



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
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Secretary's Order No.: 2016-WS-0034

**RE: Approving Final Regulations to Amend 7 DE Admin. Code §7402:
*Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally
Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])***

Date of Issuance: August 12, 2016

Effective Date of the Amendment: September 11, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006, 6010, and other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §7402: *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, promulgated pursuant to authority granted in 7 *Del.C.* §§1902(a) and 7 DE Admin. Code §7402, Section 3.1.5 of the *Shellfish Sanitation Regulations*, which charges the Department to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to

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public health (for the purpose of this regulation, shellfish are defined as clams, oysters, and mussels). The Department's Division of Watershed Stewardship commenced the regulatory development process with Start Action Notice 2016-04 dated April 5, 2016. The Department published its initial proposed regulation Amendments in the May 1, 2016 *Delaware Register of Regulations*. The Department then held a public hearing on June 27, 2016. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through July 12, 2016.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 DE Admin. Code §7402: *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively]*, ("Amendments"). This proposed action seeks to adopt provisions consistent with the National Shellfish Sanitation Program ("NSSP") and the United States Food and Drug Administration ("USFDA") Guidance Documents for shellfish growing area classifications which were recently revised in January 11, 2016, and, as noted above, to ensure that public health and safety is not at risk from the same. Specifically, this promulgation is in support of the recent Secretary's Order No. 2016-WS-0013 (March 16, 2016), which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016, consistent with the revised USFDA Guidance Documents. This proposed action will amend existing Delaware Shellfish Sanitation regulations to come into alignment with the aforementioned Secretary's Order. Additionally, these Amendments will provide further clarity to the regulated community by the removal of various duplicate citations as set forth in the existing regulations.

The international standards for the growing, harvesting, handling, and processing of shellfish are maintained by the Interstate Shellfish Sanitation Conference (“ISSC”). This administrative body of the NSSP is a combination of industry, state regulators, and federal Food and Drug officials. Delaware is a cooperative member of the NSSP, which evolved from the public health principles and program controls formulated at the original conference on shellfish sanitation called by the Surgeon General of the United States Public Health Service in 1925. Adherence to ISSC principles and standards is administered under the auspices of the USFDA.

Based upon the recommendation of the Department’s Division of Watershed Stewardship’s Shellfish Program, the Seasonally Approved area identified in 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations*, Appendix 3, Rehoboth Bay 1, no longer meets the classification for seasonal harvest, and is therefore closed. The description of said lands are as follows: *the areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower.* It should be noted that the decision to recommend closure of the Rehoboth Conditionally Approved Area is based on an assessment of theoretical waste water discharge dilutions, and not on changes to observed water quality. The theoretical waste water discharge dilution criteria were recently changed by a U.S. Food and Drug Administration guidance document, which is now being incorporated into the Department’s existing regulations with this proposed promulgation.

The current classification of the shellfish growing area is “Seasonally Approved” (December 1st through April 15th); however, due to new USFDA Federal Guidance for prohibited zones around wastewater treatment plants as referenced above, this area is now being classified as “Prohibited” to the harvest of shellfish. The closure of this shellfish growing area, through the aforementioned Secretary’s Order No. 2016-WS-0013, exceeds the required prohibited area associated with the Rehoboth Wastewater Treatment Plant year-round. This proposed regulatory promulgation will update the current Shellfish Sanitation Regulations Appendix 3, Rehoboth Bay 1 (Seasonally Approved) to Regulations Appendix 1, Rehoboth Bay and Indian River Bay: 18 (Prohibited).

