

250-RICR-90-00-1

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 1 – Definitions

1.1 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.

1.2 Authority

These Rules and Regulations are promulgated pursuant to Title 20, Chapters 42.17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures Act of the R.I. Gen. Laws.

1.3 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.

1.4 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.

1.5 Superseded Rules and Regulations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Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded.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

1.6 General Provisions

- A. Use of explosives: The use of explosives as a fishing device in the internal and territorial waters of the State of Rhode Island is prohibited.
- B. Obstruction of migratory fish passage: No person shall obstruct the free passage of anadromous or catadromous fish in any coastal river, stream, or estuary of the State of marine waters of Rhode Island.
- C. Transfer at sea: No one may transfer or attempt to transfer at sea, from one vessel to another, any finfish that are subject to these regulations.
- D. Transiting.
 - 1. Finfish.
 - a. During the closure of a Rhode Island state allocated fishery quota, a federally permitted vessel fishing in the Exclusive Economic Zone may transit Rhode Island state waters for the purpose of landing that species in another state, provided the vessel is in compliance with their federal permit, and the vessel nets are stowed.
 - b. A federally permitted vessel fishing in the Exclusive Economic Zone may transit Rhode Island state waters for the purpose of landing a species in Rhode Island, provided that the species in possession do not have a state allocated quota that is currently closed, provided the vessel is in compliance with their federal permit, provided the vessel nets are stowed, and provided that the owner or operator possesses a valid RI Landing License pursuant to DEM's "Commercial and Recreational Saltwater Fishing Licensing Regulations" Part 2 of this Subchapter.
 - c. A vessel in possession of a managed species caught in an open area of state waters may transit a closed portion of RI state waters in possession of that species for the purpose of landing, provided the operator of the vessel has a valid commercial or recreational fishing license, and if fishing with nets, the nets are stowed.

2. Shellfish.

- a. During the closure of a Rhode Island state allocated fishery quota, a federally permitted vessel fishing in the Exclusive Economic Zone may traverse Rhode Island state waters for the purpose of landing that species in another state, provided the vessel is in compliance with their federal permit, and all gear capable of harvesting shellfish is stowed and not engaged in the act of taking or harvesting while transiting state waters.
- b. A federally permitted vessel fishing in the Exclusive Economic Zone may traverse Rhode Island state waters for the purpose of landing a species in Rhode Island, provided that the species in possession do not have a state allocated quota that is currently closed, provided the vessel is in compliance with their federal permit, and provided that all gear capable of harvesting shellfish is stowed and not engaged in the act of taking or harvesting while transiting state waters, and provided that the owner or operator possesses a valid RI Landing License pursuant to DEM's "Commercial and Recreational Saltwater Fishing Licensing Regulations" Part 2 of this Subchapter.

E. Stowage of nets: Vessels possessing trawl devices while harvesting summer flounder, scup, black sea bass, or winter flounder, in excess of the limits specified in RIMFR may have nets with mesh less than the minimum size specified in the regulations provided that the net is stowed and is not available for immediate use in accordance with this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be "not available for immediate use".

- 1. A net stowed below deck, provided:
 - a. It is located below the main working deck from which the net is deployed and retrieved;
 - b. The towing wires, including the "leg" wires are detached from the net; and,
 - c. It is fan folded (flaked) and bound around its circumference.

2. A net stowed and lashed down on deck, provided:
 - a. It is fan folded (flaked) and bound around its circumference;
 - b. It is securely fastened to the deck or rail of the vessel; and,
 - c. The towing wires, including the leg wires, are detached from the net.
3. A net that is on a reel and is covered and secured, provided:
 - a. The entire surface of the net is covered with canvas or other similar material that is securely bound;
 - b. The towing wires, including the leg wires, are detached from the net; and,
 - c. The cod end is removed from the net and stored below deck.
4. National Marine Fisheries Service authorized: Nets that are secured in a manner authorized in writing by the National Marine Fisheries Service Regional Director, for the Mid Atlantic regulated mesh area defined as "that area bounded the intersection of the outer boundary of the Exclusive Economic Zone (EEZ)".

F. Possession limit compliance.

1. Licensed party/charter vessels: Possession limit compliance aboard licensed party/charter vessels is determined by dividing the number of fish by the number fishermen onboard the boat.
2. Multiple licensed recreational fishermen fishing from a single vessel: Possession limit compliance aboard vessels with multiple licensed recreational fishermen will be determined by dividing the number of fish by the number of licensed recreational fishermen on board said vessel, except for tautog, which has a maximum possession limit per vessel.
3. Size, possession, and daily limit violations on board vessels: In any instance when there is a violation of the size, possession, or daily limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the

owner of the vessel, or the operator of the vessel, if the owner is not on board.

