

322 CMR: DIVISION OF MARINE FISHERIES

322 CMR 16.00: SHELLFISH HARVEST AND HANDLING

Section

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16.01: Purpose and Scope

The purpose of 322 CMR 16.00 is to establish procedures, performance criteria, and specifications for persons harvesting wild and aquaculture-reared shellfish for commercial purposes, and for selling shellfish into commerce and receiving shellfish from commercial harvesters or wholesale dealers. 322 CMR 16.00 is intended to ensure that the Commonwealth's shellfish industry complies with:

- (a) the National Shellfish Sanitation Program (NSSP), which regulates the harvest and transport of shellfish; and
- (b) the Food and Drug Administration (FDA) requirements for minimizing the risk of food borne illnesses to consumers within and outside of the Commonwealth.

16.02: Definitions

For purposes of 322 CMR 16.00:

Aquaculturist means any person authorized by the Director to propagate or rear shellfish for commercial purposes under the authority of a shellfish propagation permit issued pursuant to 322 CMR 7.01(4): *Special Permits*.

Director means the Director of the Division of Marine Fisheries.

Division means the Massachusetts Division of Marine Fisheries.

Icing means applying ice made from approved sources of potable water to oysters, as established under the National Shellfish Sanitation Program Model Ordinance.

Land means to transfer or attempt to transfer shellfish onto any land, pier, wharf, dock or other artificial structure or for a vessel with any shellfish onboard to tie-up to any dock, pier or artificial structure.

License Site means the specific portion of the coastal waters of the Commonwealth granted by the municipality where an aquaculturalist is licensed to propagate shellfish in accordance with M.G.L. c. 130, § 57.

Public Health means the Massachusetts Department of Public Health

Shellfish Growing Area means any geographic area within waters under the jurisdiction of the Commonwealth that have been listed and mapped by the Division as a Designated Shellfish Growing Area (DSGA) and made available to the public on the Division's website under

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information on the Shellfish Sanitation and Management Program. Such areas support or could support the propagation of shellstock and are used for the purpose of shellfish classification, traceability and management.

Shellstock means live and unprocessed molluscan shellfish with the shell intact.

Wet Storage means the storage of shellstock from growing areas in the approved classification or in the open status of conditionally approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater at any permitted land-based activity or facility.

16.03: Tagging of Shellfish

(1) Requirements to Tag Containers and Bags of Shellfish.

(a) Commercial Fishermen and Aquaculturists. All persons harvesting shellfish for commercial purposes shall comply with the following tagging requirements:

1. Tagging Requirement. A tag with the features and harvest information specified in 322 CMR 16.03(1)(a)2. must be attached to all containers of shellfish shellstock before transport from the harvest site to the landing site.

2. Tag Features and Required Harvest Information. The tag shall be comprised of durable and waterproof material and be at least 13.8 square inches in size or at least 2<sup>5</sup>/<sub>8</sub>" by 5<sup>1</sup>/<sub>4</sub>". The tag shall contain, in the order specified, the following information written legibly in indelible ink:

- a. The full name of the harvester;
- b. the DMF Commercial Shellfish Permit number;
- c. the date and time of harvest;
- d. the type and quantity of shellstock;
- e. the initials of the state of harvest; the Shellfish Growing Area name and number, and if applicable, the aquaculture site number; and
- f. the following statement shall be written in bold capitalized type:

"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED, AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

(b) Dealers. All persons accepting shellfish from commercial fishermen for commercial purposes shall ensure that all bags and other containers of shellfish are properly tagged as required in 322 CMR 16.03(1)(a). Any dealer who accepts or possesses untagged or improperly tagged shellfish shall be subject to the penalties in M.G.L. c. 130 and may also have their permit suspended or revoked by the Director.

(c) Prohibition. It is unlawful for any person to possess and transport shellfish for commercial purposes that is not tagged as required in 322 CMR 16.03.

