

**RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
PUBLIC NOTICE CONCERNING PROPOSED REGULATORY CHANGES**

Pursuant to the provisions of Chapter 42-17.1 and Title 20 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 I – RI Marine Fisheries Regulations – Legislative Findings” to address harvest methods and habitat impacts by incorporating new definitions, and to update regulatory citations for consistency with certain statutory changes;
- 2) Amendments to “Part VI – RI Marine Fisheries Regulations – Dredging for Shellfish” to address harvest methods by clarifying dredging regulations and identifying applicable marine species, and to update regulatory citations for consistency with certain statutory changes;
- 3) Amendments to “Part XVIII – RI Marine Fisheries Regulations – Shellfish Grounds” to prevent the operation of devices capable of harvesting shellfish in polluted areas and to update regulatory citations for consistency with certain statutory changes;
- 4) Amendments to “Part III – RI Marine Fisheries Regulations – Marine Fisheries Council” to establish Marine Life Management Areas and to update regulatory citations for consistency with certain statutory changes;
- 5) Amendments to “Part IV – RI Marine Fisheries Regulations – Shellfish” to clarify what species may be harvested under a shellfish dredging license and to update regulatory citations for consistency with certain statutory changes;
- 6) Amendment to the Narragansett Bay Menhaden Management Plan;
- 7) Amendments to the Lobster Management Plan for mandatory v-notching of certain female lobsters in LCMA 2 and establishing a minimum size increase for LCMA 3 as conservation equivalency methods for complying with Addendum XVII to Amendment 3 of the ASMFC Interstate Fishery Management Plan, as well as adopting certain technical revisions to update language and remove expired language;
- 8) Amendments to the Spiny dogfish management plan; and
- 9) Amendments to “Part III – RI Marine Fisheries Regulations – Marine Fisheries Council” to allow more flexibility to adjust seasons in order to effectively comply with federal fishery management plans.

The public hearing will commence at 6:00 PM on Wednesday, April 3, 2012 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 April 3, 2012.

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 March 2, 2012 through April 3, 2012 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/pn040312.htm>.



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 VI Dredging for Shellfish



Annotated 2-17-2012
(Sections 6.1- 6.7; Pages 4-6)

(And changes made to update regulations for consistency with
Statutory changes made since regulations were last updated).

~~December 31, 2001~~

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,~~ 20-2, 20-2.1, 20-3, 20-3.1, 20.3.2, 20-4, and 20-6, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

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STATUTES AND REGULATIONS**

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
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**RHODE ISLAND MARINE FISHERIES
STATUTES AND REGULATIONS**

PURPOSE

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

AUTHORITY

These rule and regulations are promulgated 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,~~ 20-2, 20-2.1, 20-3, 20-3.1, 20.3.2, 20-4, and 20-6, and in accordance with Chapter 42-35, Administrative Procedures, of the Rhode Island General Laws of 1956, as amended.

ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to modify existing regulations in accordance with Chapter 42-35, Administrative Procedures, of the General Laws of 1956, as amended. ~~(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 VI shall be superseded.

R.I. Marine Fisheries Statutes and Regulations
PART VI - DREDGING FOR SHELLFISH

Public Hearing Item # 2 – To address harvest methods by clarifying dredging regulations and identifying applicable marine species:

6.1 Shellfish Dredging License - Fee -- A resident of this State shall pay an annual fee of two hundred dollars (\$200) for a license to take **ocean** quahaugs, **blue** mussels, and surf clams by dredges hauled by power boat. ~~(RIGL 20-2-24)~~ **(RIGL20-1-3) (RIGL 20-2.1-5 (2)(ii)(A))** [Penalty - Part 6.6; (RIGL 20-6-13)]