4. A person who takes marine product /species utilizing a vessel and also without the assistance of a vessel is only allowed one possession limit per calendar day unless an alternative period of time is specifically provided in the governing regulation.
- G. Violations for non-compliance: If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to R.I. Gen. Laws § 20-1-16 as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub-period.
- H. Penalties.
1. Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (R.I. Gen. Laws § 20-1-16).
 2. Additionally, a person may be subject to the imposition of an administrative penalty pursuant to DEM's "Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries", Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to R.I. Gen. Laws Title 250-RICR-80-00-6.
- I. Appeals.

1. Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by R.I. Gen. Laws Chapter 42-17.7 and pursuant to DEM's Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.
2. Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with R.I. Gen. Laws Chapter 42-17.7 and DEM's Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.

1.7 Definition of Terms

"Actively fishing" means a license holder will be considered to have been actively fishing that license/endorsement if he or she demonstrates by dated transaction records, as verified by dealer reports to the Department, that he or she has fished at least 40 days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years. Evidence as to days fished may be supplemented by one or more Vessel Trip Reports, which specifically reference the license holder's name and license number, and correspond to dated transaction records, where in the determination of the Department such dates are verified by dealer reports to the Department; where such reports verifiably reflect two or more calendar days at sea during a single trip, those days may be used to establish fishing activity. For the purpose of this definition the term "day" shall mean any 24-hour period or part thereof. A license holder with a dockside sales endorsement who sells all of his or her lobster and/or crab landings dockside may utilize documentation other than dated transaction records to establish fishing activity, pursuant to the standards and criteria set forth in RIMFR "Commercial and Recreational Saltwater Fishing Licensing Regulations" Part 2 of this Subchapter.

"Actively participating" means a crew member will be considered to have been actively participating in the fishery if he or she demonstrates via one or more affidavits that he or she has fished in the fishery with one or more licensed captains at least 40 in the preceding two calendar years, with some of the fishing activity occurring in each of the two years. Crew members may also demonstrate longevity in the fishery via one or more affidavits from licensed captains who they fished with in previous years.

"Adequately iced" means the amount and application of ice sufficient to ensure that immediate cooling begins and continues for all shellfish. Ice should be produced from a potable water source and shall be maintained to prevent contamination of shellfish.

"Affidavit" means a sworn statement of facts made under oath as to the truthfulness therein, and made before an authorized person such as a Notary Public. For the purposes of these Rules and Regulations, affidavits must be on forms provided by the Department.

"Agent" means a representative of a licensed dealer with a place of business in the State of Rhode Island wherein transaction records of said dealer are maintained and available for inspection during normal business hours.

"Application deadline" means February 28, or the first business day following February 28 if that day falls on a Saturday, Sunday, or holiday.

"Air-assisted harvest" means the use of an air compressor or any device capable of pressurizing air/gas or compressed gas in a tank, to power any device designed to disturb the substrate, create a vacuum effect or sediment displacement effect in collection of aquatic species.

"Anadromous fish" means any species of fish which ascends rivers or streams from the sea for breeding purposes (e.g. Alewife - *Alosa pseudoharengus*; Salmon - *Salmo salar*; Shad - *Alosa sapidissima*).

"Angling" means to fish recreationally using hook and line (R.I. Gen. Laws § 20-2.2-3).

"Approved" means approved by the Director.

"Approved waters" or "Approved growing areas" means marine waters of the State that have been classified by the DEM Division of Water Resources as Approved Areas, fit for the taking of shellfish for human consumption on a regular basis, in accordance with the criteria established by the National Shellfish Sanitation Program (NSSP) Manual of Operations. These classifications may be subject to change as water quality conditions dictate.

"Aquaculture" means the cultivation, rearing, or propagation of aquatic plants or animals, herein referred to as cultured crops, under natural or artificial conditions.

"Aquaculture facility" means any properly permitted aquaculture operation, either in upland areas or the State's waters or submerged lands.

"Aquaculture lease" means the permitted area for which the 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.

"Aquaculturist" means a person conducting commercial, experimental, or restoration aquaculture in Rhode Island.

"Authorized" means authorized by the Director.

"Bait gillnet" means a gillnet not exceeding one hundred (100) feet nor exceeding a mesh size greater than three and three quarters inches (3 3/4") (stretched).

"Basic harvest" and "Gear level" means the harvest and/or gear restrictions governing each fishery endorsement category pertaining to Commercial Fishing Licenses, as well as Student Shellfish Licenses, and 65 and Over Shellfish Licenses.

"Bay scallop dredging" means the towing of a bay scallop dredge during the established bay scallop dredging season.

