

State of California

CALIFORNIA SHELLFISH LAW

Health and Safety Code Sections 112150-112280

§112150.

The Legislature finds and declares that the public health interest requires that the people of this state be protected from adulterated shellfish grown and harvested in state waters for sale to the public and for introduction into interstate commerce. This protection is a matter of statewide concern and the purpose of this chapter is to establish uniform sanitation standards for the growing waters, harvesting, shucking, packing, repacking, and handling of shellfish and shellstock intended for human consumption.

§112155.

Unless the context otherwise requires, the definitions set forth in this article govern the construction of this chapter.

- (a) "Shellfish" means native or nonnative bivalve mollusks, which include oysters, rock scallops, clams, and mussels, either fresh or frozen, and either shucked or in the shell.
- (b) "Shellstock" means shellfish which remain in their shells.
- (c) "Growing area" means any offshore ocean, coastal estuarine, or freshwater area that may be classified by the department for natural shellfish growth or artificial shellfish propagation and includes open seawater systems.
- (d) "Approved area" means a shellfish-growing area not adversely affected by sewage or other wastes.
- (e) "Conditionally approved area" means a shellfish-growing area that may be occasionally affected by sewage or other wastes.
- (f) "Prohibited area" means a shellfish-growing area not certified because of its proximity to a waste discharge or because the area is influenced by other detrimental environmental factors.
- (g) "Restricted area" means a shellfish-growing area subjected to a limited degree of pollution which makes it unsafe to harvest shellfish for direct marketing but where harvesting for relaying or depuration may be permitted.
- (h) "Other wastes" means wastes, such as, but not limited to, animal, industrial, radiological, and agricultural wastes which would render shellfish unsafe or unfit for human consumption.
- (i) "Department" means the State Department of Health Services.
- (j) "Director" means the State Director of Health Services.

- (k) "Person" includes any individual, partnership, corporation, limited liability company, and association.
- (l) "Closed area" means an area that the shellfish taken therefrom have been declared to be unsafe or unfit for human consumption.

§112160.

- (a) The director may declare any area within the jurisdiction of this state to be a closed area if it is determined that shellfish taken from the growing area may be unsafe or unfit for human consumption.
- (b) The director shall close to the taking of shellfish for a period deemed advisable any waters to which shellfish from a closed area may have been transferred.
- (c) The director shall establish by order the areas that he or she declares unsafe or unfit for shellfish harvesting and shall modify or revoke the order in accordance with the results of chemical, toxicologic, and bacteriological surveys conducted by the department. The director shall file the order in the office of the department, and shall furnish copies of the orders describing closed areas to the Department of Fish and Game, the State Water Resources Control Board, and to any interested person without charge.
- (d) Prior to the director's declaration that shellfish-growing waters may be unsafe and shellfish grown in these waters may not be taken for human consumption, the department shall do all of the following:
 - (1) Give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subject and issues involved, and the time when, the place where, and the manner in which, interested persons may present their views thereon.
 - (2) Afford all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing. The department shall consider fully all written and oral submissions respecting the proposed action.
- (e) If the department finds that the shellfish harvested from an area is unsafe or unfit for human consumption and states in writing its reasons for that finding, it may proceed without prior notice or hearing to take emergency action. The action may be effective for a period of not longer than 30 days, during which time the department shall initiate the procedures contained in subdivision (d).

§112165.

- (a) The department shall adopt regulations regarding all of the following:
 - (1) The classification and minimum requirements for growing and harvesting areas, for relaying and depuration procedures, and for aquaculture facilities that are used for the cultivation and production of shellfish.
 - (2) Specifications for plant facilities and for the harvesting, transporting, storing, handling, packing, and repacking of shellfish.

(3) Fees.

- (b) The department shall adopt regulations by January 1, 1999, to interpret and enforce the provisions of this chapter. The regulations shall be adopted by the department in the manner prescribed by Chapter 3.5 commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) The regulations shall conform, so far as possible, to the standards or procedures established in the guidelines adopted by the National Shellfish Sanitation Program that pertain to the evaluation of shellfish-growing areas and handling facilities, but shall provide for regulating other wastes or contaminants not covered by the guidelines adopted by the National Shellfish Sanitation Program that would render shellfish unsafe or unfit for human consumption. If the department adopts standards or procedures that exceed standards or procedures established in the guidelines adopted by the National Shellfish Sanitation Program, the department shall provide a written finding describing the public health need for those standards and procedures in the rulemaking process.

