

SCSL Digital Collections

Summary of Commercial Shellfish Laws 2017-2018

Item Type	Text
Publisher	South Carolina State Library
Rights	Copyright status undetermined. For more information contact, South Carolina State Library, 1500 Senate Street, Columbia, South Carolina 29201.
Download date	2024-11-13 16:14:02
Link to Item	http://hdl.handle.net/10827/25767

Summary of Commercial Shellfish Laws

2017-2018

This document should be kept on board all vessels engaged in commercial shellfishing as a reference to regulation, not to supersede knowledge of the pertinent laws. Complete laws can be found at www.scstatehouse.gov.

License Requirements: [Section 50-5-300, Section 50-5-310, Section 50-5-320, Section 50-5-325, Section 50-5-360, Section 50-5-965]

	<u>Resident</u>	<u>Non-Resident</u>
Saltwater Commercial License	\$25.00	\$300.00
State Shellfish Grounds License	\$75.00	\$375.00
Hand Held Equipment License	No Charge	No Charge
Drag Dredge License	\$75.00	\$375.00
Other Mechanical Equipment License	\$125.00	\$625.00
Commercial Vessel Decal	No Charge	No Charge
Culture or State Ground Harvest Permit/Decal	No Charge	No Charge
State Ground Harvest Maps	No Charge	No Charge

Legal definitions important to shellfishermen include:

- “Bottoms” are all of the lands within the State covered at mean high water from the freshwater/saltwater dividing line seaward to the seaward most limits of the territorial sea. **[Section 50-5-15]**
- “Bull rake” means a rake having a basket and a width greater than twelve inches. **[Section 50-5-15]**
- “Bushel” means one US bushel. **[Section 50-5-15]**
- “Commercial equipment” means:
 - (a) Any trawl, haul seine, gill net, channel net, bull rake, seed fork, grabs, escalator, or dredge; and
 - (b) Any net, seine, trap, pot, tongs, rake, fork, trotline, or other device or appliance when used for taking or attempting to take fish for a commercial purpose. **[Section 50-5-15]**
- “Commercial purpose” means:
 - (a) Being engaged in buying or selling fish;
 - (b) Taking or attempting to take fish in order to derive income or other consideration;
 - (c) Using commercial equipment; and
 - (d) Otherwise being engaged in the fisheries industry with the intent to derive income. **[Section 50-5-15]**
- “Culch” means oyster shell or other substrate, which is purposely placed for propagation of oysters through the attachment of oyster larvae. **[Section 50-5-15]**
- “Dredge” means equipment used for harvesting bottom dwelling aquatic life, which is not a trawl and is powered by mechanical means, and is designed to contact the bottom when in operation. **[Section 50-5-15]**
- “Fish” means finfish, shellfish including mollusks, scallops, crustaceans, horseshoe crabs, whelks (conchs), turtles, and terrapin or products thereof. **[Section 50-5-15]**

- “Mariculture” means controlled cultivation in confinement of marine and estuarine organisms in salt waters. **[Section 50-5-15]**
- “Mollusk” or “molluscan”, means any member of the phylum Mollusca. **[Section 50-5-15]**
- “Recreational fishermen” means persons taking or attempting to take saltwater fish for recreation only, and not for commercial purposes. **[Section 50-5-15]**
- “Seed fork” means a fork manufactured having seven or more straight or slightly curved tines or having any tine greater than eight inches in length. All tines must be at least one inch apart unless utilized for mariculture harvest. **[Section 50-5-15]**
- “Shellfish” means oysters, clams, mussels, scallops, and all nonmotile molluscan fish having shells. **[Section 50-5-15]**
- “Shellfish seed” means any shellfish that does not exceed one inch in height or maximum dimension. **[Section 50-5-15]**
- “Striker” means a person, other than a licensed saltwater commercial fisherman, who under immediate supervision assists a licensed commercial saltwater fisherman, but does not use separate commercial equipment on a vessel, which is engaged in commercial fishing. **[Section 50-5-15]**

Notice of opening or closing of commercial fishing season; health and environmental protection.

