

NEW JERSEY REGISTER
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VOLUME 40, ISSUE 8

ISSUE DATE: APRIL 21, 2008

RULE ADOPTIONS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

40 N.J.R. 2105(a)

Adopted New Rules: N.J.A.C. 2:71-9

Grades and Standards

Jersey Seafood Logo

Reproposed: November 19, 2007 at 39 N.J.R. 4887(a).

Adopted: March 28, 2008 by the State Board of Agriculture and Charles M. Kuperus, Secretary, Department of Agriculture.

Filed: March 28, 2008 as R.2008 d.104, **without change**.

Authority: N.J.S.A. 4:1-11.1, 4:1-21.2, 4:10-1 et seq., 4:10-16 et seq., and 4:27-1 et seq.

Effective Date: April 21, 2008.

Expiration Date: October 7, 2008.

Full text of the adopted new rules follows:

SUBCHAPTER 9. "JERSEY SEAFOOD" LOGO

2:71-9.1 Scope and purpose

A licensed aquatic farmer, commercial seafood harvester or packer of New Jersey seafood is permitted to make an application to the New Jersey Department of Agriculture for the use of the "Jersey Seafood" logo for the Jersey Seafood Quality Grading Program on containers of licensed seafood commodities.

2:71-9.2 Definitions

For purposes of this subchapter, the following words, terms, and phrases shall have the following meanings unless the context clearly indicates otherwise:

"Aquatic Farmer License" means the formal license issued by the Department pursuant to N.J.A.C. 2:89 for the possession and ownership of aquatic organisms by a person, firm, partnership, corporation, cooperative or association.

"Aquatic organism" means an animal or plant of any species or hybrid thereof and includes gametes, seeds, eggs, sperm, larvae, and juvenile and adult stages, any of which is required to be in water during that stage of its life. This definition does not include birds and mammals.

"Department" means the New Jersey Department of Agriculture.

"Depuration" means the process of reducing the pathogenic organisms that may be present in shellfish by using a controlled environment as a treatment option.

"Farmed shellfish" means clams and/or oysters that are farm-raised and packed in New Jersey.

"Farmer" or "aquatic farmer" means any person, firm, partnership, corporation, cooperative or association who is engaged in propagating, rearing and subsequent harvesting of aquatic organisms in controlled or selected environments for economic gain within the State of New Jersey and shall include, but is not limited to, activities to intervene in the rearing process to increase production, such as stocking, feeding, transplanting and providing for protection from predators.

"Finfish" means any vertebrate aquatic organism other than mammals and birds.

"Harvester" or "commercial seafood harvester" means a person, firm, partnership, corporation, cooperative or association who is engaged in harvesting wild aquatic organisms for economic gain under strict management programs instituted by the National Oceanic Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries), Atlantic States Marine Fisheries Commission, and the New Jersey Department of Environmental Protection to maintain sustainable fishery resources.

"Licensed seafood commodity" or "licensed seafood commodities" means any aquatic organism that is farm-raised or wild caught and packed in New Jersey, which are the subject of a license issued by the Department pursuant to N.J.A.C. 2:71-9.4.

"Licensee" means any person, firm, partnership, corporation, cooperative or association licensed by the Department pursuant to N.J.A.C. 2:71-9.4.

"Packer" means any person, firm, partnership, corporation, cooperative or association engaged in the business of processing and packaging aquatic organisms within the State of New Jersey and distributing it to wholesalers or retailers.

"Program" means the Jersey Seafood Quality Grading Program established pursuant to this subchapter.

"Seafood" means any finfish, mollusk, crustacean, other invertebrate or aquatic vegetable produced in either freshwater or saltwater and used for human food.

"Secretary" means the Secretary of the Department of Agriculture of the State of New Jersey or his or her designee.

"Shellfish" means clams, oysters, mussels and scallops that are harvested and packed in New Jersey.

"Shellfish grower" means any person, firm, partnership, corporation, cooperative or association who is engaged in propagating, rearing and subsequent harvesting of shellfish in controlled or selected environments for economic gain and shall include, but is not limited to, activities to intervene in the rearing process to increase production, such as stocking, feeding, transplanting and protection from predators.

2:71-9.3 Use of the "Jersey Seafood" Logo

(a) The Department approves the use of the "Jersey Seafood" logo as an official emblem for identifying New Jersey licensed seafood commodities.

(b) The configurations of the "Jersey Seafood" logo are as follows:



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(c) Only those persons, firms, partnerships, corporations, cooperatives or associations licensed to use the "Jersey Seafood" logo shall be permitted to attach or have it imprinted upon any label, package or container related to their licensed seafood commodities, employ its use in advertising or use it in any other manner whatsoever. Layout of proposed advertising to be used for marketing the "Jersey Seafood" logo must be submitted to and approved by the Department's Division of Marketing and Development in advance of its marketing and use. Advertising layouts will be evaluated based on the following criteria:

1. The color scheme of the advertisement;
2. The font used;
3. The configuration, color, and size of the logo;
4. Placement of the logo;
5. The advertising medium used; and
6. Consistency with the wholesome image of the "Jersey Fresh" Promotional Program.

