

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF AGRICULTURE**

PUBLIC NOTICE CONCERNING PROPOSED RULE MAKING

Pursuant to the provisions of Title 20, Chapters 42-17.1 and 42-17.6, and §§ 2-1-8 and 2-1-9 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Director of the Department of Environmental Management (DEM) proposes the adoption of “*RULES AND REGULATIONS GOVERNING THE RHODE ISLAND SEAFOOD BRAND AND THE MISLABELING OF MARINE SPECIES*” and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the proposed rule making that are intended (1) to establish a Rhode Island Seafood Brand, or logo to be administered by the Department of Environmental Management, for use in identifying and promoting Rhode Island seafood products; (2) to adopt rules and regulations governing the use of the Rhode Island Seafood Brand, or logo; and (3) to prohibit the mislabeling of marine species by seafood dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo.

The public hearing will commence at **6:00 PM on Tuesday, August 27, 2013**, at the University of Rhode Island, Graduate School of Oceanography, Corless Auditorium, and South Ferry Road, Narragansett, RI 02882. The room is accessible to the disabled. Interpreter services for the hearing impaired will be provided if such services are requested at least (3) business days prior to the hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300. A recording of the hearing will be made by DEM staff. Written comments concerning the regulations proposed for promulgation by the DEM may be submitted to the Division of Agriculture, 235 Promenade Street, Providence, RI 02908 **no later than 12:00 PM on August 27, 2013**.

The Department has determined that small businesses will not be adversely impacted by some of the proposed regulations listed above. However, the public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may believe that that may be adversely affected. Small businesses which are either currently licensed or in the future may seek licensure as seafood dealers, or permission to harvest, buy, sell, or produce seafood products as well as the small businesses that provide services related to those engaged in such industries and small businesses which buy, sell, or produce products or provide services related to fishing are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the proposed regulations will be available for examination from July 26 through August 27, 2013, by mail or at the offices of the Division of Agriculture located at 235 Promenade Street, Providence, RI 02908. Electronic copies of the proposed regulations will also be available on the DEM website at the following web address: www.dem.ri.gov/programs/bnatres/agricult/pdf/cfoodpn.pdf.

Janet L. Coit, Director

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF AGRICULTURE**

**RULES AND REGULATIONS GOVERNING
THE RHODE ISLAND SEAFOOD BRAND
AND THE MISLABELING OF MARINE SPECIES**

_____, 2013

AUTHORITY: These regulations are adopted pursuant to Title 20, Chapters 42-17.1 and 42-17.6, and §§ 2-1-8 and 2-1-9 of the Rhode Island General Laws of 1956, as amended, in accordance with R.I. Gen. Laws Chapter 42-35, the Administrative Procedures Act.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF AGRICULTURE
RULES AND REGULATIONS GOVERNING
**THE RHODE ISLAND SEAFOOD BRAND
AND THE MISLABELING OF MARINE SPECIES**

EFFECTIVE: _____, 2013

TABLE OF CONTENTS

- RULE 1: PURPOSE
- RULE 2: AUTHORITY
- RULE 3: ADMINISTRATIVE FINDINGS
- RULE 4: APPLICATION
- RULE 5: DEFINITIONS
- RULE 6: GENERAL REQUIREMENTS
- RULE 7: MISLABELING OF MARINE SPECIES
- RULE 8: PENALTIES
- RULE 9: APPEALS
- RULE 10: SEVERABILITY
- RULE 11: EFFECTIVE DATES

RULE 1.00 PURPOSE

The purpose of these regulations are (1) to establish a Rhode Island Seafood Brand, or logo to be administered by the Department of Environmental Management, for use in identifying and promoting Rhode Island seafood products; (2) to adopt rules and regulations governing the use of the Rhode Island Seafood Brand, or logo; and (3) to prohibit the mislabeling of marine species by any seafood dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo.

