

DEPARTMENT OF MARINE RESOURCES

Chapter 115: VIBRIO CONTROL PLAN

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115.01 Compliance

The Vibrio Control Plan applies specifically to American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) harvested in Maine territorial waters and hard clams (*Mercenaria mercenaria*) harvested in the upper New Meadows River. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules chapters 9, 22 and 94 to the handling of American and European oysters and hard clams in the areas described in Section 115.02. Insofar as the Control Plan time and temperature requirements exceed those imposed by existing rules or are in addition to those imposed by existing rules, the relevant provisions of the Control Plan shall supersede the provisions of chapters 9, 22 and 94.

The Control Plan shall be complied with during the harvesting and handling of the above-described species, as conducted by harvesters, certified shellstock dealers, certified shellfish establishments (sometimes referred to as shellfish facilities or plants), shucker-packers, shellstock shippers and receivers, reshippers, depuration processors, enhanced retail seafood license holders, aquaculture license holders, and retail seafood license holders and all others involved in the processes described in chapters 9, 22, and 94.

115.02 Control Months and Designated Control Areas

The Vibrio Control Plan is in effect from June 1st through October 15th, inclusive, in the designated control areas for the designated species:

- A. Maine territorial waters for American and European oysters (*Crassostrea virginica* and *Ostrea edulis*)
- B. all parts of the New Meadows River north of Bath/State Rd in Brunswick and West Bath for hard clams (*Mercenaria mercenaria*)

115.03 Definitions

“Adequately iced” means that the amount and application of ice is sufficient to ensure that immediate cooling begins and continues for all shellstock in a container. If ice slurry is used and the shellstock are submerged, the presence of ice in the slurry indicates adequate icing. Potable water must be used for the production of ice used for cooling of shellstock.

“Control months” means June 1st through October 15th, inclusive.

“Harvest” means the act of removing shellstock from growing area waters and its placement on or in a manmade conveyance or other means of transport or transfer. This does not include the placement of shellstock in aquaculture gear designed to grow or enhance shellstock as part of husbandry practices.

“Mechanical Refrigeration” means storage in a container or conveyance that is approved by the Maine Department of Marine Resources (DMR) and capable of cooling to, and maintaining, an ambient temperature of 45°F or less.

“Potable water” means a water supply which meets the requirements of the *Safe Drinking Water Act*, as administered by the EPA and which meets the requirements of DMR Chapter 94.

“Resubmerge” means, and is strictly limited to, reintroduction of shellstock into approved waters following the removal of shellstock from approved waters. This is separate and distinct from “wet storage” which is a certified dealer activity. Resubmergence shall be conducted only by an aquaculture lease holder or license holder.

“Shading” means to shelter by intercepting the direct rays of the sun to protect the shellstock from heat. Shading may be accomplished by any means that effectively protects the harvested shellstock from direct sunlight and prevents excessive heat build-up in the shaded area. Materials used for shading should not be in direct contact with the shellstock unless they are food grade surfaces (e.g. no seaweed or wet tarps applied directly to shellstock).

“Temperature control” means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at an internal temperature of 50°F or less.

“Time of harvest” for the purpose of temperature control time of harvest begins once the first shellstock is no longer submerged. For example, the time intertidal shellstock are first exposed to the air as the tide recedes or the time when a drag is brought onboard a vessel with shellstock from a subtidal resource.

“Vibrio” refers to several species of pathogenic bacteria including but not limited to *Vibrio parahaemolyticus*.

115.04 General Requirements

- A. **Deterioration and Decomposition.** Harvesters shall not allow shellstock to deteriorate or decompose from exposure to warm ambient air temperatures (>60°F) and shall deliver shellstock to a certified shellfish dealer before such deterioration or decomposition occurs.

Certified shellfish dealers, enhanced retail seafood license holders and retail seafood license holders shall not allow shellstock to deteriorate or decompose from exposure to warm ambient air temperatures (>60°F). Certified shellfish dealers and enhanced retail seafood license holders shall cool shellstock to 50°F internal temperature within three hours of receiving product. Product may not be reshipped before it reaches 50°F internal temperature and must remain at or below 50°F internal temperature throughout distribution. Certified shellfish dealers may wet store or depurate with proper permitting.

- B. **Sales from Home Prohibited.** Notwithstanding the provisions of 12 MRS §6601(2) or §6810-B, during the control months it is unlawful for harvesters to sell from their homes oysters and hard clams that have been taken from the designated control areas.

