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

April 8, 2009

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

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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 through 20-3-6, 20-4 through 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SUPERSEDED RULES AND REGULATIONS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previous rules and regulations, and any policies regarding the administration and enforcement of **Part IV** shall be superseded.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.

PART IV - SHELLFISH

4.1 Licenses -- Residents are not required to obtain a license provided they do not exceed the non-commercial (resident's) daily catch 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)

4.1.1 Commercial Licenses - Fees:

(a) A resident older than nineteen (19) years but younger than sixty-five (65) years shall pay two hundred dollars ($200) for a commercial license to take shellfish.

(b) A resident twenty-three (23) years or younger shall pay fifty dollars ($50) for a student commercial license to take shellfish under provision of proof of full-time student status.

(c) Commercial shellfish licenses shall expire on June 30 of each year.

[*it is the policy of the Department of Environmental Management to allow a resident sixty-five (65) years of age and older to be eligible for a commercial license to take shellfish at no cost*]

(RIGL 20-2-20)

4.1.2 Non-resident License - Fee:

(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).

(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).

(c) Landing - A non-resident must obtain a shellfish landing license, for a fee of two hundred ($200), to land shellfish (surf clams, blue mussels, ocean quahaugs, sea scallops) harvested outside Rhode Island waters.

(d) Non-resident landowner - A non-resident landowner, as defined in § 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)

4.1.3 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 20-2-21)

4.1.4 Scallop License - Fee:

4.1.4-1 Residents are not required to obtain a license, provided they do not exceed the non-commercial daily catch limit, and provided that such scallops shall not be offered for sale. RIMF REGULATION [Penalty Part 6.6 (RIGL 20-6-9, 20-6-13)] ref (RIGL 20-6-1)

4.1.4-2 Commercial scallop license - Commercial: two hundred dollars ($200). The license is only issued to a resident of this state and shall be valid only for the season for which it is issued. (RIGL 20-2-25)

4.1.5 Multipurpose License - Fee

(a) Each resident of this state is eligible to obtain a multipurpose commercial marine license to participate in all commercial marine fisheries licensed subject to this chapter upon payment of an annual fee of three hundred dollars ($300). (RIGL 20-2-18.1)

(b) Multi-purpose Rhode Island Dealers licenses. This license allows persons to deal all marine products in the state of Rhode Island, three hundred dollars ($300).

(RIGL 20-2-28.1)

4.1.6 Shellfish Buyer's License - Fee -- The annual fee for a shellfish buyer's license is two hundred dollars ($200). (RIGL 20-2-23)

(Commercial shellfish licenses shall expire on June 30 of each year)

4.1.7 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 a commercial shellfish license as the Director may require, and
(c) such person while taking or possessing shellfish from Rhdoe Island waters has on his person a valid, legally obtained, shellfish license issued by the Department of Environmental Management.

[RIMF REGULATIONS]

4.1.8 The shellfish license shall contain the following information:
(a) first name, middle initial, and last name of licensed shellfisherman,
(b) date of birth of licensed shellfisherman,
(c) signature of licensed shellfisherman, and
(d) state-assigned identification number.
[RIMF REGULATION]

4.1.9 A licensed shellfisherman shall only sell, barter, or trade shellfish taken from Rhode Island waters to a licensed shellfish dealer or multipurpose dealer. [RIMF REGULATION]

4.1.10 A licensed shellfisherman 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 Limits -- (Daily Take)

Quahaugs, Soft-shelled Clams, Sea Clams, Bay Scallops, Mussels, and Oysters
Except in Management Areas

4.3.1 Resident Limit - No License Required. -- Unless otherwise specified in regulations adopted by the Marine Fisheries Council, 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-shelled clams, sea clams, oysters, and mussels, and not more than one (1) bushel of scallops; provided that those quahaugs, soft-shelled 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 regulation of the Marine Fisheries Council, 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 (20-3-3)]