16.04: Possession of Shellfish from Areas Closed to Commercial Harvesting

(1) Purpose. Shellfish management in Massachusetts is a cooperative effort between municipalities, the Division and Public Health. M.G.L. c. 130, § 52 authorizes municipalities to open and close shellfish growing areas within local waters. Other provisions of M.G.L. c. 130 require the Division ensure that the shellfish purchased, sold and possessed in Massachusetts are from areas open to harvesting and to prevent the commerce of tainted shellfish harvested from non-compliant growing areas. Public Health administers and enforces regulations that ensure shellfish are safe to the consumer by conducting safety inspections of wholesale and retail fish dealers, truck transporting, and processing.

Shellfish populations are a key component of ecosystems that cross-over municipal and state boundaries and are the foundation of commercial and recreational fisheries that are managed for sustainable harvest. Accordingly, the purpose of 322 CMR 16.04 is to further uniform compliance with state and local shellfish regulations and enhance shellfish populations by prohibiting commercial fishermen and dealers from harvesting or accepting any shellfish from an area that is not open for commercial harvest by either the Division or by the municipality, in accordance with M.G.L. c. 130, § 52.

(2) Commercial Harvester Restrictions. It is unlawful for any commercial fisherman to harvest

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or possess for commercial purposes any shellfish from a shellfish growing area that is not open for commercial harvest by either the Division or by the municipality that regulates commercial harvest in its waters pursuant to M.G.L. c. 130, § 52.

(3) Dealer Restrictions. It is unlawful for any wholesale dealer to accept from commercial fishermen or from another wholesale dealer any shellfish from a shellfish growing area that is not open for commercial harvest by the Division or by the municipality that regulates commercial harvest in its waters pursuant to M.G.L. c. 130, § 52.

16.05: Vibrio Management Plan for Harvest and Handling of Oysters

(1) Purpose. The purpose of 322 CMR 16.05 is to set forth the protocols and performance standards of the Vibrio Management Plan for shellfish harvesters and dealers to minimize the risk to consumers of pathogens, including *Vibrio parahaemolyticus* (Vp) associated with consumption of raw oysters, and applies to commercial fishermen, aquaculturists, and dealers possessing shellstock oysters.

(2) Definitions. For the purpose of 322 CMR 16.05, the following terms hold the following meanings:

Adequately Iced means the amount and application methods of ice described in 322 CMR 16.05(3) to completely surround all the oysters in a shellfish icing container to ensure their immediate and ongoing cooling.

Adequately Shaded means the measures required to be taken to protect oysters from direct exposures to sunlight.

Aquaculturist means any person authorized by the Director to propagate or rear shellfish for commercial purposes under the authority of a shellfish propagation permit issued pursuant to 322 CMR 7.01(4): *Special Permits*.

Broadcast Re-submergence means the return of loose, market-sized oysters to the waters of the original license site following off-site culling and/or oyster culture activities requiring re-submergence, as described at 322 CMR 16.05(4).

Commercial Fisherman means any person authorized by the Director to harvest shellfish for commercial purposes pursuant to 322 CMR 7.01(2): *Commercial Fisherman Permits*.

Harvester Lot means containers of oysters identified by the harvest tag as having the same time of harvest and consisting of oysters from a single defined growing area gathered by a single commercial fisherman or aquaculturist.

Market Bound Oysters means all oysters removed from a designated shellfish growing area by a commercial fisherman or aquaculturist intended for commercial purposes on that calendar day.

Market Sized Oysters means those oysters that measure at least three inches shell length or 2½ inches shell length for those aquaculturists authorized by the Division pursuant 322 CMR 6.20(3): *Restrictions on Oysters and Quahogs Raised by Aquaculturists and Sold to Dealer* to possess and sell "petit" oysters.

Off-site Culling means an aquaculture practice of temporarily removing shellfish from the licensed site (grant) to an aquaculturists' permitted off-site culling location for the purposes of sorting, grading and cleaning the individual shellfish.

Oyster Culture Activities means activities conducted by some aquaculturists that require the removal of oysters from the waters of the license site (grant) for the purposes of sorting, culling, grading, pitting, over-wintering and/or the removal of fouling organisms to enhance oyster marketability.

Primary Buyer means a seafood dealer authorized by the Director pursuant to M.G.L. c. 130, § 80

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and 322 CMR 7.07: *Dealers Acting as Primary Buyers* to purchase shellfish directly from a commercial fisherman. This person is also identified as the Original Dealer in the Commonwealth's Vibrio Management Plan approved by the federal Food and Drug Administration.

