

NOTICE OF AGENCY RULE-MAKING PROPOSAL

AGENCY: Department of Marine Resources

RULE TITLE OR SUBJECT:

Enact Chapter 115 *Vibrio parahaemolyticus* Control Plan

Amend the following eight chapters to incorporate reference to Chapter 115:

Chapter 9 Section 9.01 Harvester: Shellstock Harvesting, Handling and Sanitation

Chapter 15 Section 15-01 General Shellfish Sanitation Requirements

Chapter 16 Section 16.01 Uniform Physical Plant Equipment and Operation Requirements

Chapter 17 Section 17.01 Shucker-Packer

Chapter 18 Section 18.01 Shellstock Shipper

Chapter 19 Section 19.01 Reshipper

Chapter 20 Section 20.01 Depuration

Chapter 22 Section 22.01 Retail Shellfish

CONCISE SUMMARY: The *Vibrio parahaemolyticus* Control Plan establishes handling requirements for oysters and hard clams harvested from the Damariscotta River north of a line beginning at Montgomery Point, Boothbay, and running southeast to Jones Point, Bristol. The additional handling requirements are designed to avoid an illness outbreak scenario that would trigger mandatory development of a *Vibrio* control plan. In addition to attending mandatory annual training, harvesters and certified shellfish dealers are required to submit a harvest plan to the Department of Marine Resources by March 1 of each year demonstrating the method to be used to achieve internal temperatures of 50 degrees Fahrenheit in harvested oysters and clams. In addition, the Rule imposes maximum time periods for exposure to ambient air prior to cooling, and resubmergence criteria if the time periods are exceeded. The standards are more stringent if ambient temperature reaches 80 degrees Fahrenheit or above. The Rule prohibits harvesters from selling from their homes and prohibits recreational harvest during the control period. The regulations will go into effect on January 1, 2016.

THIS RULE WILL ___ WILL NOT X HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 12 M.R.S. §6171-A

PUBLIC HEARINGS: July 22, 2015, 5 to 7 pm at the Department of Marine Resources Boothbay Harbor Facility, 194 McKown Point Road, West Boothbay Harbor

DEADLINE FOR COMMENTS: August 3, 2015

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with sub missions by fax or e-mail is on the sender.

AGENCY CONTACT PERSON: Kohl Kanwit (207-633-9535)

Mail written comments to;

attn: Elaine Clark

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Department of Marine Resources

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 115

Vibrio parahaemolyticus CONTROL PLAN

TITLE INDEX

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DEPARTMENT OF MARINE RESOURCES

Chapter 115 - *Vibrio parahaemolyticus* Control Plan

115.01 Compliance

The *Vibrio parahaemolyticus* Control Plan (the “Vibrio Control Plan” or the “Control Plan”) applies specifically to American and European Oysters (*Crassostrea virginica* and *Ostrea edulis*) and Hard Clams (*Mercenaria mercenaria*) harvested from the Damariscotta River. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the area 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, 15, 16, 17, 18, 19, 20 and 22.

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 and all others involved in the processes described in Chapters 9, 15, 16, 17, 18, 19, 20 and 22.

115.02 Control Months and Locations

The Vibrio Control Plan is in effect from May 1st through October 31st, inclusive, in all parts of the Damariscotta River north of a line beginning at Montgomery Point, Boothbay and running southeast to Jones Point, Bristol. A mandatory harvest plan must be submitted annually by March 1 in accordance with section 115.04 (F).

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 May 1st through October 31st, 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.

“**Husbandry**” means the production, development, or improvement of a marine organism.

“**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 Chapters 15-20.

“Resubmerge” means, and is strictly limited to, reintroduction of shell stock 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 a certified dealer.

“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.

“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 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.

“Vp” and “Vibrio” refer to *Vibrio parahaemolyticus*

115.04 General Requirements

- A. Deterioration and Decomposition. Harvesters shall not allow shellstock to deteriorate or decompose from exposure to high ambient air temperatures and shall deliver shellstock to a certified shellfish dealer before such deterioration or decomposition occurs.

