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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Oysters

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

Authorized By: Bob Martin, Commissioner,

Department of Environmental Protection.

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

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

DEP Docket Number: 01-16-03.

Proposal Number: PRN 2016-051.

Submit comments by June 3, 2016, electronically at www.nj.gov/dep/rules/comments.

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

Gary J. Brower, Esq.

Attn: DEP Docket Number: 01-16-03

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 oysters rules, N.J.A.C. 7:25A, govern the management and harvest of oysters from the Delaware River, Delaware Bay, and their tributaries. The Department is proposing to amend the rules concerning the management of oyster harvesting in the Delaware Bay to allow for the consolidation of up to six oyster dredge vessel licenses and the annual oyster harvest quotas assigned to those licenses to one designated harvest vessel, so long as each oyster dredge vessel and the designated harvest vessel are wholly owned by the same person. As a result, the vessel to which the license(s) and quota(s) are assigned would be allowed to harvest the annual harvest quota of that vessel as well as the annual harvest quotas of the other vessels included in the consolidation, for a total of up to six harvest quotas on the designated harvest vessel. Because licensed oyster dredge vessels must be maintained in “operable condition” in accordance with the definition of “validly licensed” at N.J.A.C. 7:25A-1.3, the proposed amendments will relieve oyster harvesters of the financial burden experienced by many members of the Delaware Bay oyster industry of having to maintain every dredge vessel they own in order to harvest the quota

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assigned to the license assigned to that vessel. By consolidating the licenses to one designated harvest vessel, only the designated harvest vessel must be maintained in “operable condition.”

The proposed amendments were developed over a number of years by the Department, in consultation with the Delaware Bay Shellfisheries Council (Council), taking into consideration recommendations received from a subcommittee of oyster industry representatives appointed by the Council. Previously, the Council agreed to the consolidation of up to three licenses on one vessel, with the consolidation allowed by the Department through administrative consent order. Under that process, each harvester who wanted to consolidate their licenses on one vessel executed an administrative consent order which acted as a contract between the Department and that harvester with the harvester subject to terms similar to those proposed as amendments to the rules at this time. The Council’s subcommittee convened in 2013 to discuss the option of allowing up to six licenses to be consolidated to one designated harvest vessel. This increase in licenses permitted to be consolidated was implemented for the 2014 season with an amendment to the administrative consent order. The proposed amendments, supported by the Council, incorporate into the rules an allowance to consolidate up to six licenses.

Consolidation of oyster dredge vessel harvest licenses has become necessary due to the age of the oyster harvesting fleet. Many of the vessels used today to harvest oysters date back to the 1800s, are wooden, and require railways to be removed from the water for repairs and maintenance. The process of pulling one of these vessels to shore is expensive, and the knowledge required to repair and maintain these antiquated vessels is being lost over time. By allowing owners to consolidate their licenses and the corresponding annual harvest quotas, these owners can reduce annual maintenance costs and potentially sell their unused vessels, allowing

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them to invest any savings or sale proceeds realized into their oyster harvesting operations. Such investment could include maintaining the remaining vessels to a higher standard and the addition of refrigeration units. For example, if an owner has \$10,000 to spend on maintenance to cover a fleet of six vessels, pursuant to these proposed amendments, that owner would be allowed to consolidate those vessels' licenses, designate one vessel as the designated harvest vessel and have the entire \$10,000 available to maintain and potentially upgrade the one designated harvest vessel.

