

322 CMR 16.00: Shellfish Harvest and Handling

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. This regulation is intended to ensure that the Commonwealth's shellfish industry complies with (1) the National Shellfish Sanitation Program (NSSP), which regulates the harvest and transport of shellfish, and (2) 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).

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 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 5/8" by 5 1/4". The tag shall contain, in the order specified, the following information written legibly in indelible ink:

- i. The full name of the harvester;
- ii. the DMF Commercial Shellfish Permit number;
- iii. the date and time of harvest;
- iv. the type and quantity of shellstock;
- v. the initials of the state of harvest; the Shellfish Growing Area name and number, and if applicable, the aquaculture site number; and
- vi. 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 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* 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 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).

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.

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 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 to another location for purposes of sorting, grading and cleaning the individual shellfish.

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 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.

Time of Harvest 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 is placed in a shellfish container that is adequately iced.

Vp logbook means the bound book or ledger required to be used by all commercial fishermen and aquaculturists during the Vp season as defined in 322 CMR 16.05 (2).

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

(c) Logbook Requirement. While harvesting oysters, all commercial fishermen and aquaculturists shall keep in their possession a bound Vp logbook that records in indelible ink the date, shellfish growing area, time of harvest, time of icing, amount harvested in bushels, or count of bags, disposition, and dealer who received the product. Such logbook shall be filled out by the permit holder at the time of landing before the day's harvest is placed in transit or leaves the shellfish growing area or the landing area, except that the primary buyer information may be completed upon transfer of the oysters at the primary buyer's facility.

(d) Restrictions on Transport of Oysters to the Primary Buyer All oysters shall be transported only to the primary buyer's physical facility for sale. Commercial fishermen and aquaculturists are prohibited from holding oysters at any unlicensed facility prior to delivery to 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.

(b) Tagging and Logbook Requirements for Those Oysters Culled Off-site.

1. Aquaculturists shall maintain a record in their *Vp* logbook of the date and quantity of market-sized oysters returned to the license site after off-site culling.
2. All 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, or other floating structures off the license site that result in oysters being out of water for more than two hours without adequate icing shall be considered to be culled off-site and therefore subject to the logbook, tagging, and re-submergence requirements in 322 CMR 16.05.

(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 aquaculturist shall only be allowed on the license site where the oysters originated, 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.

(e) 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) Authority to Suspend Permits for Violations of 322 CMR 16.00

- (a) Subject to the procedures in 322 CMR 16.05(5)(b), the Director may suspend without hearing 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) 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 right to request an expedited hearing.