

**Readopt with amendment He-P 2150 through He-P 2159, effective 10-23-14 (Document #10704), to read as follows:**

PART He-P 2150 NEW HAMPSHIRE SHELLFISH SANITATION RULES: DECLARATION OF PURPOSE

Statutory Authority: RSA 143:20-28

He-P 2150.01 Declaration of Purpose.

(a) RSA 143:20-28 requires the New Hampshire department of health and human services to ensure the safety of shellfish being sold for food within the ~~S~~state of New Hampshire.

PART He-P 2151 NEW HAMPSHIRE SHELLFISH SANITATION RULES: DEFINITIONS

He-P 2151.01 Definitions.

(a) “Adequately iced” means that the amount and application of the ice is sufficient to ensure that immediate cooling begins and continues for all shellfish. If ice slurry is used and the shellfish are submerged, the presence of ice in the slurry indicates adequate ice.

(b) “Approved” means a classification used as an identifier for a growing area where harvest for direct marketing is allowed.

(c) “Aquaculture” means cultivating shellfish in controlled conditions for human consumption.

(d) “Authority” means the state or local shellfish control authority or authorities or their designated agents, which are responsible for the enforcement of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, as incorporated by reference in He-P 2152.01.

(e) “Certificate” means the document issued by the authority to a person to harvest or transport shellstock for commercial sale.

(f) “Certification” means the issuance of a numbered certificate to a person for a particular activity or group of activities that indicates:

(1) Permission from the department to conduct the activity; and

(2) Compliance with the provisions of RSA 143:22 and the requirements of these rules including the NSSP Guide for the Control of Molluscan Shellfish, as incorporated by reference in He-P 2152.01.

(g) “Certification number” means the unique identification number issued by the authority to each dealer for each location, which consists of a one to 5 digit Arabic number preceded by the 2 letter state abbreviation and followed by a 2 letter abbreviation for the type of activity or activities the dealer is qualified to perform in accordance with these rules and the NSSP Guide for the Control of Molluscan Shellfish, as incorporated by reference n He-P 2152.01.

(h) “Commingling” means the act of combining different lots of shellfish.

(i) “Commissioner” means the commissioner of the New Hampshire department of health and human services, or commissioner~~’s~~~~his or her~~ designee.

(j) “Compliance schedule” means a written comply-by-date that is specified on the inspection report that provides a correction time period to eliminate key and other deficiencies.

(k) “Conditional area management plan” means a plan developed by the NH department of environmental services (DES) which establishes a strict set of criteria to be met for the growing area to remain in the open status.

(l) “Conditionally approved” means a classification used to identify a growing area that meets the criteria for the approved classification except under certain conditions described in a conditional area management plan.

(m) “Conditionally restricted” means a classification used to identify a growing area that meets the criteria for the restricted classification except under certain conditions described in a conditional area management plan.

(n) “Conveyance” means any type of container used to transport shellfish.

(o) “Critical control point (CCP)” means a point, step, or procedure in a food process at which control may be applied, and a food safety hazard may as a result be prevented, eliminated, or reduced to acceptable levels.

(p) “Critical deficiency” means a condition or practice which:

- (1) Results in the production of a product that is unwholesome; or
- (2) Presents a threat to the health or safety of the consumer.

(q) “Critical limit” means the minimum or maximum value at 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.

(r) “Dealer” means a person to whom certification is issued for the activities of shellstock shipper, reshipper, shucker-packer, repacker, or depuration processor.

(s) “Department” means the New Hampshire department of health and human services.

(t) “Depuration” means the process of reducing the pathogenic organisms that may be present in shellstock by using a controlled aquatic environment as the treatment process.

(u) “Depuration processor (DP)” means a person who harvests or receives shellstock from growing areas in the approved classification or conditionally approved classification, restricted classification, or conditionally restricted classification in the open status and submits such shellstock to an approved depuration process.

(v) “Direct marketing” means the sale for human consumption of shellfish which:

- (1) Does not require depuration or relaying prior to sale; or
- (2) Has been subjected to depuration or relaying activities.

(w) “Facility” means an establishment, equipment, and premises designed, built, or installed to perform a specific function.

(x) “Growing area” means any site which supports or could support the propagation of shellstock by natural or artificial means.

(y) “Harvest” means the act of removing shellstock from growing areas and its placement on or in a manmade conveyance or other means of transport.

(z) “Harvest area” means an area that contains commercial quantities of shellstock and may include aquaculture sites and facilities.

(aa) “Harvester” means a person who takes shellstock by any means from a growing area.

(ab) “Hazard analysis critical control point (HACCP)” means a systematic, science-based approach used in food production as a means to ensure food safety which is based upon the 7 principles identified by the National Advisory Committee on Microbiological Criteria for Foods.

(ac) “Hazard analysis critical control point (HACCP) plan” means a written document that delineates the formal procedures that a dealer follows to implement the HACCP requirements set forth in 21 CFR 123.6 as adopted by the Interstate Shellfish Sanitation Conference.

(ad) “In-shell product” means non-living, processed shellfish with one or both shells present.

(ae) “In-shell product packing” means the process of placing in-shell product into containers for introduction into commerce.

(af) “Interstate Certified Shellfish Shippers List (ICSSL)” means a United States Food and Drug Administration (FDA) publication of shellfish dealers, domestic and foreign, who have been certified by a state or foreign authority as meeting the public health control measures specified in the NSSP Guide for the Control of Molluscan Shellfish, as incorporated by reference in He-P 2152.01.

(ag) “Interstate Shellfish Sanitation Conference (ISSC)” means the organization which consists of agencies from shellfish producing and receiving states, the FDA, the shellfish industry, the National Oceanic and Atmospheric Administration (NOAA), the US Department of Commerce, and the US Environmental Protection Agency (EPA). The ISSC provides the formal structure wherein state regulatory authorities, with FDA concurrence, can establish updated guidelines and procedures for sanitary control of the shellfish industry.

(ah) “Key deficiency” means a condition or practice that might result in adulterated, decomposed, misbranded, or unwholesome product.

(ai) “Label” means any written, printed, or graphic matter affixed to or appearing upon any package containing shellfish.

(aj) “Lot of shellstock” means a single type of bulk shellstock or containers of shellstock of no more than one day’s harvest from a single defined growing area gathered by one or more harvesters. ~~A lot may also be used to segregate the harvest times and intended uses of shellstock for the purposes of complying with time to temperature requirements.~~

(ak) “National Shellfish Sanitation Program (NSSP)” means the cooperative program between the states, the FDA, and the shellfish industry for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide for the Control of Molluscan Shellfish, as incorporated by reference in He-P 2152.01, will be safe and sanitary.

(al) “Other deficiency” means a condition or practice that is not defined as a critical or key deficiency and is not in accordance with the requirements of NSSP Guide for the Control of Molluscan Shellfish, as incorporated by reference in He-P 2152.01.

(am) “Performance based inspection” means when a dealer who has demonstrated a history of no critical deficiencies, no more than one key deficiency, and no more than 2 other deficiencies in any one inspection for a 3-year period, and therefore requires no more than one inspection per certification period.

