STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES REGULATIONS

Part XVI
Menhaden

June 22, 2015

AUTHORITY: Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act 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 regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

DEFINITIONS

See Rhode Island Marine Statutes and Regulations, Part I, '1.3.

SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

SUPERSEDED RULES AND REGULATIONS

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part XVI shall be superseded.

16.1 Prohibition on the Harvesting of Menhaden for Reduction Processing: The taking of Menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel's catch is sold for reduction.

16.2 Narragansett Bay Marine Life Management Area: This area shall include the 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 further extends from Land's End to Sachuest Point and then to Sakonnet Light. The following regulations govern all commercial Menhaden operations conducted in the Narragansett Bay Management Area (Management Area).

16.2.1 Gear Restrictions: The use of purse seines shall be permitted only in accordance with the following terms and conditions:

(A) All nets shall be less than 100 fathoms (600 feet) in length and less than 15 fathoms (90 feet) in depth.

(B) All nets shall be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of 50 feet.

(C) Annually, prior to use, all nets shall be inspected and certified as being in conformance with the provisions of this section by the DEM Division of Law Enforcement (DLE). Once inspected and certified, a net may be used throughout the duration of the calendar year in which it was inspected, provided that it is not altered with regard to any of the provisions of this section. Any net that is altered with regard to any of the provisions of this section must be re-inspected and recertified prior to use.

16.2.2 Vessel Restrictions: When engaged in the commercial Menhaden fishery, vessels may not have a useable fish storage capacity greater than 120,000 pounds. Prior to the commencement of fishing, for any vessel not previously certified through this process, each vessel must be inspected by a certified marine surveyor and assessed with regard to its fish storage capacity. A document reflecting the assessment must be kept aboard the vessel at all times. Any vessel with a fish storage capacity greater than 120,000 pounds may only engage in the fishery if the excess capacity is rendered unusable in accordance with the specifications set forth in the assessment.

16.2.3 Possession Limits:

(A) When the commercial Menhaden fishery opens, per section 16.2.5 of this part, the possession limit shall be 120,000 pounds per vessel per calendar day. The possession limits may be modified by the Division of Fish & Wildlife (DFW) on the basis of the estimated weekly standing stock of Menhaden in the Management Area derived, in accordance with section 16.2.5, via approved scientific monitoring methods.

(B) No commercial Menhaden fisher shall possess Menhaden or otherwise engage in the taking of Menhaden anytime on Saturday, Sunday, on any official state holiday, or prior to sunrise or following sunset, unless the fisher is using non-directed gear for menhaden. Non-direct gear will be defined as cast nets, floating fish traps, and rod and reel.

16.2.4 Reporting Requirements: In order to permit the DFW to monitor the fishery, any fisher intending to engage in the commercial Menhaden fishery shall notify the DLE at (401) 222-3070 prior to taking or coming into possession of Menhaden in the Management Area. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification which may have been established in the possession limit for menhaden. Each commercial Menhaden fisher shall also contact the DFW at (401) 423-1940 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished.

16.2.5 Opening/Closure of Fishery Based on Biomass Estimates:

(A) Biomass "Floor": On an annual basis beginning every spring, the DFW, utilizing approved scientific monitoring methods, shall conduct regular estimates of the weekly standing stock of Menhaden present in the Management Area. On the basis of those estimates, the DFW shall issue a notice when the estimated weekly standing stock reaches a threshold of 1,500,000 pounds, and the DFW shall open the commercial fishery, at an initial possession limit of 120,000 pounds per vessel per calendar day, when the estimated weekly standing stock reaches 2,000,000 pounds. If, at any time, the stock estimate drops below 1,500,000 pounds, the DFW shall close the commercial fishery until further notice.

(B) Biomass "Ceiling": When 50% of the estimated weekly standing stock of menhaden stock present in the management area, above the minimum threshold amount of 1,500,000 pounds, is harvested, the DFW shall close the menhaden fishery until further notice.

(C) A possession limit of 6,000 lbs per vessel per day will be allowed if using non-directed gear once the Management Area closes.

16.2.6 Permanent Closures: The following areas are permanently closed to purse seining for menhaden:

(A) Providence River: All waters north of a straight line running from Rocky Point to Conimicut Light to Nayatt Point.

(B) Greenwich Bay: All waters in Greenwich Bay west of a line from the flag pole on Warwick Point to Sandy Point.

