

## **Public Notice - Direct Final Rule**

**July 2019**

### **Proposed/annotated amendments**

Note: Proposed new language is identified as **red, bold, underline**; proposed language to be deleted is identified as ~~red-stricken~~.

**250-RICR-90-00-7**

## **TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 90 – MARINE FISHERIES**

#### **SUBCHAPTER 00 – N/A**

PART 7 – Dealers

#### **7.1 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.

#### **7.2 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35-18(b)(5), Administrative Procedures Act, as amended.

#### **7.3 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.

#### **7.4 Definitions**

See Rhode Island Marine Fisheries Regulations, Part 1 of this Subchapter.

## 7.5 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.

## 7.6 Superseded Rules and Regulations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Rules and Regulations, and any policies regarding the administration and enforcement these regulations shall be superseded.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.

## 7.7 Applicability

- A. No person shall barter or trade any marine species taken by a licensed fishermen or aquaculturist unless a license to do so has been obtained from the Director.
- B. Any licensee operating under the provisions of these rules shall purchase marine species only from licensed fishermen or aquaculturist and shall purchase or possess only those marine species legally taken or possessed.

## 7.78 Dealer Reporting

- A. Dealers shall accurately identify all marine species received as categorized in the Standard Atlantic Fisheries Information System (SAFIS).
- B. Dealers shall have accounted for the quantity by count, weight and/or volume of all marine species landed at the point of transfer from the harvester.
- C. Dealer weight scales must be certified in accordance with R.I. Gen. Laws Chapter 47-1.
- D. Dealers shall maintain a record of transaction for all sales of marine species. The following information shall be maintained at the dealer's place of business and be available for inspection by the Director:
  - 1. Sellers' name;
  - 2. Seller's commercial fishing license number;
  - 3. Date of purchase;

4. Species landed;
  5. Quantity of purchase;
  6. Signature of seller. This provision shall not take effect until May 1, 2018.
- E. Dealers shall submit an electronic report to the SAFIS. In cases where a seafood dealer falls under the jurisdiction of both the State of R.I. and the federal government (NMFS), the dealer must comply with the more frequent of the minimum reporting schedules or the more detailed trip level data requirement.
- F. Reporting frequency and required trip level data elements:
1. Weekly reporting: Trip level data for all species landed shall be reported each week on Mondays and Thursdays, are due no more than five days after the date of purchase, and shall consist of the following:
    - a. The species common name including market level and grade;
    - b. The amount landed or purchased including the units the product was measured in (i.e. pounds);
    - c. The area where product was taken (only applicable to shellfish purchases);
    - d. The date the product was landed or purchased;
    - e. The R.I. commercial fishing license or landing permit number of the fisherman selling the product to the dealer;
    - f. The vessel identification number (Coast Guard documentation number and/or State of R.I. registration number);
    - g. The port or location where the catch was landed or purchased; and,
    - h. 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".
  2. Price reporting: Price data for all species harvested shall be reported within thirty (30) days of the landing or purchase date.
  3. Negative reports:

- a. R.I. licensed seafood dealers shall submit a negative report to SAFIS for each weekly 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.
4. Control date: The control date for compliance with this section is March 1, 2006.

## **7.89 Shellfish Dealers**

- A. Applicability: Shellfish dealers may only purchase, barter, or trade in wild or cultured shellfish that have been:
  1. Harvested from or cultured in Rhode Island waters from licensed shellfishermen, licensed aquaculturists, or other shellfish dealers; or,
  2. Harvested from waters outside of Rhode Island from a dealer whose shellfish business appears on the U.S. Food and Drug Administration Interstate Certified Shellfish Shippers List (ICSSL), and tagged in accordance with the National Shellfish Sanitation Program (NSSP) Model Ordinance and Rhode Island DOH regulations Processing and Distribution of Shellfish ([216-RICR-50-10-6](#)), ~~which are incorporated in § 7.10 of this Part.~~
- B. Shellfish dealers may not purchase or accept any wild or cultured shellfish from a shellfisherman or aquaculturist without first being presented with a valid commercial fishing license or Aquaculture license issued by DEM.
- C. Shellfish dealers must also possess a DOH shellfish business license pursuant to DOH Processing and Distribution of Shellfish ([216-RICR-50-10-6](#)), ~~which are incorporated in § 7.10 of this Part.~~
- D. Shellfish dealers shall maintain a record of transaction for all sales of shellfish. The following information shall be maintained at the dealer's place of business and be available for inspection by the Director:
  1. Seller's name;
  2. Seller's commercial fishing license number;
  3. Seller's date of birth;
  4. Harvest tagging area where shellfish were harvested;

