



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

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May 13, 2025

Her Excellency, Governor Kelly A. Ayotte
 And the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to enter into a **SOLE SOURCE** Memorandum of Agreement (MOA) with the New Hampshire Department of Health and Human Services (NHDHHS), Division of Public Health Services, Bureau of Laboratory Services (BLS), Concord, NH (VC# 202586-B002), in the amount of \$128,400 to perform laboratory services to support NHDES' Shellfish Protection Program, effective as of July 1, 2025 through June 30, 2027, upon Governor and Council approval. 88% General Funds, 12% Federal Funds.

Funds are available in the following accounts with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified. Funding for FY2026 and FY2027 is contingent upon continued appropriation and availability of funds.

	<u>FY 2026</u>	<u>FY 2027</u>
Dept Environmental Services		
03-44-44-442010-1523-020-500239	\$30,000	\$30,000
Shellfish Protection /Healthy Tidal Waters, Current Expenses		
03-44-44-442010-1523-049-584990	\$26,200	\$26,200
Shellfish Protection/Healthy Tidal Waters, Transfer to Other State Agencies		
03-44-44-442010-7602-020-500239	<u>\$8,000</u>	<u>\$8,000</u>
Surface Water Quality PPG, Current Expenses		
TOTALS:	\$64,200	\$64,200

EXPLANATION

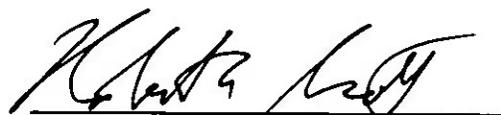
NHDES requests approval of a **SOLE SOURCE** Memorandum of Agreement (MOA) between NHDHHS and NHDES for continuation of laboratory services to support NHDES' Shellfish Protection program. Commercial and recreational shellfish harvesting is a valuable part of New Hampshire's seacoast culture, and an important 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, Amnesic Shellfish Poisoning (ASP) 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 accredited by the U.S. Food and Drug Administration (FDA) to analyze seawater and shellfish tissue samples. Use of an accredited laboratory is required by the NSSP and the FDA.

This agreement provides funds for the NHDHHS-BLS to analyze seawater and shellfish tissue samples for Paralytic Shellfish Poisoning toxin, for Amnesic Shellfish Poisoning toxin, for *Vibrio* bacteria, for fecal coliform bacteria, and for male-specific coliphage. 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. The agreement also provides funds for the purchase of equipment, support for part-time laboratory staff, and overtime costs for laboratory staff.

This agreement has been approved by the Office of the Attorney General as to its form, substance, and execution.

We respectfully request your approval.



Robert R. Scott, Commissioner
Department of Environmental Services

State of New Hampshire

Interagency Memorandum of Understanding

(For use between an executive branch agency and another agency or branch of government of the State of New Hampshire)

Whereas, the NH Department of Environmental Services (NHDES) ["**AGENCY 1**"] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the NH Department of Health and Human Services (DHHS) ["**AGENCY 2**"] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, pursuant to RSA 143:21 and RSA 143:21-a and RSA 487:34 **AGENCY 1** is responsible for: classifying coastal waters under New Hampshire shellfish sanitation control authority, pursuant to RSA 143:21 and RSA 143:21-a, so that all waters suitable for shellfish propagation and harvest are classified, and, to the maximum extent possible, classified areas are approved for harvest of shellfish, in accordance with the National Shellfish Sanitation Program.

Whereas, **AGENCY 1** desires to: secure laboratory services from DHHS for the purposes of evaluating and classifying the sanitary quality of coastal shellfish harvest waters in accordance with National Shellfish Sanitation Program requirements.