16.2.7 Harvest of Menhaden in Permanently Closed Areas: No person harvesting menhaden by any fishing method shall possess more than two hundred (200) menhaden per vessel per calendar day in any closed area of the Management Area as set forth above, unless the individual is properly commercially licensed to harvest menhaden and is not using purse seine gear.

16.2.8 Fall Opening of the Narragansett Bay Marine Life Management Area:

(A) Beginning September 1 of each year, the area south of a line from the Jamestown and Newport Bridges, and the area south of a line from Fogland Point to Sandy Point in the Sakonnet River, to the southern extent of the Narragansett Bay Marine Life Management Area as defined in 16.2 will be open to the harvest of menhaden by purse seine as long as the states quota has not been exhausted or if the Episodic Event Set Aside Program has been enacted in RI.

(B) Possession limit: 25,000 lbs per vessel per day.

16.3 Landing of Menhaden in RI under State Quota Program: A total annual statewide quota for Menhaden shall be the most recent allocation as established for the State by the Atlantic States Marine Fisheries Commission (ASMFC). The quota shall pertain solely to landings of Menhaden in RI and shall not pertain to the possession of Menhaden in RI waters prior to landing. The quota may only be harvested and landed by fishermen licensed and vessels duly authorized in accordance with the provisions of Title 20 of the General Laws and in accordance with all rules and regulations promulgated by the DEM. The State's Menhaden quota will be managed as follows:

16.3.1 The landing limit for Menhaden in RI will be unlimited until the quota has been reached, as determined by the DFW. Once the quota has been reached: (i) the landing limit will be zero for vessels associated with directed fisheries for Menhaden, including but not limited to purse seine operations, and (ii) the landing limit will be 6,000 pounds per vessel per day for all vessels not associated with directed fisheries for Menhaden. Non-directed fisheries for Menhaden include but are not limited to cast net fishing and the floating fish trap fishery.

16.3.2 All commercial Menhaden operations conducted in the Management Area, prior to and after the State's quota has been reached, are subject to the provisions of section 16.2, unless the fisher is using a non-directed gear type.

16.4 Episodic Event Set Aside Program:

16.4.1 After the State's quota has been reached, if RI is approved to participate in the Episodic Event Set Aside Program for Menhaden, as established by the ASMFC, the landing limit for menhaden will be 120,000 pounds per vessel per day for vessels associated with directed fisheries for Menhaden, until the Set Aside quota has been exhausted, as determined by the ASMFC and/or the DFW, at which time the

program will end and the directed fishery will close. Vessels that target and land Menhaden in RI under this program must harvest only from RI waters and, if operating in the Management Area, must adhere to all of the provisions as specified in these regulations.

16.4.2 Reporting Requirements: Any commercial fisher intending to target Menhaden under the Episodic Event Set Aside Program for Menhaden must notify the DLE at (401) 222-3070 prior to taking or coming into possession of Menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification to the possession limit for menhaden that is applicable to operations conducted in the Management Area. Each said fisher shall also contact the DFW at (401) 423-1940 at the end of each daily trip or within four hours thereof to report the amount of Menhaden landed by the fisher in pounds. These Menhaden-specific reporting requirements are in addition to all other existing commercial fishing reporting requirements as set forth in the RI Marine Fisheries Regulations (RIMFR).

16.4.3 Vessels not associated with directed fisheries for menhaden may continue to harvest and land in RI up to 6,000 pounds per vessel per day as bycatch. Such vessels are not subject to the provisions of sub-sections 16.2.3(A) and (B), but are subject to the provisions of section 16.2 with regard to operations conducted in the Management Area, and are subject to all existing commercial fishing reporting requirements as set forth in the RIMFR.

16.4.4 The Episodic Event Set Aside Program will end on November 1 annually or when the set aside quota has been harvested, whichever first occurs.

16.5 No fisher may transfer or attempt to transfer Menhaden to another fisher.

16.6 Violations for Non-compliance:

16.6.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.

16.7 Penalties:

16.7.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars ($500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)

16.7.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "*Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife"*.

16.8 Appeals:

16.8.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "*Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters"*

16.8.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

EFFECTIVE DATE

The foregoing rules and regulations "Rhode Island Marine Fisheries Regulations, Part XVI - Menhaden" after due notice, are hereby adopted and filed with the Secretary of State this 22nd day of June, 2015 to become effective 20 days from filing, unless otherwise indicated below, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures, of the Rhode Island General Laws of1956, as amended.

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Janet L. Coit, Director
Department of Environmental Management

Notice Given: 04/10/2015
Public Hearing: 05/11/2015

Filing date: 06/22/2015
Effective date: 07/12/2015

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