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

December 12, 2011

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SUPERSEDED RULES AND REGULATIONS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previous rules and regulations, and any policies regarding the administration and enforcement of **Part IV** shall be superseded.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 Rhode 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-shell Clams, Sea Clams, Bay Scallops, Mussels, and Oysters Except in Management Areas

4.3.1 Resident Limit - No License Required. -- Unless otherwise specified in Marine Fisheries Regulations, 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-shell clams, sea clams, oysters, and mussels, and not more than one (1) bushel of scallops; provided that those quahaugs, soft-shell 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 Marine Fisheries Regulations, 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-shell 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 Marine Fisheries Regulations, 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-shell 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-shell 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-shell 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-shell 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-shell 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, Conimicut Point, Mill Gut, Kickemuit River, Bissel Cove, High Banks, Sakonnet River, and Jenny's Creek have been declared special Shellfish Management Areas. Each of the above referenced areas shall continue to enjoy the designation as a Shellfish Management Area unless modified by the Director.

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. Note: Conimicut Point Shellfish Management Area has different possession limits, see specific regulations in section 4.11.1.

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

Maximum Daily Take by

BOAT HARVEST

R.I. Resident (no sale)	**1 peck each/day/person**
Commercial (in season)	**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. (Note: The harvest and possession of oysters in Quonochontaug Pond is prohibited from September 15, 2010 to September 15, 2013. See section 4.12.3. The harvest and possession of oysters in Bissel Cove/Fox Island is prohibited from September 15, 2010 to September 15, 2015. See section 4.12.6)**	

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 (in season)	**3 bu each/day/license holder [Exception: In the Greenwich Bay Management Area, the limit is 3 bu/day/license holder whenever sub-area 1 is open to boat harvest, but 1 peck/day/license holder whenever sub-area 1 is not open to boat harvest]**

Licensed Non-Resident (no sale)	**½ peck each/day/license holder**
*** Oyster season is open from September 15 to May 15 annually.** **(Note: The harvest of possession oysters in Quonochontaug Pond is prohibited from September 15, 2010 to September 15, 2013. See section 4.12.3. The harvest and possession of oysters in Bissel Cove/Fox Island is prohibited from September 15, 2010 to September 15, 2015. See section 4.12.6)**	

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 <u>Tagging/Labeling Requirements</u> – 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)]

<u>4.9</u> <u>Temporary Shellfish Limit</u> -- The Department 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:

<u>Quahaugs, Soft-shell Clams, Sea Clams, and Oysters</u>
<u>Reduced Maximum Daily Take for Marine Life Management Areas</u>

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. 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.

BOAT HARVEST:

4.10.4 Greenwich Bay Sub-Areas 1 and 2

The areas shall be subject to an annual December harvest schedule established 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.

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.**

(a.) GB Sub-Area 1 – Described as the waters east of a line between the Rhode Island Department of Environmental Management range marker located at the end of Neptune Street in Chepiwanoxet to the Rhode Island Department of Environmental Management range maker located on Cedar Tree Point, Warwick,

and north of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods.

(b) <u>GB Sub-Area 2</u> – Described as the waters west of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods; and south of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods

<u>For December 2011 - both GB Sub-Area 1 and GB Sub-Area 2 shall be open to shellfishing from a boat with the following schedule:</u>

<u>For December 2011</u> – open on December 14, 16, 19, 20, 21, 26, 27 and 28 from 8:00 AM to 11:00 AM (3 hours per day).

<u>For January 2012</u> – open Mondays and Wednesdays from 8:00 AM to 12:00 PM (4 hours per day).

<u>Also, February 1 through April 30, 2012</u> - open Mondays, Wednesdays, and Fridays from 8:00 AM to 12:00 PM (4 hours per day).

(c) <u>Default harvest schedules for GB Sub-Areas 1 & 2</u> – If no action is taken to establish specific harvest schedules and/or closures for the December 2011 – April 2012 harvest season, or harvest seasons subsequent thereto, the sub-areas shall revert to the following default harvest schedule:

> **Shellfishing from a boat will be permitted only between 8:00 A.M. and 10:00 A.M. on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.**

(d.) <u>GB Area 3</u> – Described as the waters east of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods, and west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.

GB Sub-Area 3 is open to shellfishing from a boat between sunrise and sunset daily on an annual basis.

<u>4.11</u> <u>Sakonnet River Shellfish Management Area</u> 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)]

4.11.1 Conimicut Point Shellfish Management Area

4.11.1-1 Certain waters adjacent to Conimicut Point are established as a Shellfish Management Area. This area is defined as south of a line running from the pole (Latitude: 41° 43' 2.93" North, Longitude: 71° 21' 27.68" West) on Conimicut Point to the center of the Old Tower at Nayatt Point; and north of a line from the western most extension of Samuel Gorton Avenue, Warwick and the southern most extension of Bay Road, Barrington.

