STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS
Part IV
Shellfish

Annotated

~~December 17, 2012~~

AUTHORITY: These regulations are adopted 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 Rhode Island General Laws of 1956, as amended.

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RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

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.

AUTHORITY

These regulations are adopted 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 Rhode Island General Laws of 1956, as amended.

ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to modify existing regulations in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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.

DEFINITIONS

See Rhode Island Marine Statutes and Regulations, Part I, '1.3.

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.

SUPERSEDED RULES AND REGULATIONS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previous rules and regulations, and any policies regarding the administration and enforcement of **Part IV** shall be superseded.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.

R.I. Marine Fisheries Statutes and Regulations
PART IV - SHELLFISH

4.1 Licenses --

4.1.1 Commercial Licenses – see "*Commercial and Recreational Saltwater Fishing Licensing Regulations*"

4.1.2 Residents Recreational Harvest -- Residents are not required to obtain a license for the harvest of shellfish provided they do not exceed the non-commercial (resident's) daily catch limit and provided that such shellfish shall not be offered for sale. RIMF REGULATION [Penalty - Part 6.6 (RIGL 20-6-9)]
ref (RIGL 20-6-1)

4.1.3 Non-resident Recreational Licenses:

(a) Season - Every non-resident over the age of twelve (12) years may obtain a non-resident, non-commercial annual shellfish license for a fee of two hundred dollars ($200).

(b) 14-day - A non-resident may obtain one non-commercial limited license per calendar year covering fourteen (14) days including the date of issue, for eleven dollars ($11).

(c) Non-resident landowner - A non-resident landowner, as defined in RIGL § 20-1-3(a)(3), who owns residential real estate in Rhode Island assessed for taxation at a valuation of not less than thirty thousand dollars ($30,000) may, with proof of residential property ownership in the form of a current tax bill from a town or city hall showing that the non-resident landowner is current in his or her property tax obligation, obtain an annual, non-commercial, non-resident shellfish license for a fee of twenty-five dollars ($25).
(RIGL§ 20-2-22)

4.1.4 Shellfish Dredging License - Fees: A resident of this State shall pay an annual fee of two hundred dollars ($200) for a license to take quahaugs, mussels, and surf clams by dredges hauled by power boat.
(RIGL §20-2.1-5 (2) *(ii)(A)*

4.1.5 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 legal resident of Rhode Island, and
(b) such person completes and submits an application for a commercial shellfish license as the Director may require, and

(c) such person while taking or possessing shellfish from Rhode Island waters has on his person a valid, legally obtained, shellfish license issued by the Department of Environmental Management. [RIMF REGULATIONS]

4.1.6 A commercially licensed person in a fishery shall only sell, barter, or trade shellfish taken from Rhode Island waters to a licensed shellfish dealer or multipurpose dealer. [RIMF REGULATION]

4.1.7 A commercially licensed person in a fishery shall not sell, deliver, or otherwise transfer shellfish taken from Rhode Island waters to a licensed shellfish or multipurpose dealer without first presenting said dealer, a valid shellfish license issued by the Department of Environmental Management. [RIMF REGULATION]

4.2 Night Shellfishing Prohibited -- Penalty for Taking Shellfish at Night. -- Notwithstanding the provisions of any general or public law to the contrary, any person who takes any oysters, clams, quahaugs, scallops, or mussels from any of the waters of this state during the hours between sundown and sunrise shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment not exceeding three (3) years or by both; and any boat, dredges, rakes, or other equipment used in this violation shall be forfeited to the State. (RIGL 20-6-23)

4.3 Statewide Catch Limits -- (Daily Take)
Quahaugs, Soft-shell Clams, Sea Clams, Bay Scallops, Mussels, and Oysters Except in Management Areas

4.3.1 Resident Limit - No License Required. -- Unless otherwise specified in Department Regulations, any resident of this State may without a license, take in any one (1) day during the open season, if applicable, not more than one half (1/2) bushel each of quahaugs, soft-shell clams, sea clams, oysters, and mussels, and not more than one (1) bushel of scallops; provided that those quahaugs, soft-shell clams, sea clams, oysters, mussels, or scallops shall not be sold or offered for sale. (RIGL 20-6-1) [Penalty - Part 4.7; (RIGL 20-6-9)]

4.3.2 Commercial Limit - License Required. -- Unless otherwise specified by Department Regulations, a holder of a commercial shellfishing license may take and/or possess, in any one (1) day, up to twelve (12) bushels of [*bay*] quahaugs, twelve (12) bushels of soft-shell clams, and three (3) bushels of oysters. RIGL 20-6-10(a). **Commercially licensed persons may take and/or possess up to 200 bushels of surf clams, or 26 cages (832 bushels) of ocean quahaugs, in any one day (midnight to midnight) (RIMF REGULATION) [Penalty - Part 3.3, Part 4.4; RIGL 20-1-16)]**

4.3.3 Non-resident Limit - Licensed Individuals Only. -- A holder of a non-resident shellfishing license may take in any one (1) day not more than one (1) peck each of oysters, quahaugs, soft-shell clams, surf clams, or mussels. Any person taking more than these allowances in any one (1) day shall be fined upon conviction, one hundred dollars ($100) for each bushel or part of a bushel exceeding the prescribed quantity or be imprisoned for not exceeding thirty days, or both. [RIGL 20-6-10(b)]

4.4 Allowance of Shellfish Taking Under License. --

(a) Unless otherwise specified by Department Regulations, a holder of a commercial shellfishing license may take and/or possess, in any one (1) day, up to twelve (12) bushels of quahaugs, twelve (12) bushels of soft-shell clams, and three (3) bushels of oysters. **Commercially licensed persons may take up to 200 bushels of surf clams in one day. (RIMF REGULATION) [Penalty - Part 3.3, Part 4.4; RIGL (20-1-16)]**

(b) A holder of a non-resident shellfishing license may take in any one (1) day not more than one (1) peck each of oysters, quahaugs, soft-shell clams, or mussels. Any person taking more than these allowances in any one (1) day shall be fined upon conviction one hundred dollars ($100) for each bushel or part of a bushel exceeding the prescribed quantity or be imprisoned for not exceeding thirty days, or both.
(RIGL 20-6-10)

4.5 Method of Harvest -- No person shall take any oysters, bay quahaugs, or soft-shell clams from the waters of this State by dredge(s), rakes, or other apparatus operated by mechanical power or hauled by power boats unless authorized pursuant to Section 10.3.1.
RIMF REGULATION) [Penalty - Part 3.3 (RIGL (20-1-16)]

