

CHAPTER 12

SHELLFISH GROWING WATER CLASSIFICATION

Authority

N.J.S.A. 13:1D-9 and 58:24-1 et seq.

Source and Effective Date

R.2003 d.242, effective May 22, 2003.
See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

Chapter Expiration Date

Chapter 12, Shellfish Growing Water Classification, expires on May 22, 2008.

Chapter Historical Note

Rules concerning shellfish growing water classification were originally codified as N.J.A.C. 7:25-7.1 and were filed and became effective on February 10, 1972 as R.1972 d.29. See 4 N.J.R. 4(b), 4 N.J.R. 45(b). Subsequent revisions to these rules were filed and became effective October 13, 1972 as R.1972 d.203. See: 4 N.J.R. 265(b).

1974 Revisions: On February 20, 1974 the original rules were repealed and replaced by R.1974 d.44, which was codified as N.J.A.C. 7:12 on June 30, 1974. See: 5 N.J.R. 80(a), 6 N.J.R. 103(b). R.1974 d.44 was repealed and replaced by R.1974 d.99 on April 23, 1974. See: 6 N.J.R. 101(a), 6 N.J.R. 175(b). Subsequent amendments were filed and became effective December 6, 1974 as R.1974 d.336. See 7 N.J.R. 6(b).

1975 Revisions: Amendments became effective January 27, 1975 as R.1975 d.18. See 7 N.J.R. 102(a). Further amendments became effective February 10, 1975 as R.1975 d.27, see 7 N.J.R. 102(c); and March 7, 1975 as R.1975 d.51, see 7 N.J.R. 152(a). On May 1, 1975, R.1975 d.116 repealed and replaced Chapter 12 with new rules. See: 7 N.J.R. 149(a), 7 N.J.R. 260(a). Amendments to the new rules were filed and became effective November 14, 1975 as R.1975 d.341. See 7 N.J.R. 463(a), 7 N.J.R. 547(b).

1976 Revisions: Amendments became effective February 18, 1976 as R.1976 d.54, see 8 N.J.R. 10(c), 8 N.J.R. 108(a); and November 23, 1976 as R.1976 d.372, see 8 N.J.R. 548(b).

1977 Revisions: Amendments became effective March 8, 1977 as R.1977 d.73; see 9 N.J.R. 69(b), 9 N.J.R. 169(a); and March 8, 1977 as R.1977 d.74, see 9 N.J.R. 71(a), 9 N.J.R. 169(b).

1978 Revisions: Amendments became effective February 24, 1978 as R.1978 d.69, see 10 N.J.R. 144(a). On June 30, 1978 the entire text of Chapter 12 was replaced by new rules adopted as R.1978 d.219. See: 10 N.J.R. 328(a). Further amendments became effective September 5, 1978 as R.1978 d.299. See: 10 N.J.R. 422(a); and September 16, 1987 as R.1987 d.327. See: 10 N.J.R. 425(b).

1979 Revisions: Amendments became effective May 9, 1979 as R.1979 d.184. See: 11 N.J.R. 170(b), 11 N.J.R. 276(a).

1980 Revisions: Amendments became effective January 9, 1980 as R.1980 d.12. See: 12 N.J.R. 71(c). Further amendments became effective January 29, 1980 as R.1980 d.48. See: 12 N.J.R. 112(b); and May 23, 1980 as R.1980 d.230. See: 12 N.J.R. 179(b), 12 N.J.R. 391(a).

1981 Revisions: Amendments became effective June 4, 1981 as R.1981 d.190. See: 13 N.J.R. 191(b), 13 N.J.R. 339(b). Further amendments became effective November 2, 1981 as R.1981 d.431. See: 13 N.J.R. 566(a), 13 N.J.R. 755(b).

1982 Revisions: Amendments became effective June 21, 1982 as R.1982 d.182. See: 14 N.J.R. 310(a), 14 N.J.R. 655(a).

1983 Revisions: Chapter 12 was readopted effective June 20, 1983 as R.1983 d.249. See: 15 N.J.R. 595(a), 15 N.J.R. 1020(a).

1984 Revisions: Amendments became effective February 21, 1984 as R.1984 d.42. See: 15 N.J.R. 2103(a), 16 N.J.R. 365(b). Further amendments became effective March 30, 1984 as R.1984 d.134, see: 16 N.J.R. 929(a); and May 7, 1984 as R.1984 d.199, see: 16 N.J.R. 558(a), 16 N.J.R. 1199(a). Section 1.7 expired on May 29, 1984. See: 19 N.J.R. 888(a). Further amendments became effective June 18, 1984 as R.1984 d.233. See: 16 N.J.R. 786(a), 16 N.J.R. 1495(b).

1985 Revisions: Amendments became effective February 19, 1985 as R.1985 d.64. See: 16 N.J.R. 3112(a), 16 N.J.R. 3379(a), 17 N.J.R. 433(a). Further amendments became effective June 3, 1985 as R.1985 d.290, see: 17 N.J.R. 661(a), 17 N.J.R. 1412(a); and December 16, 1985 as R.1985 d.634, see: 17 N.J.R. 2185(a), 17 N.J.R. 2971(a).

1987 Revisions: Chapter 12 was substantially amended and recodified effective November 16, 1987 as R.1987 d.488. See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

1988 Revisions: Chapter 12 was readopted pursuant to Executive Order No. 66(1978) effective April 11, 1988 with amendments effective May 2, 1988 as R.1988 d.206. See: 20 N.J.R. 450(a), 20 N.J.R. 980(b).

Pursuant to Executive Order No. 66(1978), Chapter 12, Shellfish Growing Water Classification, was readopted as R.1992 d.508, effective November 24, 1992. See: 24 N.J.R. 3657(a), 24 N.J.R. 4518(b).

Pursuant to Executive Order No. 66(1978), Chapter 12, Shellfish Growing Water Classification, was readopted as R.1998 d.2, effective November 24, 1997. See: 29 N.J.R. 4223(a), 30 N.J.R. 224(a).

Chapter 12, Shellfish Growing Water Classification, was readopted as R.2003 d.242, effective May 22, 2003. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. CLASSIFICATION OF CERTAIN SHELLFISH WATERS

- 7:12-1.1 General provisions
- 7:12-1.2 Definitions
- 7:12-1.3 Scope
- 7:12-1.4 Classification of shellfish waters
- 7:12-1.5 Emergency harvest suspension

SUBCHAPTER 2. SHELLFISH GROWING WATER CLASSIFICATION—PROHIBITED

- 7:12-2.1 Shellfish growing water classification—Prohibited
- 7:12-2.2 Use of shellfish grown in waters classified as Prohibited for human consumption

SUBCHAPTER 3. SHELLFISH GROWING WATER CLASSIFICATION—SPECIAL RESTRICTED

- 7:12-3.1 Use of shellfish grown in waters classified as Special Restricted for human consumption
- 7:12-3.2 Shellfish growing waters that are classified as Special Restricted

SUBCHAPTER 4. SEASONALLY APPROVED SHELLFISH GROWING WATERS

- 7:12-4.1 Seasonally Approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

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

SUBCHAPTER 5. SEASONAL SPECIAL RESTRICTED SHELLFISH GROWING WATERS

7:12-5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, Prohibited Area: October 1 through April 30 yearly)

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. SANCTUARIES

7:12-7.1 Sanctuaries

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. SPECIAL PERMIT

- 7:12-9.1 General provisions; all programs
- 7:12-9.2 General provisions; hard and soft clam depuration only
- 7:12-9.3 Applications
- 7:12-9.4 Bait program; sea clams
- 7:12-9.5 Bait program; soft clams and/or hard clams
- 7:12-9.6 Depletion program
- 7:12-9.7 Soft clam and hard clam depuration programs
- 7:12-9.8 Relay program
- 7:12-9.9 Transfer program
- 7:12-9.10 Transplant program
- 7:12-9.11 Possession and/or plant program; bait store
- 7:12-9.12 Possession and/or processing plant program; seed oysters
- 7:12-9.13 Scientific Collection and Non-Human Consumption Program
- 7:12-9.14 through 7:12-9.15 (Reserved)

SUBCHAPTER 1. CLASSIFICATION OF CERTAIN SHELLFISH WATERS

7:12-1.1 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.

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

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

(e) 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.

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

(g) No person shall obstruct or interfere with any officer or employee of the State while such officer or employee is engaged in the performance of duties related to shellfish sanitation.

