

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.

~~Anti-fouling practices means the activities conducted by some aquaculturists to remove oysters from the water and expose the shellfish to air for purposes of removing or killing attached organisms from the exterior of the shell to enhance oyster marketability.~~

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).

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 processing 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).

~~Container means a conveyance that is smooth, in good condition, is easily cleaned, impervious to water, insulated, self-draining, and with a light-colored exterior.~~

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.

~~Ice slurry means a mixture of ice and water that serves to rapidly chill fully submerged shellfish. If ocean water is used to make the slurry, the water must be from an area classified as “Approved” or “Conditionally Approved” by the Division and in the “open” status. This determination is made by the Division’s Shellfish Sanitation and Management Program using criteria set forth in the NSSP. “Approved” and “Conditionally Approved” areas are listed on the Division’s website and notifications of “open” status are sent by the Division to the municipality for local dissemination. If fresh water is used, it must be potable water approved by the local Board of Health or Public Health.~~

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 3” shell length or 2 1/2” shell length for those aquaculturists authorized by the Division pursuant 322 CMR 6.20(3) 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 ~~another location~~ for the purposes of sorting, grading and cleaning the individual shellfish.

Oyster processing 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 and 322 CMR 7.07 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 processing activities, or after being returned by a primary buyer, as a result of recall specified at 322 CMR 16.05(4). ~~means placing market size oysters back into the water at the original licensed culture site after they have been removed for off site culling and/or antifouling processes or after being returned by a primary buyer due to non-compliance with the Vp Control Plan or as a result of a recall.~~

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.

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. ~~means the time when the first shellfish in a lot is taken from the water or, in the case of intertidal harvest, the time of first exposure to air.~~

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 ~~that~~ and is adequately iced in accordance with the procedure at 322 CMR 16.05(3).

Vp logbook means the Division issued bound logbook ~~or ledger~~ 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 19th through October 19th 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 Requirement. All commercial fishermen and aquaculturists shall adequately ice oysters, as defined in 322 CMR 16.05(2) within two (2) hours of time of harvest or exposure using one of the following methods:

1. **Mesh bags containing oysters must be completely surrounded by ice, with at least two (2) inches of ice between the bags and the bottom and sides of the shellfish icing container, and at least three (3) inches of ice on top of the mesh bags; ~~Icing of Oysters in Mesh Bags in a Container. If oysters are placed in mesh bags, then the bags must be completely surrounded by ice, with at least two (2) inches of ice between the bags and the bottom and sides of the container, and at least three (3) inches of ice on top.~~**

2. **Loose oysters must be completely surrounded by ice, with at least two (2) inches of ice at the bottom and sides of the shellfish icing container, and at least three (3) inches of ice onto of the loose oysters; or ~~Icing of Oysters Placed Loose in a Container. If loose oysters are placed into a container then oysters must be completely surrounded by ice, with at least two (2) inches at the bottom and sides of the container, and at least three (3) inches of ice on top.~~**

3. **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. Only fresh potable water or ocean water from an area classified as “Approved” or “Conditionally Approved” by the Division on Marine Fisheries and in the “open status” may be used to constitute the mixture. ~~Icing of Oysters Using an Ice Slurry. The use of ice slurry to fully submerge oysters or bags of oysters shall be considered adequate icing.~~**

(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. ~~upon harvest and during transport to shore and in transit to the primary buyer.~~**

(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
3. The shellfish icing tag also includes the time of harvest, harvest date, harvest area, harvester identification and quantity (in pieces) of oysters harvested.

(c) Logbook Requirement. ~~While harvesting oysters, all commercial fishermen and aquaculturists shall keep in their possession a bound Vp logbook that records in~~ 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, ~~amount~~ quantity harvested (in pieces) ~~in bushels, or count of bags, disposition,~~ and the dealer who received the product. ~~Such logbook~~ 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 ~~shellfish growing area or the landing area,~~ except that the primary buyer information may be completed upon ~~transfer of the receipt of the market bound oysters by the primary buyer.~~ ~~at the primary buyer's facility.~~

(d) 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 ~~only to~~ the primary buyer's physical facility ~~for sale 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 ~~delivery to the receipt by the primary buyer.~~

(4) Restrictions that Apply to Aquaculturists Only

(a) Re-submergence Requirements for Off-Site Culling Practices. ~~Aquaculturists may remove market sized oysters from the license site for purposes of off-site culling; provided prior notice is provided to the local shellfish authority. All such oysters must be returned to and segregated on the license site for at least 14 days before being harvested for commercial sale.~~ 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 14-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 G.L. c. 130 § 80 and 322 CMR 7.01(7); 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 (2) 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 14-days prior to being harvested for commercial sale; and
3. When oyster processing activities do not exceed two (2) 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.