Improved vessel maintenance can produce several benefits, both for the owner and crew, and for the general public. Well-maintained vessels are safer for the crew. In addition, upgrade of vessels can provide harvesters with additional flexibility regarding hours during which harvest can be conducted while ensuring supply of a safe product for the consuming public. In accordance with N.J.A.C. 7:25A-2.4, the season for direct harvest of oysters from the State's natural beds is established annually taking into account specified factors. Notice of the opening and closing dates for each season, as well as conditions applicable to harvest for that season, is provided to each oyster dredge vessel license holder. The Department recently began to allow the use of refrigeration units on board vessels as part of the *Vibrio parahaemolyticus* Management Plan. *Vibrio parahaemolyticus* is an organism that occurs naturally in coastal waters that is not related to pollution. When shellfish, usually oysters, that have high levels of *Vibrio parahaemolyticus* are eaten raw or undercooked, gastrointestinal illness in humans may occur. The *Vibrio parahaemolyticus* Management Plan recognizes the role cooling plays in reducing the growth of this pathogen in harvested oysters. Under the *Vibrio parahaemolyticus* Management Plan, on-board refrigeration allows harvesters longer harvest hours during the

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season when *Vibrio parahaemolyticus* is of greatest concern (June 1 through August 31).

Therefore, with one well-maintained designated vessel with a refrigeration unit, owners are able to harvest all of their annual harvest quotas and ensure that the shellfish harvested are safe for consumption.

To monitor the oyster harvest, the Department has a number of control methods in place. The annual harvest quota for each vessel is a portion of the overall State quota of oysters that can be harvested in that year. The annual harvest quota becomes associated with each license, and therefore with each vessel. Each year, the Department identifies those license holders who are interested in participating in that year's harvest. The Department then divides the State quota or the Total Allowable Catch by the number of interested license holders to establish the individual vessel annual harvest quota. The owner of the licensed vessel then purchases tags allotted to each individual license, which allows the owner to harvest the oysters. Owners of multiple designated harvest vessels who have consolidated licenses under an existing administrative consent order must harvest the consolidated licenses' annual harvest quotas for each designated harvest vessel one license at a time. This will continue to be required by the proposed amendments. Based upon experience gained under the administrative consent order, owners typically have only one crew despite often owning a number of vessels and licenses. As part of the effort to effectively monitor harvest of this resource to ensure sustainability, the rules require that owners call the Department prior to harvesting for the day to declare which harvest vessel they are using and which license they will be harvesting under that day. They are also required to submit reports when oysters are landed and subsequently sold.

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The consolidation of the licenses is not expected to have any impact on the monitoring of the oyster quota or the number of people employed by the industry. These amendments will not reduce the amount of oysters harvested. The amendments aim at assisting oyster harvesters with reducing the financial burden of maintaining multiple vessels while allowing them to harvest the same amount of oysters.

To allow consolidation of licenses and quotas to occur in appropriate circumstances, the Department is proposing several amendments to the rules.

The process that will be required to be followed to consolidate licenses and quotas, as well as limitations on what may be consolidated, is proposed at N.J.A.C. 7:25A-1.4(e). The Department is proposing to amend the heading of N.J.A.C. 7:25A-1.4 to reflect the addition of this subsection and the process it enumerates.

As indicated above, only a person who wholly owns more than one licensed oyster dredge vessel may consolidate the licenses of up to six oyster dredge vessels (the licenses of five vessels that will not be used to harvest and the license of the vessel designated as the harvest vessel) and all or the entire remaining amount of the licenses' oyster annual harvest quota (if some portion of the vessel's quota has been harvested before the decision is made to consolidate) to a single designated harvest vessel wholly owned by that same person provided that the conditions at N.J.A.C. 7:25A-1.4(e) are met.

A person seeking to consolidate licenses and the licenses' corresponding oyster annual harvest quota(s) to a licensed harvest vessel under single ownership must file with the Department a notarized Statement of Intent indicating that the person wishes to make such consolidation. The Statement of Intent identifies the vessel or vessels that will not be used for

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harvest as well as the designated harvest vessel proposed to receive the license(s) and annual harvest quota(s).

