



# House of Representatives

## **File No. 817**

General Assembly

January Session, 2007

**(Reprint of File No. 172)**

House Bill No. 7018  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
May 10, 2007

### **AN ACT CONCERNING IDENTIFICATION OF HARVESTED SHELLFISH.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 26-192k of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The Department of Agriculture shall allow the relay of shellfish  
4 from shellfish grounds classified as restricted relay to other grounds in  
5 accordance with the National Shellfish Sanitation Program Model  
6 Ordinance, as amended from time to time, regarding restricted  
7 shellfish relay. The department shall allow the harvest of shellfish from  
8 shellfish grounds classified as approved for market on the same day  
9 using the same vessel, provided the harvester first harvests the  
10 approved market product and lands the product to shore. A harvester  
11 shall not begin the relay of shellfish from shellfish grounds classified  
12 as restricted relay until all shellfish harvested first from approved  
13 market grounds, in market quantities, have been removed from the  
14 vessel. Such harvester shall not begin such relay until after the  
15 harvester has notified the Department of Environmental Protection of

16 such relay. The harvester shall provide all information required by the  
17 Department of Agriculture regarding shellfish relays to the  
18 Department of Environmental Protection at the time of such  
19 notification. For the remainder of the day, the harvester shall not  
20 harvest approved market shellfish after beginning such relay.

21 (b) All tag identification information regarding shellfish harvest  
22 locations shall be confidential, provided the harvester of the shellfish  
23 marks the tag with a unique code corresponding to the shellfish  
24 harvest location. [Such harvester shall provide the Department of  
25 Agriculture] The Department of Agriculture shall provide such  
26 harvester and the Department of Environmental Protection with a  
27 written code key detailing the harvest location and corresponding code  
28 to be used by the harvester.

29 Sec. 2. (NEW) (*Effective from passage*) (a) The Department of  
30 Agriculture may, upon written request of a municipality, enter into a  
31 memorandum of understanding with such municipality to authorize  
32 the health department or similar agency of the municipality to collect  
33 sea water samples for the purpose of shellfish harvest water  
34 classification. The memorandum of understanding shall not limit the  
35 geographic area from which the municipality may collect such samples  
36 and shall not be construed to prevent the municipality from collecting  
37 or processing samples for the purpose of improving shellfish harvest  
38 water classification. The Department of Agriculture shall provide the  
39 municipality with support, documentation and training regarding  
40 record keeping and sample collection and transport. The municipality  
41 shall provide training to any employees or agents it designates to take  
42 such samples.

43 (b) Samples collected by a municipality shall be collected and  
44 processed in accordance with the National Shellfish Sanitation  
45 Program Model Ordinance, as amended from time to time. Such  
46 samples shall be processed by a laboratory certified pursuant to said  
47 ordinance. The analysis of a sample processed in a laboratory other  
48 than a Department of Agriculture laboratory shall be transmitted

49 directly to said department's Bureau of Aquaculture and to the  
50 municipality that submitted the sample.

51 (c) The municipality may, but shall not be required to, assist the  
52 Department of Agriculture in sample collection in post rainfall  
53 conditions, spill events or routine sampling requirements. The  
54 Department of Agriculture shall accept all sample data analysis from  
55 samples collected by municipalities pursuant to this section and said  
56 department shall include such data analysis in any data base, report,  
57 file, calculation or process used by said department to determine or  
58 report water quality classification or reclassification.

59 Sec. 3. Section 26-241 of the general statutes is repealed and the  
60 following is substituted in lieu thereof (*Effective July 1, 2007*):

61 (a) All stakes, buoys or other markers placed by any person, except  
62 buoys placed by the state, so as to mark the divisional line, in whole or  
63 in part, between any private and any public or natural oyster, clam or  
64 mussel beds, in any waters of this state, shall have the name or initial  
65 of the owner plainly marked and visible at high water. Any  
66 corporation or person who fails to comply with the provisions of this  
67 section shall have committed an infraction.

68 (b) A buoy marking oyster, clam or mussel beds pursuant to  
69 subsection (a) of this section or section 26-240 shall be constructed with  
70 rigid polystyrene foam or similar buoyant material. Such buoy shall  
71 support a vertical pole extending not less than ten feet above the top of  
72 such buoy and shall be tethered by a rope or line to an anchoring  
73 device of sufficient weight to maintain the position of the buoy. The  
74 vertical pole shall not exceed three and one-half inches in diameter at  
75 any point and shall not be constructed of a metallic material. A durable  
76 waterproof flag not less than six inches in height and eight inches in  
77 length shall be affixed to the top of the pole.