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-shelled 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. [RIGL 20-6-10(b)]

4.4 Allowance of Shellfish Taking Under License. --

(a) Unless otherwise specified by regulation of the Marine Fisheries Council, 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 (20-3-3)]**

(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)

4.5 Method of Harvest. -- No person shall take any oysters, bay quahaugs, or soft-shelled 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 20-3-3)]

4.6 Soft-shelled 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-shelled 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-shelled 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-shelled 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, Mill Gut, Kickemuit River, Bissel Cove, High Banks, Sakonnet River, and Jenny's Creek have been declared special Shellfish Management Areas in their entirety for a period of five years. Shellfish Management Area status shall expire five years from the filing date of this document unless renewed by subsequent R.I. Marine Fisheries Council actions.

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:

Quahaugs, Soft-shelled Clams, Sea Clams, Mussels, and Oysters*

Maximum Daily Take by

BOAT HARVEST

R.I. Resident (no sale)	1 peck each/day/person
Commercial	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	

SHORE DIGGING

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

R.I. Resident (no sale)	1 peck each/day/person
Commercial	3 bu each/day/license holder
Licensed Non-Resident (no sale)	½ peck each/day/license holder
* Oyster season is open from September 15 to May 15 annually	

Daily catch limits apply to all Management Areas unless otherwise specified. The use of diving apparatus is prohibited while shoredigging.

(RIMF REGULATION) [Penalty – Part 3.3; (RIGL 20-3-30)]

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 -- The Rhode Island Marine Fisheries Council may establish a reduced shellfish limit in any Marine Life Management Area for a period not to exceed sixty (60) days. The following reduced limit shall apply in any area so designated:

Quahaugs, Soft-shelled 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 for a five-year period. This area is defined as 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 D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.10.3 SHORE DIGGING: will be permitted between sunrise and sunset daily. The maximum daily catch limit for shore digging of bay quahaugs, soft-shelled clams, mussels, and oysters [in season] is:

Resident shoredigger (no sale)	**1 peck each/person/day**
Licensed non-resident (no sale)	**½ peck each/person/day**
Commercial License holder	
oysters [in season]	**3 bushels/license holder/day**
soft-shellfed clams	**3 bushels/license holder/day**
Mussels	**3 bushels/license holder/day**
bay quahaugs	**One peck/license holder/day [EXCEPT: Mondays, Wednesdays, and Fridays beginning the second Wednesday of December until April 30 annually, when the daily limit shall be 3 bushels/license holder/day.]**

The use of diving apparatus is prohibited while shore digging.

BOAT HARVEST:
4.10.4 The entire area is closed to all shellfishing from a boat except as follows:

The area shall be open to shellfishing every December in accordance with a schedule established annually by the Director, pursuant to recommendations developed by the Division of Fish and Wildlife and the Marine Fisheries Council. 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; provided, however, that on the first six (6) consecutive days that the area is open, shellfishing from a boat will be permitted only between 8 A.M. and 10 A.M.; and for the second six (6) consecutive days that the area is open, shellfishing from a boat will be permitted only between 8 A.M. and 11 A.M.

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 may modify the December schedule to allow for additional hours or days of permitted shellfishing, provided:

1. **the proposed modification(s) is/are submitted in writing to the Division of Fish and Wildlife by a member of the Marine Fisheries Council, appointed by the Marine Fisheries Council, who shall represent the interests of the commercial shellfishing industry, including harvesters and dealers, regarding the proposed modification(s);**
2. **the total number of hours of permitted shellfishing for the month does not exceed forty-eight (48) hours; and**
3. **the re-scheduled hours or days are announced publicly by the Division of Fish and Wildlife with at least seventy-two (72) hours of advance**

notice.