6.2 Use of Dredges -- Except as hereinafter provided and unless otherwise specified by regulation of the ~~Marine Fisheries Council~~ **Department of Environmental Management**, no person shall take any ~~oysters, bay quahaugs, or soft-shell clams~~ **marine species** from the waters of this State by dredges, rakes, or other apparatus operated by mechanical power or hauled by power boats. No ~~licensed~~ person shall cast, haul, or have overboard any dredges while fishing for ~~oysters, bay quahaugs, or soft-shell clams~~ **any marine species other than blue mussels, ocean quahaugs, or surf clams** from the free and common fisheries of this State, nor shall any ~~licensed~~ boat be used for fishing ~~oysters, soft-shell clams, or bay quahaugs~~ **for any marine species other than blue mussels, ocean quahaugs, or surf clams** with dredges, except as herein provided; provided, however, that any person having a license issued under this Title for the taking of scallops may use a dredge or dredges, not exceeding six (6) in number nor exceeding twenty-eight inches (28") each in width, **solely** for that purpose, provided that the licensee shall immediately return all ~~oysters, soft-shell clams, or bay quahaugs~~ **marine species other than blue mussels, ocean quahaugs, or surf clams** caught by the licensee to the waters from which they were taken. Any licensed boat may be used in dredging for **blue** mussels by the licensee of that boat, the licensee having first obtained a permit from the Director of Environmental Management allowing the licensee so to do; provided the licensee, while dredging for **blue** mussels under the permit granted the licensee by the Director, shall immediately return all ~~oysters, scallops, or bay quahaugs~~ **marine species other than blue mussels, ocean quahaugs, or surf clams** caught by him or her to the waters from which they were taken. **Permits issued by the Director for blue mussel dredging permits will specify where dredging is permissible. Use of a dredge shall be limited to areas so authorized.** The fact of any ~~licensed~~ person being found with ~~oysters, scallops, or bay quahaugs~~ **any marine species other than blue mussels, ocean quahaugs, or surf clams** in his or her possession while dredging for **blue** mussels shall be prima facie evidence that person was fishing in violation of the provisions of this Chapter and shall be subject to the penalties and fines imposed by this chapter. Any resident dredging for surf clams or skimmers, shall not be in violation of this Section if that dredging is done southerly of the coastline of Little Compton, southerly of a line extending from Church Point, in the town of Little Compton, to Flint Point on Aquidneck Island, southerly of the coastline of Aquidneck Island, southerly of a line extending from Castle Hill Point on Aquidneck Island, to Southwest Point of Conanicut Island to Bonnet Point, Narragansett, easterly of the coastline of the town of Narragansett, southerly of the coastline of the towns of

Narragansett, South Kingstown, and Charlestown, and westerly to the Connecticut line. For the purpose of this section, coastline refers to the land facing the open sea. (RIGL 20-6-7) [Penalty - Part 6.6 (RIGL 20-6-13)]

NOTE: The use of dredges is prohibited in polluted areas as defined by DEM Office of Water Resources except for the harvest of bay scallops within established seasons (see Part XVIII – Shellfish Grounds, section 18.6 of the RI Marine Fisheries Regulations).

6.3 Registration of Boats and Display of Numbers -- No boat shall be used in the taking of **ocean** quahaugs by dredge or the commercial taking of scallops unless that boat has been registered with the Director of Environmental Management. Each registered boat shall be issued a certificate of registration and assigned a number, and this number shall be displayed on a flat surface in a conspicuous place upon the port side while the boat is engaged in taking **ocean** quahaugs or scallops. (RIGL 20-6-4) [Penalty - Part 6.6 (RIGL 20-6-13)]

Ocean Quahaug Dredging

6.4 Opening Areas for Ocean Quahaug Dredging -- Pursuant to good conservation practices, the **Director of the Department of Environmental Management Marine Fisheries Council** shall be authorized to open areas of the public waters of the State for taking **ocean** quahaugs under license by a registered boat, by dredges, rakes or other apparatus operated by mechanical power or hauled by power boats, and shall be authorized to close **those that** areas at any time there is a danger of depletion of **ocean** quahaugs or when flagrant violations of this Chapter occur. (RIGL 20-6-8)

6.5 Maximum Take for Dredged Ocean Quahaugs -- Any person licensed to take **ocean** quahaugs by dredge, rake, or other apparatus operated by power or hauled by a power boat may take and possess, between sunrise and sunset of any one (1) day, thirty (30) bushels of **ocean** quahaugs, unless a different amount is specified by regulation of the Marine Fisheries Council. Any person taking more than the prescribed quantity shall be fined upon conviction not more than one hundred dollars (\$100) for each bushel exceeding the prescribed quantity, or be imprisoned not more than thirty (30) days, or both. (RIGL 20-6-12) (Penalty 20-6-12 - Part 6.5)

6.6 General Penalties for Violations - Impoundment of Boats -- Any person who shall without a license **operate a take quahaugs by** dredge, or any person who shall violate any suspension of the Director of Environmental Management made with respect to **ocean** quahaug dredging or who shall violate any provisions of this Chapter for which a penalty is not otherwise provided, shall, upon conviction for the first offense, be fined two hundred fifty dollars (\$250), and the Director may seize, hold, and impound at the owner's expense, in one of three commercial shipyards submitting the lowest bid, for a period of not less than thirty (30) days nor more than sixty (60) days, any power boat used in any such violation of this Section together with its dredges, rakes, and equip-

ment. Any person convicted of a subsequent violation or violations of the provisions of this Section shall be imprisoned for thirty (30) days and the Director of Environmental Management may seize, hold, and impound at the owner's expense in a commercial shipyard for a period of not less than ninety (90) days nor more than one hundred twenty (120) days, any power boat used in any such violation of this Chapter together with its dredges, rakes, and equipment. (RIGL 20-6-13)

6.7 Cost of Seizure and Impounding -- Any costs incurred by the seizure and impounding of power boats by authority of § 20-6-13 shall be assessed against the owner or owners of those boats, and no boats so seized and impounded shall be released to any claimant unless and until any costs incurred by reason of their seizure and impounding shall have been paid. (RIGL 20-6-14)

6.8 Dredging for Surf Clams

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

6.8.1-1 It is unlawful for any vessel to operate with any hydraulic dredge with a blade, knife, or manifold which is greater than forty-eight (48) inches in maximum width.