(an) “Person” means any individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind, and any partnership, association, corporation, or other entity. Person includes the federal government, the state, and any other public or private entity.

(ao) “Post-harvest processing” means any process that has been validated using NSSP validation procedures which reduces the levels of pathogenic hazards to below the appropriate FDA action level or, in the absence of such a level, below the appropriate level as determined by the ISSC.

(ap) “Primary dealer” means those certified dealers who receive, purchase, ~~and~~/or pack shellfish directly from harvesters.

(aq) “Processing” means any activity associated with the handling, shucking, freezing, packing, labeling, or storing of shellfish in preparation for distribution. This term includes the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor.

(ar) “Raw” means shellfish that have not been thermally processed to an internal temperature of 145° Fahrenheit or greater for 15 seconds, or the equivalent.

(as) “Relay” means to transfer shellstock from a growing area classified as restricted or conditionally restricted to a growing area classified as approved or conditionally approved for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the shellstock by using the ambient environment as the treatment process.

(at) “Repacker (RP)” means a person other than the original certified shucker-packer who repackages shucked shellfish into other containers.

(au) “Reshipper (RS)” means a person who purchases shellfish from dealers and sells the product without repacking or relabeling to other dealers, wholesalers, or retailers.

(av) “Restricted” means a classification used to identify a growing area where harvesting shall be by special certificate and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration.

(aw) “Sanitation control record” means records that document the monitoring of sanitation practices and conditions during processing.

(ax) “Seed” means shellstock that is less than market size.

(ay) “Shellfish” means all fresh or frozen edible species of oysters, clams, or mussels, either shucked or in the shell, or scallops in any form, except when the final product form is the adductor muscle only.

~~(1) Oysters, clams or mussels, whether:~~

~~a. Shucked or in the shell;~~

~~b. Raw, including post harvest processed;~~

~~c. Frozen or unfrozen; or~~

~~d. Whole or in part; and~~

~~(2) Scallops in any form, except when the final product form is the abductor muscle only.~~

(az) “Shellstock” means live molluscan shellfish in the shell.

(ba) “Shellstock shipper (SS)” means a dealer who grows, harvests, buys, or repacks and sells shellstock, who is not authorized to shuck shellfish nor to repack shucked shellfish, and who is permitted to buy, repack, and sell in-shell product as well as ship shucked shellfish.

(bb) “Shucker-packer (SP)” means a person who shucks and packs shellfish. A shucker-packer may act as a shellstock shipper or reshipper or may repack shellfish originating from other certified dealers.

(bc) “State shellfish standardization officer” means a person that has successfully completed the FDA standardization training course and the field evaluation phase of shellfish plant inspection with an FDA standardization officer.

(bd) “Temperature control” means the mechanical refrigeration or other conveyance pre-chilled and maintained at 45° F (7.22° C) or below and capable of reducing the internal temperature of shellstock to 50 °F (10 °C) or below within ~~four~~ (4) hours.

(be) “Time of harvest” means the time when the first shellstock harvested is no longer submerged.

(bf) “Vehicle” means a machine or conveyance, including watercraft and aircraft, used to move or transport shellfish.

(bg) “*Vibrio parahaemolyticus*<sup>2</sup> (V.p.)” means a bacterium that lives in brackish saltwater and causes gastrointestinal illness in humans.

(bh) “Wet storage” means the storage, by a dealer, of shellstock from growing areas in the approved classification or in the open status of the conditionally approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater at any permitted land-based activity or facility.

## PART He-P 2152 NEW HAMPSHIRE SHELLFISH SANITATION RULES: INCORPORATION OF THE NATIONAL SHELLFISH SANITATION PROGRAM GUIDE FOR THE CONTROL OF MOLLUSCAN SHELLFISH

### He-P 2152.01 Incorporation of the NSSP Guide for the Control of Molluscan Shellfish, 2019 Revision.

(a) All certificate holders shall comply with the United States Department of Health and Human Services, Public Health Services, Food and Drug Administration, National Shellfish Sanitation Program (NSSP) “Guide for the Control of Molluscan Shellfish”, (2019 Revision), henceforth referred to as the “NSSP Guide,” available as noted in Appendix A.

(b) The NSSP Guide may be viewed or downloaded from the FDA website at <http://www.fda.gov/media/143238/download> or the ISSC website at <https://www.issc.org/nssp-guide>.

### He-P 2152.02 Special Requirements for (Aquaculture) Harvesters of Oysters and Hard Clams for the Control of *Vibrio Parahaemolyticus*.

(a) A shellfish ~~harvester~~/dealer who commercially harvests oysters and hard clams during the timeframe from May 1 through September 30 shall:

(1) Provide adequate shading to protect oysters and hard clams from direct exposure to sunlight during harvest and where harvested oysters or hard clams are stored;

- (2) If an ice slurry is used for rapid cooling, ensure that the temperature of the slurry is less than or equal to 50° F;
- (3) Ensure that all oysters and hard clams are adequately iced or placed under temperature control within 45 hours from the time of harvest;
- (4) Complete a log that contains the following:
  - a. Time of harvest; and
  - b. Time to temperature control information as per (3) above;
- (5) Ensure that the internal temperature of the oysters and hard clams has reached 50° F or 10° C or below within 4 hours of being placed under temperature control;
- (6) Document the internal temperature and time information as specified in (5) above;
- (7) Sell only oysters or hard clams that have reached an internal temperature of 50 °F (10 °C) or below; and
- (8) Complete a hazard analysis and critical control point (HACCP) plan that indicates pathogen growth of naturally occurring *Vibrio parahaemolyticus* as a significant hazard that includes the following:
  - a. A critical limit indicating all oysters and hard clams shall be harvested in accordance with the time temperature requirements of (3) above; and
  - b. A critical limit indicting that the internal temperature of oysters and hard clams has reached 50 °F (10 °C) or below prior to sale as required in (7) above prior to sale.

PART He-P 2153 NEW HAMPSHIRE SHELLFISH SANITATION RULES: APPLICATION AND CERTIFICATE PROCEDURE

He-P 2153.01 Initial Certificate Application Requirements.

- (a) Each applicant for a certificate shall submit the following to the department:

- (1) A completed application form entitled “Application for New Shellfish Certification” (SSAPP February 2023~~XXXXXX 2022~~), signed and dated by the applicant or the person who represents the applicant and certifying the following:

“I certify that all information provided in or attached to this application is complete, accurate and up-to-date as of the date specified below. I further certify that there are no willful misrepresentations of the answers to questions herein, and that I have made no omissions with respect to any of my answers to the questions presented. I understand that it is my responsibility to immediately notify the Food Protection Section with regard to any changes, corrections or updates to the information provided.”;

- (2) A check, money order, or online payment by credit card at <https://www.dhhs.nh.gov/programs-services/environmental-health-and-you/food->

<https://www.dhhs.nh.gov/food-protection/shellfish-harvesters-and-dealers> for the applicable fees, in accordance with He-P 2153.05(a);

(3) Water system documentation, which meets the requirements outlined in He-P 2153.06;

(4) Wastewater system documentation, which meets the requirements outlined in He-P 2153.07, except that dealers applying to be certified as a reshipper shall not be required to submit such documentation; and

(5) A HACCP plan as required in He-P 2153.1213.

