§ 13-0309. Taking, handling and importation of shellfish; general provisions.

1. a. Shellfish shall not be taken from uncertified lands except as provided in sections 13-0319 and 13-0321.

b. Shellfish from uncertified lands of other states shall not be possessed, transported or trafficked in within this state, except pursuant to permit as provided in sections 13-0319 and 13-0321.

c. Shellfish shall not be shipped or transported into this state except as provided in sections 13-0319 and 13-0321 unless such shellfish are harvested from certified shellfish lands whose quality is equivalent to or better than that described in regulations promulgated pursuant to section 13-0319.

2. a. Shellfish shall not be taken from sunset to sunrise from any shellfish lands of this state.

b. During the period from one hour after sunset until sunrise, no person, except pursuant to a permit issued by the department, shall possess on board a vessel, or off-load from a vessel, more than the quantities of shellfish allowed to be possessed pursuant to subdivision five of section 13-0311 of this title. Possession of shellfish during the period from one hour after sunset until sunrise in quantities exceeding those set forth in subdivision five of section 13-0311 of this title shall be presumptive evidence of a violation of paragraph a of this subdivision.

3. No dredge or scrape or other device operated by power or by boats propelled by motor or other mechanical means may be used for the taking of shellfish from public or unleased lands under water except that

a. Sea scallops (Pecten magellanicus) may be taken from the waters of the Atlantic Ocean by any means.

b. In the taking of soft clams (Mya arenaria) on lands below low tide,

the practice of churning with a propeller may be employed.

c. Surf, sea, hen or skimmer clams (Spisula solidissima; Spisula polynyma) and ocean quahogs (Arctica islandica) may be taken by mechanical means from the waters of the marine and coastal district, except as limited by any regulations promulgated pursuant to subdivision twelve of this section.

d. The department may permit the taking of shellfish for purposes of transplanting only pursuant to section 13-0321, by mechanical means, except that in the waters of Richmond county the department may permit such taking in waters at a mean low water mark of thirty feet or more.

e. Subject to the provisions of section 13-0327, bay scallops (Pecten irradians) may be taken with a dredge or scrape, having an opening at the mouth not to exceed thirty-six inches in width, when towed by a boat operated by mechanical power, or other means provided that such dredge or scrape is brought aboard by hand power without the use of a mechanical device.

f. The department may issue permits for the taking of mussels (Mytilus edulis) from underwater lands as hereinafter described by means of dredges not to exceed thirty-six inches in width, which may be equipped to be returned to boatside by means of power or mechanical devices. Mussels (Mytilus edulis) may be taken by such means in the following areas:

(1) In Long Island Sound generally easterly of a line extending due north from Herod Point on Long Island including those waters surrounding Fishers Island.

(2) In the Atlantic Ocean easterly of a line extending due south from the rock jetty on the east side of Shinnecock Inlet.

(3) In the bays with state-owned bottomland easterly from the Town of Riverhead to and including Block Island Sound.

(4) The limit on mussels (Mytilus edulis) taken in such a manner is fifteen bushels per person per day, not to exceed thirty bushels taken per boat per day. Possession of other shellfish or possession of mussels on a vessel possessing a dredge is presumptive evidence that such

shellfish or mussels were taken by such dredge.

g. In the taking of hard clams (Mercenaria mercenaria), a pot hauler may be used onboard a vessel to assist in hauling or retrieving a clam rake from the water, provided that the basket attached to the clam rake shall not exceed twenty-six inches in width. For the purposes of this section, "pot hauler" shall mean a mechanically operated device, including but not limited to a winch, reel, windlass or capstan, which is used to haul or retrieve a clam rake from the water and return it to the harvest vessel.

4. No person shall take, carry away, interfere with or disturb shellfish of another, lawfully possessed, planted or cultivated; nor remove any stakes, buoys or boundary marks of lawfully possessed, planted or cultivated lands. The possession of dredges, rakes or tongs overboard on any such lands shall be deemed presumptive evidence of a violation of this subdivision.

5. All boats, houses and other places, containers and equipment used in the handling of shellfish shall be maintained in a sanitary condition as provided in section 13-0319.

6. Shellfish shall not be treated by the process known as drinking, floating, plumping or swelling, and shellfish so treated shall not be possessed, bought, sold or exposed for sale; provided, however, that shellfish may be retained in water storage as provided in section 13-0319 and provided, further, that nothing herein shall be deemed to prohibit or render unlawful the practice of off-bottom culture of shellfish under permit issued pursuant to section 13-0316 hereof.

