

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Marine Resources

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**SPECIAL NOTICE TO ALL SHELLFISH HARVESTERS IN THE TOWN OF EAST HAMPTON**

**NOTICE OF CHANGES TO THE SANITARY CONDITION OF SHELLFISH LANDS IN AND ADJACENT TO THE TOWN OF EAST HAMPTON, SUFFOLK COUNTY, NEW YORK, AND NOTICE OF CHANGES TO THE CERTIFICATION OF SHELLFISH LANDS**

The New York State Department of Environmental Conservation, Shellfisheries Section (Department) has determined that water quality in portions of Northwest Creek, Northwest Harbor, Gardiners Bay, and Napeague Harbor adjacent to the Town of East Hampton has changed, requiring reclassification to protect public health. The Department has also determined that it was necessary to update closure line references in portions of Montauk Lake and to make technical changes to improve enforcement and readability of the regulations in portions of Sag Harbor, Montauk Lake, Oyster Pond, Three Mile Harbor, Gardiners Bay, Napeague Bay, Northwest Harbor, Northwest Creek, Accabonac Harbor, and Georgica Pond.

Additionally, the Department has determined that portions of Title 6 of the New York Codes, Rules and Regulations (NYCRR) Part 47, "Certification of Shellfish Lands" needed amendments to term definitions and to the documentation of certification standards used to certify shellfish lands. As such, amendments updated definitions of terms and updated certification requirements used to certify waters for the safe harvest of shellfish when used as food.

Due to these determinations, the Department has filed a Notice of Emergency Adoption and Proposed Rulemaking to amend 6NYCRR, Section 41.3, "Sanitary Condition of Shellfish Lands," in Suffolk County, and 6NYCRR, Part 47 "Certification of Shellfish Lands."

**Highlights of changes are:**

**Northwest Creek and Northwest Harbor:**

- 81-acres of Northwest Creek had their seasonal closure dates extended from May 1 through December 14 to May 1 through December 31.
- 92-acres of Northwest Harbor were downgraded from certified year-round to seasonally uncertified May 1 through December 31.
- 17-acres of Northwest Harbor, the Old Mile Hill Marina, and the unnamed creek adjacent to the old marina had their seasonal closure dates extended from May 1 through December 14 to May 1 through December 31.

**Gardiners Bay:** 30-acres of Gardiners Bay at the entrance to Accabonac Harbor were downgraded from certified year-round to seasonally uncertified May 1 through November 30.

**Napeague Harbor:** 25-acres of Napeague Harbor were downgraded from certified year-round to seasonally uncertified May 1 through October 31.

**Montauk Lake:** 16-acres of Montauk Lake (Montauk Harbor) were downgraded from certified year-round to seasonally uncertified May 1 through October 31.

**Technical Changes:**

- Sag Harbor, Montauk Lake, Oyster Pond, Three Mile Harbor, Gardiners Bay, Hog Creek, Napeague Bay, Northwest Harbor, Northwest Creek, Accabonac Harbor, and Georgica Pond – The existing subparagraphs and clauses were renumbered to reduce complexity and improve the readability of the regulations.
- Northwest Creek and Northwest Harbor – Clarified the closure line descriptions of the seasonally uncertified areas for enforcement purposes.
- Hog Creek – Updated the description of a reference point for the seasonally uncertified area.

The Department updated portions of 6NYCRR, Part 47, "Certification of Shellfish Lands" to amend definitions of terms and to update the documentation of certification standards used to certify shellfish lands.