(b) The applicant shall apply online at <https://www.dhhs.nh.gov/programs-services/environmental-health-and-you/food-protection/shellfish-harvesters-and-dealers>; by mail, or by hand delivering the documents to:

Department of Health and Human Services  
Bureau of Finance/Receipts Unit – Food Protection  
129 Pleasant Street  
Concord, NH 03301

He-P 2153.02 Processing of Initial Applications and Issuance of Certificates.

(a) Applications shall be processed in accordance with RSA 541-A:29.

(b) An application for an initial certificate shall be complete when the department determines that all items required by He-P 2153.01(a) have been received.

(c) If an application does not contain all of the items required by He-P 2153.01(a), the department shall notify the applicant in writing within 10 business days specifying any information or supporting documentation required to be submitted before the application can be processed.

(d) If after written notice in (c) above the applicant fails to provide the missing information or supporting documentation, including payment of the required fee, within 30 days of such notice:

(1) The application shall be considered incomplete and shall not be processed; and

(2) The applicant may reapply by submitting a new initial application in accordance with He-P 2153.01(a).

(e) Application fees shall not be transferable to any other application(s).

(f) Application fees shall be nonrefundable.

(g) Following an application and inspection, conducted pursuant to RSA 143:4, and in accordance with He-P 2154, an initial certification shall be issued if the department determines that an applicant is in compliance with RSA 143:20–28 and these rules.

(h) All certificates issued in accordance with RSA 143:22 shall be issued for a specific certificate classification under He-P 2153.04.

(i) All certificates shall be non-transferable by person or location.

He-P 2153.03 Certificate Expirations and Procedures for Renewals.

(a) All certificates issued shall expire pursuant to RSA 143:22.

(b) Each dealer shall apply for recertification at least 30 days prior to the expiration of the current certificate.

(c) The certificate holder shall submit a renewal application, provided by the department that contains the following:

- (1) A request for renewal of any existing variances previously granted by the department, in accordance with He-P 2153.~~13~~4, if applicable;
  - (2) Any changes to information provided to the department in the initial application; and
  - (3) Applicable permit fees, in accordance with He-P 2153.05(a).
- (d) A certificate shall be renewed if the department determines that the certificate holder:
- (1) Has submitted a completed application containing all the items required by (c) above, as applicable, prior to the expiration of the current certificate;
  - (2) Meets the requirements for certification as outlined in the NSSP Guide;
  - (3) Has a compliance schedule in place to address any new key or other deficiencies not corrected during the inspection;
  - (4) Is found to be in compliance with RSA 143, RSA 143:20–28, and He-P 2150–2159 at a renewal inspection, as applicable;
  - (5) Has paid all outstanding fees and fines in full; and
  - (6) Has, every other year, met the training requirement in He-P 2153.~~14~~5.

(e) If a certificate holder fails to submit a complete application for renewal as required under (b) and (c) above, the dealer shall cease operation the day after the certificate expires, and shall not operate until a certificate is obtained.

#### He-P 2153.04 Designations and Permits.

(a) When the department certifies a person to become a dealer, the department shall notify the FDA for the purposes of having the dealer listed in the Interstate Certified Shellfish Shippers List (ICSSL). The department shall include any permit designation to be included in the ICSSL.

(b) Certification classifications and permit designations shall be as follows:

- (1) Certification classifications:
  - a. RS – Reshipper;
  - b. SS – Shellstock shipper;
  - c. RP – Repacker;
  - d. SP – Shucker-packer; and
  - e. DP – Depuration processor; and
- (2) Permit designations:



- a. PHP – Post-harvest processing;
- b. AQ – Aquaculture; and
- c. WS – Wet storage.

(c) The department shall issue only one certification number to an individual dealer for a particular location.

(d) The department shall issue more than one certification number to an individual dealer provided that each business is maintained as a separate entity and does not operate at the same location, each of which shall require separate applications and separate fees.

(e) The department shall allow separately certified dealers to share a facility at a single location.

He-P 2153.05 Fees.

(a) For each classification of certification, the applicant shall pay the following annual fees:

- (1) Reshipper, \$175;
- (2) Shellstock shipper, \$350;
- (3) Repacker, \$875;
- (4) Shucker-packer, \$1,100, and
- (5) Depuration processor, \$1,750.

(b) For each permit, the applicant shall pay the following fees:

- (1) Shellstock relaying permit, \$50; and
- (2) Wet storage permit, \$50.

(c) All fees shall be non-transferable and non-refundable.

(d) Payment of any fee to the department shall meet the following requirements:

- (1) Payment shall be made in the form of credit card payment, check, or money order made payable to the “Treasurer, State of New Hampshire” in the exact amount due;
- (2) Money order or certified check shall be required when an applicant or certificate holder has issued payment to the department by check, and such check was returned for insufficient funds; and
- (3) Any payment made to the department by check which is returned for insufficient funds, and which an individual, applicant, or certificate holder has not made good by submitting a money order or certified check within 2 business days of notification by the department, including any penalty assessment allowed by RSA 6:11-a, shall be grounds for denial or revocation of the certificate.

He-P 2153.06 Water System Requirements.

(a) Certificate holders ~~whowhich~~ purchase their water from ~~other~~ public water systems, as defined by RSA 485:1-a, XV, shall provide proof of their water source along with the application.

(b) Certificate holders which do not fall under (a) above, and are instead served by a water source other than a public water system, shall submit with the initial applications the written results of a laboratory analysis of the water intended for use, which tests the level of the following:

- (1) Bacteria;
- (2) Nitrates; and
- (3) Nitrites.

(c) The analyses required by (b) above shall be conducted not more than 6 months prior to the date of the application by a laboratory accredited by DES to perform such tests in accordance with Env-C 300.

(d) For an application to be approved, the results of the water analysis shall be as follows:

- (1) The bacteria test required under (b) above shall not exceed the maximum contaminant level (MCL) for drinking water prescribed by Env-Dw 702; and
- (2) The nitrate and nitrite tests required under (b) above shall not exceed the MCL for drinking water prescribed by Env-Dw 704 for those 2 contaminants.

#### He-P 2153.07 Wastewater System Requirements.

(a) Certificate holders which discharge their wastewater to either public or private wastewater systems which hold either a state surface water discharge permit or a groundwater discharge permit issued by the New Hampshire department of environmental services (DES), shall indicate this by selecting "yes" under the town wastewater category on question 10 on the initial application.