(h) Special shellfish buoys, signs, and markers showing areas other than Approved are considered to be under the control of the State as provided by RS 12:4-2 and any person who removes or destroys these buoys, signs and/or markers shall be liable to a penalty of \$60.00; or any person who damages or removes any shellfish sign, buoy, or marker showing a shellfish area classified other than Approved may be prosecuted for criminal mischief, N.J.S.A. 2C:17-3. These signs, markers and buoys are provided as a means of public information only.

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Monitoring Offices, Marine Police Stations and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. 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 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.

Amended by R.1984 d.42, effective February 21, 1984.

See: 15 N.J.R. 2103(a), 16 N.J.R. 365(b).

"Seasonal Special Restricted Areas" defined.

Amended by R.1986 d.234, effective June 16, 1986.

See: 18 N.J.R. 784(a), 18 N.J.R. 1275(a).

Added definitions "Department", "sanctuary", "spawner area" and "special permit programs".

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

Substantially amended.

Amended by R.1988 d.206, effective May 2, 1988.

See: 20 N.J.R. 450(a), 20 N.J.R. 980(b).

Cross reference in Seasonal Special Restricted Areas changed to section 5 from section 6.

Amended by R.1990 d.548, effective November 19, 1990.

See: 22 N.J.R. 97(a), 22 N.J.R. 3508(a).

Added definitions for Bureau, depuration plant, depuration process, designated enforcement unit, Division, hard clams, harvester allocation tag, Interstate Shellfish Sanitation Conference, monitoring system, Shellfish Resource Recovery Steering Committee, and soft clams; amended definitions for depuration, marina, prohibited areas, seasonal restricted area, and shellfish.

Amended by R.1992 d.508, effective December 21, 1992 (operative January 1, 1993).

See: 24 N.J.R. 3657(a), 24 N.J.R. 4518(b).

Amended definition of "Shellfish".

Amended by R.1994 d.201, effective April 18, 1994.

See: 26 N.J.R. 789(a), 26 N.J.R. 1632(a).

Amended by R.1995 d.81, effective February 6, 1995.

See: 26 N.J.R. 4475(b), 27 N.J.R. 484(a).

Amended by R.1998 d.2, effective January 5, 1998.

See: 29 N.J.R. 4223(a), 30 N.J.R. 224(a).

Amended "Bureau".

Amended by R.2000 d.57, effective February 7, 2000.

See: 31 N.J.R. 3885(a), 32 N.J.R. 595(a).

In "Designated enforcement unit(s)", substituted a reference to the Bureau of Law Enforcement for a reference to the Marine Enforcement Unit, and substituted a reference to the Bureau of Marine Water Monitoring in the Division of Watershed Management for a reference to the Bureau of Marine Water Classification and Analysis in the Division of Water Resources; in "Division", substituted a reference to the Division of Watershed Management for a reference to the Division of Science and Research; and in "Interstate Shellfish Sanitation Conference", inserted a new second sentence.

Amended by R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

In "Marina", inserted "and/or "mooring facility" " preceding "means any structure".

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

In "Depuration plant", substituted "shellfish" for "clams" throughout; in "Designated enforcement unit(s)", deleted ", Game" following "Fish"; deleted "Division"; in "Harvester allocation tag", inserted "and Senior Services" following "Health".

7:12-1.3 Scope

This chapter describes the procedures for the establishment of areas of restricted shellfish harvest. These procedures include classification of shellfish waters, establishment of Prohibited areas in the vicinity of wastewater treatment facility discharge points, establishment of restricted harvest areas in the vicinity of marina or boat mooring facilities, creation of restricted harvest areas affected by non-point sources of contamination, and establishment of emergency closures or harvest suspensions due to unpermitted discharges or the presence of marine biotoxins or naturally occurring harmful algal blooms.

As amended, R.1978 d.327, eff. September 16, 1978.

See: 10 N.J.R. 425(b).

As amended, R.1979 d.184, eff. May 9, 1979.

See: 11 N.J.R. 170(b), 11 N.J.R. 276(a).

As amended, R.1980 d.12, eff. January 9, 1980.

See: 12 N.J.R. 71(c).

As amended, R.1980 d.48, eff. January 29, 1980.

See: 12 N.J.R. 112(b).

As amended, R.1980 d.230, eff. May 23, 1980.

See: 12 N.J.R. 179(b), 12 N.J.R. 391(a).

As amended, R.1981 d.190, eff. June 4, 1981.

See: 13 N.J.R. 191(b), 13 N.J.R. 339(b).

As amended, R.1981 d.431, eff. November 2, 1981.

See: 13 N.J.R. 566(a), 13 N.J.R. 755(b).

As amended, R.1982 d.182, eff. June 21, 1982.

See: 14 N.J.R. 310(a), 14 N.J.R. 655(a).

As amended, R.1983 d.249, eff. June 20, 1983.

See: 15 N.J.R. 595(a), 15 N.J.R. 1020(a).

Substantially amended.

As amended, R.1984 d.42, eff. February 21, 1984.

See: 15 N.J.R. 2103(a), 16 N.J.R. 365(b).

(a)3iii: Special Restricted Area delineated.

(a)3vi: deleted.

As amended, R.1984 d.233, eff. June 18, 1984.

See: 16 N.J.R. 786(a), 16 N.J.R. 1495(b).

(a): Approved Area Charts changed to Shellfish Growing Water Classification Charts; Editions updated.

(a)4ii added; 24i, 31vii, and 32vii revised, 37iii revised, xii and xiii added; 39iii revised.

Amended by R.1985 d.64, eff. February 19, 1985.

See: 16 N.J.R. 3112(a), 16 N.J.R. 3379(a), 17 N.J.R. 433(a).

(a)i-iii: amended;

(a)27vi: added; (a)40: deleted.

Amended by R.1985 d.290, effective June 3, 1985.

See: 17 N.J.R. 661(a), 17 N.J.R. 1412(a).

Substantially amended.

Amended by R.1986 d.234, effective June 16, 1986.

See: 18 N.J.R. 784(a), 18 N.J.R. 1275(a).

Substantially amended.

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

This section was "Growing water condemnations".

New Rule, R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

Inserted "or naturally occurring harmful algal blooms" following "biotoxins".

7:12-1.4 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, 1999, 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/issc in co-operation with the US Food and Drug Administration. Shellfish waters may be classified as Approved, Seasonally Approved, Special Restricted, Seasonal Special Restricted or Prohibited. Classification of shellfish waters shall be determined based on the following factors:

1. The ambient bacteriological water quality, for example, total coliform bacteria;

2. Hydrological characteristics of the area to be classified, for example, rainfall, freshwater input, tidal exchange, flow pattern;

3. Shoreline survey and assessment, for example, location of pollution sources such as permitted point sources, non-point sources, marinas, docks and other recreational areas, agricultural areas, and/or areas of wildlife usage, characteristics of various pollution sources, and land-use patterns;

4. Any site-specific factors related to (a)1 through 3 above; and

5. All growing areas which are not subjected to a sanitary survey every 12 years shall be classified as prohibited.

(b) The Department shall establish areas classified as Prohibited for the harvest of shellfish in waters surrounding wastewater treatment facility discharges. The extent of the Prohibited area shall be based on the following factors:

1. Pollution conditions, such as flow rate, sewage treatment facility performance;

2. Dispersion, dilution, and/or time of travel of the pollutant, for example, currents, volume of water, direction of travel, stratification, location of the discharge, tidal characteristics, and morphology of the receiving water area.

3. Bacteriological decay rate;

4. Adjacent harvest use classification and location of the shellfish resource;

5. Identifiable landmarks for boundaries; and

6. Any site-specific factors related to (b)1 through 5 above.

(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 Restricted or Seasonally Approved. The extent of the restricted area shall be based upon the following:

1. The number of slips or mooring facilities;

2. The size of vessels that may be accommodated with the potential for overboard discharge at the slips or mooring facilities;

3. The water depth in the vicinity of the marina or mooring facility;

4. The hydrodynamics of the receiving water in the vicinity of the marina or mooring facility;

5. The estimated bacterial load potentially discharged to the water from the marina or mooring facility;

6. Seasonal activity at the marina or mooring facility; and

7. Any site-specific factors related to (c)1 through 6 above.

(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 Restricted or Seasonally Approved. Factors to be considered by the Department in establishing the restrictions include the following:

1. The source or potential source of the pollutant;

2. The amount or potential amount discharged from the source;

3. Hydrodynamics in the vicinity of the source or probable source;

4. Seasonal population changes; and

5. Any site-specific factors related to (d)1 through 4 above.

New Rule, R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

In (a), substituted "shellfish" for "saline" and amended the website in the introductory paragraph, and added 5.

