

**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 STATUTES AND REGULATIONS

Part VI Dredging for Shellfish



December 17, 2012

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, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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**RHODE ISLAND MARINE FISHERIES
STATUTES AND REGULATIONS**

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 rule and regulations are promulgated pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to modify existing regulations in accordance with Chapter 42-35, 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 Statutes and 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 VI 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 Statutes and Regulations~~
~~PART VI – DREDGING FOR SHELLFISH~~

~~6.1 Shellfish Dredging License - Fee -- A resident of this State shall pay an annual fee of two hundred dollars (\$200) for a license to take quahaugs, mussels, and surf clams by dredges hauled by power boat. (RIGL 20-1-3) (RIGL 20-2.1-5 (2)(iii)(A)) [Penalty - Part 6.6; (RIGL 20-6-13)]~~

~~6.2 Use of Dredges -- Except as hereinafter provided and unless otherwise specified by regulation of the Department of Environmental Management, no person shall take any oysters, bay quahaugs, or soft-shell clams from the waters of this State by dredges, rakes, or other apparatus operated by mechanical power or hauled by power boats. No licensed person shall cast, haul, or have overboard any dredges while fishing for oysters, bay quahaugs, or soft-shell clams from the free and common fisheries of this State, nor shall any licensed boat be used for fishing oysters, soft-shell clams, or bay quahaugs with dredges, except as herein provided; provided, however, that any person having a license issued under this Title for the taking of scallops may use a dredge or dredges, not exceeding six (6) in number nor exceeding twenty-eight inches (28") each in width, for that purpose, provided that the licensee shall immediately return all oysters, soft-shell clams, or bay quahaugs caught by the licensee to the waters from which they were taken. Any licensed boat may be used in dredging for mussels by the licensee of that boat, the licensee having first obtained a permit from the Director of Environmental Management allowing the licensee so to do; provided the licensee, while dredging for mussels under the permit granted the licensee by the Director, shall immediately return all oysters, scallops, or bay quahaugs caught by him or her to the waters from which they were taken. The fact of any licensed person being found with oysters, scallops, or bay quahaugs in his or her possession while dredging for mussels shall be prima facie evidence that person was fishing in violation of the provisions of this Chapter and shall be subject to the penalties and fines imposed by this chapter. Any resident dredging for surf clams or skimmers, shall not be in violation of this Section if that dredging is done southerly of the coastline of Little Compton, southerly of a line extending from Church Point, in the town of Little Compton, to Flint Point on Aquidneck Island, southerly of the coastline of Aquidneck Island, southerly of a line extending from Castle Hill Point on Aquidneck Island, to Southwest Point of Conanicut Island to Bonnet Point, Narragansett, easterly of the coastline of the town of Narragansett, southerly of the coastline of the towns of Narragansett, South Kingstown, and Charlestown, and westerly to the Connecticut line. For the purpose of this section, coastline refers to the land facing the open sea. (RIGL 20-6-7) [Penalty - Part 6.6 (RIGL 20-6-13)]~~

~~6.3 Registration of Boats and Display of Numbers -- No boat shall be used in the taking of quahaugs by dredge or the commercial taking of scallops unless that boat has been registered with the Director of Environmental Management. Each registered boat shall be issued a certificate of registration and assigned a number, and this number shall be displayed on a flat surface in a conspicuous place upon the port side while the boat is engaged in taking quahaugs or scallops. (RIGL 20-6-4) [Penalty - Part 6.6 (RIGL~~

Quahaug Dredging

~~6.4 Opening Areas for Quahaug Dredging -- Pursuant to good conservation practices, the Director of the Department of Environmental Management shall be authorized to open areas of the public waters of the State for taking quahaugs under license by a registered boat, by dredges, rakes or other apparatus operated by mechanical power or hauled by power boats, and shall be authorized to close that areas at any time there is a danger of depletion of quahaugs or when flagrant violations of this Chapter occur. (RIGL 20-6-8)~~

~~6.5 Maximum Take for Dredged Quahaugs -- Any person licensed to take quahaugs by dredge, rake, or other apparatus operated by power or hauled by a power boat may take and possess, between sunrise and sunset of any one (1) day, thirty (30) bushels of quahaugs, unless a different amount is specified by regulation of the Marine Fisheries Council. Any person taking more than the prescribed quantity shall be fined upon conviction not more than one hundred dollars (\$100) for each bushel exceeding the prescribed quantity, or be imprisoned not more than thirty (30) days, or both. (RIGL 20-6-12) (Penalty 20-6-12 -- Part 6.5)~~

~~6.6 General Penalties for Violations -- Impoundment of Boats -- Any person who shall without a license take quahaugs by dredge, or any person who shall violate any suspension of the Director of Environmental Management made with respect to quahaug dredging or who shall violate any provisions of this Chapter for which a penalty is not otherwise provided, shall, upon conviction for the first offense, be fined two hundred fifty dollars (\$250), and the Director may seize, hold, and impound at the owner's expense, in one of three commercial shipyards submitting the lowest bid, for a period of not less than thirty (30) days nor more than sixty (60) days, any power boat used in any such violation of this Section together with its dredges, rakes, and equipment. Any person convicted of a subsequent violation or violations of the provisions of this Section shall be imprisoned for thirty (30) days and the Director of Environmental Management may seize, hold, and impound at the owner's expense in a commercial shipyard for a period of not less than ninety (90) days nor more than one hundred twenty (120) days, any power boat used in any such violation of this Chapter together with its dredges, rakes, and equipment. (RIGL 20-6-13)~~

~~6.7 Cost of Seizure and Impounding -- Any costs incurred by the seizure and impounding of power boats by authority of § 20-6-13 shall be assessed against the owner or owners of those boats, and no boats so seized and impounded shall be released to any claimant unless and until any costs incurred by reason of their seizure and impounding shall have been paid. (RIGL 20-6-14)~~