RULE 2.00 AUTHORITY

These regulations are adopted pursuant to Title 20, Chapters 42-17.1 and 42-17.6, and §§ 2-1-8 and 2-1-9 of the Rhode Island General Laws of 1956, as amended, in accordance with Chapter 42-35 of the Rhode Island General Laws, the Administrative Procedures Act.

RULE 3.00 ADMINISTRATIVE FINDINGS

Section 2-1-8 of the Rhode Island General Laws vests the Director of the RI Department of Environmental Management with the authority to establish and administer programs to promote the marketing of Rhode Island seafood products grown and produced in Rhode Island for the purpose of encouraging the development of the commercial fishing and aquaculture sectors in the state. In accordance with this authority and purpose, the Director has determined that a Rhode Island seafood brand will serve the interests of the state by (1) enhancing opportunities to identify, access, and enjoy RI seafood; (2) bolstering consumer awareness and confidence regarding the nature and source of RI seafood; and (3) elevating the status of RI seafood in the marketplace, thereby increasing demand and yielding greater economic value for RI seafood. The Director further finds that the marketing of seafood products would be enhanced, if consistent with the Director's responsibilities pursuant to Title 20 of the Rhode Island General Laws, purchasers of marine products were afforded protection against the mislabeling of seafood products by licensed dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo.

RULE 4.00 APPLICATION

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

RULE 5.00 DEFINITIONS

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

- (1) "Authorized dealer" means a dealer who has been issued written authorization by the Department to use the Rhode Island Seafood Brand to identify and promote Rhode Island seafood products.
- (2) "Commercial aquaculturist" means an individual, firm, partnership, association, academic institution, municipality, or corporation, duly licensed by the State of Rhode Island to conduct commercial aquaculture in Rhode Island, pursuant to RIGL Chapter 20-10.
- (3) "Commercial fisherman" means a person duly licensed by the State of Rhode Island to harvest and/or land seafood products in Rhode Island, pursuant to RIGL Chapter 20-2.1.

(4) “Dealer” means a person duly licensed by the State of Rhode Island to sell, purchase, barter, and/or trade seafood products obtained directly from a duly licensed commercial fisherman, pursuant to RIGL Chapter 20-2.1.

(5) “Department” means the Rhode Island Department of Environmental Management.

(6) “Land” means to transfer seafood products directly from a commercial aquaculturist or a commercial fisherman to a dealer for sale or intended sale.

(7) “Person” means an individual, corporation, partnership, or other legal entity.

(8) “Rhode Island seafood products” means any marine species that have been grown in Rhode Island waters by commercial aquaculturists and any marine species that have been landed in Rhode Island by commercial fishermen, pursuant to all applicable state and federal regulations.

RULE 6.00 GENERAL REQUIREMENTS

1. A Rhode Island Seafood Brand (the “brand”) is hereby established and as depicted in the attachment to these regulations.
2. The brand is subject to the full ownership of, and control by, the Department.
3. The Department may authorize use of the brand by dealers for the express purpose of identifying and promoting Rhode Island seafood products. Such authorization will be issued in writing, upon application to the Department by the dealer. Such authorization will enable the dealer to use the brand on any packaging that contains Rhode Island seafood products, and any documents or written materials associated therewith.
4. Dealers authorized to use the brand are responsible for ensuring that the brand is used properly, i.e., applied only to packaging that contains Rhode Island seafood products. The co-mingling of Rhode Island seafood products with seafood products from other states is prohibited.
5. Any alteration or modification of the brand is prohibited.
6. Once a Rhode Island seafood product is demarcated with the brand, by virtue of its inclusion in packaging to which the brand has been affixed by an authorized dealer, the brand may be used by other persons or entities who acquire the product from an authorized dealer, following along the chain of custody, provided that the brand is used properly, i.e., for the continued and sole purpose of identifying and promoting the product. Examples of persons or entities authorized to use the brand in this way include retail establishments and restaurants that sell seafood products directly to the public.
7. Any dealer who does not possess a valid authorization to use the brand shall be prohibited from marking any product with the brand or otherwise representing that a seafood product or the facility offering the product is associated with the brand. Any person or other entity who does not obtain seafood products from an authorized dealer shall be prohibited from marking those products with the brand or otherwise representing that those products are associated with the brand.

