



**SS-2-2022**

**ROY COOPER**  
*Governor*

**ELIZABETH S. BISER**  
*Secretary*

**KATHY B. RAWLS**  
*Director*

## PROCLAMATION

### RE: TEMPERATURE AND SANITATION CONTROLS – CLOSED SEASON OYSTER HARVEST

This proclamation supersedes SS-2-2021 dated March 26, 2021. It reestablishes National Shellfish Sanitation Program requirements that mandate measures to control the temperature of oysters after harvest, as well as other sanitation requirements for shellfish harvesters and certified shellfish dealers.

It reestablishes National Shellfish Sanitation Program requirements that mandate measures such as re-submergence to minimize the risk of *Vibrio* illness due to certain pre-harvest handling practices such as air-drying and defouling of oysters. It also reestablishes tagging requirements for pre-harvest activities conducted off-site of shellfish leases and franchises and the shading of oysters after harvest.

Kathy B. Rawls, Director, Division of Marine Fisheries, hereby announces that **effective immediately** the following restrictions shall apply to the harvest, transport, and storage of oysters taken from shellfish leases or franchises in Coastal Fishing Waters:

#### I. TIME PERIOD

The following restrictions shall be in effect for all commercial fishing operations involving oysters and certified shellfish dealers, as applicable, for the time period of **April 1 through October 14**. These restrictions shall not apply to Shellfish Lease Restoration Permit (SLRP) holders transporting shellfish product for restoration purposes once transport begins from the shellfish lease or franchise.

#### II. NOTIFICATION AND TAGGING REQUIREMENTS

- A. It is unlawful for shellfish lease or franchise holders to fail to notify the N.C. Division of Marine Fisheries, Habitat and Enhancement Section by telephone at 800-682-2632 extension 8048 or 252-808-8048 prior to beginning oyster harvest from shellfish leases or franchises during the **April 1 through October 14** time period. Only one call for the entire April 1 through October 14 time period is required.
- B. **Harvest Tags-** It is unlawful to possess oysters in a commercial fishing operation without a harvest tag recording the time of the start of harvest, shellfish lease or franchise number and the information as described in 15A NCAC 03K .0109, affixed to each container of oysters. The time of the start of harvest shall be the time when the first oyster is initially removed from the water or, in the case of intertidal harvest, the time of first exposure by the receding tide.
- C. **Off-site Tags-** It is unlawful to possess oysters greater than 25mm in length off-site of a shellfish lease or franchise for the purposes of transporting, sorting, grading or cleaning without an off-site tag recording the following information:
  1. Shellfish lease or franchise number;
  2. Date;

3. Shellfish Growing Area;
4. The time the first oyster was removed from the water, or in the case of intertidal gear, the time of first exposure by the receding tide; and
5. Number of containers (if bulk off-site tag).

The use of a single bulk off-site tag identifying multiple containers of oysters to be transported, sorted, graded or cleaned is acceptable if it identifies the number of containers. Off-site tags shall be durable, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size. If any oysters are to be harvested after sorting, grading or cleaning activities, a harvest tag is then required to be attached to each container in accordance with Section II. (B) above, with the original time of harvest recorded.

An example off-site tag template is available at <https://deq.nc.gov/about/divisions/marine-fisheries/shellfish-sanitation-and-recreational-water-quality/shellfish-growing-areas#educational-materials> or can be picked up at Division Headquarters.

- D. **Dealer Tags-** The following text additional to requirements in 15A NCAC 18A .0425 (a)(7) shall be printed in bold capitalized type on shellfish dealer tags along with other required information as described in 15A NCAC 18A .0425:

**“THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS.” “RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE)\_\_\_\_\_.”**

- E. Dealer tags shall also contain the statement “Keep Refrigerated”.

### III. TRANSPORT AND STORAGE RESTRICTIONS

- A. It is unlawful for harvesters to fail to deliver oysters harvested from shellfish leases or franchises in Coastal Fishing Waters to a licensed shellfish dealer **within 12 hours of the time of the start of harvest from April 1 through April 30**. When the harvester is also a licensed shellfish dealer, all harvested shellfish shall be delivered to the dealer’s licensed and permitted facility location **within 12 hours of the time of the start of the harvest**.
- B. It is unlawful for harvesters to fail to deliver oysters harvested from shellfish leases or franchises in Coastal Fishing Waters to a licensed shellfish dealer **within 5 hours of the time of the start of harvest from May 1 through October 14**. When the harvester is also a licensed shellfish dealer, all harvested shellfish shall be delivered to the dealer’s licensed and permitted facility location **within 5 hours of the time of the start of the harvest**.
- C. It is unlawful for a licensed shellfish dealer to receive oysters from Coastal Fishing Waters where the interval between the time of the start of harvest on the harvest tag attached to the container of oysters and the time of receipt **exceeds 12 hours from April 1 through April 30**.

