

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Division of Fish and Wildlife
Marine Fisheries**

PUBLIC NOTICE CONCERNING PROPOSED RULEMAKING

Pursuant to the provisions of Chapters 42-17.1 and 20-3 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the R. I. General Laws, the Department of Environmental Management (DEM) proposes to repeal several Parts of the Rhode Island Marine Fisheries Regulations and adopt a new regulation in their place.

Public comment will be solicited on the following proposals:

- 1) **Repeal** of each of the following Parts of the Rhode Island Marine Fisheries Regulations:
 - a. Part IV – Shellfish;
 - b. Part V - Bay Scallops;
 - c. Part VI - Dredging for Shellfish;
 - d. Part VIII – Oyster Regulations;
 - e. Part IX - Shellfish Buyer’s License – Statutes;
 - f. Part XVIII - Shellfish Grounds.
- 2) **Adoption** of new regulation “Rhode Island Marine Fisheries Regulations – Shellfish”, that incorporates all regulatory and management aspects of the above named regulations proposed for repeal.

There are no regulatory or management changes with the proposed rulemaking. The purpose of the proposed changes are only to streamline, de-fragment, clarify, and to remove unnecessary duplicative, obsolete, and non-regulatory (e.g., statutory, programmatic) language.

Written comments concerning the proposed rulemaking may be submitted to the Division of Fish and Wildlife, Marine Fisheries section, 3 Fort Wetherill Road, Jamestown, RI 02835, Attention: Peter Duhamel. Written comments must be received within thirty (30) days of this notice (i.e., no later than 4:00 P.M., July 17, 2014) to be entered into the public record. The Department shall consider fully all properly submitted written and oral submissions concerning the proposed rulemaking.

Upon adoption of a rulemaking, the Department, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

A public hearing concerning the proposed rulemaking will be held **only** if requested, consistent with the requirements of Chapter 42-35 of the R. I. General Laws (i.e., if requested by twenty-five (25) persons, or by a governmental subdivision or agency, or by an association having not

less than twenty-five (25) members). Such request must be received within thirty (30) days of this notice (i.e., no later than 4:00 P.M, July 17, 2014).

In the development of the proposed amendment, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

A copy of the proposed rulemaking will be available for review from June 17 through July 17, 2014 at the DEM Marine Fisheries office located at 3 Fort Wetherill Road, Jamestown, RI 02835; and also online at the Marine Fisheries website at the following web address: <http://www.dem.ri.gov/programs/bnatres/fishwild/pn012214.htm>.

Date Posted: 06/17/2014



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT



RHODE ISLAND MARINE FISHERIES
REGULATIONS

Part IV
Shellfish

May 8, 2014

AUTHORITY: Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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PURPOSE

~~The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.~~

AUTHORITY

~~These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

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.~~

DEFINITIONS

~~See Rhode Island Marine Regulations, Part I, '1.3.~~

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.~~

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~~
- ~~— Part IV 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.~~

~~R.I. Marine Fisheries Regulations~~

~~PART IV - SHELLFISH~~

~~4.1 License~~

~~4.1.1 Recreational Harvest - R.I. Resident: R.I. residents are not required to obtain a license for the recreational harvest of shellfish provided that such shellfish shall not be offered for sale. (RIGL 20-6-1)~~

~~4.1.2 Recreational Harvest - Non-Resident: Every non-resident over the age of twelve (12) years wishing to take or possess shellfish recreationally in Rhode Island waters must obtain shellfish license. (RIGL 20-2-22)~~

~~(A) Annual: The fee for an annual shellfish license is two hundred dollars (\$200). This license will expire on the last day in February annually. (RIGL 20-2-22(a))~~

~~(B) 14-day: The fee for a fourteen (14) day tourist license is eleven dollars (\$11). This license is valid for fourteen (14) consecutive days only, including the date of issue, and is limited to one (1) license per person per calendar year. (RIGL 20-2-22(b))~~

~~(C) Non-resident landowner: A non-resident landowner may, with proof of residential property 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, obtain an annual, non-commercial, non-resident shellfish license for a fee of twenty-five dollars (\$25). (RIGL 20-2-22(d))~~

