



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

Aquaculture of Marine Species in Rhode Island Waters



June 21, 2002

Effective upon filing

AUTHORITY: These regulations are adopted pursuant to Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

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PURPOSE

The purpose of these regulations is to describe the permits, licensing, and conditions under which aquaculture shall be conducted in Rhode Island.

AUTHORITY

Chapters 42-17.1 “DEM”; 20-1-2; 20-1-4; 20-1-5; 20-10-5c; and 20-10-12, in accordance with 42-35 of the RIGL 1956, as amended.

ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to modify existing regulations (RIGL 20-3-2 through 20-3-6).

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 page 1 of this document

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SUPERSEDED RULES AND REGULATIONS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previous rules and regulations, and any policies regarding the administration and enforcement of aquaculture shall be superseded. These rules and regulations shall supersede the Department of Environmental Management Regulation “Aquaculture of Molluscan Shellfish in Rhode Island Tidal Waters” (#1874).

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations **Aquaculture of Marine Species in Rhode Island Waters**, after due notice, are hereby adopted 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 adopted regulations that describe the permits, licenses and conditions under which **aquaculture** shall be authorized to be conducted in Rhode Island. These rules and regulations shall supersede the Department of Environmental Management Regulation "Aquaculture of Molluscan Shellfish in Rhode Island Tidal Waters" (#1874).

These regulations become effective upon filing.

Sincerely,

Jan Harmen Reitsma
Director

Aquaculture of Marine Species in Rhode Island Waters

INTRODUCTION

These regulations describe the permits, licenses and conditions under which aquaculture shall be authorized to be conducted in Rhode Island. These regulations acknowledge that cultured crops are the property of the aquaculturist and are distinct from wild stocks. Cultured crops are therefore not subject to the statutory and regulatory restrictions governing the protection of wild stocks (except that the minimum size limit established for quahaugs, *Mercenaria mercenaria*, applies to all wild and cultured quahaugs).

1.0 DEFINITIONS

As used in these rules and regulations, the following words and phrases have the following meanings:

- 1.1 **"Approved waters, Approved shellfish growing areas"** mean waters of the state which have been classified by the RI Department of Environmental Management (DEM) Office of Water Resources as Approved Areas, fit for the taking of shellfish for human consumption on a regular basis, according to criteria established by the National Shellfish Sanitation Program (NSSP) Manual of Operations. These classifications may be subject to change as water quality conditions dictate.
- 1.2 **"Aquaculture"** means the cultivation, rearing, or propagation of aquatic plants or animals, hereinafter referred to as cultured crops, under natural or artificial conditions ..
- 1.3 **"Aquaculture facility"** means any properly permitted aquaculture operation, either in upland areas or in the State's waters or submerged lands.
- 1.4 **"Aquaculture lease"** means the permitted area for which the Coastal Resources Management Council (CRMC) issues a lease in which aquaculture can be conducted. Leases are discretionary and granted for the express purpose of allowing aquaculture activities on the State's submerged lands or in the water column. Certain types of permitted activities, such as experimental aquaculture operations, may not require a lease.

- 1.5 **"Aquaculturist"** means the individual, firm, partnership, association, academic institution, municipality, or corporation conducting commercial, experimental or restoration aquaculture in Rhode Island.
- 1.6 **"Biosecurity Board"** means the board, within the Coastal Resources Management Council (CRMC), established pursuant to RIGL Section 20-10-1.1 and charged with assisting and advising the CRMC in carrying out the provisions of RIGL Chapter 20-10.
- 1.7 **"Conditionally Approved Areas"** mean any shellfish grounds underlying waters examined and found fit for the taking of shellfish for human consumption on an intermittent basis, declared by the director as conditionally approved waters pursuant to RIGL Sections 20-8.1-3 and 20-8.1-4. Such classification may be subject to change as water quality conditions dictate.
- 1.8 **"CRMC"** means the RI Coastal Resources Management Council.
- 1.9 **"Cultured crops"** mean aquatic or marine animals or plants: (i) that are in the location, water column or artificial conditions specified in a valid aquaculture permit issued pursuant to RIGL section 20-10-3 or that have been taken by the holder of such permit from the location, water column or artificial conditions specified in such permit, or (ii) that have been produced by aquaculture methods outside the state and have not been commingled with wild stocks that are in or have been removed from the waters of the state. Appropriate bills of sale, bills of lading and proper tags used in accordance with Rule 9.9 herein and all other applicable state and federal laws and regulations shall be prima facie evidence of the origin of cultured crops inside or outside the state.
- 1.10 **"DEM"** means the RI Department of Environmental Management.
- 1.11 **"Director"** means the Director of the RI Department of Environmental Management.
- 1.12 **"DOH"** means the RI Department of Health.
- 1.13 **"Operational plan"** means a written plan, approved by DEM and DOH prior to its implementation, that includes, at a minimum: description of the design and activities of the aquaculture facility, specific location and boundaries of the aquaculture lease and facility, types and locations of structures (rafts, pens, tanks, etc.), species to be cultured, source of these organisms (i.e., wild or cultured), procedures to prevent contamination, program of sanitation and maintenance, description of the water source including details of water treatment, program to maintain

water quality, maintenance of records, and how shell stock will be harvested.

