



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

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SECRETARY

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EMERGENCY SECRETARY'S ORDER

Pursuant to Paragraph M.4. of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, and pursuant to 7 Del. C. §903(h) and 29 Del. C. §10119

Order No: 2020-F-0039

(Extension of Order No: 2020-F-0026)

RE: 7 DE Admin. Code §§3801-16.2; 16.3.1; and 16.4: *Shellfish Aquaculture; Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites*

AUTHORITY

Pursuant to Paragraph M.4. of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration"), the Department of Natural Resources and Environmental Control ("Department") is adopting an emergency rule modifying the Inland Bays Shellfish Aquaculture Regulation 7 DE Admin. Code §§ 3801-16.2, 16.3.1 and 16.4: *Shellfish Aquaculture; Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites*. Paragraph M.4. of the Governor's Emergency Declaration authorizes the Secretary of the Department to adopt emergency rules in order "to respond to COVID-19 concerns that implicate the natural resources of the State of Delaware."

REASON FOR THE EMERGENCY RULE

The mandatory business closures and reduced business operations resulting from national and state efforts to contain the COVID-19 pandemic have led to a catastrophic decline in commercial demand for seafood and shellfish, including oysters propagated by shellfish aquaculture in the Inland Bays. Delaware's Inland Bays shellfish aquaculture regulations specify timeframes for when aquaculture activity must occur and minimum shellfish planting quantities on shellfish aquaculture leases. Inland Bays shellfish aquaculture lessees subject to these requirements in the year 2020 communicated to the Department that the substantial reduction in the restaurant market for shellfish does not warrant the risk, investment of time, and financial resources to plant and actively cultivate oyster stock for which there is a limited and uncertain market.

Additionally, the mandatory COVID-19 quarantines on interstate travel during the spring of 2020 in Delaware and other states, as well as staffing limits placed on shellfish seed hatching, propagation, and testing facilities in several states, resulted in challenges for the shellfish aquaculture industry in obtaining, transferring, testing, and importing shellfish seed for planting on aquaculture leases. The COVID-19 pandemic is therefore responsible for a catastrophic loss in the shellfish sales market and a disruption of the shellfish seed supply chain. The reduction in the restaurant market for shellfish in the year 2020 will extend into the year 2021, which does not warrant the risk, investment of time, and financial resources to plant and actively cultivate oyster stock for which there is a limited and uncertain market, and the uncertain availability of shellfish seed may limit the ability to plant shellfish. Thus, the extension of Emergency Secretary Order 2020-F-0026 is necessary to ensure the financial and operational viability of the shellfish aquaculture industry and individual lessees and associated shellfish resources.

EMERGENCY RULE

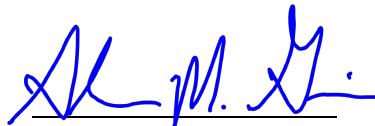
It is hereby ordered, this 29th day of December 2020, that 7 DE Admin. Code §§ 3801-16.2; 16.3.1; and 16.4 concerning the conditions for active use of and minimum shellfish planting quantities for Inland Bays shellfish leases are temporarily modified, as shown by strikethrough, as follows:

3801-16.2: ~~In the event that an aquaculture lease is determined by the Department not to be active for a period of one (1) year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites.~~

3801-16.3.1: ~~After two (2) years (24 months) from the date of lease issuance or transfer, leaseholders must provide evidence to the Department's satisfaction that they annually plant at least 100,000 shellfish per acre leased.~~

3801-16.4: ~~Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter.~~

The renewal of this emergency rule shall take effect at **12:00 a.m. on January 1, 2021** and shall remain in effect until **12:00 a.m. on July 1, 2021**.



Shawn M. Garvin
Secretary