

**AGRICULTURE  
DIVISION OF MARKETING AND DEVELOPMENT**

39 N.J.R. 4887(a)

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

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

**Grades and Standards**

**Jersey Seafood Logo**

Authorized By: State Board of Agriculture and Charles M. Kuperus, Secretary.

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.

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

Proposal Number: PRN 2007-339.

Submit written comments by January 18, 2008 to:  
Alfred Murray, Director  
Division of Marketing and Development  
N.J. Department of Agriculture  
P.O. Box 330  
Trenton, New Jersey 08625

The agency reproposal follows:

**Summary**

The Jersey **Seafood** Logo rules, N.J.A.C. 2:71-9, were originally proposed June 5, 2006 at [38 N.J.R. 2240\(a\)](#). A number of comments were received and several changes have been made in the reproposal to address these comments. The original proposal, with changes, was adopted by the State Board of Agriculture and Charles M. Kuperus, Secretary of Agriculture, on March 28, 2007. The formal adoption process was not completed before the notice of proposal expired pursuant to [N.J.A.C. 1:30-6.2\(c\)](#). A short section appears at the end of the Summary below, providing an abbreviated summary of the public comments and agency changes made to the original proposal. In addition, to clarify certain sections of the originally proposed rules, and to ensure that both wild harvest and farmed **seafood** are able to take advantage of benefits of the "Jersey **Seafood**" marketing program, the reproposal contains revisions of the original proposal and contains new sections with corollary standards for wild caught **seafood**.

New Jersey is strategically located in one of the nation's largest upscale consumer

**seafood** markets. For over 300 years, commercial **seafood** harvesters in New Jersey have helped to supply those markets. The demand for quality **seafood** continues to grow and, while the wild harvest industry continues to implement plans for the development of sustainable fisheries, aquaculture has helped supplement the wild harvest. As a result, New Jersey aquaculture is a fast growing agricultural industry in this State. According to the 1998 United States Department of Agriculture (USDA) Census of Aquaculture, New Jersey had 28 aquatic farms. Today there are over 180 licensed aquatic farmers in the Garden State.

In order to help promote New Jersey's **seafood** and aquaculture industries, the Department of Agriculture (Department) is proposing new rules at N.J.A.C. 2:71-9 to permit aquatic farmers, commercial **seafood** harvesters and packers of New Jersey **seafood** commodities to become certified by the New Jersey Department of Agriculture and to market their products using the "Jersey **Seafood**" logo. The use of the "Jersey **Seafood**" logo will permit certified finfish and shellfish farmers and commercial **seafood** harvesters or packers to make New Jersey **seafood** commodities more visible, and will help promote the viability of the industry by signaling to the consumer the availability of a product that many believe to be superior. The "Jersey **Seafood**" logo and promotion program is similar to the Department's "Jersey Fresh" marketing program, but will be tailored to meet detailed standards developed specifically for **seafood** products. The proposed new rules will provide an opportunity to promote an additional New Jersey agricultural commodity. Like "Jersey Fresh" has done with New Jersey grown fruits and vegetables, the "Jersey **Seafood**" logo will provide New Jersey **seafood** with a better market position and allow the industry to be more competitive, while providing consumers with the confidence that they are purchasing high-quality **seafood** products.

It should be noted that while the Department is considered the lead Agency in regulating the marketing, development and promotion of aquaculture products within the State of New Jersey, the Department of Environmental Protection (DEP) is responsible for regulating aquaculture activities within New Jersey waters. Thus, these proposed new rules should be read in conjunction with the DEP's rules on aquaculture. The proposed new rules are not intended to supersede the rules promulgated by DEP with regard to aquaculture activities, but rather, are additional standards imposed for those within the aquaculture industry who wish to be part of the "Jersey **Seafood**" promotion program.

Public comments to the original proposal were received from:

1. Barbara Sachau, resident, Morris County, NJ;
2. Walter J. Canzonier, Aquarius Associates, Port Norris, NJ; and
3. Cali C. Alexander, **Seafood**/Shellfish Coordinator, New Jersey Department of Health and Senior Services

One comment included concerns about mercury content of **seafood**, objection to **seafood** quality and waste in aquaculture and general opposition to the proposed rules. No changes were made in the reproposal from this comment, but the Department clarifies that mercury loads of concern identified by the Food and Drug Administration (FDA) are confined to a few species of deepwater fish that are not heavily consumed, such as king mackerel, shark, swordfish and tilefish. In addition, the Department explains the reliable quality of aquacultured fish, noting that New

Jersey aquatic farmers are required to comply with a set of management practices and a health management plan found in the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004, that have been designed to protect the environment, wild stocks and the **seafood** consumer, thus minimizing the concerns of the commenter as to waste stream pollution and impacts on wild stock supplies. With regard to the program generally, the New Jersey Aquaculture Development Act ( [N.J.S.A. 4:27-1](#) et seq.) directs the Department to develop certain programs to support the growth of aquaculture in an environmentally sound and business-friendly manner. It specifically directs the Department to assist the aquaculture industry in promoting its products through techniques "that may include the establishment and use of a trademark." [N.J.S.A. 4:27-15\(f\)](#). This reproposal (like the original proposal) is in fulfillment of that directive.

