amendments will have an overall positive social impact. The proposed amendments at N.J.A.C. 7:12-2, 3, and 4 establish the boundaries of waters meeting specific shellfish growing water classifications. The proposed downgrading of specific waters may reduce recreational opportunities in those waters, but the net effect of the amendments to the shellfish growing water classifications will be to protect the public by ensuring that shellfish is grown and harvested only in waters that meet the water quality requirements for the safe consumption of shellfish, in turn ensuring that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters and growers.

The Department anticipates that the proposed new rules at N.J.A.C. 7:12-8 establishing general requirements for all harvesters, including rules related to required training, harvesting vessels, washing shellfish, and tagging shellfish containers, will ensure the safety of shellfish that

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is commercially harvested for human consumption. The proposed new rule at N.J.A.C. 7:12-8.6 setting forth the *Vibrio parahaemolyticus* Control Plan time to temperature control requirements for harvesting oysters will ensure that those oysters harvested during the *Vibrio parahaemolyticus* season (June 1 through August 31) are brought to refrigeration in a timely manner. Shellfish that contain high levels of the *Vibrio parahaemolyticus* bacteria can cause gastrointestinal illness when eaten raw or undercooked. Such bacteria grow and multiply more rapidly during the *Vibrio parahaemolyticus* season when water temperatures are higher. Department studies have shown that timely refrigerating harvested shellfish to a temperature of 45 degrees Fahrenheit or below significantly reduces the growth of the *Vibrio parahaemolyticus* bacteria. As a result, the proposed rules mandating that shellfish be refrigerated to an appropriate temperature within a specific period of time will protect the public by lowering the potential for illness.

The proposed rules relating to specific permits will also have a positive social impact. The proposed Permit for Shellfish Research in Waters Other Than Approved at N.J.A.C. 7:12-9.10 will allow universities and colleges, and other entities or persons, to collect shellfish from degraded waters specifically for their research needs as they pertain to shellfish from degraded waters. The proposed Permit for Shellfish Restoration and/or Enhancement in Waters Other than Approved at N.J.A.C. 7:12-9.11 and the proposed Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency at N.J.A.C. 7:12-9.12 will allow organizations interested in restoring populations of shellfish in degraded waters or in improving the water quality in those degraded waters through the natural filtration of water by shellfish to conduct such activities. Improved water quality and increased shellfish resources

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will provide more recreational opportunities for New Jersey residents and tourists. Restoration and enhancement and shellfish growing projects often use volunteers and include an educational component, which can help connect those individuals to New Jersey's outdoor recreational opportunities.

Proposed new N.J.A.C. 7:12-9.13 permits the use of shellfish to monitor toxins as part of a Remedial Investigation pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and facilitates the remediation of known or suspected contaminated sites. The proposed new Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed at N.J.A.C. 7:12-9.14 and proposed new Commercial Shellfish Aquaculture Permit at N.J.A.C. 7:12-9.15 will allow persons interested in aquaculture activities to participate in these activities in State waters. No existing permit authorizes such activities.

The proposed amendments to clarify and update the rules will not have a social impact.

Economic Impact

The Department anticipates that the proposed amendments, repeals, and new rules will have an overall positive economic impact. The proposed amendments, repeals, and new rules implement the applicable shellfish sanitary control procedures and standards of the National Shellfish Sanitation Program (NSSP) contained in the NSSP Guide for the Control of Molluscan Shellfish (NSSP Guide). The FDA reviews the State's shellfish control program to ensure that it is consistent with the NSSP Guide. Conformance with the NSSP through promulgation of the rules will help ensure that New Jersey's certified shellfish dealers will not be removed from

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FDA's Interstate Certified Shellfish Shippers List. Removal from the list would jeopardize interstate sales and shipment of all New Jersey shellfish products.

According to the State of New Jersey 2014 Hazard Mitigation Plan

(http://www.ready.nj.gov/programs/mitigation_plan2014.html Section 5 – 5.18 Fishing Failures), the New Jersey fishing industry contributes an estimated \$4.5 billion annually from commercial fisheries, aquaculture, and recreational fishing. Based on data from “New Jersey’s Commercial Fishing Industry” collected by the Garden State Seafood Association in 2011, New Jersey’s most valuable fisheries were dominated by shellfish including sea scallops (\$142 million), surf clams/ocean quahogs (\$19 million), squid (\$13 million), blue crabs (\$9 million), hard shell clams (\$6 million), oysters (\$3 million), and lobsters (\$3 million) (DiDomenico, Gregory. n.d. “New Jersey’s Commercial Fishing Industry,” Garden State Seafood Association).

According to NOAA National Marine Fisheries Service, in 2012, “Shellfish landings revenue was dominated by New Jersey (\$159 million), followed by Virginia (\$114 million), and Maryland (\$63 million).”

[http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012_MidAtlantic.p](http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012_MidAtlantic.pdf)

[df](http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012_MidAtlantic.pdf). Shellfish Aquaculture Survey results published in October 2013 show the annual production and economic value of the small but growing aquaculture industry in New Jersey.

<http://hsrl.rutgers.edu/outreach/aquaculture/Aquaculture%20survey%20doc.pdf>.

Rutgers University sent the survey to 66 shellfish growers, which included all the oyster culturists and a subset of the hard clam growers. According to Rutgers University,

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“Eleven of 12 oyster growers responded to the survey. These growers sold 1,492,000 cultivated oysters in 2012. Market oyster harvests from individual farms ranged from 2000 to 780,000 oysters. Overall the average price per oyster sold was \$0.51, yielding a total sales value of \$760,920.

Fifteen clam growers, probably less than 30% of clam growers operating in New Jersey, participated in the survey. Together they marketed 4,000,000 clams. The number of market clams sold per farm ranged from 200,000 to 800,000, with an average of 428,571 clams per farm. Based on the average price per clam reported, \$0.165, the estimated sales value was \$660,000.”

The proposed rules add five new permits to N.J.A.C. 7:12-9, Permits. The table below provides the Department’s best estimate of the number of permits for each new category.

<u>Permit</u>	<u>Estimated Number per Year</u>
Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved	1
Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency	1-4
Permit for Short-term Use of Shellfish for Toxins Monitoring in Waters Other Than Approved	6

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Permit for a Hatchery to Produce and Grow Seed or for a Nursery to
Grow Seed 12-15

Commercial Shellfish Aquaculture Permit 80-100

The Department anticipates that the cost to the regulated industry to comply with the proposed amendments and new rules will be low. Most of the proposed required recordkeeping and planning is already part of the best management practices for the industry. Additional costs may include the establishment of an operational plan, implementation of security measures, and biennial training. The Department is providing the required training at no cost to the harvester through an online training program. The proposed required operational plan is new to the Department's rules, but preparing the plan is not new to the State's aquaculturists. The operational plan is required as part of the Department of Agriculture's Aquatic Farmers License, which most aquaculturists already have obtained. The Department of Agriculture's Office of Aquaculture Coordination provides assistance in completing operational plans at no cost. Entities that are growing, harvesting, processing, and shipping shellfish for human consumption and that are not subject to a permit under the existing rules should still be following the requirements of the model ordinance and the Department's *Vibrio parahaemolyticus* Control Plan. Those that are meeting those requirements will not incur additional costs to comply with the proposed rules related to *Vibrio parahaemolyticus*. The *Vibrio parahaemolyticus* Control Plan requires that harvesters comply with harvest times and time to refrigeration requirements. Harvesters can comply with the time to refrigeration requirements without cost, provided they bring their harvest to appropriate refrigeration within the required period of time. In the alternative, the harvesters may install refrigeration on the harvesting vessel. The cost of that

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refrigeration varies based upon capacity of the refrigerator and other vessel-specific conditions. The Department is not able to estimate the cost of such refrigeration, in light of the many variables. To the extent a harvester must install a Type III sanitation device in order to comply with the rules, such as system can be obtained from a New Jersey vendor for as low as approximately \$150.00; however, it could cost more depending on unique vessel features or requirements.

The Department anticipates that implementing the proposed amendments and new rules will not require it to hire additional staff. The Department estimates that its Bureau of Marine Water Monitoring will issue an additional 100 to 150 permits per year, but it will require no new permitting staff. The proposed two inspections per year will result in an additional 200 to 300 inspections. The Department will conduct these inspections as efficiently as it can (such as by conducting multiple inspections for a given facility with one site visit, using desk reviews where appropriate and allowed by regulation, and grouping scheduled inspections by geographic location); nevertheless, the Department anticipates that the inspections may not be able to be conducted solely by the Bureau of Law Enforcement, Marine Region, or the Bureau of Marine Water Monitoring staff. Therefore, the proposed amendments and new rules recognize employees of the Department's Water Compliance and Enforcement as a designated enforcement unit. By sharing enforcement responsibilities among these various programs, the Department anticipates that it will be able to conduct the additional inspections without hiring additional inspectors or other enforcement staff.

Environmental Impact

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The proposed amendments, repeals, and new rules will have an overall positive environmental impact. Through operation of the Shellfish Growing Waters Classification rules at N.J.A.C. 7:12, the Department monitors the health of the State's shellfish growing waters. This monitoring benefits the State not only by affording consumers protection from shellfish related disease, as discussed in the Social Impact above, but also by providing the Department with data through which it can gauge the progress of pollution abatement programs can be gauged. The proposed amendments, repeals, and new rules allow the Department to measure the quality of the State's coastal waters, provide an historical record for future comparisons, and identify areas of concern or degraded waters on which the Department should focus additional monitoring and investigation.

In addition to supporting the Department's monitoring of the waters, the amendments, repeals, and new rules reduce the likelihood that human waste will be discharged into the shellfish growing waters. This is accomplished through the requirement that each harvesting vessel have installed an appropriate marine sanitation device (N.J.A.C. 7:12-8.3), and the prohibition of discharging human waste into shellfish growing waters.

The proposed permits, too, will have a positive impact on the environment. The proposed new permits at N.J.A.C. 7:12-9.11 and 9.12 authorizing restoration and enhancement activities have the potential to help restore natural populations of shellfish in degraded water bodies and improve water quality in those degraded waters through the natural filtration of water by shellfish. The proposed new permit at N.J.A.C. 7:12-9.13 allows for the short-term use of shellfish for toxins monitoring in waters other than Approved, for the purposes of a remedial investigation pursuant to the Department's Technical Requirements for Site Remediation at

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N.J.A.C. 7:26E, or for purposes of a study approved by the Department's Site Remediation Program under certain circumstances. The Department anticipates that such studies will contribute to the timely and effective clean-up efforts of affected waters.

The remaining proposed amendments, repeals, and new rules are not anticipated to have an environmental impact.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking a Federal standards analysis.

The proposed amendments, repeals, and new rules are developed under public health control procedures of the National Shellfish Sanitation Program (NSSP). The NSSP is a tripartite cooperative program consisting of the states, shellfish industry, and the United States Food and Drug Administration (FDA). This cooperative program is managed through the Interstate Shellfish Sanitation Conference, which developed the sanitary control procedures defined in the Guide for the Control of Molluscan Shellfish. Each shellfish producing state has the responsibility to adopt laws and regulations consistent with the guidelines of the NSSP. The FDA is responsible for reviewing the State's shellfish control program to ensure that it is consistent with the national standards applicable to all other state shellfish control programs. These proposed amendments, repeals, and new rules implement the NSSP guidelines and contain no standards or requirements that exceed the standards or requirements imposed by Federal Law. Accordingly, no further analysis is required.

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Jobs Impact

The Department evaluated this rulemaking to determine the impact of the proposed amendments, repeals, and new rules on job creation or retention in the State, and has determined that the proposed amendments, repeals, and new rules will result in the net generation or continuation of jobs. According to National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service, in 2012, the seafood industry generated 50,754 jobs in New Jersey. The Shellfish Growing Water Classification rules enable individuals to harvest shellfish from Approved and Conditionally Approved waters, and from Restricted waters in the open status. The proposed amendments to the classifications will result in the downgrade of approximately 5,209.5 acres, and an upgrade of approximately 951.4 acres of shellfish waters resulting in a net downgrade of approximately 4,258.1 acres of shellfish waters. The proposed downgrade of 4,258.1 acres of water will not significantly impact the size of the water areas from which shellfish may be harvested, and those waters from where shellfish may be harvested will continue to support the shellfish employment opportunities within the State.

The Department anticipates that proposed N.J.A.C. 7:12-8.5 will allow for the continued harvest of shellfish throughout the *Vibrio parahaemolyticus* season (June 1 to August 31), rather than requiring the Department to close the beds. By doing so, the Department will be able to keep the waters of New Jersey open for harvest throughout the *Vibrio parahaemolyticus* season, resulting in no job loss.

The proposed repeal of five permits at N.J.A.C. 7:12-9 will not have an impact on job creation or retention. Although the repeal of the permits will result in no one being authorized to conduct the activities in the existing permits, no one is conducting those activities. Therefore,

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the repeal of the permits will not have an impact on jobs. The proposed new permits, on the other hand, may result in new jobs. The proposed Permit for Short-term use of Shellfish for Toxins Monitoring in Waters Other Than Approved, could result in the generation of jobs by allowing the placement of shellfish in waters other than Approved near known contaminated sites in order to study the environmental impact on marine organisms in waters near the sites. The proposed new Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed will allow interested persons to grow oyster and clam seed in waters other than Approved. The permit is being implemented to address existing hatchery/nursery operations in New Jersey; however, it may result in the growth of the existing operations, implementation of new technologies, and the creation of additional jobs for the operations of shellfish hatcheries/nurseries used to supply oyster and clam seed to the aquaculture industry. The proposed Commercial Shellfish Aquaculture Permit will ensure New Jersey's compliance with the requirements of the National Shellfish Sanitation Program's Guide for the Control of Molluscan Shellfish, which requires states to regulate aquaculture activities undertaken in their waters. This permit will allow persons interested in aquaculture to conduct aquaculture activities in State waters.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments, repeals, and new rules' impact on the agriculture industry. The Department anticipates that the proposed new Commercial Shellfish Aquaculture Permit and the Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed will have a positive impact on the agriculture industry by allowing

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persons interested in aquaculture to conduct such activities. Beyond this, however, the Department anticipates that the amendments, repeals, and new rules will have no other impact on the agriculture industry in the State.

The Department of Agriculture is the lead agency for the development, marketing, promotion, and advocacy of aquaculture in the State (N.J.S.A. 4:27-6.c). The Department of Environmental Protection is the lead State agency with respect to regulation of aquaculture activities in the waters of the State (N.J.S.A. 4:27-6.d). The Aquaculture Advisory Council (AAC), established within the Department of Agriculture, advises the Department of Environmental Protection and other State agencies on aquaculture matters, and assists the various agencies in the evaluation of proposed and existing rules and the development of policies mandated by provisions of the New Jersey Aquaculture Development Act (N.J.S.A. 4:27-5.e). The Commissioner of the Department of Environmental Protection is among AAC's 13 voting members. Among the AAC's two non-voting members is the Chairman of the Marine Fisheries Council. The Department made a presentation regarding this rulemaking to the AAC.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated any reporting, recordkeeping, and other compliance requirements that the proposed rules impose on small businesses. The Regulatory Flexibility Act defines the term "small business" as any business that is a resident in this State, independently owned and operated and not dominant in its field, and that employs fewer than 100 full-time employees. The proposed amendments, repeals, and new rules affect commercial shellfish harvesters, most of whom are small businesses. The various reporting, recordkeeping, and compliance

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requirements and their associated costs are discussed in the Summary and Economic Impact above.

In proposing these amendments, repeals, and new rules, the Department has evaluated the need to protect the health, safety, and welfare of the public from the risks associated with the consumption of shellfish against the economic impact of the proposed amendments, repeals, and new rules and has determined that to provide a different standard for small businesses would endanger the environment and public health, safety, and welfare. The dangers posed by the consumption of contaminated shellfish is the same whether harvester is a small business or not. Therefore, no reduction in compliance standards is provided based on small business status.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments, repeals, and new rules on the affordability of housing. The Department does not anticipate that the proposed amendments, repeals, and new rules will have an impact on the affordability of housing units or result in a change in the average cost of housing in the State, inasmuch as the amendments, repeals, and new rules relate solely to the classification of shellfish growing waters, requirements for shellfish harvesters, and permits related to growing and harvesting shellfish.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed rules to determine the impact, if any, on housing

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production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments, repeals, and new rules apply solely to the shellfish industry, particularly to the classification of shellfish growing waters, requirements for shellfish harvesters, and permits related to growing and harvesting shellfish, and do not involve land use policies, infrastructure development, or housing production.

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Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:12-1.3, 2.2, 3.1, 5.1, 9.2, 9.3, 9.5, 9.6, 9.9, 9.11, 9.12, and 9.13.

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

SUBCHAPTER 1. **GENERAL PROVISIONS AND PROCEDURES FOR CLASSIFICATION OF [CERTAIN] SHELLFISH WATERS**

7:12-1.1 [General] **Scope; general** provisions

(a) [It is the intent of the Department pursuant to statutory authority to establish regulations and specifications, to be known as the Shellfish Growing Water Classification Code.]

In order to protect the health, safety, and welfare of the public from the risks associated with the consumption of shellfish, this chapter sets forth the rules of the Department of Environmental Protection concerning the harvest or use of shellfish from waters other than Approved pursuant to N.J.S.A. 58:24-1 et seq., and the aquaculture of shellfish in all waters of the State pursuant to N.J.S.A. 50:1-5 et seq. This chapter establishes:

1. The procedures for the classification of shellfish waters and the boundaries of the waters so classified;

2. The procedures for the Department to impose immediate shellfish harvest suspensions and restrictions;

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3. The requirements for shellfish license holders for the harvest, handling, and transport of shellfish in order to ensure harvested shellfish are safe for human consumption; and

4. Permits for the following:

i. Depuration plants;

ii. Depuration harvesters;

iii. Harvest of surf clams for bait;

iv. Harvest for relay;

v. Harvest for transplant;

vi. Shellfish research in waters other than Approved;

vii. Shellfish restoration and/or enhancement in waters other than Approved;

viii. Growing seed in waters other than Approved by a nonprofit or government agency;

ix. Short-term use of shellfish for toxins monitoring in waters other than Approved;

x. Production and growing of seed by a hatchery or nursery in waters other than Approved; and

xi. Commercial shellfish aquaculture in Approved waters.

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[(b) The Department recognizes that the shellfish industry and regulatory standards are subject to change as technological data becomes available; accordingly it is the desire of the Department that the code be revised as necessary.]

[(c)] (b) The enforcement of the provisions of this [code] **chapter** by the Department or its agents shall be coordinated with and be in conjunction with any and all other State and [federal] **Federal** agencies exercising jurisdiction over practices of the shellfish industry.

[(d)] (c) If any provision of this [code] **chapter** or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this [code] **chapter** which can be given effect without the invalid provision or application, and to this end the provisions of this [regulation] **chapter** are severable.

[(e)] (d) Pursuant to N.J.S.A. 58:24-7 [and N.J.S.A. 13:1D-7a], the Department shall have free access to [“]all oyster or clam beds, places of business, and all other places where [oysters, clams or other] shellfish are grown, kept, stored, had in possession with intent to distribute or sell, or sold, and also to all streams, tributaries thereof and land adjacent thereto, the waters draining from which may come in contact with such shellfish. **Pursuant to N.J.S.A. 23:2B-9, the Department may inspect on request and at reasonable hours any record required to be maintained under this chapter.**

[(f)] (e) The Department of Environmental Protection, together with the Department of Health [and Senior Services], may make such inspection of such places and take such samples of

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[oysters, clams or other] shellfish or other substances as it may deem necessary to carry out the purposes of this chapter.

Recodify existing (g) and (h) as **(f) and (g)** (No change in text.)

(h) No person shall throw or dump into the water or otherwise dispose of the contents of any pail, bag, or basket, or any matter whatsoever after being hailed by any member of the designated enforcement unit(s) and before the authorized officer has inspected the same.

(i) All persons onboard a vessel shall immediately comply with all lawful instructions issued by any member of the designated enforcement unit(s) to facilitate safe boarding and inspection of the vessel, equipment, and catch for the purpose of enforcement of this chapter.

[(i)] **(j) Charts designating growing water classifications [as hereinafter referenced] are available from the Bureau of Marine Water Monitoring [Offices] at the address set forth at (l) below, [Marine Police Stations and] the Division of Fish and Wildlife Shellfisheries Field Offices at Bivalve and Nacote Creek, and at www.nj.gov/dep/bmw. [However, all persons are cautioned that at emergency closure may be necessary and may not be charted.] Notice of any emergency closure or harvest suspension imposed pursuant to N.J.A.C. 7:12-1.4 shall be provided in accordance with N.J.A.C. 7:12-1.4(e), including posting at www.nj.gov/dep/bmw. [These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 93rd Edition, January 15, 2000; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 29th Edition, April 7, 2001; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 28th Edition, August 25, 2001; and Number 12304 Delaware Bay, 41st Edition, April 22, 2000. The Department of**

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Environmental Protection hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year except when otherwise noted in N.J.A.C. 7:12-4 and 5.

(j) Designated areas utilized in conjunction with one of the Special Permit Programs under N.J.A.C. 7:12-9 which are leased from the State and may contain shellfish harvested from the Seasonal Special Restricted or Special Restricted area, are under the Relay Program, N.J.A.C. 7:12-9.8, Transfer Program, N.J.A.C. 7:12-9.9, and Transplant Programs, N.J.A.C. 7:12-9.10, and may be harvested only upon notification by the Bureau of Marine Water Monitoring. Nonleased lots within these designated areas are not available to harvest of shellfish at any time.]

