250-RICR-90-00-4

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 4 – Shellfish

4.1 Purpose

The purpose of these Rules and Regulations is to manage the marine resources of Rhode Island.

4.2 Authority

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act.

4.3 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of State law, goals, and policies.

4.4 Definitions

See Marine Fisheries Definitions, Part 1 of this Subchapter.

4.5 Severability

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

4.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these Regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

4.7 License Required

4.7.1 Recreational

A. Resident: Rhode Island residents are not required to obtain a license for the recreational harvest or possession of shellfish.

B. Non-resident: A non-resident over the age of twelve (12) years wishing to harvest or possess shellfish recreationally in Rhode Island waters must obtain one (1) of the flowing licenses:

1. Fourteen (14) day: This license is valid for fourteen (14) consecutive days including the date of issuance, and is limited to one (1) license per person per calendar year. The annual fee is eleven dollars ($11.00).

~~12.~~ Annual: This license is valid from the date of purchase until the last day in February. The annual fee is two hundred dollars ($200.00).

3. Non-resident landowner: This license is available to non-resident landowners and is valid from the date of purchase until the last day in February. Ownership in the form of a current tax bill from a town or city hall showing that the non-resident landowner is current in his or her property tax obligation is required at time of application. The annual fee is twenty-five dollars ($25.00).

4.7.2 Commercial

A. No person shall take shellfish from the marine waters of Rhode Island commercially without a valid commercial fishing license issued by the Director pursuant to Part 2 of this Subchapter.

B. A commercially licensed fisherman shall only sell, barter, or trade shellfish taken from Rhode Island waters to a licensed shellfish dealer or multipurpose dealer.

C. A commercially licensed fisherman shall not sell, deliver, or otherwise transfer shellfish taken from Rhode Island waters to a licensed shellfish or multipurpose dealer without first presenting said dealer, a valid shellfish license issued by the DEM.

4.8 General Provisions

A. Recreational harvest: Shellfish harvested recreationally shall not be sold or offered for sale.

B. No person shall take shellfish from waters declared polluted by the Director pursuant to R.I. Gen. Laws § 20-8.1-3 unless authorized by the Director. This sub-section shall not apply to the harvest of Whelk or Bay scallop. For the water

quality status of shellfish grounds subject to conditional closures or emergencies call 401-222-2900.

C. Night shellfishing prohibited: The harvesting of shellfish is prohibited during the hours between sundown and sunrise.

D. Opening shellfish on water: No person shall possess the meats of six (6) or more shellfish while shellfishing on the waters of the State, or throw the shells of open bay scallops onto bay scallop beds.

E. Whelk – general provisions:

1. Mutilation and/or possession of whelk meat; cooked or uncooked: Prior to landing of any whelk, no person shall mutilate any cooked or uncooked whelk by breaking and removing the meat from the shell or have in his or her possession any part or parts of any uncooked whelk so mutilated. In any and all prosecutions under this sub-section, the possession of any part or parts of any cooked or uncooked whelk so mutilated shall be prima facie evidence sufficient to convict. All whelks are to be landed whole in the shell.

2. Hauling or setting whelk pots at night: No person shall haul or unduly disturb any whelk pot within the territorial waters of this state between the hours of one (1) hour after sundown and one (1) hour before sunrise.

F. Commercial soft-shell clam control date: A control date of December 31, 2007, is established for the commercial soft-shell clam fishery in Rhode Island. This control date has been established by the Department for potential future use in establishing eligibility criteria for future access to the fishery.

4.9 Equipment Provisions and Harvest Methods

A. SCUBA prohibition: The taking of shellfish by the use of a Self-Contained Underwater Breathing Apparatus (SCUBA) from Green Hill Pond, Quonochontaug Pond, Ninigret Pond, and Potter Pond is prohibited.

B. The use of a diving apparatus is prohibited while recreational shoredigging.

C. Use of devices capable of harvesting shellfish while in polluted areas: No person shall work, cast, haul, or have overboard a dredge, pair of tongs, rake or rakes, air-assisted equipment, water-assisted equipment, or any other implement capable of harvesting shellfish, except for the taking of whelk in pots and the use of an implement commonly employed for the taking of bay scallops (within established bay scallop harvest seasons), in waters declared polluted by the Director.

D. Power hauling of tongs and bullrakes: Power hauling of tongs and bullrakes for any purpose other than the removal and retrieval of bullrakes and tongs from the benthic sediments is prohibited.