4.11.1-2 Shellfish harvesting in Conimicut Point Shellfish Management Area will be allowed only when declared open by the D.E.M. Office of Water Resources based upon water quality considerations.

4.11.1-3 In the Conimicut Point Shellfish Management Area, the daily possession limit shall be three (3) bushels of soft-shell clams per day per license holder and a maximum of six (6) bushels per day per vessel with a maximum of two licensed shellfishers per boat.

4.11.1-4 The daily catch limits for shellfish species, other than soft-shell clams, shall be the statewide limits as provided by these regulations, not those applicable to management areas.

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

4.12.1 Mill Gut

4.12.1-1 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-shell clams, mussels, and oysters in accordance with the catch limits set forth in section 4.8.

4.12.2 Winnapaug (Brightman) Pond

4.12.2-1 The following area in Winnapaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net only: the area north of a line running easterly from a special DEM marker at Big Rock Point (N 41 degrees 19 minutes 49.0 seconds, W 71 degrees 47 minutes 57.0 seconds), to the special DEM marker at the southern end of Larkin's Island (N 41 degrees 19 minutes 55.0 seconds, W 71 degrees 47 minutes 5.0 seconds),. The area will be bordered on the east by a line running northwesterly the Larkin's Island special marker to a special DEM marker adjacent to the end of Bayside Avenue (N 41 degrees 19 minutes 58.0 seconds, W 71 degrees 47

minutes 9.0 seconds). The northern boundary is the shoreline between the Bayside Ave special DEM marker and the Big Rock Point special DEM marker.

4.12.3 Quonochontaug Pond

4.12.3-1 The harvest and possession of oysters in Quonochontaug Pond is prohibited from September 15, 2010 to September 15, 2013 (for three years).

4.12.3-2 The following areas in Quonochontaug Pond will be closed to all shellfishing except for the harvest of bay scallops by dip net only:

(a) The western closure area is defined as south of a line running easterly from the special DEM marker at the end of Quahaug Point (N 41 degrees 20 minutes 0.0 seconds, W 71 degrees 44 minutes 39.5 seconds), to a second special DEM marker at the northern end of Nope's Island (N 41 degrees 20 minutes 5.0 seconds, W 71 degrees 44 minutes 1.0 second). The area will be bordered on the west by a line running south from Quahaug Point to a special DEM marker located on the barrier beach shoreline (N 41 degrees 19 minutes 51.5 seconds, W 71 degrees 44 minutes 40.0 seconds). The southern boundary will be the shoreline between the barrier beach special DEM marker and Nope's Island special DEM marker.

(b) The eastern closure area is defined as east of a line running southerly from the special DEM marker located at N 41 degrees 21 minutes 1.1 seconds W 71 degrees 42 minutes 33.4 seconds, to a second special DEM marker located at N 41 degrees 20 minutes 41.0 seconds W 71 degrees 42 minutes 44.1 seconds; and bound by the eastern pond shoreline between the special DEM markers.

(RIMF REGULATION) [Penalty Part 3.3; (RIGL 20-3-3)]
4.12.4 Ninigret Pond

4.12.4-1 The following area within Ninigret Pond in Charlestown will be closed to all shellfishing except for the harvest of bay scallops by dip net only: all waters within an area formed by the following points: from ("A" N 41 degrees 20 minutes 41.7 seconds W 71 degrees 41 minutes 24.3 seconds, the northeast corner of the Ninigret Conservation Area parking lot) following the shoreline to ("B" N 41 degrees 20 minutes 49.6 seconds W 71 degrees 41 minutes 4.6 seconds, a DEM sign approximately 500 meters eastward of "A"); from "B" northward to ("C" N 41 degrees 21 minutes 31.0 seconds W 71 degrees 41 minutes 22.2 seconds, the Lavin's Landing Marina launching ramp); from "C" following the shoreline to ("D" N 41 degrees 21 minutes 10.1 seconds W 71 degrees 41 minutes 40.9 seconds, a DEM sign on the westernmost end of Reeds Point); from "D" southward to "A".

4.12.5 Potter Pond

4.12.5-1 The following area within Potter Pond in South Kingstown will be closed to all shellfishing except for the harvest of bay scallops by dip net only: An area within Sycamore Cove defined as north of a line running easterly from a special DEM marker located at N 41 degrees 23 minutes 2.0 seconds, W 71 degrees 32 minutes 13.0 seconds; to a second special DEM marker located at N 41 degrees 23 minutes 1.0 second, W 71 degrees 31 minutes 59.5 seconds; and bound by the northern pond shoreline between the special DEM markers.

