

6 NYCRR Part 42 – Shellfish Control - Express Terms

6 NYCRR Part 42 is repealed

A new Part 42 is adopted to read as follows:

42.1 Purpose.

The purpose of this Part is to provide adequate sanitary control over all non-commercially sterile shellfish in wholesale commerce in the State of New York. Cooked shellfish, shellfish subject to 21 CFR part 113 or 114, or raw processed shellfish with the explicit intent that they be cooked by the end consumer are products not covered by this Part. However, such shellfish products are still subject to the appropriate harvest and/or approved source controls outlined in this Part.

42.2 Definitions.

Unless the context otherwise requires, the following terms and their derivatives when used in this Part shall have the following meanings:

(a) 'Adequately Iced' means that the amount and application of ice, originating from an approved source of potable water, is sufficient to ensure that immediate cooling begins and continues for all shellfish. It requires that the shellfish or containers of shellfish are completely surrounded by ice, within a self-draining container.

(b) 'Aerobic plate count per gram or milliliter' means a bacterial test which counts all bacterial colonies which grow in or on standard methods agar when such agar is incubated aerobically for 45 to 51 hours at 95°F (35°C plus or minus 0.5°C).

(c) 'Allergen cross-contact' means the transfer of an allergen from a food containing an allergen to a food that does not contain the allergen. An '*allergen*' is a substance that causes an allergic reaction.

(d) 'Approved' means acceptable to the department based on a determination as to conformance with appropriate standards, good public health practices, or good manufacturing practices.

(e) 'Batter' means any moist edible preparation containing cereal, milk, eggs and other foodstuffs used individually or in combination in the processing of shellfish for use as food for human consumption.

(f) 'Breeding' means any dry edible preparation containing one or more dry ingredients used in the processing of shellfish for use as food for human consumption.

(g) 'Business address' or 'place of business' means a physical location identified in a permit application as the business address where any shellfish-related activities are conducted.

(h) 'Certified shellfish lands' means shellfish lands from which the harvesting of shellfish for use as food is permitted by commissioner's order.

(i) 'Clean or cleaned' means the absence of foul, dirty, loathsome, dangerous, toxic, abnormal, impure or unsafe substance.

(j) 'Coliform group' means all of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacilli which ferment lactose broth with gas formation within 48 hours at 95°F (35°C plus or minus 0.5°C).

(k) 'Commercial sterility' means free of viable microorganisms having public health significance and free of viable microorganisms ordinarily capable of reproducing and causing spoilage under normal storage conditions. Commercial sterility of shellfish or other foodstuffs is achieved by the proper application of heat under pressure, or by other effective methods, to such shellfish or such other foodstuffs when such shellfish or such other foodstuffs are contained in hermetically sealed containers. Commercially sterile shellfish or other foodstuffs shall not contain viable bacteria of the

coliform group capable of growing and/or reproducing in or on standard methods agar when such agar is incubated aerobically for 45 to 51 hours at 95°F (35°C plus or minus 0.5°C).

(l) 'Commissioner' means the Commissioner of Environmental Conservation or the commissioner's duly authorized representative.

(m) 'Communicable disease' means any disease listed in section 2.1 of Title 10 NYCRR, and any other diagnosed foodborne illness that may be transmitted through the handling of food.

(n) 'Compliance schedule' means a written schedule that provides a deadline by which Key or Other deficiencies must be corrected.

(o) 'Confidential fisheries data' means shellfish landings data, statistics or other information collected by the department from the holders of Class A, B, D or E shellfish dealers permits.

(p) 'Container' means a receptacle for receiving, shucking, processing, transporting, storing, packing, repacking, shipping, reshipping or distributing shellfish.

(q) 'Contamination' means any foul, loathsome, dangerous, toxic or abnormal or impure substance. 'Contaminated' means the presence of such substances.

(r) 'Corrective action' means an action required to be taken in order to address deviations from a critical limit identified in the shellfish Hazard Analysis Critical Control Point (HACCP) Plan.

(s) 'Corrective action plan' means a written plan which outlines any corrective actions required to be taken in order to address any deficiencies, including deviations from a critical limit identified in the shellfish HACCP Plan.

(t) 'Critical control point' means a point, step or procedure in the handling, storing, packing, processing, shipping or shucking of shellfish at which one or more controls can be applied to prevent, eliminate, or reduce a food safety hazard.

(u) 'Critical deficiency' means a condition or practice which results in the production of a product that is unwholesome or presents a threat to the health or safety of the consumer.

(v) 'Critical limit' means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard or hazards.

(w) 'Culture or cultivation' means the controlled or partially controlled raising, breeding, growing, planting and containment of marine plant or animal life in any marine hatchery or through on-bottom or off-bottom culture.

(x) 'Department' means the State of New York Department of Environmental Conservation.

(y) 'Easily cleanable' means readily accessible and fabricated of material and finish so residues may be completely removed by normal cleaning methods.

(z) 'Excessive bacteria' means, in the case of shellfish, a fecal coliform MPN per 100 grams of sample in excess of 230 or an aerobic plate count per gram of sample in excess of 500,000.

(aa) 'Farmed or farm-raised' means any shellfish subject to culture or cultivation as permitted under a permit issued by the department pursuant to Part 48 of this Title.

(ab) 'Fecal coliform' means that portion of the coliform group which will produce gas from lactose in an EC or A-1 multiple tube procedure liquid medium within 24 hours, plus or minus 2 hours, in a water bath maintained at 112.1°F (44.5°C, plus or minus 0.2°C), or another approved method acceptable to the department.

(ac) 'Food' means ice, shellfish or any ingredient used on or in shellfish products.

(ad) 'Harvester' or 'digger' means a person who takes shellfish from shellfish lands. 'Harvest' means to take shellfish from shellfish lands.

(ae) 'Harvester education course' means a training course approved by the department that includes safe shellfish harvesting, handling, and transportation practices.

(af) 'Hazardous' means actually or potentially dangerous to human health.

(ag) 'Internal temperature' means the external temperature of the shell of the shellfish at the center of a packaged mass of shellstock in its container.

(ah) 'Key deficiency' means a condition or practice which may result in product that is unwholesome, misbranded, or presents a threat to the health or safety of the consumer.

(ai) 'Land' or 'landed' means the bringing of shellfish to shore or the transfer of shellfish from a vessel to shore, pier, wharf, dock or similar structure.

(aj) 'Lot of shellstock' or 'lot of shellfish' means a single type of bulk shellstock or containers of shellstock of not more than one day's harvest from a single defined harvest area gathered by one or more harvesters. A lot may also be used to segregate shellfish by harvest times or intended use for the purpose of complying with the time to temperature requirements.

(ak) 'Marine district' means the waters of the Atlantic Ocean within three nautical miles of the coastline of the State and all tidal waters within the State including the Hudson River up to the Governor Mario M. Cuomo Bridge (formerly known as the Tappan Zee Bridge).

(al) 'MPN' means most probable number, which is an estimate of the numbers of bacteria per 100 milliliters or grams of sample using laboratory tests and probability tables in a manner endorsed or approved by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration.

(am) 'Noncommercially sterile' means the inverse of 'commercially sterile'.

(an) 'Non-hazardous' means not actually or potentially dangerous to human health.

(ao) 'Other deficiency' means a condition or practice that is not defined as critical or key but is not in accordance with the requirements of this Part.

(ap) 'Original shipper' means the first shipper who distributes or sells or offers for sale shellfish to another shipper, reshipper, retailer or ultimate consumer after the harvest of such shellfish or after the purchase of such shellfish from a harvester.

(aq) 'Packing' means placing shellfish in a container. 'Packer' means a person who performs such activities.

(ar) 'Person' means any individual, group of individuals, public or private corporation, limited liability company, industry, co-partnership, joint-stock company, not for profit organization, association, firm, legal entity, trust or estate.

(as) 'Processing' means the shucking, dismembering, cutting, chopping, grinding, heating, freezing, depurating, blowing or water storage of shellfish, or the adding of batter, breading or other foodstuffs to shellfish. 'Processor' means a person who performs such activities.

(at) 'Repacking' means removing shellfish from a container and placing such shellfish in another container. 'Repacker' means a person who performs such activities.

(au) 'Reshipper' means a shellfish dealer who receives and redistributes, in wholesale commerce, previously packed shellfish from a shipper, another reshipper or a processor. A reshipper is not authorized to pack, repack, tag or label, retag or re-label containers of shellfish. A reshipper is authorized to remove dead or broken shellfish from containers.

(av) 'Retail commerce' means the selling or offering for sale of shellfish to an ultimate consumer.

(aw) 'Safe' means nonhazardous.

(ax) 'Sanitary' means free of pathogenic microorganisms and excessive bacteria. 'Sanitize' means to make sanitary.

(ay) 'Sewage' means water-borne refuse, including fecal material of humans and other warm-blooded animals.

(az) 'Shaded' means protected from exposure to sunlight that may cause a significant increase in post-harvest growth of 'Vibrio' bacteria due to an increase in temperature.

(ba) 'Shellfish' means, for the purpose of this Part, fresh or frozen oysters, clams, mussels or scallops or any edible portion thereof except for scallops when the final product is only the adductor muscle.

(bb) 'Shellfish dealer' means any person who engages in the processing, packing, repacking, receipt, storage, possession, transportation, distribution, or shipment of shellfish in wholesale commerce, excluding freight forwarders.

(bc) 'Shellfish lands' means all tidal or saline waters within the marine district and the lands lying thereunder, including such lands which are exposed at low tide.

(bd) 'Shellfish sanitary inspection' means an unannounced/announced inspection of facilities, buildings, structures, invoices, shellfish tags and labels, hazard analysis, HACCP Plans and any other records required to be kept pursuant to this Part.

(be) 'Shellstock' means live molluscan shellfish in the shell.

(bf) 'Shipper' means a shellfish dealer who receives and distributes or redistributes shellfish in wholesale commerce.

(bg) 'Shuck' means to release shellfish from one or both shells. 'Shucker' means a person who performs such activities.

(bh) 'Standard measure' means a bushel with a volume of 2,150.42 cubic inches or otherwise in agreement with criteria set out in the NYS Agriculture and Markets Law.

(bi) 'Start of harvest' or 'time of harvest' means the time when the first shellstock is taken from the water, or in the case of intertidal harvest, the time of first exposure.

(bj) 'Stuffing' means any edible preparation containing batter, breading, shellfish, seasoning, and other foodstuffs used individually or in combination that may be used in the processing of shellfish as food for human consumption.

(bk) 'Total coliform' means bacteria of the coliform group which will produce gas from brilliant green bile lactose broth two percent when such broth is incubated for 51 hours or less at 35°C, plus or minus 0.5°C.

(bl) 'Transaction record' means a written or computer-generated record of all shellfish received or shipped in wholesale or retail commerce.

(bm) 'Tributary' means a harbor, river, creek, pond, stream, or other body of water that is fed from or fed into a larger body of water such as a sound, ocean or bay.

(bn) 'Trip record' means a written document that includes the harvester name, harvester permit number, harvest area, the harvest date and time and, if applicable, the temperature of each lot of shellstock harvested.

(bo) 'Uncertified shellfish lands' means shellfish lands from which, except as otherwise provided pursuant to the Environmental Conservation Law or this Subchapter, the harvesting of shellfish for use as food has been prohibited by commissioner's order.

(bp) 'Unsafe' means the inverse of safe.

(bq) 'Unwholesome' means the inverse of wholesome.

(br) 'Vibrio parahaemolyticus Control Plan' ('Vp'CP) means a written plan developed by the department in response to a shellfish related 'Vp' illness outbreak or unacceptable risk of illness. Such plan outlines control measures that must be taken by shellfish harvesters and shellfish dealers to prevent or decrease the likelihood of 'Vp' related illnesses occurring due to the consumption of raw or undercooked shellfish.

(bs) 'Water of drinking quality' means water that meets the requirements of Part 5 of Title 10 NYCRR.

(bt)'Water storage' or 'wet storage' means the holding of shellstock harvested from certified shellfish lands in tanks of water, or containers of shellstock harvested from certified shellfish lands held in certified bodies of water for purposes of storage or de-sanding.