E. Method of harvest of oysters, bay quahaugs, soft-shell clams: No person shall dig and/or take any oysters, bay quahaugs, or soft-shell clams from the waters of this State by dredge(s), rakes, or other apparatus operated by mechanical power or hauled by power boats, unless as provided for in these Regulations.

F. Dimensions for bullrakes and tongs when using power hauling equipment: No person shall use any power hauling equipment in the operation of bullrakes and tongs with dimensions exceeding the following:

1. Maximum width measured along a line parallel to the tooth bar: Thirty-one and one half inches (31 ½").

2. Maximum tooth length: Four and one half inches (4 ½").

3. Maximum basket depth: Twelve inches (12"), measured along a line perpendicular to the tooth bar and extending from the tooth bar to any point on the basket.

4. Possession of bullrakes and tongs in excess of these size restrictions shall be prohibited aboard vessels equipped with any power hauling equipment.

5. Except as required for safety or to avoid property loss, no vessel involved in the harvest of bay quahaugs or oysters by use of bullrakes or tongs may be moved or propelled by any source of mechanical power at any time when any bullrakes or tongs operated from such vessel are submerged in the waters of the state.

G. Tong construction: No person shall take shellfish, or attempt to take shellfish, or have in his possession while on the waters of this State, with tongs not meeting the following dimensions:

1. Minimum tooth gap: Not less than one inch (1") apart.

2. Heads: Heads on the bar or heads constructed with wires, rods, crossbars, or reinforcement that will form a rectangle shall not be less than one inch (1") by two and one half inches (2½").

3. A tolerance of one sixteenth of an inch (1/16") is allowed.

H. Bullrake construction: No person shall take shellfish, or attempt to take shellfish, or have in his possession while on the waters of this State, with a bullrake not meeting the following dimensions:

1. Minimum tooth or tine gap: Not less than one inch (1") apart.

2. Crossbars or reinforcement that will form a rectangle shall not be less than one inch (1”) by two and one half inches (2½”).

3. A tolerance of one sixteenth of an inch (1/16”) is allowed.

I. Bay quahaug diving basket construction: No commercially licensed diver shall take or attempt to take bay quahaugs from the waters of the State of Rhode Island with a diver’s bay quahaug harvesting basket, bag, or combination of basket and bag, or similar device not meeting the following dimensions:

1. Bar spacing: Not less than one inch (1”) by two and one half inches (2½”). A tolerance of one sixteenth inch (1/16”) is allowed.

2. Bag mesh on the bay quahaug harvesting basket: Not less than two inches (2”) when measured on the stretch (from inside of knot to inside of the knot). A tolerance of one eighth inch (1/8”) for variance in the twine is allowed. The bag shall be hung on the square so that when held by the mouth, the twine forms fully opened squares.

J. Dredging of bay scallops:

1. Maximum number of single dredges used: Six (6) single dredges.

2. Maximum width of dredge blades: Twenty-eight inches (28”).

3. Maximum length of bag: Thirty-six inches (36”).

4. Each single dredge shall be towed and hauled aboard the registered vessel individually. All oysters, soft-shell clams, or bay quahaugs shall be immediately returned to the waters from which they were taken.

5. Areas where bay scallop dredging is prohibited: The use of bay scallop dredges is prohibited in closed areas of Shellfish Management Areas.

K. Dredging of blue mussels:

1. When dredging for blue mussels, all bay scallops, oysters, or bay quahaugs shall be immediately returned to the waters from which they were taken.

2. Blue Mussel Dredging Permit: A permit issued from the Director is required for the commercial dredging for blue mussels. Applications shall be made annually on forms prescribed by the Director.

L. Dredging of surf clams and ocean quahaugs:

1. Surf clam gear restrictions:

a. Hydraulic dredging: The maximum width of a dredge blade, knife or manifold is forty-eight inches (48”).

b. Multiple dredge restriction: It is unlawful for any vessel to operate more than one (1) dredge while harvesting for surf clams.

2. Areas prohibited for the dredging of surf clams or ocean quahaugs: All waters north of a line extending from Church Point in the town of Little Compton, to Flint Point in the town of Middletown; and north of a line extending from Castle Hill Point in the city of Newport, to Southwest Point in the town of Jamestown and to Bonnet Point in the town of Narragansett.