In opening or closing the commercial shellfish fishing season, except under its emergency closure authority, the Department shall give at least twenty-four hours notice of any action and shall use all reasonable means to inform the public. **[Section 50-5-35 (A)]**

Responsibility for determining location of commercial fishing vessel.

The operator of any vessel engaged in commercial fishing is responsible for accurately determining the location of his vessel in order that he not violate any closed or restricted area. **[Section 50-5-115]**

Boarding of vessel by law enforcement officers; penalty for failure to allow boarding and to cooperate.

The operator and crew of any watercraft operating in the state waters are required to heave to when signaled or hailed, and allow boarding, and cooperate with Department personnel, law enforcement officers, or U.S. Coast Guard personnel. **[Section 50-5-120]**

Commercial equipment licenses and fees; specification of vessel on which used; tagging of equipment; penalties.

Other than vessels solely transiting the State in interstate commerce, any vessel on or from which commercial shellfish harvest equipment is used or transported must display a current identification decal provided by the Department. **[Section 50-5-325 (F)]**

Commercial license a condition of permit; exceptions; revocation.

In order to obtain any commercial shellfish harvest permit, a person must be a licensed commercial saltwater fisherman and hold all other required licenses. **[Section 50-5-345 (A)]**

Any permit granted may be revoked by the Department for a violation of a condition of the permit or of a related conservation law. **[Section 50-5-345 (B)]**

Display of licenses, permits, and vessel's identification decal; transfer of licenses; penalty.

While exercising the privilege of a license or permit, the licensee, operator, or permittee must display or keep on his person the license or permit, and the license or permit must be produced on demand of Department personnel or other law enforcement personnel. **[Section 50-3-350 (A)]**

The operator and the owner of a vessel used for commercial purposes must have aboard the required commercial equipment licenses and permits and display the vessel's identification decal provided by the Department. **[Section 50-3-350 (C)]**

Expiration of licenses and permits.

Licenses issued for shellfish equipment expire on June 30th following their effective date. Permits expire under the terms of the individual permit. **[Section 50-5-385]**

Designation and maintenance of Public Shellfish Grounds; areas containing DHEC permitted structure; taking for commercial purpose prohibited.

The Department designates certain shellfish growing areas for recreational harvest only. It is a violation of the law for a person to take shellfish from such area for a commercial purpose or to sell or attempt to sell shellfish taken from such area. **[Section 50-5-955 (C)]**

Rules governing recreational shellfish bottom harvests.

Only properly licensed and permitted commercial fisherman and persons who received properly tagged shellfish from a licensed and certified wholesale seafood dealer may possess more than the daily recreational limits provided in law while on the waters of this State or the adjoining lands. **[Section 50-5-960 (B)]**

Taking shellfish from bottoms designated for commercial harvest; individual harvester permits; written approvals; penalties.

A person who takes shellfish commercially or takes more than the recreational limits allowed by law from the bottoms designated for commercial harvest must possess an individual harvesting permit. **[Section 50-5-965 (A)]**

In order to obtain an individual harvesting permit, a person must be a licensed commercial saltwater fisherman, hold all other appropriate valid commercial licenses, and complete any shellfish training required by regulations promulgated by the South Carolina Department of Health and Environmental Control pursuant to Section [44-1-140](#). **[Section 50-5-965 (B)]**

The Department may limit the number of areas on which an individual may harvest commercially under permit. **[Section 50-5-965 (D)]**

People holding Shellfish Culture or Mariculture Permits may allow others to harvest shellfish from bottoms permitted to them. In addition to the required Department permit, in the form of a hard card, harvesters must have a decal from the Shellfish Culture permittee or Shellfish Mariculture permittee for each area. **[Section 50-5-965 (E)]**

No person may take or attempt to take shellfish from state-owned bottoms in quantities greater than that allowed for personal use without having in possession a valid individual commercial harvesting permit granted to him by the Department. **[Section 50-5-965 (F)]**

No person may take or attempt to take shellfish from state-owned bottoms under permit for shellfish

culture or mariculture without a valid individual harvester permit granted to him by the Department. **[Section 50-5-965 (G)]**

Mechanical harvest permits; penalties.