~~4.1.3 Commercial Harvest: See specific requirements and conditions in DEM's "Commercial and Recreational Saltwater Fishing Licensing Regulations".~~

~~(A) A commercially licensed shellfisherman shall only sell, barter, or trade shellfish taken from Rhode Island waters to a licensed shellfish dealer or multipurpose dealer.~~

~~(B) A commercially licensed shellfisherman 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 DEM.~~

~~(C) Shellfish Dredging License: A resident of this State shall pay an annual fee of two hundred dollars (\$200) for a commercial license to take quahaugs, mussels, and surf clams by dredges hauled by power boat. (RIGL 20-2-1-5(2)(ii)(A))~~

~~4.2 General Provisions~~

~~4.2.1 Night Shellfishing Prohibited - Penalty for Taking Shellfish at Night: Notwithstanding the provisions of any general or public law to the contrary, any person who takes any oysters, clams, quahaugs, scallops, or mussels from any of the waters of this state during the hours between sundown and sunrise shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not exceeding three (3) years or by both; and any boat, dredges, rakes, or other equipment used in this violation shall be forfeited to the State (RIGL 20-6-23).~~

~~4.2.2 Opening Shellfish on Water: No person shall possess the meats of more than six (6) shellfish while shellfishing on the waters of the State or throw the shells of open scallops onto the scallop beds. (RIGL 20-6-21)~~

~~4.2.3 Soft-shell Clams - Method of Taking: No person, either as principal, agent, or employee, shall dig or take by any method other than by forks, rakes, hoes, tongs, or any other device operated by hand, from any of the waters of this State, any soft-shell clam. Any violation of the provisions of this section shall be punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50) (RIGL 20-6-15).~~

~~4.2.4 Penalty for Exceeding Allowance Without License: Every person who shall take in any one (1) day more than one half (1/2) bushel each of oysters, bay quahaugs, soft-shell clams, surf clams, or mussels from the free and common fisheries of this state, without a license, shall be fined, upon conviction, not exceeding fifty dollars (\$50) and costs for each one half (1/2) bushel or fraction thereof above the stated limits or be imprisoned not exceeding thirty (30) days, or both. (RIGL 20-6-9)~~

~~4.2.5 Method of Harvest: No person shall 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 done so in accordance with RIMFR Part X.~~

~~4.2.6 Shellfish Grounds - Polluted Area: Shellfish harvesting will be allowed in all areas, except those areas declared by the Director to be polluted based upon water quality considerations pursuant to RIGL Chapter 20-8.1.~~

~~4.2.7 The use of a diving apparatus is prohibited while shoredigging.~~

4.3 Minimum Sizes

~~4.3.1 Bay Quahaug: One inch (1") shell thickness (hinge width). (RIGL 20-6-11)~~

~~4.3.2 Soft-Shell Clam: Two inches (2") taking the maximum shell diameter. (RIGL 20-6-11)~~

~~4.3.3 Oyster: Three (3) inches measured parallel to the long axis of the oyster. (RIGL 20-6-11)~~

~~(A) Season: September 15 to May 15 annually.~~

~~4.3.4 Surf Clam: Five (5) inches measured parallel to the long axis of the clam.~~

~~4.3.5 Bay Scallops: The taking and possession of seed scallops is prohibited. A "seed scallop" means a scallop with a bright, thin, slightly curved shell with no foreign adherent, the shell having no well-defined raised annual growth line, and the scallop being less than one (1) year old. Every person taking any seed scallops and who fails to restore them as soon as possible to their natural beds in the water from which taken, shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100), or be imprisoned not exceeding thirty (30) days, or both, for each offense. (RIGL 20-6-17)~~

~~4.3.6 Penalty: Any person who takes and/or possesses shellfish of less than the minimum size, as delineated above, upon conviction, shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each and every fifteen (15) shellfish taken. Additionally, any person who takes and/or possesses shellfish of less than the minimum size commingled and/or otherwise stored or contained with shellfish of not less than the minimum size, where the percentage of the less than minimum size shellfish is not less than ten percent (10%) of the total piece count of the commingled and/or otherwise stored or contained package, shipment, or container, shall be subject to seizure and/or forfeiture of the entire commingled and/or otherwise stored or contained package, shipment, or container, in accordance with the provisions of 20-1-8.1. (RIGL 20-6-11)~~