As part of the Department's effort to effectively monitor the take of oysters under a consolidated license to ensure that the fishery is not overharvested and remains sustainable, once consolidation is approved, the proposed amendments require that the quota and related annual tag allotment associated with each license must be utilized one license at a time. Accordingly, if the licenses of three licensed oyster dredge vessels are consolidated, the license holder must choose one of the three license tag allotments to begin harvesting. No tags attributable to any other licensed oyster dredge vessel included under the consolidated license may be used until the tags attributable to the first licensed oyster dredge vessel are exhausted. Additionally, the annual tag allotment attributable to a particular license must be used sequentially. These requirements are necessary to avoid the potential for a license holder who has consolidated multiple licenses to one designated harvest vessel to utilize random tags from one license allotment in conjunction with random tags from other licenses consolidated on the designated harvest vessel in the same day, which would make effective monitoring difficult.

Once a license has been consolidated to a designated harvest vessel, the proposed amendments provide that it may only be "unconsolidated" and then consolidated one more time during the term of the license. The Department is proposing to allow this second consolidation of a license to provide the licensee with the opportunity to manage any exigent circumstances that could arise. For example, if an oyster dredge vessel license holder consolidated licenses and the annual harvest quota from a licensed oyster dredge vessel to a designated harvest vessel and that designated harvest vessel experienced a mechanical problem that could not be immediately

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fixed, without the ability to consolidate the license to a different designated harvest vessel, the license holder would be unable to harvest the annual harvest quota of all of the vessels under the consolidated license, which could result in a significant loss to the license holder even if the consolidated vessels were in working order. The ability to “unconsolidate” the license and the un-harvested or remaining annual harvest quota of oysters back to the original vessel(s) and then consolidate that vessel’s license and annual harvest quota to another designated harvest vessel under the same ownership avoids such an unintended negative consequence. This allowance will help reduce the possibility of a license harvester losing a substantial portion of their income due to equipment failure when the harvester has other operational equipment available that could be utilized, while ensuring that such changes in designation of the designated harvest vessel are not commonplace and do not impact the Department’s ability to enforce quota limitations.

While the proposed amendments seek to accommodate harvesters by providing reasonable flexibility to allow a harvester to address unanticipated situations, such as the breakdown of the designated harvest vessel, as discussed above, the ability to unconsolidate a consolidated license and shift licenses to a different designated harvest vessel cannot result in a total oyster annual harvest quota on a single designated harvest vessel that is greater than the sum of six individual annual harvest quotas. Each licensed vessel has an annual harvest quota, and during the season as harvesters harvest oysters, the harvested quota is tracked so the Department can monitor the overall Total Allowable Catch. Because the Department allows the limited transfer of vessel licenses and quotas in and out of consolidated licenses, there is a possibility that a designated harvest vessel could harvest during the course of a season more than the sum of six individual annual harvest quotas of the vessels under the consolidated license. For example,

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the 100 percent owner of seven licensed harvest vessels in a season in which each license is allowed an annual harvest quota of 1,000 bushels of oysters could consolidate six of the licenses and quotas to one designated harvest vessel, allowing the designated harvest vessel to harvest a total of 6,000 bushels of oysters. If the owner harvested one-half of the first license's quota under the consolidated license, thus leaving five and a half annual harvest quotas to be harvested under the consolidated license and then attempted to de-consolidate the first partially harvested license and replace it with the license and full quota from the seventh vessel, the request to consolidate the license and quota of the seventh vessel would be denied as the designated harvest vessel under the originally consolidated license would end up harvesting six and a half annual harvest quotas. Conversely, any consolidation that would result in less than six annual harvest quotas being harvested by the designated harvest vessel would be allowed. This limitation ensures that the intent of the rule to limit the number of quotas that can be consolidated to one vessel is not circumvented.

To accommodate proposed new N.J.A.C. 7:25A-1.4(e), existing N.J.A.C. 7:25A-1.4(e) is proposed to be recodified as N.J.A.C. 7:25A-1.4(f) without amendment.

