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 IV
Shellfish

~~**November 20, 2013**~~

ANNOTATED REGULATIONS
MARCH 25, 2014 PUBLIC HEARING

AUTHORITY: 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 # 15

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;

~~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~~

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~~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~~

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 in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

APPLICATION

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

DEFINITIONS

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

SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

SUPERSEDED RULES AND REGULATIONS

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part IV shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

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

4.1 Licenses:

4.1.1 Commercial Licenses: See "*Commercial and Recreational Saltwater Fishing Licensing Regulations*".

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

4.1.3 Non-Resident Recreational Licenses:

(a) Season: Every non-resident over the age of twelve (12) years may obtain a non-resident, non-commercial annual shellfish license for a fee of two hundred dollars ($200) **(RIGL §20-2-22(a).**

(b) 14-day: A non-resident may obtain one non-commercial limited license per calendar year covering fourteen (14) days including the date of issue, for eleven dollars ($11) **(RIGL §20-2-22(b)**.

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

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

4.1.5: No person may possess or take shellfish from the waters of the State of Rhode Island for resale or trade unless:

(a) such person is a legal resident of Rhode Island; and
(b) such person ~~completes and submits an application for~~ **obtains** a commercial shellfish license as the Director may require; and
(c) such person while taking or possessing shellfish from Rhode Island waters has on his person a valid, legally obtained, shellfish license issued by the Department ~~of Environmental Management~~. ~~[RIMF REGULATIONS]~~

4.1.6: A commercially licensed person in a fishery shall only sell, barter, or trade

shellfish taken from Rhode Island waters to a licensed shellfish dealer or multipurpose dealer. ~~[RIMF REGULATION]~~

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

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

4.3 Statewide ~~Catch~~ **Possession** Limits - (Daily Take) Quahaugs, Soft-shell Clams, Sea Clams, Bay Scallops, Mussels, and Oysters except in Management Areas:

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

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

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

4.4 ~~Allowance of Shellfish Taking Under License:~~

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

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

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

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

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

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

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

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

4.8.1 - Maximum daily ~~Take~~ **possession limit of Bay Quahaugs, Soft-shell Clams, Sea Clams, Mussels, and Oysters (Note: Conimicut Point Shellfish Management Area has different possession limits; see specific regulations in section 4.12):**

(a) Boat Harvest:

(1) R.I. Resident: One (1) peck/day/person;

(2) Commercial (in season): Three (3) bushels/day/license holder; maximum of six (6) bushels/boat/day; and maximum of two (2) licensed shellfishers per boat;

(3) Licensed Non-Resident: One half (½) peck/day/license holder

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

(b) Shore Digging:

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

(1) R.I. Resident: One (1) peck ~~each~~**/person/day**~~/person~~**;**

(2) Commercial (in season): Three (3) bushels/day/license holder; maximum of 6 bushels/boat/day; and maximum of two licensed shellfishers per boat;

(i) Exception: In the Greenwich Bay Management Area, the possession limit is three (3) bushels/day/license holder whenever

sub-area 1 is open to boat harvest, but one (1) peck/day/license holder whenever sub-area 1 is not open to boat harvest.

(3) Licensed Non-Resident: One half (½) peck/day/license holder.

~~R.I. Resident (no sale)~~	~~1 peck each/day/person~~
~~Commercial (in season)~~	~~3 bu each/day/license holder (Exception: In the Greenwich Bay Management Area, the limit is 3 bu/day/license holder whenever sub-area 1 is open to boat harvest, but 1 peck/day/license holder whenever sub-area 1 is not open to boat harvest)~~
~~Licensed Non-Resident (no sale)~~	~~½ peck each/day/license holder~~
~~* Oyster season is open from September 15 to May 15 annually.~~ ~~(Note: The harvest of possession oysters in Quonochontaug Pond is prohibited from September 15, 2010~~**~~3~~** ~~to September 15, 2013~~**~~6~~**~~. See section 4.12.3. The harvest and possession of oysters in Bissel Cove/Fox Island is prohibited from September 15, 2010 to September 15, 2015. See section 4.12.6)~~	

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

4.8.2 The use of diving apparatus is prohibited while shoredigging (~~RIMF REGULATION)~~ ~~(Penalty – Part 3.3; (RIGL (§20-1-16)~~.

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

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

~~(RIMF REGULATION) (Penalty - Part 3.3 (RIGL §20-3-3)~~

4.9 Temporary Shellfish Limit **in Shellfish or Marine Life Management Areas**: The Department may establish a reduced shellfish limit in any **designated** ~~Marine Life~~ Management Area for a period not to exceed sixty (60) days. The following reduced **possession** limits shall apply **for the taking of Bay Quahaugs, Soft-shell Clams, Sea Clams, and Oysters** in any area so designated:

4.9.1 R.I. Resident: One (1) peck each/day/person;

4.9.2 Commercial: One (1) bushel/day/license holder;

4.9.3 Licensed Non-Resident: One half (½) peck/day/license holder

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

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

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

4.10 Greenwich Bay Shellfish Management Area:

4.10.1: ~~The conditionally approved waters of Greenwich Bay are established as a Shellfish Management Area. This area is defined as~~ **Described as the waters** west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore **and is further divided into sub-areas and described as follows:**

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

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

(~~d~~**c**) GB Area 3: Described as the waters east of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods, and west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.

