



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

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SECRETARY

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**Secretary's Order No: 2025-F-0015**

**RE: Approving Final Amendments to 7 DE Admin. Code 3801 - *Shellfish Aquaculture***

**Date of Issuance: April 26, 2025**

**Effective Date: June 11, 2025**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del. C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

**Background, Procedural History and Findings of Fact**

This Order relates to 7 DE Admin. Code 3801 - *Shellfish Aquaculture* ("Regulation"). The Department proposes amendments to the Regulation to enhance operational efficiency, reduce regulatory burden, and encourage greater industry participation, while maintaining effective oversight by the Department.

The Department originally promulgated this Regulation in 2014 pursuant to 7 *Del. C.* Chapter 20, to establish leasing provisions for subaqueous lands in Delaware's Inland Bays to support the development of shellfish aquaculture. Leasing activity began in 2017 within designated Shellfish Aquaculture Development Areas ("SADAs") in Indian River, Rehoboth, and Little Assawoman Bays.

In 2019, following two years of the Regulation implementation, the Department's Division of Fish and Wildlife ("DFW") conducted public outreach to gather feedback on the aquaculture leasing. Based on this feedback, the Department amended the Regulation in May 2024 to update aquaculture practices, improve compliance mechanisms, and enhance administrative oversight.

In 2024, the Delaware General Assembly established the Shellfish Aquaculture Task Force (“Task Force”) through Senate Concurrent Resolution 103. The Task Force was charged with evaluating all aspects of shellfish aquaculture within Delaware’s Inland Bays and identifying strategies to increase industry participation and production. Between April and August 2024, the Task Force convened six times and issued recommendations aimed to improve the effectiveness and sustainability of shellfish aquaculture operations.

In response to the Task Force’s findings and recommendations, the Department proposes regulatory amendments that incorporate the following revisions:

**1. Revision of Planting and Harvesting Requirements**

The proposed amendments reduce the minimum annual planting requirement from 100,000 to 50,000 oysters per leased acre. In addition, the timeline for compliance has been shortened: new lessees must now meet the planting requirement within 36 months (previously 60 months) and achieve a minimum harvest of 2,000 oysters or 5,000 clams per acre within 48 months (previously 72 months).

**2. Modification of Gear-Marking Requirements**

The proposed revisions remove the requirement to mark individual gear units that are attached to lines suspended between poles spaced no more than ten feet apart. This change reduces unnecessary burdens on growers utilizing suspended gear systems, where such equipment is already readily visible from the surface.

**3. Streamlining of In-State Hatchery Import Permitting**

The amendments eliminate the import permit requirement for in-state hatcheries that comply with established shellfish disease control standards. Hatcheries implementing approved biosecurity measures and demonstrating consistently low disease levels may also be eligible for reduced testing requirements.

These revisions are intended to support continued industry development while upholding the Department’s responsibility to protect environmental resources and public health.

The Department published its proposed regulation Amendments in the March 1, 2025, *Delaware Register of Regulations*. A public hearing was held on March 25, 2025, during which the Department presented the proposed amendments. There were five (5) members of the public in attendance at the hearing.

Pursuant to 29 *Del.C.* §10118(a), the hearing record (“Record”) remained open for fifteen (15) days following the public hearing to allow for receipt of written comment. The Record formally closed for comment at close of business on April 9, 2025. The Department received a total of three (3) comments all of which expressed support for the proposed Amendments.

The Department recognizes and appreciates the public input received, as well as the continuing work of the Task Force in identifying ways to further increase participation and enhance the productivity of shellfish aquaculture in the Inland Bays.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C.* § 2002, 2005(a) & 2006(d) & (e). The Department’s proposed Amendments support the harvesting of shellfish aquaculture, while protecting public health, environmental preservation, and safeguarding of the State’s natural resources. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Hearing Officer Theresa Smith prepared her report dated April 15, 2025 (“Report”), which expressly incorporated into the Record the proposed Amendment, attached thereto as Appendix “A”. Mrs. Smith’s Report set forth the procedural history, summarized and established the record of information (“Record”) relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the proposed Amendments pending before the Department.

### **Reasons and Conclusions**

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 3801 - *Shellfish Aquaculture*. In reviewing the applicable statutes and regulations, as well as weighing the public benefits of the proposed Amendments against potential detriments, the Department’s experts in the DFW have concluded that the proposed Amendments comply with all applicable federal and state laws and regulations.

Further, the proposed Amendments as published in the March 1, 2025, *Delaware Register of Regulations*, are consistent with the Department’s statutory authority under 7 *Del. C.* § 2002, 2005(a) & 2006(d) & (e), to support the aquaculture industry in Delaware’s Inland Bays through regulatory revisions that enhance lease conditions for bivalve shellfish cultivation.

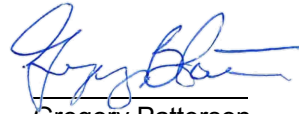
Based on the Record developed by the Department’s experts in the DFW, and established by the Hearing Officer’s Report, I find that the proposed amendments to 7 DE Admin. 3801 - *Shellfish*

*Aquaculture*, are well-supported. I further find that the Department's experts fully developed the record to support adoption of these proposed Amendments. Accordingly, I hereby adopt the Hearing Officer's Report and direct that the proposed amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* § 2002, 2005(a) & 2006(d) & (e);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments, all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on March 25, 2025, and during the 15 days subsequent to the hearing (through April 9, 2025), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. 3801 - *Shellfish Aquaculture* will enable the Department to 1) reduce the planting and harvesting requirements, (2) modify gear-marking requirements, and (3) streamline in-state hatchery import permitting processes;
5. The Department has reviewed the proposed Amendments in light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable. The Department does not anticipate additional costs to the aquaculture industry as a result of these changes;
6. The Department has reviewed this proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3) and has determined that any impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets will be *de minimis*;
7. The Department's proposed regulatory Amendments, as published in the March 1, 2025, *Delaware Register of Regulations*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Therefore, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;
8. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate; and

9. The Department shall serve and publish its Order on its internet site.

A handwritten signature in blue ink, appearing to read 'Gregory Patterson', written over a horizontal line.

Gregory Patterson  
Secretary

April 26, 2025