~~4.4 Daily Possession Limits in waters other than Shellfish Management Areas~~

~~4.4.1 Recreational - R.I. Resident:~~

~~(A) Bay Quahaug, Soft-shell clams, Oysters, Surf clams, and Blue mussels:
One half (1/2) bushel/person/day. (RIGL 20-6-1)~~

~~(B) Bay scallops: One (1) bushel/person/day. (RIGL 20-6-1)~~

~~4.4.2 Recreational - Licensed Non-resident:~~

~~(A) Bay Quahaugs, Soft-shell clams, Oysters Surf clams, or Blue mussels:
One (1) peck/person/day.~~

~~(1) Penalty: Any person taking more than these allowances in any one (1) day shall be fined upon conviction, one hundred dollars (\$100) for each bushel or part of a bushel exceeding the prescribed quantity or be imprisoned for not exceeding thirty days, or both (RIGL 20-6-10(b)).~~

~~4.4.3 Commercial:~~

~~(A) Bay quahaugs and Soft-shell clams: Twelve (12) bushels/person/day. (RIGL 20-6-10)~~

~~(B) Oysters: Three (3) bushels/person/day. (RIGL 20-6-10)~~

~~(C) Surf clams: Two hundred (200) bushels/person/day.~~

~~(D) Ocean Quahaugs: Twenty six (26) cages or eight hundred thirty two (832) bushels/person/day.~~

~~(E) Bay scallops: Three (3) bushels/person/day, with a maximum of three (3) bushels/vessel/day. (RIGL 20-6-16)~~

4.5 Shellfish Management Areas — descriptions, seasons, and possession limits:
~~Greenwich Bay, Conimicut Point, Potowomut, High Banks, Bissel Cove/Fox Island, Mill Gut, Bristol Harbor, Kickemuit River, Jenny's Creek, Sakonnet River, Pt. Judith Pond, Potter Pond, Ninigret (Charlestown) Pond, Quonochontaug Pond, and Winnapaug Pond have been declared Shellfish Management Areas pursuant to RIGL 20-3-4.~~

4.5.1 Daily possession limits of Bay Quahaugs, Soft-shell Clams, Surf Clams, Blue Mussels, and Oysters:

~~(A) Boat Harvest:~~

~~(1) Recreational - R.I. Resident: One (1) peck/person/day.~~

~~(2) Recreational - Licensed Non-Resident: One half (½) peck/person/day.~~

~~(3) Commercial (in season): Three (3) bushels/person/day; maximum of six (6) bushels/vessel/day; and maximum of two (2) licensed shellfishers per boat.~~

~~(B) Shore Digging: Recreational shore digging is open in all Shellfish Management Areas daily, unless specifically closed to all shellfishing.~~

~~(1) Recreational - R.I. Resident: One (1) peck/person/day.~~

~~(2) Recreational - Licensed Non-Resident: One half (½) peck/person/day.~~

~~(3) Commercial (in season): Three (3) bushels/person/day.~~

~~(a) Exception: In the Greenwich Bay Management Area, the possession limit is three (3) bushels/person/day whenever sub-area 1 is open to boat harvest, but one (1) peck/person/day holder whenever sub-area 1 is not open to boat harvest.~~

~~4.5.2 Temporary Shellfish Limit in Shellfish or Marine Life Management Areas: The Department may establish a reduced shellfish limit in any designated Management Area for a period not to exceed sixty (60) days. The following reduced possession limits shall apply for the taking of Bay Quahaugs, Soft-shell Clams, Surf Clams, and Oysters in any area so designated:~~

~~(A) Recreational- R.I. Resident: One (1) peck each/person/day.~~

~~(B) Recreational- Licensed Non-Resident: One half (1/2) peck/person/day.~~

~~(C) Commercial: One (1) bushel/person/day.~~

~~4.5.3 **Greenwich Bay:** Described as the waters west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.~~

~~(A) **GB Sub-Area 1:** Described as the waters east of a line between the Rhode Island DEM range marker located at the end of Neptune Street in Chepiwanoxet to the Rhode Island DEM range marker located on Cedar Tree Point, Warwick, and north of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods.~~

