

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Aquaculture of Marine Species in Rhode Island Waters

Rhode Island General Laws Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended, the Director of the Department of Environmental Management (DEM) proposes the amendment of the “*Aquaculture of Marine Species in Rhode Island Waters*” and give notice of intent to hold a public workshop to afford interested parties the opportunity for public comment.

Public comment will be solicited on the proposed rule making that is intended to amend the subject regulations governing the practices required to be employed by aquaculturists who are harvesting oysters. These restrictions mandate the cooling of the oysters either through icing or refrigeration in order to reduce the likelihood that the product will spread *Vibrio cholerae*; or *Vibrio parahaemolyticus*; the State is obligated to adopt these restrictions in order to comply with the requirements adopted by the United States Food and Drug Administration which are to become effective on July 1, 2014.

The public meeting to receive comments concerning the proposed rulemaking will commence at **6:00 P.M. on Tuesday, May 27, 2014**, in the University of Rhode Island, Graduate School of Oceanography, Corless Auditorium, 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 Ken Ayars, Chief, Division of Agriculture, 235 Promenade Street, Providence, RI 02908 or via e-mail to Ken.Ayars@dem.ri.gov **no later than 12:00 PM on May 28, 2014**.

The Department has determined that small businesses will not be adversely impacted by the proposed regulations referenced 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.

A copy of the proposed regulations will be available for examination from April 25, 2014, through May 28, 2014, 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 addresses:
www.dem.ri.gov/programs/bnatres/agricult/pdf/oyfarmpn.pdf.

Signed 28 April 2014
Janet L. Coit, Director

State of Rhode Island and Providence Plantations
Department of Environmental Management

Aquaculture of Marine Species in
Rhode Island Waters

Concise Summary of Proposed Amendment

The proposed rulemaking would amend the *Aquaculture of Marine Species in Rhode Island Waters* (the “Regulations”). The proposed amendment imposes restrictions on the practices required to be employed by aquaculturists who are harvesting oysters. These restrictions mandate the cooling of the product either through icing or refrigeration in order to reduce the likelihood that the product will spread *Vibrio cholerae* or *Vibrio parahaemolyticus*; the State is obligated to adopt these restrictions in order to comply with the requirements adopted by the United States Food and Drug Administration which are to become effective on July 1, 2014. These regulations are adopted pursuant to Rhode Island General Laws Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Aquaculture of Marine Species in Rhode Island Waters



July 1, 2014

Supersedes and Replaces all Previous Versions

AUTHORITY: These regulations are adopted pursuant to Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

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DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**Aquaculture of Marine Species in
Rhode Island Waters**

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Aquaculture of Marine Species in Rhode Island Waters

RULE 1 PURPOSE

The purpose of these regulations is to describe the permits, licensing, and conditions under which aquaculture shall be conducted in Rhode Island.

RULE 2 AUTHORITY

Chapter 42-17.1, and §§; 20-1-2; 20-1-4; 20-1-5; 20-10-5c; and 20-10-12, in accordance with Chapter 42-35 of the RIGL 1956, as amended.

RULE 3 ADMINISTRATIVE FINDINGS

These regulations acknowledge that aquaculture is a form of agriculture (RIGL 2-23-4) and that cultured crops are the property of the aquaculturist and are distinct from wild stocks. Cultured crops are therefore not subject to the statutory and regulatory restrictions governing the protection of wild stocks, except that the minimum size limit established for quahaugs, *Mercenaria mercenaria*, applies to all wild and cultured quahaugs (RIGL 20-10-13.1). Rules and regulations are based upon the need to modify existing regulations (RIGL 20-3-2 through 20-3-6).

RULE 4 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.

RULE 5 DEFINITIONS

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

- 5.1 “Adequately Iced” means that the amount and application of the ice is sufficient to ensure that immediate cooling begins and continues for all shellfish. If ice slurry is used and the shellfish are submerged the presence of

ice in the slurry indicates adequate icing. The water source for, the production of, and the handling of the ice must be approved by DOH for the intended use of cooling shellfish.

5.2 **"Approved waters, or, Approved shellfish growing areas"** mean waters of the state which have been classified by the RI Department of Environmental Management (DEM) Office of Water Resources as Approved Areas, fit for the taking of shellfish for human consumption on a regular basis, according to criteria established by the National Shellfish Sanitation Program (NSSP) Manual of Operations. These classifications may be subject to change as water quality conditions dictate.