4.6 Soft-shell Clams -- Method of Taking. -- No person, either as principal, agent, or employee, shall dig or take by any method other than by forks, rakes, hoes, tongs, or any other device operated by hand, from any of the waters of this State, any soft-shell clam. Any violation of the provisions of this Section shall be punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50). (RIGL 20-6-15)

4.7 Penalty for Exceeding Allowance Without License. -- Every person who shall take in any one (1) day more than one half (1/2) bushel each of oysters, bay quahaugs, soft-shell clams, surf clams, or mussels from the free and common fisheries of this state, without a license, shall be fined, upon conviction, not exceeding fifty dollars ($50) and costs for each one half (1/2) bushel or fraction thereof above the stated limits or be imprisoned not exceeding thirty (30) days, or both. (RIGL 20-6-9)

4.8 Shellfish Management Areas - Catch Limits for Quahaugs, Soft-shell Clams, Sea Clams, Mussels, and Oysters. – Bristol Harbor Shellfish Transplant Area, Potter Pond, Pt. Judith Pond, Ninigret (Charlestown) Pond, Quonochontaug Pond, Winnapaug (Brightman) Pond, Potowomut, Greenwich Bay, Conimicut Point, Mill Gut, Kickemuit River, Bissel Cove, High Banks, Sakonnet River, and Jenny's Creek have been declared special Shellfish Management Areas. Each of the above referenced areas shall continue to enjoy the designation as a Shellfish Management Area unless modified by the Director.

No person may possess more than the maximum shellfish management area daily catch limit while in a management area. The following daily catch limits have been established for the Management Areas listed above. Note: Conimicut Point Shellfish Management Area has different possession limits, see specific regulations in section 4.11.1.

Quahaugs, Soft-shell Clams, Sea Clams, Mussels, and Oysters*

Maximum Daily Take by:

BOAT HARVEST:

R.I. Resident (no sale)	**1 peck each/day/person**
Commercial (in season)	**3 bu each/day/license holder maximum of 6 bushels each/boat/day; and maximum of two licensed shellfishers per boat**
Licensed Non-Resident (no sale)	**½ peck each/day/license holder**
*** Oyster season is open from September 15 to May 15 annually.** **(Note: The harvest and possession of oysters in Quonochontaug Pond is prohibited from September 15, 2010 to September 15, 2013. See section 4.12.3. The harvest and possession of oysters in Bissel Cove/Fox Island is prohibited from September 15, 2010 to September 15, 2015. See section 4.12.6)**	

SHORE DIGGING:

This maximum daily catch limit for shoredigging of soft shell clams, bay quahaugs, mussels, and oysters [in season] is:

R.I. Resident (no sale)	**1 peck each/day/person**
Commercial (in season)	**3 bu each/day/license holder [Exception: In the Greenwich Bay Management Area, the limit is 3 bu/day/license holder whenever sub-area 1 is open to boat harvest, but 1 peck/day/license holder whenever sub-area 1 is not open to boat harvest]**
Licensed Non-Resident (no sale)	**½ peck each/day/license holder**
*** Oyster season is open from September 15 to May 15 annually.** **(Note: The harvest of possession oysters in Quonochontaug Pond is prohibited from September 15, 2010 to September 15, 2013. See section 4.12.3. The harvest and possession of oysters in Bissel Cove/Fox Island is prohibited from September 15, 2010 to September 15, 2015. See section 4.12.6)**	

Daily catch limits apply to all Management Areas unless otherwise specified.

The use of diving apparatus is prohibited while shoredigging.

(RIMF REGULATION) [Penalty – Part 3.3; (RIGL (20-1-16)]

4.8.1 Tagging/Labeling Requirements – All shellfish taken by licensed commercial fishers of shellfish from Shellfish Management Areas must be in a container which is tagged and labeled with the fisher's name, license number, date, and management area from which shellfish was removed prior to any of the following:

- **leaving the waters of the management area which has been approved for the harvest of shellfish by the Rhode Island Department of Environmental Management.**
- **shellfish are removed from the boat; or**
- **shellfish are offered for sale.**

(RIMF REGULATION) [Penalty - Part 3.3 (RIGL 20-3-3)]

4.9 Temporary Shellfish Limit -- The Department may establish a reduced shellfish limit in any Marine Life Management Area for a period not to exceed sixty (60) days. The following reduced limit shall apply in any area so designated:

Quahaugs, Soft-shell Clams, Sea Clams, and Oysters
Reduced Maximum Daily Take for Marine Life Management Areas

R.I. Resident (no sale)	**1 peck each/day/person**
Commercial	**1 bu each/day/license holder**
Licensed Non-Resident (no sale)	**½ peck each/day/license holder**

(RIMF REGULATION) [Penalty - Part 4.4 or 4.7 (RIGL 20-6-9 or 20-6-10)]

4.10 Greenwich Bay Shellfish Management Area

4.10.1 The conditionally approved waters of Greenwich Bay are established as a Shellfish Management Area. This area is defined as west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.

4.10.2 Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.10.3 SHORE DIGGING: will be permitted between sunrise and sunset daily.

BOAT HARVEST:

4.10.4 Greenwich Bay Sub-Areas 1 and 2

The areas shall be subject to an annual December harvest schedule established by the Director, pursuant to recommendations developed by the Division of Fish and Wildlife and the Marine Fisheries Council. Said recommendations shall be submitted to the Director at least sixty (60) days prior to the first scheduled opening. The December schedule may include up to forty-eight (48) hours of permitted shellfishing, spread over any number of days during the month, excepting December 25.

If weather or water quality conditions during the month of December prevent the area from opening on two or more scheduled days, the Division of Fish and Wildlife may modify the December schedule to allow for additional hours or days of permitted shellfishing, provided:

1. **the proposed modification(s) is/are submitted in writing to the Division of Fish and Wildlife by a member of the Marine Fisheries Council,**

appointed by the Marine Fisheries Council, who shall represent the interests of the commercial shellfishing industry, including harvesters and dealers, regarding the proposed modification(s);

2. **the total number of hours of permitted shellfishing for the month does not exceed forty-eight (48) hours; and**
3. **the re-scheduled hours or days are announced publicly by the Division of Fish and Wildlife with at least seventy-two (72) hours of advance notice.**

(a.) <u>GB Sub-Area 1</u> – Described as the waters east of a line between the Rhode Island Department of Environmental Management range marker located at the end of Neptune Street in Chepiwanoxet to the Rhode Island Department of Environmental Management range maker located on Cedar Tree Point, Warwick, and north of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods.

