RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

PUBLIC NOTICE

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. Proposal to continue/expand/modify the summer flounder sector allocation program in 2010
2. Proposed changes to the Recreational Summer Flounder Management Plan
3. Proposed changes to the Recreational Scup Management Plan
4. Proposed changes to the Commercial Floating Fish Trap Scup Management Plan
5. Proposed changes to the Commercial Tautog Management Plan
6. Proposed changes to the Recreational Tautog Management Plan
7. Proposed changes to the Recreational Black Sea Bass Management Plan
8. Proposed changes to the Narragansett Bay Menhaden Management Plan
9. Proposed changes to the General Category Commercial Striped Bass Management Plan
10. Proposed changes to the Floating Fish Trap Commercial Striped Bass Management Plan
11. Proposed changes to the Recreational Striped Bass Management Plan
12. Proposed changes to the Winter Flounder Management Plan
13. Proposed changes to the Weakfish Management Plan

The public hearing will commence at 6:00 PM on Tuesday, February 23, 2009 in the University of Rhode Island Graduate School of Oceanography, Corless Auditorium, South Ferry Road, Narragansett, RI 02882. The hearing room is handicap accessible. A taped record of the hearing will be made and the DEM will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for this service can be made in writing or by calling (401) 222-6800 or TDD (401) 831-5508. Written comments concerning the regulations proposed for promulgation by the DEM may also be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 no later than 12:00 p.m. on February 23, 2009.

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 January 22 through February 23, 2009 by mail or at the offices of the Division of Fish and Wildlife located at 4808 Tower Hill Road, Wakefield, RI 02879 and 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 address: http://www.dem.ri.gov/topics/mftopics.htm

W. Michael Sullivan, PhD
Director
Department of Environmental Management

Table of Public Hearing Items and Proposed Options Included in Part XVI - **Menhaden Regulations**

<u>Public Hearing Item 8 – Proposed changes to the Narragansett Bay Menhaden Management Plan:</u> (Pages 5-10)

Option 1 - Setting a floor, maximum boat size and maximum capacity of 120,000 pounds (Menhaden AP consensus option)

Option 2 - Lower possession limit to keep fishery open all summer (Proposed by D. Pesante)

Option 3 - Close northern area from May 15 – July 15 and remove restrictions from southern area – (Proposed by Federated RI Sportsmen's Club) (pages 9-12)

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 1/20/2010

~~**April 11, 2008**~~

AUTHORITY: These regulations are adopted pursuant to Chapters 42-17.1, 42-17.6, 20-1-2, 20-1-4, 20-3-2 thru 20-3-6, 20-4 thru 20-10, and in accordance with 42-35, of the Rhode Island General Laws of 1956, as amended.

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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 rules and regulations are promulgated pursuant to Chapter 42.17.1, 42-17.6, 20-1-2, 20-1-4, 20-3-2 though 20-3-6, 20-4 thru 20-10 and in accordance with Chapter 42-35, Administrative Procedures, of the 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.

PART XVI - MENHADEN REGULATIONS

16.1 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 will then extend from Land's End to Sachuest Point and then to Sakonnet Light. The use of a purse seine to harvest menhaden shall be permitted within the Menhaden Management Area according to sections 16.2, 16.3, and 16.4. (RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

Public Hearing Item 8 – Proposed changes to the Narragansett Bay Menhaden Management Plan:
Option 1: Setting a floor, maximum boat size and maximum capacity of 120,000 pounds - (Menhaden AP consensus option)

16.1.1- Possession Limits/Reporting Requirements.

(A) The commercial menhaden fishery possession limit shall be no more than 120,000 pounds per vessel per day while in state waters. Further, no commercial menhaden fisher shall possess menhaden or otherwise engage in the taking of menhaden anytime on Saturday, Sunday, official state holiday, or prior to sunrise or following sunset Monday through Friday.

(B) No commercial menhaden fisher shall engage in the taking of menhaden with a purse seine net exceeding 100 fathoms in length (600 ft in length) and 15 fathoms in depth (90 ft in depth).

(C) Additionally, a commercial menhaden fisher will paint the float buoys along the top of the net a fluorescent color that is distinguishable from the other float buoys at intervals of 50 feet. All nets to be used in the purse seine fishery shall be certified by the DEM Division of Law Enforcement prior to the commencement of fishing annually.

(D) Vessels used in the commercial menhaden fishery in the Narragansett Menhaden Management Area may not exceed a length of 85 feet, and may not have a storage capacity of greater than 120,000 pounds.