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

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

5.5 **"Aquaculture lease"** means the permitted area for which the Coastal Resources Management Council (CRMC) issues a lease in which aquaculture can be conducted. Leases are discretionary and granted for the express purpose of allowing aquaculture activities on the State's submerged lands or in the water column. Certain types of permitted activities, such as experimental aquaculture operations, may not require a lease.

5.6 **"Aquaculturist"** means the individual, firm, partnership, association, academic institution, municipality, or corporation conducting commercial, experimental or restoration aquaculture in Rhode Island.

5.7 **"Biosecurity Board"** means the board, within the Coastal Resources Management Council (CRMC), established pursuant to RIGL Section 20-10-1.1 and charged with assisting and advising the CRMC in carrying out the provisions of RIGL Chapter 20-10.

5.8 **"Conditionally Approved Areas"** mean any shellfish grounds underlying waters examined and found fit for the taking of shellfish for human consumption on an intermittent basis, declared by the director as conditionally approved waters pursuant to RIGL Sections 20-8.1-3 and 20-8.1-4. Such classification may be subject to change as water quality conditions dictate.

5.9 **"Container"** means any bag, sack, tote, conveyance, or other receptacle used for containing shellfish for holding or transporting.

5.10 **"CRMC"** means the RI Coastal Resources Management Council.

5.11 **"Cultured crops"** mean aquatic or marine animals or plants: (i) that are in

the location, water column or artificial conditions specified in a valid aquaculture permit issued pursuant to RIGL section 20-10-3 or that have been taken by the holder of such permit from the location, water column or artificial conditions specified in such permit, or (ii) that have been produced by aquaculture methods outside the state and have not been commingled with wild stocks that are in or have been removed from the waters of the state. Appropriate bills of sale, bills of lading and proper tags used in accordance with Rule 6.6 herein and all other applicable state and federal laws and regulations shall be prima facie evidence of the origin of cultured crops inside or outside the state.

5.12 **"DEM"** means the RI Department of Environmental Management.

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

5.14 **"Director"** means the Director of the RI Department of Environmental Management.

5.15 **"DOH"** means the RI Department of Health.

5.16 **"Harvest"** means the act of removing shellstock for the purpose of human consumption from the waters of growing areas. Harvest includes placement of shellfish that has been removed for the purpose of human consumption on or in a manmade conveyance, or other means of transport. Harvest commences when the first shellfish intended for human consumption is removed from the water on any given day, or is exposed by the receding tide.

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

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

5.19 **"Operational plan"** means a written plan, approved by DEM and DOH prior to its implementation, that includes, at a minimum: description of the design and activities of the aquaculture facility, specific location and boundaries of the aquaculture lease and facility, types and locations of structures (rafts, pens, tanks, etc.), species to be cultured, source of these organisms (i.e., wild or cultured), procedures to prevent contamination, program of sanitation and maintenance, description of the water source

including details of water treatment, program to maintain water quality, maintenance of records, and how shell stock will be harvested.

- 5.20 **"Possession of aquaculture crops"** means the exercise of dominion or control over cultured crops commencing at the time at which a decision is made not to return the crops to the aquaculture lease or facility from which they were taken. This decision must be made at the first practical opportunity, taking into consideration the management practices set forth in the approved operational plan.
- 5.21 **"Possession of wild stocks"** means the exercise of dominion or control over wild stocks commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. This decision must be made at the first practical opportunity.
- 5.22 **"Resubmerge"** means, and is strictly limited to, reintroduction of shell stock into approved waters following the removal of such stock from approved waters for husbandry purposes.
- 5.23 **"Shading"** means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat. Shading may be accomplished by any means that effectively protects the harvested shellfish from direct sunlight and prevents excessive heat build-up in the shaded area.
- 5.24 **"Shellfish"** means all species of: (a) Oysters, clams or mussels, whether: (i) Shucked or in the shell; (ii) Raw, including post harvest processed; (iii) Frozen or unfrozen; (iv) Whole or in part; and (b) Scallops in any form, except when the final product form is the adductor muscle only.
- 5.25 **"Shellfish seed"** means, for quahaugs, *Mercenaria mercenaria*, a shell size less than 20 mm (0.78"), and for oysters, *Crassostrea virginica* and *Ostrea edulis*, a shell size less than 32 mm (1.25"). All measurements are taken along the longest axis.
- 5.26 **"Spat collection"** means the use of apparatus (spat collectors) or cultch to attract or capture larval shellfish.
- 5.27 **"Temperature control"** means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at 50°F or less.
- 5.28 **"Wild stock"** means natural resources, including aquatic or marine animals or plants, which grow within the waters of the state, and are not cultured in any way.