(b) <u>GB Sub-Area 2</u> – Described as the waters west of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods; and south of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods

<u>Winter Shellfish Harvest Schedule for Western Greenwich Bay (both GB Sub-Area 1 and GB Sub-Area 2):</u>

<u>For December 2012</u> – In accordance with D.E.M. Office of Water Resources, "<u>Shellfish Grounds, Closures and Approved Areas</u>" document dated May 2012, GB Sub Area 1 and GB Sub Area 2 are closed to shellfishing beginning sunrise on December 1 through sunrise of January 1.

<u>From January 1, 2013 through April 30, 2013</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) <u>Default harvest schedules for GB Sub-Areas 1 & 2</u> – If no action is taken to establish specific harvest schedules and/or closures for the December through April harvest season, and harvest seasons subsequent thereto, the sub-areas shall revert to the following default harvest schedule:

> **Shellfishing from a boat will be permitted only between 8:00 A.M. and 10:00 A.M. on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.**

(d.) <u>GB Area 3</u> – Described as the waters east of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods, and west

of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.

GB Sub-Area 3 is open to shellfishing from a boat between sunrise and sunset daily on an annual basis.

4.11 Sakonnet River Shellfish Management Area - The following special regulations apply in the Management Area: In the Sakonnet River Shellfish Management Area, the daily take for licensed dredge boats will be limited to 200 bushels of surf clams. A by-catch of bay quahaugs will be permitted. It shall be calculated at the rate of one bushel of bay quahaugs for each ten (10) bushels of surf clams in possession of the harvester. Total by-catch of bay quahaugs shall not exceed twelve (12) bushels per vessel. (RIMF REGULATION) [Penalty Part 3.3; (RIGL 20-3-3)]

4.11.1 Conimicut Point Shellfish Management Area

4.11.1-1 Certain waters adjacent to Conimicut Point are established as a Shellfish Management Area. This area is defined as south of a line running from the pole (Latitude: 41° 43' 2.93" North, Longitude: 71° 21' 27.68" West) on Conimicut Point to the center of the Old Tower at Nayatt Point; and north of a line from the western most extension of Samuel Gorton Avenue, Warwick and the southern most extension of Bay Road, Barrington.

4.11.1-2 Shellfish harvesting in Conimicut Point Shellfish Management Area will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations.

4.11.1-3 In the Conimicut Point Shellfish Management Area, the daily commercial possession limit shall be three (3) bushels of soft-shell clams per day per license holder and a maximum of six (6) bushels per day per vessel with a maximum of two commercially licensed shellfishers per boat. The daily recreational possession limit for RI residents shall be one (1) peck of soft-shell clams per day, and the possession limit for licensed recreational non-residents shall be one-half (1/2) peck of soft-shell clams per day.

4.11.1-4 The daily catch limits for shellfish species, other than soft-shell clams, shall be the statewide limits as provided by these regulations, not those applicable to management areas.

4.12 Shellfish Management Areas Closed to Shellfishing (also see: Areas Closed Due to Pollution).

4.12.1 Mill Gut

4.12.1-1 **Mill Gut in Bristol is closed in its entirety until further notice, with the exception that between sunrise the second Wednesday in December and sunset, April 30 annually the area will be open for the harvesting of quahaugs, soft-shell clams, mussels, and oysters in accordance with the catch limits set forth in section 4.8.**

4.12.2 Winnapaug (Brightman) Pond

4.12.2-1 **The following area in Winnapaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net only: the area north of a line running easterly from a special DEM marker at Big Rock Point (N 41 degrees 19 minutes 49.0 seconds, W 71 degrees 47 minutes 57.0 seconds), to the special DEM marker at the southern end of Larkin's Island (N 41 degrees 19 minutes 55.0 seconds, W 71 degrees 47 minutes 5.0 seconds),. The area will be bordered on the east by a line running northwesterly the Larkin's Island special marker to a special DEM marker adjacent to the end of Bayside Avenue (N 41 degrees 19 minutes 58.0 seconds, W 71 degrees 47 minutes 9.0 seconds). The northern boundary is the shoreline between the Bayside Ave special DEM marker and the Big Rock Point special DEM marker.**

4.12.3 Quonochontaug Pond

4.12.3-1 **The harvest and possession of oysters in Quonochontaug Pond is prohibited from September 15, 2010 to September 15, 2013 (for three years).**

4.12.3-2 **The following areas in Quonochontaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net only:**

(a) The western closure area is defined as south of a line running easterly from the special DEM marker at the end of Quahaug Point (N 41 degrees 20 minutes 0.0 seconds, W 71 degrees 44 minutes 39.5 seconds), to a second special DEM marker at the northern end of Nope's Island (N 41 degrees 20 minutes 5.0 seconds, W 71 degrees 44 minutes 1.0 second). The area will be bordered on the west by a line running south from Quahaug Point to a special DEM marker located on the barrier beach shoreline (N 41 degrees 19 minutes 51.5 seconds, W 71 degrees 44 minutes 40.0 seconds). The southern boundary will be the shoreline between the barrier beach special DEM marker and Nope's Island special DEM marker.

(b) The eastern closure area is defined as east of a line running southerly from the special DEM marker located at N 41 degrees 21 minutes 1.1 seconds W 71 degrees 42 minutes 33.4 seconds, to a second special DEM marker located at N 41 degrees 20 minutes 41.0 seconds W 71 degrees 42

minutes 44.1 seconds; and bound by the eastern pond shoreline between the special DEM markers.

(RIMF REGULATION) [Penalty Part 3.3; (RIGL 20-3-3)]

4.12.4 Ninigret Pond

4.12.4-1 The following area within Ninigret Pond in Charlestown will be closed to all shellfishing except for the harvest of bay scallops by dip net only: all waters within an area formed by the following points: from ("A" N 41 degrees 20 minutes 41.7 seconds W 71 degrees 41 minutes 24.3 seconds, the northeast corner of the Ninigret Conservation Area parking lot) following the shoreline to ("B" N 41 degrees 20 minutes 49.6 seconds W 71 degrees 41 minutes 4.6 seconds, a DEM sign approximately 500 meters eastward of "A"); from "B" northward to ("C" N 41 degrees 21 minutes 31.0 seconds W 71 degrees 41 minutes 22.2 seconds, the Lavin's Landing Marina launching ramp); from "C" following the shoreline to ("D" N 41 degrees 21 minutes 10.1 seconds W 71 degrees 41 minutes 40.9 seconds, a DEM sign on the westernmost end of Reeds Point); from "D" southward to "A".

4.12.5 Potter Pond

4.12.5-1 The following area within Potter Pond in South Kingstown will be closed to all shellfishing except for the harvest of bay scallops by dip net only: An area within Sycamore Cove defined as north of a line running easterly from a special DEM marker located at N 41 degrees 23 minutes 2.0 seconds, W 71 degrees 32 minutes 13.0 seconds; to a second special DEM marker located at N 41 degrees 23 minutes 1.0 second, W 71 degrees 31 minutes 59.5 seconds; and bound by the northern pond shoreline between the special DEM markers.

