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RULE PROPOSALS

**AGRICULTURE
STATE BOARD OF AGRICULTURE**

41 N.J.R. 2752(a)

Proposed Readoption: N.J.A.C. 2:89

[Click here to view Interested Persons Statement](#)

Aquaculture Development

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:27-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-213.

Submit comments by September 18, 2009 to:

Monique Purcell, Division Director
Agricultural and Natural Resources
New Jersey Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

The Aquaculture Development Act at N.J.S.A. 4:27-17 directs the Department of Agriculture ("Department" or "NJDA") to adopt a program for licensing the possession and ownership of aquacultured organisms through an Application for an Aquatic Farmer License and a permit coordination system to assist in completing and processing the application for licensing. The Aquaculture Development Act at N.J.S.A. 4:27-18 also directs the Department of

Agriculture to adopt rules and regulations establishing an Aquatic Organism Health Management Plan designed to protect public and private aquaculturists and wild aquatic populations from the importation of non-endemic disease causing organisms and to assist in facilitating the exportation and importation of aquatic species into and out of the State. It includes disease reporting and quarantine requirements as set forth in N.J.S.A. 4:5-1 et seq. These proposed rules continue the established aquaculture policy framework that was begun in 2004 to continue to foster the orderly development of aquaculture. This framework consists of an Aquatic Farmer License issued upon completion and approval of the Application for Aquatic Farmer License and acquisition of any additional permits that may be required by the New Jersey Department of Environmental Protection (NJDEP) or any other agency. As the Department has filed this notice of proposed reoption with the Office of Administrative Law prior to June 7, 2009, the expiration date is extended to December 4, 2009, pursuant to N.J.S.A. 52:14B-5.1c.

Since 2004, the NJDA has issued 192 Aquatic Farmer Licenses. The breakdown of these licensees includes 166 for bivalve molluscan shellfish, which includes 108 for hard clams, 43 for eastern oysters and 15 producers growing both clams and oysters; 18 for finfish; two for aquatic plants; three producers integrating finfish and aquatic plants; and three producing other aquaculture products, which include juvenile horseshoe crabs, soft-shell crabs and marine soft corals.

Obtaining an Aquatic Farmer License allows the producer to demonstrate definitive ownership of the organisms being cultured and will reduce the possibility of the introduction of exotic pests that may be detrimental to wild stocks and other aquatic farms. Aquatic Farmer License data was useful in determining that risk of introduction of viral hemorrhagic septicemia (VHS) through aquaculture was minimal since no licensed producers reported importing VHS-susceptible species from known geographic areas where VHS outbreaks had been documented. Many of the licensed aquatic farmer have received assistance in completing paperwork necessary for obtaining required State and Federal permits and guidance in planning an operation in a manner likely to reduce the regulatory burden and reduce or eliminate excessive fees while maintaining environmental integrity. The licensed aquatic farmer also have to be able to establish a documented production history, which can be used for disaster relief and other financial assistance eligibility for various programs operated by the New Jersey and United States Departments of Agriculture. Several aquaculture producers now participate in the Jersey Seafood branded program because of their status of licensed aquatic farms. Production data was recently used to determine eligibility for assistance to aquaculture producers under the American Recovery and Investment Act of 2009.

N.J.A.C. 2:89-1.1 continues the scope and purpose of the proposed new rules.

N.J.A.C. 2:89-1.2 establishes definition of terms.

N.J.A.C. 2:89-2 provides the licensing requirements, filing and application requirements and exemptions from licensing.

N.J.A.C. 2:89-3 continues the requirements for effluent management.

N.J.A.C. 2:89-4 establishes the identification and certification requirements of the Aquatic Farmer License.

N.J.A.C. 2:89-5 continues an Aquatic Organism Health Management plan and incorporates by reference the industry standards set forth by the "International Aquatic Animal Health Code" as identified by the Office des International Epizooties (OIE). The OIE lists the diseases of finfish mollusks and crustaceans, the consequences, spread and diagnoses of same, as well as sets forth the criteria for urgent notification of aquatic animal diseases.

N.J.A.C. 2:89-6 continues an aquatic organism import protocol.