The Department is proposing to add several definitions at N.J.A.C. 7:25A-1.3 for terms used in the proposed new subsection. The Department is proposing a definition for the term "consolidated license." As explained above, a consolidated license is assigned to an oyster dredge vessel which is the "designated harvest vessel." This consolidated license incorporates the original license of the designated harvest vessel as well as up to five additional vessel licenses, including those licenses' annual harvest quotas and tag allotments, provided the requirements discussed above are satisfied. The consolidated license authorizes the designated

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harvest vessel to harvest the consolidated annual harvest quota. Vessels participating in the oyster dredge industry are licensed according to gross tonnage and the new vessel to which a license is transferred must not exceed the gross tonnage of the vessel to which the license was originally issued. The reason for this requirement is that owners may transfer, sell, and buy vessels including vessels that have been consolidated under one license. Prior to transferring a vessel that is under a consolidated license, the license of the vessel to be transferred must be “unconsolidated.” An owner then may transfer that vessel to another consolidated license. However, the process of consolidating or unconsolidating a license in no way affects or allows owners to subvert the transfer rules at N.J.A.C. 7:25A-1.5(a) which require transferred or substituted vessels be the same or less gross tonnage as the previously licensed vessel.

The Department is proposing a definition for the term “designated harvest vessel.” The proposed definition refers to the requirements specified in proposed N.J.A.C. 7:25A-1.4 that must be satisfied for a licensed oyster dredge vessel to qualify for this designation.

The Department is proposing a definition for the term “licensed oyster dredge vessel.” The term applies to a licensed vessel that is equipped to harvest oysters by means of a dredge or dredges from the State’s natural seed beds during a designated harvest season.

The Department is proposing a definition for the term “person.” “Person” is defined to include an individual, corporation, company, association, society including a nonprofit organization, firm, partnership, joint stock company, government entity, including the plural of any of these terms, and any other entities or organizations. Under the proposed consolidation amendments, all vessels must be wholly owned by the same “person” in order to be eligible for consolidation of the licenses and the licenses’ annual harvest quotas. The proposed definition

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makes it clear that “person” includes not just individuals, but also all other types of entities. The proposed definition is the same as the definition of the same term in the Department’s Division of Fish and Wildlife Rules at N.J.A.C. 7:25-10.4.

The definition of “validly licensed” is proposed for amendment to allow for the licensed vessel to be one that is not propelled under its own motive power but only if it is a vessel that is to be consolidated under one license and is expected to be retired from harvesting oysters. Otherwise, all licensed vessels must be fully operable. A corresponding amendment is proposed to N.J.A.C. 7:25A-1.5(j) to make clear that, where licenses have been consolidated to a designated harvest vessel, those vessels that are no longer being used for harvest are not required to continue to be capable of propulsion under their own motive power for their license to be renewed.

The last definition the Department is proposing is for the term “wholly owned.” The Department will only allow vessels that are entirely owned by the same person to be consolidated under one license. Many vessels are held under a variety of ownerships and co-ownerships. Requiring that the vessels whose licenses are to be consolidated be wholly owned by the same person will make it easier for the Department to control and keep track of the consolidating of licenses. N.J.A.C. 7:25A-1.5(c) addresses requirements applicable when a person replaces or transfers ownership of the person’s licensed oyster vessel. The rule currently provides that a notarized statement be filed indicating either that the vessel has been sold and will be replaced with another vessel within one year, or that the right to the license is being transferred with the vessel to the new owner. The Department is proposing to clarify the intent of N.J.A.C. 7:25A-1.5(c)2, which requires that a harvester who is selling a harvest vessel and the

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license associated with that vessel file a notarized statement indicating the intent to transfer the right to a license with the vessel to its new owner who must meet all statutory criteria for licensing. As licensees are required to meet both statutory requirements and the requirements contained in this chapter implementing the statutory provisions, this paragraph is proposed for amendment to make clear the requirement that licensees comply with all requirements of this chapter. The Department is additionally proposing to add a new N.J.A.C. 7:25A-1.5(c)3 which creates a third option for a person selling a vessel that recognizes that, with the proposal to allow consolidation of licenses, a vessel could be sold and not replaced if that vessel's license has or will be consolidated along with its harvest quota to a designated harvest vessel.