RULE 6 REGULATIONS

6.1 GENERAL PERMITTING REQUIREMENTS

- 6.1.1 Coastal Resources Management Council (CRMC) Assent -- An aquaculturist must apply for and receive a Coastal Resources Management Council (CRMC) Assent to conduct aquaculture as specified in RIGL Chapter 20-10. No application shall be approved by CRMC prior to the consideration of recommendations by the Department of Environmental Management (DEM) Director, who shall consult with and obtain input from appropriate divisions and offices within the department, and the Rhode Island Marine Fisheries Council. No application shall be approved by the CRMC prior to the issuance of a R.I. Pollutant Discharge Elimination System (RIPDES) permit by DEM, if required.
- 6.1.2 Aquaculture Permit-- An aquaculturist must apply for and obtain an Aquaculture Permit from the Director to conduct aquaculture as specified in RIGL Section 20-10-12. The application for an Aquaculture Permit must include an operational plan describing the species to be cultured, the methods to be used, the locations where the work will be done, and other provisions detailed in [Rule 6.3 19.4.1](#) herein. The permit shall specify the conditions governing the taking, possession, sale, importation, and transportation of cultured crops utilized in the aquaculture lease or facility. The permit shall be automatically renewed January first annually, providing that proper annual reports of aquaculture activities conducted that year are filed with the Director, in a form prescribed by the Director, no later than December first of each year. Aquaculture Permits will be reviewed, modified if appropriate, and renewed by the Director.
- 6.1.3 Cultured Crops Exempt From Wild Stock Regulations -- Aquaculturists harvesting their cultured crops, in accordance with their CRMC Assent and DEM Aquaculture Permit, are exempt from the statutory and regulatory harvest restrictions governing wild stocks, including: seasons, catch or bag limits, minimum sizes, quotas, and methods of harvest. However, in no case may aquaculturists possess, import, transport or offer for sale for human consumption to any individual or entity cultured quahaugs, *Mercenaria mercenaria*, with a hinge width of less than one inch, unless specifically authorized to possess, import, transport, or sell legal quahaug seed.
- 6.1.4 Endemic Species limitation -- All species cultured at an aquaculture lease or facility must be specifically authorized via an approved DEM Aquaculture Permit. Under no circumstances are permits to be granted for species that are not endemic to Rhode Island without prior approval from the Director with the advice of the Biosecurity Board. Determination of what species are endemic to Rhode Island rests under the authority of the

Director.

6.2 GEAR REQUIREMENTS

- 6.2.1 Marking -- All aquaculture apparatus must be marked as specified by the CRMC Assent. Said markings must be clearly visible and maintained at all times.
- 6.2.2 Maintenance and Removal -- The gear and its contents are the possession and responsibility of the aquaculturist, who shall be responsible for its maintenance and eventual removal. The aquaculturist may be required to post a performance bond in an amount specified by CRMC, to be used to return the site, including tidal waters, to the condition that existed prior to the aquaculture, in the event that the gear is abandoned or permit conditions violated.