"Bay scallop seed" means a bay scallop with a bright, thin, slightly curved shell with no foreign adherent, the shell having no well-defined raised annual growth line, and the bay scallop being less than one (1) year old.

"Bill of landing" means an invoice which identifies a shipment of fish, shellfish or crustaceans as to seller, buyer, source, type, quantity and sale price.

"Biosecurity board" means the board within the CRMC established pursuant to R.I. Gen. Laws § 20-10-1.1 charged with assisting and advising the CRMC in carrying out its role under the provisions of R.I. Gen. Laws Chapter 20-10.

"Bullrake" means any curved metal instrument or basket with four (4) or more metal tines (teeth) which is customarily used to harvest quahaugs.

"Bycatch" means marine species which have been harvested, but which are not sold or kept for personal use, and includes species that are discarded while a fisher is directing his/her effort toward the harvest of another marine species.

"Bushel" means a standard U.S. bushel, 2150.4 cubic inches capacity (R.I. Gen. Laws § 20-1-3).

"Catadromous fish" means any species which lives in fresh water, but must go to sea for breeding purposes (e.g., American eel, *Anguilla rostrata*).

"Carapace" means the un-segmented body shell of the American lobster.

"Carapace length" means the length of a lobster measured from the rear of the eye socket along a line parallel to the center of the body shell to the rear of the body shell.

"Catastrophic trap tag loss" means the loss of original lobster trap tags in excess of the 10% over-allotment trap tags issued for routine loss, in which instance the original trap tags become invalid and must be replaced in their entirety by catastrophic trap tags.

"Charter" and "party boat" means any vessel that carries passengers for hire to engage in fishing.

"Coastal salt pond" means a pond abutting a barrier beach; some are periodically fresh; others are brackish or salt.

"Coastal salt ponds" and/or "river system channels" means a natural or man-made, temporary or permanent waterway, allowing for the passage of water to and from any coastal salt pond and/or river system. Distances (in feet) describing the following salt pond channel areas are measured from the seaward extremity of any channel to a point measured in a northerly direction, or as specifically described herein.

Coastal Salt Pond – River Channel Distances

Pond/Channel	Town	Distance
Quicksand	L. Compton	750'
Tunipus	L. Compton	200'
Briggs Marsh	L. Compton	600'
Ship Pond Cove	L. Compton	200'
Long	L. Compton	400'
Round	L. Compton	250'
Nonquit (Puncatest)	Tiverton	1,800'
Nannaquaket (measured from the mouth	Tiverton	400'

of the Quaket River to the eastern side of the Nannaquaket Bridge abutment)		
Narrow/Pettaquamscutt	Narragansett/N.Kingstown	3,850'
Point Judith (measured in a northerly direction from the mouth of the Pt. Judith Breachway to a line drawn from Strawberry Hill Pt. on the east to High Point on the west)	Narragansett/S.Kingstown	6,000'
Potter (measured from the western entrance of Potter Pond channel to the eastern tip of Gooseberry Island in Pt. Judith Pond)	South Kingstown	2,800'
Card	South Kingstown	200'
Trustom	South Kingstown	500'
Green Hill: Potato Pt. (measured from the easternmost point of Stevens Island in Ninigret/Charlestown Pond to the westernmost point of Potato Point in Green Hill Pond)	S.Kingstown/Charlestown	1,800'
Ninigret/Charlestown	Charlestown	3,200'
Quonochontaug	Charlestown/Westerly	2,800'
Winnapaug/Brightman	Westerly	2,800'
Little Maschaug	Westerly	250'
Maschaug	Westerly	300'
Great Salt	Block Island	1,800'

Trim	Block Island	850'
Harbor	Block Island	1,000'

"Codend" means the terminal section of a trawl net in which captured fish may accumulate, and is further defined as the last 45 rows of meshes in the terminal section of the net.

"Colregs demarcation line" means the lines of demarcation, as defined on National Oceanic and Atmospheric Administration chart #13221, delineating those waters upon which mariners must comply with the international regulations for preventing collisions at sea, and those waters upon which mariners must comply with the inland navigation rules. For Point Judith the "Port" is to be all waters inside of and north of the southern end of the riprap wall at Salty Brine State Beach so-called. The demarcation lines for Block Island are as follows: the area enclosed by the breakwaters at Old Harbor, and the entirety of Great Salt Pond so called.

"Commercial fisherman/fishermen" means a person(s) who catches, harvests, or takes finfish, crustaceans, or shellfish from the marine waters for sale (R.I. Gen. Laws § 20-2.1-3).

"Commercial fishing" means to take, harvest, hold, transport, or off-load marine species for sale or intended sale (R.I. Gen. Laws § 20-1-3).