(k) This [subchapter] **chapter** recognizes the National Shellfish Sanitation Program [(NSSP)] as the Federal/State cooperative program that provides for the sanitary control of molluscan shellfish produced and sold for human consumption. Participants in the NSSP include agencies from shellfish producing states, [the] Federal agencies (**U.S.** Food and Drug Administration, **U.S.** Environmental Protection Agency, and National Oceanic and Atmospheric Administration), and the shellfish industry. A 1984 Memorandum of Understanding between the FDA and the Interstate Shellfish Sanitation Conference (ISSC) specified that the purpose of the ISSC is to provide a formal structure for state regulatory authorities to participate in establishing updated procedures for uniform state application of the NSSP. The ISSC has adopted formal procedures for state and industry representatives to review shellfish sanitation issues and [develop] **establish** regulatory guidelines. Following FDA concurrence, the guidelines are published in revisions to the NSSP “Guide for the Control of Molluscan Shellfish” (**NSSP Guide**). **The NSSP Guide may be obtained from the U.S. Food and Drug Administration**

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website at

<http://www.fda.gov/Food/GuidanceRegulation/FederalStateFoodPrograms/ucm2006754.htm>

m. Individual provisions of the NSSP Guide become part of [New Jersey's shellfish regulations] **this chapter** through [the State's] rulemaking [process, thereby requiring compliance by the New Jersey's shellfishing industry].

(l) Charts, permit application forms, and other information can be downloaded from the Bureau website, www.nj.gov/dep/bmw; requested by sending an e-mail to bmwm@dep.nj.gov; or obtained in person or by mail from the Bureau at the following address:

NJ Department of Environmental Protection

Bureau of Marine Water Monitoring

929 Stoney Hill Road

PO Box 405

Leeds Point, NJ 08220

7:12-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Approved [areas]" means waters **that the Department has determined, pursuant to N.J.A.C. 7:12-1.3**, meet[ing] the sanitary standards [for approved shellfish harvesting as recommended by the Interstate Shellfish Sanitation Conference] **set forth in the NSSP Guide such that the harvest of shellfish for direct marketing is allowed.** [Waters not classified as

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Prohibited, Special Restricted, Seasonal Special Restricted, or Seasonal shall be considered Approved for the harvest of shellfish.]

"Aquaculture" is a form of agriculture involving the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging, and marketing, and shall include, but is not limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators. Aquaculture is a water dependent activity. Aquaculture shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or Federal law or regulation.

["Bait harvesting" means the taking of shellfish from areas other than approved, for use only as bait and not for human consumption.]

“Broodstock” means sexually mature shellfish that are kept for breeding purposes.

...

“Certified dealer” means a person who receives or accepts shellfish for shucking, repacking, shipping, or sale pursuant to a certificate issued by the Department of Health under N.J.A.C. 8:13.

"Condemned[areas]" means waters **that, pursuant to N.J.A.C. 7:12-1.3, do not meet[ing] the [established sanitary standards as recommended by the Interstate Shellfish Sanitation Conference] criteria set forth in the NSSP Guide for the harvest of shellfish for**

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direct marketing. Condemned [areas are comprised of] **waters comprise** the following classifications: Prohibited, [Special] Restricted, [Seasonal Special] **Conditionally** Restricted, and [Seasonal] **Conditionally Approved when the water classification is in its closed status.**

“Conditionally Approved” means waters that, pursuant to N.J.A.C. 7:12-1.3, meet the definition of “Approved” when the Conditionally Approved water classification is in its open status and meet the definition of “Restricted” when the Conditionally Approved water classification is in its closed status. Conditionally Approved waters are delineated at N.J.A.C. 7:12-4.1.

“Conditionally Restricted” means waters that, pursuant to N.J.A.C. 7:12-1.3, meet the definition of “Restricted” when the Conditionally Restricted water classification is in its open status and meet the definition of “Prohibited” when the Conditionally Restricted water classification is in its closed status. Conditionally Restricted waters are delineated at N.J.A.C. 7:12-5.1.

...

"Department maintained markers" means any special shellfish buoy, range, stake, or marker maintained by the Department [of Environmental Protection], for the purpose of aiding in the delineation of [water classified for shellfish harvesting] **shellfish growing waters.**

["Depletion" means the planned removal of market size shellfish from areas other than approved, for resource management and control purposes.]

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"Depuration [or controlled purification]" means the process [that uses a controlled aquatic environment to reduce the levels of bacteria and viruses in live shellfish] **of reducing the pathogenic organisms that may be present in shellfish by using a controlled aquatic environment as the treatment process.**

"Depuration plant" means a [premise or establishment in which shellfish obtained from waters officially sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted are subject to a process of controlled purification with the proper controls approved by the Department of Health and Senior Services which will render the depurated shellfish alive, and microbiologically acceptable within the meaning of State statutes and regulations] **facility that conducts depuration pursuant to a permit under this chapter and the Department of Health's rules at N.J.A.C. 8:13.**

["Depuration process" means the procedure and equipment employed by which shellfish are harvested from waters sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted and are treated at a depuration plant for controlled purification.

"Depuration unit" is a tank or series of tanks supplied by a single process water system.]

"Designated enforcement unit(s)" means the **Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region** [in the Division of Fish and Wildlife,]; **Division of Water Monitoring and Standards, Bureau of Marine Water Monitoring; Division of Water and Land Use Enforcement, Water Compliance and Enforcement Program; and** [Marine Bureau in] the **Department of Law and Public Safety, Division of**

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State Police, **Marine Services Bureau** [the Bureau of Marine Water Monitoring in the Division of Watershed Management] .

“Direct marketing” means the sale for human consumption of shellfish that does not require depuration or relay prior to sale or has been subjected to depuration or relay prior to sale.

["Hard clams" mean the species *Mercenaria mercenaria*.]

“Harvest” means the act of removing shellfish from a growing water and its placement on or in a manmade conveyance or other means of transport.

["Harvester allocation tag" means the tag that is to be affixed to each container of shellfish at the time the container is allocated by the depuration plant operator to the individual clammer. The use, specifications and information requirements shall be in compliance with Department of Health and Senior Services rules at N.J.A.C. 8:13-2.24.

"Interstate Shellfish Sanitation Conference" or "ISSC" means the formal conference that establishes guidelines and procedures of the National Shellfish Sanitation Program (NSSP) for the sanitary control of the harvesting, processing and distribution of shellfish. These guidelines and procedures are published as "Guide for the Control of Molluscan Shellfish" and are updated by the ISSC as needed. Membership in the ISSC consists of Federal, State and local regulatory agencies responsible for shellfish sanitation, the shellfish industry and the academic community.]

“Intertidal harvesting” means the harvesting of shellfish from the area that is exposed at low tide and covered by water at high tide.

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“Landing” means the time or place at which shellfish is put on land or a dock.

...

["Monitoring system" means a video surveillance system which shall be remotely monitored via telephone lines in designated State offices. The surveillance system shall be so located as to monitor all critical control activities. The system must be approved by the SRRSC.]

“National Shellfish Sanitation Program” or “NSSP” means the Federal/State cooperative program that provides for the sanitary control of molluscan shellfish produced and sold for human consumption, as described at N.J.A.C. 7:12-1.1(k).

“NSSP Guide” means the NSSP Guide for the Control of Molluscan Shellfish, as described at N.J.A.C. 7:12-1.1(k).

...

“Poisonous or deleterious substance” means a toxic substance occurring naturally or added to the environment for which a regulatory tolerance limit or action level has been established in shellfish to protect public health.

“Polyculture” means the culturing in a common environment of two or more species of shellfish, or of shellfish with other species.

"Prohibited [areas]" means [certain Condemned areas meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC)] **waters that, pursuant to N.J.A.C. 7:12-1.3, meet the criteria set forth in the NSSP Guide such that no**

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harvest of shellfish is allowed for direct marketing, depuration, or relay. Prohibited waters are delineated at N.J.A.C. 7:12-2.1.

“Refrigeration” means a mechanical unit that is chilled to a temperature of 45 degrees Fahrenheit (7.2 degrees Celsius) or colder at the time shellfish are placed in the unit and maintained at that temperature thereafter.

"Relay[ing]" means [the taking of market size shellfish from areas other than approved areas, for replanting in approved areas for purposes of purification prior to marketing] **the movement of shellfish from waters classified as Restricted to waters classified as Approved for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the shellfish by using the ambient water as the treatment process.**

["Research" means the taking of shellfish from areas other than approved, for purposes of scientific investigation requiring naturally contaminated shellfish.]

“Restricted” means waters that, pursuant to N.J.A.C. 7:12-1.3, meet the criteria set forth in the NSSP Guide such that shellfish shall not be harvested except for depuration or relay pursuant to a permit under this chapter. Restricted waters are delineated at N.J.A.C. 7:12-3.2.

["Sanctuary" means an area established by the department for research purposes.

"Seasonal area" means waters condemned and opened for the harvest of shellfish each year automatically by operation of the regulations in this chapter.

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"Seasonal Special Restricted Area" means certain Condemned waters meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC) during a portion of the year. The areas so designated will automatically, by operation of regulations according to the schedule in N.J.A.C. 7:12-5.1, be available for use under the special permit programs sanctioned by the Department.]

“Seed” means shellfish that have a maximum shell length, when measured across the largest dimension, as follows: for hard clam (*Mercenaria mercenaria*), equal to or less than one inch (25.4 mm); for eastern oyster (*Crassostrea virginica*), equal to or less than one and one-half inches (38.1 mm); for blue mussel (*Mytilus edulis*), equal to or less than one-half inch (12.7 mm); for bay scallop (*Argopecten irradians*), equal to or less than one-third inch (eight mm); for soft clam (*Mya arenaria*), equal to or less than one-half inch (12.7 mm); and for sea scallop (*Placopecten magellanicus*), equal to or less than two inches (50.8 mm).

"Shellfish" means [all] **any** species of oysters, clams, [or] mussels, **or scallops live in the shell** [either shucked or in the shell that are fresh or fresh frozen and whole or in part and scallops, only when they are whole or with roe-on].

“Shellfish license” means the applicable commercial shellfish license issued by the Department’s Division of Fish and Wildlife.

["Shellfish Resource Recovery Steering Committee" or "SRRSC" means a committee of representatives from the Department of Environmental Protection and the Department of Health and Senior Services who have the regulatory responsibilities for resource recovery programs.

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"Soft clams" means the species *Mya arenaria*.

"Spawner area" means those areas established by the department to re-establish shellfish populations.

"Special Permit Programs" means programs developed to utilize shellfish from waters classified other than approved.

"Special Restricted areas" means certain Condemned areas meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference. Application for removal of shellfish to be used for human consumption from areas classified as Special Restricted will be considered for transplant, transfer, relaying, and depuration/controlled purification.]

“Subtidal harvesting” means the harvesting of shellfish from the area that lies below the low tide line and is normally covered by water.

“Tide-dependent harvesting” means subtidal harvesting that can only be accomplished during a stage of the tide cycle allowing the harvester access to the shellfish.

["Transfer" means the movement of shellfish from leased land located in a Condemned area to leased lands located in an Approved area for the purposes of propagation and/or purification.]

"Transplant[ing]" means the [taking] **harvest** of [submarket size shellfish] **seed** from [areas other than approved areas] **waters classified as Restricted** for replanting **and grow-out** in **waters classified as** [approved areas until they grow to market size] **Approved for a minimum of six months.**

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7:12-[1.4]**1.3** Classification of shellfish waters

(a) The Department shall classify the shellfish waters of the State for the purpose of harvesting shellfish. The classification of all shellfish waters shall adhere to the guidance and criteria contained within the [National Shellfish Sanitation Program publication entitled Guide for the Control of Molluscan Shellfish] **NSSP Guide**, [2007] **2013**, incorporated herein by reference, as amended and supplemented, [published by the Interstate Shellfish Sanitation Conference (209-2 Dawson Drive, Columbia, SC 29223, (803) 788-7559, www.issc.org in cooperation with the U.S. Food and Drug Administration] **and available as provided at N.J.A.C. 7:12-1.1(k)**. Shellfish waters may be classified as Approved, [Seasonally Approved, Special Restricted, Seasonal Special Restricted] **Conditionally Approved, Restricted, Conditionally Restricted**, or Prohibited. Classification of shellfish waters shall be determined based on the following factors:

1. – 4. (No change.)

5. [All growing areas which] **Any shellfish waters that** are not subjected to a sanitary survey every 12 years shall be classified as [prohibited] **Prohibited**.

(b) (No change.)

(c) The Department shall establish restricted harvest areas in the vicinity of marinas and/or boat mooring facilities. The restricted harvest areas may be classified as Prohibited, [Special] Restricted, [Seasonal Special] **Conditionally** Restricted, or [Seasonally] **Conditionally** Approved. The extent of the restricted area shall be based upon the following:

1.-7. (No change.)

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(d) The Department shall establish restricted harvest areas where water quality is or may be affected by various non-point sources of pollutants. The restricted harvest areas may be classified as Prohibited, [Special] Restricted, [Seasonal Special] **Conditionally** Restricted, or [Seasonally] **Conditionally** Approved. Factors to be considered by the Department in establishing the restrictions include the following:

1. – 5. (No change.)

7:12-[1.5]**1.4** Immediate shellfish harvest suspensions and restrictions

(a) – (c) (No change.)

(d) The Department shall conduct, in accordance with the [National Shellfish Sanitation Program] **NSSP** Guide [for the Control of Molluscan Shellfish referenced at N.J.A.C. 7:12-1.4(a)], an annual assessment to determine [whether] the risk of *Vibrio parahaemolyticus* illness **and *Vibrio vulnificus* illness** from the consumption of shellfish harvested from shellfish growing waters [is reasonably likely to occur]. Based on the results of the risk assessment, the Department shall develop and annually update and implement a *Vibrio parahaemolyticus* [Management] **Control Plan and a *Vibrio vulnificus* Control Plan** [that identifies shellfish growing waters affected by *Vibrio parahaemolyticus*]. The [*Vibrio parahaemolyticus* Management] **Control Plans** establish[es] control measures to minimize growth of *Vibrio parahaemolyticus* **and/or *Vibrio vulnificus*** in shellfish [harvested from those waters, including restrictions on the hours during which shellfish may be harvested]. **The Control Plans are available at <http://www.nj.gov/dep/bmw>, or from the address at N.J.A.C. 7:12-1.1(i).** *Vibrio parahaemolyticus* **Control Plan time to temperature requirements are set forth at N.J.A.C. 7:12-8.6.**

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(e) The Department shall immediately notify representatives of agencies or organizations affected by a harvest suspension or restriction under this section by fax or e-mail. Notice of harvest suspension or restriction shall be posted in areas where those harvesting shellfish would be likely to enter the water. **Notice shall also be posted at www.nj.gov/dep/bmw.** The following agencies or organizations shall be notified:

1. [State enforcement agencies including the NJDEP Water Compliance and Enforcement Program and the New Jersey State Marine Police] **The designated enforcement unit(s)** in the area in which the suspension or restriction occurred;
2. The shellfish program in the [State] Department of Health [and Senior Services] and the health agencies in the county in which the suspension or restriction occurred;
3. The [USFDA] **U.S. Food and Drug Administration;**
4. The [USEPA] **U.S. Environmental Protection Agency;** and
5. (No change.)

SUBCHAPTER 2. SHELLFISH GROWING WATER CLASSIFICATION - PROHIBITED

7:12-2.1 Shellfish growing water classification - Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1. - 2. (No change.)
3. Monmouth Middlesex County area (note that a portion is also designated as a [Special] Restricted area. See N.J.A.C 7:12-3):
 - i. [All those waters of the Raritan River, Arthur Kill (and tributaries), and portion of the Raritan Bay that are lying south and west of the New Jersey-New York boundary and

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lying west of a line beginning at the New Jersey-New York boundary with coordinates of latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W., then bearing approximately 165 degrees T in a southeasterly direction toward a point with latitude 40 degrees 27 minutes 24.8 seconds N., longitude 74 degrees 11 minutes 43.9 seconds W., and then proceeding in a westerly direction at approximately 261 degrees T to a point of land with latitude 40 degrees 27 minutes 12 seconds N., longitude 74 degrees 13 minutes 28.0 seconds W., and terminating;] **All those waters of the Raritan Bay, Raritan River (and its tributaries), Arthur Kill (and its tributaries), and Keyport Harbor (and its tributaries) lying south of the New York-New Jersey boundary line and west of a line starting at a point on the New York-New Jersey boundary with coordinates of latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W., then bearing approximately 165 degrees T to the northernmost point of Keyport Harbor with coordinates of latitude 40 degrees 27 minutes 24.78 seconds N., longitude 74 degrees 11 minutes 43.86 seconds W., then bearing approximately 81 degrees T to the northernmost point of land on Conaskonk Point, Union Beach, New Jersey coordinates of latitude 40 degrees 27 minutes 31.99 seconds N., longitude 74 degrees 10 minutes 44.50 seconds W., and terminating;**

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

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Recodify existing iii.-v. as **ii.-iv.** (No change in text.)

[vi.] **v.** All those waters of Raritan Bay and Lower Bay enclosed by the New Jersey/New York boundary and a straight line beginning on the southwesternmost point of land on Rockaway Point, Long Island, New York and bearing approximately 222 degrees T to the northernmost point of land on Sandy Hook, New Jersey and then in a northwesterly direction for approximately 2.2 nautical miles bearing approximately 331 degrees toward R "10" 18 Fl R4s Bell, (located in New York State waters) until it intersects New York State waters at approximately latitude 40 degrees 30 minutes 30.2 seconds N. and longitude 74 degrees 2 minutes 21.9 seconds W., where this line terminates. (Note: This closure adjoins those Prohibited waters defined in [(a)20i] (**a)21i** below);

[vii.] **vi.** [All those waters enclosed by a line beginning where the structure (old ferry pier) forming the western extent of the Atlantic Highlands Municipal Harbor (First Avenue, Borough of Atlantic Highlands) and then following the western extent of this structure in a northerly direction to its northernmost extent,] **All those waters enclosed by a line beginning at a point of land (off Harbor Court, Borough of Atlantic Highlands), at coordinates latitude 40 degrees 25 minutes 3.3 seconds N., longitude 74 degrees 2 minutes 29.9 seconds W., then bearing approximately 64 degrees T in a northeasterly direction to the northernmost extent of the ferry pier (located on First Avenue, Borough of Atlantic Highlands) and then connecting this structure with the breakwater (this breakwater or rockpile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to the breakwater's easternmost extent, where it is marked by the navigation marker designated as 'Flashing light 4sec 29ft 8M' (Fl 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland where this line terminates;**

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[viii.] **vii.** All waters west of a line starting from [a Department maintained marker located on] the [northern] **southern** shore of the Navesink River at coordinates [latitude 40 degrees 21 minutes 31.1 seconds N., longitude 74 degrees 4 minutes 5.5 seconds W., then bearing 144 degrees T in a southeasterly direction to the Department maintained marker on the southern shore of the Navesink River near Marine Park at coordinates latitude 40 degrees 21 minutes 17.6 seconds N., longitude 74 degrees 3 minutes 53.0 seconds W.] **latitude 40 degrees 22 minutes 3.4 seconds N., longitude 74 degrees 2 minutes 48.2 seconds W., and then heading in a northeasterly direction to the northern shore of the Navesink River at coordinates latitude 40 degrees 22 minutes 25.0 seconds N., longitude 74 degrees 2 minutes 34.1 seconds W.,** including all of Swimming River, Shadow Lake, McClee's Creek, and other tributaries; and

[ix.] **viii.** (No change in text.)

4. (No change.)

5. Manasquan River area (Note: A portion is also designated as a [Special] Restricted area. See N.J.A.C. 7:12-3):

i. All of the Point Pleasant Canal; [and]

ii. All of the waters of the Manasquan River and tributaries located north and west of the State Highway Route 70 bridge[.];

iii. All of the waters of the Glimmer Glass region north of a line starting at a point with coordinates of latitude 40 degrees 6 minutes 38.67 seconds N., longitude 74 degrees 2 minutes 38.34 seconds W., then bearing approximately 277 degrees T across Crabtown Creek to a point with coordinates of latitude 40 degrees 6 minutes 39.14 seconds N., longitude 74 degrees 2 minutes 42.98 seconds W., then following the shoreline of

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Debbies Creek, Glimmer Glass, Watson Creek, Stockton Lake, and Deep Creek to a point with coordinates of latitude 40 degrees 6 minutes 32.02 seconds N., longitude 74 degrees 2 minutes 37.42 seconds W., then bearing approximately 349 degrees T across Deep Creek to a point with coordinates of latitude 40 degrees 6 minutes 32.67 seconds N., longitude 74 degrees 2 minutes 37.58 seconds W., then following the western shoreline of a small unnamed island in a northerly direction to its point of origin and terminating; and

iv. All of the waters of Lake Louise located south of the northern side of the Broadway Bridge, specifically south of a line beginning at a point with coordinates of latitude 40 degrees 6 minutes 2.53 seconds N., longitude 74 degrees 2 minutes 15.60 seconds W., then bearing approximately 101 degrees T across the Lake Louise channel in an easterly direction to a point with coordinates of latitude 40 degrees 6 minutes 2.26 seconds N., longitude 74 degrees 2 minutes 13.76 seconds W., and terminating.

6. Bay Head and Metedeconk River area (Note: A portion is also designated as a [Special] Restricted area. See N.J.A.C. 7:12-3):

i. All of Twilight Lake and its tributaries including its access channel [upstream from where its mouth meets Northern Barnegat Bay or Bay Head Harbor] north from where it meets Northern Barnegat Bay at a point with coordinates of latitude 40 degrees 3 minutes 57.27 seconds N., longitude 74 degrees 2 minutes 49.55 seconds W., then bearing approximately 3.5 degrees T in a northerly direction across the mouth of the access channel to a point with coordinates of latitude 40 degrees 3 minutes 58.10 seconds N., longitude 74 degrees 2 minutes 49.47 seconds W., and terminating;

ii. All those waters of Beaverdam Creek and its tributaries west of a line beginning [on the southwesternmost point of land forming the eastern side of the lagoon located

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just west of the] **at a point of land near the** westernmost extent of Boat Point Drive in Point Pleasant **on the northern side of Beaverdam Creek with coordinates latitude 40 degrees 3 minutes 40.32 seconds N., longitude 74 degrees 3 minutes 50.83 seconds W., then crossing Beaverdam Creek with the** [and bearing approximately 174] **approximate bearing of 183** degrees T to navigation marker Flashing Green light “3” (FL G “3”) and then bearing approximately [210] **194** degrees T to the easternmost point of land on Wardells Neck [east of the easternmost extent of North Drive] in Brick Township **with coordinates latitude 40 degrees 3 minutes 32.66 seconds N., longitude 74 degrees 3 minutes 51.32 seconds W., and terminating;** [and]

iii. All those waters of the Metedeconk River and its tributaries west of a line beginning [on the southeasternmost] **at a point of land [of] on** Wardells Neck [east of the easternmost extent of South Drive] in Brick Township **with coordinates latitude 40 degrees 3 minutes 23.04 seconds N., longitude 74 degrees 5 minutes 38.70 seconds W.,** and then bearing approximately 180 degrees T [to navigation marker Flashing Red light “2” (FL R “2”) and then bearing approximately 165 degrees T through navigation marker Flashing Green light “1” (FL G “1”) to the shoreline in West Mantoloking where this line terminates.] **due south across the Metedeconk River to a point of land on the southern bank with coordinates latitude 40 degrees 2 minutes 58.27 seconds N., longitude 74 degrees 5 minutes 38.70 seconds W., and terminating;** and

iv. All tributaries, lagoons, and marina basins on the southern shoreline of the Metedeconk River beginning at a point of land on the southern bank with coordinates latitude 40 degrees 2 minutes 58.27 seconds N., longitude 74 degrees 5 minutes 38.70 seconds W., then following along the shoreline to the most eastern point of land in West

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Mantoloking with coordinates latitude 40 degrees 3 minutes 0.76 seconds N., longitude 74 degrees 3 minutes 26.97 seconds W., and terminating.

