

322 CMR: DIVISION OF MARINE FISHERIES

322 CMR 10.00: MANAGEMENT OF MODERATELY CONTAMINATED SHELLFISH

Section

- 10.01: Definitions
- 10.02: Authorization
- 10.03: Agents
- 10.04: Containers
- 10.05: Transportation
- 10.06: Hold-over
- 10.07: Records
- 10.08: Purification
- 10.09: Shellfish Release
- 10.10: Prohibitions
- 10.11: Penalties

10.01: Definitions

For purposes of 322 CMR 10.00 only, the following words shall have the following meanings:

Approved Area as used by the Division when classifying or reclassifying a shellfish growing area in accordance with M.G.L. c. 130, § 74 or 74A means that shellfish may be grown or harvested for direct marketing.

Dig or Take (in all of its tenses) means to harvest, dig, take, remove or attempt to harvest, dig, take or remove any moderately contaminated shellfish by any method or means.

Director means the Director of the Division of Marine Fisheries or his or her designee.

Division means the Massachusetts Division of Marine Fisheries.

DPH means the Massachusetts Department of Public Health, Division of Food and Drugs.

Landing Site means an area or areas designated by the Director as that location where moderately contaminated shellfish shall be deposited immediately after harvesting and from which the loading of said contaminated shellfish onto a transport vehicle shall take place.

Master Digger means any individual authorized by the Director pursuant to 322 CMR 7.02: *Master and Subordinate Digger Permits* to engage in the harvest, possession, transportation and sale of moderately contaminate shellfish.

Moderately Contaminated Shellfish means moderately contaminated shellfish harvested from an area which has been classified by the Division as "restricted" and has been opened by the Division for harvesting by master and subordinate diggers conditioned upon the purification of said shellfish at the shellfish purification plant.

Prohibited as used by the Division when classifying or reclassifying a shellfish area in accordance with M.G.L. c. 130, §§ 74 or 74A means the prohibition of any digging or taking of shellfish from the area so classified.

Purification Plant, or Depuration Plant, means the shellfish purification plant operated by the Division located at Plum Island, Newburyport, Massachusetts.

Rack means a ½ bushel container which may be filled pursuant to 322 CMR 10.04 with moderately contaminated shellfish harvested by each subordinate digger on a given day as a condition of the permit.

10.01: continued

Subordinate Digger means any individual authorized by the Director pursuant to 322 CMR 7.02 to harvest and possess at a landing site moderately contaminated shellfish for purposes of sale to a master digger only.

Transport Vehicle means any motor vehicle equipped with a separate, fully enclosed mechanically refrigerated cargo area not accessible from the cab, approved by DPH as complying with the transporting requirements of the National Shellfish Sanitation Program, marked in accordance with DPH regulations and authorized by the Director. No more than one such vehicle may be approved, authorized and used by a master digger for purposes of transporting moderately contaminated shellfish. Exception: mechanical refrigeration will not be required prior to July 1, 1989.

10.02: Authorization

(1) Permits. Any person authorized by 322 CMR 7.02 as a master digger or subordinate digger conducting activities under said authorization may not at the same time have in their possession a bait permit, a commercial fisherman permit endorsed for shellfish, or a shellfish transaction card unless it is validated for use by a master digger for the sale of purified shellfish. In no instance will a permit to harvest contaminated shellfish from a prohibited area be issued by the Director.

(2) Areas. Any person authorized as a master or subordinate digger may harvest moderately contaminated shellfish only from an area or areas classified as restricted and opened for such harvest by written notice of the Director, and if applicable, opened by local officials in accordance with M.G.L. c. 130, § 52.