[Note: pursuant to section 4.10.2, the following provisions are superseded by the closure of the management area to all shellfishing during the months of December and January, due to water quality conditions.] From the beginning of January until April 28, annually, shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Mondays, Wednesdays, and Fridays; provided, however, that if weather or water quality conditions prevent the area from opening during December, shellfishing from a boat will be permitted, when the area opens, only between 8:00 A.M. and 10 A.M. on the first six (6) consecutive Mondays, Wednesdays, and Fridays; between 8:00 A.M. and 11:00 A.M. on the second six (6) consecutive Mondays, Wednesdays, and Fridays; and then between 8:00 A.M. and NOON on all following Mondays, Wednesdays, and Fridays, until April 30.

For the period of February 1, 2009 to February 28, 2009: shellfishing from a boat will be permitted only one day per week – on the first available Monday, Tuesday, Wednesday, Thursday, or Friday, based on water quality conditions – between 8:00 A.M. and 11:00 A.M.

Shellfishing from a boat will also be permitted only between 8 A.M. and NOON on Monday, Wednesday, and Friday during the one (1) week immediately preceding Memorial Day weekend, annually.

The waters east of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods will be open to harvesting from a boat between sunrise and sunset daily on an annual basis.

4.11 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. (RIMF REGULATION) [Penalty Part 3.3; (RIGL 20-3-3)]

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

4.12.1 Mill Gut -- Mill Gut in Bristol 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-shelled clams, mussels, and oysters in accordance with the catch limits set forth in section 4.8.

4.12.2 Brightman (Winnapaug) Pond -- The following areas in Brightman Pond will be closed to the taking of clams and quahaugs: the area north of a line running easterly from Big Rock Point (so-called) to the southern end of Larkin's Island (so-called). The area will be bordered on the east by a line north westerly from a DEM marker on Larkin's Island to a DEM marker adjacent to the end of Bayside Avenue.

4.12.3 Quonochontaug Pond - The following area in Quonochontaug Pond will be closed to the taking of clams and quahaugs: the area is defined as south of a line running easterly from the special DEM marker at the end of Quahaug Point (so-called) to the northern end of Nope's or Barn Island. The area will be bordered on the west by a line running south from Quahaug Point to a DEM marker located on the barrier beach shoreline.
(RIMF REGULATION) [Penalty Part 3.3; (RIGL 20-3-3)]

4.12.4 Ninigret Pond – The following area within Ninigret Pond in Charlestown will be closed to the taking of soft-shelled clams, bay quahaugs, and oysters: all waters within an area formed by the following points: from ("A" N41º 20' 41.7" W71º 41' 24.3", the northeast corner of the Ninigret Conservation Area parking lot) following the shoreline to ("B" N41º 20' 49.6" W 71º 41' 4.6", a DEM sign approximately 500 meters eastward of "A"); from "B" northward to ("C" N41º 21' 31.0" W71º 41' 22.2", the Lavin's Landing Marina launching ramp); from "C" following the shoreline to ("D" N41º 21' 10.1" W71º 41' 40.9", a DEM sign on the westernmost end of Reeds Point); from "D" southward to "A".
(RIMF REGULATION) [Penalty - Part 4.4 or 4.7; (RIGL 20-6-9 or 20-6-10)]

4.13 repealed 12/2001

4.14 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 reharvest 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; RIGL 20-6-29]

4.15 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 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 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 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.

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)]

MINIMUM SIZES FOR SHELLFISH

<u>4.21</u> <u>Minimum Size of Quahaugs, Soft-Shelled Clams, Mussels</u> -- 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 (20-6-11) (RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

(a) No person shall take and/or possess any quahogs less than one inch (1") shell thickness (hinge width). In addition, 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 one and one half inches (1 1/2") 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. 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.