7:12-1.5 Emergency harvest suspension

(a) The Department shall suspend harvest in areas impacted by an intermittent pollution episode or emergency condition when the event has or may have a deleterious impact on public health. Examples of such events include the following: wastewater facility malfunctions, sewer line breaks, malfunctioning septic systems, catastrophic storm events, or other hazardous material spills. The Department shall consider the following factors in determining the necessity, area extent, and length of such an emergency suspension:

1. The type and quantity of the material spilled or discharged;

2. The location of the spill or discharge or naturally occurring harmful algal blooms;

3. The duration of the spill or discharge or naturally occurring harmful algal blooms;

4. The proximity to shellfish beds of the spill or discharge;

5. The hydrographic characteristics of the waterway; and

6. Any site-specific factors related to (a)1 through 5 above.

(b) The Department shall immediately notify representatives of agencies or organizations affected by an emergency suspension by fax or email. Notice of harvest suspension shall be posted in areas where those harvesting shellfish would be likely to enter the water. The following agencies shall be notified:

1. State enforcement agencies, including the NJDEP Water Compliance and Enforcement Program and the New Jersey State Marine Police in the area in which the suspension 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 occurred;

3. The U.S. Food and Drug Administration (USFDA);

4. The U.S. Environmental Protection Agency (USEPA); and

5. Members of the Atlantic Coast Shellfish Council and/or the Delaware Bay Shellfish Council.

(c) The Department shall develop a marine biotoxin contingency plan to routinely sample shellfish growing water for marine organisms. The Department shall expand the sampling and analysis of shellfish waters and/or shellfish tissue in the event that phytoplankton that produce various marine biotoxins or naturally occurring harmful algal blooms are identified in a harvest area. The Department shall immediately suspend shellfish harvest in the event that it is determined that the level of biotoxin present in shellfish meats or the level of naturally occurring harmful algal blooms in the waters of the harvest area is sufficient to cause a health risk.

1. The factors considered in determining the necessity, extent, and length of such an emergency suspension shall include:

i. The concentration of naturally occurring harmful algal or biotoxin producing phytoplankton and/or biotoxin levels present;

ii. The location of phytoplankton;

iii. The proximity to shellfish beds of the phytoplankton or biotoxin levels;

iv. The hydrographic characteristics of the waterway;

v. Meteorological conditions; and

vi. Any site-specific factors related to (c)1i through v above.

2. The Department shall immediately notify representatives of agencies or organizations affected by such an emergency suspension by fax or email. Notice of harvest suspension shall be posted in areas where those harvesting shellfish would be likely to enter the water. The following agencies or organizations shall be notified:

i. State enforcement agencies including the NJDEP Water Compliance and Enforcement Program and the New Jersey State Marine Police in the area in which the suspension occurred;

ii. The shellfish program in the State Department of Health and Senior Services and the health agencies in the county in which the suspension occurred;

iii. The USFDA;

iv. The USEPA; and

v. Members of the Atlantic Coast Shellfish Council and/or the Delaware Bay Shellfish Council.

New Rule, R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

In (a), inserted "or naturally occurring harmful algal blooms" in 2 and 3; in (b), rewrote 2; in (c), rewrote the introductory paragraph, inserted "naturally occurring harmful algal or" preceding "biotoxin" in 1i, and rewrote 2ii.

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. General areas as follows:

i. All lagoons dredged for the purpose of access to property and/or the dockage of boats; and

ii. All marinas, anchorages or other places where docking or mooring facilities are provided for boats.

2. Northern New Jersey area: All the waters lying west and north of Raritan Bay, including the Raritan River, Arthur Kill, Kill Van Kull, Newark Bay, Passaic River, Hackensack River, Upper Bay, Hudson River and tributaries thereof.

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 Bay, Raritan River and Arthur Kill (and tributaries) lying south and west of the New Jersey/New York boundary and lying west of a line beginning on the northernmost point of land on Conaskonk Point, Union Beach, New Jersey (latitude 40 degrees 27 minutes 31.99 seconds N., longitude 74 degrees 10 minutes 44.50 seconds W.), and bearing approximately 261 degrees T to a point of land at latitude 40 degrees 27 minutes 12 seconds N., latitude 74 degrees 13 minutes 27.98 seconds W., until it intersects a line at latitude 40 degrees 27 minutes 24.78 seconds N., longitude 74 degrees 11 minutes 43.86 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., where this line terminates;

ii. All those waters of Raritan Bay and its tributaries lying south of a line beginning on the northernmost point of land on Conaskonk Point (Union Beach) and bearing approximately 092 degrees T to the northernmost point of land on Point Comfort (Keansburg) where this line terminates;

iii. All waters of Pews Creek and tributaries thereof;

iv. All waters of Compton Creek and tributaries thereof;

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 below);

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, 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; and

vii. All waters west of the Highway 35 Bridge (Cooper's Bridge) in Red Bank, including all of Swimming River, Shadow Lake and tributaries.

4. Sea Girt area: All of Wreck Pond and tributaries thereof.

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.

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;

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 just west of the westernmost extent of Boat Point Drive in Point Pleasant and bearing approximately 174 degrees T to navigation marker Flashing Green light "3" (FL G "3") and then bearing approximately 210 degrees T to the easternmost point of land on Wardells Neck east of the easternmost extent of North Drive in Brick Township; and

iii. All those waters of the Metedeconk River and its tributaries west of a line beginning on the southeasternmost point of land of Wardells Neck east of the easternmost extent of South Drive in Brick Township 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.

7. Toms River area: All those waters of Toms River and tributaries west from a straight line beginning at the northeastern junction of Dillon Creek with the Toms River that has the coordinates of latitude 39 degrees 56 minutes 33.8 seconds North and longitude 74 degrees 7 minutes 59.2 seconds West and bearing approximately 167 degrees T to the northern terminus of Anglesea Road at Toms River that has the coordinates of latitude 39 degrees 55 minutes 43.1 seconds North and longitude 74 degrees 7 minutes 44.4 seconds West.

8. Brigantine area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

30. The Wildwoods area:

i. Those waters of Grassy Sound Channel from the Ocean Drive Bridge (Route 619) North Wildwood, southwest to a line bearing approximately 062 degrees T through Fl R 4s "442";

ii. All of Sunset Lake south of a line beginning at a Department maintained marker at the end of Aster Street, Wildwood Crest and bearing approximately 290 degrees T to a Department maintained marker on the south end of Ephraims Island then bearing approximately 240 degrees T to a Department maintained marker at Shaw Island then along the shoreline in a westerly direction to a Department maintained marker then bearing approximately 273 degrees T across Shaw Cutoff to a Department maintained marker at the north side of the mouth of Stingaree Creek then across the mouth of Stingaree Creek to a Department maintained marker on the other side of Stingaree Creek then continuing in a westerly direction along the shoreline of Swain Channel and including Swain Channel to a Department maintained marker at the junction of Taylor Sound and Swain Channel. All that portion of Taylor Sound beginning at a Department maintained marker at the junction of Swain Channel and Taylor Sound 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 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 at the junction of the ICW and Sunset Lake then following the shoreline around back to a Department maintained marker at the point of origin and terminating.

iii. All of the waters from the south portion of Jarvis Sound from a point north of the mouth of Upper Thorofare at latitude 38 degrees 58 minutes 12.4 sec-

onds N, longitude 74 degrees 52 minutes 39.1 seconds W, bearing approximately 222 degrees T across to a Department maintained marker on the south side of the mouth of Upper Thorofare then continuing along the shoreline in an easterly direction to a Department maintained marker on the west side of the mouth of Middle Thorofare bearing approximately 125 degrees T across the mouth of Middle Thorofare to a Department maintained marker on the other side then again continuing east to a Department maintained marker on the west side of the mouth of Lower Thorofare and bearing approximately 084 degrees T across the mouth of Lower Thorofare to a Department maintained marker on the other side then continuing along the shoreline in a northerly direction to point at latitude 38 degrees 57 minutes 38.4 seconds N, longitude 74 degrees 51 minutes 56.6 seconds W, then bearing approximately 316 degrees T back to the point of origin and terminating.