N.J.A.C. 2:89-7 continues the parameters for compliance and monitoring.

N.J.A.C. 2:89-8 establishes violations and enforcement actions.

Changes are anticipated in a future rule proposal that will greatly improve the Aquatic Farmer License program. Updated and new definitions will be provided in N.J.A.C. 2:89-1.1. A major overhaul of the application in N.J.A.C. 2:89-2 for Aquatic Farmer License will focus on a [page=2753] general activity description where only relevant sections of the application must be completed based on the intended activity of the applicant. Existing licensees that do not have significant changes in operation will be able to renew their Aquatic Farmer Licenses with minimal burden. N.J.A.C. 2:89-5 and 6 will be changed to reflect the management of aquatic animal diseases and import rules in the State and the region that have been undergoing considerable change since 2004. Foreseen changes will also provide a regulatory pathway to establishing offshore aquaculture in State waters from zero to three nautical miles.

N.J.A.C. 2:89 Appendix A provides the license form for an aquatic farmer license and Appendix B provides the interim license requirements for the initial aquaculture program. A new license is expected to be proposed in August 2009, through amendments to the existing rules.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for re-adoption will have a positive social impact. Aquaculture is based on sustained production of renewable resources, promotes a healthy environment and provides an economically viable form of agriculture. Ability to provide a sustainable source of food production is a cornerstone of national security.

Development of aquatic farms along the coast is in the public interest since it is a use compatible with periodic flooding and can preserve flood hazard areas from development, which could result in significant property loss to the citizens of New Jersey. In evaluating water dependent uses, preference should be given to those uses that enhance renewable aquatic resources. Additionally, bivalve shellfish require the highest water quality certification and bivalve culture increases the ecological benefits derived from the filtering capacity of high populations of filter-feeding organisms and adds to the biodiversity of coastal waters. Other states that have allowed their shellfish populations to decline are now spending millions to restore those resources. Aquaculture development is compatible with tourism and other recreational activities.

Economic Impact

The rules proposed for re-adoption will have a positive impact on the State economy. Full development of aquaculture is expected to yield a significant increase in annual sales revenue. Aquaculture development is especially critical in economically stressed regions in southern New Jersey that have been hard hit by declines in fishery resources as a result of population dynamics and disease problems. The Oyster Industry Revitalization Task Force estimates that the full development of aquaculture could result in a conservative return of \$ 24 million along the Delaware Bayshore. Similar aquaculture development efforts undertaken in Connecticut have resulted in the growth of a vibrant industry. Studies in other states have indicated that dollars earned in fishery communities tend to stay within the community benefiting a variety of other businesses. Congress is currently considering the National offshore aquaculture Act of 2007. This bill seeks to provide a clear mechanisms to allow commercial aquaculture operations in Federal waters, three to 200 miles off the coast. It is anticipated that the establishment of sustainable aquaculture in both State and Federal offshore waters would be a positive economic activity for the existing infrastructure of New Jersey's working waterfronts.

Expansion of the aquaculture industry in New Jersey is anticipated to provide additional annual revenues, keep additional farmland acreage in production, increase of the number of aquatic leases, generate additional jobs and add to the food supply. New Jersey's hard clam industry is currently on the decline as a result of increased competition from other states that have moved forward on the development of a coherent aquaculture policy. It is anticipated that industry harvest could easily increase from the current \$ 6 million first receiver vessel return to over \$ 10 million.

In addition to the increases that can be achieved in the traditional bivalve molluscan shellfish sectors, aquaculture can assist in supplementing other wild harvests, which have decreased as a result of increasingly stringent fisheries management regimes. New Jersey harvests have decreased from a high of 540 million pounds in 1956 to 162 million pounds in 2002. Developing alternative sources of high-value fishery products can provide significant economic activity and associated jobs.