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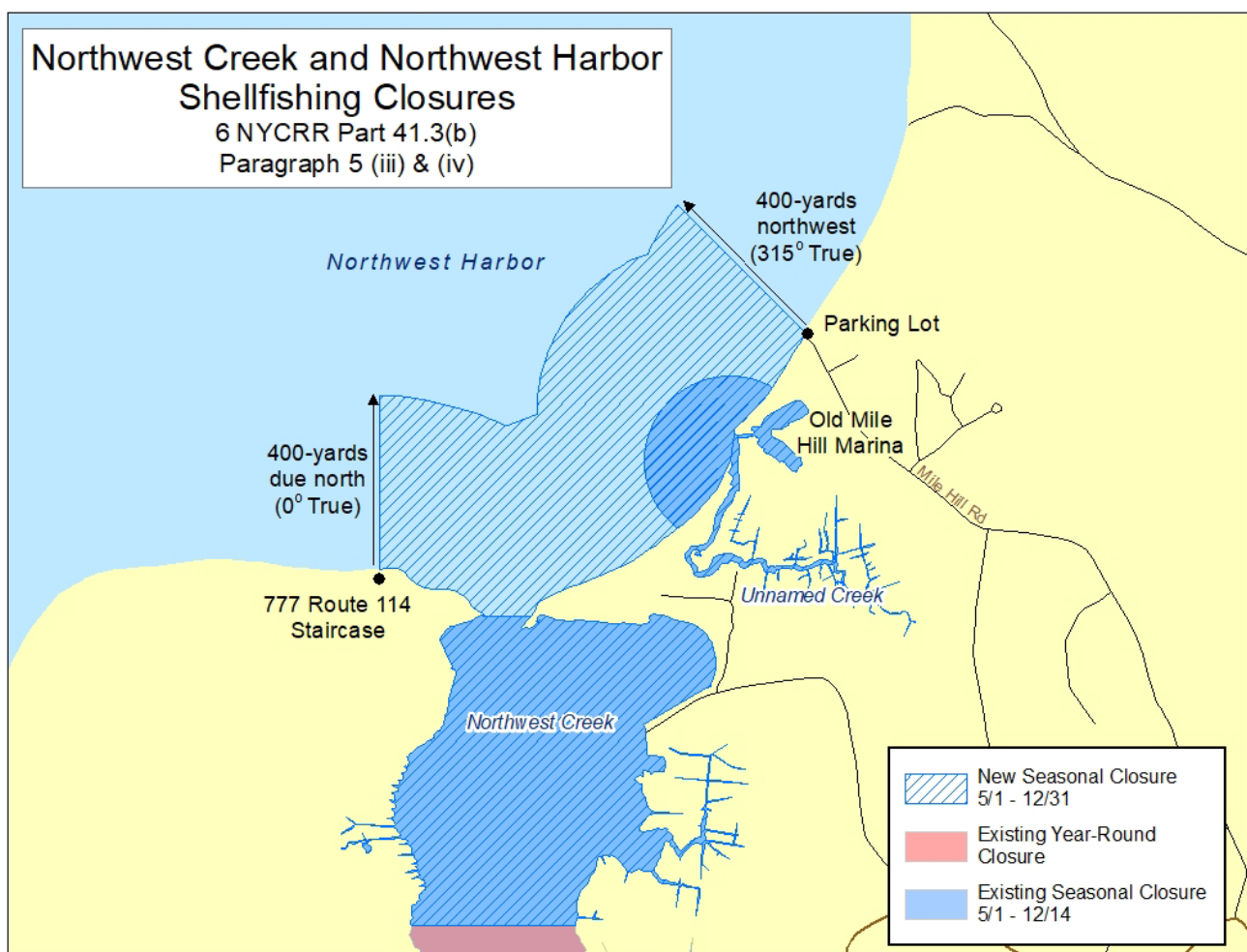
The new regulations are **EFFECTIVE on July 11, 2023** and should appear in the NYS Register on July 26, 2023, see: [State Register | Department of State \(ny.gov\)](#)

The following shellfish lands are in such sanitary condition that shellfish thereon shall not be taken for use as food and such lands are designated as uncertified areas (new text is underlined, old text that was removed is [bracketed]).

### (5) Town of East Hampton

Subparagraph 41.3(b)(5)(iii) was renumbered subparagraph 41.3(b)(5)(xi).