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

4.10.~~3~~**2** Shore Digging: will be permitted between sunrise and sunset daily.

4.10.3 Boat Harvest in ~~4.10.4~~ Greenwich Bay Sub-Areas 1 and 2: The areas shall be subject to an annual December harvest schedule established by the Director, pursuant to recommendations developed by the Division of Fish and Wildlife **(DFW)** and the RI Marine Fisheries Council **(RIMFC)**. Said recommendations shall be submitted to the Director at least sixty (60) days prior to the first scheduled opening. The December schedule may include up to forty-eight (48) hours of permitted shellfishing, spread over any number of days during the month, excepting December 25.

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

(a) the proposed modification(s) is/are submitted in writing to the ~~Division of Fish and Wildlife~~ **(DFW)** by a member of the ~~Marine Fisheries Council~~, **RIMFC** appointed by the ~~Marine Fisheries Council~~, **RIMFC**, who shall represent the interests of the commercial shellfishing industry, including harvesters and dealers, regarding the proposed modification(s);

(b) the total number of hours of permitted shellfishing for the month does not exceed forty-eight (48) hours; and

(c) the re-scheduled hours or days are announced publicly by the ~~Division of Fish and Wildlife~~ **(DFW)** with at least seventy-two (72) hours of advance notice.

4.10.4 Winter Shellfish Harvest Schedule for Western Greenwich Bay (both GB Sub-Area 1 and GB Sub-Area 2):

(a) For December 2013: In accordance with DEM Office of Water Resources, "Notice of Polluted Shellfish Grounds" document dated May 2013, GB Sub-Area 1 and GB Sub-Area 2 are closed to shellfishing beginning sunrise on December 1 through sunrise of January 1.

(b) On Thursday, January 2, 2014: shellfishing from a boat will be permitted between 8:00 A.M. and 12:00 P.M. Noon.

(c) From January 6, 2014 through April 30, 2014: shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

4.10.5~~(c)~~ Default harvest schedules for GB Sub-Areas 1 & 2: If no action is taken to establish specific harvest schedules and/or closures for the December through April

harvest season, and harvest seasons subsequent thereto, the sub-areas shall revert to the following default harvest schedule:

(a) Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April excepting December 25 and January 1 if they fall on a Monday, Wednesday, or Friday.

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

4.11 Sakonnet River Shellfish Management Area: **Described as the waters north of a line from Sachuest Point to Sakonnet Light. The northern boundary of the Management Area will be an east/west line across the Sakonnet River lying one quarter (1/4) mile south of the pipeline found just south of Black Point, so-called, and bounded on the west by a north/south line running from Flint Point to Taggert's Ferry, so-called.**

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

4.~~11.1~~**12** Conimicut Point Shellfish Management Area: ~~4.11.1-1: Certain waters adjacent to Conimicut Point are established as a Shellfish Management Area. This area is defined as~~ **Described as the waters** south of a line running from the pole (Latitude: 41° 43’ 2.93” North, Longitude: 71° 21’ 27.68” West) on Conimicut Point to the center of the Old Tower at Nayatt Point; and north of a line from the western most extension of Samuel Gorton Avenue, Warwick and the southern most extension of Bay Road, Barrington.

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

~~4.11.1-3: In the Conimicut Point Shellfish Management Area,~~

4.12.1 Commercial Possession Limit – Soft-shell clams: ~~The daily commercial possession limit shall be~~ Three (3) bushels of soft-shell clams per day per license holder and a maximum of six (6) bushels per day per vessel with a maximum of two commercially licensed shellfishers per boat.

4.12.2 Recreational possession limit – Soft-shell clams: ~~The daily~~

~~recreational possession limit for RI residents shall be~~ **For residents,** one (1) peck of soft-shell clams per day; ~~and the possession limit~~ for licensed recreational non-residents, ~~shall be~~ one-half (1/2) peck of soft-shell clams per day.

~~4.11.1-4~~**4.12.3** The daily ~~catch~~ **possession** limits for shellfish species, other than soft-shell clams, shall be the statewide limits as provided by these regulations, not those applicable to management areas.

