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 III
Marine Fisheries Council

November 16, 2010

AUTHORITY: These regulations are adopted pursuant to Chapters 42-17.1, 42-17.6, 20-1-2, 20-1-4, 20-3-2 thru 20-3-6, 20-4 thru 20-10, and in accordance with 42-35-18(b)(5), 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 thru 20-10 and in accordance with Chapter 42-35-18 (b)(5), 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SUPERSEDED RULES AND REGULATIONS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all previous rules and regulations, and any policies regarding the administration and enforcement of Part III shall be superseded.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 III - MARINE FISHERIES COUNCIL

3.1 Council Created - Membership - Compensation -- There is hereby created a Marine Fisheries Council. The Council shall be composed of the Director of the Department of Environmental Management or the Director's designee, who shall serve as chairperson and eight (8) private citizen members. The private citizen members shall be chosen from among those with skill, knowledge, and experience in the commercial fishing industry, the sport fishing industry, and in the conservation and management of fisheries resources, and shall be appointed by the Governor with the advice and consent of the Senate. Three (3) of the private citizen members shall be representatives of the commercial fishing industry; three (3) shall be representatives of the sport fishing industry; and the remaining two (2) shall have skill, knowledge, and experience in the conservation and management of fisheries resources and/or marine biology. The chairperson of the Coastal Resources Management Council and the chiefs of the Divisions of Enforcement and Fish and Wildlife in the Department of Environmental Management shall serve in an advisory capacity to the Council. Members of the Council shall serve for a term of four (4) years and may succeed themselves. Initial appointments to the Council shall be appointed as follows: three (3) members for a term of two (2) years, three (3) members for a term of three (3) years, and two (2) members for a term of four (4) years. All members of the Council shall serve without compensation and shall be reimbursed for their necessary expenses incurred in travel and in the performance of their duties as such. (RIGL 20-3-1)

3.2 Powers and Duties -- The Marine Fisheries Council shall have regulatory jurisdiction over all marine animal species within the jurisdictional territory of the State. The Council is authorized after the holding of a public hearing to promulgate and adopt rules and regulations governing the following activities only, within the areas of its jurisdiction:

(1) the manner of taking fish, lobsters, and shellfish;
(2) the legal size limits of fish, lobsters, and shellfish to be taken or possessed;
(3) the seasons and hours during which fish, lobsters, and shellfish may be taken or possessed;
(4) the numbers or quantities of fish, lobsters, and shellfish which may be taken or possessed; and
(5) the opening and closing of areas within the coastal waters to the taking of any and all types of fish, lobsters, and shellfish.

(RIGL 20-3-2)

3.2.1 Regulations for adjusting allocation and possession limits -- For species managed under quota or possession limit in compliance with a federal or regional fisheries management plan (FMP) Fish and Wildlife and the RIMFC, unless specifically prohibited by the Secretary of Commerce or the Atlantic States Marine Fisheries Commission, will have the authority to distribute the allocations and possession limits in the following manner:

3.2.1-1 - Upon its own initiative, Fish and Wildlife may project when the allocation for a species will be exhausted. This determination will be based on the period of time remaining in the allocation period, historical catch rates, and the current

catch rate. If Fish and Wildlife determines that an allocation will be exhausted prior to the end of the sub-period or will not be met for a sub-period, it may change the possession limit without Council approval. Fish and Wildlife will file a notice with the Secretary of State and submit a news release announcing the change. All variances of possession limits will be effective upon filing with the Secretary of State.

3.2.1-2 - If Fish and Wildlife determines that the allocation for a given species will be exhausted prior to the end of a sub-period or will not be met for a sub-period, the RIMFC, upon its own initiative, may direct Fish and Wildlife to change the possession limit. This order will be binding on Fish and Wildlife, and the Program must satisfy the notice requirements of 11.21.1 to validate the change.

3.2.1-3 – Current Possession limit – If no current possession limit is noted in the table below, refer to Part 7 of the RI Marine Fisheries Statutes and Regulations for the sub period starting possession limit for all species other than striped bass, menhaden, and horseshoe crabs. For striped bass, if no current possession limit is noted in the table below, refer to Part 12 of the RI Marine Fisheries Statutes and Regulations for the sub period starting possession limit. For horseshoe crabs, refer to Part 15 of the RI Marine Fisheries Statutes and Regulations. For menhaden, refer to Part 16 of the RI Marine Fisheries Statutes and Regulations.