(3) Supervision. The master digger, or his approved supervisor or transportation agent, shall at all times be present and supervise the harvesting, loading and transportation of all moderately contaminated shellfish taken under authority of a master or subordinate digger permit. As a condition to the master digger permit the master digger:

- (a) shall be responsible, accountable and liable for all of the shellfish activities of his or her supervisor, transportation agents, and subordinate diggers;
- (b) shall maintain an accurate list of subordinate diggers authorized to harvest moderately contaminated shellfish on each day in which harvesting activities take place, except that this requirement shall not apply to the master digger if the duly authorized supervisor maintains the list;
- (c) shall not authorize subordinate diggers to dig or take any moderately contaminated shellfish until such time as their true and accurate name and subordinate digger number is entered upon such list, and the area from which harvesting will take place is described to him or her by the master digger;
- (d) shall remain informed of the status of each area from which moderately contaminated shellfish is harvested under authority of the master digger permit;
- (e) shall receive and accept all regular and certified mail sent to him or her by the Division; and
- (f) agrees as a condition to the master digger permit to fully accept the provisions of 322 CMR 10.08(6) and 10.09.

10.03: Agents

(1) Supervisors. A master digger may employ no more than three persons who may also be subordinate diggers to act as supervisors provided that;

- (a) the individual is designated as a supervisor on forms supplied by the Director;
- (b) the individual designated as a supervisor on such forms is approved in writing by the Director;
- (c) the approved supervisor shall be authorized to and responsible for supervising the digging and taking, placement at a landing site, and loading onto a transport vehicle of all moderately contaminated shellfish harvested under authority of a master or subordinate digger permit;

10.03: continued

(d) the approved supervisor signs a statement certifying his or her knowledge of and agreement to fully comply with 322 CMR 7.02: *Master and Subordinate Digger Permits* and 10.00, applicable regulations of DPH, M.G.L. c. 130, §§ 74, 74A, 75 and 80 and any applicable condition or restriction of the master digger permit; and

(e) the approved supervisor carries on his or her person during moderately contaminated shellfishing activities his or her approved authorization form as required by 322 CMR 7.02(1)(b) and shall display said authorization on request of any officer authorized to enforce 322 CMR 7.02: *Master and Subordinate Digger Permits* and 10.00.

(2) Transportation Agents. A master digger may employ no more than two persons, who may also be subordinate diggers, to act as transportation agents. An approved transportation agent shall be considered an approved supervisor if responsible for supervising the harvesting and landing of moderately contaminated shellfish. Applicants for a transportation agent:

(a) shall be designated as transportation agents on forms supplied by the Director;

(b) shall have such designated forms approved in writing by the Director;

(c) shall be authorized to and responsible for the transportation of moderately contaminated shellfish from its loading onto the transport vehicle to its off-loading at the purification plant;

(d) shall sign a statement certifying his or her knowledge of and agreement to fully comply with 322 CMR 7.02: *Master and Subordinate Digger Permits* and 10.00, applicable regulations of DPH, M.G.L. c. 130, §§ 74, 74A, 75 and 80, and applicable conditions or restrictions of the master and subordinate digger permits; and

(e) shall carry on his or her person during transporting activities his or her approved authorization form as required by 322 CMR 7.02(2): *Master Digger Eligibility* and shall display said authorization on request of any officer authorized to enforce 322 CMR 10.00.

(3) Prohibitions. It is unlawful for a supervisor or transportation agent to:

(a) sell or offer to sell any moderately contaminated shellfish;

(b) possess or transport any shellfish from an approved area while in possession of a master or subordinate digger permit or supervisor or transportation agent authorization form;

(c) possess or transport any moderately contaminated shellfish from an area closed by the Director or from an area not otherwise classified as restricted by the Director.

(4) Plan. Cities and towns may develop alternate harvesting measures for approved and moderately contaminated shellfish areas by submitting a plan to the Director. The plan shall ensure that permits for such activities may not be possessed by a master digger or subordinate digger at the same time. Shellfish transaction cards and commercial fisherman permits shall be turned in to an authorized official during harvesting activities in moderately contaminated areas. Master and subordinate digger permits shall be turned in during harvesting activities in approved areas.

10.04: Containers

(1) Racks. Immediately upon harvesting, and for the purpose of loading onto a transport vehicle, all moderately contaminated shellfish shall be deposited in a rack that has been approved for such use in writing by DPH.