Clarification was also sought as to how the designation of New Jersey "Wild Caught" relates to the three-mile limit. The Department responds that the term "Wild Caught" applies to all aquatic products landed by New Jersey-registered vessels, other than those produced through aquaculture methods. Further, although the original proposal addressed farm raised **seafood** and did not address wild caught **seafood**, this reproposal includes both.

A number of comments were addressed to the definitions section. Specifically questioned was whether the phrase ". . . in controlled or selected environments . . ." includes the practice of traditional oyster culture. In response, traditional oyster culture is clearly included in the definition of aquaculture as set forth in the New Jersey Aquaculture Development Act at [N.J.S.A. 4:27-3](#) because there are "activities to intervene in the rearing process to increase production, such as stocking, feeding, transplanting and providing for protection from predators." Since traditional oyster culture was clearly contemplated in the statutory definition of "aquaculture," and one must select an environment in which to place the seed oyster in order to engage in traditional oyster aquaculture, the language "in controlled or selected environments" would not preclude traditional oyster culture. Another comment concerning definitions questioned whether the term "packer," would cause confusion as between an NJDEP-licensed harvester or New Jersey Department of Health and Senior Services (NJDHSS)-certified dealer. Since the NJDHSS has jurisdiction over distribution of finfish and shellfish, the commenter said "packer" should be amended to include a reference to [N.J.S.A. 24:2-1](#). The Department clarifies that the term "packer" was intended to be broad in application so as to include both NJDEP-licensed harvesters and NJDHSS-certified dealers. Because the "Jersey **Seafood**" promotion program was designed to be applicable to a broad range of finfish and shellfish species, the term needs to be broad in order to ensure applicability to the large universe of aquatic farmers who can take advantage of the "Jersey **Seafood**" promotion program. Thus no changes were needed. Also because the reproposal applies to both farm raised and to wild caught **seafood**, the definition of finfish in the original proposal was changed from "tilapia, hybrid striped bass, catfish, and trout that are farm-raised and packed in New Jersey" to "any vertebrate aquatic organism other than mammals and birds' to include both farm raised and wild caught finfish."

Appropriate changes, however, were made to N.J.A.C. 2:71-9.5(e)3 and 9.5(f) to clarify that statutory and regulatory oversight of processing and packing of food grade fish and **seafood** products remains with NJDHSS under the licensing provisions of N.J.A.C. 8:21-9 for all licensees who process finfish and shellfish for

human consumption. Any firm that further processes farmed 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.

A comment urged differentiation between shellfish and fanned shellfish. In the reproposal, both wild harvest and farmed shellfish are included, thereby eliminating the need to address this issue as it was identified. Another comment sought to clarify whether the definition of "shellfish grower" includes a licensed harvester and to exclude from the definition the process of depuration, so as not to be included in "controlled or selected environments" of aquaculture; however, the Department believes that such an explicit exclusion is not required at this time because it is generally recognized by the aquaculture industry that depuration is not an aquaculture process. The process of depuration is governed by the NJDHSS, whose rules are codified at N.J.A.C. 8:13-2. Depuration also falls under the wild harvest shellfish standards. In addition, because N.J.A.C. 2:71-9.5(e)3 specifically requires all shellfish growers to comply with applicable licensing requirements, shellfish growers will need to be licensed harvesters where applicable, regardless if that requirement is included in the definition of "shellfish grower."

A number of comments were directed to the originally proposed N.J.A.C. 2:71-9.5. Changes to this section of the originally proposed rule are summarized below.

To avoid confusion, a definition of "farmed shellfish" has been inserted. This was necessary since the term "shellfish" generally has a broader definition and includes scallops, mussels, clams, and oysters. The originally proposed rules were intended only to apply to farmed shellfish. Currently only clams and oysters are farm-raised shellfish. In addition, the definition of "shellfish" was modified to include other shellfish harvested in New Jersey including clams, oysters, mussels, and scallops. It should also be noted that the text of the rules already used the term "fanned shellfish." Thus, the change in the definition merely clarified that fanned shellfish did not include all types of shellfish.