Subparagraph 41.3(b)(5)(viii) was renumbered subparagraph 41.3(b)(5)(iii).



Renumbered clause 41.3(b)(5)(iii)(b) was amended to read as follows:

(b) During the period May 1 through December [14,] 31, both dates inclusive, all that area of Northwest Creek lying south of a line extending due east [(true)] (90 degrees true) from the easternmost point of land on the western side of the inlet to Northwest Creek to the opposite [shoreline, and northerly of the line described in clause (a), of this subparagraph.] shoreline.

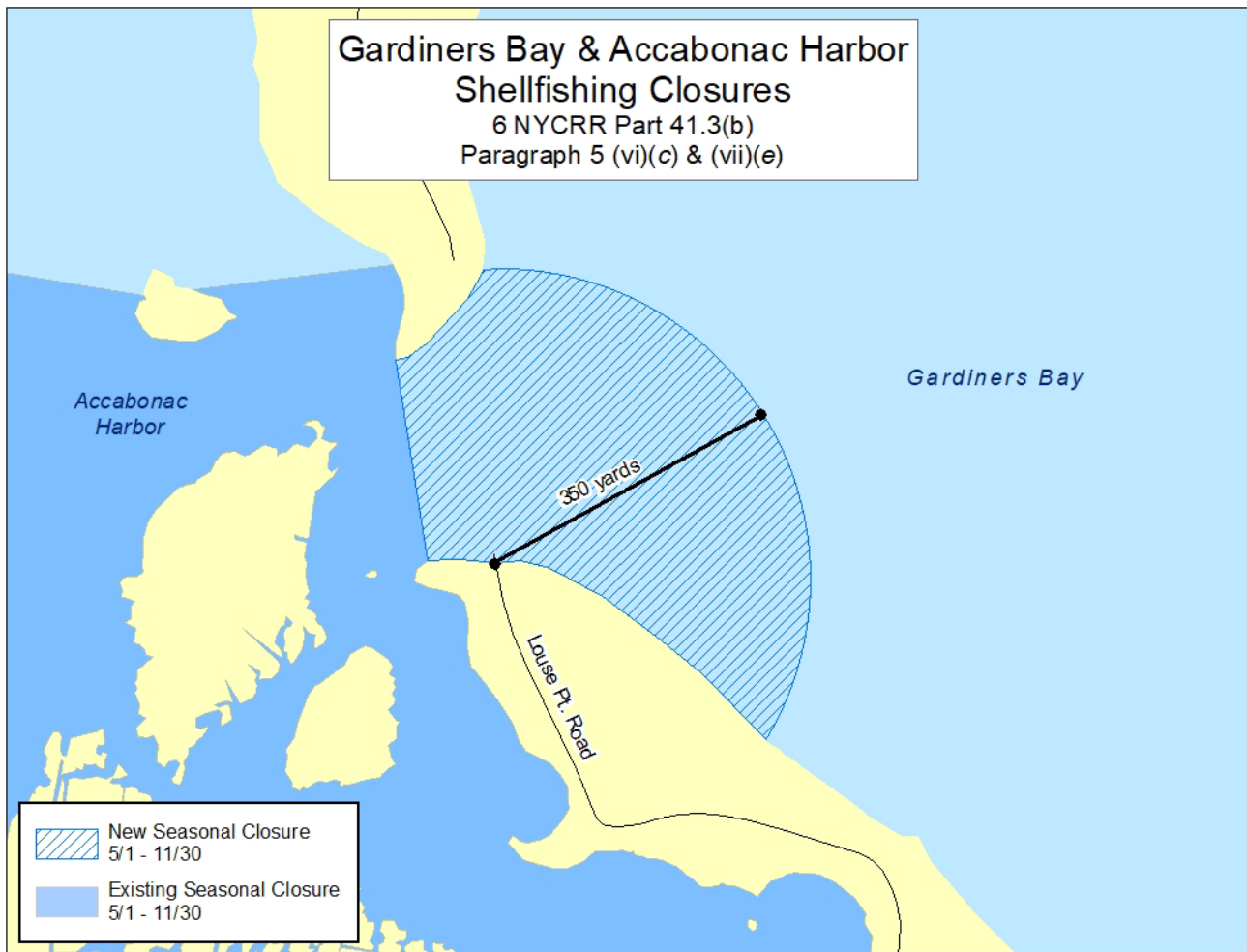
Subparagraph 41.3(b)(5)(vi) was renumbered subparagraph 41.3(b)(5)(viii).

