



The State of New Hampshire  
**Department of Environmental Services**

**Clark B. Freise, Assistant Commissioner**

45 S.A.M.

April 3, 2017

His Excellency, Governor Christopher T. Sununu  
and The Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the New Hampshire Department of Environmental Services (NHDES) to execute an amendment to the **SOLE SOURCE** Memorandum of Agreement (MOA) (PO #1045022) with the New Hampshire Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS), Bureau of Laboratory Services (BLS), Concord, NH (VC# 177921-B003) by 1) amending the title of the MOA to read "Laboratory Analysis of Shellfish Tissue Samples and Seawater Samples for Paralytic Shellfish Poison, *Vibrio* Bacteria, Male-Specific Coliphase, and Fecal Coliform Bacteria", 2) adding work plans for FY 2018 and FY 2019 including analysis for male-specific coliphase, 3) extending the agreement end date from June 30, 2017 to June 30, 2019, and 4) increasing the agreement amount by \$121,800 from \$105,000 to \$226,800, effective upon Governor and Council approval through June 30, 2019. The original Agreement was approved by G&C on June 10, 2015 (Item# 73). 100% General Funds.

Funding is available in the following account, with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified, and is contingent upon the availability and continued appropriation of funds in FY 2018 and FY 2019, as follows:

	<u>FY 2018</u>	<u>FY 2019</u>
03-44-44-442010-15230000-020-500239	\$32,000	\$33,000
Dept Environmental Services, Shellfish Protection Program/Healthy Tidal Waters, Current Expense		

	<u>FY 2018</u>	<u>FY 2019</u>
03-44-44-442010-15230000-049-500294	\$34,900	\$21,900
Dept Environmental Services, Shellfish Protection Program/Healthy Tidal Waters, Transfer to Other State Agencies		

**EXPLANATION**

NHDES is requesting authorization to amend the **SOLE SOURCE** MOA with DHHS to provide funds for the DHHS-BLS to analyze seawater and shellfish tissue samples for Paralytic Shellfish Poisoning (PSP) toxin, for *Vibrio* bacteria, and for fecal coliform bacteria for FY 2018 and FY 2019. Funds will also be used to assist DHHS-BLS to develop the capability to test for male specific coliphage, a new microbiological indicator of viral contamination from municipal wastewater treatment facilities that is now part of the National Shellfish Sanitation Program. The laboratory results will be used by NHDES to determine appropriate classification of shellfish growing waters and to determine when shellfish growing areas may be reopened for harvesting following pollution-generating events such as wastewater treatment facility upsets. This amendment to the **SOLE SOURCE** MOA is justified because the DHHS-BLS is the only laboratory in New Hampshire that is certified by the U.S.

Food and Drug Administration to analyze shellfish tissue samples for PSP toxin and fecal coliform bacteria. Use of a certified laboratory is required to comply with RSA 487:34 and the National Shellfish Sanitation Program.

The original agreement provided \$105,000 in funds for laboratory services in FY 2016 and FY 2017. The proposed amendment includes additional funds that will be necessary to continue testing for FY 2018 and FY 2019. The attached MOA amendment outlines the respective obligations of NHDES and DHHS in completing the additional work specified for FY 2018 and FY 2019.

The amendment has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.



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Clark B. Freise, Assistant Commissioner

**Memorandum of Agreement Amendment**  
**Change in Scope of Work**

It is hereby agreed that the initial Memorandum of Agreement (MOA) approved Governor and Executive Council on June 10, 2015, Item #73, between the Department of Health and Human Services, Division of Public Health Services, Bureau of Laboratory Services and the Department of Environmental Services to provide laboratory services is amended as follows:

1. Change the title of the MOA from “Laboratory Analysis of Shellfish Tissue Samples and Seawater Samples for Paralytic Shellfish Poison, *Vibrio* Bacteria and Fecal Coliform Bacteria” to the following:

Laboratory Analysis of Shellfish Tissue Samples and Seawater Samples for Paralytic Shellfish Poison, *Vibrio* Bacteria, Male-Specific Coliphage, and Fecal Coliform Bacteria