7. Shellfish in the shell, or shucked, shall not be washed preparatory to marketing except by the use of water from a water supply approved by the department.

8. The operation, use or placing, for whatever purpose, of dredges, rakes, tongs or other devices for the taking of shellfish in uncertified shellfish lands, except as provided in sections 13-0319 and 13-0321, is

prohibited. The department may suspend or cancel the digger's permit of any person who is convicted of a violation of this subdivision or who signs an acknowledgment of a violation of this subdivision for the purpose of effecting a settlement by civil compromise or by stipulation.

9. No person shall in any way alter, damage, mutilate, move or carry away any buoy or marker placed by the department that is used to designate, mark or define the uncertified waters of the state.

10. The department may issue permits for the possession of a stick dredge for purposes it may deem necessary. No person without a permit from the department shall possess a stick dredge in Nassau county, Suffolk county, or in the marine and coastal district. For the purpose of this section, a stick dredge shall be any tooth-basket combination dredging device whose construction shall allow for the installation of a stick or sticks of any type material whose purpose is to permit the direction of force upon such device and which is commonly used for the taking of Mercenaria mercenaria by being towed either directly or indirectly by a motorboat which has its engine engaged.

11. No person without a permit from the department shall possess rakes or tongs, of the type and design normally used by shellfish harvesters for harvesting shellfish from shellfish lands, in Nassau county, Suffolk county or the marine and coastal district except:

a. hand operated tongs having teeth in the heads spaced not less than one inch apart and the basket attached to such tongs having bars not less than fifteen-sixteenths of an inch apart, or

b. hand operated rakes having teeth spaced not less than one inch apart and the basket attached to such rake having bars not less than fifteen-sixteenths of an inch apart.

Rakes or tongs having wire netting or other material between the teeth or bars shall not be used.

12. Notwithstanding any other provision of this chapter or rule or

regulation, the department shall fix by regulations open seasons, harvest areas, size limits, catch limits, manner of taking and possession, transportation, identification, sale and permit requirements for surf, sea, hen and skimmer clams (Spisula solidissima, Spisula polynyma) and ocean quahogs (Arctica islandica). Such regulation may provide for, but not be limited to the following:

a. a daily catch limit for surf clams not to exceed eight hundred ninety-six bushels or twenty-eight cages per vessel and a daily catch limit for ocean quahogs not to exceed eight hundred ninety-six bushels or twenty-eight cages per vessel, regardless of the number of permittees aboard such vessel;

b. requirements with respect to number of vessels which may participate in the surf clam and ocean quahog fishery;

c. limitations on harvest within specified periods of time, such as weekly and daily harvest limits, designed to minimize the number of and the duration of closures;

d. qualification of applicants and vessels to participate in the surf clam and ocean quahog fishery;

e. the regulations shall take into consideration and attempt to maintain the economic viability of those portions of the surf clam harvesting and processing industry that have a longstanding investment in the domestic surf clam industry; and

f. the regulations shall take into consideration and attempt to maintain the economic viability of the traditional established New York based commercial surf clam/ocean quahog harvesting industry, processors and packers that rely on this fishery.

13. Possession of shellfish on a vessel equipped with a dredge, scrape or other device operated by power and capable of being used for the taking of shellfish, except a scallop dredge as defined in paragraph e of subdivision three of this section, is presumptive evidence that such

shellfish were taken by the use of such dredge, scrape or other device.

14. The department, until April first, two thousand ten shall be entitled to collect fifteen cents per bushel of surf clams and ten cents per bushel of ocean quahogs taken from all certified waters to be deposited in the surf clam/ocean quahog account as provided in section eighty-three of the state finance law.

15. Unless and until regulations are adopted implementing a comprehensive long-term management plan for the protection of surf clams and ocean quahogs in New York waters, the following restrictions shall apply in addition to any consistent regulations adopted prior to the date upon which such section shall take effect:

a. a weekly catch limit not to exceed twenty-eight cages;

b. an annual catch limit in certified waters of the Atlantic Ocean for surf clams not to exceed five hundred thousand bushels in the aggregate;

c. an annual catch limit in certified waters other than the Atlantic Ocean for surf clams not to exceed fifty thousand bushels in the aggregate; and

d. requiring permittees to report on a weekly basis the number of bushels harvested in the previous seven day period, and provide that the failure to file such weekly report may result in the revocation of such person's permit by the department.