Certified shellfish dealers shall not allow shellstock to deteriorate or decompose from exposure to high ambient air temperatures and shall deliver shellstock to a certified shellfish dealer or retail customer before such deterioration or decomposition occurs.

- B. Sales from Home Prohibited. Notwithstanding the provisions of 12 MRS §6601 (2), during the control months it is unlawful for harvesters to sell from their homes oysters and hard clams that have been taken from the Damariscotta River.
- C. Recreational Harvest Prohibited. It is unlawful to engage in the recreational harvest of oysters and hard clams harvested from the Damariscotta River during the control months.
- D. Mandatory Training. All harvesters and certified shellfish dealers who take oysters and/or hard clams or purchase oysters and/or hard clams from the Damariscotta River shall participate in an annual, mandatory training provided by the DMR. Any harvester or dealer whose product is implicated in an epidemiologically linked case of Vibrio shall take a refresher training provided by DMR.
- E. Mandatory Ambient Air Temperature Records. All harvesters who take oysters and/or hard clams from the Damariscotta River shall use one of two methods to record ambient air temperature: a continuous ambient air temperature data recorder with a record on the harvester’s temperature collection data sheet of the air temperature at the time of harvest and at the end of harvest activities; or data collected from a DMR-designated weather station with a record of the air temperature at the time of harvest and at the end of harvest activities. Any

harvester or dealer whose product is implicated in an epidemiologically linked case of Vp shall provide their continuous ambient air temperature data recorder to DMR for review.

F. Mandatory Vp Harvest Plan By March 1. All harvesters and certified shellfish dealers who take oysters and/or hard clams or wet store oysters and/or hard clams from the Damariscotta River shall submit to DMR a Vp harvest plan. This plan must be submitted on or before March 1st annually in order to be able to operate during the control months. The harvest plan must be reviewed, amended if necessary, signed and dated by the harvester or shellfish dealer before submission to DMR. The DMR will approve or deny the plan within 30 days and notify the applicant in writing of their decision. If the plan is denied, the applicant will have an opportunity to correct the deficiencies. Harvesters and shellfish dealers may not harvest or wet store oysters or hard clams during the control months without a DMR approved harvest plan. The harvest plan must include:

1. Harvest process from time of harvest to delivery to a certified shellfish dealer for wet storage or achievement of an internal temperature of 50°F.
2. Temperature collection including recording the daily air temperature at the start of harvest activities and at the end of harvest activities. An example data sheet should be included with the harvest plan.
3. Cooling processes such as resubmergence procedures, shading, wetting, icing and wet storage.
4. Product handling and data recording including documentation of temperature history and resubmergence times. Details on how lots are identified and kept separate depending on their exposure history must be included. An example data sheet should be included with the harvest plan.
5. Conveyance methods including how shellstock are held and transported from time of harvest to point of sale, resubmergence or wet storage.

115.05 Harvest Restrictions During Control Months

All oysters and hard clams shall be transferred to a certified shellfish dealer within five (5) hours of the time of harvest and put into temperature control.

All oysters and hard clams shall be subject to shading immediately after harvest.

All oysters and hard clams that are harvested and exposed to ambient temperatures for more than five (5) hours but less than twelve (12) hours must be resubmerged or wet stored by a certified shellfish dealer for no less than 24 hours.

All oysters that are harvested and exposed to ambient temperatures for twelve (12) hours or more must be resubmerged or wet stored for no less than seven (7) days or 168 hours.

115.06 Additional Harvest Restrictions During Control Months For 80° F and above Air Temperatures

The temperature shall be determined at the time of harvest using a continuous ambient air temperature data recorder or data from a DMR-designated weather station and recorded on the temperature collection data sheet.

All oysters and hard clams shall be transferred to a certified shellfish dealer within two (2) hours of the time of harvest and put into temperature control.

All oysters and hard clams shall be subject to shading immediately after harvest.

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 or wet stored by a certified shellfish dealer for no less than twenty-four (24) hours.

All oysters that are harvested and exposed to ambient temperatures for twelve (12) hours or more must be resubmerged or wet stored for no less than seven (7) days or 168 hours.