Re-submergence means the return of market size oysters back to the water of the original license site (grant) after they have been removed for off-site culling and/or oyster culture activities, or after being returned by a primary buyer, as a result of recall specified at 322 CMR 16.05(4).

Shellfish Icing Container means a conveyance that is smooth, in good condition, is easily cleaned, impervious to water, insulated, self-draining, has a tight fitting lid, and a light-colored exterior.

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Time of Harvest for sub-tidal areas means the time when the first oyster in a harvester lot is taken from the water on a calendar day and for intertidal area means the time when the first oyster in a harvester lot is exposed during a single low tide cycle or when the first oyster in a harvester lot is taken from the water, whichever occurs first.

Time of Icing means the time when the last oyster or bag of oysters in a harvester lot is placed in a shellfish icing container and is adequately iced in accordance with the procedure at 322 CMR 16.05(3).

Vp Logbook means the Division issued bound logbook required to be used by all commercial fishermen and aquaculturists during the Vp season as defined in 322 CMR 16.05(2), to record required icing, shading and re-submergence information described at 322 CMR 16.05(3) and (4).

Vp Season means the time period from May 19<sup>th</sup> through October 19<sup>th</sup> when the Vibrio Management Plan is in effect.

(3) Commercial Harvester Restrictions. The following shall apply to all commercial fishermen and aquaculturists harvesting oysters during the Vp season.

(a) Icing Requirements.

1. General Time to Icing. All commercial fishermen and aquaculturists shall adequately ice oysters, as defined in 322 CMR 16.05(2), within two hours of time of harvest or exposure, or prior to leaving the point of landing, whichever occurs first. Oysters must remain adequately iced until received by a wholesale dealer.

2. Seasonal Time to Icing Requirements for Certain Growing Areas. From July 1<sup>st</sup> through September 15<sup>th</sup>, all commercial fishermen and aquaculturists who are harvesting oysters in shellfish growing areas CCB-42, CCB-43, CCB-44, CCB-45, CCB-46, CCB-47 and V-20, shall adequately ice oysters, as defined in 322 CMR 16.05(2), within one hour of time of harvest or exposure, or prior to leaving the point of landing, whichever occurs first. Oysters must remain adequately iced until received by a wholesale dealer.

3. Methods for Icing. To meet these time to icing requirements, commercial fishermen and aquaculturists must place oysters and ice into a shellfish icing container using one of the following methods:

a. Mesh bags containing oysters must be completely surrounded by ice, with at least two inches of ice between the bags and the bottom and sides of the shellfish icing container, and at least three inches of ice on top of the mesh bags;

b. Loose oysters placed into a shellfish icing container must be completely surrounded by ice, with at least two inches of ice at the bottom and sides of the shellfish icing container, and at least three inches of ice on top of the loose oysters;

c. Oysters held in an ice and water mixture (*e.g.*, ice slurry or cold water dip) must be fully submerged and the ice and water mixture must be at or below 45°F to inhibit growth and proliferation of bacteria; or

d. All ice and or water used to cool oysters must originate from a fresh potable water source or ocean water from an area classified as "Approved" or "Conditionally Approved" by the Division of Marine Fisheries and in the "open status".

(b) Shading Requirement. All commercial fishermen and aquaculturists shall adequately shade oysters, as defined in 322 CMR 16.05(2) immediately following harvest and until oysters are adequately iced. Materials in direct contact with oysters or bags of oysters must be smooth, easily cleanable and impervious to water.

