

## DEPARTMENT OF MARINE RESOURCES

### Chapter 9 HARVESTER: SHELLSTOCK HARVESTING, HANDLING AND SANITATION

#### 9.01 Compliance

- 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).

### 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.
- G. 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).

#### 22.02 Receiving Shellfish

- A. The enhanced retail seafood license holder shall reject or discard any shellfish which:
  - 1. Do not originate from a licensed harvester or dealer; and/or
  - 2. Are unwholesome, inadequately protected or whose source cannot be identified.
- B. The enhanced retail seafood license holder shall:
  - 1. Place shellstock under temperature control, 41°F or less, within 2 hours after receipt from the harvester.
  - 2. For the purpose of this section, temperature control is defined in accordance with Maine Food Code, Chapter 200, §3-202.11 (Specifications for Receiving, Temperature).

#### 22.03 Prevention of Cross Contamination

- A. Shellstock shall be stored in a manner as to be protected from contamination.
- B. If equipment has been used for a species other than shellfish it shall be washed, rinsed and sanitized prior to use for shellstock.
- C. Shellstock shall not be placed into water.

- D. Shellstock coolers shall not be used for storage of bait, other fish processing byproducts or refuse.
1. Only food grade product may be stored in the cooler physically separated from shellstock and shellfish.
- E. Shellstock shall be stored in a protected location and at an adequate height off the floor to protect it from contamination from water accumulation on the floor or splash by foot traffic.
- F. The enhanced retail seafood license holder shall require all employees to wash, rinse and sanitize their hands thoroughly in a hand washing facility;
1. Before starting work;
  2. After each absence from the work station;
  3. After each work interruption; and
  4. Any time their hands may have become soiled or contaminated.
- G. No unauthorized personnel shall be allowed to handle shellstock. The employee shall wear a clean apron or other clean outer garments when handling shellstock.

#### 22.04 Records

- A. Each enhanced retail seafood license holder must maintain records pertaining to all shellfish purchases and shellfish shipments received. These records must be made available to the Department upon request and must comply with the following criteria:
1. Each enhanced retail seafood license holder shall have a business address at which records are maintained.
  2. Records shall:
    - (a) Be complete, accurate and legible;
    - (b) Contain all of the Department's required information in a form authorized by the Department; and
  3. The records must be sufficient to:
    - (a) Document that the shellstock was obtained from an authorized source (licensed harvester or certified dealer);
    - (b) Allow each container of shellstock to be traced back to the specific incoming lot of shellstock from which it was taken; and
    - (c) Allow for each lot of shellstock to be traced back to the growing area, date of harvest, and if possible, the harvester or group of harvesters.
  4. Records shall be maintained in a permanently bound ledger book or other recording method approved by the Department.
  5. The records shall be retained:
    - (a) For a minimum of one year for fresh shellstock and for a minimum of two years for frozen shellstock.
- C. Shellfish Reports: See Chapter 8.10(A) Landings Program; a no-cost Primary Buyers Permit is required.

#### 22.05 Suspension, Revocation or Refusal to Reissue an Enhanced Retail Seafood License

##### A. Suspension or Revocation

1. The Commissioner may apply to the District Court for suspension of an enhanced retail seafood license where the holder has refused to allow a shellfish inspection or has violated a shellfish sanitation regulation. As

provided by 12 M.R.S. §6373, the Commissioner may apply for suspension in a summary action before the district court pursuant to the provisions of 4 M.R.S. §184.

2. The Commissioner may suspend an enhanced retail seafood license under 12 M.R.S. §6401 where the holder has been convicted of a violation of a marine resources law. The Commissioner shall follow the procedures set forth in 12 M.R.S. §§6351 to 6353 to impose such a suspension.

B. When the Department determines that a condition exists that presents an immediate threat to public health the Department may take any or all of the following actions to protect the public health:

1. Suspend the enhanced retail seafood license in accordance with 5 M.R.S. §10004 (3 & 4):

2. Require the holder of the enhanced retail seafood license to initiate a recall consistent with the procedures in Chapter 15.36, of any distributed shellfish or shellstock that are adulterated or may have become adulterated; and

3. Embargo and destroy any undistributed lots of shellstock that are adulterated or may have become adulterated consistent with the provisions of Chapter 15.23.

C. If the Commissioner determines that an applicant for renewal of an enhanced retail seafood license is not currently in compliance with shellfish sanitation regulations, or has failed to comply with shellfish sanitation regulations during the previous license period, the Commissioner may refuse renewal of the license in accordance with the following procedures:

1. The Commissioner shall advise the applicant for renewal by certified mail, return receipt requested, of the refusal and the grounds for this refusal.

2. The Commissioner shall advise the applicant for renewal that the applicant has a right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S., Chapter 375 subchapter IV. The Commissioner shall advise the applicant that the hearing must be requested in writing and that the written request must be received by the Department no later than 10 days of receipt by the applicant of the notice, by certified mail, of refusal to renew the enhanced retail seafood license.

3. If an adjudicatory hearing is requested, the Commissioner shall schedule a hearing within 10 days of the Department's receipt of the written request for hearing, unless a longer period is mutually agreed to in writing.

