

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**WET STORAGE OF MOLLUSCAN SHELLFISH
REGULATIONS**

August 3, 2000

AUTHORITY: these regulations are issued by the Director by Chapter 20-1-2, Chapter 20-10-12, Chapter 42-17.1, and Chapter 42-17.6 in accordance with the requirements of Chapter 42-35, Administrative Procedures Act by RIGL, 1956, as amended.

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Rule 1. PURPOSE -- It is the purpose of these regulations to establish wet storage of molluscan shellfish standards for the waters of the State. These standards are intended to protect public health, restore and enhance the state's shellfish resources and serve the purposes of Rhode Island General Laws (RIGL) Chapter 20-1, Chapter 20-6 and 20-10. These standards provide for the management of wet storage of molluscan shellfish in the waters of the state, taking into consideration their commercial use, the propagation of shellfish, recreational interests and navigational concerns.

Rule 2. AUTHORITY --The authority for the issuance of these regulations is vested in the Director by Chapter 20-1-2, Authority over fish and wildlife, Chapter 20-10-12, Permits for possession, importation and transportation of species used in aquaculture, Chapter 42-17.1, Environmental Management and Chapter 42-17.6 Administrative Penalties for Environmental Violations of the General Laws of Rhode Island, as amended. These rules and regulations are further pursuant to the requirements and provisions of all chapters of the General Laws of Rhode Island relating to the duties and responsibilities of the Director for the waters and marine resources of the State, and in accordance with the requirements of Chapter 42-35, Administrative Procedures Act.

Rule 3. NEW RULES --Upon adoption, these rules and regulations will become Department of Environmental Management regulations.

Rule 4. APPLICATION -- The terms and provisions of these rules and regulations shall be liberally construed to allow the Department of Environmental Management to effectuate the purposes of State law.

Rule 5. SEVERABILITY -- If any provisions of these rules and regulations or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any rule or rules, or parts of any rule or rules shall not affect the validity of these rules and regulations.

Rule 6. APPLICATION OF THESE REGULATIONS

A. Nothing in these rules and regulations shall be deemed to interfere with the Director's power and duty to issue an immediate order pursuant to Section 46-12-10 of the General Laws of Rhode Island.

B. These regulations apply to any wet storage of molluscan shellfish in the waters of the state and on-land based systems that discharge into the waters of the state. All departmental regulations should be construed to be consistent and/or complementary and any perceived conflicts are unintentional. Should a perceived conflict arise between or among these regulations and the requirements imposed by any other departmental regulations or other governmental entities, the most stringent requirement shall govern.

Rule 7. DEFINITIONS

For the purposes of these regulations, the following terms shall have the following meanings:

Approved waters, -- the classification used to identify a growing area where harvesting for direct or wholesale marketing is authorized.

Coastal Resources Management Council or CRMC -- the Rhode Island Coastal Resources Management Council or any designee to whom the CRMC delegates the powers and duties vested in that office.

Dealer -- a person who is licensed by the State of Rhode Island to sell. Purchase, barter and/or trade seafood

Department or Departmental or DEM or Director -- the Rhode Island Department of Environmental Management or the Director of the Department of Environmental Management or any designee to whom the Director delegates the powers and duties vested in that office.

Department of Health or DOH -- the Rhode Island Department of Health or the Director of the Department of Health or any designee to whom the Director delegates the powers and duties vested in that office.

Marine Fisheries Council or Council -- the chairperson and eight members authorized by Rhode Island General Laws Chapter 20-3.

Molluscan Shellfish -- any of the following: Bay quahaug (*Mercenaria mercenaria*), Bay Scallop (*Argopecten irradians*), Blue Mussel (*Mytilis edulis*), Oyster (*Crassostrea virginica* , *Ostrea edulis*) and Soft Shell Clam (*Mya arenaria*).

Molluscan Shellfish -- all species of :

(a) Oysters, clams (including quahaugs) or mussels whether

(i) Shucked or in the shell;

(ii) Fresh or frozen; or

(iii) Whole or in part; and

(b) Scallops in any form, except when the final product form is the adductor muscle only.

Office of Water Resources or OWR -- the DEM Office of Water Resources.

Person -- an individual, corporation, partnership, or other legal entity.

Resident -- an individual who has had his or her actual place of residence and has lived in the State of Rhode Island for a continuous period of not less than six (6) months.

Waters of the State -- all marine waters within the territorial jurisdiction of the state.

Waterway -- specific bodies of water such as the coastal salt ponds or specified estuarine complexes.

Wet storage -- the temporary storage of shellfish (from growing areas) in the approved classification or in the open status of the conditional approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic sea water. This includes **Flow through systems** .

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
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**WET STORAGE OF
MOLLUSCAN SHELLFISH REGULATIONS**

I. APPLICATION PROCEDURES

- A. A shellfish dealer licensed under RIGL 20-6-24 and 21-14-2 shall apply for a License for Shellfish Business (wet storage facility) Permit through the DOH, Office of Food Protection on an annual basis.
- B. In the case 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 site (or lease). A CRMC assent shall be required for a wet storage facility located within the CRMC's shoreline jurisdiction as specified in CRMC Management Procedures, Section 4-1.
- C. If the open water wet storage is conducted as part of an aquaculture operation, the licensed dealer shall apply to the DEM Division of Fish and Wildlife for a DEM Special Permit For Aquaculture; if the permit is issued, it should appropriately address the possession of shellfish held for wet storage.