It is unlawful to take or attempt to take shellfish by mechanically operated devices without a mechanical harvest permit. **[Section 50-5-970]**

Commercial and personal harvest limited to areas specified on permit; penalties; voluntary surrender of commercial permit.

A person permitted to harvest shellfish from state- owned bottoms for commercial purposes must harvest, whether for commercial or personal use, from only the areas of state bottoms specified on the permit. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than thirty days. **[Section 50-5-975 (A)]**

Following voluntary surrender of a commercial shellfish harvest permit by a commercial fisherman, the Department must not issue a commercial harvest permit to that person during the remainder of the license year. **[Section 50-5-975 (B)]**

Erection and maintenance of signs; penalty.

It is not lawful without approval of the Department to erect or maintain any sign on shellfish bottoms or waters, except Culture or Mariculture Permit holders may erect signs approved by the Department to designate their areas under permit. **[Section 50-5-980]**

Setting season for taking shellfish; bringing shellfish into State during closed season; night harvests; penalties.

The Department sets the shellfish season annually. Please contact the Department (843)953-9301 for the shellfish opening and closing dates. It is a violation of the law for a person to take or attempt to take any shellfish during the closed season. A person who violates the provision of this subsection for a commercial purpose is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days and must have his saltwater privileges suspended for twelve months. A person who violates this section for a noncommercial purpose is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. **[Section 50-5-985 (A)]**

It is unlawful to take or attempt to take shellfish from any grounds closed by the Department or any other authorized government agency. A person who violates the provision of this subsection for a commercial purpose is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than one thousand dollars or imprisoned for not more than thirty days and must have his saltwater privileges suspended for twelve months. A person who violates the provisions of this subsection for a noncommercial purpose is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than one thousand dollars or imprisoned for not more than thirty days. **[Section 50-5-985 (B)]**

Shellfish imported during the closed season must bear written evidence, such as a bill of lading or other official document from the State of removal, which verifies that the shellfish were lawfully taken from the state. **[Section 50-5-985 (E)]**

It is unlawful to harvest shellfish between one-half hour after sunset as locally published and one-half hour before sunrise as locally published. In the case of bottoms under culture or mariculture permit, harvesting at night is lawful with the written permission of the Department. **[Section 50-5-985 (F)]**

Size limitations for hard clams of the genus *Mercenaria*; permits for possession and sale of undersized clams; penalties.

Except as an activity of mariculture it is unlawful to take or attempt to take, possess, sell, purchase, or import a hard clam less than one inch in thickness as measured from the exterior surface of one shell of the intact clam to the exterior surface of the opposite shell. A person taking a clam of other than legal size must immediately return it to the bottoms from whence it came. **[Section 50-5-990 (A)]**

It is lawful for persons and entities engaged in shellfish mariculture operations to possess mariculture clams of less than the minimum size specified in this section and to import, purchase, sell, or transplant undersized mariculture clams, as defined in this section, by obtaining a permit. It is also lawful for a licensed wholesale seafood dealer or retail restaurant to purchase and possess for resale undersized maricultured clams purchased from a mariculture operation permitted pursuant to this section, provided the licensed wholesale seafood dealer or retailer has proof of origin in possession for each lot of clams purchased. **[Section 50-5-990(B)]**

Wholesale seafood dealer prohibited from purchasing from unlicensed fisherman or dealer; maintenance of records; penalties.

It is unlawful for a wholesale seafood dealer to purchase shellfish from anyone other than a properly licensed and permitted commercial saltwater fisherman or another licensed wholesale seafood dealer. The dealer must maintain a record of all purchases of shellfish handled including the name and address of the person from whom purchased, the area where harvested, the type of shellfish purchased, the dates of harvest and purchase, and the commercial saltwater fisherman's license number. The record must be available for inspection by any law enforcement officer or Department personnel for one year after the date of sale. **[Section 50-5-1000 (A)]**

Unlawful removal of shell; penalty.

