

State of Rhode Island and Providence Plantations
Department of Environmental Management

**NOTICE OF THE PUBLICATION OF A PROPOSED
DIRECT FINAL RULE**

Rules and Regulations Governing the Taking, Possession, Holding, Bartering and Trading of Shellfish (ERLID # 588)

Pursuant to the provisions of Chapters 2-10-3.1, 42-17.1, 42-17.2 and 42-17.6 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws of 1956, as amended, and specifically Section 42-35-2.11 of the amended Administrative Procedures Act, the Director of the Department of Environmental Management (the "Department" or "DEM") hereby proposes to file a Direct Final Rule pursuant to Section 42-35-2.11 of the General Laws of 1956, as amended. The Director believes that this proposed action is noncontroversial and anticipates that no objections will be received to the proposed repeal of the *Rules and Regulations Governing the Taking, Possession, Holding, Bartering and Trading of Shellfish*. This regulation was recently merged into the *Rhode Island Marine Fisheries Regulations Part 7-Dealers*. Failure to repeal the instant regulation would result in duplicative regulations remaining in effect. Thus, consistent with the Governor's mandate to repeal unnecessary regulations, the Department proposes the repeal of the subject regulations.

Pursuant to the requirements of Section 42-35-2.6 and 42-35-2.7 of the Rhode Island General Laws, DEM has made the following determinations: DEM has considered alternative approaches to the proposed dismissal and has determined that there is no alternative approach among the alternatives considered that would be as effective and less burdensome.

A copy of the subject regulations will be available for examination from August 11, 2017 through September 10, 2017 by mail or at the Office of Customer and Technical Assistance at 235 Promenade Street, Providence, RI 02908, weekdays from 8:30 - 4:00 PM or by calling the Office at (401) 222-6800. Electronic copies of the proposed regulations to be repealed will also be available on the DEM website.

DEM encourages the submission of written objections to the proposed repeal of the *Rules and Regulations Governing the Taking, Possession, Holding, Bartering and Trading of Shellfish* (ERLID # 588), via a Direct Final Rule pursuant to Section 42-35-2.11 of the General Laws of 1956, as amended. If no objection is received on or before September 10, 2017, DEM will file the repeal without opportunity for public comment. All written objections should be sent to the Department at the Division of Law Enforcement located at 235 Promenade Street, Providence, RI 02908 or via e-mail to jennifer.ogren@dem.ri.gov and must be received no later than 11:59 PM on **September 10, 2017**.

Janet L. Coit
Director, Department of Environmental Management

Posted

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Division of Law Enforcement**

Rules and Regulations

**GOVERNING THE TAKING, POSSESSION, HOLDING,
BARTERING AND TRADING OF SHELLFISH**



June 19, 2000

Regulation Short Title:

Shellfish Buyer Regulations

AUTHORITY: These regulations are adopted pursuant to Chapters 42-35, 20-1-4, 20-6-24, and of the Rhode Island General Laws of 1956, as amended.

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF LAW ENFORCEMENT

RULES AND REGULATIONS GOVERNING TAKING,
POSSESSION, HOLDING, BARTERING AND TRADING
OF SHELLFISH

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

1.01“LICENSED SHELLFISH BUYER” shall mean any person, partnership, firm, association or corporation engaged in bartering or trading in shellfish taken or possessed by licensed shellfisherman or other licensed shellfish buyers and licensed under the provisions of RIGL, section 20-6-24, or their authorized agents.

1.02 “LICENSED SHELLFISHERMAN” shall mean any person licensed to take and possess shellfish from Rhode Island waters pursuant to the provisions of RIGL chapter 20-6 section 20-2-1 20-2-20 or 20-2-28.1.

1.03 “SHELLFISH” shall include but not be limited to Bay Quahaugs, Ocean Quahaugs, Blue Mussel, Oyster, Soft shell Clam, Surf or Sea Clam.

2.00 LICENSED SHELLFISHERMAN

2.01 No person may possess or take shellfish from the waters of the State of Rhode Island for resale or trade unless:

- a) such person is a resident of Rhode Island, and
- b) such person completes and submits an application for a commercial shellfish license or multi-purpose commercial fishing license as the Director may require. Specimens of such forms are appended to these rules and made part hereof by reference (Addendum A), and
- c) such person while taking or possessing shellfish from Rhode Island waters has on his person a valid, legally obtained, plastic “credit card” type, shellfishing or multi-purpose commercial fishing license (hereafter collectively referred to as “shellfish license” issued by the Department of Environmental Management.

2.02 The shellfish license shall contain the following information:

- a) First name, middle initial, and last name of licensed shellfisherman
- b) Date of birth of licensed shellfisherman
- c) Social security number and license number of licensed shellfisherman
- d) Signature of licensed shellfisherman

2.03 A licensed shellfisherman shall only sell, barter, or trade shellfish taken from Rhode Island waters to a licensed shellfish buyer.

2.04 A licensed shellfisherman shall not sell, deliver, or otherwise transfer shellfish taken from Rhode Island waters to a licensed buyer without first presenting said buyer, a valid shellfishing license issued by the Department of Environmental Management.

3.00 LICENSED SHELLFISH BUYERS

3.01 No person, partnership, firm, association, or corporation shall barter or trade in shellfish in Rhode Island unless such person partnership, firm, association, or corporation shall first obtain from the Department of Environmental Management a shellfish buyer's license.