4. Notice of the hearing date, time and location shall be given immediately to the applicant.

# Basis Statement

## Chapter 22 Retail Shellfish (New), & Chapter 9.01(D) Update

Regulations for holders of an enhanced retail seafood license (12 MRS §6852, sub-§2, effective September 12, 2009) are adopted for traceability of shellfish via record keeping, landings reporting, temperature control, and prevention of cross contamination, tag retention, non-compliance consequences, and inspection in accordance with the Maine Food Code, the National Shellfish Sanitation Program (Model Ordinance), the Atlantic States Coastal Cooperative Statistics Program and DMR Landings Program. Compliance with the Landings Program would require obtaining a no-cost Primary Buyer Permit; plus the inspections apply only to those not already inspected by other agencies.

Current law does not allow the holder of a retail seafood license to buy shellstock directly from the commercial shellfish license holder that harvests the shellfish but instead these license holders must buy shellstock from a wholesale seafood license holder that purchases shellstock from the harvester. These regulations would allow enhanced retail seafood license holders to purchase shellstock directly from the harvester in compliance with the Maine Food Code, the Atlantic States Coastal Cooperative Statistics Program, the DMR Landings Program and without violation of the National Shellfish Sanitation Program (Model Ordinance).

Additional amendments to these regulations are considered non-substantive changes and include clarification that inspections are required; that these rules only allow the commercial shellfish harvester to take their product to the fixed or permanent facility belonging to the enhanced retail seafood license holder not to a truck or mobile facility; corrections to typos; a web link and citations to the Maine Food Code added; plus clarifications to tagging, temperature control and water sources, which are duplications from the Maine Food Code but added as either reference or reinforcement of these standards from the Maine Food Code.

## Summary of Comments

### Chapter 22 Retail Shellfish (New), & Chapter 9.01(D) Update

A public hearing was held in West Boothbay Harbor on October 27, 2009. A summary of the written comments and questions pertaining to the proposed rules with the Department's responses are listed followed by the individual written comments or questions. No persons from the public attended the hearing and one written comment was received from the public. A summary of the questions and clarifications submitted by Department staff are included below.

#### Summarized written comments and responses:

##### **1. Chuck Underwood, Underwood Farms and Hallowell Seafood, Waterville & Hallowell**

My name is Chuck Underwood, I own Underwood Farms along with Hallowell Seafood with my son Justin Underwood in Hallowell, Maine.

We both feel the No-cost Primary Buyer Permit is a good thing for our business. We both **support** this and want it. [Chapter 22.04(C)]

**Response:** *The primary buyer permit associated with the Department's Landings Program for reporting by persons who buy from harvesters is free or no-cost. The enhanced retail seafood license cost is \$150 pursuant to [12 MRS §6852-A\(4\)](#).*

##### **2. Col. Fessenden, DMR**

- The proposed rules] imply that we will do inspections but it does not say we will actually inspect, and it needs to be stated that they are 'fixed' facilities and not trucks.

**Bruce Chamberlain, DMR Seafood Inspector Supervisor**

- The proposed regulations should state that the applicant for an [enhanced retail seafood license](#) must first have an inspection by seafood inspectors of their fixed facility prior to being issued this license.

**Response:** Upon review, Col. Fessenden's points are implied but not clearly stated in the proposed rulemaking. The regulations have been clarified in Chapter 22.01(E) that the license harvesters must take their product to the enhanced seafood license holder's fixed (permanent) facility, no trucks are allowed for these purposes pursuant to these regulations.

Chapter 22.01, sub-section F, has been added to clarify that inspections are indeed a normal part of being an enhanced seafood license holder and consistent with similar inspection requirements of retail seafood license holders. Inspections may be conducted by Maine Department of Agriculture, Food and Rural Resources or the Department of Marine Resources (DMR) Seafood Inspectors.

The comment that an inspection should be conducted prior to license issuance is also consistent with similar licenses and has therefore also added to sub-section F.

### 3. Jeff Armstrong, DMR Seafood Inspector

- **22.01(C)** [Add that] product identity must be maintained continually while being held at the **retailer's permanent facility**. This would require product to be tagged in storage as well as identified in the seafood case, as it is now. It would also **exclude** the licensing of mobile vendors who only possess a vehicle.

**Response:** Regarding permanent facility and trucks see response in (2) above.

Product identity rules are covered by the Maine Food Code and are intentionally not duplicated in their entirety here; however the applicable identity/tag record requirements have been expanded for clarity with a web link and citation added to Chapter 22.01(C) to the applicable citation in the Maine Food Code.

- **22.02(A)** Receiving Shellfish

The enhanced retail seafood license holder **shall wash shellfish in potable water**, ([they] must be able to wash shellfish in potable water) **cull, and** reject or discard any shellfish which are unwholesome or inadequately protected...

**Response:** Washing is required of the harvester in Chapter 9.02 Shellstock washing; and the [Maine Food Code, Chapter 200](#) (MFC) regulations jointly adopted by the Maine Department of Human Services, 10-144 CMR 200 and the Maine Department of Agriculture, Food and Rural Resources, 01-001 CMR 331. The MFC applicable water standards are not duplicated in these rules. Also see response in 4 below regarding potable water testing records.

