

## TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

### CHAPTER 40 - AGRICULTURE AND RESOURCE MARKETING

#### SUBCHAPTER 20 - MARKETING

PART 13 - Rules and Regulations Governing the Rhode Island Seafood Brand and the Mislabeling of Marine Species

#### 13.1 Purpose

A. The purposes of these regulations are:

1. To establish a Rhode Island Seafood Brand, or logo, to be administered by the Department of Environmental Management, for use in identifying and promoting Rhode Island seafood products;
2. To adopt Rules and Regulations governing the use of the Rhode Island Seafood Brand, or logo; and
3. To prohibit further guard against the mislabeling or misrepresentation of marine species by seafood dealers who are authorized to use the Rhode Island Seafood Brand, and seafood products produced and sold in Rhode Island.

#### 13.2 Authority

These regulations are adopted pursuant to R.I. Gen. Laws Title 20, Fish and Wildlife, Chapters 42-17.1, 42-17.6, and 42-17.7, and §§ 2-1-8 and 2-1-9, consistent with Chapters 21-31 and 23-1, and in accordance with Chapter 42-35, the Administrative Procedures Act.

#### 13.3 Administrative Findings

A. R.I. Gen. Laws § 2-1-8 vests the Director of the R.I. Department of Environmental Management with the authority to establish and administer programs to promote the marketing of Rhode Island seafood products grown and produced in Rhode Island for the purpose of encouraging the development of the commercial fishing and agricultural [aquaculture] sectors in the state. In accordance with this authority and purpose, and consistent with recommendations set forth by the Rhode Island Seafood Marketing Collaborative, established pursuant to Chapter 20-38 of the R.I. Gen. Laws, the Director has determined that a Rhode Island Seafood Brand will serve the interests of the state by:

- 1.- Enhancing opportunities to identify, access, and enjoy RI seafood;
  2. Bolstering consumer awareness and confidence regarding the nature and source of RI seafood; and,
  3. Elevating the status of RI seafood in the marketplace, thereby increasing demand and consumption, contributing to a more stable and resilient local food system, and yielding greater economic value for RI seafood.
- B. The Director further finds that the marketing of Rhode Island seafood products would be enhanced, if consistent with the authority of the Rhode Island Department of Health pursuant to Chapters 23-1 and 21-31 of the R.I. Gen. Laws and the Director's authority pursuant to R.I. Gen. Laws §§ 2-1-8 and 2-1-9, purchasers of marine products were afforded additional protection against the mislabeling or misrepresentation of Rhode Island seafood products.

### 13.4 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purpose of state law, goals, and policies.

### 13.5 Definitions

- A. For the purpose of these regulations, the following terms shall have the following meanings:

- ~~1. "Authorized dealer" means a dealer who has been issued written authorization by the Department to use the Rhode Island Seafood Brand to identify and promote Rhode Island seafood products.~~
1. "Authorized seafood dealer" means a person duly licensed by the State of Rhode Island to sell, purchase, barter, and/or trade seafood products obtained directly from a duly licensed commercial fisher or commercial aquaculturist. The term shall also include those commercial fishers who are authorized to sell live lobsters and crabs directly to consumers pursuant to § 2.7.6(l) of this Title of the Commercial and Recreational Saltwater Fishing Licensing Regulations (250-RICR-90-00-2). The term shall also include holders of Direct Sale Dealer Licenses issued pursuant to § 7.13 of this Title of the Fish/Shellfish Dealers Regulations (250-RICR-90-00-7).
2. "Authorized seafood retailer" means a person or business duly licensed by the State of Rhode Island as a food market or food business, pursuant to § 250-RICR-50-10-1 of this Title, and thereby authorized to sell seafood products obtained from an authorized seafood dealer or seafood wholesaler.