8. Any authorized dealer, or other person or entity who obtains seafood products from an authorized dealer, found to have improperly used the brand will be subject to enforcement action, which may include and shall be limited to: suspension or revocation of the authorization or right to use the brand.
9. The Department reserves the right to deny the application of any dealer or other person or entity seeking authorization to use the brand based on any prior violation of a rule or regulation pertaining to marine fisheries administered by the Rhode Island Department of Environmental Management, or any prior violation of a rule or regulation pertaining to the sale of seafood administered by the Rhode Island Department of Health, that occurred within the three (3) year period prior to the date of application.

RULE 7.00 MISLABELING OF MARINE SPECIES

1. No dealer, person or entity shall offer for barter, trade, or sale a seafood product that is represented to be a species other than the actual species of said product.

RULE 8.00 PENALTIES

1. Any person who has violated the provisions of these regulations may be penalized as follows:

- (a) First violation - up to one hundred (\$100.00) dollars;
- (b) Second violation - up to three hundred (\$300.00) dollars;
- (c) Third violation – up to five hundred (\$500.00) dollars; and
- (d) Fourth and successive violations – up to one thousand (\$1,000.00) dollars.

2. In addition to the penalty imposed by Rule 8.00(1), any authorization issued by the Department to any person to use the Rhode Island Seafood Brand to identify and promote Rhode Island seafood products, may be suspended or revoked as the Director or his/her designee in his/her discretion determines, for the time periods below if the person violates the provisions of these regulations:

- (a) First violation - up to thirty (30) days suspension;
- (b) Second violation - up to ninety (90) days suspension;
- (c) Third violation - up to three hundred and sixty-five days suspension;
- (d) Fourth and successive violations - revocation

In addition, no new authorization conferring said privileges shall be issued during the period of suspension or revocation to the subject person or to any corporation in which the person owns a majority interest or to a partnership in which the subject is a party.

RULE 9.00 APPEALS

In accordance with RIGL § 42-17.7-9, Administrative Hearings:

1. Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges a violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, One Capitol Hill, and Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

2. Any person who seeks an adjudicatory hearing relative to denial of the issuance of an authorization to use the brand arising under these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, One Capitol Hill, and Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

RULE 10.00 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.

RULE 11.00 EFFECTIVE DATE

The foregoing "Rules and Regulations Governing the Seafood Brand", after due notice, are hereby adopted and filed with the Secretary of State this day of _____, to become effective twenty (20) days thereafter, in accordance with the provisions of Title 20, Chapters, 42-35, 42-17.6 and 42-17.1 and §§2-1-8 and 2-1-9 of the General Laws of Rhode Island of 1956, as amended.

Janet L. Coit, Director
Department of Environmental Management

Notice Given on: _____

Public Hearing held: _____

Filing Date: _____

Effective Date: _____

State of Rhode Island and Providence Plantations
Department of Administration
Budget Office

Fiscal Note for Proposed Administrative Rules (R.I.G.L. Section 22-12-1.1)
Name of Administrative Rule:

State of Rhode Island
Department of Environmental Management

***RULES AND REGULATIONS GOVERNING THE RHODE ISLAND SEAFOOD
BRAND AND THE MISLABELING OF MARINE SPECIES***

Date of Notice: July 26, 2013
Date of Hearing: August 27, 2013

RIGL: These regulations are adopted pursuant to Title 20, Chapters 42-17.1 and 42-17.6, and §§ 2-1-8 and 2-1-9 of the Rhode Island General Laws of 1956, as amended, in accordance with R.I. Gen. Laws Chapter 42-35, the Administrative Procedures Act.