§112170.

- (a) The director, or the director's duly authorized agent, shall conduct sanitary surveys of any shellfish growing water as deemed necessary to assure each of the following:
 - (1) Any shellfish grown in the water is safe as an article of food and meets bacteriological, chemical, and toxicologic standards as prescribed by regulation.
 - (2) Any shellfish grown in prohibited or restricted areas is either relayed to or depurated in approved water for a period of time as necessary to meet bacteriological, chemical, and toxicologic standards, as prescribed by regulation.
 - (3) For good cause shown, a shellfish grower or harvester may request the resurvey of restricted or unapproved growing water, and the director, or the director's duly authorized agent, shall conduct the sanitary resurvey.
- (b) If it is found that the shellfish and growing water are in compliance with the regulations promulgated under this chapter, the director shall issue a certificate attesting to the compliance to the lawful grower or harvester of the shellfish.

§112175.

It is unlawful for any person to engage in commercial shellfish cultivation or the harvesting for human consumption of shellfish from naturally occurring populations, except as provided for in Sections 5670, 7850, 8500, and 15101 of the Fish and Game Code and in regulations adopted by the department pursuant to this chapter, with regard to growing areas, relaying and depuration procedures, and aquaculture facilities.

§112180.

The director, or the director's duly authorized agent, may, at any reasonable hour of the day, do any of the following:

- (a) Enter and inspect any facility or area used for cultivation, production, depuration, processing, transporting, or sale of shellfish.
- (b) Obtain samples of water and shellfish. Upon request, split samples shall be given to the person from whose property the samples were obtained.
- (c) Inspect all shellfish plants and the practices followed in the handling and packaging of shellfish. If it is found that the operator is complying with the regulations promulgated under this chapter, the director shall issue a certificate attesting to the compliance.
- (d) Cause a reinspection to be made at any time and may revoke the certificate upon refusal of the operator to permit an inspection or free access at all reasonable hours, or upon a finding that the plant is not being operated in compliance with the regulations promulgated under this chapter.
- (e) No revocation, suspension, annulment, or withdrawal of any certificate is lawful unless, prior to the institution of department proceedings, the department gave notice by mail, to the certificate holder, of facts or conduct that warrants the intended action, and the certificate holder was given an opportunity to show compliance with all lawful requirements for the retention of the certificate, pursuant to Section 112265. This section does not preclude the department from taking immediate action in accordance with subdivision (e) of Section 112160.

§112185.

It is unlawful for any person to take, sell, offer, or hold for sale any shellfish from an area declared by the director to be unsuitable for harvesting for human consumption, without complying with all regulations adopted by the department to ensure that the shellfish have been purified.

The intent of this section is not to prohibit the transplanting of shellfish from restricted or prohibited growing areas, if permission for the transplanting is first obtained from the Department of Fish and Game pursuant to Section 237 of Title 14 of the California Code of Regulations.

§112190.

It is unlawful for any person to sell, offer, or hold for sale any shellstock or shucked shellfish that has not been harvested from a growing area which has been certified by the department or that has not been purified in accordance with Section 112170.

§112195.

It is unlawful for any person to sell, offer, or hold for sale any shellstock or shucked shellfish that has not been handled and packaged in accordance with specifications under this chapter, and regulations adopted pursuant to this chapter.

§112200.

It is unlawful for any person to sell, offer, or hold for sale any shellfish where the facilities for packaging and handling of the shellfish do not comply with regulations adopted by the department under this chapter.

§112205.

It is unlawful for any person to operate a shellfish plant engaged in the handling and packaging of shellfish, either shucked or in the shell, without a valid certificate issued by the department for each plant or place of business.

§112210.