"Commercial fishing vessel" means any vessel, boat or craft employed in the harvesting of marine species commercially, which shall first be declared with the Department.

"Conch pot" means any pot designed or adapted principally for the catching or taking of conchs.

"Conditionally approved waters" means 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 R.I. Gen. Laws §§ 20-8.1-3 and 20-8.1-4. Such classification may be subject to change as water quality conditions dictate (R.I. Gen. Laws § 20-8.1-1).

"Constantly tended" means that a person setting a net shall remain within one hundred (100) feet of the net at all times.

"Container" means any bag, sack, tote, or other receptacle that contains shellfish to be held or transported.

"Control date" means a cutoff date for potential use in establishing eligibility criteria for future access to a fishery.

"Crab pot" means any pot designed or adapted principally for the catching or taking of crabs.

"Crew" means a person, aged sixteen (16) or older, employed for purposes of assisting in the operation of a commercial fishing vessel and its gear by another person licensed to fish commercially pursuant to the "Commercial and Recreational Saltwater Fishing Licensing Regulations" Part 2 of this Subchapter.

"Cultured crops" means aquatic or marine animals or plants:

- A. That are in the location, water column or artificial conditions specified in a valid aquaculture permit issued pursuant to R.I. Gen. Laws § 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,
- B. 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 DEM's Part 2 of this Subchapter, "Commercial and Recreational Saltwater Fishing Licensing Regulations" 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.

"Day" means a calendar day, or the 24 hour period of time beginning at 12:00AM and ending at 11:59PM.

"Dealer" means a person licensed to barter or trade in marine species.

"Designated temperature control area" means an area designated by the Department in which aquaculturists must comply with more stringent temperature controls for harvested shellfish. These areas have been determined to be Winnapaug Pond, Quonochontaug Pond, Ninigret Pond, Potter Pond, Point Judith Pond, Island Park Cove (Spectacle Cove), Hog Island Cove and Great Salt Pond.

"Director" means the Director of the Department of Environmental Management or his or her duly appointed agents.

"Discards" means marine species that are discarded overboard by fishers because their possession is prohibited by regulations or for economic reasons.

"Disposition" means the intended use or fate of the catch after leaving the dealer, such as sold for food, sold for bait, etc.

"Drift gillnet" means a floating gillnet that is floating unattached to the ocean bottom and not anchored, secured, or weighted to the ocean bottom.

"Dockside sales endorsement" means a notation on a license or landing permit that authorizes the holder to sell live lobsters and/or crabs directly to consumers at dockside.

"Dual federal permit/state license holder" means a person who holds both a federal limited access lobster permit and a State of RI commercial fishing license endorsed for American lobster.

"Eel trap/pot" means any pot or trap designed or adapted principally for the catching or taking of American eels.

"Endorsement" means a notation on a license that indicates the right to harvest a marine species or group of similar species, the right to utilize a particular type of gear or harvesting method, or the right to sell a particular marine species or group of similar species directly to consumers at dockside, in accordance with applicable harvest and/or gear restrictions.

"Endorsement category" means a marine species or group of similar species that may be legally harvested by a fisher whose license allows the taking of those species; or a gear type or harvesting method that may be legally utilized by a fisher whose license is properly endorsed.

"Exclusive economic zone" or "EEZ" means those waters three (3) to two hundred (200) miles (five to 322 kilometers) offshore which are under the direct jurisdiction of the federal government.

"Exit/entry ratio" means a formula established by regulation for a fishery or fisheries which identifies the number of new fishing licenses in each category that will be issued for each one that is retired and surrendered to the Department.

"Family member" means a spouse, mother, father, brother, sister, child or grandchild of a licensed fisher. Spouse shall include a person who is currently a party to a marriage that was legally recognized in the state or territory in which the marriage was solemnized.

"February 28" means the twenty-eighth (28th) day in the month of February or the next business day if February 28 falls on a Saturday or Sunday or holiday for the purpose of application submittals and renewal deadlines.

"Fishery" means one or more stocks of marine species which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

"Fishery performance" means properly documented commercial lobster fishing activity; namely pounds landed and traps fished in LCMA 2 during the applicable qualifying period.

"Fishery sector" means one of three general fishery classifications, each encompassing two or more fishery endorsement categories: Shellfish (encompassing Quahaug, Soft-shell Clam, Whelk, and Other Shellfish); Finfish (encompassing Restricted and Non-Restricted Finfish); and Crustacean (encompassing Lobster and Non-Lobster Crustacean).

"Fish trap" means a floating trap, weir, pounds net, or any equivalent contrivance set on, in or anchored to the bottom or shore, used for the purpose of catching fish (R.I. Gen. Laws § 20-5-1).

