

**RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF FISH AND WILDLIFE
MARINE FISHERIES SECTION**

PUBLIC NOTICE CONCERNING PROPOSED REGULATORY CHANGES

Pursuant to the provisions of Chapters 42-17.1 and 20-3 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 amendments to the Rhode Island Marine Fisheries Regulations 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 following proposals:

- 1) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Summer Flounder** (section 7.7.4);
- 2) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Winter flounder** (section 7.8.1-2);
- 3) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Tautog** (section 7.9.1);
- 4) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **commercial Tautog** (section 7.9.2);
- 5) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Scup** (section 7.11.3);
- 6) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Black Sea Bass** (section 7.14.2);
- 7) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **Coastal Sharks** (section 7.24);
- 8) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, in their entirety, for general editing: to remove duplicative language; to add and/or correct statutory citations; and to add general provisions regarding possession limit changes, transiting, reporting requirements, penalties and appeals;
- 9) Amendments to Part XII – Striped Bass, regarding management for **recreational Striped Bass**;
- 10) Amendments to Part XII – Striped Bass, regarding management for **commercial Striped Bass**;
- 11) Amendments to Part XII – Striped Bass, regarding management for **commercial Striped Bass floating fish trap**;
- 12) Amendments to Part XII – Striped Bass, in their entirety, for general editing; to remove duplicative language; to correct statutory citations; and to add general provisions regarding possession limit changes, penalties and appeals;
- 13) Amendments to Part IV – Shellfish, regarding **correcting two technical errors delineating the borders of the Bristol Harbor Shellfish Management Area** (section 4.22);
- 14) Amendments to Part IV – Shellfish, regarding management of **Conch** (section 4.35); **including addition of provision regarding a Fishery Closure due to Eminent Public Health Risk (Bio-toxins)**;

- 15) Amendments to Part IV - Shellfish, in their entirety: to re-format numbering/lettering of sections; to remove duplicative language; for general editing; to add and/or clarify descriptions of Shellfish Management Areas; to add and/or correct several statutory citations; and to add general provisions regarding penalties and appeals;
- 16) Amendments to Part III – Marine Fisheries Council, to remove the section regarding the description of Shellfish Management Areas (section 3.6);
- 17) Amendments to Part III – Marine Fisheries Council, in their entirety, for general editing; and to remove duplicative language
- 18) Amendments to Part XI – Commercial Fisheries, regarding a **commercial fishing prohibition in designated experimental artificial reef locations in the Narragansett Bay Marine Life Management Area**;
- 19) Amendments to Part XI – Commercial Fisheries, regarding general editing; to remove duplicative language; to correct statutory citations; to clarify descriptions of Marine Life Management Areas; and add general provision for penalties and appeals;
- 20) Amendments to Part XVI – Menhaden regarding commercial Menhaden fisheries;
- 21) Amendments to Part XVI – Menhaden, regarding general editing; to remove duplicative language; to correct statutory citations; and to add general provision for penalties and appeals.

The public hearing will commence at **6:00 PM** on **Tuesday, March 25, 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 deaf and hard of hearing will be provided if such services are requested at least two (2) weeks prior to the hearing by contacting the RI Commission on the Deaf and Hard of Hearing at (401) 222-5300; or (401) 222-5301 (TTY); or <http://www.cdhh.ri.gov/>.

Written comments concerning the regulations proposed for promulgation by the DEM may be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 no later than 12:00 Noon on March 25, 2014. Comments must be submitted directly to Peter Duhamel via email at peter.duhamel@dem.ri.gov or regular mail. A recording of the hearing will be made by DEM staff.

The Department has determined that small businesses may be adversely impacted by the proposed regulations. 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 be adversely affected. Small businesses which are either currently licensed or in the future may seek 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 February 21 through March 25, 2014 by mail or at the offices of the Division of Fish and Wildlife located at 3 Fort Wetherill Road, Jamestown, RI 02835. Electronic copies of the proposed regulations will also be available on the DEM website at the following web address: <http://www.dem.ri.gov/programs/bnatres/fishwild/pn032514.htm>.

Mark Gibson,
Deputy Chief



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 XVI
Menhaden ~~Regulations~~



~~November 8, 2013~~

ANNOTATED REGULATIONS
MARCH 25, 2014 PUBLIC HEARING

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 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

PUBLIC HEARING ITEM # 21

**General editing: to remove duplicative language; to correct statutory citations;
and to add general provision for penalties and appeals.**

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~~STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
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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 42-35-18(b)(5), 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 (RIGL 20-3-2 through 20-3-6).~~

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 XVI shall be superseded.

