

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 115 *Vibrio parahaemolyticus* Control Plan

ADOPTED RULE NUMBER: (LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:

This emergency rule incorporates the New Meadows River, north of Bath/State Rd in Brunswick and West Bath, into certain elements of the existing *Vibrio parahaemolyticus* (*Vp*) control plan. The addition of the New Meadows River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause *Vp* infections in consumers. Independent, biological sampling of hard clams (quahogs) in the New Meadows River has 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 New Meadows 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. As a result, DMR seeks to reduce the potential for *Vp* illnesses, by requiring industry members to shade product upon harvest and to adequately ice the product until delivery to a certified dealer. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171-A.

EFFECTIVE DATE: August 9, 2017

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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 and New Meadows 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, South Bristol and in all parts of the New Meadows River north of Bath/State Rd in Brunswick and West Bath. For the Damariscotta River, 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 and New Meadows River.
- C. **Recreational Harvest Prohibited.** It is unlawful to engage in the recreational harvest of oysters and hard clams harvested from the Damariscotta River and New Meadows River 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.
- 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

(A) Damariscotta River

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.

(B) New Meadows River

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

All oysters and hard clams shall be adequately iced onboard immediately after harvest and maintained on ice until delivery to a certified dealer

115.06 Additional Harvest Restrictions During Control Months For 80° F and above Air Temperatures in the Damariscotta River

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.

Basis Statement

This emergency rule incorporates the New Meadows River, north of Bath/State Rd in Brunswick and West Bath, into certain elements of the existing *Vibrio parahaemolyticus* (*Vp*) control plan. The addition of the New Meadows River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause *Vp* infections in consumers. Independent, biological sampling of hard clams (quahogs) in the New Meadows River has 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 New Meadows 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. As a result, DMR seeks to reduce the potential for *Vp* illnesses, by requiring industry members to shade product upon harvest and to adequately ice the product until delivery to a certified dealer. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171-A.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 115 *Vibrio parahaemolyticus* Control Plan

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

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

This rule incorporates the New Meadows River into certain elements of the existing *Vibrio parahaemolyticus* (*Vp*) control plan in order to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause *Vp* infections in consumers.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

Harvesters will be required to shade product upon harvest, and to adequately ice product from the time of harvest until delivery to a certified dealer.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

Independent, biological sampling of hard clams and quahogs in the New Meadows River has 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 New Meadows 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.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of this amendment would not require additional activity in this agency. The regulation imposes minor changes to harvesting practices for shellfish harvesters.