(2) Filing. Said rack shall be filled level with the bottom of the handles with no more nor less than ½ bushel of moderately contaminated shellfish, except the one rack from each day's harvest may contain less than the prescribed amount.

(3) Contents. Each rack may not contain any dead or broken shellfish or any foreign matter.

(4) Washing. All moderately contaminated shellfish in each rack shall be thoroughly washed prior to its loading onto the transport vehicle with water from the harvest area.

(5) Condition. All racks shall be kept in good repair.

10.04: continued

- (6) Protrusions. Racks with protruding wires or staples may not be used.

10.05: Transportation

- (1) Loading. Except as provided for in 322 CMR 10.06 all moderately contaminated shellfish harvested under authority of a master or subordinate digger permit shall be loaded onto a transport vehicle only at an approved landing site designated by the Director.
- (2) Identification. Moderately contaminated shellfish shall be accurately recorded in the master digger book and physically separated in the transport vehicle by designated area where harvested.
- (3) Route. Moderately contaminated shellfish shall be transported in the following manner.
 - (a) immediately upon loading and with no delays to the purification plant;
 - (b) only in the master digger's approved transport vehicle; and
 - (c) via the approved route or routes designated and authorized by the Director.

10.06: Hold-over

- (1) Moderately contaminated shellfish may be held-over for delivery to the purification plant in the case of a demonstrated emergency notwithstanding 322 CMR 10.05 provided that such hold-over has been approved in advance by an environmental police officer or a duly appointed and authorized shellfish constable, and provided further that said officer or constable notifies the Division of Law Enforcement through its radio room of such approval.

10.07: Records

- (1) Books. Master diggers shall maintain complete and accurate records of their moderately contaminated shellfishing activities written in ink, in books supplied by the Director.
- (2) Entries. The master digger shall accurately record in such books, in triplicate, by date:
 - (a) the amount of moderately contaminated shellfish harvested;
 - (b) the location where the harvesting occurred; and
 - (c) all entries shall be made subsequent to the loading of moderately contaminated shellfish on the transport vehicle but prior to the moment at which the transport vehicle departs from the landing site.
- (3) Placement. Upon completing an accurate entry the record book shall be placed in a secure and clean part of the cargo area wherein the moderately contaminated shellfish is located.
- (4) Production. The record book shall be produced upon demand of any officer authorized to enforce the provisions of 322 CMR 10.00 including but not limited to environmental police officers, shellfish constables and employees of the Division and DPH.
- (5) Disposition. The record books shall be disposed of as follows:
 - (a) the white sheet shall be removed only by an official of the Division at the purification plant upon proper verification and validation.
 - (b) the transparent sheet shall remain attached to and form a part of the book at all times; and
 - (c) the yellow sheet may be removed by a duly appointed shellfish constable in a city or town authorized by the Director to manage contaminated shellfish areas pursuant to M.G.L. c. 130, § 75.
- (6) Diggers. The master digger shall, on a daily basis, record the true and accurate name and permit number of each subordinate digger employed and the number of racks of moderately contaminated shellfish harvested by each. Said records shall be produced upon demand of any officer authorized to enforce 322 CMR 10.00 or the supervisor of the shellfish purification plant.

10.08: Purification

- (1) Responsibility. The master digger shall be responsible for all moderately contaminated shellfish delivered to the purification plant.
- (2) Pick-up. The master digger shall pick up all of his or her purified shellfish within 24 hours after its purification. Unclaimed shellfish shall be disposed of at the discretion of the plant supervisor.
- (3) Records. Prior to departing with the purified shellfish, the master digger shall record the amount of all purified shellfish released to his or her custody, the date of release and the designated area from which the purified shellfish had been harvested.
- (4) Tags. Prior to departing with the purified shellfish, the master digger shall supply and place a tag in each rack of purified shellfish or attach a tag to each rack by means other than by staples. Said tag shall be durable, of water proof material and contain the following information:
 - (a) the name of the master digger;
 - (b) the permit number of the master digger;
 - (c) the date when the purified shellfish was originally harvested;
 - (d) the designated area from which the purified shellfish was harvested;
 - (e) a Division stamp affixed by an official of the purification plant.
- (5) Dealers. Any licensed wholesale dealer certified to deal in shellfish may pick up purified shellfish for the master digger at the purification plant, provided that all tagging requirements are met, and DPH shellfish traceability regulations have been fully complied with by the transporting dealer.
- (6) Liability. The master digger agrees that the purification plant supervisor may refuse to treat improperly washed or culled moderately contaminated shellfish, and may dispose of any moderately contaminated shellfish which in his or her opinion will adversely affect the purification process. The master digger further agrees that said actions shall be taken without liability of any kind, may not subject the Division or the plant supervisor to any civil action for damages and may not form the basis for a tort claim of any kind.