At N.J.A.C. 2:71-9.5(c)3 in this reproposal, the term "visible evidence" was substituted for the term "symptom" since a commenter pointed out that there is a divergence in the pathology industry as to the appropriate terminology for use with animals.

At N.J.A.C. 2:71-9.5(c)4 and (e)4 in this reproposal, the term "chemical agents" was replaced by "chemical additives." The intention of these paragraphs was to ensure that appropriate withdrawal times were followed for any antibiotics and chemical additives that may be used during the growth period. These paragraphs were intended to apply to artificial inputs and not persistent environmental contaminants. Thresholds for environmental contaminants are more properly addressed by the NJDEP and NJDHSS. Thus, the revision is necessary in this reproposal to clarify this distinction.

New paragraphs were added as N.J.A.C. 2:71-9.5(c)6, (d)5 and (e)8, which require compliance with the Recommended Management Practices for Aquatic Farms, a document published by Rutgers Cooperative Extension that establishes guidelines for proper production practices for finfish and shellfish farmers. This document was originally intended to be incorporated by reference in its entirety as was indicated in the Summary of the original proposal (see 38 N.J.R. 2240), but was inadvertently left out. Rather, the only portion that was actually included in the original proposal

was the section on withdrawal times. Since the Department originally intended for finfish and shellfish farmers to follow the standards for health management, removal and disposal of deceased finfish and shellfish, chemical and drug handling, security and bio-security, disease control and reporting, and recordkeeping requirements contained in the Recommended Management Practices, that requirement has now been specifically added to this reproposal.

In N.J.A.C. 2:71-9.5(d)4i, the term "gel packs" was inserted to clarify that whole finfish may be packed in ice or gel packs since gel packs will effectively maintain the cold chain through distribution in a manner similar to ice. Additionally, the use of gel packs in lieu of ice is a commonly accepted practice in the **seafood** industry and, absent this change, those seeking to participate in the "Jersey **Seafood**" program would be unreasonably restricted.

Under N.J.A.C. 2:71-9.5(e)3, the legal citation to the NJDHSS regulations has been revised in the reproposal to read "[N.J.A.C. 8:13](#) and 8:21-1, 2, 9, 11 and 13" for clarity, as the originally proposed citation was incorrect.

N.J.A.C. 2:71-9.5(e)5 was amended to specify that the relevant sections of the 2005 National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish (Guide) are Sections X .05, Shellstock Identification and X .06, Shucked Shellfish Labeling. This change adds further clarity and consistency to the rules since those are the only specific sections of the Guide that are incorporated by reference in the NJDHSS and DEP shellfish programs. Rather than incorporating the entire Guide as was originally proposed, the reproposal now only incorporates the relevant sections of the Guide. Clarifying language was also added to N.J.A.C. 2:71-9.5(e)7 to replace "this document" with "the 2005 National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish" to ensure that the regulated public knows what document is being referenced.

To further ensure the integrity of the aquacultured product, several additional sections of the 2005 NSSP Guide were incorporated by reference, including: subsections .01, .02 and .03 of VI., Shellfish Aquaculture-Requirements for the Harvester/Dealer, subsections .01 and .02 of VIII., Control of Shellfish Harvesting-Requirements for Harvesters, and subsections .01 and .02 of XIII., Shellstock Shipping.

One comment to the original proposal objected to the penalty structure as inadequate and would allow violations. The Department is limited as to the fines it is able to charge and no change was made to the penalty structure in the reproposal.

N.J.A.C. 2:71-9.1 sets forth the scope and purpose of the repropose new rules and N.J.A.C. 2:71-9.2 sets forth the definitions of terms used in the repropose new rules. The definitions are expanded from the original proposal because they apply both to farm-raised and to wild caught **seafood**.

N.J.A.C. 2:71-9.3 adopts an official "Jersey **Seafood**" emblem to be used as a logo to identify **seafood** commodities grown, harvested and packed in New Jersey. Use of this logo will be allowed only by persons or entities who obtain a license in accordance with the procedures set forth in these new rules, including the payment of an annual licensing fee of \$ 30.00 to be paid to the New Jersey Farm Products Publicity Fund, created pursuant to [N.J.S.A. 4:10-16](#).