(b) Certificate holders which do not discharge their wastewater as described in (a) above shall submit the following as part of their application a copy of the construction approval and the operation approval for the sewage or waste disposal system that indicates that the system is sufficient in capacity to serve the subject establishment issued by DES in accordance with RSA 485-A:29 and Env-Wq 1000.:

~~(1) The applicant demonstrates that the existing use has not changed since July 1, 1967, by providing:~~

~~a. A town property tax record for 1967 or earlier that is authenticated by a current official of the town; or~~

~~b. A sworn, notarized affidavit that the existing use has not increased from the use existing as of July 1, 1967 from an individual unrelated to the applicant who owned the structure served by the private sewage or waste disposal system prior to July 1, 1967 or has personal knowledge of the use of the structure prior to July 1, 1967 in an official capacity such as being a tax assessor or code enforcement officer.; or~~

~~(2) A copy of the construction approval and the operation approval for the sewage or waste disposal system that indicates that the system is sufficient in capacity to serve the subject establishment issued by DES in accordance with RSA 485 A:29 and Env Wq 1000.~~

~~(c) If not stated in or (b)(2) above a copy of the sewage or waste disposal system plan specifying use shall be submitted as part of their application.~~

(cd) If there is no increase in the loading of the waste disposal system serving the certificate holder in (b) above, and the applicant is unable to produce the documentation required, and has obtained approval of the waste disposal system from DES, the department shall waive the requirement in (b) with written approval from DES.

He-P 2153.08 Change in Ownership.

(a) When there is a change in ownership, the new owner shall submit the items required for initial applicants under He-P 2153.01 to the department at least 30 days prior to the change in ownership.

(b) Upon receipt and processing of the items required by (a) above, and after an inspection conducted in accordance with He-P 2154, which determines compliance with the NSSP Guide , as incorporated by reference in He-P 2152.01, the department shall issue an initial certification reflecting the change in ownership.

(c) The issuance of an initial certification due to a change in ownership shall void the certificate of the previous owner on the date the change of ownership occurs.

He-P 2153.09 Change in Name.

(a) When a certificate holder intends to change the name of its business, the certificate holder shall submit a written request to the department for a new certificate at least 30 days prior to the intended date of name change.

(b) The written request shall include:

- (1) The reason for requesting a new certificate;
- (2) The name of the business as it appears on the existing certificate;
- (3) The name of the business as the certificate holder requests it to appear on the new certificate; and
- (4) The date upon which the change in name is intended to occur.

(c) Following receipt of the items required by (b) above, the department shall issue a revised certificate reflecting the change in name. The certificate number and expiration date shall remain the same as it was on the immediately preceding certificate.

He-P 2153.10 Change in Location.

(a) When there is a change in location, for land based activities, the certificate holder shall submit the items required for initial certification under He-P 2153.01 to the department at least 30 days prior to the change in location.

(b) Upon receipt and processing of the items required under (a) above, and after an inspection conducted in accordance with He-P 2154, the department shall issue an initial certification reflecting the change of location.

(c) The issuance of an initial certification due to a change in location shall void the previous certificate on the date the change of location occurs.

(d) This section shall not apply to vehicles used to sell wholesale or retail shellfish.

He-P 2153.11 Change in Certificate Classification.

(a) A certificate holder wishing to request a change to their certificate classification or permit designation as listed in He-P 2153.04 shall:

- (1) Be treated as an applicant for a new certificate; and
- (2) Apply for a new certificate in accordance with He-P 2153.01.

(b) The issuance of an initial certification due to a change in certificate classification or permit designation shall void the previous certificate on the date the change occurs.

He-P 2153.12 Hazard Analysis and Critical Control Point (HACCP) Plan and Sanitation Standard Operating Procedure (SSOP) Requirements.

(a) Every dealer shall establish and implement a written hazard analysis critical control point (HACCP) plan which is specific to:

- (1) Each location where shellfish products are processed by that dealer; and
- (2) Each kind of shellfish product processed by the dealer.

(b) At a minimum, the HACCP plan shall include:

(1) A list of the food safety hazards that are reasonably likely to occur as determined by the individual completing the HACCP plan. for each kind of shellfish product processed by that dealer and identification of preventative measures that shall be applied to control those hazards; and

(2) A statement of standard operating procedures for the plan under consideration clearly identifying:

- a. Each critical control point;
- b. The critical limits for each critical control point;
- c. The method and frequency for monitoring and controlling each critical control point by an individual who has successfully completed training in the application of HACCP principles to shellfish processing or who is otherwise qualified through job experience to perform these functions;
- d. The method and frequency to routinely verify that the dealer is following standard operating procedures and monitoring critical control points;
- e. Action to be taken by the dealer if the critical limits for each critical control point are not met; and
- f. Records to be maintained by the dealer to demonstrate that the HACCP plan is properly operated and managed.

(c) The department shall review HACCP plans for compliance with all applicable sections of RSA 143:20-28 and He-P 2150–2159 and notify the applicant or certificate holder as to whether the plan complies with these requirements.

(d) The dealer shall maintain possession of the HACCP plan at all times.

He-P 2153.13 Variances.

(a) Applicants or certificate holders seeking variances from specific rules, or from items in the NSSP Guide, as incorporated by reference in He-P 2152.01, shall complete and submit a “Variance Request Form” (SSVARFORM February 2023XXXX-2022) to the:

NH Department of Health and Human Services  
Division of Public Health Services  
Food Protection Section  
29 Hazen Drive  
Concord, NH 03301  
(603) 271-4589

(b) The commissioner shall approve a request for variance if:

(1) The commissioner concludes that authorizing deviation from strict compliance with the rule or the item in the NSSP Guide, as incorporated by reference in He-P 2152.01, from which a variance is sought does not contradict the intent of the rule or the item in the NSSP Guide; and

(2) The alternative proposed by the applicant or certificate holder ensures that the objective or intent of the rule or item in the NSSP Guide, as incorporated by reference in He-P 2152.01, from which a variance is sought will be accomplished.

(c) The commissioner shall deny a request for a variance if:

(1) The request does not meet the requirements of (a) above; or

(2) The request does not meet the criteria for approval in accordance with (b) above.

(d) If a variance is approved, the certificate holder’s subsequent compliance with the alternatives approved in the variance shall be considered equivalent to complying with the rule or the NSSP Guide, as incorporated by reference in He-P 2152.01.

(e) A variance shall be approved for one year or until the expiration of the current certificate, unless otherwise specified by the department.

(f) No request for a variance concerning any statutory provision or the rules of other state agencies referred to in this chapter shall be approved.

He-P 2153.14 Training.

(a) All dealers shall have for review by inspection staff:

(1) Documentation that the individual responsible for monitoring and controlling each critical control point has successfully completed department approved training in the application of HACCP principles to shellfish processing ~~or who can demonstrate that the individual is otherwise qualified through job experience to perform these functions~~; and

(2) Training documentation ~~Proof of training~~ for all individuals in proper food handling and personal hygienic practices as it relates to their assigned duties.

(b) Harvesters shall:

(1) Complete department approved training every 2 years. The training shall include required processing, handling, and transportation practices as determined by the department;

(2) Complete the required training in (b)(1) above within 90 days of initial certification; and

(3) At a minimum, have one individual involved in the harvester's shellfish operations obtain the required training in (b)(1) above.