3. Tagging of cages: Shellfish cages must be tagged in accordance with the United States Food and Drug Administration/RIDOH Regulations before being off-loaded in Rhode Island.

M. Dredging for sea scallops:

1. Maximum dredge size for a vessel in possession of sea scallops: Ten and one half feet (10½’).

2. Minimum dredge ring size: Four inches (4”).

3. The minimum mesh size of a net, net material or any other material on the top of a sea scallop dredge (twine top) possessed or used by vessels fishing with sea scallop dredge gear/net size of twine top is ten-inch (10”) square or diamond mesh.

4.10 Minimum Sizes

A. Bay quahaug: One inch (1") shell thickness (hinge width).

B. Soft-shell clam: Two inches (2”) measured as the shell diameter or parallel to the long axis of the clam.

C. Oyster: Three inches (3”) measured parallel to the long axis of the oyster.

D. Bay scallop: The taking or possession of a seed Bay scallop is prohibited. Seed bay scallops shall be immediately returned to their natural beds in the water from which taken.

E. Surf clam: Five inches (5”) measured parallel to the long axis of the clam.

F. Sea scallop: Three and one half inches (3½”), measuring in a straight line from the hinge to the part of the shell furthest from the hinge, whether caught within the jurisdiction of this State or otherwise.

G. Whelk: Two and one quarter inches (2¼") shell height. Shell height shall be the distance along a straight perpendicular line from a point on the opercular side of the shell to the farthest point of the top of the shell. This distance is measured with the whelk retracted, and shell placed with the operculum stably positioned against a flat surface. To properly measure shell height using a gauge: Minimum legal shell height shall be the two and one quarter inches (2¼") distance between opposing parallel surfaces, measured with the whelk retracted and shell placed with the operculum stably positioned against one (1) of the parallel surfaces. The whelk is legal-sized if it does not fit between the opposing parallel surfaces.

4.11 Waters Other Than Shellfish Management Areas

4.11.1 Daily possession limits

A. Recreational – Rhode Island resident:

1. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One half (½) bushel per person per day.

2. Bay scallop: One (1) bushel per person per day.

3. Whelk: One half (½) bushel per resident per day; and maximum of one (1) bushel per vessel per day.

    a. Whelk pot limit: Maximum of five (5) whelk pots in the water at any one time.

4. Sea scallop: Forty (40) pounds shucked; or five (5) bushels of in-shell scallops per vessel per day.

B. Recreational – Licensed non-resident:

1. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One (1) peck per person per day.

2. Bay scallop: The harvest or possession of Bay scallops by non-residents is prohibited.

3. Whelk: The harvest or possession of whelk by non-residents is prohibited.

4. Sea scallop: Forty (40) pounds shucked; or five (5) bushels of in-shell scallops per vessel per day.

C. Commercial:

1. Bay quahaug:

a. Multi-purpose (MPURP), Principal Effort License (PEL), and Standard license holders: Twelve (12) bushels per person per day.

b. Commercial Fishing License (CFL), Student Shellfish license, and Sixty-five (65) and Over Shellfish license holders: Three (3) bushels per person per day.

2. Soft-shell clam: Twelve (12) bushels per person per day.

3. Oyster: Three (3) bushels per person per day.

4. Bay scallop: Three (3) bushels per person per day; and maximum of three (3) bushels per vessel per day.

5. Surf clam: Two hundred (200) bushels per person per day.

6. Ocean quahaug: Twenty-six (26) cages or eight hundred thirty-two (832) bushels per person per day.

7. Sea scallops: For non-federally permitted vessels, four hundred (400) pounds of shucked; or fifty (50) bushels of in-shell scallops per vessel per day.

8. Whelk: Thirty-five (35) bushels per vessel per day.

a. Commercial whelk pot limit: Maximum of three hundred (300) whelk pots per licensee in the water at any one time.

4.11.2 Seasons

A. Bay quahaug, soft-shell clam, blue mussel, sea scallop, whelk, surf clam, and ocean quahaug: Open daily.

B. Oyster: Open from September 15 through May 15 annually.

C. Bay scallop:

1. Dip-netting from a boat: Open only from the first (1st) Saturday in November through December 31 annually.

2. Dredging: Open only from December 1 through December 31 annually.

4.12 Shellfish Management Areas

4.12.1 Daily possession limits

A. Recreational – Rhode Island resident:

1. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One (1) peck per person per day.