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(c) Shellfish Icing Tag Requirement. In addition to the tagging requirements at 322 CMR 16.03, commercial fishermen and aquaculturists shall record the time of icing on all harvester tags affixed to containers of oysters or record the time of icing on a single harvester tag attached to a shellfish icing container. The use of a single harvester tag for the purpose of meeting this shellfish icing tag requirements does not exempt commercial fishermen and aquaculturists from attaching harvester tags, as specified at 322 CMR 16.03, to all individual containers of market bound shellfish. A single harvester tag for the purpose of meeting the shellfish icing tag requirements may be used in instances when:

1. All oysters in the shellfish icing container are from a single harvester lot;
  2. The shellfish icing tag is attached to the shellfish icing container at the time of icing and remains attached to the shellfish icing container until received by the primary buyer;
- and



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3. The shellfish icing tag also includes the time of harvest, harvest date, harvest area, harvester identification and quantity (in pieces) of oysters harvested.
- (d) Logbook Requirement. When landing oysters, all commercial fishermen and aquaculturists must have in their possession the Division of Marine Fisheries issued Vp logbook. The harvester, or his or her licensed employee shall record in indelible ink the date, shellfish growing area, time of harvest, time of icing, quantity harvested (in pieces), and the dealer who received the product. The Vp logbook shall be filled out by the permit holder, or his or her licensed employee, at the time of landing before the day's harvest is placed in transit or leaves the landing site except that the primary buyer information may be completed upon receipt of the market bound oysters by the primary buyer.
- (e) Restrictions on Transport of Market Bound Oysters to the Primary Buyer. All market bound oysters shall be transported by the harvester, or his or her licensed employee, directly to the primary buyer's physical facility or received by the primary buyer at the landing site. Commercial fishermen and aquaculturists are prohibited from handling and/or holding market bound oysters at any unlicensed facility prior to receipt by the primary buyer.
- (4) Restrictions that Apply to Aquaculturists Only.
- (a) Re-submergence Requirements for Off-site Culling Practices. Market-sized oysters may be removed from the original license site for the purpose of off-site culling, provided:
1. All removed oysters are returned to and segregated on the license site of at least ten days prior to being harvested for commercial purposes;
  2. Off-site culling activities are subject to Aquaculture Propagation Permit permit conditions, issued by the Division pursuant to the authority at M.G.L. c. 130, § 80 and 322 CMR 7.01(7): *Conditions*; and
  3. Prior to the removal of any shellstock from a license site, harvesters are required to notify the local municipal shellfish authority.
- (b) Re-submergence Requirements for Oyster Processing Activities Conducted on Barges, Boats and Other Floating Structures. Market-sized oysters may be brought onboard barges, boats and other floating structures for the purpose of oyster processing activities, provided:
1. All oyster processing activity that is not conducted on the license site is conducted within the same designated shellfish growing area as the license site;
  2. When oyster processing activities exceed two hours from the time of harvest or time of first exposure, all oysters subject to such activities must be returned to the license site, segregated and re-submerged for at least ten days prior to being harvested for commercial sale; and
  3. When oyster processing activities do not exceed two hours from the time of harvest or first exposure, all oysters subject to such activities may either be properly tagged and harvested during that calendar day, in accordance with the procedures set forth at 322 CMR 16.00, or returned to the original license site and harvested not before the next calendar day.
  4. Between July 1<sup>st</sup> and September 15<sup>th</sup>, in shellfish growing areas CCB-42, CCB-43, CCB-44, CCB-45, CCB-46, CCB-47 and V-20, when oyster culture activities exceed the one hour time to icing requirement at 322 CMR 16.05(3)(a)2., but do not exceed two hours from the time of harvest or first exposure, all oysters subject to such activities must be returned to the original license site and shall not be harvested sooner than the following calendar day.
- (c) Tagging and Logbook Requirements for Re-submerged Oysters.
1. Logbook Requirements. Aquaculturists shall maintain a record in their Vp logbook of all market-sized oysters returned to the license site after off-site culling or oyster

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processing activities requiring re-submergence. The Vp logbook shall be filled out by the permit holder, or his or her licensed employee, at the time of re-submergence when the last market-sized oyster is returned to the license site, except that the date-out information shall not be completed prior to the end of the ten day re-submergence period.

2. Container Tagging Requirement. All containers of re-submerged oysters shall be marked with a waterproof green tag and legibly labeled in indelible ink with the statement "re-submerged" and with the date that the oysters were returned to the license site for re-submergence. After such oysters have remained on the license site for at least ten days, the green "re-submerged" tag may be removed from the containers and the oysters may then be harvested in accordance with those procedures set forth at 322 CMR 16.00.