## PART He-P 2154 NEW HAMPSHIRE SHELLFISH SANITATION RULES: INSPECTIONS AND COMPLIANCE

### He-P 2154.01 Inspections.

(a) For the purpose of determining compliance with RSA 143:20-28 and He-P 2150–2159, as authorized by RSA 143:4 and RSA 143:22, the applicant or certificate holder shall admit and allow any department representative at any time to enter and inspect ~~the~~ all facilities, activities, equipment, vehicles, and records pertaining to shellfish processing, holding, or transportation.

(b) Inspections shall be conducted:

(1) Prior to issuance of a certificate;

(2) At a frequency not less than as specified in Section II, Chapter I @.02 F.(1) in the NSSP Guide; and

(3) Whenever the department has reason to believe a condition exists that places the dealer in non-compliance with RSA 143:20-28 and He-P 2150–2159.

(c) The dealer shall agree to a compliance schedule to address any new deficiencies not corrected by the dealer during the inspection.

(d) After the dealer is certified, the department shall make unannounced inspections of the dealer's facilities during periods of activity, and at the following minimum frequencies:

(1) Within 30 days of beginning production if the dealer was certified on the basis of a pre-operational inspection;

(2) At least monthly for dealer facilities certified as depuration processors;

(3) At least quarterly for production activities certified as shucker-packer or repacker; and

(4) At least semiannually for other dealer activities.

(e) To be eligible for the department's performance based inspection program (PIP), the dealer shall have demonstrated a history of satisfactory compliance for the previous 3-year period, including, but not limited to, the following:

- (1) Full compliance with the minimum inspection frequency listed in (d) above;
- (2) Annual recertification of the dealer by the department, with no lapses in certification;
- (3) Verification that no critical deficiencies, no more than one key deficiency, and no more than 2 other deficiencies have occurred in any one inspection;
- (4) Correction of all identified deficiencies in accordance with the compliance schedule approved by the department; and
- (5) No repeat deficiencies.

(f) The minimum frequency of inspection under a PIP shall be no less than one inspection per certification period. The recertification inspection shall qualify as the required minimum inspection frequency.

He-P 2154.02 Correction of Deficiencies.

- (a) When any inspection identifies a critical deficiency:
  - (1) The deficiency shall be corrected during that inspection; or
  - (2) The certificate holder shall cease production of the activity(ies) affected by the deficiency.
- (b) When a key or other deficiency identified in the inspection report cannot be corrected both immediately and permanently in the presence of the inspector a compliance schedule shall be issued.:
- (c) The department shall verify the elimination of any key or other deficiencies as specified in the compliance schedule referenced in (b) above, as follows:
  - (1) The department shall review any materials submitted to the department by the certificate holder and determine whether the materials demonstrate implementation of and compliance with the requirements of the compliance schedule; and
  - (2) If materials in (1) above are not submitted to the department by the certificate holder, or if the department determines that the materials submitted in (1) above do not demonstrate implementation of and compliance with the requirements of the compliance schedule, the department shall conduct an inspection to determine compliance.
- (d) If the department finds the certificate holder to be out of compliance with the compliance schedule, the department shall do one or more of the following, as applicable:
  - (1) Revise the compliance schedule if the department determines that the certificate holder has mitigated any immediate public health risk and produced ~~sufficient~~ evidence of substantial hardship preventing compliance to original compliance schedule ~~good-cause~~ for failure to comply with the compliance schedule;
  - (2) Impose applicable fines, in accordance with He-P 2155.02(a)(~~1415~~);
  - (3) Revoke the certificate in accordance with He-P 2155.03(a)(6); or
  - (4) Deny the application for a renewal of a certificate in accordance with He-P 2153.03(d).

PART He-P 2155 NEW HAMPSHIRE SHELLFISH SANITATION RULES: ENFORCEMENT ACTIONS

He-P 2155.01 Enforcement Actions and Notice of Right to Appeal.

(a) The department shall impose enforcement actions for violations of RSA 143:20-28, He-P 2150–2159, or the NSSP Guide, as incorporated by reference in He-P 2152.01, as applicable, including the following:

- (1) Imposing administrative fines upon an applicant, certificate holder, or any decertified dealer in accordance with He-P 2155.02;
- (2) Denying a certificate application in accordance with He-P 2155.03;
- (4) Revoking a certificate in accordance with He-P 2155.03;
- (5) Ordering embargo of contaminated or adulterated products, including condemning and seizing products, in accordance with RSA 146:20 and (d) below;
- (6) Ordering the certificate holder to cease and desist all operations in the event of a threat to the public health and safety in accordance with RSA 143:5-a, RSA 541-A:30, III, or both; and
- (7) Ordering a person or entity to cease and desist all operations in the event that the person or entity is operating without a valid certificate.

(b) When the certificate holder fails to comply with He-P 2154.02 (a) above, the department shall immediately begin actions to revoke the certificate holder’s certification.

(c) Product affected by a critical deficiency shall be controlled to prevent contaminated or adulterated product from reaching consumers. When necessary the department shall:

- (1) Detain or seize any undistributed lots of shellfish that ~~might~~ have been adulterated;
- (2) Initiate a recall of any distributed shellfish; and
- (3) Immediately notify ~~FDA’s~~ the enforcement officials ~~for FDA~~ and any other relevant authorities.

(d) When denying a certificate application, imposing a fine, or revoking a certificate, the department shall send to the applicant or certificate holder a written notice that sets forth:

- (1) The action to be taken by the department;
- (2) The reasons for the action, including the identification of each deficiency; and
- (3) The right of the applicant, certificate holder, or other person or entity to request a hearing in accordance with RSA 541-A, He-C 200, and He-P 2155.04.

(e) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 143, RSA 541-A:30, III, or He-P 2150–2159.

He-P 2155.02 Administrative Fines.

(a) The department shall impose fines as follows:



- (1) For providing false or misleading information on or with an application, in violation of He-P 2153.01(a) ~~or He-P 2153.03 (c)(a)~~, the fine shall be \$1,000;
- (2) For failure to operate only in the manner in which certified to do so, in violation of He-P 2153.02(h), the fine shall be \$1,000;
- (3) For failure to cooperate during an inspection of a shellfish plant, including but not limited to failing to allow department representatives or inspectors to inspect the premises, vehicles, and records at all times, in violation of He-P 2154.01, the fine shall be \$2,000;
- (4) For failure to notify the department by telephone within 24 hours of any fire or other incident that jeopardizes the safety or sanitation of shellfish, in violation of He-P 2155.06(a), the fine shall be \$250;
- (5) For failure to notify the department pursuant to He-P 2153.08(a) at least 30 days prior to a change in ownership, the fine shall be \$500;
- (6) For failure to notify the department pursuant to He-P 2153.10(a) at least 30 days prior to the change of location, the fine shall be \$500;
- (7) For failure to discard shellfish as required by RSA 146:20 and in the manner instructed to do so by the department, the fine shall be \$1,000;
- (8) For failure to cease operation upon notification by the department to do so, the fine shall be \$1,000;
- (9) For failure to cease operation after a certificate has expired, when an application has been denied, or when a certificate has been revoked, the fine shall be \$1,000;
- (10) For failure to maintain records in accordance with RSA 143:22, the fine shall be \$1,000;
- (11) For a violation of the same critical deficiency 2 times within any 12-month period, the fine shall be \$1,000;
- (12) For a violation of the same key deficiency 3 times within any 12-month period, the fine shall be \$500;
- (13) For failure to pay an administrative fine within 30 days of its imposition, or within 30 days of the decision to uphold the imposition of a fine that was appealed, the fine shall be \$500;
- (14) For failure to comply with any compliance schedule that has been accepted by the department, the fine shall be \$500;
- (15) For operation of a dealer without obtaining a certificate, as required by RSA 143:22, the fine shall be \$1,000. Each day operating without a certificate shall be considered a separate offense subject to an additional \$500 fine;
- (16) For failure to submit a HACCP plan for review, in accordance with He-P 2153~~4.1213~~, the fine shall be \$500;
- (17) For failure to comply with a variance approved in accordance with He-P 2153.1~~34~~, the fine shall be \$500; and
- (18) For failure to submit a timely renewal application, in violation of He-P 2153.03(b), the fine shall be \$75.