- a) This rule shall not apply to persons, firms, associations, or corporations engaged solely in the business of selling such shellfish directly to the consumer and/or engaged solely in the processing or preparation of such shellfish for sale directly to the consumer, provided that such business purchases shellfish from licensed shellfish buyers.
- b) Out –of –State shellfish buyers, dealers, or other such businesses may purchase or trade in Rhode Island shellfish without a shellfish buyer's license, provided that such business appears on the United States public Health Service, Food and Drug Administration list of state certified shippers, such business purchases Rhode Island shellfish from licensed shellfish buyers only, and such business complies with the provisions of these rules relating to such transactions.
- c) These rules shall not apply to persons buying Surf Clams or Ocean Quahaugs for use as bait.

3.02 An applicant for a shellfish buyer's license shall complete such forms containing such information as the Department of Environmental Management may require. Such forms are appended to these rules and are made a part hereof by reference (Addendum B)

3.03 A licensed shellfish buyer shall only purchase, barter, or trade in shellfish taken from Rhode Island water from licensed shellfisherman or other licensed shellfish buyers.

3.04 A licensed shellfish buyer shall only purchase, barter, trade, or otherwise obtain shellfish taken from other than Rhode Island waters from a dealer whose shellfish business appears on the United States Public Health Service, Food and Drug Administration list of state certified shellfish shippers and which are tagged in compliance with Rhode Island Department of Health regulations.

4.00 BARTERING AND TRADING IN SHELLFISH

4.01 A licensed shellfish buyer may not purchase or accept any shellfish from a shellfishermen, or may not sell or transfer shellfish to another licensed shellfish buyer without having first being presented with a license issued by the Department of Environmental Management to said shellfishermen

4.02 A licensed shellfish buyer shall maintain a license card printing machine and utilize said machine in all transactions covered by these rules involving shellfish. The metal identification plate used in said card printing machine shall contain the following information:

- a) name and address of shellfish buyer
- b) license number of shellfish buyer
- c) employer identification number of shellfish buyer.

4.03 Each transaction between any licensed shellfisherman and licensed shellfish buyer must be validate by the buyer receiving the shellfish through the use of a 2- part transaction form to be used on a credit card type imprinting machine including the following information:

- a) The following information shall be imprinted on the transaction form by the use of the card printing machine containing the licensed shellfish buyer's identification plate required in rule 4.02 and the shellfishermen's card type license
 - 1) first name, middle initial, last name of licensed shellfish-seller
 - 2) date of birth of licensed shellfisherman-seller
 - 3) license number of licensed shellfisherman-seller

- 4) name and address of licensed shellfish buyer
- 5) license number of shellfish buy
- 6) employer identification number
- b) The following information shall be reported on the transaction forms by the licensed shellfish buyer:
 - 1) area of Rhode Island waters from which shellfish were obtained by licensed shellfisherman as designated in Addendum D
 - 2) quantity of shellfish
 - 3) type of shellfish
 - 4) purchase price of shellfish
 - 5) date and time of transaction
- c) signature of shellfisherman- seller

5.00 HANDLING OF SHELLFISH

5.01 All licensed shellfish buyers are prohibited from mixing or comingling shellfish taken from Rhode Island water with shellfish taken from other waters.

5.02 Shellfish purchased or acquired by a licensed shellfish buyer may be separately sorted by type, size, or other basis.

5.03 The shellfish buyer shall tag each bag or container of shellfish to be resold, or otherwise transferred, with a label identifying such shellfish by the state from whose waters said shellfish were harvested and license of shellfish buyer. A tag issued or approved by the Rhode Island Department of Health shall be acceptable under this rule, provided it contains the information required by this rule.

6.0 FALSE STATEMENTS

No licensed shellfisherman or licensed shellfish buyer, or his agent shall make any false statement, misrepresentation or alteration of any statement on the forms required by these rules.

7.0 INSPECTION OF SHELLFISH BUYER'S BUSINESS

The Director or his agents may enter and inspect the business premises, appurtenance structures, or vehicles and vessels of a shellfish buyer to determine compliance with the provisions of G.L. 20-6-24, these rules, or any order issued by the Director, and no person shall interfere with such entrance and inspection

8.0 DENIAL, SUSPENSION OR REVOCATION OF LICENSE

8.01

In addition of other penalties provided by law or other rule or regulation, any licensed shellfisherman or licensed shellfish buyer who violates the provision of G.L. 20-6-24, or these rules, or an order issued by the Director shall be subject to suspension, revocation or denial of his license in accordance with RIGL sections 20-2- 13 and 42-17.1-2(s).

8.02 PENALTIES

- a) First violation, up to six (6) months suspension of license
- b) Second violation, revocation of license

8.03.1 The Department of Environmental Management may deny renewal of shellfisherman or shellfish buyers license for violation of the provisions of G.L. section 20-6-24, these rules or any order issued by the Director during a prior license period.

8.04 The Department of Environmental Management may suspend, revoke or deny issuance of a shellfish buyer's license to any person, firm, association or corporation which is managed by or has a

principal, shareholder, creditor, or employee, a person who was or is a shellfish buyer, partner manager, principal or shareholder of a shellfish buyer whose license at the time of application is subject to suspension, revocation or denial by the Department of Environmental Management.

9.00 OTHER REQUIRMENTS

Persons subject to these rules are also responsible for complying with other applicable state, local and federal laws, including Rhode Island Department of Health laws and regulations relating to shellfish businesses.

10.0 SEVERABILTY

If any section or provision of these rules and regulations is held invalid by a court of competent jurisdiction, the remaining sections of provisions of these rules and regulations shall not be affected thereby.

PREPARED