

12 §6172. CONTAMINATED OR POLLUTED FLATS

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1. Commissioner's powers. The commissioner may examine the coastal waters and the intertidal zone and adopt rules to close coastal waters or intertidal zone areas if the commissioner determines that any marine organisms are or may become contaminated or polluted. The commissioner may adopt or amend rules as the commissioner determines necessary, setting forth standards for closure of contaminated or polluted areas, giving consideration to established state water quality standards, the most recently adopted federal sanitation standards, or other state or federal public health standards, the most recent generally accepted research data and known sources of pollution in any area, in a manner to protect the public health and safety while allowing reasonable use of the State's marine organisms.

[1991, c. 390, §2 (AMD) .]

1-A. Federal waters. The commissioner may adopt rules establishing standards for closing waters under the jurisdiction of the Federal Government to the harvesting of a marine organism that the commissioner determines is or may become contaminated or polluted. The commissioner may, in accordance with standards adopted under this subsection, by rule close waters under the jurisdiction of the Federal Government to the harvesting of a marine organism when the commissioner determines the organism is or may become contaminated or polluted. Rules adopted pursuant to this subsection must be in conformance with applicable federal law and regulations. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1997, c. 93, §1 (NEW) .]

1-B. Advisory council. Notwithstanding section 6171-C, the advice and consent of the Marine Resources Advisory Council is not required prior to adoption of a rule under this section.

[2005, c. 44, §2 (NEW) .]

2. Emergency rules. The commissioner may adopt or amend rules under the emergency procedures, if immediate action is necessary to prevent the taking of polluted or contaminated marine organisms.

[1991, c. 390, §2 (AMD) .]

3. Repeal. The commissioner shall repeal a rule closing an area or waters when the marine organisms are no longer contaminated or polluted or when the waters meet the sanitary standards set forth in any department rules. The commissioner may use emergency regulatory procedures to open areas or waters that have been closed under emergency procedures of this section.

[1991, c. 390, §2 (AMD) .]

4. Procedure. The procedures of subchapter II shall be used in adopting or amending rules authorized by this section.

[1989, c. 205, §3 (AMD) .]

5. Private property; right of entry. The commissioner's authority to enter privately owned land or buildings to carry out the purposes of this section is prescribed as follows:

A. The commissioner, upon presentation of credentials, may enter privately owned land at reasonable times with the owner's permission. If entry to the land is denied by the owner, the commissioner may seek a search warrant to inspect the land for sources of pollution under this section. A warrant may not be issued to search a domicile or residential building or ancillary structures; and [1991, c. 242, §1 (NEW) .]

B. The commissioner may enter a privately owned domicile, building or structure only with the owner's permission and only in the presence of the owner or the owner's agent. [1991, c. 242, §1 (NEW) .]

For the purposes of this subsection, "commissioner" means the Commissioner of Marine Resources or an employee of the department authorized by the commissioner to inspect coastal waters and intertidal zones for sources of pollution.

[1991, c. 242, §1 (NEW) .]

SECTION HISTORY

1977, c. 661, §5 (NEW). 1981, c. 649, §1 (AMD). 1983, c. 301, §§5,6 (AMD). 1985, c. 268, §1 (AMD). 1989, c. 205, §3 (AMD). 1991, c. 242, §1 (AMD). 1991, c. 390, §2 (AMD). 1997, c. 93, §1 (AMD). 2005, c. 44, §2 (AMD).

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