7. (No change.)

8. Tuckerton area (Note: A Portion of Tuckerton Cove is also designated as [Seasonal] **Conditionally Approved** or [Special] Restricted. See N.J.A.C. 7:12-4 and [7:12-]3. [A Portion of Tuckerton Creek is also designated as Special Restricted. See N.J.A.C. 7:12-3]): The waters of Tuckerton Creek and tributaries north of a line beginning at a point on the **southeastern** bank of Tuckerton Creek [just north of Bass Rd. with coordinates of latitude 39 degrees 35 minutes 14.5 seconds N., and longitude 74 degrees 20 minutes 28 seconds W., and then bearing 315 degrees T for 0.03 nautical miles to a point on the western side of Tuckerton Creek with coordinates of latitude 39 degrees 35 minutes 15.6 seconds N., and longitude 74 degrees 20 minutes 29.4 seconds W], **southeast of Parker Rd. with coordinates of latitude 39 degrees 34 minutes 40.7 seconds N., longitude 74 degrees 20 minutes 14.9 seconds W., and then bearing 186 degrees T for 0.10 nautical miles to a point on the southwestern bank of Tuckerton Creek with coordinates of latitude 39 degrees 34 minutes 34.7 seconds N., longitude 74 degrees 20 minutes 15.8 seconds W., and terminating.**

9. Brigantine area (Note: Portions are also designated as [Special] Restricted and [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-3 and 4):

i. (No change.)

10. Atlantic City area (Note: Portions are also designated as [Special] Restricted and [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-3 and 4):

i.-iv. (No change.)

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11. Great Egg Harbor River (Note: Portions are also designated as [Special]

Restricted and [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-3 and 4).

i. (No change.)

12. (No change.)

13. Strathmere and Sea Isle City area (Note: Portions are also designated as [Special]

Restricted and [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-3 and 4):

i.-iv. (No change.)

14. (No change.)

15. Stone Harbor area (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See N.J.A.C. 7:12-4):

i.-xi. (No change.)

16. (No change.)

17. The Wildwoods Area (Note: Portions are also designated as [Special] Restricted

and [Seasonal] **Conditionally Approved**. See: N.J.A.C. 7:12-3 and 4):

i.-x. (No change.)

18. Cape May (Note: A portion is also designated as a [Special] Restricted area. See

N.J.A.C. 7:12-3):

i.-vi. (No change.)

vii. That area of Cape May Harbor described in N.J.A.C. 7:12-[3(a)32i]**3.1(a)31**

which lies adjacent to the U.S.C.G. harbor area inshore from a line connecting Flashing Green light Number 5 (FL G 4 sec. "5") with G "9" PA.

19. Delaware Bay area (Note: Portions are also designated as [Special] Restricted

and [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-3 and 4):

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i.-vi. (No change.)

vii. All of **the** Maurice River and tributaries upstream of a line [from the end of Berry Avenue (Shellpile)] **beginning at a point along the west shore of the river south of Bivalve at latitude 39 degrees 12 minutes 51.2 seconds N., longitude 75 degrees 2 minutes 55.9 seconds W.** and bearing approximately [214] **115** degrees T across the river to a [Department maintained marker] **point along the east shore at latitude 39 degrees 12 minutes 21.4 seconds N., longitude 75 degrees 1 minute 27.9 seconds W.,** and terminating; and

viii. (No change.)

20. (No change.)

21. Atlantic Ocean:

i.-ii. (No change.)

iii. [All of the Ocean waters inshore of a line beginning at the water tank located on the corner of Barnegat Avenue and 12th Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 54 minutes 52.4 seconds N., longitude 74 degrees 4.0 minutes 57.7 seconds W., and bearing approximately 096 degrees T to a point approximately 1.5 nautical miles from the shoreline with coordinates of latitude 39 degrees 54 minutes 40.0 seconds N., longitude 74 degrees 02 minutes 36.4 seconds West. The line continues from this point parallel to the shoreline in a southerly direction 1.5 nautical miles offshore for approximately 1.1 nautical miles to a point with coordinates of latitude 39 degrees 53 minutes 35.1 seconds N., longitude 74 degrees 02 minutes 42.2 seconds W., then bearing approximately 276 degrees T (reciprocal 096 degrees T) for approximately 1.6 nautical miles to the cupola located on top of Island Beach State Park's Maintenance Center (the old Coast Guard Station 110), with coordinates of latitude 39 degrees 53 minutes 44.6 seconds N., longitude 74 degrees 04 minutes 54.1 seconds W., and

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terminating;] **All ocean waters south of a line beginning at a point with coordinates of latitude 39 degrees 55 minutes 2.08 seconds N., longitude 74 degrees 4 minutes 31.11 seconds W., located East of the intersection of 8th and Ocean Avenues, Borough of Seaside Park, then bearing 095 degrees T to a point 1.67 nautical miles from the shoreline with coordinates of latitude 39 degrees 54 minutes 52.21 seconds N., longitude 74 degrees 2 minutes 21.70 seconds W., then continuing South at 183 degrees T, and parallel to the shoreline for 2.46 nautical miles to a point with coordinates of latitude 39 degrees 52 minutes 24.91 seconds N., longitude 74 degrees 2 minutes 34.10 seconds W., then bearing West at 277 degrees T for 1.82 nautical miles to a point with coordinates of latitude 39 degrees 52 minutes 38.09 seconds N., longitude 74 degrees 4 minutes 54.70 seconds W. and terminating;**

iv. – xiv. (No change.)

SUBCHAPTER 3. SHELLFISH GROWING WATERS CLASSIFICATION -

[SPECIAL] RESTRICTED

7:12-[3.2]3.1 Shellfish growing waters that are classified as [Special] Restricted

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

1. All those waters **of Raritan Bay and Sandy Hook Bay** contained within a line beginning on the northernmost point of Conaskonk Point, latitude 40 degrees 27 minutes 31.99 seconds N., longitude 74 degrees 10 minutes 44.50 seconds W., near Union Beach, New Jersey and [continuing in a southwesterly direction along the coastline to a Department maintained marker at latitude 40 degrees 26 minutes 21.7 seconds N., longitude 74 degrees 12 minutes 7.9

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seconds W., then bearing 300 degrees T across the mouth of Matawan Creek to a department maintained marker at latitude 40 degrees 26 minutes 29.3 seconds N., longitude 74 degrees 12 minutes 26.2 seconds W., then continuing along the shoreline in a northwesterly direction to a point of land at latitude 40 degrees 27 minutes 12 seconds N., longitude 74 degrees 13 minutes 28.0 seconds W., then bearing approximately 80 degrees T,] **bearing approximately 261 degrees T to the most northern point of Keyport Harbor with coordinate of latitude 40 degrees 27 minutes 24.78 seconds N., longitude 74 degrees 11 minutes 43.86 seconds W., then bearing 345 degrees T until it intersects the New York-New Jersey boundary line with coordinate of latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W.,** [until it intersects a line at latitude 40 degrees 27 minutes 24.8 seconds N., longitude 74 degrees 11 minutes 43.9 from the tank between Keyport and Union Beach, New Jersey at latitude 40 degrees 26 minutes 31.16 seconds N., longitude 74 degrees 11 minutes 25.18 seconds W., bearing approximately 345 degrees T to the Iso G 6 sec 80 foot tower at latitude 40 degrees 30 minutes 27.82 seconds N., longitude 74 degrees 12 minutes 47.94 seconds W., at Red Bank, Staten Island, New York, until it intersects the New York-New Jersey boundary at latitude 40 degrees 28 minutes 51.4 seconds N., longitude 74 degrees 12 minutes 13 seconds W.,] then [along that] **following the New York-New Jersey boundary line** in an easterly direction until it intersects the Chapel Hill South Channel at approximately latitude 40 degrees 30 minutes 30.20 seconds N., and longitude 74 degrees 2 minutes 22.03 seconds W., (just south of R "10" 18 Fl R4s Bell, located in New York State waters), thence in a southeasterly direction at a bearing of 151 degrees T to the northernmost tip of Sandy Hook, approximately latitude 40 degrees 28 minutes 39.57 seconds N., and longitude 74 degrees 1 minute 4.02 seconds W., then proceeding in a generally southerly direction following the western shoreline of

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Sandy Hook to the westernmost extent of the Rt. 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on the mainland and then following the shoreline in a generally northwesterly direction until it intersects a line [bearing approximately 201 degrees T from the navigational marker designated as Flashing light 4 second 29ft 8M (Fl 4 sec 29ft 8M) marking the easternmost extent of the Atlantic Highlands Municipal Yacht Basin's breakwater (this stonepile forms the basin's northern boundary), and then along that line in a northerly direction to the marker designated as a Flashing light 4 second 29ft 8M and following the northern side of the breakwater in a westerly direction until it reaches the structure forming the western boundary of the Yacht Basin, and then following the western edge of this structure in a southerly direction to the mainland,] **at coordinates latitude 40 degrees 24 minutes 48.65 seconds N., longitude 74 degrees 1 minute 20.10 seconds W., then bearing approximately 21 degrees T to the Atlantic Highland Municipal Yacht Basin's breakwater (a stone pile forming the basin's northern boundary), then following the breakwater in a northwesterly direction toward the tip of the northernmost extent of the ferry pier (located on First Avenue, Borough of Atlantic Highlands), then bearing 246 degrees T from the northernmost extent of the ferry pier to a point of land at coordinates latitude 40 degrees 25 minutes 3.3 seconds N., longitude 74 degrees 2 minutes 29.9 seconds W.,** then following the shoreline in a generally northwesterly direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.

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

i.-iv. (No change.)

3. **Navesink River (Note: Portions are also designated as Prohibited or Conditionally Approved. See N.J.A.C. 7:12-2 and 4):**

i. All waters of the Navesink River and tributaries west of the Oceanic Bridge [and a line starting from a Department maintained marker located on the northern shore of the Navesink River at coordinates latitude 40 degrees 21 minutes 31.1 seconds N., longitude 74 degrees 4 minutes 5.5 seconds W., then bearing 144 degrees T in a southeasterly direction to the Department maintained marker on the southern shore of the Navesink River near Marine Park at coordinates latitude 40 degrees 21 minutes 17.6 seconds N., longitude 74 degrees 3 minutes 53.0 seconds W] **starting from the southern base of the Oceanic Bridge, then following the shoreline in a southwesterly direction to a line starting from the southern shore of the Navesink River at coordinates latitude 40 degrees 22 minutes 3.4 seconds N., longitude 74 degrees 2 minutes 48.2 seconds W., and then bearing approximately 26 degrees T in a northeast direction to the northern shore of the Navesink River at coordinates latitude 40 degrees 22 minutes 25.0 seconds N., longitude 74 degrees 2 minutes 34.1 seconds W., then following the shoreline in a northeasterly direction to the northern base of the Oceanic Bridge at Locust Point, then along a line crossing the Oceanic Bridge and terminating at its southern base.**

ii. All waters of Claypit Creek north of a line starting at the northern base of the Oceanic Bridge at Locust Point, then bearing 60 degrees T to a Department

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maintained marker at the south easternmost point of land at the mouth of Claypit Creek and terminating.

iii. All waters of Black Point Creek.

4. All of Shark River and tributaries. This closure adjoins those Prohibited waters defined in N.J.A.C. 7:12-2.1(a)[20i]**21i.**

5. All of Manasquan River and tributaries located south and east of the State Highway Route 70 bridge to its union with the Atlantic Ocean at the Manasquan Inlet [(See N.J.A.C. 7:12-2)] **excluding Lake Louise and the Glimmer Glass region (Note: The Prohibited waters of Lake Louise, the Glimmer Glass region, and the Atlantic Ocean are described at N.J.A.C. 7:12-2.1(a)5).**

6. Bay Head and Mantoloking area[: All those waters of Northern Barnegat Bay and tributaries north of a straight line beginning at the southwestern abutment of the Mantoloking Bridge (County Route 528) with coordinates latitude 40 degrees 2 minutes 25.4 seconds North and longitude 74 degrees 3 minutes 23.4 seconds West and continuing along the southern edge of the bridge to the southeastern abutment of the bridge with coordinates of latitude 40 degrees 2 minutes 24.9 seconds North and longitude 74 degrees 3 minutes 17.7 seconds West where this line terminates.] **(Note: A portion is also designated as a Prohibited area. See N.J.A.C. 7:12-2.1): Waters inclusive of an area beginning at a point of land on Wardells Neck in Brick Township with coordinates latitude 40 degrees 3 minutes 23.04 seconds N., longitude 74 degrees 5 minutes 38.70 seconds W., then bearing 180 degrees T due south across the Metedeconk River to a point of land on the southern bank with coordinates latitude 40 degrees 2 minutes 58.27 seconds N., longitude 74 degrees 5 minutes 38.70 seconds W., then**

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following along the shoreline in a generally easterly direction, crossing all tributaries and lagoons, to the easternmost point of land in West Mantoloking with coordinates latitude 40 degrees 3 minutes 0.76 seconds N., longitude 74 degrees 3 minutes 26.97 seconds W., then proceeding along the shoreline in southerly direction, crossing all tributaries and lagoons and excluding all marina basins, to the southwestern abutment of the Mantoloking Bridge (County Route 528) with coordinates latitude 40 degrees 2 minutes 25.81 seconds N., longitude 74 degrees 3 minutes 22.99 seconds W., then proceeding east along the southern edge of the bridge to the southeastern abutment of the bridge with coordinates of latitude 40 degrees 2 minutes 24.24 seconds N., longitude 74 degrees 3 minutes 9.11 seconds W., then proceeding northbound along the shoreline, crossing all lagoons and excluding all marina basins, to the southeastern corner of the footbridge across the access channel of Twilight Lake with coordinates latitude 40 degrees 3 minutes 57.27 seconds N., longitude 74 degrees 2 minutes 49.55 seconds W., then crossing in a northerly direction the mouth of the access channel of Twilight Lake to the northeastern corner of the same footbridge with coordinates latitude 40 degrees 3 minutes 58.10 seconds N., longitude 74 degrees 2 minutes 49.47 seconds W., then proceeding along the shoreline in a generally westerly direction, across all lagoons and excluding all marina basins, to a point of land off of Bay Avenue in Point Pleasant Borough with coordinates latitude 40 degrees 3 minutes 57.69 seconds N., longitude 74 degrees 3 minutes 6.94 seconds W., then crossing in a westerly direction the Point Pleasant Canal to a point of land off of Perch Hole Point Place in Point Pleasant Borough with coordinates latitude 40 degrees 3 minutes 55.91 seconds N., longitude 74 degrees 3 minutes 9.06 seconds W., then proceeding along the shoreline, across all lagoons and excluding existing marina basins, to a point of land near the westernmost extent of

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Boat Point Drive in Point Pleasant on the northern side of Beaverdam Creek with coordinates latitude 40 degrees 3 minutes 40.32 seconds N., longitude 74 degrees 3 minutes 50.83 seconds W., then crossing Beaverdam Creek with the approximate bearing of 183 degrees T to navigation marker Flashing Green light “3” (FL G “3”), and then bearing approximately 194 degrees T to the easternmost point of land on Wardells Neck with coordinates latitude 40 degrees 3 minutes 32.66 seconds N., longitude 74 degrees 3 minutes 51.32 seconds W., then continuing along the shoreline, across the lagoon at the end of Wardells Neck, then continuing along the shoreline to a point with coordinates latitude 40 degrees 3 minutes 22.15 seconds N., longitude 74 degrees 3 minutes 51.85 seconds W., then following the shoreline in a westerly direction to the point of origin and terminating.

7. Island Beach areas: Mantoloking to Berkeley Township (Note: A portion is designated [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4): All those waters of Barnegat Bay and its tributaries east of a line beginning [on the northernmost] **at the tip of Chadwick Island with coordinates latitude 40 degrees 0 minutes 0.4 seconds N., longitude 74 degrees 4 minutes 20.8 seconds W., proceeding in a southwesterly direction** across Middle Thoro to the northeastern tip of Middle Sedge Island **with coordinates latitude 39 degrees 59 minutes 59.5 seconds N, longitude 74 degrees 4 minutes 24.0 seconds W., thence approximately 298 degrees T in a westerly direction to coordinates latitude 40 degrees 0 minutes 13.9 seconds N., longitude 74 degrees 4 minutes 59.1 seconds W., then approximately 192 degrees T in a southerly direction to the northeastern tip of NW Point Island with coordinates latitude 40 degrees 0 minutes 13.9 seconds N., longitude 74 degrees 4 minutes 59.1 seconds W., [in a southerly direction along the shoreline to Broad Thorofare,] then following the shoreline of NW Point Island in a southerly direction to a point on land**

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with coordinates latitude 39 degrees 59 minutes 52.0 seconds N., longitude 74 degrees 5 minutes 5.2 seconds W., thence **approximately 142 degrees T** in a southeasterly direction to the southeasternmost tip of NW Point Island **with coordinates latitude 39 degrees 59 minutes 33.3 seconds N. and longitude 74 degrees 5 minutes 6.7 seconds W.,** then along the southern shore to a Department maintained marker on the southwestern tip of NW Point Island, then bearing approximately [145] **142 degrees T** to the [east] **western** tip of the [two] island[s] off Ocean Beach, continuing along the east shore of that island to its southernmost point, then bearing approximately 200 degrees T to Flashing Green light "11" (Fl G "11") off West Point Island, then bearing approximately 217 degrees T to Quick Green light (QG "29"), then bearing approximately 158 degrees T to the westernmost point of land on Pelican Island, then bearing approximately 129 degrees T to Flashing Green light "3" (Fl G "3") marking the channel to Seaside Heights, then bearing approximately 170 degrees T to the southwest corner of the bulkhead west of the Berkeley Yacht Basin, then bearing 174 degrees T to the western end of the municipal pier off 5th Avenue in Seaside Park, then bearing approximately 210 degrees T to the western end of the municipal pier off 14th Avenue in Seaside Park, then bearing approximately 186 degrees T to the next point of land, then bearing approximately 178 degrees T and terminating at the next point of land at Island Beach State Park.

8. Barnegat Bay-Brick Township and Dover Township from Swan Point to Toms River (Note: A portion is also designated [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4.):

i.-v. (No change.)

9.-10. (No change.)

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11. Barnegat Bay-Berkeley Township, Potter Creek to Sunrise Beach (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i.-iii. (No change.)

12. Western Barnegat Bay Forked River to Conklin Island. (Note: A portion is designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i.-iii. (No change.)

13. Barnegat Bay-Little Egg Harbor and Long Beach Island area; Barnegat Light to Holgate (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i.-iii. (No change.)

14. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See: N.J.A.C. 7:12-4):

i. (No change.)

ii. All of those waters in unnamed creek north and west of a line beginning on Oyster Point and bearing approximately 032 degrees T to its terminus on the northeast shore of the unnamed creek. This line of closure is an extension of a line (terminating on Oyster Point) defined in N.J.A.C. 7:12-4[.2].

15. Cedar Run area. (Note: A portion is designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i.-ii. (No change.)

16 – 17. (No change.)

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18. Tuckerton area (Note: Portions are also designated as Prohibited or [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-2 and 4): The waters of Tuckerton Cove [and Tuckerton Creek] and tributaries thereof between a location on Gaunt Point that is west of Little Egg Harbor Boulevard and situated on the eastern bank of Tuckerton Cove with coordinates of latitude 39 degrees 34 minutes 41.7 seconds N., and longitude 74 degrees 19 minutes 58.8 seconds W., and then bearing 230 degrees T for 0.34 nautical miles to a point on the west bank of Tuckerton Cove with coordinates of latitude 39 degrees 34 minutes 28.8 seconds N., and longitude 74 degrees 20 minutes 19.3 seconds W., then in a [northern] **northeasterly** direction [proceeding up Tuckerton Creek] **along the western shore of Tuckerton Cove** for [0.88] **0.11** nautical miles to a point on the western shoreline with coordinates of latitude 39 degrees [35] **34** minutes [15.6] **34.7** seconds N., and longitude 74 degrees 20 minutes [29.4] **15.8** seconds W., then bearing [135] **6** degrees T for [0.03] **0.10** nautical miles to a point on the eastern bank of Tuckerton Cove [Creek just north of Bass Road], **southeast of Parker Rd.** with coordinates of latitude 39 degrees [35] **34** minutes [14.5] **40.7** seconds N., and longitude 74 degrees 20 minutes [28] **14.9** seconds W., then continuing [southbound] **northeast, west, then southeast** along the **Tuckerton Cove** shoreline to the point of origin and terminating.

19. (No change.)

20. Mullica River Great Bay area (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i. Mullica River and tributaries (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See: N.J.A.C. 7:12-4): All of Mullica River and tributaries thereof, upstream from a straight line beginning at the easternmost point of Moss Point and bearing

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approximately 093 degrees T to the southwesternmost point of land on the north bank of the northernmost ditch (Bloody Ditch) separating Blood Point from the mainland;

ii. (No change.)

iii. Ballanger Creek area (Note: A portion is also designated as [Seasonal]

Conditionally Approved . See N.J.A.C. 7:12-4):

(1)-(2) (No change.)

iv. Roundabout Creek area (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See N.J.A.C. 7:12-4): All of Roundabout Creek and tributaries upstream from a straight line connecting two Department maintained markers;

v. All of Judies Creek and tributaries upstream from a straight line connecting two Department maintained markers (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4);

vi.-ix. (No change.)