5. Quantity of shellfish purchased;
  6. Species landed;
  7. Purchase price;
  8. Date and time of transaction;
  9. Signature of seller;
  10. For transactions of shellfish cultured on an aquaculture lease, the dealer shall maintain complete, accurate and legible records sufficient to document the source of shellfish, and permit the contents of the container of shellfish to be traced back to the aquaculture lease site and date of harvest. All transactions shall be recorded by DEM and DOH by a method approved by DEM and DOH.
- E. Shellfish harvested from or cultured in Rhode Island waters may only be sold to out-of-state dealers by shellfish dealers whose businesses appear on the U.S. Food and Drug Administration Interstate Certified Shellfish Shippers List (ICSSL) and are licensed with DOH.
- F. Shellfish harvested from or cultured in other than Rhode Island waters may only be sold to dealers in or from Rhode Island by out-of-state dealers whose businesses appear on the U.S. Food and Drug Administration Interstate Certified Shellfish Shippers List (ICSSL).
- G. A dealer may possess undersize cultured shellfish crops, excluding bay quahaugs, provided the dealer has obtained said cultured crops from an aquaculturist or dealer.
- H. Wet storage of shellfish: No person shall engage in land-based wet storage (as defined in the NSSP 2015 Model Ordinance, which is incorporated herein by reference) of molluscan shellfish without prior written authorization from DOH. Open-water wet storage (as defined in the NSSP Model Ordinance) is prohibited.
- I. Dealer handling of shellfish: Dealers shall comply with the NSSP Model Ordinance and DOH regulations Processing and Distribution of Shellfish ([216-RICR-50-10-6](#)), ~~which are incorporated in § 7.10 of this Part.~~
- J. Dealer tagging of shellfish: Dealers shall comply with the NSSP Model Ordinance and DOH regulations Processing and Distribution of Shellfish ([216-RICR-50-10-6](#)), ~~which are incorporated in § 7.10 of this Part.~~ Dealer tagging is not required for surf clams or ocean quahaugs for use as bait and not for human

consumption, however at a minimum must be labeled and/or designated as bait in a method approved by DEM and DOH.

## **7.910 Other Regulations**

- A. Any person engaged solely in the business of selling seafood 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 seafood from a dealer.
- B. 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*.
- C. 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.
- D. Striped bass tagging: Each individual striped bass shall be immediately marked with tags available from ~~DFW~~ DEM. No striped bass may be sold unless it has been properly identified with such tag. ~~DFW~~ DEM may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and reports specified by ~~DFW~~ DEM. All tag reports and unused tags must be returned to ~~DFW~~ DEM by January 1st of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.
- E. Summer Flounder:
  - 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;
  - 2. Dealers shall receive summer flounder between the hours of 6:00 AM to 8:00 PM only.
- F. Lobster Exemption Certificate for Dealers:

1. Dealers wishing to purchase, barter, trade or import lobsters from outside of the state or receive lobsters from LCMA 3 which are less than the minimum size for LCMA 2 must obtain a Lobster Exemption Certificate for Dealers from the Director. Eligibility requirements are as follows:
  - a. The applicant dealer must hold a valid commercial dealers license to deal in lobsters in Rhode Island;
  - b. The applicant dealer shall provide a copy of a valid dealer's license to purchase, barter, trade or import lobsters in the State of Rhode Island;
  - c. The applicant dealer must maintain a landside facility in Rhode Island with the tanks required to segregate and store separately lobsters not conforming to the LCMA 2 minimum size.
2. Application shall be made on forms prescribed by the Director.
3. Conditions to maintain compliance:
  - a. The Certificate holder must notify the DLE by phone between one hour and six hours prior to receiving a shipment. The notification must include the name of the dealer receiving the shipment, the name of the dealer sending the shipment, the transfer time and location of transfer, and amount of lobster to be received, and if a vessel is involved the name of the vessel;
  - b. All shipments of lobsters less than the LCMA 2 minimum size as must be culled out immediately and stored separately on the business premises of the certificate holder;
  - c. The certificate holder shall maintain a written record of all transactions taking place under the provisions of this section including: the date of purchase; time of purchase; location of purchase; name of selling dealer or vessel; the person in charge of the vessel; amount of lobster received, including number of animals and total weight. Records shall be maintained documenting the sale of lobsters received pursuant to this section, including the date and time of sale, and the name of the person or dealer to whom the lobsters were sold. Records must be available for inspection 8:00AM – 4:00PM at the dealer's Rhode Island office or with an authorized business agent for a period of three (3) years from the date of the acquisition of the lobsters. Records shall be available for immediate inspection as a condition of this permit.

- d. Lobsters not conforming to the LCMA 2 minimum size may only be exported out of state or sold to another dealer who possesses a Lobster Exemption Certificate for Dealers for export out of state. No lobsters less than the LCMA 2 minimum size may be offered for sale on the retail market in Rhode Island.

## **7.1011** **Incorporated Materials**

These regulations hereby adopt and incorporate Department of Health regulations Processing and Distribution of Shellfish ([216-RICR-50-10-6](#)) by reference.