~~(B) **GB Sub-Area 2:** Described as the waters west of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods; and south of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods.~~

~~(1) **Commercial Boat Harvest in GB Sub-Areas 1 and 2:** These areas shall be subject to an annual December harvest schedule established by the Director, pursuant to recommendations developed by the Division of Fish and Wildlife (DFW) and the RI Marine Fisheries Council (RIMFC). Said recommendations shall be submitted to the Director at least sixty (60) days prior to the first scheduled opening. The December schedule may include up to forty-eight (48) hours of permitted shellfishing, spread over any number of days during the month, excluding December 25.~~

~~(2) If weather or water quality conditions during the month of December prevent this area from opening on two or more scheduled days, the (DFW) may modify the December schedule to allow for additional hours or days of permitted shellfishing, provided that:~~

~~(a) The proposed modification(s) is/are submitted in writing to the (DFW) by a member of the Marine Fisheries Council (RIMFC);~~

~~(b) The total number of hours of permitted shellfishing for the month does not exceed forty-eight (48) hours; and~~

~~(c) The re-scheduled hours or days are announced publicly by the (DFW) with at least seventy-two (72) hours of advance notice.~~

~~(3) Commercial Boat Harvest Winter Schedule for Western Greenwich Bay (GB Sub-Areas 1 and 2):~~

~~(a) December 2013: In accordance with DEM Office of Water Resources, "Notice of Polluted Shellfish Grounds" document dated May 2013, GB Sub-Areas 1 and 2 are closed to shellfishing beginning sunrise on December 1 through sunrise of January 1, annually.~~

~~(b) On Thursday, January 2, 2014: Open between 8:00 A.M. and 12:00 P.M. Noon.~~

~~(c) January 6, 2014 through April 30, 2014: Open between 8:00 A.M. and 12:00 P.M. Noon on Mondays, Wednesdays, and Fridays.~~

~~(4) Default Commercial Boat Harvest Schedule for GB Sub-Areas 1 & 2: If no action is taken annually to establish specific boat harvest schedules and/or closures for the December through April harvest season, the following default harvest schedule shall be in effect:~~

~~(a) Open between 8:00 A.M. and 12:00 P.M. on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April excepting December 25 and January 1 if they fall on a Monday, Wednesday, or Friday.~~

~~(C) GB Area 3: Described as the waters east of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods, and west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.~~

~~(1) Boat harvest schedule: Open daily.~~

~~4.5.4 Conimicut Point: Described as the waters south of a line running from the pole (Latitude: 41° 43' 2.93" North, Longitude: 71° 21' 27.68" West) on Conimicut Point to the center of the Old Tower at Nayatt Point; and north of a line from the western-most extension of Samuel Gorton Avenue, Warwick and the southern-most extension of Bay Road, Barrington.~~

~~(A) The daily possession limit for shellfish species other than soft-shell clams are those as specified applicable to waters other than Shellfish Management Areas.~~

~~4.5.5 Potowomut: Described as the waters at the mouth of Greenwich Bay south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point and north of a line between and the seaward end of Pojac Point to buoy~~

~~"G1" (Round Rock) to the Warwick Lighthouse, including all the waters of the Potowomut (Greene's) River seaward of the Forge Road Spillway.~~

~~(A) Area A: Described as the waters west of a line between the seaward end of Sandy Point and buoy "G1" (Round Rock) and north of a line between the seaward end of Pojac Point to buoy "G1" (Round Rock).~~

~~(1) Harvest Schedule: Commencing May 1, 2013, open daily.~~

~~(B) Area B: Described as the waters within the triangular area east of a line between the seaward end of Sandy Point and buoy "G1" (Round Rock) and west of a line between the flagpole at the Warwick Country Club and buoy "G1" (Round Rock) and south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point.~~

~~(1) Harvest Schedule: Closed until further notice.~~

~~(C) Area C: Described as the waters east of a line between the flagpole at the Warwick Country Club and buoy "G1" (Round Rock) and north of a line from buoy "G1" (Round Rock) to the Warwick Lighthouse.~~