115.07 Noncompliance

Shellstock received by a certified dealer without time of harvest recorded on the harvest tag shall be resubmerged in an approved wet storage system for seven (7) days or 168 hours or destroyed.

115.08 Reporting of Violations

Harvesters and certified shellfish dealers are required to report observed violations of the Damariscotta River Vibrio Control Plan immediately to Marine Patrol.

115.09 Effective Date

The effective date of Chapter 115 shall be January 1, 2016.

EFFECTIVE DATE: January 1, 2016

DEPARTMENT OF MARINE RESOURCES

Chapter 9 – Harvester Shellstock Harvesting, Handling and Sanitation

9.01 Compliance

- A. Closed Area compliance: Harvest of shellstock is prohibited in areas that are closed due to marine biotoxins pursuant to Chapter 96 and bacterial pollution pursuant to Chapter 95, and in those areas that may be closed by the Department. For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at: <http://www.maine.gov/dmr/shellfish%20sanitation%20hot%20line.htm>.
- B. Commingling of shellstock is prohibited, except that primary dealers, as defined in Chapter 15.02(65), who are authorized by the Department in accordance with Chapter 16.21(C), may commingle shellstock.
- C. Harvesters may not conduct wet storage activities. Wet storage of shellstock is prohibited, except by certified dealers pursuant to a current permit issued by the Department in accordance with Chapter 15.
- D. Harvesters licensed pursuant to 12 M.R.S. §6601, §6731, §6732, §6745 and §6746 may sell shellstock the holder has taken only to wholesale seafood license holders certified in accordance with §6856. Exception: a harvester license holder may sell shellstock the holder has taken from that license holder's home in the retail trade pursuant to §6601 and to the holder of an enhanced retail seafood license pursuant to [12 M.R.S. §6852\(2\)](#).
- E. In cases where a harvester is also a certified dealer, until the shellstock harvested by the licensee is sold to a wholesale seafood license holder certified under §6856, the licensee shall comply with all harvester laws and rules.
- F. Shellstock harvested by a licensed shellfish harvester shall be tagged, with the harvester tag pursuant to Chapter 9.06, at the harvest location (Chapter 9.06(A)) and until the first point of sale, to a certified dealer's permanent facility unless otherwise described below:
 1. Shellstock harvested by persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and persons permitted pursuant to Chapter 24.05 who hold a valid shellfish harvester license shall be tagged with a harvester tag pursuant to Chapter 9.06.
 2. Shellstock harvested by persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and persons permitted pursuant to Chapter 24.05 who hold a valid shellfish harvester license, and which are sold to a dealer certified pursuant to §6856, shall be tagged with a harvester tag pursuant to Chapter 9.06;
 - (a) Exception: for mussels, quahogs (includes mahogany quahogs), surf clams and oysters at the point of landing pursuant to Chapter 15.18 and 15.19; and
 3. Shellstock harvested by persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and persons permitted pursuant to Chapter 24.05 who hold a valid shellfish harvester license and are certified pursuant to 12 M.R.S.A. §6856 shall be landed with a harvester tag attached pursuant to Chapter 9.06, and such tag shall remain in place until the shellstock is processed and ready for shipment, at which point the certified dealers tag shall be affixed in accordance with Chapter 15.18.

- G. The *Vibrio parahaemolyticus* Control Plan (the “Vibrio Control Plan” or the “Control Plan”) applies specifically to American and European Oysters (*Crassostrea virginica* and *Ostrea edulis*) and Hard Clams (*Mercenaria mercenaria*) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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 and all others involved in the processes described in Chapters 9, 15, 16, 17, 18, 19, 20 and 22.