Species	Current possession limit	Effective dates
Atlantic Herring	Area 1A – 2,000 pounds per vessel per calendar day.	Effective 12:01 AM on November 9, 2010, until the next season begins on January 1, 2011.
	Area 1B - CLOSED	Effective 12:01 AM on September 15, 2010, until the next season begins on January 1, 2011.
Black Sea Bass	100 pounds per vessel per calendar day, until the fishery closes on November 7, 2010.	Effective 12:01 AM on November 2, 2010, until November 7, 2010 when the fishery will CLOSE, until the next sub period begins on January 1, 2011at 750 pounds per vessel per calendar day.
Coastal Sharks	Non-Sandbar Large Coastal Sharks (LCS) Species Group - CLOSED	Effective 12:01 AM on January 7, 2010, until the season begins on July 15, 2010.

	Small Coastal Sharks (SCS) Species Group – CLOSED	**Effective 12:01 AM on November 4, 2010, until the effective date of the 2011 shark season specifications are published in the Federal Register.**
Coastal Sharks (continued)	**CLOSED – porbeagle sharks of the Pelagic Shark Group**	**Effective 12:01 AM on September 5, 2010, until the effective date of the 2011 shark season specifications are published in the Federal Register.**
Horseshoe Crab	**CLOSED**	**Effective 12:01 AM on May 16, 2010, the commercial bait fishery for horseshoe crabs will be closed until the next harvest period begins on January 1, 2011.**
Menhaden	**CLOSED in the Narragansett Bay Menhaden Management Area**	**Effective 12:01 AM on June 8, 2010, until further notice.**
Monkfish	**50 pounds tail weight or 166 pounds whole weight per vessel per calendar day.**	**Effective 12:01 AM on October 24, 2010, until the state water quota has been harvested.**
Scup – General Category	**CLOSED**	**Effective 12:01 AM on October 31, 2010, until the next sub period begins on November 1, 2010 at 2,000 pounds per vessel per calendar day.**
Scup – Floating Fish Traps	**CLOSED**	**Effective 12:01 AM on October 31, 2010, until the next sub period begins on January 1, 2011.**
Striped Bass – General Category	**5 fish per vessel per calendar day for September 13, 2010 only**	**Effective 12:01 AM on September 13, 2010, and CLOSED effective 12:01 AM on September 14, 2010, until the next sub period begins on June 6, 2011.**
Striped Bass – Floating Fish Traps	**CLOSED**	**Effective 3:00 PM on September 24, 2010, until the next season begins on January 1, 2011.**

Summer Flounder	**2,000 pounds per vessel per calendar day.**	**Effective 12:01 AM on November 17, 2010, until the next sub period begins on January 1, 2011.**
Tautog	**CLOSED**	**Effective 12:01 AM on October 29, 2010, until the next sub period begins on April 15, 2011 at 10 fish per vessel per calendar day.**
Spiny Dogfish	**CLOSED**	**Effective 12:01 AM on August 25, 2010, until the next fishing season begins on May 1, 2011.**
Weakfish		

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

3.3 Penalties -- Unless another penalty is specified in this Title, any person who violates a rule or regulation of the Marine Fisheries Council shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500) or imprisonment for not more than thirty (30) days, or both. (RIGL 20-3-3)