6.3 GENERAL REQUIREMENTS

- 6.3.1 Operational Plan -- In accordance with the permitting requirements set forth in [Rule 6.1 19.1.2](#) herein, the aquaculturist must submit a written Operational Plan to be reviewed and approved by DEM and maintained on file with the Division of Fish and Wildlife. Operational Plans will be made available for review and inspection by the U.S. Food and Drug Administration. The Operational Plan must be upgraded and resubmitted prior to any change(s) occurring in the aquaculture operation. Aquaculture shall be practiced only in strict compliance with the provisions of the approved Operational Plan. At a minimum, each Operational Plan shall include the following information: description of the design and activities of the aquaculture facility, specific location and boundaries of the aquaculture lease and facility, types and locations of structures (rafts, pens, tanks, etc.), species to be cultured, source of these organisms (i.e., wild or cultured), procedures to prevent contamination, program of sanitation and maintenance, description of the water source including details of water treatment, program to maintain water quality, maintenance of records, and how shell stock will be harvested.
- 6.3.2 Shipment/Importation -- The aquaculturist must notify the DEM Divisions of Law Enforcement and Fish and Wildlife in writing of every shipment of animals for culture entering this state, at least five working days prior to entry into the state, and each shipment must be accompanied by a certificate of disease inspection from a recognized laboratory appropriate to the species received. A copy of the certificate of disease inspection must be provided to the Division of Fish and Wildlife along with the written notice prior to the importation of any animals for culture. The Director, in consultation with the Biosecurity Board, may waive the requirement for a certificate of disease inspection, or set forth specific requirements

governing shipments.

6.4 FINFISH CULTURE REQUIREMENTS -*To be developed*

6.5 ALGAE CULTURE REQUIREMENTS -*To be developed*

6.6 SHELLFISH CULTURE REQUIREMENTS

- 6.6.1 Importation of Shellfish Seed -- All shipments of undersized shellfish brought into Rhode Island for aquaculture operations must be labeled or tagged indicating the origin (operator/company name, license number and body of water), date of importation and destination. ~~All conditions listed in Rule 19.4.2 herein apply.~~
- 6.6.2 Sale for Human Consumption -- In accordance with all DEM and Department of Health (DOH) regulations for the buying, trading, and selling of shellfish, only shellfish cultured in approved waters or within an approved land-based system meeting the water quality criteria for harvesting, may be sold for human consumption, and such sales may only be made to licensed RI dealers. All requirements for handling, tagging, use of shellfish containers, and temperature control, as set forth herein in Rules 6.7 through 6.9 19.8 through 19.10 inclusive, as well as all other applicable National Shellfish Sanitation Program and DOH standards, must be adhered to. The CRMC lease number will be listed as the harvest area for cultured shellfish. Aquaculturists must hold the appropriate DEM license to sell shellfish to a licensed RI dealer.
- 6.6.3 Taking or Possession of Wild Stock Shellfish by Aquaculturists-- Aquaculturists who also hold a commercial shellfishing or multipurpose license may not take or possess wild stock shellfish while they are in possession of cultured shellfish crops. Nor may an aquaculturist be in possession of wild stock shellfish while visiting his/her lease or tending his/her shellfish crops, unless they are a properly licensed shellfish dealer and the wild stock shellfish is properly tagged and being held in or at their dealer facility, buy boat, or wet storage operation.
- 6.6.4 Possession of Wild Undersized Shellfish -- Possession of undersized wild stock shellfish is not authorized under any circumstances.
- 6.6.5 Approved Waters-- Water quality at any site used for open water aquaculture or land-based aquaculture must meet the water quality criteria appropriate to the aquaculture activity as determined by the DEM Office of Water Resources.
- 6.6.6 Water Quality Changes -- Water quality and water quality classification of waters within the state are subject to change due to various environmental

conditions. In some cases the aquaculturist shall be required to respond to these changes. DEM shall not assume any liability for any changes in classification and shall assume no liability to the aquaculturist for damages incurred due to such actions.

