# RHODE ISLAND
# DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## 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 the Recreational Summer Flounder management plan;
2) Amendments to the Recreational and Commercial Tautog management plan;
3) Amendments to the Recreational Scup management plan;
4) Amendments to the Recreational Black Sea Bass management plan;
5) Amendments to the Narragansett Bay Menhaden management plan; and
6) Amendments to RI Marine Fisheries Statutes and Regulations – Part XIX - Fish/Shellfish Dealer Regulations regarding the reporting of research set aside (RSA), and to update regulatory citations for consistency with certain statutory changes.

The public hearing will commence at 6:00 PM on **Wednesday, March 13, 2013** in the University of Rhode Island, Graduate School of Oceanography, Corless Auditorium, South Ferry Road, Narragansett, RI 02882. The room is accessible to the disabled. Interpreter services for the hearing impaired will be provided if such services are requested at least (3) business days prior to the hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300. A recording of the hearing will be made by DEM staff. Written comments concerning the regulations proposed for promulgation by the DEM may be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 no later than 12:00 PM on March13, 2013.

The Department has determined that small businesses may be adversely impacted by some of 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 11 through March 13, 2013 by mail or at the offices of the Division of Fish and Wildlife located at 3 Fort Wetherill Road, Jamestown, RI 02835. Electronic copies of the proposed regulations will also be available on the DEM website at the following address: http://www.dem.ri.gov/programs/bnatres/fishwild/pn031313.htm.

Janet Coit, Director
Department of Environmental Management

Date Posted: 2/7/2013

DEM/DFW March 13, 2013 Public Hearing
Table of Public Hearing Items Included in
**Part XIX – Fish/Shellfish Dealer Regulations**

**Public Hearing Item #6 – Amendments to RI Marine Fisheries Statutes and Regulations – Part XIX - Fish/Shellfish Dealer Regulations regarding the reporting of research set aside (RSA), and to update regulatory citations for consistency with certain statutory changes:** *(Section 19.14.3, page 13)*

**Proposal #1** – Add requirement to report research set aside (RSA) by using the "Disposition" field in the Standard Atlantic Fisheries Information System (SAFIS).

**Proposal #2** – Add requirement to report RSA by using the "Fishing Mode" field in the Standard Atlantic Fisheries Information System (SAFIS).

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 XIX
## FISH/SHELLFISH DEALER REGULATIONS

**Annotated 2/6/2012**
***(Section 19.14.3)***

~~**January 20, 2006**~~

**AUTHORITY:** These regulations are adopted pursuant to **Title 20,** Chapters 42-17.1, 42-17.6, **and 42-17.7** ~~20-1-2, 20-1-4, 20-3-2 thru 20-3-6, 20-4 thru 20-10~~, and in accordance with **Chapter** 42-35, **Administrative Procedures Act** of the Rhode Island General Laws of 1956, as amended.

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# RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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# RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

## PURPOSE

The purpose of these regulations is to prescribe the proper conduct of licensed shellfish dealers for the purpose of protecting the public health, safety and welfare.

## AUTHORITY

These rules and regulations are promulgated pursuant to **Title 20,** Chapter 42.17.1, 42-17.6, **and 42-17.7,** ~~20-1-2, 20-1-4, 20-3-2 thru 20-3-6, 20-4 thru 20-10~~ and in accordance with Chapter 42-35, Administrative Procedures **Act** of the **Rhode Island** General Laws of 1956, as amended.

## ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to modify existing regulations ~~RIGL 20-3-2 through 20-3-6).~~ **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 (#2061)

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of **Part XIX shall be superseded.** ~~the Department of Environmental Management Regulation "Wet Storage of Molluscan Shellfish" **(#2061)** 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.**

# PART XIX – FISH/SHELLFISH DEALER REGULATIONS

## 19.1 Licensed Shellfish Dealers

**19.1.1 An applicant for a shellfish dealer's license shall complete such forms containing such information as DEM may require**

**19.1.2 Each licensed shellfish dealer shall maintain a place of business or an agent at which transaction records are maintained and available during normal business hours. Further, each licensed dealer must have a DOH shellfish license pursuant to RIGL Chapter 21-14.**