4.12.6 Bissel Cove/Fox Island Oyster Harvest Moratorium –

4.12.6-1 The harvest and possession of oysters in the Bissel Cove/Fox Island Shellfish Management Area is prohibited from September 15, 2010 to September 15, 2015 (for five years).

(RIMF REGULATION) [Penalty - Part 4.4 or 4.7; (RIGL 20-6-9 or 20-6-10)]

4.13 repealed 12/2001

4.14 Transfer of Shellfish from Uncertified Waters. --The Director of Environmental Management is authorized and directed, after requiring all necessary safeguards, to transfer shellfish from uncertified waters of the State to approved areas. The Director may make rules and regulations governing the reharvest of those shellfish to the best economical

benefit of the state after all necessary safeguards to insure their cleanliness. (RIGL 20-6-26) [Penalty - Part 4.17; RIGL 20-6-29]

4.15 Dredging, Raking, and Tonging in Transplant Beds. -- Those areas to which the shellfish are transferred shall be marked out, and dredging, raking, or tonging on them shall be prohibited except under the special direction of the Director. (RIGL 20-6-27) [Penalty - Part 4.17; 20-6-29]

4.16 Cost of Transfer of Shellfish -- For the transfer of shellfish pursuant to § 20-6-26, the Director is authorized to hire dredge boats or hand rakers and to set the rate of payment. Any transferred shellfish may be sold by the Director, and the proceeds of that sale shall be retained under the control of the Director for the purpose of assisting in the cost of the transfer of shellfish from uncertified waters to approved areas from time to time as the transfer becomes necessary or expedient. (RIGL 20-6-28) [Penalty - Part 4.17; (20-6-29)]

4.17 Penalty for Improper Taking of Transferred Shellfish -- Any person violating rules or regulations promulgated by the Director of Environmental Management as provided for in Sections 20-6-26 to 20-6-28, shall, upon conviction, be subject to a fine not exceeding five hundred dollars ($500) or imprisoned not exceeding thirty (30) days or both. (RIGL 20-6-29)

4.18 Shellfish Grounds - Polluted Area. -- For a discussion of the statutes and penalty provisions governing shellfishing in polluted areas, refer to Chapter 20-8-1, as amended, of the Rhode Island General Laws.

4.19 [*Repealed 11/20/02*]

4.20 Surf Clams and Ocean Quahaugs.

4.20.1 Gear Restrictions The following gear restrictions shall apply to vessels fishing in the territorial waters of Rhode Island for surf clams:

4.20.1-1 It is unlawful for any vessel to operate with any hydraulic dredge with a blade, knife, or manifold which is greater than 48 inches in maximum width.
4.20.1-2 It is unlawful for any vessel to operate more than one dredge while harvesting surf clams.

4.20.2 Trip Limits The following limits shall apply to vessels fishing in the territorial waters of Rhode Island:

4.20.2-1 It is unlawful for any dredge vessel to take and/or possess more than 200 bushels of surf clams per vessel.

4.20.2-2 Except as allowed in Part 6.8.3, it is unlawful for any vessel to catch, harvest, possess, have on board, land, or off load, any surf clams which are less than 5 inches in the longest shell diameter.
4.20.2-3 Vessels properly licensed to do so may land surf clams and ocean quahaugs legally taken outside the territorial waters of Rhode Island in excess of the trip limit established by Part 4.20.2-1, provided that no vessel engaged in fishing for surf clams or ocean quahaugs within territorial waters may possess or have on board more than the prescribed limit.
4.20.2-4 It is unlawful for any dredge vessel to take and/or possess more than 26 cages (832 bushels) of ocean quahaugs.

(RIMF REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

MINIMUM SIZES FOR SHELLFISH

4.21 Minimum Size of Quahaugs, Soft-Shell Clams, Mussels --
No person shall take or have in his custody or possession quahaugs of less than one inch (1") shell thickness (hinge width). For purposes of this regulation, hinge width is defined as the distance between the convex apex of the right shell and convex apex of the left shell. ref (20-6-11) (RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

(a) No person shall take and/or possess any quahogs less than one inch (1") shell thickness (hinge width). In addition, no person shall take and/or possess soft-shell clams, taken from the free and common soft-shell clam fisheries, of a diameter less than two inches (2”) taking the maximum shell diameter, or any oysters, taken from the free and common oyster fisheries, measuring less than three inches (3") measured parallel to the long axis of the oyster, unless greater minimum sizes are established by the director, in consultation with the marine fisheries council. Any person who takes and/or possesses shellfish of less than the minimum size, as delineated above, upon conviction, shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each and every fifteen (15) shellfish taken. Additionally, any person who takes and/or possesses shellfish of less than the minimum size commingled and/or otherwise stored or contained with shellfish of not less than the minimum size, where the percentage of the less than minimum size shellfish is not less than ten percent (10%) of the total piece count of the commingled and/or otherwise stored or contained package, shipment, or container, shall be subject to seizure and/or forfeiture of the entire commingled and/or otherwise stored or contained package, shipment, or container, in accordance with the provisions of §§ 20-1-8(e) and (f) and 20-1-8.1.

Oysters - Minimum Size -- Three (3) inches measured parallel to the long axis of

the oyster. ref (20-6-11) (RIMF REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

Sea Clams (Surf Clams) Minimum Size -- Five (5) inches measured parallel to the long axis of the clam. (RIMF REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

Scallops -- Taking and Possession of Seed Scallops -- Every person taking any seed scallops, and who fails to restore them as soon as possible to their natural beds in the water from which taken, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100), or be imprisoned not exceeding thirty (30) days, or both, for each offense. For the purpose of this Chapter, a "seed scallop" means a scallop with a bright, thin, slightly curved shell with no foreign adherent, the shell having no well-defined raised annual growth line, and the scallop being less than one (1) year old. (RIGL 20-6-17)

4.22 Bristol Harbor Shellfish Transplant Area

4.22.1 The waters of Bristol Harbor described below are designated as a Shellfish Management Area. This area is defined as that area of Bristol Harbor southerly of a line between Johnson's Dock (so-called) on the west side of Bristol Harbor and the northwest corner of the Coast Guard Dock, on the east side of Bristol Harbor, and north of a line between Rockwell's Dock (so-called) on the west side of Bristol Harbor, and the northwest corner of the Coast Guard Dock. The area is bordered on the west by the three (3) foot contour line along the shore between Rockwell's Dock and Johnson's Dock and on the east by the existing pollution line.