R.I. Marine Fisheries ~~Statutes and~~ Regulations
PART XVI - MENHADEN REGULATIONS

16.1 Prohibition on the Harvesting of Menhaden for Reduction Processing: The taking of Menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel's catch is sold for reduction. ~~(RIMF REGULATIONS) (Penalty - Part 3.3; (RIGL 20-3-3)~~

16.2 Narragansett Bay ~~Menhaden Marine Life~~ Management Area: ~~Narragansett Bay, in its entirety, is designated a Menhaden Management Area.~~ The area shall include the east and west passages of Narragansett Bay, Mt. Hope Bay, and the Sakonnet River, and be bordered on the south by a line from Bonnet Point to Beavertail Point to Castle Hill Light. The southern boundary further extends from Land's End to Sachuest Point and then to Sakonnet Light. The following regulations govern all commercial Menhaden operations conducted in the Narragansett Bay ~~Menhaden~~ Marine Life Management Area (Management Area).

16.2.1 Gear Restrictions: The use of purse seines shall be permitted only in accordance with the following terms and conditions:

(A) All nets shall be less than 100 fathoms (600 feet) in length and less than 15 fathoms (90 feet) in depth.

(B) All nets shall be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of 50 feet.

(C) Annually, prior to use, all nets shall be inspected and certified as being in conformance with the provisions of this section by the DEM Division of Law Enforcement (DLE). Once inspected and certified, a net may be used throughout the duration of the calendar year in which it was inspected, provided that it is not altered with regard to any of the provisions of this section. Any net that is altered with regard to any of the provisions of this section must be re-inspected and recertified prior to use.

16.2.2 Vessel Restrictions: When engaged in the commercial Menhaden fishery, vessels may not have a useable fish storage capacity greater than 120,000 pounds. Prior to the commencement of fishing, for any vessel not previously certified through this process, each vessel must be inspected by a certified marine surveyor and assessed with regard to its fish storage capacity. A document reflecting the assessment must be kept aboard the vessel at all times. Any vessel with a fish storage capacity greater than 120,000 pounds may only engage in the fishery if the excess capacity is rendered unusable in accordance with the specifications set forth in the assessment.

16.2.3 - Possession Limits:

(A) When the commercial Menhaden fishery opens, per section 16.2.5 of this part, the possession limit shall be 120,000 pounds per vessel per calendar day, ~~per section 16.2.5~~. The possession limits may be modified by the ~~DEM~~ Division of Fish & Wildlife (DFW) on the basis of the estimated weekly standing stock of Menhaden in the Management Area derived, in accordance with section 16.2.5, via approved scientific monitoring methods.

(B) No commercial Menhaden fisher shall possess Menhaden or otherwise engage in the taking of Menhaden anytime on Saturday, Sunday, on any official state holiday, or prior to sunrise or following sunset.

16.2.4 Reporting Requirements: In order to permit the ~~DEM~~ **DFW** to monitor the fishery, any fisher intending to engage in the commercial Menhaden fishery shall notify the ~~DEM Division of Law Enforcement (DLE)~~ at (401) 222-3070 prior to taking or coming into possession of Menhaden in the Management Area. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification which may have been established in the possession limit for menhaden. Each commercial Menhaden fisher shall also contact the DFW at (401) 423-1940 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished.

16.2.5 Opening/Closure of Fishery Based on Biomass Estimates:

(A) Biomass "Floor": On an annual basis beginning every spring, the DFW, utilizing approved scientific monitoring methods, shall conduct regular estimates of the weekly standing stock of Menhaden present in the Management Area. On the basis of those estimates, the DFW shall issue a notice when the estimated weekly standing stock reaches a threshold of 1,500,000 pounds, and the DFW shall open the commercial fishery, at an initial possession limit of 120,000 pounds per vessel per calendar day, when the estimated weekly standing stock reaches 2,000,000 pounds. If, at any time, the stock estimate drops below 1,500,000 pounds, the DFW shall close the commercial fishery until further notice.

(B) Biomass "Ceiling": When 50% of the estimated weekly standing stock of menhaden stock present in the management area, above the minimum threshold amount of 1,500,000 pounds, is harvested, the DFW shall close the menhaden fishery until further notice.

PUBLIC HEARING ITEM # 20

Option 1:

(C) A possession limit of 6,000 lbs per vessel per day will be allowed once the marine life management area closes.

16.2.6 Permanent Closures: The following areas are permanently closed to purse seining for menhaden:

Providence River: All waters north of a straight line running from Rocky Point to Conimicut Light to Nayatt Point.