2. Amend the second paragraph of the MOA by adding the following to the end of the paragraph:

Work in SFY 2018 and SFY 2019 will involve laboratory analysis of shellfish tissue samples for Paralytic Shellfish Poison toxin, for *Vibrio* bacteria (\$140 per sample), for male-specific coliphage (\$60 per sample) and for fecal coliform bacteria (\$60 per sample). Work will also involve laboratory analysis of seawater samples for fecal coliform bacteria Most Probable Number (\$30 per sample), for fecal coliform bacteria plate counts (\$20 per sample), and for male-specific coliphage (\$30 per sample) for a total project cost not to exceed \$66,900 in SFY18 and \$54,900 in SFY19 per year, or \$121,800 over the two fiscal years. As match for the project, DHHS will contribute laboratory analysis of up to 50 shellfish tissue samples per year for fecal coliform Most Probable Number testing (valued at \$60 per sample) and laboratory analysis of up to 65 shellfish tissue samples per year for Paralytic Shellfish Poison toxin testing (valued at \$200 per sample) to determine the proper classification of shellfish growing waters.

3. Delete the third paragraph of the MOA and replace it with the following:

The purposes of this project are to (1) test shellfish tissue samples for Paralytic Shellfish Poisoning (PSP) toxin to determine when shellfish beds need to be closed and/or reopened following a red tide event; (2) assess *Vibrio* bacteria levels in shellfish under various environmental conditions to assess risk of illness outbreaks, (3) conduct analysis of shellfish tissue and seawater samples for fecal coliform bacteria to determine when it is appropriate to reopen shellfish harvesting areas following a pollution event, (4) conduct analysis of shellfish tissue and seawater samples for male specific coliphage to determine risk of illness outbreaks from viral pathogens, and (5) conduct analysis of seawaters for fecal coliform bacterial testing to maintain the proper classifications of shellfish growing waters. This MOA will result in written results of all samples analyzed.

Initials LSR  
Date 3/8/2017

4. Change the last sentence of the fourth paragraph of the MOA from “The period of this Agreement shall be from the date of Governor and Council approval through June 30, 2017” to the following:

The period of this Agreement shall be from the date of Governor and Council approval through June 30, 2019.

5. Add a new section E. to the MOA, to read as follows:

E. For SFY18, the DES agrees to:

1. Collect and submit to the DHHS up to 65 shellfish tissue samples for Paralytic Shellfish Poison testing, up to 60 shellfish tissue samples for *Vibrio* bacteria testing, up to 95 shellfish tissue samples for fecal coliform MPN testing, up to 30 shellfish tissue samples for male specific coliphage testing, up to 100 seawater samples for male specific coliphage testing, up to 1,000 seawater samples for fecal coliform MPN testing, and up to 100 water samples for fecal coliform plate count testing.
2. Provide the DHHS up to \$66,900.00 to be utilized for testing seawater and shellfish tissue samples for fecal coliform, bacteria, male specific coliphage, and *Vibrio* bacteria. Funds may be used for necessary costs relating to supplies, equipment, and travel. All payments are subject to the approval of the Project Coordinator at DES.

6. Add a new section F. to the MOA, to read as follows:

F. For SFY18, the DHHS agrees to complete the following tasks:

1. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 1,000 seawater samples, for *Vibrio* [MPN] bacteria for up to 60 shellfish tissue samples, for male specific coliphage for up to 30 shellfish tissue samples and up to 100 seawater samples, and for fecal coliform [plate count] bacteria for up to 100 water samples.
2. Provide laboratory analyses for Paralytic Shellfish Poison toxin for up to 65 shellfish tissue samples at no charge to DES as match for the program.
3. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 50 shellfish tissue samples at no charge to DES as match for the program. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 45 additional shellfish tissue samples at a cost to NHDES of \$60 per sample.
4. Provide written and digital results of all analyses as they are completed.
5. Submit invoices to DES on a quarterly basis.