(E) A minimum threshold of XX pounds of menhaden must be present in the Narragansett Bay Menhaden Management Area prior to the commencement of commercial menhaden fishing. The minimum threshold will be determined using approved scientific methods and commercial menhaden fishers will be notified when the threshold is reached by calling the Division of Fish and Wildlife at 401-423-1920 or by checking the DEM website.

~~(C)~~ (F) In order to permit the Department of Environmental Management (DEM) to monitor the fishery, any fisher intending to engage in the commercial menhaden fishery shall notify the DEM Division of Law Enforcement (Division) at (401) 222-3070 prior to taking or coming into possession of menhaden in state waters . At the time that a fisher advises the Division of his/her intent to harvest menhaden, the Division 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 Law Enforcement at (401) 222-3070 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished. The possession limit may be modified on the basis of the estimate weekly standing stock of menhaden in Narragansett Bay based on approved scientific methods.

(~~D)~~ (G) When 50 % of the estimated menhaden stock present in Narragansett Bay above the minimum threshold amount of XX pounds is harvested, the Director shall close the menhaden fishery until further notice.

Option 2: Lower possession limit to keep fishery open all summer (Proposed by D. Pesante)

16.1.1- Possession Limits/Reporting Requirements.

(A) The commercial menhaden fishery possession limit shall be no more than 120,000 pounds per vessel per day while in state waters. Further, no commercial menhaden fisher shall possess menhaden or otherwise engage in the taking of menhaden anytime on Saturday, Sunday, official state holiday, or prior to sunrise or following sunset Monday through Friday.

(B) No commercial menhaden fisher shall engage in the taking of menhaden with a purse seine net exceeding 100 fathoms in length (600 ft in length) and 15 fathoms in depth (90 ft in depth).

(C) In order to permit the Department of Environmental Management (DEM) to monitor the fishery, any fisher intending to engage in the commercial menhaden fishery shall notify the DEM Division of Law Enforcement (Division) at (401) 222-3070 prior to taking or coming into possession of menhaden in state waters . At the time that a fisher advises the Division of his/her intent to harvest menhaden, the Division 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 Law Enforcement at (401) 222-3070 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished. The possession limit may be modified on the basis of the

estimate weekly standing stock of menhaden in Narragansett Bay based on approved scientific methods.

(D) When 40% of the estimated menhaden stock present in Narragansett Bay is harvested, the Director shall decrease the possession limit to 10,000 pounds per vessel per day while in state waters.

~~(D)~~ (E) When 50 % of the estimated menhaden stock present in Narragansett Bay is harvested, the Director shall close the menhaden fishery until further notice.

16.2 Menhaden Season -- The season for taking menhaden from the Narragansett Bay Menhaden Management Area by purse seine, for purposes other than fish meal reduction shall open at sunrise on January 1 and end at sunset on December 31, ANNUALLY. (RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

16.3 Permanent Closures -- The following areas are permanently closed to all types of purse seining for menhaden:

Providence River

- **In the Providence River, all waters north of a line along the hurricane barrier.**
- **All waters east of the east line of the Providence River navigation channel, south to the northwest corner of the Getty fuel dock on the East Providence shore in the Boyden Heights area.**
- **On a line from Pomham Rocks to Sabin Pt. and then along a line to BP thence along a line from BP to the tower at Nayatt Point.**
- **On the west side of Providence River, all of Pawtuxet Cove and all waters inside the dike.**
- **All waters in the Fields Point area north of a line running from Arnold Ave. on the West Shore to C"39" on the east thence running north to the easternmost extreme tip of Fields Point.**

Greenwich Bay

- **All waters in Greenwich Bay west of a line from the flag pole on Warwick Point to Sandy Point.**
- **All waters of Potowomut River west of a line from Marsh Point to Pojac Pt.**

West Bay Area:

- **All waters of Allen Harbor west of a line running north and south from the easternmost point of land forming Allen Cove.**
- **All waters west of a line drawn between the towers marking the entrance to Wickford Harbor.**

East Bay Area:

- **All waters of the Warren River, Barrington River and Palmer River, north of a line running from Rumstick Point through N"2" to the seaward end of Gibson Road at Bristol Highlands.**
- **All waters of Bristol Harbor north of a line from the end of Johnston Estate Road through R"6" to the Bristol shore on the east at approximately the seaward end of Franklin Street.**
- **All waters of the Kickemuit River north of a line running from N"6" through N"4" to the shore at the end of Narrows Road in Bristol.**
- **In the Sakonnet River all waters bounded on the north by the Swing Bridge and on the south by "Stone Bridge" including the waters of Spectacle Cove.**
- **All the waters of Nannaquaket Pond south of the bridge to Nannaquaket Neck.**

Southern Bay Area:

- **All waters of Dutch Harbor south and east of a line from the westernmost end of Orchard Road on Conanicut Island to the Quay on the northeastern shore of**
  Dutch Island. Thence along the eastern shore to Dutch Island Light then easterly to N"2" and then to the most northerly tip of Beaverhead Dock.
- **The waters in the area of "Melville" south of a line running from the end of the breakwater to the easternmost point of Dyer Island and thence to Carr Point.**
- **In Newport Harbor, south and east of a line from the western end of the breakwater in Coasters Harbor south to the southeastern tip of Rose Island thence southerly to C"1" thence east to G"3" to the northern tip of Goat Island, thence south along the east shore of Goat Island to the southern tip of Goat Island and then west to the northernmost tip of Fort Adams.**

16.3.1 Weekend and Holiday CLOSURES -- The following areas are closed to purse seining for menhaden on weekends and official state holidays:

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

- **Warren River -- All waters east of a line running from Rumstick Point south to North Point on Poppasquash Neck.**

16.3.2 Sunday and Holiday CLOSURES -- The following areas are closed to purse seining for menhaden on Sunday and official state holidays:

- **Providence River -- All waters north of a line running east from Gaspee Point to Bullock Point.**

16.3.3 Seasonal Purse Seine CLOSURES -- The following areas are seasonally closed to purse seining for menhaden:

- Providence River: Between sunrise August 15 and sunrise January 1 ANNUALLY, it is illegal to purse seine for menhaden north of a line from Conimicut Point to Nayatt Point.

- Hope Island Management Area: The Hope Island Management Area is encompassed by the following boundary lines: A line from the southern tip of Warwick Point to the northwest point on Patience Island; a line from the eastern point on Patience Island, east to Prudence Island, south along the western shore line of Prudence Island, to the southernmost tip of Prudence Island, then to the northernmost point on Jamestown, northwest from the northern tip of Jamestown to the eastern tip of the carrier pier at

Quonset Point and then north along the shoreline from the carrier pier north to southern tip of Warwick Neck. The Hope Island Management Area is closed to all harvesting of menhaden with purse seine gear from sunrise January 1 to sunrise August 15 ANNUALLY.

Option 3: Close northern area from May 15 – July 15 and remove restrictions from southern area – (Proposed by Federated RI Sportsmen's Club)

~~16.1.1- Possession Limits/Reporting Requirements.~~

~~(A) The commercial menhaden fishery possession limit shall be no more than 120,000 pounds per vessel per day while in state waters. Further, no commercial menhaden fisher shall possess menhaden or otherwise engage in the taking of menhaden anytime on Saturday, Sunday, official state holiday, or prior to sunrise or following sunset Monday through Friday.~~

~~(B) No commercial menhaden fisher shall engage in the taking of menhaden with a purse seine net exceeding 100 fathoms in length (600 ft in length) and 15 fathoms in depth (90 ft in depth).~~

~~(C) In order to permit the Department of Environmental Management (DEM) to monitor the fishery, any fisher intending to engage in the commercial menhaden fishery shall notify the DEM Division of Law Enforcement (Division) at (401) 222-3070 prior to taking or coming into possession of menhaden in state waters . At the time that a fisher advises the Division of his/her intent to harvest menhaden, the Division 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 Law Enforcement at (401) 222-3070 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished. The possession limit may be modified on the basis of the~~

~~estimate weekly standing stock of menhaden in Narragansett Bay based on approved scientific methods.~~

~~(D) When 50 % of the estimated menhaden stock present in Narragansett Bay is harvested, the Director shall close the menhaden fishery until further notice.~~

16.2 Menhaden Season -- The season for taking menhaden from the Narragansett Bay Menhaden Management Area by purse seine, for purposes other than fish meal reduction shall open at sunrise on January 1 and end at sunset on December 31, ANNUALLY. (RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

16.3 ~~Permanent Closures -- The following areas are permanently closed to all types of purse seining for menhaden:~~

~~**Providence River**~~

- ~~**In the Providence River, all waters north of a line along the hurricane barrier.**~~
- ~~**All waters east of the east line of the Providence River navigation channel, south to the northwest corner of the Getty fuel dock on the East Providence shore in the Boyden Heights area.**~~
- ~~**On a line from Pomham Rocks to Sabin Pt. and then along a line to BP thence along a line from BP to the tower at Nayatt Point.**~~
- ~~**On the west side of Providence River, all of Pawtuxet Cove and all waters inside the dike.**~~
- ~~**All waters in the Fields Point area north of a line running from Arnold Ave. on the West Shore to C"39" on the east thence running north to the easternmost extreme tip of Fields Point.**~~

~~**Greenwich Bay**~~

- ~~**All waters in Greenwich Bay west of a line from the flag pole on Warwick Point to Sandy Point.**~~
- ~~**All waters of Potowomut River west of a line from Marsh Point to Pojac Pt.**~~

