

§6856. Shellfish sanitation; depuration certificate and permits

1. Shellfish sanitation certificate. A person may not undertake the processing, buying, selling, shipping, transporting or shucking of shellfish or whole scallops without a shellfish sanitation certificate issued by the department or a valid, current certificate issued by the relevant regulatory authority recognized by the United States Department of Health and Human Services, Food and Drug Administration and posted on the administration's interstate certified shellfish shippers list, unless authorized under section 6701 or 6702. A person may engage in activities only to the extent authorized by the certificate held by the person. The commissioner may issue a shellfish sanitation certificate to a wholesale seafood license holder or a shellfish transportation license holder that authorizes the holder to undertake the activities expressly authorized therein, which may include buying and selling, shipping, transporting, shucking or other processing of shellfish or whole scallops. A wholesale seafood license or shellfish transportation license is also necessary to undertake the activities authorized under those licenses. A shellfish sanitation certificate does not authorize a person to undertake any of the activities for which a permit is required pursuant to subsection 2-A. Beginning June 1, 2018, the fee for a shellfish sanitation certificate is \$50.

[PL 2019, c. 334, §3 (AMD).]

2. Express authorizations. The commissioner shall expressly state the authorized activities on each shellfish sanitation certificate. The activities authorized must be sufficient to allow the holder to carry out the holder's wholesale or transportation operations, except that the operations may be limited to the extent required to protect the public health.

[PL 2003, c. 248, §11 (AMD).]

2-A. Additional permits. A person may not engage in an activity for which a permit is required pursuant to this subsection unless the person holds a shellfish sanitation certificate and the applicable permit as provided in this subsection.

A. A person may not store shellfish in containers or tanks containing recirculating water without a recirculating wet storage permit. Beginning August 1, 2018, the fee for a recirculating wet storage permit is \$200, except that the fee for a recirculating wet storage permit is \$100 if the holder of the permit accepts as a permit condition the duty to provide and provides the department weekly test results showing the recirculating wet storage facility's compliance with the most recently adopted federal sanitation standards. [PL 2017, c. 224, §2 (NEW).]

B. A person may not store shellfish in containers or tanks where nonrecirculating water flows through the containers or tanks or in or on floats in a natural body of water without a flow-through wet storage permit. Beginning August 1, 2018, the fee for a flow-through wet storage permit is \$100. [PL 2017, c. 224, §2 (NEW).]

C. A person may not handle, ship, transport or process shellfish in bulk, as defined by the department by rule, without:

- (1) Attaching a tag to the shellfish in accordance with rules adopted by the department; and
- (2) A bulk tagging permit. Beginning June 1, 2018, the fee for a bulk tagging permit is \$50. [PL 2017, c. 224, §2 (NEW).]

D. A person may not use a vehicle to transport shellstock purchased at a location other than the establishment or vehicle authorized under the license without a shellfish buying station permit. Beginning June 1, 2018, the fee for a shellfish buying station permit is \$100. [PL 2019, c. 334, §4 (AMD).]

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3. Depuration certificate. A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a

deputation certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for deputation, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ensure the public safety. The commissioner may permit deputation of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during deputation will not contaminate the shellfish with paralytic shellfish poisoning. Beginning May 1, 2018, the fee for a deputation certificate is \$200. [PL 2017, c. 224, §2 (AMD).]

3-A. Municipal consultation and approval; deputation harvesting.

[PL 2011, c. 175, §2 (RP).]

3-B. Municipal pollution abatement plan.

[PL 2011, c. 175, §3 (RP).]

3-C. Municipal deputation management plan.

[PL 2011, c. 175, §4 (RP).]

3-D. Soft-shelled clam deputation harvesting in municipalities with municipal shellfish conservation programs. Soft-shelled clam deputation activities conducted within a municipality that has a municipal shellfish conservation program pursuant to section 6671 are subject to the following provisions.

A. Using the following general guidelines to identify whether pollution abatement activities are likely to succeed in a shellfish growing area, the commissioner may close a shellfish growing area pursuant to section 6172 for municipal pollution abatement activities.

- (1) Pollution abatement activities are likely to succeed in shellfish growing areas affected by identified failing residential septic systems and other identified localized sources of human or animal fecal contamination when funding for abatement is available.
- (2) Pollution abatement activities are not likely to succeed in shellfish growing areas affected by wastewater treatment plant outfall or other point sources of treated or partially treated sewage unless complete removal of pollution sources has been achieved.
- (3) Abatement activities are not likely to succeed in shellfish growing areas affected by chronic nonpoint source contamination from rivers or streams.

