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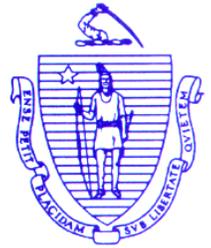
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MEMORANDUM

TO: The Marine Fisheries Advisory Commission

FROM: Paul J. Diodati, Director *Paul J. Diodati*

DATE: February 13, 2015

SUBJECT: 2015 *Vibrio parahaemolyticus* Control and Management Regulations

Background

Vibrio parahaemolyticus (*Vp*) is a naturally occurring bacterium in oysters. This bacterium rapidly multiplies when exposed to warm ambient air and water temperatures. While the bacterium is harmless to the oyster, high concentrations may cause severe gastro-intestinal illness in humans when oysters are consumed as a raw or undercooked shellfish product.

Confirmed cases of *Vp* related illness have increased in Massachusetts in recent years due to increasing water and air temperatures relating to climate change. Following incidents of *Vp* related illness in 2012, Massachusetts - through its Division of Marine Fisheries (*Marine Fisheries*) and Department of Public Health (DPH) - have been required by the U.S. Food and Drug Administration (FDA) to draft and implement an annual *Vp* Control Plan (Plan). The Plan establishes certain time-to-temperature restrictions, re-submergence protocols, and labeling and record keeping requirements to reduce the risk of *Vp* related illness and facilitate product recall when outbreaks occur. *Marine Fisheries* is responsible for implementing aspects of the Plan that affect harvesters, whereas DPH is responsible for implementing aspects of the Plan that affect wholesale seafood dealers.

Marine Fisheries first implemented the Plan through conditions to the commercial shellfish permit endorsement in 2012 and 2013. To further compliance with and enforcement of the Plan, we drafted and promulgated our first ever *Vp* management regulations in 2014. While there were, admittedly, some issues with this inaugural regulatory exercise, I am confident enacting the Plan through regulation is critical to protecting public health, furthering industry compliance, and promoting sustained growth in the state's oyster industry. Updates to these regulations are needed in 2015 to resolve regulatory confusion, further comply with federal mandates to have enforceable regulations and accommodate industry whenever possible.

Changes to 2015 *Vp* Regulations

Following the 2014 *Vp* Control Season, a few aspects of the Plan and its implementing regulations needed to be amended for 2015. These regulatory changes include:

322 CMR 16.05(2) - Definitions

- Adding new and amending/deleting existing definitions to enhance clarity of the regulations.

322 CMR 16.05(3) – Commercial Harvester Restrictions

- Refining existing oyster icing requirements and including a measurable temperature threshold of 45° F for a water/ice mixture used for the purpose of icing oysters.

- Refining existing oyster shading requirements, so that oysters are only shaded from harvest until icing, rather than until receipt by primary buyer. Also, further specifying that if shading material comes in contact with oysters it must meet certain specifications to ensure cleanliness.
- Requiring oyster harvesters record time of icing on all shellfish harvester tags.
 - At the request of industry, a single shellfish icing tag may be used to record time of icing. However, to ensure compliance with federal mandates, this may only be done when:
 - all oysters were harvested at the same time, from the same shellfish growing area, by a single fisherman;
 - the tag is attached to the shellfish icing container at the time of icing and remains affixed to the container until it is received by a primary buyer; and
 - the shellfish icing tag includes time of harvest, harvest date, harvest area, harvester identification and quantity (in pieces) of oysters harvested.
 - The use of a single shellfish icing tag does not supersede the requirement that all containers and bags of shellfish need to be tagged with harvester information.
- Having oyster harvesters record the quantity of oysters harvested in pieces, rather than bushels and/or bags in the *Vp* Logbook.

322 CMR 16.05(4) – Restrictions that Apply to Aquaculturists Only

- Simplifying existing oyster re-submergence requirements for aquaculturists engaged in off-site culling activities.
- Specifying that oyster processing activities conducted by aquaculturists at barges, boats or floating structures outside of the aquaculture grant site are authorized, provided these structures are in the same designated shellfish growing area as the license site.
 - These oysters are not subject to off-site culling re-submergence requirements if the processing activity does not exceed two hours from time of harvest to first exposure and may be harvested and sold into market that day or returned to the grant for harvest and sale on the next calendar day.
 - Oysters that undergo processing activity that exceeds two hours from time of harvest or first exposure are subject to the off-site culling re-submergence requirements.
- Clarifying existing *Vp* Logbook requirements for re-submerged oysters.
- Clarifying existing container tagging requirements for re-submerged oysters.
 - At the request of industry, alternative methods to container tagging may be allowed. This includes broadcast re-submergence or the use of a single container re-submergence tag.
 - These alternative activities may only be conducted if a re-submergence plan is submitted to *Marine Fisheries* 30-days prior to the start of the activity.
 - The re-submergence plan must include a description of the re-submergence method, a description of the segregation method and a description of the re-submergence tagging method.

322 CMR 16.05(5) – Disposition and Handling of Non-Compliant and Recalled Oysters

- Moving existing rules regarding the disposition and handling of non-compliant and re-called oysters from 322 CMR 16.05(4) to its own regulatory section at 322 CMR 16.05(5).

322 CMR 16.05(6) – Authority to Suspend Permits for Violations

- Moving existing rules regarding the authority to suspend permits from 322 CMR 16.05(5) to 16.05(6) to accommodate the creation of a new section for the disposition.

Recommendation

Marine Fisheries shellfish and policy staff have been working, in concert with DPH food protection and policy staff, on developing the 2015 Plan and drafting of parallel *Vp* management regulations, which affect the harvest and handling of oysters by commercial shellfish harvesters in the Commonwealth. These regulations must be in place prior to start of the *Vp* Control Season on May 18, 2015 to comply with federal mandates. Accordingly, I am proposing to bring draft regulations out to public hearing during the early spring of 2015 and return to you in April with a final regulatory proposal for your approval.

Attachments

Draft *Vp* Regulations
Draft Control Plan