(b) Except for violations of (a)(18) above, each day that a certificate holder continues to be in violation of the provisions of RSA 143:20-28 or He-P 2150–2159 shall constitute a separate violation and shall be fined in accordance with this section.

(c) Payment of any imposed fine to the department shall meet the following requirements:

- (1) Payment shall be made in the form of credit card, check, or money order payable to the “Treasurer, State of New Hampshire” in the exact amount due;
- (2) Money order or certified check shall be required when an applicant or certificate holder has issued payment to the department by check, and such check was returned for insufficient funds; and
- (3) Any payment made to the department by check which is returned for insufficient funds, and which an applicant or certificate holder has not made good by submitting money order or certified check within 2 business days of notification by the department, including any penalty assessment by RSA 6:11-a, shall be grounds for revocation or denial of the certificate.

He-P 2155.03 Denial or Revocation of a Certificate.

(a) The department shall deny an application or revoke a certificate if:

- (1) An applicant or certificate holder has failed to pay any applicable fee in accordance with He-P 2153.05 or any administrative fine imposed under He-P 2155.02 or any payment ordered by a court to be paid to the department;
- (2) An applicant or certificate holder has had a check returned to the department for insufficient funds, and has not re-submitted the outstanding fee and additional charges in the form of money order or certified check within 2 business days of notification by the department;
- (3) After being notified of and given an opportunity to supply missing information, an applicant or certificate holder fails to submit an application ~~that~~the meets the requirements of He-2153.01(a);
- (4) An applicant, certificate holder or any representative or employee of the applicant or certificate holder:
  - a. Provides false or misleading information to the department;
  - b. Prevents or interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
  - c. Fails to provide, upon request, information or documents to the department;
- (5) There is a deficiency identified in the inspection report and the applicant or certificate holder does not either correct it or complete a compliance schedule in accordance with He-P 2154.02;
- (6) The certificate holder fails to implement or continue to implement a compliance schedule that has been accepted by the department in accordance with He-P 2154.02;
- (7) The certificate holder is cited 2 or more times under RSA 143, or He-P 2150–2159 for the same critical deficiency within the last 12 months or the last 5 inspections;

(8) A certificate holder has had a certificate revoked and submits an application during the one-year prohibition period specified in (b) below;

(9) A certificate holder fails to implement an approved HACCP plan in accordance with He-P 2153.1~~23~~; or

(10) The certificate holder fails to submit proof of required training as required in He-P 2153.1~~45~~.

(b) When a certificate has been denied or revoked, the applicant or certificate holder shall be prohibited from reapplying for a certificate for one year at a different location, if the enforcement action pertained to their role in the business.

(c) The one-year period referenced in (b) above shall begin on:

(1) The date of the department's decision to revoke or deny the certificate, if no request for an administrative hearing is requested or if the request is withdrawn; or

(2) The date a final decision upholding the action of the department is issued, if a request for a hearing is made and a hearing is held.

(d) Notwithstanding (b) and (c) above, the department shall consider an application submitted after a decision to revoke or deny becomes final, if the applicant provides proof that circumstances have changed and that the applicant has obtained the requisite degree of knowledge, skills, and resources necessary to maintain compliance with the provisions of RSA 143 and He-P 2150–2159.

(e) Application for a certificate after revocation shall require submission of a written application for a certificate to the department, completed in accordance with He-P 2153.01.

#### He-P 2155.04 Request for an Administrative Hearing.

(a) An applicant or certificate holder shall have 10 calendar days after receipt of the notice of an enforcement action to submit a written request for a hearing.

(b) If a request for a hearing is not received pursuant to (a) above, the applicant or certificate holder shall have waived his right to a hearing and the action of the department shall become final.

(c) Hearings under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(d) For administrative fines, full payment shall be submitted to the department no later than 30 days from receipt of the notice or within 30 days from the date of the decision of the department's administrative appeals unit, if a hearing has been requested.

#### He-P 2155.05 Effect of Denial of Application, Revocation or Expiration of Certificate.

(a) Any applicant who has been denied a certificate or renewal certificate shall not operate or shall cease operation within 10 calendar days after receipt of the denial notice, unless a timely appeal is submitted.

(b) If a certificate is revoked by the department, the certificate holder shall cease operation within 10 calendar days after receipt of the revocation notice, unless a timely appeal is submitted.

(c) If a certificate holder is subject to immediate closure as defined in RSA 143:5-a, the certificate holder shall immediately cease operation pending reinspection and pursuant to the appeals provisions of RSA 541-A.

(d) If a certificate expires without the timely submission of an application for renewal, the certificate holder shall immediately cease operation.

He-P 2155.06 Closure. A certificate holder shall immediately discontinue operations and notify the department at 603-271-4589, or if at night or during weekends at 603-271-5300, if an imminent health hazard might exist because of an emergency such as, but not limited to:

- (a) Interruption of water services that lasts for 2 or more hours;
- (b) Whenever a drinking water sample is found to have E.coli bacteria or exceed the MCL for nitrates or nitrites described in He-P 2153.06~~(d)~~;
- (c) A failed sewer system or a sewage backup into the vehicle or facility;
- (d) Interruption of electrical service for 2 or more hours;
- (e) A fire affecting the vehicle or facility;
- (f) Flooding in the vehicle or facility;
- (g) Chemical exposure in the vehicle or facility;
- (h) Any other natural disaster or catastrophic event that may result in contamination of the shellfish;
- (i) An employee has been found to be infected with a communicable disease as described in the “NSSP ~~“Guide” for Control of Molluscan Shellfish” Section II~~, Chapters XI-XV.02.(G.), as incorporated by reference in He-P 2152.01; or
- (j) Any other unsafe or unsanitary conditions that threaten to contaminate the vehicle or facility.

#### PART He-P 2156 NEW HAMPSHIRE SHELLFISH SANITATION RULES: SHELLFISH RELATED RECALLS

##### He-P 2156.01 Recall Procedures.

(a) The dealer shall develop and maintain on file a written procedure for the recall of shellfish products, including procedures for the notification of the department and consumers of the removal of the product from commerce, which complies with the Recall Enforcement Policy, Title 21 Code of Federal Regulations (CFR) Part 7.

