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ENVIRONMENTAL PROTECTION
OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking
Coastal Zone Management Rules, N.J.A.C. 7:7-4.16
Request for expand Permit-By-Rule 16, placement of land-based upwellers and raceways for
aquaculture activities
Petitioner: BaySide Shellfish Co.

Take notice that on October 19, 2020, the Department of Environmental Protection (Department) received a petition for rulemaking from BaySide Shellfish Co. (petitioner). Petitioner indicates that it conducts a shellfish aquaculture business consisting of a hatchery and nursery in Cape May Court House, New Jersey. Petitioner says that it raises various forms of shellfish, including clams and oysters. Petitioner states that inclusion of both hatchery and nursery operations are necessary for such a facility to be economically viable. The petitioner requests that the Department amend the Coastal Zone Management Rules, N.J.A.C. 7:7. Specifically, petitioner requests that the Department amend N.J.A.C. 7:7-4.16, Permit-By-Rule (PBR) 16, to expand it to cover both hatchery and nursery operations at an aquaculture business. Petitioner additionally requests that be amended to allow covered structures to include a single-family dwelling unit. Petitioner states that the requested amendments would help it and similarly situated businesses grow their businesses to further contribute to the economy of the State. Petitioner included in its submission a list of organizations and businesses that it indicates support its petition for rulemaking.

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Petitioner states that current N.J.A.C. 7:7-4.16 restricts any aquaculture business established subsequent to passage of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., or aspiring shellfish businesses from being able to operate a financially viable business because Permit-By-Rule 16 only encompasses nursery operations. As a result, these shellfish operations, including BaySide, must go through what it says is the extensive and expensive process of applying for CAFRA Individual Permits for the hatchery portion of the shellfish business. Petitioner indicates that this requirement severely hinders its businesses from growing and contributing further to the economy of the State of New Jersey.

Despite the fact that the hatchery portion of petitioner's operation (which consists of two large sheds, two small sheds and one 5000-gallon water tank) is required for a successful shellfish operation, it has been informed by the Department that it must apply for CAFRA individual permits for all of these structures. Petitioner asserts that it is not financially viable to require a shellfish aquaculture business to apply for a separate CAFRA individual permit for the hatchery portion of the operation.

Similarly, Petitioner sees no reason that a single-family dwelling unit cannot be combined with a shellfish aquaculture business. Accordingly, it is requested that N.J.A.C. 7:7-4.16 be amended

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to allow such an arrangement under this permit-by-rule. Petitioner states that, if the Department requires all shellfish aquaculture businesses to relocate their aquaculture hatchery operations to a site that does not include a single-family home, then all shellfish aquaculture businesses would be compelled to purchase an off-site location for the hatchery operations for the three months out of the calendar year during which the hatchery is in use.

Petitioner contends that the limitations imposed by the rule severely hinder it and other shellfish businesses' ability to operate successfully. To address these concerns, the petitioner requests that N.J.A.C. 7:7-4.16 be amended as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:7-4.16 Permit-by-rule 16- placement of land-based upwellers, [and] raceways **and structures necessary** for aquaculture activities **including hatchery and nursery related operations.**

(a) This permit-by-rule authorizes the placement of land-based upwellers, [and] raceways **and structures necessary** for aquaculture activities **including hatchery and nursery related operations combined with a single-family dwelling unit.** Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et. seq. The aquaculture activities shall comply with the following:

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- (1) The structures are located on the upland portion of the lot with a legally existing, functioning bulkhead;
- (2) No grading, excavation, filling or placement of a structure was undertaken on a beach, dune, or wetland; and
- (3) The discharge from the aquaculture activities is to a body of water and not directly into a wetland.

This notice and the full text of the petition filed in this matter are available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.