~~(1) Harvest Schedule: Open daily.~~

~~4.5.6 High Banks: Described as the waters of the upper west passage south of a line between the seaward end of Pojac Point to the Round Rock buoy "G1" and north of a line from the seaward end of the fence between the former Davisville Navy property and Pettee Street in the Mount View section of North Kingstown to "N6" buoy located mid-bay west of Prudence Island. The area is bounded on the east by a line projecting from the easternmost end of Pier 2 at Davisville to the Round Rock buoy "G1" and is bounded to the west by the shore.~~

~~(A) Harvest Schedule: Commencing May 1, 2013, open daily.~~

~~4.5.7 Bissel Cove/Fox Island: Described as the waters of Bissel Cove in its entirety and the adjacent waters of Narragansett Bay south of a line between pole #275 at the corner of Waldron and Seaview Avenues and the southwestern most point of Fox Island (south of the cable area); west of a line from the southwestern most point of Fox Island to the northern most point of Rome Point in the town of North Kingstown.~~

~~(A) Boat Harvest:~~

~~(1) Beginning the 2nd Wednesday of December through April 30, 2014:
Open daily.~~

~~(2) May through November annually: Closed.~~

~~(3) Default harvest schedule: If no action is taken annually to establish specific boat harvest schedules for the December through April harvest season, the following default harvest schedule shall be in effect:~~

~~(a) Open between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.~~

~~(B) Oyster Harvest Moratorium: The harvest and possession of oysters in the Bissel Cove/Fox Island Shellfish Management Area is prohibited from September 15, 2010 to September 15, 2015.~~

~~4.5.8 Mill Gut: Described as the waters of Mill Gut, in the town of Bristol, lying south of the northern-most bridge on Colt Drive.~~

~~(A) Closed area: Closed in its entirety until further notice, with the exception that between the second Wednesday in December and April 30 annually, the area will be open for the harvesting of quahaugs, soft-shell clams, blue mussels, and oysters.~~

~~4.5.9 Bristol Harbor: Described as the waters of Bristol Harbor southerly of a line between CRMC permitted dock #419 located at 163 Poppasquash Road to the northwest corner of the Rockwell Pier municipal parking lot in Bristol Harbor, and north of a line between CRMC Permitted Dock # 1601 at the boat house to the rear of 363 Poppasquash Road and the northwest corner of the Coast Guard Dock in Bristol Harbor. The area is bordered on the west by the three (3) foot contour line along the shore between Dock #419 and Dock # 1601 and on the east by the existing pollution line.~~

~~(A) Boat Harvest:~~

~~(1) December 2013: Closed.~~

~~(2) Beginning January 3, 2014: Open between 8:00 A.M. and 12:00 P.M. Noon on Mondays, Wednesdays, and Fridays.~~

~~(3) February 1 through April 30, 2014: Open seven (7) days a week.~~

~~(4) May through November annually: Closed.~~

~~(5) Default harvest schedule: If no action is taken annually to establish specific boat harvest schedules for the December through April harvest season, the following default harvest schedule shall be in effect:~~

~~(a) Open between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and~~

~~continuing through the end of April, excepting December 25 and January 1 if they fall on a Monday, Wednesday, or Friday.~~

~~4.5.10 **Kickemuit River:** Described as the marine waters of the Kickemuit River north of a line connecting nun-buoy 6 and can-buoy 1 at Bristol Narrows.~~

~~4.5.11 **Jenny's Creek:** Described as the waters of Jenny's Creek north of the inlet at Pine Hill Cove, Prudence Island.~~

~~(A) **Closed area:** Closed in its entirety until further notice.~~

~~4.5.12 **Sakonnet River:** Described as the waters north of a line from Sachuest Point to Sakonnet Light. The northern boundary of the Management Area will be an east/west line across the Sakonnet River lying one-quarter (1/4) mile south of the pipeline found just south of Black Point, so-called, and bounded on the west by a north/south line running from Flint Point to Taggart's Ferry, so-called.~~

~~(A) The possession limit for licensed dredge boats is two hundred (200) bushels/vessel/day. A by-catch of Bay quahaugs will be permitted and calculated at the rate of one (1) bushel of Bay quahaugs for each ten (10) bushels of surf-clams in possession of the harvester. Total by-catch of bay quahaugs shall not exceed twelve (12) bushels per vessel.~~