78 Sec. 4. (NEW) (*Effective from passage*) Jurisdiction of shellfish  
79 grounds known as Cockenoe Flats in the town of Westport shall be  
80 transferred from the state of Connecticut to the town of Westport and

81 the Westport Shellfish Commission shall have jurisdiction over  
82 recreational clamming in said shellfish grounds and the ability to issue  
83 recreational clamming permits for the use of said grounds by all state  
84 residents.

85 Sec. 5. (NEW) (*Effective from passage*) A resource assessment permit  
86 issued by the Department of Agriculture for the purpose of assessing  
87 the viability of a shellfish area shall not authorize more than one  
88 hundred acres of assessment area per permit. Said department shall  
89 require the placement of buoys at each corner of the assessment area,  
90 as defined by the permit applicant, prior to the start of any assessment.  
91 Said department shall notify all abutting shellfish ground owners or  
92 lease holders of the issuance of such permit not later than five days  
93 prior to the effective date of the permit.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	26-192k
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>July 1, 2007</i>	26-241
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Agriculture	GF - None	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill makes a change which would increase efficiency to the shellfish relay program established in PA 06-116 and administered by the Department of Agriculture. It should be noted that sHB 7077 the Appropriations Act, as favorably reported by the Appropriations Committee includes funds in the amount of \$12,000 in FY 08 through the Capital Equipment Purchase Fund (CEPF) to purchase laptop computers which are necessary to fully implement this program.

It is anticipated that local costs, if any, associated with the collection of sea water samples will be taken into consideration by any interested municipality in the course of deciding whether or not to submit a written request to the Department of Agriculture (DOAG) .

Any increase in workload to the DOAG due to providing guidance to municipalities with regard to collection of sea water samples would depend upon the actual number of municipalities that entered into a memorandum of understanding (MOU) with the agency. The increase is estimated to be minimal at this time and since the MOU provisions are discretionary, it is anticipated that the agreements would be entered into when resources permit. The additional provisions concerning notification requirements for resource assessment permits are anticipated to minimally increase the workload of the DOAG for additional notification requirements.

Provisions of the bill requiring shellfish buoys to be constructed to have certain specifications are anticipated to have no fiscal impact.

Returning the shellfish grounds known as Cokenoe Flats to the town of Westport from state jurisdiction is anticipated to minimally reduce the workload of the state and increase the workload of the Westport Shellfish Commission. Any potential revenue increase to the Commission due to the issuance of permits is anticipated to be minimal.

House "A" adds provisions concerning Cokenoe flats, MOUs, certain buoys, and resources assessment permits and House "B" adds the same provisions as House "A" but allows the DOAG to enter into the MOUs instead of requiring it as in "A" and requires the support, record keeping etc. of DOAG if an MOU is entered into, and has the fiscal impact as stated above.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****HB 7018 (amended by House “A” and “B”)\******AN ACT CONCERNING IDENTIFICATION OF HARVESTED SHELLFISH.*****SUMMARY:**

This bill transfers jurisdiction of the Cockenoe Flats shellfish grounds in Westport from the state to the town of Westport, gives the Westport Shellfish Commission jurisdiction over recreational clamming in the shellfish grounds, and allows the commission to issue recreational clamming permits for use of the grounds by all state residents.

It allows the Department of Agriculture (DOAG), when a municipality requests it in writing, to enter into a memorandum of understanding (MOU) with the municipality to authorize the municipality’s health department or similar agency to collect sea water samples for shellfish harvest water classification (see BACKGROUND). It specifies the municipality’s and DOAG’s duties under the MOU and regarding sampling, and allows the municipality to assist DOAG with sample collecting under certain circumstances.

The bill also makes changes in various laws concerning shellfishing. Specifically, it requires DOAG to assign the unique confidential code for tag identification information about shellfish harvest locations (tags are attached to the harvested lots of shellfish).

It requires any buoy marking (1) the line between private and public or natural oyster, clam, or mussel (shellfish) beds and (2) an area in town beds for planting or cultivating shellfish to be constructed to meet certain specifications.

It also limits the area authorized by a resource assessment permit, which DOAG issues to assess the viability of a shellfish area, to 100 acres or less. Under the bill, DOAG must require buoys to be placed at each corner of the assessment area, as the permit applicant defines it, before any assessment begins. The department must notify all abutting shellfish ground owners or lease holders that it has issued such a permit no later than five days before the permit's effective date (see BACKGROUND).

\*House Amendment "A" adds provisions concerning (1) Cockenoe flats; (2) requiring DOAG to enter an MOU when a municipality request it and to provide guidance on record keeping, sampling, and transport; (3) certain buoys, and (4) resource assessment permits.