21. Reed Bay area (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i. All of the unnamed cove southwest of Somers Cove (adjacent to the [Seasonal] **Conditionally Approved** area described in N.J.A.C. 7:12-4.1[(a) 5ii](a)6i) west of a line connecting two Department maintained markers;

ii.-iii. (No change.)

22. Brigantine area (Note: A portion is also designated as [Seasonal] **Conditionally Approved**. See N.J.A.C. 7:12-4):

i. (No change.)

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23. Atlantic City-Absecon area (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See N.J.A.C. 7:12-4):

i.-vii. (No change.)

24. Pleasantville-Northfield-Linwood-Margate-Ventnor-Longport area (Note: A portion is also designated as [Seasonal] **Conditionally Approved.** See N.J.A.C. 7:12-4):

i.-v. (No change.)

vi. Lakes Bay (Note: A portion is also designated as [Seasonal] **Conditionally Approved.** See N.J.A.C. 7:12-4[.]): All of Lakes Bay within a line from the Pleasantville Yacht Club and following the channel markers Fl G "15", Fl G "13", Fl G "11", Fl R "8" to Fl G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island then northwesterly across the mouth of Great Thorofare, then along the shoreline in a northwesterly direction, then across the mouth of an unnamed lagoon at the northwest corner of Lakes Bay and returning to the point of origin.

25. Ocean City-Somers Point area (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See N.J.A.C. 7:12-4):

i.-iii. (No change.)

[iv. All of Crook Horn Creek and tributaries from the 34th Street Bridge to its confluence with the northern end of Beach Creek;

v. All of Upland Thorofare and tributaries thereof;]

Recodify existing vi. and vii. as **iv. and v.** (No change in text.)

26. Great Egg Harbor River (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See: N.J.A.C. 7:12-4):

i.-ii. (No change.)

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27. (No change.)

28. Strathmere and Sea Isle City area (Note: A portion is also designated as

[Seasonal] **Conditionally Approved.** See N.J.A.C. 7:12-4):

i.-v. (No change.)

29. (No change.)

30. The Wildwoods area:

i. (No change.)

ii. All of Swain Channel[,] **and** Taylor Sound [and the Intracoastal Waterway] within a line from the mouth of Swain Channel at coordinates of latitude 38 degrees 58 minutes 49.7 seconds N., longitude 74 degrees 50 minutes 57.0 seconds W., then continuing along the shoreline in a northwesterly direction to Terrapin Thorofare and including Terrapin Thorofare, then continuing along the shoreline to a Department maintained marker at the north side of the mouth of Taylor Creek bearing approximately 213 degrees T to a Department maintained marker on the south side of the mouth of Jones Creek, then continuing along the shoreline in an easterly direction to a Department maintained marker on the west side of the mouth of Reubens Thorofare, then bearing 123 degrees T across the mouth of Reubens Thorofare to a Department maintained marker on the other side of Reubens Thorofare, then continuing easterly along the shoreline of Swain Channel to Jarvis Sound Thorofare and including Jarvis Sound Thorofare and continuing east to Old Turtle Creek and including Old Turtle Creek, then continuing in an easterly direction along the shoreline of Swain Channel to an unnamed body of water known as the intracoastal waterway (ICW) [then turning in a southerly direction at the junction with the ICW and continuing along the shoreline of the ICW to Jarvis Sound at a point at latitude 38 degrees 58 minutes 24.9 seconds N., longitude 74 degrees 51 minutes 41.7 seconds W., then

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bearing approximately 137 degrees T to a point at latitude 38 degrees 58 minutes 19.9 seconds N., longitude 74 degrees 51 minutes 35.6 seconds W., then turning in an easterly direction to a point at latitude 38 degrees 58 minutes 41.3 seconds N., longitude 74 degrees 50 minutes 57.4 seconds W., at the junction of the ICW and Sunset Lake then bearing approximately 2.5 degrees T to the point of origin] and terminating.

iii. (No change.)

31. (No change.)

32. Delaware Bay area (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See N.J.A.C. 7:12-4):

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

(1) (No change.)

(2) [A line from the end of Berry Avenue (Shellpile)] **All of the Maurice River and tributaries downstream of a line from a point along the west shore of the river south of Bivalve at latitude 39 degrees 12 minutes 51.2 seconds N., longitude 75 degrees 2 minutes 55.9 seconds W. and bearing approximately [214] 115 degrees T across the River to a [Department maintained marker] point along the east shore at latitude 39 degrees 12 minutes 21.4 seconds N., longitude 75 degrees 01 minutes 27.9 seconds W., and terminating;** and

ii. Dividing Creek (Note: A portion is also designated as [Seasonal]

Conditionally Approved. See N.J.A.C. 7:12-4): All of Dividing Creek and tributaries upstream from a line beginning on the southerly bank at the entrance to Ogdens Creek and bearing 251 degrees T to the opposite shore of Dividing Creek;

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iii. Oranoaken Creek (Note: A portion is also designated as [Seasonal])

Conditionally Approved. See: N.J.A.C. 7:12-4): All of Oranoaken Creek in the area known as The Glades and north of Weir Creek;

iv.-v. (No change.)

vi. Nantuxent Cove area (Note: A portion is also designated as [Seasonal])

Conditionally Approved. See: N.J.A.C. 7:12-4):

(1)-(3) (No change.)

vii.-viii. (No change.)

ix. All of that portion of Delaware Bay and tributaries thereof inshore of a line from a Department maintained marker at Beadon Point and bearing approximately 309 degrees T towards flashing light (Fl 4 sec. 33 ft. 6M), but terminating at a Department maintained marker on the shoreline at Nantuxent Point; [and]

x. Cohansey Cove area: All of Delaware Bay and Cohansey Cove included [within a line from] within a line from QG Fl 24 ft. 5M “1” and bearing approximately 245 degrees T to buoy “10”, then bearing approximately 099 degrees T to a Department maintained marker on the mainland, then along the mainland (including tributaries) in a northwesterly direction to a Department maintained marker at the mouth of Cohansey River, then bearing approximately 277 degrees T to QG Fl 24 ft. 5M “1”, the point of origin and terminating[.]; **and**

xi. All of the waters contained within a line beginning at a point south of the mouth of Cherry Tree Creek at latitude 39 degrees 24 minutes 1.1 seconds N., longitude 75 degrees 26 minutes 20.3 seconds W., then bearing approximately 269 degrees T to a point at latitude 39 degrees 24 minutes 1.0 seconds N., longitude 75 degrees 26 minutes 27.9 seconds W., then bearing approximately 349 degrees T to a point southeast of the mouth of

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Lower Deep Creek at latitude 39 degrees 24 minutes 8.8 seconds N., longitude 75 degrees 26 minutes 29.7 seconds W., then along the shoreline in a southeasterly direction to a point north of the mouth of Cherry Tree Creek at latitude 39 degrees 24 minutes 1.6 seconds N., longitude 75 degrees 26 minutes 19.8 seconds W., then bearing 217 degrees T back to the point of origin and terminating;

33. (No change.)

SUBCHAPTER 4. [SEASONALLY] **SHELLFISH GROWING WATER CLASSIFICATION --- CONDITIONALLY APPROVED** [SHELLFISH GROWING WATERS]

7:12-4.1 [Seasonally] **Shellfish growing water classification --- Conditionally** Approved [growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)]

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

1. Navesink River: [Seasonally] **Conditionally** Approved ([Special] Restricted May 1 through October 31 yearly; Approved November 1 through April 30 yearly): All those waters contained within a line originating at the northern base of the Oceanic Bridge at Locust Point, then bearing approximately 60 degrees T to a Department maintained marker at the [north

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easternmost] **northeasternmost** point of land at the mouth of Claypit Creek, then following the shoreline in an easterly direction to a Department maintained marker at the [south easternmost] **southeasternmost** point of land at lower Rocky Point, and continuing on a line bearing approximately 135 degrees T to the southernmost white obstruction buoy, then continuing to the [north easternmost] **northeasternmost** point of land on the first adjacent unnamed island, then continuing to the northeast tip of the second adjacent unnamed island, then along the eastern shoreline to the [south easternmost] **southeasternmost** point, then to a Department maintained marker on the [north easternmost] **northeasternmost** point of land on the adjacent third unnamed island, then following the eastern shoreline to a Department maintained marker on the southern shoreline, then along a line bearing 174 degrees T to a Department maintained marker, then bearing 244 degrees T across the mouth of an unnamed creek, then continuing along the shoreline to a Department maintained marker at the end of Navesink Avenue, then following a line across Black Point Creek bearing 280 degrees T to the southeasterly point of land on Barley Point Island, then following the shoreline in a northwesterly direction to a Department maintained marker on the westernmost point of land on the island, then along a line bearing 250 degrees T to a Department maintained marker on a point of land at the end of the Avenue of Two Rivers, then following the shoreline in a westerly direction to the southern base of the Oceanic Bridge, then along a line crossing the Oceanic Bridge and terminating at its northern base.

2. (No change.)

3. Barnegat Bay Area:

i. Bay Head and Mantoloking area: All those waters of Northern Barnegat Bay and tributaries south of a line beginning at the southwestern abutment of the Mantoloking Bridge (County Route 528) with coordinates latitude 40 degrees 2 minutes 25.4 seconds North and

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longitude 74 degrees 3 minutes 23.4 seconds West, then following the western shoreline of the Bay to the easternmost point of land on Swan Point and bearing approximately 141 degrees T to Flashing Green light "15" (QG 8 ft. "15") and then following the east side of the inland waterway channel bearing approximately 227 degrees T to Flashing Green light "17" (FG G 6s "17"), then bearing approximately 210 degrees T to the most westerly point of land on Curtis Point, thence following the eastern shoreline in a northerly direction to the southeastern abutment of the Mantoloking Bridge (and continuing along the southern edge of the bridge to the southwestern abutment of the bridge with coordinates of latitude 40 degrees 2 minutes 25.4 seconds North and longitude 74 degrees 3 minutes 23.4 seconds West where this line terminates. (This designation of [Seasonally] **Conditionally** Approved waters directly adjoins those defined as [Special] Restricted in N.J.A.C. 7:12-[3.2(a)6]**3.1(a)6.**)

ii. Island Beach areas: Mantoloking to Berkeley Township: All those waters of Barnegat Bay and its tributaries east of a line beginning on the westernmost point of land on Curtis Point (Brick Township) and [the] **then** bearing approximately 186 degrees T to the most westerly point of land on Dutchman's Point (just south of Mantoloking Shores), then bearing approximately 205 degrees T to the easternmost point of Middle Sedge Island, and terminating. (This designation of [Seasonally] **Conditionally** Approved waters directly adjoins those defined as [Special] Restricted in N.J.A.C. 7:12-[3.2(a)7]**3.1(a)7.**)

iii. Havens Cove: All those waters of Havens Cove, West of a line beginning on the northern side of an unnamed manmade waterway with coordinates of latitude 40 degrees 1 minute 49.8 seconds N and longitude 74 degrees 4 minutes 28.6 seconds W and bearing approximately 188 degrees T for .52 nautical miles toward a point just north of the most easterly tip of Havens Point with coordinates of latitude 40 degrees 1 minute 18.9 seconds N and

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longitude 74 degrees 4 minutes 34.6 seconds W. (This designation of [Seasonally] **Conditionally** Approved waters directly adjoins those waters defined as [Special] Restricted in N.J.A.C. 7:12-[3.2(a)8i]**3.1(a)8i.**)

iv. Kettle Creek: Kettle Creek north and west from a straight line beginning at Seaweed Point and bearing approximately 241 degrees T to Andrew Point at Green Island and terminating and east and south of a straight line beginning at the westernmost end of Long Point Island at coordinates latitude 40 degrees 0 minutes 0 seconds North and longitude 74 degrees 6 minutes 4.7 seconds West and bearing approximately 270 degrees T to the northernmost point on Green Island with coordinates latitude 40 degrees 0 minutes 0 seconds North and longitude 74 degrees 6 minutes 26.2 seconds West and terminating. (This designation of [Seasonally] **Conditionally** Approved waters directly adjoins those defined as [Special] Restricted in N.J.A.C. 7:12-[3.2(a)8ii]**3.1(a)8ii.**)

v. Silver Bay: Silver Bay west of a straight line beginning at the southernmost point of land on Andrew Point (Green Island) and bearing approximately 185 degrees T and terminating on the most easterly point on Cattus Island Park (Ocean County) and east of a straight line beginning at the southernmost point of land on Andrew Point (Green Island) and bearing approximately 202 degrees T and terminating at a Department maintained marker on Cattus Island Park (Ocean County) with coordinates of latitude 39 degrees 59 minutes 41 seconds North and longitude 74 degrees 6 minutes 54.7 seconds West. (This designation of [Seasonally] **Conditionally** Approved waters directly adjoins those defined as [Special] Restricted in N.J.A.C. 7:12-[3.2(a)8iii]**3.1(a)8iii.**)

vi.-vii. (No change.)

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viii. Barnegat Bay-Forked River to Barnegat: [Seasonal] **Conditionally**

Approved -[Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters east of the [Special] Restricted waters described in N.J.A.C. 7:12-3 and west of a line beginning at the easternmost point of land immediately north of Forked River (Department maintained marker) approximate location: Latitude 39 degrees 49 minutes 53 seconds N., longitude 74 degrees 9 minutes 17 seconds W.) and bearing approximately 167 degrees T to Flashing Red light "2" (Fl R "2") located off the mouth of Forked River, and then bearing approximately 212 degrees T to Flashing light "3" (Fl "3") marking the entrance to the channel to Oyster Creek, and then bearing approximately 204 degrees T through Department maintained markers "A" and "B" to Department maintained marker "C" located approximately 0.4 nautical miles east of Flashing Red light "2" (Fl R"2") marking the entrance to Waretown Creek, then bearing approximately 194 degrees T through Department maintained markers "D" and "E" to Department maintained marker "F" located approximately 0.5 nautical miles east of Flashing Green light "1" (Fl G "1") marking the entrance to Lochiel Creek and the Pebble Beach lagoon complex, and then bearing approximately 180 degrees T through Department maintained marker "G" and terminating at the range marker (Department maintained) located on Conklin Island.

4. Barnegat Bay to Little Egg Harbor Bay-Long Beach Island area:

i. Northern Long Beach Island: [Seasonal] **Conditionally Approved** – [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All that portion of Barnegat Bay and Manahawkin Bay lying east of a line beginning on the northern point of land forming the mouth of the most northerly lagoon located

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between Butler and Meadow Streets in High Bar Harbor (Long Beach Township) and bearing approximately 270 degrees T to the northeast point of the northernmost of the two islands just offshore[,] (Edwin B. Forsythe National Wildlife Refuge-Barnegat Division), then along the west shore of that island to its southeast point, then bearing approximately 131 degrees T across the unnamed gut or thoro fare to the northeast point of the southernmost island, then along the east shore of that island to its easternmost point, then bearing approximately 144 degrees T to the most easterly point on Vol Sedge, then along the southeastern shore of that island to its southernmost point, and then bearing approximately 170 degrees T to the easternmost extent of the southern island of Vol Sedge, then bearing approximately 213 degrees T to the westernmost tip of Loveladies Harbor (marsh), then bearing approximately 190 degrees T to the westernmost point of land at the end of Bay View Road which forms the (southern bank) entrance to the Loveladies Harbor lagoon complex, then proceeding to where a line bearing approximately 177 degrees T to the standpipe in Harvey Cedars intersects the shoreline just west of Bay Terrace (Harvey Cedars), and then following the bulkhead or shoreline in a southerly direction, until reaching the southwesternmost point of land, located at the westernmost extent of Maiden Lane (Harvey Cedars), and then bearing approximately 220 degrees T to a point of land just north of the northernmost extent of Kent Place (Harvey Cedars), and then following the western shoreline or bulkhead in a southerly direction across the mouths of the two lagoons. (The northernmost lagoon located between Buckingham Avenue and Lange Avenue in Long Beach Township shall remain Prohibited, and the southernmost lagoon, which is located immediately south of Lange Avenue, shall also remain Prohibited) to the bulkhead on the point of land on the southern bank forming the entrance to the second of these lagoons, then bearing approximately 205 degrees T to the northernmost corner of the largest of the unnamed islands (just northeast of Fl G "55") off

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the mouth of Harvey Cove (Harvey Cove itself shall remain [Special] Restricted, See: N.J.A.C. 7:12-[3.2(a)]**3.1(a)**), then along that island's northern shoreline to its easternmost point, then bearing approximately 115 degrees T to the westernmost point of land just west of the westernmost extent of West Salem Avenue in Harvey Cedars, then bearing approximately 219 degrees T to the westernmost point of land (marsh) located west of the westernmost extent of James Street in Long Beach Township, then bearing approximately 196 degrees T to the westernmost point of land located on the properties labeled as block 104, lot 10 and block 102, lot 10 (located just southwest of the westernmost extent of a private road known as Little Bridge Road) in Long Beach Township, then bearing approximately 209 degrees T to the end of the pier at the end of Bay Shore Street in Long Beach Township, then bearing approximately 247 degrees T to Flashing Green light "1" (FI G "1"), then bearing approximately 224 degrees T to Flashing Red light "2" (FI R "2"), then bearing approximately 211 degrees T to a Department maintained marker on Cedar Bonnet Island, then following the east shore of that island to where the eastern shoreline of Cedar Bonnet Island intersects with Route 72 (Manahawkin Causeway) and then following the southern edge of that highway in an easterly direction to its terminus where Route 72 intersects with Long Beach Island (in Ship Bottom).

ii. Southern Long Beach Island: [Seasonal] **Conditionally Approved** — [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters lying east of a line beginning at the point where Route 72 (Manahawkin Causeway) intersects with Long Beach Island (in Ship Bottom) and proceeding in a westerly direction as it follows the southern edge of Route 72 [(this line coincides with that described in (a)2i(1) above to where the highway intersects with the westernmost shoreline of

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Cedar Bonnet Island, and then following that shoreline in a generally southerly direction, but following all changes in direction of the shoreline until reaching the southernmost point of Cedar Bonnet Island, and then bearing approximately 190 degrees T to the unnamed island immediately south (this island is generally considered part of the Cedar Bonnet group) and then following that shoreline in a southerly direction to that island's southernmost point where it intersects a line beginning at the range markers (Department maintained) located on the above unnamed island and following that line bearing 203 degrees T to Flashing Red light 8ft. "74" (Fl R 4s "74") marking the intracoastal waterway, then bearing approximately 177 degrees T to the most northerly point of land on High Island] **to where the southern edge of Route 72 intersects with the easternmost shoreline of Cedar Bonnet Island at a point with coordinates of latitude 39 degrees 39 minutes 21 seconds N., longitude 74 degrees 11 minutes 24.92 seconds W., then following that shoreline in a southerly direction, crossing the mouths of all waterways until reaching the southeasternmost point of Cedar Bonnet Island, then crossing the mouth of a larger waterway and continuing south along the eastern shoreline of the unnamed island immediately south of Cedar Bonnet (this island is generally considered part of the Cedar Bonnet group), and then following that island's eastern shoreline in a southerly direction to its southeasternmost point with coordinates of latitude 39 degrees 38 minutes 43.46 seconds N., longitude 74 degrees 11 minutes 42.40 seconds W., then bearing 205 degrees T for 0.38 nautical miles to a point with coordinates of latitude 39 degrees 38 minutes 22.81 seconds N., longitude 74 degrees 11 minutes 54.56 seconds W., located on the northwestern side of the most northwestern of two smaller islands just northwest of Flat Island, then following the combined western shorelines of the two smaller islands in a southerly direction across the mouths of any waterways until reaching the southern tip of the most southerly of the**

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two smaller islands, then continuing in a southerly direction across the mouth of a larger waterway until reaching the northwestern side of Flat Island, and continuing in a southerly direction along Flat Island's western shoreline across the mouths of any waterways until reaching Flat Island's southern tip at a point with coordinates of latitude 39 degrees 37 minutes 56.33 seconds N., longitude 74 degrees 11 minutes 57.04 seconds W., then bearing 210 degrees T for 0.54 nautical miles to the most northerly point of land on High Island with coordinates of latitude 39 degrees 37 minutes 28.73 seconds N., longitude 74 degrees 12 minutes 19.05 seconds W., and then following this island's eastern shoreline to its southernmost point, then bearing approximately 197 degrees T to Red "80" R "80", then bearing approximately 206 degrees T to Flashing Red light "81" (Fl G 2.5s "81"), then following the west side of the intracoastal waterway bearing approximately 187 degrees T to Red "84" (R "84"), then bearing approximately 218 degrees T to Flashing Red light "86" (Fl R 4s "86"), then bearing approximately 221 degrees T to Flashing Red light "88" (Fl R 2.5 s "88"), then bearing approximately 240 degrees T to Flashing Red light "92" (Fl R 4s "92"), then bearing approximately 209 degrees T to Quick Green light "95" (QG "95"), then bearing approximately 172 degrees T to the northernmost point of the easternmost Marshelder Island and then following the eastern shoreline of this island in a southerly direction to this island's southernmost point, and then bearing approximately 201 degrees T to Flashing Red light 104 (Fl R 2.5s "104"), then bearing approximately 229 degrees T to the northernmost point on Mordecai Island, then following the western shore of that island to its westernmost point, then bearing approximately 244 degrees T to Flashing Green light 109 (Fl G 4s "109"), then bearing approximately 199 degrees T to a point on shore and terminating.

iii. (No change.)