(d) Only licensed seafood commodities may be marked with the "Jersey Seafood" logo. Licensed seafood commodities may be marked using self-adhesive labels, rubber stamps or imprinted containers that identify those licensed seafood commodities as being packed under the "Jersey Seafood" logo. Markings must comply with the marking requirements in N.J.A.C. 2:71-9.5.

(e) When a licensee discontinues use of the "Jersey Seafood" logo, fails to renew its license when required or has its license revoked, the licensee shall be prohibited from its use in any manner, including, but not limited to, product labels, stamps, containers, stationery, forms, advertising on billboards or other signs or on trucks or car panels.

(f) A licensed aquatic farmer, commercial seafood harvester or packer using the "Jersey Seafood" logo for licensed seafood commodities who has not satisfied the requirements set forth in N.J.A.C. 2:71-9.4 and 9.5 shall be prohibited from using the "Jersey Seafood" logo in any manner.

(g) All unlicensed persons, firms, partnerships, corporations, cooperatives or associations shall be prohibited from using the "Jersey Seafood" logo in any manner.

2:71-9.4 Licensing

(a) Any person, firm, partnership, corporation, cooperative or association wishing to employ the "Jersey Seafood" logo must make an application to the Department for a license and registration number. The application shall be made in writing, upon a form provided by the Department for this purpose and shall contain the name and address of the user, the type of licensed seafood commodities for which the user is seeking a license and any other information the Department deems necessary for the enforcement of the Program.

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(b) An annual fee of \$ 30.00 shall accompany each application form and shall be made payable to the "New Jersey Farm Products Publicity Fund." If an applicant is deemed ineligible the fee shall be refunded.

(c) All applications approved for issuance of licenses and registration numbers shall have the license granted for the period of one year commencing April 1. Applications for an initial license and registration number and for license and registration number renewal shall be submitted at least 20 days prior to April 1 of the license year. The Department shall approve or deny applications within 20 days after receipt of a completed application that complies with the requirements of (a) and (b) above.

(d) Interim licenses and registration numbers may be granted to qualified persons, firms, partnerships, corporations, cooperatives or associations for the remainder of the license year. The Department shall approve or deny interim applications within 20 days after receipt of a completed application that complies with the requirements of (a) and (b) above.

(e) Each licensee shall submit a report by December 31 of each license year. The report must be submitted on forms supplied by the Department and shall indicate the number of packages and/or containers packed by licensed seafood commodity under the "Jersey Seafood" logo. Failure to timely supply this report may be cause for denial or delay of licensing approval for the following licensing year.

(f) Any person, firm, partnership, corporation, cooperative or association wishing to transfer ownership of containers bearing a "Jersey Seafood" logo to another licensee shall make an application to the Department for a transfer license. The application shall be made in writing, upon a form provided by the Department. Any licensee who transfers ownership of containers, labels or stamps bearing the "Jersey Seafood" logo must supply a copy of each shipping invoice or statement to the Department within 30 days of the date of transfer.

(g) The Division of Marketing and Development shall make the initial determination as to whether to approve or deny a license application submitted pursuant to this section.

(h) The Department will hold confidential any information provided in any application submitted pursuant to this section that constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

2:71-9.5 Packing requirements, packer identification and containers

(a) All containers, packages and packaging material bearing the "Jersey Seafood" logo must be new.

(b) Each container or package bearing the "Jersey Seafood" logo must include the following information imprinted in letters not less than three-eighths of an inch in height and clearly marked on the container or package:

1. The name and address of the packer;
2. The phrase "Product of U.S.A. (NJ)"; and
3. A statement indicating the method of production using either the phrase "Wild Caught" or "Farm-Raised."

(c) Live farm-raised finfish shall be graded, packed and contained as follows:

1. Live finfish must be farmed in New Jersey;
2. Farmers of live finfish must possess an Aquatic Farmer License;
3. Live finfish shall be free from visible evidence of all infections, contagious, or communicable disease and known exposure thereto for at least 30 days prior to shipment;
4. Live finfish must show good movement, clear and bright eyes, and be free of all antibiotics and chemical additives;

5. Live finfish must be transported in accordance with the following requirements:

i. Water temperature during transport must be appropriate for the species;

ii. Oxygen levels in the water during transport must be appropriate for the species; and

iii. Appropriate drug withdrawal times shall be observed and records must be kept in accordance with the Recommended Management Practices for Aquatic Farms published by Rutgers University, revised March 2004, incorporated herein by reference, as amended and supplemented. A copy of this publication is available on the Department's website at: <http://www.jerseyseafood.nj.gov/aquacultureamp.pdf> or by contacting the Department's Fish and Seafood Development Program at P.O. Box 330, Trenton, New Jersey 08625. A copy of this publication is also available by contacting Rutgers Cooperative Extension, N.J. Agricultural Experiment Station, Rutgers, the State University of New Jersey, 88 Lipman Dr., New Brunswick, NJ 08901-8525; and

6. All live finfish shall be produced in accordance with the Recommended Management Practices for Aquatic Farms published by Rutgers University, revised March 2004.