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

4.~~12.1~~**13** Mill Gut: ~~4.12.1-1: Mill Gut~~ **Described as the waters of Mill Gut, in the town of Bristol, lying south of the northern-most bridge on Colt Drive.**

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

4.~~12.2~~**14** Winnapaug ~~(Brightman)~~ Pond: **Described as the waters of Winnapaug Pond in its entirety, in the town of Westerly.**

~~4.12.2-1~~**4.14.1 - Closed Area:** The following area in Winnapaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net only: the area north of a line running easterly from a special DEM marker at Big Rock Point (N 41 degrees 19 minutes 49.0 seconds, W 71 degrees 47 minutes 57.0 seconds), to the special DEM marker at the southern end of Larkin's Island (N 41 degrees 19 minutes 55.0 seconds, W 71 degrees 47 minutes 5.0 seconds),. The area will be bordered on the east by a line running northwesterly the Larkin's Island special marker to a special DEM marker adjacent to the end of Bayside Avenue (N 41 degrees 19 minutes 58.0 seconds, W 71 degrees 47 minutes 9.0 seconds). The northern boundary is the shoreline between the Bayside Ave special DEM marker and the Big Rock Point special DEM marker.

4.~~12.3~~**15** Quonochontaug Pond **in its entirety, in the towns of Charlestown and Westerly.**

~~4.12.3-1~~**4.15.1**: The harvest and possession of oysters in Quonochontaug Pond is prohibited from September 15, 2013 to September 15, 2016 (for three years).

~~4.12.3-2~~**4.15.2 - Closed Areas:** The following areas in Quonochontaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net only:

(a) The western closure area is defined as south of a line running easterly from

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

(b) The eastern closure area is defined as east of a line running southerly from the special DEM marker located at N 41 degrees 21 minutes 1.1 seconds W 71 degrees 42 minutes 33.4 seconds, to a second special DEM marker located at N 41 degrees 20 minutes 41.0 seconds W 71 degrees 42 minutes 44.1 seconds; and bound by the eastern pond shoreline between the special DEM markers. ~~(RIMF REGULATION) (Penalty Part 3.3; (RIGL 20-3-3)~~

4.~~12.4~~**16** Ninigret **(Charlestown)** Pond; **in its entirety in the Town of Charlestown.**

~~4.12.4-1~~**4.16.1 - Closed Areas:** The following area within Ninigret Pond ~~in Charlestown~~ will be closed to all shellfishing except for the harvest of bay scallops by dip net only: all waters within an area formed by the following points: from ("A" N 41 degrees 20 minutes 41.7 seconds W 71 degrees 41 minutes 24.3 seconds, the northeast corner of the Ninigret Conservation Area parking lot) following the shoreline to ("B" N 41 degrees 20 minutes 49.6 seconds W 71 degrees 41 minutes 4.6 seconds, a DEM sign approximately 500 meters eastward of "A"); from "B" northward to ("C" N 41 degrees 21 minutes 31.0 seconds W 71 degrees 41 minutes 22.2 seconds, the Lavin's Landing Marina launching ramp); from "C" following the shoreline to ("D" N 41 degrees 21 minutes 10.1 seconds W 71 degrees 41 minutes 40.9 seconds, a DEM sign on the westernmost end of Reeds Point); from "D" southward to "A".

4.~~12.5~~**17** Potter Pond **in its entirety, Town of South Kingstown, west of the bridge at Succotash Road.**

4.~~12.5-1~~**17.1**: **Closed Areas:** The following area within Potter Pond in South Kingstown will be closed to all shellfishing except for the harvest of bay scallops by dip net only: An area within Sycamore Cove defined as north of a line running easterly from a special DEM marker located at N 41 degrees 23 minutes 2.0 seconds, W 71 degrees 32 minutes 13.0 seconds; to a second special DEM marker located at N 41 degrees 23 minutes 1.0 second, W 71 degrees 31 minutes 59.5 seconds; and bound by the northern pond shoreline between the special DEM markers.

PUBLIC HEARING ITEM #13
Bristol Harbor Shellfish Management Area Boundaries

4.~~22~~**18** Bristol Harbor Shellfish ~~Transplant~~ **Management** Area:

4.~~22~~**18**.1 The waters of Bristol Harbor described below are designated as a Shellfish Management Area. This area is defined as that area of Bristol Harbor southerly of a line between ~~Johnson's Dock (so-called) on the west side of Bristol Harbor and~~ **CRMC permitted dock #419 located at 163 Poppasquash Road (so called Rockwell's Dock) to** the northwest corner of the ~~Coast Guard Dock, on the east side of Bristol Harbor~~ **Rockwell Pier municipal parking lot in Bristol Harbor**, and north of a line between **CRMC Permitted Dock # 1601 at the boat house to the rear of 363 Poppasquash Road (so called Johnson's Dock)** ~~Rockwell's Dock (so-called) on the west side of Bristol Harbor,~~ and the northwest corner of the Coast Guard Dock **in Bristol Harbor**. The area is bordered on the west by the three (3) foot contour line along the shore between ~~Rockwell's Dock and Johnson's Dock~~ **Dock #419 and Dock # 1601** and on the east by the existing pollution line.