2. Bay scallop: One (1) bushel per person per day.

3. Whelk: One half (½) bushel per resident per day; or if a vessel with more than one (1) resident onboard is used, a maximum of one (1) bushel per vessel per day.

4. Whelk pot limit: Five (5) whelk pots in the water at any one time.

B. Recreational – licensed non-resident:

1. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One half (½) peck per person per day.

2. Bay scallop: The harvest or possession of Bay scallops by non-residents is prohibited.

3. Whelk: The harvest or possession of whelk by non-residents is prohibited.

C. Commercial:

1. Bay quahaug, soft-shell clam, blue mussel, surf clam and oyster: Three (3) bushels per person per day unless specified otherwise in § 4.12.1(D) of this Part; with a maximum of two (2) possession limits per vessel per day when two (2) licensed persons are on board the vessel.

2. Bay scallop: Three (3) bushels per person per day; maximum of three (3) bushels per vessel per day.

3. Whelk:

a. Thirty-five (35) bushels per vessel per day.

b. Commercial whelk pot limit: Maximum of three hundred (300) whelk pots per licensee set at any one time.

D. Area specific possession limits:

1. Greenwich Bay (GB) sub areas 1 and 2 commercial shoredigging for bay quahaug, soft-shell clam, blue mussel, surf clam and oyster: Three (3) bushels per person per day when the season specified in § 4.12.2(D)(1)(b) is open; and one (1) peck per person per day when the season specified in § 4.12.2(D)(1)(b) is not open.
2. Conimicut point: The reduced Shellfish Management Area possession limit applies only to soft-shell clams.

3. Bissel Cove/Fox Island: The harvest of oysters is prohibited until November 15, 2025.

4. Sakonnet River: The commercial possession limit for surf clams is two hundred (200) bushels/vessel/day, with an incidental catch limit of one (1) bushel of bay quahaugs for each ten (10) bushels of surf clams, not to exceed twelve (12) bushels of bay quahaugs.

5. Quonochontaug Pond: The harvest of oysters is prohibited until November 15, 2023.

6. Providence/Seekonk River:

   a. Bay quahaug commercial possession limit:

      (1) Multi-purpose (MPURP), Principal Effort License (PEL), and Standard license holders: Six (6) bushels per person per day.

      (2) ~~Commercial Fishing License (CFL), Student Shellfish license, and Sixty-five and Over Shellfish license holders: Three (3) bushels per person per day.~~

   c. The harvest and possession of soft-shell clams and oysters is prohibited.

7. Jacobs Point: The reduced Shellfish Management Area possession limit applies only to oysters. The commercial possession limit for oysters is one (1) peck per person per day.

4.12.2 Seasons

A. Oyster:

1. The taking of oysters in Shellfish Management Areas is limited to the season as specified in § 4.11.2(B) of this Part for waters other than Shellfish Management Areas, but is also limited to the area specific seasons as specified in § 4.12.2(D) of this Part.

2. The taking of oysters is prohibited in closed areas of Shellfish Management Areas.

B. Bay scallop:

1. The taking of bay scallop in Shellfish Management Areas is limited to the season as specified in § 4.11.2(C) of this Part for waters other than Shellfish Management Areas, but is also limited to the area specific seasons as specified in § 4.12.2(D) of this Part.

2. The taking of bay scallops by dip-netting from a boat is allowed in closed Shellfish Management Areas and/or in closed areas within Shellfish Management Areas, unless expressly prohibited.

C. Whelk: Open daily

D. Bay quahaug, soft-shell clam, blue mussel, surf clam and ocean quahaug:

1. Greenwich Bay sub-areas 1 and 2:

a. Shoredigging: Open daily.

b. Other than shoredigging:

(1) December 2022: Open only from 8:00 A.M. until 12:00 P.M. on December 14, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30.

(AA) The schedule for the month of December may include up to forty-eight (48) hours of permitted shellfishing, spread over any number of days, excluding December 25.

(BB) If weather or water quality conditions during the month of December prevent opening on two (2) or more scheduled days, the Director may modify the December schedule to allow for additional hours or days of permitted shellfishing.

(2) If the season is expired or unspecified, the following default season shall be in effect: Open 8:00 A.M. to 12:00 P.M. only on Mondays, Wednesdays, and Fridays, beginning on the second (2nd) Wednesday of December through the end of April, excluding December 25 and January 1.

(3) Recommendation for a change to the season must be submitted to the Director at least sixty (60) days prior to the first proposed opening date.