\*House Amendment "B" adds the same provisions, except it (1) allows, rather than requires, DOAG to enter into an MOU when a municipality requests it and (2) specifies that, if DOAG enters an MOU, it must provide the municipality with support, documentation, and training on record keeping, sampling, and transport.

EFFECTIVE DATE: Upon passage, except for the provision concerning buoys, which is effective July 1, 2007.

### **MOU AND SAMPLES**

Under the bill, the MOU cannot limit the geographic area from which the municipality collects samples. And the MOU cannot be construed to prevent the municipality from collecting or processing samples to improve shellfish harvest water classification. DOAG must provide the municipality support, documentation, and training on record keeping, collecting samples, and transport. The municipality must provide training to any employees or agents it designates to take the samples.

The samples that a municipality collects must be collected and processed in accordance with the National Shellfish Sanitation Program (NSSP) Model Ordinance (see BACKGROUND). The samples

must be processed by a laboratory certified as the ordinance requires. Under the bill, the analysis of a sample processed in a laboratory other than one the DOAG operates must be transmitted directly to the DOAG's Bureau of Aquaculture and the municipality that submitted the sample.

The municipality may help DOAG collect samples in post-rainfall conditions, spill events, or routine sampling requirements. Under the bill, DOAG must (1) accept all sample data analysis from samples that municipalities collect and (2) include the data analysis in any data base, report, file, calculation, or process it uses to determine or report water quality classification or reclassification.

### **TAG IDENTIFICATION**

By law, all tag identification information about shellfish harvest locations is confidential if the shellfish harvester marks the tag with a unique code corresponding to the harvest location. Currently, the harvester provides DOAG and the Department of Environmental Protection (DEP) with (1) a written code key describing his or her harvest location and (2) the corresponding code he or she uses for it. The bill instead requires DOAG to give the harvester and DEP the code key describing the harvester's harvest location and the corresponding code he or she must use for it. As by law, the location remains confidential.

### **SHELLFISH BUOYS**

Under the bill, the marker buoys must be constructed with rigid polystyrene foam or similar buoyant material. The buoy must support a vertical pole at least 10 feet high and be tethered by a rope or line to an anchoring device weighing enough to maintain the buoy's position. This vertical pole cannot (1) exceed 3.5 inches in diameter at any point or (2) be constructed of metallic material. The buoy must have a durable waterproof flag that is at least six inches tall and eight inches long affixed to the pole's top.

By law, all stakes, buoys, or other markers anyone places, except

state-placed buoys, that mark the divisional line, in whole or in part, between any private and any public or natural oyster, clam, or mussel beds in any state waters must have the name or initial of the owner plainly marked and visible at high water. Any corporation or person who fails to comply with these requirements, and those under the bill, commits an infraction (see BACKGROUND).

## **BACKGROUND**

### ***Classification***

By law, DOAG must classify the coastal waters, shores, and tidal flats for shellfish taking. The classifications are: approved, conditional (conditional-open and -closed), restricted, conditionally restricted, and prohibited. Anyone aggrieved by a classification decision may appeal as the law provides.

An area may be classified as prohibited for taking or harvesting shellfish, if it fails to conform to the standards established by the department for classifications other than prohibited. The department may specify the activities that may occur within each classified area. The activities must be listed on a shellfish license the department issues (CGS § 26-192e).

### ***Scientific Resource Assessment License***

By law, all people conducting shellfish operations involving relay (transplant), aquaculture, scientific studies, market harvesting, shucking, repacking, or the sale of shellfish to market must obtain a license. Licenses are usually valid for up to one year and are not transferable. License fees range from \$0 to \$50. DOAG may issue a license to conduct a scientific resource assessment or for educational or research purposes. By law, shellfish may not be removed from any leased or granted state or local natural bed without permission. Harvested shellfish from such an area may not be sold, consumed, or otherwise offered (CGS § 26-192c).

### ***NSSP Model Ordinance***

The NSSP Model Ordinance establishes (1) minimum requirements

for regulating the interstate commerce in molluscan shellfish and (2) a program to protect consumers' public health by ensuring that (a) shellfish sold and distributed are from safe sources and (b) have not been adulterated at any point. The Model Ordinance provides guidelines and is not a regulation.

***Tag Identification***

PA 06-116 requires all tag identification information about shellfish harvest locations to be confidential, if the harvester marks the tag with a unique code corresponding to the shellfish harvest location. Prior law established a non-confidential numbering system for tag identification of shellfish harvest locations from state and local shellfish beds.

***Infraction***

Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus an additional fee based on the amount of the fine and a \$20 surcharge. An infraction is not a crime; thus, violators do not have criminal records and can pay the fine by mail without making a court appearance.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 30    Nay 0    (03/12/2007)