(bu) 'Wholesale commerce' means the selling or offering for sale of shellfish to a person other than the ultimate consumer, including restaurants or food service establishments, and such shellfishing activities as the harvesting, processing, packing, repacking, receiving, storing, possessing, shipping or reshipping of shellfish which may result in such selling or offering for sale.

(bv) 'Wholesome' means shellfish that is fresh, unspoiled, clean and free from adulteration, contamination, evidence of previous temperature abuse, and suitable for human consumption without altering its physical or organoleptic characteristics.

(bw) 'Wild' means any marine plant or animal life existing in a wild or natural state that are not subject to culture or cultivation under a permit issued by the department pursuant to Part 48 of this Title.

42.3 Applicability; general prohibitions.

(a) The provisions of this Part shall apply to all persons who, in wholesale commerce, engage in any aspect of shellfishing in the State of New York, including, but not limited to, the growing,

harvesting, processing, handling, packing, repacking, receiving, storing, possessing, transporting, distributing, shipping, reshipping or selling or offering for sale of shellfish.

(b) Failure to comply with the provisions of this Part or the conditions of any permit issued pursuant to this Part is a violation of this section.

(c) Nothing contained in this Part shall be construed as relieving any person from complying with any applicable Federal, State or local law, rule or regulation.

(d) Nothing contained in this Part shall be construed as preventing the department from inspecting retailers or any other non-permit holders to ensure compliance with applicable provisions of article 13 of the Environmental Conservation Law and this Part, when the department deems that such inspections may be necessary to assure that the public health, safety and welfare of the people of the State of New York are protected and the intent and purposes of article 13 of the Environmental Conservation Law and this Part will be carried out.

(e) No person engaged in any activity described in this Part shall purchase or receive shellfish from a person who has failed to obtain and maintain a valid and appropriate permit issued by the department or a similar valid permit issued by the shellfish sanitation control agency of the exporting state or foreign country. In order for such permit to be acceptable to the department, the shellfish sanitation control program of such agency of such state or foreign country shall have been endorsed or approved by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration.

(f) No person engaged in any activity described in this Part shall ship or cause to be shipped shellfish to a person who has failed to obtain and maintain a valid and appropriate permit issued by the department.

(g) No person shall import shellfish for use as food for human consumption into the State of New York unless such shellfish have been grown, harvested, processed, stored, packed, repacked, shipped or reshipped, under sanitary conditions which are equivalent with the provisions of this Part.

42.4 Applications for permits; permit description; permit fees.

(a) No person shall receive shellfish, store shellfish, or engage in any other activity described in this Part without a valid and appropriate permit issued by the department.

(b) An application for a permit shall be filed with the State of New York Department of Environmental Conservation by the applicant on a form and in a manner prescribed by the department. An application shall be accompanied by the appropriate application fee as set forth in article 13 of the Environmental Conservation Law, and the following, as applicable:

(1) If applying for a shellfish digger's (harvester's) permit, proof of completion of a harvester education course, at a frequency determined by the department, but shall not exceed every 5 years; or

(2) If applying for a shellfish dealer permit, proof of completion of a shellfish dealer education course, as described in section 42.5 of this Part, and submission of the following:

(i) a copy of a shellfish HACCP Plan, as described in section 42.8 of this Part, that has been approved by the department;

(ii) a copy of a shellfish shipping invoice or bill of lading pre-printed or stamped with the applicant's name, business address, and shellfish shipper permit number assigned by the department. No changes or alterations to the invoice may be made, unless approved by the department;

(iii) if applicable, a proof copy of a shellfish shipping tag pre-printed or stamped with the applicant's name, business address, and shellfish shipper permit number assigned by the department. No changes or alterations to the tag may be made, unless approved by the department;

(iv) if applicable, a copy of a shucked shellfish label or container that meets the requirements of section 42.12(a)(4) of this Part. No changes or alterations to the label or container may be made, unless approved by the department;

and

(v) a business address that has been inspected and approved by the department for the shellfish activities for which the application was filed. The criteria for a business address to meet the minimum requirements for approval are as follows:

(a) HACCP requirements:

(1) No critical deficiencies observed during inspection;

(2) Not more than two key deficiencies observed during inspection; and

(3) Not more than two other deficiencies observed during inspection.

(b) For sanitation items and additional requirements:

(1) No critical deficiencies observed during inspection;

(2) Not more than two key deficiencies observed during inspection; and

(3) Not more than three other sanitation or additional requirement deficiencies observed during inspection.

(c) Subject to the provisions of sections 13-0311 and 13-0315 of the Environmental Conservation Law and this Part, the department in its discretion, may issue permits for the following shellfish activities:

(1) Digger's (harvester's) permit.

This permit allows the holder thereof to take (harvest) shellfish from certified shellfish lands in the State for commercial purposes and to ship or sell such shellfish only to a holder of a valid class A, B or E dealer's permit who has a place of business in Nassau or Suffolk County and whose permit contains a condition authorizing the holder of the Class A, B or E shellfish dealer's permit to receive shellfish from a shellfish digger. The holder of a digger's permit shall not harvest shellfish from uncertified shellfish lands except as provided in section 42.14(b) of this Part.

(2) Class A (shipper) permit.

This permit shall allow the holder thereof and any person in the employ of the permit holder to:

(i) reship shellfish previously shipped by the holder of a class A, B, C, D or E shellfish dealer permit or similar permit issued by the shellfish sanitation control agency of another state or foreign country;

(ii) pack or repack shellstock received from the holder of a digger's permit provided the Class A permit holder's place of business is located in Nassau or Suffolk County and such permit contains a condition authorizing them to do so; or

(iii) pack or repack shellstock received from the holder of a class A, B, C, or D shellfish dealer permit or similar permit issued by the shellfish sanitation control agency of another state or foreign country. The holder of a class A permit is authorized to tag or label, retag or re-label containers of shellstock.

(3) Class B (processor) permit.

This permit shall allow the holder thereof and any person in the employ of the permit holder to engage in the activities authorized by a class A permit, as described in paragraph (2) of this subdivision, and to otherwise process shellfish. The holder of a Class B permit may allow the holder of a digger's permit to shuck bay scallops at the Class B permit holder's facility provided that the scallops were

harvested from certified shellfish lands within the State. Any bay scallops shucked at the Class B permit holder's facility by such digger shall not be sold or shipped to anyone other than the Class B permit holder.

(4) Class C (reshipper) permit.

This permit shall allow the holder thereof and any person in the employ of the permit holder to receive, store, and reship shellfish previously shipped by the holder of a class A, B, C, D or E shellfish dealer permit or similar permit issued by the shellfish sanitation control agency of another state or foreign country. The holder of a class C permit is authorized to remove dead or broken shellstock from containers, but is not authorized to pack, repack, tag or label, retag or re-label containers of shellfish;

(5) Class D (digger/shipper) permit.

This permit shall allow the holder thereof to ship shellstock which the holder has legally harvested from shellfish lands of the State;

(6) Class E (bay scallop shucker/packer) permit.

This permit shall allow the holder thereof, members of the permit holder's immediate family, and not more than two employees of the permit holder, to shuck and pack bay scallops which have been received from the holder of a digger's permit and to ship such scallops in the form of fresh shucked adductor muscle meat only in intrastate commerce.

(7) Shellfish bait harvester's permit—no fee.

This permit shall allow the holder thereof to harvest shellfish from designated uncertified shellfish lands and to use or sell such shellfish only for use as bait.

(8) Shellfish water storage permit—no fee.

This permit shall allow the holder thereof to store shellstock harvested from certified shellfish lands in one of the following:

(i) tanks of water, or

(ii) containers of shellstock held in certified (approved) natural bodies of water pursuant to the provisions of Part 48 of this Title.

42.5 Shellfish Dealer Education.

(a) Prior to the issuance of a shellfish dealer permit, the applicant must be trained in current good manufacturing practices which includes, at minimum, that reasonable measures and precautions must be taken as related to the following:

(1) Personnel and all employees.

(i) Shall not be permitted to conduct shellfish related activities if any observations of illness, boils, open lesions, sores, infected wounds or any other abnormal source of microbial contamination by which there is a possibility of food, food-contact surfaces or food packaging materials becoming contaminated. Shellfish related activities may be resumed when the condition has been corrected or if boils, open lesions, sores, infected wounds are adequately covered with impermeable material(s).

(ii) While on duty, hygienic practices to the extent necessary to protect against allergen cross-contact and contamination of food shall include but are not limited to wearing outer garments suitable to the shellfish related activity; maintenance of personal cleanliness; thorough hand washing and sanitizing when hands may have become soiled or contaminated or at frequencies related to the shellfish activity; removing all unsecured jewelry, and other objects that may fall into food, equipment, or containers; wearing gloves and effective hair restraints; storing clothing and personal items where any shellfish related activities are not being conducted; and, prohibit eating, drinking, gum chewing and tobacco use where any shellfish related activities are conducted.

(2) Facilities and grounds.

(i) Construction and design of any facility used for conducting any shellfish related activity shall be suitable in size to provide adequate space for personnel to perform their duties, the storage of equipment, packaging material, separation of operations which may include the use of partitions, and to facilitate maintenance and sanitary operations. Adequate illumination in all areas where shellfish related activities are conducted, including hand washing stations, and adequate ventilation to minimize dust, odors, vapors, steam, and noxious fumes shall be provided. Adequate screening or other protection against pests must also be provided.

(ii) The grounds around the facility including driveways, walkways, yards, and parking lots shall be maintained. The proper storage of equipment, adequate drainage, removal of litter and waste, and cutting weeds or grass within the immediate vicinity of the facility must also be maintained to deter pests from breeding near the facility, or from entering the facility.

(3) Sanitary operations.

(i) Safety of water that may come in contact with food or food contact surfaces which also includes the proper uses of backflow and back-siphon prevention devices, and proper sewage disposal systems. Ice, ice machine reservoirs, and any part of the ice machine that comes in contact with the ice produced must also be protected from dirt and bacterial or chemical contaminants.

(ii) The condition and cleanliness of food contact surfaces which includes, but is not limited to, all equipment, utensils, outer garments, gloves, hands, and packaging material that food may contact. All food contact surfaces must be constructed of safe, non-porous, and easily cleanable materials.

(iii) The prevention of cross-contamination includes the protection of shellfish and any equipment, utensils, containers, pallets used in connection with shellfish from contamination including, but not limited to, splash from foot traffic or other sources when received, during storage,

and at points of transfer. Shellfish must be stored separately from non-related shellfish activities by means of adequate barriers, or by space and time.

(iv) The maintenance of hand washing, hand sanitizing, and toilet facilities must be adequately and properly supplied. Toilet facilities must have self-closing doors, be kept clean, functional, and properly plumbed.

(v) The protection of shellfish, ice, and food contact surfaces from adulterants which includes condensate and any other physical, chemical, or biological contaminants.

(vi) The proper use, labeling and storage of toxic materials which includes, but is not limited to, cleaning compounds, sanitizing solutions, lubricants, pesticides, and rodenticides.

(vii) The exclusion of pests including vermin, insects, birds, wild or domestic animals from the facility, vessels, and conveyances used for transporting shellfish, and any other areas where shellfish related activities may take place.

(b) Every employee of the shellfish dealer shall receive training in current good manufacturing practices to ensure that the responsibilities and tasks assigned to the employee are sufficient to address each paragraph described in subdivision (a) of this section as it relates to the responsibilities and tasks assigned to that employee.

(c) Every new employee of the shellfish dealer shall receive training in current good manufacturing practices as provided in subdivision (b) of this section within thirty days of initial hiring.

42.6 Conditions of a permit.

(a) Any permit issued pursuant to article 13 of the Environmental Conservation Law or this Part may be issued with conditions. Conditions may be attached as may be necessary to assure that the public health, safety and welfare of the people of the State of New York are protected, and the intent and purposes of this Part will be carried out. Facilities, buildings, structures, equipment, and

conveyances used for activities described in this Part and maintenance of all shellfish transaction records, and all tagging requirements, shall be in compliance with the applicable provisions of this Part and shall be approved by the department prior to the issuance or renewal of a permit.