"Fork length" means the straight linear distance from the tip of the snout to the fork of the tail.

"Full harvest" and "gear level" means the harvest and/or gear restrictions governing each fishery endorsement category pertaining to Principal Effort Licenses, and for all species pertaining to Multi-Purpose Licenses.

"Fyke net" means a conical shaped net supported by hoops, which also utilizes a leader to direct fish to the net.

"Gear" means any device or mechanism other than a vessel employed to catch fish, shellfish or crustaceans.

"Gear level" means the amount, type, capacity and design of gear that may legally be employed in a given fishery.

"Gillnet" means a net used to catch fish by means of meshing or entanglement.

"Grace period" means sixty (60) calendar days commencing on the day immediately following the application deadline, as defined herein. The grace period is applicable only to renewals of licenses from the immediately preceding year.

"Grade" means the landing condition of each marine species (e.g., whole, gutted).

"Harbor of refuge breakwater" means the three sections of breakwater off of Pt. Judith.

"Harvest" means the act of removing a marine species with the intention of not returning it to the water.

"Harvest level" means the amount of marine species that may be legally harvested, possessed, and/or sold by a licensed fisher during a given period of time, usually a calendar day. That amount may vary according to the type of license held and/or the species involved.

"Hinge width" means the distance between the convex apex of the right shell and the convex apex of the left shell.

"Husbandry" means any activity related to the cultivation and management of shellfish crops, including but not limited to grading, sorting, cleaning, or planting.

"Incapacity" means death of, or injury that renders an active licensed fisher unable to fish for a period in excess of fourteen (14) days either as a result of the physical loss of function or impairment of a body part or parts, or debilitating pain.

"Initial LCMA 2 LTA" means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in LCMA 2.

"Land" or "landing" means to offload marine species harvested within or outside of Rhode Island waters for sale or intended sale, or to secure a vessel with marine species on board to a shoreside facility where the marine species may be offloaded for sale or intended sale (R.I. Gen. Laws § 20-1-3).

"LCMA 2 lobster trap allocation" or "LTA" means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in LCMA 2.

"Licensed aquaculturist" means any person licensed by the State of Rhode Island to culture and possess shellfish, finfish, or aquatic plants pursuant to the provisions of R.I. Gen. Laws Chapter 20-10 and § 20-2-27.2.

"Licensed captain" means a person who holds or held a valid commercial fishing license issued by the Department.

"Licensed shellfisherman" means any person licensed by the State of Rhode Island to take and possess shellfish from Rhode Island waters pursuant to the provisions of R.I. Gen. Laws Chapter 20-6 and §§ 20-2-1, 20-2-20, or 20-2-28.1 and must possess the appropriate license when engaged in shellfishing activities.

"Licensed shellfish dealer" means any person engaged in bartering or trading in shellfish taken, cultured, or possessed by licensed shellfishermen, licensed aquaculturists, or other licensed shellfish dealers, or their authorized agents, and licensed by the State of Rhode Island under the provisions of R.I. Gen. Laws § 20-6-24, Chapter 21-14, Chapter 22-24, § 20-2-28.1, § 20-7-5.1, § 20-4-1.1, or Chapter 21.17.

"License year" means January 1 of any given year through December 31 of the same year.

"Lobster pot" means any pot designed or adapted principally for the catching or taking of lobsters or Jonah Crab.

"Lottery" means any of a variety of techniques to distribute licenses or permits when the demand for such licenses or permits exceeds the supply, such techniques having the common characteristics of being verifiably blind, random, fair and equitable.

"LTA transfer" means a change in ownership of a partial or entire Department or NOAA Fisheries-issued LTA by a person.

"LTA transferor" means the license or permit holder from whom an LTA transfer is made.

"LTA transferee" means the person or fishing vessel to whom/which an LTA transfer is made.

"Marine species" means any animal species found in the marine waters of Rhode Island, including but not limited to finfish, shellfish, crustaceans, and squid.

"Marine waters of Rhode Island" means all tidal and territorial waters of the state out to three (3) nautical miles from the coastline (R.I. Gen. Laws § 20-2.2-3).

"Material incapacitation" means a significant and verifiable event, involving either a medical condition or military service that reasonably prevented the license holder from meeting the actively fishing standard during the two calendar years preceding the sale of the license holder's vessel and gear. A short-term illness or injury, which cannot be reasonably construed to have prevented the license holder from meeting the actively fishing standard during the two-year period, does not constitute a material incapacitation.

"Mechanical power" means any source of energy or power other than exclusively human power.

"Mechanical refrigeration" means storage in a container that is approved by the Rhode Island Department of Health and capable of cooling to, and maintaining, an ambient temperature of 45°F or less.