Subparagraph 41.3(b)(5)(v) was renumbered subparagraph 41.3(b)(5)(vi).

Renumbered subclause 41.3(b)(5)(vi)(a)(2) was amended to read as follows:

(2) During the period May 1 through November 30, both dates inclusive, all that area of Hog Creek lying north of a line extending easterly from the highest point of the center peak of the residence located at 59 Isle of Wight Road to the northwesternmost point of land on the

south side of the dug basin on the opposite shore, and lying south of a line extending easterly from the highest point of the center peak of the residence located at 99 Isle of Wight Road to the northerly corner of the hexagon shaped residence located at 120 [Fenmarsh] Waterhole Road on the opposite shoreline.



A new clause 41.3(b)(5)(vi)(c) was adopted to read as follows:

(c) During the period May 1 through November 30, both dates inclusive, all that area of Gardiners Bay including the inlet into Accabonac Harbor, lying within a 350-yard radius in all directions from the northernmost point of Louse Point Road.

Subparagraph 41.3(b)(5)(iv) was renumbered subparagraph 41.3(b)(5)(v).

Subparagraph 41.3(b)(5)(vii) was renumbered subparagraph 41.3(b)(5)(iv).

Renumbered clause 41.3(b)(5)(iv)(b) was renumbered clause 41.3(b)(5)(iv)(c) and was amended to read as follows:

(c) During the period May 1 through December [14,] 31, both dates inclusive, all that area of [Northwest Harbor within a 200-yard radius from the western point of the spit of land on the southerly side of the entrance to] the old Mile Hill Marina (local [name], including the old Mile Hill Marina] name, local landmark) and the unnamed creek located immediately south of the old marina, which are [all] both located [southwesterly of] between the entrance of Northwest Creek and Mile Hill Road.

A new clause 41.3(b)(5)(iv)(b) was adopted to read as follows:

(b) During the period May 1 through December 31, both dates inclusive, all that area of Northwest Harbor lying within 400-yards of the shoreline beginning at a line extending due north (0 degrees true) from the northwesternmost point of the beach access staircase at 777 Route 114, East Hampton (local landmark) and ending at a line extending northwest on a bearing 315 degrees true from the northernmost point of the parking lot at the end of Mile Hill Road (local landmark).

