

MARK WILLIAMS
COMMISSIONER

DOUG HAYMANS
DIRECTOR

October 8, 2019

MEMORANDUM

TO: Members, Board of Natural Resources

FROM: Doug Haymans

SUBJECT: Proposed Amendment to the Rules of the Georgia Department of Natural Resources, Saltwater Fishing Regulations, Chapter 391-2-4

The Coastal Resources Division is proposing amendments to the Rules of the Georgia Department of Natural Resources, Saltwater Fishing Regulations, Chapter 391-2-4. The proposed amendment will ensure Georgia's compliance with House Bill 501 passed by the Georgia General Assembly in 2019 providing for the mariculture of shellfish in estuarine waters.

Included in this packet are the following:

- Proposed Notice Page A-2
- Background and Synopsis Pages A-3 through A-5
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I respectfully submit these items for your consideration. The Coastal Resources Division looks forward to presenting these at the October meeting.

DH/ja

Attachments

MARK WILLIAMS
COMMISSIONER

DOUG HAYMANS
DIRECTOR

October 22, 2019

NOTICE OF PROPOSED REGULATION CHANGES

TO: All Interested Persons and Parties
FROM: Doug Haymans
SUBJECT: Notice of Rule Making for Saltwater Shellfish Mariculture

Notice is hereby given that, pursuant to authority contained in the Game and Fish Code (Official Code of Georgia Annotated, Title 27; O.C.G.A. §27-1-4), the Board of Natural Resources proposes to amend the Rules of the Georgia Department of Natural Resources, Saltwater Fishing Regulations, Chapter 391-2-4. The proposed amended Rule, when adopted, will incorporate the National Shellfish Sanitation Program Model Ordinance for the harvesting, processing and distribution of shellfish; enable the certification of shellfish seed hatcheries and nurseries; establish shellfish seed sizes; set health requirements for shellfish seed and shellfish seed importation; and establish criteria for the leasing of state-owned water bottoms.

Written public comment will be received through Thursday, November 21, 2019. Mailed comments must be postmarked by November 21st and e-mailed comments will be accepted through close of business (4:30 pm) on November 21st. Comments should be legible, concise and limited to the proposed rule change.

Following this comment period, the Board of Natural Resources will consider the proposed rules on December 4, 2019 at 10:00 AM at the Lake Blackshear Resort, 2450-H US Hwy 280 West, Cordele, GA 31015.

Mail or email comments to: Cason Kinstle
Coastal Resources Division
One Conservation Way
Brunswick, GA 31520.
Cason.Kinstle@dnr.ga.gov

Additional information is available at www.coastalgadnr.org. Click in the “Quick Links”.

**BACKGROUND AND SYNOPSIS OF
PROPOSED AMENDMENTS TO THE RULES OF THE
GEORGIA DEPARTMENT OF NATURAL RESOURCES
COASTAL RESOURCES DIVISION
RELATING TO
SALTWATER FISHING REGULATIONS, CHAPTER 391-2-4**

Background

Georgia previously had a prosperous and lucrative oyster industry through the early 1900s. Today Georgia's oyster harvest represents a fraction of former yields. The oysters harvested in Georgia are native and wild. New techniques for oyster mariculture, or farming, in subtidal waters of creeks and rivers have been developed and tested in Georgia demonstrating the potential for substantial economic growth in the industry.

Georgia's existing laws governing shellfish harvest date back to the late 1800's and were based on the rights of riparian owners to plant and harvest shellfish. There was flexibility in the law such that in the 1980's the shellfish industry was reinvigorated with the startup of clam mariculture in intertidal mud flats. To experience a similar revitalization in oyster mariculture significant policy reform was required. All other Southeastern states have recently adopted new regulations to bolster their oyster farming industries. However, the challenges associated with oyster farming are not insignificant and include ensuring public health and food safety, siting mariculture facilities to be compatible with existing uses, and enforcement.

In 2019 the Georgia General Assembly passed House Bill 501 providing the basis for shellfish mariculture in a manner that is compatible with the environment and other public uses of coastal waters. The Bill, which goes into effect on March 1, 2020, recognizes that shellfish mariculture provides increased seafood production and long-term economic opportunities as well as increased ecological benefits to the estuarine environment. It further acknowledges the public health concerns associated with the consumption of raw or undercooked shellfish, especially those harvested during warm-water, summer conditions.

House Bill 501 amends O.C.G.A Title 27, Chapter 4 to provide for mariculture development and includes provisions for permitting, approving harvest in areas otherwise closed, leasing of intertidal and subtidal water bottoms, performance bonds, requirements for operational plans, shellfish mariculture permits and importation of shellfish seed. The Bill also authorizes the Board of Natural Resources to promulgate rules necessary to develop and cultivate the shellfish industry including, but not limited to size, possession, and creel limits; seasonal criteria; lease siting criteria; methods for issuing leases; and importation.

Purpose

The purpose of the proposed amended Rule is to promulgate rules in support of the development of shellfish aquaculture in Georgia, including: adoption of the overarching National Shellfish Sanitation Program Model Ordinance that provides for the commerce of shellfish; establishment

of commercial shellfish seed sizes for use in mariculture; requirements for shellfish seed health and importation; siting criteria for subtidal water bottoms leases; and shellfish water bottoms lease terms.