2. Greenwich Bay sub-area 3 (eastern GB): Open daily.

3. Conimicut Point: Open daily.

4. Potowomut sub-area 1 (western Potowomut): Open daily.

5. Potowomut sub-area 2 (mid-Potowomut): Closed.

6. Potowomut sub-area 3 (eastern Potowomut): Open daily.

7. High Banks: Open daily.

8. Bissel Cove/Fox Island:

    a. Shoredigging: Open daily.

    b. Other than shoredigging:

        (1) December 2022: Open only from 8:00 A.M. until 12:00 P.M. on December 14, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30.

        (2) If the season is expired or unspecified, the following default season shall be in effect: Open 8:00 A.M. to 12:00 P.M. on Mondays, Wednesdays, and Fridays, beginning on the second (2nd) Wednesday of December through the end of April, excluding December 25 and January 1

        (3) Recommendation for a change to the default season must be submitted to the Director at least sixty (60) days prior to the first (1st) proposed opening date.

9. Mill Gut: Open daily from the second (2nd) Wednesday in December through April 30 annually

10. Bristol Harbor:

    a. Shoredigging: Open daily

    b. Other than shoredigging:

        (1) If the season is expired or unspecified, the following default season shall be in effect:

            (AA) January 2 through January 31: Open only from 8:00 A.M. to 12:00 P.M. on Mondays, Wednesdays, and Fridays

            (BB) February 1 through April 30: Open daily.

            (CC) May 1 through January 1: Closed.

            (DD) Recommendation for a change to the default season must be submitted to the Director at least sixty (60) days prior to the first (1st) proposed opening date.

11. Kickemuit River: Open daily.

12. Jenny Creek: Closed.

13. Sakonnet River: Open daily.

14. Point Judith Pond: Open daily.

15. Potter Pond: Open daily, except for the following:

    a. Potter Pond sub-area 1: Closed.

16. Ninigret (Charlestown) Pond: Open daily, except for the following:

    a. Ninigret Pond sub-area 1: Closed.

    b. Ninigret Pond-Foster Cove sub-area 1: Closed until January 1, 2025.

    c. Ninigret Pond-Foster Cove sub-area 2: Closed until January 1, 2025.

17. Quonochontaug Pond: Open daily, except for the following:

    a. Quonochontaug Pond sub-area 1: Closed.

    b. Quonochontaug Pond sub-area 2: Closed.

18. Winnapaug Pond: Open daily, except for the following:

    a. Winnapaug Pond sub-area 1: Closed.

19. Green Hill Pond: Closed.

20. Narrow River: Closed.

21. Little Narragansett Bay and Pawcatuck River: Closed.

22. Providence and Seekonk Rivers:

    ~~a. Commercial: Open 8:00 A.M. to 11:00 A.M. only on the following dates:~~

        ~~(1) May 23 through September 2: Open on the first (1st) two (2) non-consecutive weekdays of each week not closed due to water quality impairment.~~
        ~~(AA) May 30 and July 4: Closed.~~

        ~~(BB) June 30: Open.~~

        ~~(2) September 6 through October 28: Open one (1) day each week on the first (1st) weekday which is not closed due to water quality impairment.~~

        ~~(AA) October 10: Closed.~~

~~(3) December 12 through December 30: Open one (1) day each week on the first (1st) weekday which is not closed due to water quality impairment.~~

~~b. Recreational shoredigging: Open daily.~~

~~c. Recreational other than shoredigging: Closed.~~

~~d. Notification of a season closure or change will be made to the public via the Division's listserve and webpage.~~

a. Recreational shoredigging: Open daily.

b. Recreational other than shoredigging: Closed.

c. Commercial: Open 8:00 A.M. to 11:00 A.M. per the following schedule:

(1) January 1 through May 20: Closed.

(2) May 21 through June 26: Open each Monday and Wednesday; closed Memorial Day, May 29.

(3) June 27: Open.

(4) June 28 through September 2: Open each Monday and Wednesday.

(5) September 3 through October 31: Open each Tuesday.

(6) November 1 through December 9: Closed.

(7) December 10 through December 31: Open one (1) weekday each week on the first (1st) weekday which is not closed due to water quality impairment; closed Christmas Day, December 25.

(8) Fishery closure: The fishery will close once eighteen (18) days have been open to harvest for the months from May through November, and then reopen for the month of December per the above schedule.