(d) Whole farm-raised finfish shall be graded, packed and contained as follows:

1. Whole finfish must be farmed in New Jersey;

2. Farmers of whole finfish must possess an Aquatic Farmer License;

3. Whole finfish must show clear and bright eyes, flesh must be resilient, gills must be bright red, and odor should be fresh or briny;

4. Whole finfish must be transported in accordance with the following requirements:

i. Whole finfish must be packed in ice or gel packs and shipped at a temperature that does not exceed 40 degrees Fahrenheit; and

ii. Appropriate drug withdrawal times shall be observed and records must be kept in accordance with the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004;

5. All whole finfish shall be produced in accordance with the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004.

(e) Farmed shellfish shall be graded, packed and contained as follows:

1. All farmed shellfish must be grown out or produced in New Jersey;

2. A shellfish grower must possess an Aquatic Farmer License;

3. A shellfish grower must be in compliance with all appropriate license requirements, which may include, but are not limited to, those set forth in N.J.S.A. 50:2-1 et seq., 50:3-1 et seq., and 50:3-20.11 et seq., and N.J.A.C. 2:89-4.4, 7:25-8, 7:25A, 8:13, and 8:21-1, 2, 9, 11 and 13, as amended;

4. All farmed shellfish must be free from antibiotics and chemical additives and their shells must be whole and free of grit, sand and fouling organisms;

5. Containers holding farmed shellfish must be properly tagged in compliance with the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Sections X .05, Shellstock Identification, and .06, Shucked Shellfish Labeling, as amended and supplemented, which is incorporated herein by reference;

6. All farmed shellfish must be handled in compliance with the following sections of the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, as amended and supplemented, which is incorporated herein by reference:

- i. Section VI, Shellfish Aquaculture, subsections .01, Exceptions, .02, General, and .03, Seed Shellstock only;
- ii. Section VIII, Control of Shellfish Harvesting, subsections .01, General, and .02, Shellstock Harvesting and Handling; and
- iii. Section XIII, Shellstock Shipping, subsections .01, Critical Control Points, and .02, Sanitation;

7. A copy of the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish is available by contacting the Office of Seafood Division of Programs and Enforcement Policy, 200 C Street, SW (HFS-417), Washington, DC 20204. This document is also available online at <http://www/cfsan.fda.gov/%7Eear/nss3-toc.html>;

8. All live farmed shellfish shall be produced in accordance with the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004.

(f) Wild-caught finfish shall be graded, packed and contained as follows:

1. Finfish must be landed by a New Jersey registered vessel;
 2. Finfish must be landed in accordance with all rules and regulations promulgated by the NOAA Fisheries Service, the Atlantic States Marine Fisheries Commission, and the New Jersey Department of Environmental Protection to help ensure the sustainability of the resource;
 3. Finfish should show good quality as indicated by clear bright eyes, resilient flesh, bright red gills, and odor should be fresh or briny;
 4. Whole/dressed finfish must be chilled as quickly as possible, packed in ice or gel packs and shipped at temperatures that do not exceed 40 [degrees] Fahrenheit.
- i. Ice must be made from potable water;
5. All surfaces that contact fish must be sanitized using appropriate FDA approved methods;
 6. Cleaning and sanitizing schedules and procedures must be established and compliance monitored;
 7. Packing must be appropriate for method of transport and product form in order to preserve quality;
 8. Fillets, steaks and other cut forms must be processed under Hazard Analysis Critical Control Point (HACCP) procedures as provided by the Fish and Fisheries Products Hazards and Controls Guidance, third edition, June 2001, which is incorporated herein by reference, as amended and supplemented. This document is available online at <http://www.cfsan.fda.gov/%7Ecomm/haccp4.html>. Processing facilities must meet the requirements of local health departments; and
 9. Any firm that processes finfish for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13 and N.J.A.C. 8:21-13, Rules Governing Wholesale Food Establishments.

