

Newport Fishing Port Operations Regulations

June 9, 2003

**State of Rhode Island
Department of Environmental Management
Division of Coastal Resources**

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Rule #1 PURPOSE

The purpose of these rules and regulations is to amend the existing regulations in order to govern the Newport Fishing Port more efficiently.

Rule #2 AUTHORITY

These rules and regulations are promulgated pursuant to Chapters 46-5 and 42-17.1 of the Rhode Island General Laws in accordance with Chapter 42-35 1 of the Rhode Island General Laws, the Administrative Procedures Act.

Rule #3 ADMINISTRATIVE FINDINGS

The instant rules and regulations are promulgated in order to clarify existing regulations governing the Newport Fishing Port.

Rule #4 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.

Rule #5 SEVERABILITY

If any provision of these rules and regulations, or 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.

Rule #6 SUPERSEDED RULES AND REGULATIONS

On the effective day of these rules and regulations, the “Newport Fishing Port Operations Regulations” which were re-promulgated by the Department of Environmental Management Division of Coastal Resources in January 2002 shall be superseded.

Rule #7 DEFINITIONS

The following words when used in these rules and regulations, except when otherwise required by the context, shall have the following meaning:

DEM or Department shall mean the Department of Environmental Management, the Director of the Department of Environmental Management, or any Division of the Department of Environmental Management.

Director shall mean the Director of the Department of Environmental Management.

Division of Coastal Resources shall mean the Division of Coastal Resources of the Department of Environmental Management.

Facility, Pier, or Port shall mean the State owned piers located at the Port of Newport.

Permittee or *Tenant* shall mean a person that has been issued a permit to berth a vessel at the State owned piers located at the Port of Newport

Permits shall mean authorization to berth a vessel at the State owned piers located at the Port of Newport.

Person shall mean an individual, corporation, partnership, or other legal entity.

Tenancy shall mean the period during which a permittee is authorized to berth a vessel at the State owned piers located at the Port of Newport

State shall mean the State of Rhode Island.

Rule #8 RULES AND REGULATIONS

1.0 This facility shall be used exclusively for the berthing of commercial fishing vessels and activities reasonably associated with and necessary thereto. Such activities may include:

- (A) Vehicle parking for captains and crewmen in assigned areas only;
- (B) Loading and offloading fishing gear and equipment in designated areas;
- (C) Access by vendors of services and repairs to fishing vessels, at certain times designated by the Department;
- (D) Storage of fishing nets in assigned net storage areas; and
- (E) Storage of lobster pots in assigned storage areas.

1.1 The following activities are prohibited at the facility:

- (A) Offloading of fish, lobsters or shellfish except by berth permit holders;
- (B) Handling, processing, storage and formal wholesale or retail sale of fish, lobsters and shellfish;
- (C) Construction or emplacement of any structure or building by fishermen or vendors of services to the fishing fleet;
- (D) Storage of vessel trailers on the Pier;
- (E) Use of vessels for residential purposes; and
- (F) Any use other than those provided above in Part 1.0.

2.0 No vessel shall berth at state owned facilities at the Port of Newport without a berth permit or a lease. The vessel owner shall submit initial applications to the State of Rhode Island Department of Environmental Management in duplicate. Dockage space will be assigned to those issued permits in order of receipt of applications. However, because of the particular length of a vessel with relations to the Pier space available or other pertinent factors, it may sometimes be necessary to deviate from this policy.

3.0 A vessel owner whose application has been approved and has been so notified shall pay the required dockage fee and any arrearages owed prior to the issuance of a berthing permit. If such payment is not received within ten (10) days after approval of application, the State may deem the application withdrawn and consider other applications.

4.0 A vessel owner who holds a berthing permit and who is not in arrears on any payments to the state, shall have the option to renew this permit for the following year. However, if such option is not exercised prior to June 30th, the space will be assigned to the next eligible applicant on the waiting list. Payment of year round dockage fees must be made no later than July 15th. Non-payment of fees after the due date shall be considered cause for revocation of berth permits. Berth holders who have had their permits revoked lose all seniority rights and cannot be reinstated in the Port or be placed on a waiting list for entry into the Port until all past due amounts are paid in full plus any interest due.

5.0 When a vessel is sold, berthing rights shall not be transferred with the vessel. The berth right may remain with the permit holder provided that a new vessel is purchased within one year and all fees remain paid in full.

6.0 When a holder of a berthing right dies, the berthing right shall become the right of his/her immediate family with no loss in the seniority of the permit. Berthing rights may not be sold or otherwise transferred outside of the immediate family.