23. Warren River: Closed.

24. Town Pond: Closed.

25. Jacobs Point: Open daily.

4.13 Wet Storage of Shellfish

No person shall engage in wet storage of molluscan shellfish without first obtaining a dealer's license from DOH and DEM.

4.14 Commercial Handling of Shellfish

A. Commercial shellfishermen shall conduct all activities and operations involving or relating to the possession and handling of shell stock so as to prevent contamination, deterioration and decomposition of such shell stock.

B. Containers used for storing shell stock must be clean.

C. Boat decks and storage bins used in the harvest or transport of shell stock shall be kept clean with potable water or water from the growing area in approved classification or the open status of conditional areas.

D. Commercial shellfishermen using a vessel to harvest and transport shell stock shall assure that said vessel is properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of shell stock.

E. Commercial shellfishermen using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.

F. Commercial shellfishermen using a boat to harvest and transport shell stock shall provide such vessel with effective drainage to avoid contact between bilge water and shell stock.

G. Commercial shellfishermen using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not contaminate shell stock.

H. Shell stock shall be washed reasonably free of bottom sediments as soon after harvesting as possible. The harvester shall be primarily responsible for washing shell stock. If shell stock washing is not feasible at the time of harvest, the dealer shall assume this responsibility. Water used for washing shall be from a potable water source, or growing area in the approved classification or open status of the conditionally approved classification.

I. The discharge of human sewage from a vessel used in the harvesting of shell stock, or from vessels that buy shell stock, within waters of the State is prohibited.

4.15 Commercial Tagging of Shellfish

A. Commercial shellfishermen must place any and all shellfish taken by them (except those shellfish returned to the waters of the harvest area) into containers, and must tag each and every container with a “harvester tag” conforming to the requirements of this sub-section, prior to shellfish being placed in the container.

B. The harvester tag shall be durable, waterproof, and sanctioned by the Rhode Island Department of Health. The tag shall contain the following indelible, legible information in the order specified as follows: The harvester's identification number as assigned by DEM; the date of harvest; the harvest commencement time; the harvest location as identified on the Rhode Island Shellfish Harvest Area Tagging Map; the shellfish management area; the type (species) of shellfish; and the approximate quantity of shellfish. The harvest commencement time will indicate the time that the first shellfish that the harvester is currently in possession of was removed from the water and should be the same for all shellfish that the harvester is in possession of regardless of tagging area.

C. Each tag shall also carry the following statement in bold capitalized type: "This tag is required to be attached until container is empty or it retagged and thereafter kept on file for 90 days." Commercial shellfishermen shall not place shell stock harvested from more than one (1) growing area into the same container. When the harvester is also a dealer, the harvester has the option to tag the shell stock with a harvester tag or a dealer's tag meeting the requirements of the RIDOH Regulations.

D. Bulk tagging of shell stock will be permitted only with prior approval of the Director under the following criteria:

1. When shell stock are harvested from one (1) harvest area on a single day, multiple containers may be utilized on a wrapped pallet, in a tote, in a net brailer, or other container and the unit tagged with a single tag; and,

2. A statement that all shell stock containers in this lot have the same harvest data and area of harvest; and number of containers in the unit.

4.16 Commercial Temperature Control of Shellfish

A. Commercial shellfishermen shall not allow shell stock to deteriorate or decompose from exposure to excessive temperature and shall deliver shell stock to a licensed dealer before such deterioration or decomposition occurs.

B. Harvest of shellfish from sunrise November 1 through sunset March 31 annually: The maximum allowable time between the commencement of harvest of shell stock and delivery to a dealer shall be twenty (20) hours. Possession of shell stock in excess of twenty (20) hours is prohibited.

C. Harvest of shellfish from sunrise April 1 through sunset October 31 annually: The maximum allowable time between the commencement of harvest of shell stock and delivery to a dealer shall be ten (10) hours. Possession of shell stock in excess of ten (10) hours is prohibited.

1. The harvester shall provide shading to all shellfish intended for harvest aboard vessels and during land-based deliveries.

2. Harvest of bay quahaugs or oysters from within Designated Temperature Control Areas that exceed five hours to complete shall be placed in mechanical refrigeration or adequately iced in a storage container within five (5) hours of the commencement of harvest until the shellfish are transferred to a licensed dealer within ten (10) hours.

