



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES

DIVISION OF FISH AND WILDLIFE
DIVISION OF LAW ENFORCEMENT



**RHODE ISLAND MARINE FISHERIES
REGULATIONS**

**Part 7
DEALER REGULATIONS**

March 31, 2016

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 regulations is to prescribe the proper conduct of licensed shellfish dealers for the purpose of protecting the public health, safety and welfare.

AUTHORITY

These rules and regulations are promulgated pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(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.

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SUPERSEDED RULES AND REGULATIONS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rules and regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded.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.

DEFINITIONS

See RIMFR Part I – Definitions.

REGULATIONS

7.1 License required:

7.1.1 No person shall sell, purchase, barter, or trade marine fisheries species in Rhode Island unless properly licensed, as specified in RI Marine Fisheries regulations (RIMFR) “*Commercial and Recreational Saltwater Fishing Licensing Regulations*”, or is exempt from such licensing requirements as authorized by the Director.

7.1.2 Each licensed shellfish dealer must have a DOH shellfish license pursuant to RIGL Chapter 21-14.

7.2 Dealer Reporting:

7.2.1 Dealers shall accurately identify all marine species received as categorized in the Standard Atlantic Fisheries Information System (SAFIS) system;

7.2.2 Dealers shall weigh all marine species prior to their removal from the dealer's premises or from the point of transfer;

7.2.3 Dealer weight scales must be certified in accordance with Rhode Island law RIGL, Chapter 47-1;

7.2.4 Dealers shall submit an electronic report to the SAFIS. In cases where a seafood dealer falls under the jurisdiction of both the state of RI and the federal government (NMFS), said dealer must comply with the more frequent of the minimum reporting schedules or the more detailed data requirement.

7.2.5 Reporting frequency and required data elements:

(A) Trip level data for all species harvested shall be reported on Monday and Thursday of each week and consist of the following elements:

- (1) The species common name including market level and grade;
- (2) The amount landed or purchased including the units the product was measured in (i.e. pounds);
- (3) The area where product was taken (only applicable to shellfish purchases);
- (4) The date the product was landed or purchased;
- (5) The RI Commercial license or landing permit number of the fisherman selling the product to the dealer;
- (6) The vessel identification number (Coast Guard documentation number and/or state of RI registration number);
- (7) The port or location where the catch was landed or purchased; and
- (8) When a seafood dealer is purchasing research set aside from a permitted and properly licensed fisherman, the poundage purchased will be designated in the catch source field as "RSA".

(B) Trip Level Data for all species harvested shall be reported within thirty (30) days of the landing or purchase date and consist of the price at which the product was purchased and the disposition.

7.2.3 Negative reports:

(A) RI licensed seafood dealers shall submit a negative report to SAFIS for each reporting period during which no seafood product was landed or purchased;

(B) Dealers may file negative reports for a maximum of three (3) months in advance.

7.2.4 Control Date: The date for compliance with this section is March 1, 2006.

7.3 Shellfish Dealers:

7.3.1 Licensed shellfish dealers may only purchase, barter, or trade in wild or cultured shellfish that have been:

(A) Harvested from or cultured in Rhode Island waters from licensed shellfishermen, licensed aquaculturists, or other licensed shellfish dealers; or

(B) Taken from other than Rhode Island waters from a dealer whose shellfish business appears on the US Public Health Service, Food and Drug Administration list of certified shippers, and tagged in accordance with Rhode Island DOH regulations.

7.3.2 Licensed shellfish dealers may not purchase or accept any shellfish (wild or cultured) from a shellfisherman or aquaculturist without first being presented with a valid shellfish or multipurpose license issued by DEM to said shellfisherman or aquaculturist.

7.3.3 Each licensed shellfish dealer must have a DOH shellfish license pursuant to RIGL Chapter 21-14.

7.3.4 Any person engaged solely in the business of selling seafood, including shellfish (wild or cultured), to consumers, either directly or through restaurants or other retail outlets, and/or engaged solely in the processing or preparation of seafood, including shellfish (wild or cultured), for sale directly to consumers, is not required to be licensed under these regulations, provided that such person purchases or otherwise acquires said shellfish from licensed shellfish dealers.