~~**West Bay Area:**~~

- ~~**All waters of Allen Harbor west of a line running north and south from the easternmost point of land forming Allen Cove.**~~
- ~~**All waters west of a line drawn between the towers marking the entrance to Wickford Harbor.**~~

~~**East Bay Area:**~~

- ~~**All waters of the Warren River, Barrington River and Palmer River, north of a line running from Rumstick Point through N"2" to the seaward end of**~~

~~Gibson Road at Bristol Highlands.~~

- ~~All waters of Bristol Harbor north of a line from the end of Johnston Estate Road through R"6" to the Bristol shore on the east at approximately the seaward end of Franklin Street.~~
- ~~All waters of the Kickemuit River north of a line running from N"6" through N"4" to the shore at the end of Narrows Road in Bristol.~~
- ~~In the Sakonnet River all waters bounded on the north by the Swing Bridge and on the south by "Stone Bridge" including the waters of Spectacle Cove.~~
- ~~All the waters of Nannaquaket Pond south of the bridge to Nannaquaket Neck.~~

~~Southern Bay Area:~~

- ~~All waters of Dutch Harbor south and east of a line from the westernmost end of Orchard Road on Conanicut Island to the Quay on the northeastern shore of~~
  ~~Dutch Island. Thence along the eastern shore to Dutch Island Light then easterly to N"2" and then to the most northerly tip of Beaverhead Dock.~~
- ~~The waters in the area of "Melville" south of a line running from the end of the breakwater to the easternmost point of Dyer Island and thence to Carr Point.~~
- ~~In Newport Harbor, south and east of a line from the western end of the breakwater in Coasters Harbor south to the southeastern tip of Rose Island thence southerly to C"1" thence east to G"3" to the northern tip of Goat Island, thence south along the east shore of Goat Island to the southern tip of Goat Island and then west to the northernmost tip of Fort Adams.~~

~~16.3.1 Weekend and Holiday CLOSURES -- The following areas are closed to purse seining for menhaden on weekends and official state holidays:~~

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

- ~~Warren River -- All waters east of a line running from Rumstick Point south to North Point on Poppasquash Neck.~~

~~16.3.2 Sunday and Holiday CLOSURES -- The following areas are closed to purse seining for menhaden on Sunday and official state holidays:~~

- ~~Providence River -- All waters north of a line running east from Gaspee Point to Bullock Point.~~

~~16.3.3~~ **Seasonal Purse Seine CLOSURES -- The following areas are**

seasonally closed to purse seining for menhaden:

The area north of a line drawn from the Warwick Lighthouse to Rumstick Point beginning May 15 and ending on July 15 annually.

~~- Providence River: Between sunrise August 15 and sunrise January 1 ANNUALLY, it is illegal to purse seine for menhaden north of a line from Conimicut Point to Nayatt Point.~~

~~- Hope Island Management Area: The Hope Island Management Area is encompassed by the following boundary lines: A line from the southern tip of Warwick Point to the northwest point on Patience Island; a line from the eastern point on Patience Island, east to Prudence Island, south along the western shore line of Prudence Island, to the southernmost tip of Prudence Island, then to the northernmost point on Jamestown, northwest from the northern tip of Jamestown to the eastern tip of the carrier pier at~~

~~Quonset Point and then north along the shoreline from the carrier pier north to southern tip of Warwick Neck. The Hope Island Management Area is closed to all harvesting of menhaden with purse seine gear from sunrise January 1 to sunrise August 15 ANNUALLY.~~

16.4 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)]

16.5 Penalties -- Any person in violation of these provisions shall have his Rhode Island commercial fishing license immediately suspended upon being apprehended by the RIDEM Environmental Police and a penalty in the amount of five-thousand dollars ($5,000) shall be assessed jointly and severely against the captain and the owner of the fishing vessel. The license shall remain suspended for one-hundred twenty (120) days or until such time as a hearing on the license suspension is held before the Director of the RIDEM. (RIMFC REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

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 ~~11th day of April, 2008~~ to become effective 20 days from filing, unless otherwise indicated below, in accordance with the provisions of Chapters 20-1-2, 20-1-4, 20-3-2 through 20-3-6, 20-4 through 20-10, 42-35, 42-17.1, 42-17.6 of the General Laws of Rhode Island of 1956, as amended.

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W. Michael Sullivan, PhD
Director, Department of Environmental Management

Notice Given: ~~**01/25/08**~~
Public Hearing: ~~**02/26/08**~~

Filing date: ~~**04/11/08**~~
Effective date: ~~**05/01/08**~~