(b) Production and distribution records shall be used to enable location of products if a recall is initiated.

(c) The dealer shall recall any product which the dealer or the department knows or has reason to believe might adversely affect the health and safety of the public, or is adulterated or misbranded.

(d) A dealer who knows or should know that the standard or quality of the product has been violated or has reason to believe that circumstances exist which might adversely affect the safety of the product shall notify the department within 24 hours of learning of the violation or circumstances.

(e) Circumstances in (d) requiring notification shall include, but are not limited to, source contamination, spills, accidents, natural disasters, or breakdowns in treatment processes.

(f) If the department determines that the circumstances present an imminent health hazard and the consumer notification ~~and~~/or shellfish product recall can significantly minimize the threat to health and safety of the public, the department shall order the dealer to initiate a product recall.

(g) In cases of a shellfish product recall, the dealer shall disseminate notification within 24 hours of the recall to all wholesale and retail outlets to which the shellfish product was distributed.

(h) If directed by the department, the dealer shall issue notification to consumers who may be affected by the recall by using such methods, including the media, as will ensure timely notification to consumers.

(i) RSA 146:20 shall apply to shellfish products.

PART He-P 2157 NEW HAMPSHIRE SHELLFISH SANITATION RULES: SHELLSTOCK RELAYING

He-P 2157.01 Shellstock Relaying.

(a) Any dealer who would like to conduct relaying activities shall apply for a shellstock relaying permit.

(b) Permit applications shall be submitted no later than 30 days prior to the requested date of relay.

(c) Any dealer who conducts relaying activities shall comply with the NSSP Guide, as incorporated by reference in He-P 2152.01.

(d) All relaying activities shall be conducted in the presence of the ~~S~~state ~~S~~shellfish ~~S~~standardization ~~O~~fficer or ~~S~~state ~~S~~shellfish ~~S~~standardization ~~I~~nspector or their representative.

He-P 2157.02 Initial Shellstock Relaying Permit Application Requirements.

(a) Each applicant for a shellstock relaying permit shall submit the following:

(1) A completed application form entitled “Application for Shellfish Relay~~Shellstock Relaying Permit Application~~” (SSRAPP ~~February 2023~~~~XXXX~~2022), signed and dated by the applicant or the person who represents the applicant and certifying the following:

“I certify that all information provided in or attached to this application is complete, accurate and up-to-date as of the date specified below. I further certify that there are no willful misrepresentations of the answers to questions herein, and that I have made no omissions with respect to any of my answers to the questions presented. I understand that it is my responsibility to immediately notify the Food Protection Section with regard to any changes, corrections or updates to the information provided.”; and

(2) A check or money order for the applicable fee, in accordance with He-P 2153.05(b).

(b) The applicant shall mail or hand deliver the documents to:

Department of Health and Human Services,  
Bureau of Finance/Receipts Unit – Food Protection Section  
129 Pleasant Street  
Concord, NH 03301-6503  
Telephone: (603) 271-4589; fax (603) 271-4859

He-P 2157.03 Processing of Initial Shellstock Relaying Applications and Issuance of Permits.

- (a) Applications shall be processed in accordance with RSA 541-A:29.
- (b) An application for an initial permit shall be complete when the department determines that a completed application required by He-P 2157.02 has been received.
- (c) If an application is incomplete, the department shall notify the applicant in writing as to which items are required to be submitted before the application will be processed.
- (d) A permit shall be issued if the department determines that an applicant is in compliance with these rules.
- (e) All permits shall be non-transferable by person or location.

He-P 2157.04 Permit Expirations. All permits issued are valid only for the dates specified on the application.

PART He-P 2158 NEW HAMPSHIRE SHELLFISH SANITATION RULES: WET STORAGE APPLICATION AND PERMIT PROCEDURE

He-P 2158.01 Wet Storage Application and Permit Procedure.

- (a) Any dealer who would like to conduct wet storage activities shall apply for a wet storage permit.
- (b) Permit applications shall be submitted no later than 60 days prior to the requested date of activity.
- (c) Any dealer who conducts wet storage activities shall comply with the NSSP Guide .

He-P 2158.02 Initial Wet Storage Permit Application Requirements.

(a) Only a certified shellstock shipper, shucker-packer, or depuration processor may apply for a wet storage permit.

(b) Each applicant for a wet storage permit shall submit the following to the department:

- (1) A completed application form entitled “Wet Storage Permit Application” (SSWSAPP ~~February 2023XXXX 2022~~), signed and dated by the applicant or the person who represents the applicant and certifying the following:

“I certify that all information provided in or attached to this application is complete, accurate and up-to-date as of the date specified below. I further certify that there are no willful misrepresentations of the answers to questions herein, and that I have made no omissions with respect to any of my answers to the questions presented. I understand that it is my responsibility to immediately notify the Food Protection Section with regard to any changes, corrections or updates to the information provided.”;

- (2) A check or money order for the applicable fee, in accordance with He-P 2153.05(b);
- (3) If a land-based facility, then an operational plan as required by the NSSP Guide , Chapter 7, Section @.01 B (2) and Section .04 AB (1)-(3);
- (4) Water system documentation which meets the requirements in He-P 2153.06 for wet storage in artificial bodies of water (land-based);

- (5) Water treatment system description and maintenance plan for wet storage in artificial bodies of water (land-based);
  - (6) A flow chart identifying each step in the wet storage process for natural bodies of water (offshore), and in artificial bodies of water (land-based); and
  - (7) A description of cleaning procedures and a cleaning schedule.
- (c) The applicant shall mail or hand deliver the documents to:

Department of Health and Human Services  
Bureau of Finance/Receipts Unit – Food Protection Section  
129 Pleasant Street  
Concord, NH 03301-6503  
Telephone: (603) 271-4589; fax (603) 271-4859

He-P 2158.03 Processing of Initial Wet Storage Applications and Issuance of Permits.

- (a) Applications shall be processed in accordance with RSA 541-A:29.
- (b) An application for an initial permit shall be complete when the department determines that all items required by He-P 2158.02(b) have been received.
- (c) If an application does not contain all the items required by He-P 2158.02(b), the department shall notify the applicant in writing as to which items are required to be submitted before the application will be processed.
- (d) A permit shall be issued if the department determines that the applicant is in compliance with these rules.
- (e) All permits shall be non-transferable by person or location.
- (f) Permits shall be available for inspection during normal business hours.

He-P 2158.04 Permit Expirations and Procedures for Renewals.

- (a) All permits issued shall expire in accordance with RSA 143:22.
- (b) Each dealer shall apply for a wet storage permit via an application form pursuant to He-P 2158.02 at least 30 days prior to the expiration of the current permit.
- (c) The permit holder shall submit with the renewal application:
  - (1) The materials required by He-P 2158.02(b)(1)-(2);
  - (2) The materials required by He-P 2158.02(b)(3)-(7) if any of these have been altered or changed within the most recent permit period; and
  - (3) A request for renewal of any existing variances previously granted by the department, in accordance with He-P 2153.1~~3~~<sup>4</sup>, if applicable.