Initials CSW  
Date 3/8/2017

7. Add a new section G. to the MOA, to read as follows:

G. For SFY19, the DES agrees to:

1. Collect and submit to the DHHS up to 65 shellfish tissue samples for Paralytic Shellfish Poison testing, up to 60 shellfish tissue samples for *Vibrio* bacteria testing, up to 95 shellfish tissue samples for fecal coliform MPN testing, up to 30 shellfish tissue samples for male specific coliphage testing, up to 300 seawater samples for male specific coliphage testing, up to 1,000 seawater samples for fecal coliform MPN testing, and up to 150 water samples for fecal coliform plate count testing.
2. Provide the DHHS up to \$54,900.00 to be utilized for testing seawater and shellfish tissue samples for fecal coliform, bacteria, male specific coliphage, and *Vibrio* bacteria. Funds may be used for necessary costs relating to supplies, equipment, and travel. All payments are subject to the approval of the Project Coordinator at DES.

8. Add a new section H. to the MOA, to read as follows:

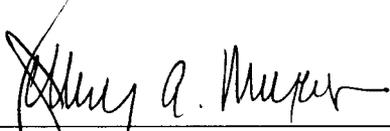
H. For SFY19, the DHHS agrees to complete the following tasks:

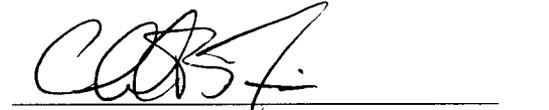
1. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 1,000 seawater samples, for *Vibrio* [MPN] bacteria for up to 60 shellfish tissue samples, for male specific coliphage for up to 30 shellfish tissue samples and up to 300 seawater samples, and for fecal coliform [plate count] bacteria for up to 150 water samples. Provide laboratory analyses for Paralytic Shellfish Poison toxin for up to 65 shellfish tissue samples at no charge to DES as match for the program.
2. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 50 shellfish tissue samples at no charge to DES as match for the program. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 45 additional shellfish tissue samples at a cost to NHDES of \$60 per sample.
3. Provide written and digital results of all analyses as they are completed.
4. Submit invoices to DES on a quarterly basis.

Except as specifically amended and modified by the terms and conditions of this Amendment, the MOA, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions as set forth therein.

Initials CSM  
Date 3/9/2017

EFFECTIVE DATE OF THE AMENDMENT: This Amendment shall be effective upon its approval by the Governor and Executive Council of the State of New Hampshire. If approval is withheld, this document shall become null and void, with no further obligation or recourse to either party. IN WITNESS WHEREOF, the parties have hereunto set their hands:

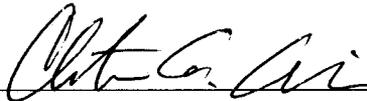
  
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Jeffrey A. Meyers, Commissioner  
Department of Health and Human Services

  
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Clark B. Freise, Assistant Commissioner  
Department of Environmental Services

3/8/17  
\_\_\_\_\_  
Date

4/5/17  
\_\_\_\_\_  
Date

Approval by State of New Hampshire Attorney General as to form, substance, and execution:

By:  \_\_\_\_\_, Assistant Attorney General, on 4/20/17 \_\_\_\_\_.

Approval by State of New Hampshire Governor and Executive Council:

By: \_\_\_\_\_, on \_\_\_\_\_.



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

*Jeff Morawetz*



Thomas S. Burack, Commissioner

April 17, 2015

Her Excellency, Governor Margaret Wood Hassan  
and the Executive Council  
State House  
Concord, New Hampshire 03301

APPROVED: \_\_\_\_\_  
DATE: 6/10/15  
ITEM #: 73

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a **sole source** Memorandum of Agreement (MOA) with the Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS), Bureau of Laboratory Services (BLS), Concord, NH (VC# 177921-B003), in the amount of \$105,000.00, to perform laboratory services, effective as of July 1, 2015 through June 30, 2017, upon approval by Governor and Council. 100% General Funds.

Funding is available in the account as follows, with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified, and contingent upon the availability and continued appropriation of funds in FY 16 and FY 17.