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

4.~~22~~**18**.2 Boat Harvest:

(a) For December 2013: shellfishing from a boat will not be permitted.

(b) Beginning January 3, 2014: shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 P.M. Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) From February 1 through April 30, 2014: shellfishing from a boat will be permitted from sunrise to sunset seven (7) days a week.

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

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

Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April excepting December 25 and January 1 if they fall on a Monday,

Wednesday, or Friday.

4.~~24~~**19** Bissel Cove/Fox Island ~~Transplant~~ **Management** Area: ~~4.24.1~~: **Described at the waters of** Bissel Cove and the adjacent waters of Narragansett Bay in the town of North Kingstown; including the entirety of Bissel Cove and the adjacent waters south of a line between pole #275 at the corner of Waldron and Seaview Avenues and the southwestern most point of Fox Island (south of the cable area); west of a line from the southwestern most point of Fox Island to the northern most point of Rome Point is established as a Shellfish Management Area.

~~4.24.1-1 Shellfish harvesting will be allowed only when declared open by the DEM Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.~~

4.~~12.6~~**19.1** Bissel Cove/Fox Island Oyster Harvest Moratorium: ~~4.12.6-1:~~ The harvest and possession of oysters in the Bissel Cove/Fox Island Shellfish Management Area is prohibited from September 15, 2010 to September 15, 2015 (for five years). ~~(RIMF REGULATION)~~ (Penalty - ~~Part 4.4 or 4.7; (~~RIGL §20-6-9 or §20-6-10)]

4.~~24~~**19**.2 Shore Digging: Shore digging will be permitted daily between sunrise and sunset.

4.~~24~~**19**.3 Boat Harvest:

(a) Beginning the 2nd Wednesday of December though April 30, 2014 – shellfishing from a boat will be permitted from sunrise to sunset seven (7) days per week for the harvesting of quahaugs, soft-shell clams, and mussels.

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

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

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

~~4.25: Repealed 12/01~~

4.20 Point Judith Pond, including East Pond, in their entirety in the towns of South Kingstown and Narragansett.

4.~~26~~**21** Kickemuit River Shellfish Management Area ~~Regulations~~: ~~4.26.1 The area is defined as follows:~~ **Described as the** marine waters of the Kickemuit **River** ~~are those~~ north of a line connecting nun buoy 6 and can buoy 1 at Bristol Narrows.

4.~~26.2~~**21.1:** ~~Upon certification of water quality by the DEM Office of Water Resources,~~ shellfishing will be permitted throughout the area between sunrise to sunset daily. ~~When the waters are certified for shellfishing by the DEM Office of Water Resources~~ shore digging will be permitted when the area is open (in season).

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

~~4.26.5 Water quality certification will determine whether or not shellfishing is allowed in these areas. Regulations established by the DEM Office of Water Resources shall supersede these regulations. (RIMF REGULATIONS) (Penalty - Part 3.3; (RIGL §20-3-3)~~

4.~~27~~**22** Potowomut Shellfish Management Area: The Potowomut Shellfish Management Area is divided into the following three areas:

4.~~27.1(a)~~**22.1** - Area A: is defined as the area west of a line between the seaward end of Sandy Point and buoy “G1” (Round Rock) and north of a line between the seaward end of Pojac Point to buoy "G1" (Round Rock).

(a) Harvesting Schedule: ~~(1)~~ Commencing May 1, 2013, shellfishing will be permitted from sunrise to sunset on: Sundays through Saturdays, seven (7) days a week, with a commercial possession limit of three (3) bushels/day/license holder.

4.~~27.1(b)~~**22.2** - Area B: is defined as the triangular area east of a line between the seaward end of Sandy Point and buoy “G1” (Round Rock) and west of a line between the flagpole at the Warwick Country Club and buoy “G1” (Round Rock) and south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point.

(a) Harvesting Schedule: ~~(1)~~ Area B is closed to shellfishing until further notice.

4.~~27.1(c)~~**22.3** - Area C: is defined as the area east of a line between the flagpole at the Warwick Country Club and buoy “G1” (Round Rock) and north of a line from buoy "G1" (Round Rock) to the Warwick Lighthouse.

(a) Harvesting Schedule: ~~(1)~~ Shellfishing will be permitted from sunrise to sunset on: Sundays through Saturdays, seven (7) days a week, with a commercial possession limit of three (3) bushels/day/license holder.