4.22.1-1 Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.22.2 Boat Harvest

(a) For December 2012 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: December 12, 14, 17, 19, 21, 24, 26, 28, and 31.

(b) For January 2013 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) From February 1 through April 30, 2013 - shellfishing from a boat will be permitted only from sunrise to 12:00 P.M. Noon on: Mondays through

Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) <u>Default harvest schedule</u> – If no action is taken to establish specific harvest schedules for the December through April harvest season, and harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.

<u>4.23</u> <u>Opening Shellfish on Water</u> -- No person shall possess the meats of more than six (6) shellfish while shellfishing on the waters of the State or throw the shells of open scallops onto the scallop beds. (RIGL 20-6-21) [Penalty - Part 6.6; (RIGL 20-6-13)]

<u>4.24</u> <u>Bissel Cove - Fox Island Transplant Area</u>

<u>4.24.1</u> Bissel Cove and the adjacent waters of Narragansett Bay, North Kingstown, including the entirety of Bissel Cove and the adjacent waters south of a line between pole #275 at the corner of Waldron and Seaview Avenues and the southwestern most point of Fox Island (south of the cable area); west of a line from the southwestern most point of Fox Island to the northern most point of Rome Point is established as a Shellfish Management Area.

<u>4.24.1-1</u> Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

<u>4.24.2</u> <u>Shore Digging</u> -- Shore digging will be permitted daily between sunrise and sunset.

<u>4.24.3</u> <u>Boat Harvest</u>

(a) <u>For December 2012</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: December 12, 14, 17, 19, 21, 24, 26, 28, and 31.

(b) For January 2013 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) From February 1 through April 30, 2013 - shellfishing from a boat will be permitted only from sunrise to 12:00 P.M. Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) Default harvest schedule – If no action is taken to establish specific harvest schedules for the December through April harvest season, and harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.

4.25 Repealed 12/01
4.26 Kickemuit River Shellfish Management Area Regulations

4.26.1 The area is defined as follows: The marine waters of the Kickemuit are those north of a line connecting nun buoy 6 and can buoy 1 at Bristol Narrows.

4.26.2 Upon certification of water quality by the D.E.M. Office of Water Resources, shellfishing will be permitted throughout the area between sunrise to sunset daily. When the waters are certified for shellfishing by the D.E.M. - Office of Water Resources shore digging will be permitted when the area is open (in season).

4.26.3 Repealed 12/01
4.26.4 Repealed 2/18/01

4.26.5 Water quality certification will determine whether or not shellfishing is allowed in these areas. Regulations established by the D.E.M. Office of Water Resources shall supersede these regulations.

(RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

4.27 Potowomut Shellfish Management Area

4.27.1 Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.27.2 SHORE DIGGING: is permitted within this entire area between sunrise and sunset daily year around.

4.27.3 BOAT HARVEST:
The Potowomut Shellfish Management Area is divided into the following three areas pertaining to boat harvesting:

Area A is defined as the area west of a line between the seaward end of Sandy Point and buoy "G1" (Round Rock) and north of a line between the seaward end of Pojac Point to buoy "G1" (Round Rock). Area A is closed to shellfishing from a boat except as follows:

(a) For December 2012 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: December 12, 14, 17, 19, 21, 24, 26, 28, and 31.

(b) For January 2013 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) From February 1 through April 30, 2013 - shellfishing from a boat will be permitted only from sunrise to 12:00 P.M. Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) Default harvest schedule – If no action is taken to establish specific harvest schedules for the December through April harvest season, and harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

Shellfishing from a boat will be permitted only between 8:00 AM and 12:00 Noon on Mondays, Wednesdays and Fridays, beginning on the second Wednesday of December and continuing through the end of April.

Area B is defined as the triangular area east of a line between the seaward end of Sandy Point and buoy “G1” (Round Rock) and west of a line between the flagpole at the Warwick Country Club and buoy “G1” (Round Rock) and south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point. Area B is closed to shellfishing from a boat until further notice.

Area C is defined as the area east of a line between the flagpole at the Warwick Country Club and buoy “G1” (Round Rock) and north of a line from buoy "G1" (Round Rock) to the Warwick Lighthouse. Area C is open to shellfishing from a boat daily between sunrise and sunset year-round.

4.28 "High Banks" Shellfish Management Area

4.28.1 The waters of High Banks are established as a Shellfish Management Area. This area is defined as the waters of the upper west passage south of a line between the seaward end of Pojac Point to the Round Rock buoy "G1" and north of a line from the seaward end of the fence between the former Davisville Navy property and Pettee Street in the Mount View section of North Kingstown to "N6" buoy located mid-bay west of Prudence Island. The area is bounded on the east by a line projecting from the easternmost end of Pier 2 at Davisville to the Round Rock buoy "G1" and is bounded to the west by the shore.

4.28.2 Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.28.3 SHORE DIGGING: is permitted between sunrise and sunset daily.

4.28.4 BOAT HARVESTING:

(a) For December 2012 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: December 12, 14, 17, 19, 21, 24, 26, 28, and 31.

(b) For January 2013 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) From February 1 through April 30, 2013 - shellfishing from a boat will be permitted only from sunrise to 12:00 P.M. Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November,

annually, and will reopen every December in accordance with the annually established December schedule.

(e) <u>Default harvest schedule</u> – If no action is taken to establish specific harvest schedules for the December through April harvest season, and harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.

<u>4.29</u> <u>Jenny's Creek Shellfish Management Area</u>: The entire area is closed to all shellfishing until further notice. (RIMF REGULATION) [Penalty – Part 3.03 (RIGL 20-3-3)].

<u>4.30</u> <u>Handling of Shellfish</u>

<u>4.30.1</u> - Commercial shellfish harvesters and shellfish aquaculturists shall conduct all activities and operations involving or relating to the possession and handling of shell stock so as to prevent contamination, deterioration and decomposition of such shell stock.

<u>4.30.2</u>- Containers used for storing shell stock must be clean

<u>4.30.3</u>- Boat decks and storage bins used in the harvest or transport of shell stock shall be kept clean with potable water or water from the growing area in approved classification or the open status of conditional areas.

<u>4.30.4</u>- Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall assure that said vessel is properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of shell stock.

<u>4.30.5</u>- Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.

<u>4.30.6</u>- Shellfishermen or aquaculturists using a boat to harvest and transport shell stock shall provide such vessel with effective drainage to avoid contact between bilge water and shell stock.

<u>4.30.7</u>- Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not

contaminate shell stock.