(b) Every permit issued pursuant to article 13 of the Environmental Conservation Law or this Part shall contain the following conditions:

(1) the department shall have the right to inspect any facility, building, structure, property or conveyance used for any activity described in this Part;

(2) the department shall have the right to take samples, without payment, of shellfish, water, chemicals, food ingredients and other substances for examinations;

(3) the department shall have the right to inspect and copy any hazard analysis, hazard control plans, hazard control records, sanitation records, tags, labels, shipping or receiving invoices or documents, bills of lading or other records required to be kept pursuant to this Part;

(4) the permit shall expire on December 31st of the year of issue;

(5) the violation of any condition of a permit or provision of this Part may result in permit modification, suspension or revocation, or seizure of any lot, quantity or shipment of shellfish or related materials associated with such violation; and

(6) the permit shall be made available for inspection by the department at all times from the date of issue through the date of expiration, and during conducting of any activity described in this Part.

(c) The holder of a class A, B, C or D shellfish dealer permit, issued pursuant to section 42.4 of this Part, shall not ship shellfish out of state unless the permit contains a condition authorizing such shipment.

(d) The holder of a class A, B or E shellfish dealer permit, issued pursuant to section 42.4 of this Part, shall not purchase or receive shellstock from the holder of a digger's permit, unless such a class A, B or E shellfish dealer permit holder has a place of business in Nassau or Suffolk County and such permit contains a condition authorizing the purchase or receipt of such shellfish from the holder of a digger's permit.

(e) The holder of a digger's permit, issued pursuant to section 42.4 of this Part, shall not ship or sell shellfish to anyone other than the holder of a Class A, B or E shellfish dealer permit who has a place of business in Nassau or Suffolk County and whose permit contains a condition authorizing the purchase or receipt of such shellfish from the holder of a digger's permit.

42.7 License or permit modifications, suspensions, and revocations.

The modification, suspension, or revocation of licenses or permits issued pursuant to this Part will be pursuant to the provisions of Part 39 of this Title except that immediate suspension of any activity described in this Part shall commence when the permit holder, or any person in employ of the permit holder has been diagnosed with an illness or communicable disease (such as, Norovirus, Hepatitis A, Shigella spp., Salmonella typhi., or Enterohemorrhagic or Shiga Toxin-producing Escherichia coli) that may be transmittable through the handling of food. Such permit suspension shall remain in effect until clinical recovery has been determined by a medical doctor.

42.8 Recordkeeping requirements.

(a) General requirements.

(1) All shellfish transaction records, and all other records required to be kept pursuant to this Part shall:

(i) be complete and accurate;

(ii) be available for inspection for a period of at least two years from the date of the last entry;
and

(iii) when required as a condition to a shellfish processor permit, include lot numbers in records for specific batches of shellfish processed.

(b) Harvesters (diggers). Shellfish harvesters shall make daily dated entries in a ledger (log book) or using other methods approved by the department. All log books shall be completed prior to landing shellfish. Such ledgers shall be made available for inspection for a period of at least two years from the date of the last entry. The ledger shall include the following:

(1) quantities of shellstock harvested (net weight, numerical counts or standard measures);

(2) the harvest date;

(3) time of harvest and, if applicable, time of cooling;

(4) harvest area or location (an identification of areas from which the shellstock were harvested shall not be less descriptive than the descriptions set forth in section 42.14(c) of this Part); and

(5) the names and permit numbers of all receivers of shellstock.

(c) Dealers.

(1) HACCP (hazard analysis critical control point); hazard analysis and hazard control plan.

(i) All shellfish dealers shall conduct, or have conducted for their facility and operations, a hazard analysis to determine whether a food safety hazard is reasonably likely to exist for each shellfish product that they receive, store, process, pack, repack, ship, or reship and maintain a written record of the date and findings of such hazard analysis. The analysis shall identify the preventative measures that shall be implemented at critical control points to reduce or eliminate the food safety hazards. Such hazards may be introduced within or outside the permit holder's facility and include food safety hazards that can occur before, during and after harvest.

(ii) All shellfish dealers shall have and implement a written hazard control plan when a hazard analysis determines that one or more food safety hazards are reasonably likely to occur. The written hazard analysis and control plan shall include the dealer's name and address, and be specific to the permit holder's facility, operations and all shellfish products handled at that facility, or any means of conveyance used by the permit holder to transport shellfish. The hazard control plan shall identify the food safety hazards, critical control points, critical limits and preventative measures the permit holder or the most responsible person at the facility shall take to control, reduce, or eliminate those hazards and the corrective action that will be taken to correct any deviations from the critical limits. The hazard analysis and hazard control plan shall be dated and signed by one of the following individuals: the most responsible person at the permit holder's facility, a higher-level official of the firm, or by the permit holder. That person's signature shall signify that the hazard analysis and written hazard control plan have been accepted by the permit holder for implementation at the permit holder's facility, or any means of conveyance used by the permit holder to transport shellfish. The hazard control plan shall be reviewed by the permit holder on an annual basis and when a change is made to the plan. Any review or change to the hazard control plan shall be signified by the permit holder's signature and date reviewed or when a change is made to the plan.

(iii) All shellfish dealers shall provide and maintain accurate, orderly dated records that include the dealer's name and address, and document routine monitoring of the critical control points and critical limits identified in the hazard analysis and written hazard control plan. The records shall include the actual values obtained, the time the values were obtained, observations made during the monitoring of critical control points and critical limits, and the initials of the person who made the observations during monitoring of critical control points and critical limits.

(iv) All shellfish dealers shall verify that the records in subparagraph (iii) of this paragraph are accurate. Verification must be conducted by an individual who has successfully completed adequate HACCP education or who is otherwise qualified through job experience to perform this function. Verification shall be signified by a signed and dated weekly review of the records.

(2) Recall Procedures. All shellfish dealers shall have and implement written shellfish recall procedures. Such shellfish written recall procedures shall include:

(i) The shellfish dealer's name and address;

(ii) a place to include the name of the recalling firm, or local, state or federal health inspection agency from whom the recall was received;

(iii) a place to include the date and time that the dealer was notified of the recall by the recalling firm, or local, state or federal health inspection agency, and a place to include the name of the person and method of contact from whom the dealer was notified;

(iv) a place to include the name of the harvester or shipper from whom shellfish were received;

(v) a place to include the types and quantities of shellfish being recalled;

(vi) a place to include the harvest area(s) and harvest date(s) affected by the recall;

(vii) a place to include the names, addresses and phone numbers of all firms to whom all shellfish affected by the recall were distributed;

(viii) a place to include the dates the shellfish were distributed; and

(ix) a place to include confirmation of the disposition of all shellfish distributed.

All shellfish dealers shall notify the department as soon as possible after being notified of a shellfish recall. Implementation of the shellfish product recall must include all information listed in subparagraphs (i) through (ix) of this paragraph and shall be submitted to the department as directed.

(3) Sanitation monitoring.

(i) All shellfish dealers shall maintain orderly dated sanitation records. Such records shall accurately document the frequency of sanitation control practices, and document the correction of any unsanitary conditions observed, to ensure that the permit holder's facility used to receive, store or process shellfish, or any means of conveyance used by the permit holder to transport shellfish are kept in an orderly, non-hazardous condition, and that all the shellfish products in the permit holder's facility or any means of conveyance used by the permit holder, are shucked, processed, packed, repacked, shipped or reshipped in a safe and sanitary manner. Such sanitation practices and sanitation records shall include the date and time monitoring occurred, the initials of the person who made the observations and, at a minimum, address the following:

(‘a’) safety of water that may come in contact with food or food contact surfaces;

(‘b’) condition and cleanliness of food contact surfaces, utensils, gloves and outer garments;

(‘c’) prevention of cross-contamination from insanitary objects or materials to shellfish products, shellfish packaging materials, food contact surfaces, utensils, gloves and outer garments;

(‘d’) maintenance of hand washing, hand sanitizing and toilet facilities;

(‘e’) protection of shellfish products, shellfish packaging materials, food contact surfaces, utensils, gloves and outer garments from adulteration such as, but not limited to, cleaning compounds, sanitizing agents, lubricants, condensate, pesticides, and other physical, chemical and biological contaminants;

(‘f’) proper labeling, storage and use of cleaning compounds, sanitizing agents or other toxic materials;

(‘g’) monitoring and control of employees' health conditions that could result in microbiological contamination of shellfish, shellfish packing materials, food contact surfaces, utensils, gloves and outer garments; and

(‘h’) exclusion of vermin, insects, other pests, and wild or domestic animals from the permit holder's facility, and any means of conveyance used by the permit holder to transport shellfish.

(4) Shellfish dealer education records.

(i) All shellfish dealers shall maintain a record of all employees that have been trained as provided in section 42.5 of this Part. The record shall include:

(‘a’) the employee’s name;

(‘b’) the date the employee has completed the training;

(‘c’) the employee’s signature; and

(‘d’) for new employees, the date hired. Training for new employees must be completed within 30 days of date hired.

(5) Receiving records.

(i) All shellfish dealers shall maintain receiving records that include the following:

(‘a’) the names, addresses and permit numbers of all shellfish dealers from whom shellfish were received;

(‘b’) the name and State permit numbers of harvesters if shellfish were received from harvesters;

(‘c’) the date and time received;

(‘d’) the date and time of harvest if shellfish were received from harvesters;

(‘e’) the temperature of the shellfish when received;

(‘f’) the quantities (net weights, numerical counts, or standard measures) of shellfish received;

(‘g’) the common name of the shellfish received;

(‘h’) area (location) of harvest;

(‘i’) wild or farm-raised;

(‘j’) the on/off-bottom culture permit number for shellfish farm-raised within the State; and
(‘k’) the original shipper’s permit number.

(ii) No shellfish dealer shall receive a shipment of shellfish unless it is accurately identified by an invoice or bill of lading, and shall not fail to make any such invoice or bill of lading received with shellfish readily available for inspection by the department for at least two years after the receipt of such shellfish. Such invoices or bills of lading shall include the name, address and State shellfish permit number of the dealer, the date the shipment was received, and the quantity and common names of all shellfish in the shipment. If such invoices or bills of lading are maintained by the dealer as the receiving record, the area of harvest, the harvest date, and the original shipper permit number must be included. All shellfish dealers shall file such invoices or bills of lading in an orderly manner by date or by other methods acceptable to the department.

(iii) No shellfish dealer shall receive a shipment of shellstock unless the shipment is accompanied with a shipping document indicating the temperature of the shellstock at shipping, and initials, date, and time of shipment. For shipments of shellstock shipped prior to being cooled to an internal temperature of 50°F (10°C), the shipping document must indicate the presence of a time/temperature recording device. Upon receipt of the shellstock shipment, the dealer shall record the temperature of the conveyance in which the shellstock were received, the internal temperature of the shellstock, or if the shellstock were received adequately iced, and the date and time the shellstock and other shellfish were received. Such shipping document shall be available for inspection by the department for at least two years after receipt.

(6) Shipping records.

(i) All shellfish dealers shall maintain shipping records that include the following:

(‘a’) the recipient’s name and address;

(‘b’) the quantities (net weights, numerical counts or standard measures) of shellfish shipped;

(‘c’) the common names of the shellfish shipped;

(‘d’) wild or farm-raised;

(‘e’) the on/off-bottom culture permit number for shellfish farm-raised within the State;

(‘f’) date shipped;

(‘g’) area of harvest;

(‘h’) harvest date; and

(‘i’) the original shipper permit number; such permit numbers shall be prefixed with the initials of the state or foreign country issuing such permit.

