

**STATE OF 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 certain 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) Adoption and amendments of regulations regarding Pot/Trap definitions and Pot/Trap gear regulations (Part I - Legislative Findings; Part X - Equipment Restrictions; Part XI - Commercial Fisheries; Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs).
- 2) Amendments to regulations regarding the management of Conch (Whelk)(Part IV - Shellfish).
- 3) Amendments to the regulations regarding the management of Winter Flounder (Part VII - Minimum Sizes of Fish/Shellfish).
- 4) Amendments to the regulations regarding the management of Cod (Part VII - Minimum Sizes of Fish/Shellfish).
- 5) Amendments to the regulations regarding the management of Monkfish (Part VII - Minimum Sizes of Fish/Shellfish).
- 6) Amendments to the regulations regarding the management of American Shad (to prohibit recreational harvesting in marine waters)(Part VII - Minimum Sizes of Fish/Shellfish).
- 7) Amendments to the regulations regarding minimum sizes for American Plaice (Dab), Haddock, Pollock, Witch Flounder (Grey Sole), and Yellowtail Flounder, and (Part VII - Minimum Sizes of Fish/Shellfish).
- 8) Amendments to the regulations regarding trawling ground gear regulations (Part X - Equipment Restrictions).
- 9) Amendments to the regulations regarding gillnet gear regulations (Part XIII - Gillnet Regulations).
- 10) Amendments to the regulations regarding the management of Horseshoe Crab (Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs)(concerning Emergency regulations that were filed March 22, 2013).
- 11) Amendments to the regulations regarding the management of Menhaden (Part XVI - Menhaden Regulations)(concerning Emergency regulations that were filed June 20, 2013).

The public hearing will commence at 6:00 PM on **Thursday, August 15, 2013**, at 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 the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 **no later than 12:00 PM on August 15, 2013.**

The Department has determined that small businesses may be adversely impacted by some of the proposed regulations listed above. 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 July 16, through August 15, 2013, 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/pn081513.htm>.

Janet L. Coit,
Director



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**



Annotated

June 20, 2013

AUTHORITY: These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures, of the Rhode Island General Laws of 1956, as amended.

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**RHODE ISLAND MARINE FISHERIES
STATUTES AND REGULATIONS**

PURPOSE

The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.

AUTHORITY

These rules and regulations are promulgated pursuant to Title 20, Chapter 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.

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 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 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. 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 Department of Environmental Management 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 Division of Fish and Wildlife at (401) 423-1943 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.

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.

Public Hearing Item #11: Amendments to the regulations regarding the management of Menhaden (Part XVI - Menhaden Regulations)(concerning Emergency regulations that were filed June 20, 2013).

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. 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 Department of Environmental Management. The State's menhaden quota will be managed as follows:

16.3.1 -- The landing limit for menhaden in RI will be unlimited until the quota has been reached, as determined by the Division. 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.

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 has been exhausted, as determined by the ASMFC and/or the Division, at which time the program will end and the directed fishery will close. Vessels who 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.

(B) Reporting Requirements -- Any commercial fisher intending to target menhaden under the Episodic Event Set Aside Program for Menhaden must notify the DEM Division of Law Enforcement (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 Division of Fish and Wildlife 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.

(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 RI Marine Fisheries Statutes and Regulations.

16.5 – No fisher may transfer or attempt to transfer menhaden to another fisher.

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations Rhode Island Marine Statutes and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this ~~20th day of June, 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: ~~N/A~~ **July 16, 2013**
Public Hearing: ~~N/A~~ **August 15, 2013**

Filing date: **06/20/2013**
Effective date: **06/20/2013**

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