N.J.A.C. 2:71-9.4 sets forth the license requirements for participation in the voluntary "Jersey **Seafood**" logo program. In order to be licensed, individuals or entities must file a licensing application and satisfy all the conditions set forth in N.J.A.C. 2:71-9.4, 9.5, and 2:89. In addition to the annual submission of an application and fee, licensees will be required to file an annual report. A transfer application is also required to be filed with the Department of Agriculture prior to the transfer of empty containers, packages, bags, labels or stamps bearing the "Jersey **Seafood**" logo. N.J.A.C. 2:71-9.5 establishes the standards for grading, packing and containing **seafood** commodities licensed under these new rules.

N.J.A.C. 2:71-9.5 incorporates by reference relevant sections of three documents, the National Shellfish Sanitation Program, published by the U.S. Food and Drug Administration, which establishes guidelines for the safe and sanitary control of the growing, processing, and shipping of shellfish; the Recommended Management Practices for Aquatic Farms, published by Rutgers Cooperative Extension, which establishes guidelines for proper production practices for finfish farmers and Fish and Fisheries Products Hazards and Controls Guidance, third edition, June 2001. The relevant sections of the 2005 National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish (2005 NSSP Guide) are Sections X .05, Shellstock Identification and .06, Shucked Shellfish Labeling. The National Shellfish Sanitation Program sets forth standards for the wet storage, harvesting, and transporting of shellfish in addition to standards for the shucking, packing, and shipping of shellfish. Likewise, standards for depuration and processing of shellfish, standards for shellfish growing areas, recordkeeping requirements and disease control measures are also delineated. Similarly, the Recommended Management Practices for Aquatic Farms sets forth standards for health management, removal and disposal of deceased finfish, chemical and drug handling, security and biosecurity, disease control and reporting, and recordkeeping requirements. The Fish and Fisheries Products Hazards and Controls Guidance document provides the procedures of the mandatory U.S. Food and Drug Administration Hazard Analysis Critical Control Point (HACCP) system that relies on identifying and preventing hazards that could cause food born illnesses rather than spot checking finished **seafood** products to ensure food safety. With the addition of wild caught **seafood** in the reproposal, additional standards were also added as new subsections. Subsection (f) was added to establish the standards for grading, packing and containing of wild-caught finfish. Subsection (g) was added to establish the standards for grading, packing and containing of wild caught bivalve molluscan shellfish. Subsection (h) was added to establish the standards for grading, packing and containing of crustaceans. Subsection (i) was added to establish the standards for grading, packing and containing Value **Seafood** Products.

N.J.A.C. 2:71-9.6 describes the penalties that may be imposed for violations of these proposed new rules. Penalties for the first offense will not exceed \$ 50.00 and the penalty for each subsequent offense will not be less than \$ 50.00 or more than \$ 100.00. In addition, for subsequent offenses occurring within the same calendar year by the same licensee and involving the same **seafood** commodity, the licensee may be subject to license revocation for the remainder of the license year. Procedures are also established for applying for a license during the license year, as well as for applying after revocation in the face of a second violation.

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 Jersey Fresh advertising and promotional program was developed to draw consumer attention to the availability of New Jersey farm products. This unique program, which has been going strong for almost a quarter of a century, has become the standard against which other states modeled their own marketing programs. As a result of the Jersey Fresh advertising and promotional program, New Jersey consumers are assured of the quality and freshness of the food they purchase. In fact, a 1998 study conducted by Rutgers University (New Jersey Agricultural Experimental Station, P-02137-2-98, February 1998) confirmed that consumers view Jersey Fresh products as better quality agricultural products.

The proposed new rules will have a positive social impact by expanding the Department's work in advertising and promoting New Jersey agricultural commodities to include New Jersey **seafood**, thereby helping to maintain an important segment of the New Jersey agricultural industry. New Jersey farms provide tax-paying open space and add diversity to the agricultural landscape that benefits the quality of life throughout the Garden State. **Seafood** grown, harvested and packed under this logo will enhance the promotion of high quality New Jersey farm products to the benefit of aquatic farmers, commercial **seafood** harvesters and packers, as well as consumers. Aquatic farmers, commercial **seafood** harvesters and packers will gain new markets for their products, while consumers will have more quality products available for consumption.

**Seafood** is also an important part of a healthy diet. Most nutritionists recommend that people eat a minimum of two **seafood** meals a week to enjoy the benefits. **Seafood** contains high quality protein and other essential nutrients, is low in saturated fats and calories, and is high in important beneficial omega-3 fatty acids. Current research indicates that omega-3 fatty acids are an important part of a healthy diet because they play a critical role in maintaining heart health, contribute to proper growth and development of children, help minimize the symptoms of inflammatory diseases, and aid in proper brain function. New studies are providing additional evidence of the importance of **seafood** to a well-balanced, healthy diet. These new rules will therefore have a positive social impact by providing consumers with high quality **seafood** that can be incorporated into healthy diets.