31. Cape May area: All of Cape May Inlet and Cape May Harbor inside a line beginning at Flashing Light 7M (Fl 4 sec. 30 ft. 7M) Fl R 4s 30 ft. 6M "4" at the outermost end of east jetty at Cape May Inlet, along the jetty and shoreline until it intersects a line connecting the 641 ft. Loran Tower on the north side of the inlet and range light Q 22 ft. marking the entrance channel through Cape May Inlet, then along the shoreline in a westerly direction and across Skunk Sound to a line connecting flashing red light (Fl R 4 sec.) marking the entrance to Cape May Canal and the radio tower at the U.S.C.G. Receiving Station, along that line to the shoreline along the shoreline to a line beginning at the tank on the U.S.C.G. Training Center and bearing approximately 331 degrees T to buoy G "9" PA then along a line connecting buoy G "9" PA with flashing green light 5 (Fl G 4 sec. "5") then to the shore bearing approximately 157 degrees T, then along the shoreline to the light (Fl G 4 sec. 20 ft. 5m "5") at the end of the jetty then across the inlet to the Flashing light "4" (Fl R 4 sec. 30 ft. 6M "4") and terminating.

32. Delaware Bay area (Note: A portion is also designated as Seasonal. 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) All of the water upstream of a line beginning at the East Point Lighthouse and bearing approximately 226 degrees T to Flashing Green 2.5 second "5" (Fl G 2.5 sec "5") in the Maurice River Approach Channel then bearing approximately 323 degrees T to a Department maintained marker on the western bank of the Maurice River Cove and terminating;

(2) A line from the end of Berry Avenue (Shell-pile) and bearing approximately 214 degrees T across the River to a Department maintained marker; and

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

iii. Oranoaken Creek (Note: A portion is also designated as Seasonal. 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. The Glades: All the water known as The Glades north from their confluence with Weir Creek, including that portion of Oranoaken Creek north from Weir Creek;

v. Straight Creek: All of Straight Creek;

vi. Nantuxent Cove area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

(1) All of Nantuxent Creek upstream from a straight line across the creek beginning at the confluence of the next large tributary (unnamed) on the south side of Nantuxent Creek downstream from Hay Cut Creek and bearing approximately 300 degrees T;

(2) All of Cedar Creek upstream from a straight line across the creek beginning at the confluence of the first tributary on the north side of Cedar Creek upstream from the mouth of Cedar Creek and bearing 153 degrees T; and

(3) All of Beach Creek.

vii. Fortescue Creek: All of Fortescue Creek;

viii. Beadons Creek: All of Beadons Creek;

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.

33. Delaware River area:

i. All of the New Jersey portion of the Delaware River and its tributaries thereof and the New Jersey section of Delaware Bay and its tributaries between the two lines described herein:

(1) A straight line beginning at the tower just northwest of the mouth of Mad Horse Creek bearing approximately 173 degrees T to a tower on Bombay Hook Point, Delaware, this line intersects the New Jersey-Delaware boundary line at Latitude 39 degrees 21 minutes 16 seconds N., Longitude 75 degrees 26 minutes 44 seconds W.;

(2) A straight line beginning at the southern dome (Salem Nuclear Power Plant) and bearing approximately 230 degrees T towards the point of land, on the southern shore, at the mouth of Blackbird Creek; and

(3) All of Stow Creek and Mad Horse Creek.

Amended by R.1988 d.206, effective May 2, 1988.

See: 20 N.J.R. 450(a), 20 N.J.R. 980(b).

Delineates the boundaries of those shellfish growing waters classified as Special Restricted.

Amended by R.1989 d.390, effective July 17, 1989.

See: 21 N.J.R. 1041(b), 21 N.J.R. 2032(a).

Deleted and replaced (d)1,j At (a)18 amended coordinates; at (a)21 added new i and renumbered remaining subparagraphs; at (a)28 added new i and ii, deleted old; and renumbered; and deleted (a)30 and renumbered remaining paragraphs.

Amended by R.1990 d.399, effective August 6, 1990.

See: 22 N.J.R. 1304(a), 22 N.J.R. 2285(a).

Manasquan River deleted; Ludlam Bay added.

Amended by R.1991 d.592, effective December 16, 1991 (operative January 1, 1992).

See: 23 N.J.R. 2993(a), 23 N.J.R. 3751(a).

Changed delineation of waters of Cedar Run; changed delineation of waters of Great Thorofare and Beach Thorofare; added waters of Ship Channel and added Grassy Sound Channel.

Amended by R.1992 d.508, effective December 21, 1992 (operative January 1, 1993).

See: 24 N.J.R. 3657(a), 24 N.J.R. 4518(b).

Reclassifications at (a)29 and technical changes upon adoption at (a)6, 8v, 10, 23i, 25iii, 29, 30i and 31.

Amended by R.1994 d.201, effective April 18, 1994.

See: 26 N.J.R. 789(a), 26 N.J.R. 1632(a).

Amended by R.1995 d.81, effective February 6, 1995.

See: 26 N.J.R. 4475(b), 27 N.J.R. 484(a).

Amended by R.1996 d.16, effective January 2, 1996.

See: 27 N.J.R. 3874(a), 28 N.J.R. 145(a).

Amended by R.1996 d.586, effective December 16, 1996 (operative January 1, 1997).

See: 28 N.J.R. 4315(a), 28 N.J.R. 5229(a).

In (a)3, added text "west of the Oceanic Bridge"; added (a)20ix; amended (a)25iv; deleted (a)25v; recodified existing (a)25vi through viii to (a)25v through vii; amended (a)30i; rewrote (a)30ii and deleted (a)30iii.

Amended by R.1998 d.590, effective December 21, 1998 (operative January 1, 1999).

See: 30 N.J.R. 3570(a), 30 N.J.R. 4351(a).

In (a)25iii, substituted "320 degrees" for "342 degrees" in the first sentence.

Amended by R.2000 d.57, effective February 7, 2000.

See: 31 N.J.R. 3885(a), 32 N.J.R. 595(a).

In (a), substituted " , then bearing approximately 267 degrees T to the westernmost tip of NW Point Island, then along the northern and eastern shoreline of NW Point Island" for "along the southwestern shoreline to the department maintained marker at the southernmost tip of the island, then bearing approximately 191 degrees T," following "Middle Sedge Island, then" in 7, inserted "latitude 39 degrees 30 minutes 32 seconds North," following "coordinates", substituted "33" for "36" following "19 minutes", and substituted "085" for "086" following "approximately" in 20ix, changed N.J.A.C. reference in 21i, and rewrote 28v.

Amended by R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

Rewrote the section.

Amended by R.2002 d.33, effective January 22, 2002.

See: 33 N.J.R. 3631(b), 33 N.J.R. 3775(c), 34 N.J.R. 593(a).

In (a), rewrote 1, 24i, 24iii and 24iv.

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

In (a), amended latitudes and longitudes in 2ii, 6, 7, 8ii, 8iii, 8v, 9, 11ii, 13ii, 14i, 24iv to 24vi, 25iii, 30ii, 31 and 32x.

Amended by R.2004 d.215, effective June 7, 2004.

See: 36 N.J.R. 120(a), 36 N.J.R. 2759(a).

In (a), deleted former 13ii, recodified former 13iii and 13iv as 13ii and 13iii, rewrote 30ii and added 30iii.

Amended by R.2005 d.224, effective July 5, 2005.

See: 37 N.J.R. 402(a), 37 N.J.R. 2495(a).

In (a), rewrote 3 and 32i(1).

Administrative correction.

See: 38 N.J.R. 3163(a).