~~4.5.13 **Point Judith Pond, including East Pond:** Described as the waters of Point Judith Pond, including East Pond, in their entireties, in the towns of South Kingstown and Narragansett.~~

~~4.5.14 **Potter Pond:** Described as the waters of Potters Pond, in its entirety, west of the bridge at Succotash Road, in the town of South Kingstown.~~

~~(A) **Closed Area:** The following area within Potter Pond in South Kingstown will be closed to all shellfishing except for the harvest of bay scallops by dip-net from a boat only: The waters within Sycamore Cove north of a line running easterly from a special DEM marker located at N 41-degrees 23-minutes 2.0-seconds, W 71-degrees 32-minutes 13.0-seconds; to a second special DEM marker located at N 41-degrees 23-minutes 1.0-second, W 71-degrees 31-minutes 59.5-seconds; and bound by the northern pond shoreline between the special DEM markers.~~

~~4.5.15 **Ninigret (Charlestown) Pond:** Described as the waters of Ninigret Pond in its entirety, in the town of Charlestown.~~

~~(A) **Closed Area:** The following area within Ninigret Pond in Charlestown will be closed to all shellfishing except for the harvest of bay scallops by dip-net from a boat only: The waters within an area formed by the following points: from ("A" N 41-degrees 20-minutes 41.7-seconds W 71-degrees 41-minutes 24.3-seconds; the northeast corner of the Ninigret Conservation Area parking lot) following the~~

~~shoreline to ("B" N 41 degrees 20 minutes 49.6 seconds W 71 degrees 41 minutes 4.6 seconds, a DEM sign approximately 500 meters eastward of "A"); from "B" northward to ("C" N 41 degrees 21 minutes 31.0 seconds W 71 degrees 41 minutes 22.2 seconds, the Lavin's Landing Marina launching ramp); from "C" following the shoreline to ("D" N 41 degrees 21 minutes 10.1 seconds W 71 degrees 41 minutes 40.9 seconds, a DEM sign on the westernmost end of Reeds Point); from "D" southward to "A".~~

~~4.5.16 **Quonochontaug Pond:** Described as the waters of Quonochontaug Pond in its entirety, in the towns of Charlestown and Westerly.~~

~~(A) The harvest and possession of oysters in Quonochontaug Pond is prohibited from September 15, 2013 to September 15, 2016 (for three years).~~

~~(B) Closed Areas: The following areas in Quonochontaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net from a boat only:~~

~~(1) The western closure area is defined as south of a line running easterly from the special DEM marker at the end of Quahaug Point (N 41 degrees 20 minutes 0.0 seconds, W 71 degrees 44 minutes 39.5 seconds), to a second special DEM marker at the northern end of Nope's Island (N 41 degrees 20 minutes 5.0 seconds, W 71 degrees 44 minutes 1.0 second). The area will be bordered on the west by a line running south from Quahaug Point to a special DEM marker located on the barrier beach shoreline (N 41 degrees 19 minutes 51.5 seconds, W 71 degrees 44 minutes 40.0 seconds). The southern boundary will be the shoreline between the barrier beach special DEM marker and Nope's Island special DEM marker.~~

~~(2) The eastern closure area is defined as east of a line running southerly from the special DEM marker located at N 41 degrees 21 minutes 1.1 seconds W 71 degrees 42 minutes 33.4 seconds, to a second special DEM marker located at N 41 degrees 20 minutes 41.0 seconds W 71 degrees 42 minutes 44.1 seconds; and bound by the eastern pond shoreline between the special DEM markers.~~

~~4.5.17 **Winnapaug Pond:** Described as the waters of Winnapaug Pond in its entirety, in the town of Westerly.~~

~~(A) Closed Area: The following area in Winnapaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip-net from a boat only: the area north of a line running easterly from a special DEM marker at Big Rock Point (N 41 degrees 19 minutes 49.0 seconds, W 71 degrees 47 minutes 57.0 seconds), to the special DEM marker at the southern end of Larkin's Island (N 41 degrees 19 minutes 55.0 seconds, W 71 degrees 47 minutes 5.0 seconds). The area will be bordered on the east by a line running northwesterly the Larkin's Island special marker to a special DEM marker adjacent to the end of Bayside~~