Finally, the Department proposes to amend N.J.A.C. 7:25A-1.5(f) to clarify what is required on oyster dredge vessel license renewal. This subsection specifies when licenses must be renewed and what must be provided as part of an application for renewal. The provision currently includes an exception for situations reflected in N.J.A.C. 7:25A-1.5(c)1 and (e): where the licensed vessel has been sold with the license retained, but the vessel has not yet been replaced at the time license renewal becomes necessary, and where the licensed vessel is lost, destroyed or disabled, and has not been replaced at the time license renewal becomes necessary. While renewals pursuant to N.J.A.C. 7:25A-1.5(c)1 and (e) are excepted from certain application requirements under subsection (f) since there is not a vessel for which proof of ownership can be provided, both paragraph (c)1 and subsection (e) make it clear that the license must be renewed on or before expiration (December 31). Accordingly, the exception specified in this subsection

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is moved to make clear that it only applies to application requirements and not the timing for license renewal.

Social Impact

The proposed amendments will have a positive social impact on participants in the oyster industry and the general public. The current oyster licensing and management program under N.J.A.C. 7:25A is designed to control harvest pressure on the State's natural oyster beds, establish procedures for licensing and replacing vessels, provide for the leasing of the bay ground above the south west line known as section E, and maintain a funding program for oyster resource enhancement activities. All of these activities provide a positive social benefit by assuring that the oyster industry continues to operate in a sustainable manner, providing employment opportunities, and supplying the market with oysters suitable for human consumption.

The proposed amendments will permit the Department to monitor and process the consolidation of licenses and their annual harvest quotas between licensed oyster dredge vessels, while assuring that consolidation will only occur in appropriate circumstances. This strategy permits license holders to consolidate their harvesting efforts onto a single vessel and eliminates the significant expense of maintaining multiple harvest vessels in an aging harvest fleet. By allowing consolidation and vessel owners to retire vessels that are costly to repair and that are often in extremely poor condition, New Jersey's oyster fleet will be much safer for crew members and owners. The amendment will ensure that workers have a safer work environment by alleviating the need for owners to maintain their entire fleet, and instead allowing them to

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concentrate on the designated harvest vessel, thereby allowing owners to operate vessels with modern equipment, potentially including refrigeration units.

The investment in maintaining vessels and adding refrigeration units is very important to the oyster industry. On a number of occasions since 2002, oysters harvested from the Delaware Bay have been linked as a causative agent to *Vibrio parahaemolyticus*-induced illnesses. *Vibrio parahaemolyticus* is a naturally occurring bacterium that is found in coastal waters. As a result of those illnesses, the New Jersey Department of Health was forced to declare an illness outbreak. Because of the declaration, the Department was required to immediately close the waters surrounding the implicated oyster beds as required by the National Shellfish Sanitation Program. The National Shellfish Sanitation Program is the Federal/State cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference for the sanitary control of shellfish produced and sold for human consumption.

Pursuant to the National Shellfish Sanitation Program, if a state has a shellfish growing area that was the source of oysters or hard clams that were epidemiologically linked to an outbreak of *Vibrio parahaemolyticus* within the prior five-year period, then the state must develop and implement a *Vibrio parahaemolyticus* Management Plan. The goal of the Management Plan is to reduce the probability of occurrence of *Vibrio parahaemolyticus* illness during periods that have been historically associated with annual illnesses. The Management Plan is to be implemented as part of a comprehensive program which includes all time and temperature requirements contained in the National Shellfish Sanitation Program's Model ordinance. Since the establishment of New Jersey's *Vibrio parahaemolyticus* Management Plan,

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the oyster harvesting industry has had to work under restricted hours of harvest to ensure that the oysters harvested and sold to the public are of a high quality and safe for consumption.