	<u>FY 2016</u>	<u>FY 2017</u>
03-44-44-442010-15230000-020-500239	\$42,500.00	\$42,500.00
Dept. of Environmental Services, Shellfish Protection Program/Healthy Tidal Waters, Current Expense		

	<u>FY 2016</u>	<u>FY 2017</u>
03-44-44-442010-15230000-049-584990	\$10,000.00	\$10,000.00
Dept. of Environmental Services, Shellfish Protection Program/Healthy Tidal Waters, Transfer to Other State Agencies		

EXPLANATION

Commercial and recreational shellfish harvesting is a valuable part of New Hampshire's seacoast culture, and an important economic activity. The shellfish beds are closed for various times of the year due to a variety of public health concerns, including Paralytic Shellfish Poisoning (PSP) events, water quality problems stemming from wastewater treatment plant upsets, and other factors. The State utilizes a set of national guidelines known as the National Shellfish Sanitation Program (NSSP) to evaluate the suitability of shellfish growing areas for harvest. Proper evaluation of areas includes regular testing of seawater and shellfish tissue samples to ensure areas meet standards for human consumption. This agreement is **sole source** because the DHHS-BLS is the only laboratory in New Hampshire that is certified by the U.S. Food and Drug Administration (FDA) to analyze shellfish tissue

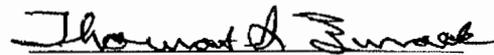
Her Excellency, Governor Margaret Wood Hassan  
and The Honorable Council  
Page 2

samples for PSP toxin and fecal coliform bacteria. Use of a certified laboratory is required by the NSSP and the FDA.

This agreement provides funds for the DHHS-BLS to analyze seawater and shellfish tissue samples for Paralytic Shellfish Poisoning toxin, for *Vibrio* bacteria and for fecal coliform bacteria. The laboratory results will be used by DES to determine appropriate classification of shellfish growing waters and to determine when shellfish growing areas may be reopened for harvesting following pollution-generating events such as wastewater treatment facility upsets.

The attached memorandum of agreement (MOA) between DES and DHHS will provide for completion of laboratory tasks, as outlined in items A, B, C and D of the MOA. This agreement has been approved by the Office of the Attorney General as to its form, substance, and execution.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

Enclosure

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
THE DEPARTMENT OF ENVIRONMENTAL SERVICES (WATER DIVISION)**

**PROJECT: Laboratory Analysis of Shellfish Tissue Samples and Seawater Samples for Paralytic Shellfish Poison, *Vibrio* Bacteria and Fecal Coliform Bacteria.**

This Memorandum of Agreement (MOA) describes a project, which has been agreed to between the NH Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS), Public Health Laboratories (PHL) and the Department of Environmental Services (DES) Water Division, to analyze shellfish tissue and seawater samples for the purposes of shellfish water classification and management.

Work in SFY 2016 and SFY 2017 will involve laboratory analysis of tissue samples for Paralytic Shellfish Poison toxin, for *Vibrio* bacteria (\$140 per sample) and for fecal coliform bacteria, and seawater samples for fecal coliform bacteria Most Probable Number (\$30 per sample) and for fecal coliform bacteria plate counts (\$20 per sample) for a total project cost not to exceed \$52,500 per year, or \$105,000 over the two fiscal years. As match for the project, DHHS will contribute laboratory analysis of up to 50 shellfish tissue samples per year for fecal coliform Most Probable Number testing (valued at \$60 per sample) and laboratory analysis of up to 65 shellfish tissue samples per year for Paralytic Shellfish Poison toxin testing (valued at \$200 per sample) to determine the proper classification of shellfish growing waters.

The purposes of this project are to (1) test shellfish tissue samples for Paralytic Shellfish Poisoning (PSP) toxin to determine when shellfish beds need to be closed and/or reopened following a red tide event; (2) assess *Vibrio* bacteria levels in shellfish under various environmental conditions to assess risk of illness outbreaks, (3) conduct analysis of shellfish tissue and seawater samples for fecal coliform bacteria to determine when it is appropriate to reopen shellfish harvesting areas following a pollution event, and (4) conduct analysis of seawaters for fecal coliform bacterial testing to maintain the proper classifications of shellfish growing waters. This MOA will result in written results of the bacterial and PSP samples.

Termination of any paragraph, part, or section of this Agreement per the conditions described herein shall not be interpreted as termination of the entire Agreement. The period of this Agreement shall be from the date of Governor and Council approval through June 30, 2017.