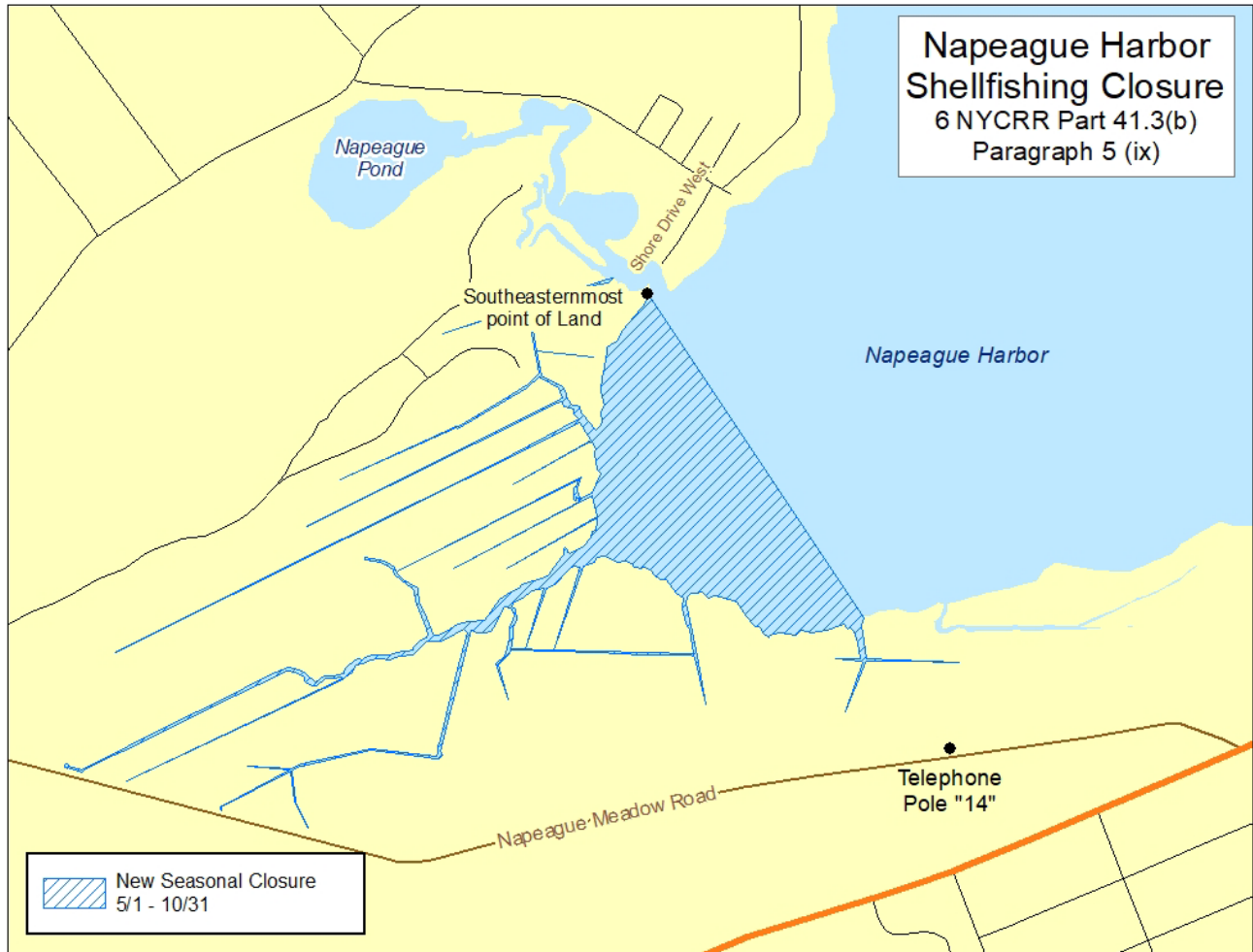
Subparagraph 41.3(b)(5)(ix) was renumbered subparagraph 41.3(b)(5)(vii).

Renumbered clause 41.3(b)(5)(vii)(f) was renumbered clause 41.3(b)(5)(vii)(g).

Renumbered clause 41.3(b)(5)(vii)(e) was renumbered clause 41.3(b)(5)(vii)(f).

A new clause 41.3(b)(5)(vii)(e) was adopted to read as follows:

(e) During the period May 1 through November 30, both dates inclusive, all that area of Gardiners Bay including the inlet into Accabonac Harbor, lying within a 350-yard radius in all directions from the northernmost point of Louse Point Road.