"Medical hardship" means an applicant's significant medical condition that prevents them from meeting licensing application requirements.

"Near shore" or "shoreward" means that point or end of any net which is closest/nearest the coast or the closest coastal outcropping.

"Netting" means a meshed fabric which exceeds eight (8) feet in length or width including, but not be limited to seines, weirs, fyke nets, otter trawls, and gill nets.

"Non-resident" means a person who does not present proof of Rhode Island residency.

"Non-resident landowner" means a non-resident citizen of the United States and owner of real estate in Rhode Island as evidenced by deed filed in the Recorder of Deeds office in a Rhode Island town or city hall (R.I. Gen. Laws § 20-1-3).

"Obstructing the free passage of fish" means the blocking of a stream, river, or pond so as to impede the passage of anadromous and/or catadromous fish, e.g., shad, alewife, and the American eel.

"Offload" means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

"Offshore" means that point of any net which is the greatest distance from the coast.

"Open to the sea" means a coastal salt pond will be considered open to the sea if any flow of water connects coastal salt pond with the sea.

"Operational plan" means a written plan filed with CRMC and approved by DEM prior to its implementation, that includes at a minimum: description of the design and activities of the culture facility, specific site and boundaries, types and locations of structures (rafts, pens, tanks, etc.), species to be cultured, source of these organisms, 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.

"Original lobster trap tags" means those trap tags available for purchase to a RI commercial license holder or a Federal Limited Access Lobster Permit holder based on their lobster trap allocation, including an additional 10% over- allotment to allow for routine trap or tag losses.

"Overfishing" or "Overfished" means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

"Peck" means one fourth (1/4) of a bushel (R.I. Gen. Laws § 20-1-3).

"Permanently disabled" means a person who is 100% permanently disabled in accordance with R.I. Gen. Laws §§ 20-2-31 and 20-2.2-3.

"Person" means an individual, corporation, partnership, co-partnership, association, private or Municipal Corporation, or other legal entity firm (R.I. Gen. Laws §§ 20-1-3; 20-8.1-1).

"Place of business" means a building or office located in the State of Rhode Island where a licensed fish dealer maintains records of sales and purchases which are available for inspection by the Department during normal business hours.

"Point of sale" means the point in time and place where ownership of a given quantity of fish, shellfish, and/or crustaceans is transferred from a licensed fisher to a licensed dealer.

"Polluted area" means shellfish grounds underlying waters examined and found to be unfit for the taking of shellfish for human consumption declared by the Director as polluted areas pursuant to R.I. Gen. Laws § 20-8.1-3 and § 20-8.1-4. For the purposes

of any criminal or civil proceeding instituted under this chapter, a declaration by the Director shall be prima facie evidence of a polluted area (R.I. Gen. Laws § 20-8.1-1).

"Port" means any town or city with a harbor and docking facilities where vessels can land.

"Possession" means the exercise of dominion or control over the resource commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. The decision must be made at the first practical opportunity.

"Possession limit" means the maximum quantity of marine species that may be possessed by a vessel or person per specified period of time (i.e., day or week) regardless of the means by which the marine species may have been taken.

"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.

"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.

"Pot" or "Trap" means any stationary bottom-fishing contrivance or device made of wood, wire mesh, or plastic mesh, fished individually or linked by a common line and generally baited; used to catch finfish, crabs, conchs, or lobsters that enter through a conical or rectangular opening where escape is difficult.

"Power hauling" means the raising or moving of fishing implements including dredges, rakes, tongs, or other apparatus used to harvest marine organisms from the waters of the state or the underlying sediment.

"Qualifying period" means the three-year period from January 1, 2001 through December 31, 2003. For persons meeting the standards governing material incapacitation, the qualifying period means the entire two-year period from January 1, 1999 through December 31, 2000.

"Quart" means one thirty-second (1/32) of a bushel.

"Quota" means the maximum weight or number of marine species which can legally be landed within a stated time period.

"Replace" means to substitute an equivalent vessel in place of a vessel, and does not permit the vessel being replaced to continue to be employed in the taking of summer flounder.

"Reporting period" means the period of time between the dates where dealers must provide reports on their activities (i.e. if the reports are required on Monday and Thursday, the reporting periods are Friday, Saturday, Sunday, and Monday for period one and Tuesday, Wednesday, and Thursday for period two).

"Resident" means a person 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. Proof of residence may include a Rhode Island driver's license, automobile registration, voter registration card or a notarized statement from a City or Town Clerk (R.I. Gen. Laws § 20-1-3).

"Resubmerge" means strictly limited to reintroduction of shell stock into approved waters following the removal of such stock from approved waters for husbandry purposes.