(ii) No shellfish dealer shall ship shellfish unless it is accompanied by an invoice or bill of lading. All shellfish dealers shall make one copy of any invoice or bill of lading for shipped shellfish readily available for inspection by the department for at least two years. Such invoices or bills of lading shall be preprinted or stamped with the seller's name, business address and State shellfish permit number, and must clearly indicate the name, address and permit number, if applicable, of the receiver of the shellfish, the quantity (net weight, numerical count or standard measure), the common name of the shellfish shipped, the date shipped, and the area of harvest, or a method approved by the department for accurately tracing back shipments of shellfish. If such invoices or bills of lading are maintained by the dealer as the shipping record, and no other method for accurately tracing back shipments of shellfish has been approved by the department, the harvest date, and the original shipper permit number must be included. All shipping invoices or bills of lading shall be filed in an orderly manner by date or by other methods acceptable to the department.

(iii) No shellfish dealer shall ship shellstock unless it is accompanied by a shipping document indicating the time and temperature of shellstock at the time of shipping. The document must also

include the date of shipment and the shellfish dealer's initials. If this is a separate document as described in subparagraph (ii) of this paragraph, the name of the shipper and the receiver of the shipment must also be included. The shipping document is not required for shellstock shipments to retail or food service establishments. Shellfish dealers shall ship shellfish adequately iced or in a conveyance prechilled at or below 45°F (7.2°C).

(iv) All shellfish dealers possessing a valid class A, B, or E shellfish dealer permit shall maintain records that include monthly totals of quantities (net weights, numerical counts or standard measures), common names and the harvest areas (locations) of all shellfish received from harvesters. Such monthly totals shall also be submitted, on a form that may be prescribed by the department, to the Bureau of Shellfisheries, Division of Marine Resources, New York State Department of Environmental Conservation by the 10th day of each succeeding month. The monthly totals may also be submitted electronically.

42.9 Facilities, buildings, structures and surrounding grounds.

(a) No person shall use or construct a new facility, building or structure, nor alter an existing facility, building or structure for the receiving, packing, processing, holding, storing, or otherwise handling of shellfish unless it is approved by the department, and meets all the requirements of subdivisions (b) through (e) of this section.

(b) Facilities, buildings, or structures shall:

(1) not be used if it is subject to flooding during ordinary high tides;

(2) not be used if it becomes flooded. Should any area of a facility, building, or structure become flooded, all shellfish related activities shall be immediately discontinued and shall not resume until the following conditions are met:

(i) the flood waters have receded; and

(ii) the facility, building, or structures have been cleaned and sanitized; and

(iii) any shellfish related equipment has been cleaned and sanitized; and

(iv) any shellfish packaging materials that may have come into contact with flood waters have been disposed of adequately.

(3) not be used unless it is of such a size that work can be carried out in an orderly and sanitary manner;

(4) be kept clean, orderly, and in good repair;

(5) have an adequate number of refuse containers with closeable lids that are maintained in good condition and emptied regularly throughout the workday;

(6) have adequate drainage in parking areas, driveways, and surrounding grounds;

(7) have adequately constructed walls, ceilings, floors and floor drains.

(i) Walls shall be covered with smooth and impervious light-colored material;

(ii) the corners where walls joint shall be sealed and impervious;

(iii) ceilings shall be covered with smooth and light-colored material;

(iv) junctions between floors and walls shall be sealed and impervious;

(v) floors shall be constructed of smooth, impervious materials which shall be maintained to be free from cracks or uneven surfaces and graded to effectively drain; and

(vi) floor drains shall be maintained to allow proper drainage, prevent the backflow of waste waters and odors, and be connected to a disposal system that complies with applicable plumbing codes.

(8) have adequate lighting sufficient to observe all areas. All sources of illumination shall be shielded from breakage in areas where any shellfish activities may take place.

(9) have an area(s) separated from any shellfish related activities for the storage of cleaning compounds or solutions, sanitizers, pesticides, chemicals, or any other potentially unsafe substances.

(10) The dealer shall ensure that ventilation, heating, or cooling systems do not create conditions that may cause the shellfish products to become contaminated.

(11) Adequate cleaning supplies, brushes, detergents, and sanitizers shall be provided.

(c) No person shall allow access to operational areas of a facility, building or structure to unauthorized persons or employees.

(d) No person shall store unused or non-essential equipment in areas of the facility, building or structure where shellfish activities are conducted.

(e) No person shall use a facility, building or structure unless adequate control of insects, vermin, birds, other pests, or wild and domestic animals are provided.

(1) Openable exterior windows shall be effectively screened or otherwise protected;

(2) Exterior doors shall be tight-fitting, and kept in proper working condition; air screens, strip curtains, or similar exclusion devices shall be kept in proper working condition;

(3) other potential entrance places such as around chimneys, vent pipes, and heating or cooling duct work shall be screened or otherwise protected;

(4) exterior waste disposal receptacles shall have closable lids; and

(5) areas surrounding a facility, building, or structure shall be free from conditions which may attract insects, vermin, birds, other pests, or wild and domestic animals.

42.10 Safety of water and ice.

(a) No person shall use a facility, building, or structure that does not have a permanently installed supply of running water of drinking water quality. The water supply shall:

(1) be adequately protected from backflow and back-siphonage;

(2) be protected from wastewater and sewage cross-connections; and

(3) not be supplied from non-public water systems or private wells unless the water supply has been tested by an approved laboratory prior to use, after it has been repaired, and at least two times a year at six-month intervals. The laboratory test results shall be submitted upon completion to the Bureau of Shellfisheries, Shellfish Inspection Unit.

(b) Ice. Any ice used as a refrigerant shall:

(1) be made from water of drinking water quality or obtained from an approved source;

(2) keep components of any machine used for the production of ice free from corrosion, clean, sanitary, and protected from adulterants and other forms of contamination;

(3) store ice in areas or containers such as, but not limited to, bins or vats which have been constructed from safe materials equipped with drains adequate to prevent the accumulation of water created by melting ice. Such containers shall be kept free from corrosion, cracks and gouges, clean, sanitary, and protected from adulterants and other sources of contamination; and

(4) use equipment for the handling of ice such as, but not limited to, shovels, scoops and pails which have been constructed from safe materials, kept free from corrosion, cracks and gouges, clean, sanitary, and stored in a manner which will prevent the contamination thereof.

42.11 Plumbing, sinks, sewage, wastewater, toilets and toilet rooms.

(a) All plumbing shall be permanently installed in compliance with applicable plumbing codes.

(b) An easily accessible and permanently installed hand washing sink, which must only be used for the purpose of hand washing, shall be provided with the following:

(1) warm water at a minimum temperature of at least 100°F (37.8°C) dispensed from a hot and cold mixing or combination faucet;

(2) permanently installed drains that are connected to effective and appropriate waste disposal systems;

(3) adequate supplies of dispensed hand-cleaning soap or detergent in suitable containers;

(4) adequate supplies of single-service sanitary towels or approved mechanical hand-drying devices;

(5) highly visible and understandable signs directing workers and/or employees to wash their hands thoroughly with soap or detergent before starting work and before returning to work after any interruption; and

(6) refuse containers with closable lids provided at hand washing sink locations.

(c) Safe and effective means for the disposal of sewage and other wastewaters that complies with applicable plumbing and building codes shall be provided.

(d) Toilets and toilet rooms. Convenient access to a toilet room that has an adequate number of toilets shall be provided.

(1) Toilet room doors shall be tight fitting, and self-closing and shall not open directly into the packing room of a shucking, packing or repacking facility.

(2) Toilet rooms shall have adequate ventilation that meets applicable building code requirements.

(3) An adequate supply of toilet tissue with suitable holders shall be provided in the toilet room, and if applicable, in each toilet room stall.

(4) A hand-washing sink that complies with the requirements in paragraphs ((1)-(6)) of subdivision (b) of this section shall be provided in or adjacent to the toilet room.

(5) A refuse container with a closeable lid shall be provided in or adjacent to the toilet room.

(e) Ware washing sinks, two-compartment or three-compartment sinks. Any sink used for washing and sanitizing equipment or utensils used for handling shellfish or ice shall be constructed from safe and easily cleanable materials that are free from exposed screws, bolts, and rivet heads, and kept easily accessible for use, free from corrosion, clean and in sanitary condition.

(1) Hot and cold running water shall be provided and dispensed from combination faucets, or faucets with mixing valves, and shall be at a temperature consistent with the requirements of federal, state or local laws or regulations.

(2) Permanently installed drains that are connected to effective and appropriate waste disposal systems that comply with applicable plumbing and building codes shall be provided.

(3) Adequate supply of detergent and sanitizers in suitable containers convenient to the sink area shall be provided.

(4) A test kit or other device that accurately measures the concentration of chemical sanitizing solutions shall be provided and used as directed.

42.12 Receiving, packing, repacking, and processing shellfish.

(a) Identification of shellfish by shellfish dealers.

(1) General requirements.

(i) No person, including retailers, shall receive, store, possess, sell, offer for sale, transport, ship, reship, give, or caused to be received, stored, possessed, sold, offered for sale, transported, shipped, reshipped, or given, shellfish in containers that have not been properly tagged or labeled.

(ii) Except as provided in subparagraph (iii) of this paragraph and clause (c) of subparagraph (a)(3)(iii) of this subdivision, no person, including retailers, shall remove or deface any tag or label required to be affixed to any container of shellfish pursuant to this Part.

(iii) All persons, including retailers, shall not fail to retain any tag and/or label required to be affixed to any container of shellfish upon emptying, retagging, or labeling such container of shellfish. Such tags or labels shall be available for inspection by the department for a period of 90 days from the date such tag or label has been removed and shall be retained in an orderly manner by date.

(iv) No person, including retailers, shall receive, purchase, possess, sell, offer for sale, give or cause to be received, purchased, possessed, sold, offered for sale or given, any shellfish tag or label that belongs to another shellfish dealer, except for the tag or label that is required to be affixed to each container of shellfish pursuant to this Part, unless otherwise approved by the department.

(2) Commingling of shellfish.

(i) No person shall pack or repack shellfish from more than one shipper or more than one harvest area, as described in section 42.14(c) of this Part, or from different harvest areas without the State, in the same container.

(ii) No person shall pack or repack shellfish from different harvest dates in the same container.

(iii) No person shall pack or repack shellfish that have been cultured or farm-raised from more than one culture or cultivation site or from more than one on/off-bottom culture permit holder within the State, in the same container.

(iv) No person shall pack or repack shellfish that have been cultured or farm-raised in the same container with wild shellfish that have been taken from any cultivation site or harvest area within the State.

(v) When a 'Vp'CP has been established by the department, no person shall pack shellfish harvested from a single area by more than one harvester in the same container until the minimum temperature required by such 'Vp'CP has been achieved.

(vi) Shucked scallops from any harvest area described in section 42.14(c) of this Part may be packed together.

(3) Shellfish identification.

(i) Shellfish dealer tags shall meet the following requirements.

(‘a’) The tag shall be at least 13.8 square inches (89.0 square centimeters) in size, constructed of a substantial, waterproof, and tear-resistant material with a reinforced point of attachment.

(‘b’) All the information on a shellfish tag must be legible, and smear and smudge resistant.

(‘c’) The information in subclauses (‘1’) through (‘9’) of this clause must be in the specific order as follows:

(‘1’) dealer’s name, either preprinted or stamped;

(‘2’) dealer’s address, either preprinted or stamped;

(‘3’) dealer’s permit number with the prefix "NY" and followed by a two-letter shipper designation assigned by the department, either preprinted or stamped;

(‘4’) a place for the original shipper’s permit number;

(‘5’) harvest date, and if applicable, the date of depuration processing, or if wet stored, the original harvest date and the final harvest date (the date removed from wet storage);

(‘6’) harvest location (harvest area), including state of origin;

(‘7’) type or common name of shellstock;

(‘8’) quantity (net weight, numerical count or standard measure) of shellstock; and

(‘9’) the following preprinted statement capitalized and bold type: **“THIS TAG IS REQUIRED TO BE ATTACHED UNTIL THE CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE IN ORDER BY DATE FOR 90 DAYS. RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED:_____”**.

(‘d’) The following indelible statement, or an equivalent statement, shall appear on one side of the tag "RETAILERS, INFORM YOUR CUSTOMERS: Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

(‘e’) No person shall fail to indicate whether the shellfish are wild or farm-raised.