**RIMF REGULATION**

## 19.2 Bartering and Trading in Shellfish

**19.2.1 No person, partnership, firm, association, or corporation shall sell, purchase, barter, or trade shellfish in Rhode Island unless such person, partnership, firm, association, or corporation is properly licensed, or exempt from such licensing requirements, as set forth below.**

**19.2.1-1 No person, partnership, firm, association, or corporation shall barter or trade in shellfish in Rhode Island unless such person, partnership, firm, association, or corporation first obtains from the Department of Environmental Management a shellfish dealer's license or multipurpose dealer's license.**

**19.2.1-2 Licensed shellfish dealers may only purchase, barter, or trade shellfish (wild or cultured) (i) harvested from or cultured in Rhode Island waters from licensed shellfishermen, licensed aquaculturists, or other licensed shellfish dealers; or (ii) taken from other than Rhode Island waters from a dealer whose shellfish business appears on the US Public Health Service, Food and Drug Administration list of certified shippers, and tagged in accordance with Rhode Island DOH regulations.**

**19.2.1-3 Licensed shellfish dealers may not purchase or accept any shellfish (wild or cultured) from a shellfisherman or aquaculturist without first being presented with a valid shellfish or multipurpose license issued by DEM to said shellfisherman or aquaculturist.**

**19.2.1-4 Any person, partnership, firm, association, or corporation engaged solely in the business of selling seafood, including shellfish (wild or cultured), to consumers, either directly or through**

**restaurants or other retail outlets, and/or engaged solely in the processing or preparation of seafood, including shellfish (wild or cultured), for sale directly to consumers, is not required to be licensed under these regulations, provided that such person, partnership, firm, association, or corporation purchases or otherwise acquires said shellfish from licensed shellfish dealers.**

**19.2.1-5 Shellfish harvested from or cultured in Rhode Island waters may only be sold to out-of-state buyers by licensed shellfish dealers whose businesses appear on the US Public Health Service, Food and Drug Administration list of certified shippers. Said dealers must also comply with all applicable DEM and DOH rules governing the handling, tagging and sale of shellfish, as well as all applicable state and federal rules governing the interstate shipment of shellfish.**

**19.2.1-6 Shellfish harvested from or cultured in other than Rhode Island waters may only be sold to buyers in or from Rhode Island by out-of-state sellers whose businesses appear on the US Public Health Service, Food and Drug Administration list of certified shippers; and said transactions must comply with all applicable state and federal rules governing the interstate shipment of shellfish.**

**19.2.2 Licensed shellfish dealers may not purchase or accept any shellfish from shellfishermen or aquaculturists unless such shellfish are bagged and tagged in accordance with the applicable Aquaculture and Shellfish Harvesting Regulations. Shellfish must be received in containers with a harvester tag attached to each container. The harvester tag shall be durable, waterproof and sanctioned by DOH. The tag shall contain the following indelible, legible information in order specified below:**

- **harvester's identification number as assigned by DEM.;**
- **date of harvest;**
- **harvest location as identified on the R.I. Shellfish Harvest Area tagging map, shellfish management area or aquaculture lease site identified by the CRMC Assent number;**
- **type (species) of shellfish;**
- **approximate quantity of shellfish; and**
- **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"**

**19.2.3 The tag shall serve as prima facie evidence of the identity of the shellfish.**

**19.2.4 Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations**

**19.2.5 Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations**

**19.2.6 Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations**
**RIMF REGULATION**

## 19.3 Undersize Shellfish Provisions

**19.3.1 At no time shall a dealer possess undersize wild stock shellfish. A dealer may possess undersize cultured shellfish crops, excluding quahaugs (*Mercenaria mercenaria*), provided the dealer has obtained said cultured crops from a licensed aquaculturist or dealer.**

**19.3.2 Any shellfish possessed by a dealer that measures less than the State minimum size for wild stock must be properly identified as cultured product with appropriate tagging as required by the Director. Each dealer shall maintain complete, accurate and legible records sufficient to: (i) document the source of shellfish, and (ii) permit the contents of the container of shellfish to be traced back to the aquaculture lease site and date of harvest. In addition, all purchases and sales shall be recorded in a permanently bound ledger book or other approved recording method authorized by DEM and DOH.**