7.0 The fee for a berth is calculated on the basis of the length of the vessel. For this purpose the length shall be determined by measuring the overall length of the vessel (including pulpit). Vessel lengths involving fractions of a foot or six inches or more shall be increased to the next higher foot. Fractions fewer than six inches shall be ignored.

8.0 The berthing permit fee schedule is as follows:

- (A) The minimum fee assessed for a berthing permit shall be the fee that would be assessed on vessels with a length of twenty (20') feet, i.e., any vessel which is less than twenty (20') feet in length shall be charged a berthing fee calculated as if the permitted vessel were twenty (20') feet in length.
- (B) Berthing permits shall cost forty (\$40.00) dollars per annum for each foot of the vessel's length.
- (C) Transient vessels are any vessels that do not have a current annual berthing permit. Any transient vessel that is authorized by the Department to berth at the facility shall be assessed a daily fee calculated as follows: forty (\$40.00) dollars plus fifty (\$.50) cents per foot for all footage over forty (40') feet per day.

9.0 The following standards shall be applied in order to determine an applicant's eligibility for issuance of a berthing permit:

- (A) Permits shall be issued only for those vessels that are and will continue to be actively engaged in commercial fishing during the year for which the permit is requested.
- (B) Applicants for permits must demonstrate that they will be engaged in commercial fishing by certifying either:

- (C) That the vessel was used for commercial fishing on at least one hundred (100) days during the previous year;
- (D) That the vessel was used for commercial fishing the maximum number of days as restricted by duly promulgated government fishing regulations; have jurisdiction over the vessel; or
- (E) That the vessel was purchased by the applicant within six (6) months of the date of permit application, and that the applicant has the intent and ability to comply with Part 9.0 B (1) and (2) above.

10.0 A priority will be given in granting of permits to vessels whose owners are individuals who are Rhode Island residents or business corporations incorporated in the State of Rhode Island and whose principal stockholders are Rhode Island residents.

11.0 Vessel owners shall promptly notify the State of any change in home or business address or change in vessel name, identification or size, or of any information contained in a previously filed application form.

12.0 A permittee shall notify the State, in advance, if a berth will not be used for a period of two weeks or longer.

13.0 All fees due shall be paid in full in advance of the issuance of a berthing permit.

14.0 No refund will be made for any unused dockage if a permittee vacates his berth. If a permittee relinquishes his berthing permit, a refund may be applied for. Said refund shall be prorated on a quarterly basis for fees paid in advance. There shall be no refunds for periods less than a quarter.

15.0 The Department shall have a right to terminate a permit for any valid cause, including, but not limited to, non-payment of fees when due, and violations of these regulations.

16.0 Lobster pots and nets may be stored on the pier in the designated storage areas subject to the following restrictions:

- (A) All pots must be removed from the pier for the period August 1 through August 14 inclusive each and every year.
- (B) A portion of the "Heavy Duty Pier" will be used for mobile gear storage (Nets). All nets will be stored on pallets and not directly on the deck of the pier. All stored gear must be kept neat and stored in an orderly fashion.
- (C) Access to piers and vessels berthed along the bulkhead must be maintained at all times.
- (D) The owners of pots and nets are required to remove or relocate said gear when requested to do so by DEM personnel.

17.0 A berth assignment list shall be maintained by the Pier Superintendent. Berth assignments may be reallocated in the sole discretion of the Pier Superintendent from time to time in order to make more efficient use of the Piers.

18.0 Passage over the Piers shall remain unobstructed at all times. No gear, barrels, equipment or other materials shall be allowed to obstruct passage to the Piers. The center three (3') feet of the "L" Pier must be kept clean at all times.

19.0 Storage of bait at the facility is only permitted in compliance with the following restrictions:

- (A) Storage of unrefrigerated bait must be in sound (no leaks) plastic barrels with tight fitting lids;
- (B) Barrels must be covered at all times;
- (C) All unrefrigerated bait must be salted down; consistent with the following standards: one (1 lb.) pound salt for each ten (10 lbs.) pounds of skate being stored, one (1 lb.) pound of salt for each six (6 lbs.) pounds of herring or porgie being stored and such storage must be arranged in alternating layers of fish and salt.
- (D) Barrels must be scrubbed out with salt water and a biodegradable cleaner before reuse.
- (E) Salted bait must be used within a one (1) month period in winter, and within two (2) weeks in summer.
- (F) Any maggot infested bait must be removed immediately from the facility and properly disposed of.
- (G) Division of Coastal Resources staff has the right to inspect barrels stored on Pier 9 and order the immediate removal of bait which they deem to be in noncompliance with these regulations or otherwise offensive. Such an obligation is recognized as a condition of tenancy.
- (H) There is no storage of bait on the asphalt surface of the pier.
- (I) Bait barrels shall not be handled in such a manner as to result in spilling of bait or juices on the asphalt deck of the pier.
- (J) Baiting is permitted on the cement bulkhead cap (except on the West face of the bulkhead). The bulkhead used for baiting shall be washed down immediately upon completion of the baiting.
- (K) The Division of Coastal Resources may in its discretion the berth permit or otherwise restrict a permittee found to violate this regulation.