The above-referenced proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 27, 2016. No member of the public attended the hearing held by the Department in this matter on June 27, 2016, nor was any public comment received by the Department at any time during this proposed promulgation. All proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated July 26, 2016 (“Report”). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A”.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code §7402: *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Watershed Stewardship fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable Delaware to remain in compliance and adhere to ISSC principles and standards, as administered under the auspices of the U.S. Food and Drug Administration, amend existing Delaware regulations to come into alignment with Secretary's Order No. 2016-WS-0013, which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016, and ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health;

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, pursuant to 7 Del.C. §§1902(a), and 7 DE Admin. Code §7402, Section 3.1.5 of the *Shellfish Sanitation Regulations*, which

charges the Department to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on June 27, 2016, and held the record open through close of business on July 12, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record, and the recommended proposed regulatory Amendments, as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

5. The adoption of these proposed regulatory Amendments will enable Delaware to (1) remain in compliance and adhere to ISSC principles and standards recently revised on January 11, 2016, as administered under the auspices of the U.S. Food and Drug Administration; (2) allow the Department to amend existing Delaware regulations to come into alignment with Secretary's Order No. 2016-WS-0013, which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016; (3) ensure that public health and safety is not at

risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health; and (4) provide further clarity to the regulated community by the removal of various duplicate citations as set forth in the existing regulations;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption “B1” regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department’s proposed regulatory Amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, as published in the May 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 &*

3, respectively]), to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

A handwritten signature in blue ink, appearing to read "David S. Small", written over a horizontal line.

David S. Small
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable David S. Small
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest ^{LA}
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])***

DATE: July 26, 2016

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Monday, June 27, 2016, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC”, “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*. This proposed action seeks to adopt provisions consistent with the National Shellfish Sanitation Program (“NSSP”) and the United States Food and Drug Administration (“USFDA”) Guidance Documents for shellfish growing area classifications, and to ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health (for the purpose of this regulation, shellfish are defined as clams, oysters, and mussels). Specifically, this promulgation is in support of the recent Secretary’s Order No. 2016-WS-0013 (March 16, 2016), which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as

“Prohibited” effective March 21, 2016. This proposed action will amend existing Delaware Shellfish Sanitation regulations to come into alignment with the aforementioned Secretary’s Order.

Based upon the recommendation of the Department’s Division of Watershed Stewardship’s Shellfish Program, the Seasonally Approved area identified in 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations*, Appendix 3, Rehoboth Bay 1, no longer meets the classification for seasonal harvest, and is therefore closed. The description of said lands are as follows: *the areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower.* It should be noted that the decision to recommend closure of the Rehoboth Conditionally Approved Area is based on an assessment of theoretical waste water discharge dilutions, and not on changes to observed water quality. The theoretical waste water discharge dilution criteria were recently changed by a U.S. Food and Drug Administration guidance document, which is now being incorporated into the Department’s existing regulations with this proposed promulgation.

The current classification of the shellfish growing area is “Seasonally Approved” (December 1st through April 15th); however, due to new USFDA Federal Guidance for prohibited zones around wastewater treatment plants as referenced above, this area is now being classified as “Prohibited” to the harvest of shellfish. The closure of this shellfish growing area, through the aforementioned Secretary’s Order No. 2016-WS-0013, exceeds the required prohibited area associated with the Rehoboth Wastewater Treatment Plant year-round. This proposed regulatory promulgation will update the current Shellfish Sanitation Regulations Appendix 3, Rehoboth Bay

1 (Seasonally Approved) to Regulations Appendix 1, Rehoboth Bay and Indian River Bay: 18 (Prohibited).

It should be noted that there are no costs associated with this regulatory change. The likely affected public includes both recreational and licensed commercial clammers. With regard to licensed commercial clammers, the impact is minimal, because there was no active commercial clam harvest when the prior aforementioned Secretary's Order was issued, and reported harvest in this area has been minimal over the last several years. There is minimal, if any, financial impact to commercial clammers because of the lack of harvest in the closure area. There is no impact to recreational clammers, because this area was previously open only during cooler months (December 1st through April 15th), when little to no recreational clam harvest occurs due to cold water temperatures.

The Department has the statutory basis and legal authority to act with regard to the aforementioned proposed amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations*, pursuant to 7 Del.C. §§1902(a), and 7 DE Admin. Code §7402, Section 3.1.5 of the *Shellfish Sanitation Regulations*, which charges the Department to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health.

No member of the public attended the hearing held by the Department in this matter on June 27, 2016, nor was any public comment received by the Department at any time during this proposed promulgation. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) nine documents introduced by responsible Department staff at the public hearing held on June 27, 2016, and marked by this Hearing Officer accordingly as Department Exhibits 1-9. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Michael Bott, developed the record with the relevant documents in the Department's files.