~~4.27.2 Shellfish harvesting will be allowed only when declared open by the DEM Office of Water Resources based upon water quality considerations. Regulations by the~~

~~Office of Water Resources shall supersede the regulations below.~~

4.~~28~~**23** High Banks Shellfish Management Area: ~~4.28.1:~~ The waters of High Banks are established as a Shellfish Management Area. This area is defined as the waters of the upper west passage south of a line between the seaward end of Pojac Point to the Round Rock buoy "G1" and north of a line from the seaward end of the fence between the former Davisville Navy property and Pettee Street in the Mount View section of North Kingstown to "N6" buoy located mid-bay west of Prudence Island. The area is bounded on the east by a line projecting from the easternmost end of Pier 2 at Davisville to the Round Rock buoy "G1" and is bounded to the west by the shore.

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

4.~~28~~**23.1** Harvesting Schedule: ~~(a)~~ Commencing May 1, 2013: Shellfishing will be permitted from sunrise to sunset on: Sundays through Saturdays, seven (7) days a week, with a commercial possession limit of three (3) bushels/day/license holder.

4.~~29~~**24** Jenny's Creek Shellfish Management Area: **Includes waters of Jenny's Creek north of the inlet at Pine Hill Cove.**

4.24.1 – Closed Areas: The entire area is closed to all shellfishing until further notice ~~(RIMF REGULATION) (Penalty – Part 3.03 (RIGL 20-3-3)~~.

~~4.13: repealed 12/2001~~

4.~~23~~**25** Opening Shellfish on Water: No person shall possess the meats of more than six (6) shellfish while shellfishing on the waters of the State or throw the shells of open scallops onto the scallop beds. (RIGL §20-6-21) ~~[Penalty - Part 6.6; (RIGL §20-6-13)]~~

4.~~14~~**26** Transfer of Shellfish from Uncertified Waters: The Director ~~of Environmental Management~~ is authorized and directed, after requiring all necessary safeguards, to transfer shellfish from uncertified waters of the State to approved areas. The Director may make rules and regulations governing the re-harvest of those shellfish to the best economical benefit of the state after all necessary safeguards to insure their cleanliness. (RIGL §20-6-26; Penalty ~~- Part 4.17;~~ §20-6-29)

4.~~15~~**27** Dredging, Raking, and Tonging in Transplant Beds: Those areas to which the shellfish are transferred shall be marked out, and dredging, raking, or tonging on them shall be prohibited except under the special direction of the Director. (RIGL §20-6-27; Penalty ~~- Part 4.17;~~ §20-6-29)

4.~~16~~**28** Cost of Transfer of Shellfish: For the transfer of shellfish pursuant to § 20-6-26, the Director is authorized to hire dredge boats or hand-rakers and to set the rate of payment. Any transferred shellfish may be sold by the Director, and the proceeds of

that sale shall be retained under the control of the Director for the purpose of assisting in the cost of the transfer of shellfish from uncertified waters to approved areas from time to time as the transfer becomes necessary or expedient. (RIGL §20-6-28; Penalty ~~- Part 4.17; (~~§20-6-29)

4.~~17~~**29** Penalty for Improper Taking of Transferred Shellfish: Any person violating rules or regulations promulgated by the Director ~~of Environmental Management~~ as provided for in Sections 20-6-26 to 20-6-28, shall, upon conviction, be subject to a fine not exceeding five hundred dollars ($500) or imprisoned not exceeding thirty (30) days or both. (RIGL §20-6-29)

4.~~18~~**30** ~~Shellfish Grounds - Polluted Area. For a discussion of the statutes and penalty provisions governing shellfishing in polluted areas, refer to Chapter 20-8-1, as amended, of the Rhode Island General Laws.~~ **Shellfish harvesting will be allowed in all areas, except those areas declared closed by the DEM Office of Water Resources based upon water quality considerations pursuant to RIGL Chapter 20-8.1.**

~~4.19 [*Repealed 11/20/02*]~~

~~4.20 Surf Clams and Ocean Quahaugs.~~

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

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

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

~~4.20.2-1: It is unlawful for any dredge vessel to take and/or possess more than 200 bushels of surf clams per vessel.~~
~~4.20.2-2: Except as allowed in Part 6.8.3, it is unlawful for any vessel to catch, harvest, possess, have on board, land, or off load, any surf clams which are less than 5 inches in the longest shell diameter.~~
~~4.20.2-3: Vessels properly licensed to do so may land surf clams and ocean quahaugs legally taken outside the territorial waters of Rhode Island in excess of the trip limit established by Part 4.20.2-1, provided that no vessel engaged in fishing for surf clams or ocean quahaugs within territorial waters may possess or have on board more than the prescribed limit.~~
~~4.20.2-4: It is unlawful for any dredge vessel to take and/or possess more than 26 cages (832 bushels) of ocean quahaugs. (RIMF REGULATION) (Penalty - Part 3.3; (RIGL 20-3-3).~~

4.31 MINIMUM SIZES FOR SHELLFISH

4.~~21~~**31.1** Minimum Size of Quahaugs, Soft-Shell Clams, and **Blue** Mussels:

(a) Bay Quahaug: No person shall take or have in his custody or possession quahaugs of less than one inch (1") shell thickness (hinge width). For purposes of this regulation, hinge width is defined as the distance between the convex apex of the right shell and convex apex of the left shell ~~ref~~ (RIGL §20-6-11) ~~(RIMF REGULATIONS) (Penalty - Part 3.3; (RIGL 20-3-3)~~.