- D. It is unlawful for a licensed shellfish dealer to fail to place **oysters that are received from a harvester at the dealer's facility** under mechanical refrigeration **within two hours of receipt from a harvester from April 1 through April 30.**
- E. It is unlawful for a licensed shellfish dealer to fail to place **oysters that are received from a harvester away from the dealer's facility** under mechanical refrigeration **at the time of the transaction.**
- F. It is unlawful for a licensed shellfish dealer to **transport oysters not meeting the requirements of 15A NCAC 18A .0420.** When a licensed shellfish dealer is also the harvester, refrigeration of shellfish that individual harvested during the initial transport from harvest to the dealer's facility is excluded from this requirement if delivered in accordance with Section III. (A). or III (B). above, as applicable.
- G. It is unlawful for a licensed shellfish dealer to receive oysters from shellfish leases or franchises where the interval between the time of the start of harvest on the harvest tag attached to the container of oysters and the time of receipt **exceeds 5 hours from May 1 through October 14.**
- H. It is unlawful for a licensed shellfish dealer to fail to place oysters under mechanical refrigeration **within 5 hours after start of harvest from May 1 through October 14.**
- I. It is unlawful for a licensed shellfish dealer to purchase shellfish from a harvester unless **the dealer also possesses a valid Shellfish Dealer Permit and Certificate of Compliance** issued by Shellfish Sanitation.
- J. It is unlawful for a licensed shellfish dealer to fail to record the following information when receiving oysters from shellfish leases or franchises in Coastal Fishing Waters:
  - 1. Harvester;
  - 2. Harvest area;
  - 3. Time of the start of harvest;
  - 4. Quantity and type of shellfish received;
  - 5. Time shellfish were received; and
  - 6. Time shellfish were mechanically refrigerated.

#### IV. RE-SUBMERGENCE REQUIREMENTS

- A. From **May 1 through October 14**, for **oysters greater than 25 mm in length that have been exposed to the air for more than 5 consecutive hours**, it is unlawful for a shellfish lease or franchise holder to fail to **completely re-submerge these oysters for a minimum of 7 consecutive days** on the original shellfish lease or franchise prior to subsequent harvest. This includes pre-harvest activities such as sorting, cleaning, grading and air-drying or defouling that **exceed 5 hours**, including the use of gear such as OysterGro or adjustable longlines that expose oysters to air and sunlight during aquaculture practices. This provision does not apply to oysters after harvest has occurred. A wet storage permit and certification by Shellfish Sanitation as a shellfish dealer is required to return oysters to the water post-harvest.

- B. It shall be unlawful to fail to comply with the following:

Oysters greater than seed size (25 mm in length) must **be re-submerged for a minimum of 21 consecutive days** when they are moved from a shellfish lease or franchise in one growing area to another shellfish lease or franchise in a different growing area. Wet storage permit holders are exempt from this requirement.

- C. It is unlawful to fail to **record all re-submergence activities in a logbook**, or other Division approved record keeping system, and make available for presentation to Marine Patrol Officers or other Division staff. Minimum re-submergence record entries shall include:

1. Date oysters are re-submerged;
2. Shellfish lease or franchise number;
3. Quantity, type, and number of containers;
4. Location of re-submerged oysters on shellfish lease or franchise; and
5. Date re-submergence tags are removed.

A logbook template for use is available at <https://deq.nc.gov/about/divisions/marine-fisheries/shellfish-sanitation-and-recreational-water-quality/shellfish-growing-areas#educational-materials> or can be picked up at Division Headquarters.

- D. It shall be unlawful to fail to **tag containers of oysters that are required to be re-submerged** on the shellfish lease or franchise. Tags shall be either:

1. Permanent gear tags affixed to each container that each include a unique identifying number. These unique identifying numbers shall be recorded in the re-submergence logbook along with the other items described in Section IV. (C). above.
2. Temporary tags that shall be:
  - a. Orange in color;
  - b. Waterproof;
  - c. Legible;
  - d. Completed using indelible ink and include the date of re-submergence; and
  - e. Recorded with the shellfish lease or franchise number.

The use of a single temporary bulk tag identifying multiple containers of re-submerged oysters is acceptable if it identifies the number of containers and if the re-submerged oysters are adequately segregated from other products on the shellfish lease or franchise.

The temporary tag(s) may be removed **after 21 consecutive days of re-submergence**. Plans for broadcast re-submergence of loose shellfish shall be approved by the Division prior to the activity and shall be adequately segregated from other products on the shellfish lease or franchise.

An example tag template is available at <https://deq.nc.gov/about/divisions/marine-fisheries/shellfish-sanitation-and-recreational-water-quality/shellfish-growing-areas#educational-materials> or can be picked up at Division Headquarters.

## **V. SHADING REQUIREMENTS**

It is unlawful to fail to protect oysters from sun exposure **from May 1 through October 14** during harvesting, storage, and transport to a certified shellfish dealer by:

- A. Providing shading over the area where the harvested oysters are stored on the harvest vessel, any floating container where the oysters are not submerged, transportation conveyance such as vessel or vehicle; or
- B. Directly covering the oysters with a light colored, non-toxic material such as a tarp or fabric during the operations in (A) of this Section.