DEPARTMENT OF MARINE RESOURCES

Chapter 15 – General Shellfish Sanitation Requirements

15.01 Compliance

- A. Each dealer shall comply with the requirements specified in Chapters 15 through 20 as appropriate to the plant and the shellfish being processed.
- B. The *Vibrio parahaemolyticus* Control Plan (the “Vibrio Control Plan” or the “Control Plan”) applies specifically to American and European Oysters (*Crassostrea virginica* and *Ostrea edulis*) and Hard Clams (*Mercenaria mercenaria*) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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DEPARTMENT OF MARINE RESOURCES

Chapter 16 – Uniform Physical Plant Equipment and Operation Requirements

16.01 Compliance

- A. Each dealer shall comply with all laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15, Chapter 17, Chapter 18, Chapter 19 and Chapter 20 that are appropriate to the plant and the food being processed.
- B. The *Vibrio parahaemolyticus* Control Plan (the “Vibrio Control Plan” or the “Control Plan”) in Chapter 115 applies specifically to American and European Oysters (*Crassostrea virginica* and *Ostrea edulis*) and Hard Clams (*Mercenaria mercenaria*) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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 and all others involved in the processes described in Chapters 9, 15, 16, 17, 18, 19, 20 and 22.

DEPARTMENT OF MARINE RESOURCES

Chapter 17 Shucker-Packer

17.01 Compliance

- A. Each dealer shall comply with all shellfish laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15, Chapter 16, and Chapter 18 that are appropriate to the plant and the food being processed.
- B. The Vibrio parahaemolyticus Control Plan (the "Vibrio Control Plan" or the "Control Plan") in Chapter 115 applies specifically to American and European Oysters (Crassostrea virginica and Ostrea edulis) and Hard Clams (Mercenaria mercenaria) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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DEPARTMENT OF MARINE RESOURCES

Chapter 18 Shellstock Shipping

18.01 Compliance

- A. Each dealer shall comply with all shellfish laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15, Chapter 16 and Chapter 17 that are appropriate to the plant and the food being processed.
- B. The Vibrio parahaemolyticus Control Plan (the "Vibrio Control Plan" or the "Control Plan") in Chapter 115 applies specifically to American and European Oysters (Crassostrea virginica and Ostrea edulis) and Hard Clams (Mercenaria mercenaria) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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DEPARTMENT OF MARINE RESOURCES

Chapter 19 Reshipping

19.01 Compliance

- A. Each dealer shall comply with all shellfish laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15 and Chapter 16 that are appropriate to the plant and the food being processed.
- B. The Vibrio parahaemolyticus Control Plan (the "Vibrio Control Plan" or the "Control Plan") in Chapter 115 applies specifically to American and European Oysters (Crassostrea virginica and Ostrea edulis) and Hard Clams (Mercenaria mercenaria) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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DEPARTMENT OF MARINE RESOURCES

Chapter 20 Depuration

20.01 Compliance

- A. Each depuration processor must comply with the requirements specified in Chapter 15, Chapter 16, and Chapter 18 that are appropriate to the plant and the shellfish being processed.
- B. The *Vibrio parahaemolyticus* Control Plan (the “Vibrio Control Plan” or the “Control Plan”) in Chapter 115 applies specifically to American and European Oysters (*Crassostrea virginica* and *Ostrea edulis*) and Hard Clams (*Mercenaria mercenaria*) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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DEPARTMENT OF MARINE RESOURCES

Chapter 22 RETAIL SHELLFISH

22.01 Enhanced Retail Seafood license holders - compliance

- A. Commingling of shellstock is prohibited.
- B. Enhanced Retail Seafood license holders may not conduct wet storage activities. Wet storage of shellstock is prohibited, except by certified dealers pursuant to a current permit issued by the Department in accordance with Chapter 15.
- C. Shellstock received by an enhanced retail seafood license holder shall be tagged with the harvester tag pursuant to Chapter 9.06 or certified dealer's tag pursuant to Chapter 15.18. All tags shall be maintained on file for 90 days and shall be kept in chronological order correlated to the date when, or dates during which the shellstock were sold or served, pursuant to the Maine Food Code 3-203.12 (Shellstock, Maintaining Identification). For reference, the Maine Food Code, 10-144 CMR Chapter 200 is available on the web at:
<http://www.maine.gov/sos/cec/rules/10/144/144c200.doc>.
- D. For purposes of this chapter the definitions in Chapter 15 shall apply.
- E. Activities are limited to retail sales only from the enhanced seafood license holder's fixed facility. Interstate commerce is prohibited in accordance with 12 M.R.S. §6601 sub-§2.
- F. All enhanced retail seafood license holders will be inspected prior to license issuance and on a random basis.
- H. An enhanced retail seafood license holder's establishment shall have a potable water supply from an approved source that meets the standards of Chapter 5 of the Maine Food Code (Water, Plumbing and Waste).
- I. The Vibrio parahaemolyticus Control Plan (the "Vibrio Control Plan" or the "Control Plan") in Chapter 115 applies specifically to American and European Oysters (Crassostrea virginica and Ostrea edulis) and Hard Clams (Mercenaria mercenaria) harvested from the areas described in Chapter 115.02. The Control Plan provides additional and more rigorous controls than those imposed by DMR Rules Chapters 9, 15, 16, 17, 18, 19, 20 and 22 to the handling of American and European Oysters and Hard Clams in the affected areas. 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, 15, 16, 17, 18, 19, 20 and 22.