**19.3.3 Cultured shellfish crops may not be commingled with any wild stock shellfish or other cultured shellfish crops from a different harvest date or location.**
**RIMF REGULATION**

**19.4 Dealer Reporting of Landings -- Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations**
**RIMF REGULATION**

## 19.5 Wet Storage of Shellfish

**19.5.1 For purposes of open water wet storage, the licensed dealer shall apply to the CRMC for an assent for an initial wet storage site or modification to an existing aquaculture facility or lease. A CRMC assent shall be required for a wet storage facility located within the CRMC's jurisdiction, as specified in CRMC Management Procedures, Section 4-1.**

**19.5.2** **If the open water wet storage is conducted as part of an aquaculture operation, the licensed dealer shall apply to DEM for a DEM Aquaculture Permit; if the permit is issued, it should appropriately address the possession of shellfish held for wet storage.**

**19.5.3** **Molluscan shellfish to be wet stored must be harvested from or cultured in approved shellfish growing areas or conditionally approved areas when open.**

**19.5.4** **All facility designs, structures and methods used for wet storage of molluscan shellfish must be approved by DOH pursuant to the National Shellfish Sanitation Program (NSSP) standards. The CRMC shall determine the structural suitability of any apparatus used for in-water storage of molluscan shellfish.**

**19.5.5** **The CRMC shall be responsible for the approval of the location of all open water storage facilities. When a wet storage facility is operated in conjunction with an aquaculture operation, the wet stored products shall be maintained separately from the cultured products designated by CRMC and the approved Operational Plan.**

**19.5.6** **Containers used in wet storage of molluscan shellfish shall be approved by DOH and shall be marked appropriately (indicating that they contain either wet stored wild or cultured stock).**

**19.5.7** **The shellfish dealer shall maintain accurate and complete records of all wet storage activities including, but not limited to, the source of the molluscan shellfish, the amounts stored, and the times/dates of storage/disposition of the molluscan shellfish. Such records shall be maintained for a minimum of two years and shall be available for inspection by DOH and DEM upon request.**

**19.5.8** **The shellfish dealer shall submit an operational plan specifying how the wet storage of molluscan shellfish will be carried out. Such an operational plan is subject to approval by DOH and DEM prior to approval of the wet storage facility.**

**19.5.9** **The molluscan shellfish that are in wet storage shall be tagged in accordance with Rule 7.2, herein.**

**19.5.10** **Permitted, open-water wet storage facilities shall only store wild or cultured molluscan shellfish that have been harvested from or cultured in the same waterway in which the wet storage facility is located. In all other cases, shellfish must be wet stored in an approved closed tank system.**

**19.5.11** **A permitted wet storage facility shall only store legal sized molluscan shellfish, which have been harvested as specified in the approved Operational Plan.**

**19.5.12** **Each wet storage facility shall be evaluated and approved annually by DOH. Since water quality and water quality classification of waters within the state are subject to change due to environmental conditions, shellfish dealers conducting wet storage of molluscan shellfish shall be required to respond to these changes. Wet storage of shellfish in waters other than those in the approved classification or in the open status of the conditional approved classification is prohibited. The CRMC, DEM and DOH shall not assume any liability for any environmental changes nor liability for potential damages incurred by shellfish dealers.**

**19.5.13** **The DEM Director shall determine the compatibility of any wet storage facility with the resources in surrounding areas and shall be satisfied that every practical precaution is in place to prevent the spread of shellfish disease and pathogens. The DEM Director shall have the authority to limit or restrict the wet storage and transplant activities in areas within waterways that are considered to be at risk for the transmission of shellfish diseases, or grant an exception if justified, after careful consideration of disease monitoring studies.**

**19.5.14** **No person shall engage in wet storage of molluscan shellfish without first obtaining a dealer's license from DOH and DEM.**

**RIMF REGULATION**

## 19.6 Handling of Shellfish

**19.6.1** **Rhode Island licensed shellfish dealers are prohibited from mixing or commingling shellfish taken from Rhode Island waters with shellfish taken from other state's waters.**

