

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1902(a)(4) (7 Del.C. §1902(a)(4))
7 DE Admin. Code 3702 & 3771

PROPOSED

3700 Shellfish Regulations

REGISTER NOTICE # 2010-12

1. Title of the Regulations:

Amendments To Shellfish Regulations

2. Brief Synopsis of the Subject, Substance, and Issues:

Oyster harvesting regulations need to be updated to clarify when oyster bags and cages are to be tagged. Additionally, a time frame for the retention of tags has been established; so that Enforcement may document the amount of oysters harvested and processed.

It is also proposed to make it illegal to have onboard a vessel used or invalid oyster tags, because some harvesters have been reusing tags to harvest more than their quota of oysters.

Onboard processing is being prohibited in order to ensure that tags remain on bags and cages until the oysters are unloaded at the dock.

"Processor" and "processing" have been defined to establish when the oyster tags may be removed, and determine the party responsible for retaining the tags for the 90 days post calendar year.

3. Possible Terms Of The Agency Action:

None

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. § 1902

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 1990, (302 739 9914). A public hearing on this proposed amendment will be held on April 29, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 P. M. April 30, 2010.

7. Prepared By:

Richard Cole, (302 739 4782), February 22, 2010

3700 Shellfish Regulations

3702 Definitions:

1.0 **"2 Consecutive Years"**, as it appears in 7 Del.C. §1918(c) shall mean any consecutive 24 month period.

"A Person's Intent to Sell Shellfisheries to Another" shall mean a person has in his possession a quantity of that species of shellfish in excess of the quantity specified under the definition of

"Commercial Shellfishing" or this same person advertises for sale, offers for sale or completes the sale of any portion of that measure of shellfish to another person.

"Commercial Shellfishing" shall mean for any person to possess those species of shellfish in excess of the following quantities unless said person has a valid receipt for all shellfish above these quantities; or as otherwise provided by law or regulation:

- Oysters - one (1) bushel per vessel
- Blue Crabs - one (1) bushel per person
- Hard Clams - five hundred (500) clams per person
- Lobsters - two (2) lobsters per person

"Commercial Measure" shall mean that unit of measurement of a species of shellfish as described herein:

- Oysters - bushels
- Blue Crabs - bushels
- Clams - actual numbers or bushels
- Lobsters - actual numbers or pounds
- Blue Mussels - bushels or pounds

"Delaware Bay" shall mean all those waters and submerged lands under the jurisdiction of the State located within an area bordered on the North by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the South by a line drawn from Cape May Inlet East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy 2CM; thence to the northernmost extremity of Cape Henlopen, but not including any tributaries thereto.

"Delaware River" shall mean all those waters and submerged lands under the jurisdictions of the State located within an area to the North of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

"New Licensee"

- shall mean for purposes of interpreting 7 **Del.C.** §1918(a), any person who has never been issued a commercial crab pot license or any person who has not been issued a valid commercial crab pot license by the Department before May 1, 1994 and annually thereafter when applying for the renewal of such license.
- shall mean for purposes of interpreting 7 **Del.C.** §1918(b), any person who has never been issued a commercial crab dredger's license or any person who has not been issued a valid crab dredger's license by the Department before May 1, 1994 and then annually thereafter when applying for the renewal of such license."

"Processing" shall mean, with respect to shellfish or shellfisheries products: Preparing, shucking, freezing, changing into different market forms, manufacturing, preserving, packing.

"Processor" shall mean any person engaged in the purchasing, or commercial, custom, or institutional processing of shellfish products.

"Recreational Purposes" shall mean the noncommercial use of shellfish that does not include the sale, trade or barter of shellfish in quantities less than the prescribed quantities for commercial shellfishing.

3771 Oyster Harvesting Licensee Requirements

(Penalty Section 7 **Del.C.** §1912)

- 1.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel while harvesting oysters.
- 2.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an current Department issued oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters. The tag shall be cinched around the top of the bag and locked such that the bag may not be opened nor oysters removed from the bag without

breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and ~~returning to any port~~ remain in place while being transported for processing.

- 3.0 It shall be unlawful for any person to possess a bushel bag that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag.

5 DE Reg. 2140 (5/1/02)

6 DE Reg. 1356 (4/1/03)

- 4.0 It shall be unlawful for any person to possess an oyster cage that is empty of oysters so long as an oyster harvesting tag is attached to said cage. A filled or partially filled oyster cage must have the appropriate number of tags attached in the locked position to reflect the number of bushels of oysters in the cage.

- 5.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess, while on board any vessel listed on said person's oyster harvesting license, used or otherwise invalid oyster harvesting tags. A used tag shall mean any tag that has been locked or sealed and subsequently cut, broken, or made unusable.

- 6.0 Any processor receiving oysters that were harvested from the State's natural oyster beds must keep the oyster harvesting tag or tags in place until the container is broken open or emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for a period of 90 days beyond the end of the calendar year, unless otherwise directed by authorized representatives of the Department.

- 6.1 It shall be unlawful for any person to process oysters aboard a vessel.

6 DE Reg. 1356 (4/1/03)

11 DE Reg. 1496 (05/01/08)

13 DE Reg. 1285 (04/01/10)