(‘f’) No person shall fail to include the on/off-bottom culture permit number for shellfish cultured within the State.

(ii) Retagging shellstock.

(‘a’) All information entered on a shellfish tag must be legible, and smear and smudge resistant.

(‘b’) All information entered on a shellfish tag must be transcribed exactly as it appears on the tag being removed. Subclauses (‘1’) through (‘5’) of this clause must be in the specific order as follows:

(‘1’) the original shipper’s (dealer’s) permit number, if different, prefixed with the state, province, or country two letter abbreviation followed by the number and ending with the appropriate letters designated;

(‘2’) the harvest date, including the year;

(‘i’) if depurated, the date of depuration process and depuration cycle number;

(‘ii’) if wet stored, the original harvest date and the final harvest date (the date removed from wet storage), and the lot number. The lot number shall begin with “w”;

(‘3’) the harvest location (harvest area);

(‘4’) type of or common name of shellstock in the container;

(‘5’) quantity of shellstock (net weight, numerical count, or standard measure of the shellstock in the container);

(‘6’) an indication of whether the shellstock are wild or farm-raised; and

(‘7’) the on/off-bottom culture permit number for shellstock cultured within the State.

(iii) Original shippers (dealers) and packers.

(‘a’) All original shippers or repackers of shellstock shall tag the shellstock in compliance with paragraph (3) of this subdivision.

(‘b’) All original shippers shall describe the areas from which the shellstock were harvested.

The description of areas for shellstock harvested in New York State shall not be less specific than the descriptions set out in section 42.14(c) of this Part and shall include the State abbreviation (NY).

(‘c’) An original shipper or packer must remove harvesters' tags from containers of shellstock, and keep them on file in an orderly manner for 90 days, except when the tag is required to remain attached.

(4) Processed shellfish identification.

(i) Packers and repackers of processed shellfish.

(‘a’) All packers and repackers of shucked shellfish shall pack such shellfish or portions thereof, in clean and sanitary containers which have been clearly and permanently marked with the packer's or repacker's name, the packer's or repacker's permit number prefixed with the initials of the state, province or foreign country that issued the permit, the common name of the shellfish contained in the container, and the net weight of the shellfish contained in the container, and one of the following:

(‘1’) For each individual package containing 64 fluid ounces or more of fresh or fresh frozen shellfish, the words “DATE SHUCKED” followed by the date the shellfish was shucked shall appear on the lid and the side wall or bottom of the container. The date shall appear in a format which identifies the day, month and the year the product was shucked.

(‘2’) For each individual package containing less than 64 fluid ounces of fresh or fresh frozen shellfish, the words “SELL BY” or “BEST IF USED BY” followed by a reasonable date when the product would be expected to reach the end of its shelf life which shall be determined by date the shellfish was originally shucked, if applicable. The date shall appear in a format which identifies the day, month and the year.

(‘b’) All packers or repackers of thawed shellfish shall label containers of shellfish with the words “PREVIOUSLY FROZEN” in addition to the requirements described in clause (‘a’) of this subparagraph.

(‘c’) All packers or repackers of processed shellfish shall pack such shellfish, or portions thereof, in clean and sanitary containers which have been clearly and permanently labeled with a lot number when the department determines, as a permit condition, that such labeling with a lot number is necessary.

(‘d’) The labels on containers described in this subparagraph may also include a name and address prefaced with either "distributed by" or "packed for." In such case the packer's or repacker's permit number shall be included on the labels.

(‘e’) All packers or repackers of fresh, frozen, or thawed shellfish described in this subparagraph shall include on each container of shellfish the following indelible statement, or an equivalent statement: “RETAILERS, INFORM YOUR CUSTOMERS: Consuming raw or undercooked

meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.”

(b) Receiving, packing and repacking operations for shellstock.

(1) All shellfish dealers shall provide competent supervision of workers and employees to ensure shellstock are not contaminated when received, packed, repacked or otherwise handled.

(2) All shellstock received shall be reasonably free of mud, sand, clay and other sediment.

(3) All shellstock received shall be inspected for wholesomeness. Shellstock with cracked or broken shells or dead shellstock shall be discarded.

(4) The temperature of the shellstock shall be recorded upon receipt using a thermometer numerically scaled with increments of not more than 2°F (1°C) that is accurate to plus or minus 2°F (1°C).

(i) All shellstock received from another shellfish dealer must be received at 50°F (10°C) or less.

(5) All shellstock received from a harvester shall be placed under temperature control at the time of receipt and must be received on the same day of harvest.

(6) All shellstock received from a shellfish dealer shall be kept under temperature control.

(7) All shellstock shall remain under temperature control except for brief periods not to exceed two hours to allow for the loading, unloading, culling, packing and repacking of shellstock.

(8) All shellstock shall be placed in safe containers, and stored in a manner which will prevent the contamination thereof.

(9) All equipment used for the receiving, packing, repacking or otherwise handling of shellstock shall be constructed from easily cleanable, corrosion resistant, impervious materials, and shall be kept clean and maintained.

(10) No person shall allow shellstock or containers of shellfish to be placed or stored on the floor, the ground, street, sidewalk, curb or any other possibly contaminated surface. This may be accomplished by the use of impervious and easily cleanable pallets, racks, shelves, or other effective devices. Such pallets, racks, shelves, or other devices shall be washed frequently to maintain cleanliness.

(11) Only running water from an approved source shall be used to wash shellstock.

(12) Vibrio control measures for dealers.

(i) All oysters received from harvesters between May 1 through September 30, both dates inclusive, must be received under temperature control through icing, mechanical refrigeration maintained at 33°F(0.6°C) to 45°F(7.2°C) or other cooling method approved by the department.

(ii) All shellfish received from harvesters between May 1 through October 31, must be received shaded from the sun.

(iii) When the department determines that a 'Vp'CP is required, all hard clams and oysters harvested from shellfish lands under the 'Vp'CP between the dates of May 1 through September 30, both dates inclusive, must be received under temperature control through icing, mechanical refrigeration maintained at 33°F(0.6°C) to 45°F(7.2°C) or other cooling method approved by the department. Shellstock with a temperature greater than 60°F(15.6°C) at receiving must be rejected or if the harvester tag does not include the time of harvest.

(iv) All hard clams and oysters harvested from shellfish lands under a 'Vp'CP, must be cooled to a temperature of 50°F(10°C) or below within 10 hours or less, from time of receipt and prior to shipping. Shellfish shall not be shrink wrapped prior to reaching 50°F(10°C) or below.

(c) Processing, packing and repacking of shellfish.

(1) Equipment.

(i) The food contact surfaces of any equipment used for the processing, shucking, packing, and repacking of shellfish, shall be constructed from safe, easily cleanable, water impervious, food grade materials that are free from exposed screws, bolts and rivet heads. Lead or other toxic metals shall not be used in the construction of food contact surfaces.

(ii) All equipment used for the processing, shucking, packing, and repacking of shellfish shall be non-corroded, clean and sanitary.

(iii) No person shall use shucking benches and blocks unless the food contact surfaces of such shucking benches and blocks are constructed from safe, easily cleanable, smooth and water impervious materials. Clothing, supplies, and other materials shall not be stored above such shucking benches.

(iv) No person shall use machines for shucking, grinding, mincing, blowing, washing or other shellfish processing operations unless such machines are constructed from safe, easily cleanable materials. Such machines shall be cleaned frequently during the work day and at the end of the work day.

(v) No person shall use blower air pump intakes unless effective air filters are installed and maintained. Oil bath type filters on such blower air pump intakes are prohibited.

(vi) No person shall use tools, knives, buckets and other utensils for the processing, shucking, packing and repacking of shellfish unless such tools, knives, buckets and other utensils are constructed from safe, easily cleanable, water impervious, food grade materials that are free from exposed screws, bolts, and rivet heads.

(vii) No person shall use tools, knives, buckets and other utensils for the processing, shucking, packing and repacking of shellfish unless such equipment is non-corroded, clean and sanitary.

(viii) All tools, knives, buckets and other utensils used during the working day shall be cleaned frequently. At the end of the working day, tools, knives, buckets and other utensils shall be stored and maintained in a manner that will prevent contamination thereof.

(ix) No person shall fail to wash and sanitize their hands, gloves, tools, knives, buckets and other utensils with an effective disinfecting solution prior to processing shellfish.

(x) No person shall use shucking buckets or other containers which receive shucked shellfish, or portions thereof, when such buckets or containers have been nested, unless exteriors of such buckets or containers have been sanitized before nesting.

(xi) A permanently installed three compartment sink shall be provided exclusively for the washing, rinsing and sanitizing of equipment with the requirements described in section 42.11(e) of this Part, and shall not be used for hand washing.

(xii) An easily accessible and permanently installed hand washing sink shall be provided in the packing area that complies with the requirements described in section 42.11(b) of this Part.

(2) Operations.

(i) No person shall process, shuck, pack or repack shellfish in a manner which will allow for the development of excessive bacteria in such shellfish.

(ii) Shucking, packing and other operations shall be separated by partitions or other effective methods, when the department determines, as a permit condition, that such separations are necessary.

(iii) When heat shock is used to prepare shellstock for shucking, the following shall apply:

(‘a’) A schedule for the heat shock process shall be posted in a conspicuous location.

(‘b’) All persons responsible or persons who intend to engage in the heat shock process shall be familiar with the requirements of this subparagraph; and

(c) All hot-dipped shellstock shall be immediately cooled after the heat shock process. Such cooling shall be accomplished by dipping the shellstock in an ice bath prepared with a potable water supply or the use of a flowing potable water supply.

(d) If a heat shock tank is used, and the water is maintained at or above 140°F (60°C) the dealer shall completely drain and flush the tank at the end of the day's operations. If the temperature is maintained below 140°F (60°C), then the dealer shall completely drain and flush the tank at 3-hour intervals.

(iv) All shellfish or portions thereof, shall be cooled to 45°F (7.2°C) within two hours after shucking, and thereafter, be maintained at temperatures between 33°F (0.55°C) and 45°F (7.2°C) unless such shellfish, or portions thereof, are frozen and maintained frozen. .

(v) Shellfish shells shall be removed from shucking operation areas frequently during the working day and at the end of the working day.

(vi) No person shall shuck, process, pack or repack shellfish in containers that are not clean and sanitary. During the shucking, processing, packing or repacking of such shellfish, and thereafter, such containers shall be protected from contamination and stored in a manner that will prevent the contamination thereof.

(vii) No person shall use breading, batter, stuffing or similar materials unless such breading, batter, stuffing or similar materials are prepared from safe materials in a clean and sanitary manner in clean and sanitary containers. Such breading, batter, stuffing or similar materials shall be protected from contamination and shall be prepared fresh daily in reasonably small quantities, and shall be maintained between 33°F (0.55°C) and 45°F (7.2°C).

(3) Supervision and personnel.

(i) All workers and employees shall be adequately supervised to ensure that such workers and employees do not contaminate shellfish.

(ii) All persons shall wear clean aprons, coats or uniforms as outer garments.

(iii) All persons shall wash and sanitize their hands and gloves, if gloves are worn:

(‘a’) before starting work;

(‘b’) after each absence from their workstation;

(‘c’) before changing their workstation; and

(‘d’) whenever they might have become soiled or contaminated.

(iv) No person shall use gloves, finger cots or shields which have been made from absorbent material.

(v) All persons shall remove hand and wrist jewelry that cannot be sanitized or protected by the use of non-absorbent gloves or other shields.

(vi) All persons shall wear effective hair restraints.

(vii) No person shall store clothing or other personal belongings in areas where shellfish are shucked and processed, packed or repacked.

(viii) No person shall eat food, drink beverages or use tobacco in any form in areas where shucked shellfish or portions thereof, or shellfish ingredients are exposed.

(ix) No person affected by boils, sores, infected wounds or abnormal sources of microbiological contamination shall work in any capacity in a facility, building or structure in which there is the possibility of shellfish or shellfish ingredients becoming contaminated by boils, sores, infected wounds or abnormal sources of microbiological contamination.