3.4 Shellfish and Marine Life Management Areas. -- The Council may, on the advice of and in cooperation with the Director of Environmental Management, designate certain portions of the shores of the public waters of the State, or land within the State covered by tidewater at either high or low tide, or portions of the free and common fisheries of the State as Shellfish or Marine Life Project Management Areas for the purpose of enhancing the cultivation and growth of marine species, managing the harvest of marine species, facilitating the conduct by the Department of experiments in planting, cultivating, propagating, managing, and developing any and all kinds of marine life, and any other related purpose. The designation shall be pursuant to the Administrative Procedures Act, Chapter 35 of Title 42, and shall be by reference to fixed landmarks. The Council, upon designating a Management Area, shall promulgate any rules and regulations as it shall deem necessary for the protection and management of the Management Area and the animal life and property in the Management Area, including the exclusion or restriction of persons from the area or the prohibition of certain activities within the areas or other restrictions as it may deem necessary. Upon the designation by the Council of any Management Area, the Director of Environmental Management shall place any stakes, bounds, buoys, or markers with the words "Rhode Island Department of Environmental Management" plainly marked on them, as will approximate the Management Area. Failure to place or maintain such stakes, bounds, buoys or markers shall not be admissible in any judicial or administrative proceeding. The Director may make any experiments or conduct such activities as in his discretion shall be appropriate in these Management Areas. (RIGL 20-3-4)

3.5 Regulations Governing the Designation of Management Areas and the Opening and Closing of Areas Within the Coastal Waters

3.5.1 The Marine Fisheries Council ("Council") from time to time may designate various portions of the waters of the State as Management Areas, pursuant to the authority granted by Title 20, Chapter 3, of the General Laws of Rhode Island. Such designations may be made for the purpose of conducting experiments in planting, cultivating, propagating, managing, and developing any and all kinds of shellfisheries or finfisheries, for the purpose of protecting shellfisheries and finfisheries from overfishing, for the purpose of encouraging the development and growth of any and all shellfisheries or finfisheries, or for any other purpose related to the protection, maintenance, and/or propagation of fisheries resources.

3.5.2 Any designations under these regulations shall include an explicit de-scription of the area to be designated and may include restrictions on the quantities, types, or sizes of shellfish or finfish which may be taken in such area, the times during which shellfish or finfish may be taken, the manner or manners in which shellfish or finfish may be taken, or may close such area to the taking of shellfish or finfish altogether.

3.5.3 A designation under these regulations may be made for a period not to exceed five (5) years. A designation may be renewed at the end of its initial term.

3.5.4 Designations under these regulations may be made pursuant to the Ad-ministrative Procedures Act, Chapter 42-35 of the General Laws of Rhode Island as amended. Such designations shall contain a brief description of the purposes for which they are being made.

3.5.5 Shellfishing and finfishing activity in a Management Area may be regulated by the Council by filing such regulation with the office of the Secretary of State. Such regulation shall take effect twenty (20) days following its filing. In case of emergency or imminent hazard found to require immediate action, the Council may issue regulations governing the taking of shellfish or finfish in a Management Area to become effective without delay. Any regulation issued under this Section shall contain an explicit description of the nature of the emergency or imminent hazard giving rise to the regulation.

3.5.6 Until and unless modified pursuant to these regulations, all Shellfish Project Management Areas and other Management Areas previously established by the Department of Natural Resources, the Department of Environmental Management, or the Marine Fisheries Council shall remain in effect. Those areas so designated are found in part 3.6-Description of Shellfish and Marine Life Management Areas, herein.

3.5.7 The Director of the Department of Environmental Management ("DEM") may, where he reasonably believes that a delay would adversely affect the public purposes sought to be served by Title 20 of the General Laws of Rhode Island and/or would pose a danger to the public health, act to open or close any area (whether or not previously designated as a Marine Life Management Area) within the coastal waters of the State of Rhode Island to the taking of any and all types of fish, lobsters, and shellfish. In determining whether to open or close an area pursuant to this regulation, the Director shall consider what effect, if any, would be occasioned by

deferring the decision to open or close such area until the next meeting of the Marine Fisheries Council. If the Director opens or closes an area without awaiting the next meeting of the Marine Fisheries Council, he shall:

a. Immediately give notice, in writing, to the Council members of his/her action, and the basis thereof;

b. Immediately give notice of his/her action, in a newspaper of general circulation in the area to be affected thereby; and

c. Place his/her decision to open or close an area on the agenda at the next scheduled meeting of the Marine Fisheries Council, for its consideration.

When the Director has so acted to open or close an area, the Marine Fisheries Council, if in agreement with such action, shall adopt a rule confirming such act, in conformance with Title 42, Chapter 35 of the General Laws. If not ratified by the Marine Fisheries Council, the action by the Director shall become null and void as of the date of the Marine Fisheries Council's failure to ratify.