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iv. Tuckerton area (**Note: A portion of Tuckerton Cove is designated as Restricted. See N.J.A.C. 7:12-3. Portions of Tuckerton Creek are designated as Prohibited. See N.J.A.C. 7:12-2):** [All those] **The waters of Tuckerton Cove between [the southeasternmost tip of] a location on Gaunt Point [at a point adjacent to the telephone pole (P-35877)] situated on the eastern bank of Tuckerton Cove at the terminus of South Green St. with coordinates of latitude 39 degrees 34 minutes 35.9 seconds N., and longitude 74 degrees 19 minutes 53.1 seconds W., and then bearing [approximately 227] 229 degrees T [to a Department maintained marker] for 0.45 nautical miles to a point on the [southwestern] western bank with coordinates of latitude 39 degrees 34 minutes 18.7 seconds N., and longitude 74 degrees 20 minutes 19.2 seconds W., then in a [northeasterly] northerly direction [approximately 500 feet] for 0.20 nautical miles along the western shoreline to a point [adjacent to the telephone pole (P-21377)] with coordinates of latitude 39 degrees 34 minutes 28.8 seconds N., and longitude 74 degrees 20 minutes 19.3 seconds W., then bearing [approximately 049] 050 degrees T [to a Department maintained marker] for 0.34 nautical miles to a point on the [northeastern] eastern bank with coordinates of latitude 39 degrees 34 minutes 41.7 seconds N., and longitude 74 degrees 19 minutes 58.8 seconds W., and terminating.**

5. Mullica River-Great Bay area:

i. Mullica River; [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31, Approved November 31 through April 30 yearly:

(1) All those waters of the Mullica River (excluding Nacote Creek and the small cut or thorofare separating Moss Point from the mainland which shall remain [Special] Restricted) lying between a straight line beginning at the northernmost point of land on Akimbo Point and bearing approximately 070 degrees T to the southernmost point of land on Doctor

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Point (downstream boundary) and a straight line beginning at the easternmost point of land on Moss Point and bearing approximately 093 degrees T, to the southwesternmost point of land on the north bank of the northernmost ditch (Bloody Ditch) separating Blood Point from the mainland (upstream boundary). The line defining the upstream boundary described here coincides with that described in N.J.A.C. 7:12-[3.2(a)20i]**3.1(a)20i**.

ii. Ballanger Creek area: [Seasonal] **Conditionally Approved** - [Special]

Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

(2) All of Winter Creek from its juncture with Ballanger Creek upstream to the Department maintained marker described in N.J.A.C. 7:12-[3.2(a) 20iii(2)]**3.1(a)20iii(2)**;

iii. Roundabout Creek area: [Seasonal] **Conditionally Approved** - [Special]

Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Roundabout Creek and tributaries upstream from a straight line beginning at the southernmost point of land on the east bank of Roundabout Creek and bearing approximately 306 degrees T to the opposite shore of the creek to the Department maintained markers described in N.J.A.C. 7:12-[3.2(a)20iv]**3.1(a)20iv**.

iv. Judies Creek: [Seasonal] **Conditionally Approved** - [Special] Restricted May

1 through October 30 yearly, Approved November 1 through April 30 yearly:

(1) All of Judies Creek and tributaries upstream from its confluence with Basses Bay to the Department maintained markers as described in N.J.A.C. 7:12-[3.2(a)20v]**3.1(a)20v**.

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v. Great Bay area: [Seasonal] **Conditionally Approved** - [Special] Restricted

May 1 through October 31, Approved November 31 through April 30 yearly:

(1)-(2) (No change.)

6. Absecon Bay, Absecon Channel, and Absecon Inlet area; [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. Absecon Bay starting from the Department maintained marker, located approximately 0.96 miles west from the mouth of Absecon Creek (latitude North 39 degrees 24 minutes 29.3 seconds and longitude West 74 degrees 29 minutes 10.8 seconds) continuing southwest along the shoreline, then crossing over the mouth of Jonathan Thorofare and continuing [south eastward] **southeastward** along the shoreline toward another Department maintained marker located at the mouth of an unnamed thorofare (latitude North 39 degrees 23 minutes 40.8 seconds and longitude West 74 degrees 28 minutes 48.8 seconds), then bearing approximately 342 degrees T to the point of origin: Absecon Channel and all waters contained within a line from the base of the Justice Vincent's Haneman Bridge (Rt. 87) starting on the Atlantic City side and extending northeast toward Brigantine City and continuing along the shoreline to Rum Point, then crossing over the mouth of St. George's Thorofare and continuing to the seaward end of the jetty on the eastern shore, at the mouth of Absecon Inlet, then channelward to a [line from RN "2"(FIR2,5s) and bearing approximately 174 degrees T] **point with coordinates latitude 39 degrees 22 minutes 1.9 seconds N., longitude 74 degrees 24 minutes 22.9 seconds W., then** to the midspan of the Justice Vincent's Haneman Bridge, then running northwest along the line to the Rt. 87 bridge[, note] (**Note: A** section of the channel is classified as [Special] Restricted, see N.J.A.C. 7:12-[3.2(a)23i]**3.1(a)23i**);

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7. Brigantine Area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. (No change.)

8. Lakes Bay-Shelter Bay-Risley Channel Area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. (No change.)

9. Ocean City-Somers Point Area-Great Egg Harbor Bay: [Seasonal] **Conditionally Approved** – [Special] Restricted May 1 through October 31, yearly, Approved November 1 through April 30 yearly;

i.-v. (No change.)

vi. All of Crook Horn Creek, Upland Thorofare, and their tributaries from the 34th Street Bridge to the northern end of Beach Creek and terminating.

10. Strathmere Area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly. Approved November 1 through April 30 yearly;

i.-ii (No change.)

11. Stites Sound area:

i. All of Leonard Thorofare, Deep Creek, Deep Thorofare, and Cat Run and their tributaries south of a line beginning from a point on the west shore of the mouth of Leonard Thorofare with coordinates latitude 39 degrees 7 minutes 4.1 seconds N., longitude 74 degrees 45 minutes 4.7 seconds W., then proceeding in a southeast direction across the mouth of Leonard Thorofare to a point on the east shore of Leonard Thorofare

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with coordinates latitude 39 degrees 7 minutes 1.9 seconds N., longitude 74 degrees 44 minutes 59.9 seconds W., and terminating.

[11.] **12.** Great Sound area:

i. Holmes Creek and Holmes Creek Cove: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Holmes Creek and Holmes Creek Cove contained within a straight line beginning at Halfmile Point and bearing approximately 335 degrees T to the opposite shore and along that shoreline in a westerly direction, excluding drainage ditches which remain [Condemned] **Prohibited** to the mouth of Holmes Creek, then continuing along the northern side of Holmes Creek to the first drainage ditch, then directly across Holmes Creek and continuing along that shoreline to the cove and along that shoreline to the point of origin at Halfmile Point and terminating; and

ii. (No change.)

[12.] **13.** Jenkins Sound-Grassy Sound-Richardson Sound: [Seasonal] **Conditionally Approved** – [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. –iv. (No change.)

[13.] **14.** Delaware Bay:

i. Bidwell Creek: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

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ii. East Point area: [Seasonal] **Conditionally Approved** – [Special] Restricted

May 1 through October 31 yearly. Approved November 1 through April 30 yearly:

(1) (No change.)

iii. Maurice River Cove: [Seasonal] **Conditionally Approved** - [Special]

Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly.

(1)-(2) (No change.)

iv. Dividing Creek: [Seasonal] **Conditionally Approved** - [Special] Restricted

May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Dividing Creek and tributaries including Weir Creek lying between the line described in N.J.A.C. 7:12-[3.2]3.1 and a line beginning at the southernmost point of land on the west bank at the mouth of Dividing Creek and bearing 000 degrees T to the opposite shore of Dividing Creek.

v. Oranoaken Creek: [Seasonal] **Conditionally Approved** - [Special]

Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

vi. Fishing Creek: [Seasonal] **Conditionally Approved** - [Special] Restricted

May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

vii. Fortescue Beach: [Special] Restricted May 1 through October 31 yearly,

Approved November 1 through April 30 yearly:

(1) (No change.)

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viii. Nantuxent Cove, Back Creek, and portion of Cedar Creek and Nantuxent Creek: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

ix. (No change.)

x. All of the waters west of Dunks Point beginning at a point southwest of Dunks Point at latitude 39 degrees 21 minutes 33.4 seconds N., longitude 75 degrees 23 minutes 25.2 seconds W., then proceeding in a westerly direction to a point at latitude 39 degrees 21 minutes 33.1 seconds N., longitude 75 degrees 23 minutes 49.5 seconds W., then proceeding in a northerly direction to a point at latitude 39 degrees 22 minutes 13.6 seconds N., longitude 75 degrees 23 minutes 50.2 seconds W., then proceeding in a southeasterly direction to a point at latitude 39 degrees 22 minutes 2.4 seconds N., longitude 75 degrees 23 minutes 39.2 seconds W., then proceeding back to the point of origin and terminating;

[x.] xi. (No change.)

[xi. All of the waters contained within a line beginning at a point south of the mouth of Cherry Tree Creek at latitude 39 degrees 24 minutes 1.1 seconds N., longitude 75 degrees 26 minutes 20.3 seconds W, then bearing approximately 269 degrees T to a point at latitude 39 degrees 24 minutes 1.0 seconds N., longitude 75 degrees 26 minutes 27.9 seconds W., then bearing approximately 349 degrees T to a point southeast of the mouth of Lower Deep Creek at latitude 39 degrees 24 minutes 8.8 seconds N., longitude 75 degrees 26 minutes 29.7 seconds W., then along the shoreline in a southeasterly direction to a point north of the mouth of Cherry Tree Creek at latitude 39 degrees 24 minutes 1.6 seconds N., longitude 75 degrees 26

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minutes 19.8 seconds W., then bearing 217 degrees T back to the point of origin and terminating;]

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

[(a) (b) The following shellfish waters [designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for harvest of shellfish] **are classified as Conditionally Approved, and are in the closed status** from May 1 through December 31 [yearly] and [Approved for the harvest of shellfish] **are in the open status** from January 1 through April 30 [yearly]:

1.-3. (No change.)

4. Cedar Run area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

5. (No change.)

6. Mullica River-Great Bay area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

7. Brigantine area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i.-ii. (No change.)

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8. Great Egg Harbor River and Middle River: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

9. Strathmere and Sea Isle City area: [Seasonal] **Conditionally Approved** - [Special] Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

10. The Wildwoods area:

i. (No change.)

ii. All of the Intracoastal Waterway from a point at the mouth of Swain Channel with coordinates of latitude 38 degrees 58 minutes 49.7 seconds N., longitude 74 degrees 50 minutes 57.0 seconds W., then turning in a southerly direction at the junction the intracoastal waterway (ICW) and Swain Channel and proceeding along the shoreline of the ICW to Jarvis Sound at a point with coordinates latitude 38 degrees 58 minutes 24.9 seconds N., longitude 74 degrees 51 minutes 41.7 seconds W., then bearing approximately 137 degrees T to a point at latitude 38 degrees 58 minutes 19.9 seconds N., longitude 74 degrees 51 minutes 35.6 seconds W., then proceeding in an easterly direction to a point at the junction of the ICW and Sunset Lake with coordinates latitude 38 degrees 58 minutes 41.3 seconds N., longitude 74 degrees 50 minutes 57.4 seconds W., then bearing approximately 2.5 degrees T to the point of origin and terminating.

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

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SUBCHAPTER 5. [SEASONAL SPECIAL] **SHELLFISH GROWING WATER**

CLASSIFICATION --- CONDITIONALLY RESTRICTED [GROWING WATERS]

7:12-5.1 Shellfish growing water classification --- Conditionally Restricted

No shellfish growing waters are classified as Conditionally Restricted.

SUBCHAPTER 7. SANCTUARIES

7:12-7.1 Sanctuaries

The Department may establish [areas known as] sanctuaries [to be utilized for research purposes such as spawner areas] **for the purpose of re-establishing shellfish populations and shall establish the boundaries of any such sanctuary in this subchapter.** [Sanctuaries shall be delineated by the Department. Shellfish may be relocated to such an area to supply brood stock to reestablish populations elsewhere. When shellfish from waters other than Approved are relocated to areas classified as Approved or Seasonal Approved, the relocation site (sanctuary) will be Prohibited to the harvest of all shellfish.] **No shellfish shall be harvested from within a sanctuary.**

SUBCHAPTER 8. [(RESERVED)] **SHELLFISH HARVEST, HANDLING, AND TRANSPORT REQUIREMENTS FOR SHELLFISH LICENSE HOLDERS**

7:12-8.1 Scope and applicability

(a) This subchapter establishes the requirements for shellfish license holders for the harvest, handling, and transport of shellfish in order to ensure harvested shellfish are safe for human consumption.

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(b) Any person who violates any requirement of this subchapter may be subject to prosecution and/or penalties pursuant to N.J.S.A. 23:2B-14, 50:1-5 et seq., 58:24-9, 58:24-10, 58:24-10.1, and 2C:64-1 et seq., including the forfeiture of shellfish, which may be seized and returned to the water or destroyed.

7:12-8.2 Shellfish harvester training requirements

(a) Every shellfish license holder shall complete the Department's shellfish harvester training in accordance with (a)1 and 2 below. The shellfish harvester training covers shellfish harvest, handling, and transportation practices, and is available on-line at <http://www.nj.gov/dep/bmw/>.

1. Any person who, as of (the operative date of this rule), possesses a valid shellfish license shall complete the shellfish harvester training by (90 days from the operative date of this rule).

2. As part of any application for a shellfish license, the applicant shall certify that he or she has completed the shellfish harvester training within the past two years.

7:12-8.3 Requirements for vessels used to harvest and/or transport shellfish

(a) Any shellfish license holder who harvests and/or transports shellfish shall do so on vessels which meet the requirements at (a)1 through 5 below. In addition, the requirements at (a)6 and 7 below apply if the vessel is used to harvest and/or transport

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shellfish for direct marketing.

- 1. Decks and storage bins shall be constructed and located to prevent bilge water or polluted overboard water from coming into contact with the shellfish.**
 - 2. Bilge pump discharges shall be located so that the discharge does not contaminate shellfish.**
 - 3. Containers used for storing shellfish shall be clean and fabricated from safe materials.**
 - 4. Effective coverings shall be provided on harvest boats to protect shellfish from exposure to hot sun, birds, and other adverse conditions that may contaminate or cause the deterioration or decomposition of the shellfish.**
 - 5. Cats, dogs, and other animals shall not be allowed on vessels.**
 - 6. Decks and storage bins used in the harvest and/or transport of shellfish shall be kept clean with potable water or water classified as Approved or Conditionally Approved in the open status, and provided with effective drainage.**
 - 7. Vessels and all other equipment coming in contact with shellfish harvested from waters other than Approved shall be thoroughly cleaned before the vessels and equipment are used to handle and/or transport shellfish for direct marketing.**
- (b) Human sewage shall not be discharged into shellfish growing waters at any time. Vessels used for the harvest of shellfish shall have a Type III marine sanitation device onboard. A Type III marine sanitation device means, pursuant to 33 CFR 159.3, a device**

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that is designed to prevent the overboard discharge of treated or untreated sewage or any waste derived from sewage. A Type III marine sanitation device shall:

- 1. Be used only for the purpose intended;**
- 2. Be secured while on board and located to prevent contamination of shellfish by spillage or leakage;**
- 3. Be emptied only into a sewage disposal system;**
- 4. Be cleaned before being returned to the vessel; and**
- 5. Not be cleaned in equipment used for washing or processing food.**

7:12-8.4 Requirement to wash shellfish

(a) A shellfish license holder harvesting shellfish shall wash the shellfish free of bottom sediments as soon after harvesting as practicable.

(b) Shellfish shall be washed using water only from a potable water source or from waters classified as Approved or Conditionally Approved in the open status, except shellfish harvested for depuration shall be washed in accordance with the Department of Health's rules at N.J.A.C. 8:13.

7:12-8.5 Requirement to tag containers of shellfish

(a) A shellfish license holder harvesting shellfish shall affix to each container of

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shellfish at the harvest location a pre-printed tag with the information required at (b) below. The tag shall remain affixed to the container during transport to the certified dealer. Shellfish harvested on different dates or from different harvest locations shall not be commingled in a single container with a single tag.

1. When the shellfish license holder harvesting shellfish is a certified dealer, the tag affixed to the container may be either a harvester tag or a dealer tag that meets the requirements established by the Department of Health pursuant to N.J.A.C. 8:13.

(b) The pre-printed harvester tag shall be at least 13.8 square inches in size, durable, waterproof, and list the following information in order:

- 1. Harvester identification number (shellfish license number);**
- 2. Harvest date;**
- 3. Harvest time;**
- 4. Harvest location (state, waterbody, and identification of lease or Tidelands instrument if applicable);**
- 5. Type (of shellfish);**
- 6. Quantity; and**
- 7. In bold capital letters: “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.”**

(c) If the shellfish is removed from the original tagged container, a tag that meets the requirements at (b) above shall be affixed to the new container.

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(d) When shellfish are harvested from one harvest location on a single day by a single shellfish license holder, the shellfish license holder may use a single tag, referred to as a bulk tag, on multiple containers on a wrapped pallet, provided the bulk tag meets the requirements of (b) above, and, in addition, includes the number of individual containers under the bulk tag or an estimate of the total weight, volume, or count, as well as the following statement: “All shellfish under this bulk tag have the same harvest date and harvest location.”

(e) If shellfish are sold in bulk, the shellfish license holder shall provide a transaction record to the certified dealer prior to transport. This transaction record shall contain all the information required at (b) and (d) above with the addition of the name of the certified dealer.

7:12-8.6 *Vibrio parahaemolyticus* Control Plan time to temperature control requirements for harvesting oysters

(a) If a shellfish license holder is conducting subtidal harvesting of oysters, the shellfish license holder shall comply with the following hours from harvest to refrigeration:

<u>Dates of harvest</u>	Maximum hours to <u>refrigeration</u>¹	<u>Start of harvest</u>	Time by which oysters shall be in <u>refrigeration</u>²
June 1 – June 14	7	6:00 A.M.	1:00 P.M.
June 15 - July 14	6	6:00 A.M.	12:00 P.M.

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July 15 – August 31

7

6:00 A.M.

1:00 P.M.

¹ **Hours to refrigeration means the total number of hours (inclusive of any transport time) from the start of harvest until the oysters are placed in refrigeration.**

² **Oysters shall be in refrigeration no later than the time specified for the respective dates of harvest, even if harvest is started later than 6:00 A.M.**

1. A shellfish license holder conducting subtidal harvesting who places harvested oysters directly in refrigeration on the vessel is not subject to the maximum hours to refrigeration and times by which oysters shall be in refrigeration in the table at (a) above. However, the shellfish license holder shall:

i. Notify the Department’s Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at 609-748-2050 prior to June 1 that the harvester will be using, on the vessel, refrigeration that is approved by the Department of Health; and

ii. Fly a flag that is a minimum size of 18 inches by 18 inches, orange, and bearing a black diagonal stripe.

(b) If a shellfish license holder is conducting intertidal harvesting of oysters from June 1 through August 31, the maximum hours to refrigeration (inclusive of any transport time) is four hours, starting when the first oysters to be harvested are exposed to the air by the receding tide.

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(c) If a shellfish license holder is conducting tide-dependent harvesting of oysters from June 1 through August 31, the maximum hours to refrigeration (inclusive of any transport time) is four hours, starting when harvest begins. On each harvest day prior to any harvest activity, the shellfish license holder shall notify the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at 609-748-2050 to provide the name of the shellfish license holder, location of harvest, and harvest start time.

(d) Each shellfish license holder harvesting oysters shall record on each harvest day, in a journal with permanently bound pages, the harvest start time, the time the last-harvested shellfish was placed in refrigeration, and the shell temperature of the shellfish in one container from the day's harvest at offloading, including the time the temperature was measured.

1. To measure the shell temperature, the shellfish license holder shall use a handheld laser thermometer.

2. The shellfish license holder shall provide each harvest day's information to the certified dealer on the transaction record.

3. The shellfish license holder shall submit to the Bureau at the address in N.J.A.C. 7:12-1.1(l) a copy of the journal by September 15 of each year.

SUBCHAPTER 9. [SPECIAL PERMIT] SHELLFISH PERMITS FOR HARVEST FROM WATERS OTHER THAN APPROVED; RESEARCH; RESTORATION AND ENHANCEMENT; TOXINS MONITORING; AND AQUACULTURE

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7:12-9.1 General provisions **for shellfish permits**[; all programs]

[(a) The State Department of Environmental Protection may issue permits to take or harvest shellfish, as hereinafter provided from waters condemned or otherwise restricted by the regulations contained herein (NOTE: Under the authority of N.J.S.A. 50:2-1 et seq., any person taking shellfish from Approved waters must have a license from the Department.)

(b) Said permits may be issued to persons above the age of 14 for the purposes of transplanting, relaying, depletion, bait harvesting, depuration/controlled purification, research or other purposes approved by the Department. Anyone age 14 years to age 18 issued a permit to work in one of the special permit programs shall be under the supervision of a permittee that is above the age of 18 years.

(c) Each application shall be accompanied by a fee in the amount of \$25.00 (check or money order made payable to Treasurer, State of New Jersey). Forms may be obtained from the New Jersey Department of Environmental Protection, Bureau of Marine Water Monitoring, Stoney Hill Road, PO Box 405, Leeds Point, New Jersey 08220, and New Jersey Marine Police stations located throughout the State. Duplicate permits may be issued upon written request to the Bureau of Marine Water Monitoring at the aforementioned address if accompanied by a \$10.00 check or money order payable to the Treasurer, State of New Jersey.]

(a) This subchapter establishes permits for the harvest of shellfish from waters classified other than Approved, for shellfish research, for shellfish restoration and enhancement, for toxins monitoring in shellfish, and for shellfish aquaculture.

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1. A permit under this subchapter shall be valid for the period specified in the permit document issued to the permittee, unless revoked or suspended for cause. The period of validity shall not extend beyond December 31 of the calendar year of issuance.

2. An issued permit is non-transferable.

3. In addition to the requirements in this subchapter, permittees are subject to the applicable requirements of N.J.A.C. 7:12-8.

4. A permit under this subchapter does not exempt a permittee from compliance with all other applicable State laws and rules.

(b) It is the responsibility of the permittee to provide the Bureau with the permittee's most current address. If the permittee's address changes from that provided to the Bureau on the application for a permit or otherwise, the permittee shall notify the Bureau at the address at N.J.A.C. 7:12-1.1(l) of the new address within one week of the change.