6.8.1-2 It is unlawful for any vessel to operate more than one dredge while harvesting surf clams.

6.8.2 Trip Limits -- The following limits shall apply to vessels fishing in the territorial waters of the State of Rhode Island:

6.8.2-1 It is unlawful for any vessel to catch, harvest, possess, have on board, land, or off load more than 200 bushels of surf clams per vessel per 24 hour day.

6.8.2-2 It is unlawful for any vessel to catch, harvest, possess, have on board, land, or off load any surf clams which are less than five (5) inches in the longest shell diameter.

6.8.2-3 Vessels properly licensed to do so may land surf clams legally taken outside the territorial waters of the State of Rhode Island in excess of the trip limit established by **6.8.2-1** provided that no vessel engaged in fishing for surf clams within the territorial waters may possess or have on board more than the prescribed limit.

6.8.3 Exemption of Surf Clam Minimum Size Regulation -- Vessels fishing for surf clams outside Rhode Island waters under National Marine Fisheries Service (N.M.F.S.) clamming permits may enter Rhode Island waters, with surf clams less than five inches (5") measured parallel to the longest axis of the clam, provided that the person having charge of the fishing vessel notify the R.I. Office of Law

Enforcement's dispatcher at (401) 277-3070, before entering Rhode Island waters and give the following information:

6.8.3-1 name of the vessel;

6.8.3-2 name of the licensee having charge of the vessel;

6.8.3-3 licensee's license number;

6.8.3-4 Federal fisheries permit number and/or documentation number;

6.8.3-5 Projected location and time of entry into R.I. waters, date, location, and time that clams are to be off-loaded, or, if off-loading, the total time to transit R.I. waters;

6.8.3-6 Number of full cages onboard.

Shellfish cages must be tagged in accordance with the United States Food and Drug Administration/Rhode Island Department of Health regulations (National Shellfish Sanitation Program manual Part II) before being off-loaded in Rhode Island.

(RIMFC REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

6.9 Sakonnet River Shellfish Management Area -- The following special regulations apply in the Management Area: In the Sakonnet River Shellfish Management Area, the daily take 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.

(RIMFC REGULATION) (Penalty 20-3-3-Part 3.3)

6.10 Dredging for Ocean Quahaugs

6.10.1 The master of any vessel registered for harvesting ocean quahaugs and operating in the territorial waters of Rhode Island, must be on board the vessel while fishing, and must be a Rhode Island resident who holds a Rhode Island Dredge or Multipurpose license.

6.10.2 Any vessel harvesting ocean quahaugs within Rhode Island territorial waters must be registered as specified in RIGL 46-22-3.

6.10.3 Trip limits -- The following limits shall apply to vessels fishing within the territorial waters of Rhode Island. It shall be unlawful for any vessel to take and/or possess more than twenty-six (26) cages (832 bushels) of

ocean quahaugs.

6.10.4 Exception to the ocean quahaug trip limit regulation -- Vessels fishing for ocean quahaugs outside Rhode Island territorial waters under a National Marine Fisheries Service (NMFS) permit (I.T.Q.) may enter Rhode Island waters with ocean quahaugs in excess of the trip limit, provided the vessel is prohibited from fishing for ocean quahaugs, bay quahaugs, or any other species of shellfish while the vessel is located in Rhode Island territorial waters and remains in possession of ocean quahaugs in excess of the trip limit established pursuant to regulation 6.10.3, and provided that the person having charge of the vessel notifies the DEM Office of Law Enforcement (401) 277-2284 before entering Rhode Island waters and provides the following information:

6.10.4-1 Name of the vessel;

6.10.4-2 Name of the licensee in charge of the vessel;

6.10.4-3 Licensee's license number;

6.10.4-4 Federal fisheries permit number and/or documentation number;

6.10.4-5 Projected location and time of entry into Rhode Island waters, date, location and time that ocean quahaugs are to be offloaded, or if not offloading, the total time to transit Rhode Island waters;

6.10.4-6 The number of full cages on board.

Prior to offloading in Rhode Island, all shellfish cages must be tagged in accordance with the United States Food and Drug Administration/R.I. Department of Health regulations in compliance with the National Shellfish Sanitation Program manual, Part 11.

(RIMFC REGULATION) [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 ~~31st day of December, 2001~~ to become effective 20 days from filing, unless otherwise indicated, 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,~~ 20-2, 20-2.1, 20-3, 20-3.1, 20.3.2, 20-4, 20-6, 42-35, 42-17.1, and 42-17.6 of the General Laws of Rhode Island of 1956, as amended.

~~Jan Harmen Reitsma,~~ Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~REFILE 11/29/01~~
Public Hearing: ~~None requested~~

Filing date: ~~12/31/2001~~
Effective date: ~~the date they are stamped received
by the Secretary of State's Office~~