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

3.6 Description of Shellfish and Marine Life Management Areas

3.6.1 Bissel Cove and adjacent waters of Narragansett Bay - North Kingstown, R.I. including the entirety of Bissel Cove and 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.

3.6.2 Greenwich Bay in its entirety, in the towns of East Greenwich and Warwick, including the waters of Narragansett Bay west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.

3.6.3 Mill Gut in its entirety in the Town of Bristol, lying south of the northern-most bridge on Colt Drive.

3.6.4 Ninigret (Charlestown) Pond in its entirety in the Town of Charlestown.

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

3.6.6 Potter Pond in its entirety, Town of South Kingstown, west of the bridge at Succotash Road.

3.6.7 Quonochontaug Pond in its entirety in the towns of Charlestown and Westerly.

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

3.6.9 Winnapaug (Brightman) Pond in its entirety in the Town of Westerly.

3.6.10 Bristol Harbor (Shellfish Transplant Area), 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 the harbor, and the northwest corner of the Coast Guard Dock. The area is bordered on the west by the three foot contour line along the shore between Rockwell's dock and Johnson's Dock, and on the east by the existing pollution line.

3.6.11 Narragansett Bay in its entirety is designated a menhaden Management Area. This area shall include east and west passages of Narragansett Bay, Mt. Hope Bay, and the Sakonnet River, and be bordered on the south by a line from Bonnet Point. to Beavertail Point to Castle Hill Light. The southern boundary will then extend from Land's End to Sachuest Point and thence to Sakonnet Light.

3.6.12 Upper Narragansett Bay Trawling Area. The area is encompassed by the following lines; the southern boundary of the Upper Narragansett Bay otter trawling area is defined as a line from Spink Neck in the Town of North Kingstown to Pine Hill Point on Prudence Island, thence from Homestead Dock on the easterly shore of Prudence Island, thence northeasterly to Hog Island Shoal Light, and thence to the north abutment of the Mt. Hope Bridge in the Town of Bristol. The western boundary of the area is a line from Sandy Point in the City of Warwick to the southern tip of Warwick Point in the City of Warwick. The northern boundary of the area is a line from the dock at Rocky Point in Warwick to the southern tip of Poppasquash Point in Bristol, thence to Hog Island Light, and thence to the northern abutment of the Mt. Hope Bridge in Bristol.

3.6.13 Upper Sakonnet River Marine Life Management Area. The area is defined as follows: That portion of the Upper Sakonnet River which lies north of a line from McCurry Pt. in Portsmouth to the southern end of Jack's Island (so-called) in Tiverton. That portion of the Sakonnet River which lies south of the Sakonnet River Bridge (Rt. 24) to the southern boundary.

3.6.14 Kickemuit River Shellfish Management Area
All marine waters of the Kickemuit River are those north of a line connecting nun buoy 6 and can buoy 1 at Bristol Narrows.

3.6.15 Potowomut Shellfish Management Area: The waters at the mouth of Greenwich Bay south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point and north of a line between and the seaward end of Pojac Point to buoy "G1" (Round Rock) to the Warwick Lighthouse, including all the waters of the Potowomut (Greene's) River seaward of the Forge Road Spillway are declared a shellfish management area for five years.

3.6.16 "High Banks" Shellfish Management Area: The waters of the upper west passage south of a line between the seaward end of Pojac Point to the Round Rock buoy "G1" and north of a line from the seaward end of the fence between the former Davisville Navy property and Pettee Street in the Mount View section of North

Kingstown to "N6" buoy located mid-bay west of Prudence Island. The area is bounded on the east by a line projecting from the easternmost end of Pier 2 at Davisville to the Round Rock buoy "G1" and is bounded to the west by the shore.

3.6.17 Jenny's Creek Shellfish Management Area: Jenny's Creek of Prudence Island in its entirety is designated as a shellfish management area. The management area includes waters of Jenny's Creek north of the inlet at Pine Hill Cove.