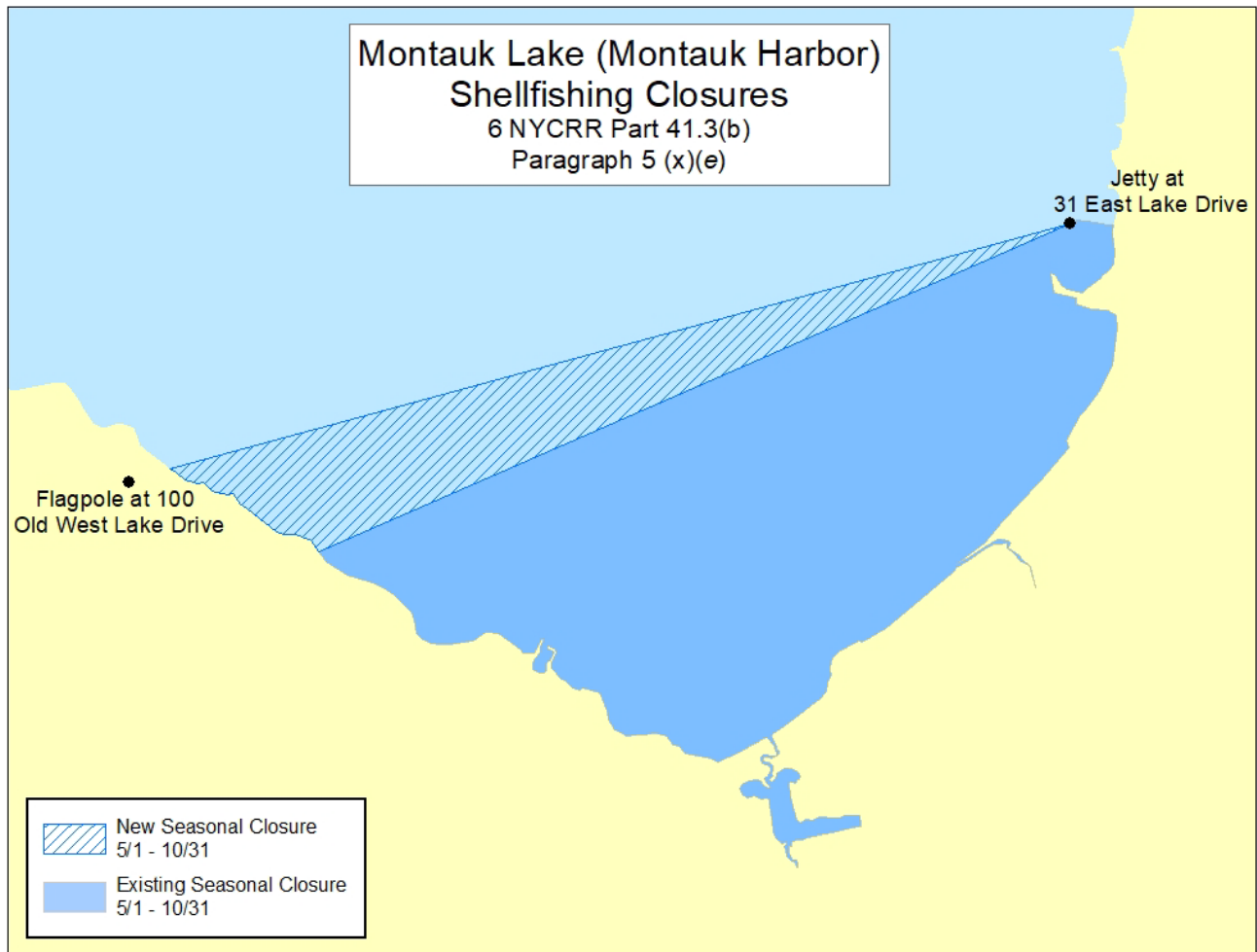
A new subparagraph 41.3(b)(5)(ix) was adopted to read as follows:

(ix) Napeague Harbor. During the period May 1 through October 31, both dates inclusive, all that area of Napeague Harbor and its tributaries lying west of a line extending northwesterly from LIPA telephone pole number 14 on Napeague Meadow Road (said telephone pole has an osprey platform on top) to the southeasternmost point of land on the western side of the outlet creek of Napeague Pond (said creek outlet is southwest of Shore Drive West).

Subparagraph 41.3(b)(5)(x) was repealed.