The international standards for the growing, harvesting, handling, and processing of shellfish are maintained by the Interstate Shellfish Sanitation Conference ("ISSC"). This administrative body of the NSSP is a combination of industry, state regulators, and federal Food and Drug officials. Delaware is a cooperative member of the NSSP, which evolved from the public health principles and program controls formulated at the original conference on shellfish sanitation called by the Surgeon General of the United States Public Health Service in 1925. Adherence to ISSC principles and standards is administered under the auspices of the USFDA.

As noted above, the purpose of this proposed regulatory promulgation is to adopt provisions consistent with the NSSP and the USFDA Guidance Documents for shellfish growing area classifications, and to ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health. Specifically, this promulgation is in support of Secretary's Order No. 2016-WS-0013, which ordered the above-referenced identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016. This promulgation will amend existing Delaware regulations to come into alignment with the aforementioned Secretary's Order.

As part of its regulatory development process, the Department's Division of Watershed Stewardship provided numerous notices of this proposed regulatory action to both the regulated community and the public at large, including, but not limited to, notice of the June 27, 2016 public hearing posted to the State Meeting Calendar on June 3, 2016, and legal notice of the aforementioned public hearing published in both the Delaware State News and the News Journal on June 5, 2016. The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 27, 2016.

As noted previously, no members of the public attended the hearing held on June 27, 2016. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. The public hearing record remained open at that time for public comment through August 7, 2016. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed Amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, as noted above. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, pursuant to 7 *Del.C.* §§1902(a), and 7 DE Admin. Code §7402, Section 3.1.5 of the *Shellfish Sanitation Regulations*, which charges the Department to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on June 27, 2016, and held the record open through close of business on July 12, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, will enable Delaware to (1) remain in compliance and adhere to ISSC principles and standards, as administered under the auspices of the U.S. Food and Drug Administration; (2) allow Delaware to amend existing Delaware regulations to come into alignment with Secretary's Order No. 2016-WS-0013, which

ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as “Prohibited” effective March 21, 2016; and (3) ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health;

5. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.*, Ch. 104 (version applicable to all proposed regulations initially submitted to the *Delaware Register of Regulations* on or after January 1, 2016), and has selected Exemption “B1” regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department’s proposed regulatory amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, as published in the May 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed regulatory amendments as final regulatory amendments to 7 DE Admin. Code §7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments/Reg. Flex. Analysis and Impact Stmt. Form

APPENDIX “A”

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, June 9, 2016, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

[http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 989RFA 05-01-16.pdf](http://regulations.delaware.gov/register/may2016/proposed/19%20DE%20Reg%20989RFA%2005-01-16.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

Cottage Food Regulations

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 Del.C., §1902(a))

7 DE Admin. Code 7402

REGISTER NOTICE

SAN #2016-04

7402 Shellfish Sanitation Regulations

1. TITLE OF THE REGULATIONS:

7402 Shellfish Sanitation Regulations

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The current classification of the shellfish growing area is Seasonally Approved (December 1st through April 15th) but due to new US Food and Drug Administration Federal Guidance for prohibited zones around wastewater treatment plants, this area is now being classified as prohibited to the harvest of shellfish. Shellfish for the purpose of this regulation are defined as clams, oysters and mussels.

The closure of this shellfish growing area, through the Secretary's Order NO 2016-WS-0013, exceeds the required prohibited area associated with the Rehoboth Wastewater Treatment Plant year-round. The effective date of this closure was on March 21, 2016 and the regulatory process will update the current Shellfish Sanitation Regulations Appendix 3, Rehoboth Bay 1 (Seasonally Approved) to Regulations Appendix 1, Rehoboth Bay and Indian River Bay: 18 (Prohibited).

