

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

REPEAL
OF

**Aquaculture of Molluscan Shellfish in
Rhode Island Tidal Waters**

June 21, 2002

AUTHORITY: These regulations are adopted pursuant to Chapters 42-7.1 and 42-35, and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, 20-10-12, and in accordance with 42-35 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 rules and regulations are promulgated pursuant to Chapter 42.17.1, Environmental Management and Title 20, in accordance with Chapter 42-35, Administrative Procedures, of the General Laws of 1956, as amended.

ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to supplement DEM regulations.

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 these regulations page 1.

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SUPERSEDED RULES AND REGULATIONS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 the any aquaculture regulations

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations **Aquaculture of Molluscan Shellfish in Rhode Island Tidal Waters**, are hereby **REPEALED** and filed with the Secretary of State this 21st day of June, 2002 to become effective 20 days from filing, unless otherwise indicated, in accordance with the provisions of Chapters 20-1-2, 20-1-4, 20-3-2 through 20-3-6, 20-4 through 20-10, 42-35, 42-17.1, 42-17.6 of the General Laws of Rhode Island of 1956, as amended.

Jan Harmen Reitsma,
Director

Notice Given:	3/1/02
Public Hearing:	4/2/02
Filing date:	6/21/02
Effective date:	upon filing

June 21, 2002

Honorable Edward S. Inman III
Secretary of State
217 State House
Providence, RI 02907

Dear Mr. Secretary:

Pursuant to the provisions of Chapter 42-17.1 and 20-3, and in accordance with 42-35 of the Administrative Procedures Act of the General Laws of Rhode Island, 1956 as amended, the Department of Environmental Management has **repealed** regulations entitled “Aquaculture of Molluscan Shellfish in Rhode Island Tidal Waters.”

These regulations become effective upon filing.

Sincerely,

Jan Harmen Reitsma
Director

REGULATIONS

AQUACULTURE OF MOLLUSCAN SHELLFISH IN RHODE ISLAND TIDAL WATERS

Authority granted: RIGL 20-10-12

DEFINITIONS

Approved waters, Approved shellfish growing areas, or Certified waters: waters of the state which have been classified by the DEM Division of Water Resources as an Approved Area by the National Shellfish Sanitation Program (NSSP) Manual of Operations.

Aquaculturist: the person or persons licensed and permitted by CRMC and DEM to conduct commercial or experimental aquaculture in Rhode Island.

Cultured: shellfish product that has been grown under the direction, possession, and control of an aquaculturist.

Grow-out: the process of culture following spat collection when the animals are grown to a market (legal) size. The term includes all intermediate (nursery) growth steps.

Juvenile shellfish: shellfish less than harvestable size, as defined by regulations of the RIMFC and/or Title 20 RIGL. For the purposes therein, juvenile shellfish shall be larger than seed (as defined).

Seed or shellfish seed: the size of either cultured or wild stock, which under the most optimum growing conditions, will not attain legal size within 12 months after its removal from other than approved shellfish growing areas. (NSSP Part 1, Section G). That size will be determined by the Division of Fish and Wildlife. Seed size for quahaugs *Mercenaria mercenaria* is less than 20 mm (0.78") and for oysters *Crassostrea virginica* and *Ostrea edulis* less than 32 mm (1.25"). All measurements are taken along the longest axis.

Spat collection: the method of enticement using apparatus (spat collectors) or approved methods using cultch to attract or capture larval shellfish.

Wild stock: natural shellfish resources which set and grow within the waters of the state, not cultured in any way.

PART XIX

AQUACULTURE OF MOLLUSCAN SHELLFISH IN RHODE ISLAND TIDAL WATERS

19.1 Permitting Requirements

19.1.1 Coastal Resources Management Council (CRMC) Assent – The aquaculturist must apply for and receive a Coastal Resources Management Council (CRMC) Assent to operate as specified in RIGL Sections 20-10-1 through 18. No application shall be approved by CRMC prior to the consideration of recommendations by the Department of Environmental Management (DEM) Director, the Rhode Island Marine Fisheries Council (RIMFC), DEM Division of Fish and Wildlife (the Division), DEM Division of Water Resources (WR), and, if required, issuance of a R.I. Pollutant Discharge Elimination System (RIPDES) permit from WR.