The consolidation of licenses and reduction in overall fleet maintenance costs would allow the industry to re-invest in the designated harvest vessels. Newer, safer vessels will be faster and more efficient, harvesting oysters in less time, and getting this perishable product back to the dock for landing, reducing the duration the oysters are exposed to higher temperatures and thereby inhibiting the growth of *Vibrio parahaemolyticus*. Furthermore, owners have reported that there is a cost savings in consolidating licenses that could allow the owners to invest in refrigeration or cooling systems that would allow harvesters to pre-chill product on the vessels prior to landing. Refrigeration or other cooling systems could significantly improve the safety and marketability of the Delaware Bay oyster, resulting in a positive social impact.

Economic Impact

The proposed amendments provide a procedure for the consolidation of licenses and those licenses' annual harvest quotas for owners who participate in the oyster fishery in the Delaware Bay. The proposed amendments provide an opportunity for harvesters who wholly own more than one vessel to reduce overall fleet maintenance costs. This cash savings can be converted into wages, equipment, debt maintenance, and operating capital. Under such conditions, harvesters would benefit economically by reducing overhead expenses, which will increase their ability to purchase and upgrade to more efficient and safer equipment.

The rules currently require harvesters to maintain, in operable condition, an oyster dredge vessel for each license. Only one annual harvest quota of oysters can be taken directly from the

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State's natural seed beds for market for each licensed vessel. The proposed amendments eliminate the need for those who wholly own more than one licensed oyster harvest vessel to maintain several vessels in order to harvest multiple quotas. The amendments will significantly reduce the burden on these harvesters to maintain each vessel that they own if they choose to pursue consolidation, by significantly reducing operating costs.

It is anticipated that the amendments will provide a positive economic impact to the oyster industry, and thereby the public, by allowing harvesters to maximize the long-term sustainable yield of oysters, improving the economic well-being of the industry and the communities supporting the industry, improving the work environment for the oyster crews, and providing the public with a high quality oyster, safe for consumption. Therefore, these amendments will have a positive economic impact on industry participants and the surrounding bayshore economies.

Environmental Impact

The proposed amendments are expected to have little to no environmental impact on the State's oyster resource in Delaware Bay. The proposed amendments contain several provisions designed to encourage prudent business practices. Consolidation will not impact oyster stocks, the viability of which will continue to be maintained as they are currently, but will provide benefits to those individuals in the oyster industry and the general public. The continued management of the oyster resource, including maintenance of healthy oyster reefs, provides ancillary benefits to the environment as the oyster reef areas continuously filter contaminants from the water and serve as habitat for numerous other species. These species include sponges,

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polychaetes, crustaceans, gastropods, echinoderms and fish such as striped bass, croakers, porgies, sea bass, tautog, flatfish, and others. The resource management rules currently in place will not be impacted by this amendment and will continue to protect the State's oyster resource from over-harvest.

Federal Standards Statement

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

Jobs Impact

The Department has evaluated this rulemaking to determine the impact of the proposed amendments on jobs. The proposed amendments are designed to provide more flexibility to harvesters who wholly own multiple licensed oyster harvest vessels. Overall, the total number of vessels in the fleet is expected to decline as a result of the proposed amendments. However, despite the potential reduction in the number of vessels, it is anticipated that jobs associated with the harvest industry will remain stable. This is because an owner harvests one vessel's quota with a single harvest crew at a time. Typically, the owner harvests oysters across a segment of

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the season during which the opportunity to sell and market the owner's product will yield the highest dockside price possible. In general, this single harvest crew works on a vessel, harvests the entire quota for that vessel, and then transfers to work on the next licensed vessel. Under the proposed amendments, the Department anticipates that that same crew might work on one newer, more modern vessel throughout the season harvesting the same total annual harvest quota. The Department does not anticipate any loss of oyster industry jobs due to the proposed amendments.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendment on the agriculture industry. Oyster "cultivation" or aquaculture is a form of agriculture in New Jersey and is established pursuant to N.J.S.A. 4:27-6. In Delaware Bay, oyster cultivation typically occurs when small oysters are harvested from the managed beds and are transplanted to lease parcels for grow-out to market. No changes are proposed to Subchapter 3, Oyster Transplant Season, which continues to provide the framework for the harvest of oysters from the State's natural seed beds for transplanting directly to the leased grounds in the lower Delaware Bay. Because the proposed amendments only codify the methods by which license holders will be permitted to consolidate licenses, with no changes to the rules governing the oyster transplant season, the proposed amendments will have no impact upon the agriculture or aquaculture industry.

