

§6077. Aquaculture monitoring program

The department may establish and maintain an information base pertaining to the siting, development and operation of finfish aquaculture facilities within the State. [PL 2003, c. 660, Pt. A, §17 (AMD).]

1. Coordination. The commissioner shall coordinate the data collection efforts of the department with those of other state agencies that regulate or assist the finfish aquaculture industry. All agencies of the State shall cooperate with the department in the establishment of the information system and shall provide all available information requested by the commissioner. [PL 1991, c. 381, §6 (NEW).]

2. Data requirements. The commissioner may collect information in site-specific categories, including, but not limited to, those listed in this subsection, to allow effective enforcement of all laws pertaining to finfish aquaculture at individual facilities:

- A. Geophysical site characteristics, including currents and bathymetry; [PL 1991, c. 381, §6 (NEW).]
- B. Benthic habitat characteristics and effects, including changes in community structure and function; [PL 1991, c. 381, §6 (NEW).]
- C. Water column effects, including water chemistry and plankton; [PL 1991, c. 381, §6 (NEW).]
- D. Feeding and production data sufficient to estimate effluent loading; [PL 1991, c. 381, §6 (NEW).]
- E. Smolt and broodstock introduction and transfer data; [PL 1991, c. 381, §6 (NEW).]
- F. Disease incidence and use of chemical therapeutics; and [PL 1991, c. 381, §6 (NEW).]
- G. Other ancillary information as the commissioner may find necessary. [PL 1991, c. 381, §6 (NEW).]

[PL 2003, c. 660, Pt. A, §18 (AMD).]

3. Data collection; authority. The commissioner may require persons holding licenses related to finfish aquaculture under this Title to report information in the categories listed in subsection 2. Personnel retained by leaseholders to perform tasks required for data collection as specified in subsection 2 and this subsection must be reviewed and approved by the commissioner for acceptable professional qualifications and experience prior to performing any data collection services. Routine notations of site operation do not require approved personnel.

[PL 2003, c. 660, Pt. A, §18 (AMD).]

4. Confidentiality. Notwithstanding section 6173 and except as provided in paragraphs A and B, information obtained by the department under this section is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney's fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information.

- A. Information submitted to the department under this section may be designated by the submitter as proprietary information and being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the United States Department of Agriculture, the Attorney General and employees of the municipality in which the aquaculture facility is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so

designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submitter and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal to the Superior Court. Information that has been designated by the submitter as proprietary information may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter 13. If a request for the information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph. [PL 2009, c. 240, §12 (AMD).]

B. The commissioner may not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal. [PL 1991, c. 381, §6 (NEW).]

C. Any information that is collected by any other state or federal agency or information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under paragraph A. [PL 1991, c. 381, §6 (NEW).]

D. The commissioner may adopt rules to carry out the purposes of this section. The rules must be consistent with the provisions of Title 1, chapter 13, subchapter I. [PL 1991, c. 381, §6 (NEW).]

E. It is unlawful to disclose designated information to any person not authorized by this section.

(1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.

(2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than \$5,000 may be assessed.

(3) In any action under this paragraph, the court shall first declare that the information is proprietary information. [PL 2009, c. 240, §13 (AMD).]

F. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [PL 2009, c. 240, §14 (NEW).]

[PL 2009, c. 240, §§12-14 (AMD).]

SECTION HISTORY

PL 1991, c. 381, §6 (NEW). PL 2003, c. 247, §17 (AMD). PL 2003, c. 660, §§A17,18 (AMD). PL 2009, c. 240, §§12-14 (AMD).

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