At the request of the municipality, the commissioner may allow soft-shelled clam deputation harvesting in a shellfish growing area closed under this paragraph. [PL 2015, c. 68, §11 (AMD).]

B. In conducting deputation harvesting activities under this subsection, a person holding a deputation certificate shall engage commercial harvesters holding valid municipal and state commercial shellfish licenses. If there are insufficient municipally licensed commercial harvesters, the deputation certificate holder may supplement with other commercial shellfish harvesters licensed in the State. [PL 2011, c. 175, §5 (NEW).]

C. A deputation certificate holder shall maintain a generalized deputation management plan on file with the commissioner that sets forth methods for identifying harvest limits, operational procedures for harvest management and responsibilities of authorized representatives. [PL 2011, c. 175, §5 (NEW).]

D. A deputation certificate holder shall pay each municipality an amount equal to one dollar for each bushel of soft-shelled clams taken in that municipality under the deputation certificate. When submitting payment to a municipality under this paragraph, the deputation certificate holder shall include a summary of reports submitted to the department pursuant to rules adopted under subsection 4. [PL 2021, c. 59, §1 (AMD).]

[PL 2021, c. 59, §1 (AMD).]

4. Rules. The commissioner may adopt or amend rules concerning:

- A. The procedures for issuing certificates and the required qualifications for each type of certificate; [PL 1977, c. 661, §5 (NEW).]
- B. The minimum sanitation standards for establishments and vehicles; [PL 1977, c. 661, §5 (NEW).]
- C. The sanitation and quality control standards for shellfish and whole scallops and their products; [PL 2001, c. 112, §3 (AMD).]
- D. The methods for taking, handling, shipping, transporting and processing of shellfish and whole scallops taken from closed areas; [PL 2001, c. 112, §3 (AMD).]
- E. The records and reports of takings, purchases, processing, sales, shipping and transporting of shellfish and whole scallops; [PL 2001, c. 112, §3 (AMD).]
- F. The labeling or marking of shipments of shellfish and whole scallops; and [PL 2001, c. 112, §3 (AMD).]
- G. Other rules necessary to the public health. [PL 2003, c. 248, §11 (AMD).]

The rules must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data, in a manner so as to protect the public health and safety while allowing reasonable use of the State's shellfish and whole scallops.

[PL 2003, c. 248, §11 (AMD).]

5. Right of entry. Whenever a certificate has been issued under this section, the commissioner, or the commissioner's agent, must have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access is grounds for suspension or revocation of any certificate or license under the provisions of section 6372.

[PL 2011, c. 311, §6 (AMD).]

6. Products embargoed and condemned. The commissioner, or the commissioner's agent, shall indefinitely embargo, condemn or order to be destroyed any shellfish, shellfish product or whole scallop in any establishment whenever it is determined that the product is of unsound quality, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe. The commissioner and the commissioner's agent shall cooperate with those state and federal agencies having similar responsibility in the protection of public health and in enforcing the order to embargo, condemn or destroy.

In the event that any shellfish, shellfish product or whole scallop in any establishment is embargoed, condemned or ordered destroyed, the commissioner, or the commissioner's agent, shall, as soon thereafter as practical, notify the owner in writing of the amount and kind of shellfish, shellfish product or whole scallop embargoed, condemned or destroyed.

[PL 2003, c. 248, §11 (AMD).]

7. Resident depuration harvesters.

[PL 2011, c. 175, §6 (RP).]

8. Payments to municipalities.

[PL 2011, c. 175, §7 (RP).]

9. Disposition of fees. The commissioner shall deposit fees collected under this section in the Shellfish Fund under section 6651.

[PL 2017, c. 224, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1979, c. 249 (AMD). PL 1981, c. 462, §6 (AMD). PL 1989, c. 770, §1 (AMD). PL 1991, c. 831, §2 (AMD). PL 2001, c. 112, §§2-4 (AMD). PL 2003, c. 248, §11 (AMD). PL 2005, c. 508, §2 (AMD). PL 2007, c. 15, §§1-5 (AMD). PL 2007, c. 15, §6 (AFF). PL 2009, c. 561, §32 (AMD). PL 2011, c. 175, §§1-7 (AMD). PL 2011, c. 311, §6 (AMD). PL 2015, c. 68, §§10, 11 (AMD). PL 2017, c. 224, §2 (AMD). PL 2019, c. 334, §§3, 4 (AMD). PL 2021, c. 59, §1 (AMD).

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