Subparagraph 41.3(b)(5)(ii) was renumbered subparagraph 41.3(b)(5)(x).

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Renumbered clause 41.3(b)(5)(x)(e) was amended to read as follows:

(e) Southern Montauk Lake. During the period May 1 through October 31, both dates inclusive, all that area of Montauk Lake (Montauk Harbor) and tributaries lying southerly of a line extending easterly from the [highest point of the stone chimney serving the residence of 80] flagpole with yardarms on the property of the residence at 100 Old West Lake Drive, Montauk, to the northwestern corner of northernmost [wooden] jetty extending from the shoreline of the Bridgeford Cottage Colony at 31 East Lake Drive, Montauk (local landmarks, local names); then proceeding along the northern edge of said jetty to the shoreline.

Subparagraph 41.3(b)(5)(i) was renumbered subparagraph 41.3(b)(5)(ii).

A new subparagraph 41.3(b)(5)(i) was adopted to read as follows:

(i) Georgica Pond. During the period of January 1 through December 31, both dates inclusive, all that area of Georgica Pond, a brackish embayment and its tributaries, including any inlet when open to the Atlantic Ocean.

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The following changes were made to Part 47, "Certification of Shellfish Lands" (new text is underlined, old text that was removed is [bracketed]).

Subdivision 47.1(a) was amended to read:

(a) *Approved* means acceptable to the [commissioner,] department based on [his] a determination as to conformance with appropriate [standards and/or] standards, good public health [practices and/or] practices, or good manufacturing practices.

Subdivision 47.1(b) was amended to read:

(b) *Coliform group* means all of the aerobic and facultative [anaerobic] anaerobic, gram-negative, non-spore [forming] forming, rod-shaped [bacteria which will produce gas from lactose when such lactose is incubated for 51 hours or less at 35 degrees Celsius plus or minus 0.5 degrees Celsius.] bacilli which ferment lactose broth with gas formation within 48 hours at 95°F (35°C plus or minus 0.5°C).

Subdivision 47.1(c) was amended to read:

(c) *Commissioner* means the Commissioner of Environmental Conservation or [his] the commissioner's duly authorized representative.

Subdivision 47.1(d) was amended to read:

(d) *Contamination* means any foul, loathsome, dangerous, [toxic, abnormal, impure or unsafe] toxic or abnormal or impure substance. *Contaminated* means the presence of such [substance or] substances.

Subdivision 47.1(f) was amended to read:

(f) *Fecal coliform* means [bacteria] that portion of the coliform group which will produce gas from [EC medium when such medium is incubated for 26 hours or less at 44.5 degrees Celsius plus or minus 0.2 degree Celsius in a water bath.] lactose in an EC or A-1 multiple tube procedure liquid medium within 24 hours, plus or minus 2 hours, in a water bath maintained at 112.1°F (44.5°C, plus or minus 0.2°C), or another approved method acceptable to the department.

Subdivision 47.1(h) was amended to read:

(h) *Hazardous* means actually or potentially dangerous to human health. [*Nonhazardous* means not actually or potentially dangerous to human health.]

Subdivision 47.1(i) was amended to read:

(i) *Marine district* means the waters of the Atlantic Ocean within three nautical miles of the coastline of the State, and all tidal waters within the State including the Hudson River up to the Governor Mario M. Cuomo [Bridge.] Bridge (formerly known as the Tappan Zee Bridge).

Subdivision 47.1(j) was amended to read:

(j) *MPN* means most probable number, which is an estimate of the [number] numbers of bacteria per 100 milliliters or grams of [sample,] sample using laboratory tests and probability tables in a manner endorsed [and/or] or approved by the United States Department of [Health, Education and Welfare,] Health and Human Services, Public Health Service, Food and Drug Administration.

Subdivision 47.1(k) was amended to read:

(k) *Person* means any individual, group of individuals, public or private corporation, limited liability company, industry, [copartnership,] co-partnership, joint-stock company, not for profit organization, association, firm, legal entity, trust or estate.