(c) Tagging and Logbook Requirements for Re-submerged Oysters ~~Those Oysters Culled Off-site.~~

1. **Logbook Requirements.** Aquaculturists shall maintain a record in their ~~Vp~~ **Vp** logbook of all market-sized oysters returned to the license site after off-site culling or oyster processing activities requiring re-submergence. The ~~Vp~~ **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 14-day re-submergence period. ~~of the date and quantity of market-sized oysters returned to the license site after off-site culling.~~

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 14-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. ~~market-sized oysters returned to and segregated on the license site after off-site culling shall be tagged with a waterproof green tag labeled in indelible ink with the statement “culled off-site” and with the date the oysters were returned to the site. After such oysters remain segregated on site for at least 14 days, the green “culled off-site” tag may be removed from them and the oysters may then be harvested, subject to being tagged as specified in 322 CMR 16.03(1)(a).~~

~~3. Any oyster handling and processing that is conducted at barges shall be considered to be culled off-site and therefore subject to the logbook, tagging, and re-submergence requirements in 322 CMR 16.05.~~

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.

~~(c) Tagging and Logbook Requirements for Those Oysters Subjected to Anti-fouling Practices~~

~~1. Aquaculturists who remove market sized oysters from the water for purposes of anti-fouling shall maintain a record in the ~~Vp~~ logbook of the date and quantity of market sized oysters that were subjected to this activity.~~

~~2. Those market sized oysters that were removed from the water and exposed to air for purposes of anti-fouling shall be segregated on the license site and tagged with a waterproof green tag labeled in indelible ink with the statement "anti-fouled" and with the date the oysters were returned to water in accordance with standard aquaculture growing practices.~~

~~3. Oysters subjected to anti-fouling shall remain on the license site for at least 14 days before harvest. After such oysters remain on site for at least 14 days, the green "anti-fouling" tag may be removed from them and the oysters may then be harvested, subject to being tagged as specified in 322 CMR 16.03(1)(a).~~

(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.** ~~except as specified in 322 CMR 16.05(4)(d)(2).~~

~~2. Wet storage of oysters at other locations is not allowed unless it has been 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. 3.~~ Market-sized oysters returned to a license site for wet storage will be considered off-site culled and subject to the tagging, ~~VP~~ **Vp** log book and re-submergence requirements set forth at 322 CMR 16.05(4).

~~(d) Disposition and Handling of Noncompliant or Recalled Oysters.~~

- ~~1. Destruction of Non-Complaint Oysters.~~
 - ~~i. In the event that the Division, the local Shellfish Constable or the Office of Law Enforcement determines that an aquaculturist is in possession of oysters on the license site or landing site that are out of compliance with the tagging, icing or other requirements set forth at 322 CMR 16.00, such oysters shall be destroyed.~~
 - ~~ii. In the event that oysters distributed into commerce are recalled in the case of illness, such oysters shall be destroyed.~~
- ~~2. Re-Submergence of Non-Compliant Oysters.~~
 - ~~i. 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.~~
 - ~~ii. 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 14 days under the supervision of the local Shellfish Constable.~~
 - ~~iii. Aquaculturists may harvest oysters that have been re-submerged in accordance with 322 CMR 16.05(4)(e)(2), provided the following actions are taken:~~
 - ~~a. Recalled oysters have been segregated and re-submerged on the license site for a minimum period of 14 days;~~
 - ~~b. 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.~~
 - ~~c. 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.~~
 - ~~d. After such oysters remain on site for at least 14 days, the green "non-compliant" or "recalled" tag may be removed and the oysters may then be harvested, subject to being tagged as specified in 322 CMR 16.03(1)(a).~~

(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 **an aquaculturist a commercial fisherman or aquaculturist** is in possession of oysters ~~on the license site or landing site that are 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 14 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)** ~~16.05(4)(f)(2)~~, provided the following actions are taken:
 - i. Recalled oysters have been segregated and re-submerged on the license site for a minimum period of 14-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 14 days, the green "non-compliant" or "recalled" tag may be removed and the oysters may then be harvested, subject to being tagged as specified in 322 CMR **16.00** ~~16.03(1)(a)~~.

(6) ~~(5)~~ Authority to Suspend Permits for Violations of 322 CMR 16.00

- (a) Subject to the procedures in 322 CMR 16.05(~~5~~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.
- (b) Such permit suspension shall not be effective until the permit holder is in receipt of following information.
 1. 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.
 2. A written notice of the Division's authority under M.G.L. c. 130, § 80 and 322 CMR 16.05(~~5~~6) to suspend the permit and a statement of the basis for such suspension, with reference to the enforcement officer's written report.
 3. 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 to adjudicate whether

the permit should be revoked. The Division's order shall also inform the permit holder of ~~their~~ **his or her** right to request an expedited hearing.