- 1.14 **"Possession of wild stocks"** means the exercise of dominion or control over wild stocks commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. This decision must be made at the first practical opportunity.
- 1.15 **"Possession of aquaculture crops"** means the exercise of dominion or control over cultured crops commencing at the time at which a decision is made not to return the crops to the aquaculture lease or facility from which they were taken. This decision must be made at the first practical opportunity, taking into consideration the management practices set forth in the approved operational plan.
- 1.16 **"Shellfish seed"** means, for quahaugs, *Mercenaria mercenaria*, a shell size less than 20 mm (0.78"), and for oysters, *Crassostrea virginica* and *Ostrea edulis*, a shell size less than 32 mm (1.25"). All measurements are taken along the longest axis.
- 1.17 **"Spat collection"** means the use of apparatus (spat collectors) or cultch to attract or capture larval shellfish.
- 1.18 **"Wild stock"** means natural resources, including aquatic or marine animals or plants, which grow within the waters of the state, and are not cultured in any way.

2.0 GENERAL PERMITTING REQUIREMENTS

2.1 Coastal Resources Management Council (CRMC) Assent -- An aquaculturist must apply for and receive a Coastal Resources Management Council (CRMC) Assent to conduct aquaculture as specified in RIGL Chapter 20-10. No application shall be approved by CRMC prior to the consideration of recommendations by the Department of Environmental Management (DEM) Director, who shall consult with and obtain input from appropriate divisions and offices within the department, and the Rhode Island Marine Fisheries Council. No application shall be approved by the CRMC prior to the issuance of a R.I. Pollutant Discharge Elimination System (RIPDES) permit by DEM, if required.

2.2 Aquaculture Permit -- An aquaculturist must apply for and obtain an Aquaculture Permit from the Director to conduct aquaculture as specified in RIGL Section 20-10-12. The application for an Aquaculture Permit must include an operational plan describing the species to be cultured, the methods to be used, the locations where the work will be done, and other provisions detailed in Rule 19.4.1 herein. The permit shall specify the conditions governing the taking,

possession, sale, importation, and transportation of cultured crops utilized in the aquaculture lease or facility. The permit shall be automatically renewed January first annually, providing that proper annual reports of aquaculture activities conducted that year are filed with the Director, in a form prescribed by the Director, no later than December first of each year. Aquaculture Permits will be reviewed, modified if appropriate, and renewed by the Director.

2.3 Cultured Crops Exempt From Wild Stock Regulations -- Aquaculturists harvesting their cultured crops, in accordance with their CRMC Assent and DEM Aquaculture Permit, are exempt from the statutory and regulatory harvest restrictions governing wild stocks, including: seasons, catch or bag limits, minimum sizes, quotas, and methods of harvest. However, in no case may aquaculturists possess, import, transport or offer for sale for human consumption to any individual or entity cultured quahaugs, *Mercenaria mercenaria*, with a hinge width of less than one inch, unless specifically authorized to possess, import, transport, or sell legal quahaug seed.

2.4 Endemic Species limitation -- All species cultured at an aquaculture lease or facility must be specifically authorized via an approved DEM Aquaculture Permit. Under no circumstances are permits to be granted for species that are not endemic to Rhode Island without prior approval from the Director with the advice of the Biosecurity Board. Determination of what species are endemic to Rhode Island rests under the authority of the Director.

3.0 GENERAL ENFORCEMENT AUTHORITIES

3.1 General -- The Director's authority to enforce aquaculture regulations and applicable statutes shall be the same as his or her enforcement powers over the free and common fisheries of the state, as provided for in RIGL Title 20 and Chapter 42-17.1.

3.2 Authority to Enter and Inspect -- The director shall have the authority to enter and inspect any and all areas subject to an aquaculture permit for the purposes of determining compliance with the terms and provisions of the permit.

3.3 Violations -- Unless otherwise provided, violations of and/or noncompliance with the regulations set forth herein shall be prosecuted under the applicable sections of RIGL Chapter 20-10. In addition to other penalties provided by law or other rule or regulation, any licensed aquaculturist who violates the provisions of these rules or any order issued by the director shall be subject to suspension, revocation or denial of his/her license and/or permit in accordance with RIGL Sections 20-2-13, 20-10-16.1, and 42-17.1-2(s).