4.30.8- Shell stock shall be washed reasonably free of bottom sediments as soon after harvesting as possible. The harvester shall be primarily responsible for washing shell stock. If shell stock washing is not feasible at the time of harvest, the dealer shall assume this responsibility. Water used for washing shall be from a potable water source, or growing area in the approved classification or open status of the conditionally approved classification.

4.30.9- The discharge of human sewage from a vessel used in the harvesting of shell stock, or from vessels that buy shell stock, within waters of the state is prohibited. *(ref. RIGL § 46-12-39).*

(RIMF REGULATION)

4.31 -- Tagging of Shellfish

4.31.1 - Commercial shellfishermen must place any and all shellfish taken by them (except those shellfish returned to the waters of the harvest area) into containers, and must tag each and every container with a "harvester tag" conforming to the requirements of section 4.31.2 below, prior to the following:

- **4.31.1-1 - the fisherman leaves the approved waters of the harvest area (identified on the RI Shellfish Harvest Area Tagging Map (see Part XVII – Maps), shellfish management area or the aquaculture site identified by the CRMC Assent number in which the shellfish were taken;**
- **4.31.1-2 the shellfish are removed from the boat; or**
- **4.31.1-3 offered for sale.**

4.31.2 - The harvester tag shall be durable, waterproof, and sanctioned by the R.I. Department of Health. The tag shall contain the following indelible, legible information in the order specified below:

- **4.31.2-1 harvester's identification number as assigned by R.I.D.E.M.;**
- **4.31.2-2 date of harvest;**
- **4.31.2-3 the harvest location as identified on the R.I. Shellfish Harvest Area Tagging Map (see Part XVII – Maps), shellfish management area or aquaculture site identified by the CRMC Assent number;**
- **4.31.2-4 type (species) of shellfish; and**
- **4.31.2-5 approximate quantity of shellfish**

4.31.3 - Each tag shall also carry the following statement in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS"

4.31.4 **Commercial shellfishermen shall not place shell stock harvested from more than one growing area into the same container. When the harvester is also a dealer, the harvester has the option to tag the shell stock with a harvester tag or a dealer's tag meeting the requirements of the R.I. Department of Health regulations.**

4.31.5 **Bulk tagging of shell stock will be permitted only with prior approval of the R.I.D.E.M. Director under the following criteria:**

- **4.31.5-1** **when shell stock are harvested from one harvest area on a single day, multiple containers may be utilized on a wrapped pallet, in a tote, in a net brailer, or other container and the unit tagged with a single tag; and**
- **4.31.5-2** **a statement that all shell stock containers in this lot have the same harvest data and area of harvest; and**
- **4.31.5-3** **number of containers in the unit.**

(RIMF REGULATION)

4.32 -- Temperature control of shellfish

4.32.1 - Shellfish harvesters shall not allow shell stock to deteriorate or decompose from exposure to excessive temperature and shall deliver shell stock to a licensed dealer before such deterioration or decomposition occurs.

4.32.2 - The maximum allowable time between the harvest of shell stock and delivery to a dealer shall be twenty hours. Possession of shell stock in excess of 20 hours is prohibited.

4.32.3 - Ocean quahaugs (*Arctica islandica*) and surf clams (*Spisula soliddisma*) are exempt from the aforementioned temperature control requirements.

(RIMF REGULATION)

4.33- Denial, Suspension, or Revocation of License

4.33.1 - In addition of other penalties provided by law or other rule or regulation, any licensed shellfisherman who violates the provision of R.I.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 R.I.G.L. §§ 20-2-13 and 42-17.1-2(s).

4.33.2 – Penalties

4.33.2-1 **First violation, up to six (6) months suspension of license.**
4.33.2-2 **Second violation, revocation of license.**

4.33.3 - The Department of Environmental Management may deny renewal of shellfisherman license for violation of the provisions of R.I.G.L. § 20-6-24, these rules or any order issued by the Director during a prior license period. (RIMF REGULATION)

4.34 - Severability -- 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. (RIMF REGULATION)

Public Hearing Item #2: Amendments to regulations regarding the management of Conch (Whelk)(Part IV - Shellfish).

4.35 Conch (Channeled Whelk – *Busycotypus canaliculatus* and Knobbed Whelk – *Busycon carica*) – General provisions applicable to commercial and recreational taking of conch.
(a) Taking by RI state residents only – The taking of conch from waters under the jurisdiction of the State of Rhode Island for either commercial or recreational purposes shall be restricted to legal residents of the State of Rhode Island. ~~Non-residents of the State of Rhode Island shall not take or harvest conch from waters under the jurisdiction of the State of Rhode Island.~~ **(RIMFC REGULATION)**

(b) Mutilation and/or Possession of Conch Meat; cooked or uncooked
~~(1) Mutilation~~ **– Prior to landing of any conchs taken for either commercial or recreational purposes,** ~~N~~**no person shall mutilate any cooked or uncooked conch by breaking and removing the meat from the shell or have in his or her possession any part or parts of any uncooked conch so mutilated. In any and all prosecutions under this Section, the possession of any part or parts of any cooked or uncooked conch so mutilated shall be prima facie evidence sufficient to convict. All conchs are to be landed whole in the shell** ~~and processed in a licensed facility~~**. [Penalty - Part 3.3; RIGL§ 20-1-16]**

(c) Commercial and Recreational Season – The season for conch will be open from January 1st through December 31st. (RIGL§ 20-3-2)

(d) Hauling or Setting Conch Pots/Traps at Night – No person shall set, raise, or unduly disturb any conch pot or trap within the territorial waters of this State between the hours of one (1) hour after sundown and one (1) hour before sunrise.

(e) Legal Minimum Size of Conch –

(a) No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any conch removed from its shell (see subsection 4.35.1-4). (RIMF REGULATION) [Penalty - Part 3.3; RIGL§ 20-1-16]

(b) **(1) No person fishing commercially or recreationally shall take, possess, sell, possess for sale, or offer for sale any conch with a shell measuring less than 2-3/4 inches (69.85 mm) in diameter or a shell length less than 4-3/4 inches (120.65 mm). (RIMF REGULATION) [Penalty - Part 3.3; RIGL§ 20-1-16]**

(2) Any person who takes and/or possesses conch of less than the minimum size, as delineated above, upon conviction, shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for every fifteen (15) conch that are less than the minimum size and found to be in his/her possession. Additionally, if any person who is found in possession of conch of less than the minimum size that are commingled and/or otherwise stored or contained with conch that are of at least minimum size, and the percentage of the less than minimum size conch is ten percent (10%) or more of the total piece count of the conch commingled and/or otherwise stored or contained in a package, shipment, or container, the entire commingled and/or otherwise stored or contained package, shipment, or container, shall be subject to seizure and/or forfeiture in accordance with the provisions of RIGL § 20-1-8((a)(5), 20-1-8(a)(6).