Main Features

This is a new rule that establishes the criteria for certifying shellfish hatcheries and nurseries; importing shellfish seed and seed size limits; and siting leases for oyster mariculture. The rule also formally adopts the National Shellfish Sanitation Program Model Ordinance that guides the harvesting, processing, and distribution of shellfish for commercial purposes.

Differences

The proposed amendment is a new section to the current Rule 391-2-4. The proposed amendment, to be number 391-2-4-.19, contains the following subparagraphs:

- 1) Subparagraph (1) “Purpose” is to implement the authority of the Board;
- 2) Subparagraph (2) “Adoption of the National Shellfish Sanitation Program Model Ordinance” adopts by reference and allows for enforcement of violations of the following publication: “Guide for the Control of Molluscan Shellfish Model Ordinance”;
- 3) Subparagraph (3) “Hatcheries and Nurseries” requires that all hatcheries and nurseries providing shellfish seed must be certified by the department according to sound principles of wildlife management;
- 4) Subparagraph (4) “Commercial Seed Size” establishes size limits for commercial shellfish seed;
- 5) Subparagraph (5) “Shellfish Seed Health Requirements, Importation” requires those in possession of shellfish seed for mariculture activities to adhere to certain conditions;
- 6) Subparagraph (5)(a) states that all commercial shellfish seed must originate in hatcheries or nurseries certified by the department;
- 7) Subparagraph (5)(b) requires that shellfish seed from out-of-state hatcheries be accompanied by a Certificate of Health that includes specific criteria;
- 8) Subparagraph (5)(c) states that the department may conduct visual inspections of imported shellfish seed;
- 9) Subparagraph (6)(a) “Leasing of State-Owned Water Bottoms Terms, Siting, Other Considerations” states that state-owned water bottoms lease terms shall not exceed ten (10) years and may be renewed for additional terms;
- 10) Subparagraph (6)(b) states the criteria by which subtidal water bottoms leases shall be sited;
- 11) Subparagraph (6)(c) states that subtidal water bottoms leases shall not be sited within certain areas;

- 12) Subparagraph (6)(d) allows for subtidal water bottoms leases to be sited in certain areas only after consultation with local, state or federal agencies; and
- 13) Subparagraph (6)(e) requires the Department evaluate certain criteria before siting a subtidal water bottoms lease.

Date, Time, and Place of Board Action:

Board Action: December 4, 2019, 10:00 AM, at the Lake Blackshear Resort, 2450-H US Hwy 280 West, Cordele, GA 31015.

Targeted Public Participation Plan Amendment to Saltwater Fishing Regulations, Chapter 391-2-4

During the 2019 session, the Georgia General Assembly passed House Bill 501 to amend O.C.G.A. Title 27 Chapter 4 relating to the development of mariculture in Georgia for oysters, clams and other molluscan species. The Bill authorized the Board of Natural Resources to promulgate rules necessary to develop and cultivate the shellfish industry. The proposed rules amend the Saltwater Fishing Regulations to include the adoption of the National Shellfish Sanitation Program Model Ordinance, certification of shellfish hatcheries and nurseries, commercial seed size, shellfish seed health requirements and importation, lease terms and subtidal water bottoms lease siting criteria.

A targeted public participation plan was selected because of the suggested interest from commercial fishers, fishing-related businesses and the general public. The plan will target current shellfish leaseholders, members of the Shellfish and Mariculture Advisory Panel and others who have expressed interest in shellfish mariculture.

Public Participation Plan

- May 6, 2019 – House Bill 501 for mariculture development was signed by Governor Kemp.
- September / October 2019 - Proposed amended rules drafted with input from Shellfish and Mariculture Advisory Panel.
- October 22, 2019 - CRD presents proposed amended Rule 391-2-4-.19 to the Board of Natural Resources, Coastal Committee. Pending approval, CRD notices a public meeting and written comment period. Advertised through various print media, Gov Delivery and on CRD website.
- November 6, 2019 – Public meeting to be held at 5:30pm in Brunswick, Georgia at the Susan Shipman Environmental Education Center located at One Conservation Way, Brunswick, Georgia, 31520.
- November 21, 2019 – Public comment period closes.
- December 4, 2019 - CRD presents final draft of proposed amended Rule, considering public comment.

Assuming affirmative vote by the Coastal Committee, Board adopts amended Rules 391-2-4-.19 and Commissioner's office files amended rule with Secretary of State such that the rules become effective on March 1, 2020.



COASTAL RESOURCES DIVISION
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MARK WILLIAMS
COMMISSIONER

DOUG HAYMANS
DIRECTOR

October 8, 2019

MEMORANDUM

TO: Board of Natural Resources

FROM: Doug Haymans

SUBJECT: Economic Impact of Proposed Amended Rule on Small Businesses:
Chapter 391-2-4, Saltwater Fishing Regulations

The Administrative Procedures Act requires that during the formation and adoption of any rule attempts shall be made to reduce the economic impact of those rules on small businesses. This applies to businesses that are independently owned and operated, are not dominant in the field and employ 100 employees or less.