~~(a)~~**(b)** ~~No person shall take and/or possess any quahogs less than one inch (1") shell thickness (hinge width). In addition,~~ **Soft-Shell Clams:** no person shall take and/or possess soft-shell clams, taken from the free and common soft-shell clam fisheries, of a diameter less than two inches (2") taking the maximum shell diameter, ~~or any oysters, taken from the free and common oyster fisheries, measuring less than three inches (3") measured parallel to the long axis of the oyster, unless greater minimum sizes are established by the Director, in consultation with the Marine Fisheries Council~~.

4.31.2 Oysters:

(a) Minimum Size: Three (3) inches measured parallel to the long axis of the oyster. ~~ref~~ (RIGL §20-6-11) ~~(RIMF REGULATION) (Penalty - Part 3.3; (RIGL §20-3-3)~~

(b) Season: September 15 to May 15 annually.

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

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

4.31.5 Penalty: Any person who takes and/or possesses shellfish of less than the minimum size, as delineated above, upon conviction, shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each and every fifteen (15) shellfish taken. Additionally, any person who takes and/or possesses shellfish of less than the minimum size commingled and/or otherwise stored or contained with shellfish of not less than the minimum size, where the percentage of the less

than minimum size shellfish is not less than ten percent (10%) of the total piece count of the commingled and/or otherwise stored or contained package, shipment, or container, shall be subject to seizure and/or forfeiture of the entire commingled and/or otherwise stored or contained package, shipment, or container, in accordance with the provisions of ~~§§ 20-1-8(e) and (f) and 20-1-8.1.~~ **(RIGL §20-6-11)**.

4.~~30~~**32** Handling of Shellfish:

4.~~30~~**32**.1: 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.

4.~~30~~**32**.2: Containers used for storing shell stock must be clean

4.~~30~~**32**.3: Boat decks and storage bins used in the harvest or transport of shell stock shall be kept clean with potable water or water from the growing area in approved classification or the open status of conditional areas.

4.~~30~~**32**.4: Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall assure that said vessel is properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of shell stock.

4.~~30~~**32**.5: Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.

4.~~30~~**32**.6: Shellfishermen or aquaculturists using a boat to harvest and transport shell stock shall provide such vessel with effective drainage to avoid contact between bilge water and shell stock.

4.~~30~~**32**.7: Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not contaminate shell stock.

4.~~30~~**32**.8: Shell stock shall be washed reasonably free of bottom sediments as soon after harvesting as possible. The harvester shall be primarily responsible for washing shell stock. If shell stock washing is not feasible at the time of harvest, the dealer shall assume this responsibility. Water used for washing shall be from a potable water source, or growing area in the approved classification or open status of the conditionally approved classification.

4.~~30~~**32**.9: The discharge of human sewage from a vessel used in the harvesting of shell stock, or from vessels that buy shell stock, within waters of the state is prohibited (RIGL §46-12-39). ~~(RIMF REGULATION)~~

4.~~31~~**33** Tagging of Shellfish:

4.~~31~~**33**.1: Commercial shellfishermen must place any and all shellfish taken by them (except those shellfish returned to the waters of the harvest area) into containers, and must tag each and every container with a "harvester tag" conforming to the requirements of section 4.31.2 below, prior to the following:

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

4.~~31~~**33**.2: The harvester tag shall be durable, waterproof, and sanctioned by the R.I. Department of Health. The tag shall contain the following indelible, legible information in the order specified below:

~~4.31.2-1~~**(a)**: harvester's identification number as assigned by DEM;
~~4.31.2-2~~**(b)**: date of harvest;
~~4.31.2-3~~**(c)**: the harvest location as identified on the (see Part XVII – Maps), shellfish management area or aquaculture site identified by the CRMC Assent number;
~~4.31.2-4~~**(d)**: type (species) of shellfish; and
~~4.31.2-5~~**(e)**: approximate quantity of shellfish

4.~~31~~**33**.3: Each tag shall also carry the following statement in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS"

4.~~31~~**33**.4: Commercial shellfishermen shall not place shell stock harvested from more than one growing area into the same container. When the harvester is also a dealer, the harvester has the option to tag the shell stock with a harvester tag or a dealer's tag meeting the requirements of the R.I. Department of Health regulations.

4.~~31~~**33**.5: Bulk tagging of shell stock will be permitted only with prior approval of the Director under the following criteria:

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

4.~~32~~**34** Temperature control of shellfish:

4.~~32~~**34**.1: Shellfish harvesters shall not allow shell stock to deteriorate or decompose from exposure to excessive temperature and shall deliver shell stock to a licensed dealer before such deterioration or decomposition occurs.

