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CHAPTER 25A

OYSTERS

Authority

N.J.S.A. 13:1D-9, 50:1-5, 50:1-23, 50:1-27.

Source and Effective Date

R.1995 d.250, effective April 20, 1995.
See: 27 N.J.R. 798(a), 27 N.J.R. 1979(a).

Executive Order No. 66(1978) Expiration Date

Chapter 25A, Oysters, expires on April 20, 2000.

Chapter Historical Note

Chapter 25A, Oysters, was originally adopted as emergency new rule R.1981 d.94, concerning an oyster dredging license moratorium, effective March 11, 1981. See: 13 N.J.R. 195(a). R.1981 d.94 expired on May 21, 1981, and new rules concerning oyster dredging licenses were adopted as R.1981 d.188, effective June 4, 1981. See: 13 N.J.R. 192(b), 13 N.J.R. 340(c).

Subchapter 2, Oyster Management in Delaware Bay, was adopted as R.1981 d.197, effective July 9, 1981. See: 13 N.J.R. 192(c), 13 N.J.R. 405(b). Amendments to 7:25A-2.1, and 2.3 through 2.5 were adopted as R.1983 d.351, effective September 6, 1983. See: 15 N.J.R. 990(a), 15 N.J.R. 1473(a). Subchapter 3, Oyster Seed Beds, was originally adopted as R.1972 d.79 and codified at N.J.A.C. 7:36, effective May 15, 1972. See comprehensive Subchapter Historical Note, this chapter. Subchapter 4, Oyster Cultch Program, was adopted as R.1983 d.590, effective December 19, 1983. See: 15 N.J.R. 1416(a), 15 N.J.R. 2159(a).

Subchapters 1, 2 and 3 were repealed by R.1985 d.216 and a new Subchapter 1, Oyster Management, adopted, effective May 6, 1985. See: 17 N.J.R. 352(a), 17 N.J.R. 1092(a).

Pursuant to Executive Order No. 66(1978), Chapter 25A was re-adopted as R.1990 d.250, effective April 23, 1990. See: 22 N.J.R. 283(a), 22 N.J.R. 1573(a).

Pursuant to Executive Order No. 66(1978), Chapter 25A was re-adopted as R.1995 d.250. See: Source and Effective Date. See, also, annotation at section 1.4.

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SUBCHAPTER 1. OYSTER MANAGEMENT

7:25A-1.1 Scope

The following shall constitute the rules governing the issuance and renewal of oyster dredging licenses, the leasing of oyster ground in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds.

Amended by R.1983 d.351, effective September 6, 1983.
See: 15 N.J.R. 990(a), 15 N.J.R. 1473(a).

7:25A-1.2 Purpose

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

Amended by R.1983 d.351, effective September 6, 1983.
See: 15 N.J.R. 990(a), 15 N.J.R. 1473(a).
Amended by R.1983 d.591, effective December 19, 1983.
See: 15 N.J.R. 1415(a), 15 N.J.R. 2158(a).
Amended by R.1994 d.450, effective September 6, 1994.
See: 26 N.J.R. 1562(a), 26 N.J.R. 3714(a).

7:25A-1.3 Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5, 50:1-23, and 50:1-27.

7:25A-1.4 Definitions

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

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

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

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife.

"Natural seed beds" means any of the natural beds or grounds in Delaware Bay or Delaware River above the southwest line, except that area known as Section "E".

“Section ‘E’” means all of the area within the boundaries described herein: Beginning at a point (X = 1820400) (Y = 146800) said point being Channel Buoy R “32” and corner # 1 of said section and running thence N 28°-14’-14.2” E 6612.18 feet to corner # 2 (X = 1826233) (Y = 149914); thence S 56°-32’-38.4” E 33401.27 feet to corner # 3 being also corner # 1 lot 530 section D leased oyster ground lot (X = 1854100) (Y = 131500) located on or near the southwest line; thence along the southwest line S 55°-16’-29.1” W 19222.67 feet to old Crossledge Lighthouse foundation being corner # 4 of the section (X = 1838301) (Y = 120550); thence N 16°-02’-14.0” W 17740.41 feet to corner # 5 being also BR “WR” buoy marking a wreck in the bay (X = 1833400) (Y = 137600); thence N 42°-42’-33.7” W 3538.36 feet to a point in Delaware Bay being corner # 6 of section E (X = 1831000) (Y = 140200); thence S 70°-17’-31.3” W 7116.88 feet to corner # 7 being a point on the east side of the Main Ship Channel in Delaware Bay (X = 1824300) (Y = 137800); thence N 23°-25’-43.3” W 9818.67 feet to corner # 1 the place of beginning.