3. "Authorized seafood wholesaler" means a person or business duly licensed by the State of Rhode Island to sell, purchase, barter, and/or trade seafood products obtained from a duly licensed commercial fisher, commercial aquaculturist, authorized seafood dealer, or other authorized seafood wholesaler.
4. "Authorized user" means any authorized seafood dealer, authorized seafood retailer, or authorized seafood wholesaler engaged in sales or donations of Rhode Island seafood products in Rhode Island.
25. "Commercial aquaculturist" means an individual, firm, partnership, association, academic institution, municipality, or corporation, duly licensed by the State of Rhode Island to conduct commercial aquaculture in Rhode Island, pursuant to R.I. Gen. Laws Chapter 20-10.
36. "Commercial fisher" means a person duly licensed by the State of Rhode Island to harvest and/or land seafood products in Rhode Island, pursuant to R.I. Gen. Laws Chapter 20-2.1.
- ~~4.~~ ~~"Dealer" means a person duly licensed by the State of Rhode Island to sell, purchase, barter, and/or trade seafood products obtained directly from a duly licensed commercial fisher, pursuant to R.I. Gen. Laws Chapter 20-2.1 et seq. The term shall also include those commercial fishers who are authorized to sell live lobsters and crabs directly to consumers pursuant to § 6.7-9 of the Commercial and Recreational Saltwater Fishing Licensing Regulations (250-RICR-90-00-2).~~
57. "Department" means the Rhode Island Department of Environmental Management.
68. "Land" means to transfer seafood products directly from a commercial aquaculturist or a commercial fisher to an authorized seafood dealer for sale or intended sale.
79. "Person" means an individual, corporation, partnership, or other legal entity.
810. "Rhode Island seafood products" means any marine species that have been grown in Rhode Island waters by commercial aquaculturists and any marine species that have been landed in Rhode Island by commercial fishers, pursuant to all applicable state and federal regulations.

### 13.6 General Requirements

- A. A Rhode Island Seafood Brand (the "brand") is hereby established and depicted in the attachment to these regulations which is designated as § 13.11 of this Part.
- B. The brand is subject to the full ownership of, and control by, the Department.

C. Any alteration or modification of the brand is prohibited ~~without the express written consent of the Department.~~

~~GD. The Department may authorize use of the brand by dealers brand may be used by anyone for the express purpose of identifying and promoting Rhode Island seafood products. Such authorization will be issued in writing, upon application to the Department by the dealer. Such authorization will enable the dealer to use the brand on any packaging that contains Rhode Island seafood products, and any documents or written materials associated therewith.~~

DE. Authorized users may use the brand to identify, market, sell, and/or donate Rhode Island seafood products subject to the following provisions:

~~1. Upon request, and no later than ten (10) days following such request, authorized users must be able to verify that a product identified, promoted, marketed, sold, and/or donated as a Rhode Island seafood product was landed in Rhode Island or grown in Rhode Island waters. Verification may be in the form of a valid SAFIS dealer report, a receipt of sale stemming from a valid SAFIS dealer report, or any other verifiable chain of custody stemming from a valid SAFIS dealer report.~~

~~2. Dealers a~~Authorized ~~to~~ users of the brand are responsible for ensuring that the brand is used properly, i.e., if applied to packaging, only applied only to packaging that contains Rhode Island seafood products; or if used in display cases or on menus, only applied to products or menu items involving Rhode Island seafood products. If using the brand to distinguish Rhode Island seafood products, ~~t~~The co-mingling of Rhode Island seafood products with seafood products from other states is prohibited.

~~E. Any alteration or modification of the brand is prohibited.~~

~~F. Once a Rhode Island seafood product is demarcated with the brand, by virtue of its inclusion in packaging to which the brand has been affixed by an authorized dealer, the brand may be used by other persons who acquire the product from an authorized dealer, following along the chain of custody, provided that the brand is used properly, i.e., for the continued and sole purpose of identifying and promoting the product. Examples of persons authorized to use the brand in this way include retail establishments and restaurants that sell seafood products directly to the public.~~

~~G. Any dealer who does not possess a valid authorization to use the brand shall be prohibited from marking any product with the brand or otherwise representing that a seafood product or the facility offering the product is associated with the brand. Any person who does not obtain seafood products from an authorized dealer shall be prohibited from marking those products with the brand or otherwise representing that those products are associated with the brand.~~