<u>Oysters - Minimum Size</u> -- Three (3) inches measured parallel to the long axis of the oyster. ref (20-6-11) (RIMF REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

<u>Sea Clams (Surf Clams)</u> <u>Minimum Size</u> -- Five (5) inches measured parallel to the long axis of the clam. (RIMF REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

<u>Scallops</u> -- <u>Taking and Possession of Seed Scallops</u> -- 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)

4.22 Bristol Harbor Shellfish Transplant Area

4.22.1 The waters of Bristol Harbor described below are designated as a Shellfish Management Area for a period of five years. 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 the northwest corner of the Coast Guard Dock, on the east side of Bristol Harbor, and north of a line between Rockwell's Dock (so-called) on the west side of Bristol Harbor, and the northwest corner of the Coast Guard Dock. 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 and on the east by the existing pollution line.

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

4.22.2 The entire area is closed to all shellfishing from a boat except as follows: Beginning on the second Wednesday of December, shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Mondays, Wednesdays, and Fridays until April 28, annually. In those years in which December 25th occurs on a Monday, Wednesday, or Friday, the management area will be closed to shellfishing from a boat on Christmas day and will be open to shellfishing from a boat the day following Christmas day.

Provided, however, that for the period of December 22 to December 26, 2008: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 22; Tuesday, December 23; and Friday, December 26 (closed Wednesday, December 24 and Thursday, December 25). And for the period of December 29, 2008 to January 2, 2009: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 29; Tuesday, December 30; and Friday, January 2 (closed Wednesday, December 31 and Thursday, January 1).

4.23 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)]

4.24 Bissel Cove - Fox Island Transplant Area

4.24.1 Bissel Cove and the adjacent waters of Narragansett Bay, 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 for a five-year period.

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

SHORE DIGGING:

4.24.2 Shore digging will be permitted daily between sunrise and sunset.

BOAT HARVESTING:

4.24.3 The entire area is closed to all shellfishing from a boat except as follows: Beginning on the second Wednesday of December, shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Mondays, Wednesdays, and Fridays until April 28, annually. In those years in which December 25th occurs on a Monday, Wednesday, or Friday, the management area will be closed to shellfishing from a boat on Christmas day and will be open to shellfishing from a boat the day following Christmas day.

Provided, however, that for the period of December 22 to December 26, 2008: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 22; Tuesday, December 23; and Friday, December 26 (closed Wednesday, December 24 and Thursday, December 25). And for the period of December 29, 2008 to January 2, 2009: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 29; Tuesday, December 30; and Friday, January 2 (closed Wednesday, December 31 and Thursday, January 1).

4.24 Repealed 12/01

4.25 Kickemuit River Shellfish Management Area Regulations

4.26.1 The area is defined as follows: The marine waters of the Kickemuit are those north of a line connecting nun buoy 6 and can buoy 1 at Bristol Narrows.

4.26.2 Upon certification of water quality by the D.E.M. 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 D.E.M. - Office of Water Resources shore digging will be permitted when the area is open.

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 D.E.M. Office of Water Resources shall supersede these regulations.

(RIMF REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

<u>4.27</u> <u>Potowomut Shellfish Management Area</u>

4.27.1 Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.27.2 SHORE DIGGING: is permitted within this entire area between sunrise and sunset daily year around.

4.27.3 BOAT HARVESTING:
The Potowomut Shellfish Management Area is divided into the following three areas pertaining to boat harvesting:

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). Area A is closed to shellfishing from a boat except between the second Wednesday of December and April 30 annually when shellfishing is permitted only between 8:00 AM and Noon on Mondays, Wednesdays and Fridays. In those years in which December 25th occurs on a Monday, Wednesday, or Friday, the management area will be closed to shellfishing from a boat on Christmas day and will be open to shellfishing from a boat the day following Christmas day.

Provided, however, that for the period of December 22 to December 26,2008: shellfishing from a boat will be permitted only between 8:00 A.M. andNOON on Monday, December 22; Tuesday, December 23; and Friday, December 26 (closed Wednesday, December 24 and Thursday, December 25). And for the period of December 29, 2008 to January 2, 2009: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 29; Tuesday, December 30; and Friday, January 2 (closed Wednesday, December 31 and Thursday, January 1).