- 6.6.7 Shellfish Aquaculture in Conditionally Approved Growing Areas -- When a shellfish aquaculture lease is in a conditional area, and the area is in the closed status, the aquaculturist may not visit his/her lease to tend his/her shellfish crops, unless the aquaculturist has applied for and received permission from the director because of, and to the extent of, exigent circumstances. Under no circumstances may the aquaculturist harvest cultured stock when his/her lease is in a growing area that is in the closed status.
- 6.6.8 Transfer of Seed From Other Than Approved Waters -- Shellfish seed cultured in other than approved waters may be transferred, by the aquaculturist, to an approved aquaculture lease in approved waters in accordance with the terms of an approved operational plan, with DEM Division of Fish and Wildlife and Division of Law Enforcement notification. If more than 10 percent of the cultured shellfish within a lot or batch exceed the definition of seed (in the case of quahaugs, if any exceed 20 mm, and in the case of oysters, if any exceed 32 mm), they shall not be moved from other than approved waters to an approved growing area without prior permission of the DEM Director and the DOH.
- 6.6.9 Harvest Of Shellfish Transferred From Other Than Approved Waters As Seed-- An aquaculturist wishing to use seed that have been produced in other than approved waters must submit an operational plan to the Director detailing how he/she intends to track and document the growth and harvest of these shellfish. Aquaculturists must maintain accurate and complete records of all shellfish seed culture in other than approved waters and removal of such shellfish seed to approved waters including, but not limited to, source, numbers transferred, size composition, time/dates of transfer, harvest and sale of the shellfish. These records must be maintained for a minimum of two years and must be available for inspection by agents of the DOH, DEM Division of Law Enforcement, or DEM Division of Fish and Wildlife, upon request. If record keeping and tracking protocols are inadequate, then the aquaculturist must only use seed from approved waters. No shellfish may be harvested until they have spent at least twelve (12) months in approved waters.
 - 6.6.9.1 Permitted Activities -- If an aquaculturist has a permit to raise shellfish in other than approved water, then it is assumed that all shellfish of that species sold by that aquaculturist have been in other than approved waters, unless the aquaculturist can demonstrate that all shellfish were removed from other than

approved waters when seed.

- 6.6.9.2 Transplanting of Shellfish Exceeding Seed Size Limits -- No shellfish exceeding the seed size limits shall be transplanted from other than approved waters unless done so under the authority of the DEM Director and DOH Director according to the Memorandum of Agreement for conducting shellfish transplant/relay operations. Possession, culture and transportation of shellfish other than seed (as defined) from other than approved water is prohibited.
- 6.6.10 Collection of Wild Stock Shellfish Seed -- Collection of wild stock shellfish seed from other than approved waters is prohibited unless approved by the Director or his/her designee in a written authorization. If permission for wild stock seed collection is approved, the site, species and amount must be specified by the Director or his/her designee in writing. The aquaculturist must notify the DEM Divisions of Fish and Wildlife and Law Enforcement in writing at least ten (10) days prior to the activity. The aquaculturist may be required to be accompanied by a DEM Environmental Police Officer, and the aquaculturist will have to pay for the Environmental Police Officer detail. ~~Any aquaculturist who intends to purchase seed shellfish from other than approved waters must notify DEM of his/her intent and must obtain prior permission from the Director or his/her designee.~~

6.7 HANDLING OF SHELLFISH

- 6.7.1 General Requirements – ~~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.
- 6.7.2 Containers -- Containers used for storing shell stock must be clean.
- 6.7.3 Vessels -- Vessel 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. 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. Aquaculturists using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.
- 6.7.4 Bilge Water -- Aquaculturists using a vessel to harvest and transport shell stock shall provide such vessel with effective drainage to avoid contact between bilge water and shell stock. Aquaculturists using a vessel to harvest and transport shell stock shall locate bilge pumps so that

discharge shall not contaminate shell stock.

6.7.5 Washing -- 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.

6.7.6 Waste Discharge Prohibited -- It is unlawful to discharge any sewage from a vessel into the waters of the state.

6.8 TAGGING OF SHELLFISH

6.8.1 Required Use of Tagged Containers -- Aquaculturists must place any and all shellfish taken by them (except those shellfish returned to the waters of the aquaculture lease or facility) into containers, and must tag each and every container with a completed, as defined in Rule 6.8.2 below, except for the information in Rule 6.8.2.5, which will be provided at the conclusion of the harvest, harvester tag **prior to harvested shellfish being placed in the container.** ~~conforming to the requirements of Rule 19.9.2 below, prior to the following:-~~

- ~~• The Aquaculturist leaves the site identified by the CRMC Assent number in which the shellfish were taken;~~
- ~~• The shellfish are removed from the vessel, or;~~
- ~~• Offered for sale.—~~

6.8.2 Tags--The harvester tag shall be durable, waterproof and sanctioned by the DOH. The tag shall contain the following indelible, legible information in the order specified below:

6.8.2.1 Aquaculturist's identification number as assigned by DEM;

6.8.2.2 Harvest commencement time and date ~~of harvest from the aquaculture lease site or facility;~~

6.8.2.3 The harvest location as identified by the CRMC Assent number;

6.8.2.4 Type (species) of shellfish;

6.8.2.5 Approximate quantity of shellfish; and

6.8.2.6 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"**

6.8.3 Commingling Prohibition and Tagging by Aquaculturists/Dealers -- Aquaculturists shall not place shell stock harvested from more than one growing area into the same container. When the aquaculturist is also a dealer, the aquaculturist has the option to tag the shell stock with a harvester tag or a dealer's tag meeting the requirements of the DOH regulations.

