

**§6172. Contaminated or polluted flats**

**1. Commissioner's powers.** The commissioner may examine the coastal waters and the intertidal zone and classify coastal waters or intertidal zone areas as closed if the commissioner determines that any marine organisms are or may become contaminated or polluted and may classify coastal waters or intertidal areas as open if the commissioner determines that the marine organisms no longer present a risk to public health. The commissioner may classify areas through text descriptions and maps as the commissioner determines necessary, setting forth standards for closure of contaminated or polluted areas and for opening areas determined to no longer present a risk to public health, giving consideration to established state water quality standards, the most recently adopted federal sanitation standards or other state or federal public health standards, the most recent generally accepted research data and known sources of pollution in any area, in a manner to protect the public health and safety while allowing reasonable use of the State's marine organisms.

[PL 2011, c. 527, §2 (AMD).]

**1-A. Federal waters.** The commissioner may classify an area through text descriptions and maps to close waters under the jurisdiction of the Federal Government to the harvesting of a marine organism that the commissioner determines is or may become contaminated or polluted and to open waters under the jurisdiction of the Federal Government to the harvesting of marine organisms that the commissioner determines no longer present a risk to public health.

[PL 2011, c. 527, §2 (AMD).]

**1-B. Advisory council.**

[PL 2011, c. 527, §2 (RP).]

**2. Emergency rules.**

[PL 2011, c. 527, §2 (RP).]

**3. Repeal.**

[PL 2011, c. 527, §2 (RP).]

**4. Procedure.**

[PL 2011, c. 527, §2 (RP).]

**5. Private property; right of entry.** The commissioner's authority to enter privately owned land or buildings to carry out the purposes of this section is prescribed as follows:

A. The commissioner, upon presentation of credentials, may enter privately owned land at reasonable times with the owner's permission. If entry to the land is denied by the owner, the commissioner may seek a search warrant to inspect the land for sources of pollution under this section. A warrant may not be issued to search a domicile or residential building or ancillary structures; and [PL 1991, c. 242, §1 (NEW).]

B. The commissioner may enter a privately owned domicile, building or structure only with the owner's permission and only in the presence of the owner or the owner's agent. [PL 1991, c. 242, §1 (NEW).]

For the purposes of this subsection, "commissioner" means the Commissioner of Marine Resources or an employee of the department authorized by the commissioner to inspect coastal waters and intertidal zones for sources of pollution.

[PL 1991, c. 242, §1 (NEW).]

**6. Effective immediately upon signature.** The classification of an area as open or closed under this section is effective immediately upon signature by the commissioner or the commissioner's authorized designee.

[PL 2011, c. 527, §2 (NEW).]

**7. Notification.** Notification of the classification of a shellfish area as open or closed and any information concerning the opening or closing of a shellfish area under this section must be placed on the department's publicly accessible website and must be provided to the municipal office of each municipality in the affected area and to the Bureau of Marine Patrol.

[PL 2011, c. 527, §2 (NEW).]

**8. Enforcement.** Upon notification as described in subsection 7, marine patrol officers shall take action to prevent the taking of shellfish from a closed area, including the embargo of contaminated shellfish under section 6856, subsection 6 and the arrest or summons of any person taking or attempting to take shellfish from an area classified as closed unless that person holds a valid depuration certificate pursuant to section 6856, subsection 3.

[PL 2011, c. 527, §2 (NEW).]

#### SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1981, c. 649, §1 (AMD). PL 1983, c. 301, §§5,6 (AMD). PL 1985, c. 268, §1 (AMD). PL 1989, c. 205, §3 (AMD). PL 1991, c. 242, §1 (AMD). PL 1991, c. 390, §2 (AMD). PL 1997, c. 93, §1 (AMD). PL 2005, c. 44, §2 (AMD). PL 2009, c. 528, §3 (AMD). PL 2011, c. 527, §2 (AMD).

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