7.3.5 Shellfish harvested from or cultured in Rhode Island waters may only be sold to out-of-state buyers by licensed shellfish dealers whose businesses appear on the US Public Health Service, Food and Drug Administration list of certified shippers. Said dealers must also comply with all applicable DEM and DOH rules governing the handling, tagging and sale of shellfish, as well as all applicable state and federal rules governing the interstate shipment of shellfish.

7.3.6 Shellfish harvested from or cultured in other than Rhode Island waters may only be sold to buyers in or from Rhode Island by out-of-state sellers whose businesses appear on the US Public Health Service, Food and Drug Administration list of certified shippers; and said transactions must comply with all applicable state and federal rules governing the interstate shipment of shellfish.

7.3.7 Licensed shellfish dealers may not purchase or accept any shellfish from shellfishermen or aquaculturists unless such shellfish are bagged and tagged in

accordance with RIMFR “*Shellfish*” and/or “*Aquaculture of Marine Species in RI Waters*”.

7.3.8 Undersize Shellfish Provisions:

(A) A dealer may possess undersize cultured shellfish crops, excluding bay quahaugs (*Mercenaria mercenaria*), provided the dealer has obtained said cultured crops from a licensed aquaculturist or dealer.

(B) Any shellfish possessed by a dealer that measures less than the State minimum size for wild stock must be properly identified as cultured product with appropriate tagging as required by the Director. Each dealer shall maintain complete, accurate and legible records sufficient to: (i) document the source of shellfish, and (ii) permit the contents of the container of shellfish to be traced back to the aquaculture lease site and date of harvest. In addition, all purchases and sales shall be recorded in a permanently bound ledger book or other approved recording method authorized by DEM and DOH.

(C) Cultured shellfish crops shall not be commingled with any wild stock shellfish or other cultured shellfish crops from a different harvest date or location.

7.3.9 Wet Storage of Shellfish:

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

(B) The DEM Director shall determine the compatibility of any wet storage facility with the resources in surrounding areas and shall be satisfied that every practical precaution is in place to prevent the spread of shellfish disease and pathogens. The DEM Director shall have the authority to limit or restrict the wet storage and transplant activities in areas within waterways that are considered to be at risk for the transmission of shellfish diseases, or grant an exception if justified, after careful consideration of disease monitoring studies.

(C) For purposes of open water wet storage, the licensed dealer shall apply to the CRMC for an assent for an initial wet storage site or modification to an existing aquaculture facility or lease. A CRMC assent shall be required for a wet storage facility located within the CRMC's jurisdiction, as specified in CRMC Management Procedures, Section 4-1.

(D) If the open water wet storage is conducted as part of an aquaculture operation, the licensed dealer shall apply to DEM for a DEM Aquaculture Permit; if the permit is issued, it should appropriately address the possession of shellfish held for wet storage.

(E) Molluscan shellfish to be wet stored must be harvested from or cultured in approved shellfish growing areas or conditionally approved areas when open.

(F) All facility designs, structures and methods used for wet storage of molluscan shellfish must be approved by DOH pursuant to the National Shellfish Sanitation Program (NSSP) standards. The CRMC shall determine the structural suitability of any apparatus used for in-water storage of molluscan shellfish.

(G) The CRMC shall be responsible for the approval of the location of all open water storage facilities. When a wet storage facility is operated in conjunction with an aquaculture operation, the wet stored products shall be maintained separately from the cultured products designated by CRMC and the approved Operational Plan.

(H) Containers used in wet storage of molluscan shellfish shall be approved by DOH and shall be marked appropriately (indicating that they contain either wet stored wild or cultured stock).

(I) The shellfish dealer shall maintain accurate and complete records of all wet storage activities including, but not limited to, the source of the molluscan shellfish, the amounts stored, and the times/dates of storage/disposition of the molluscan shellfish. Such records shall be maintained for a minimum of two years and shall be available for inspection by DOH and DEM upon request.

(J) The shellfish dealer shall submit an operational plan specifying how the wet storage of molluscan shellfish will be carried out. Such an operational plan is subject to approval by DOH and DEM prior to approval of the wet storage facility.

(K) Permitted, open-water wet storage facilities shall only store wild or cultured molluscan shellfish that have been harvested from or cultured in the same waterway in which the wet storage facility is located. In all other cases, shellfish must be wet stored in an approved closed tank system.