II. COORDINATION OF PERMITTING

- A. The Department of Health shall coordinate applications for wet storage of molluscan shellfish. The DOH shall notify CRMC and DEM, Division of Fish and Wildlife of any applications made. The CRMC and Fish and Wildlife shall advise DOH of any concerns relative to permitting and operating a wet storage facility.
- B. Verification from OWR that the proposed wet storage facility is consistent with the appropriate water quality classification.
- C. The Executive Director of CRMC shall notify the DOH and the DEM Division of Fish and Wildlife as to whether the wet storage application requires a Category A or B assent.
- D. It is the responsibility of DOH to determine that all requirements of the National Shellfish Sanitation Program (NSSP) are satisfied and that the public (human) health is protected.
- E. It is the responsibility of CRMC to ensure that the area selected for wet storage is suitable and compatible with existing uses. Also, CRMC is responsible to ensure that all structures and equipment are appropriately designed and built.
- F. It is the responsibility of the Chief, DEM Division of Fish and Wildlife to determine the compatibility of a wet storage operation with surrounding resources and to be satisfied that practical and reasonable precautions are being carried out to avoid the spread of shellfish diseases and pathogens.

III. CRITERIA FOR COMPLIANCE

- A. Molluscan shellfish to be wet stored must be harvested from approved shellfish growing areas (or conditionally approved when open).
- B. All facility designs, structures and methods used for wet storage of molluscan shellfish must be approved by the 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.
- C. The CRMC shall approve 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 DOH operations plan (ref: III-E). Containers used in wet storage of molluscan shellfish shall be approved by the DOH and shall be marked appropriately (indicating that they contain wet stored wild product). No molluscan shellfish less than legal size shall be maintained in a wet storage facility.
- D. 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.
- E. The shellfish dealer shall submit an operations plan specifying how the wet storage of molluscan shellfish will be carried out. Such an operations plan is subject to approval of DOH and DEM. Prior to approval of the wet storage facility.
- F. The molluscan shellfish that are in wet storage shall be tagged in accordance with the standards in the NSSP.
- G. Permitted wet storage facilities shall only store wild molluscan shellfish that have been harvested from 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.
- H. A permitted wet storage facility shall only store legal sized molluscan shellfish which have been harvested as specified in the approved operations plan.
- I. 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. The CRMC, DEM and DOH do not assume any liability for any environmental changes nor liability for potential damages incurred by shellfish dealers.
- J. The Chief of the DEM Division of Fish and Wildlife 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 Chief (F&W)

maintains the authority to limit or restrict the wet storage and transplant activities in areas within waterways which 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.

IV. VIOLATION AND PENALTIES

- A. No person shall engage in wet storage of molluscan shellfish without first obtaining a license from the Department of Health and cooperating agencies.
- B. Applicable penalties- The following penalties shall apply to violations of these regulations:
 - (1) Forfeiture of the wet stored shellfish.
 - (2) Administrative action which may result in suspension and/or revocation of appropriate licenses or permits and/or imposition of additional penalties.
 - (3) Criminal prosecution pursuant to RIGL 20-1-16 which imposes a maximum fine of \$500, 90 days imprisonment or both.

V. APPEALS

- A. General - The procedures for appeal of Departmental decisions pursuant to the provisions of Section 42-35 of the R.I. General Laws are contained in both Administrative Rules of Practice and Procedure for the DEM Administrative Adjudication Division for Environmental Matters; and the Administrative Rules of Practice & Procedure for the Department of Environmental Management.
- B. Appeal Procedure for Denials- Any person whose application is denied may appeal to the Director for review of the decision on which the denial is based by filing an appeal with DEM Administrative Adjudication.
- C.
 - (1) Filing of Appeal- All appeals shall be in writing and shall be filed with and received by DEM Administrative Adjudication within 30 days after the effective date of the denial of the subject application.
 - (2) Contents of Appeal _ Every appeal shall contain a detailed basis upon which the appeal is taken and the name and address of the applicant.
- D. Appeal Procedure for Notice of Violations, Suspension or Revocations- Any person who has received a Notice of Violation (NOV) alleging violation of these regulations and the institution of a Administrative Penalty Processing or whose approval has been suspended or evoked, may appeal to the Director for review of the decision on which the NOV, suspension or revocation is based by filing for review of the decision on

which the NOV, suspension or revocation is based by filing an appeal with DEM Administrative Adjudication.

- (1) Filing an Appeal -- All appeals shall be in writing and shall be filed with and received by DEM Administrative adjudication within ten (10) days after the date of the receipt of the subject NOV, revocation or suspension.
- (2) Contents of Appeal -- Every appeal shall contain a detailed basis upon which the appeal is taken.

Rule 8. EFFECTIVE DATE

The foregoing rules and are hereby adopted and filed with the Secretary of State this 3rd of August, 2000 to become effective 20 days from filing in accordance with the provisions of Chapters 20-1-2 and 20-10-12, and Chapter 42-17.6 in accordance with 42-35, of the General Laws of Rhode Island of 1956, as amended.

Jan Harmen Reitsma, Director
Department of Environmental Management

Public Notice: 10/5/99
Public Hearing: 11/16/99

Date filed: 8/3/00
Effective 20 days from filing - 8/23/00

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