6.8.4 Bulk Tagging -- Bulk tagging of shell stock will be permitted ~~only with prior approval of the DEM Director~~ under the following criteria:

6.8.4.1 When shell stock are harvested from one aquaculture lease site or facility on a single day, multiple containers may be utilized on a wrapped pallet, in a tote, in a net brailer, in a single boat, in a vehicle or other container, and the unit tagged with a single tag, provided that the tag specifies the number of individual containers in the unit or an estimate of the total weight, volume, or count; and

6.8.4.2 A written statement is provided that "All shell stock containers in the lot have the same harvest data and area of harvest."

6.9 TEMPERATURE CONTROL OF SHELLFISH

6.9.2 General Requirements -- Aquaculturists 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.

6.9.3 Harvest of Oysters annually from September 15 through June 30 inclusive - The maximum allowable time between the harvest of shell stock and delivery to a dealer shall be twelve ~~twenty~~ hours. Possession of shell stock by anyone other than a licensed dealer in excess of twelve (12) hours is prohibited. This maximum allowable time may be reduced by DEM, via emergency regulation, in certain harvest areas if environmental changes necessitate such adjustment.

6.9.4 Harvest of Oysters outside of designated Temperature Control or Thermally Impacted areas annually from July 1 through September 14 inclusive.

6.9.4.1 All oysters harvested shall be transferred to a licensed dealer within five (5) hours of the commencement of harvest

6.9.4.2 All harvested oysters shall be subject to shading immediately upon harvest.

6.9.4.3 All oysters that are removed from the water for less than twelve (12)

hours for husbandry purposes must be resubmerged for no less than forty-eight (48) hours before harvest.

6.9.4.4 All oysters that are removed from the water for twelve (12) hours or greater for husbandry purposes must be resubmerged for no less than seven days (168 hours) before harvest.

6.9.4.5 All oysters that are exposed to air drying must be resubmerged for no less than seven days (168 hours) before harvest.

6.9.5 Harvest of Oysters from within a designated Temperature Control or Thermally Impacted area annually from July 1 through September 14 inclusive.

6.9.5.1 In addition to the requirements of Rule 6.9.4 above, all oysters harvested from a designated Temperature Control or Thermally Impacted area shall be harvested in compliance with one of the following requirements:

6.9.5.1.1 Harvesters shall terminate all harvest activities and all harvested oysters must be transferred to a dealer or placed in mechanical refrigeration or adequately iced by 11:00 a.m. between the dates of July 1st and August 31st, inclusive; and by noon between September 1 and September 14th, inclusive. Oysters must remain under temperature control or adequately iced until transferred to a licensed dealer.

6.9.5.1.2 Oysters that are harvested after the times specified in Rule 6.9.5.1.1 must be delivered to a licensed dealer within two (2) hours of the commencement of harvest; or placed in mechanical refrigeration or adequately iced within two (2) hours of the commencement of harvest until the oysters are transferred to a licensed dealer.

RULE 7 GENERAL ENFORCEMENT AUTHORITIES

7.1 General -- The Director's authority to enforce aquaculture regulations and applicable statutes shall be the same as his or her enforcement powers over the free and common fisheries of the state, as provided for in RIGL Title 20 and Chapter 42-17.1.

7.2 Authority to Enter and Inspect -- The director shall have the authority to enter and inspect any and all areas subject to an aquaculture permit for the purposes of determining compliance with the terms and provisions of the

CRMC assent or permit and DEM permit.