- C. **Recreational Harvest Prohibited.** It is unlawful to engage in the recreational harvest of oysters and hard clams harvested from the designated control areas during the control months. Provided, however, that the prohibition against recreational harvest shall not apply to those holding a Limited Purpose Aquaculture license for shellfish taken from their license site or to towns with a municipal shellfish ordinance that issues recreational

licenses and administers mandatory vibrio education to recreational harvesters prior to licensing.

- D. **Mandatory Training.** All harvesters, aquaculture license holders (issued under 12 MRS §6810-B), enhanced retail seafood license holders and certified shellfish dealers who take oysters and/or hard clams from the designated control areas or who purchase oysters and/or hard clams from harvesters that were taken from the designated control areas shall participate in annual, mandatory training provided by the DMR. Individuals are eligible to receive their Vibrio certification upon successful completion of the mandatory training.
- E. **Vibrio Certification.** All harvesters, aquaculture license holders (issued under 12 MRS §6810-B), enhanced retail seafood license holders and certified shellfish dealers who take oysters and/or hard clams from the designated control areas or who purchase oysters and/or hard clams from harvesters that were taken from the designated control areas must obtain a Vibrio certification
- F. **Dealer Records.** Certified shellfish dealers and enhanced retail seafood license holders must document in their receiving records, the time of harvest, verification of harvesters' Vibrio certification, time of receipt and presence of adequate ice if applicable. Certified shellfish dealers and enhanced retail seafood license holders must record the time product reached 50°F or less internal temperature.
- G. **Buying Stations.** Certified shellfish dealers with a buying station permit may purchase oysters and/or hard clams from the designated control areas provided that they use adequate icing to initiate immediate cooling in the conveyance. The use of mechanical refrigeration alone is not permitted.
- H. **Inspection.** Any harvester, certified shellfish dealer, enhanced retail seafood license holder and/or retail seafood license holders whose product is implicated in an epidemiologically linked case of Vibrio illness shall be subject to an inspection by DMR to determine their compliance with Chapter 115 requirements.

115.05 Harvest Restrictions During Control Months

Harvesters are required to use one of the following methods to reduce time to temperature for all oysters and hard clams taken from the designated control areas during the control months:

- A. Transfer of oysters and hard clams to a certified shellfish dealer or enhanced retail seafood license holder within two hours of harvest:
 - (1) All oysters and hard clams shall be transferred to a certified shellfish dealer or enhanced retail seafood license holder and put into temperature control, wet storage or depuration within two (2) hours of the time of harvest.
 - (2) All oysters and hard clams shall be subject to shading immediately after harvest.
 - (3) All oysters and hard clams that are harvested and exposed to ambient temperatures for more than two (2) hours but less than twelve (12) hours must be resubmerged on an aquaculture lease or license site for no less than 24 hours or destroyed.

- (4) All oysters and hard clams that are harvested and exposed to ambient temperatures for twelve (12) hours or more must be resubmerged on an aquaculture lease or license site for no less than seven (7) days or 168 hours or destroyed.
- (5) Aquaculture lease or license holders who resubmerge shall maintain records identifying individual lots and their exposure history along with the date and time product was initially resubmerged and the date and time when the product was removed from resubmergence. These records shall be made available to DMR on request.

B. Immediate icing:

- (1) All oysters and hard clams shall be subject to shading immediately after harvest.
- (2) All oysters and hard clams shall be adequately iced immediately after harvest and maintained on ice until delivery to a certified dealer or enhanced retail seafood license holder under the time to temperature regulations in Chapter 94.04.

115.06 Noncompliance

Shellstock received by a certified dealer or enhanced retail seafood license holder without time of harvest recorded on the harvest tag, in exceedance of two (2) hours from time of harvest and/or without adequate ice shall be destroyed. Shellstock received by a retail seafood license holder in exceedance of 50°F internal temperature shall be destroyed.

115.07 Reporting of Violations

Harvesters, certified shellfish dealers, enhanced retail seafood license holders and retail seafood license holders are required to report observed violations of the Vibrio Control Plan immediately to Marine Patrol.

EFFECTIVE DATE: January 1, 2016

AMENDED:

August 9, 2017-EMERGENCY 115.01; 115.02; 115.04(B); 115.04(C); 115.05(A)-(B); 115.06;115.08

November 14, 2017-Sections 115.01, 115.02, 115.03, 115.04(B)-(F)(1)&(2), 115.05(A)&(B),115.06, 115.08

March 13, 2019-Sections 115.01, 115.02, 115.04, 115.05, and 115.06

March 13, 2021-Sections .01, .02, .03, .04, .0, .06 (removed), .07, .09 (removed)

April 26, 2022-Section 115.02(F)

March 19, 2024-Sections 115.01, 115.02, 115.03, 115.04, 115.05, 115.06, 115.07