"Routine trap tag loss" means the loss of lobster trap tags that does not exceed the 10% over-allotment trap tags issued for routine loss.

"Season" means a period of time established by regulation during which management rules specific to that period are in effect.

"Seine" means any net used to catch fish by encirclement or herding.

"Shading" means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat. Shading may be accomplished by any means that effectively protects the harvested shellfish from direct sunlight and prevents excessive heat build-up in the shaded area.

"Shellfish" means any molluscan species growing in Rhode Island tidal waters, including, but not limited to, bay quahaug, ocean quahaug, blue mussel, oyster, soft shell clam, bay scallop, and surf clam.

"Shellfish dredge" means a mechanical device that is towed behind a fishing vessel and whose purpose is to collect shellfish from the sea floor.

"Shellfish grounds" means all land underlying waters within the rise and fall of the tide and the marine limits of the jurisdiction of the State (R.I. Gen. Laws § 20-8.1-1).

"Shellfish harvest tagging area" means the marine waters of the state where shellfish are harvested (refer to <http://www.dem.ri.gov/programs/bnatres/fishwild/shelltag.htm>).

"Shellfish seed" means for bay quahaug, a shell size less than 20 mm (0.78") longest axis length; for oysters, a shell size less than 32 mm (1.25") longest axis length; and, for blue mussels (*Mytilus edulis*) any mussel that settled during the current calendar year.

"Shellfish seeding" means the introduction of shellfish spat or sub-legal juvenile animals into an area for purposes of increasing the population of shellfish in that area.

"Sink gillnet" means any bottom tending gillnet that is designed to be or is fished on or near the bottom of the water column by means of a weight line or enough weights and/or anchors that the bottom of the gillnet sinks to, on, or near the ocean bottom.

"Spat" means newly settled post-metamorphic bivalve.

"Spat collection" means the use of artificial apparatus (spat collectors) or cultch to attract or capture induce settlement of larval shellfish.

"Shoredigging" means the taking of shellfish from shallow areas or the intertidal zone of the waters of the State without the use of a boat or SCUBA gear and when body contact is made with the bottom substrate.

"Take" or "taking" means the process and each of the activities in that process undertaken to remove the resource from its natural habitat until the time at which possession begins.

"Temperature control" means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at 50 °F or less.

"Tongs" means any shellfishing implement constructed with heads attached to stales (handles) and pinned at a pivot point to allow the opening and closing of the basket mouth formed by the two.

"Total length" means the straight linear distance from the tip of the snout to the end of the tail of a finfish species. All finfish species minimum size are measured as total length, except for coastal sharks, in which minimum size is measured by fork length.

"Transaction records" means invoices or similar records of the purchase marine species by a licensed dealer, which identify the boat, license holder, the Rhode Island dealer name, and the date sold, species landed, pounds landed, name of the seller, and license number of the seller.

"Transfer" means to convey, pass, or remove something from one person, place, and/or vessel to another.

"Trawl devices" means any type of fishing apparatus drawn behind a vessel which consists of otter doors and/or ground cables, ropes, and/or netting -- this will apply to, but not be limited to beam trawls, otter trawls, Scottish seines, and pair trawls.

"Trip" means a fishing voyage beginning with the departure from any port and terminating with the return to any port regardless of the duration of time.

"Trip level data" means data reported to the detail of each individual fishing voyage.

"Unreasonable hardship" means substantial economic loss which is unique to a person, including but not limited to adverse medical or personal circumstances, and which has not been caused or exacerbated by prior actions of or inaction on the part of that person.

"V-notched female american lobster" means a V-notched female lobster means any female American lobster with a V-notch mark, or the remnant of a healed V-notch mark in the end part of the right tail flipper adjacent to the middle tail flipper, or any lobster which is mutilated in such a manner which could hide, obscure, or obliterate such a mark, including a missing right tail flipper. A V-notch shall be a notch or the remnant of a healed notch, with or without setal hairs, at least 1/8 inch (1/8") in depth. Any licensed/permitted commercial fisherman required or authorized to mark lobsters with a v-notch mark in LCMA 2 shall make a v-notch mark by means of a sharp-blade instrument, at least 1/4 inch (1/4") and not greater than 1/2 inch (1/2") in depth and tapering to a sharp point. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

"Vessel" means every description of watercraft, other than a seaplane on the water, used, or capable of being used as a means of transportation on water.

"Vessel declaration" means declaration of a vessel as a commercial fishing vessel with the Department as required herein.

"Vessel upgrade" means the acquisition by a licensed fisher of a vessel that is longer, of greater displacement, or increased horsepower relative to the vessel it is replacing.

"Water-assisted harvest" means the attempt to collect aquatic species by using a water pump or pressurized water, or device designed to disturb the substrate, create a vacuum effect or sediment displacement.