10.09: Shellfish Release

If upon completion of the first 48 hour purification period the shellfish delivered does not meet the required purification standards as established by DPH, an additional purification period may be attempted. If upon completion of an additional 24 hour purification period the shellfish do not meet or exceed the purification standards as established by DPH, the shellfish may not be released to the master digger but shall instead be disposed of by the purification plant supervisor in the best interests of the Commonwealth. The Commonwealth, the Division and its officials and employees shall not be liable to the master digger for any claim of any kind arising out of the disposition of the shellfish.

10.10: Prohibitions

In addition to any other prohibition contained in 322 CMR 10.00, it is unlawful:

- (1) to harvest, possess, transport, sell or offer to sell any moderately contaminated shellfish unless properly authorized as a master digger, supervisor, transportation agent or subordinate digger pursuant to 322 CMR 7.02: *Master and Subordinate Digger Permits*.
- (2) for a master or subordinate digger to have in possession during his or her moderately contaminated shellfish activities a clean shellfish permit, a shellfish endorsement on his or her commercial fishermen permit or a shellfish transaction card other than a special master digger transaction card.
- (3) for the holder of a master or subordinated digger permit to harvest, possess, transport, sell or offer to sell any shellfish from a prohibited area or from any area which are otherwise clean, open and classified as approved by the Division.

322 CMR: DIVISION OF MARINE FISHERIES

10.10: continued

- (4) for a master digger or duly approved supervisor not to maintain an accurate list of subordinate diggers authorized to harvest moderately contaminated shellfish each day in which harvesting activities take place;
- (5) for a supervisor or transportation agent not to carry on his or her person during moderately contaminated shellfishing activities his or her approved authorization form or to fail or refuse to display said form on request of any officer authorized to enforce 322 CMR 10.10;
- (6) for a master or subordinate digger to conduct any moderately contaminated shellfish harvesting activities from sunset to ½ hour before sunrise as established by the United States Weather Bureau;
- (7) for a master or subordinate digger to leave any moderately contaminated shellfish at any location other than a designated landing site, or at a landing site which is not supervised at all times by the master digger or an agent as provided for in 322 CMR 10.03;
- (8) for a master or subordinate digger, supervisor or transportation agent to load any moderately contaminated shellfish onto a transport vehicle at any time between hour after sunset to sunrise, as established by the United States Weather Bureau;
- (9) for a master digger or transportation agent to delay the transportation of moderately contaminated shellfish to the purification plant, unless authorized to hold-over pursuant to 322 CMR 10.06;
- (10) to hold-over any moderately contaminated shellfish without fully complying with 322 CMR 10.06;
- (11) for a master digger or transportation agent to transport any contaminated shellfish by any method or in any vehicle other than the transport vehicle authorized by the Director for use by the master digger;
- (12) for a master digger or transportation agent to transport any contaminated shellfish in anything other than containers or racks approved by the DPH;
- (13) for a master digger or a supervisor to fill any container or rack in a manner which is not level with the bottom of the handles with more or less than ½ bushel of moderately contaminated shellfish except as provided for in 322 CMR 10.04(1);
- (14) for a master digger or transportation agent to transport contaminated shellfish which has not been washed or which contains broken or dead shellfish;
- (15) for a master digger, transportation agent, supervisor or subordinate digger to wash or clean moderately contaminated shellfish in water from a prohibited or unclassified area;
- (16) to transport moderately contaminated shellfish without the master digger or transportation agent present;
- (17) to transport any moderately contaminated shellfish which is not accurately identified in writing and physically separated by designated area where harvested;
- (18) for a master digger or transportation agent to transport any moderately contaminated shellfish over any route or routes other than those routes designated and authorized by the Director;
- (19) to transport any moderately contaminated shellfish in a transport vehicle which contains any other shellfish, either shucked or in the shell, which did not originate from the areas designated on that day as evidenced by entries in the master digger book;