4.12.6 Bissel Cove/Fox Island Oyster Harvest Moratorium –

4.12.6-1 The harvest and possession of oysters in the Bissel Cove/Fox Island Shellfish Management Area is prohibited from September 15, 2010 to September 15, 2015 (for five years).

(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

4.21 Minimum Size of Quahaugs, Soft-Shell Clams, Mussels --
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 two inches (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.

Oysters - Minimum Size -- 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)]

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

Scallops -- Taking and Possession of Seed Scallops -- 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. 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 <u>Boat Harvest</u>

(a) <u>For December 2011</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: December 14, 16, 19, 20, 21, 26, 27 and 28.

(b) <u>For January 2012</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) <u>From February 1 through April 30, 2012</u> - shellfishing from a boat will be permitted only from sunrise to 12:00 Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) <u>Default harvest schedule</u> – If no action is taken to establish specific harvest schedules for the December 2011 – April 2012 harvest season, or harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

> **Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.**

<u>4.23</u> <u>Opening Shellfish on Water</u> -- 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)]

<u>4.24</u> <u>Bissel Cove - Fox Island Transplant Area</u>

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.

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.

4.24.2 <u>Shore Digging</u> -- Shore digging will be permitted daily between sunrise and sunset.

4.24.3 <u>Boat Harvest</u>

(a) <u>For December 2011</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: December 14, 16, 19, 20, 21, 26, 27 and 28.

(b) <u>For January 2012</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) <u>From February 1 through April 30, 2012</u> - shellfishing from a boat will be permitted only from sunrise to 12:00 Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) <u>Default harvest schedule</u> – If no action is taken to establish specific harvest schedules for the December 2011 – April 2012 harvest season, or harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

> **Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.**

<u>4.24</u> Repealed 12/01

<u>4.25</u> <u>Kickemuit River Shellfish Management Area Regulations</u>

<u>4.26.1</u> 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.

<u>4.26.2</u> 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 (in season).

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)]

4.27 Potowomut Shellfish Management Area

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 HARVEST:
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 as follows:

(a) For December 2011 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: December 14, 16, 19, 20, 21, 26, 27 and 28.

(b) For January 2012 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) From February 1 through April 30, 2012 - shellfishing from a boat will be permitted only from sunrise to 12:00 Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) Default harvest schedule – If no action is taken to establish specific harvest schedules for the December 2011 – April 2012 harvest season, or harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

Shellfishing from a boat will be permitted only between 8:00 AM and 12:00 Noon on Mondays, Wednesdays and Fridays, beginning on the second Wednesday of December and continuing through the end of April.

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 The waters of High Banks are established as a Shellfish Management Area. This area is defined as 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.

4.28.2 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.

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

4.28.4 BOAT HARVESTING:

(a) For December 2011 – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: December 14, 16, 19, 20, 21, 26, 27 and 28.

(b) <u>For January 2012</u> – shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon (4 hours per day) on: Mondays, Wednesdays, and Fridays.

(c) <u>From February 1 through April 30, 2012</u> - shellfishing from a boat will be permitted only from sunrise to 12:00 Noon on: Mondays through Fridays.

(d) The area is closed to all shellfishing from a boat from May through November, annually, and will reopen every December in accordance with the annually established December schedule.

(e) <u>Default harvest schedule</u> – If no action is taken to establish specific harvest schedules for the December 2011 – April 2012 harvest season, or harvest seasons subsequent thereto, the area shall revert to the following default harvest schedule:

> **Shellfishing from a boat will be permitted only between 8:00 A.M. and 12:00 Noon on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December and continuing through the end of April.**

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

<u>4.30</u> <u>Handling of Shellfish</u>

4.30.1 - Commercial shellfish harvesters and shellfish aquaculturists 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 (see Part XVII – Maps), 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
4.31.1-3 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 (see Part XVII – Maps), 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)

4.34 Severability -- 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)

4.35 Conch

4.35.1 Commercial Harvest

4.35.1-1 Legal Minimum Size –
(a) No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any conch measuring less than 2-1/2 inches in diameter and/or a length not less than 4-1/2 inches. (RIMF REGULATION) [Penalty - Part 3.3; RIGL§ 20-1-16]

4.35.2 Recreational Harvest

4.35.2-1 Legal Minimum Size – No person shall take or possess any conch measuring less than 2-1/2 inches in diameter and/or either a length not less than 4-1/2 inches. RIGL (RIMF REGULATION) [Penalty - Part 3.3, RIGL §20-1-16]

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 **12th day of December, 2011** 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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Janet L. Coit, Director
Department of Environmental Management

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

FILING DATE: 12/12/2011
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