

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1974 Revisions: On February 20, 1974 the original rules were repealed and replaced by R.1974 d.44, which was codified as N.J.A.C. 7:12 on June 30, 1974.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 R.1974 d.44 was repealed and replaced by R.1974 d.99 on April 23, 1974.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 On May 1, 1975, R.1975 d.116 repealed and replaced Chapter 12 with new rules.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 Immediate Shellfish harvest suspensions

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.