~~Avenue (N 41 degrees 19 minutes 58.0 seconds, W 71 degrees 47 minutes 9.0 seconds). The northern boundary is the shoreline between the Bayside Ave special DEM marker and the Big Rock Point special DEM marker.~~

4.6 Shellfish Transplant Program

~~4.6.1 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 economical benefit of the state after all necessary safeguards to insure their cleanliness. (RIGL §20-6-26)~~

~~4.6.2 Any person participating in the transplant program shall surrender his commercial license to the conservation officer or DFW employee afloat on the transplant bed or otherwise stationed to collect licenses. The license must be surrendered before the participant commences digging shellfish.~~

~~4.6.3 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.~~

~~4.6.4 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.~~

~~4.6.5 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.~~

~~4.6.6 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.~~

~~4.6.7 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.~~

~~4.6.8 Violation of any of these provisions shall be punishable by a fine of up to \$500 and/or up to 30 days in jail.~~

~~4.6.9 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. (RIGL 20-6-29)~~

~~4.6.10 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. (RIGL 20-6-27)~~

~~4.6.11 Cost of Transfer of Shellfish: For the transfer of shellfish pursuant to § 20-6-26, the Director is authorized to hire dredge boats or hand rakers and to set the rate of payment. Any transferred shellfish may be sold by the Director, and the proceeds of that sale shall be retained under the control of the Director for the purpose of assisting in the cost of the transfer of shellfish from uncertified waters to approved areas from time to time as the transfer becomes necessary or expedient. (RIGL 20-6-28)~~

~~4.6.12 Penalty for Improper Taking of Transferred Shellfish: Any person violating rules or regulations promulgated by the Director as provided for in Sections 20-6-26 to 20-6-28, shall, upon conviction, be subject to a fine not exceeding five hundred dollars (\$500) or imprisoned not exceeding thirty (30) days or both. (RIGL 20-6-29)~~

4.7 Handling of Shellfish

~~4.7.1 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.~~

~~4.7.2 Containers used for storing shell stock must be clean~~

~~4.7.3 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.~~

~~4.7.4 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.~~

~~4.7.5 Commercial shellfishermen using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.~~

~~4.7.6 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.~~

~~4.7.7 Commercial shellfishermen using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not contaminate shell stock.~~

~~4.7.8 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.~~

~~4.7.9 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 (RIGL §46-12-39).~~

4.8 Tagging of Shellfish

~~4.8.1 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 section 4.31.2 below, prior to the following:~~

~~(A) The fisherman leaves the approved waters of the harvest area identified on the (see Part XVII – Maps), shellfish management area or the aquaculture site identified by the CRMC Assent number in which the shellfish were taken;~~

~~(B) The shellfish are removed from the boat; or~~

~~(C) Offered for sale.~~

~~4.8.2 The harvester tag shall be durable, waterproof, and sanctioned by the R.I. Department of Health. The tag shall contain the following indelible, legible information in the order specified below:~~

~~(A) Harvester's identification number as assigned by DEM;~~

~~(B) Date of harvest;~~

~~(C) The harvest location as identified on the (see Part XVII – Maps), shellfish management area or aquaculture site identified by the CRMC Assent number;~~

~~(D) Type (species) of shellfish; and~~

~~(E) Approximate quantity of shellfish~~

~~4.8.3 Each tag shall also carry the following statement in bold capitalized type “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS”~~

~~4.8.4 Commercial shellfishermen shall not place shell stock harvested from more than one 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 R.I. Department of Health regulations.~~

~~4.8.5 Bulk tagging of shell stock will be permitted only with prior approval of the Director under the following criteria:~~

~~(A) When shell stock are harvested from one 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~~

~~(B) A statement that all shell stock containers in this lot have the same harvest data and area of harvest; and~~

~~(C) Number of containers in the unit.~~

4.9 Temperature Control of Shellfish

~~4.9.1 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.~~

~~4.9.2 The maximum allowable time between the harvest of shell stock and delivery to a dealer shall be twenty hours. Possession of shell stock in excess of 20 hours is prohibited.~~