[(d)] (c) [Said] **An issued** permit[s] may contain special conditions relating to [their] purpose, duration, area limitations, time limitations, methods of handling, identification and disposition of the shellfish, limitation on species and/or size of shellfish, and/or any other conditions deemed necessary by the Department to protect the health, safety, and welfare of the public.

[(e)] (d) Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., [N.J.S.A.] 24:2-1 et seq., and [N.J.S.A.] 50:2-1 et seq. shall be adequate cause for the suspension, revocation, and/or denial of [all special] **any** permit[s] issued [by the New Jersey Department of Environmental Protection involving the harvesting, possession, and/or processing of shellfish from the waters of the State] **under this subchapter.**

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[(f)] (e) Any [participant violating the regulations] person who violates this subchapter and/or the terms of [the special] a permit[s] issued [by the Bureau of Marine Water Monitoring,] under this subchapter may be subject to prosecution [under provisions of N.J.S.A. 58:24-3 and may incur the] and/or penalties [prescribed for offenses specified by] pursuant to N.J.S.A. 23:2B-14, 50:1-5 et seq., [N.J.S.A.] 58:24-9, [and] 58:24-10, 58:24-10.1, and 2C:64-1 et seq., including the forfeiture of shellfish, which may be seized and returned to the water or destroyed.

(f) Any person who takes shellfish from waters classified as other than Approved without a permit issued under this subchapter authorizing such activity may be subject to prosecution and/or penalties pursuant to N.J.S.A. 23:2B-14, 50:1-5 et seq., 58:24-9, 58:24-10, 58:24-10.1, and 2C:64-1 et seq., including the forfeiture of shellfish, which may be seized and returned to the water or destroyed.

(g) Any person who conducts aquaculture activities without a permit issued under this subchapter authorizing such activity may be subject to prosecution and/or penalties pursuant to N.J.S.A. 23:2B-14, 50:1-5 et seq., 58:24-9, 58:24-10, 58:24-10.1, and 2C:64-1 et seq., including the forfeiture of shellfish, which may be seized and returned to the water or destroyed.

[(g) Any person who shall gather any oysters, clams or other shellfish from a place which has been condemned by the department pursuant to N.J.S.A. 58:24-2 or who shall distribute, sell, offer or expose for sale or have in his possession any such shellfish so gathered unless he shall first have secured a permit in writing from the department to distribute, sell, offer or expose for sale or have in his possession any such shellfish so taken, is guilty of a petty disorderly persons offense and any subsequent offense is guilty of a disorderly persons offense

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(N.J.S.A. 58:24-9). Additionally, the vessel, vehicle and all equipment used to violate this law, regulation or permit may be subject to seizure or forfeiture (N.J.S.A. 58:24-10).]

(h) [Due to the necessity to closely monitor this program for the purpose of protecting public health, the Bureau of Marine Water Monitoring] **The Department** shall immediately suspend the [Special Permit] **permit** of any [participant] **person** who violates any condition of the permit or any provision of this chapter and thereby creates a threat to public health by compromising the purity of shellfish as a food product. The [Bureau of Marine Water Monitoring] **Department** may suspend the [Special Permit] **permit** of any [participant] **person** who violates any condition of the permit or any other provision of this chapter. [The right to post-suspension hearing shall be granted by the Department in accordance with the procedures established by 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. Requests for post-suspension hearings shall be submitted to the Department at the following address:

Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection

PO Box 402

Trenton, New Jersey 08625-0402

The hearing shall be held on an expedited basis, unless an adjournment is requested by the participant.] **Any person whose permit is suspended may request an adjudicatory hearing in accordance with N.J.A.C. 7:12-9.4.**

[(i) Discrimination against any harvester on the basis of race, sex, creed, domicile, or any other non-work related factor shall be adequate cause for revocation of this permit.

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(j) The Department may apply more restrictive delineations to harvest areas that are described in N.J.A.C. 7:12-3 and 5 by specifying the sections available for harvest on the special permit. These limitations will be made at the discretion of the Department when deemed necessary to protect the health, safety, and welfare of the public.

(k) It shall be unlawful for any person issued a special permit or license, or any person on board a vessel to which a permit or license has been issued, under the provisions of N.J.S.A. 58:24-1 et seq. and 50:2-1 et seq. to:

1. Throw or dump into the water or otherwise dispose of the contents of any pail, bag, basket, or any matter whatsoever after being hailed by any member of the designated enforcement unit(s), before the authorized officer has inspected the same; or

2. Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search of the vessel by any member of the designated enforcement unit(s).

(l) The operator of any vessel and all others onboard issued a special permit or license shall immediately comply with all lawful instructions issued by any member of the designated enforcement unit(s) to facilitate safe boarding and inspection of the vessel, its gear, and catch for the purpose of enforcing this chapter.

(m) The hours listed in this subchapter are Eastern Standard Time (EST) or Eastern Daylight Time (EDT) at date and are based on Trenton Time. Time tables for the Trenton Time are published in the annual Summary of Game Regulations issued by the New Jersey Division of Fish and Wildlife. Trenton Time shall be the Statewide official time.]

(i) For purposes of this subchapter, sunrise and sunset shall mean the times of sunrise and sunset in Trenton, New Jersey. These sunrise and sunset times shall apply regardless of where a harvester intends to harvest or is harvesting shellfish. The Trenton

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sunrise and sunset timetable is included in the NJ Hunting and Trapping Digest available from the Department's Division of Fish and Wildlife and on-line at

<http://www.state.nj.us/dep/fgw/>.

7:12-9.2 Hatchery, nursery, and/or aquaculture activities existing as of (the day prior to the operative date of this rule); requirement to apply for a permit

Any person who, as of (the day prior to the operative date of this rule), is engaged in shellfish hatchery, nursery, and/or aquaculture activities regulated under the permits at N.J.A.C. 7:12-9.14 and 9.15 shall apply for the applicable permit in accordance with N.J.A.C. 7:12-9.3 on or before (30 days after the operative date of this rule). Any person whose permit application is denied may request an adjudicatory hearing in accordance with N.J.A.C. 7:12-9.4.

7:12-9.3 Applications for and issuance of a permit

(a) To apply for a permit, a person shall obtain a Consolidated Permit Application form from the Bureau at the address set forth at N.J.A.C. 7:12-1.1(l) and shall submit the completed and signed form by mail or hand-delivery to that address.

(b) The Consolidated Permit Application form requires identifying information regarding the applicant, including name, address, and telephone number(s); date of birth; driver's license number; the number of the applicant's current permit issued under this subchapter (if any); the number of the applicant's shellfish license(s) (if any); conservation identification (CID) number issued by the Department's Division of Fish and Wildlife (if any); as well as identifying and contact information for the organization or company with

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which the applicant is affiliated or employed (if any). The Consolidated Permit Application form also identifies the permit-specific information an applicant shall submit to meet the requirements set forth elsewhere in this subchapter for the particular permit sought.

(c) Each application for a permit, other than for the Commercial Shellfish Aquaculture Permit pursuant to N.J.A.C. 7:12-9.15, shall be accompanied by a \$25.00 application fee in the form of check or money order made payable to Treasurer, State of New Jersey.

(d) If, after review of the application, the Department determines the application meets the applicable requirements of this subchapter, the Department shall issue the permit to the applicant. Any person whose permit application is denied may request an adjudicatory hearing in accordance with N.J.A.C. 7:12-9.4.

7:12-9.4 Request for an adjudicatory hearing on a permit decision

(a) Any person, subject to the limitation on third party appeal rights set forth in N.J.S.A. 52:14B-3.1 through 3.3, aggrieved by a permit decision made by the Department, including suspension of a permit in accordance with N.J.A.C. 7:12-9.1, 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 Department'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

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to the Department at the addresses in (e) below:

- 1. The name, address, telephone number, and e-mail address of the person requesting the hearing, and the person's authorized representative (if any);**
- 2. The date the person requesting the hearing received the decision document and a copy of the decision document;**
- 3. Any facts or principles of law that the person requesting the hearing believes constitute a defense;**
- 4. Any other information or documents supporting 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 Bureau at the address at N.J.A.C. 7:12-1.1(l):

Office of Legal Affairs

Attention: Adjudicatory Hearing Requests

New Jersey Department of Environmental Protection

401 East State Street, Seventh Floor

PO Box 402

Trenton, New Jersey 08625-0402

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7:12-9.5 Soft clam and/or hard clam depuration plant permit

(a) The Soft Clam and/or Hard Clam Depuration Plant Permit authorizes a depuration plant to possess soft and/or hard clams harvested from Restricted waters for further processing. This permit completes the control link between the harvest of soft and/or hard clams regulated under the Soft Clam and/or Hard Clam Depuration Harvester Permit at N.J.A.C. 7:12-9.6 and the processing of the harvested clams, which is regulated by the Department of Health and requires that the depuration plant obtain a certificate to operate from the Department of Health under that department's rules at N.J.A.C. 8:13-2.

1. Any person who seeks certification from the Department of Health for the construction and/or operation of a depuration plant shall submit to the Department for approval a shellfish transportation plan designed to control shellfish transportation between the harvest area and the depuration plant in order to prevent shellfish from being illegally diverted to direct marketing. The shellfish transportation plan shall include measures such as surveillance of the vessel or vehicle used to transport shellfish, predetermined route from harvest site to depuration plant, GPS tracking of the vehicle used to transport the shellfish, use of a tamper-evident seal on the vehicle used to transport the shellfish, and/or a count of both the quantity of shellfish transported from the harvest area and the quantity received at the depuration plant.

2. In the event that transporting shellfish directly by vessel to the depuration plant cannot be accomplished because of adverse weather conditions (for example, bay and river icing) or other circumstance as determined by the Department, the depuration plant shall submit to the Department for prior approval a shellfish transportation plan satisfying the requirements of (a)1 above.

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(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Soft Clam and/or Hard Clam Depuration Plant Permit shall submit:

1. A provisional shellfish certificate to operate on an interim basis issued by the Department of Health pursuant to N.J.A.C. 8:13-2; or

2. If a final shellfish certificate to operate has been issued by the Department of Health pursuant to N.J.A.C. 8:13-2, the final certificate that is valid for the year for which the Soft Clam and/or Hard Clam Depuration Plant Permit is sought.

(c) A Soft Clam and/or Hard Clam Depuration Plant Permit is subject to the following requirements and conditions:

1. The only shellfish that may be possessed under the permit are soft clams (*Mya arenaria*) and/or hard clams (*Mercenaria mercenaria*) as specified in the permit document issued to the depuration plant.

2. The depuration plant shall issue to each harvester who reports in person to the plant on a harvest day a specific number of Department of Health approved primary containers, based on the plant's daily processing capacity, and additional alternate containers if requested by the harvester. The plant shall mark all containers with a serial number.

3. The depuration plant shall affix to each primary container a time and date stamped Harvester Allocation Tag as required by the Department of Health in accordance with N.J.A.C. 8:13-2.

4. On each harvest day by 8:30 A.M. or prior to any harvest activity, the depuration plant shall notify the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, to provide the names of each harvester, the area(s) to be

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worked by each harvester, and the number of containers (primary and alternate) issued to each harvester. The depuration plant shall report to the Marine Region any changes in harvest activity prior to the start of such activity.

5. The depuration plant shall not accept any primary container that does not have attached to it a time and date stamped Harvester Allocation Tag. The depuration plant shall account for assigned alternate containers and, after the harvester transfers the clams in the alternate containers to the corresponding primary containers, shall reassign the Harvester Allocation Tag on the primary containers to that harvester. The depuration plant shall time and date stamp each Harvester Allocation Tag at the completion of off-loading, and enter on the tag the depuration harvester's permit number and the number of clams, by size, in that container. These Harvester Allocation Tags shall be affixed to the containers in which the clams are depurated.

6. The depuration plant shall possess soft and/or hard clams harvested only from the waters specified on the charts attached to the permit document issued to the plant or amended charts sent by the Bureau to the current mailing address of the permittee on record with the Bureau. The permittee is on notice that any emergency closure or harvest suspension imposed pursuant to N.J.A.C. 7:12-1.4 may affect the waters specified on the charts. The Department will post notice of all emergency closures and harvest suspensions at www.nj.gov/dep/bmw.

7. The depuration plant shall purchase shellfish only from harvesters who possess a valid shellfish license and a valid Soft Clam and/or Hard Clam Depuration Harvester Permit issued pursuant to N.J.A.C. 7:12-9.6.

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8. The depuration plant shall maintain a harvest depuration record of each purchase, including date, quantity of purchase, each harvester's name and address, harvest site, and all Harvester Allocation Tags and harvester depuration receipts at the plant for a period of not less than one year.

9. The depuration plant shall provide weekly reports to the Department's Division of Fish and Wildlife. Such reports shall be submitted within five working days of the week's end (Saturday) and shall contain the following information for each day:

- i. The name and permit number of the harvester;**
- ii. The area worked;**
- iii. The total number of containers out and in; and**
- iv. The total number of clams by size harvested from each area(s);**

10. The suspension or revocation of the shellfish certificate to operate issued by the Department of Health under N.J.A.C. 8:13-2 for a specific depuration plant shall invalidate that plant's Soft Clam and/or Hard Clam Depuration Plant Permit issued under this section.

7:12-[9.7]**9.6** Soft clam and/or hard clam depuration [programs] **harvester permit**

(a) The purpose of the [harvesters permit numbers 4 and 9 (]Soft Clam **and/or Hard Clam** Depuration Harvester['s and Hard Clam Depuration Harvester's] Permit[, respectively)] is to allow soft and/or hard clams to be harvested from [Special] Restricted [and Seasonal Special Restricted Areas] **waters** and ultimately marketed after processing through a [state permitted and certified] depuration [or controlled purification facility] **plant operating pursuant to a**

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certification issued by the Department of Health under N.J.A.C. 8:13-2 and a Soft and/or Hard Clam Depuration Plant Permit issued under N.J.A.C. 7:12-9.5. [Permit numbers 4 and 9 shall be valid only under the following specific conditions:]

(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Soft Clam and/or Hard Clam Depuration Harvester Permit shall specify the depuration plant at which the applicant intends to land harvested shellfish and submit a copy of a valid shellfish license.

(c) A Soft Clam and/or Hard Clam Depuration Harvester Permit is subject to the following requirements and conditions:

1. [Only] **The only shellfish that may be harvested under this permit are soft clams (*Mya arenaria*) and/or hard clams (*Mercenaria mercenaria*) [shall be harvested under harvester permit numbers 4 and 9 respectively] as specified in the issued permit document.**

2. Area(s) of harvest are limited to those specified on the charts attached to [each] **the issued permit document** or amended charts sent by the Bureau to the current mailing address of the permittee on record [at] **with** the Bureau[**'s Leeds Point office**]. [These areas specified for harvest may consist of Special Restricted and Seasonal Special Restricted waters as classified by the Department. All harvesters transferring clams to a depuration or controlled purification plant shall at all times work within the designated areas.] **The permittee is on notice that any emergency closure or harvest suspension imposed pursuant to N.J.A.C. 7:12-1.4 may affect the waters specified on the charts. The Department will post notice of all emergency closures and harvest suspensions at www.nj.gov/dep/bmw.**

[3. The harvester permit shall be valid for the period set forth on the face of the permit and shall allow for harvesting only in the waters specified on the charts attached to the

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permit (as amended where applicable) and as further restricted on a day-to-day basis by the designated enforcement unit(s).]

[4.] **3.** The harvester shall possess a valid [commercial] shellfish [harvesting] license issued by the Department's [division] **Division** of Fish and Wildlife pursuant to N.J.S.A. 50:2-1.

[5.] **4.** The harvester shall have the **issued depuration** harvester permit **document** in [his] possession while [operating] **working** in the specified [waters] **areas**.

[6.] **5.** [Vessels] **Each vessel** used by [special permit holders] **a harvester under this permit** shall be marked, **on both sides (amidships)**, with [signs having] legible black lettering (minimum six inches in height) on [a] **the** color [coded] background [(color) assigned by the Department to each depuration [facility]] **plant**, giving the permittee's first initial and last name and [special] permit number [on both sides (amidships) of the permittee's harvest vessel, while participating in all phases of the program].

[7. The Department may require additional markings on a particular vessel(s) as it may deem necessary to supervise a harvesting operation.]

[8.] **6.** [Harvesters] **Each harvester** shall report in person each day, prior to any harvest activities, to the depuration plant[,] to [advise the owner/operator of their intentions to work that day and] obtain the specific number of **Department of Health**-approved primary harvest containers and, if so desired, obtain additional [white colored] **approved** alternate containers **in accordance with N.J.A.C. 7:12-9.5**.

i. [The owner/operator of the depuration plant shall issue each harvester a specific number of Department of Health and Senior Services approved primary containers based on the plant capacity and, if requested by the harvester, additional alternate colored serially numbered containers. A stamped/validated waterproof serially numbered harvester-allocation

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tag approved by the State Department of Health and Senior Services shall be issued by the plant and affixed to each primary container in the plant as part of the daily harvest allocation.] No [other] containers [or bags] **to hold shellfish**, [except for the alternate colored baskets,] **other than the approved harvest containers (primary and alternate) obtained from the depuration plant**, may be possessed in or on [the] **any** harvest vessel[s during any phase of the program] **used under this permit. However, a harvester may have onboard up to three clam baskets solely for purposes of culling and sorting harvested clams.** [Any harvester in possession of depuration plant containers (primary or alternate) shall be deemed to have harvested all clams in their possession from the Special Restricted waters.]

ii. [The owner/operator of the depuration plant shall notify the Marine Enforcement Office of the Department's Division of Fish and Wildlife by telephone in order to provide the list of all harvesters' names, the areas they will be harvesting and the number of containers (both primary and alternate) issued to each harvester. Notification shall be made to the Nacote Creek Office each day be 8:30 A.M., or prior to any harvesting activities, whichever is earlier. Any subsequent harvest activity shall also be reported to the Marine Enforcement Office prior to that harvest activity commencing. If the plant determines that additional primary baskets are available, the plant may offer the additional baskets to a harvester. If the harvester accepts the additional primary baskets, he or she is permitted to fill their alternate baskets as if they were the primary ones. If any harvester's name has been called in and registered with a depuration plant and/or subsequently to the Marine Enforcement Office, the entire clam catch of that harvester shall be deemed to have been harvested from Special Restricted waters.] **Any harvester in possession of approved harvest containers (primary or alternate) shall be deemed to have harvested all clams in the harvester's possession from Restricted waters.**

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iii. [Shellfish] **Clams** in the primary and alternate containers shall be transported directly from the harvest area to the designated depuration landing site(s) by the most direct route without making any stops or landings along the way. Each [participant] **harvester** shall land [his] **the** entire day's catch at the [designated] depuration landing site(s) **specified in the issued permit document** [and at the time(s) specified by the designated enforcement unit] **between the hours of 8:00 A.M. and 4:00 P.M.** [A participant may sell and/or purchase part of his daily catch to a person who holds a valid relay permit only at the designated relay landing site and at the designated relay landing time.] **The harvester shall take all reasonable measures to ensure that the containers of clams landed at the plant are filled to capacity.** Upon arriving at the depuration plant, **the harvester shall transfer** all clams [contained] in the alternate containers [are to be transferred] to the corresponding primary [baskets] **containers** [which were previously offered]. [A stamped/validated waterproof serially numbered harvester-allocation tag approved by the State Department of Health and Senior Services shall be re-issued by the plant and affixed to each primary container that has been reassigned to another harvester as part of the daily harvest allocation.]

iv. Should an emergency arise or adverse weather conditions exist, the harvest vessels may dock at the depuration [facility] **plant** when necessary, except that off loading of [shellfish] **clams** shall not be initiated until the specified landing times.

v. Upon landing at the designated depuration landing site(s), the harvester shall [complete a harvester-allocation tag containing the following information] **enter the following information on the Harvester Allocation Tag affixed to each primary container by the depuration plant pursuant to N.J.A.C. 7:12-9.5(c)3:** harvester name, date, and the harvest area. [Harvester-allocation tags shall be date and time stamped upon receipt of shellfish by the plant

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owner/operator into the depuration plant. The plant owner/operator shall retain the Harvester-allocation tags. All unused containers will be accounted for and so noted on the receipt.

vi. Once off-loading of the shellfish to the depuration plant commences, the containers of shellfish shall immediately be moved into the plant and the attached Harvester Allocation Tag shall be dated and time stamped for a second time upon receipt by the plant on that harvest day.]

[9.] 7. (No change in text.)

[10.] 8. [All soft and hard clams harvested under this permit shall be landed at the depuration plant for further processing at the designated landing times except those hard clams sold to a relayer. All other] **Any** species of shellfish **other than soft and hard clams** [shall not be removed from the harvest site but] shall be immediately [deposited] **released** at the location from which they were harvested **and shall not be removed from the harvest site**. [Only Department of Health and Senior Services specified and approved serially numbered containers (primary and alternate colored) shall be used for the harvesting, transportation, and receiving of clams at the depuration plant. All reasonable measures shall be taken to assure that the containers of clams received at the plant are filled to capacity.

11. Under adverse weather conditions (for example, bay and river icing), as determined by the designated enforcement unit(s), alternative methods of harvest and transportation of clams may be developed jointly by the harvester and depuration industry and the Departments of Environmental Protection and Health and Senior Services for as long as the adverse weather conditions continue. Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained expressed written permission from the designated enforcement unit(s). These alternative methods, once approved,

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will become part of the SOP, required under Department of Health and Senior Services rules at N.J.A.C. 8:13-2.5.

12. Violations of these permit conditions shall subject the violator to prosecution under N.J.S.A. 58:24-1 et seq. and any other applicable statute or rule and may result in immediate permit suspension or revocation. In the event of a suspension or revocation of the shellfish certificate issued by the Department of Health and Senior Services pursuant to N.J.A.C. 8:13-2.1, all permits issued under this subchapter will no longer be valid for the plant(s) that no longer holds a valid shellfish certificate.

13. Any change of permittee's home or mailing address shall be reported by the permittee in writing to the Bureau's Leeds Point office within one week of the change.

(b) The permittee harvesting from the specified area(s) shall be subject to all State laws and rules applicable to the harvest of oysters, clams or mussels from Approved waters.]