19.1.2 Special Permit for Aquaculture – The aquaculturist must obtain a “Special Permit for Aquaculture” from the Chief of the Division acting on behalf of the DEM Director. This permit shall specify the conditions under which the possession, importation, transportation, and handling of the cultured species are permitted to take place. The Special Permit for Aquaculture expires January first annually. Application for renewal of said permit shall be submitted by the aquaculturist for review by the Chief of the Division, no later than December first of each year. At the time of submission of request for renewal, each permit holder must submit to the Division an annual report of aquaculture activities conducted that year with a copy to CRMC. Special Permits will be reviewed, renewed, and modified if appropriate each January, by the Chief of the Division.

19.1.2-1 By submission of an application for issuance or renewal of a “Special Permit for Aquaculture”, the aquaculturist provides the Division of Fish and Wildlife and the Division of Law Enforcement with the authority to enter and inspect all aquaculture facilities which have been requested to be permitted (R.I.G.L. 20-10-15). Conservation Officers’ authority to enforce aquaculture regulations shall be the same as their enforcement powers (arrest, detain, impound, etc.) Over the free and common fisheries of the state and to cite violations of RIGL and regulations promulgated by the RIMFC and DEM.

19.1.3 Permit for possession of endemic species – The aquaculturist must obtain a permit from the Division for possession for each species to be cultured. Under no circumstances are permits to be granted for shellfish species which are not endemic to this area. Determination of what species are endemic to areas of the state rests under the authority of the Chief of the Division acting on behalf of the Director.

19.2 Gear Requirements

- 19.2.1 All aquaculture apparatus must be marked as specified by the CRMC assent. Said markings must be clearly visible and maintained at all times.
- 19.2.2 The gear and its contents are the possession and responsibility of the aquaculturist, who shall be responsible for its maintenance and eventual removal. The aquaculturist may be required to post a permit bond in an amount specified by CRMC, to be used to return the site, including tidal waters, to the condition which existed prior to the aquaculture, in the event that the gear is abandoned or permit conditions violated.

19.3 General Requirements

- 19.3.1 Operation Plan – The aquaculturist must submit an operation plan, as specified by the National Shellfish Sanitation Programs (NSSP) to be maintained on file with the Division for review and inspection by the U.S. Food and Drug Administration (FDA). The operation plan must be upgraded and resubmitted prior to any change(s) occurring in the aquaculture operation. Shellfish aquaculture shall be practiced only in strict compliance with the provisions of the operation plan on file with the Division.
- 19.3.2 Shipment/Importation – The aquaculturist must notify, in writing, the Division of Law Enforcement and Fish and Wildlife of every shipment of animals for culture entering this state, at least five working days prior to entry into the state and each shipment must be accompanied by a certificate of disease inspection from a recognized laboratory appropriate to the species received. A copy of the certificate of disease inspection must be provided to the Division of Fish and Wildlife along with the written notice prior to the importation of any animals for culture. All requirements set forth by the Atlantic Marine Fisheries Commission species importation committee and the Division shall be adhered to. All shipment of undersized shellfish brought into Rhode Island for aquaculture operations must be labeled or tagged indicating the origin (operator/company name, license number, and body of water) date of importation and destination.
- 19.3.3 Sale for Direct Human Consumption – In accordance with all DEM and Department of Health regulations for the buying trading, and selling of shellfish, all shellfish cultured in any open water or land-based system meeting the quality criteria for harvesting during the culture period may be sold for direct human consumption. All requirements for tagging and use of shellfish containers must meet the standards of the National Shellfish Sanitation Program (NSSP), the R.I. Department of Health (DOH), and the DEM. Additionally, the aquaculturist must hold the appropriate DEM and DOH licenses (commercial shellfish, multi-purpose, dealer, etc.) to sell, trade, or barter seafood.
- 19.3.4 Possession of Undersized Shellfish -- Aquaculturists are allowed to possess and transport, within the state, undersized shellfish on a year-around basis. In no is an

aquaculturist allowed to possess or transport undersized shellfish on any given day (midnight to midnight) in which the aquaculturist has harvested or is in possession of other than cultured shellfish. Harvesting of undersized shellfish from the free and common shellfishing ground is not authorized.