Subdivision 47.1(n) was amended to read:

(n) *Total coliform* means bacteria of the coliform group which will produce gas from brilliant green bile lactose broth two percent when such broth is incubated for 51 hours or less at [35 degrees Celsius plus or minus five-tenths (0.5) degree Celsius.] 35°C, plus or minus 0.5°C.

Paragraph 47.3 (a)(1) was amended to read:

(1) The department shall periodically examine shellfish lands to determine the sanitary condition thereof. Such examinations, hereinafter referred to as sanitary surveys, shall include shoreline (pollution source) surveys and water quality evaluations conducted at a frequency determined by the commissioner to adequately protect public health. Following a sanitary survey, the department shall on the basis of shoreline surveys and criteria contained in paragraph (2) of this subdivision determine which of the examined shellfish lands are of such sanitary condition that shellfish may be taken therefrom for use as food. Lands that meet such criteria shall be designated, by commissioner's order, *certified shellfish lands*; except, no particular shellfish lands may be designated certified shellfish lands in the absence of a sanitary survey conducted within the previous [10] 12 years. Lands that do not meet such criteria or have not been subject to a sanitary survey within the previous [10] 12 years shall be designated, by commissioner's order, *uncertified shellfish lands*. At any time particular certified shellfish lands may be redesignated by commissioner's order as uncertified shellfish lands if such lands no longer meet the criteria contained in paragraph (2) of this subdivision. The department, annually, and as often as it deems necessary, shall cause a notice describing certified shellfish lands and uncertified shellfish lands to be published in a newspaper widely distributed in the county in which such lands are located.

Subparagraph 47.3 (a)(2)(iii) was amended to read:

(iii) have, when samples are collected from those portions of the [uncertified] certified lands most probably exposed to fecal contamination during adverse hydrographic and pollution conditions: a median (or geometric mean) total coliform MPN per 100 milliliters of sample of 70 or less; and unless extenuating circumstances warrant otherwise, not more than 10 percent of the samples have a total coliform MPN per 100 milliliters of sample in excess of 330 (or the MPN value at the estimated ninetieth percentile does not exceed 330) when a multiple dilution fermentation tube test is used which examines three 10-milliliter sample portions, three one-milliliter sample portions and three one-tenth (0.1) milliliter sample portions; and unless extenuating circumstances warrant otherwise, not more than 10 percent of the samples have a total coliform MPN per 100 milliliters of sample in excess of 230 (or the MPN value at the estimated ninetieth percentile does not exceed 230) when a multiple dilution fermentation tube test is used which examines five 10-milliliter sample portions, five one-milliliter sample portions, five one-tenth (0.1) milliliter sample portions and five one-hundredth (0.01) milliliter sample portions; or

Subparagraph 47.3 (a)(2)(iv) was amended to read:

(iv) have, when samples are collected from those portions of the [uncertified] certified lands most probably exposed to fecal contamination during adverse hydrographic and pollution conditions: a median (or geometric mean) fecal coliform MPN per 100 milliliters of sample of 14 or less; and unless extenuating circumstances warrant otherwise, not more than 10 percent of the samples have a fecal coliform MPN per 100 milliliters of sample in excess of 49 (or the MPN value at the estimated ninetieth percentile does not exceed 49) when a multiple dilution fermentation tube test is used which examines three 10-milliliter sample portions, three one-milliliter sample portions and three one-tenth (0.1) milliliter sample portions; and unless extenuating circumstances warrant otherwise, not more than 10 percent of the samples have a fecal coliform MPN per 100 milliliters of sample in excess of 43 (or the MPN value at the estimated ninetieth percentile does not exceed 43) when a multiple dilution fermentation tube test is used which examines five 10-milliliter sample portions, five one-milliliter sample portions and five one-tenth (0.1) milliliter sample portions.

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Dated: July 11, 2023  
Kings Park, New York

Debra Barnes, Chief  
Bureau of Shellfisheries