## **VI. SANITATION REQUIREMENTS**

- A. It is unlawful to operate and maintain vessels or vehicles used for the commercial harvest, handling or transport of shellfish in such a manner that allows contact of shellstock with bilge water, standing water or other sources of contamination in the vessel or vehicle.
- B. It is unlawful to allow dogs or other animals on vessels or vehicles used to commercially harvest or transport shellfish.
- C. It is unlawful to discharge human waste overboard from harvest vessels.

## **VII. DEALER TRAINING REQUIREMENTS**

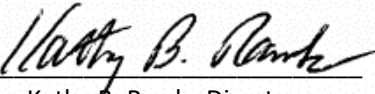
- A. Shellfish dealers shall ensure that all employees that manufacture, process, pack or hold food are qualified and obtain training in the principles of food hygiene and food safety, including the importance of employee health and personal hygiene, in accordance with 21 CFR 117.4.
- B. Shellfish dealers shall be allowed (30) days following initial hiring of a new employee to provide the required education.
- C. Proof of training for all employees shall be required prior to initial certification or recertification.
- D. The shellfish dealer shall maintain the record of the completed training.

## **VIII. GENERAL INFORMATION:**

- A. This proclamation is issued under the authority of N.C. General Statutes 113-170.4; 113-170.5; 113-182; 113-221.1; 113-221.2; 143B-289.52; and N.C. Marine Fisheries Commission Rules 15A NCAC 03H .0103, 03K .0110, 18A .0420 and 18A .0425(a)(5).
- B. It is unlawful to violate the provisions of any proclamation issued by the Fisheries Director under their delegated authority pursuant to N.C. Marine Fisheries Commission Rule 15A NCAC 03H .0103.
- C. In accordance with N.C. General Statute 113-221.1(c) all persons who may be affected by proclamations issued by the Fisheries Director are under a duty to keep themselves informed of current proclamations.

- D. The National Shellfish Sanitation Program Model Ordinance requires shellfish harvesters to:
1. Keep shellfish out of bilge water and protected from contamination from fuel, oil, and other contaminants;
  2. Shade shellfish when necessary to reduce the chance of temperature abuse;
  3. Protect shellfish from adulteration and contamination during transport;
  4. Prevent cats, dogs, and other animals on harvest vessels or in any conveyance where shellfish is stored;
  5. Prevent overboard discharge of human sewage from harvest vessels.
- E. The temperature control requirements of oysters after harvest in this proclamation reduce the risk of *Vibrio* illness by limiting the post-harvest growth of pathogenic *Vibrio* bacteria.
- F. The re-submergence requirements in this proclamation allow *Vibrio* bacteria that may have become elevated in oysters during pre-harvest culture activities due to air exposure to return to background levels prior to harvest.
- G. The following applies to the oyster shading requirements in this proclamation:
1. Shading prevents heat buildup in oysters from direct sunlight radiation following harvest, and during storage and transportation to the dealer. Elevated temperatures in oysters can cause rapid growth of pathogenic *Vibrio* bacteria.
  2. Adequate air space should be left between shading canopies to reduce heat buildup. Direct coverings such as tarps or fabrics shall be white or a similar light color to prevent heat buildup. Direct heating from the sun can occur even on overcast days so shading shall be provided from **May 1 through October 14** at all times during harvesting, storage, and transport to a licensed shellfish dealer.
- H. Licensed shellfish dealers are required to keep all shellstock under mechanical refrigeration including delivery conveyances.
- I. The call-in and record keeping requirements established by this proclamation eliminate the need for the Closed Oyster Season Harvest Permit for Shellfish Leases and Franchises.
- J. The provisions in this proclamation shall not apply to Polluted Area Relay which occurs under a permit specific for that operation.
- K. Contact Shannon Jenkins, Jacob Boyd or Col. Carter Witten at N.C. Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557, phone: 252-726-6827 or 800-682-2632 for more information or visit our website at <https://deq.nc.gov/about/divisions/marine-fisheries/>.

- L. This proclamation supersedes SS-2-2021 dated March 26, 2021. It reestablishes National Shellfish Sanitation Program requirements that mandate measures to control the temperature of oysters after harvest, as well as other sanitation requirements for shellfish harvesters and certified shellfish dealers. It reestablishes National Shellfish Sanitation Program requirements that mandate measures such as re-submergence to minimize the risk of Vibrio illness due to certain pre-harvest handling practices such as air-drying and defouling of oysters. It also reestablishes tagging requirements for pre-harvest activities conducted off-site of shellfish leases and franchises and the shading of oysters after harvest.

BY:   
Kathy B. Rawls, Director  
DIVISION OF MARINE FISHERIES, DEQ

March 31, 2022  
9:05 A.M.  
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