Regulatory Flexibility Analysis

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In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed amendments for reporting, recordkeeping, or other compliance requirements on small businesses. Although most oyster harvesters are “small businesses” as defined by the Regulatory Flexibility Act, the paperwork involved in obtaining a consolidated oyster dredge license is limited to demonstrating that the vessels whose licenses are proposed to be consolidated are in single ownership. Consolidation is not required by the proposed amendments, but is an option that may be requested at the discretion of a harvester who wholly owns more than one licensed vessel. Accordingly, the proposed amendments do not impose any mandatory reporting, recordkeeping, or other compliance requirements. If an owner chooses to request consolidation, the information required is the minimum necessary for the Department to ensure that the owner qualifies under the rules, and it is the same information that the owner must submit to obtain a license under N.J.A.C. 7:25A-1.5(k). Small businesses that may seek consolidation of their licenses will not need to retain professional services or to incur other costs to provide the required information. In developing these amendments, the Department balanced the need for the information required against any impact on small businesses and determined that no exception from the application requirements is necessary or appropriate.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the proposed amendments to determine what, if any, impact the amendments will have on the affordability of housing. The proposed amendments to the oysters rules at N.J.A.C. 7:25A do not implicate land

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use policies or development and, therefore, do not have any impact on the average cost of housing.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine the impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). As indicated above, the proposed amendments eliminate the need for those participating in the oyster dredge fishery who wholly own more than one licensed oyster harvest vessel to maintain several vessels in order to harvest multiple quotas, thus significantly reducing the burden on these harvesters to maintain each vessel that they own. The amendments do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

7:25A-1.3 Definitions

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

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...

“Consolidated license” means an oyster dredge vessel license that combines up to six oyster dredge vessel licenses originally held in accordance with N.J.S.A. 50:3-1 and the licenses’ quotas. The consolidated license is issued to a designated harvest vessel in accordance with N.J.A.C. 7:25A-1.4.

...

“Designated harvest vessel” means a licensed oyster dredge vessel that has been designated by the owner in accordance with N.J.A.C. 7:25A-1.4 to harvest the annual harvest quota for that vessel as well as the annual harvest quota of up to five of the owner’s other licensed oyster dredge vessels (for a maximum harvest of the quota attributable to up to six oyster dredge vessel licenses).

...

“Licensed oyster dredge vessel” means a vessel licensed pursuant to this chapter and N.J.S.A. 50:3-1, equipped to harvest oysters by means of a dredge or dredges.

...

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"Person" shall include, but is not limited to, corporations, companies, associations, societies including nonprofit organizations, firms, partnerships, joint stock companies, individuals, and governmental entities.

...

["Validly licensed" means those vessels:

1. Which are operable, that is, entirely capable of the commercial dredging harvest of oysters under their own motive power at the time of license application or renewal unless exempted from this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation; and
2. Which have been licensed and operated as required by the provisions of this chapter.]

"Validly licensed" means a vessel which has been licensed and operated as required by the provisions of this chapter and either:

- 1. Is operable, that is, entirely capable of the commercial dredging harvest of oysters under its own motive power at the time of license application or renewal unless exempted from this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation; or**
- 2. Is a vessel from which the license has been consolidated to a designated harvest vessel under a consolidated license.**

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“Wholly owned” means a licensed oyster dredge vessel legally documented by either the U.S. Coast Guard (if five net tons or over) or the New Jersey Motor Vehicle Commission (if under five net tons) as being solely owned by one person who has legal title or right to said vessel.