7.3 Violations -- Unless otherwise provided, violations of and/or noncompliance with the regulations set forth herein shall be prosecuted under the applicable sections of RIGL Chapter 20-10. In addition to other penalties provided by law or other rule or regulation, any licensed aquaculturist who violates the provisions of these rules or any order issued by the director shall be subject to suspension, revocation or denial of his/her license and/or permit in accordance with RIGL Sections 20-2-13, 20-10-16.1, and 42-17.1-2(s).

RULE 8 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.

RULE 9 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 aquaculture shall be superseded. These rules and regulations shall supersede the Department of Environmental Management Regulation ***"Aquaculture of Marine Species in Rhode Island Waters (June 21, 2002)"*** ~~"Aquaculture of Molluscan Shellfish in Rhode Island Tidal Waters" (#1874).~~

RULE 10. EFFECTIVE DATE

The foregoing ***"Aquaculture of Marine Species in Rhode Island Waters"*** after due notice and an opportunity for hearing, are hereby adopted and filed with Secretary of State this ____ day of _____, 2014 become effective twenty (20) days after filing, in accordance with the provisions of the General Laws of 1956, as amended, specifically Chapters 42-17.1 and 42-35 and 4-13.

Janet L. Coit _____
Director of the RI Department of Environmental Management
Notice given on: _____
Effective: _____

State of Rhode Island and Providence Plantations
Department of Environmental Management
 Aquaculture of Marine Species in
 Rhode Island Waters

Date of Notice: April 25, 2014 **Date of Hearing:** May 27, 2104

RIGL: These regulations are adopted pursuant to Rhode Island General Laws Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

FISCAL IMPACT					
<i>Revenues</i>		<i>State Expenditures</i>		<i>City/Town Expenditures</i>	
FY 2014	\$ 0	FY 2014	\$ 0	FY 2014	\$ 0
FY 2015	\$ 0	FY 2015	\$ 0	FY 2015	\$ 0
FY 2016	\$ 0	FY 2016	\$ 0	FY 2016	\$ 0

Summary of Policy Change

The proposed rulemaking would amend the *Aquaculture of Marine Species in Rhode Island Waters* (the “Regulations”). The proposed amendment imposes restrictions on the practices required to be employed by aquaculturists who are harvesting oysters. These restrictions mandate the cooling of the product either through icing or refrigeration in order to reduce the likelihood that the product will spread *Vibrio cholerae* or *Vibrio parahaemolyticus*; the State is obligated to adopt these restrictions in order to comply with the requirements adopted by the United States Food and Drug Administration which are to become effective on July 1, 2014.

Summary of Fiscal Impact: The Commission does not anticipate any substantial, adverse fiscal impacts at the state level due to the amendment of these regulations.

City or Town Impact: There should be no impact at the municipal level.

Approved:

 Thomas Mullaney
 Executive Director/State Budget Officer

SMALL BUSINESS IMPACT STATEMENT: ***Aquaculture of Marine Species in Rhode Island Waters***

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/Division of Agriculture

Subject Matter of Regulation: *Aquaculture of Marine Species in Rhode Island Waters*

ERLID No: To be assigned

Statutory Authority: These regulations are adopted pursuant to Rhode Island General Laws Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

Other Agencies Affected: None

Other Regulations That May Duplicate or Conflict with the Regulation: There are no duplicative or conflicting regulations.

Describe the Scope and Objectives of the Regulation: The proposed amendment imposes restrictions on the practices required to be employed by aquaculturists who are harvesting oysters. These restrictions mandate the cooling of the product either through icing or refrigeration in order to reduce the likelihood that the product will spread *Vibrio cholerae* or *Vibrio parahaemolyticus*; the State is obligated to adopt these restrictions in order to comply with the requirements adopted by the United States Food and Drug Administration which are to become effective on July 1, 2014.

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

Types of Businesses Included in the Industry (s): Same as above.

Total Number of Small Businesses Included in the Regulated Industry (s) RI had 144 licensed seafood dealers, and 30 licensed aquaculturists in the State during 2014.

Number of Small Businesses Potentially Subject to the Proposed Regulation:

See above. In addition, restaurants and food stores could be expected to be required to rely upon out of state sources if the oysters produced in State were not in compliance with United States Food and Drug Administration requirements.

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 did not exist RI would not be compliance with the requirements imposed by the United States Food and Drug Administration.