4.~~32~~**34**.2: The maximum allowable time between the harvest of shell stock and delivery to a dealer shall be twenty hours. Possession of shell stock in excess of 20 hours is prohibited.

4.~~32~~**34**.3: Ocean quahaugs (*Arctica islandica*) and surf clams (*Spisula soliddisma*) are exempt from the aforementioned temperature control requirements. ~~(RIMF REGULATION)~~

~~4.33- Denial, Suspension, or Revocation of License~~

~~4.33.1 - In addition of other penalties provided by law or other rule or regulation, any licensed shellfisherman who violates the provision of RIGL § 20-6-24, or these rules, or an order issued by the Director shall be subject to suspension, revocation or denial of his license in accordance with RIGL §§ 20-2-13 and 42-17.1-2(s).~~

~~4.33.2 Penalties~~

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

~~4.33: The Department of Environmental Management may deny renewal of shellfisherman license for violation of the provisions of RIGL §20-6-24, these rules or any order issued by the Director during a prior license period. (RIMF REGULATION)~~ **Repealed.**

4.34: ~~Severability -- If any section or provision of these rules and regulations is held invalid by a court of competent jurisdiction, the remaining sections of provisions of these rules and regulations shall not be affected thereby. (RIMF REGULATION)~~ **Repealed**

PUBLIC HEARING ITEM # 14
Conch

4.35 Conch (Channeled Whelk – *Busycotypus canaliculatus* and Knobbed Whelk – *Busycon carica*) – General provisions applicable to commercial and recreational taking of conch:

(a) Taking by RI state residents only: The taking of conch from waters under the jurisdiction of the State of Rhode Island for either commercial or recreational purposes shall be restricted to legal residents of the State of Rhode Island. ~~(RIMFC REGULATION)~~

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

(c) Unauthorized Hauling of Conch Pots: No person except the Director may haul, unduly disturb, or remove any animal from a conch pot of a person possessing a valid commercial fishing license to take conch, or from a person fishing recreationally for conch, without the written permission of that person.

(d) Unauthorized Possession and/or Transfer of Conch Pots: No person except the Director may sell, transfer, or have in his or her possession or control any conch pot, or associated line (warp) and/or buoy, without the written permission of the owner.

(e) Hauling or Setting Conch Pots at Night: No person shall haul or unduly disturb any conch pot within the territorial waters of this state between the hours of one (1) hour after sundown and one (1) hour before sunrise.

1. Season

Option #1 – Status quo

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

Option #2 – 4.4% reduction

~~(c)~~ **(f)** Commercial and Recreational Season: The season for conch will be open from ~~January~~ **May** 1st through December 31st **and will be closed from January 1st through April 30th** (RIGL§ 20-3-2).

Option #3 – 5% reduction

~~(c)~~ **(f)** Commercial and Recreational Season: The season for conch will be ~~open~~ **closed** from ~~January~~ **August** 1st through ~~December~~ **September** 31st **and will be open during January 1st through July 31st and October 1st through December 31st** (RIGL§ 20-3-2).

2. Legal Minimum Size

Option #1

~~(e)~~ **(g)** Legal Minimum Size of Conch:

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

Year	Shell Width	Shell Length
2014	3" (76.2 mm)	5-39/128" (134.74 mm)
2015	3-1/4" (82.55 mm)	5-11/16" (144.46 mm)

OR

Year	Shell Width
2014	3" (76.20 mm)
2015	3-1/4" (82.55 mm)

Option #2

~~(e)~~ **(g)** Legal Minimum Size of Conch:

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

Year	Shell Width	Shell Length
2014	2-7/8" (73.03 mm)	5-15/128" (129.98 mm)
2015	3" (76.20 mm)	5-39/128" (134.74 mm)
2016	3-1/8" (79.38 mm)	5-63/128" (139.50 mm)
2017	3-1/4" (82.55 mm)	5-11/16" (144.46 mm)

OR

Year	Shell Width
2014	2-7/8" (73.03 mm)
2015	3" (76.20 mm)
2016	3-1/8" (79.38 mm)
2017	3-1/4" (82.55 mm)

Option #3

~~(e)~~ **(g)** Legal Minimum Size of Conch:

(1) No person fishing commercially or recreationally shall take, possess, sell, possess for sale, or offer for sale any conch with a shell **width or shell**

length measuring less than ~~2-3/4 inches (69.85 mm) in diameter or a shell length less than 4-3/4 inches (120.65 mm)~~ **the dimensions specified by the following schedule**. ~~(RIMF REGULATION) (Penalty - Part 3.3; RIGL §20-1-16)~~.