(L) A permitted wet storage facility shall only store legal sized molluscan shellfish, which have been harvested as specified in the approved Operational Plan.

(M) Each wet storage facility shall be evaluated and approved annually by DOH. Since water quality and water quality classification of waters within the state are subject to change due to environmental conditions, shellfish dealers conducting wet storage of molluscan shellfish shall be required to respond to these changes. Wet storage of shellfish in waters other than those in the approved classification or in the open status of the conditional approved classification is prohibited. The CRMC, DEM and DOH shall not assume any liability for any environmental changes nor liability for potential damages incurred by shellfish dealers.

7.3.10 Handling of Shellfish:

(A) Rhode Island licensed shellfish dealers are prohibited from mixing or commingling shellfish taken from Rhode Island waters with shellfish taken from other state's waters.

7.3.11 Dealer tagging of shellfish: Shellfish dealers shall properly tag each bag or container of shellfish as follows:

(A) The dealer shall keep the harvester's tag affixed to each container of shellfish until the container is (i) shipped, or (ii) emptied to wash, grade, or pack the shellfish.

(B) The dealer shall affix his/her dealer's tag to each container of shellfish prior to shipment, and immediately after shellfish emptied from a tagged container have been washed, graded, or packed.

(C) When the dealer is also a licensed aquaculturist and he/she elects not to use a harvester's tag, he/she shall affix his/her dealer's tag to each container of shellfish prior to leaving the aquaculture site, removing the shellfish from a vessel, or offering the shellfish for sale.

(D) The dealer's tag shall be (i) durable, waterproof and sanctioned by DOH prior to use, and (ii) at least 2 5/8 inches by 5 1/4 inches (6.7 x 13.3 cm) in size.

(E) The dealer's tag shall contain the following indelible, legible information in the order specified below:

(1) Dealer's name and address;

(2) Dealer's certification number as assigned by DOH and the original shellfish shipper's certification number;

(3) The date of harvest;

(4) The most precise identification of the harvest location as is practicable including the initials of the state of harvest, and the DOH/DEM designation of the growing area by indexing, administrative or geographic designation;

(5) When the shellfish has been placed in wet storage in a dealer's operation, the statement: **"THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";**

(6) The type and quantity of shellfish; and

(7) The following statement in bold capitalized type on each tag: **"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS"**.

7.3.12 Shellfish purchased or acquired by a Rhode Island licensed shellfish dealer may be separately sorted by type, size, or other basis. The original containers with tags must be kept in close proximity while sorting, grading and processing is taking place.

7.3.13 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.

7.4 Importation of non-indigenous (non-native) Horseshoe Crabs: No licensed fish/shellfish dealer shall import, attempt to import, or possess in the cooked or un-cooked (frozen) state any non-indigenous (non-native) Horseshoe Crab species within the State of Rhode Island without prior, written authorization by the Department. The only species of Horseshoe Crab which may be possessed within the jurisdictional limits of the State of Rhode Island is the Atlantic Horseshoe Crab *Limulus polyphemus*.

7.5 Striped bass finning: No licensed fish/shellfish dealer may purchase and/or offer for sale, any striped bass where the entire right pectoral fin has been removed.

7.6 Exemption for Surf clams and/or Ocean Quahaugs for use as bait: These rules shall not apply to persons buying surf clams or ocean quahaugs for use as bait and not for human consumption. However, any other rule or law governing these species shall remain in effect and not be superseded by this exemption.

7.7 Summer flounder:

7.7.1 Dealers shall place Summer flounder in standard 60 or 100 pound cartons (containers) prior to their removal from the dealer's premises or from the point of transfer, unless specific prior written authorization is requested and received from the Division of Law Enforcement;

7.7.2 Dealers shall receive Summer flounder between the hours of 6:00 AM to 8:00 PM only.

7.8 Violations for non-compliance: 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 as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub-period.

7.9 Penalties:

7.9.1 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)

7.9.2 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"*.

7.10 Appeals:

7.10.1 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*"

7.10.2 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, after due notice, are hereby 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.

Janet L. Coit, Director,
Department of Environmental Management

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