20.0 Bait vehicles are prohibited from entering into any area of the facility other the designated parking area that has been assigned for this purpose. No bait trucks other than those that are duly registered and currently insured shall be permitted to enter into or remain at the facility. In addition, no bait trucks from which bait juices are leaking shall be permitted to enter into or remain at the facility.

21.0 Power washing is prohibited at the facility with the exception of on the cement slab located at the Northwest corner of the pier. In addition, all users of the slab for power washing shall clean the area immediately upon completion of the job.

22.0 A permit for berthing space does not bestow the permittee with the right to occupy land on the waterfront in any manner except as explicitly provided in these regulations.

23.0 The Department shall have a lien upon the vessel for any monies due and owing for berthing fees which are in default, which lien may be enforced by sale of vessel in accordance with the General Laws of 1956 and any amendments thereto. The owner of the vessel, or the owner's agent shall be subject to the penalties set forth in Title 46, Chapter 22, of the General Laws of 1956, and any amendments thereto. For purposes of Section 9(E) of said Chapter, a failure to pay all fees when due shall effect an automatic withdrawal of any consent by the State of Rhode Island.

24.0 In the event a permit holder wishes to substitute a vessel, the permittee shall give the Department full particulars and request and receive prior approval to substitute a new vessel.

25.0 Piers are occupied at the sole risk of the users thereof.

26.0 Dumping of garbage, oil, refuse, fish offal, or other substances in public tidewaters of the State is prohibited by State and Federal Law. Waste crankcase oil from the fishing vessels shall only be disposed of in the designated waste oil collection tanks. The collection areas shall be kept clean and oil spills shall be immediately reported to the Pier Superintendent.

27.0 The Department reserves the right to designate "firelanes" which shall be signed and kept clear and unobstructed at all times. No obstructions including but not limited to gear, storage, parking, standing vehicles, cutting boards, or bait barrels shall be allowed in designated firelanes, except for loading and unloading equipment with the driver in line of sight of the vehicle.

28.0 No person shall bring into the port area any refuse, ashes, waste oil, garbage, or other materials for the purpose of disposal within said area. No person shall dispose of fish or fish parts on the bulkhead or in the waters of the State.

29.0 Parking shall be allowed only in allocated and/or designated parking spaces. Vehicles must have a current Pier 9 parking sticker. Any vehicles which are found in areas designated "No Parking Zones" shall be tagged and fined as well as the vehicle(s) towed away at the owner's expense.

30.0 All designated rights of way shall be kept free and clear of obstruction including but not limited to vehicles, gear, or equipment. A ten-foot zone around all electric power pedestals and all water hydrants are to be kept free and clear of obstruction including but not limited to vehicles, gear, or equipment.

31.0 No person shall distribute or exhibit in the Port any printed or written material of a commercial nature without written permission of the Pier Superintendent. When official permission is granted, the distributor or exhibitor shall be responsible for removal of all litter, which may result from such distribution.

32.0 No person shall offer for sale at the Pier any goods or services of a commercial nature without written permission of the Pier Superintendent.

33.0 Camping and/or sleeping in vehicles at the facility is prohibited.

34.0 Abandoned or illegally parked vehicles will be towed at the owner's expense.

35.0 Abandoned or illegally berthed vessels will be removed from the Pier at the owners expense.

36.0 A section of the bulkhead at the facility will be designated for short-term vessel service and will be located on the Northwest corner of the Main Pier. Use of this area for other immediate loading/unloading purposes is prohibited. The storage of gear in this area for longer than twenty-four (24) hours is prohibited. The captain of the vessel obtaining short-term service shall remain in board; any tie-up over six (6) hours is only permitted with the written permission of the Pier Superintendent.