(c) **(3) Any person who is found to possess conch in violation of Subsection~~s~~ 4.35(a), or 4.35(b), or 4.35.1-1, or 4.35.1-2(b), or 4.35.1-3 by a court of competent jurisdiction shall be punishable pursuant to the provisions of RIGL§ 20-1-16. [Penalty - Part 3.3; RIGL§ 20-1-16]**

(d) **(4) In addition to provisions of Subsection 4.35.1-2(c)(e)(3), any person who is found to possess conch in violation of Section Subsection 4.35.1-1(a), or subsections 4.35.1-2(a) 4.35(b), or 4.35(d), or 4.35.1-2(b)1, or 4.35.1-2, or 4.35.1-3 by the Administrative Adjudication Division consistent with the requirements of RIGL Chapter 42-17.7 may have his/her license to harvest issued by the Department suspended or revoked consistent with governing, duly promulgated regulations. RIGL§ 20-3-6 [Penalty - Part 3.3; RIGL§ 20-1-16 and 20-3-6]**

4.35.1 Commercial Harvest Taking of Conch (Channeled Whelk – *Busycotypus canaliculatus* and Knobbed Whelk – *Busycon carica*)

4.35.1-1 License Required for Commercial ~~Harvest~~Taking of Conch -- No person either as principal, agent, or servant shall at any time catch or take any conch from any of the waters ~~in~~ under the jurisdiction of ~~this state~~ the State of Rhode Island, or place, set, keep, maintain, supervise, lift, raise, or draw in or from any of those waters or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters any pot or other contrivance, designed or adapted for the catching or taking of conch unless licensed to do so. [Penalty - Part 1.16; (RIGL 20-1-16)]

~~4.35.1-2 Legal Minimum Size of Conch –~~
~~(a) No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any conch removed from its shell (see subsection 4.35.1-4). (RIMF REGULATION) [Penalty - Part 3.3; RIGL§ 20-1-16]~~

~~(b) No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any conch with a shell measuring less than 2-3/4 inches (69.8 mm) in diameter or a shell length less than 4-3/4 inches (120.6 mm). (RIMF REGULATION) [Penalty - Part 3.3; RIGL§ 20-1-16]~~

~~(c) Any person who is found to possess conch in violation of Section 4.35.1-1, or subsections 4.35.1-2(a) or 4.35.1-2(b) by a court of competent jurisdiction shall be punishable pursuant to the provisions of RIGL§ 20-1-16. [Penalty - Part 3.3; RIGL§ 20-1-16]~~

~~(d) In addition to provisions of Subsection 4.35.1-2(c), any person who is found to possess conch in violation of Section 4.35.1-1, or subsections 4.35.1-2(a) or 4.35.1-2(b) by the Administrative Adjudication Division consistent with the requirements of RIGL Chapter 42-17.7 may have his/her license to harvest issued by the Department suspended or revoked consistent with governing, duly promulgated regulations. RIGL§ 20-3-6 [Penalty - Part 3.3; RIGL§ 20-1-16 and 20-3-6]~~

4.35.1-2 Commercial Possession Limit – A holder of any commercial fishing license issued by the State of Rhode Island authorized for the taking of conch may take and/or possess, in any one (1) day, up to 35 bushels of conch per vessel per calendar day. (RIMFC REGULATION) [Penalty – Part 3.3, RIGL§ 20-3-3]

~~4.35.2~~ **4.35.1-3 Commercial Conch Pot limit – No more than 300 conch pots or traps per licensee can be in the water at any one time. It shall be unlawful for any person licensed under this chapter to place, set, keep, maintain, supervise, lift, raise, or draw in from any of the waters in the jurisdiction of**

this state any pot or other fixed gear contrivance designed or adapted for the catching or taking of conch which exceeds the commercial conch pot limit.

~~4.35.3 Mutilation and/or Possession of Conch Meat; cooked or uncooked~~
~~(a) Mutilation -- No person shall mutilate any uncooked conch by breaking and removing the meat from the shell or have in his or her possession any part or parts of any uncooked conch so mutilated. In any and all prosecutions under this Section, the possession of any part or parts of any uncooked conch so mutilated shall be prima facie evidence sufficient to convict. All conchs are to be landed whole in the shell and processed in a licensed facility.~~

4.35.2 Reporting Requirements -- Dealers must comply with the reporting requirements as set forth in Section 19.14 Dealer Electronic Reporting Requirements, of the RI Marine Fisheries (RIMF) Regulations. (RIMF REGULATION) [Penalty – Part 3.3, Part 19.14.5 (RIGL§20-1-16)]

4.35.3 Sales to out of State Dealers – Out of State Dealers operating within the State of Rhode Island are required to obtain a RI Seafood Dealer License and must comply with the reporting requirements as set forth in Section 19.14 Dealer Electronic Reporting Requirements, of the RI Marine Fisheries (RIMF) Regulations. (RIMF REGULATION) [Penalty - Part 3.3 (RIGL§20-3-3, RIGL§20-1-16)]

4.35.4 Recreational ~~Harvest~~Taking of Conch (Channeled Whelk – *Busycotypus canaliculatus* and Knobbed Whelk – *Busycon carica*)

~~4.35.6-1 Harvest by RI residents only – The taking or harvest of conch from waters under the jurisdiction of the State of Rhode Island shall be restricted to legal residents of the State of Rhode Island. Non-residents of the State of Rhode Island shall not take or harvest conch from waters under the jurisdiction of the State of Rhode Island. (RIMF REGULATION)~~

~~4.35.6-2 Legal Minimum Size of Conch --~~
~~(a) No person shall take or possess any conch removed from its shell (see subsection 4.35.3(a)). [Penalty - Part 3.3, RIGL §20-1-16]~~

~~(b) No person shall take or possess any conch with a shell measuring less than 2-3/4 inches (69.8 mm) in diameter or a shell length less than 4-3/4 inches (120.6 mm). RIGL (RIMF REGULATION) [Penalty - Part 3.3, RIGL §20-1-16]~~

4.35.~~6-3~~4-1 Recreational Possession Limit – Unless otherwise specified in this section or by the RI Marine Fisheries (RIMF) Regulations, the ~~following~~

possession limit for the recreational conch fishery shall be 1/2 bushel per person per calendar day, or if a vessel with more than one (1) individual onboard is used, a maximum of 1 bushel per vessel per calendar day. (RIMF REGULATION) [Penalty – Part 3.3, RIGL §20-1-16]

4.35.~~6-44-2~~ ~~Non-commercial~~ Recreational Conch Pot Limit – A ~~non-commercial~~ recreational fisher may ~~set, place,~~ place, set, keep, ~~or~~ maintain, supervise, lift, raise, or draw in from any of the waters under the jurisdiction of the State of Rhode Island, or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters ~~at any one time~~ not more than five (5) conch pots or traps at any one time. A non-commercial conch fisher shall not offer for sale or sell conchs. [Penalty - Part 1.16; RIGL §20-1-16]

4.35.5 Commercial and Recreational Equipment Requirements to Take Conch

4.35.5-1 Tagging of Conch Pots or Traps - No person shall have onboard a vessel, or set, deploy, place, keep, maintain, lift, or raise from in or upon the waters under the jurisdiction of the State of Rhode Island any conch pot or trap as defined in Part 1.3 for the taking of conch (Channeled whelk and Knobbed whelk) without having a valid State of Rhode Island conch pot or trap tag permanently attached to the trap so that it is clearly visible for inspection.