6.8 Dredging for Surf Clams

~~6.8.1 Gear Restrictions -- The following gear restrictions shall apply to vessels fishing in the territorial waters of the State of Rhode Island for surf clams:~~

~~6.8.1-1 It is unlawful for any vessel to operate with any hydraulic dredge with a blade, knife, or manifold which is greater than forty-eight (48) inches in maximum width.~~

~~6.8.1-2 It is unlawful for any vessel to operate more than one dredge while harvesting surf clams.~~

~~6.8.2 Trip Limits -- The following limits shall apply to vessels fishing in the territorial waters of the State of Rhode Island:~~

~~6.8.2-1 It is unlawful for any vessel to catch, harvest, possess, have on board, land, or off load more than 200 bushels of surf clams per vessel per 24 hour day.~~

~~6.8.2-2 It is unlawful for any vessel to catch, harvest, possess, have on board, land, or off load any surf clams which are less than five (5) inches in the longest shell diameter.~~

~~6.8.2-3 Vessels properly licensed to do so may land surf clams legally taken outside the territorial waters of the State of Rhode Island in excess of the trip limit established by 6.8.2-1 provided that no vessel engaged in fishing for surf clams within the territorial waters may possess or have on board more than the prescribed limit.~~

~~6.8.3 Exemption of Surf Clam Minimum Size Regulation -- Vessels fishing for surf clams outside Rhode Island waters under National Marine Fisheries Service (N.M.F.S.) clamming permits may enter Rhode Island waters, with surf clams less than five inches (5") measured parallel to the longest axis of the clam, provided that the person having charge of the fishing vessel notify the R.I. Office of Law Enforcement's dispatcher at (401) 277-3070, before entering Rhode Island waters and give the following information:~~

~~6.8.3-1 name of the vessel;~~

~~6.8.3-2 name of the licensee having charge of the vessel;~~

~~6.8.3-3 licensee's license number;~~

~~6.8.3-4 Federal fisheries permit number and/or documentation number;~~

~~6.8.3-5 Projected location and time of entry into R.I. waters, date, location, and time that clams are to be off-loaded, or, if off-loading, the total time to transit R.I. waters;~~

~~6.8.3-6 Number of full cages onboard.~~

~~Shellfish cages must be tagged in accordance with the United States Food and Drug Administration/Rhode Island Department of Health regulations (National Shellfish Sanitation Program manual Part II) before being off-loaded in Rhode Island.~~

~~(RIMFC REGULATION) [Penalty - Part 3.3; (RIGL (20-1-16))]~~

~~6.9 Sakonnet River Shellfish Management Area -- The following special regulations apply in the Management Area: In the Sakonnet River Shellfish Management Area, the daily take for licensed dredge boats will be limited to 200 bushels of surf clams. A by-catch of bay quahaugs will be permitted. It shall be calculated at the rate of one 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.
(RIMFC REGULATION) (Penalty 20-1-16-Part 3.3)~~

6.10 Dredging for Ocean Quahaugs

~~6.10.1 The master of any vessel registered for harvesting ocean quahaugs and operating in the territorial waters of Rhode Island, must be on board the vessel while fishing, and must be a Rhode Island resident who holds a Rhode Island Dredge or Multipurpose license.~~

~~6.10.2 Any vessel harvesting ocean quahaugs within Rhode Island territorial waters must be registered as specified in RIGL 46-22-3.~~

~~6.10.3 Trip limits -- The following limits shall apply to vessels fishing within the territorial waters of Rhode Island. It shall be unlawful for any vessel to take and/or possess more than twenty-six (26) cages (832 bushels) of ocean quahaugs.~~

~~6.10.4 Exception to the ocean quahaug trip limit regulation -- Vessels fishing for ocean quahaugs outside Rhode Island territorial waters under a National Marine Fisheries Service (NMFS) permit (I.T.Q.) may enter Rhode Island waters with ocean quahaugs in excess of the trip limit, provided the vessel is prohibited from fishing for ocean quahaugs, bay quahaugs, or any other species of shellfish while the vessel is located in Rhode Island territorial waters and remains in possession of ocean quahaugs in excess~~

~~of the trip limit established pursuant to regulation 6.10.3, and provided that the person having charge of the vessel notifies the DEM Office of Law Enforcement (401) 277-2284 before entering Rhode Island waters and provides the following information:~~

~~6.10.4-1 Name of the vessel;~~

~~6.10.4-2 Name of the licensee in charge of the vessel;~~

~~6.10.4-3 Licensee's license number;~~

~~6.10.4-4 Federal fisheries permit number and/or documentation number;~~

~~6.10.4-5 Projected location and time of entry into Rhode Island waters, date, location and time that ocean quahaugs are to be offloaded, or if not offloading, the total time to transit Rhode Island waters;~~

~~6.10.4-6 The number of full cages on board.~~

~~Prior to offloading in Rhode Island, all shellfish cages must be tagged in accordance with the United States Food and Drug Administration/R.I. Department of Health regulations in compliance with the National Shellfish Sanitation Program manual, Part 11.~~

~~(RIMFC REGULATION) [Penalty - Part 3.3; (RIGL (20-1-16))]~~

~~Rule 8. EFFECTIVE DATE~~

~~The foregoing rules and regulations Rhode Island Marine Statutes and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this 17th day of December, 2012 to become effective 20 days from filing, unless otherwise indicated, 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, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

Janet L. Coit, Director
Department of Environmental Management

Notice Given: 03/02/2012
Public Hearing: 04/03/2012

Filing date: 12/17/2012
Effective date: 01/06/2013

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