42.13 Storage of shellfish.

(a) Shellfish dry storage (mechanical refrigeration).

(1) Any holder of a shellfish dealer's permit shall provide a designated area for the dry storage of shellfish that complies with the requirements of this subdivision.

(i) All areas used for the dry storage of shellfish shall be separated from other facilities and activities by means of partitions or other effective methods.

(ii) No person shall allow, during the duration of the term of the applicable permit, the use of a dry storage area for any purpose other than the dry storage of foodstuffs.

(iii) All areas used for the dry storage of shellfish shall be sufficiently illuminated to permit the inspection of the contents thereof. All light bulbs, tubes, and other sources of illumination shall be shielded, coated or otherwise shatter resistant.

(iv) No person shall operate a dry storage area that is not of sufficient size to permit the inspection of contents, and to allow for adequate air circulation and workspace for employees.

(v) The floors shall be constructed of smooth, water-impervious materials that are graded to drains or outlets to provide rapid drainage of waste waters to effective and appropriate wastewater disposal areas.

(vi) The walls shall be covered with smooth and impervious light-colored materials.

(vii) The ceilings shall be covered with smooth and impervious light-colored materials.

(viii) The junction between floors and walls, and the junctions between walls and walls, shall be sealed and impervious.

(ix) The dry storage area shall be equipped with automatic temperature controls, adjusted to continuously maintain the temperature between 33°F (0.55°C) and 45°F (7.2°C).

(x) The dry storage area shall be equipped with an accurate (plus or minus 2°F or plus or minus 1°C) and readily visible thermometer or an accurate (plus or minus 2°F or plus or minus 1°C) temperature recording device.

(xi) The dry storage area shall be washable throughout, kept orderly, in good repair, protected from insects, vermin, domestic animals and other agents and forms of potential contamination.

(xii) Shellfish shall not be placed, stored or allowed to be placed or stored directly on the floor or any other possible contaminated surface. This may be accomplished by the use of impervious, and easily cleanable pallets, racks, shelves, or other effective devices. Such pallets, racks, shelves or other devices shall be washed frequently to maintain cleanliness.

(xiii) Frozen shellfish shall be maintained frozen.

(xiv) Unfrozen shucked shellfish or unfrozen portions thereof, shall be maintained at a temperature between 33°F (0.55°C) and 45°F (7.2°C).

(xv) Unfrozen shellstock shall be maintained at a temperature between 33°F (0.55°C) and 50°F (10°C).

(b) Wet storage.

(1) The provisions of this subdivision shall apply to any person storing or responsible for the storage of shellfish in water.

(i) No person shall store shellstock in any tank of water without first obtaining the following:

(‘a’) a valid Class B shellfish processor permit; and

(‘b’) a valid shellfish water storage permit.

(ii) No person shall store shellstock in open bodies of water without the following:

(‘a’) a valid Class B shellfish processor permit;

(‘b’) a valid shellfish water storage permit;

(‘c’) a valid transplant permit issued pursuant to Part 45 of this Title; and

(‘d’) a valid on/off bottom culture permit issued pursuant to Part 48 of this Title.

(iii) No person shall store shellstock in open bodies of water that are not certified pursuant to Part 41 of this Title.

(iv) No person shall store shellstock obtained within the state, or obtained from another state, province, or foreign country when the department determines certain environmental factors exist, such as, but not limited to, the presence of marine biotoxins.

(v) No person shall operate a water storage facility unless it meets the requirements of sections 42.9, 42.10 and 42.11 of this Part.

(vi) No person shall store shellfish in water in any tank which is not of a watertight construction.

(vii) No person shall store shellfish in any tank unless it has food grade interior surfaces.

(viii) All water storage tanks shall be kept clean, orderly, sanitary and protected from flooding and storm water runoff.

(ix) All water storage tanks shall be protected from wild and domestic animals and other forms, conditions and agents of contamination.

(x) No person shall permit the use of a tank for any purpose other than for the storage of shellstock.

(xi) No person shall permit the use of a tank for the storage of shellstock unless such tank is identified with a number, letter, or combination of a number and letter.

(xii) Accessibility to a tank used for the storage of shellstock shall be provided. Such accessibility shall not be accomplished by walking through the tank's storage water.

(xiii) No person shall permit access to any tank used for the water storage of shellstock to anyone other than authorized persons or employees.

(xiv) No person shall supply water to a water storage tank unless such water is from an approved source.

(‘a’) An approved source of water is:

(‘1’) water from a harvest area classified as certified pursuant to Part 41 of this Title; or

(‘2’) water obtained from a well that meets drinking water standards.

(‘b’) Supply water obtained from a well must be examined at least two times annually at 6-month intervals by an approved laboratory and be of satisfactory quality. Examination results shall be submitted to the department's Bureau of Shellfisheries, Shellfish Inspection Unit.

(‘c’) The degree of salinity of supply water shall be approximately equal to that of the waters from which such shellfish were harvested.

(xv) The water shall be supplied continuously to a water storage tank in an amount sufficient to provide at least two complete changes of water in such tank in each 24-hour storage period.

(xvi) No container shall be used for the water storage of shellstock unless such a container is constructed from impervious, safe materials and is easily cleanable.

(xvii) No container shall be used for the water storage of shellstock unless such a container is washed and sanitized within two hours after each use.

(xviii) No person shall reuse a container for the water storage of shellstock unless such a container is washed and sanitized before use.

42.14 Shellfish harvesting, identification and handling by harvesters. The provisions of this section shall apply, as appropriate, to persons who, in wholesale commerce, engage in activities described in the following subdivisions:

(a) Harvesting shellfish for use as food for human consumption.

(1) Except as provided in this Subchapter, or in subdivisions (b) and (c) of this section, no person shall harvest shellfish from uncertified shellfish lands.

(2) No person shall harvest shellfish without a valid shellfish digger's permit issued by the department.

(3) Shellfish shall be washed reasonably free from mud and sand with water as soon as possible after such shellfish have been harvested. Such water shall be tidal water from certified shellfish lands from which the shellfish were harvested or fresh running water of drinking water quality.

(4) During the period May 1 through October 31, all shellfish shall be shaded from the sun at all times from the time of harvest.

(5) Shellfish shall be placed in safe containers as soon as possible after harvest. Such containers shall be self-draining so as not to allow harvested shellfish to sit in standing or stagnant water, and shall be stored in a manner which will prevent the contamination thereof.

(6) A readily visible tag at least 13.8 square inches (89.0 square centimeters) in size shall be affixed securely to each container of shellstock prior to placement of any shellfish in the container. Shellfish harvester tags must include the 'time of harvest' for all shellfish taken ('time of harvest' begins when the first shellstock is taken from the water). 'Time of harvest' must be written in indelible ink on each tag and the tag must be affixed to the container prior to the placement of any shellfish into the container. Once a container has been completely filled as intended, a new 'time of harvest' begins when the next lot of shellfish is removed from the water. All shellfish harvester tags must be completed prior to leaving the area of harvest. Such tag must be constructed of a substantial, waterproof and tear-resistant material with a reinforced point of attachment and must indicate, indelibly and legibly, the following information in the specific order listed:

(i) harvester's name;

(ii) harvester's permit number issued by the department;

(iii) harvest date, including the year;

(iv) time of harvest and, if applicable, time of cooling;

(v) harvest area or harvest location (the description of the harvest area must not be less specific than the descriptions set out in subdivision (d) of this section);

(vi) common name of the shellfish in the container;

(vii) the quantity (net weight, numerical count or standard measure) of the shellfish in the container;

(viii) the following statement in bold, capitalized type: **“THIS TAG IS REQUIRED TO BE ATTACHED UNTIL THE CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS”**; and

(ix) if applicable, the on/off-bottom culture permit number.

(7) Harvested shellfish shall be protected from contamination, freezing and excessively high temperatures.

(8) Any boat, barge, or vessel used for the harvesting or transporting of shellfish shall be kept clean and orderly.

(9) No person shall permit shellfish or shellfish containers to contact bilge water. This may be accomplished by use of floorboards, false bottoms or other effective methods.

(10) No person shall permit or otherwise allow any wild animal, bird, pet or other domestic animal to be on board a boat, barge or vessel used for the harvesting or transporting of shellfish. Such animal or bird shall be immediately removed from such boat, barge or vessel if such animal or bird is found thereon.

(11) No person holding a digger's permit issued by the department shall harvest shellfish from a vessel that is not equipped with an approved marine sanitation device (MSD), portable toilet, or an

impervious and cleanable container with tight-fitting lid provided to contain human body wastes. Such MSD, portable toilet or impervious and cleanable container with a tight-fitting lid shall:

(i) be used only for the purpose intended;

(ii) be secured while on board and located to prevent contamination of shellstock by spillage or leakage;

(iii) be emptied only into a sewage disposal system;

(iv) be cleaned before being returned to the vessel;

(v) not be cleaned in equipment used for washing or processing food; and

(vi) for an impervious, cleanable container with a tight-fitting lid, be indelibly labeled "HUMAN WASTE" in contrasting letters at least three (3) inches in height.

(12) No person shall throw, dump, discharge, permit or allow any human body waste, garbage, cinders, ashes, oils, sludge, contamination or refuse of any kind to run into the waters of certified shellfish lands.

(13) All shellfish must be delivered to a certified shellfish dealer on the same day of harvest;

(i) During the period July 1 through August 31:

(a') All shellstock harvested shall be delivered to an authorized shellfish dealer by 6:00 p.m. on the day of harvest with the following exceptions:

(1') Harvested soft clams ('*Mya arenaria*') shall be delivered to an authorized shellfish dealer by 9:00 p.m. on the day of harvest; and

(2') for shellstock other than soft clams, when time of harvest begins at 1:00 p.m. or later, shellstock shall be delivered to an authorized shellfish dealer by 9:00 p.m. on the day of harvest.

(ii) During the period September 1 through June 30, all shellstock harvested shall be delivered to an authorized shellfish dealer by 9:00 p.m. on the day of harvest.

(14) Vibrio control measures for harvesters.

(i) All oysters harvested from certified shellfish lands between the dates of May 1 through September 30, both dates inclusive, must be immediately culled and placed under temperature control through icing, mechanical refrigeration maintained at 33°F (0.6°C) to 45°F (7.2°C) or other cooling method approved by the department upon commencement of 'time of harvest'. All oysters subject to immediate culling shall be maintained under temperature control (cooling) throughout the harvest day once 'time of harvest' begins.

(ii) When the department determines that a 'Vp'CP is required, all hard clams and oysters harvested from shellfish lands under the 'Vp'CP between the dates of May 1 through September 30, both dates inclusive, must be immediately culled and placed under temperature control through icing, mechanical refrigeration at 33°F (0.6°C) to 45°F (7.2°C) or other cooling method approved by the department upon commencement of 'time of harvest'. All oysters and hard clams subject to immediate culling under a 'Vp'CP shall be maintained under temperature control (cooling) throughout the harvest day once 'time of harvest' begins.

(iii) All shellfish harvesters shall adhere to the requirements of the 'Vp'CP for the harvest of oysters and hard clams. The Plan may include any or all of the following:

- (a') The duration for which the Plan shall remain in effect;
- (b') daily time limits of harvest;
- (c') time to temperature control measures;
- (d') the means for lowering shellstock temperatures;
- (e') the areas of harvest subject to the requirements; and
- (f') any additional tagging requirements.

(iv) All oysters and hard clams harvested under a 'Vp'CP must be cooled to an internal temperature of 60°F (15.6°C) or less prior to sale to the original dealer.

(b) Harvesting shellfish for use as bait.

(1) No person shall harvest shellfish for use as bait from uncertified shellfish lands without a valid shellfish digger's permit and a valid shellfish bait harvester's permit issued by the department.

(2) All shellfish harvesters harvesting shellfish for use as bait shall place such shellfish in containers clearly and permanently labeled "BAIT" prior to leaving the harvest area from which such bait has been harvested.