D. Ocean quahaugs, surf clams, and whelks are exempt from temperature control requirements.

4.17 Shellfish Transplant Regulations

A. The Director is authorized and directed, after requiring all necessary safeguards, to transfer shellfish from uncertified waters of the State to approved areas. The Director may make Rules and Regulations governing the re-harvest of those shellfish to the best economic benefit of the State after all necessary safeguards to insure their cleanliness. .

B. Any person participating in the transplant program shall surrender his commercial license to the conservation officer or DEM employee afloat on the transplant bed or otherwise stationed to collect licenses. The license must be surrendered before the participant commences digging shellfish.

C. The boundaries of the transplanting area shall be marked with designated corner markers. All shellfishermen participating in the transplant program shall harvest shellfish only within the boundaries of the transplant area so marked.

D. No shellfisherman shall commence harvesting shellfish in the transplant area before the hour at which the transplant program is scheduled to commence. Hours of transplanting shall be publicized in advance.

E. Shellfishermen participating in the transplant program shall bring no shellfish into the transplant area before beginning the transplant. Any shellfish on board a participant's boat shall be considered transplant shellfish, dug from the transplanting area.

F. Any participant in the transplant program shall be considered to have completed his participation in the program when he presents his shellfish to the "buy boat/buy station" for counting/weighing. If the method of transplanting involves diggers planting their own catch in the transplant bed, the shellfisherman shall first present his catch to the authorized DEM officer for counting/weighing, and shall then proceed directly to the planting area. Once the shellfisherman commences to remove the shellfish from his boat to the "buy boat/buy station" or into the transplant bed, he shall remove all shellfish from his boat before changing location. Any change of location shall indicate that the shellfisherman has cleared his boat of shellfish and is ready for inspection and return of license by DEM officers. No shellfish shall be aboard any participant's boat at the time of inspection.

G. Temporary creation of a transplanting area shall in no way affect the polluted status of the waters therein, or of any waters surrounding the transplanting area and declared polluted.

H. Violation of any of these provisions shall be punishable by a fine of up to five hundred dollars ($500.00) and/or up to thirty (30) days in jail.

I. Agents of the DEM may limit the maximum allowable harvest by each participant in a transplant. Agents of the DEM may limit the number of participants in a shellfish transplant program provided that the limit is determined in a fair and equitable manner. .

J. Dredging, Raking, and Tonging in Transplant Beds: Those areas to which the shellfish are transferred shall be marked out, and dredging, raking, or tonging on them shall be prohibited except under the special direction of the Director. .

4.18 Commercial Whelk Pot Tagging

A. Applicability: No person shall set, haul, or maintain a whelk pot unless the pot has attached a valid whelk pot tag issued by the Director.

B. Application for whelk pot tags shall be made on forms as prescribed by the Director.

C. Cost of tags shall be borne by the license holder and shall not exceed the cost of producing such tags by the vendor(s) selected by the Department.

D. Tags shall be permanently attached to the pot in a location clearly visible for inspection.

E. Tags shall be valid on an annual basis from April 1 through March 31.

F. No person shall transfer whelk pot tags between whelk pots, or between individuals or vessels.

G. No person shall possess at any one time more whelk pot tags than are authorized.

H. Only tags for the current fishing year, and either the immediate previous or following fishing year, may remain attached to each whelk pot.

I. Pot tag types and issuance:

1. Original tags: Eligible license holders may order up to the maximum pot limit plus a fifteen percent (15%) over-allotment to allow for replacement of tags due to routine losses. When a routine loss of an original tag occurs, the ten percent (10%) over-allotment shall be used to replace the lost tag.

2. Gear rotation tags: Eligible license holders may order additional tags to be used for gear rotation and maintenance. The number of gear rotation tags issued shall not exceed the maximum pot limit or exceed the number of original tags ordered. Gear rotation tags shall be held by the Director. The Director shall issue gear rotation trap tags on a one-for-one basis upon receipt of the original tags.

3. Catastrophic loss tags: Eligible license holders may order up to two (2) complete sets of catastrophic loss trap tags, in an amount equal to the number of original tags ordered, to be used in the event of catastrophic loss or to replace original trap tags not received.

    a. Catastrophic loss trap tags ordered shall be held by the Director.

    b. Issuance of catastrophic loss tags shall null and void original and gear rotation tags issued. No original tag issued may be used upon issuance of catastrophic trap tags.

    c. Catastrophic loss trap tags shall be distinguishable from original trap tags (i.e. color).