[(c)] (d) The harvesting of [soft and hard] clams from the specified area(s) shall be permitted Monday through Saturday of each week between [the hours of] sunrise and [one hour before sunset] **4:00 P.M.** [Depending on the location of the depuration plant, the harvesting may be further restricted by designated landing times established by the Department.

(d) The purpose of permit numbers 8b and 10 (Depuration Plant Permit to Possess Soft Clams and Hard Clams, respectively) is to allow a depuration or controlled purification facility to possess soft and hard clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration or controlled purification program at (a) above and the processing phase, which is regulated by the New Jersey Department of Health and Senior Services. Permit numbers 8b and 10 shall be valid only under the following specific conditions:

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1. Only soft clams (*Mya arenaria*) and/or hard clams (*Mercenaria mercenaria*) shall be possessed under their respective permits.

2. The owner/operator shall notify the Marine Enforcement Office of the Department's Division of Fish and Wildlife by telephone in order to provide the names of the designated harvesters names, the area(s) to be worked and the number of containers (primary and alternate) issued to each harvester. Notification shall be made to the Nacote Creek Office on each harvest day by 8:30 A.M. or prior to any harvest activities. Any additions or changes to the initial notification must also be reported to the Marine Enforcement Office prior to any additions or changes to the harvesters working; this includes the allocation of any of the alternate colored serially numbered baskets.

3. The depuration plant permit shall be valid for the period set forth on the face of the permit and shall apply only to the waters specified on the charts attached to the permit (as amended where applicable) and as further restricted on a day to day basis by the designated enforcement unit(s).

4. The harvester from which the shellfish are purchased shall possess a valid New Jersey Commercial Shellfish Harvesting License issued by the Department's Division of Fish and Wildlife pursuant to N.J.S.A. 50:2-1 and a valid Permit No. 4 for soft clam depuration or No. 9 for hard clam depuration issued by the Bureau.

5. The permittee shall comply with all laws including rules promulgated by the Department and other agencies of the State of New Jersey.

6. Purchases of clams from the specified Special Restricted Waters shall be subject to all State laws including applicable to the purchaser of oysters, clams or mussels from approved areas.

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7. All records of purchases, including the harvesters names, address, date, quantity of purchase, harvest site and all harvester allocation tags and harvester depuration receipts shall be maintained at the plant for a period of not less than one year and shall be available for inspection by any authorized agent of the State.

8. The plant operator shall provide weekly reports to the Department's Division of Fish and Wildlife on forms provided by the Department. Such reports shall be submitted within five working days of the week's end (Saturday) and shall contain the following information for each day:

- i. The name and permit number of the harvester;
- ii. The area worked;
- iii. The total number of containers out and in; and
- iv. The total number of clams by size harvested from each area(s);

9. This permit and this subchapter do not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey.

10. Upon completion of the day's harvesting, all clams shall be off-loaded at the depuration plant for storage and/or processing. Only Department of Health and Senior Services specified and approved serially numbered containers and/or approved alternate containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant.

11. All containers shall have attached to them a serially numbered harvester allocation tag which has been validated by the plant stamp prior to harvest showing the time and date. Assigned alternate containers shall be accounted for and those authorized to be filled by a harvester will have the primary tag reassigned. This shall again be stamped at the completion of harvest and landing by the plant showing the time, date and depuration harvester's permit

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number. These tags shall remain attached to specified serially numbered containers through the depuration process.

12. Once the depuration and bacteriological approvals are complete, all harvester allocation tags shall be removed from the specified serially numbered containers and maintained on file at the plant for one year.

13. All such tags and records shall be available for inspection by any authorized agent of the State.

14. Violation of these permit conditions shall subject the holder to prosecution under N.J.S.A. 58:24-1 et seq. and any other applicable statute and may result in immediate permit suspension or revocation. In the event of a suspension or revocation of the shellfish certificate issued by the Department of Health and Senior Services pursuant to N.J.A.C. 8:13-2.1, permits issued under this subchapter regulations will no longer be valid for the plant(s) that no longer holds a valid shellfish certificate.

15. Should overland transportation be utilized on a regular basis for the movement of soft or hard clams from State waters to the depuration plant site, the operational plan for such a movement shall be approved by the SRRSC.]

7:12-[9.4]9.7 [Bait program; sea clams] **Permit for the Harvest of Surf Clams from Prohibited Waters for Bait**

(a) The [purpose of Permit No.2a ("Sea Clam Bait Permit") is to allow Sea or Surf Clams to be harvested] **Permit for the Harvest of Surf Clams from Prohibited Waters authorizes the harvest of surf clams** from [the Condemned] waters in the Atlantic Ocean **classified as**

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Prohibited [within the State of New Jersey jurisdictional three mile limit and ultimately sold] for bait [purposes only (N.J.S.A. 58:24-3)] **and not for human consumption.**

(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for the Harvest of Surf Clams from Prohibited Waters for Bait shall submit:

- 1. A copy of a valid shellfish license; and**
- 2. The vessel name and license, and mooring location.**

[(b)] (c) [Permit No. 2a shall be valid only under] **The Permit for the Harvest of Surf Clams from Prohibited Waters for Bait is subject to** the following specific requirements [or] **and** conditions[. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.]:

- 1. [Species limited under said permit to sea or] The only shellfish that may be harvested under this permit are** surf clams (*Spisula solidissima*).
2. Areas of harvest are limited to the [Condemned] **Prohibited** waters in the Atlantic Ocean [within the State of New Jersey jurisdictional three nautical mile limit as described in the most recent revision of the Regulations Concerning Classification of Certain Shellfish Beds].
- [3. This permit shall apply only to the water areas specified above.
4. The inclusive dates of the permit shall be from July 1 through June 30 yearly unless revoked or suspended prior to that date for cause.

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5. The permit does not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey including, but not limited to, N.J.S.A. 50:2-6.1 et seq. and N.J.A.C. 7:25.

6. The harvester shall possess a valid Bait Boat License to Dredge Sea Clams issued by the Division of Fish and Wildlife.]

3. The harvested surf clam shall be used only for bait and shall not be used or sold for human consumption.

4. The permittee is responsible for informing all employees of the risks associated with consumption of shellfish from waters classified other than Approved.

[7.] **5.** The harvester shall have [this] **the issued permit document** [(permit No. 2a)] in [his] possession while working in [said] **the** specified areas.

[8.] **6.** While harvesting in the specified areas, a yellow pennant, visible at a one [(1)] nautical mile distance, shall be flown.

[9.] **7.** All clams taken from the specified areas shall be containerized with a tag (at least 2 3/8[" x] **inches by 4 3/4[" inches**; yellow with dark printing) affixed to each container stating: "CLAMS HARVESTED FROM [CONDEMNED] **PROHIBITED** WATERS FOR BAIT PURPOSES ONLY. NOT TO BE USED FOR HUMAN CONSUMPTION. TAG NOT TO BE REMOVED FROM CONTAINER UNTIL CONTAINER IS EMPTY." In addition, the tag shall state the NAME and ADDRESS of the harvester and the DATE and QUANTITY of the sale. Said tag shall remain affixed to each container until the container is empty.

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[10.] **8.** All **harvested** clams [to be utilized for bait shall remain on the harvest vessel or in a storage area specified by the permittee to preclude their removal by unauthorized persons] **shall be stored securely** [.

11. Areas such as walk-in boxes, truck bodies, etc., which are used for the storage of clams harvested from the condemned area shall not be used for the storage of other] **and not where** food [products if such food products are to be utilized] for human consumption **is stored**.

[12. Signs (1" lettering, yellow background with dark printing) stating, "CLAMS HARVESTED FROM CONDEMNED WATERS FOR BAIT PURPOSES ONLY. NOT TO BE USED FOR HUMAN CONSUMPTION," shall be prominently displayed in your establishment and in each customer's establishment at the point of sale and the storage area.

13. Bait clams are not to be harvested on the same date as edible clams.]

[14.] **9.** The vessel shall **not be used to harvest surf clams for bait on the same date as surf clams for direct marketing and the vessel shall be** [sanitized] **thoroughly cleaned** between **harvesting surf clams for** bait [clam] and [edible clam] **harvesting surf clams for direct marketing**.

[15.] **10.** Records of [daily catches including area harvested, date and quantity; and] sales **of bait clams harvested** including customer's name, date, and quantity of sale shall be maintained for a period of not less than [90 days] **one year** [, and shall be available for inspection by any authorized agent of the State].

[16.] **11.** The [harvester] **permittee shall** [,] **telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at 609-748-2050** prior to

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harvesting[, **surf clams for bait** [verbally notify, on a day to day basis, the designated enforcement unit(s) as to the area and hours he intends to work under the provisions of this permit]. **Information is to include permit number, identity of person calling, description of vessel(s) being utilized, location of harvest, and contact number for the person calling.**

[17. Said clams harvested from condemned waters shall not be used or sold as food for human consumption.

18. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the Sea Clam Bait program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. The permittee is also required to comply with all other applicable statutes and regulations.

EDITOR'S NOTE: Form WR 002a was filed with these rules but is not reproduced herein. Further information on this form may be obtained from the Department of Environmental Protection, PO Box 405, Leeds Point, NJ 08220.]

7:12-9.8 [Relay program] **Permit for the Harvest of Hard Clams or Oysters from Restricted Waters and Relay to Approved Waters**

(a) The [purpose of this program is to] **Permit for the Harvest of Hard Clams or Oysters from Restricted Waters and Relay to Approved Waters authorizes the harvest of [market size] hard clams or oysters from [areas other than Approved Areas] waters classified as Restricted for [replanting in] relay to a relay lease(s) in waters classified as Approved [Areas**

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on special leased lots] for purposes of [natural purification] **reduction of pathogens** prior to **direct** marketing. [Two different types of permits are issued depending on participant request.

1. Permit 5a (Harvest, Buy, Sell, and Relay Hard Clam Permit) allows hard clams to be harvested, purchased, sold and relayed from specified Special Restricted, Seasonal Special Restricted or Condemned Waters in conjunction with a State approved shellfish relay program. All applicants are required to possess a special relay lease issued by the department (see N.J.A.C. 7:25-15.1) as a condition of this permit. The applicant is solely responsible for maintenance of all signs, stakes and markers as established in N.J.S.A. 50:1-5.

2. Permit 5b (Harvest Hard Clams For Sale Purposes Only Permit) allows hard clams to be harvested from specified Special Restricted, Seasonal Special Restricted, or Condemned Waters for sale purposes only (thus eliminating the requirement for obtaining a special relay leased plot in Approved waters) in conjunction with a state approved shellfish relay program.]

(b) In addition to the completed Consolidated Permit Application form and the application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for the Harvest of Hard Clams or Oysters from Restricted Waters and Relay to Approved Waters shall submit:

- 1. A copy of a valid shellfish license; and**
- 2. A copy of a relay lease(s) issued pursuant to N.J.A.C. 7:25-15.**

[(b)] (c) [Permits 5a and 5b shall be valid only under] **The Permit for the Harvest of Hard Clams or Oysters from Restricted Waters and Relay to Approved Waters is subject to the following specific requirements [or] and conditions[. Violations may subject the holder to**

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prosecution under N.J.S.A. 58:24-3. These rules must be read together with the shellfisheries rules which appear at N.J.A.C. 7:25-15.1]:

1. [Species limited under said permit to] **The only shellfish that may be harvested and relayed under this permit are hard clams (*Mercenaria mercenaria*) or oysters (*Crassostrea virginica*) as specified in the issued permit document.**

2. [Sections] **Area(s)** of harvest are limited to those [delineated] **specified** on the chart attached to [each] **the issued permit document** or amended charts sent **by the Bureau to the** current mailing address of permittee on record [at] **with** the [Leeds Point office] **Bureau**. [These areas specified for harvest may consist of Special Restricted, Seasonal Special Restricted or Condemned waters as classified by the department.]

3. [The inclusive dates of the permit shall be specified on the face of the special permit unless revoked or suspended by the Department prior to the dates indicated and for cause. A] **The permittee shall harvest and plant according to the schedule of harvest and planting** dates, [by section and] **with** landing sites [will be sent] **and off-loading sites, provided** by the [Department] **Bureau** [to the permittee at the address on file with the Bureau of Marine Water Monitoring (Leeds Point)]. [A change of address must be reported to the Bureau of Marine Water Monitoring (Leeds Point) by the permittee within one week of the change.]

4. The harvester must possess a valid NEW JERSEY COMMERCIAL SHELLFISH HARVESTING LICENSE issued by the New Jersey Division of Fish and Wildlife.

5. Harvesting from waters designated for relay purposes shall be subject to all state laws and regulations applicable to the harvest of hard clams from Approved waters.

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6. The relay of hard clams from the waters designated for relay purposes shall be permitted as established by N.J.A.C. 7:25-15.1. Hard clams shall be planted on the specified relay leased plots in Approved waters as scheduled by the Department. The shellfish shall be removed from the bags at time of planting.]

4. Twenty-four hours prior to a scheduled harvest date, the permittee shall provide the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at 609-748-2050 with a description of the vehicle(s) (year, make, model, and license plate number) that will be used to transport the hard clams or oysters and the proposed transport route.

5. Upon completion of the day's harvesting, the permittee shall place all harvested hard clams or oysters in bushel bags. The permittee shall affix to each bag a tag clearly marked "Relay" and including the harvester's name, relay permit number, and harvest date. Any shellfish not in bags tagged for Relay shall be deemed to have been harvested from waters classified as Restricted.

6. The permittee shall place the tagged bags of hard clams or oysters in the authorized vehicle(s) for transport at the landing site. The vehicle compartment containing the tagged bags will be sealed by the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at the landing site. The permittee shall drive the vehicle(s) via the specified transport route to the specified off-loading site, where the Marine Region will unseal the vehicle compartment. At the off-loading site, the permittee shall move the tagged bags to the vessel and proceed to the relay lease(s). At the relay

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lease(s) the permittee shall remove the hard clams or oysters from the tagged bags and plant the hard clams or oysters.

7. No hard clams or oysters shall be harvested for direct marketing from a relay lease until the permittee requests and receives written permission for harvest from the Bureau. The following conditions shall be met in order for the harvest to be permitted:

i. The hard clams or oysters shall have been on the relay lease for at least 30 days; and

ii. The water temperature during the 30-day period shall have been at or above 10 degrees Celsius (50 degrees Fahrenheit).

[7.] **8. The [participant must] permittee shall have [this] the issued permit document in [his] possession while [working in all phases of the relay program] conducting activities authorized under this permit.**

[8. This permit shall apply only to the waters specified on an attached chart provided with each permit and further specified on a schedule determined by the department to manage the resource and protect the public health, safety and welfare.

9. All hard clams taken from the designated relay waters shall be relayed to the special leased plots on a schedule set by the Department and shall remain upon said leased plots until written permission for harvest has been granted by the Bureau of Marine Water Monitoring. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30-day purging period will begin on a schedule established by the Department. Additionally, the water temperature of the Approved waters during the minimum

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30-day purging period shall be at or above 10 degrees Celsius (50 degrees Fahrenheit) as determined by the Bureau of Marine Water Monitoring. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Bureau of Marine Water Monitoring. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10. The State Department of Environmental Protection reserves the right to suspend or revoke this permit at any time that, in the department's judgement, its continued use may imperil the public health.]

[11.] **9. Each vessel used by a permittee conducting activities under this permit shall be marked, on both sides (amidships), with legible black lettering (minimum six inches in height) on [Signs having] a white background [with 6 inch legible black lettering], giving the [participant's] permittee's first initial and last name and [Special Relay] permit number [shall be placed and maintained (amidships) on both sides of the participants boat while participating in any phase of the program].**

[12. Said boats shall remain in the designated relay section during the time harvesting operations are underway. Harvesting beyond the designated section is prohibited.

13. Upon completion of the day's harvesting, all shellfish shall be transferred to the authorized vehicle(s). No clams are to remain in the marked clam boats or transferred to other vehicles or boats. The location(s) of all loading and unloading sites associated with the transfer of shellfish from one vehicle/vessel to another, shall be assigned by the enforcement unit(s)

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designated in the Bureau of Shellfisheries regulations appearing at N.J.A.C. 7:25-15.1. There shall be no variance from said designated area unless so authorized by same.

14. Dredging and other illegal methods of harvesting are prohibited.

15. Shellfish taken from the designated relay section shall be bagged by the participant, to the imprinted line on the bag, in bags available to the participant from the Department. These bags will be provided, at cost, to the participant through the Leeds Point office of this bureau. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's name and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the Department. The vehicles will be sealed by the Department, or an agent designated by the Department, at the harvest landing site and opened by the Department or designated agent at the off-loading site. The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site. Shellfish purchased from a holder of a valid Hard clam depuration permit (Number 9) shall be handled under the same conditions. Where there is a simultaneous possession of hard clams and relay bags, all hard clams shall be deemed to have been harvested from Special Restricted waters.

16. The bags will be counted by the relay harvester and listed on the numbered three-part relay receipt forms which shall be certified by the harvester. The forms must be filled out in their entirety before the clams are transported. Receipts for all clams must be in the transporting vehicle. When clams are sold to the holder of a 5a permit, the form shall be signed by both the

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harvester and the buyer-planter at the landing site. The possession or submission of incomplete, fraudulent or misleading relay receipt forms shall be a violation of this permit.

17. Participants shall not harvest approved clams from their leased plots on the same trip they plant clams from the day's relay. Persons harvesting clams from relay lots after written permission has been received from the Bureau of Marine Water Monitoring shall not have any "RELAY" transport bags, as described in N.J.A.C. 7:25-15.1 of the relay rules, in their vehicles or vessels at the time they harvest.

18. The department shall have the authority to inspect and collect shellfish from any phase of the relay to ensure compliance with all relay program regulations. Shellfish found under participant's control contrary to these and other applicable statutes and regulations shall be subject to seizure.]

[19.] **10.** Only the [lessee or a substitute harvester] **permittee** shall remove [clams] **shellfish** from the [leased plots] **relay lease(s)**. [A substitute harvester must possess a Letter of Permission (issued by the Division of Fish and Wildlife) from the lessee giving the dates for which he is allowed harvest privileges, and the lessee's permit number from the Bureau of Marine Water Monitoring Permit 5a.

20. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24.

21. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish relay program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of

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these regulations. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day as determined by the department.]

7:12-[9.10]**9.9 [Transplant program] Permit for the Harvest of Seed Oysters and/or Seed Clams from Restricted Waters and Transplant to Approved Waters**

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

(b) [Permit No. 7 shall be valid only under] **In addition to the completed Consolidated Permit Application form and the application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for the Harvest of Seed Oysters and/or Seed Clams from Restricted Waters and Transplant to Approved Waters shall submit:**

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1. A copy of a valid shellfish license; and

2. A map showing the general area from which seed are to be harvested and the boundaries and GPS coordinates of the lease to which the seed will be transplanted.

(c) The Permit for the Harvest of Seed Oysters and/or Seed Clams from Restricted Waters and Transplant to Approved Waters is subject to the following specific requirements [or] **and** conditions[.]: [Violations may subject the holder to prosecution under N.J.S.A. 58.24-3.]

1. [Species is limited under said permit to] **The only shellfish seed that may be harvested and transplanted under this permit are** oysters (*Crassostrea virginica*) and/or **hard** clams (*Mercenaria mercenaria*).

[2. This permit is limited to persons having a leased shellfish lot(s) in Approved waters and/or Seasonally Approved waters and a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish and Wildlife. The applicant shall provide a chart delineating the leased grounds to which the shellfish are to be transplanted. This chart shall be validated by the appropriate Bureau of Shellfisheries Office at Nacote Creek or Bivalve. Additionally, a chart showing the area from which the shellfish are to be harvested shall be provided by the applicant.

3. The permit does not supersede current laws, rules and regulations promulgated by this and other agencies of the State of New Jersey.]

[4.] **2.** The permittee shall [verbally notify the designated enforcement unit(s)] **telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement,**

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Marine Region, at 609-748-2050 at least 24 hours prior to [each day's harvesting from waters other than Approved] **harvest of seed** and provide the following **information: the permit number, the identity of person calling, a description of vessel(s) being utilized, the location of harvest, and a contact number for the person calling.**

[5.] **3.** The permittee shall have [this] **the issued permit document** in [his] possession while [working in specified waters and while transporting seed oysters taken from specified waters] **conducting activities authorized under this permit.**

4. No more than three percent of the number of shellfish harvested and transplanted shall be larger than seed.

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

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Monitoring by letter after the final transplanting to a particular leased lot. The minimum 30 day purging period shall begin after the Bureau of Marine Water Monitoring has received written notice of the final transfer date and has determined that the water temperature of the Approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).

8. Lots being planted will be staked, by the lessee, and maintained in that condition during the effective period of the special permit. Transplant lot(s) located in waters that may be approved during the purging period shall be marked at the corners with Condemned Area signs (supplied by the Bureau of Marine Water Monitoring) during the Condemned period.

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9. From the time the Transplant Program is issued until written notification for reharvest is received by the permittee, the transplant lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish.

10. This special permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transplant program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violations(s) of these regulations. All permittees are also required to comply with all other applicable statutes and regulations.

(c) Any permittee violating these regulations or terms of the special transplant permit issued by the Bureau of Marine Water Monitoring shall be subject to prosecution under the provisions of N.J.S.A. 58:24-3, taking shellfish from Condemned waters in violation of the permit, and may incur the penalties prescribed by N.J.S.A. 58:24-9. Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., and/or N.J.S.A. 50:2-1 et seq., shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting of shellfish from the waters of this State.

EDITOR'S NOTE: Form WR 007 and Permit Number 7 were filed with these rules but is not reproduced herein. Further information on this form may be obtained from the Department of Environmental Protection, PO Box 405, Leeds Point, NJ 08220.]

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7:12-9.10 Permit for Shellfish Research in Waters Other Than Approved

(a) The Permit for Shellfish Research in Waters Other Than Approved authorizes the collection of shellfish from waters classified as other than Approved for the purpose of scientific research.