(3) A readily visible tag at least 13.8 square inches (89.0 square centimeters) in size shall be affixed securely to each such container of shellstock harvested for bait prior to leaving the area of harvest. Such tag shall be constructed of a substantial, waterproof, and tear-resistant material with a reinforced point of attachment and indicate, indelibly and legibly, the following information in the specific order listed:

(i) the harvester's name;

(ii) the harvester's permit number, and the harvester's shellfish bait harvester's permit number issued by the department;

(iii) the waters from which the shellfish were harvested;

(iv) the common name of the shellfish contained in the container;

(v) the date the shellfish were harvested; and

(vi) the words "FOR BAIT ONLY."

(4) No person shall permit shellfish harvested for use as bait to be transported or stored with, or to come into contact with, shellfish to be used as food for human consumption.

(5) No person shall permit containers, storage or transportation facilities, or any other equipment used in connection with shellfish to be used as bait, to be used in connection with shellfish for use as food unless such equipment has been cleaned and sanitized.

(c) Harvest areas. The harvest areas are described in this subdivision solely for the purposes of the department's shellfish sanitation program and are not intended to define the official boundaries of any body of water named herein. Reference points are taken from the appropriate NOAA nautical charts.

(1) Atlantic Ocean.

(i) Area A1 – All shellfish lands of the Atlantic Ocean lying west of a line extending due south from the southernmost point of the jetty located on the east side of Jones Inlet (Hempstead).

(ii) Area A2 – All shellfish lands of the Atlantic Ocean lying east of a line extending due south from the southernmost point of the jetty located on the east side of the Jones Inlet (Hempstead) and west of a line extending due south from Democrat Point on Fire Island (Babylon).

(iii) Area A3 – All shellfish lands of the Atlantic Ocean lying east of a line extending due south from Democrat Point on Fire Island (Babylon) and west of a line extending due south from the southernmost point of the jetty located on the east side of Moriches Inlet (Brookhaven).

(iv) Area A4 – All shellfish lands of the Atlantic Ocean lying east of a line extending due south from the southernmost point of the jetty located on the east side of Moriches Inlet (Brookhaven) and south of a line extending due east from Montauk Point (East Hampton).

(2) Area B – Block Island Sound. All shellfish lands of Block Island Sound and tributaries lying west of a line extending northerly from Botswick Point on Gardiners Island (East Hampton) to East Point on Plum Island (Southold), and lying south of a line extending northeasterly from East Point on Plum Island to Race Point on Fishers Island (Southold), excluding all that area within one mile of Fishers Island. ('Note': That area within one mile of Fishers Island has its own harvest area designation referenced in paragraph (17) of this subdivision.); and lying north of a line extending southeasterly from Eastern Plain Point on Gardiners Island to Shagwong Point (East Hampton) then

following the shoreline to Montauk Point (East Hampton), and lying north of a line extending due east from Montauk Point (East Hampton).

(3) Area N – Napeague Bay. All shellfish lands of Napeague Bay and tributaries, excluding Accabonac Harbor, Napeague Harbor, Lake Montauk (East Hampton) lying south of a line extending southernmost tip of land on the northern side of the entrance to the Accabonac Harbor to the southernmost tip of land on Gardiner’s Island (East Hampton), and lying south of a line extending easterly from the Eastern Point on Gardiners Island to Shagwong Point (East Hampton).

(4) Area G – Gardiners Bay. All shellfish lands of Gardiners Bay and tributaries, excluding Coecles Harbor (Shelter Island), Three Mile Harbor, and Hog Creek (East Hampton), lying east of a line northeasterly from Cornelius Point (Shelter Island) to Long Beach Point (Southold), and lying south of a line extending northeasterly from Orient Point to Plum Gut Light (Southold), and lying west of a line extending southerly from East Point on Plum Island (Southold) to Botswick Point on Gardiners Island (East Hampton), and north of a line extending westerly from the southernmost tip of land on Gardiners Island to the southernmost tip of land on the northern side of the entrance to the Accabonac Harbor (East Hampton), and lying north of a line extending southwesterly from Cedar Point (East Hampton) to the southeasternmost point of land at Mashomack Point Preserve (Shelter Island).

(5) Area P1 – Flanders Bay. All shellfish lands of Flanders Bay and tributaries lying west of a line extending from Red Cedar Point (Southampton) to Miamogue Point (Riverhead).

(6) Area P2 – Great Peconic Bay. All shellfish lands of Great Peconic Bay, excluding tributaries, lying east of a line extending northerly from Red Cedar Point (Southampton) to Miamogue Point (Riverhead), and lying west of a line extending southerly from the southeasternmost point of

land at New Suffolk to the northern tip of land on Robins Island (Southold), then continuing along the western shoreline to the southern tip of land on Robins Island (Southold).

(7) Area P3 – Little Peconic Bay. All shellfish lands of Little Peconic Bay, excluding tributaries, lying east of a line extending northerly from Cow Neck Point (Southampton) to the southern tip of land on Robins Island (Southold), then continuing along the eastern shoreline to the northern tip of land on Robins Island to the southeasternmost point of land at New Suffolk (Southold), and lying west of a line extending southerly from Cedar Beach Point (Southold) to Jessup Neck (Southampton). ('Note': Cutchogue Harbor and Hog Neck Bay have their own harvest area designation in subparagraphs (14)(i) and (14)(ii) of this subdivision).

(8) Area P4 – Shelter Island Sound Southwest (excluding West Neck Harbor). All shellfish lands of Shelter Island Sound Southwest including tributaries lying east of a line extending northerly from Jessup Neck Point (Southampton) to Cedar Beach Point (Southold), and lying south of a line extending easterly from Paradise Point (Southold) to Crab Creek Point (Shelter Island), and lying west of a line extending southerly from the southernmost point of the rock jetty at the South Ferry terminal (Shelter Island) to Tyndal Point (Southampton), and lying north of a line extending westerly from Gleason Point to Jessup Neck Point (Southampton). ('Note': West Neck Harbor has its own harvest area designation in subparagraph (15)(i) of this subdivision).

(9) Area P5 – Shelter Island Sound West, Southold Bay, and Hashamomuck Pond. All shellfish lands lying east of a line extending southwesterly from Conkling Point (Southold) to Jennings Point (Shelter Island), and north of a line extending westerly from Crab Creek Point (Shelter Island) to Paradise Point (Southold).

(10) Area P6 – Pipes Cove and Shelter Island Sound North. All shellfish lands lying south of a line extending northeasterly from Jennings Point (Shelter Island) to Conkling Point (Southold) and

west of a line extending southeasterly from Fanning Point (Southold) to the northeasternmost bulkhead at the North Ferry terminal (Shelter Island).

(11) Area P7 – Shelter Island Sound North, Dering Harbor, Greenport Harbor, and Stirling Basin. All shellfish lands lying east of a line extending northeasterly from the northeasternmost bulkhead at the North Ferry terminal (Shelter Island) to Fanning Point (Southold) and west of a line extending southeasterly from the southernmost point of land at Cleaves Point (Southold) to Hay Beach Point (Shelter Island).

(12) Area P8 – Shelter Island Sound North, Orient Harbor, and Hallocks Bay. All shellfish lands lying east of a line extending from the northernmost point of land at Hay Beach Point (Shelter Island) to the southernmost point of land at Cleaves Point (Southold) and north of a line extending southwesterly from the southwesternmost point of land at Long Beach (Southold) to the easternmost point of land at Cornelius Point (Shelter Island).

(13) South Fork (SF) tributaries of Great Peconic Bay, Little Peconic Bay, Napeague Bay, and Gardiners Bay.

(i) Area SF1 – All tributaries of Great Peconic Bay lying between Red Cedar Point and western jetty of the Shinnecock Canal (Southampton).

(ii) Area SF2 – Cold Spring Pond. All shellfish lands of Cold Spring Pond lying southeast of a line extending easterly from the northernmost point of land at the west side of the entrance to Cold Spring Pond to the northernmost point of land at the east side.

(iii) Area SF3 – Sebonac Creek Complex. All shellfish lands lying southeast of the harbor entrances of Sebonac Creek Complex and its tributaries, including Bullhead Bay, Little Sebonac Creek, West Cove Creek, and Scallop Pond (Southampton).

(iv) Area SF4 – North Sea Harbor, Wooley Pond, and Fresh Pond. All tributaries of Little Peconic Bay lying between Cow Neck Point and Jessup Neck Point (Southampton).

(v) Area SF5 – Noyac Bay and tributaries. All shellfish lands lying south of a line extending easterly from Jessup Neck Point to Gleason Point (Southampton).

(vi) Area SF6 – Sag Harbor. All shellfish lands of Shelter Island Sound lying west of a line extending northerly from Tyndal Point (Southampton) to the southernmost point of the rock jetty at the South Ferry terminal (Shelter Island), and east of a line extending southerly from the southeasternmost point of land at Mashomack Point Preserve (Shelter Island) to the northernmost point of land at Barcelona Point (East Hampton).

(vii) Area SF7 – Northwest Harbor. All shellfish lands lying east of a line extending northerly from the northernmost point of land at Barcelona Point (East Hampton) to the southeasternmost point of land at Mashomack Point Preserve (Shelter Island), and south of a line extending northwesterly from the southeasternmost point of land at Mashomack Point Preserve (Shelter Island) to the westernmost point of land at Cedar Point (East Hampton).

(viii) Area SF8 – Three Mile Harbor. All shellfish lands lying south of a line between the northernmost points of the jetties at the entrance to Three Mile Harbor (East Hampton).

(ix) Area SF9 – Hog Creek. All shellfish lands lying southerly of a line extending northwest of the Hog Creek Harbor entrance (East Hampton).

(x) Area SF10 – Accabonac Harbor. All shellfish lands lying west of a line extending northerly from the northernmost tip of land on the southern side of the entrance to the southernmost tip of land on the northern side of the Accabonac Harbor (East Hampton).

(xi) Area SF11 – Napeague Harbor. All shellfish lands of Napeague Harbor lying south and east of a line extending due south from the southernmost point of land on the north side of the entrance to Napeague Harbor (East Hampton).

(xii) Area SF12 – Lake Montauk (Montauk Harbor). All shellfish lands of Lake Montauk (Montauk Harbor) lying south of a line between the northernmost points of the rock jetties at the Lake Montauk harbor entrance (East Hampton).

(14) North Fork (NF). Tributaries of Great Peconic Bay and Little Peconic Bay.

(i) Area NF1 – Great Peconic Bay tributaries. All tributaries of Great Peconic Bay lying between Miamogue Point (Riverhead) and the southeasternmost point of land at New Suffolk (Southold).

(ii) Area NF2 – Tributaries of Cutchogue Harbor and Little Peconic Bay. All tributaries of Cutchogue Harbor and Little Peconic Bay between the seaward end of the rock jetty at the southernmost point of New Suffolk and southernmost tip of land at Nassau Point (Southold).

(iii) Area NF3 – Hog Neck Bay, Little Peconic Bay, and their tributaries. All shellfish lands between southernmost tip of land at Nassau Point and Cedar Beach Point (Southold).

(15) Shelter Island (SI), tributaries of Gardiners Bay and Shelter Island Sound South.

(i) Area SI1 – West Neck Harbor. All shellfish lands between the easternmost point of land at West Neck Point (Shell Beach Point) and the southwestern point of land at Ward Point (Shelter Island).

(ii) Area SI2 – Coecles Harbor. All shellfish lands lying westerly of a line extending northeasterly from Sungic Point to Reel Point (Shelter Island).

(16) Long Island Sound.

(i) Area LS1 – All shellfish lands of Long Island Sound, excluding tributaries, lying west of a line extending due north from Lloyd Point (Huntington).

(ii) Area LS2 – All shellfish lands of Long Island Sound, except tributaries, lying east of a line extending due north from Lloyd Point (Huntington) and west of a line extending due north from the northernmost point of land at Eatons Neck Point (Huntington).

(iii) Area LS3 – All shellfish lands of Long Island Sound and Smithtown Bay, excluding tributaries, lying east of a line extending due north from the northernmost point of land at Eatons Neck Point (Huntington) and west of a line extending due north from Old Field Point (Brookhaven).