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3. Alternatives to Container Tagging Requirements. Aquaculturists who engage in broadcast re-submergence or wish to mark multiple containers of re-submerged oysters using a single re-submergence tag may do so following the submission of a re-submergence plan to the Division for approval. The re-submergence plan must be submitted at least 30-days prior to the start of the activity and it must include, at a minimum, the following:
  - i. A description of the re-submergence method (*e.g.*, broadcast, holding cars, cages, *etc.*);
  - ii. A description of the segregation method to be utilized, including a site map marking the segregated re-submergence area; and
  - iii. A description of the re-submergence tagging method to be utilized.
- (d) Wet Storage Restrictions.
  1. Wet storage of oysters by the permitted aquaculturists shall only be allowed on the license site where the oysters originated, unless otherwise approved in advance in writing by the Division in accordance with the provisions of the National Shellfish Sanitation Program's Guide for the *Control of Molluscan Shellfish 2011 Revision, Section II, Chapter VII.*
  2. Market-sized oysters returned to a license site for wet storage will be considered off-site culled and subject to the tagging, Vp logbook and re-submergence requirements set forth at 322 CMR 16.05(4).
- (5) Disposition and Handling of Non-compliant Oysters and Recalled Oysters.
  - (a) Destruction of Non-complaint Oysters.
    1. In the event that the Division, the local Shellfish Constable or the Office of Law Enforcement determines that a commercial fisherman or aquaculturist is in possession of oysters that are out of compliance with the tagging, icing or other requirements set forth at 322 CMR 16.00, such oysters shall be destroyed.
    2. In the event that oysters distributed into commerce are recalled in the case of illness, such oysters shall be destroyed.
  - (b) Re-submergence of Non-compliant Oysters.
    1. In the event of a recall resulting from the closure of a harvest area due to illness, only those oysters received from harvesters and stored at a primary buyer's facility may be re-submerged.
    2. In the event that the Division or Public Health determines that a primary buyer is in possession of oysters that do not comply with the tagging, icing or other requirements set forth at 322 CMR 16.00, such oysters may be returned to the aquaculturists, and re-submerged and segregated on the license site where they originated for ten days under the supervision of the local Shellfish Constable.
    3. Aquaculturists may harvest oysters that have been re-submerged in accordance with 322 CMR 16.05(5)(b), provided the following actions are taken:
      - i. Recalled oysters have been segregated and re-submerged on the license site for a minimum period of ten days;
      - ii. Recalled oysters are tagged with a waterproof green tag labeled in indelible ink with the statement "non-compliant" or "recalled" and the date of re-submergence;
      - iii. The return, segregation and re-submergence of oysters are documented in the Vp logbook, including recording the quantity of oysters, and date and purpose of the return and re-submergence, in accordance with 322 CMR 16.05(4); and
      - iv. After such oysters remain on site for at least ten days, the green "non-compliant" or "recalled" tag may be removed and the oysters may then be harvested, subject to

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being tagged as specified in 322 CMR 16.00.

16.06: Authority to Suspend Permits for Violations of 322 CMR 16.00

(1) Subject to the procedures in 322 CMR 16.05(6)(b), the Director may suspend without a prior hearing the permit of a commercial fisherman, aquaculturist, or a wholesale dealer whenever an officer authorized to investigate and enforce shellfish laws and regulations of the Commonwealth determines that there is reasonable cause for citing such permit holder for a violation of 322 CMR 16.00.

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(2) Such permit suspension shall not be effective until the permit holder is in receipt of following information.

(a) The written report from the officer that sets forth the factual and regulatory basis for the officer's determination that there is reasonable cause for citing such permit holder for a violation of 322 CMR 16.00.

(b) written notice of the Division's authority under M.G.L. c. 130, § 80 and 322 CMR 16.05(6) to suspend the permit and a statement of the basis for such suspension, with reference to the enforcement officer's written report.

(c) An order to show cause from Director or his or her authorized designee that establishes a timely date and location for an adjudicatory proceeding to be conducted pursuant to M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules* to adjudicate whether the permit should be revoked. The Division's order shall also inform the permit holder of his or her right to request an expedited hearing.

#### REGULATORY AUTHORITY

322 CMR 16.00: M.G.L. c. 130, §§ 17A, 52, 81, and 82.