4.0 GEAR REQUIREMENTS

4.1 Marking -- All aquaculture apparatus must be marked as specified by the CRMC Assent. Said markings must be clearly visible and maintained at all times.

4.2 Maintenance and Removal -- 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 performance bond in an amount specified by CRMC, to be used to return the site, including tidal waters, to the condition that existed prior to the aquaculture, in the event that the gear is abandoned or permit conditions violated.

5.0 GENERAL REQUIREMENTS

5.1 Operational Plan -- In accordance with the permitting requirements set forth in Rule 19.1.2 herein, the aquaculturist must submit a written Operational Plan to be reviewed and approved by DEM and maintained on file with the Division of Fish and Wildlife. Operational Plans will be made available for review and inspection by the U.S. Food and Drug Administration. The Operational Plan must be upgraded and resubmitted prior to any change(s) occurring in the aquaculture operation. Aquaculture shall be practiced only in strict compliance with the provisions of the approved Operational Plan. At a minimum, each Operational Plan shall include the following information: description of the design and activities of the aquaculture facility, specific location and boundaries of the aquaculture lease and facility, types and locations of structures (rafts, pens, tanks, etc.), species to be cultured, source of these organisms (i.e., wild or cultured), procedures to prevent contamination, program of sanitation and maintenance, description of the water source including details of water treatment, program to maintain water quality, maintenance of records, and how shell stock will be harvested.

5.2 Shipment/Importation -- The aquaculturist must notify the DEM Divisions of Law Enforcement and Fish and Wildlife in writing 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. The Director, in consultation with the Biosecurity Board, may waive the requirement for a certificate of disease inspection, or set forth specific requirements governing shipments.

6.0 FINFISH CULTURE REQUIREMENTS - *To be developed*

7.0 ALGAE CULTURE REQUIREMENTS - *To be developed*

8.0 SHELLFISH CULTURE REQUIREMENTS

8.1 Importation of Shellfish Seed -- All shipments 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. All conditions listed in Rule 19.4.2 herein apply.

8.2 Sale for Human Consumption -- In accordance with all DEM and Department of Health (DOH) regulations for the buying, trading, and selling of shellfish, only shellfish cultured in approved waters or within an approved land-based system meeting the water quality criteria for harvesting, may be sold for human consumption, and such sales may only be made to licensed RI dealers. All requirements for handling, tagging, use of shellfish containers, and temperature control, as set forth herein in Rules 19.8 through 19.10, as well as all other applicable National Shellfish Sanitation Program and DOH standards, must be adhered to. The CRMC lease number will be listed as the harvest area for cultured shellfish. Aquaculturists must hold the appropriate DEM license to sell shellfish to a licensed RI dealer.

8.3 Taking or Possession of Wild Stock Shellfish by Aquaculturists -- Aquaculturists who also hold a commercial shellfishing or multipurpose license may not take or possess wild stock shellfish while they are in possession of cultured shellfish crops. Nor may an aquaculturist be in possession of wild stock shellfish while visiting his/her lease or tending his/her shellfish crops, unless they are a properly licensed shellfish dealer and the wild stock shellfish is properly tagged and being held in or at their dealer facility, buy boat, or wet storage operation.

8.4 Possession of Wild Undersized Shellfish -- Possession of undersized wild stock shellfish is not authorized under any circumstances.

8.5 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 as determined by the DEM Office of Water Resources.

8.6 Water 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. DEM shall not assume any liability for any changes in classification and shall assume no liability to the aquaculturist for damages incurred due to such actions.

8.7 Shellfish Aquaculture in Conditionally Approved Growing Areas -- When a shellfish aquaculture lease is in a conditional area, and the area is in the closed status, the aquaculturist may not visit his/her lease to tend his/her shellfish crops, unless the aquaculturist has applied for and received permission from the director because of, and to the extent of, exigent circumstances. Under no circumstances may the aquaculturist harvest cultured stock when his/her lease is in a growing area that is in the closed status.

8.8 Transfer of Seed From Other Than Approved Waters -- Shellfish seed cultured in other than approved waters may be transferred, by the aquaculturist, to an approved aquaculture lease in approved waters in accordance with the terms of an approved operational plan, with DEM Division of Fish and Wildlife and Division of Law Enforcement notification. If more than 10 percent of the cultured shellfish within a lot or batch exceed the definition of seed (in the case of quahaugs, if any exceed 20 mm, and in the case of oysters, if any exceed 32 mm), they shall not be moved from other than approved waters to an approved growing area without prior permission of the DEM Director and the DOH.