Effective Date Used In Cost Estimate: 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 as growers of oysters will need to create documents to establish the establish timeliness and temperature compliance for their product.
Yes X	No	Will small businesses have to implement additional recordkeeping procedures? Yes, small businesses that as growers of oysters will need to implement additional recordkeeping procedures to establish the establish timeliness and temperature compliance for their product
Yes X	No	Will small businesses have to provide additional administrative oversight? Yes, small businesses that as growers of oysters will need to provide additional administrative oversight to establish the establish timeliness and temperature compliance for their 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 to comply with the proposed regulation.
Yes	No X	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No, no other professionals are required to comply with the proposed regulation.
Yes	No	Does the regulation require small businesses to purchase a product or

	X	<p>make any other capital investments in order to comply with the regulation?</p> <p>No, no capital investments are required to comply with the proposed regulation.</p>
Yes	No	<p>Are performance standards more appropriate than design standards?</p>
	X	<p>No, performance standards are not applicable.</p>
Yes	No	<p>Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?</p>
X		<p>Compliance with the proposed regulation may require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities.</p>
Yes	No	<p>Will the regulation have the effect of creating additional taxes and/or fees for small businesses?</p>
	X	<p>There are no additional taxes or fees associated with compliance.</p>
Yes	No	<p>Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?</p>
	X	<p>No, small businesses do not have to provide educational services to keep up to date with regulatory requirements.</p>
Yes	No	<p>Is the regulation likely to <i>deter</i> the formation of small businesses in Rhode Island?</p>
	X	<p>No, in fact, the program may result in the attraction of small businesses to the State.</p>
Yes	No	<p>Is the regulation likely to <i>encourage</i> the formation of small businesses in Rhode Island?</p>
X		<p>Yes, the program may result in the attraction of small businesses to the State.</p>
Yes	No	<p>Can the regulation provide for less stringent compliance or reporting requirements for small businesses?</p>
	X	<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>Aquaculturists were involved in the drafting of this proposed regulation. 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>

Date of Public Notice: April 25, 2014

Date of Hearing: May 27, 2104

NOTIFICATION FORM
Department of Environmental Management
SMALL BUSINESS REGULATORY IMPACT AND
REGULATORY FLEXIBILITY ANALYSIS
(R.I.G.L. § 42-35.1-4)

Title of Administrative Rule or Regulation: Aquaculture of Marine Species in Rhode Island Waters

Statutory Authority: (R.I. General Law(s)) These regulations are adopted pursuant to Rhode Island General Laws Chapter 42-17.1 and Sections 20-1-2, 20-1-4, 20-1-5, 20-10-5c, and 20-10-12, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

The Regulation: (The purpose for the amendment(s)): The proposed rulemaking would amend the *Aquaculture of Marine Species in Rhode Island Waters* (the "Regulations"). The proposed amendment imposes restrictions on the practices required to be employed by aquaculturists who are harvesting oysters. These restrictions mandate the cooling of the product either through icing or refrigeration in order to reduce the likelihood that the product will spread *Vibrio cholerae* or *Vibrio parahaemolyticus*; the State is obligated to adopt these restrictions in order to comply with the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014.

Expected Small Business Impact: (Agency determination of what the economic impact, if any, would be on a small business) The failure of the Department to adopt these regulations to impose restrictions on the practices required to be employed by aquaculturists who are harvesting oysters would mean that that the aquaculturists would not be in compliance with the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014. Without such compliance, the aquaculturists would be precluded from marketing oysters.

Regulatory Flexibility Analysis:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;

No, the regulation can not provide for less stringent compliance or reporting requirements for small businesses while remaining in compliance **with** the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014.

- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

No, the regulation can not provide for less stringent schedules or deadlines for compliance or reporting requirements for small businesses while remaining in compliance **with** the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014.

(3) The consolidation or simplification of compliance or reporting requirements for small businesses;

No, the regulation can not provide for a consolidation simplification of compliance or reporting requirements for small businesses while remaining in compliance **with** the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014.

(4)The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

No, the regulation can not establish performance standards for small businesses to replace design or operational standards while remaining in compliance with the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014.

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No, the regulation can not provide for an exemption for small businesses from all or any part of the regulatory requirements while remaining in compliance **with** the requirements adopted by the Food and Drug Administration which are to become effective on July 1, 2014.