(a) Conch pot or trap tags shall be issued annually, at the time of license renewal, to licensees with a conch endorsement.

4.35.5-2 Buoying of Conch Pots or Traps -- Each single conch pot or trap shall be separately and plainly buoyed. If setting conch pots or traps as a trawl, each end of the trawl must have a buoy attached.

4.35.5-3 Marking of Conch Pots or Traps -- The owner of every pot, trap, or other stationary contrivance used for the taking of conch fished in the waters of this state, and the owner of any pot or trap for catching conch, or cars or other contrivances for keeping conch shall mark each pot, trap, or contrivance, together with the buoy which is attached thereto, with the name or names of the owners of the traps, pots, or contrivances or the person or persons using the same, and the license number or numbers of such person or persons. Every person failing to mark each buoy and pot, trap, or other stationary contrivance as provided in this section shall be fined not less than twenty dollars ($20) nor more than five hundred dollars ($500) for each offense and all traps, pots, or other contrivances used contrary to the provisions of this and other sections of this Part shall be seized by any officer engaged in the enforcement of this Part, and the property

shall be forfeited to the state. (RIGL§ 20-4-7)

4.35.5-4 Escape Vent Sizes and Biodegradable (Ghost) Panels-- Penalty -- Effective January 1, 2008, it shall be unlawful to fish for or take conch by use of any conch pot or trap within the territorial waters of the State of Rhode Island unless the pot or trap is equipped with an escape vent(s) and biodegradable (ghost) panel meeting the following specifications:

(a) A rectangular escape vent with an unobstructed opening not less than 2-1/4" inches (57.2 mm) by 5-3/4 inches (146mm); or

(b) Two circular escape vents, each with an unobstructed opening not less than 3.1 inches (78.7mm) in diameter; or

(c) A square escape vent with an unobstructed opening not less than 2-1/4" inches (57.2 mm) by 2-1/4 " inches (57.2 mm); or

(d) An unobstructed opening that would be adequate to meet the minimum size and number of vents required in 4.35.2-3,(a)-(c).

(e) Conch pots must contain a biodegradable (ghost) panel with the following specifications:

(1) The opening to be covered by the biodegradable panel must be rectangular and shall not be less than 3-3/4 inches (9.53 cm) by 3-3/4 inches (9.53 cm), and the biodegradable panel must be constructed of, or fastened to the trap with one of the following untreated materials: wood lath, cotton, hemp, sisal, or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.

(2) A side of the trap may serve as the biodegradable panel if fastened with a material specified in previous paragraph (4.35.2-4,(e),1.)

(3) An unobstructed opening that would be adequate to meet the minimum size of biodegradable panels required in 4.35.2-4,(e),1.

(4) The ghost panel must not be located on the bottom of the trap.

(RIMFC REGULATION) (Penalty RIGL§ 20-1-16 - Part 1.16 and 15.12)

4.35.5-5 Unauthorized Raising of Traps, Pots, and Devices -- No person except the Director, enforcement officers, and authorized technical personnel of the Department may unduly disturb, lift, raise, molest, or remove any animal from a pot, trap, or other such device of a person possessing a valid license to take conch, without the written permission of that person. (RIGL§ 20-4-8) [Penalty 20-1-16 - Part 1.16]

4.35.5-6 Removal of Branded Numbers or Identification Tags from Conch Pots – No person shall set, maintain, or have in his or her possession any conch pots or traps from which the branded numbers or identification tags have been altered, obliterated, or removed, with the intent to defraud or deprive the owner. Every person convicted of violating the provision of this section shall be fined one hundred dollars ($100) for each of those pots or traps or be imprisoned not more than thirty (30) days, or both. All pots, traps, or other devices used or possessed contrary to the provisions of this section and other sections of this Part shall be seized by any officer engaged in the enforcement of this Part, and that property shall be forfeited. (RIGL §20-7-12)

4.35.5-7 Unauthorized Possession and/or Transfer of Pots and Traps -- (a) No person except the Director, Division of Law Enforcement officers, and authorized technical personnel of the Department may place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding conchs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner.

(b) Every person convicted of violating this section shall be fined not more than one thousand dollars ($1,000) for each offense, or be imprisoned not exceeding one year, or both, and each pot, trap, car, or other device used in violation of this section shall constitute a separate offense. In addition, if that person is licensed, his or her license shall be revoked for one (1) year. (RIGL §20-1-6)

4.35.6 Raising Pots at Night -- No person shall raise or unduly disturb any conch pot or trap within the territorial waters of this state between the hours of one (1) hour after sundown and one (1) hour before sunrise. Every person violating this section shall, upon conviction, be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be imprisoned not exceeding one (1) year, or both. However, in situations of emergency or upon application being made, the owner of the conch pots or traps may be authorized to remove the pots or traps by the Director or the Director's designee during the prohibited hours. All boats, pots or traps, or other equipment used in violation of this section shall be seized and forfeited to the state. (RIGL§ 20-1-8 and § 20-1-

8.1)

4.35.7 Conch Endorsement Moratorium – Effective for the year beginning January 1, 2014, there shall be a moratorium on the issuance of any new conch fishery endorsements for principal effort and commercial fishing licenses. All multipurpose fishing licenses shall be exempt from this conch fishery endorsement moratorium.

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations Rhode Island Marine Statutes and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this ~~22nd day of March, 2012~~ to become effective 20 days from filing, **unless otherwise indicated below,** in accordance with the provisions of Title 20, Chapters 42.17.1, 42-17.6, and 42-17, and in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~N/A~~ **July 16, 2013**
Public Hearing: ~~N/A~~ **August 15, 2013**

Filing Date: ~~03/22/2013~~
Effective date: ~~04/11/2013~~

ERLID# ~~7250~~