(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for Shellfish Research in Waters Other Than Approved shall submit:

1. A copy of a valid Scientific Collection Permit issued by the Department's Division of Fish and Wildlife allowing the collection of the species for which the applicant seeks the Permit for Shellfish Research in Waters Other Than Approved; and

2. A project overview that includes the following:

i. The name of the project manager, and the names of all participants, identifying each participant's roles and responsibilities in the project;

ii. A detailed description of the objective(s) of the project, including why the research requires shellfish from waters other than Approved;

iii. The name(s) and location(s) of the waters where the project is proposed to be conducted and the classification(s) of those waters under this chapter;

iv. The anticipated length of time to accomplish the research project, including intended start and finish dates;

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v. A description of the methods and equipment to be used to collect the shellfish;

vi. The species and size, and estimated number of shellfish proposed to be collected; and

vii. Where the project is being continued from the previous year, the Project Summary Report described at (d) below for that previous year.

(c) A Permit for Shellfish Research in Waters Other Than Approved is subject to the following specific requirements and conditions:

1. The collected shellfish shall be used only for the purposes of the research project described in the project overview and shall not be used for human consumption.

2. The permittee shall collect only the species, size, and numbers of shellfish specified in the issued permit document.

3. The permittee shall collect shellfish only from the locations specified in the issued permit document.

4. The permittee shall not modify any aspect of the project without prior written approval from the Department.

5. The permittee is responsible for informing all participants in the research project that any collected shellfish shall not be used for human consumption and of the risks associated with consumption of shellfish from waters classified other than Approved;

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6. The permittee shall provide an updated list of participants when any participant joins or leaves the project.

7. The permittee shall telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at 609-748-2050 at least 24 hours before collecting any shellfish and provide the following information: the permit number, the identity of person calling, a description of vessel(s) being utilized, the location, and a contact number for the person calling.

(d) Except as provided at (b)2vii above, the permittee shall submit a Project Summary Report to the Bureau at the address at N.J.A.C. 7:12-1.1(l), no later than 60 days after the end of the period of validity specified in the issued permit document. The Project Summary Report shall include a description of the materials and methods used; results with, as appropriate, tables and graphs summarizing the data collected; and a discussion analyzing the results as they relate to the objective of the project.

7:12-9.11 Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved

(a) The Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved authorizes the gardening of shellfish at a single site in waters other than Approved by a non-profit organization or government agency for purposes of restoring or enhancing the shellfish resource or enhancing water quality, and not for human consumption.

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(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved shall submit:

1. A copy of a valid Scientific Collection Permit issued by the Department's Division of Fish and Wildlife allowing the collection of the species for which the applicant seeks the Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved;

2. A project overview that includes the following:

i. The name of the project manager, and the names of all participants, identifying each participant's roles and responsibilities in the project;

ii. A detailed description of the objective(s) of the project;

iii. The name(s) and location of the waters where the project is proposed to be conducted and the classification(s) of those waters under this chapter;

iv. The anticipated length of time to accomplish the project, including intended start and finish dates;

v. A description of the design of the project, including considerations of site selection, source of shellfish (wild versus hatchery stock), minimizing predation, spatial arrangement, and shellfish density;

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vi. A description of the type of structure(s), or alteration or enhancement of the bottom, to facilitate the growth of shellfish, for example, reef bags, reef balls, cages, broad-scale placement of shell at high density, and reefs;

vii. A map indicating the location of any structure(s), including GPS coordinates;

viii. The species and size, and estimated number of shellfish to be used over the course of the project, and if a multi-year project is anticipated, the species and size, and estimated number of shellfish to be used each year;

ix. The criteria by which success of the project is to be measured with respect to the objectives;

x. The method(s) and schedule for monitoring shellfish growth and health;

xi. A schedule for maintenance activities;

xii. A security plan that ensures adequate controls are in place to prevent the unauthorized harvest of shellfish. The minimum requirements for the security plan are:

(1) Continuous surveillance and patrol (24 hours/day, 365 days/year) of the project site. Where the surveillance and patrol are provided by an entity other than the permittee, evidence that the entity has entered into a legally binding agreement with the permittee to provide the surveillance and patrol;

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(2) Provisions requiring immediate notification of law enforcement in the event of any security breach or emergency; and

(3) Other security measures based on site-specific circumstances, such as signs, fencing, or structures that limit access to the site or to the shellfish; and

xiii. Where the project is being continued from the previous year, the Project Summary Report described at (d) below for that previous year.

(c) A Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved is subject to the following specific requirements and conditions:

1. The shellfish shall be used only for the purposes of the restoration and/or enhancement project described in the project overview and shall not be used for human consumption.

2. The permittee shall use only the species, size, and numbers of shellfish specified in the issued permit document.

3. The permittee shall conduct gardening activities only in the locations specified in the issued permit document.

4. The permittee shall not modify any aspect of the project without prior written approval from the Department.

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5. The permittee is responsible for informing all participants in the project that any collected shellfish shall not be used for human consumption and of the risks associated with consumption of shellfish from waters classified other than Approved.

6. The permittee shall provide an updated list of participants when any participant joins or leaves the project.

7. The permittee shall keep records of the disposition of all shellfish.

8. The permittee shall not conduct any activities under the permit until the Security Plan is implemented.

9. The permittee shall immediately telephone the Department at (877) WARN DEP (927-6337) regarding any theft of shellfish, tampering with structures, or significant shellfish mortality.

10. The permittee shall remove shellfish from the project site only for the purposes described in the project overview.

i. The permittee shall telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region, at 609-748-2050 at least 24 hours before removing any shellfish and provide the following information: the permit number, the identity of person calling, a description of vessel(s) being utilized, and a contact number for the person calling.

11. The project manager shall have the issued permit document in possession when removing shellfish as part of the project.

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(d) Except as provided at (b)2xiv above, the permittee shall submit a Project Summary Report to the Bureau at the address at N.J.A.C. 7:12-1.1(l), no later than 60 days after the end of the period of validity specified in the issued permit document. The Project Summary Report shall include a description of the materials and methods used; results with, as appropriate, tables and graphs summarizing the data collected; and a discussion analyzing the results as they relate to the objective of the project.

7:12-9.12 Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency

(a) The Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency authorizes a Non-profit Organization or Government Agency to conduct a project involving the distribution of seed to participants who will grow the seed at various locations in waters other than Approved for relocation by the permittee to:

- 1. Approved or Conditionally Approved waters;**
- 2. A project authorized under a Permit for Shellfish Restoration and/or Enhancement in Waters Other Than Approved (N.J.A.C. 7:12-9.11); or**
- 3. Waters outside the boundaries of the State of New Jersey, subject to any required approval from the receiving state.**

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(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for Growing Seed in Waters Other Than Approved by a Non-Profit Organization or a Government Agency shall submit:

1. A copy of a valid Scientific Collection Permit issued by the Department's Division of Fish and Wildlife allowing the collection of the species for which the applicant seeks the Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency;

2. A project overview that includes the following:

i. The name of the project manager, and the names of all participants, identifying each participant's roles and responsibilities in the project;

ii. A detailed description of the objective(s) of the project;

iii. For those participants growing seed, the location where each participant will be growing seed (street address or GPS coordinates), the type of equipment to be used (for example, upwellers, downwellers, floats, raceways), and the name and location of the waters where the seed will be grown and the classification(s) of those waters under this chapter;

iv. The anticipated dates for purchase of seed, seed distribution to the participants, seed collection from the participants, and relocation of seed as provided at (a) above;

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v. The species and estimated number of seed to be purchased, as well as the species and estimated number of seed to be distributed to each participant;

vi. The criteria by which success of the project is to be measured with respect to the objective(s);

vii. The method(s) and schedule for monitoring seed growth and health;

viii. A schedule for the inspection of the participants' seed and equipment;

ix. The specific location(s) where the seed will be relocated after collection from the participants as provided in (a) above; and

x. Where the project is being continued from the previous year, the Project Summary Report described at (d) below for that previous year.

(c) A Permit for Growing Seed in Waters Other Than Approved by a Non-profit Organization or Government Agency is subject to the following specific requirements and conditions:

1. The permittee shall not sell any seed without prior written approval from the Department.

2. The permittee shall use only the species and number of seed specified in the issued permit document.

3. The permittee and participants shall grow seed only in the locations specified in the issued permit document.

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- 4. The permittee shall ensure participants do not grow shellfish larger than seed.**
- 5. If shellfish are found to be larger than seed, the permittee shall immediately notify the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region at 609-748-2050.**
- 6. The permittee shall not modify any aspect of the project without prior written approval from the Department.**
- 7. The permittee shall inform the Department of any changes in the information provided pursuant to (b)2iii above.**
- 8. The permittee is responsible for informing all participants in the project that any collected shellfish shall not be used for human consumption and of the risks associated with consumption of shellfish from waters other than Approved.**
- 9. The permittee shall keep records of the disposition of all shellfish.**
- 10. The permittee shall notify the Bureau at least five days in advance of the date(s) of:**
 - i. Seed distribution to participants;**
 - ii. Seed collection from participants; and**
 - iii. Relocation of seed as provided at (a) above.**

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11. The permittee shall immediately telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region at 609-748-2050 regarding any theft of seed, tampering with structures, or significant seed mortality.

12. The project manager shall have the issued permit document in possession when distributing, collecting, or relocating seed as part of the project.

13. The permittee shall keep records of the disposition of all seed.

14. The permittee shall conduct inspections of all participants' seed and equipment at the frequency specified in the issued permit document, and shall maintain appropriate records of such inspections.

(d) Except as provided at (b)2x above, the permittee shall submit a Project Summary Report to the Bureau at the address at N.J.A.C. 7:12-1.1(l), no later than 60 days after the end of the period of validity specified in the issued permit document. The Project Summary Report shall include a description of the materials and methods used; results with, as appropriate, tables and graphs summarizing the data collected; and a discussion analyzing the results as they relate to the objective of the project.

7:12-9.13 Permit for Short-term Use of Shellfish for Toxins Monitoring in Waters Other Than Approved

(a) The Permit for Short-term Use of Shellfish for Toxins Monitoring in Waters Other Than Approved authorizes the placement of shellfish into waters other than

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Approved for purposes of a Remedial Investigation pursuant to the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, or for purposes of a study approved by the Department's Site Remediation Program where the applicant can demonstrate a specific need to study bioaccumulation of toxins in shellfish from known contaminated sites located in or impacting waters other than Approved.

(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for Short-term use of Shellfish for Toxins Monitoring shall submit a project overview that includes the following:

- 1. The name of the project manager, and the names of all participants, identifying each participant's roles and responsibilities in the project;**
- 2. A detailed description of the objective(s) of the project;**
- 3. The name(s) and location of the waters where the project is proposed to be conducted and the classification(s) of those waters under this chapter;**
- 4. The anticipated length of time to accomplish the project, including intended start and finish dates;**
- 5. A description and specifications for the secure cage or container that will hold shellfish during the project;**
- 6. A map indicating the location(s) of cages and/or secure containers, including GPS coordinates;**

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7. The species and size, and estimated number of shellfish to be used over the course of the project, and if a multi-year project is anticipated, the species and size, and estimated number of shellfish to be used each year;

8. The criteria by which success of the project is to be measured with respect to the objectives;

9. A schedule for placement of the shellfish cages or containers in the water, sampling of shellfish, and removal at completion of the study;

10. A schedule for maintenance activities; and

11. Where the project is being continued from the previous year, the Project Summary Report described at (d) below for that previous year.

(c) A Permit for Short-term use of Shellfish for Toxins Monitoring in Waters Other Than Approved is subject to the following specific requirements and conditions:

1. The shellfish shall be used only for the purposes of the project described in the project overview and shall not be used for human consumption.

2. The permittee shall use only the species, size, and numbers of shellfish specified in the issued permit document.

3. The permittee shall conduct toxins monitoring activities only in the locations specified in the issued permit document.

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4. The permittee shall not modify any aspect of the project without prior written approval from the Department.

5. The permittee is responsible for informing all participants in the project that any collected shellfish shall not be used for human consumption and of the risks associated with consumption of shellfish from waters classified other than Approved.

6. The permittee shall keep records of the disposition of all shellfish.

7. All shellfish shall be kept in a secure cage or container, approved by the Bureau, for the duration of the project.

8. The permittee shall affix to each cage or container a durable, water-proof tag bearing the toxic hazard symbol (Unicode U+2620) and the following written warning, in English and Spanish: “Warning: Shellfish Unsafe. May be toxic. Not for Human Consumption.”

9. The permittee shall ensure that each cage or container remains submerged beneath the surface of the water at all times and does not present a hazard to navigation.

10. The permittee shall not indicate the location of any cage or container with a buoy, flotation device, flag, stake, or other marker.

11. Shellfish shall be removed from the project site by the permittee only for the purposes of the project. The permittee shall minimize the number of times shellfish are moved or removed.

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12. The permittee shall notify by telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region at least 24 hours before placing or removing any shellfish and provide the following information: the permit number, the name of person calling, a description of vessel(s) being utilized, the location, and a contact number for the person calling.

13. The permittee shall immediately telephone the Department at (877) WARN DEP (927-6337) regarding any theft of shellfish, tampering with structures, or significant shellfish mortality.

14. All shellfish cages and containers shall be removed when the project is completed, and any shellfish destroyed.

15. The project manager shall have the issued permit document in possession when placing or removing shellfish as part of the project.

(d) Except as provided at (b)11 above, the permittee shall submit a Project Summary Report to the Bureau at the address at N.J.A.C. 7:12-1.1(l), no later than 60 days after the end of the period of validity specified in the issued permit document. The Project Summary Report shall include a description of the materials and methods used; results with, as appropriate, tables and graphs summarizing the data collected; and a discussion analyzing the results as they relate to the objective of the project.

7:12-9.14 [(Reserved)] **Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed**

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(a) The Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed authorizes a hatchery or nursery to produce and/or grow seed at a single site in or using waters classified as other than Approved for sale or for relocation to Approved or Conditionally Approved waters.

(b) In addition to the completed Consolidated Permit Application form and application fee required under N.J.A.C. 7:12-9.3, an applicant for a Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed shall submit a detailed description of the operation that includes the following:

- 1. The name(s) and location(s) of the waters where the operation is to be conducted and the classification(s) of those waters under this chapter;**
- 2. A description of the methods and equipment to be used to produce and/or grow seed;**
- 3. The species of seed to be produced and/or grown;**
- 4. If hatchery activities are conducted, the species and number of broodstock and the physical location of the broodstock at all times; and**
- 5. If hatchery activities are conducted, a description of security measures that limit access to the broodstock. Such measures may include locked structures or cages, surveillance, patrols, and/or fencing.**

(c) A Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed is subject to the following specific requirements and conditions:

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1. The permittee shall conduct production and/or growing activities only in the location(s) specified in the issued permit document.

2. The permittee shall not make any changes to its operations without prior written approval from the Department, including, for a hatchery, increasing the quantity of broodstock or moving broodstock to a location other than that specified in the issued permit document.

3. The permittee is responsible for informing its employees involved in seed production and/or growing activities that any collected shellfish shall not be used for human consumption and of the risks associated with consumption of shellfish from waters classified other than Approved.

4. The permittee shall immediately telephone the Department at (877) WARN DEP (927-6337) regarding any theft of broodstock.

5. The permittee shall immediately telephone the Department's Division of Fish and Wildlife, Bureau of Law Enforcement, Marine Region at 609-748-2050 regarding any theft of seed or significant seed mortality.

6. A nursery shall not have any broodstock or shellfish above seed.

7. A hatchery shall not have broodstock in numbers greater than specified in the issued permit document. Any broodstock shall be used only for the purposes of producing seed. Broodstock shall not be sold for human consumption.

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7:12-9.15 [(Reserved)] Commercial Shellfish Aquaculture Permit

(a) The Commercial Shellfish Aquaculture Permit authorizes the growing of shellfish in waters classified as Approved or Conditionally Approved and harvest for direct marketing.

(b) In addition to the completed Consolidated Permit Application form required under N.J.A.C. 7:12-9.3, an applicant for a Commercial Shellfish Aquaculture Permit shall submit:

- 1. A copy of a valid shellfish license.**
- 2. If the applicant is a certified dealer, a copy of the shellfish certificate issued by the Department of Health pursuant to N.J.A.C. 8:13-1.5; and**
- 3. An Operational Plan for the shellfish aquaculture operation(s) in accordance with (c) below; and**
- 4. For a shellfish aquaculture operation re-applying for a Commercial Shellfish Aquaculture Permit, a report of the total quantity(ies) of shellfish, by species, harvested in the most recent calendar year.**

(c) The Operational Plan for the shellfish aquaculture operation(s) shall include the following:

- 1. A description of the design and activities of the aquaculture operation(s), including, if the applicant is a certified dealer, wet storage (that is, storage in a natural**

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body of water, or a tank containing natural or synthetic seawater, of shellfish from other shellfish growing waters to condition, remove sand, or add salt to the shellfish);

2. A map showing the boundaries, with GPS coordinates, of the site(s) where aquaculture activities will be conducted;

3. Identification of the lease or Tidelands instrument for the site(s) where aquaculture activities will be conducted;

4. The types and locations of any structures, including rafts, pens, cages, nets, raceways, tanks, or floats;

5. The species of shellfish to be grown;

6. The source of seed;

7. A description of maintenance and husbandry activities;

8. A description of harvesting methods;

9. A description of post-harvest handling and transportation of shellfish to a certified dealer;

10. For a land-based aquaculture operation, the Operational Plan shall also include:

i. The source and species of any other organism(s) to be grown in any polyculture operation;

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ii. A list of drugs used for treatment of shellfish. No drugs shall be used for the treatment of shellfish without prior written approval from the Department of Health;

iii. Procedures to ensure no poisonous or deleterious substances are introduced into the aquaculture operation;

iv. A program of sanitation, maintenance, and supervision to prevent contamination of shellfish;

v. A description of the water source, including the details of any water treatment process or method;

vi. A program to maintain water quality that includes collection of water samples for fecal coliform analysis and routine temperature and salinity monitoring. The applicant shall specify the method used for fecal coliform analysis and the FDA approved laboratory that will conduct the analysis; and

vii. For a closed or recirculating operation, the source and type of food for the shellfish.

(d) A Commercial Shellfish Aquaculture Permit is subject to the following specific requirements and conditions:

1. The permittee shall have the issued permit document in possession while harvesting, off-loading, and transporting shellfish from the aquaculture operation.

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2. The growing of shellfish as part of an aquaculture operation shall be conducted in waters classified as Approved, or Conditionally Approved.

i. Source water for a closed or recirculating operation shall be water classified as Approved or Conditionally Approved in the open status.

3. The permittee is on notice that any emergency closure or harvest suspension imposed pursuant to N.J.A.C. 7:12-1.4 may affect the waters at the site(s) where aquaculture activities are conducted. The Department will post notice of all emergency closures and harvest suspensions at www.nj.gov/dep/bmw.

4. If shellfish are grown in Conditionally Approved waters, shellfish shall be harvested only when the waters are in open status.

5. Prior to harvesting shellfish from a closed or recirculating operation, the permittee shall collect and analyze three water samples from each tank over 14 days, with a minimum of three days between samples. Each sample shall be analyzed for fecal coliform by an FDA approved laboratory using the method specified in the permittee's Operational Plan.

i. If the fecal coliform level in any one sample is less than 14 Most Probable Number (MPN) or Colony Forming Units (CFU) per 100 ml, the permittee may harvest the shellfish for sale to a certified dealer for direct marketing.

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ii. If the fecal coliform level in any one sample is 14 MPN or CFUs per 100 ml or greater, the permittee shall not harvest the shellfish and shall notify the Bureau immediately of the exceedance.

iii. In the circumstance described at (d)5ii above, the permittee shall implement measures as necessary (for example, ultraviolet light disinfection, drain and sanitize system, replace water) to reduce the fecal coliform level to less than 14 Most Probable Number (MPN) or Colony Forming Units (CFU) per 100 ml. The permittee shall re-sample in accordance with (d)5 above no sooner than three days after such measures are implemented. The permittee shall notify the Bureau of any exceedance of the standard. When the coliform level in all samples is less than 14 Most Probable Number (MPN) or Colony Forming Units (CFU) per 100 ml, the permittee shall notify the Bureau and may harvest the shellfish.

iv. The permittee shall maintain all laboratory reports of sample analyses, including chain of custody, for three years. The records shall be available for inspection by the Department.

6. The permittee shall maintain, for at least three years, complete and accurate records, which shall include:

i. The source of seed;

ii. The dates of planting seed and harvesting shellfish;

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iii. For any closed or recirculating operation, water source, treatment, and monitoring results, including all laboratory reports of sample analyses with chain of custody pursuant to (d)5 above;

iv. The husbandry and maintenance journal required under (e)3 below; and

v. The quantities of shellfish harvested, by species.

(e) Husbandry and maintenance activities conducted under the Commercial Shellfish Aquaculture Permit shall meet the requirements of this subsection.

1. For purposes of this permit, husbandry and maintenance activities are those aquaculture activities relating to the care and rearing of shellfish and the maintenance of the equipment used for those activities. Such husbandry and maintenance activities are not considered harvest.

2. If husbandry and maintenance activities are conducted within the boundaries of the lot subject to the permittee's lease or Tidelands instrument, the permittee does not need to use shellfish husbandry tags to identify the shellfish containers.

3. If husbandry and maintenance activities are conducted outside the boundaries of the lot subject to the permittee's lease or Tidelands instrument, the permittee shall:

i. Affix to each individual shellfish container, cage, basket, bin, or bag a fluorescent orange, serially numbered, water-resistant shellfish husbandry tag that is clearly marked with the permittee's name or company name, and shellfish license number;

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ii. Prior to removing any shellfish container from the lot, record in a journal with permanently bound pages the following information: the serial number of each shellfish husbandry tag, the date and time the shellfish container is removed for husbandry or maintenance activities, identification of the site subject to the lease or Tidelands instrument from which the shellfish are removed, the location where the husbandry or maintenance activities are conducted, and the activity conducted; and

iii. On returning the shellfish container to the lot, the permittee shall record in the journal the date and time the shellfish container is returned.

4. If shellfish are removed for husbandry and maintenance activities, all shellfish shall be returned to the lot subject to the permittee's lease or Tidelands instrument for no less than 48 hours prior to being harvested for direct marketing.

5. Washing of shellfish as part of husbandry and maintenance activities shall use water only from a potable water source or from waters classified as Approved or Conditionally Approved in the open status.