**19.6.2** **Shellfish dealers shall properly tag each bag or container of shellfish as follows:**

**19.6.2-1** **The dealer shall keep the harvester's tag affixed to each container of shellfish until the container is (i) shipped, or (ii) emptied to wash, grade, or pack the shellfish.**

**19.6.2-2** **The dealer shall affix his/her dealer's tag to each container of shellfish prior to shipment, and immediately after shellfish emptied from a tagged container have been washed, graded, or packed.**

**<u>19.6.2-3</u> When the dealer is also a licensed aquaculturist and he/she elects not to use a harvester's tag, he/she shall affix his/her dealer's tag to each container of shellfish prior to leaving the aquaculture site, removing the shellfish from a vessel, or offering the shellfish for sale.**

**<u>19.6.2-4</u> The dealer's tag shall be (i) durable, waterproof and sanctioned by DOH prior to use, and (ii) at least 2 5/8 inches by 5 1/4 inches (6.7 x 13.3 cm) in size.**

**<u>19.6.2-5</u> The dealer's tag shall contain the following indelible, legible information in the order specified below:**

- **the dealer's name and address;**
- **the dealer's certification number as assigned by DOH and the original shellfish shipper's certification number;**
- **the date of harvest;**
- **the most precise identification of the harvest location as is practicable including the initials of the state of harvest, and the DOH/DEM designation of the growing area by indexing, administrative or geographic designation;**
- **when the shellfish has been placed in wet storage in a dealer's operation, the statement:**
  **"THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";**
- **the type and quantity of shellfish; and**
- **the following statement in bold capitalized type on each tag:**
  **"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS."**

**<u>19.6.3</u> Shellfish purchased or acquired by a Rhode Island licensed shellfish dealer may be separately sorted by type, size, or other basis. The original containers with tags must be kept in close proximity while sorting, grading and processing is taking place.**

**<u>19.6.4</u> 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.**

**(RIMF REGULATION)**

**19.7 False Statements -- No licensed shellfisherman, aquaculturist or licensed shellfish dealer, or his/her agent shall make any false statement, misrepresentation or alteration of any statement on the forms required by these rules. (RIMF REGULATION)**

**19.8 Inspection of Shellfish Dealers Business -- The Director or his/her agents may enter and inspect the business premises, wet storage facilities, appurtenance structures, or vehicles and vessels of a shellfish dealer to determine compliance with the provisions of RIGL Section 20-6-24, these rules, or any order issued by the Director, and no person shall interfere with such entrance and inspection. (RIMF REGULATION)**

**19.9 Denial, Suspension or Revocation of License**

**19.9.1 In addition to other penalties provided by law or other rule or regulation, any licensed shellfish dealer who violates the provisions of RIGL Section 20-6-24, these rules, or any order issued by the Director shall be subject to suspension, revocation or denial of his/her license in accordance with RIGL Sections 20-2-13 and 42-17.1-2(s).**

**19.9.2 The Director may deny renewal of shellfish dealer's license for violation of the provisions of RIGL Section 20-6-24, these rules, or any order issued by the Director during a prior license period.**

**19.9.3 The Director may suspend, revoke or deny issuance of a shellfish dealer's license where a) the license holder or applicant is involved in the management of a shellfish dealer business for which DEM has suspended, revoked or denied a license on account of noncompliance with these regulations, or b) the business of the license holder or applicant is owned, managed or operated, in whole or in part, by a person, firm, association or corporation whose shellfish dealer's license has been suspended, revoked or denied on account of noncompliance with these regulations.**
**(RIMF REGULATION)**

**19.10 Penalties --The following penalties shall apply to violations of these regulations:**

- **forfeiture of the shellfish;**

- **administrative action, which may result in suspension and/or revocation of applicable licenses or permits and/or imposition of additional penalties;**

- **criminal prosecution pursuant to RIGL Section 20-1-16, which imposes a maximum fine of $500, 90 days imprisonment, or both.**

**(RIMF REGULATION)**

**19.11 Other Requirements -- Persons subject to these rules are also responsible for complying with other applicable state, local and federal laws, including DOH laws and regulations relating to shellfish businesses.**
**(RIMF REGULATION)**