SUBCHAPTER 4. SEASONALLY APPROVED SHELLFISH GROWING WATERS

7:12-4.1 Seasonally 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 from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1. Navesink River: Seasonally 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 easternmost 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 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 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 point, then to a Department maintained marker on the north easternmost 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 di-

rection 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. Shrewsbury River: All those waters contained within a line originating at southeastern bascule of the Route 520 Highway Bridge and proceeding in a southerly direction along a line connecting the westernmost ends of the docks on the eastern shore of the Shrewsbury River to the northernmost corner of the abutment at the western end of Center Street, Sea Bright, thence in a southwesterly direction to the northeastern corner of Gunning Island at coordinates latitude 40 degrees, 21 minutes, 31 seconds North and longitude 73 degrees, 58 minutes, 41.4 seconds West, thence in a southerly direction along the coastline of Gunning Island to the southeastern corner of Gunning Island at coordinates latitude 40 degrees, 21 minutes, 24.9 seconds North and longitude 73 degrees, 58 minutes, 39.7 seconds West, thence in a southerly direction to the eastern end of Sedge Island at coordinates latitude 40 degrees, 21 minutes, 13.2 seconds North and longitude 73 degrees, 58 minutes, 35.4 seconds West, thence in a southerly direction along the coastline of Sedge Island to the southern corner of Sedge Island at coordinates latitude 40 degrees, 21 minutes, 10.4 seconds North and longitude 73 degrees, 58 minutes, 36.9 seconds West, thence in a southwesterly direction to the northeastern corner of an unnamed island at coordinates latitude 40 degrees, 20 minutes, 56.4 seconds North and longitude 73 degrees, 58 minutes, 49.8 seconds West, thence in a northwesterly direction along the shoreline of the island to the southwestern corner of the island at coordinates latitude 40 degrees, 20 minutes, 34.1 seconds North and longitude 73 degrees, 58 minutes, 54 seconds West, thence in a southwesterly direction to a Department maintained marker at coordinates latitude 40 degrees, 20 minutes, 27.1 seconds North and longitude 73 degrees, 59 minutes, 4.2 seconds West, thence to a Department maintained marker at coordinates latitude 40 degrees, 21 minutes, 12.9 seconds North and longitude 73 degrees, 59 minutes, 31.5 seconds West, thence in a northeasterly direction along the shoreline to Oyster Bay, thence in an easterly direction across the mouth of Oyster Bay, thence in a northerly direction along a line connecting the eastern end of the docks protruding into the Shrewsbury River to the southwestern bascule of the Route 520 Bridge, thence to the origination point at the southeastern bascule of the bridge, and terminating.

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

vi. Island Beach State Park area: All those waters in Barnegat Bay from a point of land, latitude 39 degrees 54 minutes 24 seconds N, longitude 74 degrees 5 minutes 13 seconds W, then bearing approximately 254 degrees T to a Department maintained marker at latitude 39 degrees 54 minutes 22 seconds N, longitude 74 degrees 5 minutes 20 seconds W, then bearing 136 degrees T to a point of land at Island Beach State Park at latitude 39 degrees 54 minutes N, then continuing northbound along the coastline to the point of origin and terminating.

vii. Toms River area: All of those waters lying within a line beginning at Flashing Red light "28" (Fl R 4s "28") and bearing approximately 160 degrees T through Quick Green light "29" (QG "29") to the western point of land on Pelican Island, then bearing approximately 129 degrees T to Flashing Green light "3" (Fl G "3"), then bearing approximately 170 degrees T to the western of the municipal pier off 5th Avenue in Seaside, then bearing approximately 290 degrees T toward a Department maintained marker on the unnamed point of land approximately 500 yards south of Good Luck Point to a Department maintained marker located approximately 250 feet east of the unnamed point with coordinates of latitude 39 degrees 55 minutes 35.5 seconds North and longitude 74 degrees 6 minutes 17.9 seconds West, then bearing approximately 170 degrees T to a Department maintained marker located at coordinates latitude 39 degrees 55 minutes 19.7 seconds North and longitude 74 degrees 6 minutes 16.3 seconds West, then bearing approximately 220 degrees T to Quick Red light "38" (QR "38"), then bearing approximately 042 degrees T to the most easterly point of Barnegat Pier, then proceeding in a northerly direction along the shoreline to a Department maintained marker at Good Luck Point, then bearing approximately 353 degrees T toward the most easterly point of land at Windsor Park (north of the Mathis Bridge) to the Mathis Bridge (Route 37), then in an easterly direction along the Mathis Bridge to a point with coordinates latitude 39 degrees 56 minutes 49.7 seconds North and longitude 74 degrees 6 minutes 17.7 seconds West, then bearing approximately 002 degrees T to Flashing Red light "28" (Fl R 4s "28"), and terminating.

v. All the waters of Peck Bay contained within a line from the base of the 34th Street Bridge (Ocean City) and continuing along the Ocean City shoreline in a northeasterly direction to a Department maintained marker, then bearing approximately 295 degrees T to another Department maintained marker on the mainland, then along the shoreline in a southerly direction to the base of the 34th Street Bridge and across the bridge to the point of origin and terminating.

vi. All of Crook Horn Creek from its confluence with the northern end of Beach Creek to Middle Thorofare.

10. Strathmere Area: Seasonal—Special Restricted May 1 through October 31 yearly. Approved November 1 through April 30 yearly;

i. All that portion of Main Channel within the area enclosed by a straight line from the north end of the Ocean Drive Bridge, along the western side of the bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp located at the end of Bayview Avenue, Strathmere, then along that shoreline to the mouth of Whale Creek, then along a straight line across Main Channel bearing approximately 194 degrees T to a small ditch on the opposite shore then along the shoreline of Main Channel to its point of origin at the Ocean Drive Bridge and terminating.

ii. Whale Creek—all of Whale Creek from the Department maintained marker at eastern side of the mouth, then along the eastern bank of Whale Creek (excluding unnamed tributary) to the Department maintained marker at the junction with Ludlam Bay, then bearing approximately 305 degrees T to another Department maintained marker on the opposite bank, then along that shoreline in a northeasterly direction to the mouth of the creek, then bearing approximately 082 degrees T to the point of origin.

11. Great Sound area:

i. Holmes Creek and Holmes Creek Cove: Seasonal—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 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. All of Cresse Thorofare, Gull Island Thorofare, Great Channel and Scotch Bonnet contained within a line starting at the base of the Stone Harbor Blvd.

Bridge and proceeding in a northeast direction along the Stone Harbor shoreline, across the mouths of Snug Harbor, South Basin, North Basin, Stone Harbor Creek and Oldmans Creek, continuing along the shoreline including Shark Creek, then along that shoreline in a northerly direction to a Department maintained marker along Sturgeon Hole, then bearing approximately 232 degrees T to the mouth of Southeast Creek (on Gull Island), then along the shoreline in a southeasterly direction (excluding Southeast Creek), then in a northwesterly direction to a Department maintained marker, then bearing approximately 271 degrees T across Cresse Thorofare to another Department maintained marker, then in a southerly direction along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, continuing along the shoreline and across the mouth of Muddy Hole, continuing along the shoreline and across the second mouth of Muddy Hole, then along the shoreline to the mouth of Scotch Bonnet, then along the Scotch Bonnet shoreline to a Department maintained marker, then bearing approximately 215 degrees T to another Department maintained marker, then along the shoreline in a southeasterly direction to the junction of Great Channel and along that shoreline in a southwesterly direction across an unnamed creek and continuing along the shoreline and across the mouth of Dung Thorofare and the shoreline of Nummy Island to a Department maintained marker and bearing approximately 116 degrees T to another Department maintained marker, then along the Stone Harbor shoreline in a northeasterly direction to the base of the Ocean Drive Bridge (Rt. 619), then bearing approximately 018 degrees T to the point of land at the junction of Great Channel and Pleasure Bay and continuing along the shoreline of Great Channel across the mouth of Stone Harbor and Shelter Haven to the point of origin at the base of the Stone Harbor Blvd. Bridge.

12. Jenkins Sound-Grassy Sound-Richardson Sound: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Nichols Channel, Dung Thoro, Great Flat Thoro, Drum Thoro, Jenkins Channel, Genesis Bay, Jenkins Sound and tributaries thereof contained within a line beginning at the parking area at Shellbed Landing and continuing along the Jenkins Sound shoreline in a southwesterly direction to a Department maintained marker at the mouth of an unnamed tributary to Race Cove, then bearing approximately 126 degrees T to another Department maintained marker, then in a southeasterly direction along the Jenkins Channel shoreline excluding tributaries to Dead Thoro Point, then in a southwesterly direction to Grassy Sound Channel, then bearing approximately 118 degrees T to Nummy Island, then along that shoreline in a northeasterly direction including tributaries to Great Channel, then bearing approximately 013 degrees T to the

opposite shoreline, then along the shoreline of Dung Thoro and Nichols Channel, excluding tributaries along the shoreline of Genesis Bay, then along the shoreline of Genesis Bay excluding Hetty Creek, Josh Creek, Charles Creek and Back Creek to Gunners Point, then continuing along the shoreline in a southwesterly direction to the point of origin and terminating.

ii. All of Grassy Sound Channel and Hereford Inlet from the Ocean Drive Bridge (Route 619) to a line bearing approximately 030 degrees T through F1 10S 57ft 24M at Hereford Inlet.

iii. All of Grassy Sound contained within a line beginning at the southern end of the railroad bridge in West Wildwood along the shoreline of Grassy Sound in an easterly direction, across the mouth of the Wildwood Canal and Beach Creek to a Department maintained marker at Grassy Point, then bearing approximately 257 degrees T to the northern end of the railroad bridge at Hann Point, then across Grassy Sound Channel to the point of origin at the southern end of the railroad bridge.

iv. Those waters of Old Turtle Thorofare from the mouth of Old Turtle Thorofare at Richardson Sound to a line created by two Department maintained markers on opposite banks of Old Turtle Thorofare just south of its junction with Tempe Creek.