It is unlawful for any person to sell, offer, or hold for sale any shellstock or shucked shellfish without a label that bears a valid certificate number and is in compliance with Chapter 4 (commencing with Section 110290) of Part 5.

§112215.

It is unlawful for any person to sell, offer, or hold for sale any shellfish not in a container bearing a valid certificate number from a state or a nation whose shellfish certification program conforms to the then current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry, issued by the United States Public Health Service.

§112220.

The provisions of Sections 112210 and 112215, with respect to labeling requirements, shall not apply to any of the following:

- (a) Shellstock held in dry storage under refrigerated conditions not for shipment or sale.
- (b) Shellstock sold on premises when the sale is the ultimate point of sale.

§112225.

Any shellfish that are held or offered for sale at retail or for human consumption, and that have not been handled and packaged in accordance with the specifications fixed by the department under this chapter, or that are not in a certified container as provided in Sections 112210 and §112215, or that are otherwise found by the director to be unfit for human consumption, are subject to immediate condemnation, seizure, and confiscation by the director or the director's duly authorized agent. The shellfish shall be held, destroyed, or otherwise disposed of as directed by the director.

§112230.

The director may suspend or revoke any certificate issued pursuant to this chapter for any violation of this chapter or the regulations adopted pursuant thereto.

§112235.

The department shall charge and collect a fee for each certificate issued. The amount of the fee shall be established by regulation.

§112240.

Any person who willfully violates any provision of this chapter, or any regulation adopted pursuant to this chapter, is guilty of a misdemeanor and shall, if convicted, be subject to imprisonment for not more than six months in the county jail or a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or both. If the violation is committed after a previous conviction under this section that has become final, or if the violation is committed with the intent to defraud or mislead, the person shall be subject to imprisonment for not more than one year in the county jail or a fine of not more than one thousand dollars (\$1,000), or both.

§112245.

One-half of all fines collected by any court or judge for any violation of any provision of this chapter shall be paid into the State Treasury to the credit of the General Fund.

§112250.

- (a) The Attorney General, any district attorney, or any city attorney to whom the department reports any violation of this chapter shall begin appropriate proceedings in the proper court.
- (b) Before any alleged violation of this chapter is reported to the Attorney General, a district attorney, or a city attorney for the institution of a criminal proceeding, the person against whom this proceeding is contemplated may be given appropriate notice and an opportunity to show cause why he or she should not be prosecuted and to present additional facts that may mitigate the action. The showing may be presented either orally or in writing, in person, or by attorney.

§112255.

The department is not required to institute proceedings under this chapter for minor violations of this chapter, if the department believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

§112260.

When the state asserts a violation of this chapter, the state need not negate any exemption or exception from the requirements of this chapter in any pleading, or in any trial, hearing, or other proceeding. The burden of proof with respect to any exemption or exception rests upon the person claiming its benefits.

§112265.

- (a) Except to the extent otherwise provided in Section 112160 and subdivision (e) of Section 112180, or when a violation is asserted pursuant to Section 112240, when the department asserts a violation of this chapter, all affected persons shall be afforded an opportunity for an administrative hearing after 20 days' notice.
- (b) The notice shall include all of the following:
 - (1) A statement of the time, place, and nature of the hearing.
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - (3) A reference to the particular sections of the statutes, regulations, and rules involved.
 - (4) A short and plain statement of the matters asserted.
- (c) Opportunity shall be afforded all persons to respond and present evidence on the issues involved.
- (d) Hearings authorized or required by this chapter shall be conducted by the department or any agent as the department may designate for that purpose.
- (e) Oral proceedings or any part thereof shall be transcribed at the request of any person. The person requesting the transcription shall bear the cost of the transcript.
- (f) Final decisions or orders adverse to any person shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, that shall be separately stated. Persons shall be notified either personally or by mail of any decision or order.

§112270.

In lieu of administrative proceedings pursuant to Section 112265, the department may proceed under Section 119940.

§112275.

A person who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision or order is entitled to judicial review pursuant to this chapter.

§112280.

All regulations applicable to this chapter, and currently in effect at the time this chapter takes effect, shall remain in effect until the department adopts regulations pursuant to Section 112165.