FISCAL IMPACT

<i>Revenues</i>		<i>State Expenditures</i>		<i>City/Town Expenditures</i>	
FY 2012	\$ 0	FY 2012	\$ 0	FY 2012	\$ 0
FY 2013	\$ 0	FY 2013	\$ 0	FY 2013	\$ 0
FY 2014	\$ 0	FY 2014	\$ 0	FY 2014	\$ 0

Summary of Policy Change: The purpose of these rules and regulations is to assist those dealers in the state who market seafood products and to ensure that products are not associated with State are not misrepresented as having been harvested or landed in the State of Rhode Island. The regulations also protect against the mislabeling of seafood products by licensed dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo.

These regulations were developed at the request of and in cooperation with the State's small businesses in this industry.

Summary of Fiscal Impact: There will be minimal fiscal effects, if any, due to the adoption of these regulations on the state level.

City or Town Impact: There should be no impact at the municipal level since these regulations are imposed upon private dealers of seafood products.

Approved:

_____ Date: _____
Thomas Mullaney
Executive Director/State Budget Officer

SMALL BUSINESS IMPACT STATEMENT (For Review of Existing Regulations)

In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.

Agency Submitting Regulation: RI Department of Environmental Management (RIDEM) –
Division of Agriculture

Subject Regulations: *RULES AND REGULATIONS GOVERNING THE RHODE ISLAND SEAFOOD BRAND AND THE MISLABELING OF MARINE SPECIES*

Subject Matter of Regulation: The purpose of these rules and regulations is to assist those dealers in the state who market seafood products and to ensure that products are not associated with State are not misrepresented as having been harvested or landed in the State of Rhode Island. The regulations also protect against the mislabeling of seafood products by licensed dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo. These regulations were developed at the request of and in cooperation with the State’s small businesses in this industry.

ERLID Number: To be assigned upon filing with the Secretary of State.

Statutory Authority: These regulations are adopted pursuant to Title 20, Chapters 42-17.1 and 42-17.6, and §§ 2-1-8 and 2-1-9 of the Rhode Island General Laws of 1956, as amended, in accordance with R.I. Gen. Laws Chapter 42-35, the Administrative Procedures Act.

Other Agencies Affected: None

Other Regulations That May Duplicate or Conflict with the Regulation: None

Describe the Scope and Objectives of the Regulation: The purpose of these rules and regulations is to assist those dealers in the state who market seafood products and to ensure that products are not associated with State are not misrepresented as having been harvested or landed in the State of Rhode Island. The regulations also protect against the mislabeling of seafood products by licensed dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo. These regulations were developed at the request of and in cooperation with the State’s small businesses in this industry.

What was the rational for establishing this regulation? The purpose of these rules and regulations is to assist those dealers in the state who market seafood products and to ensure that products are not associated with State are not misrepresented as having been harvested or landed in the State of Rhode Island. The regulations also protect against the mislabeling of seafood products by licensed dealers and, in addition, any commercial vendors utilizing the Rhode Island Seafood Brand, or logo. These regulations were developed at the request of and in cooperation with the State’s small

businesses in this industry.

Does the rationale still exist? YES

Is the rationale still relevant? YES

Business Industry(ies) Affected by the Regulation: Seafood harvesters, importers, and dealers.

Types of Businesses Included in the Industry(ies): See above.

Total Number of Small Businesses Included in the Regulated Industry(ies) *Please see the attached guidance documents for assistance determining the total number of small businesses:*

RI had 144 licensed seafood dealers, 2230 persons licensed to harvest seafood, and 125 persons who were licensed to land seafood products in the State during 2012. In addition, restaurants and food stores are expected to seek out market products that are certified as having a local connection.

Number of Small Businesses Potentially Subject to the Proposed Regulation: Same as above.