Year	Shell Width	Shell Length
2014	2-7/8" (73.03 mm)	5-15/128" (129.98 mm)
2016	3" (76.20 mm)	5-39/128" (134.74 mm)
2018	3-1/8" (79.38 mm)	5-63/128" (139.50 mm)
2020	3-1/4" (82.55 mm)	5-11/16" (144.46 mm)

OR

Year	Shell Width
2014	2-7/8" (73.03 mm)
2016	3" (76.20 mm)
2018	3-1/8" (79.38 mm)
2020	3-1/4" (82.55 mm)

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

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

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

(h) Fishery Closure due to Eminent Public Health Risk (Bio-toxins): A prohibition on the taking and landing of conchs from any of the waters under the jurisdiction of the State of Rhode Island shall be in effect upon a determination by the Office of Water Resources of an eminent public health risk caused by the consumption of conchs exposed to biotoxins. The prohibition on the taking and landing of conchs shall terminate upon a determination by the Office of Water Resources that an eminent public health risk from biotoxins caused by the consumption of conchs no longer exists.

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

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

3. Commercial Possession Limit

Option #1 – Status Quo

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

Option #2 – 10% reduction

4.35.1-2 Commercial Possession Limit: A holder of any commercial fishing license issued by the State of Rhode Island authorized for the taking of conch may take and/or possess, in any one (1) day, up to ~~35~~ **seventeen (17)** bushels of conch per vessel per calendar day. ~~(RIMFC REGULATION) (Penalty – Part 3.3, RIGL§ 20-3-3)~~

Option #2 – 20% reduction

4.35.1-2 Commercial Possession Limit: A holder of any commercial fishing license issued by the State of Rhode Island authorized for the taking of conch may take and/or possess, in any one (1) day, up to ~~35~~ **fourteen (14)** bushels of conch per vessel per calendar day. ~~(RIMFC REGULATION) (Penalty – Part 3.3, RIGL§ 20-3-3)~~

4. Commercial Conch Quota – Annual Catch Limit

Option #1:

4.35.1-4 Commercial Conch Fishery Quota – Annual Catch Limit (ACL) – The Division of Fish and Wildlife shall set an annual catch limit (ACL) for the commercial conch fishery. If the ACL is reached prior to December 31, the commercial conch fishery shall be closed for the remainder of the calendar year and shall open again on January 1st of the following year.

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

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

4.35.~~4~~**2** Recreational Taking of Conch (Channeled Whelk – *Busycotypus canaliculatus* and Knobbed Whelk – *Busycon carica*):

4.35.~~4~~**2**-1 Recreational Possession Limit: Unless otherwise specified in this section or by the ~~RI Marine Fisheries~~ RIMF**R** ~~Regulations~~, the possession limit for the recreational conch fishery shall be 1/2 bushel per person per calendar day, or if a vessel with more than one (1) ~~individual~~ **resident** onboard is used, a maximum of 1 bushel per vessel per calendar day ~~(RIMF REGULATION) (Penalty – Part 3.3, RIGL §20-1-16)~~.

4.35.~~4~~**2**-2 Recreational Conch Pot Limit: A recreational fisherman may place, set, keep, maintain, supervise, lift, raise, or draw in from any of the waters under the jurisdiction of the State of Rhode Island, or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters not more than five (5) conch pots or traps at any one time. A ~~non-commercial~~ **recreational** conch fisherman shall not offer for sale or sell conchs ~~(Penalty - Part 1.16; RIGL §20-1-16)~~.

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

~~4.35.6 Unauthorized Possession and/or Transfer of Pots and Traps: (a) No person~~

~~except the Director, Division of Law Enforcement officers, and authorized technical personnel of the Department may place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding conchs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner.~~

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

~~4.35.7 Raising Pots at Night: No person shall raise or unduly disturb any conch pot or trap within the territorial waters of this state between the hours of one (1) hour after sundown and one (1) hour before sunrise. Every person violating this section shall, upon conviction, be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or be imprisoned not exceeding one (1) year, or both. However, in situations of emergency or upon application being made, the owner of the conch pots or traps may be authorized to remove the pots or traps by the Director or the Director's designee during the prohibited hours. All boats, pots or traps, or other equipment used in violation of this section shall be seized and forfeited to the state. (RIGL§ 20-1-8 and § 20-1-8.1)~~

4.36 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.

4.37 PENALTIES

4.37.1 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).

4.37.2 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".*

4.38 APPEALS

4.38.1 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"*

4.38.2 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~~7. EFFECTIVE DATE

The foregoing rules and regulations "Rhode Island Marine **Fisheries** ~~Statutes and~~ Regulations, **Part IV, Shellfish",** after due notice, are hereby adopted and filed with the Secretary of State this ~~20th 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 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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Janet L. Coit, Director
Department of Environmental Management

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

Filing Date: ~~11/20/2013~~
Effective date: ~~12/10/2013~~

ERLID# ~~7598~~