For the purpose of this Agreement, DHHS and DES agree to cooperate as follows:

A. For SFY16, the DES agrees to:

1. Collect and submit to the DHHS up to 65 shellfish tissue samples for Paralytic Shellfish Poison testing, up to 60 shellfish tissue samples for *Vibrio* bacteria testing, up to 50 shellfish tissue samples for fecal coliform MPN testing, up to 1,250 seawater samples for fecal coliform MPN testing, and up to 250 water samples for fecal coliform plate count testing.
2. Provide the DHHS up to \$52,500.00 to be utilized for seawater fecal coliform testing and *Vibrio* bacteria testing. All payments are subject to the approval of the Project Coordinator at DES.

B. For SFY16, the DHHS agrees to complete the following tasks:

1. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 1,250 seawater samples, for *Vibrio* [MPN] bacteria for up to 45 shellfish tissue samples, and for fecal coliform [plate count] bacteria for up to 250 water samples. Up to \$3,700 of the annual award may be used to provide for sample transportation from coastal New Hampshire to the DHHS laboratories in Concord and/or additional *Vibrio* [MPN] bacteria testing as needed.
2. Provide laboratory analyses for Paralytic Shellfish Poison toxin for up to 65 shellfish tissue samples at no charge to DES as match for the program.
3. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 50 shellfish tissue samples at no charge to DES as match for the program.
4. Provide written results of all analyses as they are completed.
5. Submit invoices to DES on a quarterly basis.

C. For SFY17, the DES agrees to:

1. Collect and submit to the DHHS up to 65 shellfish tissue samples for Paralytic Shellfish Poison testing, up to 60 shellfish tissue samples for *Vibrio* bacteria testing, up to 50 shellfish tissue samples for fecal coliform MPN testing, up to 1,250 seawater samples for fecal coliform MPN testing, and up to 250 water samples for fecal coliform plate count testing.
2. Provide the DHHS up to \$52,500 to be utilized for seawater fecal coliform testing and *Vibrio* bacteria testing. All payments are subject to the approval of the Project Coordinator at DES.

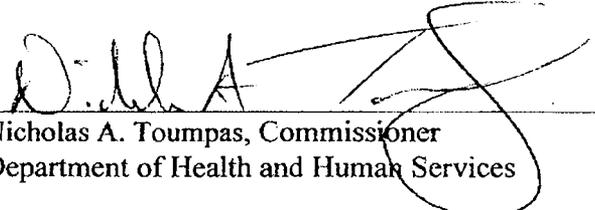
D. For SFY17, the DHHS agrees to complete the following tasks:

1. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 1,250 seawater samples, for *Vibrio* [MPN] bacteria for up to 45 shellfish tissue samples, and for fecal coliform [plate count] bacteria for up to 250 water samples. Up to \$3,700 of the annual award may be used to provide for sample transportation from coastal New Hampshire to the DHHS laboratories in Concord and/or additional *Vibrio* [MPN] bacteria testing as needed.
2. Provide laboratory analyses for Paralytic Shellfish Poison toxin for up to 65 shellfish tissue samples at no charge to DES as match for the program.
3. Provide laboratory analyses for fecal coliform [MPN] bacteria for up to 50 shellfish tissue samples at no charge to DES as match for the program.
4. Provide written results of all analyses as they are completed.
5. Submit invoices to DES on a quarterly basis.

IN WITNESS WHEREOF, the respective parties have hereunto set their hands on the dates indicated.

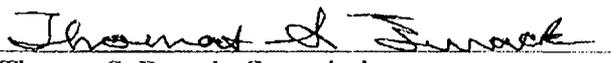
Date

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Nicholas A. Toumpas, Commissioner  
Department of Health and Human Services

Date

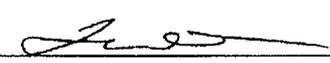
4/27/2015

  
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Thomas S. Burack, Commissioner  
Department of Environmental Services

Approval by Attorney General's Office

This is to certify that the above AGREEMENT has been reviewed by this office and is approved as to form, substance, and execution.

Date

5-14-15 

Signed