“Seed oysters (seed)” means all oysters taken from the natural seed beds.

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

“Southwest line” means a line running directly from the mouth of Straight Creek to Crossledge Lighthouse in Delaware Bay.

“Time” means Eastern Standard time (EST) or Eastern Daylight Savings time (EDT), whichever is in effect that date.

“Validly licensed” means those vessels:

1. Which are operable, that is, capable of taking oysters within the previous calendar year, unless exempted from this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation; and
2. Which have been licensed and operated as required by the provisions of this chapter.

Amended by R.1991 d.349, effective July 1, 1991.
See: 23 N.J.R. 1112(a), 23 N.J.R. 2012(b).

Added definitions for “Council;” “Shellfish Office;” “Time;” “Validly licensed”.

Amended by R.1995 d.250, effective May 15, 1995.
See: 27 N.J.R. 798(a), 27 N.J.R. 1979(a).

7:25A-1.5 Licenses

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

Amended by R.1991 d.349, effective July 1, 1991.

See: 23 N.J.R. 1112(a); 23 N.J.R. 2012(b).

Added “as a renewal for”, “prior to that of the license to be issued”; deleted “new oyster”, “previous”.

7:25A-1.6 Substitution of vessels; license renewal

(a) Any person who owns a vessel validly licensed pursuant to N.J.S.A. 50:3-1 may substitute a new vessel for the previously licensed vessel, except that no substituted vessel shall have a greater gross tonnage than the previously licensed vessel.

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

(c) A person transferring ownership of his licensed oyster vessel may do one of the following:

1. File a notarized Statement of Intent with the Department indicating that he has sold the vessel and wishes to replace it with another vessel within one year; or
2. File a notarized Statement of Intent with the Department indicating that he will waive all rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the vessel to its new owner who shall meet all statutory criteria for licensing.

(d) The new owner of a transferred vessel must have its license reissued in his own name. Application for reissue must include documentation as to ownership of the vessel and the current year’s license.

(e) A licensed vessel that is lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, that he will replace the vessel. The replacement vessel shall be licensed upon proof of loss and of replacement of the previously licensed vessel. No replacement vessels shall have more than a 10-percent greater gross tonnage than the previously-licensed vessel.

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

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

(h) License renewal is specifically conditioned on the continuing conformance of the licensee with all the requirements of this chapter.

(i) Nothing in this subchapter shall allow the issuance of two licenses for one.

Amended by R.1991 d.349, effective July 1, 1991.
See: 23 N.J.R. 1112(a), 23 N.J.R. 2012(b).

Added "more than a 10-percent" in (e). Added "in order to maintain licensing during subsequent years", "an affidavit that the vessel was validly licensed", "evidence of compliance with N.J.A.C. 7:25A-1.5"; deleted "the previous year's license. An applicant may be issued a license if he had a license in the previous year" in (f).

7:25A-1.7 Leasing of Section E

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

7:25A-1.8 Expiration and renewal of Section E lot leases

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

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

7:25A-1.9 Oyster seed beds

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

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

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

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

(d) All seed oysters shall be planted on the day taken by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose except that the Division with the advice of the Council may designate times, manner and section(s) of the natural seed beds from which seed oysters may be taken for market, barter, or other trade during any period when the natural seed beds are legally opened.

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

1. The minimum size limit for seed oysters taken for market, barter or other trade shall be 2½ inches in height from hinge to lip.

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

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

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

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

necessary for the preservation and improvement of the shellfish industry.

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

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

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

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

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

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

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

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

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

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

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

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

Public Notice: Based upon physical tests of natural oyster seed beds and the recommendation of the Bay Season Advisory Committee, the Delaware Bay Section of the Shellfisheries Council voted to close the natural seed beds below a line from Bennies Point to Buoy No. 35, effective 3:30 P.M., Friday, June 7, 1985, and to close all remaining natural seed beds, effective 3:30 P.M., Friday, June 14, 1985. Pursuant to N.J.A.C. 7:25A-1.9(f), I, Robert E. Hughey, Commissioner of Environmental Protection, granted the necessary approvals to effect these closures.
See: 17 N.J.R. 1795(c).