It is unlawful to remove shells from any shell deposit under state jurisdiction without a permit from the Department. **[Section 50-5-1015]**

All permits must be obtained through the Permitting Office at the Office of Fisheries Management at 217 Fort Johnson Road, Charleston, SC 29412.

***All fishermen commercially harvesting molluscan shellfish must have harvest tags, please contact SC DHEC Shellfish Sanitation for details.**

* If you no longer need your license please be sure to surrender it to the Commercial License office in Charleston (PO Box 12559 Charleston, SC 29422). If you have questions about surrendering your license please call (843)953-9311.

As required by S.C. Code Section 8-29-10, applicants for a commercial license or permit are required to complete an affidavit entitled "Verification of Lawful Presence in the United States" certifying that the applicant is lawfully in the United States. The affidavit MUST be completed, notarized and returned with the application. If you are a US citizen, the properly filled out affidavit is all that is required. If you are not a US citizen, you will be required to provide documentation, which is subject to verification with the Department of Homeland Security. Specific types of documentation that may be provided can be found

on Page 2 of the form, under "Accepted Immigration Documents." Your application for a commercial license or permit will be returned if the affidavit and documentation is not received and notarized. If your license/permit is in a company name the owner/responsible party for the company must complete the affidavit and indicate the business information on the bottom right of the form. The affidavit only needs to be completed once if you are a U.S. Citizen 18 years of age or older, all others will be required to resubmit the affidavit each time an individual applies for a commercial license or permit from the Department.

If you are convicted for an offense, there may be points assessed against your license or your privileges may be suspended if the statute requires it. Upon an accumulation of eighteen (18) or more points, the privileges of that license will be suspended for one year. Points and violations can be found in the SC DNR Rules and Regulations book or SC Code of Laws 50-5-2500(A).

If your license/ permit is suspended or revoked, you are entitled to an administrative appeal pursuant to the South Carolina Administrative Procedures Act. The review must be scheduled by the Administrative Law Court in accordance with the division's procedural rules. The scope of the hearing is limited to the issues set out by the Administrative Procedures Act and the division's procedural rules. Appeals must be filed and served within 30 days of suspension/ revocation notice with the Clerk of Court of Administrative Law Court 1205 Pendleton Street Suite 224 Columbia, SC 29201, telephone (803)734-0660.

SCDHEC - Shellfish Commercial Harvester Regulations and Safety Guidelines

These safety guidelines include the requirements for commercial shellfish harvesters operating in South Carolina as required by Regulation 61-47 and enforced by the South Carolina Department of Health and Environmental Control (SCDHEC). The guidelines are set forth and required to protect human health and consumers from the unsafe harvesting, handling, transportation, and distribution of molluscan shellfish.