The proposal to amend rules for the development and cultivation of shellfish mariculture should have minimal negative impact on small business. Currently, shellfish mariculture is limited in Georgia with only clam-farming. The amended rules guide the development of a new oyster farming industry in Georgia which should have far reaching positive economic impacts.

DH/ja

**Saltwater Fishing Regulations
Chapter 391-2-4**

**RULES
OF
GEORGIA DEPARTMENT OF NATURAL RESOURCES
COASTAL RESOURCES DIVISION**

CHAPTER 391-2-4

**SALTWATER FISHING
REGULATIONS**

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391-2-4-.19 Shellfish sanitation; seed
importation; water
bottoms lease terms.

**391-2-4-.19 Shellfish sanitation; seed importation; water
bottoms lease terms.**

(1) Purpose. The purpose of this Rule is to implement the authority of the Board of Natural Resources to promulgate rules and regulations based on current, sound principles of wildlife research and management establishing commercial shellfish sanitation requirements, seed size and importation criteria, and water bottoms lease terms.

(2) Adoption of National Shellfish Sanitation Program Model Ordinance. The following publication is adopted by reference and is part of these Rules: The National Shellfish Sanitation Program (“NSSP”) Model Ordinance entitled "Guide for the Control of Molluscan Shellfish Model Ordinance" (“Guide”) covering the sanitation of harvesting, processing, and distribution of shellfish. Violations of the Guide are violations of these Rules, and the

Department of Natural Resources is authorized to enforce any requirements set forth in the Guide.

(3) Hatcheries and Nurseries. All hatcheries and nurseries providing shellfish seed, whether in-state or out-of-state, must be certified by the department. Certification is based upon current, sound principles of wildlife research and management and history of shellfish disease in the vicinity of the hatchery or nursery facility.

(4) Commercial shellfish seed size. Clam seed shall be not be greater than one-half inch and oyster seed shall not be greater than one-inch.

(5) Shellfish Seed Health Requirements, Importation. For the purpose of possessing shellfish seed for mariculture in this state, any person permitted to conduct mariculture operations according to this section must adhere to the following:

(a) All shellfish seed used in mariculture must originate only from hatcheries or nurseries certified by the department; and

(b) Shellfish seed from out-of-state hatchery and nursery facilities must be accompanied by a Certificate of Health from a Department-approved pathologist certifying the shellfish seed as free from disease and pathogens and must include the following:

(i) Location(s) where the shellfish seed was spawned and nursed;

(ii) Size of shellfish seed tested;

(iii) List of diseases and pathogens in the analysis as required by the department;

(iv) Shellfish species tested;

(v) An indication that the shellfish seed was tested within 30-days prior to entering this state unless waived by the Department; and

(vi) Copies of the Certificate of Health must be maintained by the hatchery and/or nursery and the master harvester for a period of not less than three years.

(c) Visual inspection of out-of-state shellfish seed shipments prior to placement on a lease must be granted upon request by the Department. Imported seed may be rejected if there is non-conformance of shellfish seed size or comingling of species that is not listed on the bill of lading or invoice that accompanies such shipment.

(6) Leasing of State-Owned Water Bottoms Terms, Siting, other Considerations.

(a) The term of a state-owned water bottoms lease shall not exceed ten years and is subject to such provisions, requirements and conditions as determined by the Department. Leases may be renewed for additional terms if the lessee is in compliance with the terms of the current lease.

(b) Subtidal water bottoms leases shall be sited in accordance with the following criteria:

(i) In Approved Shellfish Growing areas as determined by the department;

(ii) In areas with a minimum width of 200 feet at mean low water;

(iii) In areas with a minimum depth of not less than 6 feet at mean low water; and

(iv) Not on or over an existing shellfish resource, live bottom or saltmarsh.

(c) Any boundary of a subtidal water bottom lease shall not be within the following:

(i) 150 feet of a federal project, such as a federally maintained channel;

(ii) 50 feet of an existing commercial, community or private dock; and

(iii) 50 feet of a shoreline at mean low water.

(d) Subtidal water bottoms leases may only be located within or adjacent to certain resources if the Department determines, after consulting with the appropriate local, state or federal agencies with jurisdiction over the subject matter, that the lease is compatible with the following:

(i) Critical habitat for marine, threatened or endangered species;

(ii) Bait shrimping zones; and

(iii) Heritage Preserves as defined in O.C.G.A. Title 12.

(e) Before siting a subtidal water bottoms lease the Department shall evaluate such other considerations as it deems necessary but shall include at a minimum the following:

(i) Areas with known pre-existing or historical commercial, recreational and private uses of the waterway such as commercial and recreational fishing, high boat traffic, riparian viewsheds, and research sites;

(ii) Areas where properties owners may exercise riparian rights to construct docks or marinas; and

(iii) Areas of dynamic shorelines and shoaling.

Authority O.C.G.A. Sec. 27-4-1, 27-4-189.