Public Notice: Based upon physical tests of natural oyster seed beds and the recommendations of the Bay Season Advisory Committee, the Delaware Bay Section of the Shellfisheries Council voted to close the natural seed beds below a line from Bennies Point to Buoy No. 35, effective 3:30 P.M., Friday, May 30, 1986, and to close all remaining natural seed beds, effective 3:30 P.M., Friday, June 6, 1986. Pursuant to N.J.A.C. 7:25A-1.9(f), Richard T. Dewling, Commissioner of Environmental Protection, granted the necessary approvals to effect these closures.
See: 18 N.J.R. 1411(b).

Public Notice: Based upon physical tests of natural oyster seed beds and the recommendation of the Bay Season Advisory Committee and the Rutgers Oyster Research Laboratory, the Delaware Bay Section of the Shellfisheries Council voted at their regularly scheduled meeting on February 3, 1987, that the natural oyster seed beds above the southwest line in Delaware Bay will not be open for the taking of oysters in 1987, due to depletion of the beds as determined by sampling.
See: 19 N.J.R. 662(b).

Amended by R.1991 d.349, effective July 1, 1991.

See: 23 N.J.R. 1112(a), 23 N.J.R. 2012(b).

Substituted "written agreement" for "arrangement" in (b)2. Added "on the day taken" in (c). Added (d) and (e). Recodified (d), (e), (f) as (f), (g), (h); deleted "Delaware Bay Section of the Shellfisheries" in (f), (b). Recodified (g)-(k) as (i)-(m). Recodified (l) as (n) and added "and in accordance with this chapter before the vessel may return to harvesting from the seed beds." Added (o), (p) and (r). Recodified (m) as (q).

Amended by R.1994 d.450, effective September 6, 1994.

See: 26 N.J.R. 1562(a), 26 N.J.R. 3714(a).

Public Notice: Closure of Delaware Bay oyster seed beds.

See: 27 N.J.R. 2268(b).

7:25A-1.10 Review

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

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. (RESERVED)

Subchapter Historical Note

Subchapter 3, Oyster Seed Beds, was originally adopted as R.1972 d.79 and codified at N.J.A.C. 7:36, effective May 15, 1972. See: 4 N.J.R. 102(a). Those rules expired on June 9, 1972. New rules were filed as R.1973 d.86, effective May 14, 1973. They were codified at N.J.A.C. 7:25-7.4, but subsequently recodified at N.J.A.C. 7:25-7.2. See: 5 N.J.R. 141(a). Amendments for N.J.A.C. 7:25-7.2 became effective May 20, 1974 as R.1974 d.124. See: 6 N.J.R. 228(b) and expired June 30, 1984. New rule was effective May 19, 1975 as R.1975 d.74. See: 7 N.J.R. 49(b), 7 N.J.R. 151(a). Amendments became effective May 11, 1977 as R.1977 d.166. See: 9 N.J.R. 264(a). May 15, 1978 as R.1978 d.123. See: 10 N.J.R. 188(a). May 22, 1978 as R.1978 d.128. See: 10 N.J.R. 188(b). March 13, 1979 as R.1979 d.102. See: 11 N.J.R. 173(b). May 15, 1980 as R.1980 d. 215. See: 12 N.J.R. 8(a), 12 N.J.R. 314(d).

N.J.A.C. 7:25-7.2 was recodified to N.J.A.C. 7:25A-3 with amendments, effective June 4, 1981 as R.1981 d.189. See: 13 N.J.R. 193(a), 13 N.J.R. 340(b). Amendments became effective May 3, 1982 as R.1982 d.148. See: 14 N.J.R. 264(a), 14 N.J.R. 426(b). May 16, 1983 as R.1983 d.161. See: 15 N.J.R. 200(a), 15 N.J.R. 804(b). December 5, 1983 (operative May 14, 1984) as R.1983 d.568. See: 15 N.J.R. 1415(b), 15 N.J.R. 2040(a), 16 N.J.R. 367(a). Beds closed to harvest on June 8, 1984 at 3:30 P.M. See: 16 N.J.R. 1813(a). This subchapter was repealed effective May 6, 1985 as R.1985 d.216. See: 17 N.J.R. 352(a), 17 N.J.R. 1092(a).

SUBCHAPTER 4. OYSTER CULTCH PROGRAM

7:25A-4.1 Scope

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

7:25A-4.2 Definitions

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

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

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

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

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

7:25A-4.3 Fee

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

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

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

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

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

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

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

Amended by R.1994 d.450, effective September 6, 1994.
See: 26 N.J.R. 1562(a), 26 N.J.R. 3714(a).
Public Notice: Landing fee, \$0.70 per bushel.
See: 27 N.J.R. 1477(a).

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

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

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

7:25A-4.5 Records required

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

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

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

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

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

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

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

7:25A-4.6 Penalties

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