**19.12 Exemption -- These rules shall not apply to persons buying surf clams (*Spisula oliddisma*) or ocean quahaugs (*Arctica islandica*) for use as bait and not for human consumption. However, any other rule or law governing these species shall remain in effect and not be superceded by this exemption.**
**(RIMF REGULATION)**

**19.13 Severability -- If a court of competent jurisdiction holds any section or provision of these rules and regulations invalid, the remaining sections of provisions of these rules and regulations shall not be affected thereby.**
**(RIMF REGULATION)**

**19.14 Dealer Electronic Reporting Requirements**

**19.14.1 Control Date – the date for compliance with section 19.14 as set forth below for all RI licensed seafood dealers will be March 1, 2006**

**19.14.2 General Requirements**

**A. All RI licensed seafood dealers will be required to obtain and utilize a personal computer in working condition which is capable of submitting an electronic report to the Standard Atlantic Fisheries Information System (SAFIS)**
**B. In cases where a seafood dealer falls under the jurisdiction of both the state of RI and the federal government (NMFS) said dealer must comply with the more frequent of the minimum reporting schedules or the more detailed data requirement**

**19.14.3 Reporting Frequency and Required Data Elements**

**A. Trip Level Data for all species harvested required on a bi-weekly basis, to be reported on Monday and Thursday of each week, will consist of the following elements:**

**1. Species common name including market level and grade**
**2. Amount landed or purchased including the units the product was measured in (i.e. pounds)**
**3. Area where product was taken (only applicable to shellfish purchases)**
**4. Date the product was landed or purchased**
**5. RI Commercial license or landing permit number of the fisherman selling the product to the dealer**
**6. Vessel identification number (Coast Guard documentation number and/or state of RI registration number)**
**7. Port or location where the catch was landed or purchased**

**Public Hearing Item #6 – Amendments to RI Marine Fisheries Statutes and Regulations – Part XIX - Fish/Shellfish Dealer Regulations regarding the reporting of research set aside (RSA):**

**Proposal #1 - Add requirement to report research set aside (RSA) by using the "Disposition" field in the Standard Atlantic Fisheries Information System (SAFIS).**

**8. When a seafood dealer is purchasing research set aside from a permitted and properly licensed fisherman, the poundage purchased will be designated as either "RSA – Food," "RSA – Bait," or "RSA - Research" in the SAFIS field titled "Disposition"**

**Proposal #2 - Add requirement to report RSA by using the "Fishing Mode" field in the Standard Atlantic Fisheries Information System (SAFIS).**

**8. When a seafood dealer is purchasing research set aside from a permitted and properly licensed fisherman, the poundage purchased will be designated as "R" in the SAFIS field titled "Fishing Mode"**

**B. Trip Level Data for all species harvested required, to be reported within 30 days of the landing or purchase date. Such data shall consist of the following elements:**
**1. Price at which the product was purchased**
**2. Disposition (what the product was used for, i.e. bait, consumer consumption, etc)**

**19.14.4 Negative reports**

**A. RI licensed seafood dealers will be required to submit a negative report to SAFIS for each reporting period during which no finfish, shellfish, crustacean, or any other seafood product was landed or purchased**

**B. Dealers may file negative reports for a maximum of three (3) months in advance**

**19.14.5 Penalty - In addition to the penalty described in RIGL 20-1-16, the license of any person who violates any of the terms of 19.14 shall have their commercial seafood dealers license suspended by the Director for a period of 30 days for a first offence, 90 days for a second offence, and 365 days for a third offence, and revocation for a fourth offense.**

**Rule 8. EFFECTIVE DATE**

The foregoing rules and regulations Rhode Island Marine Statutes and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this ~~20th day of January,~~ 2006 to become effective 20 days from filing, unless otherwise indicated, in accordance with the provisions of **Title 20,** 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**, and 42-17.7, and in accordance with Chapter 42.35, Administrative Procedures Act** of the **Rhode Island** General Laws of ~~Rhode Island of~~ 1956, as amended.

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~~W. Michael Sullivan, PhD~~ **Janet L. Coit,** Director,
Department of Environmental Management

Notice Given: ~~10/7/2005~~
Public Hearing: ~~11/7/2005~~

Filing date: ~~1/20/2006~~
Effective date: ~~2/9/2006~~