(g) Wild Caught Bivalve molluscan shellfish shall be graded, packed and contained as follows:

1. All shellfish must be landed in New Jersey;

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2. All shellfish must be harvested and packed by individuals who are in compliance with all appropriate license requirements, which may include, but are not limited to, those set forth in N.J.S.A. 50:2-1 et seq., 50:3-1 et seq., and 50:3-20.11 et seq., and N.J.A.C. 2:89-4.4, 7:25-8, 7:25A, 8:13, and 8:21-1, 2, 9, 11 and 13, as amended;

3. All shellfish must be harvested from approved, seasonally approved or special restricted waters as specified by N.J.A.C. 7:12-1, 3, and 4;

4. The shells of all shellfish must be whole, free of grit, sand and fouling organisms;

5. All shellfish must be handled in compliance with the National Shellfish Sanitation program 2005 Guide for the Control of Molluscan Shellfish;

6. Containers holding shellfish must be properly tagged in compliance with the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Sections X .05, Shellstock Identification, and .06, Shucked Shellfish Labeling;

7. All shellfish must be handled in compliance with the following sections of the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish:

i. Section VI, Shellfish Aquaculture, subsections .01, Exceptions, .02, General, and .03, Seed Shellstock;

ii. Section VIII, Control of Shellfish Harvesting, subsections .01, General, and .02, Shellstock Harvesting and Handling; and

iii. Section XIII, Shellstock Shipping, subsections .01, Critical Control Points, and .02, Sanitation; and

8. Any firm that processes shellfish for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13 and N.J.A.C. 8:21-13, Rules Governing Wholesale Food Establishments.

(h) Crustaceans shall be graded, packed and contained as follows:

1. Lobsters and crabs must be harvested in New Jersey in accordance with all rules and regulations promulgated by the National Marine Fisheries Service, the Atlantic States Marine Fisheries Commission and the New Jersey Department of Environmental Protection (N.J.A.C. 7:25) to help ensure the sustainability of the resource;

2. Live lobsters and crabs should be vigorous and show good leg movement;

3. Lobsters and crabs should be kept moist and cool;

4. Lobster temperatures should remain above 32 degrees Fahrenheit and below 50 degrees Fahrenheit to maintain quality;

5. Lobsters and crabs should be packed right-side up;

6. Packing must be appropriate for method of transport; and

7. Any firm that processes crustaceans for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13, and N.J.A.C. 8:21-13, Rules Governing Wholesale Food Establishments.

(i) Value Seafood Products shall be graded, packed and contained as follows:

1. Value-added seafood products shall be processed in New Jersey under an FDA-approved Hazard Analysis Critical Control Point (HACCP) plan that is regularly monitored as provided by the Fish and Fisheries Products Hazards and Controls Guidance, third edition, June 2001;

2. Processing facilities must meet the requirements of local health departments;
3. Seafood processing facilities should have an established set of sanitary operating procedures that include cleaning and sanitizing schedules and procedures, as well as compliance monitoring;
4. Any firm that wholesales, stores or processes seafood products (fresh or saltwater) for human consumption must possess a wholesale food license requires by N.J.S.A. 24:15-13 and N.J.A.C. 8:13-1 and 8:21-13, Rules Governing Wholesale Food Establishments; and
5. Only potable water shall be used.

2:71-9.6 Penalties

(a) Any person, firm, partnership, corporation, cooperative or association who violates the provisions of this subchapter shall be subject to a penalty of not more than \$ 50.00 for the first offense and a penalty of not less than \$ 50.00 and not more than \$ 100.00 for each subsequent offense.

(b) In addition to the penalties set forth in (a) above, if the subsequent offense occurs in the same calendar year and involves the same licensee and the same licensed seafood commodity, the Department may revoke their license. Revocation of a license pursuant to this subsection does not prohibit a licensee from reapplying for a license for the next license year.

(c) Any person, firm, partnership, corporation, cooperative or association licensed pursuant to N.J.A.C. 2:71-9.4(f) to transfer ownership of containers bearing the "Jersey Seafood" logo who transfers ownership in violation of this subchapter shall be subject to a penalty of no more than \$ 50.00 for the first offense and revocation of their license for any subsequent offense.

(d) Orders for penalties or to enjoin continuing violations may be enforced by summary action brought in the name of the Secretary in Superior Court or Municipal Court.

(e) The Division of Marketing and Development shall make an initial determination as to whether to revoke a license under this section.

(f) Any person, firm, partnership, corporation, cooperative or association aggrieved by the determination of the Division of Marketing and Development pursuant to this section or N.J.A.C. 2:71-9.4 shall be afforded an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, subject to the following:

1. All hearing requests must be in writing and received by the Department within 20 days of the license denial, notice of intent to revoke a license, or penalty notice;
2. Hearing requests shall be sent to:
New Jersey Department of Agriculture
Director, Division of Marketing and Development
P.O. Box 330
Trenton, New Jersey 08625; and
3. The State Board of Agriculture shall make a final determination as to whether to deny, revoke a license or impose a penalty following the Office of Administrative Law hearing.