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues? No inquiries have yet been received concerning these proposed regulations.

What is the cost to your agency of establishing and enforcing this regulation?

The entire budget for the Division of Agriculture is \$1,370,000 for FY13. The portion of the budget dedicated to this and related activities have not yet been determined.

What would the consequences be if the regulation did not exist? If these regulations were not adopted RI would lose the advantage of being able to market seafood products that enjoy a connection to this State both to the local interests as well as reaping the benefits enjoyed by a high reputation on the national market. In addition, the Department would not be in compliance with R.I. Gen. Laws §§ 2-1-8 and 2-1-9.

Effective Date Used In Cost Estimate: Spring 2013.

For each question below, please answer “yes” or “no” and offer a brief explanation.

Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.

Yes	No	<i>*Note: For each question, please answer “yes” or “no” and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i>
Yes X	No	Will small businesses have to create, file, or issue additional reports? Yes, small businesses that elect to participate in this voluntary program as marketers of Rhode Island Seafood will need to create documents to establish the origin of the product.
Yes X	No	Will small businesses have to implement additional recordkeeping procedures? Yes, small businesses that elect to participate in this voluntary program as marketers of Rhode Island Seafood will need to create documents to establish the origin of the product.
Yes X	No	Will small businesses have to provide additional administrative oversight? Yes, small businesses that elect to participate in this voluntary program as marketers of Rhode Island Seafood will need to create documents to establish the origin of the product.
Yes	No X	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No, no additional employees are required by those who voluntarily participate in the program.
Yes	No	Does compliance with the regulation require small businesses to hire other

	X	<p>professionals (e.g. a lawyer, accountant, engineer, etc.)?</p> <p>No, no other professionals are required by those who voluntarily participate in the program.</p>
Yes	No X	<p>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</p> <p>No, no capital investments are required by those who voluntarily participate in the program.</p>
Yes	No X	<p>Are performance standards more appropriate than design standards?</p> <p>No, performance standards are not applicable.</p>
Yes X	No	<p>Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?</p> <p>Participation in this voluntary program may result in inspections to ensure the integrity of the claim that the product is indeed of RI origin.</p>
Yes	No X	<p>Will the regulation have the effect of creating additional taxes and/or fees for small businesses?</p> <p>There are no additional taxes or fees associated with compliance.</p>
Yes	No X	<p>Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?</p> <p>No, small businesses do not have to provide educational services to keep up to date with regulatory requirements.</p>
Yes	No X	<p>Is the regulation likely to <i>deter</i> the formation of small businesses in Rhode Island?</p> <p>No, in fact, the program may result in the attraction of small businesses to the State.</p>
Yes X	No	<p>Is the regulation likely to <i>encourage</i> the formation of small businesses in Rhode Island?</p> <p>Yes, the program may result in the attraction of small businesses to the State.</p>

Yes	No X	<p>Can the regulation provide for less stringent compliance or reporting requirements for small businesses?</p> <p>No, the regulation can not provide for less stringent compliance or reporting requirements for small businesses.</p>
Yes	No X	<p>Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?</p> <p>No, the regulation can not establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses.</p>
Yes	No X	<p>Can the compliance or reporting requirements be consolidated or simplified for small businesses?</p> <p>No, the compliance or reporting requirements imposed by these regulations can not be consolidated or simplified for small businesses.</p>
Yes	No X	<p>Can performance standards for small businesses replace design or operational standards?</p> <p>No, performance standards for small businesses can not replace design or operational standards</p>
Yes	No X	<p>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</p> <p>No, performance standards for small businesses can not replace design or operational standards.</p>
Yes X	No	<p>Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe.</p> <p>Dealers were involved in the creation of this program. In addition, all of the regulated community will be afforded the opportunity to become involved in adoption of these regulations in compliance with the requirements of the Administrative Procedures Act, R.I. Gen. Laws Chap.42-35.</p>