(d) A permit shall be renewed if the department determines that the permit holder has submitted an application containing all the items required by (c) above, as applicable, prior to the expiration of the current certificate.

(e) If a permit holder fails to submit a complete application for renewal as required under (b) and (c) above, the dealer shall cease operation the day after the permit expires, and shall not operate until a permit is obtained.

## PART He-P 2159 NEW HAMPSHIRE SHELLFISH SANITATION RULES: COMMINGLING

### He-P 2159.01 Commingling Requirements.

(a) Any dealer who conducts commingling activities shall comply with the NSSP Guide.

(b) The practice of commingling shall be limited to:

~~(1) —c~~ Certified primary dealers who purchase shellstock directly from New Hampshire harvesters; ~~and~~

~~(2) — Certified shucker packers who purchase shellstock from other certified dealers.~~

(c) When a primary dealer chooses to commingle shellstock ~~or a shucker packer chooses to commingle shucked shellfish~~, they shall possess a written commingling plan approved by the department, which describes the procedures the primary dealer ~~or shucker packer~~ use to commingle product in a way to ensure that each lot of shellstock ~~or shucked shellfish~~ is identified in a way to prevent misidentification and provide traceability.

(d) The commingling plan in (c) above shall include provisions that minimize commingling but meet the minimum of:

(1) Multiple harvest areas from the same harvest date; ~~and/or~~

(2) Multiple harvest ~~times~~ dates from the same harvest area on the same day.

(e) All shellfish tags and records shall indicate which areas and/or which dates from the same harvest area have been commingled, for example, Quahog Bay/White's Cove, Brunswick commingled, or Quahog Bay, Brunswick 11/12 & 11/13 commingled.

(f) Shucked product may be commingled if it is in one container and from only ~~one~~ two consecutive ~~days~~ processing. The areas commingled shall be documented in the days shucking log and also in the sales records.

(g) Tags of commingled shellstock that has been held in wet storage shall include the statement: "This Product was in Wet Storage at (Facility Certification Number) from (Date) to (Date)."

(h) When an entire cargo consists only of molluscan shellfish products, for example oysters, hard or soft shell clams, or mussels, the various lots shall be separated so as to avoid unintentional cross-contamination and/or commingling. When a lot of shellfish is part of a mixed cargo, for example, with other seafood or non-seafood products, it shall be protected from contamination and/or commingling through partitioning, horizontal separation, or other isolation methods.

(i) No cargo shall be placed on or above the shellfish unless all cargo is packed in sealed, crush-resistant, waterproof containers.

(j) All handling and recordkeeping practices shall ensure that any container of shellfish can be traced-back to a specific harvest date and harvest area.



(k) Shellstock or shucked product from different lots shall not be commingled during repacking.

He-P 2159.02 Depuration Process Commingling Requirements.

(a) Unless the dealer has an accepted commingling management plan, different harvest lots of shellfish shall not be commingled during washing, culling, or packing.

(b) If more than one harvest lot of shellfish is being processed at the same time, the identity of each harvest lot shall be maintained throughout the depuration process and final packing.

(c) If shellfish in different tanks are at different stages of depuration, each tank shall be labeled to show when depuration began.

(d) Non-purified shellfish shall not be removed from a depuration plant except under direct supervision by the department.

**APPENDIX A:  
Incorporation by Reference Information**

<b>Rule</b>	<b>Title</b>	<b>Publisher; How to Obtain; and Cost</b>
He-P 2152.01(a)	U.S. Food and Drug Administration- National Shellfish Sanitation Program’s (NSSP), “Guide for the Control of Molluscan Shellfish” (2019 Revision)	Publisher: U.S. Food and Drug Administration-National Shellfish Sanitation Program (NSSP)  Cost: Free to the Public  The incorporated document is available at: <a href="https://www.fda.gov/media/143238/download">https://www.fda.gov/media/143238/download</a> or <a href="https://www.issc.org/2019-nssp-guide">https://www.issc.org/2019-nssp-guide</a>

**APPENDIX B**

<b>Rule</b>	<b>Specific State or Federal Statute the Rule Implements</b>
He-P 2150 – He-P 2159	RSA 143:26; 21 CFR Part 123
He-P 2152.01	21 CFR 1, B, section 123.6
He-P 2152.02	RSA 143:26; 21 CFR 1, B, section 123.6
He-P 2153.01	RSA 143:22; RSA 143:22-a; RSA 143:26
He-P 2153.02	RSA 541-A:29; RSA 143:22; RSA 143:4; RSA 143:22-a; RSA 143: 21-26
He-P 2153.03	RSA 143:25; 143:22; RSA 143:26; RSA 143:22-a
He-P 2153.04	RSA 143:22; RSA 143:26; RSA 143:21-a
He-P 2153.05	RSA 143:22-a; RSA 143:22; RSA 6:11-a
He-P 2153.06	RSA 485:1-a,XV; RSA 143:26; RSA 143:21-a
He-P 2153.07	RSA 143:21; RSA 485-A; RSA 485-A:13
He-P 2153.08	RSA 143:22; RSA 143:20-28

He-P 2153.09	RSA 143:22; RSA 143:20-28
He-P 2153.10	RSA 143:4; RSA 143:20-28
He-P 2153.11	RSA 143:21-a; RSA 143:22; RSA 143:26
He-P 2153.12	RSA 143:20-28; 21 CFR 1, B, section 123
He-P 2153.13	RSA 143:20-28
He-P 2153.14	RSA 143:6; RSA 143:22; RSA 143:26
He-P 2154.01	RSA 143:4; RSA 143:22; RSA 143:20-28
He-P 2154.02	RSA 143:4; RSA 143:6; RSA 143:20-28
He-P 2155.01	RSA 143:6; RSA 143; RSA 541-A:30; RSA 541-A:30, III
He-P 2155.02	RSA 143:22; RSA 143:6; RSA 143:7; RSA 143:7-a; RSA 6:11-a
He-P 2155.03	RSA 143; RSA 143:20-28; RSA 143:6, II(d); RSA 143:5-a
He-P 2155.04	RSA 541-A; RSA 541-A:31-36; RSA 143:5-a, IV
He-P 2155.05	RSA 143:1-4; RSA 143:5-a; RSA 143:4; RSA 143:23; RSA 143:24
He-P 2155.06	RSA 143:26; RSA 143:6
He-P 2156.01	RSA 146:20; 21 CFR 7, C sections 7.40-7.59; RSA 143:2; RSA 143:21-a; RSA 143:23; RSA 143:26
He-P 2157.01	RSA 143; RSA 143:22; RSA 143:22-a; RSA 143:26
He-P 2157.02	RSA 143; RSA 143:22; RSA 143:22-a; RSA 143:26
He-P 2157.03	RSA 541-A:29; RSA 143:22; RSA 143:26
He-P 2157.04	RSA 143:22
He-P 2158.01	RSA 143:20-28
He-P 2158.02	RSA 143:20-28
He-P 2158.03	RSA 541-A:29
He-P 2158.04	RSA 143:22
He-P 2159.01	RSA 143:22
He-P 2159.02	RSA 143:22