13. Delaware Bay:

i. Bidwell Creek: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Bidwell Creek and tributaries downstream from the easterly side of the Route 47 bridge to its confluence with the Delaware Bay.

ii. East Point area: Seasonal—Special Restricted May 1 through October 31 yearly. Approved November 1 through April 30 yearly:

(1) All that portion of Delaware Bay contained within a line beginning at the East Point Lighthouse and bearing approximately 226 degrees T to Flashing Green 2.5 second "5" (FL G 2.5 sec "5") in the Maurice River Approach Channel, then bearing approximately 098 degrees T to the marker (Department maintained) on the point of land on the west shore at the mouth of West Creek and terminating.

iii. Maurice River Cove: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly.

(1) All those waters inside of a line beginning at Flashing Green 2.5 second "5" (FL G 2.5 sec. "5"), then bearing approximately 188 degrees T to flashing Green 4 second "3" (FL G 4 sec "3"), then bearing approximately 171 degrees T to a point at latitude 39 degrees 10 minutes 23.32 seconds N., longitude 75 degrees 2 minutes 19.99 seconds W., then bearing approximately 290.5 degrees T to a Department maintained marker at latitude 39 degrees 11 minutes 6 seconds N., Longitude 75 degrees 04 minutes 50 seconds W., then bearing approximately 013 degrees T to a Department maintained marker on the shoreline west of the mouth of the Maurice River, then along the shoreline in a northeasterly direction to another Department maintained marker, then bearing approximately 143 degrees T to Flashing Green 2.5 second "5" (FL G 2.5 sec. "5"), and terminating; and

(2) All those waters adjacent to the mouth of Oranoaken Creek and Dividing Creek, from a Department maintained marker on the shoreline approximately 605 yards southwest of the mouth of Oranoaken Creek, and bearing approximately 081 degrees T to a Department maintained marker at station 3842D (Latitude 39 degrees 12 minutes 24 seconds N., Longitude 75 degrees 05 minutes 42 seconds W.), then bearing approximately 034 degrees T to another Department maintained marker on the shore 1,040 yards east of Dividing Creek.

iv. Dividing Creek: Seasonal—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 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—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Oranoaken Creek and tributaries, except the connecting branches of Fortescue Creek, downstream from The Glades and south of Weir Creek to a line beginning at the eastern-most point of land on the west bank at the mouth of Oranoaken Creek and bearing approximately 090 degrees T to the opposite shore of Oranoaken Creek.

vi. Fishing Creek: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Fishing Creek; and

vii. Fortescue Beach: Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All waters northeast of a line from the southernmost tip of Beadons Point bearing approximately 140 degrees T to the westernmost tip of a point of land just south of Raybins Beach and just north of Fishing Creek (Cumberland County).

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

(1) All of Nantuxent Cove north of a line beginning at the light (F1 4 sec 33 feet 6M) located at the western tip of Nantuxent Point and bearing approximately 289 degrees T to the light (F1 6 sec 30 feet 6M) located at the southern tip of Ben Davis Point, all of Back Creek and tributaries, including Tweed Creek, all of Nantuxent Creek lying downstream from the line described in N.J.A.C. 7:12-3.2 and all of Cedar Creek lying downstream from the line described in N.J.A.C. 7:12-3.2.

R.1980 d.12, effective January 9, 1980.

See: 12 N.J.R. 71(c).

Amended by R.1980 d.48, effective January 29, 1980.

See: 12 N.J.R. 112(b).

R.1982 d.182, effective June 21, 1982.

See: 14 N.J.R. 210(a), 14 N.J.R. 655(a).

Amended by R.1983 d.249, effective June 20, 1983.

See: 15 N.J.R. 595(a), 15 N.J.R. 1020(a).

Substantially amended.

Amended by R.1984 d.233, effective June 18, 1984.

See: 16 N.J.R. 786(a), 16 N.J.R. 1495(a).

(a)6 and 9 substantially revised.

Amended by R.1985 d.290, effective June 3, 1985.

See: 17 N.J.R. 661(a), 17 N.J.R. 1412(a).

Substantially amended.

Amended by R.1986 d.234, effective June 16, 1986.

See: 18 N.J.R. 784(a), 18 N.J.R. 1275(a).

Substantially amended.

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

Recodified and substantially amended from 1.4.

Amended by R.1988 d.206, effective May 2, 1988.

See: 20 N.J.R. 450(a), 20 N.J.R. 980(b).

Delineates those shellfish growing waters classified as Seasonally approved.

Amended by R.1989 d.390, effective July 17, 1989.

See: 21 N.J.R. 1041(b), 21 N.J.R. 2032(a).

At (a)4ii, waters around Somers Cove delineated in more detail; at (a)6i, area added between Shelter Island, Jonas Island and Pork Island; (a)9 deleted regarding Sea Isle City Area and 10 and 11 renumbered and amended new 9ii; added vi to new 10.

Amended by R.1990 d.399, effective August 6, 1990.

See: 22 N.J.R. 1304(a), 22 N.J.R. 2285(a).

Absecon Bay and Great Sound Area deleted; Ship Channel, Great Channel, Jenkins Sound, Grassy Sound/Richardson Sound and Maurice River Cove added.

Amended by R.1991 d.592, effective December 16, 1991 (operative January 1, 1992).

See: 23 N.J.R. 2993(a), 23 N.J.R. 3751(a).

Added (a)7iv and v, Great Egg Harbor Bay and Ship Channel; added (a)10iii and iv, Grassy Sound and Old Turtle Thorofare.

Amended by R.1992 d.508, effective December 21, 1992 (operative January 1, 1993).

See: 24 N.J.R. 3657(a), 24 N.J.R. 4518(b).

Amended designation at (a)8 and make technical changes upon adoption to (a)1i(1); 2ii(1); 6i; 7i, iii and v and 9ii.

Amended by R.1994 d.201, effective April 18, 1994.

See: 26 N.J.R. 789(a), 26 N.J.R. 1632(a).

Amended by R.1995 d.81, effective February 6, 1995.

See: 26 N.J.R. 4475(b), 27 N.J.R. 484(a).

Amended by R.1996 d.16, effective January 2, 1996.

See: 27 N.J.R. 3874(a), 28 N.J.R. 145(a).

Amended by R.1996 d.586, effective December 16, 1996 (operative January 1, 1997).

See: 28 N.J.R. 4315(a), 28 N.J.R. 5229(a).

Added (a)1, recodified existing (a)1 through (a)11 as (a)2 through (a)12, and added (a)8vi.

Amended by R.1998 d.2, effective January 5, 1998.

See: 29 N.J.R. 4223(a), 30 N.J.R. 224(a).

Inserted (a)2i and recodified (a)2i and ii as (a)2ii and iii; repealed (a)8ii; and in (a)12iii amended "cove boundaries".

Amended by R.1998 d.590, effective December 21, 1998 (operative January 1, 1999).

See: 30 N.J.R. 3570(a), 30 N.J.R. 4351(a).

In (a), inserted "Flashing red light 263 (F1 Q R '263') at" following "286 degrees T" and substituted "140 degrees" for "149 degrees" in 8i, and rewrote 11i.

Amended by R.2000 d.57, effective February 7, 2000.

See: 31 N.J.R. 3885(a), 32 N.J.R. 595(a).

In (a), rewrote 8, and substituted "along" for "to a Department maintained marker on" following "tributaries" in 11i.

Amended by R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

Rewrote the section.

Amended by R.2002 d.33, effective January 22, 2002.

See: 33 N.J.R. 3631(b), 33 N.J.R. 3775(c), 34 N.J.R. 593(a).