There is no fee associated with the issuance of the Aquatic Farmer License; however, fees may be required for licenses or permits required by other agencies.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking requirements of the Department of Agriculture for issuance of an Aquatic Farmer License are dictated by N.J.S.A. 4:27-1 et seq. and are not subject to any Federal requirements or standards. The rules do not exceed any applicable Federal standards. However, the following Federal laws may be applicable to certain aquatic farms:

7 U.S.C. §§8702, 7140, 7414, 11013, 12027 Food, Conservation, and Energy Act of 2008;

16 U.S.C. §§661 et seq. Fish and Wildlife Coordination Act;

16 U.S.C. §§1451 through 1464, Coastal Zone Management Act of 1972;

16 U.S.C. §§1531 et seq., Endangered Species Act;

16 U.S.C. §§2801 and 2809, National Aquaculture Act of 1980;

16 U.S.C. §§2801 through 2810, National Aquaculture Improvement Act of 1985;

16 U.S.C. §§3371 through 3378, Control of Illegally Taken Fish and Wildlife (Lacey Act);

21 U.S.C. §409(c)(3)(A), Federal Food, Drug and Cosmetic Act;

33 U.S.C. §§401 et seq., Rivers and Harbors Act of 1899;

33 U.S.C. §§1251 through 1387, Federal Water Pollution Control Act Amendments of 1972;

33 U.S.C. §§1401 through 1445, Marine Protection, Research and Sanctuaries Act of 1972;

21 CFR Parts 20, 510, 514 and 516, Designation of New Animal Drugs for Minor Uses or Minor Species;

21 CFR Volume 6, Parts 500 through 599, Animal Drugs and Related Products;

33 CFR Part 330, Nationwide Permit Program;

40 CFR Parts 100 through 140 and 400 through 471 (1989), and 451 (2004), Clean Water Act.

In addition, all licensed aquatic farmers will be required to provide production data for the U.S.D.A. Census of Agriculture pursuant to 7 U.S.C. §2204(g).

Jobs Impact

It has been estimated that New Jersey aquaculture can potentially support 10,000 new jobs. It is anticipated that aquaculture development can create new jobs and business opportunities for existing New Jersey farmers, commercial harvesters and members of the aquatic products processing, marketing and distribution industries. Increasingly stringent

fishery management regimes, decreasing stocks of traditional species and growing international competition have significantly reduced opportunities for employment in the traditional wild harvest fishery and the processing/packaging industries it supports. Growth of aquaculture can recapture some of those jobs. This initiative is especially critical in the small towns surrounding Delaware Bay that have been under severe economic stress since the decline of the oyster industry.

Agriculture Industry Impact

Aquaculture can provide an alternative source of income for farmers and other rural landowners who are faced with the challenge of a changing marketplace and tighter profit margins. Fish and seafood are high value crops that can allow farmers to diversify. Aquaculture can make effective use of existing farm ponds and provide a use for land that is not currently in production. Overall, the growth and development of aquaculture will have a positive impact on the agriculture industry.

Regulatory Flexibility Analysis

The majority of aquatic farms sited in New Jersey are anticipated to be small scale, environmentally benign operations that are operated by farmers and fishermen as a means to supplement their incomes in changing economic times. These farms are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re-adoption have been developed to provide exemptions and regulatory relief for those smaller farms while providing more stringent [page=2754] environmental safeguards for larger operations that can effect the surrounding environment. While there are no expenditures for professional services, or initial capital outlays that are required by any business as a result of the rules, the rules require the completion of an application for an Aquatic Farmer License. Information required by the application includes applicant information, information on the type of culture, a general activity description and a list of all relevant permits. The NJDA is available to provide assistance in completion of the Application, which is found at chapter Appendices A and B of these rules. Additional costs associated with reporting or recordkeeping that may be required by provisions of the license will be minimal.

Smart Growth Impact

The rules proposed for re-adoption will contribute toward the achievement of New Jersey's smart growth goals by helping to develop renewable resources, improving water quality, contributing to environmental diversity and preservation of open space. Therefore, the Department anticipates that there will be a positive impact on the State's Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for re-adoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules provide for licensing Aquatic Farmers and continuing the Aquatic Organism Health Management Plan.

Smart Growth Development Impact

The rules proposed for re-adoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules provide for licensing Aquatic Farmers and continuing the Aquatic Organism Health Management Plan.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:89.