- 19.3.5 Approved Waters – Water quality at any site used for open water aquaculture or land-based aquaculture must meet the water quality criteria appropriate to the aquaculture activity proposed as determined by the Office of WR.

19.3.5-1 Transfer to Approved Waters – Shellfish seed cultured in other than approved waters may be transferred, by the permitted aquaculturist, to the approved water grow-out site with Fish and Wildlife and Law Enforcement notification. If more than 10% of the cultured shellfish within a lot (or batch) exceed the definition of seed (in the case of quahaugs, if any exceed 25 mm and in the case of oysters, if any exceed 36 mm), they shall not be moved from other than approved water to any approved growing area without prior permission of the DEM Director and the Department of Health.

19.3.5-2 Culture in Other Than Approved Waters – Culture of juvenile shellfish may be permitted in other than approved waters using CRMC approved facilities including but not limited to spat collectors, upwellers, flow through systems, etc. as long as these animals are removed to approved water sites prior to achieving the seed size limit and prior notice of the harvesting is provided to the Division.

19.3.5-2a If an aquaculturist has a permit to raise shellfish in other than approved water, then it is assumed that all shellfish of that species sold by that aquaculturist, have been in the other than approved waters, unless the aquaculturist can demonstrate that all shellfish were removed from other than approved waters when seed.

19.3.5-3 Transplant Shellfish Exceeding Seed – No shellfish exceeding the seed size limits shall be transplanted from other than approved waters of the State of R.I. unless done so under the authority of the DEM Director and Director of the Department of Health according to the Memorandum of Agreement for conducting shellfish transplant/relay operations. Possession, culture, and transportation of shellfish other than seed (as defined) in or from other than approved water is prohibited.

19.3.5-4 Recording Requirements – Uncertified Waters – Aquaculturists must maintain accurate and complete records of all culture in uncertified waters and removal of shellfish from other than approved waters including (but not limited to)

source, amounts transferred, size composition, time/dates of transfer, and disposition of the shellfish. These records must be maintained for a minimum of two years and must be available for inspection by agents of the Department of Health, Divisions of Law Enforcement or Fish and Wildlife upon request.

19.3.5-5Adherence to Changes – All subsequent requirements set forth by the NSSP, changes in water classification, and public health directives shall supersede these regulations.

19.3.5-6Water Quality Changes – Water quality and water quality classification of waters within the state are subject to change due to various environmental conditions. In some cases the aquaculturist shall be required to respond to these changes. The DEM does not assume any liability for any changes in classification and assumes no liability to the aquaculturist for damages incurred due to such actions.

19.3.6 Collection of Wild Stock Shellfish – Collection of wild stock shellfish seed from other than approved waters is prohibited unless approved by the Director of DEM or his/her designee in a written authorization. If permission for wild stock collection is approved, the site, species, and amount must be specified by the Director or his/her designee in writing. Notification of Fish and Wildlife and Law Enforcement is required, by the aquaculturist in writing at least ten days prior to the activity. The aquaculturist may be required to be accompanied by a DEM Conservation Officer, and, the aquaculturist will have to pay for the Conservation Officer detail. Any aquaculturist who intends to purchase seed shellfish from other than approved waters must notify the DEM of his/her intent and must obtain prior permission from the Director (or designee).

19.3.7 Sale of Sub-Legal Shellfish – No person, other than those licensed to do so, shall sell sub-legal shellfish to other than a permitted aquaculturist, scientific/educational institution or a government agency permitted by DEM.

19.3.8 Sale of Juvenile Shellfish – In the case of the sale of juvenile shellfish, the aquaculturist must verify that the receiver of seed is either a government agency, a licensed aquaculturist, or a scientific or educational group. The aquaculturist must obtain written verification to this effect from an appropriate agency in the receiver state. The Department of Health may require memoranda of agreement between the aquaculturist and receiver states. The aquaculturist must notify Fish and Wildlife and Law Enforcement of any sale of juvenile shellfish to purchasers within R.I.

19.3.9 Violations – Unless otherwise provided, violations and/or noncompliance of these regulations shall be prosecuted under R.I.G.L. 20-10-16. Violations may be prosecuted administratively which may result in revocation of the DEM Special

Permit for Aquaculture and/or imposition of a penalty.