(iv) Area LS4 – All shellfish lands of Long Island Sound, excluding tributaries, lying east of a line extending due north from Old Field Point (Brookhaven) and west of a line extending due north from the northernmost point of the rock jetty on the west side of Mattituck Inlet (Southold).

(v) Area LS5 – All shellfish lands of Long Island Sound, excluding tributaries and Fishers Island Sound, lying east of a line extending due north from the northernmost point of the rock jetty on the west side of Mattituck Inlet (Southold) then north of a line extending northeasterly from Orient Point to Plum Gut Light (Southold), and lying north of a line extending northeasterly from East Point on Plum Island to Race Point (Fishers Island). ('Note': That area within one mile of Fishers Island has its own harvest area designation in paragraph (17) of this subdivision).

(17) Area F – Fishers Island. All shellfish lands within one mile of the shoreline of Fishers Island (Southold).

(18) North Shore Waters (Tributaries of Long Island Sound).

(i) Area NS1 – Hempstead Harbor. All shellfish lands lying south of a line extending easterly from Prospect Point (North Hempstead) to Matinecock Point (Oyster Bay).

(ii) Areas NS2 – All tributaries of Long Island Sound between Matinecock Point and Rocky Point (Oyster Bay); and between Whitewood Point and Lloyd Point (Huntington).

(‘a’) NS2OBH – Oyster Bay Harbor. All shellfish lands of Oyster Bay Harbor and their tributaries lying west of a line extending northerly from Cove Point to Plum Point (Oyster Bay).

(‘b’) NS2CSH – Cold Spring Harbor. All shellfish lands of Cold Spring Harbor and their tributaries lying east of a line extending northerly from Cove Point to Plum Point (Oyster Bay) and south of a line extending easterly from Rocky Point (Oyster Bay) and Whitewood Point (Huntington).

(iii) Areas NS3HB and NS3NP – Huntington Bay, Northport Bay and their associated bays, harbors, and coves.

(‘a’) NS3HB – Lloyd Harbor and Huntington Bay. All shellfish lands lying south of a line extending easterly from Lloyd Point to Eatons Neck Point (Huntington) and west of a line extending southerly from the southernmost point of West Beach to the northeastern corner of the bathhouse at Crescent Beach (Huntington).

(‘b’) NS3NP – Northport Bay. All shellfish lands lying east of a line extending southerly from the southernmost point of West Beach to the northeastern corner of the bathhouse at Crescent Beach (Huntington).

(iv) Area NS4 – Tributaries of Long Island Sound and Smithtown Bay, Stony Brook Harbor, and Flax Pond. All shellfish lands lying between Eatons Neck Point (Huntington) and Old Field Point (Brookhaven).

(v) Area NS5 – Port Jefferson Harbor and tributaries. All shellfish lands lying between the northernmost points of the rock jetties at the Port Jefferson Harbor entrance (Brookhaven).

(vi) Area NS6 – Mount Sinai Harbor. All shellfish lands lying between the northernmost points of the rock jetties at the Mount Sinai Harbor entrance (Brookhaven).

(vii) Area NS7 – All tributaries to Long Island Sound lying east of the eastern rock jetty located at the entrance to Mount Sinai Harbor and west of the rock jetty located at the western side of the entrance to Mattituck Creek (Southold).

(viii) Area NS8 – Mattituck Creek. All shellfish lands lying between the northernmost points of the rock jetties at the mouth of Mattituck Creek.

(19) South Shore Waters.

(i) Area SS1 – Hempstead Bay and East Bay. All shellfish lands lying east of a line extending north from Silver Point (Hempstead); northeast of the COLREGS Demarcation line 33 CFR 80.160d (Jones Inlet); and west side of the southbound lanes of the Wantagh State Parkway (Hempstead).

(ii) Area SS2 – South Oyster Bay. All shellfish lands between the west side of the southbound lanes of the Wantagh State Parkway (Hempstead and Oyster Bay) and west side of the Amityville Cut (Babylon).

(iii) Area SS3 – Great South Bay. All shellfish lands between the west side of the Amityville Cut (Babylon) and the west side of the southbound lanes of the Robert Moses Causeway (Islip) lying north of Jones Beach Island.

(iv) Area SS4 – Great South Bay. All shellfish lands lying east of the west side of the southbound span of the Robert Moses Causeway (Islip) and north of Jones Beach Island; and lying east of COLREGS Demarcation line 80.160c and west of a line extending south from Nicoll Point (Islip) to the eastern jetty of the Point O' Woods boat basin (Fire Island).

(v) Area SS5 – Great South Bay. All shellfish lands lying east of a line extending southerly from Nicoll Point (Islip) to the eastern jetty of the Point O' Woods boat basin (Fire Island) and west of a line extending southerly from the southernmost point of land at Blue Point (Brookhaven) to the western jetty of the Davis Park boat basin (Fire Island).

(vi) Area SS6. Patchogue Bay. All shellfish lands lying east of a line extending southerly from the southernmost point of land on Blue Point (Brookhaven) to the western jetty of the Davis Park boat basin (Fire Island) and west of a line extending southerly from Howells Point (Brookhaven) to the flag pole at Bellport Beach (Fire Island).

(vii) Area SS7 – Bellport Bay. All shellfish lands lying east of a line extending southerly from Howells Point (Brookhaven) to the flag pole at Bellport Beach (Fire Island) and west of a line extending due south from Smith Point (Brookhaven) to the shoreline of Fire Island.

(viii) Area SS8 – Narrow Bay. All shellfish lands lying east of a line extending due south from Smith Point to the shoreline of Fire Island and west of a line extending due south from Forge Point to the shoreline of Fire Island.

(ix) Area SS9 – Moriches Bay West. All shellfish lands of Moriches Bay and tributaries lying east of a line extending due south from Forge Point to the shoreline of Fire Island (Brookhaven) and west of a line extending from Tuthill Point to the northeasternmost point of land on the western side of Moriches Inlet (Brookhaven).

(x) Area SS10 – Moriches Bay East. All shellfish lands lying east of a line extending from Tuthill Point (Brookhaven) to the northeasternmost point of land on the western side of Moriches Inlet and north of COLREGS Demarcation line 80.160b and west of the western side of the Jessup Lane bascule bridge (Southampton).

(xi) Area SS11 – Moneybogue Bay, Quantuck Bay and Quogue Canal. All shellfish lands lying east of the western side of the Jessup Lane bascule bridge and west of the western side of the Post Lane bascule bridge (Southampton).

(xii) Area SS12 – Shinnecock Bay West. All shellfish lands lying east of the western side of the Post Lane bascule bridge and west of the western side of the Ponquogue Bridge (Southampton).

(xiii) Area SS13 – Shinnecock Bay East. All shellfish lands lying east of the western side of the Ponquogue Bridge and lying north of the COLREGS Demarcation line 80.160a and south of a line extending easterly from the northernmost point of the west jetty of the Shinnecock Canal to the northernmost point of the east jetty of the Shinnecock Canal at the entrance to Great Peconic Bay.

(xiv) Area SS14 – Mecox Bay. All shellfish lands of Mecox Bay including its outlet to the Atlantic Ocean (Southampton).

(20) All other North Shore waters or South Shore waters not described in paragraph (18) and (19) of this subdivision shall be preceded with the letters NS or SS and shall describe the name of the embayment.

42.15 Conveyances used for the transportation of shellfish.

(a) No person shall utilize a conveyance for the transporting of shellfish unless such conveyance is equipped with an easily washable shellfish holding area.

(b) All holding areas of any conveyance shall be kept orderly, in good repair, and protected from and free from insects, pets, wild and domestic animals and other agents and forms of contamination.

(c) All holding areas on trucks, trailers, and other conveyances shall be kept enclosed to protect shellfish from contamination. Such holding areas shall be equipped with drains adequate to prevent the accumulation of water created by melting ice, condensation, or other sources.

(d) Conveyances used for the transporting of shellfish shall be equipped with shellfish holding areas of sufficient size to permit the inspection of the contents thereof and to permit adequate air circulation.

(e) All shellstock shall be transported in storage areas continuously maintained between 33°F (0.55°C) and 45°F (7.2°C), except when shellstock are being transported for periods less than four hours from the time the shellstock are brought to shore.

(f) When shellstock is transported for more than four hours, mechanical refrigeration maintained at a temperature of 45°F (7.2°C) or lower in the shellfish storage areas shall be used. Such mechanical refrigeration units shall be equipped with automatic temperature controls with an accurate (plus or minus 2°F or plus or minus 1°C) and readily visible thermometer, or an accurate (plus or minus 2°F or plus or minus 1°C) temperature recording device.

(g) When shellstock is transported for less than four hours and mechanical refrigeration is not used, shellstock shall be adequately iced.

(h) Shipments of shellstock shall be cooled to an internal temperature of 50°F (10°C) or lower prior to being shipped by the original dealer.

(i) All containers of shellfish being transported shall have been properly tagged or labeled in compliance with the provisions of this Part.

(j) All unfrozen shucked shellfish, or portions thereof, shall be transported at a maintained temperature of between 33°F (0.55°C) and 45°F (7.2°C).

(k) All frozen shellfish shall be transported frozen.

(l) All frozen shellfish shall be transported in safe containers. Such containers shall be stored in a manner which will prevent their contamination.

42.16 Shellfish hazardous for use as food for human consumption.

When the department determines that shellfish might be hazardous for use as food for human consumption, such action shall be taken as deemed necessary to protect the public health and welfare. The department may prohibit shellfishing activities, such as, but not limited to, the harvesting,

shucking, processing, packing, transporting, selling, and storing of shellfish for use as food. The department may advise the general public, shellfish industry, and public health officials that shellfish might be hazardous for use as food.

42.17 Examination and condemnation of shellfish.

(a) Shellfish may be sampled and examined by the department as often as necessary to determine that such shellfish have been harvested, received, processed, shucked, packed, repacked, stored, or conveyed in a manner in compliance with the provisions of this Part. The department may, upon written notice to the permit holder or person in charge, place an embargo order on any shellfish that have been or where there is probable cause to believe that shellfish were harvested, processed, shucked, packed, repacked, stored, or conveyed in a manner not in compliance with the provisions of this Part. Under an embargo order, shellfish shall be stored in a manner determined by the department. No person shall remove or alter an embargo order, notice, or tag placed on shellfish by the department, and neither such shellfish nor the containers thereof shall be moved, relabeled, retagged, packed, repacked, processed, reprocessed, altered, sold, disposed of, or destroyed without permission of the department, except by order of a court of competent jurisdiction. After the permit holder or person in charge has had notice of a hearing and an opportunity to be heard, as provided in section 42.7 of this Part, based on the evidence produced at such a hearing or on the basis of examination by the department, or in the event that the permit holder or person in charge defaults in appearing at such hearing, the department may vacate the embargo order, direct the permit holder or person in charge of the shellfish which were placed under the embargo order to denature and destroy such shellfish in a manner determined by the department or to bring such shellfish into compliance with the provisions of this Part in a manner determined by the department.

(b) Samples of water, shellfish, and other materials shall be collected and examined in a manner endorsed or approved by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration. Laboratories engaged in the bacteriological examination of water, shellfish, and other materials shall have received and shall maintain a satisfactory evaluation by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration in order for results of such examinations to be acceptable to the department.

42.18 Confidentiality of fisheries data.

Shellfish landings data, statistics or other information collected by the department from the holders of Class A, B, D or E shellfish dealers permits shall be confidential and shall not be disclosed except to an authorized user or when required under court order; provided, however, that the department may release or make public any statistics in an aggregate or summary form (with no less than three permit holders contributing to that statistic) which does not directly or indirectly disclose the identity of any person who submits such data or statistic. For the purposes of these regulations, an 'authorized user' is any person that is employed by or under contract to the department or who is employed by or under contract with the National Marine Fisheries Service and has been designated by such agency to require confidential data as a means to fulfill their job responsibilities related to shellfish management and conservation or public health protection.

42.19 Penalties.

Any person violating any provision of this Part shall be subject to the penalties prescribed in the Environmental Conservation Law.