In (a), inserted 5v and rewrote 8i.

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

Rewrote the section.

Amended by R.2004 d.215, effective June 7, 2004.

See: 36 N.J.R. 120(a), 36 N.J.R. 2759(a).

In (a), added a new 3iii, recodified former 3iii and 3iv as 3iv and 3v, added a new 3vi, recodified former 3v and 3vi as 3vii and 3viii, and amended 13iii(1).

Amended by R.2005 d.224, effective July 5, 2005.

See: 37 N.J.R. 402(a), 37 N.J.R. 2495(a).

In (a), rewrote 6, 13ii, and 13iii.

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

(a) 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 from May 1 through December 31 yearly and Approved for the harvest of shellfish from January 1 through April 30 yearly:

1. (Reserved)

2. (Reserved)

3. (Reserved)

4. Cedar Run area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (Reserved)

5. (Reserved)

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

i. All of Landing Creek to its confluence with the man-made ditch leading to Scotts Landing.

7. Brigantine area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. An area adjacent to the city of Brigantine inshore from a line beginning at the telephone pole (A4229) at the north end of 13th Street North and bearing approximately 325 degrees T through Steelman Bay to Flashing light 5 (Fl "5"), then to the northwest tip of George's Dock (1427 North Shore Drive), then proceeding in a westerly direction to the first pier end west of the Brigantine Country Club (1048 North Shore Drive), then to the pier end at 1002 North Shore Drive (next to dead end street), then to the third pier end west of the Lafayette Boulevard Street end (860 North Shore Drive), then from pier end to 800 West Shore Drive, then to pier end at 714 West Shore Drive and bearing approximately 173 degrees T into Shore Drive and bearing approximately 173 degrees T into Wading Thorofare until it intersects a line connecting Flashing lights 6 and 8 (Fl R "6" and Fl R "8") in Wading Thorofare, then along the line connecting Flashing lights 6 and 8 (Fl "6" and Fl "8") to Flashing light 8, then bearing approximately 211 degrees T to a point of land on the west shore of Bonita Tideway, then along the shoreline in a southerly direction to the first unnamed creek past Sand Creek, then bearing approximately 030 degrees T to the point of land on the opposite shore and terminating.

ii. That portion of Broad Creek immediately south of Sunflower Island (U.S.G.S. quad designation), between the Brigantine shoreline and a line from a Department maintained marker on Boot Island (U.S.G.S. quad designation) and bearing approximately 238 degrees T across Broad Creek, to another Department maintained marker on the opposite shore and terminating.

8. Great Egg Harbor River and Middle River: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All that portion of Great Egg Harbor River and Middle River contained within a line beginning at Fl R "4" and bearing approximately 215 degrees T to a Department maintained marker on the western shoreline, then in a northwesterly direction to Middle River, then along the entire shoreline of Middle River and including its tributaries, then along the shore of Great Egg Harbor River to a Department maintained marker, then bearing approximately 028 degrees T to Fl R "8," then along the northern and/or eastern shore of Great Egg Harbor River in a downstream direction to the point of origin at Fl R "4."

9. Strathmere and Sea Isle City area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. The area of Townsend Channel adjacent to the town of Townsends Inlet contained within a line beginning at the western end of the northernmost pier located approximately at the end of 79th St. and bearing approximately 225 degrees T to a Department maintained marker at the mouth of Middle Thorofare, then bearing approximately 171 degrees T to the southernmost pier in Townsend Channel (at the end of 94th Street) then in a northerly direction connecting the western end of the longest piers to the northernmost pier at the western end of 79th Street and terminating.

10. The Wildwoods area:

i. All of the portion of Jarvis Sound beginning at a point at latitude 38 degrees 58 minutes 25.0 seconds N, longitude 74 degrees 51 minutes 41.8 seconds W, then continuing along the shoreline in a southerly direction to a Department maintained marker on the north side of the mouth of Meadow Creek then bearing approximately 239 degrees T to a Department maintained marker on the south side of Meadow Creek then continuing in a southerly direction to a Department maintained marker on the north side of the mouth of Punyard Creek and bearing approximately 222 degrees T across to a point north of the mouth of Upper Thorofare at latitude 38 degrees 58 minutes 12.5 seconds N, longitude 74 degrees 52 minutes 39.1 seconds W, then bearing approximately 136 degrees T to a point at latitude 38 degrees 57 minutes 38.4 seconds N, longitude 74 degrees 51 minutes 56.6 seconds W, then continuing along the shoreline in a northerly direction to a Department maintained marker at the south side of the mouth of Shell Thorofare and bearing approximately 330 degrees T across the mouth of Shell Thorofare to the other side then continuing along the shoreline of the ICW in a northerly direction to a point at latitude 38 degrees 58 minutes 20.0 seconds N, longitude 74 degrees 51 minutes 35.7 seconds W, and bearing approximately 317 degrees T back to the point of origin and terminating.

R.1982 d.182, effective June 21, 1982.

See: 14 N.J.R. 310(a), 14 N.J.R. 655(a).

Amended by R.1983 d.249, effective June 20, 1983.

See: 15 N.J.R. 595(a), 15 N.J.R. 1020(a).

Substantially amended.

Amended by R.1986 d.234, effective June 16, 1986.

See: 18 N.J.R. 784(a), 18 N.J.R. 1275(a).

Substantially amended.

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

Recodified from 1.5 and substantially amended.

Amended by R.1989 d.390, effective July 17, 1989.

See: 21 N.J.R. 1041(b), 21 N.J.R. 2032(a).

(a)5i amended and (a)8 deleted Ocean City-Somers Point area and replaced with Great Egg Harbor River and Middle River.

Amended by R.1990 d.399, effective August 6, 1990.

See: 22 N.J.R. 1304(a), 22 N.J.R. 2285(a).

Bearing corrected at (a)5i.

Amended by R.1991 d.592, effective December 16, 1991 (operative January 1, 1992).

See: 23 N.J.R. 2993(a), 23 N.J.R. 3751(a).

Deleted (a)4i, Cedar Run Cove; added (a)7ii, portion of Broad Creek.

Amended by R.1992 d.508, effective December 21, 1992 (operative January 1, 1993).

See: 24 N.J.R. 3657(a), 24 N.J.R. 4518(b).

Technical changes made upon adoption to (a)1i and ii; 2i and ii.

Amended by R.1995 d.81, effective February 6, 1995.

See: 26 N.J.R. 4475(b), 27 N.J.R. 484(a).

Amended by R.1996 d.16, effective January 2, 1996.

See: 27 N.J.R. 3874(a), 28 N.J.R. 145(a).

Amended by R.1998 d.2, effective January 5, 1998.

See: 29 N.J.R. 4223(a), 30 N.J.R. 224(a).

In (a)1iii, amended N.J.A.C. reference and western boundary line.

Amended by R.2000 d.57, effective February 7, 2000.

See: 31 N.J.R. 3885(a), 32 N.J.R. 595(a).

Rewrote (a).

Amended by R.2001 d.85, effective March 5, 2001.

See: 32 N.J.R. 4428(a), 33 N.J.R. 869(a).

Rewrote the section.

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

In (a), reserved 3 and 5.

Amended by R.2004 d.215, effective June 7, 2004.

See: 36 N.J.R. 120(a), 36 N.J.R. 2759(a).

Added (a)10.

SUBCHAPTER 5. SEASONAL SPECIAL RESTRICTED SHELLFISH GROWING WATERS

7:12-5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, Prohibited Area: October 1 through April 30 yearly)

The Seasonal Special Restricted waters described below shall be Prohibited for the harvest of shellfish from October 1 through April 30 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-9 during the period of May 1 through September 30 yearly. These waters will not be utilized, that is, will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metal are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by the Department from analyses of ongoing studies.

R.1984 d.42, effective February 21, 1984.

See: 15 N.J.R. 2103(a), 16 N.J.R. 365(b).

Amended by R.1986 d.234, effective June 16, 1986.

See: 18 N.J.R. 784(a), 18 N.J.R. 1275(a).

Dates changed.

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

Recodified from 1.6.

Amended by R.1988 d.206, effective May 2, 1988.

See: 20 N.J.R. 450(a), 20 N.J.R. 980(b).

Substituted condemned for prohibited.

Amended by R.1989 d.390, effective July 17, 1989.

See: 21 N.J.R. 1041(b), 21 N.J.R. 2032(a).