~~H. The Department reserves the right to deny the application of any dealer or other person seeking authorization to use the brand based on any prior criminal conviction or the assessment of an administrative penalty that occurred within the three (3) year period prior to the date of application arising from the violation of a federal or state statute, rule or regulation pertaining to marine fisheries, or from the violation of a federal or state statute, rule or regulation pertaining to the sale of seafood including those Rules and Regulations promulgated by the Rhode Island Department of Health pursuant to the authority vested in that agency by R.I. Gen. Laws Chapters 23-1 or 21-31.~~

## 13.7 Mislabeling of Marine Species

No person shall offer for barter, trade, or sale a seafood product that is mislabeled as prohibited by R.I. Gen. Laws Chapters 23-1 or 21-31, i.e., represented to be a species other than the species that it actually is.

## 13.8 Penalties

- A. Any authorized user whose license to purchase, sell and/or donate seafood products in Rhode Island is deemed or rendered invalid by any federal, state, or municipal authority shall be prohibited from using the brand for any purpose until such time as the license is deemed or rendered valid.
- B. Any authorized user convicted of a violation of R.I. Gen. Laws Chapters 23-1 or 21-31 pertaining to the mislabeling of marine species, or any rule or regulation promulgated by the Department of Health pursuant thereto, may be subject to enforcement action and/or penalty imposed by the Department of Health.
- C. Any authorized ~~dealer~~user, or other person who obtains seafood products from an authorized dealer, found to have improperly used the brand, in violation of any of the provisions of these regulations § 13.6 of this Part or who has been convicted of a violation of R.I. Gen. Laws Chapters 23-1 or 21-31 pertaining to the mislabeling of marine species, or any rule or regulation promulgated by the Department of Health pursuant thereto, or who has been assessed an administrative penalty arising from the violation of said Department of Health rule or regulation, may be subject to additional enforcement action under these Rules and Regulations, which may include and shall be limited to: suspension or revocation of the authorization or right to use the brand, shall be subject to the following penalties for the following time periods:
  - 1. First violation - up to thirty (30) days suspension of the authorization to use the brand;
  - 2. Second violation - up to ninety (90) days suspension of the authorization to use the brand;

3. Third violation - up to three hundred and sixty-five (365) days suspension of the authorization to use the brand; and,
4. Fourth and successive violations – revocation of the authorization to use the brand.

**BD.** Pursuant to this subsection, an incident involving improper use of the brand shall be considered a single violation, regardless of the extent of the incident, including the quantities involved.

~~C.~~ ~~No new authorization conferring said privileges associated therewith shall be issued during the period of suspension or revocation to the subject person or to any corporation in which the person owns a majority interest or to a partnership in which the subject is a party.~~

~~D.~~ ~~Any dealer who uses the brand without authorization, or any dealer or other person found to have used the brand in violation of any of the provisions of § 13.6 of this Part, may be subject to enforcement action, which may include and shall be limited to the following administrative penalties:~~

~~1.~~ ~~First violation -- up to one hundred dollars (\$100);~~

~~2.~~ ~~Second violation -- up to three hundred dollars (\$300);~~

~~3.~~ ~~Third violation -- up to five hundred dollars (\$500); and,~~

~~4.~~ ~~Fourth and successive violations -- up to one thousand dollars (\$1,000).~~

## **13.9 Appeals**

A. In accordance with R.I. Gen. Laws § 42-17.7-9, Administrative Hearings:

1. Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges a violation(s) of these Rules and Regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street~~One Capitol Hill~~, ~~Third~~Fourth Floor, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.
2. Any person who seeks an adjudicatory hearing relative to denial of the issuance of an authorization to use the brand arising under these Rules and Regulations must file said request in writing with the clerk of Administrative Adjudication Division, ~~One Capitol Hill~~235 Promenade Street, ~~Fourth~~Third Floor, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

### **13.10 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.

### **13.11 Appendix 1**