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Rule-Making Fact Sheet

(5 M.R.S.A., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Elaine Clark, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021

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CHAPTER NUMBER AND RULE:

Enact:

Chapter 115 *Vibrio parahaemolyticus* Control Plan

Amend the following eight chapters:

Chapter 9 Section 9.0 Harvester: Shellstock Harvesting, Handling and Sanitation

Chapter 15 Section 15-01 General Shellfish Sanitation Requirements

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Chapter 17 Section 17.01 Shucker-Packer

Chapter 18 Section 18.01 Shellstock Shipper

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Chapter 22 Section 22.01 Retail Shellfish

STATUTORY AUTHORITY: 12 M.R.S. §6171-A

DATE AND PLACE OF PUBLIC HEARING: July 22, 2015, 5 to 7 pm at the Department of Marine Resources Boothbay Harbor Facility, 194 McKown Point Road, West Boothbay Harbor

COMMENT DEADLINE: August 3, 2015

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: The principal purpose of this control plan is to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the Damariscotta River will cause *Vibrio parahaemolyticus* (*Vp*) infections in consumers. As of June 2015 Maine had not experienced a single source, epidemiologically linked case of *Vp*; however several multi-source cases of *Vp* illness associated with Damariscotta River oysters were reported between 2012 and 2014. Independent, biological sampling of oysters in the Damariscotta River has also shown positive results for total *Vp*, so the organism is known to be present in the growing area. The Maine Department of Marine Resources recognizes that the Damariscotta River has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to *Vp* infections. Research indicates that the most reliable way to minimize potential *Vp* illnesses is through the use of time and temperature controls. DMR rules currently incorporate time and temperature controls that are in compliance with the National Shellfish Sanitation Model Ordinance (2013). The Control Plan for the Damariscotta River is enacted pursuant to the Commissioner's powers under 12 MRS § 6171-A (1)(A) to protect public health. It is designed to avoid an illness outbreak scenario that would trigger mandatory development of a *Vibrio* control plan.

The Control Plan provides additional and more rigorous controls on the handling of American and European oysters and hard clams than those imposed by DMR regulations Chapters 9, 15, 16, 17, 18, 19, 20 and 22. Because the Control Plan time and temperature requirements exceed those imposed by existing rules or are in addition to those imposed by existing rules, Chapters 9, 15, 16, 17, 18, 19, 20 and 22 are proposed to be amended to reflect the requirements of Chapter 115.

All DMR Regulations are available at the following web address:
<http://www.maine.gov/dmr/lawsandregs/regs/index.htm>

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The proposed regulations would apply to persons engaged in the harvesting and handling of American and European oysters and hard clams grown in the Damariscotta River. The regulation applies to 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 and all others involved in the processes described in Chapters 9, 15, 16, 17, 18, 19, 20 and 22. The effective date of the regulation would be January 1, 2016.

FISCAL IMPACT OF THE RULE:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. The regulation imposes minor administrative requirements upon shellfish harvesters, dealers, processors, shippers, shucker-packers and others in the shellfish industry. The time and temperature criteria may increase operational costs due to icing and time-to-refrigeration requirements. Towns in the affected areas may sell fewer recreational shellfish licenses between May and the end of October.