322 CMR: DIVISION OF MARINE FISHERIES

10.10: continued

- (20) to deposit the master digger book after an entry has been made prior to the transport of the moderately contaminated shellfish in any place other than a secure and clean part of the cargo area wherein the shellfish is located;
- (21) to falsify, forge or counterfeit the signature of an environmental police officer or a shellfish constable when the signature is required by 322 CMR 10.06(2);
- (22) to store moderately contaminated shellfish in accordance with an approved hold-over in an area which is not sanitary or secure, or which has a temperature less than 32°F or greater than 50°F or where other clean shellfish is stored.
- (23) for a master digger not to maintain complete and accurate records by a medium other than ink, or to falsify any such record, or to dispose of any pages in a master digger book in any manner other than that provided for in 322 CMR 10.07;
- (24) for a master digger or subordinate digger not to pick up regular mail or sign for certified mail of the Division which is addressed to the master or subordinate digger;
- (25) for a master digger to possess any purified shellfish after its release from the purification plant without properly affixing tags, or affixing tags which do not contain all of the requirements of 322 CMR 10.08(4);
- (26) to falsify, forge, counterfeit, alter or steal the Division stamp required by 322 CMR 10.08(4)(e);
- (27) for a master digger or subordinate digger to conduct any moderately contaminated shellfishing activities, to be present at the purification plant, or to be present at or near a restricted area during a suspension of his or her master digger or subordinate digger permit;
- (28) for any master digger of his or her agent to discuss or negotiate the sale of any shellfish at the purification plant;
- (29) for a subordinate digger to sell any moderately contaminated shellfish to any person other than a master digger;
- (30) for a subordinate digger to harvest moderately contaminated shellfish without the permission, authorization and supervision of a master digger or supervisor;
- (31) for any person to violate any condition or restriction of:
 - (a) the master digger permit;
 - (b) the subordinate digger permit;
 - (c) the supervisor's authorization form; or
 - (d) the transportation agent's authorization form;
- (32) for any master digger, supervisor or transportation agent to mix moderately contaminated shellfish with clean shellfish, whether shellstock or shucked, in the transportation vehicle.
- (33) for any person to refuse to pay the purification fee as established by the Executive Office of Administration and Finance, by check or money order, or to deliver shellfish to the purification plant before restitution is made for checks which have not been honored by the payor bank;
- (34) for any person to refuse to display for inspection upon demand of any authorized officer or Division personnel a master digger or subordinate digger permit, a supervisor or transportation agent's authorization form, or any moderately contaminated shellfish possessed at the time;
- (35) for any person to harass, threaten, intimidate, abuse or assault any environmental police officer, shellfish constable, or employee of the Division or DPH.

322 CMR: DIVISION OF MARINE FISHERIES

10.11: Penalties

A violation of any provision of 322 CMR 10.00 may result in:

- (1) a fine of not less than \$50 nor more than \$1,000;
- (2) the seizure and forfeiture of all shellfish unlawfully taken, possessed or sold;
- (3) the seizure and forfeiture of all shellfishing gear, equipment and the transport vehicle;
- (4) suspension or revocation of the master digger permit or subordinate digger permit in accordance with 322 CMR 7.02(b);
- (5) suspension or revocation of any agent authorization;
- (6) enforcing the terms and conditions of the applicable bond maintained pursuant to 322 CMR 7.02(2)(b); or
- (7) any combination of the above.

REGULATORY AUTHORITY

322 CMR 10.00: M.G.L. c. 130, §§ 2, 17A, 75, 80 and 104.