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. Area B is closed to shellfishing from a boat until further notice.

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. Area C is open to shellfishing from a boat daily between sunrise and sunset year-round.

4.28 "High Banks" Shellfish Management Area

4.28.1 Shellfish harvesting will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations. Regulations by the Office of Water Resources shall supersede the regulations below.

4.28.2 SHORE DIGGING: is permitted between sunrise and sunset daily.

4.28.3 BOAT HARVESTING:

Beginning on the second Wednesday of December shellfishing will be permitted only between sunrise and NOON on Monday through Friday every week until April 28, annually. In those years in which December 25th occurs on a Monday, Wednesday, or Friday, the management area will be closed to shellfishing from a boat on Christmas day and will be open to shellfishing from a boat the day following Christmas day.

Provided, however, that for the period of December 22 to December 26, 2008: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 22; Tuesday, December 23; and Friday, December 26 (closed Wednesday, December 24 and Thursday, December 25). And for the period of December 29, 2008 to January 2, 2009: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 29; Tuesday, December 30; and Friday, January 2 (closed Wednesday, December 31 and Thursday, January 1).

4.29 Jenny's Creek Shellfish Management Area: The entire area is closed to all shellfishing until further notice. (RIMF REGULATION) [Penalty – Part 3.03 (RIGL 20-3-3)].

4.30 Handling of Shellfish

4.30.1 - Commercial shellfish harvesters and shellfish aquaculterists 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.

4.30.2 - Containers used for storing shell stock must be clean

4.30.3 - 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.

4.30.4 - 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.

4.30.5 - Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.

4.30.6 - 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.

4.30.7 - Shellfishermen or aquaculturists using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not contaminate shell stock.

4.30.8 - 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.

4.30.9 - 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. *(ref. RIGL § 46-12-39).*
(RIMF REGULATION)

<u>4.31 -- Tagging of Shellfish</u>

4.31.1 - 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 - the fisherman leaves the approved waters of the harvest area (identified on the RI Shellfish Harvest Area tagging map, shellfish management area or the aquaculture site identified by the CRMC Assent number) in which the shellfish were taken;
4.31.1-2 the shellfish are removed from the boat; or
4.31.1-2 offered for sale.

4.31.2 - 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 harvester's identification number as assigned by R.I.D.E.M.;
4.31.2-2 date of harvest;
4.31.2-3 the harvest location as identified on the R.I. Shellfish Harvest Area tagging map, shellfish management area or aquaculture site identified by the CRMC Assent number;
4.31.2-4 type (species) of shellfish; and
4.31.2-5 approximate quantity of shellfish

4.31.3 - 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"

4.31.4 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.

4.31.5 Bulk tagging of shell stock will be permitted only with prior approval of the R.I.D.E.M. Director under the following criteria:

4.31.5-1 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 a statement that all shell stock containers in this lot have the same harvest data and area of harvest; and
4.31.5-3 number of containers in the unit.

(RIMF REGULATION)

<u>4.32 -- Temperature control of shellfish</u>

4.32.1 - 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.

4.32.2 - 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.

4.32.3 - Ocean quahaugs (*Arctica islandica*) and surf clams (*Spisula*

***soliddisma*) are exempt from the aforementioned temperature control requirements.**
(RIMF REGULATION)

<u>4.33 Denial, Suspension, or Revocation of License</u>

4.33.1 - In addition of other penalties provided by law or other rule or regulation, any licensed shellfisherman who violates the provision of R.I.G.L. § 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 R.I.G.L. §§ 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.

4.33.3 - The Department of Environmental Management may deny renewal of shellfisherman license for violation of the provisions of R.I.G.L. § 20-6-24, these rules or any order issued by the Director during a prior license period.
(RIMF REGULATION)

<u>4.34 Severability</u> -- 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)

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 8th day of April, 2009 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, 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: N/A
Public Hearing: N/A

Filing Date: 04/08/2009
Effective date: 04/28/2009