~~4.9.3 Ocean quahaugs (*Arctica islandica*) and surf clams (*Spisula solidissima*) are exempt from the aforementioned temperature control requirements.~~

4.10 Conch (Channeled Whelk – *Busycotypus canaliculatus* and Knobbed Whelk – *Busycon carica*)

4.10.1 General Provisions:

~~(A) Taking by RI state residents only: The taking of conch from waters under the jurisdiction of the State of Rhode Island shall be restricted to legal residents of the State of Rhode Island.~~

~~(B) Mutilation and/or Possession of Conch Meat; cooked or uncooked: Prior to landing of any conchs, no person shall mutilate any cooked or uncooked conch~~

~~by breaking and removing the meat from the shell or have in his or her possession any part or parts of any uncooked conch so mutilated. In any and all prosecutions under this section, the possession of any part or parts of any cooked or uncooked conch so mutilated shall be prima facie evidence sufficient to convict. All conchs are to be landed whole in the shell.~~

~~(C) Unauthorized Hauling of Conch Pots: No person except the Director may haul, unduly disturb, or remove any animal from a conch pot of a person possessing a valid commercial fishing license to take conch, or from a person fishing recreationally for conch, without the written permission of that person.~~

~~(D) Unauthorized Possession and/or Transfer of Conch Pots: No person except the Director may sell, transfer, or have in his or her possession or control any conch pot, or associated line (warp) and/or buoy, without the written permission of the owner.~~

~~(E) Hauling or Setting Conch Pots at Night: No person shall haul or unduly disturb any conch pot within the territorial waters of this state between the hours of one (1) hour after sundown and one (1) hour before sunrise.~~

~~4.10.2 Season: January 1st through December 31st.~~

~~4.10.3 Minimum Size:~~

Year	Shell Width	Shell Length
2014	2-7/8" (73 mm)	5-1/8" (130.1 mm)
2015	3" (76.2 mm)	5-3/8" (136.5 mm)

~~(A) Penalty: Any person who takes and/or possesses conch of less than the minimum size, as delineated above, upon conviction, shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for every fifteen (15) conch that are less than the minimum size and found to be in his/her possession. Additionally, if any person who is found in possession of conch of less than the minimum size that are commingled and/or otherwise stored or contained with conch that are of at least minimum size, and the percentage of the less than minimum size conch is ten percent (10%) or more of the total piece count of the conch commingled and/or otherwise stored or contained in a package, shipment, or container, the entire commingled and/or otherwise stored or contained package, shipment, or container, shall be subject to seizure and/or forfeiture in accordance with the provisions of RIGL § 20-1-8((a)(5), 20-1-8(a)(6).~~

~~4.10.4 Recreational:~~

~~(A) Possession Limit: One half (1/2) bushel per person per calendar day, or if a vessel with more than one (1) resident onboard is used, a maximum of one (1)~~

~~bushel per vessel per calendar day.~~

~~(B) Conch Pot Limit: Five (5) conch pots at any one time. A non-commercial conch fisherman shall not offer for sale or sell conchs.~~

~~4.10.5 Commercial:~~

~~(A) Possession Limit: Thirty five (35) bushels per vessel per calendar day.~~

~~(B) Commercial Conch Pot limit: Not more than three hundred (300) conch pots per licensee can be in the water at any one time.~~

~~4.11 Violations for non-compliance~~

~~4.11.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.~~

~~4.12 Penalties~~

~~4.12.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16).~~

~~4.12.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "*Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife"*.~~

~~4.13 Appeals~~

~~4.13.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's~~

~~“Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters”~~

~~4.13.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM’s Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.~~

EFFECTIVE DATE

~~The foregoing rules and regulations “Rhode Island Marine Fisheries Regulations, Part IV – Shellfish”, after due notice, are hereby adopted and filed with the Secretary of State this 8th day of May, 2014 to become effective 20 days from filing, unless otherwise indicated below, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

Janet L. Coit, Director
Department of Environmental Management

Notice Given: 02/21/2014
Public Hearing: 03/25/2014

Filing Date: 05/08/2014
Effective date: 05/28/2014

ERLID# 7672