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

3.7 Shellfish Transplant Regulations.

3.7.1 Any person participating in the transplant program shall surrender his commercial license to the conservation officer or Division of Fish and Wildlife employee afloat on the transplant bed or otherwise stationed to collect licenses. The license must be surrendered before the participant commences digging shellfish.

3.7.2 The boundaries of the transplanting area shall be marked with designated corner markers. All shellfishermen participating in the transplant program shall harvest shellfish only within the boundaries of the transplant area so marked.

3.7.3 No shellfisherman shall commence harvesting shellfish in the transplant area before the hour at which the transplant program is scheduled to commence. Hours of transplanting shall be publicized in advance.

3.7.4 Shellfishermen participating in the transplant program shall bring no shellfish into the transplant area before beginning the transplant. Any shellfish on board a participant's boat shall be considered transplant shellfish, dug from the transplanting area.

3.7.5 Any participant in the transplant program shall be considered to have completed his participation in the program when he presents his shellfish to the "buy boat/buy station" for counting/weighing. If the method of transplanting involves diggers planting their own catch in the transplant bed, the shellfisherman shall first present his catch to the authorized DEM officer for counting/weighing, and shall then proceed directly to the planting area. Once the shellfisherman commences to remove the shellfish from his boat to the "buy boat/buy station" or into the transplant bed, he shall remove ALL shellfish from his boat before changing location. Any change of location shall indicate that the shellfisherman has cleared his boat of shellfish and is ready for inspection and return of license by DEM officers. No shellfish shall be aboard any participant's boat at the time of inspection.

3.7.6 Temporary creation of a transplanting area shall in no way affect the polluted status of the waters therein, or of any waters surrounding the transplanting area and declared polluted.

3.7.7 Violation of any of these provisions shall be punishable by a fine of up to $500

and/or up to 30 days in jail.

<u>3.7.8</u> Agents of the D.E.M. may limit the maximum allowable harvest by each participant in a transplant. Agents of the D.E.M. may limit the number of participants in a shellfish transplant program provided that the limit is determined in a fair and equitable manner.

(RIMF REGULATION) [Penalty - Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

<u>3.8</u> <u>Emergencies</u> -- The Marine Fisheries Council may, without requirement of notice of hearing close any or all of the coastal waters of the State to the taking of any or all types of fish, lobsters, and shellfish, where it determines that a biological emergency exists which imminently threatens the marine resources of the State subject to the provisions of § 42-35-3(b). (RIGL 20-3-5)

<u>3.9</u> <u>Suspension and Revocation of Licenses</u> -- The Director of Environmental Management has the authority to suspend or revoke any shellfishing, lobster, or fishing license issued pursuant to any provision of this Title, for violation of a rule or regulation adopted by the Marine Fisheries Council, in any manner and for any period as the Director deter-mines by regulation. Any person aggrieved by an order of suspension or revocation may appeal there from in accordance with the provisions of the Administrative Procedures Act, Chapter 35 of Title 42. (RIGL 20-3-6)

3.9.1 Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

<u>3.10</u> <u>Regulation of Fishing in Great Salt Pond</u> -- Notwithstanding the provisions of §§ 20-10-1 through 20-10-4, the electors of the Town of New Shoreham may, in a town meeting called for that purpose, enact any ordinances to protect and to regulate the taking of shellfish and other fish in Great Salt Pond, and may impose penalties for violations of these ordinances, not exceeding a fine of two hundred dollars ($200) and three (3) months imprisonment for any one offense. (RIGL 20-3-7)

<u>3.11</u> <u>Size, Possession, and Daily Limit Violations On Board Vessels</u> -- In any instance, when there is a violation of the size, possession, or daily limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board. (RIMFC REGULATION)
[Penalty - Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

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 **16th day of November, 2010** to become effective 20 days from filing, unless otherwise indicated, in accordance with the provisions of Chapter 42.17.1, 42-17.6, 20-1-2, 20-1-4, 20-3-2 through 20-3-6, 20-4 thru 20-10 and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures, of the General Laws of 1956, as amended.

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Robert Ballou, Acting Chief
Division of Fish and Wildlife
Department of Environmental Management

Notice Given: N/A
Public Hearing: N/A

Filing date: 11/16/2010
Effective date: 11/16/2010