8.9 Harvest Of Shellfish Transferred From Other Than Approved Waters As Seed -- An aquaculturist wishing to use seed that have been produced in other than approved waters must submit an operational plan to the Director detailing how he/she intends to track and document the growth and harvest of these shellfish. Aquaculturists must maintain accurate and complete records of all shellfish seed culture in other than approved waters and removal of such shellfish seed to approved waters including, but not limited to, source, numbers transferred, size composition, time/dates of transfer, harvest and sale of the shellfish. These records must be maintained for a minimum of two years and must be available for inspection by agents of the DOH, DEM Division of Law Enforcement, or DEM Division of Fish and Wildlife, upon request. If record keeping and tracking protocols are inadequate, then the aquaculturist must only use seed from approved waters. No shellfish may be harvested until they have spent at least twelve (12) months in approved waters.

8.9.1 Permitted Activities -- 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 other than approved waters, unless the aquaculturist can demonstrate that all shellfish were removed from other than approved waters when seed.

8.9.2 Transplanting of Shellfish Exceeding Seed Size Limits -- No shellfish exceeding the seed size limits shall be transplanted from other than approved waters unless done so under the authority of the DEM Director and DOH Director according to the Memorandum of Agreement for conducting shellfish transplant/relay operations. Possession, culture and transportation of shellfish other than seed (as defined) from other than approved water is prohibited.

8.10 Collection of Wild Stock Shellfish Seed -- Collection of wild stock shellfish seed from other than approved waters is prohibited unless approved by the Director or his/her designee in a written authorization. If permission for wild stock seed collection is approved, the site, species and amount must be specified by the Director or his/her designee in writing. The aquaculturist must notify the DEM Divisions of Fish and Wildlife and Law Enforcement in writing at least ten (10) days prior to the activity. The aquaculturist may be required to be accompanied by a DEM Environmental Police Officer, and the aquaculturist will have to pay for the Environmental Police 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 his/her designee.

9.0 HANDLING OF SHELLFISH

9.1 General Requirements -- Commercial shellfish harvesters and shellfish aquaculturists 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.

9.2 Containers -- Containers used for storing shell stock must be clean.

9.3 Vessels -- Vessel 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. Aquaculturists 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. Aquaculturists using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.

9.4 Bilge Water -- Aquaculturists using a vessel to harvest and transport shell stock shall provide such vessel with effective drainage to avoid contact between bilge water and shell stock. Aquaculturists using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not contaminate shell stock.

9.5 Washing -- 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.

9.6 Waste Discharge Prohibited -- It is unlawful to discharge any sewage from a vessel into the waters of the state.

10.0 TAGGING OF SHELLFISH

10.1 Required Use of Tagged Containers -- Aquaculturists must place any and all shellfish taken by them (except those shellfish returned to the waters of the aquaculture lease or facility) into containers, and must tag each and every container with a harvester tag conforming to the requirements of Rule 19.9.2 below, prior to the following:

- the aquaculturist leaves the aquaculture site identified by the CRMC Assent number in which the shellfish were taken;
- the shellfish are removed from the vessel; or
- offered for sale.

10.2 Tags -- The harvester tag shall be durable, waterproof and sanctioned by the DOH. The tag shall contain the following indelible, legible information in order specified below:

- aquaculturist's identification number as assigned by DEM;
- date of harvest from the aquaculture lease site or facility;
- the harvest location as identified by the CRMC Assent number;
- type (species) of shellfish;
- approximate quantity of shellfish; and
- 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"**

10.3 Commingling Prohibition and Tagging by Aquaculturists/Dealers -- Aquaculturists shall not place shell stock harvested from more than one growing area into the same container. When the aquaculturist is also a dealer, the aquaculturist has the option to tag the shell stock with a harvester tag or a dealer's tag meeting the requirements of the DOH regulations.

10.4 Bulk Tagging -- Bulk tagging of shell stock will be permitted only with prior approval of the DEM Director under the following criteria:

- when shell stock are harvested from one aquaculture lease site or facility on a single day, multiple containers may be utilized on a wrapped pallet, in a tote, in a net brailer, or other container, tagged with a single

tag, provided that the tag specifies the number of containers in the unit;
and

- a written statement is provided that all shell stock containers in the lot have the same harvest data and area of harvest.

11.0 TEMPERATURE CONTROL OF SHELLFISH

11.1 General Requirements -- Aquaculturists 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.

11.2 Maximum Holding Time -- The maximum allowable time between the harvest of shell stock and delivery to a dealer shall be twenty hours. Possession of shell stock by anyone other than a licensed dealer in excess of twenty (20) hours is prohibited. This maximum allowable time may be reduced by DEM, via emergency regulation, in certain harvest areas if environmental changes necessitate such adjustment.