"Week" means a calendar week, or the period beginning on Sunday at 12:00AM and ending on 11:59PM of the immediately following Saturday.

"Weir" means a barrier of interwoven twine, branches, or other material used to catch fish.

"Wet storage" means 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.

"Wild shellfish stock" means natural shellfish resources that set and grow within the waters of the State and are not cultured in any way; however, cultured shellfish crops that are stocked in tidal waters of the State that are not within an aquaculture lease or facility are considered wild stock shellfish.

"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. Any shellfish that have settled naturally within an aquaculture facility are considered wild stock.

1.8 COMMONLY USED ACRONYMS

ACCSP: Atlantic Coastal Cooperative Statistics Program.

CRMC: Rhode Island Coastal Resources Management Council.

DEM or Department: Rhode Island Department of Environmental Management.

DFW or Division: The Division of Fish and Wildlife of the Department of Environmental Management.

DOH: Rhode Island Department of Health.

LCMA: Lobster Conservation Management Area.

LCMA 2: Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

LOA: Letter of Authorization.

LTA: Lobster trap allocation, either issued by the Department or NOAA Fisheries.

NOAA: National Oceanic and Atmospheric Administration.

RIMFC: the Rhode Island Marine Fisheries Council. (R.I. Gen. Laws § 20-10-2)

SAFIS: Standard Atlantic Fisheries Information System.

TAL: Total allowable landings.

1.9 COMMON SPECIES

Alewife: *Alosa pseudoharengus*.

American eel: *Anguilla rostrata*.

American lobster: *Homarus americanus*. (R.I. Gen. Laws § 20-1-3)

American plaice (Dab): *Hippoglossoides platessoides*.

Atlantic cod: *Gadus morhua*.

Atlantic menhaden: *Brevoortia tyrannus*.

Atlantic herring: *Clupea harengus*.

Atlantic Horseshoe Crab: *Limulus polyphemus*.

Basking shark: *Cetorhinus maximus*.

Bay quahaug: *Mercenaria*. (R.I. Gen. Laws § 20-1-3)

Bay scallop: *Argopecten irradians*. (R.I. Gen. Laws § 20-1-3)

Black sea bass: *Centropistes striatus*.

Blue crab: *Callinectes sapidus*. (R.I. Gen. Laws § 20-1-3)

Bluefish: *Pomatomus saltatrix*.

Blue mussel: *Mytilus edulis*. (R.I. Gen. Laws § 20-1-3)

Cancer Crab: *Cancer Borealis* (Jonah Crab) or *Cancer irroratus* (Atlantic Rock Crab).

Conch: Channeled Whelk - *Busycotypus canaliculatus*; or Knobbed Whelk - *Busycon carica*. (R.I. Gen. Laws § 20-1-3)

Dusky shark: *Carcharhinus obscurus*.

Goosefish (monkfish): *Lophius americanus*.

Green crab: *Carcinus maenas*. (R.I. Gen. Laws § 20-1-3)

Haddock: *Melanogrammus aeglefinus*.

Jonah crab: *Cancer borealis*.

Menhaden: *Brevoortia tyrannus*.

Ocean quahog: *Arctica islandica*. (R.I. Gen. Laws § 20-1-3)

Oyster: American oyster, *Crassostrea virginica* or European oyster, *Ostrea edulis*. (R.I. Gen. Laws § 20-1-3)

Pollock: *Pollachius virens*.

Rainbow smelt: *Osmerus mordax*.

Rock crab: *Cancer irroratus*.

Sand tiger shark: *Carcharias taurus*.

Scup: *Stenotomus chrysops*.

Sea scallop: *Placopecten magellanicus*. (R.I. Gen. Laws § 20-1-3)

Smelt: *Osmerus mordax*.

Soft-shelled clam: *Mya arenaria*. (R.I. Gen. Laws § 20-1-3)

Spiny dogfish: *Squalus acanthias*.

Striped bass: *Morone saxatilis*.

Summer flounder (fluke): *Paralichthys dentatus*.

Surf clam or sea clam: *Spisula solidissima*.

Tautog (blackfish): *Tautoga onitis*.

White Shark: *Archarodon carcharias*.

Winter flounder: *Pleuronectes americanus*.

Witch flounder (gray sole): *Glyptocephalus cynoglossus*.

Yellowtail flounder: *Limanda ferruginea*.

250-RICR-90-00-1

TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 - MARINE FISHERIES

SUBCHAPTER 00 - N/A

PART 1 - PART 1 – Definitions and General Provisions (250-RICR-90-00-1)

Type of Filing: Amendment

Effective Date: 10/16/2017

Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.