37.0 A section of the South-facing bulkhead located between the skiff dock and the first back down slip will be designated for short-term vessel use. Short-term storage of gear in this area restricted to seventy-two (72) hours. Authorized uses are loading and unloading pots and fishing gear, running out cables, minor welding, carpentry, outfitting, and engine repair, electrical equipment repair, net repairs (for no longer than four (4) hours), loading/unloading bait barrels; and fueling of vessels provided said fueling operations do not occur adjacent to welding or other potential fire hazards.

38.0 In addition to specific restrictions noted in the two preceding Parts, the following obligations shall apply to any vessel using the bulkhead service areas described above in Parts 36.0 and 37.0. The operator of any vessel using a bulkhead service area shall ensure that the area employed is clean and in good repair prior to vacating the area. Any vessel which does not possess a valid berth permit is prohibited from using a bulkhead service area without the prior written approval of the Pier Superintendent and payment of the transient rate for the use of the Pier.

39.0 Vendors of services related to the fishing fleet are prohibited from entering the facility including the bulkhead areas in order to servicing tenant or transient vessels without the prior authorization of the Division. The Division shall provide the requisite authorization to private sector vendors of services related to the fishing fleet on an equal and non-exclusive access basis to qualified vendors while in the act of servicing tenant or transient vessels. Any vendor applying for such authorizations shall be licensed by the

Department and shall provide their services in accordance with the Port operating rules and regulations. License fees shall be in conformance with the established rate for the use of Pier and bulkhead space.

40.0 The State Pier Superintendent shall have the right to assign berths to vessels from the waiting list based upon seniority on the waiting list while taking into consideration Pier and dock configuration, size of vessel, hull type, berthing space available, and any other factor which will produce the most efficient utilization of berthing space.

41.0 A Newport Fishing Advisory Group shall be established by the Director in order to advise and/or assist the Department relative to the preparation of a Master plan and rules and regulations for the development and operation of this facility. The Director or his/her designee shall call meetings of the advisory group only upon reasonable notice.

42.0 Uses and/or activities which are or may be reasonably associated with and/or necessary to the berthing of commercial fishing vessels which are not otherwise addressed herein may be permitted by the Director after opportunity for review by the advisory committee. In permitting such uses and/or activities, the Director shall consider the following:

- (A) Compatibility with other permitted uses and activities;
- (B) The demand for the use or activity by tenant fishing vessels;
- (C) If a commercial service, the availability of said service elsewhere in the city of Newport and the impact of permitting it on other service vendors; and
- (D) The impact of permitting arrangement on the price, availability and convenience of the service to tenant fishing vessels.

43.0 Any use of activity which is not reasonably associated with or necessary to the berthing of commercial fishing vessels as these several terms are defined herein is expressly prohibited.

44.0 There shall be no modifications or alterations to the pier without prior approval of the superintendent.

45.0 Curfew: With the exception of the owners and crew of commercial fishing vessels assigned berthing permits and/or those involved in loading/unloading or servicing vessels at the State owned facilities at the Port of Newport, all persons are prohibited from the State owned facilities at the Port of Newport at any time during the hours between sunset and sunrise.

46.0 Penalties: The following penalties shall apply to violations of these regulations:

- (A) Administrative processing which may result in suspension and/or revocation of any and all of the violators berthing permits at the State facility; and
- (B) Administrative enforcement proceeding may impose a maximum fine of Five Hundred (\$500.00) Dollars per day per violation.

47.0 Appeals

- (A) General-The procedure for the appeal of decisions by the Division of Coastal Resources relative to these rules and regulations is governed by the provisions of Chapter 42-17.7 of the Rhode Island General Laws, i.e., the “Administrative Adjudication for Environmental Matters,” and the rules and regulations duly promulgated pursuant thereto.
- (B) The request for hearing before the Administrative Adjudication Division (the “AAD”) concerning either attempts to impose enforcement penalties including the denials of licenses or the denials of applications for licenses or permits shall be in writing and filed with the AAD within the time periods set forth in Section 42-17.7 of the Rhode Island General Laws. R.I. General Laws Section 42-17.7-9 provides that all requests for an adjudicatory hearing concerning enforcement actions must be received by the AAD within twenty (20) calendar days of a person’s receipt of the contested enforcement action. R.I. General Laws Section 42-17.7-9 further provides that all requests for an adjudicatory hearing concerning appeals of the denial of applications for licenses or permits must be received by the AAD within twenty (20) calendar days of a person’s receipt of the contested agency action.

RULE #9- EFFECTIVE DATE

These rules and regulations shall take effect twenty (20) days after filing with the Department of the Secretary of State.

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

JAN H. REITSMA, DIRECTOR

DATED: _____