- **22.02(B)** Place shellstock under **temperature control as soon as possible**, within **at least** 2 hours after receipt from the harvester. For the purpose of this section, temperature control is defined in accordance with Maine Food Code, [Chapter 200, §3-202.11](#). Specifications for Receiving, Temperature; this should be modified to state the actual holding temperature "**Held in a mechanically operated cooler maintained at a temperature of 41°F or less**". The [proposed rules] also serve as guidelines for the industry. Product cannot be held in iced coolers. It would be easier to enforce our regulations also. At a minimum note the holding temperature of 41°F or less.

**Response:** The license holders should be familiar with the Maine Food Code where the standards are stated, however for clarity and reinforcement of these rules the maximum temperature of 41°F or less has been added to Chapter 22.02(B)(1). It should be noted that if the MFC rules change then these rules would also be required to be changed.

Regarding adding the phrase "as soon as possible", as written the time requirement description is consistent with similar rules and is not considered necessary.

- **22.01(E)** Modify to include all activities, "**purchase and storage activities are limited to the license holder's permanent facility**". [Otherwise] The retail sales could be carried out at a mobile retail unit, but not purchases or long term storage. We will need to prevent retailers from purchasing from licensed vehicles.

**Response:** Regarding permanent facility and trucks see response in (2) above.

- **22.04 Records:** Retailers are required to keep shellfish tags for 90 days after the containers are emptied. They must be kept in **chronological order** to the **date when, or dates during which** the shellstock

are sold or served. [They] must be **traceable** from purchase to date of sale. See [Maine Food Code: 3-203.12 Shellstock, Maintaining Identification](#).

**Response:** *The 90 day tag retention requirement is previously stated in Chapter 22.01(C) with references to Chapter 9.06 and 15.18 that contain details on tag retention requirements. The primary requirements of the MFC have been added to this section with a reference as to where to locate a copy of the MFC added. Also see response to comment on 22.01(C) above.*

**Additional response:** *A web link to the Maine Food Code has been added to the regulation text in Chapter 22.02(B)(2).*

#### **4. Michelle Mason Weber, DMR Shellfish Program Coordinator**

- ...Add an exception to Chapter 15.03(A) to allow enhanced retail seafood license holders to purchase shellfish from commercial harvesters...and to allow commercial harvesters sell to enhanced retail seafood license holders.

- Since these regulations would be in compliance with the National Shellfish Sanitation Program (Model Ordinance), does a HACCP plan need to be mentioned in the language?

**Response:** *The enhanced retail seafood license was promulgated by the Maine Legislature and is completely separate from the National Shellfish Sanitation Program or Model Ordinance. This license does not pertain the persons licensed or permitted as a certificate holder pursuant to a wholesale seafood (12 M.R.S.A. §6851) or shellfish transportation (12 M.R.S.A. §6855) licensee to whom the Department has issued a certificate, as required by 12 M.R.S.A. §6856. The shellfish purchased with the enhanced retail seafood license cannot be sold wholesale or shipped across state lines. These rules regulate the activity between only the enhanced retail seafood license holders and the commercial shellfish license holders and are placed in the respective (new) Chapter 22 and Chapter 9 and using references to rules in Chapter 15 to avoid duplication of rules. An incorrect reference to a shellfish certificate in Chapter 22.05(C)(2) has been corrected.*

*If a HACCP plan is required it would be a requirement in accordance with the Maine Food Code and would not be duplicated in these rules.*

- Should DMR Chapter 15 be referenced in this section?

**Response:** *Chapter 15 is referenced where applicable to avoid duplication of procedures; it is not otherwise referenced because these rules do not pertain to wholesale seafood certificate holders. See response above.*

- Is the DMR going to keep track of locations tests for potable water [by the enhanced seafood license holders]? In which agency would such records be held, with DMR, Dept of Agriculture, Food and Rural Resources or Health and Human Services?

**Response:** *The DMR will license, inspect and maintain records pertaining to the enhanced retail seafood license pursuant to [12 MRS §6852-A\(4\)](#) because this license is authorized through the DMR statutes and would also therefore include test records such as for potable water if deemed necessary by this agency.*

- The proposed language makes references in Chapter 22.05(A)(1) and (C) to suspension of the license when the holder has “violated a shellfish sanitation regulation”. Should the DMR chapter(s) (or parts thereof) be specifically referenced, to identify which regulations are being referred to?

**Response:** *The regulations in Chapter 22.05 follow nearly identical procedures, in accordance with the referenced statutes, that has been in effect since April 2004 for “dealers” and where applicable in Chapter 9 for commercial shellfish harvesters without incidence to date on what constitutes a violation derived in accordance with the statutes and regulations cited. This is a new license that will have a learning curve to develop a specific inspection form to address its applicable violations, similar to how other license violations have developed.*

- If an enhanced seafood license were to be suspended would all the activities covered by this license be suspended or only the ability to by shellfish from a shellfish harvester?

**Response:** *All activities associated with this license would be suspended.*