- **HARVESTER TRAINING** – Shellfish harvesters are required to have DHEC-approved harvester education. SC DNR will not issue harvest permits until you have completed the DHEC-required training. This training is to make harvesters aware of human health concerns related to shellfish and thereby improve consumer safety.
- **PROTECTION FROM CONTAMINATION** - Harvesters **MUST** protect harvested shellstock from contamination at all times. Contamination can come from many different sources. Water from a closed area splashing on product as you head back to the landing or dock, animals on board vessels, transporting shellstock in vessels that allow bilge water to come into contact with shellstock are examples of potential sources of contamination.
- **APPROVED HARVESTING AREAS** - Shellstock must be harvested **ONLY** from shellfish growing waters that are classified as APPROVED by SCDHEC. It is important to know where you are harvesting. Areas which are NOT SAFE for harvest are marked in orange or red on the maps provided to you by SCDNR for State Shellfish Grounds. SCDHEC has closed these areas based on levels of bacteria that are in the water. Oysters and clams can concentrate bacteria from the water as they filter feed. Shellfish from SCDHEC-closed areas could contain high levels of bacteria that could make a consumer sick. Maps of the shellfish harvesting areas that have been closed to harvesting for the season can be located by going to www.scdhec.gov/shellfish
- **TEMPORARY CLOSURES** – In case of pollution events (e.g. spills) or heavy rainfall, harvest areas may be temporarily closed by SCDHEC. Such closures will be announced in your local newspaper and at <http://www.scdhec.gov/FoodSafety/ShellfishMonitoring/ClosureUpdates/>. SCDHEC also maintains a closure hotline 1-800-285-1618.
- **HARVESTING TIMES** – **During the regular season** shellstock must be delivered to a certified shellfish dealer within **18 HOURS** from initial harvest start time. Initial harvest start time is when the first oyster or clam is harvested and placed into a container. It is important to make sure that shellstock are delivered as soon as possible to the certified dealer to begin the cooling process. Shellfish already contain bacteria and warmer temperatures (such as the air) will cause the bacteria to multiply. The quicker the shellfish are cooled to below 50 degrees F., the lower the risk of an illness associated with the product.
- **HARVEST TAGS** - Commercial harvesters shall affix a harvest identification tag to containers of shellstock prior to removal of the shellstock from the area in which it is harvested. Commercial Harvest Tags must be obtained from the Certified Shipper (=Dealer) who will purchase your product. This must be arranged with the Dealer PRIOR to harvest. The tag must be completely filled out and have the most precise location and time from when and where the shellstock was harvested on each individual container. This is a critical part of the tracking

process in case someone becomes ill from eating the shellfish. When an illness occurs, officers use the tags to identify where the oysters or clams came from. If multiple people become ill from shellfish from the same area it is critical for SCDHEC to be able to identify all the shellfish harvested from that area and make sure it is removed from the marketplace to prevent further people from becoming sick.

- **BULK TAG** - When shellstock are harvested from a single harvest area on a single day, and a harvest vessel utilizes open decks or holds, tubs or totes, or other similar large-capacity holding units for the transport of loose, bulk shellstock, the vessel may utilize a single harvest identification tag. ****Quantity of shellstock must be indicated on the bulk tag.***
- **BOAT CONSTRUCTION** –All vessels used in the gathering of shellstock shall be constructed, used, and maintained in a manner that will prevent product contamination; this includes bilge water. Elevated decks in boats can keep shellstock above any bilge water that has accumulated in the bottom of the boat. Fuel containers and any human waste containers should be stored so as to prevent any spillage on or near the shellstock or in the water. **Human Waste should never be discharged into the waters of a shellfish growing area!!!!** This could result in deadly bacteria being introduced to the shellfish which would later be harvested and sold to consumers. Always store any human waste in a container with a tight fitting lid or have on board a United States Coast Guard (USCG) approved Marine Sanitation Device. If a bucket with a tight fitting lid is used, it must be labeled HUMAN WASTE and not used for any other purposes. Once back to the land it should be emptied in a toilet or portable toilet only.
- **TRANSPORTATION** - Vehicles used to transport shellfish shall be constructed, operated, and maintained to prevent contamination, deterioration, and decomposition of shellfish. Shellfish transported in unenclosed vehicles shall at all times be protected by effective coverings. Enclosed vehicles such as refrigerated box trucks should be maintained and cleaned to prevent the buildup of unsanitary conditions. Refrigeration units on these trucks should be capable of maintaining an ambient air temperature of 45 degrees F. or less. When non-refrigerated vehicles are used to transport shellstock to a certified dealer, an effective covering should be used to prevent debris and road film from being sprayed onto shellstock. The coverings also help to prevent the shellstock from being in direct sunlight and increased post harvest temperatures.

For questions about any of this information contact your local SCDHEC Shellfish Officers:

Horry and Georgetown Counties: Myrtle Beach office – 843 -238-4378
Charleston County : Charleston office - 843-953-0150
Beaufort, Colleton and Jasper Counties: Beaufort office - 843-846-1030
Closure Hotline 1-800-285-1618