There are no costs associated with this regulatory change and there is minimal or no impact to commercial clambers because no recent commercial harvest of clams has been reported in the closure area.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for the proposed regulation change.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Administrative Code 7402 *Shellfish Sanitation Regulations*

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7402 Shellfish Sanitation Regulations will be open May 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on June 2, 2016 beginning at 6:00 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Michael Bott

Phone: 302-739-9939

Fax: 302-739-6140

Michael.bott@state.de.us

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/may2016/proposed/19 DE Reg 990RFA 05-01-16.pdf>

7402 Shellfish Sanitation Regulations (Break in Continuity of Sections)

2.0 Definitions

NOTE: Those definitions primarily relating to the "Policy To Determine Shellfish Growing Area Classification In And Around Wet Slip Basins And Artificial Lagoons" are contained in Appendix 11.

(Break in Continuity Within Section)

Approved Source of Shellfish: Shellfish meeting all criteria in these Regulations, including the following:

Shellfish which have been handled by certified interstate Shellfish Dealer/Processors whose names appear on the *Interstate Shellfish Shippers Certified List*;² OR shellfish harvested from Delaware waters which have been handled by certified Delaware Intrastate Shellfish Dealer/Processors, and which are available for retail sale to the final customer only in Delaware.¹

Shellfish from Approved waters; OR shellfish from waters classified as other-than-Approved when shellfish harvesting is allowed on a seasonal/conditional basis; OR shellfish subjected to an approved depuration or relay process.

(Break in Continuity of Sections)

3.0 General Regulations, Water Quality and Classification, Harvesting, Tracking, Permitting, Handling and Shipping:

(Break in Continuity Within Section)

3.3 Permitting of Shellfish Dealer/Processors:

3.3.1 Permit Issuance Parameters:

- 3.3.1.1 Applications for permits to operate as shellfish dealer/processors shall be made on permit applications provided by DNREC. The following shellfish handlers shall be required to be permitted/certified by DNREC in order to engage in the procurement and sale of shellfish:

-
1. Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to ~~sale~~ being sold/transferred to the final consumer.

PROPOSED REGULATIONS

(Break in Continuity Within Section)

3.3.1.1.5 Shellfish harvesters, engaged in:

(Break in Continuity Within Section)

3.3.1.1.5.3 Harvesting of shellfish for delivery to a depuration plant and/or for relaying.⁴²

3.3.1.2 Shellfish retailers shall not be required to be permitted/certified unless shellfish are procured from a non-certified source.³¹

(Break in Continuity Within Section)

3.4 Shellfish Handling and Shipping Parameters:

(Break in Continuity Within Section)

3.4.2 Marketing to the Final Consumer:⁴¹

(Break in Continuity of Sections)

APPENDIX 1

This list of *Prohibited* shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control on December 20, 1995. Shellfish harvesting is prohibited in the following areas for any reason at any time:

(Break in Continuity of Sections)

Rehoboth Bay and Indian River Bay:

(Break in Continuity Within Section)

10. The areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower. This area is marked by signs and buoys.
101. Indian River Inlet and Cedar Islands. The western boundary line begins at Burton's Island, running south to a point west of the marsh which lies south of an unnamed gut south of the South Inlet Marina, thence in an easterly direction to said marsh. The eastern boundary begins one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. The northern boundary (in the vicinity of Cedar Islands in Rehoboth Bay) begins at an unnamed island north of Savages Ditch running in a southeasterly direction to Burton Island. The area is marked by signs and buoys.
142. White Creek and its tributaries extending south of a line drawn in an east-west direction from the East Shore of White Creek to a point on Big Marsh on the West Shore. This area is marked by signs.

2. Persons harvesting shellfish from waters classified as other-than-Approved for delivery to a depuration plant and persons engaged in relaying shall submit operational specifications for said activities to DNREC prior to commencing operations, and shall have received a permit or written permission from DNREC to harvest shellfish from waters classified as other-than-Approved prior to commencing such operations. Additional permits may be required by the DNREC Division of Fish and Wildlife.
3. ~~Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to being sold/transferred to the final consumer.~~
4. ~~Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to being sold/transferred to the final consumer.~~

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123. Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the eastern bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.
134. Herring Creek and its tributaries extending northwest from a line running from Burton Point in a southerly direction to Long Neck. This area is marked by signs.
145. The southwest corner of Beach Cove. This area is marked by signs.
156. The southeast corner of Beach Cove. This area is marked by signs.
167. The northeast corner of Beach Cove. This area is marked by signs.
178. Love Creek - The portion of Love Creek lying in a northwesterly direction from the line formed by a point marked on shore at the southern confluence of Love Creek and Arnell Creek, thence in a southwesterly direction to a point in the marsh identified as being directly south of Boathouse Lane. This area is marked by signs.