## Economic Impact

Coastal revenues generate \$ 50 billion annually - \$ 4.5 billion is from fisheries, aquaculture, and recreational fishing. According to the 2006 statistics developed by the National Marine Fisheries Service, the ex-vessel value of the New Jersey **seafood** harvest was over \$ 145 million (\$ 159 million in 2005, \$ 146 million in 2004 and \$ 121 million in 2003). Given that one out of every six jobs in New Jersey is related to the "Coastal Zone," making coastal revenues one of the State's largest economic sectors, generating \$ 50 billion annually - \$ 4.5 billion from fisheries, aquaculture, wild harvest **seafood** and recreational fishing, the aquaculture and wild harvest **seafood** industry provides an important contribution to the State's economy, particularly for coastal communities. The proposed new rules will have a positive economic impact for New Jersey by providing an additional marketing tool for packers, aquatic farmers and commercial **seafood** harvesters of New Jersey **seafood** who choose to use the "Jersey **Seafood**" logo on their products. There is no cost to anyone who does not participate in this voluntary program. For those who choose to participate, the cost is \$ 30.00 per year for the annual registration fee,



which will be offset by the value added to the product by use of the logo on packaging materials. Therefore, these proposed new rules will have a positive economic impact. Additional costs may be incurred by individuals or entities who violate these rules and are subject to penalties as discussed in the Summary above.

### **Federal Standard Statement**

Executive Order No. 27 (1994) and [N.J.S.A. 52:14B-23](#) (P.L. 1995, c. 65) require administrative agencies which adopt, readopt, or amend any State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. [7 CFR 60.101](#) et seq. sets forth Federal standards for labeling wild and farm-raised fish and shellfish products with regard to country of origin notification. Proposed N.J.A.C. 2:71-9.5(a) imposes labeling standards that are substantially the same as, but do not exceed those required by, [7 CFR 60.101](#) et seq., for country of origin notification. The remainder of the new rules deal with the creation and use of a logo for marketing New Jersey **seafood**. Because there are no Federal standards governing the creation and regulation of a logo identifying New Jersey agricultural products, as provided by [N.J.S.A. 4:10-1](#) et seq. and [4:10-16](#) et seq., no Federal standards analysis is required.

### **Jobs Impact**

It is not anticipated that the proposed new rules will result in the generation or loss of jobs. However, it is anticipated that these rules will positively affect the New Jersey **seafood** industry and others associated with the agricultural industry.

### **Agriculture Industry Impact**

For the reasons set forth in the Summary, Social Impact and Economic Impact above, the proposed new rules will have a positive impact on New Jersey agriculture industry by helping to maintain viable aquaculture industry in the Garden State by giving them additional marketing opportunities.

### **Regulatory Flexibility Analysis**

The proposed new rules will have an impact on small businesses, as defined under the Regulatory Flexibility Act, [N.J.S.A. 52:14B-16](#) et seq. The rules impose compliance standards, as described in the Summary above, on those voluntarily participating in this program. Since these proposed new rules are part of a voluntary program, they do not impose unduly burdensome recording, recordkeeping or compliance requirements on either large or small businesses. If this labeling is voluntarily undertaken, the aquatic farmer, commercial **seafood** harvester or packer must ensure that the labeling is accurate. The compliance, recording and recordkeeping requirements are necessary to protect public confidence in products purchased. As a result, there can be no lesser or differing standards based on business size.

The proposed new rules will protect the interest of the aquatic farmers, commercial **seafood** harvesters and packers, including those of small businesses, in much the same way as the Jersey Fresh logo has done for fruit and vegetable farmers in New Jersey. The use of uniform product identification promotes the orderly marketing of



goods that are similar in the generic sense and allows equally good products from the small operations to compete with the products of larger operations. Although a small annual registration fee of \$ 30.00 is required, should an aquatic farmer, commercial **seafood** harvester or packer choose to participate under the voluntary rules, the cost of participating should be offset by the anticipated higher prices received for the "Jersey **Seafood**" products. There is no professional assistance required nor initial capital outlays to any business by these proposed new rules.

### **Smart Growth Impact**

These proposed new rules implement economic development strategies outlined in the Department's Smart Growth Plan. The proposed rules are consistent with the State's smart growth goals as they encourage the continued viability of the State's farmers. Therefore, the Department anticipates that there will be a positive impact on the achievement of smart growth and the implementation of the State's Development and Redevelopment Plan.

**Full text** of the repropoed 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:



(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.

(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 requirement 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/~ear/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 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/~comm/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;

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.