Greenwich Bay: All waters in Greenwich Bay west of a line from the flag pole on Warwick Point to Sandy Point.

16.2.7 [Repealed 4/2011]

16.2.8 Harvest of Menhaden in Permanently Closed Areas: No person harvesting menhaden by any fishing method shall possess more than 200 Menhaden per vessel per calendar day in any closed area of the **Menhaden** Management Area as set forth above.

16.3 Landing of Menhaden in RI Under State Quota Program: A total annual statewide quota for Menhaden ~~is hereby established. It~~ shall be the most recent allocation as established for the State by the Atlantic States Marine Fisheries Commission (ASMFC). The quota shall pertain solely to landings of Menhaden in RI ~~and The quota~~ shall not pertain to the possession of Menhaden in RI waters prior to landing. The quota may only be harvested and landed by fishermen licensed and vessels duly authorized in accordance with the provisions of Title 20 of the General Laws and in accordance with all rules and regulations promulgated by the DEM. The State's Menhaden quota will be managed as follows:

Option 2:

16.3.1: The landing limit for Menhaden in RI will be unlimited until the quota has been reached, as determined by the DFW. Once the quota has been reached: (i) the landing limit will be zero for vessels associated with directed fisheries for Menhaden, including but not limited to purse seine operations, and (ii) the landing limit will be 6,000 pounds per vessel per day for all vessels not associated with directed fisheries for Menhaden. **Non-directed fisheries for Menhaden include but are not limited to cast net fishing and the floating fish trap fishery.**

16.3.2: All commercial Menhaden operations conducted in the **Narragansett Bay Menhaden** Management Area, prior to and after the State's quota has been reached, are subject to the provisions of section 16.2.

16.4 – Episodic Event Set Aside Program:

(A) After the State's quota has been reached, if RI is approved to participate in the Episodic Event Set Aside Program for Menhaden, as established by the ASMFC, the landing limit for menhaden will be 120,000 pounds per vessel per day for vessels associated with directed fisheries for Menhaden, until the Set Aside **quota** has been

exhausted, as determined by the ASMFC and/or the DFW, at which time the program will end and the directed fishery will close. Vessels that target and land Menhaden in RI under this program must harvest only from RI waters and, if operating in the ~~Narragansett Bay Menhaden~~ Management Area, must adhere to all of the provisions governing the ~~Narragansett Bay Menhaden Management Area, as set forth in section 16.2~~ as specified in these regulations.

(B) Reporting Requirements: Any commercial fisher intending to target Menhaden under the Episodic Event Set Aside Program for Menhaden must notify the DLE at (401) 222-3070 prior to taking or coming into possession of Menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification to the possession limit for menhaden that is applicable to operations conducted in the ~~Narragansett Bay Menhaden~~ Management Area. Each said fisher shall also contact the DFW at (401) 423-1940 at the end of each daily trip or within four hours thereof to report the amount of Menhaden landed by the fisher in pounds. These Menhaden-specific reporting requirements are in addition to all other existing commercial fishing reporting requirements as set forth in the RI Marine Fisheries ~~Statutes and~~ Regulations (RIMFR).

(C) Vessels not associated with directed fisheries for menhaden may continue to harvest and land in RI up to 6,000 pounds per vessel per day as bycatch. Such vessels are not subject to the provisions of sub-sections 16.3.2(A) and (B), but are subject to the provisions of section 16.2 with regard to operations conducted in the ~~Narragansett Bay Menhaden~~ Management Area, and are subject to all existing commercial fishing reporting requirements as set forth in the RIMFR.

Option 3:

(D) The Episodic Event Set Aside Program will end on November 1 annually or when the set aside quota has been harvested, whichever first occurs. If the Episodic Event Set Aside Program ends prior to November 1, a notice will be filed with the Secretary of State.

16.5: No fisher may transfer or attempt to transfer Menhaden to another fisher.

16.6 VIOLATIONS FOR NON-COMPLIANCE: If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the

permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.

16.7 PENALTIES

16.7.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)

16.7.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".

16.8 APPEALS

16.8.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters"

16.8.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations "Rhode Island Marine **Fisheries Statutes and Regulations, Part XVI, Menhaden**" after due notice, are hereby adopted and filed with the Secretary of State this ~~8th day of November, 2013~~ 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 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures, of the Rhode Island General Laws of 1956, as amended.

Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~07/16/2013~~ 02/21/2014
Public Hearing: ~~08/15/2013~~ 03/25/2014

Filing date: ~~11/08/2013~~
Effective date: ~~11/28/2013~~

ERLID# ~~7386~~