Whereas, pursuant to RSA131:1 and 131:2 **AGENCY 2** is responsible for: making investigations and analyses of foods offered for sale with a view of discovering unhealthful or unsafe products, and for making investigations concerning food sanitation

Whereas, **AGENCY 2** desires to: provide laboratory services for NHDES for the purposes of evaluating the sanitary quality of coastal shellfish harvest waters in accordance with National Shellfish Sanitation Program requirements.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

1. The NH Department of Environmental Services [**AGENCY 1**] agrees to *[check all that apply]*:

- A. Pay **AGENCY 2** the amount of \$128,400 for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 1., A is checked: Payment shall be provided

from: 03-44-44-442010-15230000-020-500239 (\$30,000 per year, \$60,000 over 2 years)), 03-44-44-442010-15230000-049-584990 (\$26,200 per year, \$52,400 over 2 years)) and 03-44-44-442010-7602E-020-500239 (\$8,000 per year, \$16,000 over 2 years)

- B.** Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

2. The NH Department of Health and Human Services [AGENCY 2] agrees to [check all that apply]:

- A.** Pay **AGENCY 1** the amount of \$ _____ for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 2. A is checked: Payment shall be provided from [**IDENTIFY FUND**]:

- B.** Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

- 3.** The method of payment and payment amount for the above-referenced services, if any is required, is described in the attached MOU Exhibit B, such exhibit being hereby incorporated by reference.
- 4.** All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
- 5.** The Memorandum of Understanding is effective until June 30, 2027.
- 6.** This Memorandum of Understanding may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least 30 days prior to termination.
- 7.** The Parties agree that the obligations, agreements and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
- 8.** Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.

- 9. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
- 10. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
- 11. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
- 12. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
- 13. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.

14. FOR AGENCY 1: NH Department of Environmental Services



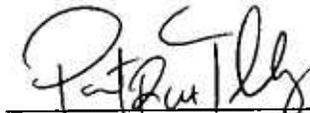
[Agency Head or Commissioner signature]

5/13/25
Date

Robert R. Scott, Commissioner

[Agency Head or Commissioner name in print]

15. FOR AGENCY 2: NH Department of Health and Human Services



[Agency Head or Commissioner signature]

4/30/25
Date

 Lori A. Weaver, Commissioner

[Agency Head or Commissioner name in print]

PLEASE NOTE

1. **MOU Exhibit A** (MOU Terms) and, if applicable, **MOU Exhibit B** (Payment Terms) must be attached to this form.
2. This form is intended only for use with Interagency Memoranda of Understanding ("MOUs"). Please refer to the MOU 1 checklist and instructions when executing this document. For Interagency MOUs, Department of Justice review and execution is only required if the MOU involves an expenditure of funds in an amount which is equal to or greater than the approval threshold established by the Governor and Executive Council in Chapter MOP 161 of the Department of Administrative Services Manual of Procedures.
3. If more than two agencies or branches are involved in the agreement, please include all information listed above for each agency or branch, identifying them as, for example, "Agency 3," "Agency 4," and so forth.
4. No changes may be made to the preprinted terms of this form without the approval of the Department of Justice.
5. **The Department of Justice and Governor and Council approvals appearing below are only required if this MOU is submitted to the Governor and Council for approval.**

Approved by the New Hampshire Department of Justice for form, substance, and execution:

By: Melissa Fales On: 5/15/25
 [Name of Assistant Attorney General] Date

Approved by the Governor and Executive Council

By: _____ On: _____
 Date

EXHIBIT A

Project Title: Laboratory Analysis of Shellfish Tissue Samples and Seawater Samples for Paralytic Shellfish Poison, Amnesic Shellfish Poison, *Vibrio* Bacteria, Male Specific Coliphage, and Fecal Coliform Bacteria for SFY 2026 and SFY 2027.

Project Period: July 1, 2025 through June 30, 2027

Project Objectives: This Memorandum of Understanding (MOU) between the NH Department of Health and Human Services' (DHHS) Division of Public Health Services (DPHS), Public Health Laboratories (PHL), Bureau of Laboratory Services (BLS), and the NH Department of Environmental Services (NHDES) Water Division, describes the responsibilities of each department in analyzing shellfish tissue and seawater samples for the purposes of shellfish water classification and management.

