



**START ACTION NOTICE # SAN 2018-12**

**1. TYPE OF ACTION:**

Amend existing regulation

**2. PURPOSE OF ACTION:**

The Atlantic Ocean is currently classified as an Approved Shellfish Growing Area (GA-7) but there is no commercial or recreational bi-valve shellfish harvest that occurs in this growing area and the State resources to maintain current sampling and classification work are costly and provide no added benefit to the State. The purpose of this action is to change the classification of the Atlantic Ocean from an Approved Shellfish Growing Area to a Prohibited Shellfish Growing Area. By changing the classification status, it will save the State thousands of dollars annually with no impact to the public which utilizes the State's shellfish resources. If a viable fishery was determined to exist in the Atlantic Ocean in the future, the area could be reclassified to support the fishery.

The Delaware Fishing Guide has listed that clamming cannot occur within seagrass beds. This addition will make the Prohibited Shellfish Growing Area classification consistent with the restriction of clamming in seagrass beds referenced in the Delaware Fishing Guide for over ten years.

The definition of Shellfish Seed and Maximum Seed Size will be added to Shellfish Sanitation Regulations to be consistent with current Fish and Wildlife Shellfish Aquaculture Regulations for the Inland Bays.

There are no costs associated with these regulatory changes and there is minimal or no impact to commercial or recreational bi-valve shellfish harvesters. This action will save the State of Delaware thousands of dollars annually and continue to protect the State's seagrass restoration efforts.

**3. STATUTORY BASIS:**

*Delaware Administrative Code 7402 Shellfish Sanitation Regulations*

**4. IS THIS PROPOSED REGULATORY ACTION REQUIRED AS A RESULT OF FEDERAL STATUTE OR REGULATION? IF SO, PROVIDE LINK TO FEDERAL MANDATE.**

Regulatory action is occurring to save the State financial and personnel resources because continued classification of this growing area does not have a benefit to commercial or recreational shellfish harvesters because there is no resource or harvest in recent history.

Prohibited Shellfish Growing Area classification in seagrass beds has already been listed in the Delaware Fishing Guide under the clamming section for over 10 years.

5. DATE OF MOST RECENT REVIEW/AMENDMENT:  
(Please indicate if review was pursuant to EO-36 OR HB 147)

The date of the last amendment to Delaware Administrative Code 7402 Shellfish Sanitation Regulations was on September 1, 2016. The regulation change was not required because of EO-36 or HB 147.

6. LIKELY AFFECTED PUBLIC:

There are no likely affected public impacted by this regulation change because there is currently no commercial or recreational bi-valve shellfish harvest in Delaware's jurisdictional waters of the Atlantic Ocean. If a viable fishery was identified in the future, the Atlantic Ocean (GA-7) would be reclassified to allow for harvest of this resource. The implementation of this regulation will save Delaware taxpayers money by not spending State resources on classification of this growing area with no added benefit to the public.

Shellfish harvesting in seagrass beds has already been listed as a Prohibited Shellfish Growing Area in the Delaware Fishing Guide under the clamming section for over 10 years. No clamming currently occurs in these protected areas so there is no effect on the public.

The addition of Seed and Maximum Seed Size will not have an adverse effect on the public because Maximum Seed Size is already defined in Fish and Wildlife Shellfish Aquaculture Regulations for the Inland Bays. This change will benefit the public by establishing a standard for the growth of seed in a Prohibited Shellfish Growing Area statewide consistent with current aquaculture regulations.

7. PROPOSED SCHEDULE OF ACTIVITIES:

Start Action Notice- August 2018

Publication- October 2018

Public Hearing- November 2018

Final Publication- January 2019

8. REVIEW COMMITTEE:

There will be no review committee because the classification change of the Atlantic Ocean will not have an impact to the public because there is no resource or recent commercial or recreational harvest.

Shellfish harvesting in seagrass beds has already been listed as a Prohibited Shellfish Growing Area in the Delaware Fishing Guide under the clamming section for over 10 years. No clamming currently occurs in these protected areas so there is no effect on the public.

No review committee is required for the definition of seed and maximum seed size because these are already contained within Fish and Wildlife Shellfish Aquaculture Regulations for the Inland Bays. This will provide consistency between the two sets of regulations and benefit the public by establishing a standard for the growth of seed in a Prohibited Shellfish Growing Area statewide consistent with current aquaculture regulations.

This change will save the State of Delaware financial and personnel resources. Letters will be mailed to all Delaware certified shellfish dealers to make them aware of the proposed regulation change.

9. RESPONSIBLE STAFF MEMBER:

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10. APPROVALS:

 8/6/2018

Michael Bott  
Responsible Staff Member

Date

 8-13-18

Terry Deputy  
Director, Division of Watershed Stewardship

Date

 8/26/18

Shawn M. Garvin  
Secretary

Date