Little Assawoman Bay:

189. Assawoman Canal. The Canal-proper is not marked. However, the adjacent waters in White Creek in Indian River Bay and Little Assawoman Bay are marked by signs.
4020. Miller Creek and its tributaries and the northern reaches of Little Assawoman Bay north of a line running in an east-west direction from Goose Point on the southern bank of Miller Creek at its mouth to an unnamed point on Fenwick Island State Park. This area is marked by signs.
201. Dirickson Creek west of a line running from Bennett Point in a southwesterly direction to Conch Point. This area is marked by signs.
242. Tubbs Cove south of a line running in an east-west direction from the shoreline north of Treasure Beach Campground to Point Of Ridge. This area is marked by signs.
223. The waters adjacent to the Town of Fenwick Island south of a line running from Old Inlet Point in a north-north-easterly direction to an unnamed point on the barrier. This area is marked by signs.

Assawoman Bay:

234. That portion of an unnamed bay north of the Delaware / Maryland line adjacent to the Cape Windsor Development. This area is marked by signs.
245. Roy Creek and its tributaries north-west of a line running from an unnamed point on Greys Neck north-east across several unnamed islands to a point south of Route 54. This area is marked by signs.

Nanticoke River:

266. Nanticoke River and all its tributaries. This area is marked by signs.

Atlantic Ocean:

267. The Atlantic Ocean adjacent to Indian River Inlet encompassed within a line beginning one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.
278. The Atlantic Ocean within a radius of one-half mile from the South Coastal Sewage Treatment Plant outfall which is located at north latitude 38°31'34" west longitude 75°01'56".

Applies To All Areas:

289. All artificial lagoons. Most of these areas are unmarked.
2930. All wet slip basins. Most of these areas are unmarked.

PROPOSED REGULATIONS

(Break in Continuity of Sections)
APPENDIX 3

This list of **Seasonally Approved** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control into the public record on December 20, 1995. Shellfish harvesting is allowed in the following areas in accordance with Delaware's fish and game laws from December 1 through April 15:

Rehoboth Bay:

1. ~~The areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower. This area is marked by signs and buoys.~~
2. The area adjacent to West Bay Trailer Park Marina from a point north of the Marina in a southeasterly direction to a point directly north of the eastern-most point of Sally Cove Marsh and directly east of the middle Marina lagoon, thence in a southwesterly direction to a point south of the Marina. This area is marked by signs and buoys.
- ~~32.~~ The area adjacent to the mouth of Herring Creek west of a line running from Burton Point on Angola Neck in a southeasterly direction to Nats Cove Point. This area is marked by signs and buoys.
- ~~43.~~ Massey's Ditch and Roman T. Pond south of a line running from Bluff Point in a southeasterly direction to an unnamed point on the north bank of the unnamed island east of Massey's Ditch. This area is marked by signs.

Indian River Bay:

- ~~64.~~ The area landward of a line running from a point on the south bank of the unnamed island east of Massey's Ditch in a southerly direction to Middle Island, thence in a westerly direction to a point on the Townsend Property east of Emily Gut (the same point marking the beginning of the Prohibited area boundary line). This area is marked by signs and buoys.
- ~~65.~~ The area south of an east-west line running from Pasture Point, to Walter Point. This area is marked by signs and buoys.

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

7402 Shellfish Sanitation Regulations

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMBLING
 Statutory Authority: 28 Delaware Code, Section 1507 (28 Del.C. §1507)
 10 DE Admin. Code 101

PUBLIC NOTICE

101 Regulations Governing Bingo

Pursuant to 28 Del.C. §1507, the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The rules pertaining to bingo and instant bingo are modified to provide additional guidance on