Pursuant to RSA 143:21, RSA 143:21-a, and RSA 487:34, NHDES is responsible for classifying shellfish harvest waters used for human consumption. Classification requires the laboratory analysis of tissue samples for Paralytic Shellfish Poison toxin, Amnesic Shellfish Poison toxin, *Vibrio* bacteria, and fecal coliform bacteria. NHDES also collects seawater samples for fecal coliform bacteria Most Probable Number and male specific coliphage. DES is required to (1) test shellfish tissue samples for Paralytic Shellfish Poisoning (PSP) toxin and Amnesic Shellfish Poison (ASP) 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 seawaters for fecal coliform bacterial testing to maintain the proper classifications of shellfish growing waters, and (5) conduct analysis of seawater samples and other water samples such as wastewater treatment facility effluent, for male specific coliphage, a viral indicator that provides information on when disease-causing viruses may be present in seawater and/or shellfish. Because these tests must be conducted in an FDA-accredited laboratory in accordance with National Shellfish Sanitation Program specifications, DHHS will perform the required tests on behalf of NHDES in accordance with this MOU.

Scope of Work: for SFY 2026 and SFY 2027, NHDES will collect and submit the following samples for testing: For each fiscal year, up to 80 shellfish tissue samples for Paralytic Shellfish Poison testing, up to 30 shellfish tissue samples for Amnesic Shellfish Poison testing, up to 16 shellfish tissue samples for *Vibrio* bacteria testing, 95 shellfish tissue samples for fecal coliform MPN testing, 1,231 seawater samples for fecal coliform MPN testing, and up to 34 seawater/effluent samples for male specific coliphage testing.

Additionally, provide DHHS with up to \$15,000 for each fiscal year for 1. purchase of equipment and or supplies (\$1,000 per fiscal year), 2. hiring part-time Water Analysis Laboratory staff (\$12,000 per fiscal year), 3. overtime costs for Water Analysis Laboratory staff (\$1,000 per fiscal year), and 4. overtime costs for Public Health Laboratory staff (\$1,000 per fiscal year).

Results Reporting: Provide written results to NHDES of all analyses as they are completed.

EXHIBIT B

Project Title: Laboratory Analysis of Shellfish Tissue Samples and Seawater Samples for Paralytic Shellfish Poison, Amnesic Shellfish Poison, *Vibrio* Bacteria, Male Specific Coliphage, and Fecal Coliform Bacteria for SFY 2026 and SFY 2027.

Project Period: July 1, 2025 through June 30, 2027

Laboratory Test Pricing: Pay DHHS for each tissue or seawater test performed at DHHS PHL per sample based on the following fee schedule:

- Total *Vibrio* Bacteria in tissue - \$150
- *Vibrio* tdh+/trh+ Bacteria in tissue - \$100
- Fecal Coliform Bacteria in tissue - \$60 (\$0 for the first 50 samples per year, \$60 for each additional sample, per year)
- Amnesic Shellfish Poison toxin in tissue - \$50
- Fecal Coliform Bacteria Most Probable Number in Seawater - \$30
- Male Specific Coliphage in Seawater - \$30
- Paralytic Shellfish Poison Toxin -\$200 (\$0 for the first 65 samples per year, \$200 for each additional sample, per year)

Invoicing: DHHS will submit invoices to DES on a quarterly basis.

Expenses to be charged to AU 1523-020, each fiscal year (\$30,000 total per fiscal year):

- \$30,000: 1,000 seawater samples tested for Fecal Coliform Bacteria MPN - \$30per

Expenses to be charged to AU 7602E-020, each fiscal year (\$8,000 total per fiscal year):

- \$5,250: 175 pollution source samples tested for Fecal Coliform MPN - \$30per
- \$ 480: 16 wastewater samples tested for Fecal Coliform Bacteria MPN - \$30per
- \$2,270: 75 seawater samples tested for Fecal Male-Specific Coliphage - \$30per

Expenses to be charged to AU 1523-049, each fiscal year (\$26,200 total per fiscal year):

- \$3,000: 15 shellfish samples tested for Paralytic Shellfish Poison toxin - \$200per
- \$1,500: 30 shellfish samples tested for Amnesic Shellfish Poison toxin - \$50per
- \$2,400: 16 shellfish samples tested for total *Vibrio* bacteria - \$150per
- \$1,600: 16 shellfish samples tested for *Vibrio* tdh+/trh+ Bacteria - \$100per
- \$2,700: 45 shellfish samples tested for Fecal Coliform Bacteria MPN - \$60per
- \$12,000: salary and FICA for part time laboratory staff
- \$2,000: overtime for laboratory staff
- \$1,000: laboratory equipment and/or supplies