Deleted reference to specific area, Raritan Bay Area.

Amended by R.1992 d.508, effective December 21, 1992 (operative January 1, 1993).

See: 24 N.J.R. 3657(a), 24 N.J.R. 4518(b).

Corrected terminology from "condemned" to "prohibited" and corrected typographical error in the April date in the body of the rule.

SUBCHAPTER 6. (RESERVED)

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. Sanctuaries shall be delineated by the Department. Shellfish may be relocated to such an area to supply brood stock to re-establish 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.

New Rule, R.1986 d.234, effective June 26, 1986.

See: 18 N.J.R. 784(a), 18 N.J.R. 1275(a).

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

Recodified from 1.8 and (a)1 added.

Amended by R.1991 d.592, effective December 16, 1991 (operative January 1, 1992).

See: 23 N.J.R. 2993(a), 23 N.J.R. 3751(a).

Deleted (a)1, spawner sanctuaries.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. SPECIAL PERMIT

7:12-9.1 General provisions; 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 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.

(d) Said permits 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) 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 denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting, possession, and/or processing of shellfish from the waters of the State.

(f) Any participant violating the regulations or the terms of the special permits issued by the Bureau of Marine Water Monitoring, may be subject to prosecution under provisions of N.J.S.A. 58:24-3 and may incur the penalties prescribed for offenses specified by N.J.S.A. 58:24-9 and 58:24-10.

Text on transplant program recodified to 9.10; text on transfer program recodified from 9.8.

Amended by R.1996 d.16, effective January 2, 1996.

See: 27 N.J.R. 3874(a), 28 N.J.R. 145(a).

Amended by R.2000 d.57, effective February 7, 2000.

See: 31 N.J.R. 3885(a), 32 N.J.R. 595(a).

In (b), substituted references to the Bureau of Marine Water Monitoring for references to the Bureau of Marine Water Classification and Analysis throughout.

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

Amended the address in the Editor's Note.

7:12-9.10 Transplant program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters) is to allow for the harvest and possession of seed oysters from waters classified other than Approved for transplanting to leased lots in Approved waters and/or Seasonally Approved waters for purging of pollutants, growth and ultimate 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 Water Monitoring.

(b) Permit No. 7 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. Species is limited under said permit to oysters (*Crassostrea virginica*).

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. The permittee shall verbally notify the designated enforcement unit(s) 24 hours prior to each day's harvesting from waters other than Approved.

5. The permittee shall have this permit in his possession while working in specified waters and while transporting seed oysters taken from specified waters.

6. Seed oysters 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.

9. From the time the Transplant Permit 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 violation(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.

As amended, R.1979 d.184, effective May 9, 1979.

See: 11 N.J.R. 170(b), 11 N.J.R. 276(a).

As amended, R.1980 d.230, effective May 23, 1980.

See: 12 N.J.R. 179(b), 12 N.J.R. 391(a).

As amended, R.1983 d.249, effective June 20, 1983.

See: 15 N.J.R. 595(a), 15 N.J.R. 1020(a), 15 N.J.R. 1761(a).

Substantially amended.

Amended by R.1985 d.64, effective February 19, 1985.

See: 16 N.J.R. 3112(a), 16 N.J.R. 3379(a), 17 N.J.R. 433(a).

Section substantially amended.

Amended by R.1987 d.488, effective November 16, 1987.

See: 19 N.J.R. 1129(a), 19 N.J.R. 2136(a).

Recodified from 2.9 and Shellfish Control changed to Marine Water Classification and Analysis.

Amended by R.1989 d.390, effective July 17, 1989.

See: 21 N.J.R. 1041(b), 21 N.J.R. 2032(a).

Changed temperature minimum from 13° centigrade (55° Fahrenheit) to 10° Celsius (50° Fahrenheit).

Amended by R.1990 d.548, effective November 19, 1990.

See: 22 N.J.R. 97(a), 22 N.J.R. 3508(a).

Text on possession and/or plant program, bait store recodified to 9.11; text on transplant program recodified from 9.9.

Amended by R.1991 d.592, effective December 16, 1991 (operative January 1, 1992).

See: 23 N.J.R. 2993(a), 23 N.J.R. 3751(a).

At (b) added requirement of chart showing the area from which the shellfish are to be harvested.

Amended by R.1996 d.16, effective January 2, 1996.

See: 27 N.J.R. 3874(a), 28 N.J.R. 145(a).

Amended by R.2000 d.57, effective February 7, 2000.

See: 31 N.J.R. 3885(a), 32 N.J.R. 595(a).

Substituted references to the Bureau of Marine Water Monitoring for references to the Bureau of Marine Water Classification and Analysis throughout.

Amended by R.2003 d.242, effective June 16, 2003.

See: 34 N.J.R. 3903(a), 35 N.J.R. 2654(a).

In (a), inserted "and/or Seasonally Approved waters" preceding "for purging"; in (b), inserted "and/or Seasonally Approved waters" preceding "shall remain" in 6; amended the address in the Editor's Note.

7:12-9.11 Possession and/or plant program; bait store

(a) The purpose of Permit No. 8a ("Bait Store Permit") is to allow sea or surf clams, soft clams and hard clams that have been harvested from waters other than Approved to be sold, for bait purposes only, by a person other than the original harvester or depuration/controlled purification plant processor.

(b) Permit No. 8a shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. Species limited under said permit to sea or surf clams (*Spisula solidissima*), soft clams (*Mya arenaria*) and hard clams (*Mercenaria mercenaria*).

2. Permittees shall purchase sea or surf clams, soft clams and hard clams solely from State-permitted harvesters, other bait stores, or depuration/controlled purification facilities that have been authorized to harvest and/or sell shellfish harvested from waters other than Approved.

3. The inclusive dates of the permit shall be from January 1st through December 31st of the same year unless revoked or suspended prior to that date for cause.

4. The yellow tags from holders of Permit No. 2a, 2b and/or 8a that state: "CLAMS HARVESTED FROM CONDEMNED WATERS FOR BAIT PURPOSES ONLY. NOT TO BE USED FOR HUMAN CONSUMPTION. TAG NOT TO BE REMOVED FROM CONTAINER UNTIL CONTAINER IS EMPTY." Name, address, date of sale, and quantity of sale shall be printed on tag.

5. 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 the permit holder's establishment at the point of sale and the storage area.

6. Said clams shall remain in a storage area specified by the permittee, to preclude their removal by unauthorized persons.

7. Storage areas which are used for the storage of clams harvested from waters other than Approved shall not be used for the storage of other food products if the latter are to be utilized for human consumption.

8. Records of purchase of said clams, including: harvester's, other bait store's or depuration/controlled purification facility's name, date of purchase, quantity of purchase, and wholesale sales shall be maintained for a period of not less than 90 days and made available for inspection by any authorized agent of the State.

9. Said clams shall not be used or sold as food for human consumption.

10. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the bait store 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 008a and Permit Number 8a 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.

As amended, R.1980 d.230, effective May 23, 1980.

See: 12 N.J.R. 179(b), 12 N.J.R. 391(a).

As amended, R.1983 d.249, effective June 20, 1983.

See: 15 N.J.R. 595(a), 15 N.J.R. 1020(a).

(a) and (b)1: hard clams included.

Amended by R.1985 d.64, effective February 19, 1985.

See: 16 N.J.R. 3112(a), 16 N.J.R. 3379(a), 17 N.J.R. 433(a).

Section substantially amended.

Amended by R.1990 d.548, effective November 19, 1990.

See: 22 N.J.R. 97(a), 22 N.J.R. 3508(a).

Text on transfer program recodified to 9.9; text on relay program added.

Amended by R.1990 d.548, effective November 19, 1990.

See: 22 N.J.R. 97(a), 22 N.J.R. 3508(a).

Text on possession and/or processing plant program, depuration plant deleted; previous annotations as follows:

Amended by R.1980 d.230, effective May 23, 1980.

See: 12 N.J.R. 179(b), 12 N.J.R. 391(a).

Amended by R.1981 d.190, effective June 4, 1981.

See: 13 N.J.R. 19(b), 13 N.J.R. 339(b).

(b)7: "one year" was "90 days"; (b)11: "designated enforcement unit(s)" was "New Jersey Marine Police";

(b)14: "designated enforcement units" was "Monmouth Beach Marine Police Station";

(b)16: "designated enforcement units" was "New Jersey Marine Police";

(b)18 added.