7:25A-1.4 Licenses; residence of vessel owners; tonnage determination; **consolidation of licenses and annual harvest quotas**; license fees

(a) - (d) (No change.)

(e) A person who wholly owns more than one licensed oyster dredge vessel may consolidate up to six licenses and the remaining amount of each vessel’s assigned annual harvest quota to a single designated harvest vessel and obtain a consolidated license, provided the following conditions are met:

1. All licensed oyster dredge vessels proposed for consolidation under a single license, including the designated harvest vessel, are wholly owned by that person.

2. The person seeking to consolidate licenses shall file with the Department a notarized Statement of Intent indicating that the person wishes to consolidate the license(s) and the entire unharvested amount of the annual harvest quota for a maximum of six

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licensed oyster dredge vessels to a designated harvest vessel. The license of the designated harvest vessel shall be included as one of the maximum of six licenses that may be consolidated. The Statement of Intent shall identify the vessel or vessels from which the annual harvest quota(s) is requested to be consolidated as well as the designated harvest vessel to receive the annual harvest quota(s) and the amount of the annual harvest quota(s) to be transferred from each vessel to the designated harvest vessel. A new notarized Statement of Intent is not required to be filed with an application to renew a consolidated license if there is no change in the licenses to be consolidated.

3. Upon issuance by the Department of a consolidated license approving the consolidation of licenses and annual harvest quotas, with associated annual tags, of multiple vessels to a designated harvest vessel, the license holder of the consolidated license shall harvest the annual tag allotment assigned to each licensed oyster dredge vessel one allotment at a time. Only upon exhaustion of one vessel's tag allotment may the license holder of the consolidated license begin to harvest the annual tag allotment of another licensed oyster dredge vessel included under the consolidated license. The tags for each allotment shall be used sequentially in the order issued for the specific oyster harvest license.

4. Once a license and annual harvest quota have been consolidated on a designated harvest vessel in accordance with (e)1 through 3 above, that license and any remaining annual harvest quota attributable to that license may be consolidated on to a

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different designated harvest vessel only one time during the term of the license. A person who wishes to consolidate a license and the associated annual harvest quota from the original designated harvest vessel to a different designated harvest vessel shall provide the documentation and information specified in (e)2 above, for the vessels involved in the requested consolidation. The second transfer shall comply with all requirements specified in this subsection.

5. Notwithstanding the limitation on transfer of a consolidated license to a different designated harvest vessel specified in (e)4 above, a consolidated license may be unconsolidated for the purpose of transferring ownership of a vessel and license in accordance with N.J.A.C. 7:25A-1.5(c)2.

6. A consolidated license shall not be issued if it would result in an annual harvest quota to a single designated harvest vessel greater than that allowed under six individual annual harvest quotas.

[(e)] (f) (No change in text.)

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

(a) - (b) (No change.)

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

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

2. File a notarized Statement of Intent with the Department indicating that [he or she] **the person** will waive all rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the vessel to its new owner who shall meet all statutory **and regulatory** criteria for licensing. If transfer of the licensed vessel is to occur after the expiration date of the current license, the license holder shall renew the license prior to expiration and pay the annual license fee specified in N.J.A.C. 7:25A-1.4[(e)](f) to retain the right to the licensed vessel to be transferred[.]; **or**

3. **File a notarized Statement of Intent with the Department indicating that the person wishes to consolidate up to five additional licenses and all or the remaining amount of annual harvest quotas of licensed oyster dredge vessels to a designated harvest vessel in accordance with N.J.A.C. 7:25A-1.4. The Statement of Intent shall include all information specified at N.J.A.C. 7:25A-1.4(e)2.**

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(d) – (e) (No change.)

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

(g) – (i) (No change.)

(j) Only vessels propelled under their own motive power are eligible for license renewal, **except for vessels for which the license has been consolidated on to a designated harvest vessel pursuant to N.J.A.C. 7:25A-1.4.**

(k) (No change.)