

CHAPTER 20

AN ACT concerning Right to Farm Act protections for shellfish aquaculture, amending P.L.1983, c.31 and P.L.1998, c.48, and supplementing P.L.1983, c.31 (C.4:1C-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1983, c.31 (C.4:1C-3) is amended to read as follows:

C.4:1C-3 Definitions.

3. As used in P.L.1983, c.31 (C.4:1C-1 et seq.):

“Board” or “county board” means a county agriculture development board established pursuant to section 7 of P.L.1983, c.32 (C.4:1C-14).

“Commercial farm” means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.), (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.), or (3) a farm management unit that is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth \$10,000 or more annually.

“Committee” means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c.31 (C.4:1C-4).

“Farm management unit” means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

“Farm market” means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51 percent of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51 percent of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$2,500.

“Full-time, year-round equine-related farm employee” means any person employed by the owner or operator of a commercial farm on a full-time, year-round basis to provide proper care and ensure the safety of horses on the commercial farm, including, but not limited to, a groom or other employee working in a stable. “Full-time, year-round equine-related farm employee” shall not include a migrant, seasonal, or temporary employee.

“Shellfish” means the same as the term is defined in R.S.50:1-5.

“Shellfish aquaculture” means the propagation, rearing, and subsequent harvesting of shellfish in controlled or selected environments, and the subsequent processing, packaging, and marketing of such shellfish, and includes activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators.

“Shellfish aquaculture management unit” means an area, contiguous or noncontiguous, together with buildings, structures, and facilities, on which shellfish aquaculture is occurring, and which is operated as a single enterprise.

“Shellfish commercial farm” means a shellfish aquaculture management unit that engages in shellfish aquaculture and produces shellfish worth \$40,000 or more annually.

“Shellfish farm market” means a structure co-located with a shellfish post-harvest activities facility that is part of the shellfish aquaculture management unit used for the wholesale or retail marketing of the shellfish output of a shellfish commercial farm, and products that contribute to farm income, except that if a shellfish farm market is used for retail marketing at least 51 percent of the annual gross sales of the retail farm market shall be generated from sales of shellfish output of the shellfish commercial farm, or at least 51 percent of the sales area shall be devoted to the sale of shellfish output of the shellfish commercial farm.

“Shellfish post-harvest activities” means the storage, processing, and packaging activities carried out at a shellfish aquaculture management unit.

“Single enterprise” means a person, including a business entity, that coordinates operations and combines resources in pursuit of the same business purpose, as evidenced by items including, but not limited to: common owners, principals, managers, directors, shareholders, or employees; integrated business records, financial statements, and tax returns; shared business resources; centralized accounting processes; commingling of income or expenses; the sharing of profits, losses, or liabilities; or common bank accounts.

2. Section 5 of P.L.1998, c.48 (C.4:1C-10.1) is amended to read as follows:

C.4:1C-10.1 Filing of complaint; process.

5. a. Any person aggrieved by the operation of a commercial farm, or the operation of a shellfish commercial farm, shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court.

b. In the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the complaint.

c. In the event the committee has not recommended an agricultural management practice concerning activities addressed by a complaint, the county board shall forward the complaint to the committee for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice. Upon receipt of the complaint, the committee shall hold a public hearing and issue its decision, in writing, to the county board. The county board shall hold a public hearing and issue its findings and recommendations within 60 days of the receipt of the committee's decision.

d. Any person aggrieved by the decision of the county board shall appeal the decision to the committee within 10 days. The committee shall schedule a hearing and make a determination within 90 days of receipt of the petition for review.

e. The decision of the State Agriculture Development Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court. Any decision of a county agriculture development board that is not appealed shall be binding.

C.4:1C-3.2 Shellfish aquaculture management unit, commercial farm, protections, entitled.

3. a. A shellfish aquaculture management unit that qualifies as a shellfish commercial farm, pursuant to P.L.2023, c.20 (C.4:1C-3.2 et al.), shall be entitled to the protections set forth in section 4 of P.L.2023, c.20 (C.4:1C-10a), but not for agricultural or horticultural activities that

are not related to shellfish aquaculture unless the shellfish aquaculture management unit also qualifies as a commercial farm pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3) for reasons other than shellfish aquaculture.

b. Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a shellfish commercial farm that is located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or that is in operation as of the effective date of P.L.2023, c.20 (C.4:1C-3.2 et al.) and is located in an area zoned for commercial or industrial use, or that is located in the coastal area, as designated pursuant to section 4 of P.L.1973, c.185 (C.13:19-4), and is zoned for commercial or industrial use, or that is located on land under tidal waters that the shellfish commercial farm has the authority to use pursuant to a riparian grant or lease granted pursuant to R.S.12:3-2 et seq. or a lease granted pursuant to R.S.50:1-23 et seq., and that operates in conformance with agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or by the committee in a county where no county board exists, to constitute a generally accepted agricultural operation or practice, and that operates in conformance with all relevant federal or State statutes or rules and regulations adopted pursuant thereto and does not pose a direct threat to public health and safety shall be authorized to:

(1) produce shellfish as described in the Standard Industrial Classification for shellfish farming or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), as described in the corresponding classification under the North American Industry Classification System;

(2) process and package the shellfish output of the shellfish commercial farm;

(3) provide for the operation of a shellfish farm market, including the construction of a building and parking area in conformance with municipal standards;

(4) control pests, predators, and diseases of shellfish;

(5) conduct on-site disposal of organic waste on land included in the shellfish aquaculture management unit, excluding land currently flowed by tidal waters;

(6) recycle shells on land included in the shellfish aquaculture management unit;

(7) conduct agriculture-related educational and farm-based recreational activities, provided that the activities are related to marketing the shellfish output of the shellfish commercial farm; and

(8) engage in any other agricultural activity as determined by the committee and adopted by rule or regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.4:1C-10a Shellfish commercial farm, public health, safety, nuisance, presumption against.

4. In all relevant actions filed subsequent to the effective date of P.L.2023, c.20 (C.4:1C-3.2 et al.), there shall exist an irrebuttable presumption that a shellfish commercial farm's operation, activity, or structure does not pose a direct threat to public health and safety, does not constitute a public or private nuisance, and does not otherwise invade or interfere with the use and enjoyment of any other land or property, provided that the operation, activity, or structure: conforms either to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or to a specific operation or practice that has been determined by the appropriate county board, or by the committee in a county where no county

board exists, to constitute a generally accepted agricultural operation or practice; and additionally conforms to all relevant federal or State statutes and rules and regulations adopted pursuant thereto.

5. This act shall take effect immediately.

Approved March 13, 2023.